

## **Special Education - Private Schools**

### **Approved Private Schools**

1. Obligations of the ESD:
  - a. The ESD ensures that parents are included in any decision about their child's evaluation, eligibility, placement or provision of services.
  - b. If the ESD refers a student with a disability to, or places such a student in, a private school or facility as a means of providing special education and related services, the ESD ensures that the student receives an education that meets the standards of the state in a private preschool, school or facility approved by the Oregon Department of Education to provide such education in conformance with an IEP, and at no cost to the parents, and has all the rights of a student with a disability who is served by the ESD.
  - c. Before placing a student with a disability in an approved private school or preschool, the ESD ensures that the program has current Oregon Department of Education approval to provide special education and related services.
  - d. The ESD or public agency fulfills all federal and state requirements relating to the evaluation, the IEP/IFSP development and placement when determining whether to place the child in an approved private preschool or school for special education services.
  - e. For each student age three through 21, the ESD's or public agency's placement team, including the parent, determines whether placement in an approved private school constitutes a free appropriate public education in the least restrictive environment.
    - (1) When proposing to place a child with a disability in an approved private school or preschool, the ESD ensures that school-age students are district residents or preschool-age children are eligible to receive EI/ECSE or special education services.
    - (2) The ESD initiates and conducts an individualized education program team meeting that includes a representative of the approved private school. If a representative of the approved private school, or other member of the IEP/IFSP team is unable to attend the IEP/IFSP meeting, the ESD and the parent may agree to use alternative means of meeting participation such as individual or conference telephone calls, or video conferences.
    - (3) After the ESD initially places a student in an approved private school, any subsequent meetings to review or revise an IEP/IFSP or placement are the responsibility of the ESD or public agency, unless the ESD or public agency requests by written agreement that the approved private school initiate and conduct meetings to review and revise the IEP or IFSP.

- (4) The ESD may, by written agreement, request that the approved private school initiate and conduct meetings to review and revise the IEP or IFSP. Under such an agreement the ESD remains responsible for ensuring the private school or preschool meets:
  - (a) All federal and state requirements related to these meetings; and
  - (b) Ensures the participation of parents and the ESD or public agency representative.
- (5) The private school or preschool may not determine or implement program changes without the participation and agreement of the parents and the ESD or public agency representative.
- (6) The ESD in which the child resides provides transportation to and from the approved private school or preschool at no cost to the parent.
- (7) The ESD or public agency terminates the placement of students in a private school or preschool if the Oregon Department of Education suspends, revokes or refuses to renew the approval of a private school or preschool.
  - (a) The ESD ensures that every student with a disability who is placed in or referred to a private school or facility by the ESD as a means of providing special education and related services.
    - (i) Receives education and services that constitute a free appropriate public education in the least restrictive environment at no cost to the parents;
    - (ii) Is provided an education that meets the standards that apply to education provided by the public agency; and
    - (iii) Has all of the rights of a student with a disability who is served by the public agency.
  - (b) The ESD ensures that all applicable federal and state requirements relating to the evaluation, eligibility, IEP development, placement and procedural safeguards are followed when determining whether the student will be placed in an approved private school for special education services.
  - (c) The ESD initiates and conducts an IEP meeting at which an IEP is developed based upon the needs of the student before determining placement of a student with a disability in an approved private school.

## 2. Out-of-State Placements for Special Education

- a. The ESD ensures that any private educational institution located outside the state of Oregon with which it contracts to provide special education and related services to Oregon students is approved by the state educational agency of the state in which the educational institution is located. If the state does not have a formal approval process, the educational institution shall meet whatever requirements apply for private schools to serve publicly placed students in that state.
- b. The ESD maintains documentation of such approval and makes it available to the Oregon Department of Education (ODE) upon request.

