



**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 I: Children with
Disabilities Enrolled by their Parents
in Private Schools**

July 27, 2005

Children in Private Schools: Children with Disabilities Enrolled by their Parents in Private Schools

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

NPRM Language	Current Regulation	Comments
<p>Sec. 300.36 Services plan. Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with Sec. 300.132, and is developed and implemented in accordance with Sec. 300.137 through 300.139.</p>		
<p>Sec. 300.129 State responsibility regarding children in private schools. The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in Sec. 300.130 through 300.148.</p>	<p>300.133 Children in Private Schools The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§300.400-300.403 and §§300.450-300.462 are met.</p>	
<p>Sec. 300.130 Definition of parentally-placed private school children with disabilities. Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under Sec. 300.145 through 300.147.</p>	<p>300.450 Definition of “private school children with disabilities.” As used in this part, private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§300.400-300.402.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>
<p>Sec. 300.131 Child find for parentally-placed private school children with disabilities. (a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and</p>	<p>300.451 Child find for private school children with disabilities. (a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the</p>	<p>OSERS discussion of proposed regulatory changes: “The new statutory requirements in section 612(a)(10)(A)(ii) of the Act should ensure that parentally-placed private school children will not be denied the opportunity to receive services that would otherwise be</p>

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<p>secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and Sec. 300.111 and 300.201.</p> <p>(b) Child find design. The child find process must be designed to ensure--</p> <p>(1) The equitable participation of parentally-placed private school children; and</p> <p>(2) An accurate count of those children.</p> <p>(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.</p> <p>(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under Sec. 300.133.</p> <p>(e) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the LEA consistent with Sec. 300.301.</p>	<p>LEA, in accordance with §§300.125 and 300.220.</p> <p>The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.</p> <p>300.453(c) Expenditures for child find may not be considered. Expenditures for child find activities described in §300.451 may not be considered in determining whether the LEA has met the requirements of paragraph (a) of this section.</p>	<p>available to them because of practical obstacles posed when they attend a private school located outside their district of residence.”</p>
<p>Sec. 300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.</p> <p>(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part</p>	<p>300.452 Provision of services – basic requirement</p> <p>(a) General. To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with §§300.453-300.462.</p>	

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B of the Act by providing them with special education and related services, including direct services determined in accordance with Sec. 300.137 , unless the Secretary has arranged for services to those children under the by-pass provisions in Sec. 300.190 through 300.198.		
(b) SEA responsibility--services plan. In accordance with paragraph (a) of this section and Sec. 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.	(b) SEA Responsibility—services plan. Each SEA shall ensure that, in accordance with paragraph (a) of this section and §§300.454-300.456, a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part.	
(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under Sec. 300.130 through 300.144: (1) The number of children evaluated; (2) The number of children determined to be children with disabilities; and (3) The number of children served.		In general, statutory language was incorporated into regulations.
Sec. 300.133 Expenditures. (a) Formula. To meet the requirement of Sec. 300.132(a), each LEA shall spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities: (1) For children aged 3 through 21, an amount that is the same proportion of the	300.453 Expenditures (a) Formula. To meet the requirement of §300.452(a), each LEA must spend on providing special education and related services to private school children with disabilities— (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total	

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<p>LEA's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.</p> <p>(2) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.</p>	<p>subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and</p> <p>(2) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.</p>	
<p>(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under Sec. 300.134, must 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.</p>	<p>300.451(b) Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in paragraph (a) of this section.</p>	
<p>(c) Child count. (1) Each LEA must-- (i) Consult with representatives of</p>	<p>300.453(b) Child count. (1) Each LEA shall— (i) Consult with representatives of private</p>	

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<p>parentally-placed private school children with disabilities (consistent with Sec. 300.134) in deciding how to conduct the annual count of the number of parentally-placed private school children with disabilities; and</p> <p>(ii) Ensure that the count is conducted on any date between October 1 and December 1 of each year.</p> <p>(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.</p>	<p>school children in deciding how to conduct the annual count of the number of private school children with disabilities; and</p> <p>(ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year.</p> <p>(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.</p>	
<p>(d) Supplement, not supplant. 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 under this part.</p>		
	<p>300.453(d) Additional services permissible. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.</p>	<p>OSERS discussion of proposed regulatory changes: “The proposed regulation would remove current Sec. 300.453(d), regarding the permissibility of additional services, as it merely provides clarification for which a regulation is not necessary. Nothing in the Act prohibits SEAs and LEAs from providing other services to parentally-placed private school children with disabilities in addition to the services that are required under Part B of the Act.”</p>
<p>Sec. 300.134 Consultation. To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must</p>	<p>300.454(b) Consultation with representatives of private school children with disabilities.</p> <p>(1) General. Each LEA shall consult, in a</p>	<p>In general, statutory language was incorporated into regulations.</p>

