



SPECIAL EDUCATION

The Individuals with Disabilities Education
Act (IDEA) 92 NAC 51 (Rule 51)

Special Education Services to
Children with Disabilities (Ages 3-21)

May 2024

Parentally Placed in
Approved and/or Accredited
Non-public
Schools Including Exempt
Home Schools

FAPE & Equitable Services



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Table of Contents

Introduction	3
Background.....	3
Purpose	3
Overview of School District Responsibilities	4
Consultation	6
Sample Forms	11
Child Find	19
Provision of Equitable Services	26
Service Plans.....	29
Sample Forms	32
Proportionate Share and Expenditures	33
Child Count, Expenditures and Finance	33
Calculation Worksheet.....	36
Expenditures and Finance	37
Carry over Funds.....	38
Procedures to Transfer Unspent Carry-over Funds (by the end of the Carry-over Period)	39
Flow Chart.....	41
FAPE	49
Complaint	50
Preschool Children with Disabilities – Ages 3-5	51
Other	54
Out-of-State Children	54
Transportation.....	55
IDEA Qualified Teachers.....	56
Equipment and Supplies	56
Record Keeping	57

INTRODUCTION

Background

The final regulations for the reauthorized Individual with Disabilities Education Act (IDEA) 2004 were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006.

The regulations require that public school districts, after timely and meaningful consultation with non-public school representatives and non-public school parent representatives, conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending non-public schools located within the public school district's boundaries. The requirements make clear the obligation to spend a proportionate amount of IDEA Part B funds to provide special education services to children with disabilities enrolled by their parents in non-public schools. Additionally, the regulations require that children with disabilities parentally-placed in a non-public school be served by the public school district with equitable services within which the non-public school is located. This also includes a consultation process, calculation of the proportionate share, and standards applicable to personnel providing equitable services.

Resident children with disabilities parentally-placed in a nonpublic school continue to be eligible for the provision of a free and appropriate public education (FAPE) from the school district where the child resides. This includes Rule 13 exempt home schools as they meet the definition in 92 NAC § 51-015.03A2, "Elementary school shall mean . . . children attending nonpublic schools that are exempt from approval or accreditation pursuant to 92 NAC 12 and 92 NAC 13."

This dual delivery system aligns with Nebraska statute which requires public school districts to make the provision of a FAPE available for all resident children.

Purpose

The purpose of this technical assistance document is to provide guidance and interpretation of the requirements of IDEA 2004 and 92 NAC 51- 015.03.

It is not intended to be a replacement for careful study of IDEA 2004 and 92 NAC- 51 or Rule 51 (Regulations and Rules for Special Education Programs).

OVERVIEW OF SCHOOL DISTRICT RESPONSIBILITIES

Children With Disabilities Parentally-Placed In Non-public Schools (Ages 3-21),

This document describes the procedures for equitable services which is the responsibility of the district in which the nonpublic/exempt home school is located. FAPE is always available to the student from the student's district of residence.

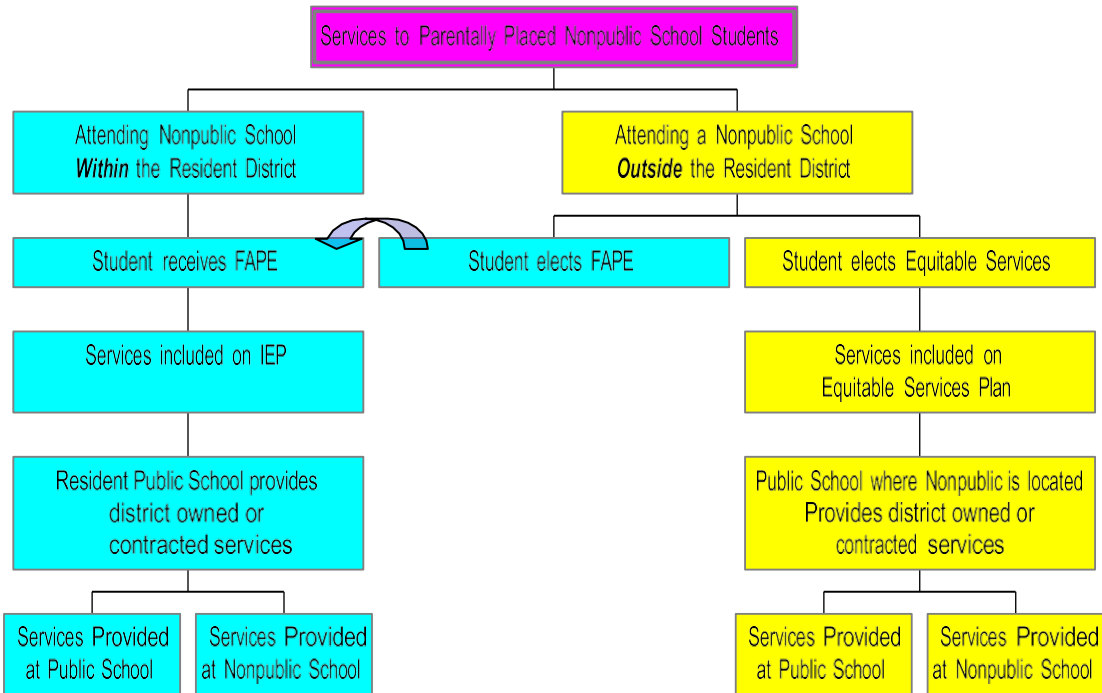
The final IDEA 2004 regulations clarify eligible children with disabilities parentally-placed in a non-public school means "children with disabilities placed by their parents in a non-public, including religious schools, home schools, and schools or facilities, which meet the definition of "elementary school" or "secondary school". "Elementary school" is defined as a nonprofit institutional day or residential school, including a public elementary school that provides elementary education, as determined by state law. "Secondary school" is defined as a nonprofit institutional day or residential school, including a secondary school that provides secondary education, as determined by state law. Preschool children (ages 3-5) attending preschools which are part of an approved and/or accredited elementary school are also included under IDEA 2004 regulations of eligible children with disabilities parentally-placed in non-public schools.

This document refers to eligible children (ages 3 - 21) with disabilities **parentally-placed** in an approved and/or accredited Rule 10 and Rule 14 Non-public schools, including religious schools and Rule 13 exempt home schools. Parents may educate their child at home by electing not to meet State approval or accreditation requirements (Section 79-1601 R.R.S.). In Nebraska, "home schools" are referred to as exempt schools and are considered non-approved and non-accredited non-public schools, or facilities that meet the definition of elementary school or secondary school, and **FAPE is not** at issue.

The public school district within which the non-public school is located is responsible for:

- Child Find (which includes evaluation)
- Taking a (October 1) child count of eligible: public school, approved and/or accredited non-public school, and exempt home children with disabilities
- Calculation of proportionate share
- Consultations with Non-public schools and parents of children in a nonpublic school and determination of equitable services
- Provision of FAPE for Resident children (ages 3 - 21) with disabilities parentally-placed in a non-public school
- Provision of equitable services as determined through the consultation process for Non-resident children (ages 3 - 21) with disabilities parentally-placed in an approved and/or accredited non-public school or exempt home school.

What Does It Look Like



Parentally-placed children with disabilities attending an approved and/or accredited non-public school which is located outside of his/her resident district:

- ◆ May elect to receive equitable services from the public school within which the non-public school is located (services plan)

OR

- ◆ May elect to receive FAPE from the public school district of which they are a resident (IEP)

Parentally-placed children with disabilities attending an approved and/or accredited non-public school or an exempt home school which is located within his/her resident district:

- ◆ Are only entitled to receive the provision of FAPE from his/her resident public school district

Consultation

Public school districts must at least annually conduct a timely and meaningful consultation meeting with parent representatives and officials of approved and/or accredited non-public schools, including exempt home schools, which are within their district's jurisdiction. The purpose of the consultation meeting is to provide an opportunity for non-public school representatives and parents to participate in meaningful discussions and provide input into the design and development of special education and related services for children with disabilities attending non-public schools, including exempt home schools. This consultation meeting should not be confused with Title consultation meetings with non-public schools.

Timely and meaningful consultation is an ongoing process. In some cases, additional consultation meetings may be needed throughout the year to discuss changes in the provision of special education and related services, expenditures and carry over funds, and should address the following topics:

- a. The child find process (ages 3 - 21 yr. olds), including how parentally-placed non-public school children suspected of having a disability can participate equitably; and how parents, teachers, and non-public school officials will be informed of the process; and gathering the October 1 child count.
- b. The determination of the proportionate share of federal funds available to serve children with disabilities parentally-placed in non-public schools including the determination of how the proportionate share of those funds was calculated; and any carry-over funds.
- c. The consultation process among the public school district, non-public school officials, and non-public school parent representatives, including how the process will operate throughout the school year to ensure that these children with disabilities can meaningfully participate in special education services. It may be necessary for a district to hold additional consultation meetings in order to address changes in equitable services, expenditures, and unspent carry-over proportionate share funds.
- d. A discussion of how, where, and by whom special education services will be provided, including a discussion of: 1) the types of services, including direct services and alternative service delivery mechanisms; 2) how special education services will be apportioned if the proportionate share of federal funds are insufficient to serve all eligible children with disabilities parentally-placed in non-public schools; and 3) how and when those decisions will be made. A unilateral offer of services by the school district with no opportunity for discussion is not adequate consultation as such an offer does not meet the basic requirements of the consultation process. Only after the discussion of key issues relating to the provision of special education and related services with all representatives may the school district make its final decision with respect to the special education and related services to be provided through an equitable service plan.
- e. How, if the school district disagrees with the views of the non-public 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 non-public school officials a written explanation of the reasons why the public school district chooses not to provide services directly or through a contract.

Upon conclusion of a consultation meeting with non-public school representatives and parent representatives, the school district must obtain written affirmation signed by the representatives of the participating non-public schools and upload the written affirmation on the Grant Management System (GMS) IDEA Grant Consolidated Application Goal 3.

If representatives of the non-public schools do not provide written affirmation within a reasonable period of time, the school district must forward documentation of the consultation process to the Nebraska Department of Education, Office of Special Education.

A non-public school official has the right to submit a complaint to the Nebraska Department of Education that the school district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the non-public school official.

NEW: For districts that does not have a nonpublic school or exempt home school registered within the district boundaries for the school year in which the application is being submitted the district is exempt from holding a consultation meeting. The district will need to upload into the GMS a statement signed by the Superintendent that there are no nonpublic or exempt home schools in the district boundaries and a screen shot from the NDE Portal (Exempt Schools School District Report 20xx-xx Home School Filings) showing no exempt home schools registered within the district boundaries. Should an exempt home school begin during the school year the district would be required to hold a consultation meeting with representatives of the exempt home school and parents to discuss a consultation plan.

Questions and Answers-Consultation

- 1. Which non-public schools should the public schools include in the consultation process?**

The consultation process should include all approved and/or accredited non-public schools which meet the definition of an elementary or secondary school, and exempt home schools which are within the jurisdiction of the public school district.

- 2. Can a school district decide only to provide services for resident children with disabilities parentally-placed in a non-public school?**

The proportionate share of federal funds must include the provision of special education services for all children with disabilities parentally-placed in non-public schools located within the district. However, through the consultation process it may be decided that only certain services will be available, and some non-resident children with disabilities may not receive some or any of the services he/she would receive if services were being provided by the resident school district.

- 3. Is it possible that a non-resident child with disabilities parentally-placed in a nonpublic school will not receive any services?**

Yes, based on the consultation process, and in light of available proportionate share funding, it could be determined that only certain special education services are available to non-resident non-public parentally-placed children. As a result, some non-resident children with disabilities parentally-placed in a non-public school may not receive the services necessary to meet their special education needs.

