

Iowa Students with Disabilities Enrolled In Accredited Nonpublic Schools: A Summary of State and Federal Legal Requirements

The 2004 IDEA amendments, the 2006 amendment to Iowa Code section 256.12, and the 2006 IDEA regulations have made significant changes to how and where special education is provided to children with disabilities enrolled by their parents in accredited nonpublic elementary and secondary schools, as well as changes to which entities are financially responsible for special education or related services provided to those children. Iowa's 2007 special education regulations codify these changes, and added some refinements. This document explains these requirements to educators and to parents.

The 2004 IDEA amendments and the implementing 2006 regulations provide that children who are placed by their parents in private schools (regardless of whether the LEA of a child's residence was able to offer the child a FAPE) are entitled to "equitable participation" in special education or related services provided with Part B funds. 20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. §§ 300.130-144. In nearly all jurisdictions and nearly all instances, this is the only public funding for private school students with disabilities. In Iowa, however, children with disabilities enrolled in private schools are entitled to "special education programs and services ... in the same manner and to the same extent that they are provided to public school students." Iowa Code § 256.12 (2009). Thus, Iowa's state law goes well above what is required by federal law.

Because state law provides special education programs and services to all students with disabilities attending accredited nonpublic schools, the Department had previously stated the IDEA's "equitable participation" was not applicable. In comments released with the 2006 IDEA regulations, OSEP stated it requires all states to comply with the "equitable participation" requirements, even if a state such as Iowa provides "a full range of special education and related services" to children with disabilities placed by their parents in private schools. *Analysis of Comments and Changes*, 71 Fed. Reg. at 46,590 (2006).

In view of OSEP's position, the Department offers the following guidance, which (1) provides the best possible harmonization of federal and state law, (2) maximizes participation and cooperation between interested parties, (3) minimizes paperwork and recordkeeping burdens while maintaining a rigorous and meaningful audit trail for Part B funds, and (4) attempts to maximize funds available for providing special education and related services to children with disabilities who are enrolled by their parents in accredited nonpublic schools.

For convenience, many of the pertinent citations will be to Iowa's rules, which parallel the requirements of federal law.

I. The Consultation Process

The 2004 IDEA amendments impose a specific requirement for “timely and meaningful” consultation between school districts and the nonpublic schools within their district. 20 U.S.C. § 1412(a)(10)(A)(II). This consultation process forms the backbone of the IDEA’s requirements for the use of Part B funds to serve accredited nonpublic school students with disabilities.

The required consultation process must ensure adequate participation, including an opportunity to make and respond to comments (face-to-face meetings, telephone conference calls, video conferences, etc.), and include parents of children with disabilities in accredited nonpublic schools, representatives of the nonpublic schools, representatives of attending (not sending) school districts, and an AEA representative.

The consultation process must occur at least annually. It is to be periodic and on-going, and may occur more frequently than annually.

The Consultation Process Will Be At the AEA Level. Since AEAs are the Department’s sub-grantees for Part B funds and are LEAs within the IDEA’s definition, there will be one consultation process for each AEA, which shall include all LEAs and accredited nonpublic schools located within the AEA’s jurisdiction. *See also* Iowa Admin. Code r. 281–41.407(1)“i”. There will be no need for a consultation process for Part B funds at the local district level.

There are several compelling rationales for the Department’s decision. By having one consultation process per AEA, the paperwork burden for LEAs and AEAs will be reduced. In addition, having one consultation process per AEA will reduce the possibility for inter-district inequities in allocating Part B funds for students enrolled in accredited nonpublic schools. Finally, AEAs typically spend far more Part B dollars than LEAs, and spend it on support and related services. In contrast, special education funding to LEAs is almost entirely state and local dollars, spent on instructional services. It is anticipated that the consultation process will primarily concern support and related services provided by AEAs.

Required Elements of Consultation Process. The consultation process, which addresses systems issues rather than individual students, must include the following points:

1. The AEA’s child find process, including how parentally placed nonpublic school children with suspected disabilities “can participate equitably” and how “parents, teachers, and private school officials will be informed of the process.” Iowa Administrative Code r. 281–41. 134(1).

