

### PRIVATE SCHOOLS (GEORGIA RULE [160-4-7-.13](#))

#### *Children with Disabilities Placed in Private Schools by the LEA*

When the Individualized Education Program (IEP) Team decides that the most appropriate placement for a child is in a private school, the local educational agency (LEA)<sup>1</sup> that places the child in the private school continues to be responsible for making sure that the child receives the special education and related services included in the child's IEP and that those services are provided at no cost to the parent.

The LEA should make sure that the education provided at the private school meets the standards that apply to other children with disabilities and that the child and parent continue to have all the same rights that other children with disabilities and their parents have. LEAs should monitor compliance with the Individuals with Disabilities Education Act (IDEA) for these children through procedures such as written reports, on-site visits, and parent surveys. Ultimately, the LEA remains responsible for ensuring a free appropriate public education (FAPE) is provided when a child is placed in a private school by the LEA.

LEAs may apply for reimbursement grants if specific criteria are met. LEAs may apply for the state Residential and Reintegration Grant if the child is placed in a private residential facility that is approved by the Georgia Department of Education (GaDOE) or if the child is reintegrating from a private residential facility. If the private residential facility is out of the state, the facility must be on the approved list of the state where the facility is located. LEAs may also apply for the High Cost Grant to receive federal funds for exceptionally costly students. If the LEA does not receive grant funding, the LEA still has the obligation to provide the necessary education in a private setting at no cost to the parent. See the Special Education Budgets and Grant Application Process Chapter for more information.

#### *Children with Disabilities Placed in Private Schools by the Parent*

Parents have the right to enroll their child in a private school of their choice; however, they are not guaranteed the same rights as when eligible children are enrolled in public school or when placed in private school by the LEA. Children who are home-schooled within the boundaries of

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<sup>1</sup> Local educational agencies include public boards of education or other public authorities legally constituted within Georgia for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, including state charter schools and Georgia Department of Juvenile Justice (DJJ).

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the traditional LEA<sup>2</sup> are considered parentally-placed private school children for the purposes of special education.

### **Child Find**

The traditional LEA is required to carry out child find activities to locate, identify, and evaluate children attending the private schools **within the jurisdiction of the traditional LEA**. The traditional LEA must consult with representatives of the private school to complete child find activities. These child find activities must be similar to activities undertaken for the children in the traditional LEA and must be completed in a time period comparable to that for other children enrolled in the traditional LEA. Child find activities include any parentally-placed private school children who attend a private school within the jurisdiction of the traditional LEA, even if the child resides in a different LEA or in a state other than Georgia. See 34 C.F.R. § 300.131(a).

### **Consultation Process**

Traditional LEAs are required to consult with the representatives of private schools, parents of private school children, and parents of home-schooled children regarding the design and development of special education and related services for parentally-placed private school and home-schooled children. This [consultation process](#) must be timely and meaningful. More than one timely and meaningful consultation may be needed to fully meet the requirement. Consultation requirements must include a description of the following:

- how parentally-placed private school children suspected of having a disability can participate equitably in the Child Find process;
- how the parents, teachers, and private school officials will be informed of the Child Find process;
- how the determination of the proportionate share of federal funds available to serve the children with disabilities was calculated;
- how the process will operate throughout the school year;
- how, where, and by whom the special education and related services will be provided;
- how funds will be apportioned if funds are insufficient;

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- how and when those decisions will be made; and
- how the traditional LEA will provide to the private school officials a written explanation of the reason why it chose not to provide services directly or through a contract.

The traditional LEA must obtain a written [Private/Home School Participation and Private School Affirmation](#) signed by the representatives of the participating private schools as documentation of the consultation process and must be prepared to submit this documentation to the GaDOE upon request. See 34 C.F.R. § 300.135. If the private school officials believe that the traditional LEA did not engage in the consultation in a meaningful or timely manner or did not consider the views of the private school officials, it may submit a complaint through the Formal Complaint Process to the GaDOE. See the chapter on Dispute Resolution for more information. If the private school is not satisfied with the decision of the GaDOE, they may submit the complaint to the United States Department of Education.

### ***Determination of Equitable Services***

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 the LEA. See 34 C.F.R. § 300.137(a). However, the traditional LEA has an obligation to provide parentally-placed private school children an opportunity for equitable participation to receive services funded with Federal IDEA Part B dollars that the traditional LEA has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities. These children with disabilities may receive a different amount of services than children in public schools. Some children will not receive any services. The traditional LEA will make the final decisions regarding services to be provided prior to the start of the school year.

