THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES
STATEWIDE COORDINATOR FOR SPECIAL EDUCATION
Room 1624 One Commerce Plaza • Albany, NY 12234 Telephone (518) 402-3353 Fax: (518) 473-5769
www.nysed.gov

September 2007

TO: District Superintendents
Superintendents of Schools
Presidents of Boards of Education
New York City Board of Education
Principals of Public Schools Directors
of Pupil Personnel Services
Administrators of Nonpublic Elementary and Secondary Schools
Organizations, Parents and Individuals Concerned with Special Education
Impartial Hearing Officers
Commissioner's Advisory Panel for Special Education Services
Commissioner's Advisory Panel for Nonpublic Schools
SETRC Professional Development Specialists
Regional School Support Centers

FROM: James P. DeLorenzo

SUBJECT: Chapter 378 of the Laws of 2007 - Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c

The purpose of this memorandum is to inform school districts of their responsibilities to provide special education services to students with disabilities who are enrolled in nonpublic elementary or secondary schools by their parents beginning with the 2007-08 school year and thereafter pursuant to section 3602-c of Education Law, as amended by Chapter 378 of the Laws of 2007. This memorandum replaces the guidance issued in April 2007 entitled ***Revised Interim*** *Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-*c.

Chapter 378 of the Laws of 2007 was signed into law on July 18, 2007. This Chapter of Laws includes amendments to section 3602-c of the Education Law relating to the education of students with disabilities who are parentally placed in nonpublic elementary and secondary schools. Section 3602-c of Education Law was amended to comply with section 612(a)(10) of IDEA, as reauthorized in 2004, and federal regulations in 34 Code of Federal Regulations (CFR) sections 300.130 to 300.147 to require the ***public school district where the nonpublic school is located*** to provide students with disabilities enrolled in nonpublic elementary and secondary schools by their parents with

special education services. Changes to State law were made to the extent necessary to comply with federal requirements while still preserving the provisions of preexisting law which ensured that all students enrolled in nonpublic elementary and secondary schools by their parents who were residents of the State have access to those special education services they would have received if they attended public school. Attachment 4 provides a copy of the statutory language in section 3602-c, as amended by Chapter 358 of the Laws of 2007, effective June 30, 2007.

The information in this memorandum does not apply to students with disabilities:

- placed in, or referred to private schools by public agencies such as school district placements of students in approved private schools, Special Act School Districts, and State-supported or State-operated schools;
- enrolled in Charter schools;
- home schooled by their parents;
- in private day care or preschool programs;
- enrolled by their parent in a public school outside of their district of residence; or
- parentally placed in drug rehabilitation centers or hospitals.

The attached guidance describes the responsibilities of the school district where a nonpublic school is located regarding:

- child find and individual evaluations,
- committee on special education (CSE) responsibilities,
- provision of special education services to NYS residents and out-of-state residents,
- consultation with nonpublic schools and parent representatives,
- due process responsibilities,
- data collection and reporting, and
- use of federal funds.

Attachment 3 to this memorandum includes a sample letter to parents who place their children in nonpublic schools. We encourage all school districts to take steps to inform parents of these new requirements using information provided in this sample letter.

Questions regarding this memorandum may be directed to the Special Education Policy Unit at 518-473-2878, the Office for Nonpublic School Services at (518) 474-3879, or to the Special Education Quality Assurance (SEQA) Office at:

Central Regional Office	(315) 428-3287
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(518) 473-1185 or (914) 245-0010
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002

Attachment 1: Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and NYS Education Law Section 3602-c

Attachment 2: Sample Form: Written Affirmation of Consultation with Nonpublic School Representatives Concerning Special Education Services

Attachment 3: Sample Letter to Parents Who Place Their Children in Nonpublic Schools

Attachment 4: Section 3602-c, as amended by Chapter 378 of the Laws of 2007

Attachment 1

Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c

Education Law section 3602-c, as amended by Chapter 378 of the Laws of 2007, establishes New York State's (NYS) requirements relating to the provision of special education to students with disabilities enrolled in nonpublic elementary and secondary schools by their parents. Under the provisions of section 3602-c, students with disabilities placed by their parents in nonpublic schools are entitled to receive special education services in accordance with an individualized education services program (IESP) from the public school district in which the nonpublic school is located while they receive general education from the nonpublic school where their parents enrolled them.

Federal regulation (34 Code of Federal Regulations (CFR) section 300.130) defines parentally placed private (or nonpublic) school children with disabilities as "children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary or secondary school, other than children with disabilities covered under 34 CFR 300.145-147 – "Placement of children by parents if free appropriate public education (FAPE) is at issue."

For the purpose of this memorandum:

District of location means the school district within whose boundaries a nonpublic elementary or secondary school is located.

District of residence means the school district where the student legally resides.

Elementary or secondary school means a school providing an education program to students in or more grades Kindergarten through grade twelve.

TABLE OF CONTENTS

I. Consultation Requirements 1

II. Child Find Requirements 3

III. Parent Consent 4

IV. Provision of Special Education Services 4

- Students who are residents of NYS 4

- Students who reside outside of NYS 7

V. Data Collection and Reporting 8

VI. Proportionate Share of Federal Dollars 9

VII. Questions and Answers 10

I. CONSULTATION REQUIREMENTS

The **school district of location** must consult with nonpublic school representatives and representatives of parents of parentally placed nonpublic school students with disabilities enrolled in nonpublic elementary and secondary schools located within the boundaries of the school district during the design and development of special education and related services for students with disabilities and throughout the school year to ensure that parentally placed nonpublic school students identified through the child find process can meaningfully participate in the special education and related services. The school district must engage in consultation regarding the child find process, provision of special education services, and use of federal funds. Consultation is not specific to individual students. Individual services are determined by the Committee on Special Education (CSE). The consultation process must be timely and meaningful and include discussion of the following.

