UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

OSEP QA 22-01

QUESTIONS AND ANSWERS ON SERVING CHILDREN WITH DISABILITIES PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS

Revised February 2022

Part B of the Individuals with Disabilities Education Act (IDEA Part B) at Section 612(a)(10)(A) and its implementing regulations at 34 C.F.R. §§ 300.130 through 300.144 contain specific requirements regarding State and local responsibilities for equitable services for parentally-placed private school children with disabilities.[1] The U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services (OSERS) issues this Questions and Answers (Q&A) document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, private school officials, advocacy organizations, and other interested parties with information regarding these requirements.[2]

Children with disabilities attending private schools will generally fall into one of three categories: (1) those placed by their parents, who are not enrolled in the LEA, and for whom the provision of a free appropriate public education (FAPE) **is not** at issue; (2) those placed by their parents and who are, or previously were, enrolled in the LEA and the provision of FAPE **is** at issue; and (3) those placed by the LEA as the means of ensuring that FAPE is made available. As used in this document, the phrase "FAPE is not at issue" means there is no disagreement between the parent and LEA about the availability of a program to provide FAPE to the child, and the parent has placed the child in a private school and is not seeking financial reimbursement for the private school placement.

[1] This Q&A document only addresses requirements under the IDEA related to equitable services for parentally-placed private school children with disabilities, including home-schooled children with disabilities as determined by State law. Children with disabilities also have rights under two civil rights laws that prohibit discrimination on the basis of disability—Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (Title II). Section 504 prohibits disability discrimination by recipients of Federal financial assistance, such as SEAs and LEAs. Title II prohibits discrimination by public entities, including SEAs and LEAs, regardless of receipt of Federal financial assistance. The Office for Civil Rights (OCR) in the U.S. Department of Education enforces Section 504 in public elementary and secondary schools. Also, in this context, OCR shares in the enforcement of Title II with the U.S. Department of Justice (DOJ). DOJ also provides technical assistance on the requirements of Title II. More information about these laws is available at: www.ed.gov/ocr and www.ada.gov.

[2] This Q&A document does not address requirements under the IDEA related to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services under 34 C.F.R. §§ 300.145 through 300.147. Further, this Q&A document does not address placement of children by their parents in private schools when there is a disagreement between the parents and a public agency about provision of a free appropriate public education (FAPE) to the child and the parent is seeking financial reimbursement for private school placement under 34 C.F.R. § 300.148.

This Q&A document is intended to provide guidance regarding the IDEA requirements applicable to the first category of students—children with disabilities placed by their parents in private schools, who are not enrolled in the LEA, and for whom the provision of FAPE is not at issue.

As explained in this Q&A document, children with disabilities placed in private schools by their parents where FAPE **is not** at issue do not have an individual entitlement to the special education and related services they would receive if they were enrolled in a public school or placed in a private school by the LEA as a means of ensuring FAPE is made available.[3] Depending on State law, private schools may not be required to meet State personnel or curriculum standards.[4] Further, children with disabilities placed by their parents in private schools do not have the right to all of the protections under IDEA. For example, IDEA's due process procedures do not apply to issues regarding the provision of services to any particular parentally-placed private school child with a disability. Parents of such children may only use IDEA's due process procedures to resolve matters concerning an LEA's obligation to meet the child find requirements.[5]

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.[6] 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.[7] Therefore, it is possible that some of these parentally-placed private school children with disabilities will not receive any special education and related services.

This Q&A document updates and supersedes the Department's guidance, titled Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools issued in April 2011 and includes additional questions and answers that address topics that have arisen as the field continues to implement the applicable provisions of IDEA and its implementing regulations. Some of the new questions reflect recent policy letters, while others address common questions that OSERS has received from stakeholders. New topics include:

Equitable Services Providers—addressing personnel qualification requirements that apply to equitable services providers under IDEA.

[3] See Question D-2.

[4] See Question G-1.

[5] See Questions A-14 and Q-1.

[6] See Question D-6.

[7] See Section B of this Q&A document and Question C-1.

Preschool Children with Disabilities—addressing the use of IDEA Part B funds for equitable services for preschool children with disabilities for whom FAPE has been made available.

Children Who Reside Out-of-State or Whose Parents Live in Other Countries—clarifying the requirements that apply to parentally-placed private school children with disabilities from other States and other countries who attend private schools in the United States.

State-funded School Voucher and Scholarship Programs—clarifying that children with disabilities who use State vouchers and scholarships to attend private schools are considered parentally-placed private school children with disabilities under IDEA and eligible for equitable services.

Extended Public School Closures—addressing the responsibilities of LEAs to provide equitable services to parentally-placed private school children with disabilities just as they have a responsibility to serve children with disabilities in public schools, as appropriate, during an extended public school closure.

The Department has determined that this document provides significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person. The questions and answers in this document are not intended to be a replacement for careful study of IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to IDEA and the regulations are found at:

https://sites.ed.gov/idea/

https://sites.ed.gov/idea/idea-files/questions-and-answers-on-serving-children-with-disabilities-placed-by-their-parents-in-private-schools/

CONTENTS

A. Child Find and Individual Evaluations 5

B. Consultation with Private School Representatives and Representatives of Parents of Parentally-Placed Private School Children with Disabilities 13

C. Equitable Services.....19

D. Provision of Equitable Services 21

E. Services Plans 26

F. Location of Services and Transportation 28

G. Equitable Service Providers.....30

H. Out-of-State Children with Disabilities and Children with Disabilities Whose Parents Live in Other Countries 32

I. Home-Schooled Children with Disabilities 34

J. Preschool Children.....35

K. State Voucher and Scholarship Programs 38

L. Children in For-Profit Private Schools 41

M. Extended Public School Closures 42

N. Proportionate Share Calculation for Equitable Services.....44

O. Expenditures and Allowable Use of Funds.....48

P. Property, Equipment, and Supplies.....52

Q. Dispute Resolution: State Complaints, Mediation, and Due Process Complaints.....53

A. Child Find and Individual Evaluations

Authority: The requirements for child find for parentally-placed private school children with disabilities are found in 20 U.S.C. § 1412(a)(10)(A)(ii) and 34 C.F.R. § 300.131.

Question A-1: Which children are considered parentally-placed private school children with disabilities?

Answer: The IDEA Part B regulations define parentally-placed private school children with disabilities as children with disabilities[8] under 34 C.F.R. § 300.8, enrolled by their parents[9] in private, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36. This definition does not include children with disabilities placed in or referred to private schools by public agencies who are covered under 34 C.F.R. §§ 300.145 through 300.147. 34 C.F.R. § 300.130. (See also Section L of this Q&A document regarding children in for-profit private schools.)

Question A-2: What are the responsibilities of the LEA where private schools are located for identifying children with disabilities placed by their parents in private schools?

Answer: Under 34 C.F.R. § 300.131, the LEA where private schools are located is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in 34 C.F.R. § 300.13, and secondary schools, as defined in 34 C.F.R. § 300.36, located in the LEA. This responsibility is known as child find. The LEA, in conducting child find for parentally-placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency's public school children. 34 C.F.R. § 300.131(c). The child find process must be completed in a time

[8] "Child with a disability" means a child who has been evaluated in accordance with 34 C.F.R. §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. 34 C.F.R. § 300.8.

[9] Under 34 C.F.R. § 300.30(a), the term "parent" means: (1) a biological or adoptive parent of a child; (2) a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519 or Section 639(a)(5) of the IDEA. Under 34 CFR § 300.520(a), a State may provide that when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law), all rights accorded to parents under Part B of the IDEA transfer to the child.

period comparable to that for students attending public schools in the LEA. 34 C.F.R. § 300.131(e). There are several possible ways that an LEA where private elementary or secondary schools are located can meet its child find responsibilities. For example, the LEA may assume the responsibility itself, contract with another LEA (including the LEA where the child's parent resides), or make other arrangements by contracting with a third party to conduct child find activities. Also note that, under 34 C.F.R. § 300.134(a)(2), during consultation between the LEA and private school officials and parent representatives, the LEA must discuss how parents, teachers, and private school officials will be informed of the child find process. (Please see Question B-1 below for further information regarding requirements for consultation.) During consultation, the LEA can solicit ideas from participants about ways to engage and educate stakeholder groups about what is involved in locating, identifying, and evaluating children with suspected disabilities under IDEA who are enrolled by their parents in private schools. Examples of such practices include but are not limited to: holding professional development sessions for private school teachers on IDEA's evaluation and reevaluation requirements, posting flyers in private school facilities to inform stakeholders of the availability of child find, and facilitating round table discussions with community members.

It is important to remember that child find is an ongoing process. Therefore, if a child who is enrolled by his or her parents in a private school without having been previously identified as a child with a disability under 34 C.F.R. § 300.8, is suspected of having a disability during the school year, the LEA where the private school is located is responsible for ensuring that the child is evaluated, subject to parental consent as defined in 34 C.F.R. § 300.9, consistent with the requirements in 34 C.F.R. §§ 300.300 through 300.311. In addition, it is possible that a child who was previously evaluated by another LEA and was not found eligible for special education and related services may be enrolled by his or her parents in a private school located in a different LEA where the child is later evaluated and found eligible for special education and related services.

Question A-3: May an LEA require a private school to implement a response to intervention (RTI) process before the LEA evaluates a parentally- placed private school child?

Answer: No. The IDEA and its implementing regulations at 34 C.F.R. §§ 300.301 through 300.311, establish requirements for an LEA when conducting an

initial evaluation to determine if a child qualifies as a child with a disability under Part B. These requirements do not apply to private schools.

Specific learning disability is a statutory term and is also defined in 34 C.F.R. § 300.8(c)(10). See also 20 U.S.C. § 1401(30). Examples include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. 34 C.F.R. § 300.8(c)(10). IDEA requires States to adopt criteria for determining whether a child has a specific learning disability, and these criteria must permit, among other things, the use of a process based on the child's response to scientific, research-based intervention (known as RTI). 34 C.F.R. § 300.307(a)(2). Thus, although IDEA *permits* an LEA to use RTI in evaluating a child suspected of having a specific learning disability, it does *not require* the LEA to use RTI. Even if a State's criteria permit an LEA to use RTI in evaluating a child suspected of having a specific learning disability, IDEA does not require an LEA to use RTI for a parentally-placed child attending a private school located in its jurisdiction. Further, it would be inconsistent with the IDEA evaluation provisions in 34 C.F.R. §§ 300.301 through 300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process with a child suspected of having a learning disability and has not reported the results of that process to the LEA.

