



Division of Special Education/Early Intervention Services
Students with Disabilities Placed in Private Schools
by their Parents

June 2001

1. What is a private school and does this include private preschools, and private home child care programs for children, ages three through five?

A private school means an educational program, which is governed and operated by an individual or entity, excluding the federal government or any State, county, or municipal agency, or division of these. Private schools are nonpublic schools as defined in COMAR 13A.05.03B(68). Private schools include parochial schools and other religiously affiliated schools. For the remainder of the questions and answers within this bulletin the term "private school" will be used to reflect the above definition.

The State Board of Education shall provide a certificate of approval to an individual or entity that operates an educational program in a private nursery school, kindergarten, elementary or secondary school. A school operated by a bona fide church organization is not required to hold a certificate of approval from the State Board, but is required to be registered with the State Board. Private educational programs include private nursery schools or kindergartens operated within a child care center, which hold a certificate of approval from the State Board of Education or are registered with the State Board of Education. Private child care programs, including home child care programs, are not included in the definition of private schools.

[20 USC §1412(a)(10)(A); 34 CFR §§300.450-300.462; Education Article §2-206; COMAR 13A.05.01.03B(39), .03B(68), and .16B(2); 13A.09.09.03]

2. Who are "eligible" private school students with disabilities?

An "eligible" private school student with a disability means a student with a disability, residing within the jurisdiction of the public agency who was placed in a private school by the parent. It is the responsibility of the State and each local school system to engage in Child Find activities that identify all students with disabilities within the State.

This includes:

- Students with disabilities placed by their parents in private schools, including religiously affiliated schools, outside the jurisdiction of the

