

## “A New IDEA in the Hoosier State” Conspectus of conclusions & recommendations

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### INTRODUCTION

The [Individuals with Disabilities Education Act](#) (IDEA) provides federally-funded special education and related services to students with disabilities between the ages of 3 to 21.

For private school students, the proper functioning of IDEA relies on three processes/components, codified under the IDEA law. These processes/components are (1) child find, (2) proportionate share, and (3) consultation.

“A New IDEA for the Hoosier State,” a project undertaken by [ADAC](#) at the behest of the [Indiana Non-Public Education Association](#) (INPEA), assessed IDEA’s implementation among Indiana’s parentally-placed private school students with disabilities.

Under IDEA, each private school student who is suspected of having a disability has a right to be evaluated. The process by which students who are suspected of having a disability are referred for evaluation, evaluated, and identified, that is, “found” eligible to receive services under IDEA is called “[child find](#).”

Private school students who are so identified, and choose to remain in private school, have a right to equitably participate in the IDEA-funded special education program of the local education agency (LEA) in which their respective private schools are located. While these identified students do *not* have an *individual* entitlement to IDEA-funded services, they do have a “group entitlement” to publicly funded special education services. Services for this group of students is funded by the private school “[proportionate share](#)” of the federal IDEA grant in/of each LEA. In each LEA in which there is located at least one private school, that “proportionate share” is calculated based on the relative number of students with disabilities attending private school(s) within said LEA compared to the total number of students with disabilities attending public and private schools within said LEA. Upon being calculated, the proportionate share is used to fund direct services for the group of eligible private school students with disabilities.

The national average of the proportionate share allocation is approximately \$1,730 per student, but since this funding amount is often insufficient to meet the needs of all private school students with disabilities identified via child find, the determination of which students are to be served is to be determined during the [consultation](#) process under IDEA. During consultation, additional determinations such as when, where, and by whom services will be provided to private school students are also to be discussed.

### ***Indiana’s Article 7, Additional Pupil Count (APC) funding & Choice Scholarship Program***

In contrast to the *group* entitlement afforded to parentally-placed private school students under IDEA, the Indiana code in [Article 7](#) requires LEAs to offer some level of special education or related services to *each* eligible parentally-placed private school student. These services are funded by a combination of IDEA proportionate share funding and the state through its [Additional Pupil Count \(APC\) funding](#). APC funding is based on the category under which the student’s disability(s) falls.

In addition to APC funding, parentally-placed private school students with disabilities may also have access to a state-funded scholarship through Indiana’s [Choice Scholarship Program](#). Designed to offset the tuition cost of the “[Participating Choice Schools](#),” this scholarship program is divided into eight tracks, which includes a special education track. To qualify for the special education track, students must (1) have legal settlement in Indiana, (2) be between the ages of 5 and 22 no later than August 1 of the school year during which they seek to use the scholarship, (3) have a disability that requires special education, (4) have an IEP or a service plan, and (5) meet the household income requirements.<sup>1</sup>

Parents of students who participate in the special education track of the Choice Scholarship Program select either the choice private school or the public school corporation (LEA) where the choice school is located as the service provider for special education. If the choice school is selected, then the services would be provided pursuant to a Choice Special Education Plan (“CSEP”). If the public school corporation is selected as the service provider, then the services would be provided pursuant to a services plan.<sup>2</sup>

## **PROJECT DESIGN & METHOD**

“A New IDEA in the Hoosier State” comprises the following 4 elements: (1) private school surveys, (2) data collection and engagement with the Indiana Department of Education (IDOE) (3) private school IDEA trainings, and (4) a final report.

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<sup>1</sup> These requirements are outlined [here](#).

<sup>2</sup> IDOE, [Choice Scholarship Program: Special Education Frequently Asked Questions \(2021-2022 School Year\)](#).

As of the fall of 2021, the aggregate enrollment of the 153 schools which completed the survey was 43,789 students. 2,755 of these students were identified as eligible for special education and were on service plans. Overall, 6.3% of the total enrollment of the schools surveyed were identified as eligible for special education.

IDOE reported that during school year 2020-2021, the total private school enrollment in Indiana was 78,758. 5,942 of these students were on service plans, which is 7.5% of the total private school enrollment.

**(1) Surveys:** The surveys, which were conducted in September and October of 2021, consisted of questions designed to collect information from Indiana's private school leaders<sup>3</sup> about (1) the degree of private school students' and teachers' participation in the equitable services processes under IDEA, (2) the scope of provided IDEA-funded services and state funded special education services, and (3) private school leaders' knowledge of IDEA.

**153 schools participated in the surveys, which is a rate of participation that is equivalent to 45.4-percent of all private schools in Indiana.**

**(2) Data Collection and Engagement with IDOE:** ADAC engaged in a number of conversations with IDOE to (1) better understand the processes for the equitable participation of private school students in IDEA and state-funded special education services and (2) collect statewide private school data regarding these processes. ADAC analyzed the IDOE-provided data in the context of the private school survey data.

