



**Council for
Exceptional
Children**

**Council for Exceptional Children's
Initial Summary of Selected Provisions from
Part B Proposed Regulations for the
Individuals With Disabilities Education Act**

**Private Schools III: Children With
Disabilities Enrolled By their Parents
In Private Schools When FAPE
Is At Issue**

July 27, 2005

Children in Private Schools: Children with Disabilities Enrolled by their Parents in Private Schools when FAPE is at Issue

Note: Bold text in left column indicates language not specifically included in IDEA 2004

NPRM Language	Current Regulation	Comments
<p>Sec. 300.148 Placement of children by parents if FAPE is at issue.</p> <p>(a) General. This part does not require an LEA 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 that child in the population whose needs are addressed consistent with Sec. 300.131 through 300.144.</p>	<p>300.403 Placement of children by parents if FAPE is at issue.</p> <p>(a) General. This part does not require an LEA 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 shall include that child in the population whose needs are addressed consistent with §§300.450-300.462.</p>	
	<p>(b) Disagreements about 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 of §§300.500-300.517.</p>	<p>OSERS discussion of proposed regulatory changes: “Proposed Sec. 300.148 would remove, as unnecessary, language currently in Sec. 300.403(b), which provides that disagreements regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to due process procedures. Disputes about these matters would be subject to the due process procedures even without this provision, because the central issue in such disputes is whether the public agency has made FAPE available to the child.”</p>
<p>(b) 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 a public agency, enroll the child in a private preschool, elementary</p>	<p>(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 a public agency, enroll the child in a private preschool, elementary, or</p>	

NPRM Language	Current Regulation	Comments
<p>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 SEA and LEAs.</p>	<p>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 SEA and LEAs.</p>	
<p>(c) Limitation on reimbursement. The cost of reimbursement described in paragraph (b) of this section may be reduced or denied-- (1) If-- (i) At the most recent IEP 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 (ii) At least ten (10) 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 public agency of the information described in paragraph (c)(1)(i) of this section; (2) If, prior to the parents' removal of the child from the public school, the public agency</p>	<p>(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied - (1) If - (i) At the most recent IEP 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 (ii) At least ten (10) 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 public agency of the information described in paragraph (d)(1)(i) of this section; (2) If, prior to the parents' removal of the child from the public school, the public</p>	<p>In general, statutory language was incorporated into regulations</p>

NPRM Language	Current Regulation	Comments
<p>informed the parents, through the notice requirements described in Sec. 300.503(a)(1), 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</p> <p>(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.</p>	<p>agency informed the parents, through the notice requirements described in §300.503(a)(1), 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</p> <p>(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.</p>	
<p>(d) Exception. Notwithstanding the notice requirement in paragraph (c)(1) of this section, the cost of reimbursement--</p> <p>(1) Must not be reduced or denied for failure to provide the notice if--</p> <p>(i) The school prevented the parent from providing the notice;</p> <p>(ii) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (c)(1) of this section; or</p> <p>(iii) Compliance with paragraph (c)(1) of this section would likely result in physical harm to the child; and</p> <p>(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--</p> <p>(i) The parent is not literate or cannot write in English; or</p> <p>(ii) Compliance with paragraph (c)(1) of this section would likely result in serious emotional harm to the child.</p>	<p>(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if -</p> <p>(1) The parent is illiterate and cannot write in English;</p> <p>(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;</p> <p>(3) The school prevented the parent from providing the notice; or</p> <p>(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.</p>	<p>In general, statutory language was incorporated into regulations</p>