VIII. PRIVATE SCHOOLS (see also Regulation VI)

This section applies to children with disabilities who attend private or parochial schools or who are home schooled.

1. CHILDREN PLACED IN APPROVED PRIVATE AGENCIES BY PUBLIC AGENCIES

Responsibility of the SEA (34 CFR 300.146)

The Department of Elementary and Secondary Education ensures that when a child with a disability is placed in or referred to an approved private agency by the state or local education agency, the child is provided special education and related services in conformity with an individualized education program and at no cost to parents. Each child must be provided an education that meets the standards that apply to education provided by the SEA and LEAs and each child has all the rights of a child with a disability who is served by the public agency.

Implementation by the SEA (34 CFR 300.147)

The Department of Elementary and Secondary Education will approve private agencies in accordance with standards developed for public agencies through procedures, such as a review of policies and procedures, written reports, parent questionnaires, and on-site visits.

All private agencies approved by the Department of Elementary and Secondary Education receive a copy of State Standards and Regulations for special education.

The Department of Elementary and Secondary Education will provide representatives from approved agencies the opportunity to participate in the development and revision of State standards that apply to them.

Any private educational agency which desires to contract with a local board of education or with the State Board of Education to provide special education and related services for students with disabilities shall make application to the State Board of Education for review and approval by staff of the Department of Elementary and Secondary Education as outlined in Regulation VI.

Responsibility of the LEA

Local school districts can only contract with private agencies that have been approved by the State Board of Education for the placement of students with disabilities. Part B funds cannot be used to pay for services from unapproved private agencies.

2. CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

A. An LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or

facility if the LEA made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with 34 CFR 300.131-300.144 that are outlined in this section.

B. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures.

   If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

   The cost of reimbursement described in the above paragraph may be reduced or denied if at the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense, or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information previously described in this section; and if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 34 CFR 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

C. Notwithstanding the notice requirement, the cost of reimbursement:

   1) must not be reduced or denied for failure to provide the notice if:

      - the school prevented the parent from providing the notice;
      - the parents had not received notice; or,
      - maintaining the child in the public agency placement would likely result in physical harm to the child; and

   2) may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot

write in English or if maintaining the child in the public agency would likely result in serious emotional harm to the child.

3. CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS-CHILD FIND

Private school children with disabilities means children with disabilities enrolled by their parents in private schools that meet the definition of elementary or secondary school.

Child Find for Private School Children with Disabilities (34 CFR 300.131)

Each LEA shall locate, identify, and evaluate all private school 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.

The child find process must be designed to ensure equitable participation of parentally-placed private school children and an accurate count of those children.

In carrying out these requirements, the LEA must undertake activities similar to the activities undertaken for the agency's public school children.

The cost of carrying out the child find requirements in this section, including initial evaluations, may not be considered in determining if the LEA has met its proportionate share obligation.

The child find process must be completed in a time period comparable to that for students attending public schools in the LEA.

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.

4. LEA REQUIREMENTS TO PROVIDE SERVICES FOR PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES (34 CFR 300.132)

To the extent consistent with their number and location in each local district, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of IDEA by providing them with special education and related services, including direct services determined in accordance with the equitable services determination requirement.

Each public agency shall ensure that a services plan is 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.

Each LEA must maintain in its records and provide to the SEA, the following information related to parentally-placed private school children:

A. the number of children evaluated;
B. the number of children determined to be children with disabilities; and,
C. the number of children served.

NOTE: While IDEA does not provide an individual entitlement to such private school students and IDEA compliance requires only that services provided represent a proportionate share as explained below under "Expenditures," school districts need to consider the extent of services required under Missouri law.

Expenditures/Proportionate Share (34 CFR 300.133)

Each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

For children ages five (5) to twenty-one (21) with disabilities, an amount that is the same proportion of the LEA's total subgrant under Section 611 of IDEA as the number of private school children eligible under IDEA ages five (5) to twenty-one (21) who are enrolled by their parents in private, including religious and home, elementary schools and secondary schools located in the school districts served by the LEA is to the total number of children eligible under IDEA in its jurisdiction ages five (5) to twenty-one (21).

