

Serving Students with Disabilities in Non-Public Schools

Taylor Jenkins

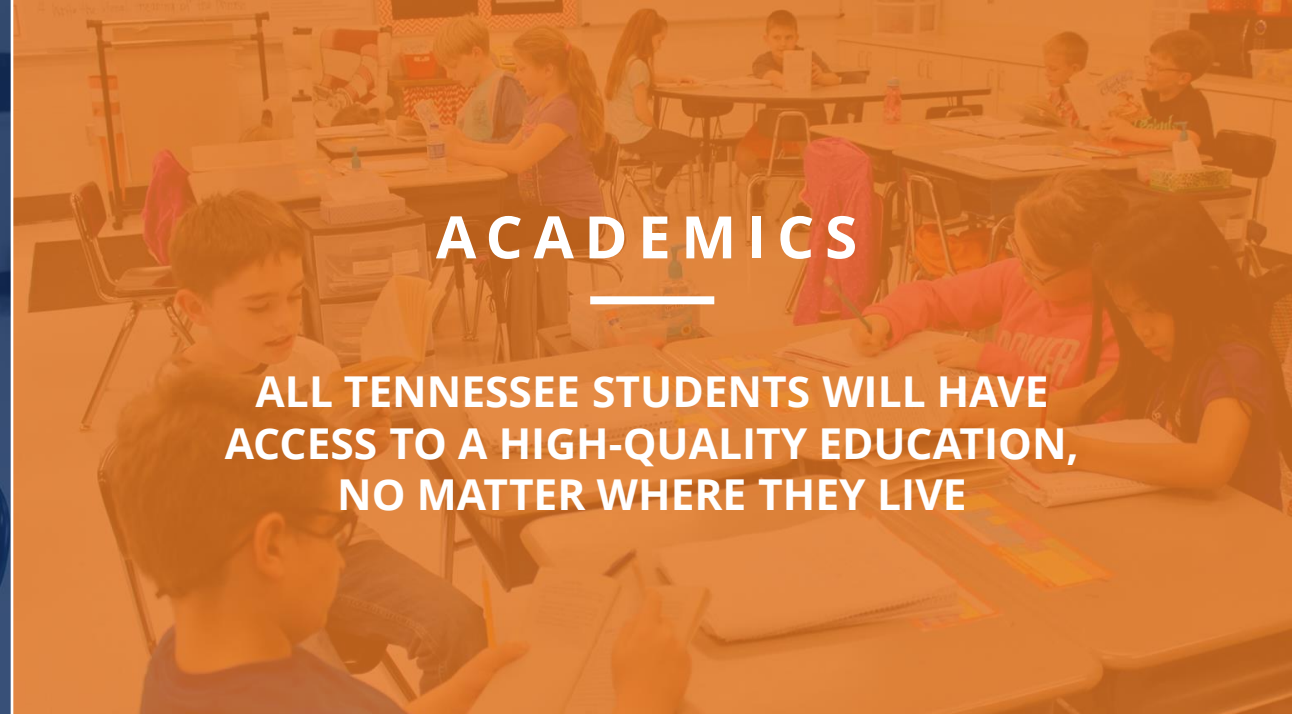
*Tennessee Department of Education
Office of General Counsel*





