



U.S. DEPARTMENT OF EDUCATION

The Individuals with Disabilities Education Act (IDEA)

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



U.S. Department of Education

The Individuals with Disabilities Education Act (IDEA)

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

Office of Innovation and Improvement
Office of Non-Public Education

U.S. Department of Education

Margaret Spellings

Secretary

Office of Innovation and Improvement

Morgan Brown

Assistant Deputy Secretary

Office of Non-Public Education

Jack Klenk

Director

February 2008

This report is in the public domain. Authorization to reproduce it in whole or in part is granted. While permission to reprint this publication is not necessary, the citation should be: U.S. Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, The Individuals with Disabilities Education Act (IDEA): Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools, Washington, D.C., 2008.

To order copies of this report,

Write to: ED Pubs, Education Publications Center, U.S. Department of Education, P.O. Box 1398, Jessup, MD 20794-1398;

Or fax your request to: 301-470-1244;

Or e-mail your request to: edpubs@inet.ed.gov.

Or call in your request toll-free: 1-877-433-7827 (1-877-4ED-PUBS). If 877 service is not yet available in your area, call 1-800-872-5327 (1-800-USA-LEARN). Those who use a telecommunications device for the deaf (TDD) or a teletypewriter (TTY), should call 1-877-576-7734;

Or order online at: www.edpubs.org.

This report is also available on the Department's Web site at:
<http://www.ed.gov/about/offices/list/oii/nonpublic/index.html>.

Upon request, this publication is available in alternate formats, such as Braille, large print or computer diskette. For more information, please contact the Department's Alternate format Center at 202-260-0852 or 202-260-0818.

Contents

Introduction.	1
Equitable Participation.	2
LEA Responsible for Conducting Child Find and Ensuring the Provision of Equitable Services.	4
Consultation	5
Written Affirmation and Complaints	6
Child Find	7
Parental Consent	8
Data Collection and Record Keeping.	9
Expenditures and Proportionate Share of Federal <i>IDEA</i> Funds	9
Formula for Expenditures.	10
Provision of Services.	11
Services Plan.	11
Service Delivery (Including On-site)	11
Complaint Procedure Regarding Consultation.	12
Preschool Children With Disabilities	12
Further Information.	13

Introduction

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

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

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

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

Equitable Participation

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

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

- Agency responsibility for conducting child find activities and determining equitable services (34 CFR §§300.131 –300.132);
- Consultation requirements (34 CFR §300.134);
- Written affirmation of timely and meaningful consultation (34 CFR §300.135);
- Child find activities (34 CFR §300.131);
- Data collection requirements (34 CFR §300.132(c));
- Determination and provision of equitable services (34 CFR §§300.137-300.138);
- Services plans for children with disabilities receiving equitable services (34 CFR §§300.132(b), 300.137(c) and 300.138(b));

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

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

- Requirement that state and local funds supplement, not supplant, the proportionate share of federal funds (34 CFR §300.133(d));
- Right to file due process complaints regarding child find and state complaints regarding equitable participation requirements (34 CFR §300.140);
- Requirements that funds not benefit a private school (34 CFR §300.141);
- Requirements regarding use of public and private school personnel to provide equitable services (34 CFR §300.142);
- Prohibition of separate classes based on school enrollment or religion under certain circumstances (34 CFR §300.143);
- Funds for equitable participation remaining in control of public agency (34 CFR §300.144(a));
- Definition of child with a disability (34 CFR §300.8);

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

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

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

Example:

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

Consultation

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

Consultation meetings should include a discussion of the following topics:

- The **child find process**, including:
 - * how children suspected of having a disability can participate equitably; and
 - * how parents, teachers, and private school representatives will be informed of the process.

- The determination of the **proportionate share** of federal *IDEA* funds, including the determination of how that share was calculated.
- **How, where, and by whom special education and related services will be provided** including a discussion of:
 - * the types of services, including direct services and alternate service delivery mechanisms;
 - * how special education and related services will be apportioned if funds are insufficient to serve all parentally placed private-school children with disabilities; and
 - * how and when these decisions will be made.
- The **consultation process** among the school district, private school representatives, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate **throughout the school year** to ensure meaningful participation of these children in special education and related services.
- How the LEA will provide a written explanation to the private school representatives if the LEA disagrees with their views on the provision of services or the types of services.

Written Affirmation and Complaints

The LEA must obtain a **written affirmation statement** from the private school representatives who participated in the consultation process **that timely and meaningful consultation has occurred**. If the private school representatives do not provide a written affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

Consultation must be both timely and meaningful and occur during the design and development of special education and related services for parentally placed children with disabilities to access benefits from *IDEA*. If private school officials believe

that consultation has not occurred in a timely and meaningful manner or that the LEA has not given due consideration to their views, they have the right to complain to the SEA. To submit a complaint, the officials must provide to the SEA the basis of the noncompliance by the LEA and include the applicable provisions in the regulations, and the LEA must forward the appropriate documentation to the SEA. If the private school officials are dissatisfied with the response from the SEA, they may submit a complaint to the U.S. Secretary of Education, and the SEA must forward appropriate documentation to the secretary.