### ***Services Plans***

A services plan will be developed and implemented for each private school child with disabilities who will receive special education and related services from the traditional LEA. The services plan must:

- (1) contain a statement of the special education and related services, and supplementary aids and services, to be provided to the child;
- (2) be in effect at the beginning of each school year; and
- (3) be developed, reviewed, and revised periodically, but not less than annually, in accordance with IEP requirements in IDEA and Georgia Rules.

The traditional LEA will initiate and conduct the meetings to develop, review, and revise a services plan and ensure that a representative of the private school attends each meeting. As with IEPs,

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in-person participation in the meeting is encouraged, but participation may be through conference call or other means. Services provided to private school children must be provided by personnel who meet the same standards as personnel providing the services in the traditional LEA, except private school teachers do not have to meet the special education teacher qualifications in 34 C.F.R. § 300.156(c). See 34 C.F.R. § 300.138(a)(1).

Services may be provided at the private school, or children may be transported to the public school or community setting to receive services. If necessary for the child to benefit from or participate in services, transportation must be provided by the traditional LEA, but the traditional LEA is not required to transport the child from their home to the private school. Transportation costs will be included in calculating whether the traditional LEA has met the requirements of proportionate funding.

The traditional LEA may provide materials, equipment, and property purchased to implement the services to children with disabilities in the private school. These must be used only for those purposes and must be returned when no longer needed. It is also permissible to use funds for indirect services such as consultation and private school staff training. No funds may be used for repairs, minor remodeling, or construction of private school facilities. The LEA may not use the IDEA Part B flow-through or federal preschool funds to finance the existing level of instruction in a private school, the needs of the private school, or the general needs of the children in the private school.

### ***Expenditures***

To meet the requirements for provision of services to parentally-placed private school children, the LEA must follow these guidelines:

- For children ages 3-21, the LEA must expend an amount that is the same proportion of the LEA's total Part B of the IDEA flow-through funding as the number of private school children with disabilities, ages 3-21, attending private and home schools in its jurisdiction is to the total number of children with disabilities in its jurisdiction.
- For children ages 3-5, the LEA must expend an amount that is the same proportion of the LEA's preschool funding as the number of private school children and home-schooled children with disabilities, ages 3-5, attending private and home schools in its jurisdiction is to the total number of children with disabilities, ages 3-5, in its jurisdiction.
- Once an LEA expends all of the proportionate share funds for a fiscal year, there is no requirement for the LEA to provide additional funds or continue services.

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- If the LEA has not expended all of the funds required by the end of the fiscal year, the LEA must carry over funds for a period of one additional year to be used for proportionate share.
- The LEA must consult with representatives of the private school in deciding how to conduct the annual count of the number of private school children with disabilities who reside in its jurisdiction.
- The LEA must ensure that the child count is done on October FTE-1 of each year since this count is used to determine the amount the LEA must spend in the following fiscal year. This count is also reported in the Consolidated Application with IDEA grant application submission. If the original submitted IDEA grant application and budget detail in the Consolidated Application does not accurately reflect the count reported in October FTE-1, a budget amendment must be submitted to revise the count and accurately reflect services and expenditures for proportionate share.

Each LEA must maintain records and report to the GaDOE the following information related to parentally-placed private school children:

- the number of children evaluated
- the number of children determined to be children with disabilities
- the number of children served

### ***Placement of Children by Parent When FAPE is at Issue***

Sometimes an LEA will make a FAPE available to a child but the child's parent decides to place the child in a private school or facility. The LEA is not required to pay for the cost of the education for this child at the private school. When the LEA and the parent disagree regarding the availability of an appropriate program for the child in the LEA, due process hearing procedures may be initiated by the parent. Through a due process hearing, an administrative law judge (ALJ) may find that the LEA had not made a FAPE available to the child in a timely manner prior to the child's enrollment in the private school and that the private placement is appropriate, resulting in reimbursement to the parent of the cost of the private school placement. A parental placement may be found to be appropriate by an ALJ even if it does not meet Georgia's standards that apply to education provided by Georgia or the LEA.

