

## Special Education and Private School Children with Disabilities

*Please note: Additional, more detailed information, follows the initial basic overview.*

*Documents referenced are either included, either in full or excerpts, at the end of this explanation, or links are provided.*

The Individuals with Disabilities Education Act (IDEA) makes public school districts, also known as local education agencies (LEAs) responsible to make a free appropriate public education (FAPE) in the least restrictive environment available to all eligible children with disabilities. The LEA, through the IEP team process, may place a child with a disability in a public school, which includes chartered public schools (charter schools) or in an approved private school. A parent may also make a unilateral placement without the involvement of the IEP team.

There are four different situations where a child with a disability may be placed in a private school:

1. A child's individualized education program (IEP) team may make a placement in a private school;
2. A parent may place their child in a non-profit private school as an alternative to the public school;
3. A parent may place their child in a for-profit private school; or
4. A parent may place their child in a non-profit private school because the parent believes the school district cannot provide the child with a free appropriate public education (FAPE)

In order to fulfill their responsibility to provide a child with a disability with a FAPE in the LRE, **a school district** (through the IEP Team) **may place the child in a private school** that has been approved for special education, regardless of whether that private school is a for-profit or a nonprofit school. A school district, or local educational agency (LEA) may place a child with a disability in a private school in another state only if the IEP team determines that the school is the least restrictive environment in which the child can be provided a FAPE and the private school has been approved for special education by their state.

**If a parent places their child in a private school and FAPE is not at issue**, the child is considered to be a parentally-placed private school child with a disability. IDEA, §300.130 defines parentally-placed private school children with disabilities as “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” [note: these sections have to do with placements made by the IEP team, not unilateral placements made by the parents]. IDEA, §300.13 and §300.36, consistent with the Elementary and Secondary Education Act, define elementary and secondary schools as ***nonprofit*** day or residential schools.

It is important to be aware that children with disabilities who are placed by their parents (parentally-placed private school children with disabilities) do not retain an individual right to continue receiving special education and/or related services under the IDEA while enrolled in the private school.

A private school that receives Federal funds is prohibited by Section 504 of the Rehabilitation Act from discriminating on the basis of disability and must make reasonable accommodations to provide a child with a disability with an equal opportunity to participate in and benefit from the school's programs and activities. The Americans with Disabilities Act (ADA), which prohibits discrimination regardless of whether an entity receives Federal funds applies to many private schools, **but neither Section 504 or the ADA require a private school to comply with the special education requirements in IDEA**. Additionally, if the private school is an entity controlled by a religious organization, that private school is exempt from the ADA's prohibition against discrimination on the basis of disability.

**The following rules apply to parentally-placed private school children with disabilities:**

**Child Find:** If a parent enrolls their child with a disability in a nonprofit private school (at parental expense), the school district in which that private school is located is responsible for conducting child find activities, including

evaluation of the child. **But** – If the parent enrolls their child with a disability in a for-profit private school, the school district in which the child resides is responsible for child find activities.

**Provision of Special Education Services:** If a parent enrolls their child with a disability in a private school and FAPE is not at issue, the parent is responsible for the costs related to the child’s private school placement. The child has no individual right to some or all of the special education services they would receive if enrolled in a public school. If a parent enrolls their child in a nonprofit private school, the school district in which that private school is located **may** provide the child with some special education services, using the proportionate share funds they receive for parentally-placed private school children with disabilities enrolled in private schools in the district. **But** – If a parent enrolls their child with a disability in a for-profit private school, regardless of whether the private school is approved to provide special education, the child is **not entitled** to receive any special education services from either the school district in which the child resides or the school district in which the private school is located.