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<p>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:</p> <p>(a) Child find. The child find process, including--</p> <p>(1) How parentally-placed private school children suspected of having a disability can participate equitably; and</p> <p>(2) How parents, teachers, and private school officials will be informed of the process.</p> <p>(b) Proportionate share of funds.</p> <p>The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under Sec. 300.133(b), including the determination of how the proportionate share of those funds was calculated.</p> <p>(c) Consultation process.</p> <p>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 children with disabilities identified through the child find process can meaningfully participate in special education and related services.</p> <p>(d) Provision of 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--</p>	<p>timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under §300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide—</p> <p>(i) Which children will receive services under §300.452;</p> <p>(ii) What services will be provided;</p> <p>(iii) How and where the services will be provided; and</p> <p>(iv) How the services provided will be evaluated.</p> <p>(2) Genuine opportunity. Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.</p> <p>(3) Timing. The consultation required by paragraph (b)(1) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under §§300.452-300.462.</p>	

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<p>(1) The types of services, including direct services and alternate service delivery mechanisms; and</p> <p>(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and</p> <p>(3) How and when those decisions will be made;</p>		
<p>(e) Written explanation by LEA regarding services. 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 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.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>Sec. 300.135 Written affirmation.</p> <p>(a) When timely and meaningful consultation, as required by Sec. 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.</p> <p>(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>Sec. 300.136 Compliance.</p> <p>(a) General. A private school official has the right to submit a complaint to the SEA under Sec. 300.151 through 300.153 that the LEA--</p> <p>(1) Did not engage in consultation that was meaningful and timely;</p>		<p>In general, statutory language was incorporated into regulations.</p>

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<p>or (2) Did not give due consideration to the views of the private school official. (b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and (2) The LEA must forward the appropriate documentation to the SEA. (3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and (ii) The SEA must forward the appropriate documentation to the Secretary.</p>		
<p>Sec. 300.137 Equitable services determined. (a) No individual right to special education and related services. No 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.</p>	<p>300.454 Services determined. (a) No individual right to special education and related services. (1) No 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. 300.455(a)(3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>
<p>(b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under Sec. 300.130 through</p>	<p>(2) Decisions about the services that will be provided to private school children with disabilities under §§300.452-300.462, must be made in accordance with paragraphs (b),</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>

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<p>300.144 must be made in accordance with paragraph (c) of this section and Sec. 300.134(c).</p> <p>(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.</p>	<p>and (c) of this section.</p> <p>300.454(b)(4) Decisions. The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.</p>	
<p>(c) Services plan for each child served under Sec. 300.130 through 300.144. 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--</p> <p>(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with Sec. 300.138(b); and</p> <p>(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.</p>	<p>300.454(c) Services plan for each child served under §§300.450-300.462. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall—</p> <p>(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.455(b); and</p> <p>(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 private school, including individual or conference telephone calls.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>
<p>Sec. 300.138 Equitable services provided.</p> <p>(a) General.</p> <p>(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.</p> <p>(2) Parentally-placed private school children with disabilities may receive a different</p>	<p>300.455 Services provided</p> <p>(a) General.</p> <p>(1) The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.</p> <p>(2) Private school children with disabilities may receive a different amount of services</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>