When a FAPE is at issue between the parent and the LEA, and the parent determines that he or she is going to place the child in a private school at public expense, the parent must notify the LEA in writing at least 10 business days prior to the removal of the child or at an IEP Team meeting

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prior to the removal. If the parent does not provide the notice, then the cost of reimbursement for private school services may be reduced or denied by the ALJ. The cost of reimbursement will not be reduced or denied for the parent's failure to give the above described notices if the LEA prevented the parent from providing the notice, the parent had not received the information regarding the notice requirement, the parent is not literate or cannot write in English, or the notice requirement would result in serious emotional or physical harm to the child. See 34 C.F.R. § 300.148(e).

### *Frequently Asked Questions*

#### **1. What are equitable services?**

The regulations state that children with disabilities enrolled in private schools by a parent do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in the public schools. The LEA only has an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B dollars that the LEA has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities. The consultation process is important to ensure the provision of equitable services, which must be provided in accordance with a services plan.

#### **2. Are LEA charter schools required to provide timely consultation and equitable services for parentally-placed private school children?**

No. Traditional LEAs have the responsibility to provide timely consultation and equitable services for parentally-placed private school children residing within their jurisdiction. LEA charter schools have the responsibility to provide special education and related services to children enrolled in their LEA charter schools.

#### **3. How often must a services plan be written?**

A services plan must be in effect for eligible children when the school year begins. The services plan must be reviewed periodically, not less than annually, to determine whether the annual goals for a child are being achieved, and must be revised as appropriate.

#### **4. Does the LEA where the private school is located have an obligation to make an offer of a FAPE?**

The LEA where a child attends private school is responsible for ensuring Child Find and equitable participation. If a parentally placed private school child also resides within the jurisdiction of that LEA, then the LEA is responsible for making a FAPE available to the child. If the child resides within the jurisdiction of a different LEA, the LEA where the private school is located is not responsible for offering a FAPE to that child.

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**5. Can the LEA where the private school is located require another LEA to pay for the services of a parentally-placed private school child with a disability from another state?**

No. Out-of-state children with disabilities enrolled in a private school within the LEA must be included in the group of parentally-placed children with disabilities whose needs are considered in determining who will be served and the types and amounts of services to be provided through a services plan.

**6. Can a parent request evaluations from the LEA where the private school is located as well as the LEA where the child resides?**

Yes. A parent could request that different LEAs evaluate his or her parentally placed private school child if the child is attending a private school that is not in the jurisdiction of the LEA in which the child resides. The LEA where the child resides has the responsibility to provide a FAPE to the child, while the LEA where the private school is located has the responsibility to ensure equitable participation (also called proportionate share services or equitable services). Parents are not encouraged to ask two different LEAs to evaluate their child for different purposes at the same time. The United States Department of Education, Office of Special Education Programs (OSEP) states that “[s]ubjecting a child to repeated testing by separate LEAs in close proximity of time may not be the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability, or of obtaining an appropriate assessment of the child’s educational needs.” See Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, Question and Answer B-4, U.S. Dep’t of Educ., Office of Special Education and Rehabilitative Services (OSERS), April 2011.

**7. What are the LEA’s responsibilities for reevaluations of parentally placed private school children?**

The LEA where the private school is located is responsible for conducting reevaluations of children with disabilities enrolled by their parents in private schools located within the jurisdiction of the LEA. Reevaluations must be conducted in accordance with IDEA and Georgia Rules. See Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, Question and Answer B-8, U.S. Dep’t of Educ., Office of Special Education and Rehabilitative Services (OSERS), April 2011.

**8. What is the Georgia Special Needs Scholarship (GSNS) Program? What are the LEA’s responsibilities for children receiving the GSNS?**

The GSNS Program is a parental choice program for special needs children attending Georgia public schools who are served under an IEP. If a child meets the eligibility criteria for the GSNS Program, parents have the right to request a transfer from a child’s current public

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school to: (1) another public school within their school system; (2) another public school outside of their school system; (3) one of the three state schools for the blind or deaf; or (4) a private school authorized to participate in the GSNS program. More Information about the GSNS Program can be found at: <http://www.gadoe.org/External-Affairs-and-Policy/Policy/Pages/Special-Needs-Scholarship-Program.aspx>

**9. If a student accepts the Georgia Special Needs Scholarship (GSNS) to attend a private school, does the private school have to follow the student’s IEP?**

No. A parent’s acceptance of the scholarship has the same effect as a parental refusal to consent to special education and related services under the IDEA. A participating private school is not required to follow a child’s IEP nor is it required to provide special education services to a child. However, the LEA in which a private school is located must consider a student participating in the GSNS Program for receipt of proportionate share if the child enrolls in a private school within the LEA’s jurisdiction.