Question A-4: **Is it possible for a parent to request evaluations from the LEA where the private school is located as well as the LEA where the child resides?**

Answer: Yes. Both LEAs are required to conduct an evaluation if requested to do so by the parent and if the LEA suspects the child has a disability under IDEA, because these evaluations are conducted for different purposes. If the parent requests the LEA of the child's residence to conduct an evaluation for purposes of making FAPE available to the child, that LEA must conduct the evaluation. If the parent requests the LEA where the private school is located to conduct an evaluation for purposes of determining whether the child could be eligible for equitable services, that LEA must conduct the evaluation.

Even though these evaluations are conducted for different purposes, the Department does not believe that the child's best interests would be served when separate evaluations are conducted by two LEAs. As a practical matter, one LEA may not know that a parent also requested an evaluation from another LEA. Note that 34 C.F.R. § 300.622(b)(3) requires parental consent for the release of information between LEAs about parentally-placed private school children. Further, subjecting a child to repeated testing by separate

LEAs in close proximity of time may not be the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability, or of obtaining an appropriate assessment of the child's educational needs.

Question A-5: Does the LEA where the private school is located have an obligation to make an offer of FAPE?

Answer: The LEA where a child attends private school is responsible for ensuring equitable participation in programs assisted or carried out under IDEA Part B. If a parentally-placed private school child with a disability also resides in the LEA where the private school is located, then that LEA would also be responsible for making FAPE available to the child, unless the parent makes clear his or her intent to keep the child enrolled in a private elementary or secondary school located in that LEA. If a parentally-placed private school child with a disability resides in a different LEA, the LEA in which the private elementary or secondary school is located is not responsible for making FAPE available to that child; rather, the LEA of the child's residence would be responsible for making FAPE available to that child.

If a determination is made through the child find process by the LEA where the private school is located that a child has a disability under 34 C.F.R. § 300.8 and needs special education and related services, and a parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in that LEA, then the LEA where the child resides is not required to make FAPE available to the child. On the other hand, if the parent chooses to accept the offer of FAPE and enroll the child in a public school in the LEA where the child resides, then the LEA where the child resides is obligated to make FAPE available to the child.

Question A-6: If a parent makes clear his or her intention to keep the child with a disability enrolled in the private school, is the LEA where the child resides obligated to offer FAPE to the child and develop an individualized education program (IEP) for the following school year, and annually thereafter?

Answer: No. Absent controlling case law in a jurisdiction, after the LEA where the child resides has made FAPE available to the child, and the parent makes clear his or her intention to not accept that offer and to keep the child in a private school, the LEA where the child resides is not obligated to contact the parent to develop an IEP for the child for the following year and annually thereafter.

However, if the parent enrolls the child in public school in the LEA where the child resides, the LEA where the child resides must make FAPE available and be prepared to develop an IEP for the child. As noted in the response to Question A-5 above, if the child attends a private school located in an LEA other than the LEA where the child resides, that LEA is not required to make FAPE available to the child.

Question A-7: Why is it important to identify the number of parentally-placed private school children with disabilities located in the LEA where the private school is located?

Answer: An accurate count of the number of eligible private school children with disabilities enrolled by their parents in private schools located in the LEA is needed to calculate the proportionate share of IDEA Part B funds that the LEA must expend annually for services for parentally-placed private school children with disabilities. 34 C.F.R. § 300.133(c). (See Section N of this Q&A document for additional information on the proportionate share.)

Question A-8: What specific child count information must the LEA maintain and report to the SEA?

Answer: Under 34 C.F.R. § 300.132(c), the LEA must maintain in its records, and provide to the SEA, the number of parentally-placed private school children evaluated, the number of parentally-placed private school children determined to be children with disabilities under Part B of IDEA, and the number of parentally-placed private school children who are provided equitable services. Pursuant to the State's general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600 and other responsibilities of the SEA under 34 C.F.R. § 300.645 regarding the annual report of children served, the SEA must ensure its LEAs submit valid and reliable data, including these required data.

Question A-9: What are the LEA's responsibilities for reevaluations of parentally-placed private school children with disabilities?

Answer: 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).

Question A-10: What is the difference between child find under 34 C.F.R. §§ 300.111 and 300.131?

Answer: The child find provision in 34 C.F.R. § 300.111 addresses the responsibility of a State to conduct child find for all children with disabilities residing in the State, including children with disabilities attending private, including religious, elementary and secondary schools. It ensures that all children with disabilities residing in the State are identified, located, and evaluated. Section 300.111, which applies to States, is much broader in scope than 34 C.F.R. § 300.131.

The child find provision in 34 C.F.R. § 300.131 addresses the responsibility of the LEA where the private school is located to conduct child find for all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the LEA. This provision addresses which children enrolled in private elementary schools and secondary schools by their parents are eligible to receive services under IDEA.

Question A-11: May amounts expended for child find, including individual evaluations, be deducted from the required amount of IDEA funds to be expended on equitable services for parentally-placed private school children with disabilities?

Answer: No. There is a distinction under IDEA between the obligation to conduct child find activities, including individual evaluations, for parentally-placed private school children with disabilities, and the obligation to use an amount of funds equal to a proportionate amount of an LEA's IDEA Part B subgrant to provide special education and related services to parentally-placed private school children with disabilities. The obligation to conduct child find, including individual evaluations, exists independently from the obligation to provide equitable services. The costs of child find activities, such as evaluations, may not be considered in determining whether the LEA has spent an appropriate

amount on providing special education and related services to parentally-placed private school children with disabilities. 34 C.F.R. § 300.131(d).

Question A-12: **May an LEA, conducting individual evaluations of children suspected of having disabilities, who are enrolled in private schools by their parents, exclude children suspected of having certain disabilities, such as those with specific learning disabilities?**

Answer: No. The LEA, where private elementary schools and secondary schools are located, must identify, and evaluate all children enrolled in those schools who are suspected of having a disability as defined under 34 C.F.R. § 300.8. An LEA may not exclude children suspected of having certain disabilities, such as those with specific learning disabilities, from its child find activities. The Department recommends that an LEA consult with officials from private elementary schools and secondary schools on how best to implement the State's evaluation criteria for identifying children with specific learning disabilities enrolled in private schools by their parents.

Question A-13: **If the LEA where the private elementary school or secondary school is located conducts an evaluation on a child and the parent disagrees with that evaluation and wishes to request an independent educational evaluation (IEE) at public expense, which LEA is responsible for the IEE?**

Answer: The parent has the right to an IEE, consistent with the requirements in 34 C.F.R. § 300.502, if the parent disagrees with an evaluation conducted by the public agency, including if the parent believes the child was not evaluated in all areas related to the child's disability. Therefore, if the LEA where the private school is located conducted the evaluation, and if the parent disagrees with that evaluation, the parent has the right to request an IEE from that LEA at public expense. A parent is entitled to only one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees. 34 C.F.R. § 300.502(b)(5).

Question A-14: **What other options are available to the parent of a parentally-placed private school child if he or she disagrees with the initial evaluation or reevaluation of the child?**

Answer: Under 34 C.F.R. § 300.140(b), the parent of a child with a disability who disagrees with his or her child's evaluation or reevaluation may file a due process complaint to request a due process hearing with the LEA where the

private school is located. Further, if the child's parent disagrees with the results of an initial evaluation or reevaluation conducted by that LEA, the child's parent may file a State complaint pursuant to 34 C.F.R. §§ 300.151 through 300.153.

Question A-15: What options are available to a private school official who believes an LEA has not complied with IDEA's child find requirements?

Answer: Under 34 C.F.R. § 300.151(a), an organization or individual, including one from another State, may file a signed, written complaint alleging that a public agency has violated a requirement of Part B of IDEA or the IDEA Part B regulations. Therefore, if a private school official believes that an LEA has violated an IDEA requirement related to child find with respect to an individual child or a group of children, the official may file a State complaint with the SEA using the procedures in 34 C.F.R. §§ 300.151 through 300.153. This would include a complaint by a private school official who disagrees with an initial evaluation of a parentally-placed child conducted under 34 C.F.R. §§ 300.304 through 300.311.

Note that parental consent must be obtained before an SEA may provide personally identifiable information from the education records of a child to a non-parent complainant as part of the complaint decision. 34 C.F.R. §§ 99.30 and 300.622. If the parent does not provide consent, the SEA's written decision on the complaint may be released after the removal of all personally identifiable information[10] about the child who is the subject of the complaint. Since the complaint resolution would likely involve the child's personally identifiable information from education records, however, it would not be possible for the SEA's decision to be issued to a non-parent complainant if the SEA reasonably believes the non-parent complainant knows the identity of the child to whom the education record relates. For more information see OSEP's Memo and Q&A on Dispute Resolution (July 23, 2013).

[10] Personally identifiable information includes, but is not limited to, (a) the student's name; (b) the name of the student's parent or other family members; (c) the address of the student or student's family; (d) a personal identifier, such as the student's social security number, student number, or biometric record; (e) other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 C.F.R. § 99.3.

B. Consultation with Private School Representatives and Representatives of Parents of Parentally-Placed Private School Children with Disabilities

Authority: The requirements for consultation are found in 20 U.S.C. § 1412(a)(10)(A)(iii) and 34 C.F.R. § 300.134.

Question B-1: What is consultation?

Answer: Consultation is a mandatory process that involves discussions between the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities on key issues relating to the equitable participation of eligible private school children with disabilities in Federally-funded special education and related services. (See more on the provision of equitable services in Sections C and D of this Q&A document.) Under 34 C.F.R. § 300.134, each LEA (or, if appropriate, an SEA) must consult in a timely and meaningful way with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for parentally-placed private school children. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA where private schools are located before that LEA makes any decision that has an impact on services for parentally-placed private school children with disabilities.