If the services for a non-resident child are not available, a services plan would not be written for the child. Parents of a non-resident child have the option to request a free appropriate public education (FAPE) from the child's resident public school district.

- 4. When should the public school district conduct the consultation meeting?**

The consultation meeting should be held before June 15th. The consultation meeting must be held prior to the district's design and development of special education services for the next school year and prior to the due date for the IDEA grant submission in the GMS. School districts may combine the consultation meeting with other ESSA and Title consultation meetings as long as the required topics of the Parentally Placed Non-public Consultation meeting are included (*i.e. notice of meeting to nonpublic schools and exempt home schools including parents attending the nonpublic schools, Written Affirmation etc. (see Consultation section).*

- 5. What are some ways for public school districts to invite parents to consultation meetings?**

Methods may, include, but are not limited to: send letters to nonpublic schools and exempt home schools, send letters to known parents; place a public meeting notice in the newspaper; request non-public schools to include consultation meeting information in their school/parent newsletter; meeting flyers; posters; posted on the district website and Facebook page.

6. Who makes the final decision on what services will be available for children with disabilities parentally-placed in non-public schools?

After timely and meaningful consultation with non-public schools representatives and representatives of parents, the school district is responsible for making final decisions about all aspects of the services to be provided to children with disabilities parentally-placed in non-public schools.

However, if the school district disagrees with the views of the non-public school officials on the provision of services or the types of services, whether provided directly or through a contract, the school district must provide the non-public school officials a written explanation of the reasons why the district chose not to accept the recommendations of the non-public school officials.

7. Are there any further requirements of the public school district if no non-public school representative or non-public parent representatives attend the consultation meeting?

No, as long as the public school has made reasonable efforts to inform representatives of non-public schools and parent representation of the consultation meeting and has documentation of its efforts to provide a timely and meaningful consultation meeting, there are no further requirements. Sample consultation meeting notices are provided in this document.

8. What are some suggestions for documentation that the district has provided timely and meaningful consultation?

Districts should keep: copies of invitation letters, all notifications, Written Affirmation signed by meeting participants and other documentation of meeting agendas, notes describing each of the topics or issues discussed at the meeting. Establishing a timeline for consultation can help ensure that timely and meaningful consultation occurs as needed throughout the school year. The timeline can include meeting dates and times as well as topics to be discussed and how the October 1 child count will be collected.

9. What documentation of the consultation process is required?

After consulting with representatives of non-public schools, the school district must obtain a written affirmation of meaningful participation, signed by non-public school representatives and public school representatives who attended the meeting. In addition, a copy of the signed Written Affirmation of meaningful consultation must be uploaded on the Grants Management System (GMS) within the IDEA Consolidated Grant Application, goal 3.

However, if non-public school representatives, do not provide signed affirmation within a reasonable period of time, the school district must upload documentation of the district's efforts to consult with the representatives of non-public schools.

10. Is a sign-in sheet of attendance sufficient documentation for a consultation meeting?

No. A sign in sheet alone provides an accounting of who attended and does not provide evidence that ongoing consultation has occurred.

11. Once the consultation plan is completed does the plan need to be submitted to the state?

No, school districts should maintain documentation of the consultation meeting and the plan. School districts are not required to submit the documentation to Nebraska Department of Education, Office of Special Education, unless the district is unable to obtain written affirmation from non-public representatives.

12. If a district needs to change how services will be apportioned (funds are insufficient or overly sufficient) must the district hold a consultation meeting?

It would depend on whether or not during the previous consultation meeting there was discussion and a plan for what would be done if there needed to be changes. A consultation meeting should be held to discuss unspent carry over funds which cannot be spent over the carry over maximum two-year period. Documentation of the discussion and decision should be recorded in the consultation meeting summary notes.

13. Must the proportionate amount of Part B funds be used only for direct services to parentally placed non-public school children with disabilities? Is it permissible to use funds for this population on other services, such as consultative services, materials, equipment, or training?

Through the consultation process, a determination must be made about how the available amount of funds will be utilized so that the parentally placed non-public school children with disabilities designated to receive services can benefit from the services offered. Depending on the discussions during the consultation process, local circumstances, and the amount of funds available to expend on services for this population of children, a school district could determine, after timely and meaningful consultation, that it will provide its population of parentally placed non-public school children with disabilities with indirect services. These services could include consultative services, equipment, or materials for eligible parentally placed children with disabilities or training for non-public school teachers and other non-public school personnel. Special education and related services provided to parentally placed non-public school children with disabilities, including materials and equipment, must be secular, neutral, and non-ideological.

14. Must the Written Affirmation of meaningful consultation be submitted to the state?

Yes, a copy of Written Affirmation of meaningful consultation with participant signatures must be uploaded on the GMS IDEA Consolidated grants, Goal 3-

Sample Letter

Non-public School Consultation Meeting Invitation

Dear (NAME):

In accordance with the requirements of 92 NAC 51, this letter is to invite you to a meeting where you will have an opportunity to participate in the discussion of a plan for child find and the provision of special education services to children with disabilities who attend your non-public school during the 20_-20_ school year. This meeting will take place at (LOCATION) starting at (TIME) on (DATE).

As you may know, a public school district is required to utilize a portion of its Federal Part B special education funds in order to provide children with disabilities parentally-placed in non-public schools which are within the school district's jurisdiction the opportunity to participate in special education services offered by the public school district. As part of this process, the public school district will consult with non-public school representatives regarding special education services for the coming school year and to afford you the opportunity to offer ideas and input.

In addition to meeting with representatives of non-public schools within the district, we would appreciate your assistance in identifying parents who may wish to attend this meeting and offer their input. In order to provide reasonable advance notice to such parents, we would appreciate receiving names and contact numbers for such parents by no later than (DATE _____).

We thank you for your willingness to participate in this process. If you have any questions or concerns pertaining this meeting please feel free to call (CONTACT NAME AND NUMBER).

Sincerely,

(Public School Official)

Sample Notice

On (DATE) at (TIME), a meeting conducted by (DISTRICT NAME) will take place at (LOCATION). The purpose of the meeting will be to provide an opportunity for parents who have parentally placed their child in an approved and/or accredited non-public school or exempt home school and representatives of non-public schools to participate in the development of a plan for providing special education services to children with disabilities who attend an approved and/or accredited non-public schools and exempt home schools which are within the _____ district for the 20 -20 school year. Parents of a home-schooled child or a child attending a non-public school who has been or may be identified with a disability and attend an approved and/or accredited non-public school within the boundaries of (DISTRICT NAME), are urged to attend. If you have further questions pertaining to this meeting, please contact (CONTACT NAME) at (NUMBER).

Consultation Plan Checklist

Requirements for Consultation under the Individuals with Disabilities Education Act as reauthorized in 2004. The public school district shall consult with non-public school representatives and representatives of parents of children with disabilities parentally-placed in an approved and/or accredited non-public school, or exempt home school during the design and development of special education and related services for the children regarding:

_Child Find: How parentally-placed non-public school children suspected of having a disability can participate equitably, including how parents, teachers, and non-public school officials will be informed of the evaluation process; restrictions on sharing information; parent election of equitable or FAPE.

_Proportionate Share Calculation: \$_____How the proportionate share of IDEA Part B and IDEA Preschool federal funds is calculated including the amount of the proportionate share funds available for the ensuing school year; and any carry-over funds.

__Consultation Process: How the consultation process will operate throughout the school year to ensure that eligible children (ages 3 -21) with disabilities parentally-placed in non-public schools identified through the Child Find process can meaningfully participate in special education and related services; and how the October 1 child count will be collected.

__Special Education and Related Services: How, where, and by whom special education and related services will be provided for children (ages 3-21) with disabilities parentally- placed, including a discussion of types of services, including direct services and alternate service delivery mechanisms, transportation, how such equitable services will be apportioned if funds are insufficient or overly sufficient to serve all children, and how and when these decisions will be made; (resident children-FAPE, non-resident children equitable services); and

__Disagreement: How, if the public school district disagrees with the views of the non-public school officials on the provision of services or the types of services, whether provided directly or through a contract, the public school district shall provide to the non-public school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

Documentation Required: Each school district shall maintain in the district's records: ~~public~~ notices/letters of consultation meetings, summary of discussion and decisions, and Written Affirmation signed by officials of each participating non-public school and the school district representatives that consultation regarding the provision of special education and related services has occurred. Records of discussion and decisions of Child find, the services to be provided and those services will be provided and further consultation meetings.

If representatives of the non-public schools do not provide written affirmation within a reasonable time, public school district must upload the documentation to the GMS IDEA Consolidated Grant, Goal 3.

Sample Consultation Meeting Agenda

Public School District

Consultation Documentation

Describe the points of discussion during the consultation process for each topic listed below for: (consultation meeting is to discuss the child find process, proportionate share calculation, and provision of equitable services for nonresident students with disabilities and FAPE services for resident students with disabilities)

1. How can parentally-placed children suspected of having a disability participate equitably in special education services? (non-resident)
2. How will parents, teachers, and non-public school officials be informed of the process for locating, identifying, evaluating and providing special education services to children with disabilities parentally-placed in a non-public school? (resident and non-resident)
3. What is the amount of funds available to provide special education services to children with disabilities parentally-placed in non-public schools, and how was that amount calculated, and any carry over funds? Proportionate share \$
4. How will the process operate throughout the school year to ensure that children with disabilities parentally-placed in a non-public school identified through the child find process can participate in special education services?
5. How will special education services be provided to children with disabilities parentally-placed in a non-public school? (*Resident children ages 3-21- FAPE, IEP; Non-resident children ages 3 -21 - equitable services-, Service plan*).

6. Where will special education services be provided to children with disabilities parentally-placed in non-public schools? Is transportation needed?
7. By whom will special education services be provided to children with disabilities parentally-placed in a non-public school?
8. How will the annual October 1 count of the number of eligible children with disabilities parentally-placed in non-public schools and exempt home schools be conducted? This includes all eligible children **attending an approved/accredited and or non-public school or exempt home school** within the jurisdiction of the Public school boundaries. This child count is not the same as the NSSRS/ADVISER count
9. How will special education services be apportioned if funds are insufficient or over sufficient to serve all children? How and when will these decisions be made? (I.e. *additional consultation meetings etc.*)
10. Do the public school district and all non-public school officials and home schools agree on the provision of special education services or types of services? YES NO
If no, describe below how the public school district will provide a written explanation to the non-public school officials of the reasons why the public school chose not to provide services directly or through a contract. Attach a copy of the dated, written explanation.
11. Other topics of discussion

Consultation Plan Summary:

Signatures of participants in attendance:

Name	Role	Non-public School	Date

Sample

(School District Name)
Special Education Services

WRITTEN AFFIRMATION OF CONSULTATION

Date of Consultation _____

It is affirmed that the non-public school consultation process included discussion of:

- The child find process and how children (ages 3 -21) with disabilities parentally-placed in non-public schools suspected of having a disability can participate equitably, including how parents, teachers, and non-public school officials will be informed of the process including information on the evaluation process;
- The determination of the proportionate amount of federal funds available to serve eligible children (ages 3-21) with disabilities parentally-placed in a non-public school, including the determination of how the amount was calculated, and any carry-over funds and how they will be allocated;
- How the consultation process will operate throughout the school year to ensure that children (ages 3-21) with disabilities parentally-placed in non-public schools identified through the child find evaluation process can meaningfully participate in special education services;

How, where, and by whom special education services will be provided for eligible children with disabilities (ages 3-21) parentally-placed in approved and/or accredited non-public schools and exempt home schools, including a discussion of types of services, including direct services and alternate service delivery mechanisms, transportation, how such equitable services will be apportioned if funds are insufficient and/or overly sufficient to serve all eligible children how and when these decisions will be made; and how the **October 1** child count of children attending a non-public school will be collected.