**10. If a parent unilaterally places a student in private school, including through the use of the Georgia Special Needs Scholarship, how do their rights under IDEA differ from a student in public school or placed in private school by the LEA?**

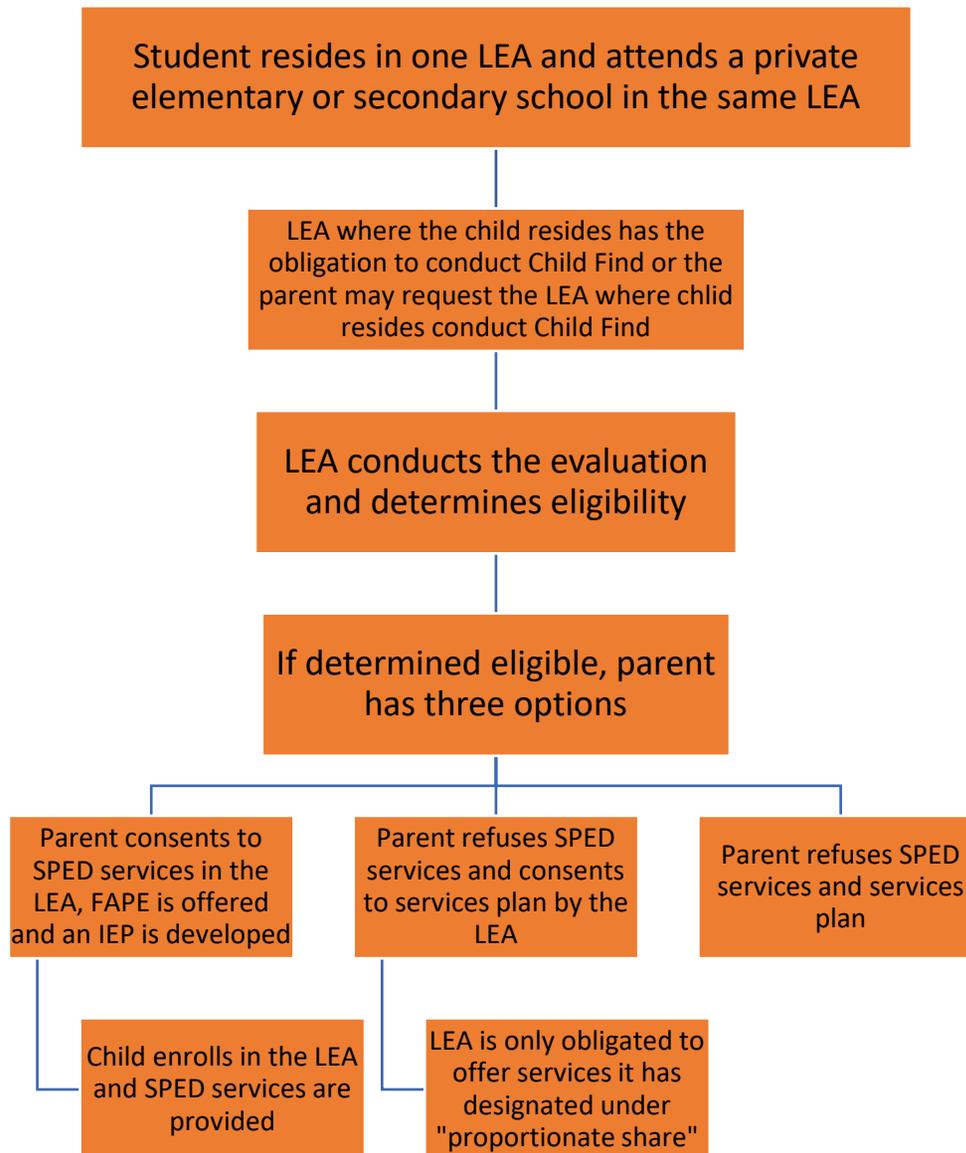
IDEA	Rights of Special Needs Children in Public Schools (or Special Needs Children placed in private schools by the school district)	Rights of Special Needs Children Parentally Placed in Approved Private Schools (Ga Special Needs Scholarship Children)
Free Appropriate Public Education (FAPE)	<p>A FAPE must be made available to eligible children with disabilities. This includes special education services provided in conformity with an individualized education program (IEP) that meets IDEA requirements.</p> <p>Special Education is specially designed instruction to meet the unique needs of the child with a disability.</p> <p>Special Education and related services are provided at no cost to the parent.</p>	<p>No individual entitlement to FAPE or to receive special education and related services that the child would receive if enrolled in public school.</p> <p>A child may receive equitable services. Each LEA determines the equitable services it will provide to its population of parentally placed private school children, through consultation with private schools and parents.</p> <p>If a child is designated to receive equitable services, they are provided in conformity with a services plan at no cost to parents.</p>
Special Education Teacher	Public Elementary, middle, and secondary school special education teachers must meet the special education teacher certifications requirements in the law and regulations.	Not Applicable

