

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter E. Special Education

Part 130. Procedural Requirements and Program Standards

Subpart 14. Children in Private Schools

6 CAR § 130-1401. 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 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36, other than children with disabilities covered under 34 C.F.R. §§ 300.145 – 300.147.

6 CAR § 130-1402. 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 subsections (b) – (e) of this section and 34 C.F.R. §§ 300.311 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 an LEA has met its obligation under 34 C.F.R. § 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 34 C.F.R § 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.

6 CAR § 130-1403. Basic requirements for provision of services for parentally placed private school children with disabilities.

(a) **General.** 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 Individuals with Disabilities Education Act by providing them with special education and related services including direct services determined in accordance with 34 C.F.R. § 300.137, unless the United States Secretary of Education has arranged for services to those children under the bypass provisions in 34 C.F.R. §§ 300.190 – 300.198.

(b) **Services plan for parentally placed private school children with disabilities.** In accordance with subsection (a) of this section and 34 C.F.R. §§ 300.137 – 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.

(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 34 C.F.R. §§ 300.130 – 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.

6 CAR § 130-1404. Expenditures.

(a)(1) Each LEA must spend on providing special education and related services (including direct services) to parentally placed private school children with disabilities:

(A) For children aged three (3) to twenty-one (21), an amount that is the same proportion of the LEA's total subgrant under Section 611(g) of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged three (3) to twenty-one (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 three (3) to twenty-one (21); and

(B) For children aged three (3) through five (5), an amount that is the same proportion of the LEA's total subgrant under Section 619(g) of the Individuals with Disabilities Education Act as the number of parentally placed private school children with disabilities aged three (3) through five (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 three (3) through five (5).

(2) As described in subdivision (a)(1)(B) of this section, children aged three (3) through five (5) 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 C.F.R. § 300.13.

(3) If an LEA has not expended for equitable services all of the funds described in subdivision (a)(1) of this section by the end of the fiscal year for which the United States 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 carryover period of one (1) additional year.

(b) Child count (calculating proportionate amount).

(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 C.F.R. § 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.

(2)(A) Annual count of the number of parentally placed private school children with disabilities.

(B) Each LEA must:

(i) After timely and meaningful consultation with representatives of parentally placed private school children with disabilities (consistent with 34 C.F.R. § 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 December 1 of each year.

(3) 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.

(c) Expenditures for child find activities described in 34 C.F.R. § 300.131 and 6 CAR § 130-1402 may not be considered in determining whether the LEA has met the requirements of subsection (a) of this section.

(d) 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.

(e) **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.

6 CAR § 130-1405. 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:

(1) **Child find.** The child find process, including how:

(A) Parentally placed private school children suspected of having a disability can participate equitably; and

(B) Parents, teachers, and private school officials will be informed of the process;

(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 C.F.R. § 300.133(b), including the determination of how the proportionate share of those funds was calculated;

(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;

(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:

(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 children; and

(C) How and when those decisions will be made;

(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; and

(6) Written affirmation.

(A) When timely and meaningful consultation, as required by 34 C.F.R. § 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.

6 CAR § 130-1406. Equitable services determined.

(a) No individual right to special education and related services.

(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.

(2) Decisions about the services that will be provided to parentally placed private school children with disabilities under 34 C.F.R. §§ 300.130 – 300.144 and 6 CAR §§ 130-1403 – 130-1414 must be made in accordance with 6 CAR § 130-1405(2) and (3) and 34 C.F.R. § 300.133(b) and § 300.134(c).

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

(b) 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:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with 34 C.F.R. § 300.138(b) and 6 CAR § 130-1407(b); and

(2)(A) Ensure that a representative of the religious or other private school attends each meeting.

(B) 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.

6 CAR § 130-1407. 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 34 C.F.R. § 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 34 C.F.R. § 300.132 and 6 CAR § 130-1403 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 C.F.R. §§ 300.134 and 300.137 and 6 CAR §§ 130-1405 – 130-1406 that it will make available to parentally placed private school children with disabilities.

(2) The services plan must, to the extent appropriate:

(A) Meet the requirements of 34 C.F.R. § 300.320 and 6 CAR § 130-808 or for a child ages three (3) through five (5), meet the requirements of 34 C.F.R. § 300.323(b) with respect to the services provided; and

(B) Be developed, reviewed, and revised consistent with 34 C.F.R. §§ 300.321 – 300.324 and 6 CAR §§ 130-803 and 130-805 – 130-807.

(c) Provision of equitable services.

(1) The provision of services pursuant to this section and 34 C.F.R. §§ 300.139 – 300.143 must be provided:

- (A) By employees of a public agency; or
- (B) Through contract by the public agency with an:
 - (i) Individual;
 - (ii) Association;
 - (iii) Agency;
 - (iv) Organization; or
 - (v) Other entity.

(2) Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, must be:

- (A) Secular;
- (B) Neutral; and
- (C) Nonideological.

6 CAR § 130-1408. Location of services — Transportation.

(a) Services provided 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.

(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 from the:

(i) Child’s school or the child's home to a site other than the private school; and

(ii) 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.

(2) **Cost of transportation.** The cost of the transportation described in subdivision (b)(1)(A) of this section may be included in calculating whether the LEA has met the requirement of 34 C.F.R. § 300.133 and 6 CAR § 130-1404.

