

**GUIDELINES FOR PROVIDING SERVICES TO CHILDREN WITH
DISABILITIES PARENTALLY PLACED IN OHIO CHARTERED
NONPUBLIC SCHOOLS
September 2005**

I. Location, Identification and Evaluation of Children Suspected of Having a Disability

The school district where the chartered nonpublic school is located is responsible for locating, identifying and evaluating all children (birth through 21 years of age) who are suspected of having a disability, under the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), who are enrolled or are planning to enroll in any chartered nonpublic school, including religious schools, located within that public school district. Each public school district shall consult with chartered nonpublic school representatives and representatives of parents of parentally placed chartered nonpublic school children with disabilities in a timely and meaningful manner regarding:

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

Such child find activities shall be completed in a time period comparable to that for other children attending public school districts. The proportionate share of Part B funds set aside to serve children with disabilities in chartered nonpublic schools cannot be used for child find activities.

II. Children's Rights to Services

The school district of residence must make a free appropriate public education (FAPE) available to all children residing in the district who are three through 21 years of age, identified as having a disability and determined to be in need of special education services. Part B of IDEIA does not, however, require the school district of residence or the school district where the chartered nonpublic school is located to pay for the cost of education, including special education and related services, of a child with a disability enrolled at a chartered nonpublic school or facility if (1) the school district of residence made FAPE available to the child; and (2) the parents elected to place the child in the chartered nonpublic school or facility.

Since the public school district where the chartered nonpublic school is located will be conducting all multifaceted evaluations (MFE) for children suspected of having a disability, it is recommended that the public school district where the chartered nonpublic school is located provide the parents of children who are determined eligible for services under IDEIA written documentation stating that the child's district of residence will provide the child FAPE if the child wishes to enroll in their public school district of residence. A copy of this documentation should be sent to the child's school district of residence. Upon receipt of this documentation by the school district of residence, it is recommended that the school district of residence document their offer to provide FAPE by sending the parent's an invitation to meet with the district of residence to create an IEP for the child. The invitation should include the name of a contact person and the phone number and/or email address of the contact person.

If a parentally placed child with a disability who is in need of special education services enrolls or re-enrolls in the public school district of residence, the public school district must make FAPE available.

III. Funding Sources for Serving Children with Disabilities

A. Use of Federal Funds Provided Through the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)

Generation of funds. The following children with disabilities, who are enrolled by their parents in chartered nonpublic schools, are counted and reported to the Ohio Department of Education (ODE), by the school district where the chartered nonpublic school is located, beginning with the October EMIS reporting period:

- Children identified as eligible to receive special education services under IDEIA, but who do not have a services plan;
- Children who are suspected of having a disability who are enrolled by their parents in chartered nonpublic schools and who are evaluated and determined **not** eligible to receive special education and related services under IDEIA. (Will be collected beginning in the '06-'07 school year).

The following children with disabilities shall be counted for the December 1 child count report by the school district where the chartered nonpublic school is located to generate Part B flow-thru funds:

- Children who are receiving special education services in accordance with a services plan funded through Part B of IDEIA or auxiliary services funds;
- Children identified as eligible to receive special education services under IDEIA, and who do have a services plan.

The amount of Part B funds that the public school district must spend on chartered nonpublic school children shall be calculated as follows:

$$\text{Amount} = \frac{\text{Eligible nonpublic children} \times \text{total district allocation}}{\text{Public children with an IEP} + \text{eligible nonpublic}}$$

Continued determination of eligibility. Children with disabilities enrolled by their parents in chartered nonpublic schools must be re-evaluated by the district where the chartered nonpublic school is located not more frequently than once a year, unless the parent and the district agree otherwise and at least once every three years, unless the parent and the district agree that a re-evaluation is unnecessary.

Determination of services. A child with a disability attending a chartered nonpublic school does not have 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. If services are provided, however, they must be delivered by personnel meeting the same standards as personnel providing services in the public school district.

The public school district where the chartered nonpublic school is located shall consult in a timely and meaningful manner with chartered nonpublic school representatives and representatives of parents of parentally placed chartered nonpublic school children with disabilities. Consultations shall take into consideration the proportionate amount of federal funds available to serve chartered nonpublic school children with disabilities including the determination of how the amount was calculated. Consultations shall take into consideration the number of these children and their needs and location as well as:

- Which children will receive special education and related services;
- What special education and related services will be provided;
- How, where and by whom the special education and related services will be provided including a discussion of types of services, 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;
- How the special education and related services provided will be evaluated; and
- How, if the public school district disagrees with the views of the chartered nonpublic school officials on the provision of services or the types of services, the public school district will provide to the chartered nonpublic school officials a written explanation of the reasons why the public school district chose not to provide services directly or through a contract.

Each public school district where the chartered nonpublic school is located shall give appropriate representatives of chartered nonpublic schools a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements bulleted above. The public school district where the chartered nonpublic school is located is responsible for making the final determination of services to be provided to eligible chartered nonpublic school children.