- c. The ESD makes contractual agreements for out-of-state placements for the provision of special education and related services when, in accordance with applicable federal and state law, the ESD has:
    - (1) Developed an individualized education program;
    - (2) The placement team has determined that no appropriate in-state placement options are available.
3. ESD Responsibility for Students Enrolled by their Parents in Private Schools
- a. The ESD provides equitable services, funded by a proportionate share of federal special education funds, for resident and nonresident students with disabilities enrolled by their parents in private schools located within district boundaries. Nonresident students include children who are residents of another state.
  - b. The ESD consults with private school officials about procedures and services and provides child find activities, evaluations, reevaluations and eligibility determinations comparable to those provided for the ESD's public schools.
  - c. The ESD maintains in its records and provides annually to the Oregon Department of Education, a count of the number of parentally-enrolled private school students evaluated, the number found eligible and the number to whom it provides services.
4. Consultation with Representatives of Private School Students with Disabilities
- a. The ESD consults, in a timely and meaningful way with representatives of private schools and parents of parentally placed private school students with disabilities enrolled in private schools located within the ESD's boundaries.
  - b. Consultation includes:
    - (1) The child find process, including:
      - (a) How parentally-placed private school children with disabilities may participate equitably, as they do not have an individual entitlement to the same level of special education services as children enrolled in public schools; and in the child find process and how parents, teachers and private school officials will be informed of the process;
      - (b) How parents, teachers and private school officials will be informed of the process.
      - (c) How, where and by whom the special education and related services will be provided.
      - (d) The determination of the proportionate amount of federal funds available including how the amount is calculated, the proportionate share of federal funds available to serve parentally placed private school children with disabilities and how this is calculated.
      - (e) How services will be apportioned if funds are insufficient, and how and when these decisions will be made.

- (f) A written explanation of service decisions that the ESD provides to officials of private schools if the ESD disagrees with the views of the private school officials about the services to be provided or the methods of providing these services.
- c. Written affirmation and complaint:
- (1) The ESD requests a written affirmation, signed by the administrator of each private school participating in the consultation process that a timely and meaningful consultation occurred;
  - (2) If private school officials do not provide this affirmation within a reasonable period of time, the ESD forwards its documentation of the consultation process to the Oregon Department of Education (ODE);
  - (3) The ESD maintains documentation of its consultation process.
  - (4) The ESD acknowledges the right of a private school official to submit a complaint to the Oregon Department of Education (ODE) regarding the ESD's implementation of these requirements. Should such a complaint occur, the ESD forwards to ODE appropriate documentation, including documentation of the ESD's consultation process.
- d. The ESD makes the final decisions with respect to the services to be provided to eligible private school students.
- e. Child Find for Parentally-Placed Private School Children:
- (1) The ESD's child find process includes all resident and nonresident parentally placed students attending private schools located within the ESD's boundaries.
  - (2) The ESD provides child find activities that are similar to, and completed within a comparable time period as child find activities for students in the ESD's public schools.
  - (3) The ESD consults with private school representatives and parents about how to implement the child find activities and how to keep parents and private school personnel informed.
  - (4) The ESD ensures the equitable participation of parentally placed private school students in the child find process.
  - (5) The ESD does not include the cost of conducting child find activities for private school students, including individual evaluations in determining whether it has spent a proportionate share of its federal IDEA funds on parentally placed private school students with disabilities.
  - (6) The ESD ensures an accurate count of these children is made between October 1 and December 1 of each year and uses this count in determining the amount the ESD spends for services in the subsequent fiscal year.

5. Provisions for serving students placed by their parents in private schools:
  - a. ESD decisions about the services that are provided to private school students with disabilities are made throughout the consultation process and in accordance with the ESD's plan for service of parentally-placed private school students and their services plans.
  - b. The services provided to private school students with disabilities are provided by personnel meeting the same standards as personnel providing service in the ESD program.
  - c. The ESD may provide private school students with disabilities a different amount of services than students with disabilities attending public schools in the ESD.
  - d. The ESD may provide services to private school students with disabilities onsite at the student's private school, including a religious school, to the extent that services can be provided in a religiously neutral setting within the private school. These services will be provided during the student's regular school day, unless stated otherwise in the student's service plan.
  - e. If a parent of a private school student with a disability requests an meeting from the resident district, the resident district will either:
    - (1) Hold an IEP meeting within a reasonable time; or
    - (2) Provide the parent with prior written notice of the ESD's refusal to hold an IEP meeting.
6. Evaluation, Reevaluation and Eligibility of Private School Students with Disabilities
  - a. The ESD conducts evaluations, reevaluations and eligibility determinations, in accordance with federal and state laws and regulations, for both resident and nonresident students enrolled by their parents in private schools located within ESD boundaries.
  - b. Eligibility for special education and related services will be determined by the ESD in the same manner as for public school students with disabilities.
  - c. The ESD in which the private school is located reevaluates private school students with disabilities at least every three years to determine whether the student continues to be eligible for special education, whether the student is or is not currently receiving services under a services plan.
  - d. If parents who enroll a student in a private school at their own expense do not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the ESD does not use due process procedures to override the lack of consent. The ESD does not, and is not required to, consider the child as eligible for special education services in these cases.
  - e. If a parent refuses a reevaluation that is necessary to determine whether the student continues to be a student with a disability, and as a result the team cannot determine the student's continuing eligibility, the student will no longer be considered "eligible" and shall not be counted as a private school student with a disability for the purposes of the private school student count.