6 CAR § 130-1409. Due process complaints and state complaints.

(a) **Due process inapplicable, except for child find.** Except as provided in subsection (b) of this section, the procedures in 34 C.F.R. §§ 300.504 – 300.519 and 6 CAR §§ 130-905 – 130-906, 6 CAR § 130-1001 et seq., and 6 CAR § 130-1501 et seq. (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 C.F.R. §§ 300.132 – 300.139 and 6 CAR §§ 130-1403 – 130-1408, 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 34 C.F.R. §§ 300.504 – 300.519 apply to complaints that an LEA has failed to meet the child find requirements in 34 C.F.R. § 300.131, including the requirements in 34 C.F.R. §§ 300.300 – 300.311.

(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.

(c) **State complaints.**

(1) Complaints that an LEA has failed to meet the requirements of 34 C.F.R. §§ 300.132 – 300.135 and 300.137 – 300.144 and 6 CAR §§ 130-1405 – 130-1412 must be filed under the procedures in 34 C.F.R. §§ 300.151 – 300.153 and 6 CAR § 130-1201 et seq., State Complaint Procedures.

(2) A complaint filed by a private school official under 34 C.F.R. § 300.136(a) must be filed with the SEA in accordance with the procedures in 34 C.F.R. § 300.136(b).

6 CAR § 130-1410. Separate classes prohibited.

An LEA may not use funds available under Section 611 or Section 619 of the Individuals with Disabilities Education Act for classes that are organized separately on the basis of school enrollment or religion of the students if the classes:

- (1) Are at the same site; and
- (2) Include students enrolled in public schools and students enrolled in private schools.

6 CAR § 130-1411. Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under Section 611 or Section 619 of the Individuals with Disabilities Education 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 Individuals with Disabilities Education Act to meet the special education and related services needs of parentally placed private school children, but not for meeting the:

- (1) Needs of a private school; or
- (2) General needs of the students enrolled in the private school.

6 CAR § 130-1412. Use of school personnel.

An LEA may use funds available under Sections 611 and 619 of the Individuals with Disabilities Education Act to make public school personnel available in other than public facilities:

- (1) To the extent necessary to provide services under 34 C.F.R. §§ 300.130 – 300.144 and 6 CAR §§ 130-1401 – 130-1414 for parentally placed private school children with disabilities; and
- (2) If those services are not normally provided by the private school.

6 CAR § 130-1413. Use of private school personnel.

An LEA may use funds available under Section 611 or Section 619 of the Individuals with Disabilities Education Act to pay for the services of an employee of a

private school to provide services under 34 C.F.R. §§ 300.130 – 300.144 and 6 CAR §§ 130-1401 – 130-1414 if the employee performs the services:

- (1) Outside of his or her regular hours of duty; and
- (2) Under public supervision and control.

6 CAR § 130-1414. Requirements concerning property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under 34 C.F.R. §§ 300.137 – 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Individuals with Disabilities Education Act.

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

(c) The public agency shall ensure that the equipment and supplies placed in a private school:

(1) Are used only for Part B of the Individuals with Disabilities Education Act 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 of the Individuals with Disabilities Education Act purposes.

(e) No funds under Part B of the Individuals with Disabilities Education Act may be used for repairs, minor remodeling, or construction of private school facilities.

6 CAR § 130-1415. Children with disabilities enrolled by their parents in private schools when FAPE is at issue.

(a) **General.**

(1) 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.

(2) However, the public agency must include that child in the population whose needs are addressed consistent with 34 C.F.R. §§ 300.131 – 300.144 and 6 CAR §§ 130-1401 – 130-1414.

(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 hearing procedures of:

- (1) 6 CAR § 130-1001 et seq., Mediation and Hearings; and
- (2) 34 C.F.R. §§ 300.504 – 300.520.

(c) **Reimbursement for private school placement.**

(1) 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:

(A) Agency had not made FAPE available to the child in a timely manner prior to that enrollment; and

(B) Private placement is appropriate.

(2) 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.

(d) **Limitation on reimbursement.** The cost of reimbursement described in 34 C.F.R. § 300.148(c) and this subsection may be reduced or denied:

- (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 C.F.R. § 300.148(d)(1)(i) and subdivision (d)(1)(A) of this section;

(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 C.F.R. § 300.503(a)(1) and 6 CAR § 130-904(a)(1), prior notice, 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

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception.

(1) Notwithstanding the notice requirement in 34 C.F.R. § 300.148(d)(1) and subdivision (d)(1) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(A) Compliance with 34 C.F.R. § 300.148(d)(1) and subdivision (d)(1) of this section would likely result in physical harm to the child; and

(B) The school prevented the parent from providing the notice; or

(C) The parents had not received notice, pursuant to 34 C.F.R. § 300.504, of the notice requirement in paragraph 34 C.F.R. § 300.148(d)(1) and subdivision (d)(1) of this section.

(2) 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 subdivision (d)(1)(A) of this section would likely result in serious emotional harm to the child.

6 CAR § 130-1416. Children with disabilities in private schools placed or referred by public agencies.

(a) 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.

(b) 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:

(1) Is provided special education and related services:

(A) In conformance with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 – 300.325 and 6 CAR § 130-801 et seq.; and

(B) At no cost to the parents;

(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 C.F.R. § 300.18 and § 300.156(c)); and

(3) Has all of the rights of a child with a disability served by a public agency.