



Utah State Board of Education

**STUDENTS WITH DISABILITIES ENROLLED BY
THEIR PARENTS IN PRIVATE SCHOOLS WHEN
FREE APPROPRIATE PUBLIC EDUCATION
(FAPE) IS NOT AT ISSUE**

A TECHNICAL ASSISTANCE DOCUMENT

January 2024

INTRODUCTION

School districts within the state of Utah have multiple responsibilities under Part B Individuals with Disabilities Education Act (IDEA) (34 CFR §300.130-144) and [Utah State Board of Education Special Education Rule](#)¹ (SpEd Rules) VI.B related to nonprofit private schools that are located within the area served by the school district.

Program components include:

- Child Find (SpEd Rules VI.B.3.)
- Data Reporting (SpEd Rules VI.B.4.c.)
- Timely and Meaningful Consultation with Written Affirmation (SpEd Rules VI.B.6-7.)
- Expenditure of a Proportionate Share of IDEA Funds (SpEd Rules VI.B.5.)
- Equitable Services and Service Plans (SpEd Rules VI.B.9-11.)

DEFINITIONS

Parentally placed private school students with disabilities means K-12 students with disabilities enrolled by their parent(s) or an adult student enrolled in private nonprofit, including religious, schools or facilities that meet the definition of elementary school or secondary school in Part B of the IDEA. This includes students accessing the Carson Smith Scholarship and Special Needs Opportunity Scholarship Programs.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. Utah law defines elementary education as beginning with kindergarten. Students enrolled in preschool, regardless of if the

¹ N.B.: Utah Board of Education Administrative Rules (Board Rules) fall under the Utah Admin. Code under title R277. These rules can be found in two places: the [USB E Administrative Rules webpage](#) or the [Utah Office Administrative Rules webpage](#). Therefore, Board Rules R277-609 refers to the same rule as Utah Admin. Code R277-609. Similarly, though the Utah State Board of Education Special Education Rules (SpEd Rules) appear as a separate set of rules distinguished from Board Rules, they are in fact incorporated into Board Rules by reference ([see Board Rules R277-750](#)).

preschool is connected to the elementary school, are not included in the definition of elementary school.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law. Secondary education does not include education beyond grade 12. To be considered a secondary school, grades nine and above must be accredited, in accordance with Board Rule R277-410.

PROGRAM COMPONENTS

CHILD FIND

Each school district must locate, identify, and evaluate all students with disabilities who are enrolled by their parent(s) or adult students enrolled in private (either for-profit or nonprofit), including religious, elementary schools and secondary schools located in the area served by the school district through a process that is designed to ensure:

- The equitable participation of parentally placed or adult enrolled nonprofit private school students; and
- An accurate count of those students in nonprofit private schools.

Child find applies to all students attending a private school located in the area served by the school district, regardless of where the child resides.

Child find activities and procedures for private school students should look similar to those undertaken for and completed in the same timeline as the school district's public-school students. As described under the section below on meaningful consultation, districts should consult with private schools on child find activities and procedures.

The cost of child find activities is not an allowable cost for IDEA Part B funds set aside for proportionate share for private school students.

EVALUATION REQUIREMENTS AND TIMELINES

The requirements including timelines, apply to initial eligibility determinations and reevaluations for students attending private schools.

REEVALUATIONS

Each school district is responsible for conducting reevaluations of students with disabilities enrolled by their parents in the private elementary school and secondary school located in the school district, including for students initially found eligible by another LEA.

DATA REPORTING

Each school district must maintain records and provide to the Utah State Board of Education (USBE) the following information related to parentally placed nonprofit private school students (SpEd Rules VI.B.4.c.):

- The number of students evaluated and reevaluated within three years;
- The number of students determined to be students with disabilities; and
- The number of students served.

These data should be collected and submitted with the annual child count data by December 1 of each year. Private school data are uploaded to the Utah Program Improvement Planning System (UPIPS) document storage online.

In order to ensure requirements for reevaluations are met, data are reported at the student level. These students may be selected for Indicator 11 and other monitoring activities.

All students who have been evaluated and found eligible for special education and related services—not solely those students who receive services through an IEP or services plan—must be included in the count. This includes students accessing the Carson Smith Scholarship and Special Needs Opportunity Scholarship Programs. This also includes students for whom the district made an offer of FAPE that was declined by the parents or student.