**(3) IDEA Trainings:** The trainings, which occurred in October of 2021, consisted of 5 in-person meetings and 1 virtual meeting (November of 2021) between ADAC and private school leaders. The trainings covered the key components of the IDEA processes for parentally-placed private school students and offered practical tips and suggestions for how to maximize these students' participation in IDEA. During the trainings, the survey data was presented and private school leaders provided insight about their own experiences and those of their respective teachers, students, parents, and other stakeholders regarding IDEA. Alongside the survey data, these insights are the bases of the key recommendations, provided below.

**(4) Final report:** This final report, that is, conspectus of conclusions and recommendations contains a summary of key findings and key recommendations.

## SUMMARY OF KEY FINDINGS

### Regarding child find and child count:

1. 15.7% of the private school leaders<sup>4</sup> indicate that their respective LEAs are *not* proactively reaching out to them to conduct child find, as required by IDEA.
2. 26.2% of the private school leaders indicate that their respective LEAs do *not* complete the child find process within the state or federal timeline on a *regular* basis, as required by IDEA.

<sup>3</sup> "Private school leaders" included directors of special education, special education teachers, and other related school staff.

<sup>4</sup> These percentages are in reference only to Indiana's private school leaders who completed the survey.

3. 34.6% of the private school leaders indicate that their respective LEAs are *not* counting all eligible private school students who reside *within* the LEA, as required by IDEA.
4. 49.2% of the private school leaders indicate that their respective LEAs do *not* consult with them about students who reside *outside* the LEA, as required by IDEA.
5. During interviews with ADAC, IDOE officials indicated that, as per state law, IDOE only includes in the proportionate share count eligible students who *receive services* as of December 1 each year *rather than all eligible students*, as required by IDEA.

#### Regarding consultation:

6. 36.6% of the private school leaders indicate that their respective LEAs do *not* engage in IDEA-related consultation with them *more than once* per year, as required by IDEA.
7. 10.5% of the private school leaders indicate that their respective LEAs have *not* engaged in meaningful consultation about which services will be provided, as required by IDEA.

#### Regarding proportionate share and services delivered:

8. 32.0% of the private school leaders indicate that their respective LEAs have *not* conveyed to them the proportionate share allocation or the calculation(s) from which this allocation was derived.

#### Indiana's Choice Scholarship Program/ Choice Special Education Plan (CSEP)

As noted above, students who participate in the Choice Scholarship Program and select a "Choice School" as the service provider are served pursuant to a Choice Special Education Plan (CSEP), *which is the rough equivalent of a service plan.*

Students who participate in the Choice Scholarship Program and select the LEA as the service provider are served pursuant to a service plan.

9. IDOE officials indicated to ADAC that private school students who receive services from a choice school through the **Choice Special Education Plan (CSEP)**<sup>5</sup> are *not* included in the IDEA private school count. In FY21, there were 554 students receiving services through a CSEP who were not included in the child count used to determine the proportionate share. IDOE has indicated that this process is currently under review, but it is likely a violation of IDEA.

10. 34.6% of the private school leaders indicate that their respective LEAs have a blanket-rule about which (and only which) services will be provided. For example, some of these private school leaders indicate that their respective LEAs unilaterally offer speech therapy services without considering other types of support that might be required. In violation of IDEA, this offer is made without meaningful dialogue.

<sup>5</sup> IDOE, [Navigating the Course: Finding Your Way through Indiana's Special Education Rules](#), 45-46.

## KEY RECOMMENDATIONS

### RECOMMENDATION #1

**Consider revising the language in the Indiana Administrative Code regarding the child count process to align with the language in IDEA.**

Under IDEA and its accompanying regulations, the child count, which is used as the basis to calculate the private school proportionate share for the subsequent school year, must be performed between October 1 and December 1 of each year.<sup>6</sup> All “parentally-placed students with disabilities attending a private school located in the LEA” are to be included in this count.<sup>7</sup> This count must include parentally-placed students with disabilities who have declined the offer of services.<sup>8</sup>

In contrast, the Indiana code in Article 7 provides that “[o]n December 1 of each year, each public agency must count the number of students: (1) eligible for special education and related services; *and* [emphasis added] (2) receiving services on that date.”<sup>9</sup> According to the Indiana code students must be both eligible and receiving services in order to be included in the December 1 count. Contrary to the requirements of IDEA, eligible students who have declined the offer of services are likely not included in the proportionate share count in Indiana. (ADAC confirmed with IDOE this understanding.) This means that, in Indiana, it is also likely that the IDEA proportionate share is negatively impacted.

The language in the Indiana code should be amended and section (1)(a)(2) should be deleted to conform with the requirements in IDEA. Indiana should also provide guidance to its LEAs on this topic to ensure that all eligible parentally-placed private school students with disabilities will be included in the count.

