

## CAPE's Comparison of Provisions in the House and Senate Versions of IDEA Relating to Services for Children Placed by Their Parents in Private Schools

(Current regulations are printed in *italics*.)

<b>Current Law (20 USC 1412(a)) and Regulations</b>	<b>House Bill (HR 1350) Passed 4/30/03</b>	<b>Senate Bill (S 1248) Passed 5/13/04</b>
<p>20 USC 1412(a)(10) Children in private schools (A) Children enrolled in private schools by their parents</p> <p>(i) In general. To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this subchapter by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f) of this section:</p>	<p>Sec. 612(a)(10) Children in private schools (A) Children enrolled in private schools by their parents</p> <p>(i) In general. To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools in the area served by such agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):</p>	<p>Sec. 612(a)(10) Children in private schools (A) Children enrolled in private schools by their parents</p> <p>(i) In general. To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):</p>
<p>(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this subchapter.</p>	<p>(I) Amounts expended for the provision of those services (including direct services to parentally-placed children) by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.</p>	<p>(I) Amounts to be expended for the provision of those services (including direct services to parentally placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p> <p><b>Regulations (34 CFR Part 300)</b> <i>§300.451 Child find for private school children with disabilities.</i> (a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA, in accordance with §§300.125 and 300.220. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools. (b) Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in paragraph (a) of this section. <i>§300.453 Expenditures.</i> (b) Child count. (2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.</p>	<p>(II) In calculating the proportionate share of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of children with disabilities parentally-placed in private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.</p>	<p>NO COMPARABLE LANGUAGE IN SENATE BILL.</p>

**CAPE Side-by-Side: IDEA Reauthorization**

**Page 2 of 4**

<p>(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.</p>	<p>(III) Such services may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.</p>	<p>(II) Such services may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p>	<p>(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this paragraph.</p>	<p>NO COMPARABLE LANGUAGE IN SENATE BILL.</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p>	<p>(V) Each local educational agency maintains in its records and provides to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be children with disabilities, and the number of children served under this subsection.</p>	<p>(III) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be children with disabilities, and the number of children served under this subsection.</p>
<p>(ii) Child-find requirement. The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.</p> <p><b>Regulations (34 CFR Part 300)</b>  <u>§300.451 Child find for private school children with disabilities.</u>  <i>(a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA, in accordance with §§300.125 and 300.220. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.</i>  <u>§300.453 Expenditures.</u>  <i>b) Child count. (1) Each LEA shall--</i>  <i>i) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and</i>  <i>(ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year.</i>  <i>(c) Expenditures for child find may not be considered. Expenditures for child find activities described in §300.451 may not be considered in determining whether the LEA has met the requirements of paragraph (a) of this section.</i></p>	<p>(ii) Child-find requirement.  (I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary and secondary schools.  (II) 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 such children.  (III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.  (IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local education agency has met its obligations under clause (i).  (V) COMPLETION PERIOD.—Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.</p>	<p>(ii) Child-find requirement.  (I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.  (II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children and an accurate count of such children.  (III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.  (IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local education agency has met its obligations under clause (i).</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p> <p><b>Regulations (34 CFR Part 300)</b>  <u>§300.451 Child find for private school children with disabilities.</u>  <i>(b) Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in paragraph (a) of this section.</i></p>	<p>(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a state educational agency, shall consult with representatives of children with disabilities parentally-placed in private schools during the design and development of special education and related services for these children such as—  (I) the child find process and how parentally-placed private school</p>	<p>(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities who are parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—  (I) the child find process and how parentally placed private school</p>

**CAPE Side-by-Side: IDEA Reauthorization**

<p><b>(Regulations continued)</b>  <u>§300.454 Services determined.</u>  <i>(b) Consultation with representatives of private school children with disabilities.</i>  <i>(1) General. Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under §300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide—</i>  <i>(i) Which children will receive services under §300.452;</i>  <i>(ii) What services will be provided;</i>  <i>(iii) How and where the services will be provided; and</i>  <i>(iv) How the services provided will be evaluated.</i>  <i>(2) Genuine opportunity. Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.</i>  <i>(3) Timing. The consultation required by paragraph (b)(1) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under §§300.452-300.462.</i></p>	<p><b>(Consultation Continued)</b>  children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;  (II) the determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under this paragraph, including the determination of how those funds were calculated;  (III) the consultation process among the district, private school officials, and parents of parentally-placed private school children with disabilities including how such 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; and  (IV) how, where, and by whom special education and related services will be provided for parentally-placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these collaborative decisions will be made.  NO COMPARABLE LANGUAGE IN HOUSE BILL</p>	<p><b>(Consultation Continued)</b>  children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;  (II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;  (III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such 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;  (IV) how, where, and by whom special education and related services will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and  (V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services through a contract.</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p>	<p>NO COMPARABLE LANGUAGE IN HOUSE BILL.</p>	<p>(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p> <p><b>Regulations (34 CFR Part 300)</b>  <u>§300.457 Complaints.</u>  <i>(a) Due process inapplicable. The procedures in §§300.504-300.515 do not apply to complaints that an LEA has failed to meet the requirements of §§300.452-300.462, including the provision of services indicated on the child's services plan.</i>  <i>(b) Due process applicable. The procedures in §§300.504-300.515 do apply to complaints that an LEA has failed to meet the requirements of §300.451, including the requirements of §§300.530-300.543.</i></p>	<p>(iv) COMPLIANCE.—  (I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.  (II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State</p>	<p>(v) COMPLIANCE.—  (I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.  (II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State</p>

**CAPE Side-by-Side: IDEA Reauthorization**

**Page 4 of 4**

<p><b>(Regulations continued)</b>  <i>(c) State complaints. Complaints that an SEA or LEA has failed to meet the requirements of §§300.451-300.462 may be filed under the procedures in §§300.660-300.662.</i></p>	<p><b>(Compliance Continued)</b>          educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the state educational agency shall forward the appropriate documentation to the Secretary.</p>	<p><b>(Compliance Continued)</b>          educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p>	<p>(v) PROVISION OF SERVICES.—          NO COMPARABLE LANGUAGE IN HOUSE BILL</p> <p>(I) DIRECTLY OR THROUGH CONTRACTS.—An agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.          (II) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services, including materials and equipment, shall be secular, neutral, and nonideological.</p>	<p>(vi) PROVISION OF EQUITABLE SERVICES.—          (I) DIRECT SERVICES.—To the extent practicable, the local educational agency shall provide direct services to children with disabilities parentally placed in private schools.          (II) DIRECTLY OR THROUGH CONTRACTS.—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.          (III) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.</p>
<p>NO COMPARABLE LANGUAGE IN CURRENT LAW.</p>	<p>(vi) PUBLIC CONTROL OF FUNDS.—          (I) IN GENERAL.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.          (II) PROVISION OF SERVICES.— The provision of services under this Act shall be provided—          (aa) by employees of a public agency; or          (bb) through contract by the public agency with an individual, association, agency, organization, or other entity.</p>	<p>(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.          NO COMPARABLE LANGUAGE IN SENATE BILL</p>
<p>20 USC 1412(f) By-pass for children in private schools          (1) In general          If, on December 2, 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(10)(A) of this section, the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.          [The statute continues with details on implementing the by-pass.]</p>	<p>LEAVES CURRENT STATUTE AS IS          See language in box at left.</p>	<p>Sec. 612(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS-          (1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.          [Thebill continues with details on implementing the by-pass.]</p>