*For additional information, see: OSERS letter to Chapman, 8/22/2007; and NH Department of Education FY 2010 memo # 38. The NH Department of Education maintains lists of for-profit & nonprofit private schools in NH.*

**If a parent places their child in a private school because the parent believes the school district has not provided the child with a FAPE**, the parent is responsible for paying for the placement, but the parent may then attempt to obtain tuition reimbursement from the school district through a due process hearing. IDEA, in §300.148, describes the process a parent of a child who previously received special education or related services through the public school district may use to request tuition reimbursement based on the parent’s contention that the school district had not provided their child with a FAPE.

In 2009, the US Supreme Court in the case of *Forest Grove School District v. T.A.* decided, “... that IDEA authorizes reimbursement for the cost of private special-education services when a school district fails to provide a FAPE and the private-school placement is appropriate, regardless of whether the child previously received special education or related services through the public school.”

### **CHILDREN ATTENDING PRIVATE RELIGIOUS SCHOOLS EXCLUDED FROM ADA PROTECTIONS**

Private religious schools that do not accept federal funds are not covered by Section 504 and are exempt from the Americans with Disabilities Act (Section 307 of the ADA, 42 U.S.C. 12187), meaning they may discriminate against a child based on the child’s disability: *42 U.S. Code § 12187. Exemptions for private clubs and religious organizations. The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) [42 U.S.C. 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.*

The U.S. Department of Justice very clearly states in a letter explaining the obligations that religious organizations and entities controlled by a religious organization have under the ADA: “Religious organizations and entities controlled by religious organizations have no obligations under the ADA”.

### **CHILDREN WITH DISABILITIES PLACED IN PRIVATE SCHOOLS WHEN FAPE IS NOT AT ISSUE HAVE NO INDIVIDUAL ENTITLEMENT TO SPECIAL EDUCATION**

As explained in *Questions and Answers on Serving Children With Disabilities Placed by Their Parents in Private Schools* (US Department of Education, Office Of Special Education And Rehabilitative Services, Office Of Special Education Programs, February 2022), children with disabilities placed in private schools by their parents where FAPE is not at issue do not have an individual entitlement to the special education and related services they would receive if they were enrolled in a public school or placed in a private school by the LEA as a means of ensuring FAPE is made available.

As explained in this Q&A document, children with disabilities placed in private schools by their parents where FAPE is not at issue do not have an individual entitlement to the special education

and related services they would receive if they were enrolled in a public school or placed in a private school by the LEA as a means of ensuring FAPE is made available.

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 local education agency (LEA or school district) 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 amount and type of services the child would receive if placed in a public school by the parents or in a private school by a public agency.

This is consistent with the explanation given in the department's 2011 resource document, *Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools*, which said:

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.

The IDEA definition of parentally-placed private school children, as well as the definitions of an elementary school and a secondary school, which are part of the definition of parentally-placed private school children with disabilities does not include home schooled children, children placed in private for-profit schools, children enrolled in another public school, or children receiving a mixture of customized schools or services arranged by their parents.

Statements in the appendices to the IDEA regulations (Analysis of Comments), also note that home schooled students and students enrolled by their parents in for-profit private schools are not considered to be parentally-placed private school children with disabilities, and emphasize that parentally-placed private school children with disabilities do not retain any individual right to some or all of the special education and related services the child would receive if enrolled in a public school. The excerpts from the Bureau of Special Education FY '10 Memo #38 and from the NH Standards for the Education of Children with Disabilities reinforces that parentally-placed children are only children placed by their parents in nonprofit private elementary or secondary schools that have met the approval standards of the state department of education, and specifically notes that this does not include home-schooled students.

IDEA does make it clear in both the statute and regulations that the child find requirements remain intact regardless of whether the child is enrolled in a for-profit or non-profit private school. This is also noted in the analysis of comments and in the OSEP letters to Chapman and Goldman. The letter to Goldman specifically addresses how the IDEA treats a child with a disability who had an IEP, then been either home-schooled or enrolled in a private school, then returns to a public school, and affirms that the right to a free appropriate public education remain intact. Excerpts from IDEA provide that, while a parent of a child with a disability may not utilize the due process procedures to dispute an LEA's decision about how they will serve parentally-placed private school children with disabilities using their proportionate share of the IDEA funds received by the LEA, a private school may file a

complaint if they do not believe that the LEA engaged in timely and meaningful consultation or did not give due consideration to the views of the private school in making their decision.

