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## **The Failure of Child Find for Students Attending Private Schools**

This white paper is provided as a starting point for discussion of special education and related services under IDEA for parentally placed students attending private schools. This white paper focuses on public data from Local Educational Agencies (LEAs) and State Education Agencies (SEAs) concerning the number of children attending private schools who have been found through IDEA to have disabilities and the funds generated by these students. Additionally, this paper contains a review of relevant research since 2002 that was conducted to determine equitability for students suspected of having a disability and attending private schools.

### ***A. The Issue: The Failure of Child Find for Students Attending Private School***

#### **“§ 300.131 Child find for parentally-placed private school children with disabilities.**

(a)General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.”

It is clear in federal regulations that LEAs have an affirmative responsibility to students attending private schools and suspected of having a disability to locate such students, and once located, work to identify through evaluation which of these children have a disability and are in need of special education and related services. This is “child find” and it is a civil right within the law.

The data that follow from LEAs and SEAs paint a picture of the very opposite in many places. Children in private schools are not identified with a disability through IDEA at the level that studies since 2002 indicate exist in private schools (Appendix A). Private school respondents in these studies have consistently reported that LEAs are not forthcoming with information, difficult to work with, and reticent to conduct child find and provide services to students with disabilities attending private schools.

According to these studies, the rate of students with disabilities attending private schools is somewhat more than half of the rate of students with disabilities attending public schools (that is, between 6% and 9%). However, the public data indicate that in many LEAs and States the rate of private school students identified as having a disability is a much smaller fraction of the rate of public school students with such an identification.

The exception to these percentages is in states with programs requiring and paying the cost of student assessments to determine a disability. These states (Indiana, New Jersey, New York, and Ohio) together average 7.8% of private school students as being identified through child find as having a disability. The data are from the 2016-17 school year. In Table A, below, we have applied this average to generate an estimate of underfunding in states below that benchmark.

## B. The Data

For a focused group of states and district, data were collected from public sources for a focused group of states and districts such as IDEA applications by SEAs to the U.S. Department of Education and by LEAs to their appropriate SEA for 2016-17. The data collected thus far for state and local LEAs are contained below in Tables A and B.

Across the states from which data were collected, approximately 13% of public school students were identified through IDEA as students with disabilities. For private school students, this percentage is only 2.83%. When states with programs supporting the assessment of private school students are taken out of the calculation, the percentage of private school students identified as students with disabilities is 0.87%, while the percentage in those states with affirmative state programs is 7.8%—slightly more than half of the public school percentage of identified students, bearing out the estimation from decades of studies on the topic.

**TABLE A Data collected for 2016-17 from selected SEAs**

State	Total IDEA Funding	IDEA Funding for Parentally placed Private School Students	Per Pupil Allocation	Number of Private School Students Identified with Disabilities	Percentage of All Private School Students Identified with Disabilities	Percentage of all Public School Students Identified with Disabilities	Estimate of under-funding of private school IDEA*
ARIZONA	\$170,076,140	\$670,231	\$2,992	224	0.6%	11.3%	\$3,557,789
CALIFORNIA	\$603,164,365			3,390	0.5%	10.9%	TBD
WASHINGTON DC	\$19,667,309	\$101,640	\$1,694	60	0.6%	14.8%	\$1,053,455
FLORIDA	\$596,734,060	\$22,153,969	\$1,476	15,007	4.1%	12.0%	\$19,552,306
ILLINOIS	\$530,733,888	\$8,519,600	\$2,215	3,846	2.4%	12.5%	\$12,465,670
INDIANA	\$271,331,688	\$10,363,131	\$1,659	6,248	7.6%	14.5%	\$354,839
MARYLAND	\$209,867,861	\$2,948,829	\$2,549	1,157	0.8%	10.6%	\$14,081,334
MASSACHUSETTS	\$231,240,666	\$2,708,142	\$2,214	1,223	1.0%	16.2%	\$11,853,626
MICHIGAN	\$396,254,136	\$6,629,811	\$2,393	2,771	3.0%	12.1%	\$6,170,506
NEW JERSEY	\$345,748,099	\$20,977,348	\$1,962	10,691	9.8%	15.2%	N/A
NEW YORK	\$726,071,014	\$36,988,180	\$1,529	24,189	4.6%	15.7%	\$23,478,170
OHIO	\$399,926,136	\$15,266,669	\$1,332	11,459	9.5%	13.4%	N/A
PENNSYLVANIA	\$374,654,609	\$15,266,669	\$3,882	3,933	2.3%	16.3%	\$13,253,843
TEXAS	\$935,949,231	\$11,355,099	\$1,802	6,301	1.8%	8.5%	\$29,852,108

