

Frequently Asked Questions

Serving Students with Disabilities Participating in School Choice Programs

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The Tennessee Department of Education (department) has prepared this Frequently Asked Questions document to address common questions asked by educators and families about serving students with disabilities who are participating in the Individualized Education Account (IEA) Program, the Education Savings Account (ESA) Program, or the Education Freedom Scholarship (EFS) Program (collectively “school choice programs”). This guidance is intended to replace all previous guidance on serving students with disabilities participating in school choice programs.

The department encourages educators and families seeking more information to review the document prepared by the United States Department of Education entitled “[Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools](#)” (USDOE Q&A). Please note that the department requires local education agencies (LEAs) to include parentally placed home school students with disabilities in grades K-12 in their proportionate share calculation and to make parentally placed home school students with disabilities eligible for equitable services under the Individuals with Disabilities Education Act (IDEA). (See USDOE Q&A, Question I-1.)

Eligibility for Special Education and Related Services

1. Is a student participating in a school choice program eligible for special education and related services under the IDEA?

Yes. A student with a disability must not be determined ineligible for special education and related services under the IDEA simply due to the student’s participation in a school choice program. Like all other students with disabilities, a student participating in a school choice program remains eligible for special education and related services until the student’s IEP team determines the student no longer meets the special education eligibility standards, until the student graduates with a traditional high school diploma, or until the end of the school year in which the student turns 22-years-old, whichever occurs first. See 34 C.F.R. §§ 300.101, -.102(a)(3)(i); State Board of Education Rule 0520-01-09-.05(2). See USDOE Q&A, Question K-3.

2. If a student participating in a school choice program was previously found non-eligible for special education and related services under the IDEA simply due to the student’s participation in a school choice program, what should happen now?

If a student participating in a school choice program was previously found non-eligible for special education and related services under the IDEA simply due to the student’s participation in a choice program, the LEA should contact the student’s family as soon as possible to offer to conduct an evaluation.

3. *Is a student participating in a school choice program entitled to receive a free appropriate public education (FAPE)?*

No. A student participating in a school choice program is considered a parentally placed non-public school student. Like all other parentally placed non-public school students with disabilities, a student participating in a school choice program is not entitled to receive FAPE through an IEP. See 34 C.F.R. §§ 300.101, -.137(a). If a family of a student with a disability wants to receive FAPE through an IEP, the family can withdraw the student from the school choice program and enroll the student in a local education agency (LEA) at any point.

4. *Is a student participating in a school choice program eligible to receive equitable services?*

Yes. A student participating in a school choice program is considered a parentally placed non-public school student. Like all other parentally placed non-public school students with disabilities, a student participating in a school choice program is eligible to receive equitable services through an individualized service plan (ISP). See 34 C.F.R. § 300.137; USDOE Q&A, Questions K-1 and K-2.

5. *Is a student enrolled in a religious school eligible to receive equitable services?*

Yes. A parentally placed student with a disability enrolled in a religious school is eligible to receive equitable services. See 34 C.F.R. § 300.137; USDOE Q&A, Question A-1.

6. *Is a student participating in a school choice program required to have an ISP?*

No. Each family of a parentally placed non-public school student with a disability has the right to choose whether to receive equitable services through an ISP.

7. *Are LEAs required to issue a prior written notice if the family of a parentally placed non-public school student with a disability declines an ISP?*

No. LEAs are not required to issue prior written notices to a student's family after proposing or refusing to provide equitable services. See 34 C.F.R. § 300.503(a) (applying only to the provision of a free appropriate public education). Nonetheless, best practice is to maintain some documentation of the decision made by the student's family in case the student's family challenges the decision to not make equitable services available. Such documentation could be maintained in the form of a prior written notice.

8. *What is the difference between an IEP and an ISP?*

IEPs must be developed to meet each student's individual needs and must provide all the special education and related services necessary to provide FAPE to the student. ISPs are developed based on the equitable services made available through the LEA and are not required to provide all the special education and related services necessary to provide FAPE to the student. See 34 C.F.R. § 300.137. In general, IEPs for public school students with disabilities will be more comprehensive and provide more special education and related services than ISPs for parentally placed non-public school students with disabilities. See USDOE Q&A, Question E-1. Families of students participating in school choice programs can utilize program funding to obtain instruction and supports best suited to their student's needs.