While IDEA places the responsibility for child find activities for parentally-placed private school children with disabilities on the LEA in which the private school is located, not on the LEA in which the child resides, OSEP's letter to Chapman says, "A State determines which public agency is responsible for conducting child find under 34 CFR §300.111 for children suspected of having a disability attending for-profit private schools. Generally, this agency is the LEA in which the child resides."

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**EXCERPTS FROM THE IDEA REGULATIONS (emphasis added with bold, underlined text)**

**§ 300.13 Elementary school.** **Elementary school means a nonprofit** institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

**§ 300.36 Secondary school.** **Secondary school means a nonprofit** institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

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

**§300.131 Child find for parentally-placed private school children with disabilities.**

(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 located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) **Child find design.** The child find process must be designed to ensure--

(1) **The equitable participation of parentally-placed private school children; and**

(2) **An accurate count of those children.**

(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.

(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.** [Note: This means that the LEA must use a proportionate amount of IDEA funds to pay for services they provide to parentally-placed private school children with disabilities, but those funds are not to be used for child find activities; the costs of child find activities, including initial evaluations and reevaluations and meetings, are the responsibility of the community in which the private elementary or secondary school is located.]

(e) **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.

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

**§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.**

(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.

(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.**

(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:

- (1) The number of children evaluated;
- (2) The number of children determined to be children with disabilities; and
- (3) The number of children served.

### **§300.133 Expenditures.**

(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:

(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.

(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 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.

#### **§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.

#### **§300.135 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.

#### **§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.

### **§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 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.

### **§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.

### **§300.139 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.**

### **§300.140 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).

### **§300.141 Requirement that funds not benefit a private school.**

(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.

(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--

(1) The needs of a private school; or

- (2) The general needs of the students enrolled in the private school.

**§300.142 Use of personnel.**

(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--

- (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

- (2) If those services are not normally provided by the private school.

(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--

- (1) The employee performs the services outside of his or her regular hours of duty; and

- (2) The employee performs the services under public supervision and control.

**§300.143 Separate classes prohibited.**

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—

- (a) The classes are at the same site; and

- (b) The classes include children enrolled in public schools and children enrolled in private schools.

**§300.144 Property, equipment, and supplies.**

(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.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

- (c) The public agency must ensure that the equipment and supplies placed in a private school--

- (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.

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**IDEA APPENDIX B GIVES AN EXAMPLE OF HOW PROPORTIONATE AMOUNTS ARE CALCULATED:**

The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's

subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives \$152,500 in Federal flow through funds. Therefore, the LEA must spend \$9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in §300.226).

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**EXCERPTS FROM THE IDEA REGULATIONS, ANALYSIS OF COMMENTS:**

**Equitable services determined (§300.137).** Comment: One commenter recommended removing §300.137(a), stating it is discriminatory and that parentally placed private school children must receive the same amount of services as children with disabilities in public schools.

Discussion: **Section 300.137(a)** reflects the Department's longstanding policy, consistent with section 612(a)(10) of the Act, and **explicitly provides that children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in the public schools.** Under the Act, LEAs only have an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities. **LEAs are not required to spend more than the proportionate Federal share on those services.**

**Expenditures (§300.133)** Comment: A few commenters requested revising §300.133 to include home-schooled children with disabilities in the same category as parentally-placed private school children with disabilities.