<p>2. Who are "eligible" private school students with disabilities? (continued)</p>	<p>public agency; and</p> <ul style="list-style-type: none"> • Students placed in private schools by their parents, but not receiving services from the public agency. <p>Children, ages three, four or five years old, participating in a private nursery school, kindergarten, or child care center with an approved educational program may also be identified as a student with a disability in need of special education and related services under the Individuals with Disabilities Education Act (IDEA). These students may be eligible to receive public preschool special education services, including related services, as determined appropriate by an Individualized Education Program (IEP) team on an individualized basis.</p> <p>This definition does not include:</p> <ul style="list-style-type: none"> • Students to be placed in or referred to a private school or facility by a public agency; or • Students with a disability placed by their parents in a private school when a free appropriate public education (FAPE) is at issue. • Students with disabilities placed in a program that does not meet the State definition of a private (nonpublic) school. <p>[20 U.S.C. §1412(a)(10)(A)(i)(I); 34 CFR §§ 300.400-300.403; 300.453(a)(1); 34 CFR §300.453(a)(2)]</p>
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<p>3. Are students with disabilities who receive home instruction considered "eligible" private school students with disabilities?</p>	<p>No. The provisions of 34 CFR 300.450-300.462 and COAMR 13A.05.01.16B that apply to students with disabilities enrolled in a private school by their parents do not pertain to students with disabilities receiving home instruction in accordance with COMAR 13A.10.01.</p> <p>Each local school system is obligated to include students with disabilities receiving home instruction in all Child Find activities. These activities include identification and evaluation procedures. No additional services are required. But, before establishing a "blanket rule" through local policies and procedures, a local school system needs to consider the following factors:</p> <ul style="list-style-type: none"> • Regulations do not prohibit a public agency from providing services to students with disabilities receiving home instruction; • Students with disabilities who are receiving services on December 1 are to be reported in the December 1 child count; • Whether or not the public agency allows a student receiving home instruction to be dually enrolled in an approved home instruction program and a public school; • Students with disabilities who have been receiving home instruction quite often enroll in a public high school at some time prior to graduation; and • Therefore, by not providing services earlier, a student's need for special
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	<p>education and related services may be greater than had services been provided.</p> <p>It is recommended that local school systems work cooperatively with parents of students with disabilities receiving home instruction. If services to these students have been available in the past, and a local school system intends to change its local policy because of this information, parents should be provided written notice regarding what services will be available and how parents may access services. [COMAR 13A.09.09; COMAR 13A.10.01; Advice of Counsel Memorandum, April 2000]</p>
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<p>4. Is an "eligible" private school student with disabilities entitled to special education and related services and a FAPE?</p>	<p>No. If parents place their child with a disability in a private school the student does not have an individual entitlement to receive some or all of the special education and related services or FAPE that a student would receive if enrolled in the local public school system. A local school system is responsible to make a FAPE available to students with disabilities, ages three through 21, residing in the jurisdiction of the local public school system and enrolled in the local public school system.</p> <p>[20 U.S.C. §1412(a)(10)(A); 34 CFR §§300.125; 300.451; 300.454; Education Article§8-401; COMAR 13A.05.01.16B(1-2)]</p>
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<p>5. How does a public agency determine the number of "eligible" private school students with disabilities residing in the jurisdiction of the agency?</p>	<p>A public agency must have Child Find policies and procedures to ensure that all students suspected of having a disability, ages three through 21 years old, who reside within the jurisdiction of the public agency, including students attending private schools are located, identified, and evaluated. Activities undertaken by a public agency to identify private school students must be comparable to activities undertaken for public school students. Each public agency shall implement Child Find in consultation with appropriate representatives of private school students with disabilities.</p> <p>The purpose of this consultation is to:</p> <ul style="list-style-type: none"> • Receive input from representatives of private school students with disabilities on how and when the public agency shall implement its Child Find obligation; • Determine the number of students with disabilities currently attending private schools; and • Determine the number of students suspected of having a disability and in need of assessment and evaluation.
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<p>5. How does a public agency determine the number of "eligible" private school students with disabilities residing in the jurisdiction of the agency? (continued)</p>	<p>Child Find activities may include:</p> <ul style="list-style-type: none"> • Distributing informational brochures; • Public service announcements; • Exhibits at health fairs and other community activities; • Establishing direct liaisons with private schools; • Notices to local media and community newsletters; • Letters to private schools; and • Announcements of public meetings. <p>Child Find for parentally-placed private school students is extremely important. Local school systems need data to develop an accurate count of the total number of eligible private school students with disabilities residing in their jurisdiction.</p> <p>For additional information on Child Find, please refer to Technical Assistance Bulletin 7, Child Find. [20 USC §1412(a)((3)(A); 34 CFR §§300.125; 300.451(a); 300.454-300.455; Education Article §8-401; COMAR 13A.05.02.04A; 13A.05.02.13A]</p>
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<p>6. Are the requirements for assessment and evaluation the same as for public school students?</p>	<p>Yes. Assessment and evaluation must be conducted in accordance with 34 CFR §§ 300.320-300.321, 300.552-300.536 and COMAR 13A.05.01.04-.06 for all students suspected of having a disability in accordance with 34 CFR §300.7 regardless of whether parents have chosen to place their child in a private school. Parents must provide informed written consent to conduct assessment procedures. Following the initial evaluation, the IEP team must determine a student's eligibility as a student with a disability and provide the parents with a copy of the evaluation report and documentation of the eligibility determination. Assessment and evaluation must be at no cost to parents. [34 CFR §§300.125; 300.320; 300.450-300.451; 300.532-300.543; 300.500-300.505; COMAR 13A.05.01.04-.06; 13A.05.01.11-13]</p>
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<p>7. Must a public agency develop an IEP for a student with a disability placed by the parent in</p>	<p>As a general rule, if an IEP team determines a student, placed in a private school by the student's parents is a student with a disability in accordance with 34 CFR §300.7 and needs special education and related services, a local school system should develop an IEP in accordance with 34 CFR §300.340-300.350 and COMAR 13A.05.01.07-.09. The IEP must document the full range of specialized instruction and services the IEP team believes the student needs to be ensured a FAPE within the public school system. If, as a result of the discussion of the proposal with the IEP team, the parents make it clear they are not interested in</p>