2. How children with disabilities enrolled in accredited nonpublic schools “can meaningfully participate in special education and related services.” *Id.* r. 41.134(3).

3. How, where, and by whom special education and related services will be provided for parentally placed nonpublic school children with disabilities. *Id.* r. 41.134(4). The consultation process should describe how, on what services, and in what order Part B monies are to be spent. This must include how Part B funds will be allocated, if Part B funds are inadequate to provide services to all students with disabilities placed by their parents in private schools. *Id.*

4. How, if the AEA disagrees with the nonpublic school about the provision of services (either directly or through a contract), the AEA will provide to nonpublic school officials a written explanation of reasons why the AEA chose not provide the requested services. *Id.* r. 41.134(5).

Documenting the Consultation Process. After the consultation process, the AEA must obtain a written affirmation that the consultation has occurred, signed by the representatives of participating accredited nonpublic schools. Iowa Admin. Code r. 281–41.135. A sample template to assist with the consultation process is attached as Appendix A, and a sample written affirmation form is attached as Appendix B. Use the first page of the affirmation form when all parties agree; page 2 is for use when a nonpublic school representative refuses to sign the affirmation within a reasonable period of time. *Id.*

The consultation process will eventually be reported in the Special Education Supplement. All documents supporting the reports must be maintained for Department inspection and review. Additionally, if a representative of an accredited nonpublic school does not sign the affirmation of consultation, documentation must be forwarded directly to the Department.

Nonpublic School Complaints About the Consultation Process. The law also allows an accredited nonpublic school to file a complaint with the Department if it believes the AEA did not (1) engage in timely and meaningful consultation or (2) give due consideration to the views of the authorized representative of the accredited nonpublic school. Iowa Admin. Code r. 281–41.136. If the accredited nonpublic school disagrees with the Department’s determination, it may then appeal to the United States Department of Education. A sample form for filing a notice of complaint is attached as Appendix C.

Proportionate Share Calculation. The Department will calculate the proportionate share for each AEA based on data provided to the Department, using currently existing data systems. The consultation process should explain

to participants how data are to be gathered and reported. Each AEA, LEA, and accredited nonpublic school is responsible for the accuracy of the data provided to the Department.

Does the Consultation Process Need to Discuss State and Local Dollars? Because it concerns only Part B dollars, the consultation process does not need to address special education and related services provided pursuant to Iowa Code section 256.12. The consultation process may discuss how Part B services and services funded with state and local dollars are coordinated. The Department recommends that LEAs engage in something similar to the consultation process with their accredited nonpublic schools concerning state and local dollars.

II. Child Find, Evaluation, & Child Count

The LEA (and AEA) where an accredited nonpublic elementary or secondary school is located is responsible for child find and evaluation, regardless of where the child resides. Iowa Admin. Code r. 281–41..131. The AEA must count and report to the Department the number of children with disabilities who are enrolled in accredited nonpublic schools (regardless of whether they receive services). *Id.* r. 41.133(c).

The “child find and evaluation” responsibility belongs to the AEA where the school is located, not the AEA where the child resides. This includes children who reside outside of Iowa and whose parents place them in accredited nonpublic schools located within Iowa. *Id.* r. 41.131(6).

EXAMPLE: A child resides in Illinois and is placed by her parents in an accredited nonpublic school in Iowa. The AEA where the Iowa school is located is responsible for finding that child and seeking consent to evaluate her if she is suspected of being a child with a disability.

The child find process must ensure equitable participation of parentally placed nonpublic school children and must provide an accurate count of those children, *id.* r. 41.131(2).

The evaluation process for children in accredited nonpublic schools must be similar to evaluations in public schools, *id.* r. 41.131(3), and completed in a time comparable to evaluations conducted in public schools, *id.* r. 41.131(5). This includes reevaluations.

EXAMPLE: A child is placed at an accredited nonpublic school in Iowa. Through child find, the child is suspected of having a disability, and the child’s parent consents to an evaluation. The evaluation must be completed within the time required by the Iowa Administrative Code and federal law and must be completed using materials and procedures used for public school students.