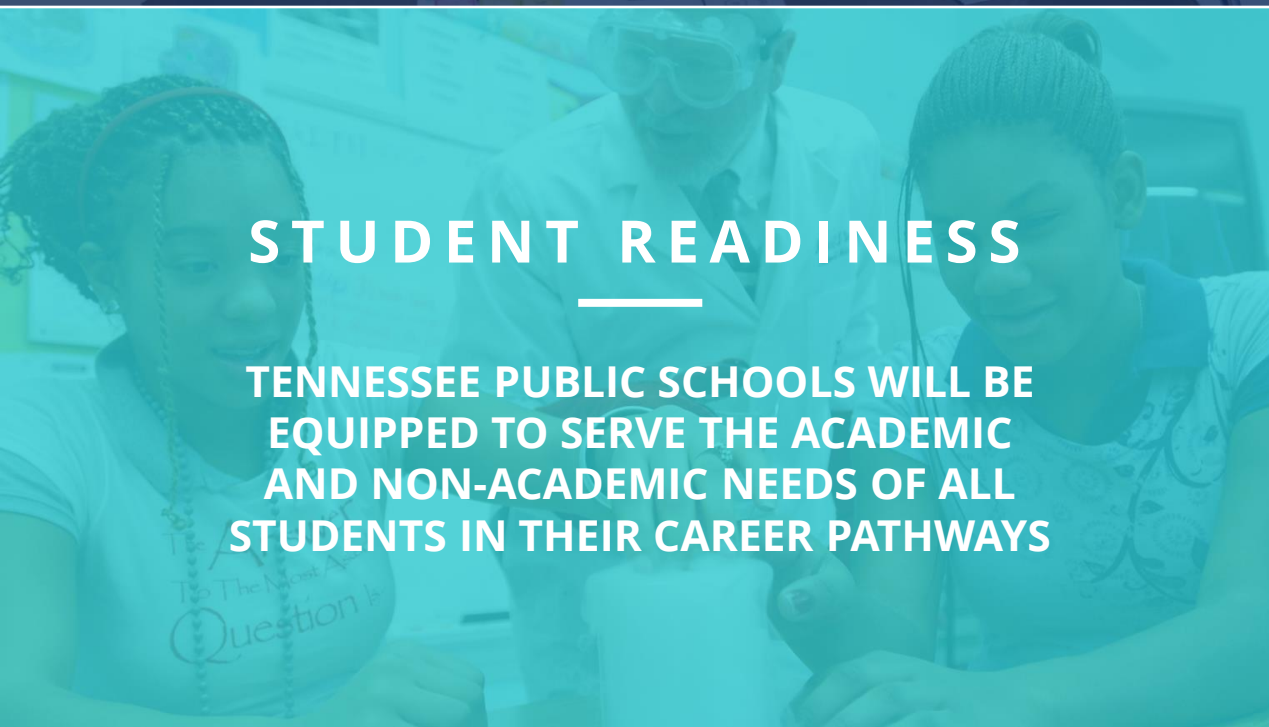
BEST FOR ALL

We will set all students on a path to success.