- How, if the public school district disagrees with the views of the non-public school officials on the provision of equitable services or the types of equitable services, whether provided directly or through a contract, the public school district shall provide to the non-public school officials a written explanation of the reasons why the school district chose not to provide equitable services directly or through a contract.

Signatures of Non-public School Representatives/ Public School Officials and Parents in attendance:

Signature _____ Parent/ Non-public School/ Public School _____ Date _____

Continued on page 2

WRITTEN AFFIRMATION OF CONSULTATION cont.

Signature Parent/ Non-public School/ Public School Date

Signature Parent/ Non-public School/ Public School Date

Signature Parent/ Non-public School/ Public School Date

Signature Parent/ Non-public School/ Public School Date

Child Find

The school district must locate, identify, and evaluate all children with disabilities (ages 3-21) who are parentally-placed in non-public schools, home schools, including religious, elementary schools and secondary schools or approved and/or accredited cooperatives which are within the school district's jurisdiction.

The child find process must be designed to: 1) ensure the equitable participation of children parentally-placed in a non-public schools; 2) result in an accurate count of these children; 3) consist of similar activities as those undertaken for public school children; 4) be conducted in a time period that is comparable to that for children attending the public school; 5) must include out of state children attending a non-public school within the district; and 6) parent election of FAPE from the resident district or equitable services from the district in which the non-public school is located.

The school district must consult with appropriate representatives of non-public schools on how the child find activities will be conducted. The costs of carrying out the child find process, including individual evaluations, cannot be included in the proportionate share expenditures.

Questions and Answers- Child Find

Boxed Additions include further guidance for students parentally placed in approved and/or accredited non-public schools including exempt home schools. These additions display a connection between NeMTSS and Child Find.

1. To which children do the IDEA requirements for children with disabilities parentally-placed in non-public schools apply?

IDEA provisions relating to children (ages 3-21) with disabilities parentally-placed in non-public schools apply to all children with disabilities parentally-placed in non-public elementary and secondary schools, including religious schools. A "non-public school" is considered an elementary school or secondary school if it meets the definition of elementary school (34 CFR 300.13) or secondary school (34 CFR 300.36).

2. Which school district is responsible for child find activities in non-public schools?

The school district within which the non-public school is located is responsible.

If the public school is using MTSS for identification, the non-public school shares responsibility for the initial problem solving within the student assistance process.

3. Can the school district which has evaluated a non-resident child, share information with the child's resident school district?

Not unless the parent gives written consent. A parent must give written consent before any personally identifiable information about the child is released between the school district within which the non-public school is located and the school district of the child's residence. If sharing information would facilitate identifying and serving the child, it may be appropriate to seek parental consent, but the school district cannot require the parent to provide consent.

4. Do these requirements apply to children who are home schooled?

Yes. If the child attends an exempt school under 92 NAC 13 the child with disabilities is considered to be parentally-placed in a non-public school. Therefore, the IDEA provisions relating to children with disabilities parentally-placed in a non-public school apply to children in exempt home schools.

5. Are children who reside out-of-state the responsibility of the school district within which the non-public school is located?

Yes. The school district within which the non-public school is located is responsible for child find, evaluation, and provision of services for children with disabilities who reside out-of-state. Out-of-state residents must be included in the group of children with disabilities parentally-placed in non-public schools whose needs are considered in determining the types and amounts of services to be provided. Nebraska Revised Statute 79-215(8).

6. How does a school district meet its child find responsibilities to children with disabilities parentally-placed in a non-public school?

The school district within which the non-public school is located has options as to how it ensures that child find responsibilities are met. For example, the school district may assume the responsibility itself, or contract with another school district or agency. The school district should determine its child find procedures through the consultation process and plan.

Essential elements of MTSS include Shared Leadership and Communication, Collaboration and Partnership, therefore participation through the Consultation

7. What are the required child find activities in non-public schools?

The school district within which the non-public school is located must conduct the child find activities. The child find process must be designed to ensure the identification and evaluation of all children parentally-placed in non-public schools, who are suspected of having a disability. Additionally, the child find process must be designed to allow for the equitable participation of such children, and result in an accurate count of children with disabilities, ages 3-21.

If the public school is using MTSS for identification, the non-public school shares responsibility for the initial problem solving within the student assistance process.

8. Can the district require a non-public school to implement a Multi-Tiered System of Supports (MTSS)/Response to Intervention (RtI) or a similar process before conducting an evaluation?

No. Although IDEA permits the use of MTSS/RtI in the evaluation of children suspected of having learning disabilities, it does not require a district to use MTSS/RtI for non-public children. It would be inconsistent with the IDEA provisions for a district to delay the initial evaluation because a non-public school has not implemented a MTSS/RtI process.

It is important to note that a deeply implemented MTSS could potentially reduce the need for special education services.

9. In conducting evaluations of children suspected of having disabilities parentally-placed in non-public schools, may a school district exclude children suspected of having certain disabilities, such as those with specific learning disabilities?

No, the school district must identify and evaluate all non-public school children suspected of having a disability. School districts may not exclude from their child find activities children suspected of having certain disabilities, such as those with specific learning disabilities.

10. What if the parent of a child parentally-placed in a non-public school refuses to consent for an initial evaluation?

If the parent does not provide written consent for an initial evaluation or reevaluation or fails to respond to a request to provide consent, the school district cannot use due process procedures to challenge a parent's refusal.

Providing a layered continuum of support through an MTSS process which includes data-based decision making could provide the necessary support and assistance for those students struggling to meet grade level standards.

11. Is it possible that a child could be evaluated at the same time by the child's school district of residence and school district within which the child's non-public school is located?

Yes. There is nothing to prohibit parents from requesting an evaluation from the child's resident school district, which is responsible for FAPE, at the same time that the parents have requested that the district within which the non-public school is located evaluate their child.

Simultaneous evaluations may not ensure that the evaluation is a meaningful measure of whether a child has a disability nor provides an appropriate assessment of the child's educational needs. Unless a parent chooses to inform the school district that their child is being evaluated by another school district, the two school districts may not know the child is being evaluated by both school districts.

School districts must obtain parental consent before any personally identifiable information about the child is released between officials in the school district within which the non-public school is located and officials in the school district in which the child resides.

12. Can the school district within which the non-public school is located request reimbursement from the school district where the child resides for the cost of evaluations?

No, the school district within which the non-public school is located is responsible for the costs of child find activities and evaluation. However, the district within which the non-public school is located has options as to how it meets evaluation responsibilities. For

example, the school district may assume the responsibility itself, contract with another district, or make other arrangements.

13. Can the costs expended for child find, including individual evaluations, be included in the required amount of funds to be expended on services for parentally-placed children?

No. There is a distinction under the IDEA between the obligation to conduct child find activities and the obligation to expend a proportionate share for the provision of special education services to non-public school students. Child find and evaluation expenditures cannot be included in the proportionate share expenditures.

14. Is the school district where the parentally-placed child attends a non-public school required to reevaluate the child on an equitable service plan?

Yes. Reevaluation is part of a school district's child find obligation for equitable services. If the student is receiving FAPE from the resident school district than the resident district providing FAPE will be responsible for the reevaluation. The LEA where private elementary schools or secondary schools are located is responsible for conducting reevaluations of children with disabilities enrolled by their parents in the private elementary schools and secondary schools located in the LEA. Under 34 C.F.R. § 300.303(a), an LEA must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 if: (1) the LEA determines that the child's educational or related services needs, in light of the child's academic achievement and functional performance, warrant a reevaluation; or (2) the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and LEA agree otherwise; and must occur at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b). Therefore, a school district must initiate a reevaluation of a non-public school child at least once every three years for equitable services. If the parent does not consent for reevaluation, or fails to respond to a request to provide consent, the school district may not use override procedures, and is not required to consider the child as eligible for services.

15. Which district is responsible for a child's three year reevaluation?

The school district who is responsible for the special education services to the child:

	Child is receiving:	School District Responsible for 3yr. reevaluation:
Child is a resident of Blue School district in which the non-public school is located	FAPE (IEP) from Blue School district	Blue School district (<i>resident school district</i>)
Child is a resident of Blue School district and is attending a non-public school in Yellow School district	Elected FAPE (IEP) from resident Blue School district	Blue School district (<i>School district who is responsible for services</i>)
Child is a resident of Blue School district and is attending a non-public school which is located within the Yellow School district	Equitable Service Plan (SP) from Yellow School district	Yellow School district (<i>School district who is responsible for equitable services</i>)
Child is eligible, but not receiving services from either Blue (resident district) or Yellow School (non-resident) district and is attending a non-public school which is located within the Yellow School district	None	Yellow School (<i>District in which the non-public school is located</i>) or the Parent can request an evaluation from the resident school district

16. **If the school district conducts an individual evaluation, and the parents disagree with the evaluation and want to request an independent educational evaluation (IEE), to which school district must the parents bring their request: the school district within which the non-public school is located; or the school district where the child resides?**

Parents should file the request for an IEE with the school district that conducted the evaluation with which the parent disagrees.

17. **Must a child with disabilities parentally-placed in a non-public school who is identified during the school year wait until the next school year to participate in special education services?**

No, if the child is identified during the school year and is not a resident of the district within which the non-public is located, the school district should consider providing special education services during the same school year. Whether the child receives services in the same school year will depend upon such factors as the services the child needs, the equitable services the school district has determined to provide, and whether the school district already has expended its proportionate share of IDEA funds. The parent may elect to request FAPE from the child's public school district of residence. If the child attending the nonpublic school is a resident of the school district in which the non-public is located the school district is responsible for the provision of FAPE.

18. **Following the evaluation, are the eligibility determination requirements the same for a non-resident child with disabilities parentally-placed in a non-public school as for a resident child with disabilities parentally-placed in a non-public school?**

Yes. Following the initial evaluation, an eligibility determination must be made by the Multidisciplinary Team and the child's parents, and the team must determine whether the child is a child with a disability. The school district must provide the parent with a copy of the evaluation report and documentation of the eligibility determination. For children with disabilities, the parent must give prior consent for their child to receive special education and related services.

19. **Which school district is responsible for informing parents of their options to receive FAPE from the resident school district or equitable services from the non-resident school district?**

How and by whom parents will be informed of their options (*FAPE or Equitable*) should be discussed and determined within the topic of Child Find at the Consultation Plan meeting. The school district in which the non-public school is located is responsible for child find, evaluation, and provision of equitable services; and the child's resident school district is responsible for initial evaluation, **IF** the parent requests an initial evaluation from the resident district and would also be responsible for reevaluation if the resident district is providing services and must make FAPE available to all resident children whose parent's elect for their child to receive FAPE.

Within a deeply implemented MTSS Communication, Collaboration and Partnership is essential in the explanation of provided services. Both the public and non-public administration can provide support and guidance in this area.

20. If a non-resident child is evaluated, determined to be a child with disabilities, should the non-resident school district explain to the parent what services the child would receive from the resident school district?

No. It is the responsibility of the child's resident school district's IEP team to develop an Individualized Education Program, and it is the IEP team who determines the type and amount of special education that will be provided.

The school district must explain to the parent of the non-resident child what equitable services are available, as determined through the Consultation Plan; and available services which are appropriate for the child, a Service Plan would be written for the child.

The school district should inform the parent that they may elect to receive FAPE from their resident school district. Information sharing between the school districts does require the parent to give signed written consent to release information.

