

# *American Society for Deaf Children*

3820 Hartzdale Drive, Camp Hill, PA 17011  
(800) 942-ASDC Parent Information and Referral  
(717) 703-0073 business (voice/tty), (717) 909-5599 fax  
[ASDC4U@aol.com](mailto:ASDC4U@aol.com) e-mail, [www.deafchildren.org](http://www.deafchildren.org) web site

## **What's the IDEA\* About Parentally Placed Private School Children with Disabilities?**

Some parents of deaf or hard of hearing children would like to place their child in a private school,<sup>1</sup> such as a religious school or other non-public school, however, they are concerned that if they do so the child will not receive necessary services. The Individuals with Disabilities Education Act (IDEA) requires States to provide some special education and related services to parentally placed private school children with disabilities. These services are determined within the law's parameters through systematic consultation between the Local Education Agency (LEA) and private school representatives and representatives of parentally placed private school children with disabilities. After consultation, service plans for these children are developed.

### **System to ensure participation.**

IDEA requires States to take certain steps to ensure the participation of parentally placed private school children with disabilities in special education and related services. At the outset, States must spend a specific amount of money to provide special education and related services to these students. This amount must be consistent with the number and location of students with disabilities in private schools. The amount must be proportional to the amount of Federal funds provided. State and local funds are to supplement, not supplant, the Federal funds required to be spent. In calculating the amount, LEAs must conduct a "timely and meaningful consultation" with representatives from private schools. LEAs must maintain records and provide information to the State about the numbers of children involved under these provisions.

The obligation of LEAs to provide for parentally-placed private school children with disabilities extends to children age three to five if the school in which they are enrolled meets the regulatory definition of elementary school ("A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.").

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\*The "What's the IDEA" series describes various sections of the Individuals with Disabilities Act. This is educational material, not legal advice. ASDC assumes no liability for this material. © American Society for Deaf Children, 2006.

<sup>1</sup> There are two ways a child can be placed in a private school: In one, the LEA offers a Free Appropriate Public Education (FAPE) to the child in a public school, but the parent turns down the offer and chooses to place the child in a private school. In the second, the LEA realizes it does not have the ability to offer FAPE and places the child in a private school to get the services the child needs. This document applies to the first, but not the second, situation.

LEAs must conduct a “thorough and complete” “child find” process to determine the number of parentally placed children with disabilities in private schools located in the LEA’s jurisdiction. “Child find” is the process of locating children with disabilities and determining their eligibility for IDEA services. The child find process must be designed to ensure the “equitable participation” of parentally placed private school children with disabilities and an accurate count of such children. Child find activities for children in private schools must be similar to those undertaken for children in public schools. These activities must be completed in a time frame comparable to the time frame for other students attending public schools.

Each LEA where private schools are located must include parentally-placed private school children who reside in a State other than where the private schools they attend are located. For example, if a child from State A attends “Acme Academy” in LEA B in State B, LEA B is responsible for child find in that school.

Local educational agencies 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. They must consult with them on issues including:

- the child find process and how parents, teachers, and private school officials will be informed of the process;
- the determination of the amount of Federal funds available to serve parentally placed private school children with disabilities;
- the consultation process itself, making sure that these children can “meaningfully participate” in special education and related services;
- how, where, and by whom special education and related services will be provided for these children, including types of services, how services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
- if the local educational agency disagrees with the views of the private school officials on the provision of service, how the local educational agency shall provide a written explanation of the reasons why it chose not to provide services.

When timely and meaningful consultation has occurred, the local educational agency must obtain a written affirmation signed by the representatives of participating private schools. If private school officials do not feel the consultation process was adequate, they may file a complaint with the State educational agency.

Equitable services to parentally placed private school children with disabilities may be provided by the school directly or through contracts. Special education and related services must be secular, neutral, and nonideological. The public agency controls the funds used to provide special education and related services.

The LEA makes the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities. The LEA is subject to additional requirements, such as the requirement that funds not benefit a private school, use of public school personnel in other than public facilities, and administration of property, equipment, and supplies.

**Services plan.**

Once the above process is complete and the LEA has designated which children will receive special education and related services, a services plan must be developed and implemented for each child. The services plan describes the special education and related services to be provided.

Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No 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. In developing the services plan, the LEA must initiate and conduct meetings to develop, review, and revise the services plan for each child. The LEA also must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. To the extent appropriate, the services plan must meet the requirements of the Individualized Education Program (IEP), or for children ages three through five, an IEP or Individualized Family Services Plan (IFSP), in accordance with IDEA. (See ASDC's "What's the IDEA About the IEP" and "What's the IDEA About the Infant and Toddler Program.") However, generally an IEP will be more comprehensive than a services plan.

The IEP or IFSP must be developed, reviewed, and revised consistent with law's development, review, and revision requirements. Generally, 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. However, teachers providing equitable services do not need to meet the "highly qualified" provisions of IDEA. Services may be provided on the premises of the private, including religious, school, to the extent consistent with law. If necessary, transportation must be provided from the private school or home to another site. Transportation from home to the private school is not required.

IDEA due process is not available, except for child find. The state complaint process is available in cases where it is believed the LEA has not complied with the “System to ensure participation” process outlined in the first part of this document.

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