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Certification Requirements		
Least Restrictive Environment Requirements	Children with disabilities must be educated with their non-disabled peers, to the maximum extent appropriate.	Not applicable
Discipline Procedures	Children with disabilities are entitled to certain protections related to IDEA's disciplinary procedures.	Not applicable
Due Process Rights	Parents may request a due process hearing if they have a dispute related to the identification, evaluation, educational placement of a child with a disability, the provision of FAPE, or the implementation of IDEA's disciplinary procedures. This could include disputes regarding the development or implementation of an IEP and the location where services will be.	Due process rights of parentally placed private school children and their parents are limited to a LEA's failure to comply with the child find requirements, including the evaluation requirements.

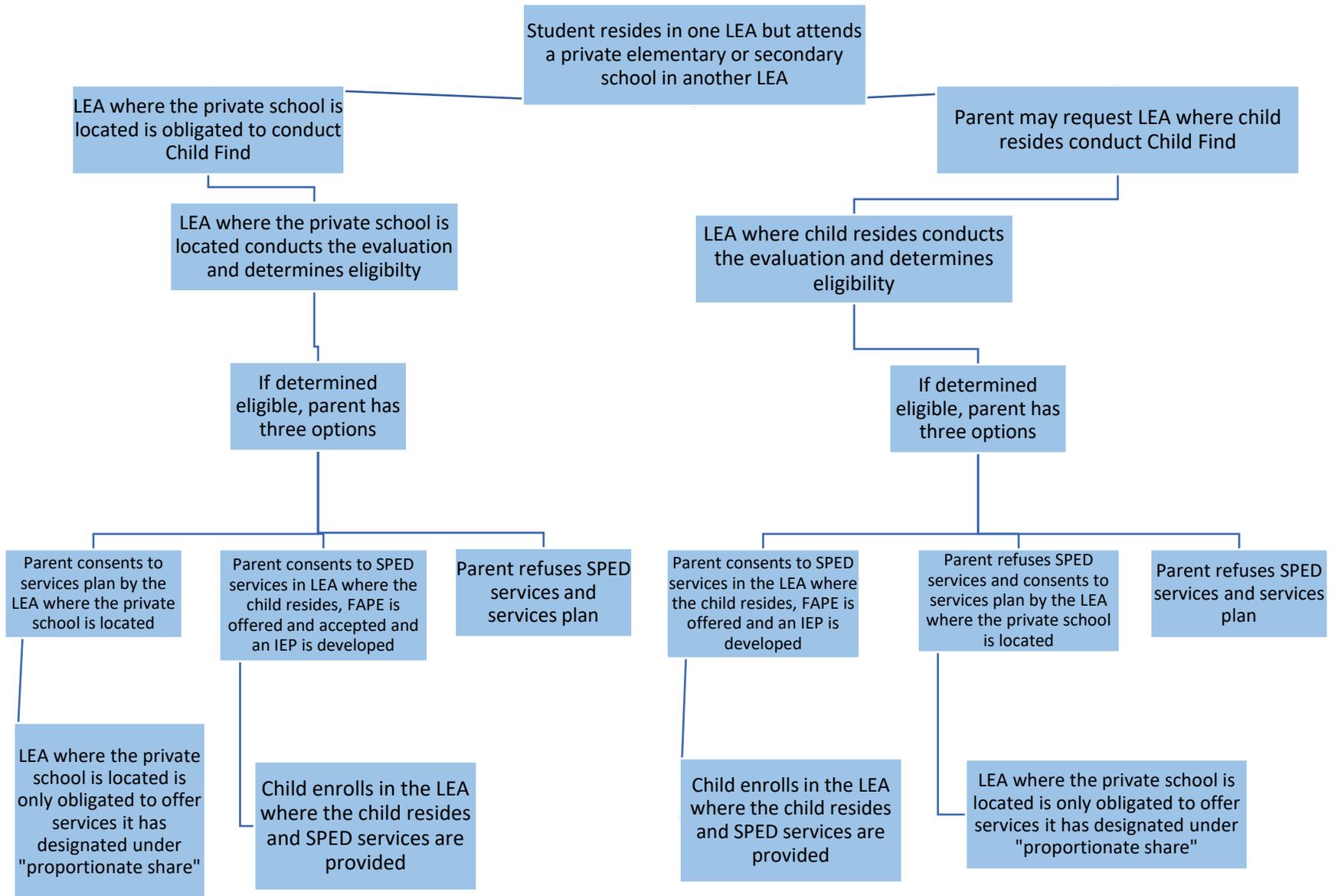
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**Flowchart 1: K-12 Child attending a Private School that is within the jurisdiction of the LEA of residence**



