

April 2007

TO: District Superintendents
Superintendents of Schools
Presidents of Boards of Education
New York City Board of Education
Principals of Public Schools
Directors of Pupil Personnel Services
Administrators of Nonpublic Elementary and Secondary Schools
Organizations, Parents and Individuals Concerned with Special Education
Impartial Hearing Officers
Commissioner's Advisory Panel for Special Education Services
Commissioner's Advisory Panel for Nonpublic Schools
SETRC Professional Development Specialists
Regional School Support Centers

FROM: James P. DeLorenzo



SUBJECT: **Revised Interim** Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c

The purpose of this memorandum is to inform school districts of their responsibilities to provide special education services to students with disabilities who are enrolled in nonpublic elementary or secondary schools by their parents in the 2007-08 school year and thereafter. **Please note that some of the information provided herein is subject to change based on any further changes to State statute. Sections of the guidance where changes are likely are so noted.** However, we are issuing interim guidance at this time because it is important that school districts begin to plan their budgets, allocate resources and share information with parents to meet the district's responsibilities for parentally placed nonpublic school students with disabilities during the 2007-08 school year.

The information in this memorandum does not apply to students placed in, or referred to private schools by public agencies such as school district placements of students in approved private schools, Special Act School Districts, and State-supported or State-operated schools, nor does it apply to Charter schools.

Pursuant to section 612(a)(10) of IDEA, as reauthorized in 2004, and sections 300.130 to 300.144 of the Code of Federal Regulations (CFR), the **public school district where the nonpublic school is located** is responsible for ensuring that students enrolled in nonpublic elementary and secondary schools by their parents receive special education services. These requirements include those relating to child find, including evaluations and reevaluations, consultation with nonpublic school officials and representatives of parents of parentally placed students with disabilities, provision of equitable services to such students and due process.

The attached guidance describes the responsibilities of the school districts where a nonpublic school is located and school districts of residence of parentally placed nonpublic school students with disabilities regarding:

- child find and individual evaluations,
- committee on special education responsibilities,
- provision of special education services to NYS residents and out-of-state residents,
- consultation with nonpublic schools and parent representatives,
- due process responsibilities,
- data collection and reporting, and
- use of federal funds.

Questions regarding this memorandum may be directed to Patricia Geary or Barbara Miller at 518-473-2878.

[Attachment 1](#): Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and NYS Education Law Section 3602-c

[Attachment 2](#): Sample Form: Written Affirmation of Consultation with Nonpublic School Representatives Concerning Special Education Services

[Attachment 3](#): Sample Letter to Parents Who Place Their Children in Nonpublic Schools

Attachment 1

Interim Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and NYS Education Law Section 3602-c

Education Law section 3602-c, as amended by Chapter 352 of the Laws of 2005 and Chapter 61 of the Laws of 2006, establishes the New York State (NYS) requirements relating to the provision of special education to students with disabilities enrolled in nonpublic schools by their parents. Pursuant to current State law, students are enrolled in the public school for purposes of receiving special education and in the nonpublic school for their general education services. Students with disabilities who are residents of NYS and who are parentally placed in elementary and secondary nonpublic schools within NYS receive special education services pursuant to an individualized education program (IEP), as requested by their parents by [June 1](#) of the year preceding the school year in which they would receive services.

For the purposes of this guidance:

- **District of location** means the school district within whose boundaries a nonpublic school is located.
- **District of residence** means the school district where the student legally resides.

In October 2006, a guidance memorandum was issued that identified the requirements to provide special education services for the 2006-07 school year. The guidance provided in that memorandum is restated below.

Provision of Special Education Services for the 2006-07 School Year

School districts must implement 2006-07 IEPs consistent with the following provision.

Section 3602-c of Education Law states: *“The school district where the student resides must contract with the school district in which the nonpublic school attended by the pupil is located, for the provision of services pursuant to this section, except that in the case of services to students with disabilities in the two thousand six--two thousand seven school year, the school district of residence may contract with the school district in which the nonpublic school attended by the student is located or may provide such services directly.”*

Accordingly, for the 2006-07 school year, the school district of residence of a nonpublic school student with a disability must continue to provide services in 2006-07 in accordance with the student’s IEP, as required by section 3602-c of Education Law.

