

CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

PRIVATE SCHOOL CHILDREN WITH DISABILITIES

Private school children with disabilities means children with disabilities enrolled by their parents in private schools and not children with disabilities enrolled in private schools upon referral by a LEA.

707 KAR 1:280 Section 1 (47)
34 CFR 300.130

"Home school" means for purposes of 707 KAR Chapter 1 only, a private school primarily conducted in one's residence.

707 KAR 1:280 Section 1 (31)

CHILD FIND ACTIVITIES IN PRIVATE SCHOOLS

(1) An LEA shall locate, identify, and evaluate all private school children with disabilities, including school children attending private, religious schools within the boundaries of the LEA. These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA in which private schools are located shall include parentally-placed private school children who attend those schools but reside in a state other than Kentucky in the LEA's child find activities.

(3) An LEA shall consult with appropriate representatives of the private schools on how to carry out these activities.

(4) Child find activities shall be completed in a time period comparable to that for other students attending public school in the LEA. An LEA shall not consider the costs, including the cost of individual evaluations incurred by the LEA's child find activities, in meeting its obligation under 707 KAR 1:370 Section 4 (3).

707 KAR 1:370 Section 2 (1), (3), (4)
34 CFR 300.131

If, through Child Find activities, Owen County School District (hereinafter called OCSD) locates a child who is parentally placed in a private school in OCSD, OCSD staff cannot disclose information to the school of residence without obtaining written parental consent (see **Release of Education Records to another Public School District** in **CONFIDENTIALITY** procedures).

Child Tracking System

Child Find for Children with Disabilities Enrolled by their Parents in Private School.

(2) The LEA shall maintain in its records and provide to KDE:

(a) the number of children evaluated under this section;

(b) the number of children determined to be children with disabilities under this section; and

(c) the number of children served under this section.

707 KAR 1:370 Section 2 (2)
34 CFR 300.131 (a) & (b)

OCSD has developed and implements a child tracking system that monitors:

1. children who are in the referral and evaluation process;
2. children who are determined to have a disability;
3. children who are currently receiving needed special education and related

- services, including private school children receiving services as outlined in a Services Plan; and
4. children who have been determined eligible for special education and related services but are not currently receiving these services, including children in private schools who do not have a Services Plan.

Evaluation for Services

If a parent of a child who is parentally placed in a private school does not provide consent for the initial evaluation or the reevaluation or a parent fails to respond to such a request, the LEA:

- (a) shall not use the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing;
- (b) shall not be required to consider the child as eligible for services under this administrative regulation; and
- (c) shall document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place or employment visits, and the results of these efforts.

707 KAR 1:370 Section 3
34 CFR 300.140

OCSD evaluates all children with suspected disabilities who attend any school within the boundaries of OCSD, according to procedures for **PROCEDURAL SAFEGUARDS** and **EVALUATION**.

Eligibility for Services

The ARC follows OCSD established procedures for **PROCEDURAL SAFEGUARDS, EVALUATION, ELIGIBILITY, and IEP**.

FAPE Availability

An LEA shall make FAPE available to each child with a disability. If a parent decides to place his child with a disability in a private school after the offer of FAPE, the LEA shall not be required to pay for the cost of the private education. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR 1:340.

707 KAR 1:370 Section 1 (1)
34 CFR 300.148 (a)
KRS 157.280 (3)

If the ARC determines that OCSD has an appropriate educational program for the child, and the parent chooses to place the child in a program or facility in another public school district or private organization, the parent assumes responsibility for payment for the costs incurred in educating the child.

OCSD does not pay for the education of a child with a disability in any location other than the one selected by the ARC if the child has a free appropriate public education available from the public school district and the parents chose to unilaterally place the child in the private school or facility.

Disagreements between a parent and OCSD regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to due process procedures.

Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. There shall be no individual right to special education and related services, but the student shall receive the services provided in the service plan in light of the services the LEA has determined to provide.

707 KAR 1:370 Section 6 (2)
34 CFR 300.138 (a) (2)
34 CFR 300.137 (a)

A parentally placed private school child with a disability has no individual right to receive FAPE.