\* Estimate uses per pupil average of \$1,399 of funding and average percent (7.8%) of PPPSS from states that have the most-effective child find processes (IN, NJ, NY, OH).  
States labeled N/A have over the 7.8% average from the states that have most effective child find processes.

**Table B: Data Collected 2016-17 School Year, Selected LEAs**

State	District	Total IDEA Funding	IDEA Funding for Parentally placed Private School Students	Per Pupil Allocation	Number of Private School Students Identified with Disabilities	Percentage of All Private School Students Identified with Disabilities	Percentage of all Public School Students Identified with Disabilities
AZ	Phoenix Union	\$4,683,000	\$62,600	\$2,981	21		11.4%
AZ	Mesa	\$10,529,000	\$31,983	\$320	100	6.1%	15.2%
AZ	Chandler	\$4,841,000	\$14,627	\$1,625	9		12.2%
CA	Los Angeles	\$115,401,755	\$1,687,072	\$1,551	1088	4.0%	11.2%
FL	Duval County	\$33,354,000	\$3,217,322	\$1,600	2011	8.0%	12.4%
FL	Broward	\$52,488,000	\$4,127,647	\$1,433	2880	7.3%	12.1%
FL	Miami-Dade	\$76,565,039	\$2,052,378	\$2,140	959	1.3%	9.6%
IL	Chicago	\$93,863,165	\$1,800,121	\$1,848	974	1.8%	13.4%
MD	Baltimore	\$23,026,685	\$126,558	\$1,733	73	0.4%	15.3%
NJ	Jersey City	\$8,359,749	\$333,591	\$1,998	167	5.0%	14.4%
NJ	Newark	\$10,147,029	\$137,528	\$1,581	87	4.8%	17.8%
NY	New York City	\$248,209,000	\$23,360,907	\$1,180	19,803	11.9%	22.0%
OH	Cincinnati	\$13,786,613	\$1,823,390	\$2,285	798	3.7%	18.4%
OH	Cleveland	\$17,969,939	\$1,219,748	\$2,430	502	5.0%	20.5%
OH	Columbus	\$13,842,024	\$917,265	\$1,849	496	5.8%	16.0%
PA	Philadelphia	\$34,695,000	\$41,422	\$1,428	29	0.1%	18.0%
PA	Pittsburgh	\$8,476,000	\$216,941	\$1,364	159	1.59%	19.6%
TX	Houston	\$37,912,000	\$166,804	\$2,453	68	0.3%	7.4%
WI	Milwaukee	\$23,412,867	\$1,206,085	\$1,753	688	2.5%	18.8%

### ***C. What the Law Requires for Students Attending Private Schools***

IDEA is both a civil rights statute and a federal education program. The two civil rights provided for in the law are:

1. Every child suspected of having disability must be evaluated; and
2. Any child found to have a disability must be provided with a free, appropriate public education (FAPE).

It is clear through the law, regulations, and guidance that private school students are included in the child find requirement and in the benefits of IDEA, although benefits for parentally-placed private school students are limited to the amount of federal funding available to meet their needs.