### RECOMMENDATION #2

**Consider requesting clarity and guidance from the US Department of Education (USED) and the state regarding student recipients of an Indiana Choice Scholarship.**

Article 7 provides that all eligible parentally-placed private school students, including CSEP students with disabilities, must be *considered* in the *expenditure* of proportionate share.<sup>10</sup> However, the code does not stipulate whether or not CSEP students are *counted* for purposes of the proportionate share *calculation*.

As indicated above, IDOE officials indicated to ADAC that in FY21 554 private school students who receive services from a private school through a CSEP are *not* included in the IDEA private school count. This would seem to run counter to the forthcoming USED guidance and the language in IDEA stipulating that *all* eligible parentally-placed private school students are to be included in the December 1 count.

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<sup>6</sup> [34 CFR §300.133 \(c\)](#).

<sup>7</sup> [Ibid.](#)

<sup>8</sup> US Department of Education, Office of Special Education and Rehabilitative Services, [Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private Schools](#), April 2011 (revised), Answer to Question H-12.

<sup>9</sup> [511 IAC 7-46-1 \(a\)](#).

<sup>10</sup> [511 IAC 7-49-10 \(a\)](#).

This issue should be addressed with IDOE when the USED’s updated guidance is published.<sup>11</sup>

### RECOMMENDATION #3

**Consider providing additional guidance to LEAs regarding the interplay between state and federal special education law, with special emphasis on ensuring that transparency and meaningful consultation regarding IDEA and state-funded services occur.**

Article 7 stipulates that all eligible parentally-placed private school students are entitled to receive some level of services.<sup>12</sup> However, IDEA is clear that no private school student has an “individual right to receive some or all of the special education.... that the child would receive if enrolled in a public school.”<sup>13</sup> Rather, the equitable services provided to eligible parentally-placed private school students are determined through the consultation process with input from private school officials.

Although state law can provide *additional* protections and services beyond those guaranteed by federal law, the federal law requirements in IDEA must continue to be met. One concern raised by this state and federal law interplay is that the meaningfulness of consultation, as required by federal law, may be undermined especially when proportionate share funds are used, in whole or in part, to cover the cost of *state-funded* services. IDOE has, in fact, indicated that a combination of proportionate share funds and APC funds are used to cover the cost of these services.

Given that both APC and IDEA funds can be utilized to provide special education and related services to private school students, IDOE should encourage LEAs to be transparent with private school leaders about the amount of state and federal funds, respectively, that are available to serve said students. At the time at which LEAs are conducting IDEA consultation meetings with private school leaders, LEA officials can (1) share with private school leaders the state and federal special education funding amounts and (2) consult with said leaders about how those funds ought to be expended to serve, in accord with state law, *all* private school students. This would enable private school leaders, who best know the needs of their respective students with disabilities, to exercise input on the services that should be provided to said students. In this way, consultation can become, as IDEA requires, truly “meaningful.”

In the best-case scenario, the state would require LEAs to utilize APC funding or other state and local funding to conduct child find and to meet the state law requirement to offer some level of services to all private school students with disabilities and reserve the full proportionate share allocation to meet additional student needs as determined during consultation with private school officials.

<sup>11</sup> Cf. note 8.

<sup>12</sup> [511 IAC 7-34-1 \(d\) \(4\)](#).

<sup>13</sup> [34 CFR §300.137 \(a\)](#).



## RECOMMENDATION #4

**Consider providing additional guidance to LEAs regarding the use of IDEA funding for child find activities.**

APC funding is used to supplement the federal proportionate share funding and can be used to cover the cost of services provided to parentally-placed private school students with disabilities. While the IDEA proportionate share funding *may not* be spent on child find activities, the APC funding *may* be utilized for this purpose.

This discrepancy appears to be a source of confusion among some LEAs. A number of the LEAs surveyed during the course of this project indicated that they used IDEA proportionate share funding for child find activities, despite the language in the IDEA law *prohibiting* the IDEA proportionate share funds from being utilized in this manner.<sup>14</sup>

Private school leaders should seek to ensure that there is a separate accounting for state APC funds and federal proportionate share funds so that each funding source is used *only* for the allowable uses under each program.

## RECOMMENDATION #5

**Consider (1) issuing updated guidance regarding and (2) arranging for LEA and private school officials opportunities for joint training on the federal and state law special education requirements and the interplay between these requirements.**

This recommendation is made due to the complex interplay between IDEA and Indiana's state special education law.

The updated guidance and the training should focus, in particular, on child count and consultation; based on the survey data from private school leaders, these aspects of the law appear to be most problematic.

Call us toll-free at **1-833-ADAC123**.

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[www.theadac.com](http://www.theadac.com).



<sup>14</sup> [34 CFR §300.131 \(d\)](#).