AEAs must receive parental consent to evaluate a parentally placed nonpublic student suspected of having a disability. If a parent refuses consent to evaluate, the AEA may not use mediation or file a due process hearing to override that refusal. Iowa Admin. Code r. 281–41..300(4). Additionally, the AEA need not submit that child to the Department for use in calculating the AEA’s proportionate share obligation.

The AEA and LEA where a private school is located and the AEA and LEA where the child resides must receive parental consent before sharing personally identifiable information about the child. *Id.* r. 41.622(4).

EXAMPLE: A parent who resides in District XYZ enrolls a child in an accredited nonpublic school located within District ABC. Before District ABC seeks to obtain information from District XYZ to use in the evaluation process, the child's parent must consent.

The cost of child find and evaluation processes for parentally placed nonpublic school students with disabilities is not included in determining whether the AEA meets its proportionate share obligations. *Id.* r. 41.131(4).

EXAMPLE: The Department calculates that AEA 123456's proportionate share to provide services to students with disabilities in accredited nonpublic schools is \$100,000. AEA 123456 evaluates a child, and that evaluation costs \$10,000. AEA 123456 must not use the cost of that evaluation to determine whether it met its proportionate share obligation.

Public school officials will be required to report to the Department (a) the number of students enrolled by their parents in accredited nonpublic schools who were evaluated, and (b) the number of students enrolled by their parents in accredited nonpublic schools who are identified as having a disability, regardless of whether they receive special education or related services. *Id.* r. 41.132(3). This reporting will be through IMS. All parentally placed students with disabilities in accredited nonpublic schools are used in calculating the AEA's proportionate share requirement, regardless of whether they receive special education or related services.

EXAMPLE: A child who is parentally placed at an accredited nonpublic school is evaluated and determined to be a child with a disability. For whatever reason, the child's parent does not agree to the provision of special education or related services. The child is still reported to the Department and included in calculating the AEA's proportionate share obligation.

III. Finance & Part B: Calculating the Proportionate Share For Services to Private School Students with Disabilities.

The Department will calculate the proportionate share for each AEA based on the following data: the number of children with disabilities served by the AEA, the number of the children with disabilities who are enrolled in accredited nonpublic elementary or secondary schools, and the funds received under Sections 611 and 619.

The proportion of Part B funds to be spent on providing special education or services to students with disabilities enrolled by their parents in accredited nonpublic elementary and secondary schools (regardless of whether those students receive special education or related services) is equal to the proportion that the number of such students is to the total number of children with disabilities in its jurisdiction. Iowa Admin. Code r. 281 – 41.133(1).

The proportionate amount of Part B funds is to be spent in accordance with the priorities developed in the consultation process. If the AEA does not spend the entire proportionate amount, it must “obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.” *Id.* r. 41.133(1)“b”(2).

OSEP gives the following example of calculating an AEA’s proportionate share.

Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities For Flintstone School District:	
Number of eligible children with disabilities in public schools in the LEA.....	300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA	20
Total number of eligible children	320
FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT	
Total allocation to Flintstone	\$152,500
Calculating Proportionate Share:	
Total allocation to Flintstone.....	\$152,500
Divided by total number of eligible children	320
Average allocation per eligible child.....	\$ 476.5625
Multiplied by the number of parentally-placed children with disabilities	20
Amount to be expended for parentally-placed children with disabilities	\$9,531.25

IV. What Activities May the “Proportionate Share” Support?

As explained above, the proportionate share of Part B funds required by federal law to be expended on the education of children with disabilities enrolled by their parents in accredited nonpublic schools is calculated at the AEA level. AEAs provide special education support services to Iowa’s children with disabilities. Iowa Admin. Code r. 281 – 41.409. According to Iowa rule,

Support services are the specially designed instruction and activities that augment, supplement or support the educational program of eligible individuals. These services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, and speech-language services.