The regulations for IDEA Part B make this responsibility clear:

“§ 300.131 Child find for parentally placed private school children with disabilities.  
(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.  
(b) Child find design. The child find process must be designed to ensure—  
(1) The equitable participation of parentally placed private school children; and  
(2) An accurate count of those children.  
(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency’s public school children.  
(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.  
(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.  
(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.  
(Approved by the Office of Management and Budget under control number 1820–0030)  
(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))”

Additionally, FAQs (April 2011) from the U.S. Department of Education on serving children with disabilities placed by their parents in private schools explain the LEA’s responsibility for child find for children attending private schools:

“Question B-2: What are the LEA’s responsibilities for identifying children with disabilities placed by their parents in private schools?

Answer: Under 34 CFR §300.131, the LEA is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in 34 CFR §300.13, and secondary schools, as defined in 34 CFR §300.36, located in the LEA. The LEA, in conducting child find for parentally placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency’s public school children. The child find process must be

completed in a time period comparable to that for students attending public schools in the LEA. The LEA where the private elementary or secondary school is located has a number of options as to how it meets its child find responsibilities. *For example, the LEA may assume the responsibility itself, contract with another public agency (including the public agency where the child resides), or make other arrangements by contracting with a third party to conduct child find activities.* (Emphasis added)

Child find is an ongoing process. *Therefore, if a child who enters a private school without having been previously identified as a child with a disability is suspected of having a disability during the school year, the LEA where the private school is located is responsible for ensuring such a child is identified, located, and evaluated.* In addition, it is possible that a child who was previously evaluated and determined not eligible for special education and related services by another LEA, may in fact be determined eligible for special education and related services at a later time through the child find process conducted by the LEA where the private school is located.” (Emphasis added)

- The answer in FAQ B-9 adds,

*“The child find provision in 34 CFR §300.111 addresses the responsibility of a State to conduct child find for all children with disabilities residing in the State, including children with disabilities attending private schools. It ensures that all children with disabilities residing in the State are identified, located, and evaluated.”* (Emphasis added)

Finally, in FAQs issued in August 2019 by the U.S. Department of Education, the requirements for LEAs to private school students under IDEA is emphasized. “...Child find is the process by which the LEA seeks out, identifies, and evaluates children with suspected disabilities.” (emphasis added) Some districts incorrectly require that private schools provide intervention services following a “response to intervention” (RTI) protocol before determining the need for an evaluation when a specific learning disability is suspected. There is no requirement in the law placing the responsibility for these activities on the private school or for conducting an RTI process prior to child find when a student is suspected of having a disability.

The April 2011 FAQs from the U.S. Department of Education referenced above address this topic:

“Question B-3: May an LEA require a private school to implement a response to intervention (RTI) process before evaluating parentally placed private school children?

Answer: No. The IDEA and its implementing regulations in 34 CFR §§300.301– 300.311 establish requirements with which LEAs must comply when conducting an initial evaluation to determine if a child qualifies as a child with a disability under Part B; these requirements do not apply to private schools. IDEA requires States to adopt criteria for determining whether a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10), and these criteria must permit, among other things, the use of a process based on the child’s response to scientific, research-based intervention (known as RTI). 34 CFR §300.307(a)(2). Thus, although IDEA permits the use of RTI in evaluating children suspected of having learning disabilities, it does not require LEAs to use RTI. Even if a State’s criteria permit LEAs to use RTI in evaluating children suspected of having learning disabilities, IDEA does not require an LEA to use RTI for parentally placed children attending private schools located in its jurisdiction. It would be inconsistent with the IDEA

evaluation provisions in 34 CFR §§ 300.301-300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process with a child suspected of having learning disabilities and has not reported the results of that process to the LEA.”