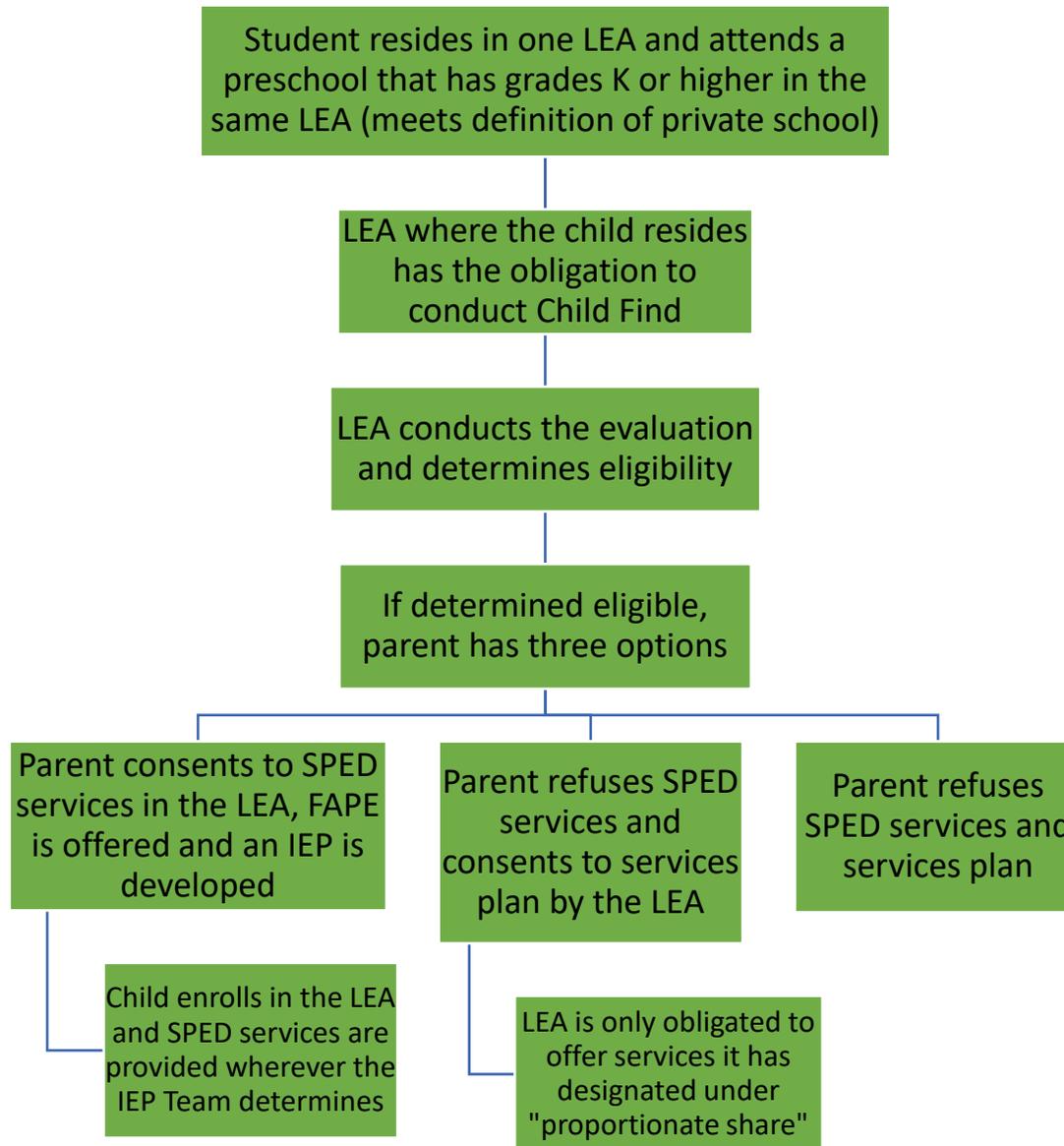
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**Flowchart 2: K-12 Child attending a Private School that is not within the jurisdiction of the LEA of residence**