21. Do all of these same requirements apply to a child who is a resident of another state attending a non-public school located within the district's boundaries?

Yes

Provision of Equitable Services

Equitable Services - Non-resident Children (ages 3-21)

Equitable Services are provided to non-resident children whose parents have elected not to receive FAPE from the resident district. Equitable services are those special education services which will be provided as determined through the consultation process.

The public school district within which the non-public school is located is responsible for the development of a services plan for non-resident children with disabilities parentally-placed in a non-public school. The services plan does not entitle children with disabilities to a free and appropriate public education (FAPE). Therefore, the services plan may not include the same services the non-resident parentally-placed child with disabilities would receive from the resident school district.

The services plan must describe the specific special education services, that the school or approved cooperative will provide to the child in light of the equitable services that the school district has determined through the consultation process it will make available to non-resident children with disabilities parentally-placed in a non-public school.

The services plan, to the extent appropriate, must be developed, reviewed, and revised in the same manner as an IEP. Similarly, the services plan must to the extent appropriate include present levels of performance, goals, and equitable services.

The school district must initiate and conduct meetings to develop, review, and revise a services plan and ensure the participation of a non-public school representative. If the representative of the non-public school cannot attend, the school district shall use other methods to ensure participation by the non-public school representative, including individual or conference telephone calls.

Equitable special education services provided to non-resident children with disabilities parentally-placed in a non-public school must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that non-public elementary school and secondary school teachers who are providing equitable services to children with disabilities parentally-placed in a non-public school do not have to meet the highly qualified special education teacher requirements. The school district may contract with an individual, association, agency, organization, or other entity to provide special education services. The school district may use Part B funds to pay an employee of the non-public school to provide equitable services if the employee performs the services outside of his/her regular hours of duty and the employee performs the services under public supervision and control.

Questions and Answers - Equitable Services Non-resident (ages 3-21)

1. What are equitable services?

A non-resident child with disabilities parentally-placed in a non-public school, which is located outside of his or her public school district of residence, has no individual entitlement to receive some or all of the special education and related services he or she would receive from his or her resident school district. The school district only must provide for the equitable participation of non-resident children with disabilities parentally-placed in a non-public school.

IDEA requires that annually a school district spend a proportionate share of IDEA funds on special education services for non-public school children with disabilities as a group. The services that will be made available are identified during the consultation process with non-public school officials and representatives of parents of children with disabilities parentally-placed in a non-public school.

2. How are equitable services for non-resident children with disabilities parentally-placed in a non-public school determined?

No child with a disability parentally-placed in a non-public school or home school which is located outside the public school district where the child resides, has an individual right to receive some or all of the special education and related services that he or she would receive from his or her resident school district. Decisions about how the proportionate share will be expended and what equitable services will be provided to children with disabilities parentally-placed in a non-public school or exempt home school are made through the district's consultation plan.

3. Who decides what equitable services the district will provide?

The school district through a timely and meaningful consultation meeting with non-public school officials and representatives of parents of children with disabilities parentally-placed in non-public schools makes the final determination of what special education services will be available.

4. What services must a school district provide to a child with disabilities parentally-placed in a non-public school?

Children with disabilities parentally-placed children in a non-public school or home school who are residents of the district within which the non-public school is located are eligible to receive FAPE from their resident school district and have an IEP.

Children with disabilities parentally-placed in a non-public school or home school who are not residents of the district within which the non-public school is located are eligible to receive equitable services. Decisions about the type, amount, and location of where equitable services will be available, are made in the consultation process. A non-resident child with disabilities may or may not have a services plan depending on whether the child will be receiving equitable services as determined through the consultation process. The child's services plan describes the specific special education and related services that the school district or approved cooperative will provide. The amount of services could be different from what the child may receive from their resident school district.

5. Who decides if a non-resident child with disabilities will receive equitable services or FAPE?

The parent decides. After determination of the child's eligibility for special education the school district should explain to the parents what equitable services are available and that a services plan for the child may be developed.

The school district should also inform the parents that the child's resident school district is responsible for the provision of FAPE and the parent may contact the resident school district to request FAPE.

If the parent makes clear his or her intention not to request FAPE from the child's resident school district, the school district within which the non-public school is located would develop a services plan depending on the availability of equitable services as determined in the consultation process.

Services Plan

Questions and Answers -Services plan Non-resident children (ages 3-21)

1. What must a services plan include?

Non-resident children with disabilities parentally-placed in a non-public school designated by the school district to receive special education services must have a services plan in place before the child can receive services. A services plan describes the specific special education the child will receive from the school district in light of the services the school district has determined will be available to non-public school children. The elements in each child's services plan may vary depending on the services to be provided as determined in the consultation plan.

2. Is a services plan required for a non-resident child who is eligible for services, but those services do not fall within the array of services the public school is offering as determined through the consultation process?

No. There is no requirement that a services plan be written for a child in this instance.

3. How often must a services plan be written?

The IDEA and its implementing regulations do not specify how often a services plan must be updated. As provided in 34 C.F.R. § 300.138(b)(2)(ii), a services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with the IEP requirements in 34 C.F.R. §§ 300.321 through 300.324. The regulations in 34 C.F.R. § 300.324(b)(1) require that a child's IEP be reviewed periodically but not less than annually, to determine whether the annual goals for the child are being achieved, and whether it needs to be revised, as appropriate. As such, the Department suggests that a services plan be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and whether revisions are needed.

4. Must the parent of a child with disabilities parentally-placed in a non-public school participate in the development of a services plan?

Parents of the child are necessary participants and should participate in the meeting to develop the services plan for their child. If neither parent can attend the services plan meeting the school district shall use other methods to ensure parent participation, such as conference phone calls.

5. What is the difference between an individualized education program (IEP) and a services plan (SP)?

A services plan (*non-resident children*) will only reflect available special education services as determined from the consultation meeting.

6. Can the school district's IEP form serve as a services plan for a non-resident child with disabilities parentally-placed in a non-public school?

It is not recommended. Using an IEP form in lieu of a services plan form may not be appropriate, as an IEP form generally includes more information and services than a non-resident child with disabilities parentally-placed in a non-public school will receive. There is nothing however, in the regulations that would prevent a district from using their IEP form in lieu of a services plan form.

7. Can a services plan be revised?

Yes, a services plan can be revised using appropriate team members. Since services to children with disabilities parentally-placed in a non-public school are determined based on funding, when services costs unexpectedly exceed the proportionate share of funds available for non-public school children, the public school district may convene another meeting to revise the services plan.

8. What if a parent is not satisfied with the special education services the public school district will provide pursuant of the child's services plan?

Parents who wish to access a greater level of support for their child than what is offered through the consultation plan and included on the child's services plan, may elect to receive a free appropriate public education (FAPE) from the child's resident (where the child resides) public school district.

9. Can a parent, whose child is receiving equitable services, at any time request FAPE from the resident school district?

Yes, at any time a parent may request FAPE from the district where the child resides

10. Can a child with disabilities parentally-placed in a non-public school have both an individualized education plan and a services plan at the same time?

No.

11. Who should provide equitable special education services to non-resident children with disabilities parentally-placed in a non-public school?

Equitable services may be provided by personnel of a public school district or may be provided by individuals or agencies that are contracted by the public school district. The school district may use Part B funds to make public school personnel available, to the extent necessary to provide equitable services for non-public school children with disabilities.

The public school district may contract with employees of the non-public schools if the employee performs the services outside of his or her regular hours of duty and the public school contracted employee performs the services under public school supervision and control.

12. Where can special education and related services be provided to children with disabilities parentally-placed in a non-public school?

Services offered to children with disabilities parentally-placed in non-public schools may be provided on-site at the child's non-public school, including religious schools, at the public school, or at another location.

13. How is the location where services will be provided to children with disabilities parentally- placed in a non-public school determined?

The location of services is discussed during the consultation process with representatives of the non-public school. The public school makes the final decision, using input through the consultation process.

14. Must the district provide transportation in order for a child to benefit from or participate in the services provided under non-public school provisions of equitable services?

If it is necessary for the child to benefit from or participate in the services provided, the district must provide transportation from the child's school or the child's home to a site other than the non-public school; and from the service site to the non-public school, or to the child's home, depending on the timing of the services. IDEA does not require school districts to provide transportation from the child's home to the non-public school. The school district may include the cost of the transportation in calculating whether it has spent the proportionate share on the provision of non-public school children with disabilities.

15. Do parents sign a placement form if their child is only eligible for equitable special education services (services plan)?

No. Documentation of placement and the placement decision-making process is not a required procedure.

			SERVICES PLAN NON-RESIDENT CHILD PARENTALLY-PLACED IN A NON-PUBLIC SCHOOL		
Student Name	DOB	Age	M F	Grade	Today's Date
Parent(s) Name	Parent(s) Address		Home Phone		
			Work Phone/Cell Phone		
			Email Address		
Non-public School	Child's Resident School District		Public School District Providing Services		
Parent concerns					
Present Levels of Education Performance					
Service Delivery Plan Schedule					
Date of Initiation of Services:		Anticipated Duration of Services:			
Description of Service(s) to be Provided by the Public School		Hours Per Week	Location		
Direct Service					
Consultation					
Teacher Training					
Instructional Materials					
Equipment					
Transportation					

Measurable Annual Goal(s) for Direct Service(s)

Documentation Of Participation In Meeting

The following individuals, as indicated by their signatures, participated in the development of this Services plan.

Parent/Guardian /Surrogate Date	Date	Parent/Guardian/Surrogate
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Non-public School Representative Date	Date	Signature/Position
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Signature/Position Date	Date	Signature/Position
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Other Date	Date	Other
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Notice To Parent Regarding Availability Of A Free Appropriate Public Education (FAPE)

Non-resident children with disabilities parentally-placed in a non-public school have no right to receive some or all of the special education and related services that would be available if the child was receiving special education services from their resident public school. The district in which your child resides will provide free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA). Please contact _____ at the _____ public school district if you elect for your child to have an Individualized Education Program (IEP) and the provision of a free and appropriate special education and related services.

**NOTIFICATION OF
SERVICES PLAN MEETING**

Date _____

To: _____
Parent/Address

(Child's name)

A equitable services plan meeting has been scheduled for: (proposed meeting date, time and place)

_____ date
_____ time
_____ place

It is very important that you attend this meeting. With your input, we can develop an education services plan describing the specific services the district will provide in light of the services the school district will provide as determined through the consultation plan with non-public school representatives. If you would like, you may review your child's education records prior to the meeting. At this services plan meeting we will be discussing:

1. Your child's present levels of performance and educational needs;
2. Annual goal/s;
3. Services your child will receive.

In addition to you, the following people will be in attendance at the equitable Services

plan meeting: 1. _____, a special education teacher;

2. _____, a public school representative;

3. _____, a non-public school representative;

4. The following individuals who can help explain the evaluation results or who have special knowledge or expertise regarding your child or services that may be needed; _

Proportionate Share and Expenditures

Child Count, Expenditures and Finance

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and 92 NAC require that each school district determine the proportionate amount of federal funds to be expended on special education services (including indirect services) for children with disabilities parentally-placed in an approved and/or accredited non-public schools and exempt homeschools which are located within the public school district's boundaries

Proportionate Share

Appendix B to Part 300-Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

- 1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally-placed nonpublic/exempt home school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3- through 21; and
- 2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

Child Find

Each school district, after timely and meaningful consultation with representatives of parentally-placed non-public school children, must conduct a thorough and complete child find process to determine the number of eligible parentally-placed children with disabilities attending non-public schools, including exempt home schools which are located within the school district's boundaries. This annual October 1 Proportionate Share child count includes both eligible children with disabilities who have been determined to be eligible and receiving services, and those who are eligible and are NOT receiving services.