Finally, those found to have a disability must be offered FAPE. If the parents accept the offer of FAPE, all required services are provided for the student in the public school. If the parents refuse the offer of FAPE and make known their intention to enroll or continue the enrollment of the child in a private school, they have then received the civil rights protections due to their child. At this point, the child is considered a “parentally placed private school child” and no longer has an individual entitlement for services as long as the child remains in a private school. Instead, the parentally placed private school child generates federal funds and these funds are used to serve the group of eligible students with disabilities, but no member of the group has an individual entitlement to services while remaining in the private school. Since federal funds are less than 20% of the cost of special education and related services under IDEA, the usual situation is that there are not sufficient funds to meet all the needs of each member of the group of parentally placed private school children.

#### ***D. Next Steps***

1. Continue to obtain publicly available data on the child find process for private school students.
2. Provide the preliminary information gathered to officials at the U.S. Department of Education in a meeting organized through the Office of Non-Public Education. Through discussion and deliberation, devise a plan of action that can include:
  - A. Review the FAQs, particularly in relation to the child find process as it relates to private school students and ensure that the requirements laid out in the FAQs are part of the monitoring by the Office of Special Education Programs (OSEP).
  - B. Ensure that the monitoring by OSEP that results in findings is followed through with corrective action.
  - C. Ensure that state monitoring processes are cognizant of the content of the FAQs particularly as it relates to child find.
  - D. Provide a policy letter or other means of reminding public school officials of their obligation to locate, identify and evaluate private school children through the child find process. This is especially important if the monitoring produces common findings, particularly as it relates to child find for private school students,
  - E. Provide a policy letter or other means of reminder to SEAs of their obligation to gather data annually on the number of private school students evaluated, found to have a disability, and provided services through IDEA.
3. With appropriate partners, increase training opportunities for private school leaders so that they can adequately represent and support their students in all aspects of IDEA. Include in training the instructions for requesting data from the participants’ LEAs that is required by IDEA to be recorded by the LEA.
4. With appropriate partners, work on potential legislative changes that would positively impact the child find process for private school students.

#### **Appendix: Review of Studies on the Participation of Private School Students in IDEA**

Data on parentally placed private school students may be difficult to assemble, but there have been a few studies that provide some insight into the issue of funding. Additionally, IDEA 2004 requires that each LEA provide on an annual basis to the State Educational Agency (SEA) data on the number of private school children who completed the child find process, the number of those children found to have disabilities, and the number of those children served.

### *2002 Study by the United States Conference of Catholic Bishops (USCCB)*

The 2002 USCCB study was conducted in anticipation of Congress' consideration of amendments to IDEA, specifically Part B. The study surveyed the largest 10 diocesan school systems and over-sampled for urban areas to ensure a representative sample.

The findings from this study relevant to this report provided the following conclusions:

1. Catholic schools serve special needs children in all disability areas. Approximately 7% of Catholic school students were found to have disabilities, as compared to 11% of public school students at the time of the study.
2. At the time of the study, the child find process was inconsistently administered and difficult to access for the parents of children suspected of having disability and attending Catholic schools. Local interpretations meant the process for obtaining a child find evaluation differed widely, and parents reported to private school principals that local officials were often unsure of the process for children attending private schools, or the process was determined by the personnel in charge at the time of the request.
3. Of the group of Catholic school students suspected of having a disability who were denied an evaluation by the public school district or found not to have a disability by the public school district, 90% were found to have a disability by a private evaluator.

### *Indiana Non-Public Education Association Federal Access Initiative Study 2009*

The University of Notre Dame's ACE Consulting (ACE) and the Indiana Non Public Education Association (INPEA) collaborated on a study to determine the level and quality of participation in IDEA for students attending Indiana private schools associated with INPEA. Membership of INPEA consists of the multiple private school organizations representing private schools in the state of Indiana.

The findings relevant to this paper include:

1. 97% of principals reported that they educated children with disabilities in their schools.
2. Only 25% reported that their public school district consistently conducted child find for private school students suspected of having a disability.
3. Most private school principals did not know the amount of funds available or how it was calculated, and this information was not provided during the consultation process.

