



U.S. Department of Education

The Individuals with Disabilities Education Act

Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools

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Introduction

The Individuals with Disabilities Education Act (IDEA) is a federal law that requires each state to ensure that a free appropriate public education (FAPE) is available to all eligible children with disabilities residing in that state. The information in this booklet explains the provisions related to, and benefits available to, children with disabilities who are enrolled by their parents in private schools, including religious schools, when the provision of FAPE is not at issue. Under IDEA, these children are often referred to as “parentally placed private school children” with disabilities and the benefits available to them differ from the benefits for children with disabilities in public schools.

IDEA is designed to improve educational results for all children with disabilities. Therefore, it provides benefits and services to children with disabilities in public schools and requires school districts to make services and benefits available to children with disabilities enrolled by their parents in nonpublic (private) schools. The law includes language requiring state education agencies (SEAs) and local education agencies (LEAs) to ensure the equitable participation of parentally placed children with disabilities in programs assisted by or carried out under the equitable participation requirements that apply to them.

A LEA's obligations to parentally placed private school children with disabilities are different from its responsibilities to those enrolled in public schools or to children with disabilities placed in a private school by a public agency (rather than by parents) as a means of providing FAPE. Parentally placed children with disabilities do not have an individual entitlement to services they would receive if they were enrolled in a public school. Instead, the LEA is required to spend a proportionate amount of IDEA federal funds to provide equitable services to this group of children. Therefore, it is possible that some parentally placed children with disabilities will not receive any services while others will. For those who receive services, the amount and type of services also may differ from the services the child would receive if placed in a public school by the parents or in a private school by a public agency. LEAs are required to consult with private school representatives and representatives of parents of parentally placed children with disabilities during the design and development of special education and related services for these children.

In August 2006, the U.S. Department of Education released new regulations for Part B of IDEA, which went into effect Oct. 13, 2006. These regulations are designed to assist SEAs, LEAs, private school representatives, and representatives of parents of parentally placed private school children with disabilities in understanding the requirements of IDEA. These groups must work together with parents so that the children can receive the benefits available to them under IDEA.

Equitable Participation

The 2004 Amendments to IDEA expand upon the 1997 reauthorization and include new requirements to ensure that LEAs provide parentally placed private school children with disabilities an opportunity for equitable participation in programs assisted or carried out under IDEA, the foundation of which is the consultation process.

The major provisions regarding children with disabilities enrolled by their parents in private, including religious, elementary and secondary schools are located in the statute at section 612(a)(10)(A) and in the regulations at 34 CFR §§300.130-300.144 and are summarized in the sections below. They concern:

- t "HFODZ SFTQPOTJ CJMJUZ GPS DPOEVD determining equitable services (34 CFR §§300.131 –300.132);
- t \$POTVMUBUJPO SFRVJSFNFOU \$'3
- t 8SJUUFO BSNBUJPO PG UJNFMZ BOE M (34 CFR §300.135);
- t \$IJME OE BDUJWJUJFT \$'3 f
- t %BUB DPMMFDUJPO SFRVJSFNFOU
- t %FUF SNJOB UJPO BOE QSPWJTJPO PG F (34 CFR §§300.137-300.138);
- t 4FSWJDFT QMBOT GPS DIJMESFO XJUI services (34 CFR §§300.132(b), 300.137(c) and 300.138(b));

- t 1FSNJTTJPO GPS EFMJWFSZ PG TFSWJ
to the extent consistent with law (34 CFR §300.139(a));
- t %FUF SNJOB UJPO PG UIF QISEA QUN SUJPO E
to be spent on equitable services (34 CFR §300.133);
- t /PO BWBJMBCJMJUZ PG BO JOEJWJEVB
private school students to special education and related services
(34 CFR §300.137(a)); and
- t \$PNQM BJO U QSPDFEVSFT GPS QSJWB U
consultation (34 CFR §300.136).

is booklet is not intended to be a replacement for careful study of IDEA and the regulations, which are available at <http://idea.ed.gov>. A number of additional provisions found in the law and regulations but that are not covered in this booklet also affect parentally placed children with disabilities. Therefore, it is important for all stakeholders to be familiar with these provisions as well. Key concern:

- t 3FRVJSFNFOU UIBU TUBUF BOE MPDBM
the proportionate share of federal funds (34 CFR §300.133(d));
- t 3JHIU UP ëMF EVF QSPDFTT DPNQM BJO
state complaints regarding equitable participation requirements
(34 CFR §300.140);
- t 3FRVJSFNFOU T UIBU GVOET OPU CFOF
(34 CFR §300.141);
- t 3FRVJSFNFOU SFHBSEJOH VTF PG QV
personnel to provide equitable services (34 CFR §300.142);
- t 1SPIJCJUJPO PG TFQBSBUF DMBTTFT C
religion under certain circumstances (34 CFR §300.143);
- t 'VOET GPS FRVJUBCMF QBSUJDDJQBUIP
agency (34 CFR §300.144(a));
- t %FëOJUJPO PG DIJME XJUI B EJTBCJM

t 4QFDJBM QSPDFEVSFT GPS JEFUJGZ
(34 CFR §§300.307-300.311);

t 3FRVJSFNFOU GPS IJHIMZ RVBMJëFE
teachers (34 CFR §300.18);

t 1BSFOUBM DPOTFOU GPS FWBMVBUJPO
(34 CFR §300.300);

t EBZ FWBMVBUJPO UJNFMJOF PS TUB
(34 CFR §300.301(c));

t 4UBUF BEWJTPSZ QBOFM \$'3 ff

t "SSBOHFNFU GPS B CZQBTT JG -&"T
providing services to private school students or if a public agency

Example:

After timely and meaningful consultation with representatives of private schools and parent representatives of parentally placed private school children with disabilities, Liberty Public Schools (LPS) will conduct child and activities (see page 7 for more on this term) for children attending private elementary and secondary schools that are located in its district. They also will provide special education and related services to eligible parentally placed children with disabilities who are designated to receive services and attend private schools located in their district. Children with disabilities enrolled in private schools located in LPS will access IDEA benefits from LPS, even if the families reside within the geographic boundaries of another school district. This includes children who reside out of state but attend a private school located within the geographical boundaries of LPS.