Services Plan

A private school child with a disability who has been designated to receive services shall have a services plan that describes the specific special education or related services that the LEA will provide in light of the services the LEA has determined to provide private school children with disabilities through the process in Section 5 of this administrative regulation.

707 KAR 1:370 Section 6 (3)
34 CFR 300.138 (b)

If, after the ARC determines the child meets eligibility for a disability, the parents make clear their intention to enroll (or continue enrollment of) their child at a private school, the ARC does not develop an IEP for the child. The ARC may determine the child may receive services through a Services Plan that describes the special education or related services OCSD will provide according to the procedures for **Determination of Proportionate Amount of Spending in CHILDREN PLACED IN PRIVATE SCHOOLS.**

If a determination is made that the child needs special education and related services, the general rule in 34 CFR Section 300.535 (b) is that an IEP must be developed for the child in accordance with 34 CFR Section 300.340-300.350, with one important exception. If the parents make clear their intention to enroll their child at a private school and that they are not interested in a public program or placement for their child, the public agency need not develop an IEP for the child. If the parents choose not to accept the public agency's offer to make FAPE available to their child, the public agency still must include the child in its eligible population of parentally-placed private school children with disabilities, whose needs must be considered and addressed in accordance with 34 CFR Section 300.450-300.462 of the Part B regulations.

OSEP Memo, Q&A #8, May 2000

An LEA shall provide special education and related services to parentally placed private school children with disabilities in accordance with 707 KAR 1:370 Section 5, to the extent consistent with the number and location of these children enrolled in private schools located within the school district boundaries.

707 KAR 1:370 Section 4 (1)
34 CFR 300.138 (b) (1)

A service plan shall be developed and implemented for each private school child with a disability who has been designated by the LEA to receive special education and related services under 707 KAR 1:370 Section 5.

707 KAR 1:370 Section 4 (2)
34 CFR 300.138 (b) (2)

OCSD conducts ARC meetings for every child who is enrolled in a private school and has been evaluated by OCSD. If the child meets eligibility for a disability, and the parent of the eligible child makes clear their intention to enroll (or continue enrollment of) their child at a private school, the ARC does not develop an IEP. The ARC Chairperson provides a full and complete explanation of the services the child would receive if enrolled in OCSD. The ARC may determine the child may receive services through a Services Plan.

If the ARC determines the private school child with a disability will receive services from OCSD, the ARC develops a Service Plan to specify the services the child will receive. The Services Plan reflects only the services offered to the private school child with a disability.

The DoSE includes the child in the child tracking system as a parentally-placed private school child with a disability.

OCSD provides special education and related services as described in the Services Plan for children with disabilities enrolled in private schools. OCSD does not provide classes in the general curriculum for the private school student at the public school. For example, if parents request that in addition to receiving speech at the public school, their child also be allowed to take physics, OCSD is not obligated, and does not allow the child to take physics.

Implementation of the Services Plan

The services plan shall, to the extent appropriate:

- (a) meet the requirements of an IEP under 707 KAR 1:320 with respect to the services provided; and
- (b) be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs.

707 KAR 1:370 Section 6 (4)
34 CFR 300.138 (b) (2)

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; and
- (2) ensure that a representative of the religious or other private school attends each meeting. 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.

34 CFR 300.137 (c)

Services delivered through a service plan shall be provided by:
(a) employees of the LEA; or
(b) through a contract with the LEA.

707 KAR 1:370 Section 6 (5)
34 CFR 300.138 (c) (1)

Special education and related services provided through a service plan shall be secular, neutral, and nonideological.

707 KAR 1:370 Section 6 (6)
34 CFR 300.138 (c) (2)

The ARC develops, reviews, and revises the Services Plan on an annual basis, or as necessary, according to procedures for **PROCEDURAL SAFEGUARDS**, **IEP**, and **SERVICE DELIVERY**.

The ARC Chairperson ensures a representative of the private school is included in the ARC to develop or revise a child's Services Plan. If a representative of the private agency cannot attend the ARC meeting, OCSD uses other methods to assure the representative's participation, including individual or conference telephone calls. ARC meetings are scheduled and conducted according to procedures in **PROCEDURAL SAFEGUARDS**.

