



**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 II: Children with  
Disabilities in Private Schools Placed  
or Referred by Public Agencies**

**July 27, 2005**

## Children in Private Schools: Children with Disabilities in Private Schools Placed or Referred by Public Agencies

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

NPRM Language	Current Regulation	Comments
<p>Sec. 300.145 Applicability of Sec. 300.145 through 300.147. Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.</p>	<p>300.400 Applicability of Sec. 300.400-300.402. Sections 300.401-300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.</p>	<p>In general, statutory language was incorporated into regulations.</p>
<p>Sec. 300.146 Responsibility of State educational agency. Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency-- (a) Is provided special education and related services-- (1) In conformance with an IEP that meets the requirements of Sec.300.320 through 300.325; and (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, <b>except for Sec. 300.18 and Sec. 300.156(c)</b>; and (c) Has all of the rights of a child with a disability who is served by a public agency.</p>	<p>300.401 Responsibility of State educational agency. Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency— (a) Is provided special education and related services— (1) In conformance with an IEP that meets the requirements of §§300.340-300.350; and  (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of this part); and  (c) Has all of the rights of a child with a disability who is served by a public agency.</p>	<p><b>OSERS discussion of proposed regulatory changes:</b> “However, because of statutory language in the ESEA that the requirements regarding highly qualified teachers apply only to public school teachers, as well as related language in section 602(10) of the Act and proposed Sec. 300.18, we do not read proposed Sec. 300.146(b) as requiring teachers of children with disabilities who are placed in or referred to private schools by a public agency to meet either the "highly qualified teacher" standard in the ESEA or the "highly qualified special education teacher" standard in the Act.”</p>

NPRM Language	Current Regulation	Comments
<p><b>Sec. 300.147 Implementation by State educational agency.</b>  <b>In implementing Sec. 300.146, the SEA must-</b>  <b>(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;</b>  <b>(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and</b>  <b>(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.</b></p>	<p>300.402 Implementation by State educational agency  In implementing §300.401, the SEA shall—  (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;   (b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and  (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations</p>
<p><b>Sec. 300.325 Private school placements by public agencies.</b>  <b>(a) Developing IEPs.</b>  <b>(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with Sec. 300.320 and 300.324.</b>  <b>(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.</b>  <b>(b) Reviewing and revising IEPs.</b>  <b>(1) After a child with a disability enters a</b></p>	<p>300.349 Private school placements by public agencies  (a) Developing IEPs.  (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.346 and 300.347.  (2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.   (b) Reviewing and revising IEPs.  (1) After a child with a disability enters a</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>

NPRM Language	Current Regulation	Comments
<p>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.</p> <p><b>(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative--</b></p> <p><b>(i) Are involved in any decision about the child's IEP; and</b></p> <p><b>(ii) Agree to any proposed changes in the IEP before those changes are implemented.</b></p> <p><b>(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.</b></p>	<p>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.</p> <p>(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative—</p> <p>(i) Are involved in any decision about the child's IEP; and (ii) Agree to any proposed changes in the IEP before those changes are implemented.</p> <p>(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.</p>	