Reevaluations

9. *Are LEAs required to conduct reevaluations for students participating in school choice programs?*

Yes. Because students participating in school choice programs remain eligible for special education and related services under the IDEA, LEAs are required to reevaluate students participating in the programs upon request of the student's parents (but only if the LEA agrees that a reevaluation is warranted) or at least once every three years, unless the LEA and the student's parent agree that a reevaluation is unnecessary. See 34 C.F.R. § 300.303; USDOE Q&A, Question A-9.

10. *What is an LEA's obligation to reevaluate a student if the student's parents refuse to provide consent for a reevaluation or fail to respond to a request for a reevaluation?*

If the parents of a student participating in a school choice program refuse to provide consent for a reevaluation, the LEA may not utilize the consent override procedures available under the IDEA to obtain a reevaluation. See 34 C.F.R. § 300.300(d)(4). The LEA must determine whether the student remains eligible for special education and related services under the IDEA based on the student's existing evaluation data and educational records. See USDOE Q&A, Question K-4.

11. *A student resides in a geographic area served by one LEA and attends a non-public school in a geographic area served by another LEA. If the student's parents want to request a reevaluation prior to the triennial reevaluation, which LEA should the student's parents request a reevaluation from?*

The student's parents may request a reevaluation from either LEA at any point. In general, the department encourages the student's parents to request a reevaluation from the LEA serving the geographic area in which the student attends school if the student's parents intend to continue participating in the IEA program or ESA program, but to request a reevaluation from the LEA serving the geographic area in which the student resides if the student's parents intend to withdraw from the school choice program and re-enroll the student in public school. See USDOE Q&A, Question A-4.

12. *A student resides in a geographic area served by one LEA and attends a non-public school in a geographic area served by another LEA. Which LEA is responsible for conducting the triennial reevaluation?*

The LEA serving the geographic area in which the student's non-public school is located is responsible for conducting the triennial reevaluation. See USDOE Q&A, Question A-9.

13. *Does a student participating in a school choice program have the right to an independent educational evaluation (IEE)? If so, which district is responsible for the IEE?*

Yes. Like all other parentally placed non-public school students with disabilities, a student participating in a school choice program has the right to an IEE if the student's parents disagree with an evaluation or reevaluation conducted by an LEA. The LEA who conducted the evaluation or reevaluation is responsible for the IEE. See USDOE Q&A, Question A-13.

Determination of Equitable Services

14. *What are “equitable services”?*

Equitable services are special education and related services designated to collectively benefit parentally placed non-public school students with disabilities. Equitable services can include direct services (i.e., services provided directly to a student by a special education teacher or a related services professional), indirect services (i.e., services provided by a special education teacher or a related services professional to another professional who works directly with the student), equipment or materials for eligible students, or training for non-public school officials.

15. *What equitable services is a student entitled to through an ISP?*

In accordance with the IDEA, a parentally placed non-public school student with a disability is not entitled to any particular equitable service and is not entitled to the same type or amount of services that the student would have received in a public school. *See* 34 C.F.R. § 300.137(a). The LEA makes the final decision about the equitable services that will be made available to parentally placed non-public school students with disabilities. To determine what equitable services will be made available to parentally placed non-public school students with disabilities, LEAs must engage in a process known as “consultation.”

16. *What is “consultation”?*

Consultation is a process that involves discussions between the LEA, non-public school officials, and representatives of parentally placed non-public school students with disabilities. Consultation is intended to be a flexible process but must include the following topics for discussion:

- The child find process and how parentally placed non-public school students suspected of having a disability can receive equitable services;
- The amount of funds available to provide equitable services to parentally placed non-public school students with disabilities;
- How the LEA will oversee the consultation process throughout the school year to ensure parentally placed non-public school students with disabilities have an opportunity to receive equitable services;
- How, where, and by whom equitable services will be provided to parentally placed non-public school students with disabilities; and
- How LEAs will designate the equitable services made available to parentally placed non-public school students with disabilities and how non-public school officials and representatives of parentally placed non-public school students with disabilities can challenge the equitable services designated by the LEA.

These topics cannot be addressed without timely and meaningful input from non-public school officials and representatives of parentally placed non-public school students with disabilities. *See* 34 C.F.R. § 300.134; USDOE Q&A, Questions B-1, B-2, and B-6.