Id. The nature of each of these support services is further defined elsewhere in Iowa’s rules. *Id.* r. 41.402(3). In determining the nature of equitable services to be provided, AEAs and accredited, nonpublic schools are advised to consider the whole range of support services in the consultation process.

Each AEA must maintain documentation demonstrating how its proportionate share is expended in providing equitable services. This would include AEA decisions on staffing levels, allocation of staff to serve students attending accredited nonpublic schools, and how and when such services were provided (using time sheets, IEP progress monitoring notes and records, etc.).

V. Finance: Coordinating State & Local Funds with Federal Funds

In Iowa, children with disabilities enrolled in accredited nonpublic schools are entitled to “special education programs and services ... in the same manner and to the same extent that they are provided to public school students.” Iowa Code § 256.12. Under Iowa law, the district of the child’s residence has the financial responsibility for providing a FAPE to students with disabilities who are enrolled in accredited nonpublic schools. *Id.*

The new IDEA amendments do not change what locality is responsible for state and local dollars. In fact, the commentary to the 2006 IDEA regulations makes clear that the district where the accredited nonpublic school is located is responsible only for the proportionate share of Part B monies, not the provision of a FAPE to students with disabilities enrolled by those parents in that accredited nonpublic school. The task for AEAs, LEAs, and private schools is to coordinate state and local dollars with Part B funds (1) to ensure a seamless delivery of services to children with disabilities and (2) to use state, local, and federal funds in the most effective and efficient manner possible.

State and local dollars may supplement, but not supplant, the proportionate share of Part B dollars to be spent providing equitable services to children with disabilities enrolled by their parents in accredited nonpublic schools. Iowa Admin. Code r. 281–41.133(4). Because of this supplement-not-supplant requirement, AEAs must maintain adequate records showing how the proportionate share was spent to provide equitable services. *Id.* rr. 41.901-902.

The Department’s finance consultants will provide information and technical assistance on billing, reporting, and child count.

Reporting of child count shall be through IMS. Reporting of finance and expenditures, as well as documentation of the consultation process, shall be through the Special Education Supplement.

VI. IEPs

Under Iowa law, children with disabilities enrolled in private schools are entitled to the same FAPE that public school children with disabilities would receive. Iowa Code § 256.12. Thus, students with disabilities who are placed by their parents in accredited nonpublic schools are entitled to IEPs, developed and implemented in accordance with state and federal law. Iowa Admin. Code r. 281–41.138(2). Parents who are dissatisfied with IEPs offered to their children with disabilities who are enrolled in accredited nonpublic schools may use the procedural safeguards available to students with disabilities who are enrolled in public schools.

If a student with an IEP who attends an accredited nonpublic school receives services funded by Part B pursuant to the criteria developed in the consultation process, those services should be somehow documented. This will facilitate federal and state auditing of Part B funds and AEA/LEA/nonpublic school accountability for such funds.

Since state law provides that children with disabilities who are enrolled in accredited nonpublic schools are entitled to IEPs, a family may not reject an IEP and then demand equitable participation in services under a “services plan.”

VII. Nature and Location of Services

A. Federal Law. Governing law, which require LEAs and AEAs to provide a proportionate share of Part B funds to provide special education or related services to eligible students placed by their parents in private schools (including religious schools), place several restrictions on the use of Part B funds.

▶ Personnel who provide Part B-funded special education or related services in accredited nonpublic schools must meet the same standards as personnel employed in public schools; however, elementary and secondary school teachers in accredited nonpublic schools need not meet the IDEA’s highly qualified teacher requirement. Iowa Admin. Code r. 281--41.138(1).

▶ Special education and related services, including materials, must be “secular, neutral, and nonideological.” *Id.* r. 41.138(4).

▶ Special education and related services must be provided by an employee of an LEA or AEA, or by contract with the LEA or AEA. *Id.* r. 41.138(3).

▶ Special education and related services may be provided on the private school site, if consistent with state law. *Id.* r. 41.139(1).

▶ The regulations provide the following concerning transportation, in 34 C.F.R. § 300.139(b).

(b) *Transportation—(1) General.* (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—

(A) From the child’s school or the child’s home to a site other than the private school; and

(B) From the service site to the private school, or to the child’s home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child’s home to the private school.