- f. Following an initial determination of eligibility, and upon any subsequent determination of eligibility, the ESD will notify the parent in writing that the resident district will make a free appropriate public education available to the student if the student is enrolled in an ESD program, and conducts a meeting to develop, review or revise the student's services plan.
- g. If the parent does not choose to remove the child from private school to enroll in an ESD public school, the ESD initiates and conducts a meeting to develop, review or revise the student's services plan, consistent with the procedures for IEP meetings and timeline and in light of the service provision the ESD has determined through the consultation process.
- h. The ESD in which the private school is located does not release evaluation and eligibility determination information or other personally identifiable information to the student's resident district without written parental consent, unless parents seek enrollment in the student's resident district and the resident district requests records.

## 7. Services Plan

- a. If a student with a disability is enrolled by a parent in a private school the ESD offers a services plan.
- b. The ESD ensures that the services plan describes the specific special education and related services the ESD will provide to the student in light of the services that have been determined through the consultation process.
- c. The ESD convenes individual meetings to develop, review and revise the services plan consistent with procedures for IEP team membership, parent participation and IEP content, to the extent appropriate.
- d. The ESD ensures that a representative of the private school attends each meeting. If the representative cannot attend, the ESD will use other methods to ensure participation by the private school, including individual or conference telephone calls.
- e. The ESD is not required to provide transportation from the student's home to the private school. If necessary for the student to benefit from or participate in the services provided by the ESD the ESD must provide transportation:
  - (1) From the student's school or the student's home to a site other than the private school; and
  - (2) From the service site to the private school, or to the student's home, depending on the timing of the services.

## 8. Property, Equipment and Supplies

- a. The ESD keeps title to and exercises continuing administrative control of all property, equipment and supplies that the ESD acquires with IDEA funds for the benefit of private school students with disabilities.
- b. The ESD may place equipment and supplies in a private school for a period of time needed to implement the service plan of a private school student with disabilities or for child find purposes.

- c. The ESD ensures that the equipment and supplies placed in a private school:
  - (1) Are used only for implementation of special education activities; and
  - (2) Can be removed from the private school without remodeling the private school facility.
- d. The ESD removes equipment and supplies from a private school if:
  - (1) The equipment and supplies are no longer needed for special education activities, programs or services; or
  - (2) The ESD determines removal is necessary to avoid unauthorized use of the equipment and supplies.
- e. The ESD does not use IDEA funds for repairs, minor remodeling or construction of private school facilities.

9. Separate Classes Prohibited

The ESD does not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

- a. The classes are at the same site; and
- b. The classes include students enrolled in public school programs and students enrolled in private schools.

10. Funds and Property Not to Benefit Private Schools

- a. The ESD will not use IDEA funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- b. The ESD will use IDEA funds to meet the special education needs of students enrolled in private schools, but not for:
  - (1) The needs of a private school; or
  - (2) The general needs of the students enrolled in the private school.

11. Use of School Personnel

- a. The ESD may use IDEA funds to make public school personnel available in other than public facilities:
  - (1) To the extent necessary to implement any of the requirements related to private school students with disabilities; and
  - (2) If those services are not normally provided by the private school.

- b. The ESD may use IDEA funds to pay for the services of an employee of a private school to provide services to private school students if:
  - (1) The employee performs the services outside of his/her regular hours of duty; and
  - (2) The employee performs the services under public supervision and control.

12. Federal Funds Available for Services

- a. The ESD calculates a proportionate share of federal funds available to provide special education and related services to private school students with disabilities using the formula specified in the Individuals with Disabilities Act (IDEA).
- b. If the ESD does not expend the proportionate share of funds by the end of the fiscal year, the ESD obligates the remaining funds to be used in the following year.
- c. The ESD does not include child find expenditures in determining whether the ESD has met its expenditure requirements for parentally placed private school students, but may include the cost of transportation required for students to access required special education services.
- d. The ESD does not supplant the proportionate amount of federal funds required to be expended for parentally placed private school students.