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<p>a private school?</p>	<p>a public program and placement in a public school and intend to either place their child in a private school or continue their child's current enrollment in a private school, the public agency does not need to develop an IEP.</p> <p>If the private school student with a disability is to receive any services from the public school system in accordance with 34 CFR §§300.450-300.462, the IEP team is responsible for the development of a service plan. [34 CFR §§300.125; 300.320; 300.346-300.348; 300.450-300.462; 300.500-300.505; 300.532-300.543; COMAR 13A.05.01.04-.06; 13A.05.01.11-13]</p>
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<p>8. What is a service plan and who is responsible for the development, review, and revision of a student's service plan?</p>	<p>A service plan describes the specific special education and related services that a public agency shall make available to parentally-placed private school students with disabilities. A service plan is developed, reviewed, and revised with respect to the services a public agency has determined it will provide in accordance with 34 CFR §§300.342-300.346. The public agency is responsible for conducting meetings to develop a service plan in accordance with 34 CFR §300.455(b). A public agency is also responsible for ensuring a representative of the private school participates in each service plan meeting. If a representative of the private school cannot attend, the public agency must use other methods to ensure participation by the private school, including individual or conference telephone calls. [34 CFR §§300.342-300.346; 300.455; COMAR 13A.05.01.07-.09]</p>
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<p>9. What is included in a service plan?</p>	<p>A service plan would include only the services offered to a parentally-placed private school student with a disability designated to receive services. To the extent appropriate, the service plan must meet the IEP content requirements of 34 CFR §300.347 and COMAR 13A.05.01.09. This is intended to ensure that services provided to a parentally-placed private school student with a disability will meaningfully address the student's individual needs. [34 CFE §§ 300.347; 300.455; COMAR 13A.05.01.09; COMAR 13A.05.01.16B(2); 22 IDEALR 501 Letter to Hayden (OSEP 1994)]</p>
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<p>10. Is informed parental consent required prior to the provision of services?</p>	<p>Yes. A public agency shall obtain written informed parental consent before the initial provision of special education and related services through a service plan to a parentally-placed private school student with a disability. If parents disagree with the services the public agency proposes to provide, the parents may refuse the services offered. The regulations do not provide parentally-placed private school students with disabilities with an individual entitlement to any or all services under Part B. [34 CFR §300.505(a)(2); COMAR 13A.05.01.13B]</p>
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<p>11. Is a public agency responsible for conducting reevaluations of parentally-placed private school students with disabilities?</p>	<p>Yes. The requirements of reevaluation apply equally to <u>all</u> eligible students with disabilities, whether they receive FAPE through the public school or are placed in a private school by their parents. Public agencies must conduct reevaluations of <u>all</u> parentally-placed private school students with disabilities at least once every three years or more frequently if conditions warrant a reevaluation or the child's parent or teacher request a reevaluation. This includes all parentally-placed private school students with disabilities, even those that do not receiving services from the public agency through a service plan. Reevaluation is conducted at no cost to parents and expenditures for reevaluations may not be considered as part of the proportionate share.</p> <p>Reevaluation is a meeting of the IEP team to review information from parents, and existing data used to determine whether:</p> <ul style="list-style-type: none"> • The student continues to have a disability in accordance with 34 CFR §300.7; • Additional data are needed; and/or • The student needs special education and related services. <p>Before additional assessments are conducted, informed parental consent must be obtained. A public agency must evaluate a student with a disability in accordance with 34 CFR 300.532 and 300.533 before determining a student is no longer a student with a disability and terminating a student's eligibility under Part B.</p> <p>[34 CFR §§300.451; 300.532-536]</p>
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<p>12. How often is a public agency required to consult with representatives of private school students with disabilities?</p>	<p>The federal regulations do not include a specific schedule for consultation. Consultation about the provision of services to parentally-placed private school students must occur in a timely and meaningful way before a local school system makes any decisions that affect the opportunities of parentally-placed private school students with disabilities to participate. The needs of parentally-placed private school students may vary over time depending upon the circumstances in a particular jurisdiction in a particular year.</p> <p>The Maryland State Department of Education (MSDE) encourages public agencies to consult annually with appropriate representatives of private school students with disabilities. Consulting annually provides public agencies and representatives of private school students the opportunity for open, meaningful communication in the consideration of changes, options, and alternatives before a public agency makes its final decision about services.</p> <p>[20 USC §1412(a)(10)(A); 34 CFR §300.454(b)]</p>
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<p>13. Who are considered "appropriate representatives" of parentally-placed private school students with disabilities?</p>	<p>Federal regulations do not specify which individuals are "appropriate representatives." MSDE considers it appropriate and reasonable to include parents of students with disabilities attending private schools as "appropriate representatives" since one purpose of the consultation is to discuss the needs of students with disabilities placed in private school by their parents. Other "appropriate representatives" may be private school teachers, principals, and other private school administrators responsible for the administration of private school policies and services, and representatives of the Council for American Private Education (CAPE). [20 USC §1412(a)(10)(A); 34 CFR §§300.453(b); 300.454(b)]</p>
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<p>14. How does a public agency determine what services to provide and to whom?</p>	<p>Each public agency makes the final determination with respect to the services to be provided to private school students with disabilities after consultation with appropriate representatives of private school students with disabilities. The public agency decisions must address the following questions:</p> <ul style="list-style-type: none"> • Which private school students with disabilities will receive services? • What services will be provided? • How and where will the services be provided? • How will the provision of services be evaluated? <p>[20 USC §1412(a)(10)(A); 34 CFR §§300.451(b); 300.453(b)(1); 300.454(b)]</p>
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<p>15. How is a public agency to conduct the December 1 child count of "eligible" private school students with disabilities?</p>	<p>A public agency shall consult with appropriate representatives of private school students in deciding how to conduct the annual December 1 count of the total number of parentally-placed private school students with disabilities. The December 1 child count of parentally-placed private school students with disabilities is used to determine the amount a public agency shall spend on providing special education and related services to private school students with disabilities in the subsequent fiscal year.</p> <p>Since public agencies are also required to consult with appropriate representatives of private school students with disabilities regarding services to private school students with disabilities, and the use of Part B funds for private school students with disabilities, these consultations may occur simultaneously. [34 CFR §300.453(b)]</p>
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16. What information is reported to MSDE regarding students with disabilities who are placed in private schools by their parents for the December 1 child count?

