



Ohio Administrative Code

Rule 3301-51-08 Parentally placed nonpublic school children.

Effective: July 1, 2023

(A) Children's rights to services

Each school district is required to provide equitable services and participation for eligible children who are attending a chartered or non-chartered nonpublic school located within the district's geographical boundaries. The school district must have timely and meaningful consultation with the chartered and non-chartered nonpublic school officials to determine if any children attending those nonpublic schools are eligible for equitable services.

(B) Child find for parentally placed nonpublic school children with disabilities

(1) General

Each school district must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district, in accordance with paragraphs (B)(2) to (B)(5) of this rule and with rules 3301-51-01 and 3301-51-03 of the Administrative Code.

(2) Child find design

The child find process must be designed to ensure:

- (a) The equitable participation of parentally placed nonpublic school children; and
- (b) An accurate count of those children.

(3) Activities

In carrying out the requirements of this rule, the school district where the nonpublic school is located



must undertake activities similar to the activities undertaken for the district's public school children.

(4) Cost

The cost of carrying out the child find requirements in this rule, including individual evaluations, shall not be considered in determining if a school district has met its obligation under paragraph (E) of this rule.

(5) Completion period

The child find process must be completed in a time period comparable to that for students attending the school district where the nonpublic school is located consistent with rules 3301-51-03 and 3301-51-06 of the Administrative Code.

(6) Out-of-state children

Each school district in which nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this rule, 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.

(7) Students eligible for a scholarship

The district where the chartered or non-chartered nonpublic school is located is responsible for additional child find activities regarding children who are enrolled in either the "Autism Scholarship Program," established by section 3310.41 of the Revised Code or the "Jon Peterson Special Needs Scholarship Program," established by section 3310.52 of the Revised Code, as well as a determination of whether or not these children will receive services through a services plan, as outlined in paragraphs (C) and (J) of this rule.

(8) Determination of eligibility

The school district where the nonpublic school is located shall conduct, either directly or through



contract, a full and individual initial evaluation in accordance with rule 3301-51-06 of the Administrative Code for children suspected of having a disability.

(a) The school district where the nonpublic school is located shall provide the parents of children who are determined eligible for services under rule 3301-51-06 of the Administrative Code written documentation stating that the child's school district of residence is responsible for making a free appropriate public education (FAPE) available to the child.

(b) A copy of this documentation shall be sent to the child's school district of residence, provided the school district where the nonpublic school is located receives written parental consent for this information to be released to the child's school district of residence.

(9) School district of residence

(a) A school district of residence is not required to pay for the cost of FAPE of a child with a disability at a nonpublic school or facility if:

(i) The school district of residence made FAPE available to the child in the public school; and

(ii) The parents elected to place the child in the nonpublic school or facility.

(b) However, the school district of residence must include the child described in paragraph (B)(8)(a) of this rule in the population whose needs are addressed consistent with the requirements of this rule.

(c) If the parents make clear their intention to keep their child with a disability enrolled in a nonpublic school then the school district of residence is not required to develop an individualized education program (IEP) for the child unless required to under Chapters 3301-101 and 3301-103 of the Administrative Code. If the child with a disability who is in need of special education and related services enrolls or re-enrolls in the school district of residence, the school district of residence must make FAPE available.

(10) Confidentiality requirements



When conducting child find, evaluation and service activities, the school district where the nonpublic school is located must be in compliance with all confidentiality requirements of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA), and the Family Education Rights and Privacy Act of 1974, August 1974 (FERPA).

(a) If a child is enrolled or is going to enroll in a nonpublic school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent's residence.

(b) The school district where the nonpublic school is located shall follow all the IDEA and the FERPA confidentiality requirements when serving children with disabilities attending chartered and non-chartered nonpublic schools.

(11) Continued determination of eligibility

Children with disabilities enrolled by their parents in nonpublic schools and receiving special education and any related services must be reevaluated by the school district where the nonpublic school is located:

(a) Not more frequently than once a year, unless the parent and the district agree otherwise; and

(b) At least once every three years, unless the parent and the district agree that a reevaluation is unnecessary.

(C) Provision of services for parentally placed nonpublic school children with disabilities: basic requirement

(1) General

To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located



in the school district, provision is made for the participation of those children in the program assisted or carried out under Part B of the IDEA by providing them with special education and related services, including direct services determined in accordance with this rule.