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<p>amount of services than children with disabilities in public schools.</p>	<p>than children with disabilities in public schools.</p>	
<p>(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under Sec. 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in Sec. 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities. (2) The services plan must, to the extent appropriate-- (i) Meet the requirements of Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided; and (ii) Be developed, reviewed, and revised consistent with Sec. 300.321 through 300.324.</p>	<p>300.455(b) Services provided in accordance with a services plan. (1) Each private school child with a disability who has been designated to receive services under §300.452 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.453-300.454, it will make available to private school children with disabilities. (2) The services plan must, to the extent appropriate— (i) Meet the requirements of §300.347, with respect to the services provided; and (ii) Be developed, reviewed, and revised consistent with §§300.342-300.346.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>
<p>(c) Provision of equitable services. (1) The provision of services pursuant to this section and Sec. 300.139 through 300.143 must be provided: (i) By employees of a public agency; or (ii) Through contract by the public agency with an individual, association, agency, organization, or other entity. (2) Special education and related services provided to parentally-placed private school</p>		<p>In general, statutory language was incorporated into regulations.</p>

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children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.		
<p>Sec. 300.139 Location of services and transportation.</p> <p>(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.</p> <p>(b) Transportation. (1) General.</p> <p>(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--</p> <p>(A) From the child's school or the child's home to a site other than the private school; and</p> <p>(B) From the service site to the private school, or to the child's home, depending on the timing of the services.</p> <p>(ii) LEAs are not required to provide transportation from the child's home to the private school.</p> <p>(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of Sec. 300.133.</p>	<p>300.456 Location of services; transportation</p> <p>(a) On-site. Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.</p> <p>(b) Transportation. (1) General.</p> <p>(i) If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation—</p> <p>(A) From the child's school or the child's home to a site other than the private school; and</p> <p>(B) From the service site to the private school, or to the child's home, depending on the timing of the services.</p> <p>(ii) LEAs are not required to provide transportation from the child's home to the private school.</p> <p>(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.453.</p>	<p>OSERS discussion of proposed regulatory changes: “Proposed Sec. 300.139, regarding the location of services and transportation, generally would retain the current provisions in Sec. 300.456 that clarify that LEAs may provide special education and related services funded under Part B of the Act on site at the private, including religious, schools to the extent consistent with law. It should be noted that LEAs should provide such services for parentally-placed private school children with disabilities on site at their school, unless there is a compelling rationale for these services to be provided off site.”</p>
<p>Sec. 300.140 Due process complaints and State complaints.</p> <p>(a) Due process not applicable, except for child find. (1) Except as provided in paragraph (a)(2) of this section, the</p>	<p>300.457 Complaints</p> <p>(a) Due process inapplicable. The procedures in §§300.504-300.515 do not apply to complaints that an LEA has failed to meet the</p>	<p>OSERS discussion of proposed regulatory changes: “Proposed Sec. 300.140, regarding the unavailability of due process complaints, except for child find and the availability of State complaints, would retain the current</p>

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<p>procedures in Sec. 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of Sec. 300.132 through 300.139, including the provision of services indicated on the child's services plan.</p> <p>(2) The procedures in Sec. 300.504 through 300.519 do apply to complaints that an LEA has failed to meet the requirements of Sec. 300.131, including the requirements of Sec. 300.300 through 300.311.</p> <p>(b) State complaints. Complaints that an SEA or LEA has failed to meet the requirements of Sec. 300.132 through 300.144 must be filed under the procedures in Sec. 300.151 through 300.153.</p>	<p>requirements of §§300.452-300.462, including the provision of services indicated on the child's services plan.</p> <p>(b) Due process applicable. The procedures in §§300.504-300.515 do apply to complaints that an LEA has failed to meet the requirements of §300.451, including the requirements of §§300.530-300.543.</p> <p>(c) State complaints. Complaints that an SEA or LEA has failed to meet the requirements of §§300.451-300.462 may be filed under the procedures in §§300.660-300.662.</p>	<p>provisions in Sec. 300.457.</p> <p>“Proposed Sec. 300.140(b) would clarify that the State complaint procedures would be used to address complaints about the implementation of the consultation process in proposed Sec. 300.134.”</p>
<p>Sec. 300.141 Requirement that funds not benefit a private school.</p> <p>(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.</p> <p>(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for--</p> <p>(1) The needs of a private school; or</p> <p>(2) The general needs of the students enrolled in the private school.</p>	<p>300.459 Requirement that funds not benefit a private school</p> <p>(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.</p> <p>(b) The LEA shall use funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for—</p> <p>(1) The needs of a private school; or</p> <p>(2) The general needs of the students enrolled in the private school.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>
<p>Sec. 300.142 Use of personnel.</p> <p>(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school</p>	<p>300.460 Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>