1. Child Find:

- The child find process and how parentally placed nonpublic school students suspected of having a disability can participate equitably, including how parents, teachers and nonpublic school officials will be informed of the process.

- How the consultation process will operate throughout the school year to ensure that parentally placed nonpublic school students with disabilities identified through the child find process can meaningfully participate in special education and related services.

2. Provision of Special Education Services:

- How, where and by whom special education and related services will be provided to such students, including a discussion of types of services, such as direct services and alternate service delivery mechanisms. *For example:*
  - *a discussion of how services might be provided could include a discussion of scheduling for resource room services;*
  - *a discussion of where services might be provided could include a discussion of those services that would generally be provided onsite and offsite of the nonpublic school or the factors that would be considered in the determination of where services would be provided;*
  - *a discussion of who will provide services might include a discussion of services that will be provided by the public school district directly and others that may be provided through contract with another agency.*

- For students who reside out-of-state but are parentally placed in nonpublic schools located in the geographic boundaries of the public school, how a proportionate share of federal IDEA Part B funds will be spent on special education services to such students.

- How, if the school district 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 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.

3. Use of Federal Funds

- The determination of the proportionate amount of federal funds available to serve parentally placed nonpublic school students with disabilities, including the determination of how the amount was calculated.

- How such services will be apportioned if funds are insufficient to serve all parentally placed out-of-state resident students with disabilities and how and when these decisions will be made. (*Note: For all NYS students, the school district must provide services pursuant to the student's IESP, regardless of the apportionment of federal funds. For students who are not New York residents who are parentally placed in NYS nonpublic schools, the school district would need to consult on how such students can participate equitably consistent with the federal proportionate share of IDEA funds.)*

The nonpublic school representatives must provide written affirmation of their participation in the consultation process. If the nonpublic school representative does not provide such affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the State Education Department (SED). **Attachment 2** provides a sample form for school districts to use to document its consultation process.

See Consultation Questions and Answers

II. CHILD FIND REQUIREMENTS

The **school district of location** is responsible for child find for students who are parentally placed in nonpublic schools located in their geographic boundaries. Child find is the practical method the public school district will develop and implement to identify, locate and ensure the evaluation and identification of students with disabilities who are parentally placed in nonpublic schools.

- The child find activities must be similar to activities undertaken for students with disabilities in its public schools and must be completed in a time period comparable to that for other students attending public schools in the school district.

- Each public school district must consult with the nonpublic schools where students are parentally placed to determine an accurate count of students with disabilities attending such schools and receiving special education services.

- The district of location must have procedures for conducting evaluations and reevaluations of students enrolled in nonpublic schools located within their district within required timeframes and at no cost to parents.

- Unless the parent and district agree otherwise, the district of location must conduct a reevaluation at least once every three years of each eligible parentally placed nonpublic school student with a disability, even if the student is not currently receiving special education services. It is important that required reevaluations are conducted because they provide current data needed to determine the total number of eligible students which is used in calculating the proportionate share of funds that must be used on services.

NOTE: If, prior to July 1, 2007, a student suspected of having a disability had been referred to the CSE of the student's district of residence, and, for the 2007-08 school year, the student with a disability is parentally placed or is going to be parentally placed in a nonpublic school that is not located in the school district where the student legally resides, the results of such evaluation, with parental consent, should be shared with the CSE of the district of location. The district of location may adopt such evaluation as its own or conduct a new evaluation in whole or in part.

See Child Find Questions and Answers

III. PARENT CONSENT

Federal regulation (34 CFR section 300.300) establishes specific parent consent requirements for parentally placed nonpublic school students, as follows:

Consent for sharing personally identifiable information regarding special education:

- If a student with a disability is parentally placed, or is going to be parentally placed in a nonpublic school that is not located in the school district where the student legally resides, parental consent must be obtained before any personally identifiable information about the student relating to special education is shared between officials in the public school district of location and officials in the public school district of residence. Therefore, parent consent is required before sharing individual evaluations, individualized education programs (IEPs), IESPs or Services Plans and other special education records between the district of location and the district of residence.

Consent for initial evaluations and reevaluations:

- If a parent who has placed a student with a disability in a nonpublic school at his/her own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district may not use the consent override procedures described in 34 CFR sections 300.300(a)(3) and (c)(1) and the school district is not required to consider the student as eligible for

special education services under 34 CFR sections 300.132 through 300.144.

Note: There is no federal or State requirement for parental consent to share information between the school district of location and the nonpublic school the student intends to enroll in or is enrolled in.

IV. PROVISION OF SPECIAL EDUCATION SERVICES

FOR STUDENTS WHO ARE RESIDENTS OF NYS, THE FOLLOWING REQUIREMENTS APPLY:

Development of the IESP

- The CSE of the district of location must develop an IESP for students with disabilities who are NYS residents and who are enrolled by their parents in nonpublic elementary and secondary schools located in the geographic boundaries of the public school.

- The IESP must be developed in the same manner and with the same contents as an IEP is developed.

- The CSE must ensure that a representative of the nonpublic school where the student attends is included in the meeting where the IESP is developed. If the representative cannot attend, the school district must use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls.

- The IESP must be reviewed periodically, but not less than annually.