TIMELY AND MEANINGFUL CONSULTATION

Each school district must conduct timely and meaningful consultation with nonprofit private school representatives and representatives of parent(s) of parentally placed or adult enrolled students with disabilities regarding the following:

1. The child find process, including how parent(s) or adult students, teachers, and nonprofit private school officials will be informed of the process.
2. The determination of the proportionate share of Federal IDEA funds available to serve private school student with disabilities, including the how the proportionate share of those funds was calculated.
3. The consultation process including how the process will operate throughout the school year.
4. How, where, and by whom special education and related services will be provided for private school students with disabilities, including:
 - a. The types of services, including direct services and alternate service delivery mechanisms (supplies, equipment, and professional learning for private school staff);
 - b. How special education and related services will be apportioned if funds are insufficient to serve all students; and
 - c. How and when those decisions will be made.
5. How, if the school district disagrees with the views of the nonprofit private school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district will provide to the nonprofit private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

WRITTEN AFFIRMATION

When the timely and meaningful consultation has occurred, the school district must obtain a written affirmation signed by the representatives of participating nonprofit private schools. School districts should maintain records of the meaningful consultation activities that occur with private schools including agreements on the equitable services that are agreed upon through meaningful consultation.

If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the State Director of Special Education. Documentation may include meeting agendas, attendance sheets, signatures of participants at consultation meetings, written records regarding topics addressed and decisions made.

If a private school declines to participate in meaningful consultation, the school district must notify USBE and provide a written statement of its attempts to engage in meaningful consultation.

School districts will receive a periodic request for written affirmations and service plans to ensure compliance with SpEd Rules VI.B. Data and documentation may also be verified and reviewed as part of USBE's monitoring activities with school districts.

EXPENDITURE OF A PROPORTIONATE SHARE OF IDEA FUNDS

Each school district must spend a proportion of the school district's total subgrant under Section 611(f) of Part B of the IDEA on equitable services for private school students with disabilities. This proportion is the same as the proportion of the number of private school students with disabilities ages 3–21 who are enrolled by their parent(s) or adults enrolled in nonprofit private, including religious, elementary schools and secondary schools located in the school district, to the total number of students with disabilities in its jurisdiction ages 3–21.

For students ages 3–5, each district must spend an amount that is the same proportion of the school district's total subgrant under Section 619(g) of the Part B of the IDEA as the number of parentally placed private school students with disabilities ages 3–5 who are enrolled by their parent(s) in kindergarten in nonprofit private, including religious, elementary schools located in the school district, is to the total number of students with disabilities in its jurisdiction ages 3–5.

If a school district has not expended for equitable services all the required funds by the end of the fiscal year for which Congress appropriated the funds, the school district must obligate the remaining funds for private school students with disabilities during a carryover period of one additional year. If a school district has not expended all the required funds by the end of the second fiscal year (carry over period), the school district may reallocate the funds to the general special education program for the remaining three months of the award.

State and local funds may supplement, and in no case supplant, the proportionate amount of Federal IDEA funds required to be expended for nonprofit private school students with disabilities.

Funds may not benefit a private school.

PROPERTY, EQUIPMENT, AND SUPPLIES

A school district must control and administer the funds used to provide special education and related services, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA.

The school district may place equipment and supplies in a private school for the period of time needed for the Part B program and must ensure the equipment and supplies:

- Are used only for Part B purposes; and
- Can be removed from the private school without remodeling the private school facility.
- Are removed when equipment and supplies are no longer needed for Part B purposes or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

EQUITABLE SERVICES AND SERVICE PLANS

No parentally placed or adult enrolled nonprofit private school student with a disability has an individual right to receive some or all the special education and related services the student would receive if enrolled in a public school.

Decisions about the services that will be provided must be made in accordance with the consultation and proportionate share requirements and the school district must make final decision. Not every student will receive services and have a services plan.

For each student with a disability who will receive special education or related services from a school district, the school district must:

- Initiate and conduct meetings to develop, review, and revise a services plan for the student; and
- Ensure that a representative of the private school attends each meeting.

The services plan must, to the extent appropriate, meet the same content requirements as the IEP, including access and progress in the general curriculum, and be developed, reviewed, and revised consistent with the IEP provisions in SpEd Rules III.I.d.

Equitable services may include professional learning and other indirect services.

Special education and related services, including materials and equipment, must be secular, neutral, and non-ideological.

LOCATION OF SERVICES AND TRANSPORTATION

Services to students may be provided on the premises of private, including religious, schools.

If necessary for the student to benefit from or participate in the services provided under this part, transportation may be provided:

- From the student's school or the student's home to a site other than the private school; and
- From the service site to the private school, or to the student's home, depending on the timing of the services.