Consultation must be an ongoing process, not solely an annual meeting. See 34 C.F.R. § 300.134(c). Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation. Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally-placed private school children with 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.

Question B-2: What constitutes meaningful consultation?

Answer: IDEA does not specify what constitutes "meaningful consultation," but in order for consultation to be meaningful, it must be timely and ongoing throughout the school year. See 34 C.F.R. §§ 300.134 and 300.134(c). Establishing a timeline for consultation can help ensure that timely and meaningful consultation occurs throughout the school year. The timeline can include meeting dates and times as well as topics to be discussed. As there is no specific schedule for consultation, States and LEAs are able to determine the appropriate period between consultation discussions based on circumstances in their jurisdictions. The needs, number, and location of parentally-placed private school children with disabilities may vary over time, depending on the circumstances in a particular LEA in a particular year.

Many jurisdictions have found that it works well when consultation meetings take place at appropriate times throughout the school year to address, at a minimum, the child find process, the child count, the types of services that will be provided, when decisions regarding services will be made, and to plan for the delivery and location of services. Generally, consultation occurs at meetings convened by an LEA with private school representatives and representatives of parents of parentally-placed private school children with disabilities who have agreed to engage in the consultation process. In addition to face-to-face meetings, an LEA and the representatives could mutually agree to facilitate additional consultation activities through virtual means, such as discussions via videoconferencing or conference calls and written communications throughout the school year.

Question B-3: Does IDEA define "representatives of parents of parentally-placed private school children with disabilities" who must be included in the consultation required by 34 C.F.R. § 300.134?

Answer: No. IDEA does not contain a definition of this term and does not specify which individuals must be included in the consultation process as representatives of parents of parentally-placed private school children with disabilities. Determinations of which individuals should be designated as representatives of parents of parentally-placed private school children with disabilities are best made at the State and local level. This is so the LEA, or SEA if appropriate, along with private school officials and representatives of parents, can identify and acknowledge the respective roles of those participating in the consultation process. There is nothing in IDEA that would

prevent parents of parentally-placed private school children with disabilities from representing themselves in the consultation process.

Question B-4: Can parents of home-schooled children with disabilities serve as parent representatives in the consultation process?

Answer: Whether parents of home-schooled children with disabilities or other representatives of home-schooled children with disabilities should be considered "representatives of parents of parentally-placed private school children with disabilities" depends on whether, under State law, a child with a disability who is being home-schooled is regarded as a parentally-placed private school child with a disability. (See more on home-schooled children with disabilities in Section I of this Q&A document.)

Question B-5: How does an LEA determine which private schools to contact?

Answer: Under 34 C.F.R. § 300.131, the LEA where private elementary schools and secondary schools are located is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in 34 C.F.R. § 300.13, and secondary schools, as defined in 34 C.F.R. § 300.36, located in the LEA. In meeting this responsibility, an LEA would need to reach out to all private schools located within the district in order to determine the private schools that will participate in consultation on child find under 34 C.F.R. § 300.134(a). LEAs may also wish to consult the Department's National Center for Education Statistics database to search for private schools, available at: https://nces.ed.gov/surveys/pss/privateschoolsearch/.

Question B-6: What must the consultation process include?

Answer: Apart from specifying certain topics that must be addressed during consultation, the IDEA regulations offer LEAs, private school representatives, and representatives of parents of parentally-placed private school children with disabilities flexibility in conducting the consultation process. However, in accordance with 34 C.F.R. § 300.134, discussions between public school officials, private school officials, and representatives of parents of parentally-placed private school children with disabilities must address—

- The child find process and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

- The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
- How the consultation process among representatives of the agency, the private schools, and the parents of parentally-placed private school children will take place, including how the process will operate throughout the school year to ensure that parentally-placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- How, where, and by whom special education and related services will be provided, including a discussion of types of services, including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children; and how and when decisions regarding services will be made; and
- How, if LEA representatives disagree with the views of the private school officials on the provision of services or the types of services whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials. See 34 C.F.R. § 300.134(a)–(e).

Question B-7: What records on consultation must an LEA maintain?

Answer: When timely and meaningful consultation has occurred, the LEA where private elementary schools and secondary schools are located must maintain documentation[11] that the consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 C.F.R. § 300.135. Other examples of documentation include meeting agendas, attendance sheets, and written records regarding topics addressed and decisions made. The requirements also apply to consultations conducted virtually.

[11] The record retention requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards are located at 2 C.F.R. § 200.334.

Another way to document participation in the consultation process is to gather signatures from participants at the end of each consultation meeting. Since the consultation process is ongoing throughout the school year, maintaining copies of the written affirmation forms obtained during each of the consultation meetings is one way to help document that the consultation process has occurred throughout the school year.

Some have asked if signing an attendance sheet at a meeting is all that is needed to document adequately that timely and meaningful consultation has occurred. Though these attendance sheets provide an accounting of who has attended meetings and can be submitted as part of the documentation the LEA submits to the SEA, the sheets themselves do not provide evidence that timely and meaningful consultation has occurred. Therefore, the written affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year.

If the representatives of participating private schools do not provide the written affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA. 34 C.F.R. § 300.135(b). As required by 34 C.F.R. §§ 300.149(a) and 300.600(b)(2), the SEA is responsible for ensuring that LEAs meet all program requirements under Part B of IDEA. This responsibility includes carefully reviewing the documentation to ensure that the LEA made reasonable efforts to meet its obligation to consult in a timely and meaningful way with private school officials and representatives of parents of parentally-placed private school children with disabilities. 34 C.F.R. § 300.134. If the LEA has not obtained a written affirmation signed by appropriate private school officials, the SEA may request that the LEA provide a reason for the lack of affirmation. If the reason is that there is a disagreement between the LEA and private school officials, the SEA could facilitate resolution of the differences.

Question B-8: **May an LEA dedicate IDEA Part B funds reserved for equitable services to be expended as part of a settlement agreement without timely and meaningful consultation as required under 34 C.F.R. § 300.134?**

Answer: No. Consistent with 34 C.F.R. § 300.134, timely and meaningful consultation must occur before any decisions are made that will affect the expenditure of IDEA Part B funds to support the equitable participation of parentally-placed private school children with disabilities in programs assisted or carried out

under IDEA Part B. It would be inconsistent with 34 C.F.R. § 300.134 for an LEA to unilaterally designate a portion of the funds reserved for equitable services to carry out the terms of a settlement agreement regarding the provision of services to a particular child with a disability in the absence of complying with the consultation requirements.

Question B-9: **What options are available to a private school official who believes that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official?**

Answer: In an attempt to resolve concerns about consultation, there are several actions a private school official can take if that official is concerned that consultation that was meaningful and timely did not occur with an LEA, or the LEA did not give due consideration to the official's views. The official may discuss the matter with LEA or SEA representatives, including with individuals who were not part of the consultation process. If the private school official does not wish to use informal means or if the informal means used is not satisfactory, the private school official has the right to file a formal complaint with the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. 34 C.F.R. § 300.136. Under this provision, a complaint must provide the basis of the noncompliance by the LEA with the applicable private school provisions in 34 C.F.R. Part 300, and the LEA must forward the appropriate documentation related to the complaint to the SEA. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary of the U.S. Department of Education (Secretary). The official must provide the information related to the LEA's noncompliance with the applicable private school requirements in 34 C.F.R. Part 300. The SEA must forward the appropriate documentation related to the complaint to the Secretary. 34 C.F.R. § 300.136(b)(3).

C. Equitable Services

Authority: The requirements for equitable services are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. §§ 300.132, 300.137, and 300.138.

Question C-1: What are "equitable services" as applied to parentally-placed private school children with disabilities?

Answer: Equitable services are special education and related services, including direct services, provided to parentally-placed private school children with disabilities in accordance with the provisions of IDEA and its implementing regulations in 34 C.F.R. §§ 300.130 through 300.144.

Under IDEA, LEAs have an obligation to provide parentally-placed private school children with disabilities an opportunity to participate in the services funded with IDEA Part B funds. After timely and meaningful consultation, the LEA must make available services to those parentally-placed private school children with disabilities that have been designated to receive equitable services. The amount of IDEA Part B funds is based on the proportionate share calculation, which is discussed in Section N of this Q&A document.

The consultation process is important to ensure the provision of equitable services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities are determined during the consultation process. See 34 C.F.R. § 300.134(d).

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. 34 C.F.R. § 300.137(a). If a child with a disability who is enrolled in a private school by the child's parents is designated to receive equitable services from an LEA, the LEA must develop, review, and revise a services plan that describes the specific special education and related services that will be provided to the child. See 34 C.F.R. § 300.138(b).

Question C-2: Who provides equitable services to parentally-placed private school children with disabilities?

Answer: Equitable services must be provided by employees of a public agency; or through contract by the public agency with an individual, association, agency, organization, or other entity. 34 C.F.R. § 300.138(c). An LEA may use IDEA Part B funds to make public school personnel available to provide

services in non-public facilities— (1) to the extent necessary to provide equitable services for parentally-placed private school children with disabilities; and (2) if those services are not normally provided by the private school. See 34 C.F.R. § 300.142(a). An LEA may use IDEA Part B funds to pay for the services of an employee of a private school to provide equitable services if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control. See 34 C.F.R. § 300.142(b). As noted previously, the LEA where the private school is located is responsible for providing equitable services to parentally-placed private school children with disabilities attending private schools located in that LEA.

D. Provision of Equitable Services

Authority: The requirements for the provision of equitable services are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. §§ 300.130, 300.132, 300.137(a), and 300.138.

Question D-1: **What is the process for making decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities?**

Answer: Timely and meaningful consultation must occur before any decisions are made that will affect the participation of parentally-placed private school children with disabilities in IDEA Part B programs. 34 C.F.R. § 300.134. Thus, decisions about services may not be made in advance or in the absence of timely and meaningful consultation. After timely and meaningful consultation has occurred with private school representatives and representatives of parents of parentally-placed private school children with disabilities, the LEA where private elementary schools and secondary schools are located is responsible for making final decisions about all aspects of the services to be provided to parentally-placed private school children with disabilities attending private schools located in the LEA. 34 C.F.R. § 300.137(b).