Parent Consent:

Federal regulations (34 CFR section 300.300) require the following:

- If a student with a disability is parentally placed, or is going to be parentally placed in a nonpublic school that is not located in the school district where the student legally resides, parental consent must be obtained before any personally identifiable information about the student is shared between officials in the public school district of location and officials in the public school district of residence. Therefore, parent consent is required before sharing IEPs and other education records between the district of location and the district of residence and before billing a district of residence for the cost of special education services provided to the student by the district of location.
- Parent consent must also be obtained prior to sharing of personally identifiable information with the nonpublic school.
- If a parent who has placed a student with a disability in a nonpublic school at his/her own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the

school district may not use the consent override procedures described in 34 Code of Federal Regulations (CFR) sections 300.300(a)(3) and (c)(1) and the school district is not required to consider the student as eligible for special education services under 34 CFR sections 300.132 through 300.144.

Responsibilities of the District of Location for the 2007-08 School Year

Beginning July 1, 2007, the district of location is responsible for child find, including individual evaluations, Committee on Special Education (CSE) meetings, provision of special education services and due process to parentally placed nonpublic school students attending nonpublic schools located in the geographic region of the public school district.

Consultation Requirements

The school district of location must consult with nonpublic school representatives and representatives of parents of parentally placed nonpublic school students with disabilities enrolled in nonpublic elementary and secondary schools located within the boundaries of the school district. The school district must engage in consultation regarding the child find process and services generally; consultation is not specific to individual students. Individual services are determined by the CSE. The consultation process must be timely and meaningful and include discussion of the following.

Child Find:

- The child find process and how parentally placed nonpublic school students suspected of having a disability can participate equitably, including how parents, teachers and nonpublic school officials will be informed of the process.
- How the consultation process will operate throughout the school year to ensure that parentally placed nonpublic school students with disabilities identified through the child find process can meaningfully participate in special education and related services.

Provision of Special Education Services:

- How, where and by whom special education and related services will be provided to such students, including a discussion of types of services, such as direct services and alternate service delivery mechanisms. *For example: A discussion of how services might be provided could include a discussion of scheduling for resource room services; a discussion of where services might be provided could include a discussion of those services that would generally be provided onsite and offsite of the nonpublic school or the factors that would be considered in the determination of where services would be provided; a discussion of who will provide services might include a discussion of services that will be provided by the public school district directly and others that may be provided through contract with another agency.*

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

Use of Federal Funds

- The determination of the proportionate amount of federal funds available to serve parentally placed nonpublic school students with disabilities, including the determination of how the amount was calculated.
- How such services will be apportioned if funds are insufficient to serve all parentally placed out-of-state resident students with disabilities and how and when these decisions will be made. *(Note: For all NYS students, the school district must provide services pursuant to the student's IEP, regardless of the apportionment of federal funds. For students who legally reside in another state who are parentally placed in NYS nonpublic schools, the school district would need to consult on how such students can participate equitably consistent with the federal proportionate share of IDEA funds.)*

The nonpublic school representatives must provide written affirmation of their participation in the consultation process. If the nonpublic school representative does not provide such affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the State Education Department (SED). [Attachment 2](#) provides a sample form for school districts to use to document its consultation process.

Child Find Requirements (including individual evaluations and reevaluations)

Child find is the practical method the public school district will develop and implement to identify, locate and ensure the evaluation and identification of students with disabilities who are parentally placed in nonpublic schools. The child find activities must be similar to activities undertaken for students with disabilities in public schools and must be completed in a time period comparable to that for other students attending public schools in the school district. Each public school district must consult with the nonpublic schools where students are parentally placed to determine an accurate count of students with disabilities attending such schools and receiving special education services.

