

## CAPE's Comparison of IDEA 2004 Regulations with IDEA 1997 Regulations Relating to Services for Children Placed by Their Parents in Private Schools

The following table focuses on provisions in federal law and regulation relating to services under the *Individuals with Disabilities Education Act* (IDEA) for students with disabilities placed by their parents in private schools. The table allows readers to compare statutory provisions in the 2004 reauthorization of IDEA (column 1) with related provisions found in final regulations for the 2004 reauthorization (column 2) and with provisions in regulations from the 1997 reauthorization of IDEA (column 3). The table enables a ready identification of the major differences between the IDEA 2004 regulations and the IDEA 1997 regulations. The final regulations for IDEA 2004 were released by the U. S. Department of Education (USDE) in an unofficial version on August 3, 2006. The official version is scheduled for publication in the *Federal Register* on August 14, 2006.

### Other Provisions

The table covers the principal provisions in the final regulations relating to services for children placed by their parents in private schools (§§300.129 to 300.144). The USDE's Office of Non-Public Education has identified additional regulations of interest to the private school community. They are listed on the final page of this document.

### Notes on Style

This document is designed for printing on 8.5" X 14" paper.

In order to allow for ready comparisons between the two sets of regulations, certain sections and paragraphs within the 1997 regulations are presented out of sequence and aligned with their counterparts in the 2004 regulations.

Text in green signals significant differences between the two sets of regulations, highlighting either new matter in the 2004 regulations that does not appear in the 1997 regulations, or matter in the 1997 regulations not found in the 2004 regulations.

To save space, subsections, paragraphs, clauses, and the like are not indented. In federal law, subsections are contained within sections and are enumerated with a lowercase letter within parentheses (e.g., (a)); paragraphs are contained within subsections and are marked by a number within parentheses (e.g., (1)); subparagraphs are contained within paragraphs and are marked by an uppercase letter within parentheses (e.g., (A)); clauses are contained within subparagraphs and are marked by a lowercase roman numeral within parentheses (e.g., (ii)); and subclauses are contained within clauses and are marked by an uppercase roman numeral within parentheses (e.g., (IV)).

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## CAPE's Comparison of IDEA 2004 Regulations with IDEA 1997 Regulations Relating to Services for Children Placed by Their Parents in Private Schools

Green signals significant differences between 1997 and 2004 regulations

Supportive Section/Language in Statute	IDEA 2004 Regulations (8/3/06)	IDEA 1997 Regulations
20 USC 1412(a)(10)	<p>§300.129 State responsibility regarding children in private schools. The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148.</p>	<p>§300.133 Children in private schools. The State must have on file with the Secretary policies and procedures that ensure that the requirements of Sec. Sec. 300.400-300.403 and Sec. Sec. 300.450-300.462 are met.</p>
20 USC 1412(a)(10)(A)	<p>§300.130 Definition of <u>parentally-placed private school children with disabilities</u>.  <u>Parentally-placed private school children with disabilities</u> means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147</p>	<p>§300.450 Definition of <u>private school children with disabilities</u>.  As used in this part, <u>private school children with disabilities</u> means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§300.400-300.402.</p>
<p>20 USC 1412(a)(10)(A)(ii) Child Find Requirement.—</p> <p>(I) In General.--The requirements of paragraph (3) (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.</p> <p>(II) Equitable Participation.--The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.</p> <p>(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 the agency's public school children.</p> <p>(IV) Cost.--The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).</p> <p>(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>§300.131 Child find for parentally-placed private school children with disabilities.</p> <p>(a) General. 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 <u>located in the school district served by the LEA</u>, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.</p> <p>(b) <u>Child find design. The child find process must be designed to ensure--</u></p> <p>(1) <u>The equitable participation of parentally-placed private school children; and</u></p> <p>(2) <u>An accurate count of those children.</u></p> <p>(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.</p> <p>(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.</p> <p>(e) <u>Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.</u></p> <p>(f) <u>Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located</u></p>	<p>§300.451 Child find for private school children with disabilities.</p> <p>(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.</p> <p>(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.</p> <p>§300.453(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.</p>