If the LEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to accept the recommendations of the private school officials. 34 C.F.R. § 300.134(e). (See Question B-9 for options available to private school officials to resolve concerns regarding the consultation process.)

Question D-2: **Are there particular kinds of services or specified amounts of services that must be provided to parentally-placed private school children with disabilities under Part B of the IDEA?**

Answer: No. Decisions about which services and the amount of services children with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the parentally-placed private school children with disabilities designated to receive services. These children have no individual entitlement to receive some or all of the

special education and related services they would receive if enrolled in a public school. See 34 C.F.R. § 300.137(a).

Question D-3: **May an LEA provide services to parentally-placed private school children with disabilities that are in addition to those services it must provide as equitable services under IDEA?**

Answer: Yes. IDEA does not prohibit a State or LEA from using additional State or local funds to provide special education or related services to parentally-placed private school children with disabilities that are in addition to the services required in 34 C.F.R. §§ 300.130 through 300.144, consistent with State law or local policy. Additionally, as long as the LEA meets all the other requirements of IDEA, including providing FAPE to children with disabilities enrolled in public schools, it is permissible for the LEA to spend more IDEA Part B funds than the proportionate amount of IDEA Part B funds on providing special education and related services to children with disabilities placed by their parents in private schools.

Question D-4: **If a State or LEA, through the use of State or local funds, chooses to provide additional special education and related services to parentally-placed private school children with disabilities, must the LEA also expend the proportionate amount of IDEA Part B funds it is required to expend on equitable services?**

Answer: Yes. While a State or LEA may choose to provide additional special education and related services to parentally-placed private school children with disabilities with State and local funds, the LEA also must continue to calculate and expend the required proportionate share of IDEA Part B funds to provide special education and related services, including direct services, to parentally-placed private school children with disabilities in accordance with the formula in 34 C.F.R. § 300.133(a). State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities. 34 C.F.R. § 300.133(d).

Question D-5: **How is the maintenance of effort (MOE) requirement in 34 C.F.R § 300.203 affected when an LEA chooses to use local, or State and local, funds to provide additional services to parentally-placed private school children with disabilities?**

Answer: Generally, 34 C.F.R. § 300.203 provides that an LEA may not reduce the amount of local, or State and local, funds that it spends for the education of children with disabilities below the amount it spent for the preceding fiscal year, except as provided in 34 C.F.R. §§ 300.204 (exceptions to MOE) and 300.205 (adjustment to local fiscal efforts in certain fiscal years). The exceptions to the MOE requirement do not apply to funds used for the equitable participation of parentally-placed private school children with disabilities in programs assisted or carried out under IDEA Part B.

Therefore, the total or per capita amount of local, or State and local, funds expended for the education of children with disabilities (which includes the amount of local, or State and local, funds expended for equitable services to children with disabilities placed by their parents in private schools) would have to be maintained, unless adjustments are permitted under 34 C.F.R. § 300.205. An LEA is not required to maintain the same amount of local, or State and local, funding for a specific line item or category of expenditures (such as the amount of funds budgeted and spent to provide services to parentally-placed private school children with disabilities).[12] An LEA meets the MOE requirement if it maintains either the total amount or per capita amount of funds when budgeting and expending local, or State and local, funds for the education of children with disabilities.

Question D-6: **Must the IDEA Part B funds designated for equitable services be used only for direct services to parentally-placed private school children with disabilities? Is it permissible to use those funds on other services, such as consultative services, materials, equipment, or training?**

Answer: Under 34 C.F.R. § 300.133(a), each LEA must spend a proportionate amount of IDEA Part B funds on providing special education and related services (including direct services) to parentally-placed private school children with disabilities. The regulations specify that the LEA makes the final decisions about the services to be provided to eligible parentally-placed private school

[12] Under 34 C.F.R. § 300.202(a)(3), IDEA Part B funds provided to an LEA must be used to supplement, not supplant, State, local, and other Federal funds. Prior to 1992, the Part B regulations had included a "particular cost test" for determining whether supplanting occurred. The "particular cost test" was removed from the regulations by an amendment published in the Federal Register on August 19, 1992 (57 Fed. Reg. 37652).

children with disabilities, based in part on input provided through the consultation process by appropriate private school representatives and representatives of parents of parentally-placed private school children with disabilities. See 34 C.F.R. § 300.137(b)(2). These decisions cannot be made in advance of or in the absence of timely and meaningful consultation with private school representatives and with representatives of parents of parentally-placed private school children with disabilities.

IDEA does not require an LEA to spend the proportionate share only for direct services. Rather, through the consultation process described in 34 C.F.R. § 300.134, a determination must be made about how the available amount of funds will be utilized so that the parentally-placed private 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 these children, an LEA could determine, after timely and meaningful consultation, that it will provide its population of parentally-placed private school children with disabilities with indirect services. See 34 C.F.R. § 300.134(d)(1). These services could include consultative services, equipment, or materials for eligible parentally-placed private school children with disabilities, or training for private school teachers and other private school personnel. Under 34 C.F.R. § 300.138(c)(2), special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

Question D-7: **Because the child count forms the basis for the proportionate share calculation, what is an LEA's obligation to a parentally-placed child who is identified as a child with a disability after that calculation has been made for the school year?**

Answer: Under 34 C.F.R. § 300.134, each LEA (or, if appropriate, an SEA), must consult in a timely and meaningful way, with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for children with disabilities enrolled by their parents in private schools. The consultation process must include a discussion of how that process will operate throughout the school year to ensure that parentally-placed private school children with disabilities can meaningfully participate in special education and related services (see also Section B of this Q&A document). 34 C.F.R. § 300.134(c). The discussions could include how to

address fluctuations in the population of children to be served, and how to serve children who are identified during the school year in which expenditures are made after the proportionate share calculation for that school year has been determined.

Note that the child count conducted between October 1 and December 1, inclusive of the previous fiscal year, is used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year. 34 C.F.R. § 300.133(c). However, once the proportionate amount of IDEA Part B funds has been expended, IDEA does not prohibit an SEA or LEA from using State or local funds to provide special education and related services to parentally-placed private school children with disabilities in addition to the services required in 34 C.F.R. §§ 300.130 through 300.144, if consistent with State law or local policy. At the same time, an LEA is not required to expend more than the proportionate share of IDEA Part B funds on the provision of equitable services to children with disabilities. Thus, ongoing consultation and careful planning to account for fluctuations in the population of children to be served are critically important.

E. Services Plans

Authority: The requirements for services plans are found in 20 U.S.C. §§ 1412(a)(10)(A)(i) and (vi) and 34 C.F.R. §§ 300.132(b) and 300.138(b).

Question E-1: What is the difference between an IEP and a services plan?

Answer: Children with disabilities enrolled in public schools or who are publicly placed in private schools or facilities by public agencies are entitled to FAPE and must receive the full range of services under Part B of IDEA. 34 C.F.R. §§ 300.101, 300.146, and 300.201. These services are determined by the child's IEP Team and are necessary to meet the child's individual needs and to provide FAPE to the child. Generally, the IEPs for these children will be more comprehensive than services plans developed for parentally-placed private school children with disabilities who are designated to receive services. This is because no parentally-placed child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. 34 C.F.R. § 300.137(a). Further, a services plan should reflect only the services offered by the LEA to a parentally-placed private school child with a disability designated to receive services. In addition, a services plan, to the extent appropriate, is required to meet the IEP content requirements described in 34 C.F.R. § 300.320 or, when applicable, for children aged three through five, the individualized family service plan (IFSP) requirements described in 34 C.F.R. § 303.344, and only in relation to the services that are to be provided. 34 C.F.R. § 300.138(b)(2).

Question E-2: How often must a services plan be updated?

Answer: 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.

Question E-3: **Should the parents of a parentally-placed private school child with a disability have the opportunity to participate in the development of a services plan?**

Answer: Yes, to the extent appropriate. 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 in accordance with the requirements in 34 C.F.R. §§ 300.321 through 300.324. Therefore, to the extent appropriate, the meeting to develop a services plan should be conducted in accordance with 34 C.F.R. § 300.321. Under 34 C.F.R. § 300.321(a)(1), the parents of the child are required participants. Given the emphasis on parent involvement in IDEA, the Department believes that parents should have the opportunity to participate in meetings to review and develop the services plan for their child. The options available to parents who disagree with their child's services plan, including the amount of services offered, are described in Section Q of this document in Questions Q-1 through Q-3.

Question E-4: **What is the process for developing a services plan for a parentally-placed private school child with a disability?**

Answer: The LEA where the private school is located must initiate and conduct meetings to develop, review, and revise a services plan for a parentally-placed private school child with a disability designated to receive services. The LEA must ensure that a representative of the religious or other private elementary school or secondary school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. See 34 C.F.R. § 300.137(c). The services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with 34 C.F.R. §§ 300.321 through 300.324. See 34 C.F.R. § 300.138(b)(2)(ii).

F. Location of Services and Transportation

Authority: The requirements for location of services and transportation are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. § 300.139.

Question F-1: **Under 34 C.F.R. § 300.139(a), services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with law. How is "to the extent consistent with law" determined?**

Answer: The phrase "to the extent consistent with law" is statutory language. See Section 612(a)(10)(A)(i)(III) of the IDEA. The Department interprets this to mean that the provision of services on the premises of a private school must take place in a manner that would not violate the Establishment and Free Exercise Clauses of the First Amendment of the U.S. Constitution and conforming State laws. The Department generally believes that, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child's private school, to not unduly disrupt the child's educational experience.