NOTE: If an IEP was developed for the 2007-08 school year by the district of residence and the student with a disability is parentally placed, or is going to be parentally placed in a nonpublic school that is not located in the school district where the student legally resides, with parent consent the district of residence must forward the IEP to the CSE of the district of location. Such IEP will then be deemed to be an IESP and the school district of location must provide the services, unless or until it is amended by the district of location.

Parent Request for Special Education Services

- The parent must request special education services in writing to the school district of location by June 1 preceding the school year for which the request for services is made, except that when a student is first identified as a student with a disability after the first day of June preceding the school year for which the request is made and prior to the first day of April of such current school year, the parent must submit the written request for services within 30 days after the student was first identified.

Note: For the 2007-08 school year, parents had until August 18, 2007 to request that the district of location provide special education services to his/her child.

Provision of Special Education Services

- The school district of location is responsible to provide special education services pursuant to the IESP developed for each eligible student. Services must be provided on an equitable basis as compared to other students with disabilities attending public or nonpublic schools located within the school district.

- The manner (how, where and by whom) special education and related services will be provided to students is determined by the district of location based on the consultation process and in consideration of the individual needs of the student. The final decision with respect to services provided to individual students is made by the CSE of the district of location. Services provided to parentally placed students may be provided on the site of the private school or at another location.

See *Provision of Services* Questions and Answers

Due Process Complaints

A parent of a student who is a NYS resident who disagrees with the individual evaluation, eligibility determination, recommendations of the CSE on the IESP and/or the provision of special education services may submit a Due Process Complaint Notice to the school district of location.

Note: A parent who, pursuant to 34 CFR section 300.148, is seeking reimbursement of private school tuition when FAPE is at issue should submit a Due Process Complaint Notice to the school district of residence. For further information on this, see http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CB%2C300%252E148%2C

See *Due Process* Questions and Answers

Process for the School District of Location to Recover its Costs from the School District of Residence for NYS Resident Students

- Beginning with the 2007-08 school year, the actual cost for CSE administration, evaluations and special education services provided to a student with a disability who is a resident of NYS but a nonresident to the district of location may be recovered from the student's school district of residence as follows:

    1. If the district of location has parent consent to share personally identifiable special education information about the student with the district of residence, the district of location is entitled to bill the district of residence for the costs of evaluation, CSE administration and providing services. The amount charged by the school district of location can not exceed the actual cost to the school district of location, after deducting any costs paid with federal or State funds[1].

OR

In the event the parent has not provided consent to release personally identifiable information concerning their child, the school district of location must submit to the Commissioner, in a form prescribed by the Commissioner (under development), a claim for costs of services, evaluation costs, and CSE administrative costs.

Parental consent must be obtained before any personally identifiable information about the student relating to special education is shared between officials in the public school district of location and officials in the public school district of residence. Therefore, parent consent to share special education information between the two public school districts is required before billing a district of residence for the cost of special education services provided to the student by the district of location.

Note: Additional guidance on the process for the school district of location to recover its costs from the school district of residence for NYS resident students will be issued in a subsequent memorandum.

FOR OUT-OF-STATE STUDENTS WITH DISABILITIES PARENTALLY PLACED IN NONPUBLIC SCHOOLS LOCATED IN NYS, THE FOLLOWING REQUIREMENTS APPLY:

Child Find

A school district in which nonpublic elementary schools and secondary schools are located must, in carrying out its child find requirements, 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 (34 CFR section 300.131(f)).

The school district of location must evaluate an out-of-state parentally placed student suspected of having a disability. Pursuant to federal requirements, the cost of the evaluation cannot be billed to the district of residence or the state where the student legally resides, nor can the federal Part B proportionate share of dollars be used for child find, including evaluations.

Parent Request for Services

The June 1 date to request services does not apply to residents of another state who are parentally placed in a nonpublic school located in NYS.

Services Plan

The school district of location is obligated to provide special education services to an eligible student who legally resides in another state and is parentally placed in a nonpublic school located in NYS **only** to the extent that such services provide the student equitable participation in the services funded with federal IDEA funds. The services to be provided to

out-of-state students must be documented on a Services Plan that is developed by the CSE of the district of location. The Services Plan is the written plan that describes the specific special education and related services that the district of location will provide to the student, consistent with the services that the school district of location has determined through the consultation process to be provided to such students **in relation to the proportionate share of federal IDEA Part B dollars**.

The Services Plan must, to the extent appropriate, be developed, reviewed and revised by the CSE of school district of location consistent with the requirements for development of an IEP. The parent(s) of the student must be invited to the meeting and the district of location must also ensure that a representative of the nonpublic school where the student attends be included in the meeting where the services plan is developed. If the nonpublic school representative cannot attend, the school district must use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls. The Services Plan must be reviewed periodically, but not less than annually.

Due Process

A parent of an out-of-state student suspected of having a disability has the right to mediation or an impartial hearing for disputes regarding evaluations and an eligibility determination. Since out-of-state resident students have no individual right to services, there is no right to mediation or an impartial hearing for disputes regarding services.

Costs for Services

The provision of services to out-of-state students is limited to services based on a proportionate share of federal IDEA funds. Federal law provides no mechanism for interstate billing,

For federal guidance on the provision of services that would apply to students with disabilities who reside in another state but are parentally placed in a nonpublic school located in NYS, see:

http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C5%2C

See Provision of Services Questions and Answers

V. DATA COLLECTION AND REPORTING

In the 2006-07 school year, school districts reported data on the PD-1/4 report regarding the numbers of resident and nonresident parentally placed students with disabilities attending nonpublic schools located in the school district and the numbers of resident students who are parentally placed in nonpublic schools located in other school districts. These data were used to calculate a proportionate per pupil amount of IDEA funds for services to students with disabilities attending nonpublic schools for the 2007-08 school year.