(2) Services plan for parentally placed nonpublic school children with disabilities

In accordance with paragraph (C)(1) and paragraphs (I) to (K) of this rule, a services plan must be developed and implemented for each nonpublic school child with a disability who has been designated by the school district in which the nonpublic school is located to receive special education and related services under this rule.

(D) Reporting requirements

(1) The following children with disabilities, who are enrolled by their parents in nonpublic schools, shall be counted and reported to the Ohio department of education by the school district where the nonpublic school is located, during the October education management information system (EMIS) reporting period:

(a) Children identified as eligible to receive special education services under the IDEA, but who do not have a services plan; and

(b) Children who are suspected of having a disability who are enrolled by their parents in nonpublic schools and who are evaluated and determined not eligible to receive special education and related services under the IDEA.

(2) Children with disabilities who are receiving special education services in accordance with a services plan funded through Part B of the IDEA or auxiliary services funds shall be counted for the October thirty-first child count report by the school district where the nonpublic school is located to generate Part B special education funds.

(E) Expenditures

(1) Formula



The school district where the nonpublic school is located must spend the following on providing special education and related services (including direct services) to parentally placed nonpublic school children with disabilities:

(a) For children between the ages of three and twenty-one, inclusive, an amount that is the same proportion of the school district's total subgrant under Section 611(f) of the IDEA as the number of nonpublic school children between the ages of three and twenty-one, inclusive, who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district, is to the total number of children with disabilities in its jurisdiction between the ages of three and twenty-one, inclusive.

(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under Section 619(g) of the IDEA as the number of parentally placed nonpublic school children with disabilities aged three through five who are enrolled by their parents in a nonpublic, including religious, elementary school located in the school district, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (E)(1)(a)(i) of this rule, children aged three through five are considered to be parentally placed nonpublic school children with disabilities enrolled by their parents in nonpublic, including religious, elementary schools, if they are enrolled in a nonpublic school that meets the definition of elementary school in rule 3301-51-01 of the Administrative Code.

(b) If the school district where the nonpublic school is located has not expended for equitable services all of the funds described in paragraph (E)(1)(a) of this rule by the end of the fiscal year for which congress appropriated the funds, the school district must obligate the remaining funds for special education and related services (including direct services) to parentally placed nonpublic school children with disabilities during a carry-over period of one additional year.

(2) Calculating proportionate amount

(a) In calculating the proportionate amount of federal funds to be provided for parentally placed nonpublic school children with disabilities, the school district where the nonpublic school is located,



after timely and meaningful consultation with representatives of nonpublic schools under paragraph (F) of this rule, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending nonpublic schools located in the school district.

(b) The annual count of the number of parentally placed nonpublic school children with disabilities must be used to determine the amount that the school district where the nonpublic school is located must spend on providing special education and related services to parentally placed nonpublic school children with disabilities in the subsequent fiscal year. Each school district must:

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, determine the number of parentally-placed private school children with disabilities attending nonpublic schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October first and December first, inclusive, of each year.

(3) Supplement, not supplant

State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed nonpublic school children with disabilities under this rule.

(4) Use of federal funds provided through the IDEA

The amount of special education IDEA Part B and early childhood special education flow-through benefits that the school district where the nonpublic school is located must allocate for eligible nonpublic school children is determined as follows:

(a) The proportionate share allocation is calculated as specified in appendix B "Proportionate Share Calculation" to 34 C.F.R. Part 300 (October 13, 2006). For purposes of the calculation of the proportionate share under appendix B, "LEA" means the school district in which the nonpublic school is located and "private school" means nonpublic school as defined in paragraph (B)(40) of rule 3301-51-01 of the Administrative Code



(b) The calculation of the proportionate share of IDEA Part B special education funds is based upon a number of factors including child count, public and nonpublic population counts and the number of children within the district living in poverty. Due to these factors, each school district's calculation will vary based on its individual data and a statewide per-child allocation cannot be determined.

(5) Use of state funds and provision of auxiliary services

(a) Opportunity for participation

Auxiliary services funds are generated for each school district based upon the number of children attending chartered nonpublic elementary or secondary schools within the district. Auxiliary services funds may be used to provide services to children with disabilities who are attending chartered nonpublic schools within the boundaries of a given school district (sections 3317.024 and 3317.06 of the Revised Code).

(b) Approval of services to be provided

The school district within whose boundaries the chartered nonpublic school is located has the responsibility for approving the chartered nonpublic school's request for services prior to the provision of such services.