Discussion: Whether home-schooled children with disabilities are considered parentally-placed private school children with disabilities is a matter left to State law. ***Children with disabilities in home schools or home day cares must be treated in the same way as other parentally-placed private school children with disabilities for purposes of Part B of the Act only if the State recognizes home schools or home day cares as private elementary schools or secondary schools.***

**Other consent requirements (§300.300(d))**

Discussion: ...By contrast, once parents opt out of the public school system, States and school districts do not have the same interest in requiring parents to agree to the evaluation of their children. In such cases, it would be overly intrusive for the school district to insist on an evaluation over a parent's objection. The Act gives school districts no regulatory authority over private schools. ***Moreover, the Act does not require school districts to provide FAPE to children who are home schooled or enrolled in private schools by their parents.*** ...

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**EXCERPT FROM THE Bureau of Special Education FY'10 Memo #38**

Date: May 19, 2010

The Bureau of Special Education has researched the requirements under IDEA 2004 regarding children with disabilities placed by their parents in private schools. Only non-profit non-public schools that are approved by the New Hampshire Department of Education fall under the private school requirement for IDEA.

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**EXCERPT FROM RSA 193-A**

**193-A:9 Liability Limited.** – The resident school district, the board of such district, and any employees of the resident school district associated with a child who is or has been receiving home education are not liable in damages in a civil action for any injury, death or loss to person or property allegedly sustained by that child, the child's parent, or any other person as a result of the child's receipt of home education, including but not limited to, any liability allegedly based on the failure of the child to receive a free appropriate or adequate public education.

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**EXCERPTS FROM LETTERS FROM THE OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP):**

Excerpts from OSEP letter to Chapman dated August 22, 2007

"Do children enrolled in for-profit private schools qualify for a proportionate share?"

Under 34 CFR §300.130, parentally-placed private school children with disabilities are defined as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 CFR §300.13 or secondary school in 34 CFR §300.36.

The definition of "elementary school" at 34 CFR §300.13 states: *Elementary school* means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. The definition of "secondary school" at 34 CFR §300.36 states: *Secondary school* means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12. (Emphasis added.)

**Because both definitions require that the schools be nonprofit, children with disabilities placed by their parents in for-profit private schools are not included in the definition of "parentally-placed private school children with disabilities." Therefore, they would not be included in the proportionate share calculation or be eligible for equitable services under 34 CFR §§300.130-300.144.**

The child find obligation exists independently from the requirement to expend a proportionate share of IDEA funds to provide services to eligible parentally-placed private school children with disabilities. Under section 612(a)(3)(A) of IDEA and 34 CFR §300.111, a State must ensure that all children with disabilities residing in the State, including children with disabilities attending private schools, and who are in need of special education and related services, are identified, located, and evaluated; this includes children with disabilities attending for-profit private schools. A State determines which public agency is responsible for conducting child find under 34 CFR §300.111 for children suspected of having a disability attending for-profit private schools. Generally, this agency is the LEA in which the child resides.

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Excerpts from OSEP letter to Goldman dated March 26, 2009

Specifically you ask how the Individuals with Disabilities Education Act (IDEA) treats a child with a disability who "had an [individualized education program] IEP, been home-schooled or enrolled in private school, and then subsequently returns to a public school setting."

Once a child is determined to be a child with a disability and eligible for special education and related services under the requirements of 34 CFR §§300.301 through 300.311, that identification as a child with a disability and eligibility for FAPE remains until one of the following events occurs;

- (1.) the student exceeds the age eligibility for FAPE under State law;
- (2.) the student graduates from secondary school with a regular diploma;
- (3.) the student is determined, through an evaluation, to no longer be a child with a disability; or
- (4.) the student moves to another State. See 34 CFR §§300.305(e) and 300.323(1).

Assuming that none of those four events occurred, the child in question remains a child with a disability and is eligible for special education and related services.

Further, once a child with a disability re-enrolls in the public school, the [LEA] has an obligation to convene an IEP meeting and develop an appropriate IEP for the child. A reevaluation may be necessary if the LEA "determines that the educational and related services needs...of the child warrant a reevaluation or the child's parent or teacher requests a reevaluation" or it has been more than three years since the last evaluation.

