



## State of New Jersey

DEPARTMENT OF EDUCATION  
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Acting Commissioner

**June 9, 2006**

**TO:** Chief School Administrator  
Director of Special Education  
Administrator of a State Facility  
Administrator of a Charter School  
Administrator of an Approved Private School for the Disabled  
Administrator of a College-Operated Program  
Statewide Special Education Advisory Council  
Agencies or Organizations Concerned with Special Education

**FROM:** Roberta Wohle, Acting Director *Roberta Wohle*  
Office of Special Education Programs

**SUBJECT:** Provision of Services to Nonpublic School Students

As you are aware, the Individuals with Disabilities Education Act of 2004 (IDEA 2004) altered the requirements for provision of "Equitable Participation" services to nonpublic school students. This memorandum is intended to remind school districts of their obligations pursuant to 20 U.S.C. §1412(a)10 with respect to those students in nonpublic schools who are to be served with a proportionate share of IDEA funds.

IDEA 2004 changed the school district responsible for provision of Equitable Participation services from the district of residence of each student to the district where the nonpublic school is located (district of attendance). As a result, the collection of data required to determine proportionate share shifted from the district of residence to the district of attendance. Because states needed time to revise their data collection systems, the United States Department of Education issued a memorandum allowing states a period of one year to gather the required data and delay the change in responsibility to the district of attendance for previously identified and served students until the 2006-2007 school year. However, the child find requirement as well as the responsibility to serve newly identified students, shifted to the district of location in July 2005.

Because the required data have been collected, and in consideration of the pending regulatory changes and expiration of the one-year time period afforded states to implement the new Equitable Participation requirements, responsibility for all eligible students will be with the district where the nonpublic school is located in the 2006-2007 school year.

[www.nj.gov/education](http://www.nj.gov/education)

Further clarification is needed with respect to preschool students with disabilities. 20 U.S.C. §1412(a)10 provides that such funds are to be expended on students “enrolled by their parents in private elementary schools and secondary schools.” The United States Department of Education (USDOE) has clarified that the definition of private (nonpublic) schools and thus, the definition of nonpublic school students is determined by state statute. In New Jersey, nonpublic elementary and secondary school students are defined as students in grades kindergarten through 12. Therefore, as you were informed in previous guidance from the Department, preschool students with disabilities are no longer entitled to Equitable Participation services in accordance with IDEA 2004.

Notwithstanding the guidance from the USDOE, parentally-placed preschool students with disabilities continued to receive services during 2005-2006 school year because New Jersey’s special education regulations currently allow for provision of Equitable Participation services to these students. When the state special education regulations are readopted in August 2006 and become effective in September 2006, this provision will be removed from the regulations.

As a result, no 2007 grant funds can be expended on preschool students parentally placed in early childhood programs. However, a district may continue to expend any available 2006 carryover funds on preschool students who received services in the 2005-2006 school year, as those funds were distributed and expended in accordance with the applicable state and federal law at the time. When all 2006 carryover grant funds are expended, preschool students may not be provided any further services under Equitable Participation.

School districts must continue their child find efforts to identify, refer and evaluate preschool age students with disabilities. If eligible, preschool students with disabilities must be offered a program and placement that provides a free, appropriate public education (FAPE).

I trust this provides necessary guidance with respect to the provision of Equitable Participation services in the 2006-2007 school year and beyond.

RW/CK/JW

- c: Members, State Board of Education
- Acting Commissioner Lucille E. Davy
- Isaac Bryant
- Senior Staff
- Rochelle Hendricks
- Susan Martz
- Diane Shoener
- County Superintendent
- County Supervisor of Child Study
- Members, NJ LEE Group
- Garden State Coalition of Schools
- Nonpublic School Advisory Committee