(2) *Cost of transportation.* The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of § 300.133.

▶ The AEA or LEA must not use Part B funds to “finance the existing level of instruction in a private school or to otherwise benefit the private school. Iowa Admin. Code r. 281 – 41.141(1).

▶ The AEA or LEA must use Part B funds to meet the needs of parentally placed students with disabilities (consistent with the agreement reached after consultation and each child's services plan), but must not use Part B monies to meet the needs of the private school or the "general needs of the students enrolled in the private school." *Id.* r. 41.141(2).

▶ LEA or AEA personnel may be used to provide services to eligible individuals enrolled in private schools to the extent necessary to provide equitable services and only if "those services are not normally provided by the private school." *Id.* r. 41.142(1).

▶ The LEA or AEA may use Part B funds to "pay for the services of an employee of a private school to provide" equitable services only if "the employee performs the services outside of his or her regular hours of duty" and LEA or AEA supervises and controls the private school employee's services. *Id.* r. 41.142(2).

▶ An LEA or AEA may not use Part B funds "for classes that are organized separately on the basis of school enrollment or religion of the children" if "the classes are at the same site" and "the classes include children enrolled in public schools and children enrolled in private schools." *Id.* r. 41.143.

▶ The LEA or AEA must "control and administer funds" used to provide services to private school students with disabilities, and must "hold title" to any real or personal property purchased with such funds. *Id.* r. 41.144(1).

▶ The LEA or AEA may "place equipment and supplies" on private school property while necessary to provide equitable services. *Id.* r. 41.144(2).

▶ The LEA or AEA must "ensure" equipment and supplies are used only for Part B purposes and "can be removed from the private school without remodeling the private school facility." *Id.* r. 41.144(3).

▶ The LEA or AEA must remove equipment or supplies if no longer needed for Part B purposes or to prevent unauthorized use. *Id.* r. 41.144(4).

▶ Part B funds must not be used for "repairs, minor remodeling, or construction of private school facilities." *Id.* r. 41.144(5).

B. State Law. Iowa Code section 256.12, in part, concerns where services may be provided to eligible individuals enrolled by their parents in accredited nonpublic schools. As noted above, services funded by state and local dollars are not subject to the consultation agreement.

1. The following services may be provided on the premises of a private school, with the permission of the “lawful custodian” of the private school property.

- a. Health services
- b. Special education support, and related services provided by area education agencies for the purpose of identifying children with disabilities
- c. Assistance with physical and communications needs of students with physical disabilities
- d. Services of an educational interpreter

2. All other services may be provided on the premises of an accredited nonpublic school “at the discretion of the school district or area education agency provider of the service and with the permission of the lawful custodian of the property.” Neither the AEA or the LEA nor the accredited nonpublic school is required to agree to provide services on the site of an accredited nonpublic school. It is important to note this discretion must not be abused. *John T. v. Marion Indep. Sch. Dist.*, 173 F.3d 684 (8th Cir. 1999). The AEA and LEA must not exercise the discretion conferred by section 256.12 to “render ... impotent,” *see id.*, the section’s term that provides special education services to nonpublic school students “in the same manner and to the same extent that they are provided to public school students.” Iowa Code § 256.12.

C. Interaction of Federal and State Law Regarding Nature and Location of Services.

Federal and state laws are closely aligned on what is permitted. Iowa’s rules state that special education services provided under section 256.12 must be “secular, neutral, and nonideological” and comply with the restrictions imposed by federal law, unless a specific provision of section 256.12 requires otherwise. Iowa Admin. Code r. 281 – 41.413(1).

Concerning location of services, federal law allows services to be provided on the site of the accredited nonpublic school if permitted by state law. State law permits those services if agreed, as described above. If no agreement is reached, then services may not be provided under state law and, as a result, federal law.

