

The Individuals with Disabilities Education Act

DEPARTMENT OF EDUCATION
Quality
Equity

U.S. Department of Education

The Individuals with Disabilities Education Act (IDEA)

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

Office of Innovation and Improvement
Office of Non-Public Education



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. In *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.

The 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 schools, and charter schools. They are designed to assist SEAs, LEAs, private

- Permission for delivery of services at the private schools by LEAs to the extent consistent with law (34 CFR §300.139(a));
- Determination of the proportionate share of federal *IDEA* funds to be spent on equitable services (34 CFR §300.133);
- Non-availability of an individual entitlement of parentally placed private school students to special education and related services (34 CFR §300.137(a)); and
- Complaint procedures for private school officials regarding consultation (34 CFR §300.136).

This 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. They concern:

- Requirement that state and local funds supplement, not supplant, the proportionate share of federal funds (34 CFR §300.133(d));
- Right to file due process complaints regarding child find and state complaints regarding equitable participation requirements (34 CFR §300.140);
- Requirements that funds not benefit a private school (34 CFR §300.141);
- Requirements regarding use of public and private school

- Special procedures for identifying specific learning disabilities (34 CFR §§300.307-300.311);
- Requirements for highly qualified public school special education teachers (34 CFR §300.18);
- Parental consent for evaluation and provision of services (34 CFR §300.300);
- 60-day evaluation timeline or state-established timeline (34 CFR §300.301(c));
- State advisory panel (34 CFR §§300.167-300.169);
- Arrangement for a bypass (if LEAs are barred by state law from providing services to private school students or if a public agency has failed or is unwilling to provide for equitable participation) (34 CFR §300.190);
- Prohibition of mandatory medication (34 CFR §300.174);
- Changing services plans without a formal team meeting (34 CFR §300.324(a)(4));
- Accommodation guidelines/alternate assessments (if private school children with disabilities participate in statewide assessments) (34 CFR §300.160); and
- Reducing litigation to provide an opportunity for resolution within 30 days following a due-process complaint regarding the child find process (34 CFR §300.510).

LEA Responsible for Conducting Child Find and Ensuring the Provision of Equitable Services

The most recent provisions require the LEA to be the responsible agency for implementing *IDEA* requirements for parentally placed children with disabilities. This includes the obligation that the LEA locate, identify, evaluate, and spend a proportionate share of *IDEA* funds for equitable services for children with disabilities enrolled by their parents in private, including religious, elementary and secondary schools located in that district.

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After timely and meaningful consultation with representatives of private schools and parent representatives of parentally placed private

- The determination of the _____ of federal *IDEA* funds, including the determination of how that share was calculated.
- _____, _____, _____ including a discussion of:
 - ▀ the types of services, including direct services and alternate service delivery mechanisms;
 - ▀ how special education and related services will be apportioned if funds are insufficient to serve all parentally placed private-school children with disabilities; and
 - ▀ how and when these decisions will be made.
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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

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

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 in *IDEA*.

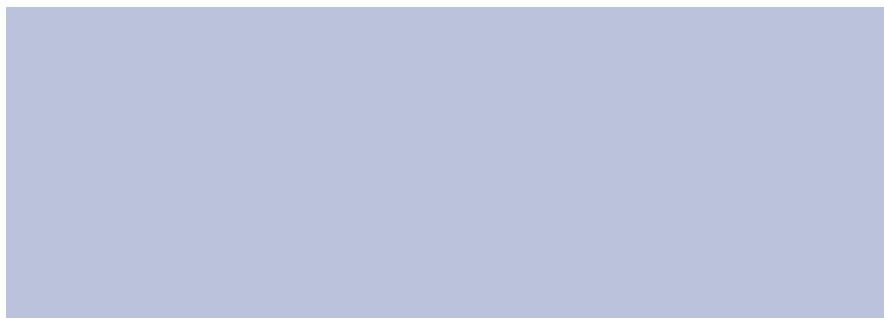
Expenditures and Proportionate Share of Federal *IDEA* Funds

To meet the requirements of *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.

Formula for Expenditures

Determining the amount of federal *IDEA* funds to be expended on parentally placed private school children with disabilities is critical to ensuring the LEA meets its obligation to spend a proportionate share of these funds on special education and related services for these children. The formula for determining the proportionate share of the LEA's subgrant is based on the (not on the number served) $\frac{3}{21}$ in relation to the total number of eligible public and private school children with disabilities aged 3 through 21 in the LEA's jurisdiction. The formula is:



LEAs also must expend a proportionate share of their subgrant under section 619 (g) of *IDEA* for parentally placed children with disabilities aged 3 through 5 who are enrolled by their parents in private schools that meet the definition of “elementary school” in the final Part B regulations. “Elementary school” is defined as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. This amount is calculated relative to the number of eligible parentally placed private school children aged 3 through 5 with disabilities compared to the total number of eligible children with disabilities in its jurisdiction aged 3 through 5.

Provision of Services

LEAs are required to expend the proportionate share of federal *IDEA* funds to provide special education and related services to eligible parentally placed children with disabilities. This includes

. Services may be provided directly by the LEA or by a contract with a third party.

Services Plan

Each parentally placed private school child with a disability who has been designated to receive special education and/or related services must have a services plan. The services plan describes the specific special education and/or related services that the LEA will provide to the child. The EA

. If the private school representative cannot attend, the LEA must use other methods to ensure participation, including individual or conference telephone calls. This will help ensure communication about the child's needs among key stakeholders.

A services plan should reflect only the services the LEA will provide to a parentally placed private school child with a disability who is designated to receive services. It must, to the extent appropriate, meet the applicable individualized education program (IEP) content requirements. The services plan also must, to the extent appropriate, be developed, reviewed, and revised consistent with the requirements related to the IEP team, parent participation, and when IEPs must be in effect, as specified in the final Part B regulations.

Service Delivery (Including On-site)

Services may be provided on the premises of private, including religious, elementary and secondary schools, to the extent consistent with state and federal laws.

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and give due consideration to the views of the private school representatives and representatives of parents of parentally placed private-school children with disabilities.

Complaint Procedure Regarding Consultation

As noted previously, a private school official has the right to file a 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 views. The private school official must provide the basis for 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 related to the private school official's complaint to the SEA.

If the private school official is dissatisfied with the decision of the SEA, he or she may submit a complaint to the U.S. secretary of education. The complaint should provide the basis of the official's belief that 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 by their parents 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 final Part B regulations. "Elementary school" is defined as a nonprofit 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 eligible for e^a u

Further Inforg

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