The district of location must have procedures for conducting evaluations and reevaluations of students enrolled in nonpublic schools located within their district within required timeframes and at no cost to parents. The reevaluation requirements apply to all eligible parentally placed nonpublic school students with disabilities, even those not currently receiving services. It is important that required reevaluations are conducted because they provide current data needed to determine the total number of eligible students which is used in calculating the proportionate share of funds that must be used on services.

Development of IEP and Provision of Special Education Services for NYS Resident Students

The CSE of the district of location will be responsible to develop an IEP for NYS students with disabilities enrolled by their parents in nonpublic schools located in the geographic region of the public school. The IEP developed for parentally placed nonpublic school students must be developed consistent with the manner in which the IEPs of all students with disabilities are developed and the services to be provided cannot be determined based on the proportionate share of federal funds. The CSE of the district of location must ensure that a representative of the nonpublic school where the student attends is included in the meeting where the IEP is developed. If the representative cannot attend, the school district must use other methods to ensure participation by the private school, including individual or conference telephone calls. The IEP must be reviewed periodically, but not less than annually.

The school district of location is also responsible to provide special education services pursuant to the IEP developed for each eligible student. The parent must request special education services in writing to the school district by June 1 preceding the school year for which the request for services is made. Exceptions to the June 1 request for services deadline must be provided:

- when a student is first identified as a student with a disability after June 1 and before April 1 of the current school year; and
- when a student with a disability establishes residence in the school district after June 1 of the preceding school year and before April 1 of the current school year

Currently, State law requires the parent's written request for services to be made to the school district where the student legally resides [Education Law section 3602-c]. Since the district of location will be required to provide the services in the 2007-08 school year, it is recommended that the district of residence obtain parent consent to forward this request for services to the district of location.

The determination of services to be provided to an individual student is based on the recommendation of the CSE. The manner (how, where and by whom) such special education and related services will be provided to such students is determined by the district of location based on the consultation process and in consideration of the individual needs of the student.

Data Collection and Reporting

In the 2006-07 school year, school districts reported data on the PD-1/4 report regarding the numbers of resident and nonresident parentally placed students with disabilities attending nonpublic schools located in the school district and the numbers of resident students who are parentally placed in nonpublic schools located in other school districts. These data will be used to calculate a proportionate per pupil amount of IDEA funds for

services to students with disabilities attending nonpublic schools for the 2007-08 school year.

In the 2007-08 school year, it is anticipated that special education data previously collected on the PD-1/4 report will be collected through SED's Student Information Repository System (SIRS). This system will collect data at the individual student level. Directions will be provided to school districts to report enrollment of all parentally placed students with disabilities in nonpublic schools located in the school district. For each student, specific information will be requested to allow SED to complete its State and federal reporting requirements, including information needed to calculate a proportionate share of federal funds for each eligible student.

Determination and Expenditure of the Proportionate Share of Federal Dollars

In the 2006-07 school year, the data that school districts reported on the PD-1/4 report (see above) will be used to calculate a proportionate per pupil amount of IDEA funds for services to students with disabilities attending nonpublic schools for the 2007-08 school year. Also, in computing the 2007-08 IDEA federal flow through allocation for every school district, SED will use the total K-12 enrollment of all students attending public and nonpublic schools located in the school district as reported on the Basic Education Data System (BEDS) forms as the "population factor" in the allocation formula. In previous years, SED used the K-12 enrollment of public and nonpublic students residing in the school district as the "population factor".

SED will post on its website the actual minimum proportionate share of federal funds for the 2007-08 school year and school districts will be provided instructions in the 2007-08 federal aid application regarding this calculation and directions for budgeting these funds. This minimum amount must be spent on services for parentally placed nonpublic elementary and secondary school students with disabilities during the 2007-08 school year. If, by the end of the fiscal year, a school district does not expend the entire proportionate share of its Part B funds on students with disabilities placed by their parents in nonpublic schools, the school district must obligate the remaining funds for special education for such students during the carry-over period.