VIII. Confidentiality

As noted previously, regulations require parental consent to before personally identifiable information is released between an LEA (or AEA) where a child resides and an LEA (or AEA) in which an accredited nonpublic school where a child attends is located. Iowa Admin. Code r. 281—41.622(4). This release of information requirement does not apply if the accredited nonpublic school is located in the same LEA and AEA where the parent resides. By the regulation's text, the regulation applies only to students with disabilities. Students without disabilities who are enrolled by their parents in accredited nonpublic schools are not covered by this regulation.

The Department expects most parents of students enrolled in accredited nonpublic schools would willingly consent to the release of such information; however, the failure to provide such a release could be a barrier to child count, to evaluation, and to payment of state and local dollars for services under Iowa Code section 256.12. While the right to refuse to consent to such transfers of information is created in federal law, a parent who exercises such right may jeopardize the full and timely delivery of the FAPE granted by Iowa Code section 256.12.

The Department recommends that AEAs include discussions of this regulation in the consultation process, including discussions about how important such releases of information are. The Department recommends that accredited nonpublic schools also explain the importance of such releases (1) whenever a parent who resides in another AEA and LEA seeks to enroll a student with a disability, (2) whenever the child is suspected of having a disability and an evaluation is proposed, or (3) whenever any other reason for the exchange of such information arises.

A sample consent form is attached as Appendix D.

If an AEA or LEA believes a parent's refusal to provide consent will not allow for the reporting required by Iowa Code section 256.12, the AEA or LEA should contact the Department for assistance.

IX. Reporting Requirements

Federal law requires each AEA to maintain in its records and to report to the Department the following information: the number of children enrolled by their parents in accredited nonpublic schools located in the AEA's jurisdiction who are evaluated, the number of such children determined to be children with disabilities, and the number of such children who receive special education or related services funded by Part B dollars. 34 C.F.R. § 300.132(c).

Federal law, aside from the confidentiality of personally identifiable information regulation discussed above, does not change the state reporting requirements (child count, special education count).

As discussed above, reporting of child count is made through IMS. Reporting of the consultation process and the expenditure of the proportionate share is to be made through the Special Education Supplement. As also noted above, if a representative of an accredited nonpublic school does not sign an affirmation of consultation, a form documenting the consultation process (see Appendix B) must be provided to the Department.

AEAs and LEAs are to maintain all records proving compliance with the IDEA and with Iowa Code section 256.12. Iowa Admin. Code. rr. 281 – 41.901-.902.

X. The Ability of an AEA and LEA to Provide A FAPE: Is It Relevant?

Several school districts asserted they should not have financial responsibility when parents have placed children with disabilities in private schools because they are able to offer a free appropriate public education (FAPE).

When Is The Ability To Provide FAPE Relevant? A district's ability to provide a FAPE when a student with a disability is placed in a private school by parents is relevant in two situations:

- Financial responsibility is sought for services provided by or at a non-accredited nonpublic school without dual enrollment (or to a greater extent than permitted by dual enrollment).
- Parents seek tuition reimbursement for placement at an out-of-state school, where the district did not make the placement or make a referral.

If the parent proved the AEA and LEA were unable to provide a FAPE, and placement in either of these two situations was necessary to provide a FAPE, the parent may be able to obtain tuition reimbursement. If the parent failed to prove the AEA and LEA were not able to offer a FAPE, then the parent would not be entitled to tuition reimbursement. As a general rule, the ability to provide a FAPE is irrelevant in all other cases.

Why Is This So? Under 20 U.S.C. § 1412(10)(A), children with disabilities enrolled in private schools are entitled to "equitable participation" in special education and related services. This section requires public education officials to consult with private schools located within their boundaries and develop plans for the provision of special education and related services to children with disabilities attending those private schools. Iowa's statute regarding provision of special education services for parentally placed students in accredited nonpublic schools (Iowa Code § 256.12) includes the requirement that "school districts and area education agency boards shall make public school services, which shall include special education programs and services . . . available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students." Section 256.12 extends special education services to students in private schools without regard to the district's ability to provide FAPE.

Under 20 U.S.C. § 1412(10)(C), the district's offer of FAPE is a defense when parents seek tuition reimbursement for unilateral private school placements. This defense, however, is subject to § 1412(10)(A) and, by necessary implication, section 256.12.