17. *How does an LEA determine who to contact to participate in consultation?*

LEAs must contact all private schools located within the geographic area served by the LEA, including participating schools in school choice programs, and invite those schools to participate in the consultation process. See USDOE Q&A, Question B-5.

18. *Are there grievance procedures available to non-public school officials and representatives of parentally placed non-public school students who believe the LEA has not engaged in timely and meaningful consultation?*

Yes. Non-public school officials and representatives of parentally placed non-public school students have the right to file a formal complaint with the department alleging that the LEA did not engage in consultation that was timely and meaningful or did not give due consideration to the views of individuals participating in consultation. In Tennessee, complaints can be filed with the department's Federal Programs Ombudsman. If the complainant is dissatisfied with the decision of the department's Federal Programs Ombudsman, the complainant may submit a complaint to the Secretary of the United States Department of Education. See USDOE Q&A, Question B-9.

Provision of Equitable Services

19. *How does an LEA determine what equitable services to provide to a parentally placed non-public school student with a disability?*

LEAs determine which equitable services will be made available to all parentally placed non-public school students with a disability through timely and meaningful consultation. Once those equitable services are identified, LEAs determine whether those equitable services will benefit each parentally placed non-public school student with a disability. For those students who will benefit from the identified equitable services, LEAs develop an ISP for the student. See USDOE Q&A, Question D-1.

20. *Do the parents of a parentally placed non-public school student with a disability have the right to participate in the development of an ISP?*

Yes. The parents of a parentally placed non-public school student with a disability have the right to participate in the development of an ISP. The LEA, however, has the right to make the final decision about the services that will be provided to the student. See USDOE Q&A, Questions E-3 and E-4.

21. *Is an LEA required to provide a student with the equitable services listed in the student's ISP?*

Yes. LEAs are required to provide a student with the equitable services listed in the student's ISP. But once an LEA has expended its full proportionate share funding, the LEA is no longer required to provide services to any non-public school student with a disability.

22. *Where can a student receive equitable services?*

The IDEA does not require equitable services to be provided at any specific location. The location of equitable services must be a topic addressed by the LEA, non-public school officials, and representatives of parentally placed non-public school students with disabilities during the consultation process. For example, parentally placed non-public school students with disabilities could receive equitable services at a public school operated by the LEA, at a private school, at the student's home, or in some other public location. Unless there is a compelling rationale for these services to be provided off-site, however, LEAs should provide services on-site, at the student's school, to not unduly disrupt the student's educational experience. See USDOE Q&A, Question F-3.

TN PULSE for Students Participating in a School Choice Program

23. *Should a student participating in a school choice program remain active in TN PULSE?*

Yes. Students who choose to participate in a school choice program should remain active in TN PULSE, except as noted in Questions 24 and 25 of this document. LEAs must update the Private School/Home School tab within the Student's Personal Info in TN PULSE.

24. *A student resides in a geographic area served by one LEA and attends a non-public school in a geographic area served by another LEA. Which LEA should list the student as active in TN PULSE?*

The LEA serving the geographic area in which the student's non-public school is located is responsible for listing the student as active in TN PULSE. To do so, the student's residential LEA must first update the Private School/Home School tab within the Student's Personal Info in TN PULSE by indicating that the student is participating in the IEA, ESA, or EFS program. Then, the student's residential LEA must inactivate the student and select "Entering IEA, ESA, or EFS, attending private school in other district" as the Reason for Exiting. Once the student is inactivated, the LEA serving the geographic area in which the student's non-public school is located should follow regular procedures for requesting the student's education records from the student's residential LEA.

25. *If a student participating in a school choice program lives in District A but attends a private school in District B, how should that be shown in the district's SIS and TN PULSE?*

The student must stay enrolled in District A's SIS for funding purposes. District A would use "Primary" as the Type of Service (TOS) in their SIS. The district where the private school is geographically located, District B, should also enroll the student in their SIS using "Service" as the TOS enrollment type. Both districts should follow the guidance found [here](#) regarding other SIS coding for the IEA program and [here](#) regarding SIS coding for the ESA Program. In TN PULSE, the district where the private school is geographically located will be responsible for the triennial evaluation of the student, as well as the ISP, if requested. District B should follow regular procedures for requesting the record from District A through TN PULSE.