

COLORADO
Department of Education

CDE Proportionate Share Procedures

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1. Purpose and Authority for Procedures

Under the Individuals with Disabilities Education Act (IDEA), each Local Educational Agency (LEA), Administrative Units (AUs) in Colorado, that receive IDEA funds is required to spend a Proportionate Share of its IDEA Part B federal grants' allocation toward the provision of equitable services for eligible parentally-placed private school children with disabilities.34 CFR §§ 300.129 - 300.144 and Appendix B. Parentally-placed private school children with disabilities are those who have been enrolled by their parents in private, nonprofit elementary or secondary schools (including religious institutions) that meet the definitions established under state and federal regulations.

As part of state's general supervision system, the Colorado Department of Education (CDE) has established policies and procedures to ensure that AUs comply with both the programmatic and fiscal requirements of IDEA related to the equitable service provision for parentally-placed private school students. The purpose of these state-level procedures is to define expectations and activities for implementing private school Proportionate Share requirements. Although AUs are responsible for implementing IDEA's Proportionate Share requirements, the CDE has an obligation to monitor whether AUs are meeting those requirements. This document outlines CDE's procedures for implementing parentally-placed private school Proportionate Share requirements.

2. Private School Definitions

Parentally-placed private school children with disabilities are those enrolled by their parents in private, nonprofit elementary and secondary (including religious) schools or facilities that meet the definition of an elementary or secondary school. 34 CFR §§ 300.13 and 300.36. The definition excludes children with disabilities placed or referred by public agencies covered under 34 CFR §§ 300.145 –147. To ensure compliance with federal and state regulations regarding parentally-placed private school children with disabilities, the following definition applies when implementing requirements: a nonprofit institutional day or residential school that provides education. This can include Local Educational Agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

Home schools and homeschooling programs, as well as standalone private and parochial preschool programs and facilities, do not meet the state's definition of a private school. Additionally, homeschooled children enrolled in a public school, who also meet the percentage of attendance guidelines for the purpose of taking one or more academic courses, must be included in the Proportionate Share count.

While IDEA provides no individual entitlement to children with disabilities whose parents have placed them in a private school when FAPE is not at issue, the law does require that an LEA spend a proportionate amount of its IDEA Part B funds to provide equitable services to this group of children, which could include direct and/or indirect services. In making these decisions, IDEA requires that the LEA engage in timely and meaningful consultation to determine which children with disabilities from this group will be designated to receive special education and related services. Therefore, it is possible that some of these parentally-placed private-school children with disabilities will not receive any special education and related services per OSEP QA 22-01.

3. Timely and Meaningful Consultation and Written Affirmation

AUs are required to conduct ongoing timely and meaningful consultation with all private schools located within the jurisdiction of the AU, this includes all districts within the boundaries of a Board of Cooperative Educational Services (BOCES) or Multi-District AU. AUs must respond to the needs of the private schools within the boundaries of the AU, per OSEP QA 23-01. Consultation must be conducted with private school representatives **and** representatives of parents of eligible privately-enrolled students during the design and development of special education and related services for parentally-placed private school children. The law does not preclude private school staff from serving to represent the interest of the student in lieu of a parent representative. The Office of Special Education Programs (OSEP) notes that consultation is ongoing and must occur more than once per year.

Each consultation meeting must include a documented discussion of the following:

- The Child Find process
- The calculation of the Proportionate Share amount
- The consultation process
- The delivery of special education and related services
- The provision of a written summary explanation by the AU regarding services (in the event of disagreement between the AU and private school officials)

CDE requires that each AU conduct timely and meaningful consultation according to the timeline outlined below.

This timeline does not preclude AUs from convening additional meetings depending on the needs of parentally-placed private school children with disabilities, as these needs may

vary over time. In addition to in-person meetings, AUs may conduct consultation meetings virtually, ensuring that the same documentation requirements apply.

Before making any decisions impacting services for parentally-placed private school children with disabilities, the AU must conduct timely and meaningful consultation to provide an opportunity for private school representatives and representatives of parents to express their views and to have those opinions considered. AUs may not make a unilateral offer of services to private schools without an opportunity for discussion through the consultation process. Following timely and meaningful consultation, each AU must obtain written affirmation confirming that it has occurred. Written affirmation documentation must be signed by private school representatives and serves as confirmation that consultation has occurred, not that there is agreement among meeting participants. If private school participants do not provide written affirmation within a reasonable period of time, the AU must keep the documentation on file and submit it during the fiscal monitoring cycle. 34 CFR § 300.135.