Reevaluation for Continued Eligibility

OCSD conducts three-year reevaluations of children with disabilities who attend private schools. If the child is receiving services from OCSD through a Services Plan, the ARC Chairperson sends a Notice to the parent according to **NOTICE OF ARC MEETING** in procedures for **PROCEDURAL SAFEGUARDS**.

If the child does not receive services from OCSD, but has been previously identified as a child with a disability, OCSD sends a notice to the parent to schedule an ARC for the purpose of reviewing current information and planning an evaluation.

Location of Services

A service to a private school child with a disability may be provided at a site determined by the LEA. If necessary for the child to benefit from or participate in the services provided under a services plan, the private school child with a disability shall be provided transportation:
(a) from the child's school or the child's home to a site other than the private school; and
(b) from the service site to the private school, or to the child's home, depending on the timing of the services.

707 KAR 1:370 Section 7 (1)
34 CFR 300.139 (b)

The DoSE, in consultation with private school representatives, makes the decision regarding the location of services to implement the Services Plan. If the child attends a private school outside the boundaries of OCSD, OCSD may provide the services within the OCSD boundaries, or through contract with the

public school district in which the private school is located. The public school district in which the private school is located is not required to contract to provide the services.

A LEA shall not be required to provide transportation from the child's home to the private school.
707 KAR 1:370 Section 7 (2)
34 CFR 300.139 (b) (1) (B) (ii)

OCSD "works in consultation with representatives of private school children to ensure that services are provided at sites that will not require significant transportation costs."

Formal Complaint

The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340 Section 4, 6, 8, 9, 10, 11, and 12 shall not apply to complaints that a LEA failed to meet the requirements of this administrative regulation, including the provision of services indicated on a services plan. However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340, Section 7. The due process procedures described in 707 KAR 1:340 shall apply to complaints that an LEA failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

707 KAR 1:370 Section 8 (1)
34 CFR 300.140 (a, b, c)

Parents of students who are voluntarily enrolled in private schools and receiving services under a Services Plan cannot seek mediation or a due process hearing regarding the school's alleged failure to meet the requirement of providing services to the child. The parents may request a meeting to review and revise the child's Services Plan, or file a complaint with the Kentucky Department of Education, according to **STATE COMPLAINT PROCEDURES** in procedures for **PROCEDURAL SAFEGUARDS**.

Due Process Procedures

In the event of disagreements between the parents and OCSD, the OCSD representative provides to the parent an explanation of the rights of the parent regarding private school placement.

Parents may only seek a due process hearing to challenge OCSD's Child Find activities or failure to comply with the evaluation requirements.

CONSULTATION WITH REPRESENTATIVES OF PRIVATE SCHOOLS

A LEA shall consult in a meaningful and timely fashion with private school representatives, and parents or representatives of parent of parentally-placed school children with disabilities during the design and development of special education and related services regarding the following:
(a) the child find process, including how children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;

(b) the determination of the proportionate share of federal funds, including how calculated;
(c) how the consultation 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;
(d) how, where, and by whom special education and related services will be provided including:
1. a discussion of the types of services, including direct services and alternate service delivery methods;
2. how special education and related services will be apportioned if funds are not sufficient to serve all parentally placed private school students with disabilities; and
3. how and when those decisions will be made; and
(e) how the LEA will provide a written explanation to the private schools of the reasons why the LEA chose not to provide services directly or through a contract, if the LEA disagrees with the views of the private school representatives.

707 KAR 1:370 Section 5 (1)
34 CFR 300.134 (a-d)

The DoSE obtains a list of students who reside in the district and are attending private schools from the Director of Pupil Personnel (DPP). This list is maintained by the DPP from information provided in accordance with KRS 159.160, which requires non-public schools to report to the local superintendent information needed to comply with the laws regarding compulsory school attendance.

The DoSE sends a letter to selected representatives of private schools where residents of OCSD may attend school. The letter offers the private school representatives an opportunity for input into OCSD's plans for conducting Child Find activities for private school students; funding available for services; and the number of OCSD residents with disabilities who attend private school, and the location and needs of the students. The DoSE maintains written records of the input received from the private school representatives.