School districts are not required to provide transportation from the student's home to the private school. The cost of the transportation may be included in calculating whether the school district has met the requirements for proportionate share spending.

PERSONNEL

Services must be provided by employees of a school district or through contract by the school district with an individual, association, agency, organization, or other entity. If private school personnel are used, they must be supervised by the district and provide services outside of their other job responsibilities.

The services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers do not have to meet the USBE and IDEA special education teacher requirements.

RESOURCES

Additional resources are as follows:

- [Utah Special Education Rules](#) (see SpEd Rules VI.B)
- U.S. Department of Education's [Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools](#)
- U.S. Department of Education, Office of Nonpublic Education Resources
 - [General Guidance](#)
 - [Sample Organizational Chart for Consultation](#)
- [WestEd Training on Private School Proportionate Share: IDEA Fiscal Requirements](#)

APPENDIX: MODEL FORMS

The following documents are USBE model forms a school district may use to implement program requirements.

- [Appendix A: Private School Timely and Meaningful Consultation Model Form](#)
- [Appendix B: Service Plan Model Form](#)

APPENDIX A: PRIVATE SCHOOL TIMELY AND MEANINGFUL CONSULTATION MODEL FORM

Non-Profit Private School Timely and Meaningful Consultation Affirmation

(Utah State Board of Education Special Education Rule VI.B.6-7.)

School Year: _____

District: _____

School districts must engage in timely and meaningful consultation with representatives of private schools and with parents or adult students about the provision of equitable services. These services apply to parentally placed and adult enrolled nonprofit private school students attending private schools within the school district's jurisdiction.

This consultation includes:

- The child find process, including:
 - How parentally placed or enrolled adult nonprofit private school students suspected of having a disability can be referred and evaluated to determine eligibility;
 - The process for private schools and parents to request an evaluation; and
 - How the parent(s) or student who is an adult, teachers, and nonprofit private school officials will be informed of the process.
- The proportionate share of funds available to serve parentally or student who is an adult placed nonprofit private school student with disabilities, including the determination of how the proportionate share of those funds was calculated.
- How the consultation process will operate throughout the school year to ensure that parentally placed or enrolled adult students with disabilities identified through the child find process can meaningfully participate in special education and related services.

- How, where, and by whom special education and related services will be provided for parentally placed or adult enrolled nonprofit private school students with disabilities, including a discussion of:
 - The types of services, including direct services and alternate service delivery mechanisms (supplies, equipment, and professional learning for private school staff); and
 - How special education and related services will be apportioned if funds are insufficient to serve all students; and
 - How and when those decisions will be made.
- How, if the school district disagrees with the views of the nonprofit private school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district will provide to the nonprofit private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

Utah State Board of Education Special Education Rule IV.B. requires that the school district to obtain a written affirmation signed by representatives of the participating nonprofit private school.

Written Affirmation

I was provided the opportunity to express my views and to ask questions of the school district pertaining to the issues outlined in this document. I understand that if I believe that the consultation was not meaningful, or that my views and those of others were not given due consideration by the school district, I may file an IDEA State Complaint with the Utah State Board of Education that identifies the area(s) in which I believe the school district did not comply with the consultation process.

Private School: _____

Signature: _____

Printed Name: _____

Date: _____

APPENDIX B: SERVICE PLAN MODEL FORM

Non-Profit Private School Special Education Service Plan (Utah State Board of Education Special Education Rule VI.B.9-11.)

Student Name: _____ Student ID: _____

Private School: _____ Meeting Date: _____

School District: _____ Evaluation Date: _____

Eligibility Category: _____

Services Provided for a Period of: _____

(Dates of Services not to exceed one school year)

Service Plan Participants

Name of Participant	Title of Participant

Present Levels of Academic Achievement and Functional Performance (PLAAFP)

- For school age students (5-year-old kindergarteners through 22 years old) describe how the student's disability affects student's involvement and progress in the general education curriculum.
- For preschool students ages 3–5, describe how the disability affects the student's participation in appropriate activities.

Present Levels (including data):

Measurable Annual Goal and Progress Reporting

Condition (When, Where, and How):

Observable Social or Academic Behavior (What Will Student Do):

Criteria (How Well, How Fast Student Will Perform Behavior):

Progress Reporting:

Special Education, Related Services, Supplementary Aids and Services, and/or Program Modifications/Supports for School Personnel

Service	Start Date	Frequency	Location	Duration	Staff Responsible

Transportation (if applicable):

Other Comments or Information (if applicable):