Attendance sheets do not provide sufficient documentation for written confirmation of consultation. Written affirmation must include a summary of what was discussed during the consultation process, and each of the required consultation topics listed above must be documented. AU's must submit documentation of written affirmations to CDE no later than June 30th of each year, through the ESSU DMS, to ensure that AUs facilitate ongoing timely and meaningful consultation throughout the year and as evidence that requirements are met by the AU. If a private school refuses to participate in meaningful consultation, an AU must document all attempts to engage the private school, including any communication sent to and received from the private school. AUs must submit documentation of the attempts in line with the timelines noted above.

A private school has the right to file a formal complaint with CDE if it believes the AU failed to provide timely and meaningful consultation or did not give consideration to the private school's views. 34 CFR § 300.136 and OSEP 22-01, B-9). The complaint is filed with the Commissioner of Education, and must provide the basis of the noncompliance by the AU with the applicable private school provisions in 34 C.F.R. Part 300. The private school official must submit the basis and supporting documentation for the complaint to the CDE. If dissatisfied with the CDE's decision, the official may escalate the complaint to the U.S. Secretary of Education, outlining the AU's noncompliance. The CDE is responsible for forwarding the necessary documentation to the U.S. Secretary of Education in such a situation.

While a private school does not have the authority to file a due process complaint in regard to the child find process, a parent who has enrolled his or her child in a private school has

the right to file a due process complaint to request a due process hearing regarding the child find requirements in 34 C.F.R. § 300.131. Such a complaint must be filed with the AU in which the private school is located, and a copy must be forwarded to the CDE by the AU.

4. Child Find and Evaluations

CDE is responsible for ensuring that all students who reside in the state, including students enrolled in private schools and who are eligible for special education and related services, are identified, located, and evaluated. The AU is responsible for providing Child Find to all students (birth to age 21) *receiving instruction* within the AU's geographical boundaries, including those children who *do not reside* within the AU's jurisdiction. 34 CFR § 300.139(a). Child Find activities in private schools must be similar to those provided to the AU's public-school children, must be conducted in a comparable time period, and must be an ongoing process.

AUs must evaluate and determine whether privately-enrolled students are eligible for special education services. AUs may accept a prior evaluation used to identify a student under IDEA if the information is comprehensive and current. Parents may request an initial evaluation from either the AU of their residence or the AU where the private school is located (AU of attendance); the AU receiving the request is responsible for conducting the evaluation. AUs are also responsible for conducting reevaluations consistent with 34 CFR §§ 300.304 - 300.311. Revaluations generally may not take place more than once per year and must occur at least once every three years, unless otherwise agreed upon with the parent. Child Find data must be used to ensure equitable services are provided to identified children with disabilities.

Note: The cost of conducting Child Find, including evaluation costs, may not be included in the AU's Proportionate Share expenditure requirement.

CDE ensures compliance for Child Find and evaluation requirements through its programmatic monitoring. For more information, please see the General Supervision and Monitoring website.

5. Child Count and Federal Data Reporting

Each year, AUs must update its internal lists of private schools operating under its jurisdiction. The total enrollment count for each private school must be reported to CDE by each private school between October and January each year, via the Non-Public School Fall Enrollment Count Form.

- AUs must maintain and provide to CDE the following information:
    - A count of parentally-placed private school children with disabilities attending private schools in the AU. Note: This count must be conducted by the AU between October 1st and December 1st.
    - The number of children attending private schools in the AU that were evaluated by the AU.
    - The number of children determined eligible by the AU to be children with disabilities.
    - The number of children served.

The child counts collected between **October 1st, and December 1st** are used to calculate the Proportionate Share amounts required by each AU for the upcoming fiscal year (see Section 6. Proportionate Share Calculation). If there are no private schools located within the geographic boundaries of an AU, the AU must submit a signed assurance to CDE in the ESSU DMS to document that the AU is exempt from the Proportionate Share requirement.

AUs submit all required data, as indicated above, through the ESSU DMS by June 30th of the following year. CDE's ESSU Data Manager works with AUs to ensure they submit valid and reliable data through the Annual IDEA Performance Report.