For planning purposes only, a school district may calculate an estimate of the proportionate share of federal funds by dividing its total anticipated IDEA Part B allocation under IDEA sections 611 and 619 by the total number of students with disabilities receiving special education services who are enrolled in public schools (including Charter Schools), Board of Cooperative Educational Services (BOCES), approved private schools (in-State and out-of-State), State-supported schools and the total number of parentally placed students with disabilities attending nonpublic schools located within the district. After determining the per pupil amount, multiply that amount by the number of students with disabilities attending nonpublic schools located within the district. As noted above, however, the actual minimum proportionate share of federal funds that will be posted on SED's website for the 2007-08 school year is the amount that

must be spent on services for parentally placed nonpublic elementary and secondary school students with disabilities during the 2007-08 school year.

Process for the School District of Location to Recover its Costs from the School District of Residence for NYS Resident Students

For the 2006-07 school year, the cost incurred by the district of location to provide special education services to students with disabilities who are parentally placed in a nonpublic school located within the boundaries of another public school district through a contract with the district of residence is based on the actual costs of providing special education services to the individual student. The calculation of these costs cannot be based on a formula using either the Estimated or Actual Nonresident Tuition Reports. *(Note: The Nonresident Tuition Report rates are not applicable since they include costs related to providing general education services to students and are average cost calculations for students receiving services from the public school district for the entire day.)*

Note: The process for recovering costs for nonresident students is expected to change for the 2007-08 and subsequent school years. Guidance provided above regarding reimbursement may, therefore, be revised based on changes to State law anticipated in the spring of 2007.

Guidance Regarding Out-Of-State Students Parentally Placed in Nonpublic Schools that are Located In NYS

Services Plans for Out-of-State Children

Child Find: Each school district in which nonpublic elementary schools and secondary schools are located must, in carrying out the child find requirements, include parentally placed nonpublic school children who reside in a state other than the state in which the nonpublic schools that they attend are located (34 CFR section 300.131(f)).

The school district of location must evaluate an out-of-state parentally placed student suspected of having a disability. Pursuant to federal requirements, the cost of the evaluation cannot be billed to the district of residence or the state where the student legally resides, nor can the federal Part B proportionate share of dollars be used for child find, including evaluations.

Services Plan: The school district of location must provide, as appropriate, special education services to an eligible student who legally resides in another state and who is parentally placed in a nonpublic school located in NYS. The services to be provided to out-of-state students must be documented on a services plan that is developed by the CSE of the district of location. The services plan is the written plan that describes the specific special education and related services that the district of location will provide to the student, consistent with the services that the school district of location has determined

through the consultation process and **in relation to the proportionate shares of federal IDEA Part B dollars**, to be provided to the student.

The services plan must, to the extent appropriate, be developed, reviewed and revised by the CSE of school district of location consistent with the requirements for development of an IEP. The parent(s) of the student must be invited to the meeting and the district of location must also ensure that a representative of the nonpublic school where the student attends be included in the meeting where the services plan is developed. If the nonpublic school representative cannot attend, the school district must use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls. The services plan must be reviewed periodically, but not less than annually.

For students who legally reside in another state and are enrolled in NYS nonpublic schools, there is no individual right to services. This means that such students are not entitled to receive all of the special education services he or she would be entitled to receive if enrolled in the public school. However, these students are entitled to equitable services based on the proportionate share of federal IDEA Part B funds.

Since the provision of services to out-of-state students is limited to services based on a proportionate share of federal IDEA funds, the cost of providing services to students may not be a charge to the students' districts of residence or to the states where the students reside.

1 State law provides an exception to the June 1 date for the parent to request special education services for students first identified as eligible for special education and/or who move into the school district after June 1 of the preceding year and before April 1 of the current school year.

Questions and Answers

In General

- 1. Do the requirements of IDEA section 612(a)(10) and section 3602-c of Education Law pertain to parental placements of preschool children with disabilities in private day care or preschool programs or to CSE placements of students with disabilities in approved private schools?**

No. These requirements only pertain to students with disabilities parentally placed in elementary and secondary nonpublic schools.

Consultation

- 2. What steps should a public school district take to arrange for consultation with officials of nonpublic schools located within its geographic boundaries**

and with representatives of parents of parentally placed students with disabilities?