When timely and meaningful consultation has occurred, the public school district where the chartered nonpublic school is located must obtain a written affirmation signed by the representatives of the participating chartered nonpublic schools. This written affirmation is part of the public school district's Comprehensive Continuous Improvement Plan (CCIP) application. This written affirmation is mailed to the Ohio Department of Education by the public school district once the chartered nonpublic school has filled out the form and submitted it to the public school district where the chartered nonpublic school is located.

In addition to the mailing of the written affirmation, the public school district where the chartered nonpublic school is located, also fills out a nonpublic component of the district's CCIP application informing ODE of which chartered nonpublic schools will be participating in the IDEIA Part B funding.

Location of services. The location of providing IDEIA services must be determined through timely and meaningful consultation with the chartered nonpublic school representatives and representatives of parents of parentally placed private school children with disabilities. Services may be provided to children with disabilities on or off the premises of chartered nonpublic schools, including religiously affiliated schools.

Transportation. 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. This means that 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 district of residence unless one of the following applies:

- The direct travel time, as measured by riding in a school bus, exceeds 30 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
- 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 Ohio

Revised Code or may offer a bus pass for the public buses in lieu of a cash payment.

Children with disabilities who are parentally placed in a chartered nonpublic school and are in grades nine through 12 may be offered transportation by their district of residence in accordance with the above rules, but are not entitled to transportation.

If a child with a disability parentally placed in a chartered nonpublic school is receiving special education and/or related services under IDEIA and those services are being delivered at a location other than the chartered nonpublic school the child with a disability is attending, then the public school district where the chartered nonpublic school is located must provide transportation to those services:

- From the child's chartered nonpublic school or the child's home to the site other than the chartered nonpublic school; and
- From the service site to the chartered nonpublic school or to the child's home depending on the timing of the service or services (Ohio Revised Code Section 3327.01).

The cost of transportation to special education and related services that are being delivered at a location other than the chartered nonpublic school the child with a disability is attending may be included in calculating whether the school district where the nonpublic school is located has met the requirement of spending a proportionate amount of federal funds that the district receives to serve children with disabilities.

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.

Use of funds. Special education and related services provided to children with disabilities parentally placed in a chartered nonpublic school, including materials and equipment, shall be secular, neutral and nonideological.

The control of funds used to provide special education and related services including materials, equipment and property purchased with those funds, shall be in a public agency for the uses and purposes provided for in IDEIA and a public agency shall administer the funds and property.

B. Use of State Funds and Provision of Auxiliary Services

Opportunity for participation. Auxiliary services funds are generated for each public school district based upon the number of students attending chartered nonpublic elementary or high schools within the district (Ohio Revised Code Section 3317.06). 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 public school district.

Approval of services to be provided. The public 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.

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 public school district in which the chartered nonpublic school is located [Ohio Revised Code Section 3317.06 (I)].

C. Part-time Enrollment

A public school district may, but is not required to, adopt a policy that allows children with disabilities who are parentally placed in a chartered nonpublic school to enroll part-time in their school district of residence. A child with disabilities may receive services from federal, state, and locally funded personnel for the portion of time the child is enrolled in and attending the public school district of residence.

IV. Services Plans for Children Parentally Placed in Chartered Nonpublic Schools

A. Public School Development of the Child's Services Plan

Special education services to be provided through IDEIA or auxiliary services funds and delivered by public school employees, must be implemented in accordance with a services plan. Services plans must be individually developed for each child using the services plan form, i.e., Individualized Education Program (IEP) form, included in the school district's approved forms. The services plan must describe the specific special education and related services that the school district agrees to provide to each child. The public school district where the chartered nonpublic school is located, whether or not it is the child's district of residence, convenes the services plan meeting, conference call or videoconference for each eligible child who has been designated, through the consultation process, to receive special education and related services. The parent and representative of

the chartered nonpublic school must be invited to participate in the services plan meeting, conference call or video conference. A chartered nonpublic school representative and the parent must participate in the development or revision of the services plan. Services plans must, to the extent appropriate, be developed to meet Individualized Education Program (IEP) requirements.

The public school district where the chartered 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. The public school district where the chartered nonpublic school is located makes the final determination of services to be provided to eligible chartered nonpublic school children. Neither IDEIA nor state law makes provisions for chartered nonpublic schools to develop student services plans. Any written plan developed by a chartered nonpublic school will not be recognized as a services plan under federal or state laws.

Although not required by IDEIA, nothing prohibits the school district of residence from utilizing IDEIA Part B funds to provide services to a child with a disability parentally placed in a chartered nonpublic school located outside the boundaries of the school district of residence. In this case, the school district of residence is responsible for convening the services plan meeting and for making the final determination of services to be provided.

B. State Assessment Considerations

Children with disabilities who are parentally placed in chartered nonpublic schools are required to take and pass the tenth-grade Ohio Graduation Test (OGT) in order to receive an Ohio high school diploma unless the child is excused from the consequences of the testing requirement as set forth below. It is expected that most children with disabilities will take and pass state assessments including the OGT.

If a child has a severe cognitive disability and has a curriculum that is modified substantially from what the state assessment measures, the child may be excused from taking one or more of the state assessments. IDEIA requirements for alternate assessment do not apply to children with disabilities enrolled in chartered nonpublic schools.