6. Proportionate Share Calculation

To ensure the provision of equitable services for parentally-placed private school children with disabilities, each AU must calculate and spend a Proportionate Share of its IDEA Part B Section 611 and Section 619 funds. 34 CFR § 300.133(a). Proportionate Share is a portion of the IDEA Part B grant that is set aside or budgeted to provide equitable services to eligible parentally-placed students who are enrolled in private schools within the AU's geographic boundary, regardless of where the student lives. AUs must use the child count of parentally-placed private school children with disabilities enrolled in the AU reported to CDE annually between October 1 and December 1 to calculate its Proportionate Share amount. The child count used for the Proportionate Share calculation is the *number of eligible students*, not the number of students receiving services, regardless of whether parents have declined special education and related services. 34 C.F.R. § 300.132(c).

Proportionate Share is calculated separately for the IDEA Section 611 and Section 619 grants. 34 CFR § 300.133. AU is required to calculate the Proportionate Share amounts using the following methodology:

1. Determine the total number of eligible parentally-placed private school children with disabilities.

2. Add that number to the total number of eligible special education students in public schools served by the AU.
3. Divide the total grant award (Section 611 and Section 619 separately) by the total number of eligible students, including public and private school students, to determine the average allocation per eligible child.
4. The average allocation per eligible child is then multiplied by the number of eligible parentally-placed private school children with disabilities to determine the Proportionate Share of funds to be expended on equitable services for parentally-placed private school students.

A calculation example is provided in Appendix B to Part 300, Title 34

If the AU is required to calculate its own Proportionate Share amount, AUs must provide this calculation to CDE by June 30th for budgeting purposes in its annual AU grant application. CDE validates each AU's calculation through the ESSU DMS to ensure accurate data is used to complete each calculation.

7. Provision of Equitable Services

Equitable Services must be made for special education and related services, including direct and indirect services, to parentally-placed private school children with disabilities. 34 CFR § 300.132. AUs are required to offer parentally-placed private school children with disabilities the opportunity to participate in services funded by IDEA Part B and Preschool based on the amount of Proportionate Share funds available.

Timely and meaningful consultation must take place before any decisions are made related to the provision of equitable services. Following timely and meaningful consultation and consideration of input from private school officials and representatives of parents of parentally-placed private school students with disabilities, each AU is responsible for making final decisions about services to be provided and communicating those decisions to the private schools within its jurisdiction. Proportionate Share is not a mechanism for ensuring private school students have an individual right to FAPE.

For each student designated to receive services, the AU must develop a Services Plan. A Services Plan should only include services offered by the AU and should meet the same content requirements as those for an Individualized Education Program (IEP) as described in 34 CFR § 300.320, or as appropriate, an Individualized Family Service Plan (IFSP) as described in 34 CFR § 300.138(b) and 300.323(b). This includes participation of a representative of the private elementary school or secondary school and parental involvement in its development, as appropriate. Additionally, each Services Plan must

describe the specific special education services that the AU will provide, including where and when the AU will provide services to the student. AUs must review each Service Plan at least annually to determine whether the annual goals for the child are being achieved and whether they need to be revised. 34 CFR § 300.138(b)(2)(ii). Compliance with requirements is monitored through the CDE's programmatic monitoring. For more information, please see the General Supervision and Monitoring website.

Equitable services must be delivered by AU employees or through a contract between the public agency and an individual, association, agency, organization, or other entity. Private school staff *may not deliver* equitable services unless outside of their contracted hours and supervised by an AU representative.

It is important to note that an individual right to a free appropriate public education (FAPE) is not guaranteed for parentally-placed private school children with disabilities; they do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in public schools. The AU has the authority to make final decisions, upon consultation, with respect to the equitable services provided for eligible students.

8. Budgeting Proportionate Share

CDE requires that the Proportionate Share of IDEA funds be budgeted and approved prior to spending. Each AU submits an annual grant application detailing the allocation of IDEA funds, including a line-item budget detailing how it anticipates using its Proportionate Share of IDEA Section 611 and Section 619 funds. Applications are due to CDE Office of Grants Fiscal by August 31st of each year. CDE Grants Fiscal verifies that the AU has budgeted the full amount of Proportionate Share separately for Section 611 and Section 619 as calculated by each AU and validated by CDE, and that budgeted amounts are for allowable costs. If an AU fails to budget the entire required amount(s) or appears to have budgeted unallowable costs, CDE Grants Fiscal works directly with the AU to rectify the discrepancy. CDE Grants Fiscal provides notice of application approval to AUs by September 30th of each year. Any changes or amendments to the approved budget must be submitted to CDE for approval. Amendments may be submitted twice throughout the fiscal year as a result of ongoing, timely, and meaningful consultation with private school representatives and representatives of parents. These timeframes are in the month of January and the end of school year during the budget closeout.