Question F-2: **How does an LEA determine the location where services will be provided to parentally-placed private school children with disabilities?**

Answer: The location of services is one of the subjects that must be discussed during the consultation process among LEA officials, private school representatives, and representatives of parents of parentally-placed private school children with disabilities. See 34 C.F.R. § 300.134(d). Under 34 C.F.R. § 300.137(b), after timely and meaningful consultation and giving due consideration to the views of the private school officials, the LEA makes the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

Question F-3: **Must an LEA provide transportation in order for a child to benefit from or receive equitable services?**

Answer: The IDEA regulations under 34 C.F.R. § 300.139(b) require that, if necessary for the child to benefit from or receive equitable services, an LEA must provide a parentally-placed private school child with a disability transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services. The LEA may include

the cost of the transportation in calculating whether it has spent the proportionate share of IDEA Part B funds on providing services to parentally-placed private school children with disabilities as required by 34 C.F.R. § 300.133. Generally, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child's private school, to not unduly disrupt the child's educational experience (see also Question F-1).

Question F-4: **Is an LEA required to provide transportation services to parentally-placed private school children with disabilities to locations outside of the LEA's geographic boundaries, including across State lines?**

Answer: IDEA does not restrict the provision of required transportation to locations within the LEA or within a State. However, nothing in IDEA requires LEAs to provide transportation from the home of a parentally-placed private school child with a disability to the private school, if that transportation is provided solely to enable the parentally-placed private school child with a disability to attend the private school. 34 C.F.R. § 300.139(b)(1)(ii). This is so regardless of whether the private school is located in the same State or a different State. As noted in Question F-3 above, if transportation is necessary for a parentally-placed private school child with a disability to benefit from or receive equitable services, an LEA must provide the child transportation in accordance with 34 C.F.R. § 300.139(b)(1). The extent of the transportation provided, which could be the subject of consultation, could depend on the timing of the services. Generally, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child's private school, to not unduly disrupt the child's educational experience.

G. Equitable Service Providers

Authority: The IDEA personnel qualification requirements and their applicability to equitable services providers are found in 20 U.S.C. §§ 1412(a)(10)(A)(vi) and 1412(a)(14) and 34 C.F.R. §§ 300.138(a) and 300.156.

Question G-1: Do the IDEA personnel qualification requirements apply to private school teachers providing equitable services?

Answer: No. Private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the special education teacher qualification requirements in 34 C.F.R. § 300.156(c). See 34 C.F.R. § 300.138(a)(1).

Question G-2: Must public school teachers providing equitable services meet IDEA Part B personnel qualification requirements?

Answer: Yes. Any person employed as a public school teacher in the State who teaches in an elementary school, middle school, or secondary school providing special education and related services must meet the IDEA personnel qualification requirements in 34 C.F.R. § 300.156(c), including public school teachers providing equitable services. The IDEA Part B regulations require that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school obtain full State certification as a special education teacher. This includes certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 C.F.R. § 200.56(a)(2)(ii) as such section was in effect on November 28, 2008; or by passing the State special education teacher licensing examination and holding a license to teach in the State as a special education teacher, except in the case of a teacher teaching in a public charter school. A teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the State's public charter school law. Teachers employed by public schools may not have special education certification or licensure requirements waived on an emergency, temporary, or provisional basis, and must hold at least a bachelor's degree. 34 C.F.R. § 300.156(c)(i)–(iii).

Question G-3: May a State exceed the IDEA's requirements and require teachers in private schools to hold certain credentials or certifications?

Answer: Yes. States may exceed the IDEA requirements and require teachers in private schools to hold certain credentials or certifications if consistent with State law. If a State establishes requirements that exceed those required by Part B of IDEA or its implementing regulations, the State is required by 34 C.F.R. § 300.199(a)(2) to identify in writing to the LEAs located in the State and to the Secretary that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of IDEA or its implementing regulations.

Question G-4: May an LEA employ a private school teacher to provide equitable services to parentally-placed private school children with disabilities?

Answer: Yes, provided the private school employee performs the services outside of his or her regular hours of duty and performs the services under public supervision and control. 34 C.F.R. § 300.142.

Question G-5: May an LEA contract with a faith-based organization to provide equitable services under IDEA?

Answer: Yes. Under 34 C.F.R. § 300.138(c)(1), services in a child's services plan and those under 34 C.F.R. §§ 300.139 through 300.143 must be provided: (i) by employees of a public agency; or (ii) through contract by the public agency with an individual, association, agency, organization, or other entity. See also 34 C.F.R. § 300.134(e) (written explanation by the LEA regarding services, including services provided directly or through a contract). Therefore, there is nothing in IDEA that would prohibit an LEA from contracting with a faith-based organization to provide such services.

Further, under 2 C.F.R. § 3474.15(b), a faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization with respect to contracts for which such organizations are eligible. In selecting providers of goods and services, grantees and subgrantees, including States, must not discriminate for or against a private organization on the basis of the organization's religious character or affiliation and must ensure that the award of contracts is free from political interference, or even the appearance of such interference, and is done on the basis of merit, not on the basis of religion or religious belief, or lack thereof.

H. Out-of-State Children with Disabilities and Children with Disabilities Whose Parents Live in Other Countries

Authority: The requirements for serving out-of-State children are found in 20 U.S.C. § 1412(a)(10)(A)(ii) and 34 C.F.R. § 300.131(f).

Question H-1: **Must the LEA where private elementary and secondary schools are located conduct child find activities for parentally-placed private school children who reside outside the State?**

Answer: Yes. The child find requirements in 34 C.F.R. § 300.131(f) make clear that the LEA where the private elementary and secondary schools, including religious schools, are located is responsible for conducting child find. This includes individual evaluations, of all children suspected of having a disability enrolled by their parents in private elementary and secondary schools located in the LEA, regardless of where those children reside. This obligation applies regardless of whether those children reside in a State other than the State where the private schools they attend are located.

Question H-2: **Are IDEA's child find and equitable services provisions applicable to children with disabilities attending private schools located in the LEA if their parents live in another country?**

Answer: Yes. The obligation to consider children with disabilities for equitable services extends to all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools within the LEA's jurisdiction, regardless of whether the parent resides in that State. 34 C.F.R. § 300.131(f). See also 71 Fed. Reg. 46540, 46591 (Aug. 14, 2006).

Question H-3: **Who is responsible for determining and paying for services provided to parentally-placed private school children with disabilities who reside out-of-State?**

Answer: The LEA where the private school is located, is responsible for paying for the services to be provided to out-of-State parentally-placed private school children with disabilities attending private elementary and secondary schools located in that LEA. LEAs are required to consult with appropriate private school officials and representatives of parents of parentally-placed private school children with disabilities to determine who will receive services. Under 34 C.F.R. § 300.131(f), these out-of-State children must be included in the group of parentally-placed children with disabilities whose needs are

considered in determining which parentally-placed private school children with disabilities will be served and the types and amounts of services to be provided.

Question H-4: **May an LEA require another LEA to pay for the services of a parentally-placed private school child with a disability from another State?**

Answer: No**.** The IDEA regulations under 34 C.F.R. § 300.133(a) clarify that the LEA where a private school is located is responsible for spending a proportionate amount of its subgrant under Part B of IDEA on special education and related services for children enrolled by their parents in private elementary and secondary schools located in the LEA. There is no exception for out-of-State children with disabilities attending a private school located in the LEA. Therefore, out-of-State children with disabilities must be included in the group of parentally-placed private school children with disabilities whose needs are considered in determining which parentally-placed private school children with disabilities will be served and the types and amounts of services to be provided. Another LEA may not be charged for child find and equitable services even if the child with a disability resides in another State. At the same time, nothing in IDEA precludes an LEA from contracting with a third party to fulfill its obligations to ensure equitable participation. This includes contracting with a child's LEA of residence as a third-party provider.

Question H-5: **When making a determination regarding the services that an LEA will provide to children with disabilities placed by their parents in private schools, could an LEA decide to provide services only to students from their LEA or their State?**

Answer: No. Although LEAs have discretion to determine how the proportionate share of IDEA Part B funds will be expended so long as the consultation requirements in 34 C.F.R. § 300.134 are followed for all parentally-placed private school children, LEAs cannot unilaterally determine, prior to or in the absence of the timely and meaningful consultation process, that the proportionate share of Part B funds for equitable services can only be expended to meet the needs of children who are residents of that LEA or State.

I. Home-Schooled Children with Disabilities

Authority: The requirements for serving children with disabilities enrolled by their parents in private schools are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. §§ 300.130 through 300.144.

Question I-1: **Are home-schooled children with disabilities considered parentally-placed private school children with disabilities?**

Answer: Whether home-schooled children with disabilities are considered parentally-placed private school children with disabilities is determined under State law. If the State recognizes home schools as private elementary schools and secondary schools, children with disabilities in those home schools must be treated in the same way as other parentally-placed private school children with disabilities.

Question I-2: **Which LEA is responsible for conducting child find for children who are home-schooled?**

Answer: Generally, the LEA where the child resides is responsible for conducting child find activities, including initial evaluations and reevaluations, for children who are home-schooled.

Question I-3: **If State law permits a home-schooled child with a disability to attend the public school for part of the school day, would the child be treated as a parentally-placed private school child or as a public school child?**

Answer: Whether a home-schooled child with a disability is treated as a parentally-placed private school child entitled to be considered for equitable services or as a public school child entitled to receive FAPE is determined under State law. This is so, even if the child is permitted to attend public school for part of the school day. The responsible public agency, generally the LEA of residence, would have to make FAPE available to the child consistent with IDEA Part B requirements if the parent seeks to enroll the child with a disability in the public school full-time.

J. Preschool Children

Authority: The requirements for providing equitable services to children with disabilities enrolled by their parents in private schools are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. §§ 300.130 through 300.144.

Question J-1: **Must an LEA use any of the Section 619 funds it receives under IDEA's Preschool Grants for Children with Disabilities program to provide equitable services to parentally-placed private school children with disabilities aged three through five?**

Answer: Yes. Section 619 of IDEA provides formula grants to States to make available special education and related services for children with disabilities aged three through five. To be eligible for these grants, States must make FAPE available to all eligible children with disabilities aged three through five. As explained in Question N-1, for children aged three through five, an LEA must spend an amount that is the same proportion of the LEA's total subgrant under Section 619(g) of the IDEA as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

Question J-2: **What obligation, if any, does the LEA where private preschools are located have to serve three- through five-year-old children with disabilities who are parentally-placed in private preschools?**

Answer: An LEA's obligation to serve children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and its implementing regulations. "Elementary school" is defined in 34 C.F.R. § 300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. Accordingly, three- through five-year-old children with disabilities who are enrolled by their parents in a private preschool or facility that meets the State's definition of "elementary school" would be considered parentally-placed and the equitable participation provisions would apply.