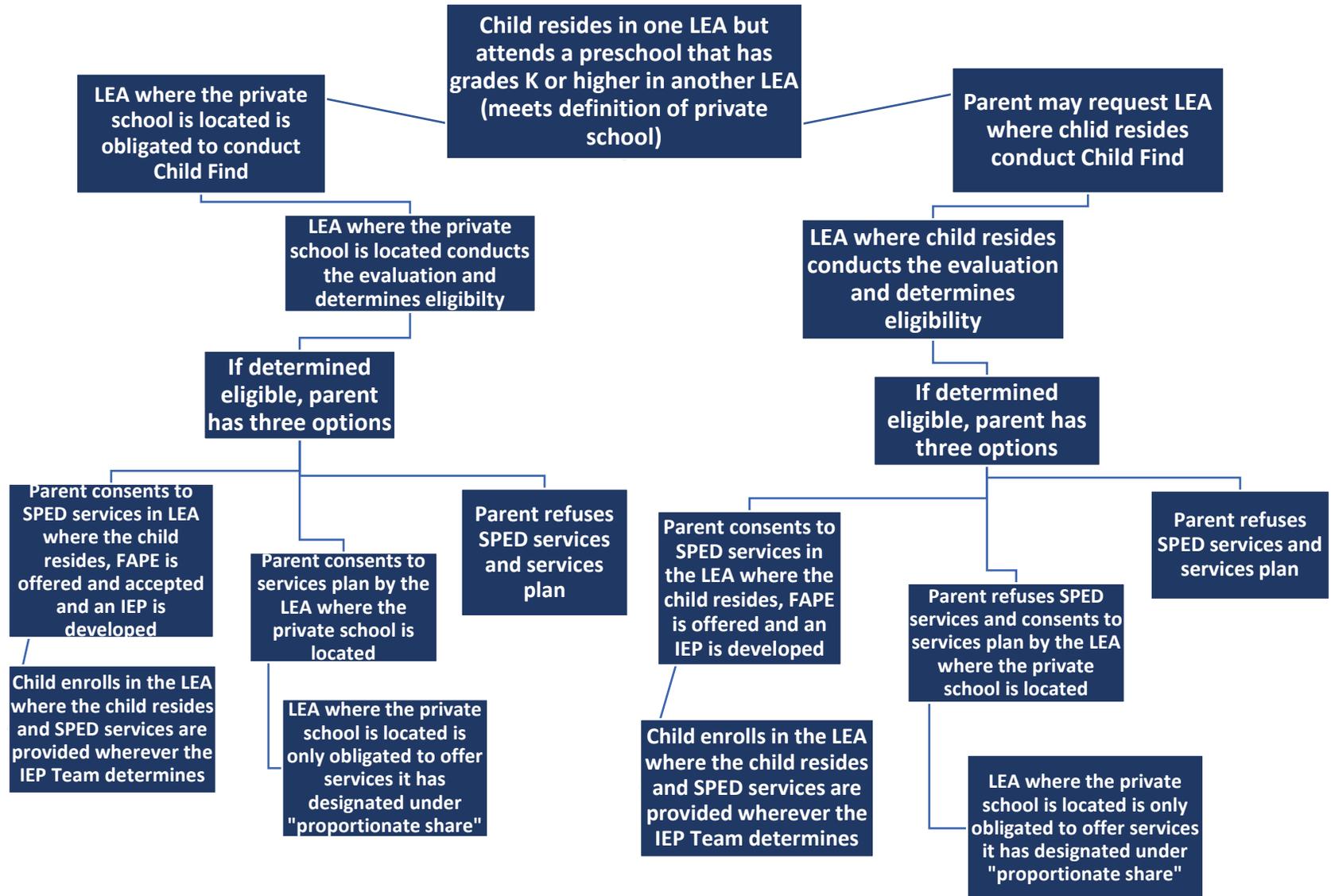
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*Flowchart 3: Preschool Child attending a Private School that is within the jurisdiction of the LEA of residence*