To arrange for consultation, a public school district should send a letter to representatives of each nonpublic school located in its geographic boundaries inviting them to participate in a meeting or meetings to discuss the required consultation topics. In addition to nonpublic school officials, the school district must invite parent representatives of parentally placed students with disabilities. There is no requirement as to the number of parents required to participate. However, the school district should take steps to ensure that parents are fairly represented in this process.

A list of nonpublic schools is provided by geographic region at <http://www.nysed.gov/admin/admindex.html>. (Nonpublic schools are designated under “record type” on this list and also include approved private schools where school districts place students.) The Directory of Public and Nonpublic Schools and Administrators is available at <http://www.nysed.gov/admin/bedsdata.html>.

Each of the nonpublic school officials should be asked to sign an affirmation that they participated in the consultation process. In the event a nonpublic school official declines participation or to sign the affirmation, the public school district must submit documentation to SED of the consultation process. See Attachment 2.

3. Must the public school district also consult with officials of approved private schools where students are placed by school districts?

No. The provisions of section 3602-c of Education Law do not apply to CSE placements of students in approved private schools unless such schools also accept parental placements.

4. What does it mean to consult on the child find process?

The school district must consult with nonpublic school officials to ensure there is an accurate count of students and to ensure that nonpublic school officials and parents understand the school district’s process for referral of students suspected of having a disability who are attending nonpublic schools. The child find process for parentally placed students with disabilities must be comparable and conducted within a similar time period as the child find process used for public school students with disabilities. Activities may include dissemination of information and public service announcements regarding referral procedures and developing contacts with nonpublic schools.

5. What is meant by consultation that is “timely and meaningful?”

To provide timely and meaningful consultation, public school officials must provide an opportunity for the nonpublic school and parent representatives to discuss the issues and school officials must consider the views of nonpublic school officials and parents before the school district makes its decisions regarding services to parentally placed students.

6. Can nonpublic school officials file a complaint with SED or the United States Education Department (USED) on the consultation process?

Yes. A nonpublic school official has the right to submit a complaint to SED that the public school district did not engage in consultation that was meaningful and timely, or did not consider the views of the nonpublic school officials. The complaint submitted by the nonpublic school official must include the basis of the noncompliance. If the nonpublic school official is dissatisfied with the SED complaint findings, he or she may submit a complaint to USED.

Child Find

7. Which school district has the responsibility to conduct the evaluation to determine if a parentally placed nonpublic school student is eligible for special education?

Beginning with the 2007-08 school year, the district of location is responsible to conduct the evaluation to determine a student's eligibility for special education. The district of location is also the district that must obtain the informed written consent of the parent to conduct the initial evaluation or reevaluation.

8. Which school district would convene a meeting of the CSE to determine the student's eligibility and develop the IEP?

Beginning with the 2007-08 school year, if a student is parentally placed in a nonpublic school and is suspected of having a disability, the public school district in which the nonpublic school is located is responsible to conduct the CSE meeting to determine a student's eligibility for special education and, if determined eligible for special education, to recommend the special education services the student will receive.

Provision of Services

9. What are the responsibilities of the school district of residence to ensure that special education services are provided to students with disabilities who are parentally placed in nonpublic schools located within the geographic boundaries of another school district?

If a determination is made that a student has a disability and needs special education and related services, the school district where the student legally resides is responsible for making a free appropriate public education (FAPE) available to the student. However, if the student's parents have made known their intentions to enroll the student in a nonpublic school located in another district, the district of residence is not responsible to develop an IEP for the student unless requested by the parent.

Beginning in the 2007-08 school year, the district in which the nonpublic school is located is responsible to provide the special education services to students who are

parentally placed in nonpublic schools located within their district. In cases where an IEP has been developed at an annual review meeting conducted this spring by the district of residence, the district of location must implement the IEP developed by the district of residence (if the parent has provided consent for the sharing of the IEP with the district of location) or conduct a CSE meeting to develop a new IEP. However whenever personally identifiable information (including the IEP) is requested by the district of location or the district of residence or the nonpublic school where the student is enrolled, the public school district must ensure that parental consent is obtained before sharing any information.