In the 2007-08 school year, it is anticipated that special education data previously collected on the PD-1/4 report will be collected through SED's Student Information Repository System (SIRS). This system will collect data at the individual student level. Directions will be provided to school districts to report enrollment of all parentally placed students with disabilities in nonpublic schools located in the school district. For each student, specific information will be requested to allow SED to complete its State and federal reporting requirements, including information needed to calculate the proportionate share of federal funds for each eligible student.

The district of location must maintain in its records and provide SED the following information related to parentally-placed nonpublic elementary and secondary school students:

- the number of students evaluated;
- the number of students determined to be students with disabilities; and
- the number of students served (i.e., receiving special education services).

VI. PROPORTIONATE SHARE OF FEDERAL DOLLARS

In the 2006-07 school year, the data that school districts reported on the PD-1/4 report (see above) were used to calculate a proportionate per pupil amount of IDEA funds for services to students with disabilities attending nonpublic schools for the 2007-08 school year. Also, in computing the 2007-08 IDEA federal flow through allocation for every school district, SED used the total K-12 enrollment of all students attending public and nonpublic schools located in the school district as reported on the Basic Education Data System (BEDS) forms as the "population factor" in the allocation formula. In previous years, SED used the K-12 enrollment of public and nonpublic students residing in the school district as the "population factor".

SED has posted on its website the actual minimum proportionate share of federal funds for each school district. See: http://www.vesid.nysed.gov/sedcar/federal.htm

This minimum amount must be spent on services for parentally placed nonpublic elementary and secondary school students with disabilities during the school year. If, by the end of the fiscal year, a school district does not expend the entire proportionate share of its Part B funds on students with disabilities placed by their parents in nonpublic schools, the school district must obligate the remaining funds for special education for such students during the carry-over period.

See Expenditure of Federal Funds Questions and Answers

VII. QUESTIONS AND ANSWERS

Nonpublic Schools

1. **What is the definition of a nonpublic school for purposes of section 3602-c of Education Law?**

   A nonpublic school includes nonpublic elementary and secondary schools chartered by the Board of Regents, nonpublic secondary schools registered by the Board of Regents, and other nonpublic elementary and secondary schools determined by the public school district to be providing instruction substantially equivalent to that provided in the public schools. A list of nonpublic schools found at http://www.nysed.gov/admin/admindex.html can assist school districts in identifying nonpublic schools for purposes of the consultation requirements. Additional assistance may be provided by the Office for Nonpublic School Services at (518) 474-6541.

2. **If a nonpublic school has different sites in more than one school district, which school is the district of location?**

   The school district where the nonpublic school is geographically located would be the district of location for students attending that school, regardless of the address for administration (or BEDS code) of the nonpublic school.

Consultation

Note: Federal questions and answers on the IDEA consultation requirements can be found at: http://www.ed.gov/policy/speced/guid/idea/faq-parent-placed.pdf

3. **What steps should a public school district take to arrange for consultation with officials of nonpublic schools located within its geographic boundaries and with representatives of parents of parentally placed students with disabilities?**

   To arrange for consultation, a public school district should send a letter to representatives of each nonpublic school located in its geographic boundaries inviting them to participate in a meeting or meetings to discuss the required consultation topics. In addition to nonpublic school officials, the school district must consult with representatives of parents of parentally placed students with disabilities A list of nonpublic schools is provided by geographic region at http://www.emsc.nysed.gov/irts/nys-schools/nonpublic/sectionI.pdf. (Nonpublic schools are designated under “record type” on this list and also include approved private schools where school districts place students.) The Directory of Public and Nonpublic Schools and Administrators is available at http://www.nysed.gov/admin/bedsdata.html.

Each of the nonpublic school officials should be asked to sign an affirmation that they participated in the consultation process. In the event nonpublic school officials decline participation or to sign the affirmation, the public school district must submit documentation to SED of the consultation process. See **Attachment 2**.

4. **Must the public school district also consult with officials of approved private schools where students are placed by school districts?**

   The consultation requirements of 34 CFR section 300.134 do not apply to students placed by CSEs in approved private schools. However, if the approved private school also accepts students who are parentally placed and paying tuition, the public school must also consult with officials of these schools, with respect to those parentally placed students.

5. **Can nonpublic school officials file a complaint with SED or the United States Education Department (USED) on the consultation process?**

   Yes. A nonpublic school official has the right to submit a complaint to SED that the public school district did not engage in consultation that was meaningful and timely, or did not consider the views of the nonpublic school officials. The complaint submitted by the nonpublic school official must include the basis of the noncompliance. If the nonpublic school official is dissatisfied with the SED complaint findings, he or she may submit a complaint to USED. A complaint submitted by a nonpublic school official may be submitted using the sample form found at http://www.vesid.nysed.gov/specialed/publications/policy/covercomplaint.htm.

Child Find

6. **Which school district has the responsibility to conduct the evaluation to determine if a parentally placed nonpublic school student is eligible for special education?**

   The **district of location** is responsible to conduct the evaluation to determine a student's eligibility for special education. The district of location is also the district that must obtain the informed written consent of the parent to conduct the initial evaluation or reevaluation.

7. **Which school district would convene a meeting of the CSE to determine the student's eligibility and develop the IESP?**

   If a student is parentally placed in a nonpublic school and is suspected of having a disability, the district of location is responsible to conduct the CSE meeting to determine a student's eligibility for special education and, if determined eligible for special education, to recommend the special education services the student will receive and document such recommendations on an IESP.