**Supportive Section/Language in Statute**

**IDEA 2004 Regulations (8/3/06)**

**IDEA 1997 Regulations**

	<p>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.</p>	
<p>20 USC 1412(a)(10)(A)(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>[Service plans are not referenced in statute.]</i></p> <p>20 USC 1412(a)(10)(A)(i)(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.</p>	<p>§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.</p> <p>(a) General. 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 §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.</p> <p>(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section 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 this part.</p> <p>(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:</p> <ol style="list-style-type: none"> <li>(1) The number of children evaluated;</li> <li>(2) The number of children determined to be children with disabilities; and</li> <li>(3) The number of children served.</li> </ol>	<p>§300.452 Provision of services--basic requirement.</p> <p>(a) General. To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with §§300.453- 300.462.</p> <p>(b) SEA Responsibility--services plan. Each SEA shall ensure that, in accordance with paragraph (a) of this section and §§300.454-300.456, a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part.</p>
<p>20 USC 1412(a)(10)(A)(i)(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.</p>	<p>§300.133 Expenditures.</p> <p>(a) Formula. To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:</p> <p>(1) 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.</p>	<p>§300.453 Expenditures.</p> <p>(a) Formula. To meet the requirement of §300.452(a), each LEA must spend on providing special education and related services to private school children with disabilities--</p> <p>(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and</p> <p>(2) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children</p>

**Supportive Section/Language in Statute**

**IDEA 2004 Regulations (8/3/06)**

**IDEA 1997 Regulations**

20 USC 1412(a)(10)(A)(i)(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of 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 local educational agency.

20 USC 1412(a)(10)(A)(i)(IV) State and local funds may supplement

(2) (i) 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.

(ii) As described in paragraph (a)(2)(i) of this section, 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 §300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section 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.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

(c) Annual count of the number of parentally-placed private school children with disabilities.

(1) Each LEA must--

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) 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.

(d) Supplement, not supplant. State and local funds may

with disabilities in its jurisdiction aged 3 through 5.

(b) Child count. (1) Each LEA shall--

(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 (ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year.

(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.

[§300.453(c) appears above as a companion to proposed §300.131(d)]

~~§300.453(d) Additional services permissible. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required~~

**Supportive Section/Language in Statute**

**IDEA 2004 Regulations (8/3/06)**

**IDEA 1997 Regulations**

and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

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 this part.

~~by this part, consistent with State law or local policy.~~

20 USC 1412(a)(10)(A)(iii) Consultation.--To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall 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 the children, including regarding--

(I) the child find process and how parentally placed private school 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 amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school 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 with disabilities, including a discussion of types of services, including direct services and 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 or the types of services, whether provided directly or 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 directly or through a contract.

§300.134 Consultation.

To ensure timely and meaningful consultation, 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 the children regarding the following:

(a) Child find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. 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.

(d) Provision of 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--

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services. 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.

§300.454(b) [Printed out of sequence to align with new regulations.]

Consultation with representatives of private school children with disabilities. (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) Which children will receive services under §300.452;
- (ii) What services will be provided;
- (iii) How and where the services will be provided; and
- (iv) How the services provided will be evaluated.

(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.

(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.

Supportive Section/Language in Statute	IDEA 2004 Regulations (8/3/06)	IDEA 1997 Regulations
<p>20 USC 1412(a)(10)(A)(iv) Written Affirmation.--When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation 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>§300.135 Written affirmation.  (a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.  (b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.</p>	<p><i>No comparable language.</i></p>
<p>20 USC 1412(a)(10)(A)(v) Compliance.--  (I) In General.--A private school official shall have the right to submit a complaint 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 submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph 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 educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.</p>	<p>§300.136 Compliance.  (a) General. A private school official has the right to submit a complaint to the SEA that the LEA--  (1) Did not engage in consultation that was meaningful and timely; or  (2) Did not give due consideration to the views of the private school official.  (b) Procedure.  (1) 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 this part; and  (2) The LEA must forward the appropriate documentation to the SEA.  (3)(i) 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 paragraph (b)(1) of this section; and  (ii) The SEA must forward the appropriate documentation to the Secretary.</p>	<p><i>No comparable language.</i></p>
<p>20 USC 1412(a)(10)(A)  [“No individual right” language does not appear in statute.]</p> <p>[Service plans are not referenced in statute.]</p>	<p>§300.137 Equitable services determined.  (a) No individual right to special education and related 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.  (b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).  (2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.  (c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child’s parents and will receive special</p>	<p>§300.454 Services determined.  (a) No individual right to special education and related services.  (1) No 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.  (2) Decisions about the services that will be provided to private school children with disabilities under §§300.452-300.462, must be made in accordance with paragraphs (b), and (c) of this section. [See §300.454(b)(1) through (3) above.]</p> <p>§300.454(b)(4) Decisions. The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.  §300.454(c) Services plan for each child served under §§300.450-300.462. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services</p>

