

160-4-7-.13 PRIVATE SCHOOLS.

(1) CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY THE LEA.

(a) Each LEA must ensure that a child with disability who is placed in or referred to a private school or facility by the LEA as a means of providing special education and related services -

1. Is provided special education and related services in conformance with an IEP (Rule 160-4-7-.06 Individualized Education Program);

(i) At no cost to the parents;

(ii) Is provided an education that meets the standards that apply to education provided by the GaDOE and the LEA; and

(iii) Has all of the rights of a child with a disability who is served by the LEA. [34 C.F.R. § 300.146]

(b) GaDOE/DES shall:

(i) Monitor compliance of these children through procedures such as written reports, on-site visits and parent surveys;

(ii) Disseminate copies of State standards to each private school and facility to which a LEA has referred or placed a child with a disability; and

(iii) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. [34 C.F.R. § 300.147]

(2) PLACEMENT OF CHILDREN BY PARENTS WHEN FAPE IS AT ISSUE.

(a) If the LEA made a free appropriate public education (FAPE) available to a child and the child's parents elect to place the child in a private school or facility, the LEA is not required to pay for the cost of the education, including special education and related services, for the child at the private school or facility. However, these students must be included in the activities in paragraph (3) of this Rule. [34 C.F.R. § 300.148(a)]

1. Disagreements about FAPE: Such disagreements regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the procedural safeguards provided in Rule 160-4-7-.09 Procedural Safeguards/Parent Rights. [34 C.F.R. § 300.148(b)]

2. Reimbursement for Private School Placement: If the parents of a child with a disability, who previously received special education and related services in a LEA, enroll the child in a private preschool, elementary school or secondary school without the consent of or referral by the LEA, a court or an administrative law judge (ALJ) may require the LEA to reimburse the parents for the cost of that enrollment if the court or ALJ finds that the LEA had not made a 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 an ALJ or a court even if it does not meet the state standards that apply to education provided by the State or LEA. [34 C.F.R. § 300.148(c)]

3. Limitation on Reimbursement: The cost of reimbursement described in (a)(2) above may be reduced or denied if:

(i) At the most recent IEP Team meeting that the parents attended prior to the removal of the child from the LEA, the parents did not inform the IEP Team that they were rejecting the placement proposed by the LEA to provide a FAPE to their child and did not state their concerns or their intent to enroll the child in a private school at public expense; or

(ii) At least 10 business days prior to the removal of the child from the LEA, the parents did not give written notice to the LEA that they were rejecting the placement proposed by the LEA to provide a FAPE to the child and did not state their concerns or their intent to enroll the child in a private school at public expense.

(iii) If, prior to the parent's removal of the child from the LEA, the LEA informed the parents through the notice requirements of its intent to evaluate the child, including a statement of the purpose and scope of the evaluation that was appropriate and reasonable, but the parents did not make the child available for evaluation; or

(iv) Upon a judicial finding of unreasonableness with respect to actions taken by the parents. [34 C.F.R. § 300.148(d)]

4. Exception to Limitation on Reimbursement: The cost of reimbursement must not be reduced or denied for a parent's failure to provide the notice to the LEA described in paragraph (3) immediately above if:

(i) The school prevented the parents from providing the notice;

(ii) The parents had not been provided a copy of the parent's rights under IDEA and, therefore, had not been notified of the requirement to provide the notice described in paragraph (3) above; or

(iii) The provision of notice would likely result in physical harm to the child. [34 C.F.R. § 300.148(e)(1)]

5. The cost of reimbursement may, in the discretion of the court or administrative law judge, not be reduced or denied for a parent's failure to provide the notice to the LEA described in paragraph 4 immediately above if:

- (i) The parents are not literate or cannot write in English; or
- (ii) The provision of notice would likely result in serious emotional harm to the child. [34 C.F.R. § 300.148(e)(2)]

(3) CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS.

(a) As used in this part, the term "parentally-placed private school children with disabilities" means children with disabilities enrolled by their parents in private schools, including religious, schools or facilities when the provision of a FAPE is not at issue. The term does not include private school children with disabilities placed by the LEA as a means of providing special education and related services. [34 C.F.R. § 300.130]

1. Children who are home schooled within the jurisdiction of the LEA are also considered parentally-placed private school students for the purposes of this Rule.