8. **Is it possible for a parent to request evaluations from the district where the nonpublic school is located as well as the district where the child resides?**

Yes, but it is generally not advisable because subjecting a student to repeated testing by separate school districts in close proximity of time may not be the most effective or desirable way to ensure that the individual evaluations are meaningful measures of whether a student has a disability or of obtaining an appropriate assessment of the student's educational needs.

If the district of residence receives a request for an evaluation of a student suspected of having a disability who is parentally placed in a nonpublic school in another district, and the parent is not seeking to enroll the student in the public school, the district of residence should notify the parent of his/her right to request an evaluation from the district of location and the development of an IESP from the district of location. The district of residence, with parental consent to share information, should facilitate the referral to the district of location.

9. **Is parent consent required when having a representative of the nonpublic school participate in the CSE meeting?**

No. Parent consent is not required to share information between the district of location and the nonpublic school. The meeting notice would inform the parents of the individuals who are expected to attend the meeting.

Provision of Services

10. **What is meant by services provided on an "equitable basis"?**

The term "equitable basis" means that special education services are provided to parentally placed nonpublic school students with disabilities in the same manner as compared to other students with disabilities attending public or nonpublic schools located within the school district.

The new State legislation is intended to maintain the level of services provided to NYS nonpublic students with disabilities through IEPs under the former provisions of Education Law section 3602-c. Accordingly, parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student's placement in the nonpublic school program. A nonpublic student may not be denied services that a public school student would receive based solely upon his or her status as a nonpublic student, nor can a district deny services to a nonresident nonpublic school student that a resident nonpublic school student would receive. The converse is also true--a school district of location is not required to provide greater services to a nonpublic

student than a public school student would receive under the Rowley standard (i.e., services reasonably calculated to enable the child to receive some educational benefit (458 U.S. at 206-07)).

11. **What are the responsibilities of the school district of residence to ensure that special education services are provided to students with disabilities who are parentally placed in nonpublic schools located within the geographic boundaries of another school district?**

    Except in cases where the district of location contracts with the district of residence for services, the district of residence would have no direct responsibility to ensure provision of special education services.

12. **Must the district of residence develop an IEP for a student who is parentally placed and conduct annual reviews of this IEP?**

    USED has provided guidance that states: "If a determination is made through the child find process by the LEA (local educational agency) where the private school is located that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in another LEA, the LEA where the child resides need not make FAPE available to the child." Therefore, if the parents make clear their intention to keep their child enrolled in the nonpublic elementary or secondary school, the district of residence need not develop or annually review an IEP for the student.

13. **For the 2007-08 school year, must the school district of location conduct CSE meetings to develop new IESPs?**

    In cases where an IEP has been developed at an annual review meeting conducted in the 2006-07 school year by the district of residence, and parent consent has been obtained to share personally identifiable special education information between the district of location and the district of residence, the district of residence must forward the IEP developed at the student's annual review to the district of location. For the 2007-08 school year, the IEP developed and shared with the district of location would be deemed an IESP and the district of location must provide the services recommended in the IEP, unless and until the district of location amends it and develops a new IESP.

14. **Is it permissible for the district of location to contract with another public agency, including the district of residence, for individual evaluations?**

    Yes. The district of location is responsible for child find, including evaluations. However it can fulfill this responsibility directly, or through contract with another public agency, including the district of residence provided that the parent has provided consent to share special education information between the district of residence and the district of location.

15. **Is it permissible for the district of location to contract with the student's district of residence to provide special education services?**

    Yes. Nothing in IDEA or State law would preclude the district of location from contracting with the district of residence as a third party provider to fulfill its obligations to provide special education services, except that parent consent to share information between the district of residence and the district of location is required.

16. **Can the school district of location contract with a Board of Cooperative Educational Services (BOCES) to provide special education services to students with disabilities parentally placed in nonpublic schools in the geographic boundaries of their school district?**

    Yes. Section 3602-c(3) of Education Law authorizes boards of education, with the consent of the Commissioner, to contract with BOCES, consistent with Education Law section 1950, to provide the services required by section 3602-c.

17. **Which school district is responsible for the provision of special education services to parentally placed nonpublic school students when the school district where the nonpublic school is located provides for the education of their students by contract with another school district (e.g., K-8, K-3, K-1 school district)?** [Sections 2040-2045 of Education Law]

    The school district of location is responsible to provide the special education services. However, consistent with the manner in which services are provided to other students in their school district, the school district of location could negotiate in its contract with the receiving school district that such district would also provide special education services to parentally placed students with disabilities.

18. **Are children who are age eligible (age 5 years by December 1) whose parents enroll them for an additional year in a preschool or nursery school program eligible for special education services pursuant to section 3602-c of Education Law?**

    No. Section 3602-c of Education Law pertains only to parental placements in nonpublic elementary and secondary schools. It does not apply to a child who is less than compulsory school age continuing in a preschool program, even if the preschool program is located in the same building as a kindergarten or other elementary grade classrooms. These students would continue to be the responsibility of the district of residence through the CSE. Also See question H- 3 of USED guidance found at:
    http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C

19. **Does section 3602-c of Education Law require services to be provided to students with disabilities during the summer?**

    No. The definition of "services" in section 3602-c(1)(a) of the Education Law is limited to services provided in programs operated during the course of the regular school year and does not apply to services provided in summer programs.

