

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(7))

Sec. 300.123 Confidentiality of personally identifiable information.

The State must have policies and procedures in effect to ensure that public agencies in the State comply with Secs. 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Sec. 300.124 Transition of children from the Part C program to preschool programs.

The State must have in effect policies and procedures to ensure that--

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with Sec. 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with Sec. 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

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(Authority: 20 U.S.C. 1412(a)(9))

Secs. 300.125-300.128 [Reserved]

Children in Private Schools

Sec. 300.129 State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in Secs. 300.130 through 300.148.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(10))

Children With Disabilities Enrolled by Their Parents in Private Schools

Sec. 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 Sec. 300.13 or secondary school in Sec. 300.36, other than children with disabilities covered under Secs. 300.145 through 300.147.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(10)(A))

Sec. 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 Secs. 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 a LEA has met its obligation under Sec. 300.133.

(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 Sec. 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.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

Sec. 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 Sec. 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in Secs. 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 Secs. 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 Secs. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A)(i))

Sec. 300.133 Expenditures.

(a) Formula. To meet the requirement of Sec. 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 reli-

gious, 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 Sec. 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 Sec. 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 Sec. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A))

Sec. 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 Sec. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A)(iii))

Sec. 300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by Sec. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A)(iv))

Sec. 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 non-compliance 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A)(v))

Sec. 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 Secs. 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and Sec. 300.134(d).

(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 Secs. 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 Sec. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A))

[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61306, Oct. 30, 2007]

Sec. 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 Sec. 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 Sec. 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 Secs. 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 Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(h) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with Secs. 300.321 through 300.324.

(c) Provision of equitable services. (1) The provision of services pursuant to this section and Secs. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

Sec. 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 Sec. 300.133.

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(Authority: 20 U.S.C. 1412(a)(10)(A))

Sec. 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 Secs. 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of Secs. 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 Secs. 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in Sec. 300.131, including the requirements in Secs. 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 Secs. 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in Secs. 300.151 through 300.153.

(2) A complaint filed by a private school official under Sec. 300.136(a) must be filed with the SEA in accordance with the procedures in Sec. 300.136(b).

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(Authority: 20 U.S.C. 1412(a)(10)(A))

Sec. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A))

Sec. 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 Secs. 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 Secs. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A))

Sec. 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.

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(Authority: 20 U.S.C. 1412(a)(10)(A))

Sec. 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 Secs. 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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(Authority: 20 U.S.C. 1412(a)(10)(A)(vii))

Children With Disabilities in Private Schools Placed or Referred by Public Agencies

Sec. 300.145 Applicability of Secs. 300.146 through 300.147.

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

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(Authority: 20 U.S.C. 1412(a)(10)(B))

Sec. 300.146 Responsibility of SEA.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--

- (a) Is provided special education and related services--
 - (1) In conformance with an IEP that meets the requirements of Secs. 300.320 through 300.325; and
 - (2) At no cost to the parents;
- (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for Sec. 300.18 and Sec. 300.156(c); and
- (c) Has all of the rights of a child with a disability who is served by a public agency.

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(Authority: 20 U.S.C. 1412(a)(10)(B))

Sec. 300.147 Implementation by SEA.

In implementing Sec. 300.146, the SEA must--

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- (b) Disseminate copies of applicable standards to each private school and facility in which a public agency has referred or placed a child with a disability; and
- (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

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(Authority: 20 U.S.C. 1412(a)(10)(B))

Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue

Sec. 300.148 Placement of children by parents when FAPE is at issue.

(a) General. This part does not require an LEA 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 that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistently with Secs. 300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in Secs. 300.504 through 300.520.

(c) Reimbursement for private school placement. 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 school, or secondary school without the consent of or referral by the public agency, a court or a