(b) Child Find. Each LEA shall locate, identify, and evaluate all private schools children with disabilities (including out of state students) enrolled by their parents in private, including religious, elementary and secondary schools located in the LEA in accordance with Child Find activities described in Rule 160-4-7-.03 Child Find. The Child Find activities utilized to comply with this requirement must be comparable to activities undertaken for children with disabilities enrolled in the LEA. [34 C.F.R. § 300.131(a)]

1. The Child Find process must be designed to ensure the equitable participation of parentally-placed private school children and to provide an accurate count of children with disabilities. [34 C.F.R. § 300.131(b)]

2. The LEA shall consult with appropriate representatives of private school children with disabilities to carry out Child Find activities; the activities must be similar to those undertaken for the public school children and completed in a time period comparable to that for children attending public schools. [34 C.F.R. § 300.131(c), (e)]

(c) Provision of services. To the extent consistent with their number and location in the state, provisions must be made for the participation of private school children with disabilities in programs provided under Part B of the IDEA by providing children with special education and related services in accordance with this section (3). [34 C.F.R. § 300.132(a)]

1. A services plan shall be developed and implemented for each private school child with a disability who has been designated to receive special education and related services by the LEA in which the private school is located. [34 C.F.R. § 300.132(b)]

2. Each LEA must maintain its records and provide to the GaDOE, the following information related to parentally-placed private school children:

- (i) The number of children evaluated;
- (ii) The number of children determined to be children with disabilities; and
- (iii) The number of children served. [34 C.F.R. § 300.132(c)]

(d) To meet the requirements for provision of services above, each LEA shall adhere to the following guidelines regarding expenditures:

1. For children ages 3-21, the LEA must expend an amount that is the same proportion of the LEA's total Part B of IDEA flow through funding as the number of private school children with disabilities, ages 3-21, residing in its jurisdiction is to the total number of children with disabilities, ages 3-21, in its jurisdiction; and

2. For children ages 3-5, the LEA must expend an amount that is the same proportion of the LEA's IDEA preschool funding as the number of private school children with disabilities, ages 3-5, residing in its jurisdiction is to the total number of children with disabilities, ages 3-5, in its jurisdiction.

(i) Children ages 3 – 5 are considered to be parentally-placed private school children when they are enrolled by their parents in a private school that meets the definition of elementary school to include having a kindergarten program .

3. If an LEA has not expended for equitable services all of the funds required in this section by the end of the fiscal year, 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. [34 C.F.R. § 300.133(a)]

4. Expenditures for Child Find activities may not be considered in determining whether the LEA has met these requirements. [34 C.F.R. § 300.131(d)]

5. Each LEA shall consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities who reside in its jurisdiction. [34 C.F.R. § 300.133(c)(1)(i)]

(i) Each LEA shall ensure that the child count is conducted on December 1 each year. [34 C.F.R. § 300.133(c)(1)(ii)]

(ii) The child count shall be used to determine the amount the LEA must spend on providing special education and related services to private school children with disabilities in the following fiscal year. [34 C.F.R. § 300.133(c)(2)]

6. 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 in this section. [34 C.F.R. § 300.133(d)]

(e) Consultation. To ensure timely and meaningful consultation, the 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. The Child Find process, including how parentally-placed private school children suspected of having a disability can participate equitably and how the parents, teachers, and private school officials will be informed of the process. [34 C.F.R. § 300.134(a)]

2. The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated. [34 C.F.R. § 300.134(b)]

3. 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 private school children with disabilities identified can meaningfully participate in special education and related services. [34 C.F.R. § 300.134(c)]

4. 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 the types of services, how services will be apportioned if funds are insufficient to serve all parentally-placed private school children and how and when those decisions will be made. [34 C.F.R. § 300.134(d)]

5. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services, 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. [34 C.F.R. § 300.134(e)]

(f) Written affirmation. When timely and meaningful consultation has occurred, the LEA must obtain written affirmation signed by representatives of participating private schools. If the representatives of the participating private schools do not provide the affirmation within a reasonable period of time, the LEA must forward documentation of the consultation process to the GaDOE. [34 C.F.R. § 300.135(a) – (b)]

(g) Compliance. A private school official has the right to submit a complaint to the GaDOE that the LEA did not engage in consultation that was meaningful or timely or did not give due consideration to the views of the private school officials. [34 C.F.R. § 300.136(a)]

1. The complaint must be submitted through the Formal Complaint Process identified in Rule (12) Dispute Resolution.

2. If the private school is dissatisfied with the decision of the GaDOE, the official may submit the complaint to the US DOE and the GaDOE must forward a copy of the appropriate documentation. [34 C.F.R. § 300.136(b)(3)]

(g) Equitable services determined. 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. [34 C.F.R. § 300.137(a)]

1. The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities prior to the start of the school year. [See 34 C.F.R. § 300.137(b)(2)]

2. A services plan shall be completed for each private school child with disabilities who will receive special education and related services provided by the LEA and the LEA must:

(i) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(ii) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the LEA shall use other measures to ensure participation, including individual or conference telephone calls. [34 C.F.R. § 300.137(c)]

(h) Equitable services provided. Services provided to private school children with disabilities must be provided by personnel who meet the same standards as personnel providing services in the public schools, except the personnel is not required to meet the highly qualified definition. [34 C.F.R. § 300.138(a)(1)]

1. Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. [34 C.F.R. § 300.138(a)(2)]

2. Each parentally-placed private school child with disabilities who has been designated to receive special education and related services shall have a *services plan* that describes the specific special education and related services that the LEA will provide to the child. [34 C.F.R. § 300.138(b)(1)]

(i) The services plan must, to the extent appropriate, provide a statement of the special education and related services and supplementary aids and services to be provided to the child.