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<p>personnel available in other than public facilities--</p> <p>(1) To the extent necessary to provide services under Sec. 300.130 through 300.144 for parentally-placed private school children with disabilities; and</p> <p>(2) If those services are not normally provided by the private school.</p> <p>(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under Sec. 300.130 through 300.144 if--</p> <p>(1) The employee performs the services outside of his or her regular hours of duty; and</p> <p>(2) The employee performs the services under public supervision and control.</p>	<p>than public facilities—</p> <p>(a) To the extent necessary to provide services under §§300.450-300.462 for private school children with disabilities; and</p> <p>(b) If those services are not normally provided by the private school.</p> <p>300.461 use of private school personnel An LEA may use funds available under sections 611 or 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.450-300.462 if—</p> <p>(a) The employee performs the services outside of his or her regular hours of duty; and</p> <p>(b) The employee performs the services under public supervision and control.</p>	
<p>Sec. 300.143 Separate classes prohibited. An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if--</p> <p>(a) The classes are at the same site; and</p> <p>(b) The classes include students enrolled in public schools and students enrolled in private schools.</p>	<p>300.458 Separate classes prohibited An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if—</p> <p>(a) The classes are at the same site; and</p> <p>(b) The classes include students enrolled in public schools and students enrolled in private schools.</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>
<p>Sec. 300.144 Property, equipment, and supplies.</p> <p>(a) A public agency must control and administer the funds used to provide special education and related services under Sec. 300.137 through 300.139, and hold title to and</p>	<p>300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.</p> <p>(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the</p>	

NPRM Language	Current Regulation	Comments
<p>administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.</p> <p>(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.</p> <p>(c) The public agency must ensure that the equipment and supplies placed in a private school--</p> <p>(1) Are used only for Part B purposes; and</p> <p>(2) Can be removed from the private school without remodeling the private school facility.</p> <p>(d) The public agency must remove equipment and supplies from a private school if--</p> <p>(1) The equipment and supplies are no longer needed for Part B purposes; or</p> <p>(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.</p> <p>(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.</p>	<p>public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.</p> <p>(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.</p> <p>(c) The public agency shall ensure that the equipment and supplies placed in a private school—</p> <p>(1) Are used only for Part B purposes; and</p> <p>(2) Can be removed from the private school without remodeling the private school facility.</p> <p>(d) The public agency shall remove equipment and supplies from a private school if—</p> <p>(1) The equipment and supplies are no longer needed for Part B purposes; or</p> <p>(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.</p> <p>(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.</p>	
<p>By-Pass for Children in Private Schools Sec. 300.190 By-pass--general.</p> <p>(a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by section 612(a)(10)(A) of the Act,</p>	<p>300.480 By-Pass – general</p> <p>(a) The Secretary implements a by-pass if an SEA is, and was on December 2, 1983, prohibited by law from providing for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act, as required by section 612(a)(10)(A) of the Act and by §§300.452-300.462.</p>	<p>OSERS discussion of proposed regulatory changes: “The proposed regulations regarding by-pass for children in private schools would incorporate changes in section 612(f) of the Act and would represent the first amendments to these regulations since they were adopted in 1984. Because the statutory changes related to the participation of parentally-placed private school children with disabilities should make it more likely that these procedures will be</p>