The annual NSSRS/ADVISER child count and Proportionate Share child count are two separate child counts taken October 1. The Proportionate Share child count is an attendance head count of all eligible children parentally placed in an approved and/or accredited non-public school or exempt home school, and **does not** consider which school district is providing special education services. (*FAPE or Equitable*)

The NSSRS/ADVISER child count is the total number of eligible Public School children and may not accurately reflect the proportionate share child count, as NSSRS/ADVISER includes all of the children who are being served by the district in both the public and non-public schools, and outside of the district. The NSSRS/ADVISER count also may include resident non-public school children; and non-resident children who are receiving contracted services from the non-resident school district. Simply using the NSSRS/ADVISER count to report the total number of eligible Public School children may not be accurate.

October 1 Proportionate Share Child Count

Eligible Parentally Placed Non-Public School Children attending an accredited and/or approved non-public school or Exempt Home School within the District's Boundaries

- A. Non-public school and children eligible and served ages 3-21 attending an approved and/or accredited non-public school located within district boundaries to include:
 - Resident children receiving FAPE
 - Non-resident children receiving Equitable services
 - Non-resident children receiving FAPE from the resident district
 - Non-resident children out-of-state receiving Equitable services
 - Non-resident children 3-5yr. olds receiving services attending a non-public preschool (which is a part of an approved and/or accredited elementary school)
- B. Non-public school children eligible but **not** served ages 3-21 attending an approved and/or accredited non-public school within district boundaries to include:
 - Resident children not receiving FAPE
 - Non-resident children not receiving Equitable services
 - Non-resident out-of-state children not receiving Equitable services
 - Non-resident children 3-5yr. olds receiving services attending a non-public preschool (which is a part of an approved and/or accredited elementary school)
- C. Home schooled children eligible both served and not served ages 5-21 attending an exempt home school within district boundaries to include:
 - Resident children receiving FAPE
 - Resident children not receiving FAPE
 - Non-resident children not receiving Equitable services
 - Non-resident children not receiving FAPE from the resident district

Eligible Public School Children

- A. Public school children eligible and served ages 3-21 attending the school district public school to include:
 - Resident children attending the Public school receiving FAPE, including eligible preschool children attending the district preschool
 - Resident children placed by the Public school receiving FAPE in a contracted program
 - Not to include parentally placed children attending an approved and/or accredited non-public or Exempt home school **outside** of the district's boundaries who are receiving FAPE services
- B. Public school children eligible but not served Ages 3-21 attending district public school including district preschool
 - Resident children eligible for FAPE (parent refused services)

The following NDE Special Education Office- Proportionate Share Worksheet For Non Public Schools can be found the Nebraska Department of Education website.

<http://viewspedws.education.ne.gov/>

Example on Next Page

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Expenditures and Finance

The proportionate share is calculated based on the district's annual October 1 proportionate share child count of eligible (*being served and not being served*) children with disabilities parentally-placed in attending an approved and/or accredited non-public schools and exempt home schools. The proportionate share must be calculated by December 15 of each year and represents the amount of federal funds that must be spent on eligible children with disabilities parentally-placed in an approved and/or accredited non-public schools and exempt home schools during the next fiscal year. (*See Proportionate Share Calculation Worksheet, included in this section of Technical Assistance document, and can also be found on NDE, Special Education website <http://viewspedws.education.ne.gov/>*).

Through the consultation process, a determination must be made about how the available amount of funds will be utilized so that the parentally placed non-public school children and exempt home school children with disabilities designated to receive equitable services can benefit from the services offered. Depending on the discussions during the consultation process, local circumstances, and the amount of funds available to expend on services for this population of children, the school district could determine, after timely and meaningful consultation, that it will provide its population of parentally placed non-public school children with disabilities with direct and indirect services. These services could include transportation, consultative services, equipment, or materials for eligible parentally placed children with disabilities or training for non-public school teachers and other non-public school personnel. Special education and related services provided to parentally placed non-public school children with disabilities, including materials and equipment, must be secular, neutral, and non-ideological. Child find and individual evaluation costs cannot be included in the proportionate share expenditures.

Proportionate Share Calculation Example (Ages 3-21)

Number of children with disabilities within in the Public School District	300
Number of eligible parentally-placed non-public school with disabilities within the district boundaries	20
Total number of eligible children within disabilities in the district	320
Total federal flow through funds to the district	\$152,500.00
Total federal flow through funds divided by total number of children with disabilities in the district (320) equals the average allocation per child	\$476.56
Average allocation per child multiplied by the number of parentally-placed non-public school children with disabilities (20) equals the amount which must be expended on parentally-placed non-public children with disabilities	\$9,531.20

Carry Over Funds

Proportionate share funds are a portion of a district's IDEA Part B funds that must be reserved and spent over a maximum two-year period to provide Special Education services to children within the district's boundaries who are parentally placed in either an approved and/or accredited non-public school or exempt home school. If the public school district cannot expend the entire proportionate share by the end of the fiscal year, the district must obligate the remaining funds for special education and related services to parentally-placed children with disabilities during a carry-over period of one additional year. 92 NAC-51 012.08B

If, near the end of the carry over period, it is apparent that all the carry-over proportionate share funds will not be expended, having met all requirements of 92 NAC-51-012.08; and 015.03 the district should request that the Nebraska Department of Education release any unspent funds for other allowable costs for children with disabilities in the public schools. This situation should be the exception. It is the clear intent of the Act that school districts spend these proportionate share funds on providing special education and related services to parentally placed non-public school children with disabilities.

The school district must be very diligent in its consultation process to ensure that every effort is made to use the proportionate share funds for special education and related services for parentally placed non-public school students with disabilities. The school district must have documentation of consultation meeting(s) were conducted to discuss services, expenditures and changes to how the proportionate share funds will be expended. Consultation meeting documentation includes the following:

- Notices/letters of meeting(s), attendance records
- How and where the proportionate share funds are being expended
- Available proportionate share funds; carry over funds; and remaining estimated expenditures
- Possible reasons for unexpended funds
 1. Children no longer attend non-public school or home school within district boundaries
 2. Student(s) age-out/graduated from non-public school or home school
 3. Non-public schools refused services
 4. Parents refused services
 5. Proportionate Share Carryover funds exceeded the amount needed for services provided
 6. Other

The particular circumstances of the school district will determine how soon the district may use the remaining carry-over proportionate share funds for the public school students with disabilities. School districts should take into consideration that the grant year does not end until **August 31**.

If the current year estimated expenditures for proportionate share are greater than the carryover amount as shown in Example A, the district is not eligible to release any funds since older funds must be expended first. However, if the estimated expenditures of the proportionate share are less than the carryover amount as shown in Example B, then the district may release the difference. Any funds remaining from the current year obligation will roll over into the next year as carryover funds.

Example A		Example B	
Carryover Amount (from previous year)	\$ 5,000	Carryover Amount (from previous year)	\$ 5,000
Current Year Obligation (from current year)	\$ 7,000	Current Year Obligation (from current year)	\$ 7,000
Total Available for Proportionate Share	\$12,000	Total Available for Proportionate Share	\$12,000
Estimated Expenditures for Current Year	\$ 6,000	Estimated Expenditures for Current Year	\$ 4,000
Amount Available for Release	\$0	Amount Available for Release	\$ 1,000

If every effort is made to expend the carry-over proportionate share funds from the previous year for services to parentally placed non-public school children with disabilities, the school district should at the end of the grant year, adjust its internal accounting records to transfer the unused, carry-over proportionate share funds for expenditures for children with disabilities in the public schools. If the carry-over proportionate share funds are not used or transferred by the end of the carry-over year, the carry-over proportionate share funds will be returned to the U. S. Department of Education.

Procedures To Transfer Unspent Carry-over Funds Within The Maximum Two Year Obligation Period

School districts who are unable to expend their proportionate share funds by the end of the carry over period (second year) must document their efforts through the Grant Management System (GMS).

Annually in July, the NDE Special Education Office will notify those districts that have yet to expend their previous year carry over funds. If school districts believe they will be unable to expend the previous years carry over funds they must hold a Consultation meeting(s), and upload documentation within the Program Information Section of GMS IDEA Consolidated Grant Goal 3. If the district discussed the carry over dollars and what the district would do with unspent funds at the annual consultation meeting a second meeting is not required. Documentation needs to include:

- Provide documentation that the requirements of 92NAC-51 012.08 and 15.02 have been met, which includes upload of:
 - Notice/letter of Consultation Meeting(s); and
 - Written Affirmation – *in addition, must also include the rationale for unexpended second year proportionate share (carryover) funds*
- Submit Amendment to release unspent carry over funds for approval by NDE.

Assurances

The district amendment submission assures that the district to the best of their knowledge has complied with the requirements in 92NAC 51 -012.08 and 015.02 in regard to identifying, evaluation, and serving eligible children with disabilities parentally placed in approved and/or accredited non-public schools and exempt home schools, and the district has consulted with non-public school representatives and representatives of parents of parentally-placed non-public school children with disabilities.

In addition, the district certifies the district will spend less proportionate share funds in the current school year than the proportionate share carryover amount from the prior school year and requests a release of those unexpended funds.

Upon amendment approval by Nebraska Department of Education, the district is eligible to receive through their final claim to NDE financial services, expenditures of those funds for public school student with disabilities. Within this final claim, the district must indicate within the Comment Section, they have successfully completed the requirements of 92NAC -51 012.08 and 015.02 and have included accounting records indicating the transfer of carry over funds and expenditures of those funds for public children with disabilities.

See Flow Chart this section page 47- **PROPORTIONATE SHARE FUNDS NOT EXPENDED BY THE END OF THE CARRY-OVER PERIOD**

Administration of Funds

A school district or approved cooperative must administer the funds used to provide special education services, and hold title to and administer materials, equipment, and property purchased with that fund for those uses and purposes.

