

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
14.00 CHILDREN IN PRIVATE SCHOOLS
July 2008

14.01 CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

14.01.1 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 34 CFR 300.13 b or secondary school in 34 CFR 300.36, other than children with disabilities covered under 34 CFR 300.145 through 300.147.

14.02 CHILD FIND FOR PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES

14.02.1 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 14.02.2 through 14.02.5 of this section, and 34 CFR 300.311 and 300.201.

14.02.2 Child find design. The child find process must be designed to ensure -

14.2.2.1 The equitable participation of parentally-placed private school children; and

14.2.2.2 An accurate count of those children.

14.02.3 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.

14.02.4 Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under 34 CFR 300.133.

14.02.5 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 34 CFR 300.301.

14.02.6 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.

14.03 BASIC REQUIREMENT FOR PROVISION OF SERVICES FOR PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES

14.03.1 General

14.03.1.1 To the extent consistent with the number and location of children with disabilities who are enrolled by their parent 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 IDEA by providing them with special education and related services including direct services determined in accordance with 34 CFR 300.137, unless the Secretary has arranged for services to those children under the bypass provisions in 34 CFR 300.190 through 300.198.

14.03.2 Services plan for parentally-placed private school children with disabilities. In accordance with paragraph 14.03.1.1 of this section and 34 CFR 300.137 through 300.139, a service 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 section.

14.03.3 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 34 CFR 300.130 through 300.144;

14.03.3.1 The number of children evaluated;

14.03.3.2 The number of children determined to be children with disabilities; and

14.03.3.3 The number of children served.

14.04 EXPENDITURES

- 14.04.1 Each LEA must spend on providing special education and related services (including direct services) to parentally-placed private school children with disabilities -
- 14.04.1.1 For children aged 3 to 21, an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the IDEA as the number of private school children with disabilities aged 3 to 21 who are enrolled by their parents in private, including religious, 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 to 21; and
- 14.04.1.2 For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the IDEA as the number of parentally-placed private school children with disabilities aged 3 through 5 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 3 through 5.
- 14.04.1.3 As described in paragraph 14.04.1.2 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 34 CFR 300.13.
- 14.04.1.4 If an LEA has not expended for equitable services all of the funds described in paragraphs 14.04.1.1 and 14.04.1.2 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.

14.04.2 Child Count (Calculating Proportionate Amount)

14.04.2.1 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 34 CFR 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.

A. Annual count of the number of parentally-placed private school children with disabilities.

1. Each LEA must -

a. After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with 34 CFR 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

2. Ensure that the count is conducted on December 1 of each year.

14.04.2.2 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.

14.04.3 Expenditures for child find activities described in 34 CFR 300.131 and § 14.02 of these regulations may not be considered in determining whether the LEA has met the requirements of § 14.04.1 of this part.

- 14.04.4 Local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with local policy.
- 14.04.5 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.

14.05 CONSULTATION

To ensure timely and meaningful consultation, an LEA 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:

- 14.05.1 Child find. The child find process, including -
 - 14.05.1.1 How parentally-placed private school children suspected of having a disability can participate equitably; and
 - 14.05.1.2 How parents, teachers, and private school officials will be informed of the process.
- 14.05.2 Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under 34 CFR 300.133(b), including the determination of how the proportionate share of those funds was calculated.
- 14.05.3 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.
- 14.05.4 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 -
 - 14.05.4.1 The types of services, including direct services and alternate service delivery mechanisms; and

- 14.05.4.2 How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
- 14.05.4.3 How and when those decisions will be made.
- 14.05.5 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.
- 14.05.6 Written affirmation.
 - 14.05.6.1 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.
 - 14.05.6.2 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.

14.06 EQUITABLE SERVICES DETERMINED

- 14.06.1 No individual right to special education and related services
 - 14.06.1.1 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.
 - 14.06.1.2 Decisions about the services that will be provided to parentally-placed private school children with disabilities under 34 CFR 300.130 -300.144 and §§14.03 - 14.14 of these regulations must be made in accordance with §§ 14.05.2 and 14.05.3 of this part and 34 CFR 300.133(b) and 34 CFR 300.134(c).

