

290-8-9-10 Administration.

Each public agency must develop and implement procedures that will ensure that FAPE is available to children with disabilities from ages 3-21.

(1) **Residency.** For children with disabilities who are not residing with their parents or who are enrolled in a program outside the jurisdiction of their residence, the following rules apply.

(a) For children with disabilities who have been determined to be wards of the State or who reside in group homes, detention facilities, nursing homes, and private facilities, it is the responsibility of the LEA where the facility is located to ensure that FAPE is made available. This rule applies to students with disabilities who are incarcerated in local city and county jails. This rule does not apply to students with disabilities who are incarcerated in adult correctional facilities under the Department of Corrections.

(b) The LEA where a child with a disability resides is responsible for offering FAPE to a child with a disability. However, should a parent unilaterally place their child in a day-care center or other program outside of the jurisdiction of residence, the LEA of residence is not responsible for providing FAPE if appropriate services are available in the LEA of residence. If the LEA where the parent unilaterally placed the child has a policy of accepting children from outside its jurisdiction, it will be responsible for ensuring that FAPE is provided to these children in accordance with the LEA's out of district policies. If not, these children would not be entitled to receive FAPE from the LEA where the day-care center or other program is located.

(c) Refer to (8) of this section for specific requirements relating to children unilaterally placed in private elementary or secondary schools by their parents.

(2) ***Forms.*** *In the implementation of these rules, education agencies must utilize all forms required by the State Department of Education. Forms are required to be completed and entered into the selected Student Information System (SIS).*

(3) **Special Education Agency Plan for Children with Disabilities.** Public agencies must develop, according to state and federal requirements, a written plan for providing special education and related services. The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the IDEA.

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(4) **General Supervision.** All public agencies that serve children under the IDEA and the Ala. Code Title 16, Chapter 39, will have their programs reviewed by the SEA to determine compliance with federal and state laws regarding special education programs. The State must ensure that when it identifies noncompliance with the requirements by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

(5) **Withholding of Funds.** When a public agency has failed to provide appropriate educational services to children with disabilities as specified by corrective action, formal complaint resolution, agency plan, or state and/or federal law and regulations, the State Superintendent of Education will invoke the following procedures to withhold the public agency's federal special education funds.

(a) If the public agency does not complete the action within the established timeline, the State Superintendent of Education will notify the public agency of the State Superintendent of Education's intent to withhold all federal special education funds because of the public agency's failure to provide appropriate educational services to the children with disabilities. This notice must also include notification that the public agency may request a hearing before the State Superintendent of Education or his designee in order to address the allegations of failure to provide

appropriate educational services to children with disabilities. This hearing must be requested within ten business days of the public agency's receipt of this notification.

(b) A decision of the State Superintendent of Education or designee will be mailed to the public agency within ten business days of the hearing. If the decision rules against the agency, the public agency must be notified that all federal special education funds will be withheld after a period of ten business days from receipt of the decision. Money will be withheld until the public agency is in compliance.

(c) Within 30 calendar days, any agency having funds withheld must inform the public within the agency's jurisdiction of the pendency of the action. The notice must be a public notice. Failure by the agency to do so will result in the State Superintendent of Education informing the public of the action.

(d) If the agency disagrees with the decision of the State Superintendent of Education, or his designee, the agency can refer the matter to the United States Secretary of Education.

(6) IEPs for Children with Disabilities Placed in Private Schools by Education Agencies. The public agency must ensure that children with disabilities who have been placed in or referred to private schools or facilities by the public agency are provided special education and related services in accordance with the child's IEP and at no cost to the parent. Children with disabilities placed by the public agency must be provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of these rules and Part B of the IDEA, except provisions related to highly qualified and personnel qualifications); and provided all of the rights of a child with a disability who is served by a public agency.

(a) Before the public agency places a child with a disability in, or refers a child to a private school or facility, the public agency must initiate and conduct a meeting to develop an IEP for the child. The public agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the public agency must use other methods to ensure participation by the private school, including individual or conference telephone calls.

(b) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility, at the discretion of the public agency.

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(c) If the private school or facility initiates and conducts an IEP meeting, the public agency must ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.

(d) The public agency must ensure that an IEP is developed and implemented for each child with a disability who is enrolled in a private school and receives special education and related services.

(e) Even if a private school or facility implements a child's IEP, the responsibility for compliance with these rules remains with the public agency and the SEA.

(7) Children in Private Schools Placed by Parents if FAPE is an Issue.

(a) **General.** A public agency is not required 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 these children in the population whose needs are addressed consistent with these rules.

(b) **Disagreements Regarding FAPE.** Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures in these rules.

(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 an education 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 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 State and LEA.

(d) Limitation on Reimbursement. The cost of reimbursement may be reduced or denied if:

1. 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 at least ten 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 education agency of the proposed action.