Question J-3: **Is a child with a disability aged three through five enrolled by his or her parents in a private preschool that does not meet the State's definition of "elementary school" considered a parentally-placed private school child with a disability?**

Answer: No. A child with a disability aged three through five who is enrolled by his or her parents in a private preschool or facility that does not meet the State's definition of "elementary school" does not meet the definition of a parentally-placed private school child with a disability under IDEA and would not be eligible to be considered for equitable services. However, the State's obligation to make FAPE available to such a child remains. Section 612(a)(1) of the IDEA requires that a State make FAPE available to eligible children. with disabilities aged three through 21 in the State's mandated age range. 34 C.F.R. § 300.101. Because many LEAs do not offer public preschool programs, particularly for three- and four-year-olds, LEAs where preschool children reside often make FAPE available to these eligible preschool children with disabilities by placing them in private schools or facilities in accordance with 34 C.F.R. §§ 300.145 through 300.147. In these circumstances, there is no requirement that the private school or facility be an "elementary school" under State law consistent with the definition in 34 C.F.R. § 300.13.

Question J-4: **Are there any situations in which an LEA may make FAPE available to a preschool aged child with a disability by placement in a private preschool program?**[13]

Answer: Yes. The public agency that is responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the least restrictive environment where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the LEA operates public preschool programs for children with disabilities. In some instances, an LEA may make FAPE available by placing the child in the private preschool program that the parent has selected. But if there is a public preschool program available, the LEA where the child resides may choose to make FAPE available to the preschool child by placement in that program. If the group of persons making the placement decision, as specified in 34 C.F.R. § 300.116(a)(1), places the child in a public or a private preschool program other than the one selected by the parents and the parents decline the

[13] Although this document primarily addresses requirements related to children with disabilities placed by their parents in private schools, based on questions received from the field, the Department is clarifying circumstances under which an LEA may be obligated to provide FAPE, rather than equitable services, to preschool children with disabilities in private schools.

public agency's offer of FAPE because they want their child to remain in the private preschool program they have selected, the LEA is not required to provide FAPE to that child. The parent may challenge the determination of what constitutes FAPE for their child using the dispute resolution procedures available under IDEA. See 34 C.F.R. §§ 300.506, 300.507-300.513, and 300.151-300.153.

Question J-5: **If a child with a disability is not placed in a public preschool program by the LEA where the child resides because that LEA does not operate public preschool programs for three- and four-year-olds, and the parent voluntarily enrolls their child with a disability and pays tuition in a public preschool program in another LEA, can the LEA where the public preschool program is located, or the LEA where the child resides, use part of its proportionate share of IDEA Part B funds designated for equitable services to provide special education and related services to that child?**

Answer: No. The proportionate share of IDEA Part B funds to provide equitable services may only be spent in connection with the provision of special education and related services to parentally-placed private school children with disabilities attending private elementary schools or secondary schools located in the LEA**.** As noted in the response to Question A-1 above, under 34 C.F.R. § 300.130, parentally-placed private school children with disabilities are defined as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147**.**

K. State Voucher and Scholarship Programs

Authority: The requirements for serving children with disabilities enrolled by their parents in private schools are found in 20 U.S.C. § 1412(a)(10) and 34 C.F.R. §§ 300.130 through 300.144.

Question K-1: **Are children with disabilities who attend private schools through a State-funded school choice voucher or scholarship program considered parentally-placed private school children with disabilities under IDEA?**

Answer: Yes. Under IDEA, if the State and its LEAs have made FAPE available to eligible children with disabilities in a public school but their parents elect to place them in private schools through a State voucher or scholarship program, such children generally are considered parentally-placed private school children with disabilities if they attend private, including religious, elementary schools or secondary schools or facilities that meet the definitions in 34 C.F.R. § 300.13 and 300.36, respectively. 34 C.F.R. § 300.130; see also 34 C.F.R. § 300.148(a). Parentally-placed private school children with disabilities attending private schools through a State-funded voucher or scholarship program must be considered for equitable services in the same manner as any other parentally-placed private school children with disabilities. 34 C.F.R. § 300.132(a).

Question K-2: **Do all of the IDEA requirements for children with disabilities enrolled by their parents in private schools apply to SEAs and LEAs when children with disabilities are enrolled by their parents in private schools participating in a State-funded voucher or scholarship program?**

Answer: Yes**.** In general, IDEA requires States and LEAs in which private schools are located to ensure the equitable participation of parentally-placed private school children with disabilities enrolled in private, including religious, elementary schools and secondary schools in programs assisted or carried out under IDEA Part B through the provision of special education and related services. 20 U.S.C. § 1412(a)(10)(A)(i) and 34 C.F.R. § 300.132(a). IDEA provides no exception to this requirement if parentally-placed private school children with disabilities attend private schools that meet the definitions of elementary school in 34 C.F.R. § 300.13 and secondary school in 34 C.F.R. § 300.36. Accordingly, LEAs where such private elementary schools and secondary schools are located must ensure that children with disabilities placed by their parents in private schools participating in State-funded voucher or scholarship programs are included in the group of

parentally-placed private school children with disabilities who are eligible for equitable services, including special education and related services from the LEA where private schools are located.

The needs of these children must be considered through the consultation process required under 34 C.F.R. § 300.134. (See more on consultation requirements in Section B of this Q&A document.) The child find requirements for locating, identifying, and evaluating children are fully applicable to children enrolled by their parents in private schools who participate in a State-funded voucher or scholarship program. 34 C.F.R. § 300.131. Thus, children with disabilities enrolled by their parents in private schools who participate in a State-funded voucher or scholarship program, must be included in the annual child count. The child count must be used to determine the amount of IDEA Part B funds that the LEA must spend on providing special education and related services to children with disabilities enrolled by their parents in private schools located in the LEA. 34 C.F.R. § 300.133(c). Parentally-placed private school children with disabilities attending private schools under a State voucher or scholarship program who are designated to receive services must also have a services plan that sets out the services the LEA will provide to the child. 34 C.F.R. §§ 300.132(b) and 300.137(c). However, no parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school (34 C.F.R. § 300.137(a)). Depending on discussions that occurred during the consultation process and the amount of funds generated for the proportionate share, the child may receive a different amount of services than children with disabilities in public schools (34 C.F.R. § 300.138(a)(2)). Even if the LEA offers to provide equitable services to the child, a parent of a parentally-placed child with a disability may decline the offer of services to their child.

Question K-3: **May a State require a parent of a child with a disability to revoke consent for their child to receive any special education and related services from the LEA, as a condition of participation in a State-funded private school choice voucher or scholarship program?**

Answer: No. A State may not condition the receipt of a school choice voucher or scholarship on the parent's revocation of consent to FAPE, including special education and related services. Parentally-placed private school children with disabilities are not entitled to FAPE in connection with their enrollment by their parents in a private school participating in a State-funded voucher or

scholarship program. See 34 C.F.R. §§ 300.148(a) and 300.137(a). As explained above, IDEA provides no exception to the equitable services requirements that are applicable to States and LEAs where private, including religious, elementary schools and secondary schools are located. 20 U.S.C. § 1412(a)(10)(A)(i) and 34 C.F.R. § 300.132(a). Therefore, a parent's revocation of consent for their child's continued receipt of FAPE, including special education and related services, if offered by an LEA as equitable services, does not relieve a State and its LEAs of their responsibilities to provide equitable services under IDEA to parentally-placed private school children with disabilities who are eligible to receive such services.

Question K-4: Are there any children participating in a State-funded voucher or scholarship program that an LEA is not required to evaluate or consider for equitable services?

Answer: Yes. If an LEA proposes to evaluate or reevaluate a child attending a private school through a State-funded voucher or scholarship program, and the child's parents refuse consent or fail to respond to the request to provide consent for their child's initial evaluation or reevaluation, the LEA proposing to evaluate or reevaluate the child may not seek to override the parent's refusal to consent by using IDEA's mediation or due process procedures.
34 C.F.R. § 300.300(d)(4)(ii).

This would mean that such a child would not be included in the proportionate share calculation under 34 C.F.R. § 300.133.

Question K-5: If a child with a disability who received a State school choice voucher or scholarship reenrolls in a public school, is the child considered a child with a disability?

Answer: Yes. Assuming a parentally-placed private school child's disability determination is current, the child continues to be considered a child with a disability under IDEA. Therefore, upon reenrollment in a public school, the child would return as a child with a disability, as defined in 34 C.F.R. § 300.8. Consistent with 34 C.F.R. §§ 300.101 and 300.201, the LEA where the child resides must make FAPE available to the child, unless the LEA determines that the child is no longer eligible for special education and related services. 34 C.F.R. § 300.305(e).

L. Children in For-Profit Private Schools

Authority: The requirements for providing equitable services to children with disabilities enrolled by their parents in private schools are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. §§ 300.130 through 300.144.

Question L-1: **Are children enrolled in a for-profit private school counted for the purpose of determining the proportionate share of IDEA Part B funds to be spent on equitable services, and eligible to receive equitable services?**

Answer: No. The regulations in 34 C.F.R. § 300.130 define parentally-placed private school children with disabilities as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36. The definitions of elementary school in 34 C.F.R. § 300.13 and secondary school in 34 C.F.R. § 300.36 specify that the school must be nonprofit. Therefore, children with disabilities who attend for-profit private schools may not be included in the proportionate share calculation or be considered for equitable services.

However, under 34 C.F.R. § 300.111, the State must ensure that all children with disabilities, including children with disabilities attending private schools, who are in need of special education and related services, are identified, located, and evaluated through the child find process. The child find process includes children with disabilities attending for-profit schools. A State determines which public agency is responsible for conducting child find under 34 C.F.R. § 300.111 for children suspected of having a disability attending for-profit private schools. Generally, this public agency is the LEA where the child resides.