10. What are the responsibilities of a school district to provide special education services to a student who is parentally placed in a nonpublic school located within its geographic boundaries?

The school district where the nonpublic school is located must:

- determine in consultation with nonpublic school officials and parents of parentally placed students with disabilities how, where and by whom special education services will be provided;
- for students suspected of having a disability, conduct the evaluation to determine a student's eligibility for special education services;
- if the student is determined eligible for special education services, develop an IEP (or services plan for an out-of-state student);
- provide the recommended special education services to students if requested by the parent; and
- conduct annual reviews.

11. Must a school district strictly enforce the June 1 written request for services due date?

No. However, the parent's written request for services is important information for district budgeting and planning purposes and to ensure availability of services to nonpublic school students. If a district does not strictly enforce the June 1 request for services policy, it must ensure its policy is consistently and fairly applied to all nonpublic students. There must be exceptions to the June 1 request date for students who first move into a school district and/or who are first identified as having a disability after June 1. Exceptions to the June 1 request for services deadline must be provided:

- when a student is first identified as a student with a disability after June 1 of the preceding school year and before April 1 of the current school year; and
- when a student with a disability establishes residence in the school district after June 1 of the preceding school year and before April 1 of the current school year.

Currently, State law requires the parent's written request for services to be made to the school district where the student legally resides [Education Law section 3602-c]. Since the district of location will be required to provide the services in the 2007-08 school year,

the district of residence should seek parent consent to forward this request for services to the district of location.

12. Can the student's school district of residence opt to continue to provide special education services directly or by contract with a BOCES or another agency?

No. The district of residence does not arrange for services and therefore cannot opt to continue to provide services to students parentally placed in a nonpublic school located outside of the geographic boundaries of the public school. However, nothing in IDEA would preclude the district of location from contracting with the district of residence as a third party provider to fulfill its obligations to provide special education services.

13. Can the school district of location contract with a BOCES to provide special education services to students with disabilities parentally placed in nonpublic schools in the geographic boundaries of their school district?

Yes. Section 3602-c.3 authorizes boards of education to contract with BOCES to provide the services required by section 3602-c.

14. Which school district is responsible for the provision of special education services to parentally placed nonpublic school students when the school district where the nonpublic school is located provides for the education of their students by contract with another school district (e.g., K-8, K-3, K-1 school district)? [Sections 2040-2045 of Education Law]

The school district of location is responsible to provide the special education services. However, consistent with the manner in which services are provided to other students in their school district, the school district of location could negotiate in its contract with the receiving school district that such district would also provide special education services to parentally placed students with disabilities.

15. What requirements apply when a NYS student with a disability is parentally placed in an out-of-state nonpublic school?

Section 3602-c only applies to NYS students with disabilities parentally placed in a nonpublic school located in NYS. If a NYS student with a disability is placed in an out-of-state nonpublic school, the federal requirements apply (i.e., the out-of-state district of location becomes programmatically responsible to provide special education pursuant to IDEA 2004 requirements <http://www.ed.gov/policy/speced/guid/idea/faq-parent-placed.doc>).

16. What requirements apply when a student with a disability who is a resident of another state is parentally placed in a nonpublic school located within NYS?

When a student with a disability is a resident of another state but is parentally placed in a nonpublic school in NYS, the public school district where the nonpublic school is located must implement the federal IDEA requirements (i.e., child find, including evaluations and equitable participation consistent with the determination of the expenditure of the proportionate share of federal funds). A public school district should consider out-of-state students in its consultation process with nonpublic schools and in determining how it will expend its proportionate share of federal IDEA funds.

Expenditure of Federal Funds

17. Can the proportionate share of federal funds be spent on child find activities, including the cost of the evaluation?

No. Section 612(a)(10)(A)(ii) of IDEA (child find requirements) states that the cost of carrying out child find requirements may not be considered in determining whether a school district has met its obligations to expend a proportionate amount of federal funds.