Child Find

Each LEA must **locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the LEA.**

The child find process must be designed to ensure the equitable participation of parentally placed private school children with disabilities as well as to generate an accurate count of these children. After timely and meaningful consultation with representatives of private schools and representatives of parents of private school children with disabilities, **the LEA must conduct a thorough and complete child find process** to accurately determine the number of parentally placed children with disabilities attending private schools located in the LEA.

These child find activities must be similar to those the LEA undertakes for public school children. For instance, during a consultation meeting, private school officials may suggest distributing child find flyers in their weekly school bulletin so that more parents will be aware of this benefit.

The child find process for private school children must be completed in a time period comparable to that for public school children. This includes a requirement to conduct initial evaluations within 60 days of receipt of parental consent or within the timeframe established by the state.

The costs of carrying out child find, including individual evaluations, may not be considered in determining whether an LEA has met its obligations to expend a proportionate share of federal *IDEA* funds on providing equitable services. Child find obligations, including individual evaluations and reevaluations, exist independently from the requirement to expend a proportionate share of federal *IDEA* funds to provide equitable services to eligible parentally placed children with disabilities.

Parental Consent

The *IDEA* regulations include new requirements related to obtaining parental consent. When the parent of a home-schooled or private school child with a disability declines to provide consent for an initial evaluation or reevaluation to determine the child's eligibility under *IDEA*, the LEA may not use its consent override procedures (the process an LEA may use to pursue the evaluation by overriding the parents' refusal to provide consent) to seek to conduct the evaluation and, thus, may not include the child in the annual count of the number of parentally placed private school children with disabilities.

If the LEA evaluates a parentally placed child and determines the child eligible under *IDEA* but the parent refuses the provision of equitable services under a services plan, **the LEA must include this child in the count of eligible parentally placed private school children with disabilities** in that district.

Another new requirement addresses the exchange of information between LEAs. This is particularly important given that the responsibilities for ensuring the delivery of equitable services have shifted from the LEA of the child's residence to the LEA where the child's private school is located. Parental consent must be obtained before any information regarding a parentally placed private school child is shared between LEAs. Parents and private school officials should be aware of this requirement in order to ensure that the children can participate equitably and receive the services and benefits available under *IDEA*.

Data Collection and Record Keeping

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

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

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

Expenditures and Proportionate Share of Federal *IDEA* Funds

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

If necessary for a parentally placed child to benefit from or participate in the services provided under the services plan, he or she must be provided with transportation from the school or the home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services. LEAs are not required to provide transportation from the child's home to the private school. The cost of this transportation may be included in calculating whether the LEA has met the expenditure requirements of the proportionate share.

Formula for Expenditures

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

$$\frac{\text{Total Federal Flow-Through}}{\text{Total IDEA-Eligible Public and Private School}} \times \text{Eligible Children Enrolled by Their Parents in Private Schools Located in the LEA} = \text{Total Proportionate Share for Parentally Placed Private School Children With Disabilities}$$

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

Provision of Services

LEAs are required to expend the proportionate share of federal *IDEA* funds to provide special education and related services to eligible parentally placed children with disabilities. This includes **direct services to children**. Services may be provided directly by the LEA or by a contract with a third party.

Services Plan

Each parentally placed private school child with a disability who has been designated to receive special education and/or related services must have a services plan. The services plan describes the specific special education and/or related services that the LEA will provide to the child. The **LEA must ensure that a representative of the private school attends each meeting to develop the services plan**. If the private school representative cannot attend, the LEA must use other methods to ensure participation, including individual or conference telephone calls. This will help ensure communication about the child's needs among key stakeholders.

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

Service Delivery (Including On-site)

Services may be provided on the premises of private, including religious, elementary and secondary schools, to the extent consistent with state and federal laws. **This may be less costly in terms of transportation, and may be more appropriate for some children**. Providing on-site services could help eliminate the need to transport children to and from services. Services may also be provided at an alternate location in a manner deemed appropriate by the LEA.

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

Complaint Procedure Regarding Consultation

As noted previously, a private school official has the right to file a complaint with the SEA that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration to his or her views. The private school official must provide the basis for his or her belief that the LEA did not comply with these consultation requirements. As part of this complaint process, the LEA must forward appropriate documentation related to the private school official's complaint to the SEA.

If the private school official is dissatisfied with the decision of the SEA, he or she may submit a complaint to the U.S. secretary of education. The complaint should provide the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation to the secretary.

Preschool Children With Disabilities

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

Further Information

For additional information on the *Individuals with Disabilities Education Act*, other federal education programs affecting private schools, private school statistics, publications, internet links to the private school community and similar resources, contact:

Office of Non-Public Education

Address: Office of Innovation and Improvement
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-5940

Phone: 202-401-1365

Fax: 202-401-1368

E-mail: OIINon-PublicEducation@ed.gov

Web site: <http://www.ed.gov/about/offices/list/oii/nonpublic/index.html>

Office of Special Education Programs

Address: U.S. Department of Education
550 12th St. S.W.
Washington, DC 20202

Phone: 202-245-7629

Fax: 202-245-7614

Web site: <http://idea.ed.gov>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov