

## VIII. PRIVATE SCHOOLS AND AGENCIES ~~(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 (**DESE**) ensures that when a ~~child~~ **student** with a disability is placed in or referred to an approved private agency by the state or ~~local education~~ **public** agency, the ~~child~~ **student** is provided special education and related services in conformity with an individualized education program and at no cost to parents. Each ~~child~~ **student** must be provided an education that meets the standards that apply to education provided by ~~the SEA~~ **DESE** and ~~LEAs~~ **public agencies** and each ~~child~~ **student** has all the rights of a ~~child~~ **student** 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~~ **DESE** 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~~ **DESE** receive a copy of State Standards and Regulations for special education.

~~The Department of Elementary and Secondary Education~~ **DESE** will provide representatives from approved **private** 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~~ **public agency** 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 ~~Department of Elementary and Secondary Education~~ **DESE** as outlined in ~~Regulation VI~~ **herein**.

#### Responsibility of the LEA **Public Agency**

~~Local school districts~~ **Public agencies** 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~~ **A public agency** is not required to pay for the cost of education, including special education and related services, of a ~~child~~-**student** with a disability at a private school or facility if the ~~LEA~~ **public agency** made FAPE available to the ~~child~~-**student** and the parents elected to place the ~~child~~-**student** in a private school or facility. However, the public agency shall include that ~~child~~-**student** 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~~-**student** and the question of financial responsibility are subject to the due process procedures.

If the parents of a ~~child~~-**student** with a disability, who previously received special education and related services under the authority of a public agency, enroll the ~~child~~-**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 ~~child~~-**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 ~~the~~ **SEA/DESE** and ~~LEAs~~ **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 ~~child~~-**student** from the public ~~school~~-**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 ~~child~~-**student**, including stating their concerns and their intent to enroll their ~~child~~-**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 ~~child~~-**student** from the public ~~school~~-**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 ~~child~~-**student** from the public ~~school~~-**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 ~~child~~-**student** (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the ~~child~~-**student** 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:

- **(i)** the ~~school~~ **public agency** prevented the parent from providing the notice;
- **(ii)** the parents had not received notice; or,
- **(iii)** maintaining the ~~child~~-**student** in the public agency placement would likely result in physical harm to the ~~child~~-**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 ~~child~~-**student** in the public agency would likely result in serious emotional harm to the ~~child~~-**student**.

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

Private school ~~children~~ **students** with disabilities means ~~children~~ **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 ~~LEA~~ **public agency** shall locate, identify, and evaluate all private school ~~children~~ **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 ~~school district served by the LEA~~ **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 ~~LEA~~ **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 ~~LEA~~ **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 ~~public schools in the LEA~~ **public agency**.

Each ~~LEA~~ **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**, the State in which the private schools that they attend are located **but attend a private school located in Missouri**.

**4. LEA 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 ~~local district~~ **public agency**, provision must be made for the participation of private school ~~children-~~ **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 ~~child-~~ **student** with a disability who has been designated by the ~~LEA~~ **public agency** in which the private school is located to receive special education and related services.

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

- A. the number of ~~children-~~ **students** evaluated;
- B. the number of ~~children-~~ **students** determined to be ~~children-~~ **students** with disabilities; and,
- C. the number of ~~children-~~ **students** 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~~ **public agency** must spend the following on providing special education and related services (including direct services) to parentally-placed private school ~~children-~~ **students** with disabilities:

For ~~children-~~ **students** ages five (5) to twenty-one (21) with disabilities, an amount that is the same proportion of the ~~LEA's~~ **public agency's** total subgrant under Section 611 of IDEA as the number of private school ~~children-~~ **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 ~~school districts served by the LEA~~ **public agency's boundaries** is to the total number of ~~children-~~ **students** eligible under IDEA in its jurisdiction ages five (5) to twenty-one (21).

If an ~~LEA~~ **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 ~~LEA~~ **public agency** must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school ~~children~~**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 ~~children~~**students** with disabilities, the ~~LEA~~**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 ~~children~~**students** eligible under IDEA attending private schools located in the ~~LEA~~ **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 ~~children~~**students** with disabilities, each ~~LEA~~ **public agency** must determine the number of parentally-placed private school ~~children~~**students** with disabilities attending private schools located in the ~~LEA~~ **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 ~~LEA~~ **public agency** must spend on providing special education and related services to parentally-placed private school ~~children~~**students** with disabilities in the next subsequent fiscal year.

Consultation (34 CFR 300.134)

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

- A. the child find process, including how parentally-placed private school ~~children~~**students** 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~~**students** with disabilities, including the determination of how the proportionate share of those funds was calculated;
- C. the consultation process among the ~~LEA~~**public agency**, private school officials, and representatives of parents of parentally-placed private school ~~children~~**students** with disabilities, including how the process will operate throughout the school year

to ensure that parentally-placed ~~children~~**students** 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~~**students** 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~~**students**; and,
  - 3) how and when those decisions will be made; and,
- E. if the ~~LEA~~ **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 ~~LEA~~ **public agency** will provide to the private school officials a written explanation of the reasons why the ~~LEA~~ **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 ~~LEA~~ **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 ~~LEA~~ **public agency** must forward the documentation of the consultation process to ~~the SEA~~**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 ~~LEA~~ **public agency**:

- 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~~**DESE** the basis of the noncompliance by the ~~LEA~~ **public agency** and the applicable private school provisions in this part. The ~~LEA~~ **public agency** must forward the appropriate documentation to ~~the SEA~~**DESE**.

If the private school official is dissatisfied with the decision of ~~the SEA~~**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 ~~the SEA~~**DESE**. ~~The SEA~~**DESE** must forward the appropriate documentation to the Secretary.

### Equitable Services Determined (34 CFR 300.137)

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

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

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

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

### Equitable Services Provided (34 CFR 300.138)

The services provided to parentally-placed private school ~~children~~-**students** 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~~-**students** with disabilities may receive a different amount of services than ~~children~~-**students** with disabilities in public schools.

Each parentally-placed private school ~~child~~-**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 ~~LEA~~ **public agency** will provide to the ~~child~~-**student** in light of the services that have been determined to be made available to parentally-placed private school ~~children~~-**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 ~~children~~**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 ~~child~~**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.** LEAs **Public agencies** must determine how and where services will be provided to ~~children~~**students** with disabilities attending private or parochial schools.

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

Any complaint that the ~~LEA~~ **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)

An ~~LEA~~ **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.

An ~~LEA~~ **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 ~~children~~**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)

- A. The ~~local school district~~ **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)

~~An LEA~~ **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 ~~children-~~ **students** if the classes are at the same site and the classes include ~~children-~~ **students** enrolled in public schools and ~~children-~~ **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 ~~children-~~ **students** with disabilities.

The ~~local school district~~ **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:

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