A child, parentally placed in a chartered nonpublic school, may receive allowable accommodations when taking state assessments or may be excused from the consequences of state assessments if one of the following conditions apply:

- A current services plan, documenting that the child is excused from the consequences of the state assessment, is in place. This plan has

been developed by public school personnel in collaboration with chartered nonpublic school personnel as well as the parent, and special education services are being provided by federally funded personnel or auxiliary personnel or a combination of both federally funded and auxiliary funded personnel;

- A current services plan, documenting that the child will receive allowable accommodations on the state assessment, is in place. This plan has been developed by public school personnel in collaboration with chartered nonpublic school personnel as well as the parent, and special education services are being provided by federally funded personnel or auxiliary personnel or a combination of both federally funded and auxiliary funded personnel;
- The chartered nonpublic school has developed a written plan, documenting that the child is excused from the consequences of the state assessment. The written plan must meet all of the requirements of State rule 3301-13-10 (attached).
- The chartered nonpublic school has developed a written plan, documenting that the child will receive allowable accommodations on the state assessment. The written plan must meet all of the requirements of State rule 3301-13-10 (attached).

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. Chartered nonpublic school personnel cannot force a child with a severe cognitive disability who has a substantially modified curriculum to take any state assessment that children without disabilities of the same age and grade level are required to take. 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 is severely cognitively disabled and has a substantially modified curriculum if all other requirements for graduation have been met.

V. Due Process Rights

Due process rights do not apply to the provision of special education and related services the public 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 chartered nonpublic school may initiate a due process hearing regarding location, identification and evaluation of his/her child.

VI. Complaint Rights

A. Chartered Nonpublic School Officials

A chartered nonpublic school official shall have the right to submit a complaint to the Ohio Department of Education (ODE) alleging that the school district where the chartered nonpublic school is located did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the chartered nonpublic school official.

If the chartered nonpublic school official wishes to submit a complaint, the official shall provide the basis of the noncompliance by the district where the chartered nonpublic school is located, and the school district where the chartered nonpublic school is located shall forward the appropriate documentation to the Ohio Department of Education. If the chartered nonpublic school official is dissatisfied with the decision of the Ohio Department of Education, such official may submit a complaint to the Secretary of the U. S. Department of Education by providing the basis of the noncompliance by the district where the chartered nonpublic school is located to the Secretary of the U. S. Department of Education, and the Ohio Department of Education shall forward the appropriate documentation to the Secretary of the U. S. Department of Education.

B. Parents of Children with Disabilities Placed in Chartered Nonpublic Schools

The parents of a child with a disability, who has been placed in a chartered nonpublic school, by said parents, have the right to file a formal written complaint under IDEIA of 2004 with the Ohio Department of Education. Complaints may be filed regarding:

- The child find process for parentally placed chartered nonpublic school children with disabilities;
- The identification and evaluation completed by the public school district;
- The provision of services the school district has agreed to provide and which are documented on the child's services plan;
- The amount of funds the school district must spend on providing special education and related services to children with disabilities enrolled in chartered nonpublic schools;
- Transportation to access agreed upon services; and
- The use of materials and equipment purchased with IDEIA Part B funds for the benefit of chartered nonpublic school children with disabilities.

VII. Placement of Children by Parents

Cost of nonpublic school education. IDEIA of 2004 does not require a public school district to pay for the cost of education, including special education and related services, of a child with a disability at a chartered nonpublic school or facility if (1) the public school district made a free appropriate public education

available to the child; and (2) the parents elected to place the child in the chartered nonpublic school or facility.

Disagreements about FAPE. Disagreements between a parent and a public school district regarding the availability of a program appropriate for the child, and the question of financial responsibility, may be subject to a due process hearing.

Reimbursement for nonpublic school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a chartered nonpublic school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner.

Limitation on reimbursement. Reimbursement costs may be reduced or denied by the court or the hearing officer if:

- At the most recent IEP meeting that the parents attended prior to removal of the child from the public school district, the parents did not inform the IEP team that they were rejecting the placement proposed by the public school district to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a chartered nonpublic school at public expense; or
- Ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school district, the parents did not file written notice to the public school district of the information described above.

Reimbursement costs may, also, be reduced or denied by the court or the hearing officer if:

- Prior to the parents' removal of the child from the public school district, the public school district informed the parents, through the notice requirements, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
- There is a judicial finding of unreasonableness with respect to actions taken by the parents.

The cost of reimbursement for a chartered nonpublic school placement shall not be reduced or denied for failure to provide such notice if:

- The public school district prevented the parent from providing such notice;
- The parent had not received the procedural safeguards notice (i.e., *Whose IDEA Is This? A Resource Guide for Parents*).
- The parent is illiterate and cannot write in English;
- Compliance with the parent notification requirement would likely result in physical or serious emotional harm to the child.

For additional information please refer to:

- Public Law 108-446 , “The Individuals with Disabilities Education Improvement Act of 2004”;
- Federal Regulation 34 C.F.R. Parts 300 and 303
- Parent Notice of Procedural Safeguards, “*Whose IDEA Is This?*”