20. **Must the IESP indicate that the student has been parentally placed in a nonpublic school?**

    Yes. Since an IESP must have the same components as an IEP which includes a recommendation for placement, the IESP should indicate placement as "student is parentally placed in a nonpublic school."

21. **Are students parentally placed in a nonpublic school entitled to declassification support services?**

    No. Only students who are enrolled in public schools are entitled to declassification support services.

Expenditure of Federal Funds

Note: Federal guidance on the expenditure of federal funds can be found at:
http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C

22. **Can the proportionate share of federal funds be spent on child find activities, including the cost of the evaluation?**

    No. Section 612(a)(10)(A)(ii) of IDEA (child find requirements) states that the cost of carrying out child find requirements may not be considered in determining whether a school district has met its obligations to expend a proportionate amount of federal funds.

23. **Can the federal IDEA funds be given to the nonpublic school to provide the special education services?**

    No. The control of funds used to provide special education services and title to materials, equipment and property purchased with those funds must be in the public school district and the public school district must administer the funds and property. 34 CFR section 300.142 adds that "An local educational agency (LEA) may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services… if the employee performs the services outside of his or her regular hours of duty; and the employee performs the services under public supervision and control."

24. **What can the proportionate share of federal IDEA funds be spent on?**

The proportionate share of federal dollars must be spent on the provision of special education services. Transportation of students with disabilities necessary for students to receive special education services can be considered. The proportionate share of IDEA funds may not be spent on child find activities, including evaluations, nor may they be spent on administrative functions such as CSE meetings. State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended pursuant to IDEA 2004.

Transportation

25. **If special education services are to be provided to a student at a site other than the nonpublic school, which school district is responsible to arrange and pay for transportation necessary for the student to receive the special education services?**

The district of location is responsible to provide the special education services, including, as applicable, arranging and providing transportation, including special transportation as appropriate, necessary for the student to receive special education services. As noted above, the proportionate share of IDEA Part B dollars could be used for such purpose.

26. **Which school district is responsible to provide transportation for the student to and from the student's home and the nonpublic school?**

The school district of residence remains responsible to provide transportation to parentally placed nonpublic school students to and from the student's home pursuant to section 3635 of Education Law. However, if the district of location chooses to provide special education services to a student before or after the school day at its own school or another location, it must ensure the student has transportation from the special education services to or from his or her home. For more information see: http://www.emsc.nysed.gov/nonpub/HANDBOOKonServicestoPupilsAttendingNonpublicSchools/ Handbookpage.htm

Section 4402(4)(d) of Education Law requires the district of residence to arrange for suitable transportation up to 50 miles to and from the nonpublic school the student attends when the student has been identified as a student with a disability by the CSE and such student attends such school for the purpose of receiving services or program similar to special educational programs recommended for such student by the CSE of the district of residence.

Attachment 2

SAMPLE FORM

IDEA Section 611(a) (10) WRITTEN AFFIRMATION OF CONSULTATION WITH NONPUBLIC SCHOOL REPRESENTATIVES CONCERNING SPECIAL EDUCATION SERVICES

1. School districts where nonpublic elementary and secondary schools are located must **maintain documentation** of timely and meaningful consultations with participating nonpublic schools signed by the representatives of such schools. New York State has provided a sample form (attached) that districts may use in order to secure the signed affirmation by nonpublic school representatives of participation in the required consultation. In the event that a school district chooses not to use the State Education Department (SED) sample form, the district must maintain some form of documentation that establishes:
   - the date(s) on which the timely and meaningful consultation occurred;
   - documentation of subject areas covered during the consultation process; and
   - a signed and dated statement from each nonpublic school representative affirming that he/she participated in the consultation process.

2. In the event the district is unable to secure a written affirmation from one or more of the nonpublic school representatives either due to a refusal or failure to attend the consultation, or failure to submit the signed confirmation, **the district must provide documentation to the State** showing that the school in question was invited to the consultation. If a nonpublic school does not agree to consult with the district, then the district must maintain documentation of its attempts to secure the school's participation at the consultation. Such documentation should include:
   - a copy of the agenda used at the consultation;
   - a copy of the notice form or letter utilized by the district to notify the nonpublic schools of the consultation;
   - copies of signed affirmations by nonpublic school participants at the consultation; and
   - if necessary, copies of all invitations provided to nonpublic school representatives who either refuse to sign the affirmation or fail to attend the consultation.

Such documentation should be sent to:

New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities (VESID)
ATTN: Special Education Quality Assurance (SEQA)
Room 1624, One Commerce Plaza
Albany, NY 12234

Sample Form: This is not an official New York State Education Department or U.S.Education Department document.

Written Affirmation of Consultation
with Nonpublic School Representatives concerning Special Education Services

I hereby affirm that I was invited to and participated in the nonpublic/parochial school providers' consultation meeting sponsored by (SCHOOL DISTRICT) and held on (DATE) in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA). I understand that during the course of the consultation, the following issues were required to be discussed:

- the child find process and how parentally placed nonpublic school students suspected of having a disability can participate equitably, including how parents, teachers and nonpublic school officials will be informed of the process;
- the determination of the proportionate amount of federal funds available to serve parentally placed nonpublic school students with disabilities under this paragraph, including the determination of how the amount was calculated; including the proportionate amount allocated to students who are not residents of New York State (NYS);
- the consultation process among the school district, nonpublic school officials, and representatives of parents of parentally placed nonpublic school students with disabilities, including how such process will operate throughout the school year to ensure that parentally placed nonpublic school students with disabilities identified through the child find process can meaningfully participate in special education and related services;
- how, where, and by whom special education and related services will be provided for parentally placed nonpublic school students with disabilities, including a discussion of types of services and how and when these decisions will be made, 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. (Note: for all NYS students, the school district must provide services pursuant to the student's individualized education service program (IESP), regardless of the apportionment of federal funds. For out-of-state students parentally placed in NYS nonpublic schools, the school district would need to consult on how such students can participate equitably consistent with the federal proportionate share of IDEA funds.); and
- how, if the school district 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 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.