The Student Services Information System (SSIS) requires data from each public agency to report and identify the number of students who are placed in private schools by their parents. If a student is placed by a parent in a private school, there are three services status for reporting purpose:

- Parent-Placed and receiving service;
- Parent-Placed, eligible, but not receiving service; and
- Parent-Placed, receiving only related service.

Each status has unique SSIS data requirements which are listed below

1. Student is Parent-Placed and receiving service

- R Public Agency/School = LSS/SOP code (01 to 34) and 9967 (indicating private school, parent-placed).
- S Public Agency/S School = LSS/SOP code (01 to 34) and school number where student is receiving service.
- Service Section (is required)= Special Education services (nature 11-14) and related service provider type (nature 17-38).

2. Parent-Placed, eligible, but not receiving service -

- R Public Agency/School = LSS/SOP code (01 to 34) and 9967 (indicating private school, parent-placed).
- S Public Agency/S School = LSS/SOP code (01 to 34) and private school number of where student attends school.
- Service Section = the service section must be left blank since they are not receiving services.

3. Parent-Placed, receiving only related service

- R Public Agency/School = LSS/SOP code (01 to 34) and 9967 (indicating private school, parent-placed).
- S Public Agency/S School = LSS/SOP code (01 to 34) and school number where student is receiving related service(s).
- Service Section (is required)= should include only Related service provider type (nature 17-38).

[Reference: 2000 SSIS MANUAL pages 14 & 15]

17. How may Part B funds be expended for private school

The minimum amount of Part B Passthrough and Part B Preschool Passthrough funds a public agency must expend is called the "proportionate share" and is based on the total number of parentally-placed private school students with disabilities divided by the total number of eligible students with disabilities residing in the jurisdiction of the public agency. A public agency may use other resources including State and local funds to provide services to parentally-

