

IDEA—Reauthorized Statute

**CHILDREN ENROLLED BY THEIR PARENTS
IN PRIVATE SCHOOLS**

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements.¹ This document addresses only the changes to the provisions of IDEA regarding children with disabilities enrolled by their parents in private schools that took effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Defines the manner in which services are provided to children enrolled in private schools.

To the extent consistent with the number and location of children with disabilities in the state who are enrolled by their parents in private elementary schools and secondary schools *in the school district served by a local education agency (LEA)*, provision is made for the participation of those children in the program assisted or carried out under the requirements of Part B by providing for such children special education and related services in accordance with Section 612(a)(10) unless the secretary has arranged for services to those children under Section 612(f). [612(a)(10)(A)(i)]

2. State and local funds must supplement and not supplant proportionate amount.

State and local funds may supplement and in no case shall supplant the proportionate amount of federal funds required to be expended under Section 612(a)(10)(A). [612(a)(10)(A)(i)(IV)]

3. Requires maintenance of records on number of children evaluated and number found eligible as part of child find.

Each LEA shall maintain in its records and provide to the SEA the number of children evaluated under Section 612(a)(10)(A), the number of children determined to be children with disabilities, and the number of children served under Section 612(a)(10)(A). [612(a)(10)(A)(i)(V)]

¹ Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: www.ed.gov/about/offices/list/osers/index.html.

4. Adds requirements for the provision of services to this population.

The provision of services pursuant to Section 612(a)(10) shall be provided by employees of a public agency; or through contract by the public agency with an individual, association, agency, organization, or other entity. [612(a)(10)(A)(vi)]

5. Adds requirements for control of funds and property.

The control of funds used to provide special education and related services under Section 612(a)(10), and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in IDEA, and a public agency shall administer the funds and the property. [612(a)(10)(A)(vii)]

Child Find:

6. Requires child find in private schools.

In calculating the proportionate amount of federal funds, the LEA, after timely and meaningful consultation with representatives of private schools as described in Section 612(a)(10)(A)(iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the LEA. [612(a)(10)(A)(i)(II)]

7. Equitable participation.

The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children. [612(a)(10)(A)(ii)(II)]

8. Activities.

In carrying out Section 612(a)(10)(A)(ii) [child find requirements], the LEA, or where applicable, the state education agency (SEA), shall undertake activities similar to those activities undertaken for the agency's public school children. [612(a)(10)(A)(ii)(III)]

9. Cost.

The cost of carrying out Section 612(a)(10)(A)(ii) [child find requirements], including individual evaluations, may not be considered in determining whether an LEA has met its obligations under Section 612(a)(10)(A)(i). [612(a)(10)(A)(ii)(IV)]

10. Completion period.

Such child find process shall be completed in a time period comparable to that for other students attending public schools in the LEA. [612(a)(10)(A)(ii)(V)]

Consultation:

11. Adds additional consultation requirements.

To ensure timely and meaningful consultation, an LEA, or where appropriate, an SEA, shall 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, including regarding:

- The child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- The determination of the proportionate amount of federal funds available to serve parentally placed private school children with the disabilities under Section 612(a)(10), including the determination of how the amount was calculated;
- The consultation process among the LEA, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- 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 types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
- 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 shall 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.

[612(a)(10)(A)(iii)]

12. Requires written affirmation.

When timely and meaningful consultation as required by Section 612(a)(10)(A)(iii) has occurred, the LEA shall 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 shall forward the documentation of the consultation process to the SEA.

[612(a)(10)(A)(iv)]

13. Provides a right to complain to the SEA and appeal to the secretary.

A private school official shall have 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. [612(a)(10)(A)(v)(I)]

If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with Section 612(a)(10)(A)(iii) by the LEA to the SEA, and the LEA shall forward the appropriate documentation to the SEA. If the private school official is dissatisfied with the decision of the SEA, such official may submit a complaint to the secretary by providing the basis of the noncompliance with Section 612(a)(10)(A)(iii) by the LEA to the secretary, and the SEA shall forward the appropriate documentation to the secretary. [612(a)(10)(A)(v)(II)]