


Clark Hill

Nonpublics




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CAUTION

This presentation contains general recommendations and information and should not be relied upon for any specific purpose without consultation with legal counsel and in the context of specific facts and circumstances.



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DEFINITION OF NONPUBLIC SCHOOLS

A private school in Michigan is referred to as a nonpublic school and is defined under Section 5 of the Revised School Code as "**a private, denominational, or parochial school.**" [MCL 380.5(4).] Section 2 of the Private, Denominational, and Parochial Schools Act, PA 302 of 1921 [MCL 388.552] elaborates on this definition as follows.

A private, denominational or parochial school within the meaning of this act shall be any school other than a public school giving instruction to children below the age of 16 years, in the first 8 grades, as provided for the public schools of the state, such school not being under the exclusive supervision and control of the officials having charge of the public schools of the state.

Thus, a nonpublic school is a private, denominational or parochial school that provides instruction to students below the age of 16 in grades 1-8, which is not under the exclusive control of a public school.

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RECORD KEEPING

- Each LEA must maintain and provide to MDE data on the number of parentally-placed children
 - Evaluated;
 - Determined eligible; and,
 - Served.

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PROPORTIONATE SHARE

- Under IDEA, public schools are required to make available a proportionate share of the amount of federal funds they receive to allow for equitable participation of private school students in IDEA programs and / or services. [20 U.S.C. § 1412(a)(10)(A)(iii)].
- To be clear, parentally-placed private school students **do not have an individual entitlement to the services they would receive if they were enrolled in a public school.**
- Public schools are required to use a timely and meaningful consultation process that allows participation of private schools located within the district to make decisions regarding the amount and use of the proportionate share for private school students attending private schools within the district.
- Timely and meaningful consultation must occur before any decisions are made that will affect the participation of parentally-placed children in Part B programs.

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PROPORTIONATE SHARE

- There is no requirement that the proportionate share be devoted to direct services, nor is there a specific type or amount of services that must be provided with the proportionate share.
- While the proportionate share may be used for the provision of direct services, the IDEA allows for the proportionate share to be used for indirect services, consultative services, equipment, materials or other supports for private school students, teachers or personnel serving parentally-placed students.
- The cost that a public school district incurs in conducting child-find activities, including the cost of individual evaluations may not be included in determining whether the district has met its proportionate share obligations under IDEA.

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CONSULTATION

- To ensure timely and meaningful consultation, each LEA shall consult with
 - Private school representatives, and
 - Representatives of parents of parentally-placed children disabilities.
- A unilateral offer of services by an LEA 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 discussing key issues relating to the provision of special education and related services with all representatives may the LEA make its final decisions with respect to the services to be provided to eligible private school children with disabilities.

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TIMELY & MEANINGFUL CONSULTATION

- Timely and meaningful consultation must address, at a minimum, the following:
 - ✓ the child find process for private schools within the district of location;
 - ✓ the determination of the proportionate share;
 - ✓ how the consultation process will take place, including ongoing consultation throughout the school year;
 - ✓ how, where and by whom services will be provided; and,
 - ✓ how the district of location will document disagreement from private schools with respect to the recommendations made during the consultation process.
- Best practice is to do this before July 1 for the upcoming school year and prior to submitting your federal grant.

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TIMELY & MEANINGFUL CONSULTATION

- If a private school refuses to sign the written affirmation within a reasonable period of time, the district of location must submit the documentation of the consultation process to MDE.
- At a minimum, the documentation should include the following:
 - Dates of attempts to consult;
 - Nature of attempts (email, phone, letter, etc.); and,
 - The results of each attempt or consultation.

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CHILD FIND

- Where a student is attending a private school located outside the district of residence, the district of location has the duty to conduct child find related to that student for the purpose of determining the proportionate share and ensuring equitable participation in Part B programs and services.
- The child find process for the parentally-placed private school student, including the timing requirements, the qualifications of the evaluators and the nature of the child find activities must be similar to the process that would be used if the student were attending the public school.
- The district of location has an ongoing obligation to conduct private school child find for any students who are enrolled in and/or attending a private school within the boundaries of the school district.
- The child find obligation for the provision of FAPE is separate and apart from the child find obligation to ensure the provision of equitable services.

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ANNUAL COUNT

- Each LEA must
 - After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, determine the number of parentally-placed students with disabilities attending private schools located in the LEA;
 - Ensure that the count is conducted between Oct. 1 and Dec 1, of each year;
 - Use the count to determine the amount the LEA must spend on providing special education and related services in the next fiscal year.

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EQUITABLE SERVICES

- Equitable services are defined as those services that a public school district of location is obligated to provide to parentally-placed private school students who attend a private school located within the the district boundaries.
- The scope and nature of the services is determined through the timely and meaningful consultation process and must, at a minimum, include services funded through the proportionate share calculation.
- The services may be provided directly by staff of the district of location or through a contractual arrangement with another individual, school or private entity, so long as the services are provided by individuals with qualifications that meet the minimum qualifications of staff who would provide such services to public school students.

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NONPUBLIC SERVICE PLANS

- Under Part B of IDEA, the district of location must develop and implement a nonpublic service plan ("service plan") for each private school student who has been designated to receive equitable services.
- The service plan is not the same as an IEP and differs primarily in its scope, since a public school student has an individual entitlement to FAPE, while a parentally-placed private school student has no such individual entitlement.
- To the extent the service plan provides a student with individualized services, the service plan must
 - be created with the involvement of the Parent and the Student if appropriate;
 - must involve a representative of the private school; and,
 - must provide an opportunity for participation by the private school representative.
- The service plan must also meet some of the basic IEP elements related to the specific services that are provided and must be reviewed at least annually and along the timelines for IEPs.

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AUXILIARY SERVICES ACT

- The ASA does give students with disabilities an individual entitlement to certain services.
- The ASA predates the MMSEA and the IDEA, even as adopted in 1973 as the EHA.
- The scope of the ASA has been interpreted to be the rough equivalent of ancillary and related services under MMSEA and IDEA.

The auxiliary services shall include health and nursing services and examinations; street crossing guards services; national defense education act testing services; teacher of speech and language services; school social work services; school psychological services; teacher consultant services for students with a disability and other ancillary services for students with a disability; remedial reading; and other services determined by the legislature.

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AUXILIARY SERVICES ACT

- Services under the ASA are typically provided on site and on an equal basis to services that would be offered in public school.
- Public schools where the private schools are located are obligated to provide the services, but only if the nonpublic school is registered under the compulsory attendance act by annually completing the Nonpublic School Membership Report.

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DISPUTE MECHANISMS

- Private schools may choose to file a state complaint with the Michigan Department of Education if they believe they have been denied timely and meaningful consultation or if they believe their views were not given due consideration by the district of location.
- The Parent of a voluntarily enrolled private school student may also file a complaint related to the content of the nonpublic service plan.
- Parents of voluntarily enrolled private school students may file a due process hearing related to child find, but may not file a due process hearing about the nonpublic service plan services since the student does not have an individual entitlement to FAPE in the private school.



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QUESTIONS



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Thank You



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