M. Extended Public School Closures

Authority: The requirements for serving children with disabilities enrolled by their parents in private schools are found in 20 U.S.C. § 1412(a)(10) and 34 C.F.R. §§ 300.130 through 300.144.

Question M-1: **Is an LEA required to provide equitable services to private school children with disabilities under IDEA Part B during extended closures of public and private schools?**

Answer: If an LEA where private elementary schools and secondary schools are located closes its physical buildings as a result of social distancing measures and other limitations that occur as a result of a pandemic or health emergency, but is providing virtual instruction or other remote learning opportunities for the general student population, then the LEA would be required to provide equitable services to private school children with disabilities under IDEA Part B, as determined through the consultation process under 34 C.F.R. § 300.134. Under such circumstances, the LEA may consider other services or alternate means of service delivery, if feasible, such as through the use of telecommunications, including telephone or videoconferencing, virtual platforms, or consultative services.

In those situations in which an LEA must close its schools because the functioning or delivery of educational services is fully disrupted (*i.e.*, due to a pandemic or natural disaster), and does not provide any educational services to the general student population, then an LEA would not be required to provide equitable services to private school children with disabilities under IDEA Part B during that same period of time.

Question M-2: **If an LEA is required to provide equitable services to private school children with disabilities during an emergency that closes brick and mortar facilities, how will private schools be notified of the availability and delivery of such services during the school closure?**

Answer: The Department suggests that LEAs include this as a topic of discussion during the consultation process. During timely and meaningful consultation, stakeholders might consider establishing a communication process for use throughout an extended brick and mortar closure of public and private schools. For example, the LEA may establish an emergency test message system or email distribution lists, to ensure any needed information is shared with key stakeholders. The LEA should consult with private school

representatives and representatives of parents of parentally-placed private school children with disabilities to establish procedures for how equitable services can be provided in the case of extended school closures, including remote service delivery. The LEA should share those procedures with the private school representatives or officials and representatives of the parents. Additionally, LEAs should coordinate such planning with appropriate private school officials to make sure that they have access to information related to equitable services for their eligible children with disabilities and, as applicable, their teachers and parents.

N. Proportionate Share Calculation for Equitable Services

Authority: The requirements for serving children with disabilities enrolled by their parents in private schools are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. §§ 300.130 through 300.144.

Question N-1: **How does an LEA calculate the proportionate share of its IDEA subgrant under Section 611 and Section 619 that it must spend on providing special education and related services to parentally-placed private school children with disabilities?**

Answer: The proportionate share calculation must be based on the total number of children with disabilities who are enrolled in private elementary and secondary schools, including religious schools, located in the LEA, whether or not the children or their parents reside in the LEA. 34 C.F.R. §§ 300.132 and 300.133(a). More specifically, each LEA must spend the following amounts on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

1. For children aged three through 21, an amount that is the same proportion of the LEA's total subgrant under Section 611(f) of the IDEA as the number of private school children with disabilities aged three through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through 21.
2. For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under Section 619(g) of the IDEA as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

Appendix B to 34 C.F.R. Part 300 provides an example of how to make this calculation.

Question N-2: Which children must an LEA count in order to calculate the proportionate share?

Answer: All children who have been evaluated and found eligible for special education and related services—not solely those children who receive services through an IEP or services plan—must be included in the count to calculate the proportionate share. See 34 C.F.R. §§ 300.132(c) and 300.133(c). As described in 34 C.F.R. § 300.133(a), each LEA must determine the total number of private school children with disabilities who are enrolled by their parents in private elementary and secondary schools located in the LEA, and the total number of children with disabilities enrolled in public and private elementary and secondary schools located in the LEA, in order to calculate the proportionate share of IDEA Part B funds that must be expended on equitable services.

Question N-3: Must children whose parents decline special education and related services be included in a school district's proportionate share calculation?

Answer: Yes. As specified in 34 C.F.R. § 300.131(a), each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA. The number of parentally-placed private school children with disabilities is used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year. 34 C.F.R. § 300.133(b) and (c)(2).

Under 34 C.F.R. § 300.300(d)(4), if a parent of a home-schooled or parentally-placed private school child declines to consent to the initial evaluation or the reevaluation, the public agency may not use the mediation or due process procedures to seek to conduct the evaluation and, thus, may not include the child in the annual count of the number of parentally-placed private school children with disabilities.

On the other hand, if the LEA evaluates a parentally-placed private school child, subject to the consent of the parent, and determines that the child qualifies as a child with a disability under the IDEA, but the parent declines the offer of special education and related services, the LEA still must include this child in the annual count of the number of parentally-placed private school children with disabilities. 34 C.F.R. § 300.133(c); see also 34 C.F.R. § 300.132(c). Accordingly, an LEA must include in its proportionate

share calculation all eligible children with disabilities enrolled by their parents in private, including religious, elementary and secondary schools located in the LEA, and also include those children whose parents decline all publicly funded services and place their children with disabilities in a private school at their own expense.

Question N-4: **Can other Federal funds, including reimbursement that an LEA receives from a Federal funding source, be used to offset the proportionate share amount that the LEA must expend under IDEA Part B?**

Answer: No. The proportionate amount of IDEA Part B funds that each LEA must expend on the provision of special education and related services for parentally-placed children with disabilities attending private schools located in the LEA is calculated based on an LEA's total subgrant under IDEA Section 611(f) for children with disabilities aged three through 21 and the LEA's total subgrant under IDEA Section 619(g) for children with disabilities aged three through five. Therefore, other Federal funding or reimbursements available from Federal funding sources may not be used to offset or reduce the proportionate amount of IDEA Part B funds that the LEA is required to expend on equitable services. See 34 C.F.R. § 300.133.

Question N-5: **Can an LEA identified with significant disproportionality under IDEA Part B subtract expenses related to providing comprehensive coordinated early intervening services (CEIS) before the State or LEA calculates the proportionate share of IDEA funds that must be used by the LEA to provide special education and related services to parentally-placed private school children with disabilities?**

Answer: No. An LEA may not deduct the funds that it is required to reserve for CEIS or voluntarily reserves for CEIS before calculating the amount of funds it is required to spend on equitable services for children with disabilities parentally-placed in private schools. The calculations for both CEIS and the proportionate share must be based on the total amount of the subgrants the LEA receives under 34 C.F.R. §§ 300.705 and 300.815. 34 C.F.R. § 300.133(a) (proportionate share) and 34 C.F.R. § 300.226(a) (CEIS).

The LEA must calculate the proportionate share of IDEA Section 611 and Section 619 funds that it must expend for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. This calculation must be based on an amount that is equal to a proportionate share of the LEA's total subgrant award under

Section 611(f) of IDEA and the LEA's total subgrant award under Section 619(g) of IDEA. 34 C.F.R. § 300.133(a) and Appendix B to 34 C.F.R. Part 300.

Question N-6: How can the public find out the amount an LEA must expend to meet its proportionate share of IDEA Part B funds?

Answer: This information should be readily available from the LEA or SEA. As required by 34 C.F.R. § 300.134(b), the consultation process must include a determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including how the proportionate share of funds is calculated.

O. Expenditures and Allowable Use of Funds

Authority: The requirements for calculating the expenditure of IDEA Part B funds for equitable services are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. § 300.133. Requirements for the cost principles governing the allowable use of Federal funds are found in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200, Subpart E.

Question O-1: **May an LEA include administrative costs to meet the requirement to spend a proportionate share of IDEA Part B funds on children with disabilities placed by their parents in private schools?**

Answer: No. As stated in 34 C.F.R. § 300.133(a), each LEA is required to spend a proportionate share of IDEA Part B funds on providing special education and related services to children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools in order for the LEA to meet its responsibility for providing equitable services. We interpret the reference to "special education and related services" to mean that administrative costs could not be included in the amount each LEA must spend to meet this requirement. Thus, an LEA may not expend the proportionate share of IDEA Part B funds on administrative costs.

Question O-2: **May an LEA use IDEA Part B funds that are required to be expended on equitable services to make payments directly to a private school?**

Answer: No. IDEA Part B funds for equitable services may not be paid directly to a private school. Under 34 C.F.R. § 300.144(a), a public agency must control and administer the funds used to provide special education and related services to parentally-placed private school children with disabilities. Under 34 C.F.R. § 300.141, an LEA may not use IDEA Part B funds to finance the existing level of instruction in a private school, and such funds may not be used for meeting the needs of a private school or the general needs of the students enrolled in the private school. The LEA must use the proportionate share of IDEA Part B funds to meet the special education and related services needs of parentally-placed private school children with disabilities.

Question O-3: **May other children in the private school derive an incidental benefit from the special education and related services provided to those parentally-placed private school children with disabilities designated to receive services under IDEA?**

Answer: Under 34 C.F.R. § 300.141, an LEA may not use IDEA Part B funds to finance the existing level of instruction at a private school or to otherwise benefit the private school. However, this regulation would not prohibit other children in the private school from deriving a benefit that is incidental to the provision of the IDEA-funded special education and related services to those parentally-placed private school children with disabilities designated to receive services under IDEA. For example, if consultation services are provided to a private school teacher as a means of providing special education and related services to a particular parentally-placed private school child with a disability and that teacher uses the acquired skills in providing education to other children, whatever benefit those other children receive is incidental to the provision of special education and related services and is not prohibited by 34 C.F.R § 300.141. In providing or arranging for the provision of equitable services, LEAs should use reasonable measures in assessing whether IDEA funds are being used to benefit private schools.

Question O-4: **May an LEA expend more than the amount of its IDEA Part B funds designated to be spent on equitable services for children with disabilities placed by their parents in private schools?**

Answer: Yes**.** As discussed in the response to Question D-3, nothing in the IDEA prohibits an LEA from expending more than the proportionate amount of IDEA Part B funds designated to be spent on equitable services. Each LEA is required to spend a minimum amount of its subgrant under IDEA Part B for children with disabilities placed by their parents in private schools. As long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for an LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools. In addition, as referenced in Question D-4 and provided in 34 C.F.R. § 300.133(d), State and local funds may be used to supplement, but not supplant, the LEA's proportionate share of IDEA Part B funds required to be expended on children with disabilities placed by their parents in private schools.

