

OSEP Leadership Conference



Building the Legacy: IDEA 2004



August 28-30, 2006

Washington, D.C.

Children with Disabilities Enrolled by Their Parents in Private Schools



Introduction

- Topics for breakout sessions were selected by OSEP because each highlights critical implementation issues under the IDEA 2004 Statute and Regulations
- Presentation will track the Topic Brief (TB page-paragraph)

FINAL REGULATIONS

34 CFR 300.130-300.144—

Requirements for children with disabilities enrolled by their parents in private schools

Key Elements

Remaining the Same

- Equitable participation based on a process that includes timely and meaningful consultation
- Proportionate share of Part B funds must be spent
- Program offered to children designated to receive services is through a services plan - not an individualized education program (IEP)
- No individual right to special education and related services

Key Changes

- Local educational agency (LEA) where private school located responsible for child find/provision of services
- Preschool children with disabilities aged 3-5 can be considered parentally-placed children under IDEA only if they are enrolled in a private school that is considered an elementary school
- Consent override procedures unavailable
- Consent required for disclosure of evaluations between the LEA of the parent's residence and the LEA where the private school is located

Key Changes (*cont.*)

- Not required that private school personnel meet highly-qualified requirements in 34 CFR 300.18
- Additional provisions related to expenditures
- Written affirmation required for consultation
- Private school officials can file a complaint with the state educational agency (SEA) regarding consultation process
- Clarification provided regarding scope of responsibility for due process and state complaint procedures

LEA Responsibility: Child Find

(TB 2-4)

Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private, including religious, ...schools located in the school district served by the LEA

34 CFR 300.131(a)

LEA Responsibility:

Child Find—Out-of-State

(TB 2-4)

Each LEA in which private...schools are located must, in carrying out the child find requirements of this section, include parentally-placed private school children **who reside in the state other than where the private schools they attend are located**

34 CFR 300.131(f)

Parentally-Placed Preschoolers

(TB 1-2)

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

34 CFR 300.133(a)(2)(ii)

Elementary School Definition

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined by state law

34 CFR 300.13

Public Comment: Parent Consent

When parents refuse consent, public agencies prohibited from seeking to conduct evaluations by utilizing consent override procedures

Response to Comment: Parent Consent

(TB 8-23)

If a parent of a child (privately-placed)...does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency **may not use the consent override procedures**

34 CFR 300.300(d)(4)

Public Comment:

Privacy

Clarification requested regarding obligation to share information between LEA where private school is located and child's district of residence

Response to Comment: Privacy

(TB 8-23)

If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental **consent must be obtained** before any personally identifiable information about the child is released between...LEA where private school is located and...LEA of parent's residence

34 CFR 300.622(b)(3)

Public Comment: Personnel Standards

Clarification requested whether private school teachers must meet the same standards (highly qualified teacher (HQT) requirements) as public-school personnel

Response to Comment: Personnel Standards

(TB 7-20)

...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

34 CFR 300.138 (a) (1)

Expenditures/ Proportionate Share

(TB 5-11)

Each LEA shall spend a proportionate amount of its Part B funds on parentally-placed private school children

34 CFR 300.133(a)(1)-(2)

Appendix B— Example of Proportionate Share Calculation

# of public school eligible children	300
# of private school eligible children	20
Total	320

Appendix B— Example of Proportionate Share Calculation (*cont.*)

Federal flow-thru	\$152,500
Average expenditure per child	\$476.5625
Total private school expenditure	\$9,531.25

Expenditures/ Proportionate Share (TB 7-12; 2-4)

- State and local funds may supplement but not supplant federal funds for this population
34 CFR 300.133(d)
- Cost of child find may not be considered in proportionate share obligation
34 CFR 300.131(d)

Public Comment:

Expenditures/Proportionate Share

- Must an LEA spend its entire proportionate share by the end of the fiscal year?
- Could remaining funds be carried over to next fiscal year?

Response to Comment: Expenditures/ Proportionate Share

(TB 5-13)

- If an LEA has not expended... its proportionate share by the end of the fiscal year..., the LEA must obligate the remaining funds... during a carry-over period of one additional year
- 34 CFR 300.133(a)(3)

Consultation/ Written Affirmation (TB 7-18)

When timely and meaningful consultation..., the LEA must obtain a **written affirmation** signed by representatives of private schools

34 CFR 300.135(a)

Compliance

(TB 7-19)

A private school official has the right to submit a complaint to the SEA that the LEA:

- Did not engage in consultation that was meaningful and timely
- Did not give due consideration to the views of the private school official

34 CFR 300.136(a)

Compliance

(TB 7-19)

If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary....

34 CFR 300.136 (b)(3)(i)

Public Comment: Due Process/State Complaints

- Concern expressed that due process rights are limited
- Suggestion regulations clarify to which district a parent should file a due process request

Response to Comment: Due Process

(TB 7-21)

Any due process complaint regarding the child find requirements in 34 CFR 300.131, including 34 CFR 300.300-300.311, must be **filed with the LEA in which the private school is located** and a copy must be forwarded to the SEA

34 CFR 300.140(b)(2)

State complaints

(TB 8-22)

Any complaint that an SEA or LEA has failed to meet the requirements in 34 CFR 300.132–300.135 and 300.137–300.144 [regarding parentally-placed private school children with disabilities] must be filed in accordance with the state complaint procedures

34 CFR 300.140 (c)(1)

Regional Implementation Planning Meetings

What implementation issues and challenges on this topic should be addressed at the *IDEA* Regional Implementing Planning Meetings?

- January 30 and 31, 2007
 - *Washington, D.C.*
- February 12 and 13, 2007
 - *Los Angeles, California*
- February 15 and 16, 2007
 - *Kansas City, Kansas*

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Implementation Challenges?

For More Information

Please go to

<http://sites.ed.gov/idea>

for resources on *IDEA* 2004
Final Regulations