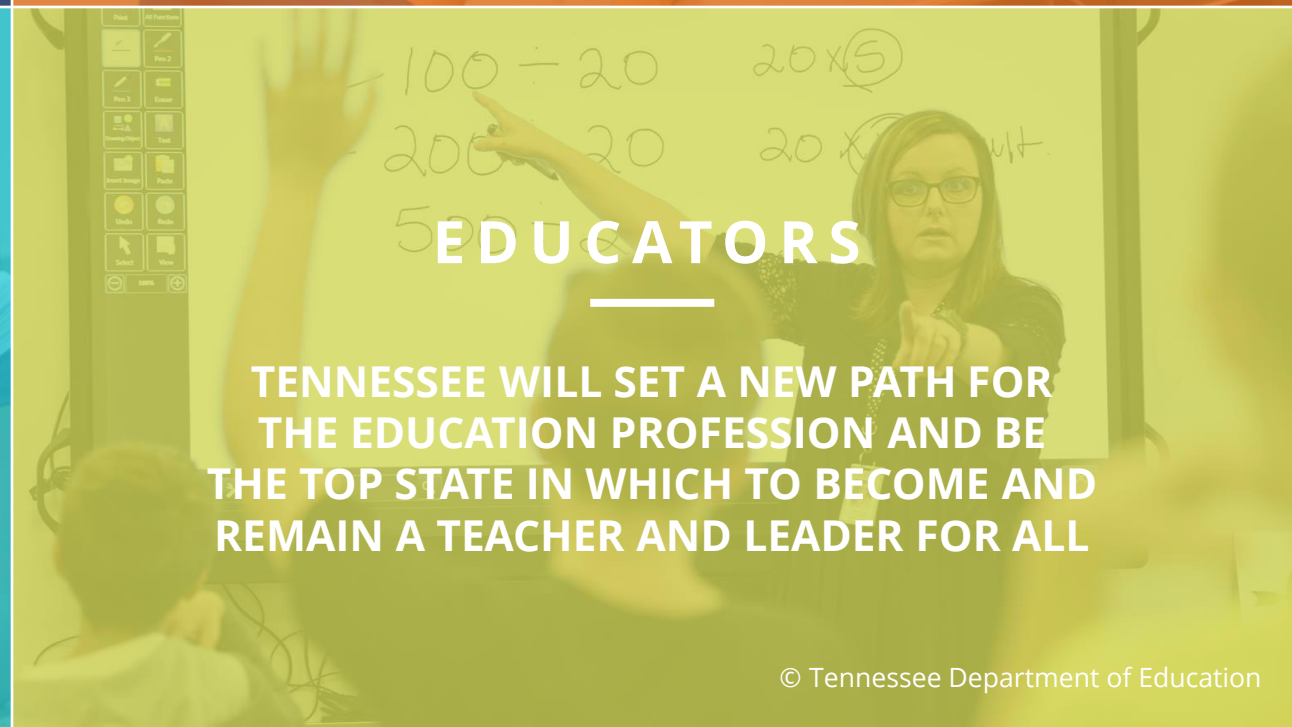
ACADEMICS

ALL TENNESSEE STUDENTS WILL HAVE ACCESS TO A HIGH-QUALITY EDUCATION, NO MATTER WHERE THEY LIVE



STUDENT READINESS

TENNESSEE PUBLIC SCHOOLS WILL BE EQUIPPED TO SERVE THE ACADEMIC AND NON-ACADEMIC NEEDS OF ALL STUDENTS IN THEIR CAREER PATHWAYS



EDUCATORS

TENNESSEE WILL SET A NEW PATH FOR THE EDUCATION PROFESSION AND BE THE TOP STATE IN WHICH TO BECOME AND REMAIN A TEACHER AND LEADER FOR ALL



Agenda

- Proportionate Share and Equitable Services
- The Consultation Process
- Service Plans





Serving Students with Disabilities in Non-Public Schools

- Students with disabilities who are unilaterally enrolled in non-public schools **are** entitled to **equitable services provided through a service plan**.
- Students with disabilities who are unilaterally enrolled in non-public schools **are not** entitled to a **free appropriate public education (FAPE) provided through an individualized education program (IEP)**.

See 34 C.F.R. § 300.137(a); U.S. Dep't of Educ., "[Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools](#)," (Feb. 2022).

Proportionate Share and Equitable Services

Proportionate Share

- Local education agencies (LEAs) must set aside a **proportionate share** of IDEA Part B funding to provide equitable services to students with disabilities in non-public schools.
- Proportionate share is based on the number of students with disabilities attending public school in the LEA **compared to** the number of students with disabilities attending non-public school within the geographic boundaries served by the LEA.

See 34 C.F.R. §§ 300.132; -.133.



Example of Funding for Equitable Services

An LEA receives \$10 million in IDEA Part B funding. On December 1, 2022, there were 900 students with disabilities attending public schools in the LEA and 100 students with disabilities attending non-public schools within the geographic boundaries served by the LEA. For the 2023-24 school year:

- The LEA would have \$9 million in IDEA Part B funding to provide FAPE to the 900 public school students. The LEA is required to use state and local funding, if necessary, to provide FAPE.
- The LEA would set aside \$1 million in IDEA funding to provide equitable services to the 100 non-public school students. The LEA is not required to use state and local funding to provide equitable services.