OCSD personnel make the final determine of the types and levels of services to be provided.

Determination of Proportionate Amount of Spending

To meet the requirements of 707 KAR 1:370 Section 4, an LEA shall spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 CFR 300.133. This amount shall be determined after the LEA has completed its child find activities and submitted a child count figure to KDE. This child count shall be conducted on December 1 of each year.

707 KAR 1:370 Section 4 (3)
34 CFR 300.133 (c)

The DoSE ensures that the child tracking system includes information on all children with disabilities, including children with disabilities who attend private schools but are not currently receiving services. The information is used to determine the proportionate amount of funding, as well as the implementation of reevaluation timelines.

The proportionate amount is a ratio based on the total number of children who are eligible for services, not children actually served. The amount is derived from dividing the total number of parentally-placed private and home school students eligible for special education services by the total number of children with disabilities who are eligible for special education services. This provides a percent of the IDEA-B grant to spend on the parentally placed private and home school students.

Once the proportionate share of funds is calculated, the funds that are expended do not have to be Federal funds. If State categorical aid funds or local funds are used, this meets the requirement of the proportionate share of funds. Section 189 of the Kentucky Constitution prohibits the appropriation, use, or aid of any non-public (private) school through state taxes levied for educational purposes (e.g., teachers paid from the district general fund cannot provide services at the private school site).

When timely and meaningful consultation has occurred, the LEA shall obtain a written affirmation signed by the representatives of the private school. If a private school does not provide the affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the KDE.

707 KAR 1:370 Section 5 (2)
34 CFR 300.135 (a) & (b)

Once the consultation meeting is over, the district reviews the needs of all parentally placed private school children; considers the views of the parents and private school administrators; considers the number of students, type(s) of services, location of services, and the service provider to determine how to apportion the funds for "*equitable participation*." OCSD requests a written affirmation from the private school representatives that they participated in the meeting. If OCSD does not receive a written affirmation, OCSD copies the written documentation of the process and sends to KDE, Office of Exceptional Children.

An LEA shall not consider the costs, including the cost of individual evaluations incurred by the LEA's child find activities, in meeting its obligation under 707 KAR 1:370 Section 4 (3).

707 KAR 1:370 Section 2 (4)
34 CFR 300.131 (d)

The DoSE does not include the cost for Child Find activities, evaluation, and reevaluation in the calculation of proportionate share of expenditures.

The cost of transportation may be included in calculating the amount to be expended on private school children with disabilities.

707 KAR 1:370 Section 7 (3)
34 CFR 300.139 (b) (2)

RESTRICTIONS ON SERVING NON-PUBLIC SCHOOL STUDENTS

Use of Funds

A LEA shall not use funds under Part B of IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA shall use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for:

- (a) the needs of a private school; or
- (b) the general needs of the students enrolled in the private school.

707 KAR 1:370 Section 9 (1)
34 CFR 300.141 (a-b)

The LEA shall not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities.

707 KAR 1:370 Section 9 (7)
34 CFR 300.144 (e)

The DoSE monitors the use of Part B funds for children voluntarily placed by their parents in private schools. The DoSE ensures that IDEA funds are not used to finance the existing level of instruction in the private school, even if such service addresses the need of a child with a disability; and that service plans do not address any needs of a child that may be met by existing programs in the private school. The DoSE ensures that funds are not used to address the general needs of students enrolled in the private school, but used only for those needs that are unique to the child with a disability.

Personnel

An LEA shall ensure that services provided under a services plan shall be provided by personnel meeting the same standards as personnel providing services in the public school, except private school teachers that provide services under a service plan shall not have to meet the highly qualified special education teacher requirements of 20 U.S.C. 1401 (10).

707 KAR 1:370 Section 6 (1)
34 CFR 300.138 (a) (1)

An LEA may use funds under Part B of IDEA to make public school personnel available in private schools to the extent necessary to provide services under a services plan and if those services are not normally provided by the private school.

707 KAR 1:370 Section 9 (2)
34 CFR 300.142 (a)

A LEA may use funds under Part B of IDEA to pay for the services of private school personnel to provide services under a services plan if the employee performs the services outside his regular hours of duty and the employee performs the services under the supervision and control of the LEA.

