

IDEA Regulations

## **CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS**

**(See also Highly Qualified Teachers)**

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the Act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the Act. The final regulations were published on August 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.<sup>1</sup> This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding children enrolled by their parents in private schools.

### **IDEA Regulations**

#### **1. Defines parentally-placed private school children with disabilities.**

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 CFR 300.13 or secondary school in 34 CFR 300.36, other than children with disabilities covered under 34 CFR 300.145-300.147.

[34 CFR 300.130] [20 U.S.C. 1412(a)(10)(A)]

#### **2. Clarifies treatment of children with disabilities, aged 3 through 5.**

Children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in 34 CFR 300.13.

[34 CFR 300.133(a)(2)(ii)] [20 U.S.C. 1412(a)(10)(A)(i)]

#### **3. Explains the manner in which services are provided to children enrolled in private schools.**

Assigns responsibility for equitable participation to the local educational agency (LEA) where the private school is located. [Under prior law, this was the responsibility of the LEA

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the IDEA website at: <http://IDEA.ed.gov>.

of the parent's residence.] To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with 34 CFR 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in 34 CFR 300.190 through 300.198.

[34 CFR 300.132(a)] [20 U.S.C. 1412(a)(10)(A)(i)]

### **Child Find**

#### **4. Requires child find for children in private schools.**

Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with 34 CFR 300.131(b) through 300.131(e), 300.111 and 300.201.

[34 CFR 300.131(a)] [20 U.S.C. 1412(a)(10)(A)(i)(II)]

In carrying out the requirements of this section, the LEA, or, if applicable, the State educational agency (SEA), must undertake activities similar to the activities undertaken for the agency's public school children.

[34 CFR 300.131(c)] [20 U.S.C. 1412(a)(10)(A)(ii)(III)]

The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with 34 CFR 300.301. Such child find process shall be completed in a time period comparable to that for other students attending public schools in the LEA.

[34 CFR 300.131(e)] [20 U.S.C. 1412(a)(10)(A)(ii)(V)]

Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

[34 CFR 300.131(f)] [20 U.S.C. 1412(a)(10)(A)(ii)]

The cost of carrying out child find, including individual evaluations, may not be considered in determining whether an LEA has met its obligations under 34 CFR 300.133 (expenditures), as described below.

[34 CFR 300.131(c)] [20 U.S.C. 1412(a)(10)(A)(ii)(IV)]

#### **5. Requires that child find ensure equitable participation.**

The child find process must be designed to ensure the equitable participation of parentally-placed private school children; and an accurate count of those children.

[34 CFR 300.131(b)] [20 U.S.C. 1412(a)(10)(A)(ii)(II)]

**6. Requires maintenance of records on number of children evaluated and number found eligible as part of child find and the number of children served.**

Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under 34 CFR 300.130 through 300.144:

- The number of children evaluated;
- The number of children determined to be children with disabilities; and
- The number of children served.

[34 CFR 300.132(c)] [20 U.S.C. 1412(a)(10)(A)(i)(V)]

**7. Clarifies that no parentally-placed child with a disability has an individual right to 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 a public school.

[34 CFR 300.137] [20 U.S.C. 1412(a)(10)(A)]

**8. Contains requirements for services plans.**

In accordance with 34 CFR 300.132(a) and 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under 34 CFR Part 300. The LEA must initiate and conduct meetings to develop, review, and revise a services plan for a child designated to receive services. The LEA must ensure that a representative of the religious or other private school attends each meeting. The LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls, if the representative cannot attend. The services plan must describe the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined through the consultation process described below that it will make available to its population of parentally-placed private school children with disabilities. The services plan must, to the extent appropriate:

- Meet the requirements of 34 CFR 300.320, or for a child ages three through five, meet the requirements of 34 CFR 300.323(b) with respect to the services provided; and
- Be developed, reviewed, and revised consistent with 34 CFR 300.321 through 300.324.

[34 CFR 300.132(b), 300.137(c) and 300.138(b)] [20 U.S.C. 1412(a)(10)(A)]

**9. Contains consultation requirements.**

Consultation must be timely and meaningful. To ensure that this occurs, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for parentally-placed children regarding the following:

- The child find process, including:

- o How parentally-placed private school children suspected of having a disability can participate equitably; and
- o How parents, teachers, and private school officials will be informed of the process.
- The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under 34 CFR 300.133(b), including the determination of how the proportionate share of those funds was calculated (See Appendix B to Part 300).
- The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
  - o The types of services, including direct services and alternate service delivery mechanisms; and
  - o How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
  - o How and when those decisions will be made; and
- How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

[34 CFR 300.134] [20 U.S.C. 1412(a)(10)(A)(iii)]