“No Individual Right”

- Each student is not entitled to the same amount of special education and related services that the student would have received in public school.
- LEAs are not required to spend the same amount on every student with a disability who is enrolled in a non-public school.
- Each student is not entitled to his or her “portion” of the proportionate share.
- The LEA is authorized to make the final determination about which services each student receives.

See 34 C.F.R. § 300.137(a)

Who is eligible for equitable services?

- Students enrolled in religious private schools?
Yes!
- Students enrolled in for-profit private schools?
No.
- Students participating in school choice programs?
Yes!
- Preschool students enrolled in a stand alone preschool?
No.

U.S. Dep't of Educ., "[Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools](#)," (Feb. 2022).

Meaningful Consultation

Meaningful Consultation

- To determine how to spend the proportionate share, LEAs **must engage in “meaningful consultation”** with officials of non-public schools and representatives of parents of students with disabilities enrolled in non-public schools.
- The goal of consultation is to provide “a genuine opportunity for all parties **to express their views and to have those views considered by the LEA . . .** before that LEA makes any decision that has an impact on services.”



What is “meaningful” consultation?

- IDEA does not specify what constitutes “meaningful consultation,” except stating that **consultation must be timely and ongoing.**
 - **Timely:** Consultation must occur before any decision that will affect students with disabilities unilaterally enrolled in non-public schools.
 - **Ongoing:** Consultation must be an ongoing process, not solely an annual meeting.



Methods of Consultation

- The IDEA offers LEAs flexibility in conducting the consultation process. For example:
 - *Small LEA*: Special education director made individual contact with private school officials, umbrella home school officials, and parents of independent home school students to gauge student needs.
 - *Large LEA*: Special education director convened town hall meeting to discuss student needs, in addition to accepting comment by mail and email.



Topics for Consultation

- The IDEA requires LEAs to include the following topics as part of the consultation process:
 1. The child find process,
 2. The amount of proportionate share available,
 3. How consultation will take place during the school year,
 4. Delivery of special education and related services, and
 5. How the LEA will notify non-public school representatives if there is disagreement about the types of special education and related services provided.



Topic to Address: Child Find

- LEAs have an affirmative, ongoing obligation to locate, evaluate, and identify all children suspected of having a disability residing within the geographic boundaries of the LEA.
- At consultation, the parties should discuss:
 - How students with a disability in non-public schools can be evaluated or re-evaluated
 - How parents, teachers, and school officials will be informed of that process



Who evaluates students enrolled in non-public schools?

- **Either** the student's district of residence **or** the district in which the student's non-public school is located within **can evaluate** the student for special education and related services.
 - If the student's family wants an offer of FAPE, the student's family should request an evaluation from the student's district of residence.
 - If the student's family wants an offer of equitable services, the student's family should request an evaluation from the district in which the student's non-public school is located.
- Families should generally avoid requesting evaluations from both districts in quick succession.

Topics to Address: Provision of Services

- Parties must discuss how, where, and by whom special education and related services will be provided
 - What types of services will be provided, if any?
 - What happens if the proportional funds are insufficient to cover services?
 - How and when will those decisions be made?
 - If the LEA disagrees with the participant's suggestions:
 - How and when will the LEA provide the participants written explanation of why the LEA disagrees?