(ii) The services plan must be in effect at the beginning of each school year and must be developed, reviewed and revised periodically, but not less than annually. [34 C.F.R. § 300.138(b)(2)]

3. Services may be provided by:

(i) Employees of a LEA; or

(ii) Through contract by the LEA with an individual, organization, association, agency, or other entity. [34 C.F.R. § 300.138(c)(1)]

4. Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment must be secular, neutral, and nonideological. [34 C.F.R. § 300.138(c)(2)]

(i) Location of services. Services provided to private school children with disabilities may be provided on site at the child's private school, including a religious school, to the extent consistent with law. [34 C.F.R. § 300.139(a)]

1. If it is necessary for the child to benefit from or participate in the services provided under his or her services plan, the private school children with disabilities must be provided transportation according to the following:

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

(ii) From the services site to the private school, or to the child's home, depending on the timing of the services.

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

(iv) The cost of transportation as described in this Rule may be included in calculating whether the LEA has met the requirements of proportionate funding in this rule. [34 C.F.R. § 300.139(b)]

(j) Complaints. The procedural safeguards outlined in Rule 160-4-7-.09 Procedural Safeguards/Parents Rights do not apply to complaints that a LEA has failed to meet requirements of this rule, including the provision of services indicated on the child's services plan except that:

1. The procedural safeguards outlined in rule 160-4-7-.09 Procedural Safeguards/Parents Rights do apply to complaints that a LEA has failed to meet the requirements of Child Find, of this Rule, including the requirements in Rule 160-4-7-.05 Eligibility Determination and Criteria. Child find complaints must be filed with the LEA in which the private school is located and a copy must be forwarded to GaDOE. [34 C.F.R. § 300.140(a) – (b)]

2. The formal complaint procedures contained in Rule 160-4-7-.12 Dispute Resolution (a) Complaints *do* apply to complaints that the LEA has failed to meet the requirements of equitable and timely consultation. [34 C.F.R. § 300.140(c)]

(k) Requirement that funds not benefit a private school.

1. An LEA *may not* use IDEA Part B flow-through or federal preschool funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. An

LEA shall use funds provided under the IDEA to meet the special education and related services needs of children enrolled in private schools but *not* for:

(i) The needs of the private school; or

(ii) The general needs of the children enrolled in the private school. [34 C.F.R. § 300.141(a) – (b)]

(l) Use of personnel. A n LEA *may* use IDEA Part B flow-through or federal preschool funds to provide personnel in a private school to the extent necessary to provide services under this rule to private school children with disabilities if those services are not normally provided by the private school. [34 C.F.R. § 300.142(a)]

1. In order to provide services to private school children with disabilities as described in this rule, a LEA *may* use IDEA Part B flow-through or federal preschool funds to pay for the services of an employee of a private school if the employee performs the services outside of his or her regular hours of duty and under LEA supervision and control. [34 C.F.R. § 300.142(b)]

(m) Separate classes prohibited. A n LEA may not use IDEA Part B funds for classes that are organized separately on the basis of school enrollment or religion of the children if –

1. The classes are at the same site; and

2. The classes include children enrolled in public schools and children enrolled in private schools. [34 C.F.R. § 300.143(a) – (b); § 300.131(a)]

(n) Property, Equipment, and Supplies. The LEA must control and administer the funds used to provide special education and related services and hold title to and administer materials, equipment and property purchased with those funds. [34 C.F.R. § 300.144(a)]

1. The LEA may place equipment and supplies in a private school for the period of time needed for the program. [34 C.F.R. § 300.144(b)]

2. The LEA must ensure that the equipment and supplies placed in a private school are used only for special education purposes and can be removed from the private school without remodeling the private school facility. [34 C.F.R. § 300.144(c)]

3. The LEA shall remove equipment and supplies from a private school if they are no longer needed for special education purposes or the removal is necessary to avoid their unauthorized use for other than special education purposes. [34 C.F.R. § 300.144(d)]

4. No funds under IDEA Part B may be used for repairs, minor remodeling, or construction of private school facilities. [34 C.F.R. § 300.144(e)]

(4) This rule shall become effective July 1, 2007.

Authority: O.C.G.A. § 20-2-133; 20-2-152; 20-2-240.

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