(c) Location of services

Personnel funded with auxiliary services funds may provide services either on or off the premises of the chartered nonpublic school to children enrolled in a religiously affiliated or nonsectarian school. If services are provided in the public school or in public centers, transportation to and from such facilities shall be provided by the school district in which the chartered nonpublic school is located (division (I) of section 3317.06 of the Revised Code).

(d) Documentation of services

If a child is unilaterally placed by the child's parents in a chartered nonpublic school and the child



will be receiving special education and related services using both Part B funds and auxiliary funds or using auxiliary funds only, the services provided by auxiliary funds must be clearly marked as auxiliary services on the child's services plan. These services are not subject to the IDEA complaint or due process procedures.

(F) Consultation

To ensure timely and meaningful consultation, the school district where the nonpublic school is located must consult with nonpublic school representatives and representatives of parents of parentally placed nonpublic school children with disabilities during the design and development of special education and related services for the children regarding the following:

(1) Child find

The child find process, including:

(a) How parentally placed nonpublic school children suspected of having a disability can participate equitably; and

(b) How parents, teachers, and nonpublic school officials will be informed of the process.

(2) Proportionate share of funds

The determination of the proportionate share of federal funds available to serve parentally placed nonpublic school children with disabilities under paragraph (E) of this rule, including the determination of how the proportionate share of those funds was calculated. Consultations shall take into consideration the number of these children and their needs and location.

(3) Consultation process

The consultation process among the school district where the nonpublic school is located, nonpublic school officials, and representatives of parents of parentally placed nonpublic school children with disabilities, including how the process will operate throughout the school year to ensure that



parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(4) Provision of special education and related services

How, where, and by whom special education and related services will be provided for parentally placed nonpublic school children with disabilities, including a discussion of:

- (a) The types of services, including direct services and alternate service delivery mechanisms; and
- (b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed nonpublic school children; and
- (c) How and when those decisions will be made.

(5) Written explanation by the school district regarding services

How, if the school district where the nonpublic school is located 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 where the nonpublic school is located 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.

(G) Written affirmation

- (1) When timely and meaningful consultation has occurred, the school district where the nonpublic school is located must obtain a written affirmation signed by the representatives of participating nonpublic schools.
- (2) If the representatives do not provide the affirmation within a reasonable period of time or choose not to participate, the school district where the nonpublic school is located must document its consultation attempts and forward documentation of the consultation process to the Ohio department of education.



(H) Compliance

(1) General

A nonpublic school official has the right to submit a complaint to the Ohio department of education, office for exceptional children, alleging that the school district where the nonpublic school is located:

(a) Did not engage in consultation that was meaningful and timely; or

(b) Did not give due consideration to the views of the nonpublic school official.

(2) Procedure

(a) If the nonpublic school official wishes to submit a complaint, the official must provide to the Ohio department of education, office for exceptional children the basis of the noncompliance by the school district with the applicable nonpublic school provisions in this rule; and

(b) The school district where the nonpublic school is located must forward the appropriate documentation to the Ohio department of education, office for exceptional children, in accordance with paragraph (L) of this rule.

(c) If the nonpublic school official is dissatisfied with the decision of the Ohio department of education, office for exceptional children, the official may submit a complaint to the secretary of the U.S. department of education by providing the information on noncompliance described in paragraph (H)(2)(a) of this rule. The Ohio department of education, office for exceptional children shall forward the appropriate documentation to the secretary of the U.S. department of education.

(I) Equitable services determined

(1) No individual right to special education and related services

No parentally placed nonpublic 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.

(2) Decisions

(a) Decisions about the services that will be provided to parentally placed nonpublic school children with disabilities under this rule must be made in accordance with paragraphs (I)(3) and (F)(3) of this rule.

(b) The school district where the nonpublic school is located must make the final decisions with respect to the services to be provided to eligible parentally placed nonpublic school children with disabilities.

(3) Services plan for each child served under this rule

If a child with a disability is enrolled in a religious or other nonpublic school by the child's parents and will receive special education or related services from the school district where the nonpublic school is located, the school district must:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with paragraph (J)(2) of this rule; and

(b) Ensure that a representative of the religious or other nonpublic school attends each meeting. If the representative cannot attend, the school district where the nonpublic school is located shall use other methods to ensure participation by the religious or other nonpublic school, including individual or conference telephone calls.

(J) Equitable services provided

(1) General

(a) The services provided to parentally placed nonpublic school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public



schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to parentally placed nonpublic school children with disabilities do not have to meet the special education teacher requirements of rule 3301-51-01 of the Administrative Code.