18. Can the federal IDEA funds be given to the nonpublic school to provide the special education services?

No. The control of funds used to provide special education services and title to materials, equipment and property purchased with those funds must be in the public school district and the public school district must administer the funds and property. 34 CFR section 300.142 adds that “An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide 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.”

19. What can the proportionate share of federal IDEA funds be spent on?

The proportionate share of federal dollars must be spent on the provision of special education services. Transportation of students with disabilities necessary for students to receive special education services can be considered. State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended pursuant to IDEA 2004.

Due Process

20. If a parent of a parentally placed nonpublic school student with a disability submits a Due Process Complaint Notice (i.e., request for an impartial hearing), with which school district must the request be filed?

For students with disabilities who are residents of another state and who are parentally placed in a nonpublic school located in NYS, there is no individual right to special education services. Therefore, except for due process complaints relating to child find and individual evaluations, there is no right of the student or parent for due process for

such students. Requests for due process relating to child find would be submitted to the school district of location and a copy must be forwarded to SED. A parent of an out-of-state student may also submit a State complaint, including a complaint alleging that a school district has failed to meet the nonpublic school provisions, such as failure to properly conduct the consultation process.

For NYS resident students with disabilities who are parentally placed in nonpublic schools located in NYS, the parent should submit his/her due process complaint notice to the school district of location, which is the school district responsible for evaluation, IEP recommendations and services beginning with the 2007-08 school year. SED will issue further guidance on this issue if there are amendments to State law regarding this matter.

Transportation

- 21. If special education services are to be provided to a student at a site other than the nonpublic school, which school district is responsible to arrange and pay for transportation necessary for the student to receive the special education services?**

The district of location is responsible to provide the special education services, including, as applicable, arranging and providing transportation necessary for the student to receive special education services. As noted above, the proportionate share of IDEA Part B dollars could be used for such purpose.

- 22. Which school district is responsible to provide transportation to the student from the student's home to the nonpublic school?**

The school district of residence remains responsible to provide transportation to parentally placed nonpublic school students. For more information:
<http://www.emsc.nysed.gov/nonpub/HANDBOOKonServicestoPupilsAttendingNonpublicSchools/Handbookpage.htm>

Attachment 2

SAMPLE FORM¹

IDEA Section 611(a)(10) WRITTEN AFFIRMATION OF CONSULTATION WITH NONPUBLIC SCHOOL REPRESENTATIVES CONCERNING SPECIAL EDUCATION SERVICES

1. School districts where nonpublic elementary and secondary schools are located must **maintain documentation** of timely and meaningful consultations with participating nonpublic schools signed by the representatives of such schools. NYS has provided a sample form (attached) that districts may use in order to secure the signed affirmation by nonpublic school representatives of participation

- in the required consultation. In the event that a school district chooses not to use the SED sample form, the district must maintain some form of documentation that establishes
- the date(s) on which the timely and meaningful consultation occurred;
 - documentation of subject areas covered during the consultation process; and
 - a signed and dated statement from each nonpublic school representative affirming that he/she participated in the consultation process.
2. In the event the district is unable to secure a written affirmation from one or more of the nonpublic school representatives either due to a refusal or failure to attend the consultation, or failure to submit the signed confirmation, **the district must provide documentation to the State** showing that the school in question was invited to the consultation. If a nonpublic school does not agree to consult with the district, then the district must maintain documentation of its attempts to secure the school's participation at the consultation. Such documentation should include:
- a copy of agenda used at the consultation;
 - a copy of the notice form or letter utilized by the district to notify the nonpublic schools of the consultation;
 - copies of signed affirmations by nonpublic school participants at the consultation; and
 - if necessary, copies of all invitations provided to nonpublic school representatives who either refuse to sign the affirmation or fail to attend the consultation.

Such documentation should be sent to:
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities (VESID)
Special Education Quality Assurance (SEQA)
Room 1624, One Commerce Plaza
Albany, NY 12234
ATTN: SEQA

Sample Form

This is not an official New York State Education Department or Department of Education document.