2. If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements, 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) Notwithstanding the notice requirement in section (d)1. above, the cost of reimbursement shall not be reduced or denied for failure to provide the notice if:

1. Providing the notice would likely result in physical harm to the child;

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2. The school prevented the parent from providing the notice, or

3. The parents had not received notice, as required by (d)1. of this section.

(f) The cost of reimbursement may, in the discretion of a court or hearing officer, not be reduced or denied for failure to provide such notice if:

1. The parent is not literate or cannot write in English; or

2. Compliance with the notice requirement in (d)1. of this section would likely result in serious emotional harm to the child.

(8) Provision of Equitable Services to Children with Disabilities Enrolled by Parents in Private Schools. 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. To the extent consistent with their 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 must be made for the participation of private school children with disabilities in the program assisted or carried out under the IDEA by providing them with special education and related services in accordance with this rule.

(a) Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district served by the LEA, in accordance with this rule. 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.

(b) In carrying out the Child Find requirements in this section, the LEA must undertake activities similar to the activities undertaken for the agency's public school children.

(c) 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 regarding expenditure of its proportionate share, as provided herein.

(d) The Child Find process must be completed in a time period comparable to that for students attending public schools in the LEA.

(e) Each LEA in which private, including religious, elementary and secondary schools are located must, in carrying out the Child Find provisions, include parentally-placed private school children who reside in a State other than the State in which the private schools are located.

(f) An LEA must timely and meaningfully consult with private school representatives and representatives of parents of children with disabilities in private schools located in the geographic jurisdiction served by the LEA during the design and development of special education and related services for children in private schools regarding the following:

1. How these children who are suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

2. How the proportionate amount of Federal funds available to serve these children is determined including the determination of how the amount was calculated;

3. How the consultation process among the LEA, private school officials, and representatives of parents will operate throughout the school year to ensure that children with disabilities identified through the Child Find process can meaningfully participate in special education and related services;

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4. How, where and by whom special education and related services will be provided, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all parentally-placed private school children, and how and when these decisions will be made; and

5. 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.

(g) When timely and meaningful consultation has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

(h) 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, or did not give due consideration to the views of the private school official. The private school official must provide the basis of the noncompliance by the LEA to the SEA, and the LEA must forward the appropriate documentation to the SEA. If the private school official is dissatisfied with the decision of the SEA, the private school official may submit a complaint to the U.S. Secretary of Education by providing the basis of the noncompliance by the LEA to the Secretary, and the SEA shall forward the appropriate documentation to the Secretary.

(i) 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 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. These services must be provided by employees of a public agency, or through contract by the public agency with an individual, association, agency, organization, or other entity.

(j) Special education and related services provided to parentally-placed private school children, including materials and equipment, must be secular, neutral, and nonideological.

(k) Each parentally-placed private school child with a disability who has been designated to receive services in accordance with this rule 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 this rule, and it will make available to parentally-placed private school children with disabilities. The services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the IEP requirements in these rules. The LEA 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.

(l) If necessary for a child to benefit from or participate in the services provided, transportation must be provided from the child's school or the child's home to a site other than the private school, and from the service site to the private school, or to the child's home, depending on the timing of the services. However, LEAs are not required to provide transportation from the child's home to the private school. The cost of transportation may be included in calculating whether the LEA has met the requirement of spending its proportionate share.

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(m) Services may be provided at the child's private school, including a religious school, to the extent consistent with this rule.

(n) Parents may not request a due process hearing regarding the requirements regarding the provisions of the child's services plan, but may request a due process hearing on issues of Child Find requirements, including identification and evaluation. If a hearing is requested, it must be filed with the LEA in which the private school is located and a copy forwarded to the SEA.

(o) Any complaint that a State or LEA has failed to meet requirements other than Child Find, including the consultation and services plan requirements, must be filed in accordance with the rules governing State complaints.

(p) A complaint filed by a private school official under paragraph (c) above must be filed with the SEA in accordance with the procedures set forth in that paragraph.

(q) Each LEA must after timely and meaningful consultation with the representatives of parentally-placed private school children with disabilities, determine the number of eligible children attending private schools located in the LEA and ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year. 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 subsequent fiscal year. To meet the requirements of the IDEA, each LEA must spend the following on providing special education and related services to private school children with disabilities:

1. For children aged 3-5, 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 3-5 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 3-5. Children aged 3-5 are considered to be parentally-placed private school children with disabilities if they are enrolled by their parents in a

private, including religious, elementary school that meets the definition of elementary school in State law; and

2. For children aged 3-21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the IDEA as the number of private school children with disabilities aged 3-21 who are enrolled by their parents in private, including religious, elementary 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 3-21.

3. If an LEA has not expended for equitable services all of the funds described in paragraphs 1. and 2. above 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. (See Appendix B to the IDEA regulations for an example of how proportionate share is calculated).

4. 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 rule.