Consultation

Consultation is essential for ensuring that LEAs provide parentally placed private school children with disabilities an opportunity for equitable participation in programs assisted or carried out under IDEA. LEAs are required to consult with both private school representatives and parent representatives of parentally placed private school children with disabilities. The consultation process should occur throughout the school year so that parentally placed private school children with disabilities identified through the child and process can meaningfully participate in special education and related services as determined as a result of the consultation process.

Consultation meetings should include a discussion of the following topics:

1. How children suspected of having a disability can participate equitably; and

2. How parents, teachers, and private school representatives will be informed of the process.

t hF EFUFSNJOB UJPO PG UIF QSPQPS
funds, including the determination of how that share was
calculated.

t)PX XIFSF BOE CZ XIPN TQFDJBM F
services will be provided including a discussion of:

- N the types of services, including direct services and alternate service delivery mechanisms;
- N how special education and related services will be placed private-school children with disabilities; and
- N how and when these decisions will be made.

t hF DPOTVMUBUJPO QSPDFTT BNPOH
school representatives, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate throughout the school year to ensure meaningful participation of these children in special education and related services.

t)PX UIF - & " XJMM QSPWJEF B XSJUUI
school representatives if the LEA disagrees with their views on the provision of services or the types of services.

P k b m m ^ g : _ Û k f Z m b h g Z g] < h f i e Z b g

e LEA must obtain a written information statement from the private school representatives who participated in the consultation process that timely and meaningful consultation has occurred. If the private school representatives do not provide B XSJUUF O B İSNBUJPO XJUIJO B SFBTP must forward the documentation of the consultation process to the SEA.

Consultation must be both timely and meaningful and occur during the design and development of special education and related services for parentally placed children with disabilities UP BDDFTT CFOF ð UT GSPN * % & " * G Q S

that consultation has not occurred in a timely and meaningful manner or that the LEA has not given due consideration to their views, they have the right to complain to the SEA. To submit a DPNQMBJOU UIF PİDJBMT NVTU QSPWJ noncompliance by the LEA and include the applicable provisions

Data Collection and Record Keeping

Under the IDEA data collection requirement, LEAs must gather and maintain data on children with disabilities enrolled by their parents in private schools and submit the data to the appropriate SEA. LEAs must collect information about the number of children

- t F W B M V B U F E
- t E F U F S N J O F E U P C F D I J M E S F O X J U I E J T
- t T F S W F E

Collecting this data will provide valuable information regarding the extent and scope of the equitable services provision under IDEA and assist in ensuring that parentally placed children with disabilities are able to participate equitably under IDEA.

Expenditures and Proportionate Share of Federal IDEA Funds

To meet the requirements under IDEA, every year each LEA must expend a proportionate share of federal IDEA funds on equitable services for parentally placed private school children with disabilities. The formula for determining the proportionate share is discussed in the next section. Each LEA must, after timely and meaningful consultation with representatives of parentally placed private school children with disabilities, determine the number of parentally placed private school children with disabilities attending private schools located in the LEA.

If necessary for a parentally placed child to benefit from or participate in the services provided under the services plan, he or she must be provided with transportation from the school or the 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. The cost of this transportation may be included in calculating whether the LEA has met the expenditure requirements of the proportionate share.

In making decisions about the delivery of services, including the location of services, the LEA must engage in timely and meaningful consultation and give due consideration to the views of the private school representatives and representatives of parents of parentally placed private school children with disabilities.

< h f i e Z b g m l k h \ ^] n k ^ K ^ ` Z k] b g ` < h g l n e

" T O P U F E Q S F W J P V T M Z B Q S J W B U F T D I P P M P i D J B M complaint with the SEA that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration to his or her belief that the LEA did not comply with these consultation requirements. As part of this complaint process, the LEA must forward appropriate documentation to the SEA.

* G U I F Q S J W B U F T D I P P M P i D J B M J T E J T T E or she may submit a complaint to the U.S. secretary of education. If the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation to the secretary.

Preschool Children With Disabilities

Preschool children with disabilities aged 3 through 5 who are enrolled in private elementary schools are considered to be "parentally placed" if the private preschool or day-care program meets the definition of "elementary school" in the federal Part B regulations. "Elementary school" is defined as a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. Children with disabilities, aged 3 through 5, enrolled in a private school or facility that meets the state's definition of an "elementary school" would be considered parentally placed and the equitable participation provisions would apply. Children with disabilities aged 3 through 5 enrolled in a private school or facility that does not meet the state's definition of "elementary school" would not be considered parentally placed. The equitable participation provisions would not apply. FAPE available to eligible children with disabilities aged 3 through 5 remains

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