

PLACEMENT OF CHILDREN WITH DISABILITIES (IN PUBLIC SCHOOL & ALTERNATIVE OPTIONS)

NH has an obligation to provide an adequate education for all school-age children through our public school system with state oversight. Additionally, the Federal special education law, the Individuals with Disabilities Education Act (IDEA), and NH state law, requires school districts (also known as local education agencies or LEAs) to make a free appropriate public education (FAPE) in the least restrictive environment (LRE) available to all eligible children with disabilities.

As part of the special education process, a child's individualized education program (IEP) team will determine the least restrictive environment in which the child's special education needs can be met. That is most often a general education classroom with needed supports, but it could also include a part-time resource room, a special class, an approved private special education school, or other setting). The school district is then responsible for providing (including paying for) that placement.

What if a parent is seeking an alternative to their local school district's public school?

There are several options¹ available to parents seeking an alternative to their local public school. Some options may impact a child's ability to receive special education and related services. A brief overview of each option is provided below:

Charter schools – Any parent may enroll their child in a chartered public school (charter school). Charter schools, which are public schools, do not charge tuition and cannot discriminate on the basis of a child's disability. The school district where the child lives (the resident school district) is responsible for providing the child with a FAPE, including the special education and related services in the child's individualized education program (IEP). The school district and charter school must work together to determine how the child's special education and related services are provided.

Open enrollment schools – In NH, if a public school chooses to accept students from within and/or from outside their school district or attendance area, the school would be an "open enrollment public school". A parent whose school district allows transfers to open enrollment schools may apply to enroll their child in an open enrollment school. An open enrollment school cannot decline a child based on whether the child has a disability. When a child attends a public school (in their own resident school district or another district), their resident school district is responsible for providing the child with a FAPE, including developing an individualized education program (IEP) and providing the special education and related services in the IEP.

Private schools – According to the IDEA: "No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school."² When a parent chooses to enroll their child in a private school at their own expense, it is important for them to know whether the school is a for-profit private school or a nonprofit private school.

- If the private school in which the parent has enrolled their child is a **nonprofit private school** – the parent would contact the school district in which the private school is located, not the school district in which the child lives. IDEA requires the school district in which the private school is located to spend a proportionate share of their IDEA funds to provide equitable services to parentally-placed private school children with disabilities enrolled in private schools in the district.³

The school district decides how to spend those funds on the group of **parentally-placed private school children with disabilities** after engaging in timely and meaningful consultation with representatives of the private schools in which parentally-placed private school children with disabilities are enrolled and with representatives of the parents of such children. As a result, some students with disabilities will get some services while others may receive no special education or related services. The school district will develop an individualized services plan (ISP) for any parentally-placed private school child with a disability who will receive services through this process. If the student requires transportation to access the services included in their ISP, the school district must provide that transportation.

- If the private school is a **for-profit private school**, the child has no right to receive any special education services from either the school district in which the child resides or the school district in which the private school is located⁴.

Exception: If a parent places their child in a private school because they allege that their school district cannot provide their child with a FAPE, the parent may file for a due process hearing to seek tuition reimbursement from the school district⁵.

¹ NH's education laws, including for the options in this document may be found at: <https://gc.nh.gov/rsa/html/NHTOC/NHTOC-XV.htm>
The NH Department of Education provides information about education options: <https://www.education.nh.gov/pathways-education>
PIC maintains a list of charter schools, approved private special education schools and other options (contact PIC for more information)

² 34 C.F.R. § 300.137(a)

³ An example of how the proportionate share is calculated may be found in Appendix B of the IDEA regulations.

⁴ https://sites.ed.gov/idea/files/QA_on_Private_Schools_02-28-2022.pdf

⁵ 34 CFR 300.148

School districts do not have to spend any of their IDEA funds to serve children who are homeschooled or enrolled in for-profit private schools because school districts only receive IDEA funds to serve children who are enrolled in schools that meet the definition of an elementary school⁶ or secondary school⁷ (both state that the school must be a nonprofit school)⁸.

Can a private school discriminate against a child because they have a disability?