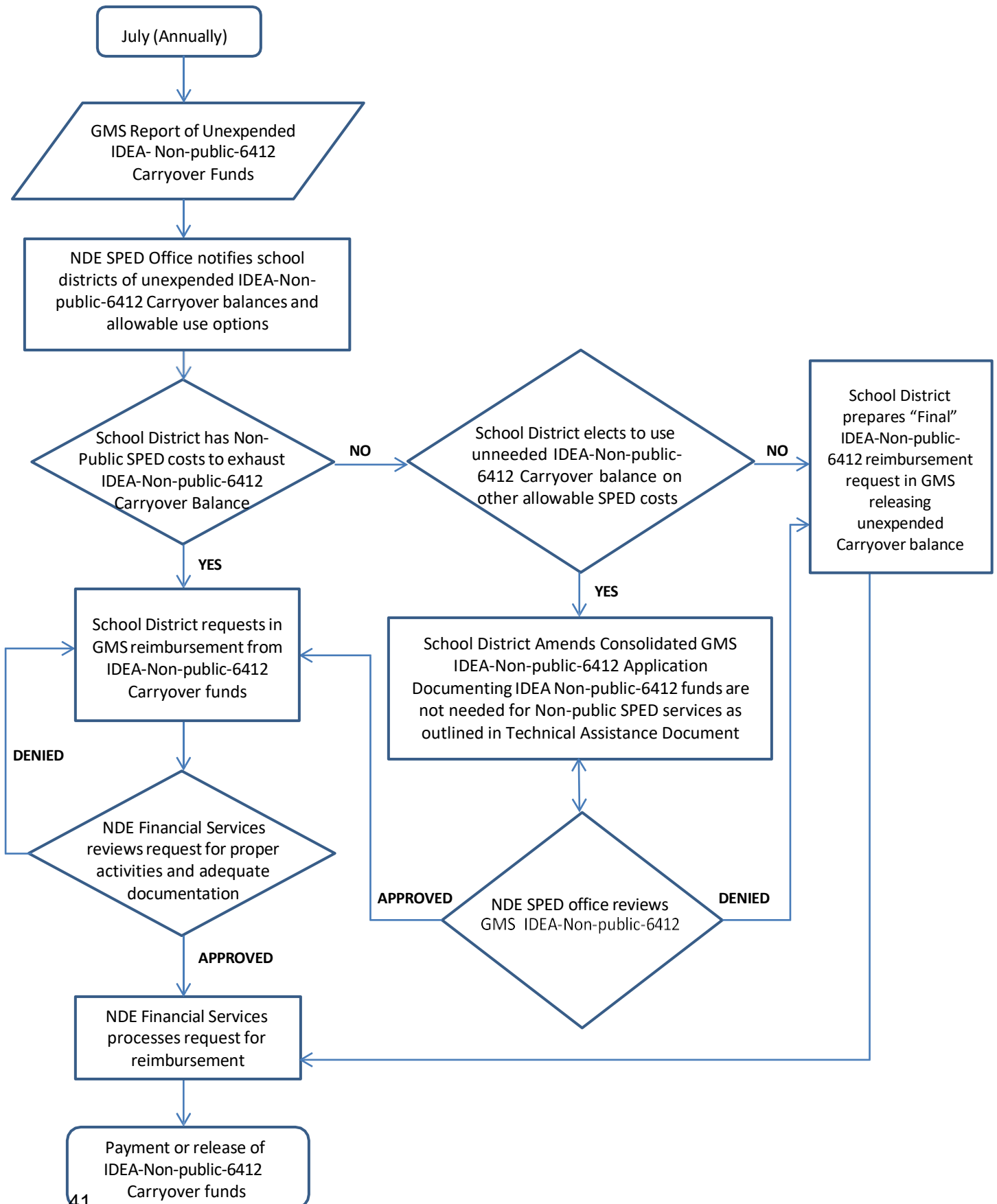
Public School Personnel

A school district or approved cooperative may use special education funds to make public school personnel available in other than public facilities: 1) to the extent necessary to provide services designed for children with disabilities parentally-placed in non-public schools, and 2) if those services are not normally provided by the non-public school.

Non-public School Personnel

A public school district or approved cooperative may use special education funds to pay for contracted services of a non-public school employee of a non-public school to provide special education and related services if: 1) the employee performs the services outside of his/her regular hours of duty; and 2) the employee performs the services under public school supervision and control. It is recommended that the school district keep clear records of contractual payments to document that the district is not reimbursing the non-public school for services.

**PROPORTIONATE SHARE FUNDS NOT EXPENDED
BY THE END OF THE CARRY-OVER PERIOD**



Questions and Answers - Proportionate Share Calculation

Child Count, Expenditures, and Finance

Child Count

- 1. Do all districts need to submit a Proportionate Share Worksheet for Non-public schools, even if no non-public schools exist within the district?**

Yes. A district who does not have an approved and/or accredited non-public school or exempt home school within its jurisdiction would submit "0's" in **Section I**. for number of Non-public school children.

- 2. When must the Proportionate Share Worksheet for Non-public schools be submitted?**

December 15th annually.

- 3. Why is it important to identify the number of children with disabilities parentally-placed in non-public schools which are within the school district?**

An **accurate** count of the number of eligible children with disabilities parentally-placed who are **attending** an approved and/or accredited non-public school including exempt home schools which are located within the school district's boundaries are needed to calculate the proportionate share of IDEA funds the school district must expend annually on services for eligible children with disabilities parentally-placed in non-public schools. The **NSSRS/ADVISER and Proportionate Share count are two different child counts**. The NSSRS/ADVISER child count should not be used to report the total number of Public school children without careful analysis, as the NSSRS/ADVISER count may include both public school children, non-public school children and contracted non-public school children. Remember the NSSRS/ADVISER is the total number of children being served by the district. The NSSRS/ADVISER does not always accurately reflect the total number eligible children with disabilities **attending** an approved and/or accredited non-public or exempt home school. Children counted in Section I, cannot also be counted in Section II of the Proportionate Share Worksheet.

See also- Question 5 and the Proportionate Share section of this document for more specific annual child count and calculation of a school district's proportionate share information.

- 4. Where can the Proportionate Share Worksheet be found?**

The Proportionate Share Worksheet for Non-public Schools is found on the NDE website at <http://viewspedws.education.ne.gov/>

- 5. How does the school district determine the number of children with disabilities to use in calculating the proportionate share of IDEA funds?**

When school districts do their annual October 1 NSSRS/ADVISER child count, they must also conduct a Proportionate Share child count. The NSSRS and Proportionate Share Child count are two separate child counts. The NSSRS count includes all children who are receiving special education services, both public and non-public children; contracted public and non-public school children. School districts must determine the number of eligible parentally placed resident and non-resident children with disabilities (ages 3-21) attending an approved and/or accredited non-public school, including exempt home schools which are within the school district's

boundaries regardless of which district is providing services. This count also includes eligible children who are not receiving services.

An important topic of the consultation meeting with representatives of non-public schools is to decide how the school district will ensure an accurate October 1 child count of eligible parentally placed resident and non-resident non-public children within the district's boundaries, regardless of which district is providing services. The October 1 count is used to determine the amount of IDEA funds the school district must spend in the subsequent fiscal year.

6. Which children must be included in the October 1 child count to calculate the proportionate share?

Each school district must determine the total number of eligible children (*regardless of which district is providing special education services*), receiving or not receiving services, resident or non-resident, out-of-state attending an:

*Approved and/or accredited non-public school and exempt home school children (3 yr.-21 yr.) with disabilities who are enrolled by their parents in non-public elementary schools and secondary schools. For preschool age children (3-5 yr. olds) attending a non-public preschool which is a part of an approved and/or accredited elementary school (*see also Preschool Section of this document*) located within the school district's boundaries ,and

*Public school children with disabilities (3yr.-21yr.) See page 36- Proportionate Share Worksheet for Non Public School <http://viewspedws.education.ne.gov/>

7. Must the school district within which the non-public school is located include in the proportionate share child count children whose parents have declined special education and related services?

Yes, the school district within which the non-public school is located must include children who are eligible and not receiving services. This count also includes out-of-state parentally placed children attending a non-public located within the district's boundaries.

8. How long must the district continue to include children whose parents have declined services in the child count?

The child is included in the child count until the child is determined by the multidisciplinary team to be no longer eligible (92 NAC 51-006.05). If a parent of a public school or parentally placed approved and/or accredited non-public school including exempt home school child declines to consent to reevaluation (92 NAC 006.05B) the school district cannot use the consent override procedures to conduct the reevaluation, and child is removed from the child count.

9. Which school district includes children attending non-public schools who are receiving FAPE in their child count?

The school district in which the child's non-public school is located counts the child. Children receiving FAPE from the resident district but attending a non-public outside of their district of residence are counted in the district in which the non-public school is located.

10. Which count (Public or Non-public) is a homeschooled child who is coming to the Public school to receive special education services counted in?

The Non-public school count- Section I of the Proportionate Share work sheet.

11. What is a proportionate share child count?

The proportionate share child count is an **October 1** head count of all eligible children with disabilities who attend an approved and/or accredited non-public school, exempt home school, and public school located within the school district's boundaries. The count includes resident, non-resident, out-of-state parentally placed eligible children regardless of who is providing special education services, (FAPE/Equitable). This count also includes those children who are eligible and not receiving services. See Proportionate Share Worksheet

12. Is the annual October 1 NSSRS/ADVISER child count the same as the required annual October 1 Proportionate share child count?

No, the annual October 1 NSSRS/ADVISER and the annual October 1 Proportionate child count for calculation of proportionate share are two separate child counts. Simply using the NSSRS/ADVISER count to report the total number of eligible Public School children may not be accurate. The NSSRS/ADVISER count is a count of all the children the district serves, which includes: public school children; and may include: contracted public school children, resident non-public school children; non-resident non-public school children, and non-resident children receiving contracted services from the non-resident school district.

Expenditures and Finance

May amounts expended for child find, including individual evaluations, be deducted from the required amount of Proportionate Share to be expended on services for parentally placed non-public school children with disabilities?

No. There is a distinction under the IDEA between the obligation to conduct child find activities, including individual evaluations, for parentally placed non-public school children with disabilities, and the obligation to use an amount of funds equal to a proportionate amount of a district's sub grant to provide special education and related services to parentally placed non-public school children with disabilities. The obligation to conduct child find, including individual evaluations, exists independently from the obligation to provide equitable/FAPE services.

Can a school district decide to exclude eligible non-resident children with disabilities in the proportionate share expenditures?

No, children with disabilities parentally-placed in non-public schools are considered a group and the proportionate share must be expended for the group. The school district's consultation plan determines the services that will be made available to children with disabilities parentally-placed in non-public schools. The consultation plan may have determined that not all and only some services will be available that a child would receive from their school district of residence.

How should a school district calculate the proportionate share of IDEA funds that must be spent on special education and related services?

The NDE Proportionate Share calculation worksheet explains how the proportionate share is calculated <http://viewspedws.education.ne.gov/> also see page 36.

What expenditures can be considered when determining whether a school district has expended a proportionate share of its IDEA funds?

Expenditures for special education services and related services, transportation consultative services, equipment, or materials, training for personnel of non-public children may be considered when determining whether the school district has expended the required proportionate share of IDEA funds. Non allowable expenditures are child find activities, including evaluations.

May non-public school officials order or purchase materials and supplies needed for the special education services and be reimbursed by the public school district?

No, non-public school officials may not obligate or receive Part B funds. The school district must control and administer the funds used to provide special education services to children with disabilities parentally-placed in a non-public school, and maintain title to materials, equipment, and property purchased with those funds.

Can the public school place equipment and supplies for services in a non-public school?

Public schools may place equipment and supplies in a non-public school for the period of time needed for eligible children. The public school must ensure that equipment and supplies placed in a non-public school are used only for the purpose of providing special education services and can be removed from the non-public school without remodeling the non-public school facility.

The public school must remove equipment and supplies from a non-public school if the equipment and supplies are no longer needed for the purpose of providing special education services; or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.

May a school district provide additional services to children with disabilities parentally-placed in a non-public school in excess of the required IDEA proportionate share of equitable services?

Yes. A school district may provide additional services, consistent with state law or local policy.

May a school district meet the requirement to expend a proportionate share of funds on services to children with disabilities parentally-placed in a non-public by spending state and local funds?

No, a school district is required to spend a proportionate share of its federal IDEA funds to satisfy this obligation. If a public school district uses state and local funds to provide special education services to children with disabilities parentally-placed in a non-public school, those funds can be used only to supplement and not supplant the proportionate share of federal funds.

Can the local public school district turn over proportionate share funds to one or more non-public schools in its jurisdiction for the purpose of allowing the non-public schools to purchase services in keeping with the district's plan for spending proportionate share funds?

No, IDEA makes clear that a public school district is required to maintain control over funds and property utilized for the purpose of providing proportionate support to children with disabilities parentally-placed in a non-public school.

May Part B funds proportionate share funds be used for repairs, minor remodeling, or construction of non-public schools facilities?

No, proportionate share funds cannot be used for repairs, minor remodeling, or construction of non-public schools facilities.

Can administrative costs be included in proportionate share expenditures?

No. Proportionate share funds are required to be expended on “special education and related services”, and therefore administrative costs cannot be included within these expenditures.