Question O-5: **If an LEA does not expend the entire proportionate share of IDEA Part B funds on children with disabilities placed by their parents in a private school that closes, what must the LEA do with those unexpended funds?**

Answer: Under 34 C.F.R. § 300.133(a), each LEA is required to spend a minimum amount of its subgrants under IDEA Part B on children with disabilities placed by their parents in private, including religious, elementary and secondary schools. As provided in 34 C.F.R. § 300.133(a)(3), if an LEA has not expended all of the proportionate share funds by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services to children with disabilities placed by their parents in private 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 LEA from spending its proportionate share to provide equitable services to children with disabilities placed by their parents in private schools, because the determination of the proportionate share was based on the prior year's child count for expenditure in the next subsequent fiscal year. 34 C.F.R. § 300.133(c)(2).

Question O-6: **If an LEA does not expend its entire proportionate share of IDEA Part B funds on children with disabilities placed by their parents in private schools by the end of the carry-over period, may the LEA return the unexpended funds to the SEA to be spent by the SEA or reallocated to another LEA?**

Answer: No. If, after the carry-over period, the LEA is unable to expend the entire proportionate share and assuming the LEA is in compliance with the child find, consultation, and other requirements related to parentally-placed private school children with disabilities in 34 C.F.R. §§ 300.129 through 300.144, the LEA may use the unexpended funds—at the end of the period during which the funds may be spent on parentally-placed private school children—to pay for other allowable IDEA Part B expenditures for that same LEA. This situation should be the exception. We emphasize that it is the clear intent of the Act that LEAs spend these funds on providing special education and related services to parentally-placed private school children with disabilities, as provided in 34 C.F.R. §§ 300.129 through 300.144. Therefore, if the LEA is not in compliance with these requirements and has not expended the funds on parentally-placed private school children, the LEA must return the funds to the Department.

The SEA is responsible for ensuring that LEAs comply with these requirements. See 34 C.F.R. §§ 300.149(a) and 300.600(b)(2). If an LEA has not expended the proportionate share by the end of the carry-over period, the SEA can monitor the LEA to ensure that it is meeting these requirements, including the requirement in 34 C.F.R. § 300.135 that the LEA obtain written affirmation signed by representatives of participating private schools that timely and meaningful consultation has occurred. In any event, there is no authority that permits the LEA to return the funds to the SEA to be spent by the SEA or reallocated to another LEA.

Question O-7: **Does the number of parentally-placed private school children with disabilities who receive equitable services impact the amount of a State or LEA's allocation of IDEA Part B funds?**

Answer: No. IDEA Part B funds are allocated to States and LEAs using a statutory formula that is not based on a child count. Therefore, the amount of Part B funds allocated to States and LEAs cannot be adjusted based on the number of private school children with disabilities receiving equitable services.

Under the Grants to States and Preschool Grants for Children with Disabilities programs, authorized by IDEA Sections 611 and 619, respectively, IDEA Part B funds are allocated to States, and States must distribute funds to eligible LEAs, using a statutory formula that takes into consideration the amount of program funds received in a prior year (the base year), along with the most recent population and poverty data (see 34 C.F.R. §§ 300.703, 300.705, 300.807, and 300.816). Each LEA calculates the proportionate share it must spend on parentally-placed private school children with disabilities based on the LEA's subgrant. It should be noted that adjustments in State funding could be made depending on each State's laws and funding mechanisms.

Question O-8: **Are States required to monitor an LEA's expenditures of IDEA Part B funds to meet the requirements for equitable services?**

Answer: Yes. As required by 34 C.F.R. §§ 300.149(a) and 300.600(b)(2), the SEA is responsible for ensuring that LEAs meet all program requirements under Part B of the IDEA. This includes the requirement that an LEA expend the proportionate share of IDEA Part B funds on providing special education and related services to parentally-placed private school children with disabilities in accordance with 34 C.F.R. §§ 300.129 through 300.144.

P. Property, Equipment, and Supplies

Authority: The requirements for property, equipment, and supplies are found in 20 U.S.C. § 1412(a)(10)(A)(vii) and 34 C.F.R. § 300.144.

Question P-1: **May a public agency place equipment and supplies for equitable services in a private school?**

Answer: Yes. The public agency may place equipment and supplies in a private school, but only for the period of time needed to meet the equitable participation requirements for the IDEA Part B program. The public agency must ensure that equipment and supplies placed in a private school are used only for IDEA Part B purposes and can be removed from the private school without remodeling the private school facility. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for IDEA Part B purposes or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA Part B purposes. See 34 C.F.R. § 300.144(b)-(d).

Question P-2: **May IDEA Part B funds for equitable services be used for repairs, minor remodeling, or construction of private school facilities?**

Answer: No. IDEA Part B funds for equitable services may not be used for repairs, minor remodeling, or construction of private school facilities. See 34 C.F.R. § 300.144(e).

Q. Dispute Resolution: State Complaints, Mediation, and Due Process Complaints

Authority: The requirements for the IDEA dispute resolution procedures applicable to children with disabilities placed in private schools by their parents are found in 20 U.S.C. § 1412(a)(10)(A) and 34 C.F.R. § 300.140.

Question Q-1: **Under what circumstances does IDEA permit parents of parentally-placed private school children with disabilities to use IDEA's due process procedures?**

Answer: As provided in 34 C.F.R. § 300.140(b), 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, including the requirements in 34 C.F.R. §§ 300.300 through 300.311. Such a complaint must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA by the LEA. The due process provisions in Section 615 of the IDEA and 34 C.F.R. §§ 300.504 through 300.519 do not apply to issues regarding the provision of services to any particular parentally-placed private school child with a disability. Disputes that arise between LEAs where private schools are located and parents about equitable services are, however, properly subject to the State complaint procedures in 34 C.F.R. §§ 300.151 through 300.153. As provided in 34 C.F.R. § 300.140(c), a parent may file a signed written complaint in accordance with the State complaint procedures alleging that an SEA or LEA has failed to meet IDEA's equitable services requirements, such as the LEA's failure to properly conduct the consultation process.

Question Q-2: **Under what circumstances does IDEA require that mediation be made available to parents of parentally-placed private school children with disabilities?**

Answer: As provided in 34 C.F.R. § 300.140(b), a parent who has enrolled his or her child in a private school has the right to file a due process complaint, requesting a due process hearing, and to use the mediation procedures in 34 C.F.R. § 300.506 regarding the child find requirements in 34 C.F.R. § 300.131, including the requirements in 34 C.F.R. §§ 300.300 through 300.311. The due process provisions in Section 615 of the IDEA and 34 C.F.R. §§ 300.504 through 300.519, which include the mediation procedures in 34 C.F.R. § 300.506, do not apply to issues regarding the provision of services to any particular parentally-placed private school child

with disabilities whom an LEA has agreed to serve because there is no individual right to services for such children under the IDEA. 34 C.F.R. § 300.140(a).

Disputes that arise about equitable services are, however, properly subject to the State complaint procedures in 34 C.F.R. §§ 300.151 through 300.153. As provided in 34 C.F.R. § 300.140(c), a parent may file a signed written complaint in accordance with the State complaint procedures alleging that an SEA or LEA has failed to meet IDEA's equitable services requirements. Under the State complaint procedures, when a parent files a State complaint regarding IDEA's equitable services requirements, including the child find requirements in 34 C.F.R. § 300.131, which include the requirements in 34 C.F.R. §§ 300.300 through 300.311, the SEA must give the parent an opportunity to voluntarily engage in mediation consistent with 34 C.F.R. § 300.506. 34 C.F.R. § 300.152(a)(3)(ii).

Question Q-3: **Do private school officials have the right to file a complaint under the State complaint provisions in 34 C.F.R. §§ 300.151 through 300.153?**

Answer: Yes. A private school official may file a State complaint regarding an alleged violation by a public agency of any requirement of Part B of IDEA or its implementing regulations by using the procedures in 34 C.F.R. §§ 300.151 through 300.153. Under those procedures, the SEA must resolve any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 300.153. See also Question A-15.

Question Q-4: **If the parent of a parentally-placed private school child with a disability files a State complaint alleging that the services identified in the child's services plan were not provided, is it permissible for the SEA to resolve the complaint by requiring the LEA to provide compensatory services? How would the provision of these services affect the calculation of the expenditures to meet the required proportionate share?**

Answer: Under 34 C.F.R. § 300.140(c), any complaint alleging that an SEA or LEA has failed to meet the requirements in 34 C.F.R. §§ 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the State complaint procedures described in 34 C.F.R. §§ 300.151 through 300.153. In resolving such a complaint, if the SEA determines that compensatory services are the appropriate remedy, such services may be ordered by the SEA if sufficient

funds are available from the proportionate share set-aside in the LEA to provide equitable services under 34 C.F.R. §§ 300.129 through 300.144.

If the proportionate share has been expended prior to the awarding of compensatory services to resolve a complaint, the SEA cannot require an LEA to spend additional IDEA Part B funds, beyond the minimum amount required under 34 C.F.R. § 300.133(a), to pay for compensatory services for a parentally-placed private school child with a disability. However, under 34 C.F.R. § 300.133(d), State and local funds may supplement, but not supplant, the proportionate amount of IDEA Part B funds required to be expended for parentally-placed private school children with disabilities. The use of State and local funds, on top of the proportionate share of Part B funds, is permitted but not mandatory. Therefore, if the proportionate share of Part B funds has been expended, pursuant to the authority in 34 C.F.R. § 300.133(d), a State may, but is not required to, order an LEA to use State and local funds to pay for compensatory services for a parentally-placed private school child with disabilities.

It is important that as part of the consultation process, the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities consider the amount of the proportionate share of IDEA Part B funds in determining what services will be provided in order to ensure an LEA has sufficient IDEA Part B funds to implement the services plan for each parentally-placed child with a disability who has been designated to receive services.