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

14.06.2 Services plan for each child served under this subpart. 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 -

14.06.2.1 Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with 34 CFR 300.138(b) and §14.07.2 of these regulations; and

14.06.2.2 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.

14.07 EQUITABLE SERVICES PROVIDED

14.07.1 General

14.07.1.1 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 34 CFR 300.18.

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

14.07.2 Services provided in accordance with a services plan

14.07.2.1 Each parentally-placed private school child with a disability who has been designated to receive services under 34 CFR 300.132 and § 14.03 of

these regulations 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 34 CFR 300.134 and 300.137 and §§ 14.05 and 14.06 of these regulations that it will make available to parentally-placed private school children with disabilities.

- 14.07.2.2 The services plan must, to the extent appropriate -
 - A. Meet the requirements of 34 CFR 300.320 and § 8.08 of these regulations or for a child ages three through five, meet the requirements of 34 CFR 300.323(b) with respect to the services provided; and
 - B. Be developed, reviewed, and revised consistent with 34 CFR 300.321 - 300.324 and §§ 8.03 and 8.05 - 8.07 of these regulations.

14.07.3 Provision of equitable services

- 14.07.3.1 The provision of services pursuant to this section and 34 CFR 300.139 through 300.143 must be provided:
 - A. By employees of a public agency; or
 - B. Through contract by the public agency with an individual, association, agency, organization, or other entity.
- 14.07.3.2 Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

14.08 LOCATION OF SERVICES; TRANSPORTATION

- 14.08.1 Services provided to parentally-placed private school children with disabilities may be provided on the premises of private, including a religious, schools, to the extent consistent with law.

14.08.2 Transportation

14.08.2.1 General

A. 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 -

1. From the child's school or the child's home to a site other than the private school; and
2. From the service site to the private school, or to the child's home, depending on the timing of the services.

B. LEAs are not required to provide transportation from the child's home to the private school.

14.08.2.2 Cost of transportation. The cost of the transportation described in § 14.08.2.1A of this part may be included in calculating whether the LEA has met the requirement of 34 CFR 300.133 and §14.04 of these regulations.

14.09 DUE PROCESS COMPLAINTS AND STATE COMPLAINTS

14.09.1 Due Process Inapplicable, except for child find except as provided in paragraph 14.09.2 of this section, the procedures in 34 CFR 300.504 - 300.519 and §§ 9.05 - 9.06, and §§10.00 and 15.00 of these regulations (Procedural Safeguards Notice, Parental Consent, Mediation, Due Process Hearings) do not apply to complaints that an LEA has failed to meet the requirements of 34 CFR 300.132 - 300.139 and §§14.03 - 14.08 of these regulations, including the provision of services indicated on the child's services plan.

14.09.2 Child find complaints - to be filed with the LEA in which the private school is located.

14.09.2.1 The procedures in 34 CFR 300.504 through 300.519 apply to complaints that an LEA has failed to meet

the child find requirements in 34 CFR 300.131, including the requirements in 300.300 through 300.311.

14.09.2.2 Any due process complaint regarding the child find requirements must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

14.09.3 State Complaints

14.09.3.1 Complaints that an LEA has failed to meet the requirements of 34 CFR 300.132 - 300.135 and 300.137-300.144 and §§ 14.05 - 14.12 of these regulations must be filed under the procedures in 34 CFR 300.151 - 300.153 and §12.00 of these regulations (Complaint Procedures).

14.09.3.2 A complaint filed by a private school official under 34 CFR 300.136(a) must be filed with the SEA in accordance with the procedures in 34 CFR 300.136(b).