If the district does not expend the entire proportionate share of Part B funds on children with disabilities placed by their parents in a non-public school that closes, what must the district do with those unexpended funds?

The school district is required to spend a minimum amount of its sub grant under Part B of the IDEA on children with disabilities placed by their parents in non-public elementary and secondary schools. If the district has not expended all of the proportionate share of its Part B sub grant by the end of the fiscal year for which Congress appropriated the funds, the district must obligate the remaining funds for special education and related services to children with disabilities placed by their parents in non-public schools during a carry-over period of one additional year. A reduction in the number of children, for example, when a school closes after the start of the school year, does not excuse the district from spending its proportionate share to provide equitable services to children with disabilities placed by their parents in non-public schools. *(See also page 41 to release unspent funds at the end of the carry over period)*

Carryover Funds

What does the school district do if it is unable to spend its entire proportionate share of IDEA funds by the end of the fiscal year?

If the school district has not expended the entire current year proportionate share of IDEA funds by the end of the fiscal year, the school district must obligate the remaining funds for services to children with disabilities parentally-placed in non-public schools during a carry-over period of one additional year. Carry over funds are budgeted in the following fiscal year's GMS Consolidated Grants 4412 Non-public application.

A reduction in the number of children, for example, when a school closes after the start of the school year, does not excuse the district from spending its proportionate share to provide services to non-public children.

What does the district do if carry over funds cannot be expended within the carry over period?

If the district cannot spend the carryover funds during the carry over period (second year) having met all the requirements for children enrolled in a Non-public school by Parents NAC 51-015.03, the district should conduct a meaningful Consultation meeting to discuss available proportionate share funds, carry over funds, estimated proportionate share expenditures, and why the carry over funds cannot be spent. If this was discussed at the annual consultation meeting, a second consultation meeting is not required. Allowable reasons for unexpended funds may include: child(ren) no longer attend non-public school or home school within district boundaries; student(s) aged-out/graduated from non-public school or home school; parents refused services; non-public school(s) refused services; proportionate share carryover funds exceeded the amount needed for services provided; or other.

If through the consultation meeting discussion a decision is made to transfer the unspent proportionate share carry over funds to be expended on allowable Part B expenditures for eligible public school children, the district would follow the Proportionate Share Funds Not Expended By the End of the Carry-over period Flow Chart procedures to amend non-public funds (6412) as outlined in this document. (See flow chart page 41)

What procedures must the district follow if the district is unable to expend the proportionate share allocation within the carry over period and would like to transfer proportionate share funds to pay for other allowable Part B expenditures?

- a) The district should hold a meaningful Consultation meeting with representative of non-public schools to discuss the proportionate share amount, and why the proportionate share funds cannot be expended within the carry over period. If this was discussed at the annual consultation meeting a second consultation meeting is not required. Possible reasons for unexpended funds: student(s) no longer attends non-public school with the district boundaries; student(s) aged-out/graduated from non-public school; non-public school(s) refused services; parents refused services; proportionate share carryover funds exceeded the amount needed for services provided; other- describe
- b) Submit an Amendment within GMS IDEA Non Public 6412 for approval for use of the unspent proportionate share funds to be spent on other allowable Part B expenditures. (See flow Chart page 40)

2. How do districts maintain accounting records to document funds that are expended for non-public proportionate share services?

School districts shall report all expenditures and claims for non-public proportionate share services within function code 6412 on the Grants Management System (GMS).

3. If a school district cannot expend the entire proportionate share of Part B funds on children with disabilities placed by their parents in non-public schools by the end of the carry over period can the district return the unexpended carry over funds to the State to be spent by the State or reallocated to another district?

If, after the carry-over period, the district is unable to expend the entire proportionate share and assuming the district is in compliance with the child find, consultation, and other requirements related to parentally placed non-public school children with disabilities in 34 CFR §§300.129 through 300.144, the district may use the unexpended funds - at the end of the period during which the funds may be spent on parentally placed non-public school children - to pay for other allowable Part B expenditures for that same school district. This situation should be the exception. We emphasize that it is the clear intent of the Act that school districts spend these funds on providing special education and related services to parentally placed non-public school children with disabilities, as provided in 34 CFR §§300.129 through 300.144. Therefore, if the school district is not in compliance with these requirements and has not expended the funds on parentally placed non-public school children, the funds must be returned to the U.S. Department of Education.

4. If the district has not expended the proportionate share by the end of the carry-over period, will NDE monitor the school district?

Yes, NDE is responsible for ensuring school districts are in compliance with requirements in 34 CFR 300.149(a) and 300.600(b)(2) including 34 CFR300.135, and 92 NAC 51-015.03 through - 015.09., that the district has obtained written affirmation signed by representatives of participating non-public schools that timely and meaningful consultation has occurred.

5. Where can the public find out the Proportionate Share amount the school district must expend on eligible non-public children?

This information is readily available from the school district or on the Nebraska Department of Education within the Proportionate Share Worksheet for Non-Public Schools- [View SPEDWS](#)

Provision of Free Appropriate Public Education (FAPE)

Resident children ages 3-21 with disabilities parentally-placed in a nonpublic school, which includes Rule 13 exempt home schools, continue to be eligible for the provision of a FAPE from the school district where the child resides.

Questions and Answers

- 1. Can children enrolled in a nonpublic school receive a free appropriate education (FAPE)?**
Yes, children with disabilities parentally-placed in a nonpublic school, including a Rule 13 exempt home school, are entitled to receive the provision of FAPE from the school district in which they reside.
- 2. Can a parent of a non-resident child with a disability who is parentally-placed in a non-public school receiving equitable services request FAPE at any time from the resident school district?**
Yes, Nebraska state statute declares that the resident school district is responsible for the provision of FAPE for all children with disabilities. The resident school district would develop an IEP for the child.
- 3. May a child receive both equitable services and FAPE services at the same time?**
No. The parent must choose either to receive FAPE from the resident school district or Equitable services from the non-resident district.
- 4. Is the regular education teacher role on the child's IEP Team required for a child with an IEP attending a Rule 13 exempt home school?**
No, if the child is currently not and may not be participating in the regular education environment during the period covered by the child's IEP. However, if the child either currently is or may be participating in the regular education environment during the period covered by the child's IEP, the regular education teacher role on the child's IEP Team may not be filled by the child's home school teacher. The regular education environment is a regular classroom, or where a child is with their nondisabled peers, which does not include a Rule 13 exempt home school.

Complaint

Questions and Answers- Complaints

1. Can a representative of a non-public school file a complaint about the consultation process?

Yes, a non-public school official has the right to submit a complaint to Nebraska Department of Education, Office of Special Education if the representative believes the public school: 1) did not engage in consultation that was meaningful and timely; or 2) did not give due consideration to the views of the non- public official as described in 92 NAC 51-015.03F.

The non-public school official must provide to Nebraska Department of Education, Office of Special Education the basis of the noncompliance by the public school district with applicable non-public school provisions in this part; and the public school district must forward the appropriate documentation to Nebraska Department of Education, Office of Special Education.

If the non-public school official is dissatisfied with the decision of the Nebraska Department of Education, the non-public official may submit a complaint to the Secretary of the U.S. Department of Education. The Nebraska Department of Education must forward the appropriate documentation to the Secretary of the U. S. Department of Education.

2. Can a parent of a non-resident child with disabilities parentally-placed in a non-public school file a due process complaint?

Yes, a due process complaint cant be filed with the Nebraska Department of Education General Council, but only if the school district has failed to meet the child find requirements in 92 NAC 51 - 015.03B, or did not provide timely and meaningful consultation with representatives of the non-public schools and parent representatives as described in 92 NAC 51-015.03F.

However, parents are not able to request mediation or a due process hearing regarding the services the child is receiving, because there is no individual right to those services under the law.

Preschool Children with Disabilities- Ages Three through Five

Children with disabilities ages three through five are considered to be “parentally-placed in a non-public preschool” including religious preschools, home preschools, and elementary schools only if they are enrolled in a nonprofit non-public preschool or facility that is a part of a non-public or public elementary school. Accordingly, if a nonprofit non-public preschool, day-care program, or other non-public early childhood program or facility, including home schools are a part of an approved and/or accredited elementary school, child find and equitable participation requirements apply to those children with disabilities enrolled by their parents in such programs.

The regulations implementing IDEA at 34 C.F.R. § 300.133(a)(2)(ii) states children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in 34 C.F.R. §300.13.

34 C.F.R. § 300.13 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.

Therefore, a school district is not responsible for child find activities and the provision of equitable services for non-resident children with disabilities parentally-placed in preschools which are within the school district that are not a part of a non-public or public elementary school.

Many preschool children with disabilities parentally-placed in nonpublic preschools, because they attend a nonpublic preschool or a facility that is not a part of a nonpublic or public elementary school, are the responsibility of the child's resident school district for child find and the provision of a free and appropriate public education (FAPE).

Preschool children with disabilities parentally-placed in a non-public preschool, including home preschools who reside within the school district in which the non-public preschool is located, are eligible for the provision of FAPE from the public school district of residence and are counted in the Public School child count and not the non-public child count.

Non-resident preschool children with disabilities parentally-placed in preschool programs which are within the school district, and are a part of a non-public or public elementary school, are included in child find activities and are eligible to receive equitable services (services plan); or may elect to receive FAPE from their school district of residence. These children are included in the non-public child count.

Non-resident preschool children with disabilities parentally-placed in preschool programs, including home preschools that are not a part of a non-public or public elementary school are eligible to receive FAPE from the school district in which the child resides. The school district where the child resides is responsible for child find activities and evaluation. These children are included in the public school child count.

Questions and Answers – Preschool

1. Which children are considered parentally-placed non-public preschool children?

Only those preschool children with disabilities parentally-placed in nonprofit non-public preschools including preschools that are part of an approved (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school are considered to parentally-placed in a non-public preschool.

2. Do Child find and equitable participation requirements apply to children with disabilities ages 3 through 5 parentally-placed in non-public preschool programs which are a part of an approved (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school?

The public school district within which the non-public preschool is located is responsible for:

- child find and equitable services for non-resident children attending non-public nonprofit preschools that are a part of an approved (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school;
- child find and FAPE for resident children with disabilities parentally-placed in non-public preschool programs regardless of whether or not the preschool (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school

3. Which school district is responsible for children with disabilities parentally-placed in a nonpublic preschool that is not a part of a (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) nonpublic elementary school?

The school district where the child resides is responsible for child find and the provision of free appropriate public education (FAPE) and would include the preschool child in the eligible public school count.

4. How are preschool children, ages 3-5 yr. counted in the October 1 Proportionate Share Child Count worksheet?

Eligible (served and not served) parentally placed children ages 3-5 yr. attending non-public nonprofit preschools which are part of an approved (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school located within the district boundaries are counted in Section I. Eligible Parentally Placed Non-Public School Children attending a Non-Public School or Exempt Home School within the District's Boundaries A. or B.

Eligible (served and not served) parentally placed children ages 3-5 yr. attending non-public nonprofit preschools which are NOT a part of a (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school located within the district boundaries are counted in the child's resident public school child counted in Section II. Eligible Public School Children, Section A. or Section B.

Eligible resident children ages 3-5 yr. (served and not served) placed by the public school in a public school program are counted in Section II. Eligible Public School Children, Section A. or B.

5. Are preschool programs which are in a church, home, or other buildings considered non-public schools?

The determining factor is not the location; it is whether the preschool program is part of a (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school.