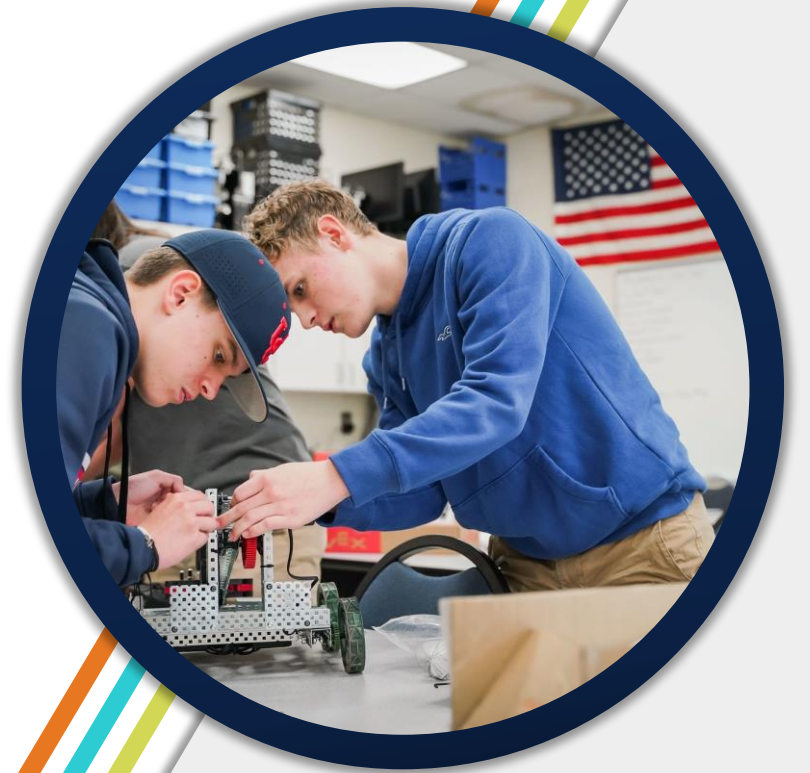


What types of services are available?

- An LEA's proportionate share **can be spent on direct services or indirect services**. Indirect services could include equipment, materials, or training for non-public school officials.
 - Special education and related services provided to students with disabilities unilaterally enrolled in non-public schools **must be secular, neutral, and nonideological**.
- An LEA's proportionate share **cannot be spent on administrative costs**.

Topics to Address: Administrative Matters

- How and when the determination of proportional funds will be made, and what services the proportional funds will cover
 - Include explanation of how the calculations are made
- Address how the consultation process will proceed over the course of the year





Documentation of Consultation

- The LEA must maintain documentation that consultation has occurred, including obtaining a [written affirmation](#) signed by representatives of participating non-public schools.
- The LEA may also maintain documentation such as:
 - Meeting agendas,
 - Attendance sheets, or
 - Meeting notes on topics addressed and decisions made.

See 34 C.F.R. § 300.135.



Procedural Safeguards for Students in Non-Public Schools

- Families maintain the right to utilize the special education dispute resolution processes **to allege violations of the child find obligation**.
- Families maintain the right **to request an independent education evaluation** if they disagree with the results of the evaluation or re-evaluation.
- Families **do not maintain the right** to challenge whether a student is receiving sufficient services from the LEA to make progress appropriate in light of the student's circumstances.

Procedural Safeguards for Students in Non-Public Schools

- A non-public school official or a family may submit a complaint to TDOE alleging that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration to the official's view.
- If the complainant disagrees with TDOE's decision, the complainant may submit a complaint to USDOE.

See 34 C.F.R. § 300.136.



Service Plans

Service Plans

- Students with disabilities who are unilaterally enrolled in a non-public school can receive special education and related services through a service plan.
- LEAs must develop the service plan in the same way that an IEP is developed.
 - The service plan must be developed at a meeting with LEA officials, officials of the non-public school, and the student’s parents. *See 34 C.F.R. § 300.138(b)(2)(ii).*
 - The service plan must be reviewed on a regular basis to ensure it is meeting the student’s needs.



How to Obtain a Service Plan

1. Ensure your student has been evaluated recently for special education and related services.
2. Talk to the LEA that serves the geographic area in which your student's non-public school is located to determine what services are available.
3. Attend consultation meetings to ensure that your student's needs are considered by the LEA.
4. Request a meeting with the LEA to develop a service plan for your student!





Thank You!

Taylor Jenkins

Assistant General Counsel for Special Education

taylor.jenkins@tn.gov

Permission is granted to use and copy these materials for non-commercial educational purposes with attribution credit to the "Tennessee Department of Education". If you wish to use these materials for reasons other than non-commercial educational purposes, please contact Joanna Collins (Joanna.Collins@tn.gov).