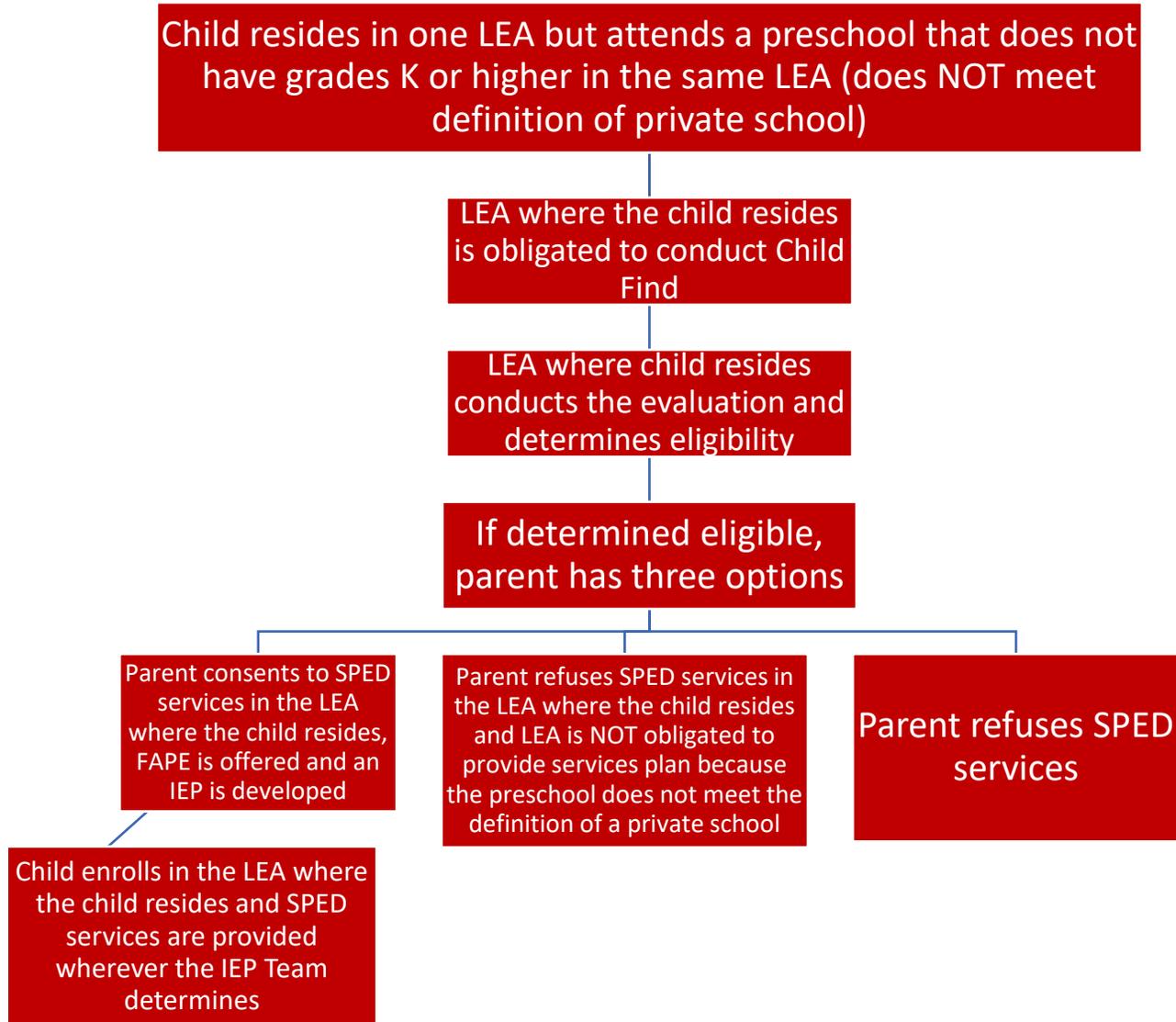
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*Flowchart 4: Preschool Child attending a Private School that is not within the jurisdiction of the LEA of residence*



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*Flowchart 5: Preschool Child attending a Preschool that does not meet the definition of a private school that is within the jurisdiction of the LEA of residence*



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*Flowchart 6: Preschool Child attending a Preschool that does not meet the definition of a private school that is not within the jurisdiction of the LEA of residence*