The CDE provides technical assistance (TA), which includes workshops each year for AUs to ensure that they understand the federal and state requirements for private school

Proportionate Share, and posts one recorded, on-demand webinar to the IDEA Part B Fiscal Website. Guidance is provided on how to budget for services to parentally-placed private school students, the criteria to determine the number of eligible students, the types of services, and allowable/unallowable use of funds. This guidance helps to ensure that costs for private school Proportionate Share are budgeted and expended appropriately. CDE notifies AUs of any updates to federal or state regulations and provides regular updates on any changes to the budgeting process through direct email communications, webinars, and/or newsletters.

9. Expenditures, Allowable Use of Funds, and Carryover Requirements

Expenditures

AUs must request reimbursement for Proportionate Share funds based on the same requirements as general IDEA funds, at least quarterly. Ideally Request for Reimbursement should occur monthly or as expenses are incurred. Reimbursement requests are submitted through CDE's Request for Funds Form. Fiscal specialists review each reimbursement request to ensure it aligns with the approved budget. CDE tracks the expenditure of Proportionate Share funds to ensure that funds are used within the period of performance as defined in the IDEA Part B State Grant Funding Cycle.

If CDE finds that an AU is not expending its Proportionate Share funds at a rate that will result in the AU meeting the Proportionate Share requirement, CDE contacts the AU to consider necessary actions, including but not limited to the following:

- Requiring the AU to submit a written plan to ensure the timely expenditure of available Proportionate Share funds
- Requiring the AU to submit specific documentation demonstrating compliance with IDEA private school requirements
- Requiring the AU to participate in technical assistance provided by the CDE
- The implementation of a Corrective Action Plan (CAP) to ensure compliance with IDEA

Allowable Use of Funds

As part of Fiscal Monitoring, CDE monitors AUs to ensure the allowable use of Proportionate Share funds through reimbursement requests. AUs may not use state special education funds to meet the requirements of Proportionate Share under IDEA.

Proportionate Share expenditures must meet all requirements of IDEA, Uniform Guidance, and Electronic Data Gathering, Analysis, and Retrieval (EDGAR). For more information on the allowable use of funds, please see ESSU Allowable Use of Funds by Category. Additionally, these expenditures must comply with specific requirements as outlined under IDEA. Specifically, IDEA funds:

- may not be paid directly to the private school
- may not be used to meet general needs of students
- must be controlled and administered by the AU

Location and Transportation

An AU may provide services at the private school, at a public or neutral site convenient to the private school, or on public school grounds, or may contract for the provision of services at an appropriate site. Transportation may be provided for students only when it is necessary for the child to benefit from or participate in the services outlined by a Services Plan. Unless there is a compelling reason for these services to be provided offsite, AUs should provide services onsite at the child's private school in order to avoid undue disruption to the child's educational experience.

Equipment, Technology, Materials, and Supplies

Proportionate Share funds must be allocated according to a student's Individualized Services Plan (ISP) to provide special education and related services, including equitable services, property, equipment, supplies, technology, and supplementary materials. However, these funds can only be used for IDEA Part B activities; once Part B services are no longer required, any property, equipment, or supplies must be returned to the AU.

Use of Personnel

AUs may use Proportionate Share funds to pay public school personnel to provide services in private schools. Public school teachers providing equitable services must meet the IDEA personnel requirements in 34 CFR § 300.156(c). AUs may use Proportionate Share funds to pay for the services of an employee of a private school to provide equitable services only if the employee performs the services outside of his or her regular hours of duty, and the employee performs the services under AU supervision and control. Private school personnel providing services to children must meet the same standards as AU personnel, with the exception that they do not need to meet special education teacher qualification requirements.

Professional Development and Travel

Proportionate Share funds may be used for the costs associated with coaching, training, and professional development for staff who provide instruction to children with disabilities. Training and professional development must be reasonably connected to directly or indirectly serving eligible parentally-placed private school children with disabilities. For the purposes of Proportionate Share, the expense of staff travel within the district to provide equitable services to parentally-placed private school students with disabilities would be permitted.

Carryover Requirements

Proportionate Share funds are available during the same period of performance as general IDEA Part B Section 611 and Section 619 funds. This includes a forward funding period (3 months), the award year funding period (12 months), and Tydings period (12 months). This means that Proportionate Share funds must be used or obligated within 27 months.