XI. Other Topics and Questions

Q: Are students with disabilities in unaccredited nonpublic “schools” or children who are home schooled entitled to IEPs under state law or to equitable services provided by Part B dollars?

A: The IDEA’s rules and Iowa Code section 256.12, as discussed in this guidance document, apply only to services in accredited nonpublic schools. They do not apply to children who are home schooled or enrolled in unaccredited “schools.”

A child in competent private instruction (whether home schooled or enrolled in an unaccredited private “school”) is not entitled to special education or related services under state or federal law, unless the child is dually enrolled. The nature and extent of the dual enrollment will determine the nature and extent of services provided under state and federal law.

Q: Do these statutes and regulations apply when an IEP team or a public agency proposes placing a student in a private school or facility?

A: No. They only apply to placements made by parents in accredited nonpublic schools located in Iowa. A different set of statutes and regulations govern private school placements or referrals made by IEP teams or a public agency. *See, e.g.,* Iowa Admin. Code rules 281 – 41.145-.147.

Q: How do these statutes and regulations relate to an Iowa resident who is placed by their parents in a private school in another state?

A: If an Iowa child is parentally placed in an out-of-state private school, that child is not entitled to services under Iowa Code section 256.12. The child would be entitled to equitable participation in Part B dollars in the out-of-state district where the private school is located.

Q: Are students who are educated at for-profit nonpublic schools to be counted for determining “proportionate share”?

A: No. Only students with disabilities who are placed by their parents in non-for-profit nonpublic schools are considered when calculating the proportionate share. *Letter to Chapman*, 49 IDELR 163 (OSEP 2007).

Q: Are students with disabilities in preschools covered by the IDEA's proportionate share requirement?

A: Only students attending preschools that meet the state's definition of an elementary school are counted in calculating the AEA's proportionate share. If a private preschool meets the state's definition of an elementary school, its students with disabilities are included in the proportionate share calculation. If the private preschool does not meet this definition, its students with disabilities are not included. *See, e.g., Letter to Smith, 47 IDELR 105 (OSEP 2006).*

If a public agency, as opposed to a parent, places a preschooler in a private preschool, a differing set of rules apply. *See Iowa Admin. Code rules 281–41.145-.147.*

Q: May a parent reject public school involvement yet still demand services under the IDEA or under section 256.12?

A: No. Both the IDEA and section 256.12 require services to be under public supervision and control. That is a necessary condition to such services, and is a required term in both state and federal law. If a parent does not accept public agency involvement, the parent, as a matter of law, rejects services the public agency is requested to provide.

XII. Appendices

- Appendix A: Template for Issues to be Addressed During Private Schools Consultation
- Appendix B: Affirmation of Consultation
- Appendix C: Notice to Representative of Participating Accredited Nonpublic School
- Appendix D: Sample Form: “Consent to Exchange Personally Identifiable Information: Student Enrolled/Enrolling In Accredited Nonpublic School Outside District of Child’s Residence”
- Appendix E: References

APPENDIX A

Template for Issues to be Addressed During Private Schools Consultation

Special Education Services for Parentally Placed Private School Children with Disabilities or Suspected Disabilities		
Provision of Services	Special Education	Related and Support
Types		
How		
Where		
By Whom		

APPENDIX B

Affirmation of Consultation

I/We, the undersigned representatives of _____
(name of accredited nonpublic school),

do hereby affirm that the AEA in which the above nonpublic school is located , as well as the district in which the above nonpublic school is located, held a consultation with me/us pursuant to the Individuals with Disabilities Education Act of 2004 on _____.

Printed Name

Signature

Printed Name

Signature

NOTE TO USER:

Report results of this consultation process in the Special Education Supplement
Retain this document for the Department’s inspection and review.

Documentation of Consultation

I/We, the undersigned representatives of the AEA and school district listed below attach documentation to show the consultation process pursuant to the

Individuals with Disabilities Education Act amendments of 2004 on

_____ (date) that we conducted with representatives of

(name of accredited nonpublic school),

and further state that the representatives of the nonpublic school failed to provide written affirmation of such consultation within a reasonable period of time.