Private schools that receive Federal funds are prohibited from discriminating against individual with disabilities on the basis of their disability. They cannot exclude a child from enrolling in a private school if the child can, with minor adjustments, be provided an appropriate education. The private school cannot charge more for a child with a disability “except to the extent that any additional charge is justified by a substantial increase in cost to the [private school]”.

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in many private programs regardless of whether the entity receives Federal funds. Parents of children with disabilities who are considering placing their child with a disability in a private school, should be aware that private religious schools are exempt from the ADA, meaning that they are not prohibited from discriminating against a child based on the child’s disability⁹.

Home education or home schooling is when a parent agrees that they will be responsible for providing, coordinating, or directing their child’s education, including instruction in science, mathematics, language, government, history, health, reading, writing, spelling, the history of the constitutions of NH and the United States, and an exposure to and appreciation of art and music. Homeschooled children do not have a right to receive special education services.

Education Freedom Account (EFA) – The NH Education Freedom Account program (<https://nh.scholarshipfund.org/>) managed by the Children’s Scholarship Fund NH provides state funding in the form of an education freedom account or “scholarship” to parents who agree to provide an education for their child in the core knowledge domains and to not enroll their child as a full-time student in their resident school district. State funds come from per-pupil adequacy grants and are provided through the EFA program to parents. Any NH resident whose child is in kindergarten through 12th grade can apply for an Education Freedom Account. While there is no income limit, there is a maximum enrollment cap (the cap may increase over time). The cap does not apply to certain groups of children:

1. a child who is currently enrolled in the EFA program;
2. a sibling of an enrolled student;
3. a child with a disability as defined by NH’s special education law (RSA 186-C:2); and
4. a student whose family income does not exceed 350% of the federal poverty guidelines.

Additional EFA funding is provided for a child with a disability or a disabling condition (even if the child has not been found eligible through the special education process). It is important for parents to be aware that if a child with a disabling condition is enrolled in the public school system, they will not be eligible for special education services until they are evaluated by the school district and found eligible (meaning that they meet the definition of a child with a disability).

Once a child is approved, the parents can choose how to spend the EFA funds on qualifying education expenses to obtain what they believe to be the best educational opportunity for their child. Qualifying education expenses include tuition at a private or public school, home-school expenses, tutoring, or special education services and/or therapies, and educational supplies.

Can a child who is home schooled, enrolled in a private or charter school, or who has an EFA participate in curricular courses and cocurricular (nonacademic and extracurricular) programs offered by their school district?

A NH state law, RSA 193:1-c, I, states: “Nonpublic, public chartered school, education freedom account, or home educated pupils shall have access to curricular courses and cocurricular programs offered by the school district in which the pupil resides, including the statewide assessment and preliminary scholastic aptitude test (PSAT). The local school board shall adopt a policy regulating participation in curricular courses and cocurricular programs. Such policy shall not be more restrictive for non-public, public chartered school, education freedom account, or home educated pupils than the policy governing the school district’s resident pupils. In this section, “cocurricular” shall include those activities which are designed to supplement and enrich regular academic programs of study, provide opportunities for social development, and encourage participation in clubs, athletics, performing groups, and service to school and community...”. It is important to note that if a child is attending their public school full-time (more than 50% of instructional time), they will not be eligible for EFA funding.

⁶ 20 U.S.C. 1401(6)

⁷ 20 U.S.C. 1401(27)

⁸ OSEP QA 22-01, Revised February 2022, https://sites.ed.gov/idea/files/QA_on_Private_Schools_02-28-2022.pdf

⁹ 42 U.S. Code § 12187. Exemptions for private clubs and religious organizations.

What if a parent of a child who is enrolled in a charter school, private school or being home schooled suspects their child may have a disability and need special education?

When a parent suspects that their child, ages 3 to 22, may have a disability and need special education, the parent can make a referral for their child to be evaluated for special education, regardless of whether the child is attending a public school, private school, or if the child is being home schooled. Additionally, school districts must have “child find” procedures to find, locate and evaluate all children who may have disabilities to determine if a child is eligible for special education.