NPRM Language	Current Regulation	Comments
<p>or if the Secretary determines that an SEA, LEA, or other public agency has substantially failed or is unwilling to provide for such equitable participation then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to these children through arrangements which shall be subject to the requirements of section 612(a)(10)(A) of the Act.</p> <p>(b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of Sec. 300.131 through 300.144 if the Secretary implements a by-pass.</p>	<p>(b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of §§300.452-300.462 if the Secretary implements a by-pass.</p>	<p>implemented, these proposed revisions would align the by-pass provisions from Part B of the Act with the general by-pass procedures in the Department's general administrative regulations in 34 CFR 76.670 through 76.677 that apply to other Department programs, including programs under titles I and IX of the ESEA. This alignment should help to ensure consistent implementation of the by-pass provisions throughout the Department.</p> <p>“Proposed Sec. 300.190, regarding the general by-pass provision, would revise the current requirements in Sec. 300.480. Consistent with changes in section 612(f)(1) of the Act, the proposed regulation would retain the current authority for a by-pass and would add additional authority in cases where the Secretary determines that an SEA, LEA, or other entity has substantially failed or is unwilling to provide for equitable participation.”</p>
<p>Sec. 300.191 Provisions for services under a by-pass.</p> <p>(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State, and as appropriate, LEA or other public agency officials to consider matters such as--</p> <p>(1) Any prohibition imposed by State law that results in the need for a by-pass; and</p> <p>(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass.</p>	<p>300.481 Provisions for services under a by-pass</p> <p>(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State to consider matters such as—</p> <p>(1) The prohibition imposed by State law that results in the need for a by-pass;</p> <p>(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass; and</p>	<p>OSERS discussion of proposed regulatory changes: “These changes are necessary to ensure effective implementation of the by-pass provision within an affected State because, in general, a by-pass would be implemented only in a specific LEA or other public agency within the State and not statewide. Thus, the change in proposed Sec. 300.191(a) would ensure that the Secretary also consults with appropriate agency officials in any affected LEA or public agency within the State.”</p>

NPRM Language	Current Regulation	Comments
	(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 612(a)(10)(A) of the Act and §§300.452-300.462.	
(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State, LEA or other public agency in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and Sec. 300.131 through 300.144 by providing services through one or more agreements with appropriate parties.	(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§300.452-300.462 by providing services through one or more agreements with appropriate parties.	Note: NPRM language is not in the statute although it is generally included in current regulations.
(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying-- (1) A per child amount determined by dividing the total amount received by the State under Part B of the Act for the fiscal year by the number of children with disabilities served in the prior year as reported to the Secretary under section 618 of the Act; by (2) The number of private school children with disabilities (as defined in Sec. 300.8(a) and 300.130) in the State, LEA or other public agency, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.	(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying— (1) A per child amount that may not exceed the amount per child provided by the Secretary under Part B of the Act for all children with disabilities in the State for the preceding fiscal year; by (2) The number of private school children with disabilities (as defined by §§300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.	In general, statutory language was incorporated into regulations.
(d) The Secretary deducts from the State's	(d) The Secretary deducts from the State's	In general, statutory language was incorporated

NPRM Language	Current Regulation	Comments
allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.	allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.	into regulations.
<p>Sec. 300.192 Notice of intent to implement a by-pass.</p> <p>(a) Before taking any final action to implement a by-pass, the Secretary provides the SEA and, as appropriate, LEA or other public agency with written notice.</p> <p>(b) In the written notice, the Secretary--</p> <p>(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and, as appropriate, LEA or other public agency to respond; and</p> <p>(2) Advises the SEA and, as appropriate, LEA or other public agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.</p> <p>(c) The Secretary sends the notice to the SEA and, as appropriate, LEA or other public agency by certified mail with return receipt requested.</p>	<p>300.482 Notice of intent to implement a by-pass</p> <p>(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.</p> <p>(b) In the written notice, the Secretary—</p> <p>(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and</p> <p>(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.</p> <p>(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.</p>	
<p>Sec. 300.193 Request to show cause. An SEA, LEA or other public agency in receipt of a notice under Sec. 300.192 that</p>	<p>300.483 Request to show cause. An SEA seeking an opportunity to show cause why a by-pass should not be</p>	

NPRM Language	Current Regulation	Comments
<p>seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time period in the written notice in Sec. 300.192(b)(2).</p>	<p>implemented shall submit a written request for a show cause hearing to the Secretary.</p>	
<p>Sec. 300.194 Show cause hearing. (a) If a show cause hearing is requested, the Secretary-- (1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing; (2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing; and (3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the hearing. (b) At the show cause hearing, the designee considers matters such as-- (1) The necessity for implementing a by-pass; (2) Possible factual errors in the written notice of intent to implement a by-pass; and (3) The objections raised by public and private school representatives. (c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid</p>	<p>300.484 Show cause hearing. (a) If a show cause hearing is requested, the Secretary— (1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and (2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing. (b) At the show cause hearing, the designee considers matters such as— (1) The necessity for implementing a by-pass; (2) Possible factual errors in the written notice of intent to implement a by-pass; and (3) The objections raised by public and private school representatives. (c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid</p>	