6. Is a preschool child with disabilities parentally-placed in a non-public preschool program that is not a part of a 92 NAC 14 and/or accredited 92 NAC 10 non-public elementary school entitled to FAPE? Yes, the preschool child with disabilities is eligible to receive FAPE from his/her public school district of residence, regardless of where the preschool program is located. The requirements of IDEA 2004 (children with disabilities parentally-placed in non-public schools) do not apply to preschools that are not a part of a (92 NAC 14, Rule 14) and/or accredited (92 NAC 10, Rule 10) non-public elementary school. This child would be counted in the resident district's public school child count Section II. Eligible Public School Children Section A. or B.

OTHER

Out-of-State Children with Disabilities

Questions and Answers

1. **What is the responsibility of the Nebraska school district to conduct child find activities for parentally- placed non-public school children who reside outside of the state?**

The school district within which the non-public approved and/or accredited school is located is responsible for conducting child find, including individual evaluations, of all parentally-placed non-public school children (ages 3-21) suspected of having a disability.

This includes non-resident children from other states parentally placed and attending a non-public approved and/or accredited elementary schools and secondary schools within the school district boundaries.

2. **Who is responsible for determining and paying for services provided to children with disabilities parentally-placed in non-public schools who reside outside the state?**

The public school district within which the non-public schools is located, through the consultation process, is responsible for determining and paying for equitable special education services to be provided to children with disabilities parentally-placed in non-public schools. These out-of-state children must be included in the group of parentally-placed children with disabilities whose needs are considered in determining which children with disabilities parentally-placed in a non-public school will be served and the types and amounts of services to be provided.

3. **When making a determination regarding the equitable services a school district will provide, could a school district decide to only provide equitable services to children who reside in the State of Nebraska?**

No. Although school districts have discretion to determine how the proportionate share of Federal Part B funds will be expended so long as the consultation requirements are followed for all parentally placed non-public school children, school districts cannot determine, prior to or in absence of the timely and meaningful consultation process, that the proportionate share of Federal Part B funds for equitable services can only be expended to meet the needs of children who are residents of that school district or Nebraska.

For Profit Non-public Schools

Questions and Answers

- 1. Must children placed by their parents in a For-Profit non-public school be included in the district's Proportionate Share Child Count?**

No. The requirements for this regulation specify the non-public school must be nonprofit school.

Transportation

Services to children with disabilities parentally-placed in a non-public school may be provided on the premises of non-public, including religious schools, to the extent consistent with law.

If necessary for a child to benefit from or participate in the services provided, a child with disabilities parentally-placed in a non-public school per 92 NAC 51.014.1D must be provided transportation: from the child's school or the child's home to a site other than the non-public school; and from the service site to the non-public school, or to the child's home, depending on the timing of the services. The public school district is not required to provide transportation from the child's home to the non-public school. Transportation is required for both resident and nonresident student whether receiving FAPE or Equitable services from non-public school to the location of the special education services.

Questions and Answers

- 1. Is the school district required to provide transportation in order for a child to benefit from or participate in the services provided under the non-public school provisions?**

Services to children with disabilities parentally-placed in a non-public school may be provided on the premises of non-public, including religious schools, to the extent consistent with law.

The regulations in 34 CFR §300.139(b) require that if necessary for the child to benefit from or participate in the services provided under the non-public school provisions, the district must provide a parentally placed non-public school child with a disability transportation from the child's school or the child's home to a site other than the non-public school; and from the service site to the non-public school, or to the child's home, depending on the timing of the services. IDEA does not require districts to provide transportation from the child's home to the non-public school.

Transportation costs may be included in calculating whether the district has spent the proportionate share of Federal Part B funds on providing services to parentally placed non-public school children with disabilities.

IDEA Qualified Teachers

Services provided to children with disabilities parentally-placed in a non-public school must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that non-public elementary and secondary teachers who are providing equitable services to children with disabilities parentally-placed in a non-public school do not have to meet the ESSA qualified special education teacher requirements.

Questions and Answers

1. Who must meet the IDEA Qualified Teacher requirements?

The regulations implementing IDEA at 34 CFR §300.138(a) clarify that personnel providing equitable services required by IDEA to children parentally-placed in non-public schools by their parents must meet the same standards as personnel providing services in the public schools, except that non-public elementary and secondary school teachers who are providing equitable services to children with disabilities parentally-placed in a non-public school do not have to meet the ESSA Qualified Teacher Requirements in 34 CFR §300.18. If the responsible school district contracts with the non-public school teachers to provide equitable services to children with disabilities parentally-placed in non- public schools, those non-public school teachers do not have to meet the ESSA Qualified Teacher requirements for special education teachers. However, if public school personnel provide equitable services to non-public school children on or off the premises of the non-public school, those public school personnel must meet the ESSA Qualified Teacher requirements.

Equipment and Supplies

A school district or approved cooperative may place equipment and supplies in a non-public school for the period of time needed for the provision of special education services. Equipment and supplies placed in a non-public school are to be used only for the purpose of providing special education services; and can be removed from the non-public school without remodeling the non-public school facilities.

The supplies and equipment shall be removed if: 1) the equipment and supplies are no longer needed for the purpose of providing special education services; or 2) removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.

Record Keeping

School districts must maintain records regarding the following:

Consultation Plan Process

Record and documentation of:

- Consultation Meeting notices
- Consultation Meeting agendas and discussion
- Consultation Plan summary
- Written affirmation of non-public school representatives participation in the meaningful consultation plan process

Proportionate Share

Child Count

Each public school district must maintain records, and provide to the Nebraska Department of Education, Office of Special Education the following information related to eligible children with disabilities:

- a) Total number of eligible parentally-placed children ages 3-21 attending an approved and/or accredited non-public school, including exempt home schools within school district boundaries
- b) Total number of eligible public school children ages 3-21 placed in a public school program

Financial

Record and document how proportionate share funds were expended for eligible children with disabilities parentally-placed in non-public schools for the fiscal year;

School districts shall report all expenditures and claims for non-public proportionate share service within function code 6412 on the Grants Management System (GMS). Any remaining carry over funds at the end of the fiscal year will be transferred to Proportionate Share Worksheet for Non- public Schools (Portal) and accounted in the calculations of the next fiscal year's proportionate share calculation. Proportionate share funds not expended by the end of the carry over period, after meaningful consultation with representatives of non-public schools and exempt home schools should be expended for other allowable Part B expenditures, after approval by NDE, Office of Special Education or released to the Federal Government.



Guidance on Serving Homeschool, Exempt Students with Disabilities

Parents (or legal guardians) may educate their child at home by electing not to meet State approval or accreditation requirements (Section 79-1601 R.R.S.). In Nebraska, “home schools” are referred to as exempt schools and are considered non-approved or non-accredited schools. By filing for and receiving exempt status, parents are electing not to have their child attend a school that meets State approval and accreditation requirements while also complying with the mandatory school attendance law (Section 79-201 R.R.S.).

- [Rule 13](#) is the rule governing the procedures and standards for parents (or legal guardians) filing for an exemption.
- [Exempt \(Home\) School Frequently Asked Questions \(FAQs\)](#)
- [Resources \(private parent support organizations\)](#)

This document refers only to eligible children (ages 3–21) with disabilities parentally placed in an approved and/or accredited Rule 13 and Rule 14 nonpublic school, including religious schools where a free appropriate public education (FAPE) is not at issue. In Nebraska these schools are referred to as exempt home schools where parents may educate their child at home by electing not to meet State approval or accreditation requirements (Section 79-1601 R.R.S.). Nebraska exempt home schools are considered non-approved and non-accredited nonpublic schools, or facilities that meet the state definition of elementary school or secondary school. Children with an individualized education program (IEP) attending an exempt home school is entitled to receive FAPE from the child's resident school district. 92 NAC § 51-015.03C1a.

The public school district within which the homeschool student resides is responsible for:

- Child Find - Taking an (October 1) child count of eligible: public school, approved and/or accredited nonpublic school, and exempt home children with disabilities
- Calculation of proportionate share
- Provision of FAPE for Resident children (ages 3–21) with disabilities parentally placed in a nonpublic school.

Parentally-placed children with disabilities attending an approved and/or accredited nonpublic school, or an exempt home school which is located within his/her resident district are only entitled to receive the provision of FAPE from his/her resident public school district.

Consultation

Public school districts must at least annually conduct a timely and meaningful consultation meeting with parent representatives and officials of approved and/or accredited nonpublic schools, including exempt home schools, which are within their district's jurisdiction. The purpose of the consultation meeting is to provide an opportunity for nonpublic school representatives and parents to participate in meaningful discussions and provide input into the design and development of special education and related services for children with disabilities attending nonpublic schools, including exempt home schools. This consultation meeting should not be confused with Title consultation meetings with nonpublic schools.

Child Find

The school district must locate, identify, and evaluate all children with disabilities (ages 3–21) who are parentally placed in nonpublic schools, home schools, including religious, elementary schools, and secondary schools, or approved and/or accredited cooperatives which are within the school district's jurisdiction. The child find process must be designed to 1) ensure the equitable participation of children parentally-placed in a nonpublic school; 2) result in an accurate count of these children; 3) consist of similar activities as those undertaken for public school children; 4) be conducted in a time period that is comparable to that for children attending the public school; 5) must include out of state children attending a nonpublic school within the district; and 6) parent election of FAPE or equitable services.

Option Students

For students who were optioned into a district outside of the resident district, if the student will be homeschooled, rather than attend the option district, the option should be canceled by the parent.

Once the parent has canceled the option enrollment under subsections (5) through (8) of section 79-237 and started homeschooling the child in the resident district, the resident district would be responsible for the Special Education Services to the homeschooled students.

<https://nebraskalegislature.gov/laws/statutes.php?statute=79-237>

In the NDE's Exempt (Home) School Frequently Asked Questions (2021-2022) document it states in question and answer #D7:

D7. Do I notify my school district that I'm homeschooling?

You can notify the school if you wish; however, NDE will provide the official notification to your resident public school district. The resident school district will have access to a report showing all families in their district who have filed with NDE regardless of status.

If this is mid-year filing (i.e. after most approved/accredited schools begin their fall semester), see Question D29.

If you participate in the Enrollment Option Program (opted to enroll in a school district that you do not reside in), show the option district the acknowledgment letter; NDE notifies only the district of residence. The option should be canceled by the parent.

NDE will provide the official notification to the resident public school district regarding the homeschool application. The resident school district will have access to a report showing all families in their district who have filed with NDE regardless of status.

Regular Education Teacher Role on IEP Team

34 C.F.R. § 300.321(a)(2) requires that each child's IEP Team includes "[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)." The United States Department of Education's interpretation of this language found in the [comments to the regulations implementing IDEA](#), "[c]onsistent with [34 C.F.R.] § 300.321(a)(2) and section 614(d)(1)(B)(ii) of the [IDEA], a regular education teacher is a required member of an IEP Team if the child is, or may be, participating in the regular education environment." NDE's interpretation is consistent with this interpretation. A regular education teacher is only a required IEP Team member if the child is, or may be, participating in the regular education environment.

However, if the district chooses to include a regular education teacher for a child who is Homeschool Exempt Status, because home school is not a regular education environment the regular education teacher IEP Team position should not be held by someone homeschooling the child. If the child may be participating in the regular education environment during the period covered by the child's IEP, then the regular education teacher should be from the regular education environment that the child may participate in, such as a regular education teacher for the child's grade level in the child's neighborhood school.

For more in-depth information, please refer to the Office of Special Education's technical assistance document that can be found here:

<https://www.education.ne.gov/wp-content/uploads/2022/09/Non-Public-Services-to-Children-with-Disabilities-Enrolled-by-their-Parents-in-Non-Public-Schools-August-2022.pdf>