Printed Name/Employer

Signature

Printed Name/Employer

Signature

NOTE TO USER:

Report results of this consultation process in the Special Education Supplement

Mail this copy to the Iowa Department of Education

Retain a copy of this document for the Department's inspection and review.

APPENDIX C

Notice to Representative of Participating Accredited Nonpublic School

TO: The authorized representative of a participating nonpublic school

You have engaged in consultation regarding special education and related services with the public school district and area education agency in whose boundaries your accredited nonpublic school is located.

This Notice is to inform you that you have the right to submit a complaint. Submit it to:

Director
Iowa Department of Education
Grimes State Office Building
Des Moines, IA 50319-0146

You may file a complaint if you believe that the school district or the AEA did not do either or both of the following:

- Engage in timely and meaningful consultation; or
- Give due consideration to your views as the authorized representative of your accredited nonpublic school.

Please state specifically why you believe the district or the AEA is non-compliant with either or both of the above points.

APPENDIX D: Sample Form

Consent to Exchange Personally Identifiable Information: Student Enrolled/Enrolling In Accredited Nonpublic School Outside District of Child's Residence

I am a parent of [INSERT NAME OF CHILD], a student who is or may be identified as a child with a disability. My child resides in [INSERT AEA WHERE CHILD RESIDES] and [INSERT LEA WHERE CHILD RESIDES].

I have enrolled or seek to enroll my child in [INSERT ACCREDITED NONPUBLIC SCHOOL], an accredited nonpublic school located in [INSERT AEA WHERE SCHOOL LOCATED] and [INSERT LEA WHERE SCHOOL LOCATED].

I understand it may be necessary for the AEA and LEA where my child resides and the AEA and LEA where the accredited nonpublic school is located to share personally identifiable information about my child to provide my child with special education and related services (including but not limited to evaluations for special education eligibility). I understand my consent is required before such sharing of information takes place. I understand I may withhold my consent; however, I understand my refusal to give consent may limit the ability to provide special education and related services to my child.

I voluntarily give my consent to exchanges of personally identifiable information about my child between the AEA and LEA where my child resides and the AEA and LEA where the accredited nonpublic school is located. I understand my consent may be revoked at any time. I understand I cannot revoke my consent retroactively.

[PARENT'S SIGNATURE & DATE]

NOTE

Do not use this sample form if the child resides in the same AEA and LEA where the accredited nonpublic school is located. No consent is necessary in that situation.

APPENDIX E: References

Statutes

20 U.S.C. § 1412(a)(10) (2009). Available at: <http://idea.ed.gov>

Iowa Code § 256.12 (2009).

Available at: <http://www.legis.state.ia.us/lowaLaw.html>

Rules and Regulations

34 C.F.R. §§ 300.129-.147, 300.300(d), 300.622(b)(3) (2008).

Available at: <http://idea.ed.gov>

Iowa Admin. Code rr. 281—41.129-.147, 41.300(4)"d", 41.402-.403, 41.409, 41.413, 41.622(4), 41.901-.902 (2007).

Available at: <http://www.iowa.gov/educate>

Cases

John T. v. Marion Indep. Sch. Dist., 173 F.3d 684 (1999).

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Supplementary Materials and Guidance Documents

Analysis of Comments and Changes, 71 Fed. Reg. 46,547 (Aug. 14, 2006).

Available at: <http://idea.ed.gov>

Letter to Chapman, 49 IDELR 163 (OSEP 2007).

Available at: <http://www.ed.gov/policy/speced/guid/idea/letters/2007-3/chapman082207privatesch3q2007.pdf>

Letter to Smith, 47 IDELR 105 (OSEP 2006).

Available at: <http://www.ed.gov/policy/speced/guid/idea/letters/2006-4/smith120106privschools4q2006.pdf>

United States Dep't of Educ., *The Individuals with Disabilities Education Act (IDEA): Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools* (2008)

Available at: <http://www.ed.gov/admins/lead/speced/privateschools/idea.pdf>