NPRM Language	Current Regulation	Comments
<p>delay, and to maintain order. (d) The designee has no authority to require or conduct discovery. (e) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity. (f) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing. (g) Within 10 days after the hearing, the designee-- (1) Indicates that a decision will be issued on the basis of the existing record; or (2) Requests further information from the SEA, LEA, other public agency, representatives of private schools or Department officials.</p>	<p>delay, and to maintain order. (d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity. (e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.</p>	

NPRM Language	Current Regulation	Comments
<p>Sec. 300.195 Decision. (a) The designee who conducts the show cause hearing-- (1) Within 120 days after the record of a show cause hearing is closed, issues a written decision that includes a statement of findings; and (2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested. (b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 30 days of the date the party receives the designee's decision. (c) The Secretary adopts, reverses, or modifies the designee's decision and notifies all parties to the show cause hearing of the Secretary's final action. That notice is sent by certified mail with return receipt requested.</p>	<p>300.485 Decision. (a) The designee who conducts the show cause hearing - (1) Issues a written decision that includes a statement of findings; and (2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested. (b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision. (c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the SEA of the Secretary's final action. That notice is sent by certified mail with return receipt requested.</p>	
<p>Sec. 300.196 Filing requirements. (a) Any written submission under Sec. 300.194 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. (b) The filing date under paragraph (a) of this section is the date the document is-- (1) Hand-delivered; (2) Mailed; or (3) Sent by facsimile transmission. (c) A party filing by facsimile transmission is responsible for confirming that a</p>	<p>300.486 Filing requirements (a) Any written submission under §§300.482-300.485 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. (b) The filing date under paragraph (a) of this section is the date the document is— (1) Hand-delivered; (2) Mailed; or (3) Sent by facsimile transmission. (c) A party filing by facsimile transmission is responsible for confirming that a complete</p>	

NPRM Language	Current Regulation	Comments
<p>complete and legible copy of the document was received by the Department.</p> <p>(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.</p> <p>(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.</p> <p>(f) A party must show a proof of mailing to establish the filing date under paragraph (b)(2) of this section as provided in 34 CFR 75.102(d).</p>	<p>and legible copy of the document was received by the Department.</p> <p>(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.</p> <p>(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.</p>	
<p>Sec. 300.197 Judicial review.</p> <p>If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3)(B) through (D) of the Act.</p>	<p>300.487 Judicial review.</p> <p>If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3)(B)-(D) of the Act.</p>	<p>In general, statutory language was incorporated into regulations.</p>
<p>Sec. 300.198 Continuation of a by-pass.</p> <p>The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>Sec. 300.706 Allocation for State in which by-pass is implemented for parentally-placed private school children with disabilities.</p> <p>In determining the allocation under Sec. 300.700 through 300.703 for a State,</p>	<p>300.710 Allocation for State in which by-pass is implemented for private school children with disabilities.</p> <p>In determining the allocation under §§300.700-300.709 of a State in which the</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>outlying area, or freely associated State in which the Secretary will implement a by-pass for parentally-placed private school children with disabilities under Sec. 300.190 through 300.198, the Secretary includes in the State's child count--</p> <p>(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in Sec. 300.8(a) and 300.130) in the State, as of the preceding December 1; and</p> <p>(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.</p>	<p>Secretary will implement a by-pass for private school children with disabilities under §§300.451-300.487, the Secretary includes in the State's child count—</p> <p>(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§300.7(a) and 300.450) in the State, as of the preceding December 1; and</p> <p>(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.</p>	
<p>Sec. 300.811 Allocation for State in which by-pass is implemented for parentally-placed private school children with disabilities. In determining the allocation under Sec. 300.808 through 300.810 for a State in which the Secretary will implement a by-pass for parentally-placed private school children with disabilities under Sec. 300.190 through 300.198, the Secretary includes in the State's child count--</p> <p>(a) For the first year of a by-pass, the actual or estimated number of private school children aged three through five years, with disabilities (as defined in Sec. 300.8(a) and 300.130) in the State, as of the preceding December 1; and</p> <p>(b) For succeeding years of a by-pass, the number of private school children with disabilities aged three through five years,</p>		

NPRM Language	Current Regulation	Comments
who received special education and related services under the by-pass in the preceding year.		