If an LEA has not expended for equitable services all of the funds described in 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 (1) additional year.

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, must conduct a thorough and complete child find process to determine the number of parentally-placed children eligible under IDEA attending private schools located in the LEA. Child find activities may not be charged to the proportionate share obligations.

Reporting Requirements

After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, each LEA must determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA and ensure that the count is conducted on December 1, inclusive of each year. The child 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.

Consultation (34 CFR 300.134)

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. the child find process, including how parentally-placed private school children suspected of having a disability can participate equitably; and how parents, teachers, and private school officials will be informed of the process;
B. the determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
C. 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. a discussion of 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);
    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; and,

E. if the LEA disagrees with the views of the private school officials on the provision of services (whether provided directly or through a contract) and how 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.

Written Affirmation (34 CFR 300.135)

When timely and meaningful consultation as required by 34 CFR 300.134 has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. 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.

Compliance (34 CFR 300.136)

A private school official has the right to submit a complaint through the state's child complaint process that the LEA:

A. did not engage in consultation that was meaningful or timely, or
B. did not give due consideration to the views of the private school official.

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 and the applicable private school provisions in this part. The LEA must forward the appropriate documentation to the SEA.

If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary of Education, United States Department of Education. The private school official must provide the information on the noncompliance that was provided to the SEA. The SEA must forward the appropriate documentation to the Secretary.

Equitable Services Determined (34 CFR 300.137)

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.

Decisions about services to parentally-placed private school children with disabilities must be made in accordance with the consultation process described above (34 CFR 300.134) and the following.

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 initiate and conduct meetings to develop, review, and revise a services plan for the child, and 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.

The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children.

Equitable Services Provided (34 CFR 300.138)

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.

Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

Each parentally-placed private school child with a disability who has been designated to receive services 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 have been determined to be made available to parentally-placed private school children with disabilities.

The services plan must, to the extent appropriate, meet the requirements specified for an IEP with respect to the services provided, and be developed, reviewed, and revised consistent with requirements for IEPs.

The provision of equitable services must be provided by employees of the public agency or through contract by the public agency with an individual, association, agency, organization, or other entity. Special education and related services provided to parentally-placed private school children must be secular, neutral, and nonideological.

Location of Services; Transportation (34 CFR 300.139)

Missouri case law and the Missouri Constitution prohibit the provision of services, equipment, and personnel on-site at a child's private school. LEAs must determine how and where services will be provided to children with disabilities attending private or parochial schools and could consider the provision at a neutral site.

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 from the child's school or the child's home to a site where the services are being provided 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 the transportation may be included in calculating whether the LEA has met expenditure requirements.

Due Process Complaints and State Complaints (34 CFR 300.140)

The due process procedures only apply to complaints that an LEA has failed to meet the child find requirements.

Any complaint that the LEA has failed to meet all other requirements pertaining to private school students must be filed in accordance with the child complaint process. Complaints filed by a private school official regarding these requirements are subject to appeal with the U. S. Secretary.

Funds Cannot Benefit a Private School (34 CFR 300.141)

An LEA may not use Part B funds available under the Act to finance the existing level of instruction in the private school or to otherwise benefit the private school.

An LEA must use Part B funds available under the Act to meet the special education and related services needs of parentally-placed private school children, but not for meeting the needs of a private school or the general needs of the students enrolled in the private school.

Use of Personnel (34 CFR 300.142)

A. The local school district may use funds available under the Act to pay for services of an employee of the private school to provide services if:

    1) the private school employee performs the services outside of his or her regular hours of private school duties;
    2) the services are provided on public school grounds or a neutral site; and,
    3) the employee performs the services under public supervision and control.

Separate Classes (34 CFR 300.143)

An LEA may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site and the classes include children enrolled in public schools and children enrolled in private schools.

Equipment/Supplies/Construction for the Benefit of Private School Children with Disabilities (34 CFR 300.143)

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 IDEA for the benefit of private school children with disabilities.

The local school district shall spend no funds for repairs, construction, or minor remodeling of private school facilities.

LISTED BELOW ARE THE STATUTES OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO PRIVATE SCHOOLS:

Article I, Section 7
Article IX, Section 8
Section 162.996