<p>students with disabilities?</p>	<p>placed private school students with disabilities.</p> <p>Part B funds may also be used for:</p> <ul style="list-style-type: none"> • Materials, equipment, supplies, training; • Transportation services for private school students with disabilities to enable the students to access offered special education and related services; • Services of an employee of a private school if that employee performs services outside his or her regular hours of duty and the employee performs the services under public supervision and control. <p>Part B funds may not be used for:</p> <ul style="list-style-type: none"> • Repairs, minor remodeling, or construction of private school facilities; • Meeting the general needs of a private school or the students enrolled in a private school; • Financing an existing level of instruction in a private school; or • To otherwise benefit a private school. <p>[20 USC §1412(a)(10)(A); 34 CFR §§300.453; 300.456; 300.458-300.462]</p>
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<p>18. What recourse do parents of private school students with disabilities have if they disagree with a public agency?</p>	<p>Parentally-placed private school students with disabilities do not have individual entitlement to services under Part B. The due process procedures under 34 CFR §§300.504-300.515 and COMAR 13A.05.01.15C do not apply to any dispute over whether a public agency failed to meet the requirements of serving private school students with disabilities or an alleged failure to provide the services specified on a student's service plan in accordance with 34 CFR §§300.452-300.462.</p> <p>A parent of a private school student with a disability may use the due process procedures described in 34 CFR §§300.504-300.515 and COMAR 13A.05.01.15C regarding issues related to:</p> <ul style="list-style-type: none"> • Child Find activities; • Identification; • Evaluation; • Reevaluation; • Disagreements involving a student's eligibility for special education and related services; and • A public agency's refusal to conduct an evaluation or reevaluation. <p>Parents of private school students with disabilities may also file a written complaint with the MSDE, as described in 34 CFR §§300.660-300.662 and COMAR 13A.05.01.15A, regarding alleged violations of a public agency's failure to meet the requirements regarding:</p> <ul style="list-style-type: none"> • Child Find, including evaluation and reevaluation [34 CFR §300.451] • Provision of services [34 CFR §300.452]
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	<ul style="list-style-type: none"> • Expenditure of funds [34 CFR §300.453] • Determination of services [34 CFR §300.454] • Services provided [34 CFR §300.455] • Location of services and transportation [34 CFR §§300.456; 300.458;300.459] • Use of public and private school personnel [34 CFR §§300.460-300.461] and • Property, equipment, materials, supplies [34 CFR §300.462] <p>A State complaint alleging that a public agency failed to offer services to a particular parentally-placed private school student with a disability would not violate Part B of IDEA since no parentally-placed private school student with a disability has an individual entitlement to services under Part B [34 CFR §§300.454(a); 300.457]</p>
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For more information, call 410-767-0858

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Proportionate Share Calculation for Parentally-Placed Private School Students with Disabilities *EXAMPLE ONLY*

Formula Example:

$$(X/Y) \times Z = E$$

X= ELIGIBLE private school students with disabilities

Y= ELIGIBLE students with disabilities residing in the public agency

Z= Total Part B Passthrough allocation

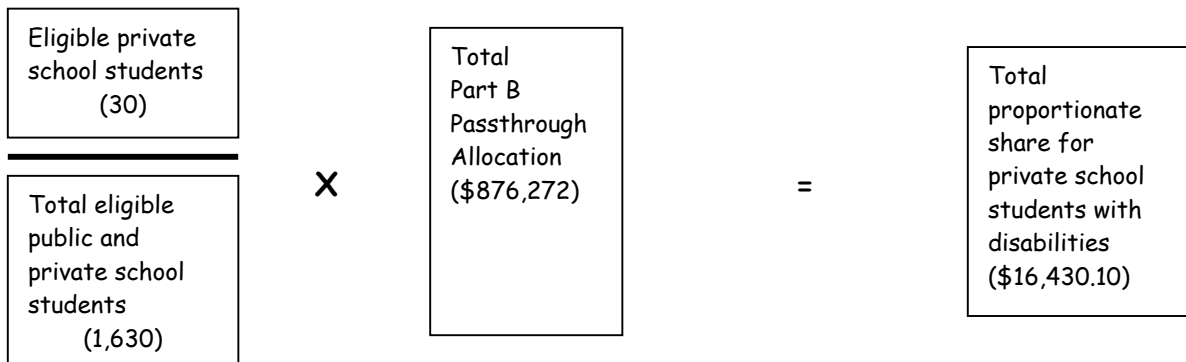
E= Required expenditure

Total Part B Passthrough [§611(g)] Allocation =	\$876,272
# of eligible students with disabilities in public schools =	1,600
# of eligible students with disabilities parentally-placed in private schools =	30
Total # of eligible students =	1,630

AT DECEMBER 1 CHILD COUNT

# of students served in public schools =	1,600
# of students served in private schools =	5
Total # of public and private school student served =	1,605*

*Note: 1,605 is the number of students submitted to OSEP



Total B Preschool Passthrough [§619] Allocation =	\$79,665
# of eligible 3-5 year old students with disabilities in public schools =	113
# of eligible 3-5 year old students with disabilities in private schools =	10
Total # of eligible students =	123

AT DECEMBER 1 CHILD COUNT

# of 3-5 year olds students served in public schools =	113
# of students served in private schools =	5
Total # of public and private school 3-5 year old student served =	118*

*Note: 118 is the number of 3-5 year old students submitted to OSEP

A local school system would use the same formula to determine the total proportionate share of the Part B Preschool Passthrough allocation for 3-5 year old private school students with disabilities.