**Written Affirmation of Consultation
with Nonpublic School Representatives concerning Special Education Services**

I hereby affirm that I was invited to and participated in the nonpublic/parochial school providers' consultation meeting sponsored by (SCHOOL DISTRICT) and held on (DATE) in accordance with the requirements of the Individuals with Disabilities

Education Act (IDEA). I understand that during the course of the consultation, the following issues were required to be discussed:

- the child find process and how parentally placed nonpublic school students suspected of having a disability can participate equitably, including how parents, teachers and nonpublic school officials will be informed of the process;
- the determination of the proportionate amount of federal funds available to serve parentally placed nonpublic school students with disabilities under this paragraph, including the determination of how the amount was calculated;
- the consultation process among the school district, nonpublic school officials, and representatives of parents of parentally placed nonpublic school students with disabilities, including how such process will operate throughout the school year to ensure that parentally placed nonpublic school students with disabilities identified through the child find process can meaningfully participate in special education and related services;
- how, where, and by whom special education and related services will be provided for parentally placed nonpublic school students with disabilities, including a discussion of types of services and how and when these decisions will be made, including direct services and alternate service delivery mechanisms;
- how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made. (Note: for all NYS students, the school district must provide services pursuant to the student's IEP, regardless of the apportionment of federal funds. For out-of-state students parentally placed in NYS schools, the school district would need to consult on how such students can participate equitably consistent with the federal proportionate share of IDEA funds.); and
- how, if the school district disagrees with the views of the nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the school district shall provide to the nonpublic school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

I was provided the opportunity to express my views and to ask questions of the school district pertaining to the aforementioned issues. I understand that if I believe that the consultation was not meaningful, or that my views and those of others were not given due consideration by the school district, I could file a State complaint with the New York State Education Department that identifies the area(s) in which I believe the school district did not comply with the consultation process.

NONPUBLIC SCHOOL REPRESENTED: _____

PRINTED NAME: _____

SIGNATURE: _____

DATE: _____

Attachment 3

**Sample Letter to Parents who Place their Children in Nonpublic Schools
(written as if coming from the school district of residence)**

Dear Parents:

I am writing to inform you of new federal and State requirements regarding special education services for parentally placed nonpublic school children. These changes may affect how your child receives special education services. The most important change is that the school district where the nonpublic school is located will now be responsible for individual evaluations and development of individualized education programs (IEPs) for students with disabilities, including conducting the Committee on Special Education (CSE) meetings, and for providing special education services to students with disabilities who are parentally placed in nonpublic schools. The following information is important for you to know:

- Beginning with the 2007-08 school year, if you have placed your child in a nonpublic school and, while the child is enrolled in that school, you suspect that the student has a disability, you must contact the school district where the nonpublic school is located to request an evaluation to determine your child's eligibility for special education services.
- We must have your written consent in order for us to provide information (such as your child's IEP) to the school district where the nonpublic school is located.
- If you place your child in a nonpublic school and wish your child to receive special education services while enrolled in that school, you must request those services in writing no later than June 1 before the school year in which services are to be provided. This year you should request services from us and with your written consent, we will forward that request to the school district responsible to provide the special education services to your child. (We will not require you to have requested services by June 1 if your child is first identified as needing special education services or if you moved into the district between June 1 of this year and April 1 of next year.)
- If the nonpublic school where you place your child is located within the geographic boundaries of our public school district, we will continue to provide IEP services to your child, if you request such services by June 1.
- If the nonpublic school where you place your child is located within the geographic boundaries of another public school district, the public school district in which the nonpublic school is located will arrange for and provide the recommended services for your child. The personnel and locations for the

delivery of those services will be determined by that school district. Federal and State law require this.

- If the nonpublic school where you place your child is located in another state, your child may not be entitled to all of his/her IEP services.
- Transportation requests from your child's home to the nonpublic school should continue to be submitted to the school district where your child legally resides by April 1 of the school year before transportation is to be provided.

If you have any questions regarding these new requirements, please contact _____ at _____.

1 This is not an official State Education Department document. It is provided only as an example.