I was provided the opportunity to express my views and to ask questions of the school district pertaining to the aforementioned issues. I understand that if I believe that the consultation was not meaningful, or that my views and those of others were not given due consideration by the school district, I could file a State complaint with the New York State Education Department that identifies the area(s) in which I believe the school district did not comply with the consultation process.

NONPUBLIC SCHOOL REPRESENTED: _____

PRINTED NAME: _____

SIGNATURE: _____

DATE: _____

Attachment 3

Sample Letter to Parents who Place their Children in Nonpublic Schools (written as if coming from the school district of residence)

Dear Parents:

I am writing to inform you of new federal and State requirements regarding special education services for parentally placed nonpublic school children. These changes are the result of changes to the federal Individuals with Disabilities Education Act (IDEA), which now require all states to ensure that the school district where the nonpublic school is located will now be responsible for special education services for your child, including individual evaluations, Committee on Special Education (CSE) meetings and development of an individualized education services program (IESP). An IESP must be developed in the same manner and with the same contents as an individualized education program (IEP). It is called an IESP to distinguish it from the IEP that would be developed if you were to reenroll your child in the public school district where you live.

The following information is important for you to know:

- If you place your child in a nonpublic school and wish your child to receive special education services while enrolled in that school, you must request those services in writing no later than June 1 before the school year in which services are to be provided. If your child is first identified as a student with a disability after June 1 and before April 1 of the current school year, you may submit your request within thirty days after your child is first identified.

- **This year you had until August 18, 2007 to provide this written request to the school district where the nonpublic school is located.** If you had requested services from the school district where you reside, with your consent, your written request to the school district will be forwarded to the school district where the nonpublic school is located.

- If you have placed your child in a nonpublic school and, while the child is enrolled in that school, you suspect that your child has a disability and you wish to have your child evaluated to determine if special education services are needed, you must contact the school district where the nonpublic school is located to request an evaluation to determine your child's eligibility for special education services.

- The school district where you reside and the school district where the nonpublic school is located must have your written consent in order for the districts to share special education information (such as your child's IEP) with one another.

- If the nonpublic school where you place your child is located within the geographic boundaries of your public school district, that same school district will

continue to provide requested special education services to your child, pursuant to an IESP.

- If your child had an IEP developed at an annual review meeting prior to June 30, 2007 by the CSE of the school district where you reside, with your written consent, the IEP will be shared with the district where the nonpublic school is located. That IEP will become the IESP, unless the school district where the nonpublic school is located develops a new IESP for your child.

- If the nonpublic school where you place your child is located within the geographic boundaries of another public school district, the public school district in which the nonpublic school is located will arrange for and provide the recommended services for your child. The school district must consult with nonpublic school representatives and parent representatives about how and where special education services will be provided.

- If you are a resident of New York State and the nonpublic school where you place your child is located in another state, your child may not be entitled to any or all of the IEP services he/she might have received if enrolled in a public school. In this case you must contact the school district in the other State where the school is located and they must determine your child's eligibility for services and develop a Service Plan which will indicate the services to which you are entitled.

- If you are a resident of another state and your child attends a nonpublic school in New York State, your child is not entitled to all of the IEP services he/she might have received if you were a New York State resident. In accordance with federal law, services to out-of-state students will be provided pursuant to a Services Plan developed by the school district where the school is located based on a proportionate share of available federal funds for such purpose.

- Transportation requests to and from your child's home to the nonpublic school should continue to be submitted to the school district where you legally reside by April 1 of the school year before transportation is to be provided.

- If you have a dispute regarding special education evaluations or services provided for your child, you should pursue resolution of these disputes with the school district that conducted the evaluation or developed the IESP (district where the nonpublic school is located).

If you have any questions regarding these new requirements, please contact _____ at _____.

Attachment 4

Section 3602-c of the Education Law as Amended by Chapter 378 of the Laws of 2004

§ 4. Subdivision 1 of section 3602-c of the education law is amended by adding a new paragraph f and subdivisions 2, 2-a and 7, subdivisions 2 and 7 as amended y section 1 of part H of chapter 61 of the laws of 2006 and subdivision 2-a as amended by chapter 430 of the laws of 2006, are amended and a new subdivision 2-b is added to read as follows:

f. "School district of location" means the school district in which the nonpublic elementary or secondary school attended by the student is located.

2. **a.** Boards of education of all school districts of the state shall furnish services to [~~**pupils**~~] **students** who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent or person in parental relation of any such [~~**pupil**~~] **student**. Such a request **for career education or services to gifted students** shall be filed with the board of education of the school district in which the parent or person in parental relation of the [~~**pupil**~~] **student** resides on or before the first day of June preceding the school year for which the request is made[~~**; provided that, in**~~]**. In** the case of education for students with disabilities, **such a request shall be filed with the trustees or board of education of the school district of location on or before the first of June preceding the school year for which the request is made, or by July first, two thousand seven for the two thousand seven--two thousand eight school year only, provided that** where a student is first identified as a student with a disability after the first day of June preceding the school year for which the request is made**, or thirty days after the chapter of the laws of two thousand seven which amended this paragraph, takes effect where applicable,** and prior to the first day of April of such current school year [~~**or when a student with a disability establishes residence in the school district after June first of the preceding year and prior to April first of the current school year**~~], such request shall be submitted within thirty days after such student is first identified [~~**or establishes residence in the district, as applicable**~~]. For students first identified [~~**or establishing residence**~~] after March first of the current school year, any such request for education for students with disabilities in the current school year that is submitted on or after April first of such current school year, shall be deemed a timely request for such services in the following school year.

