

REGULATION XIII: PRIVATE SCHOOLS

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

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

A public agency is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if the public agency made FAPE available to the student and the parents elected to place the student in a private school or facility. However, the public agency shall include that student in the population whose needs are addressed consistent with 34 CFR 300.131-300.144 that are outlined in this section.

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

If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency, enroll the student 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 student 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 DESE and public agencies.

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 student from the public agency, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public agency expense, or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public agency, 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 student from the public agency, the public agency informed the parents, through the notice requirements described in 34 CFR 300.503(a)(1), of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Notwithstanding the notice requirement, the cost of reimbursement:

- (1) Must not be reduced or denied for failure to provide the notice if:
 - a. the public agency prevented the parent from providing the notice;
 - b. the parents had not received notice; or,
 - c. maintaining the student in the public agency placement would likely result in physical harm to the student; 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 student in the public agency would likely result in serious emotional harm to the student.

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

Private school students with disabilities means students 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 public agency shall locate, identify, and evaluate all private school students with disabilities, who are enrolled by their parents in private schools (including religious/parochial schools, home schools, and private elementary schools and secondary schools) located in the public agency's boundaries.

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 public agency 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 and reevaluations, may not be considered in determining if the public agency has met its proportionate share obligation.

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

Each public agency 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 Missouri, but attend a private school located in Missouri.

C. PUBLIC AGENCY 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 public agency, provision must be made for the participation of private school students 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 student with a disability who has been designated by the public agency in which the private school is located to receive special education and related services.

Each public agency must maintain in its records and provide to DESE, the following information related to parentally-placed private school students:

- (1) the number of students evaluated;
- (2) the number of students determined to be students with disabilities; and,
- (3) the number of students served.

EXPENDITURES/PROPORTIONATE SHARE (34 CFR 300.133)

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

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

If a public agency 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 public agency must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students 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 students with disabilities, the public agency, 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 students eligible under IDEA attending private schools located in the public agency boundaries. Child find activities may not be charged to the proportionate share obligations.

State funds, local funds, or IDEA Part B 611 funds that are not part of the obligation, may supplement the proportionate share obligation, but in no case supplant the proportionate share obligation. The public agency must expend the entire proportionate share obligation before utilizing any other funding sources on proportionate share services.

REPORTING REQUIREMENTS

After timely and meaningful consultation with representatives of parentally-placed private school students with disabilities, each public agency must determine the number of parentally-placed private school students with disabilities attending private schools located in the public agency's boundaries 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 public agency must spend on providing special education and related services to parentally-placed private school students with disabilities in the next subsequent fiscal year.

CONSULTATION (34 CFR 300.134)

To ensure timely and meaningful consultation, a public agency or, if appropriate, DESE, must consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and related services for the students regarding the following:

- (1) The child find process, including how parentally-placed private school students suspected of having a disability can participate equitably; and how parents, teachers, and private school officials will be informed of the process;
- (2) The determination of the proportionate share of Federal funds available to serve parentally-placed private school students with disabilities, including the determination of how the proportionate share of those funds was calculated;
- (3) The consultation process among the public agency, private school officials, and representatives of parents of parentally-placed private school students with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed students with disabilities identified through the child find process can meaningfully participate in special education and related services;
- (4) A discussion of how, where, and by whom special education and related services will be provided, for parentally-placed private school students with disabilities including a discussion of:
 - a. the types of services (including direct services and alternate service delivery mechanisms);

- b. how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school students; and,
 - c. how and when those decisions will be made; and,
- (5) If the public agency disagrees with the views of the private school officials on the provision of services (whether provided directly or through a contract) and how the public agency will provide to the private school officials a written explanation of the reasons why the public agency 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 public agency 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 public agency must forward the documentation of the consultation process to DESE.

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 public agency:

- (1) Did not engage in consultation that was meaningful or timely, or
- (2) 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 DESE the basis of the noncompliance by the public agency and the applicable private school provisions in this part. The public agency must forward the appropriate documentation to DESE.

If the private school official is dissatisfied with the decision of DESE, 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 DESE. DESE must forward the appropriate documentation to the Secretary.

EQUITABLE SERVICES DETERMINED (34 CFR 300.137)

No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

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

If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a public agency, the public agency must initiate and conduct meetings to develop, review, and revise a services plan for the student, and ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the public agency shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

The public agency must make the final decisions with respect to the services to be provided to eligible parentally-placed private school students.

EQUITABLE SERVICES PROVIDED (34 CFR 300.138)

The services provided to parentally-placed private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

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

Each parentally-placed private school student 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 public agency will provide to the student in light of the services that have been determined to be made available to parentally-placed private school students 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 students must be secular, neutral, and nonideological.

LOCATION OF SERVICES AND TRANSPORTATION (34 CFR 300.139)

Missouri case law and the Missouri Constitution prohibit the provision of personnel, services, materials, and equipment on the premises of a student's private school unless they are provided in a neutral site. The private school may be considered a neutral site if the setting of the services is secular and void of ideological items. Public agencies must determine how and where services will be provided to students with disabilities attending private or parochial schools.

If necessary for the student to benefit from or participate in the services provided under this part, a private school student with a disability must be provided transportation from the student's school or the student'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 student's home, depending on the timing of the services. Public agencies are not required to provide transportation from the student's home to the private school. The cost of the transportation may be included in calculating whether the public agency has met expenditure requirements.

DUE PROCESS COMPLAINTS AND STATE COMPLAINTS (34 CFR 300.140)

The due process procedures only apply to complaints that a public agency has failed to meet the child find requirements.

Any complaint that the public agency 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)

A public agency 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.

A public agency must use Part B funds available under the Act to meet the special education and related services needs of parentally-placed private school students, 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)

The public agency 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)

A public agency may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools and students 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 students with disabilities.

The public agency 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.

- (1) Article I, Section 7
- (2) Article IX, Section 8
- (3) Section 162.996