(b) Parentally placed nonpublic school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(2) Services provided in accordance with a services plan

(a) Each parentally placed nonpublic school child with a disability who has been designated to receive services under paragraph (C) of this rule must have a services plan that describes the specific special education and related services that the public school district where the nonpublic school is located will provide to the child in light of the services that the district has determined, through the process described in this rule, it will make available to parentally placed nonpublic school children with disabilities.

(b) The services plan must:

(i) Be developed to meet IEP requirements as outlined in paragraph (H) of rule 3301-51-07 of the Administrative Code, to the extent appropriate;

(ii) Be individually developed for each participating child using the services plan form, i.e., IEP form, included in the school district's approved forms; and

(iii) Be developed, reviewed, and revised consistent with paragraphs (I) to (L) of rule 3301-51-07 of the Administrative Code.

(3) Development of the services plan

(a) The school district where the nonpublic school is located, whether or not it is the child's school district of residence, convenes the services plan meeting, conference call, or video conference for each eligible child who will receive special education and any related services.



(b) A nonpublic school representative must participate in the development or revision of the services plan.

(c) The school district where the nonpublic school is located is required to and is responsible for conducting a meeting, conference call, or video conference at least annually to review and revise, if appropriate, each child's services plan.

(d) Neither the IDEA nor state law makes provisions for nonpublic schools to develop student services plans. Any written plan developed by a nonpublic school will not be recognized as a services plan under federal or state laws.

(4) Provision of equitable services

(a) The provision of services pursuant to paragraphs (K) to (O) of this rule 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.

(b) Special education and related services provided to parentally placed nonpublic school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(K) Location of services and transportation

(1) Services on nonpublic school premises

(a) Services to parentally placed nonpublic school children with disabilities may be provided on the premises of nonpublic, including religious, schools, to the extent consistent with law.

(b) The school district where the nonpublic school is located will determine where services will be provided. Services may be provided at the nonpublic school with the permission of the nonpublic school.



(2) Transportation

(a) General

(i) If necessary for the child to benefit from or participate in the services provided under this rule, a parentally placed nonpublic school child with a disability must be provided transportation:

(A) From the child's school or the child's home to a site other than the nonpublic school; and

(B) From the service site to the nonpublic school, or to the child's home, depending on the timing of the services.

(b) Transportation for parentally placed chartered nonpublic school children

(i) Notwithstanding the provisions of paragraph (K)(2)(a) of this rule, a child with a disability who is parentally placed in a chartered nonpublic school shall be entitled to transportation to the same degree as any child without disabilities who is attending a chartered nonpublic school even though transportation is not necessary for the child to benefit from or participate in the services provided under this rule.

(ii) A child with a disability parentally placed in a chartered nonpublic school in grades kindergarten through eight who lives more than two miles from the chartered nonpublic school will be transported by the school district of residence unless one of the following applies:

(A) The direct travel time, as measured by riding in a school bus, exceeds thirty minutes from the public school building to which the child with a disability would be assigned if attending the public school to the chartered nonpublic school the child is attending; or

(B) Where it is impractical to transport a pupil by school conveyance, a board of education may offer payment in lieu of providing such transportation in accordance with section 3327.02 of the Revised Code.



(iii) Children with disabilities who are parentally placed in a chartered nonpublic school and are in grades nine through twelve may be offered transportation by their school district of residence in accordance with the above rules, but are not entitled to transportation.

(iv) No transportation of any pupils shall be provided by any board of education to or from any school which in the selection of pupils, faculty members or employees, practices discrimination against any person on the grounds of race, color, religion or national origin.

(c) Cost of transportation

The cost of the transportation described in paragraph (K)(2)(a)(i) of this rule may be included in calculating whether the school district where the nonpublic school is located has met the requirements of paragraph (E) of this rule.

(L) Due process complaints and state complaints

(1) The right to request a due process hearing does not apply to the provision of special education and related services the school district has agreed to provide through a services plan. However, a parent of a child with a suspected disability, or a child identified as having a disability, who is enrolled in a nonpublic school may initiate a due process hearing regarding child find for parentally placed nonpublic school children with disabilities, including location, identification, evaluation and reevaluation of the child.

(2) Child find complaints: to be filed with the school district in which the nonpublic school is located.

(a) The due process and mediation procedures in rule 3301-51-05 of the Administrative Code apply to complaints that the school district where the nonpublic school is located has failed to meet the child find requirements in paragraph (B) of this rule, including the requirements for location, identification, evaluation and reevaluation of the child.