b.(1) For the purpose of obtaining education for students with disabilities, as defined in paragraph d of subdivision one of this section, such request shall be reviewed by the committee on special education [~~**in accordance with the provisions of section forty-four hundred two of this chapter**~~] **of the school district of location, which shall develop an individualized education service program for the student based on the student's individual needs in the same manner and with the same contents as an individualized education program. The committee on special education shall assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district**. Review of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the

pupil pursuant to the provisions of section forty-four hundred four of this chapter. [~~Such~~]

(2) In the event an individualized education program for the two thousand seven--two thousand eight school year is developed pursuant to this section by the committee on special education of the student's school district of residence prior to the effective date of this subparagraph, with the consent of the parent or person in parental relation, such school district shall forward such individualized education program to the committee on special education of the school district of location. Such individualized education program shall be deemed to be an individualized educational services program for purposes of this subdivision, and the school district of location shall provide the services recommended in such individualized education program, unless and until it is amended by its committee on special education in the manner prescribed by law. If, prior to the effective date of this subparagraph, a student suspected of having a disability has been referred to the committee on special education of the student's school district of residence the results of such evaluation, with the consent of the parent or person in parental relation of the student, shall be shared with the committee on special education of the school districbnct of location, which may adopt such evaluation as its own or conduct a new evaluation in whole or in part.

(3) Notwithstanding any other provision of this section to the contrary, an individualized education program developed for the two thousand six--two thousand seven school year shall continue to be in full force and effect and binding on the school districts through the end of such school year. Such individualized education program shall be deemed an individualized educational services program for purposes of dispute resolution.

c.**Due process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter.**

d.**In the case of career education and education of gifted students, the** school district **of residence** shall contract with the school district in which the nonpublic school attended by the pupil is located, for the provision of services pursuant to this section[~~, except that in the case services to students with disabilities in the two thousand six--two thousand seven school year, the school district of residence may contract with the school district in which the nonpublic school attended by the student is located or may provide such services directly~~].

2-a. For the education for students with disabilities provided in the two thousand seven--two thousand eight school year and thereafter, to the extent required by federal law, the school district [~~in which the nonpublic elementary or secondary school attended by the~~] **of location of** compliance with the requirements of paragraph ten of subsection (a) of section fourteen hundred twelve of title twenty of the United States code, including but not limited to, equitable provision of services, child find and consultation requirements. The **committee on special education of the** school district [~~in which the nonpublic school is located~~] **of location** shall [~~immediately refer any nonpublic school student who is a resident of this state and has been identified through its child find process as a student suspected of having a disability to the committee on special education of the student's school district of residence~~] **be responsible** for evaluation and possible identification as a student with a disability [~~by the committee on special education of the school district of residence~~] **of all students attending nonpublic**

schools located within the school district, including students who are not New York residents. The school district [~~**in which the nonpublic school is located**~~] **of location** shall expend a proportionate amount of its federal funds made available under part B of the individuals with disabilities education act for the provision of services to students with disabilities attending such nonpublic schools**, including students who are not New York residents**, provided that such federal funds may not be used for the cost of carrying out the child find requirement. **School districts shall obtain parental consent prior to the release of personally identifiable information concerning a student attending a nonpublic school from records collected or maintained pursuant to Part B of the individuals with disabilities education act between such student's school district of residence and school district of location.**

2-b. The school district of location shall provide special education programs and services to students with disabilities attending nonpublic schools in the school district who are not New York residents to the extent required under federal law and regulations and such students shall not have an individual right to receive special education programs and services pursuant to this section. The committee on special education shall develop services plans for such students in accordance with federal law and regulations. The provisions of subdivision two of this section shall not apply to such students, except that due process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter.

7. **a.** Boards of education of districts providing **career education and gifted education** services to non-resident [~~**pupils**~~] **students** shall be entitled to recover tuition from the district of residence of such [~~**pupils**~~] **students** in accordance with a formula promulgated by the commissioner by regulation.

b. In the case of the education for students with disabilities **who are residents of New York**, [~~**such tuition shall exclude any costs paid with federal or state funds by the school district providing such services**~~] **a school district of location providing services to non-resident students shall be entitled to recover costs of services, costs of evaluation, and costs of committee on special education administration directly from the district of residence of the student if consent of the parent or person in parental relation is obtained to release of personally identifiable information concerning their child. If such consent is not obtained, the school district of location shall submit to the commissioner, in a form prescribed by the commissioner, a claim for costs of services, evaluation costs, and committee on special education administrative costs that includes the address of the student's permanent residence, including the school district of residence, and a certification by officials of the nonpublic school attended by the student that such address is the address of record of such student. Upon certification by the commissioner of the amount of such claim, the state comptroller shall deduct such amount from any state funds which become due to such school district of residence**.

c.**The amount charged by the school district of location for services, evaluation, eligible due process costs and committee on special education administrative costs shall not exceed the actual cost to the school district of location, after deducting any costs paid with federal or state funds. The commissioner shall adopt regulations prescribing a dispute resolution mechanism that will be available to a school district of residence where such district disagrees with the amount of tuition or costs charged by the school district of location.**