707 KAR 1:370 Section 9 (3)
34 CFR 300.142 (b)

OCSD ensures that personnel implementing the services plan meet the same standards as are required by OCSD; however, OCSD does not require private school teachers providing services to meet the specifications under the No Child Left Behind Act for highly qualified.

The DoSE monitors the amount of Part B funds utilized for salaries or contracted service delivery purposes by specific individual and job assignment. The DoSE assigns OCSD staff to provide services in Private Schools only to the extent determined by Service Plans developed by the ARC.

If, after consultation with the Superintendent, the DoSE determines that Part B funds will be used to contract with Private School personnel to provide services under a Service Plan, the contract includes the specification that the services are provided outside his/her regular hours of duty at the Private School, and under the supervision and control of OCSD. The DoSE ensures the provision of the supervision and evaluation of the services delivered.

Property, Equipment and Supplies

The LEA shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities. An LEA may place equipment and supplies in a private school for the period of time needed to provide the services.

707 KAR 1:370 Section 9 (4)
34 CFR 300.144 (a-b)

The DoSE keeps an inventory of any property, equipment and supply items purchased through the use of Part B funds that are utilized to provide benefit to private school children with a disability through Service Plans. The inventory includes items utilized for the purposes of Child Find (evaluation tests/kits, equipment such as audiometers, etc.), and service delivery (language programs, reading kits, picture cards, etc.).

The LEA shall ensure that the equipment, and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

707 KAR 1:370 Section 9 (5)
34 CFR 300.144 (c)

The LEA shall remove equipment and supplies from the private school if the equipment and supplies are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies.

707 KAR 1:370 Section 9 (6)
34 CFR 300.144 (d)

When the assigned location of the equipment or supplies is at a private school, the DoSE ensures that the item(s) are secure, not permanently installed, and available for use with children with disabilities only by OCSD assigned or

contracted staff. The items are removed from the private school location by OCSD staff when no longer needed for Part B purposes (Child Find activities or service delivery as specified by a Service Plan). Federal funds are not used for repair, remodeling, or construction at a private school site. The DoSE instructs OCSD staff to report any suspected unauthorized use of the items. The DoSE may remove the items from the private school site.

PARENTAL PLACEMENT OF A CHILD WHO PREVIOUSLY RECEIVED SPECIAL EDUCATION AND RELATED SERVICES

If a parent of a child with a disability, who previously received special education and related services under the authority of the LEA, enrolls the child in a private school without the consent of or referral by the LEA, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the LEA did not offer FAPE to the child in a timely manner and the private placement is appropriate. This may be awarded even if the parents did not receive consent from the LEA for the private placement and the LEA did not make a referral to the private school. A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to a LEA.

707 KAR 1:370 Section 1 (2)
34 CFR 300.148 (c)

The cost of the financial reimbursement described in 707 KAR 1:370 Section 1 (2) may be reduced or denied if:

- (a) at the most recent ARC meeting prior to the removal by the parents of their child with a disability to the private school, the parents did not inform the LEA that they were rejecting the proposed LEA placement, including stating their concerns and their intent to enroll the child in a private school at public expense;
- (b) the parents did not give written notice to the LEA of the information described in (a) above at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child;
- (c) prior to the parent's removal of the child, the LEA informed the parents 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
- (d) there is a judicial finding that the actions taken by the parents were unreasonable.

707 KAR 1:370 Section 1 (3)
34 CFR 300.148 (d)

The cost of financial reimbursement shall not be reduced or denied for the failure to provide the notice in 707 KAR 1:370 Section 1 (3) if:

- (a) the parent is illiterate;
- (b) compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
- (c) the school prevented the parent from providing the notice; or
- (d) the parent had not received notice from the LEA of his obligation to provide this notice.

707 KAR 1:370 Section 1 (4)
34 CFR 300.148 (e)

OCSD includes notice of the above responsibilities to the parent in the written Notice of Parental Procedural Safeguards (parent rights) document provided according to procedures for **PROCEDURAL SAFEGUARDS**.