**10. Requires annual count of number of parentally-placed private school children with disabilities.**

Each LEA must:

- After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with 34 CFR 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
- Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

[34 CFR 300.133(c)] [20 U.S.C. 1412(a)(10)(A)]

## **Funding Requirements**

### **11. Requires each LEA to use funds for services for parentally-placed private school children with disabilities according to a formula.**

Each LEA must spend an amount to meet its obligations to parentally-placed private school children with disabilities that is equal to a proportionate amount of Federal funds made available under the Act. Each LEA must expend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

- For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
- For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

[34 CFR 300.133(a)] [20 U.S.C. 1412(a)(10)(A)(i)(I)-(II)]

### **12. Provides that State and Local funds may supplement and not supplant proportionate amount of Federal funds.**

State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under Part 300.

[34 CFR 300.133(d)] [20 U.S.C. 1412(a)(10)(A)(i)(IV)]

### **13. Makes provision for carry-over of unexpended funds.**

If an LEA has not expended for equitable services all of the funds described in 34 CFR 300.133(a)(1) and (a)(2) by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

[34 CFR 300.133(a)(3)] [20 U.S.C. 1412(a)(10)(A)]

### **14. Contains requirements regarding how services to this population are provided.**

The provision of services pursuant to 34 CFR 300.138 and 300.139 through 300.143 must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.

[34 CFR 300.138(c)(1)] [20 U.S.C. 1412(a)(10)(A)(vi)(I)]

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

[34 CFR 300.138(c)(2)] [20 U.S.C. 1412(a)(10)(A)(vi)]

**15. Explains that IDEA does not prohibit on-premises services.**

Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

[34 CFR 300.139(a)] [20 U.S.C. 1412(a)(10)(A)(i)(III)]

**16. Contains requirements regarding when transportation must be provided.**

If necessary for the child to benefit from or participate in the services provided under Part 300, a parentally-placed private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school and from the service site to the private school, or to the child's home, depending on the timing of the services. LEAs are not required to provide transportation from the child's home to the private school.

[34 CFR §300.139(b)] [20 U.S.C. 1412(a)(10)(A)]

**17. Contains requirements for control of property, equipment, and supplies.**

A public agency must control and administer the funds used to provide special education and related services under 34 CFR 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program. The public agency must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

[34 CFR 300.144] [20 U.S.C. 1412(a)(10)(A)(vii)]

**Complaint Process Applicable to Consultation**

**18. Requires written affirmation and provides a right to complain.**

When timely and meaningful consultation as required by 34 CFR 300.134 has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private

schools. If such representatives do not provide such affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the SEA. [34 CFR 300.135] [20 U.S.C. 1412(a)(10)(A)(iii)]

A private school official has the right to submit a complaint to the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in 34 CFR 300.132 through 300.135 and 300.137 through 300.144 and the LEA must forward the appropriate documentation to the SEA.

If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in 34 CFR 300.136(b)(1) of this section and the SEA must forward the appropriate documentation to the Secretary.

[34 CFR 300.136] [20 U.S.C. 1412(a)(10)(A)(v)]

### **Other Provisions**

#### **19. Defines personnel standards for parentally-placed private school children with disabilities.**

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of 34 CFR 300.18.

[34 CFR 300.138(a)(1)] [20 U.S.C. 1412(a)(10)(A)(vi)]

#### **20. Establishes criteria for due process hearing requests.**

The procedures in 34 CFR 300.504 through 300.519 apply to due process complaints that an LEA has failed to meet the child find requirements in 34 CFR 300.131, including the requirements in 34 CFR 300.300 through 300.311. Any due process complaint regarding the child find requirements for parentally placed private school children must be filed with the LEA in which the private school is located.

[34 CFR 300.140(b)] [20 U.S.C. 1412(a)(10)(A)]

#### **21. Establishes criteria for State complaints.**

Any complaint that an SEA or LEA has failed to meet the requirements in 34 CFR 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in 34 CFR 300.151 through 300.153. A complaint filed by a private

school official under 34 CFR 300.136(a) must be filed with the SEA in accordance with the procedures in 34 CFR 300.136(b).

[34 CFR 300.140(c)] [20 U.S.C. 1412(a)(10)(A)]

## **22. Establishes requirements for parental consent.**

If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

[34 CFR 300.622(b)(3)] [20 U.S.C. 1412(a)(8); 1417]

If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in 34 CFR 300.300(a)(3) and (c)(1) and the public agency is not required to consider the child as eligible for services under 34 CFR 300.132 through 300.144

[34 CFR 300.300(d)(4)] [20 U.S.C. 1414(a)(1)(D) and 1414(c)]