In most cases, the referral would be made to the school district in which the child resides. The exception is when a child is enrolled by their parents in a non-profit private school. In that case, the referral would be made to the school district in which the private school is located. The Parent Information Center (PIC) has a sample referral letter on its website that can be adapted to make a referral to the responsible school district. It can be found under sample letters and forms (<https://picnh.org/sample-letters/>).

Once the school district receives a referral, they must hold a meeting of the child’s individualized education program (IEP) team, which includes the parent, within 15 business days. Parents will receive at least 10-days notice of an IEP team meeting so they are able to attend. Meetings may also be held using alternative means such as virtual or online meetings if that is more convenient for the parent. At that meeting, the IEP team determines either that the child’s needs can be met using general education interventions or whether to conduct special education evaluations to determine if the child is eligible for special education. Informed written parental consent is required before a school district can evaluate a child for special education.

To learn more about the NH special education process, including these first steps, see the *Family Guide to Special Education in NH* or *Steps in the NH Special Education Process* brochure, which may be found under special education resources on the PIC website (<https://picnh.org/special-education-resources/#>). See PIC’s website (www.picnh.org) to learn more about PIC’s services and resources.

Can a parent decide to re-enroll their child with a disability in the public school system?

Yes. If a child has been evaluated by a school district and found to be eligible for special education, that child remains eligible until they graduate with a regular high school diploma, turn age 22, or are evaluated and determined to no longer be eligible for special education. Any parent who is home schooling their child with a disability, or who has placed their child in a private school, may enroll or re-enroll their child in the public school system (including a public charter school), at any time. The parent does not have to re-refer the child to be evaluated to determine whether they are eligible for special education; the child has already been found eligible. Instead, the public school would conduct an IEP team meeting to discuss the child’s special education needs and to develop an IEP to meet those needs.

Additional Resources:

- Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, US Department of Education, Office of Special Education Programs, Revised February 2022 – https://sites.ed.gov/idea/files/QA_on_Private_Schools_02-28-2022.pdf
- The regulations to the IDEA, §300.131-300.144, address the special education rights of parentally-placed private school children with disabilities. See Section Ed 1112.01 in the Parent Information Center’s *Guide to the NH Standards for the Education of Children with Disabilities*: <https://picnh.org/special-education-resources/>

Children with Disabilities in Various Educational Placements – Summary of Major Rights & Responsibilities

Children with disabilities who are attending →	Traditional (School District) Public Schools	Chartered Public Schools (Charter Schools)	Private Schools, Placed by the IEP Team	Non-profit Private Schools, Placed by the Child's Parent(s)	For-profit Private Schools or Being Home Schooled
A child with a disability (who has been evaluated and found eligible for special education) is:	A child with a disability as defined in the Federal Individuals with Disabilities Education Act (IDEA) & NH state special education law	A child with a disability as defined in IDEA & NH special education law	A child with a disability as defined in IDEA & NH special education law	A parentally-placed private school child with a disability Funding may be available through the Education Freedom Account (EFA) program to help pay for these placements (https://nh.scholarshipfund.org/). Additional EFA funding is provided for a child with a disabling condition (children do not have to be found eligible through the special education process).	A child eligible for special education but not currently receiving services
The child is entitled to:	A free appropriate public education (FAPE) at public expense This applies to children with disabilities who attend the public school in their (resident) school district. The right to a FAPE <u>also applies to a child whose parent enrolls them privately in a public school in another school district</u>. Public schools are one of the options parents who are eligible for an Education Freedom Account (EFA) may choose as alternatives to participating in their public school system. Regardless of where the public school the child attends is located, the school district in which the child resides is responsible for providing the child with a FAPE [Ed 805.01(c)(2)]	A FAPE at public expense (with the same rights & protections as they would have if enrolled in their local school district public school)	A FAPE at public expense (with the same rights & protections as they would have if enrolled in their local school district public school)	If the LEA (the local education agency means your school district) offered the child a FAPE, but the parent chose to place their child or on their own in a nonprofit private school, the child has no individual right to special education services. IDEA says, "No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school". [§300.137(a)] The child is only entitled to the special education & related services the LEA where the private school is located chooses to provide them using a proportionate share of their IDEA funds. The LEA in which the private school is located makes this decision after timely and meaningful consultation with representatives of the private schools located within the district and representatives of the parents of the parentally-placed children with disabilities attending those private schools. . Note: If a parent places their child in a private school because the parent believes the LEA cannot provide the child with a FAPE, the parent may file for a due process hearing to attempt to obtain tuition reimbursement after providing required notice to the school district. There is a specific process and timelines.	A child who is being homeschooled or who is placed by their parent in a for-profit private school has no right to special education services (unless the child reenrolls in the public school system). Note: IDEA does not provide funding to school districts for children who are homeschooled or who are enrolled by their parents in a for-profit private school. For profit private schools are not included in the definition of an elementary or secondary school under the Federal Every Student Succeeds Act. Home schooling is not the same as home instruction, which is when an IEP team determines that the child's home is the least restrictive environment and makes that the child's placement for special education.