(b) Any due process complaint regarding the child find requirements as described in paragraph (L)(2)(a) of this rule must be filed with the school district in which the nonpublic school is located



and a copy must be forwarded to the Ohio department of education, office for exceptional children.

(3) Complaint rights of parents of children with disabilities placed in nonpublic schools

The parents of a child with a disability, who have unilaterally placed the child in a nonpublic school, have the right to file a formal written complaint under the IDEA with the Ohio department of education, office for exceptional children. In accordance with applicable law and regulations, complaints may be filed regarding:

- (a) The provision of services, as stated on the child's services plan;
- (b) The amount of funds, including the calculation of the proportionate share, child count and non-supplanting provisions, for parentally placed children with disabilities enrolled in nonpublic schools;
- (c) The required consultation for parentally placed children with disabilities enrolled in nonpublic schools;
- (d) Written affirmation signed by the representatives of participating nonpublic schools;
- (e) Determination of equitable services for the group of parentally placed children with disabilities enrolled in nonpublic schools;
- (f) Provision of equitable services for the group of parentally placed children with disabilities enrolled in nonpublic schools;
- (g) Location of services and transportation for parentally placed children with disabilities enrolled in nonpublic schools;
- (h) Requirement that federal funds not benefit a nonpublic school;
- (i) Use of personnel, including use of public school personnel and nonpublic school personnel for parentally placed children with disabilities enrolled in nonpublic schools;



(j) Prohibition of separate classes on the basis of school enrollment or religion if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in nonpublic schools;

(k) The use of property, equipment and supplies purchased with IDEA Part B funds for the benefit of parentally placed nonpublic school children with disabilities enrolled in nonpublic schools.

(4) State complaints

(a) Any complaint that the Ohio department of education or the school district where the nonpublic school is located has failed to meet the requirements in this rule must be filed in accordance with the procedures described in rule 3301-51-05 of the Administrative Code.

(b) A complaint filed by a nonpublic school official under paragraph (H)(1) of this rule must be filed with the Ohio department of education, office for exceptional children, in accordance with the procedures in paragraph (H)(2) of this rule.

(M) Requirement that funds not benefit a nonpublic school

(1) A school district may not use funds provided under Section 611 or 619 of the IDEA to finance the existing level of instruction in a nonpublic school or to otherwise benefit the nonpublic school.

(2) The school district where the nonpublic school is located must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally placed nonpublic school children with disabilities, but not for meeting:

(a) The needs of a nonpublic school; or

(b) The general needs of the students enrolled in the nonpublic school.

(N) Use of personnel

(1) Use of public school personnel



A school district may use funds available under Sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities:

(a) To the extent necessary to provide services under this rule for parentally placed nonpublic school children with disabilities; and

(b) If those services are not normally provided by the nonpublic school.

(2) Use of nonpublic school personnel

A school district may use funds available under Sections 611 and 619 of the IDEA to pay for the services of an employee of a nonpublic school to provide services under this rule if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(O) Separate classes prohibited

A school district may not use funds available under Section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the children if:

(1) The classes are at the same site; and

(2) The classes include children enrolled in public schools and children enrolled in nonpublic schools.

(P) Property, equipment, and supplies

(1) A school district must control and administer the funds used to provide special education and related services under paragraphs (I) to (K) of this rule, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA.



(2) The school district may place equipment and supplies in a nonpublic school for the period of time needed for the Part B program.

(3) The school district must ensure that the equipment and supplies placed in a nonpublic school:

(a) Are used only for Part B purposes; and

(b) Can be removed from the nonpublic school without remodeling the nonpublic school facility.

(4) The school district must remove equipment and supplies from a nonpublic school if:

(a) The equipment and supplies are no longer needed for Part B purposes; or

(b) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(5) No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of nonpublic school facilities.

(Q) State assessment considerations

(1) A plan may be developed for children with disabilities who are parentally placed in chartered nonpublic schools for any accommodation for or an excuse from statewide tests in accordance with section 3301.0711 of the Revised Code and rule 3301-13-10 of the Administrative Code. .

(2) Chartered nonpublic school personnel cannot prohibit children with disabilities from taking any state assessment that children without disabilities of the same age and grade level are required to take.

(3) Chartered nonpublic school personnel cannot force a child who would otherwise take an alternate assessment to take any state assessment that children without disabilities of the same age and grade level are required to take.



(4) Chartered nonpublic school personnel cannot deny a diploma to a child with a disability who has been excused from the consequences of the state assessment or who would otherwise take an alternate assessment if all other requirements for graduation have been met.