### *Mid-Atlantic Catholic Schools Consortium Federal Access Initiative Study 2010*

The Mid-Atlantic Catholic Schools Consortium (MACSC) conducted a study of the Catholic schools of the five arch/dioceses that made up the consortium: the Archdioceses of Baltimore and Washington, and the Dioceses of Arlington, Richmond, and Wilmington.

The findings from this study relevant to this report provided the following conclusions:

1. Catholic schools in the Mid-Atlantic arch/dioceses educated children with disabilities and provided services for them, independent of any state or federal support for special education services and benefits.
2. In the Mid-Atlantic arch/dioceses, child find was not consistently provided to Catholic school students who were suspected of having a disability. When child find was carried out, it was not always timely. There was no confidence that child find was carried out in a way that accurately identified Catholic school students with disabilities.
3. Catholic school principals in the Mid-Atlantic arch/dioceses did not always know the IDEA funding available or how it was generated. Public school districts were not cooperative or knowledgeable about their responsibilities toward parentally placed private school students.

### *Archdiocese of Philadelphia Study March 2017*

IDEA was part of a larger study conducted by the Archdiocese of Philadelphia regarding federal and state education program participation. It included a state program for special education, Act 89, as well as IDEA. In addition to the online survey and analysis of data, site visits were conducted to develop a fuller picture of services being delivered through IDEA.

Relevant findings provided the following conclusions:

1. Child find was inconsistently conducted by the public entities responsible for doing so (LEAs and the intermediate units in Pennsylvania which act on behalf of some LEAs for administering federal education programs to private school students). The consultation process was not providing sufficient information and guidance for private school principals to be meaningfully involved in identifying students with disabilities or providing services for them.
2. 95% of principals in the Archdiocese of Philadelphia were not told the amount of funding their students with disabilities generated under IDEA to serve children with disabilities attending schools in the Archdiocese of Philadelphia. 87% did not know how many students attending schools in the Archdiocese of Philadelphia were being counted by the LEAs or intermediate units for the purpose of generating funding.
3. Most special education services being publicly provided were provided through Act 89, but neither the evaluation to qualify for Act 89 services nor the psycho-educational assessments performed under Act 89 were used for IDEA child find. Therefore, Act 89 students assessed as having educational problems were not identified as generating funds or eligible for services through IDEA.

### *Exceptional Learners in Catholic Schools Benchmarking Survey Report, 2017*

This study included an online survey of 53 superintendents and 119 principals from Catholic schools across the country. It was conducted by researchers Boyle, Bernards, and Davoren in collaboration with the National Catholic Educational Association (NCEA).

The findings from the study relevant to this report provided the following conclusions:

1. 73% of principals believe there are undiagnosed students in their buildings.
2. Students with diagnosed disabilities comprised 9.3% of the overall population of Catholic schools in this study.
3. Most of the referrals for evaluation came from classroom teachers, followed by parents and special education teachers.
4. The Child Find process was inadequately identifying students.



*National Study 2019 United States Conference of Catholic Bishops and National Catholic Educational Association*

This study has completed survey process for data collection and conducted listening sessions across the nation. Currently the survey data is being analyzed for writing the final report. As of October 2019, the key take-aways are as follows:

1. There exists widespread lack of awareness about IDEA. Slightly more than 9% possess no awareness about IDEA, 37% of principals report that they possess little awareness of IDEA, and 43% possess only moderate awareness.
2. Consultation is not being implemented across all LEAs. For instance, 6% of superintendents have indicated that none of the LEAs with whom they work engage in consultation while slightly more than 9% have indicated that less than half do.
3. Child find is not being conducted across all LEAs. For instance, while 62% of principals indicate that child find is occurring, 38% report that child find is not occurring.
4. There is a large gap between the number of students who are referred for evaluation and the number of students who are identified by LEAs as requiring special education services. For instance, 40% of superintendents report that less than 25% of students suspected of having a disability and referred for child find have been identified by the LEA as needing special education services. Similarly, 43% of principals have indicated that 50% or less of students suspected of having a disability have been identified by the LEA.