... If the child was parentally-placed in a private school for more than three years, the LEA had an obligation, under 34 CFR §§300.131 and 300.303(b), to conduct a reevaluation while the child was attending the private school.

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See also:

US Department of Education – Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools: <https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf>

US Department of Education – Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools: [https://sites.ed.gov/idea/files/QA\\_on\\_Private\\_Schools\\_02-28-2022.pdf](https://sites.ed.gov/idea/files/QA_on_Private_Schools_02-28-2022.pdf)



U.S. Department of Justice  
Civil Rights Division

T. 4/27/92  
JLW:PLB:HJB:Jfh

III-1.5000  
Washington, D.C. 20530

Ms. (b)(6)

Gainesville, New York 10923

Dear Ms. XX

This letter responds to your correspondence requesting information about the application of the Americans with Disabilities Act (ADA) to churches. The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Section 307 of the ADA provides that "[t]he provisions of this title shall not apply to . . . religious organizations or entities controlled by religious organizations, including places of worship." As noted in the preamble to the ADA title III regulation:

[T]he ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations. Religious organizations and entities controlled by religious organizations have no obligations under the ADA. Even when a religious organization carries out activities that would otherwise make it a public accommodation, the religious organization is exempt from ADA coverage. Thus, if a church itself operates . . . a private school, or a diocesan school system, the operations of the . . . school or schools would not be subject to the ADA or [the title III regulations]. The religious entity would not lose its exemption merely because the services provided were open to the general public. The test is whether the church or other religious organization operates the public accommodation, not which individuals receive the public accommodation's services.

Nonreligious entities may be subject to title III when operating places of public accommodation in the facilities of a religious organization. A nonreligious entity running a place of public accommodation -- such as a community theatre in a church auditorium -- is exempt when the space is donated by the church. However, the public accommodation (i.e. the community theatre) -- but not the church itself -- is covered when the space is rented (for money or any other consideration) from the church. See 56 Fed. Reg. 35,554 (July 26, 1991); Department of Justice ADA Title III Technical Assistance Manual SIII-1.5200 (1992).

A religious entity, however, is not exempt from the employment requirements of title I of the ADA, which go into effect on July 26, 1992, if it has 25 or more employees. Moreover, if a religious entity receives Federal funds, it is subject to section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. S794, which prohibits disability discrimination in federally assisted programs.

I hope that this information is useful to you in understanding the requirements of the ADA.

Sincerely,  
Philip L. Breen  
Special Legal Counsel  
Office on the Americans with Disabilities Act

cc: Records; OADA; Wodatch; Breen; Beard; Arthur

01-00752

56 Fed. Reg. 35,554 (July 26, 1991).

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Bureau of Special Education FY'10 Memo #38

Date: May 19, 2010

To: Superintendents of Schools  
Directors of Special Education

From: Office of the Commissioner of Education  
Division of Instruction  
Bureau of Special Education

RE: Children with Disabilities Placed by their Parents in Private Schools

The Bureau of Special Education has researched the requirements under IDEA 2004 regarding children with disabilities placed by their parents in private schools. Only non-profit non-public schools that are approved by the New Hampshire Department of Education fall under the private school requirement for IDEA.

The Bureau is providing a current list of New Hampshire Department of Education Approved Non-Public schools. This list will enable districts to successfully complete their Annual Request for Federal Special Education Funds Fiscal Year 2011 Application regarding children with disabilities placed by their parents in private non-profit schools.

Please note that the final column "meets IDEA requirements for children with disabilities placed by their parents in private schools" says "yes" and the "location" of the school is in a town in your district's jurisdiction, you must consider this a private school. This list will enable districts to successfully complete their Annual Request for Federal Special Education Funds Fiscal Year 2011 Application section regarding children with disabilities placed by their parents in private schools.

For further questions regarding children with disabilities placed by their parents in private schools please contact the Bureau at (603)271-3741.

TDD Access: Relay NH 711