Note: If an AU has not expended all of its Proportionate Share funds by the end of the fiscal year for which Congress appropriated the funds, the AU must carry over and obligate the remaining Proportionate Share funds for special education and related services to children with disabilities placed by their parents in private schools for one additional year.

If, after the carryover period, the AU is unable to spend its entire Proportionate Share amount, the remaining funds may be reallocated for other allowable IDEA Part B expenditures beginning July 1st of the final year of the grant. However, the AU must be in compliance with all other requirements related to parentally-placed private school students with disabilities as included within these procedures. AUs who are unable to spend their entire amount of Proportionate Share funds must submit the required documentation to the CDE, including the following documentation to demonstrate compliance.

- Consultative Notes or documented attempts to contact Private Schools
- Written documentation of attempts made to spend the dollars and why it was not successful

Reverting Proportionate Share funds to general IDEA funds requires CDE approval and should only be done under exceptional circumstances and must submit an updated budget for CDE approval. Additionally, CDE may take this into account when conducting its fiscal risk assessment or future monitoring of the AU. It is important to note that AUs are expected to comply with IDEA requirements for parentally-placed private school students

with disabilities, including fully spending Proportionate Share funds to provide equitable services.

10. Monitoring, Timelines, and Responsibilities

CDE provides oversight of each AU's implementation of the private school Proportionate Share regulations to verify that AUs comply with these requirements.

Specific monitoring activities that occur universally throughout the year are referenced above and noted in the timeline below.

Subrecipient fiscal monitoring activities include oversight of Proportionate Share, including allowable use of funds, verifying proper calculation of Proportionate Share amount. These activities occur for AUs continually through budget submission, Request for Funds, and submitted documentation of Consultations to CDE.

Programmatic monitoring includes surveys submitted by the AU. These activities occur for AUs yearly through documentation collection and every 4 years through CDE's cyclical monitoring activities.

Timeline	Action
By June 30	AUs submit child counts of parentally-placed students with disabilities
By July 30	AU calculates and CDE verifies preliminary Proportionate Share amounts separately for IDEA Section 611 and Section 619 (IDEA Part B and Preschool)
May 1	CDE publishes and opens annual AU application for IDEA Part B and Preschool funds
May - August	AUs update list of private schools operating within its jurisdiction

Ongoing	Review submitted AU applications to ensure proportionate share funds are fully budgeted on allowable costs
August 1	CDE validates each AUs final Proportionate Share amount for Sections 611 and 619 funds
November–April	Cyclical IDEA monitoring, including review of compliance with Proportionate Share requirements: ongoing meaningful consultation documentation, written affirmation, allowable expenditure of funds
April–May	Identify and contact AUs with unspent Proportionate Share funds; provide technical assistance as needed
October 30	Expenditure reports submitted to CDE; verify that expenditures are allowable and determine carryover, if any
October 30	Performance Reports due to CDE including consultation documentation from prior year and student count collection documentation
Ongoing	AUs complete ongoing timely and meaningful consultation
Oct 1 - Dec 1	AU's Collect IDEA eligible Parentally-Placed Private Student count during consultation from each Private School within its jurisdiction
May 1 - June 30	CDE collects and verifies AU written affirmations
Special Education Directors Conferences	CDE provides AU trainings on private school requirements

See IDEA Carryover Timeline	CDE provides AUs with notice of remaining balance of Proportionate Share funds

12. Resources

- **IDEA Regulations** (current full text of these regulations can be found at https://www.ecfr.gov): 34 CFR § 300.130–300.144 and Appendix B to Part 300: Proportionate Share Calculation.
- **Uniform Grant Guidance** (current full text of these regulations can be found at https://www.ecfr.gov): 2 CFR § 200.328 and 200.329.
- **Quick Reference Guide on Parentally-Placed Private School Proportionate Share of IDEA Funds, NCSI,** https://ncsi.wested.org/resource/quick-reference-guide-on-parentally-placed-private-school-proportionate-share-of-idea-funds/.
- **OSEP 22-01. Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, OSEP,** https://sites.ed.gov/idea/files/QA_on_Private_Schools_02-28-2022.pdf.
- **OSEP QA 23.01 State General Supervision Responsibilities Under Parts B and C of the IDEA** https://sites.ed.gov/idea/files/Guidance_on_State_General_Supervision_Responsibilities_under_Parts_B_and_C_of_IDEA-07-24-2023.pdf
- **Proportionate Share Tracker, NCSI,** https://ncsi.wested.org/resource/proportionate-share-tracker/