**Supportive Section/Language in Statute**

**IDEA 2004 Regulations (8/3/06)**

**IDEA 1997 Regulations**

[Service plans are not referenced in statute.]

education or related services from an LEA, the LEA must--  
(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and  
(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls

from an LEA, the LEA shall--  
(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.455(b); and  
(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

20 USC 1412(a)(10)(A)(vi) Provision of Equitable Services.--  
(I) Directly or Through Contracts.--The provision of services pursuant to this subparagraph 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.  
(II) Secular, Neutral, Nonideological.--Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

§300.138 Equitable services provided.  
(a) General. (1) 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 §300.18.**  
(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.  
(b) Services provided in accordance with a services plan.  
(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes 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 process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.  
(2) The services plan must, to the extent appropriate--  
(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and  
(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.  
(c) Provision of equitable services. (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:  
(i) By employees of a public agency; or  
(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.  
(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

§300.455 Services provided.  
(a) General. (1) The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.  
(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.  
(3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.  
(b) Services provided in accordance with a services plan. (1) Each private school child with a disability who has been designated to receive services under §300.452 must have a services plan that describes 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 process described in §§300.453-300.454, it will make available to private school children with disabilities.  
(2) The services plan must, to the extent appropriate--  
(i) Meet the requirements of §300.347, with respect to the services provided; and  
(ii) Be developed, reviewed, and revised consistent with §§300.342-300.346.

**Supportive Section/Language in Statute**

**IDEA 2004 Regulations (8/3/06)**

**IDEA 1997 Regulations**

20 USC 1412(a)(10)(A)(i)(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

§300.139 Location of services and transportation.  
(a) Services on private school premises. 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.  
(b) Transportation. (1) General.  
(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--  
(A) From the child’s school or the child’s home to a site other than the private school; and  
(B) From the service site to the private school, or to the child’s home, depending on the timing of the services.  
(ii) LEAs are not required to provide transportation from the child’s home to the private school.  
(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.

§300.456 Location of services; transportation.  
(a) On-site. Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.  
(b) Transportation.  
(1) General.  
(i) If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation--  
(A) From the child's school or the child's home to a site other than the private school; and  
(B) From the service site to the private school, or to the child's home, depending on the timing of the services.  
(ii) LEAs are not required to provide transportation from the child's home to the private school.  
(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.453.

20 USC 1412(a)(10)(A)

§300.140 Due process complaints and State complaints.  
(a) Due process not applicable, except for child find.  
(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child’s services plan.  
(b) Child find complaints--to be filed with the LEA in which the private school is located.  
(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131, including the requirements in §§300.300 through 300.311.  
(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.  
(c) State complaints.  
(1) Any complaint that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153.  
(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b).

§300.457 Complaints.  
(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.  
(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.  
(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.



Supportive Section/Language in Statute	IDEA 2004 Regulations (8/3/06)	IDEA 1997 Regulations
20 USC 1412(a)(10)(A)	<p>§300.141 Requirement that funds not benefit a private school.</p> <p>(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.</p> <p>(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--</p> <ol style="list-style-type: none"> <li>(1) The needs of a private school; or</li> <li>(2) The general needs of the students enrolled in the private school.</li> </ol>	<p>§300.459 Requirement that funds not benefit a private school.</p> <p>(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.</p> <p>(b) The LEA shall use funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for--</p> <ol style="list-style-type: none"> <li>(1) The needs of a private school; or</li> <li>(2) The general needs of the students enrolled in the private school.</li> </ol>
20 USC 1412(a)(10)(A)	<p>§300.142 Use of personnel.</p> <p>(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--</p> <ol style="list-style-type: none"> <li>(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and</li> <li>(2) If those services are not normally provided by the private school.</li> </ol> <p>(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--</p> <ol style="list-style-type: none"> <li>(1) The employee performs the services outside of his or her regular hours of duty; and</li> <li>(2) The employee performs the services under public supervision and control.</li> </ol>	<p>§300.460 Use of public school personnel.</p> <p>An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--</p> <ol style="list-style-type: none"> <li>(a) To the extent necessary to provide services under §§300.450-300.462 for private school children with disabilities; and</li> <li>(b) If those services are not normally provided by the private school.</li> </ol> <p>§300.461 Use of private school personnel.</p> <p>An LEA may use funds available under section 611 or 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.450-300.462 if--</p> <ol style="list-style-type: none"> <li>(a) The employee performs the services outside of his or her regular hours of duty; and</li> <li>(b) The employee performs the services under public supervision and control.</li> </ol>
20 USC 1412(a)(10)(A)	<p>§300.143 Separate classes prohibited.</p> <p>An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if--</p> <ol style="list-style-type: none"> <li>(a) The classes are at the same site; and</li> <li>(b) The classes include children enrolled in public schools and children enrolled in private schools.</li> </ol>	<p>§300.458 Separate classes prohibited.</p> <p>An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if--</p> <ol style="list-style-type: none"> <li>(a) The classes are at the same site; and</li> <li>(b) The classes include students enrolled in public schools and students enrolled in private schools.</li> </ol>
20 USC 1412(a)(10)(A)(vii) Public Control of Funds.--The control of funds used to provide special education and related services under this subparagraph, 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 title, and a public agency shall administer the funds and property.	<p>§300.144 Property, equipment, and supplies.</p> <p>(a) A public agency must control and administer the funds used to provide special education and related services under §§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.</p> <p>(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.</p> <p>(c) The public agency must ensure that the equipment and supplies placed in a private school--</p>	<p>§300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.</p> <p>(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.</p> <p>(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.</p> <p>(c) The public agency shall ensure that the equipment and supplies placed in a private school--</p>