14.10 SEPARATE CLASSES PROHIBITED

14.10.1 An LEA may not use funds available under section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if -

14.10.1.1 The classes are at the same site; and

14.10.1.2 The classes include students enrolled in public schools and student enrolled in private schools.

14.11 REQUIREMENT THAT FUNDS NOT BENEFIT A PRIVATE SCHOOL

14.11.1 An LEA may not use funds provided under section 611 or 619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.

14.11.2 The LEA must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private school children, but not for meeting -

14.11.2.1 The needs of a private school; or

14.11.2.2 The general needs of the students enrolled in the private school.

14.12 USE OF SCHOOL PERSONNEL

14.12.1 An LEA may use funds available under sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities -

14.12.1.1 To the extent necessary to provide services under 34 CFR 300.130 - 300.144 and §§14.01 - 14.14 of these regulations for parentally-placed private school children with disabilities; and

14.12.1.2 If those services are not normally provided by the private school.

14.13 USE OF PRIVATE SCHOOL PERSONNEL

14.13.1 An LEA may use funds available under section 611 or 619 of the IDEA to pay for the services of an employee of a private school to provide services under 34 CFR 300.130 - 300.144 and §§ 14.01 - 14.14 of these regulations if -

14.13.1.1 The employee performs the services outside of his or her regular hours of duty; and

14.13.1.2 The employee performs the services under public supervision and control.

14.14 REQUIREMENTS CONCERNING PROPERTY, EQUIPMENT, AND SUPPLIES

14.14.1 A public agency must control and administer the funds used to provide special education and related services under 34 CFR 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.

14.14.2 The public agency may place equipment and supplies in a private school for the period of time needed for the program.

14.14.3 The public agency shall ensure that the equipment and supplies placed in a private school -

14.14.3.1 Are used only for Part B purposes; and

14.14.3.2 Can be removed from the private school without remodeling the private school facility.

14.14.4 The public agency must remove equipment and supplies from a private school if -

14.14.4.1 The equipment and supplies are no longer needed for Part B purposes; or

14.14.4.2 Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

14.14.5 No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

14.15 CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

14.15.1 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 consistent with 34 CFR 300.131 – 300.144 and §§14.01-14.14 of these regulations.

14.15.2 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 hearing procedures of §10.00 (Mediation and Hearings) of these regulations and 34 CFR 300.504 - 300.520.

14.15.3 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, 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.

14.15.4 Limitation on reimbursement. The cost of reimbursement described in 34 CFR 300.148(c) and § 14.15.3 of this part may be reduced or denied -

14.15.4.1 If -

- A. 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
- B. 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 described in 34 CFR 300.148(d)(1)(i) and § 14.15.4.1A of this part;

14.15.4.2 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) and § 9.04.1.1 (Prior notice) of these regulations, 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

14.15.4.3 Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

14.5.5 Exception. Notwithstanding the notice requirement in 34 CFR 300.148(d)(1) and § 14.15.4.1 of this part, the cost of reimbursement must not be reduced or denied for failure to provide the notice if -

- 14.15.5.1 Compliance with 34 CFR 300.148(d)(1) and §14.15.4.1 of this part would likely result in physical harm to the child; and
- 14.15.5.2 The school prevented the parent from providing the notice; or
- 14.15.5.3 The parents had not received notice, pursuant to 34 CFR 300.504, of the notice requirement in paragraph 34 CFR 300.148(d)(1) and § 14.15.4.1 of this part.
- 14.15.5.4 The cost of reimbursement may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if -
 - A. The parents are not literate or cannot write in English; or
 - B. Compliance with paragraph 14.15.4.1A of this section would likely result in serious emotional harm to the child.

14.16 CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

- 14.16.1 This section applies 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.
- 14.16.2 Each public agency shall ensure that each child with a disability who is placed in or referred to a private school or facility by a public agency -
 - 14.16.2.1 Is provided special education and related services -
 - A. In conformance with an IEP that meets the requirements of 34 CFR 300.320 - 300.325 and § 8.00 of these regulations; and
 - B. At no cost to the parents;
 - 14.16.2.2 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 34 CFR 300.18 and 300.156(c); and

14.16.2.3 Has all of the rights of a child with a disability served by a public agency.