Children with disabilities who are attending →	Traditional (School District) Public Schools	Chartered Public Schools (Charter School)	Private Schools, Placed by the IEP Team	Non-profit Private Schools, Placed by the Child's Parent(s)	For-profit Private Schools or Being Home Schooled
Responsible Entity for child find (locating, evaluating, and identifying children who may have disabilities, including responding when a child is referred for special education) and other steps in the special education process:	The LEA where the child resides is responsible for child find. For all other steps in the special education process – the LEA where the child resides is responsible, with all major decisions made by the child's IEP team. If the IEP team cannot reach agreement, the LEA must make a proposal to which the parent can respond.	The LEA where the child resides The LEA where the child resides is also responsible for all other steps in the special education process – except – Only the parent (not the LEA/ IEP team) can enroll their child in a chart school. Then a representative of the charter school must be invited to participate in IEP team meetings.	The LEA where the child resides For all other steps in the special education process – the LEA where the child resides is responsible, with all major decisions made by the child's IEP team	The LEA where the private school is located. It is also responsible for deciding how to spend a proportionate share of its IDEA funds to serve the parentally-placed private school children with disabilities attending private schools in the LEA. The child's parent, teacher, or any other individual may make a referral to the LEA where the private school is located for the child to be evaluated for special education. A parent may, at any time, consider reentering the public school system. If the child has not yet been found eligible for special education, the parent could make a referral to the LEA In which they reside. If the child attends the public school for 1 or more academic classes or for extracurricular activities, the child may receive reasonable accommodations or supports as provided by Section 504 while attending the public school.	The LEA where the child resides Then the child's parent is responsible for the provision of any special education or related services the child may need (the LEA has no responsibility).
Document outlining the special education and/or related services to be provided to the child:	Individualized education program (IEP)	IEP – The LEA where the child resides must work with the charter school to implement the IEP. The LEA determines how and where the special education and related services will be provided	IEP	The LEA in which the private school is located develops an individual service plan (ISP) for any parentally-placed private school child with a disability who will be provided with special education services, as determined by that LEA.	No IEP or ISP
Educational placement determined by:	The IEP team (but, if the IEP team cannot reach agreement, the LEA representative on the IEP team must make a proposal to which the parent can give or refuse consent). Children in public schools may be able to obtain course credit in addition to their school-based learning through participation in extended learning opportunities (ELOs) or Learn Everywhere experiences.	The parent is the only person who can decide to place (enroll) their child in a chartered public school.	The IEP team makes the placement; the child's resident LEA remains the responsible entity.	The parent makes the decision to place their child in a private school. The parent is then responsible for funding the child's placement (with any financial assistance obtained from the private school, EFA or other resource). Exception – When a parent alleges that the LEA could not provide a FAPE to the child, the parent may file for a due process hearing to attempt to obtain reimbursement from the LEA for the child's private school tuition.	The parent is responsible for determining & funding the child's program. Children who are enrolled in for-profit private schools or home schooled are not entitled to receive special education or related services.
		Children attending charter or private schools, who are home schooled, & EFA students may participate in their public school's curricular and co-curricular activities (see RSA 193:1-c, I). EFA students are limited to less than 50% of their instructional time			