**Supportive Section/Language in Statute**

**IDEA 2004 Regulations (8/3/06)**

**IDEA 1997 Regulations**

	<p>(1) Are used only for Part B purposes; and (2) Can be removed from the private school without remodeling the private school facility. (d) The public agency must remove equipment and supplies from a private school if-- (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.</p>	<p>(1) Are used only for Part B purposes; and (2) Can be removed from the private school without remodeling the private school facility. (d) The public agency shall remove equipment and supplies from a private school if-- (1) The equipment and supplies are no longer needed for Part B purposes; or (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.</p>
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## Additional IDEA Regulations of Interest to the Private School Community

(Compiled by USDE's Office of Non-Public Education)

### Subpart A

§300.2: Applicability of this part to State and local agencies.

§300.9: Consent.

§300.18: Highly qualified special education teacher.

§300.37: Services plan.

### Subpart B:

§300.111: Child find.

§300.116: Placements.

§300.118: Children in public or private institutions.

§300.145: Applicability of §§300.146-300.147.

§300.146: Responsibility of SEA.

§300.147: Implementation by SEA.

§300.148: Placement of children by parents when FAPE is at issue.

§300.149: SEA responsibility for general supervision.

§300.150: SEA implementation of procedural safeguards.

§300.156: Personnel qualifications.

§300.168: Membership.

§300.174: Prohibition on mandatory medication.

§300.190: By-pass—general.

§300.191: Provisions for services under a by-pass.

§300.192: Notice of intent to implement a by-pass.

§300.193: Request to show cause.

§300.194: Show cause hearing.

§300.195: Decision

§300.196: Filing requirements.

§300.197: Judicial review.

§300.198: Continuation of a by-pass.

### Subpart C

§300.207: Personnel development.

§300.208: Permissive use of funds.

### Subpart D

§300.300: Parental consent.

§300.301: Initial evaluations.

§300.302: Screening for instructional purposes is not evaluation.

§300.303: Reevaluations.

§300.304: Evaluation procedures.

§300.305: Additional requirements for evaluations and reevaluations.

§300.306: Determination of eligibility.

§300.307: Specific learning disabilities.

§300.308: Additional group members.

§300.309: Determining the existence of a specific learning disability.

§300.310: Observation.

§300.311: Specific documentation for the eligibility determination.

§300.320: Definition of individualized education program.

§300.321: IEP Team.

§300.322: Parent participation.

§300.323: When IEPs must be in effect.

§300.324: Development, review, and revision of IEP.

§300.325: Private school placements by public agencies.

### Subpart E

§300.501: Opportunity to examine records; parent participation in meetings.

§300.502: Independent educational evaluation.

§300.503: Prior notice by the public agency; content of notice.

§300.504: Procedural safeguards notice.

### Subpart F

§300.644: Annual report of children served--criteria for counting children.

### Subpart G

§300.705: Subgrants to LEAs.

§300.192: Notice of intent to implement a by-pass.

### Subpart H

§300.800: In general.

§300.816: Allocation to LEAs.