

§ 300.455

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.

(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.

(4) *Decisions.* The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

(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—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.455(b); 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 private school, including individual or conference telephone calls.

(Authority: 1412(a)(10)(A))

§ 300.455 Services provided.

(a) *General.* (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.

(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(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.

(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 serv-

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ices 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.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.456 Location of services; transportation.

(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.

(b) *Transportation.* (1) *General.* (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—

(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.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(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.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.457 Complaints.

(a) *Due process inapplicable.* The procedures in §§ 300.504–300.515 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.452–300.462, including the provision of services indicated on the child's services plan.

(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.

(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.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 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—

- (a) The classes are at the same site; and
- (b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.459 Requirement that funds not benefit a private school.

(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.

(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—

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

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 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 than public facilities—

- (a) To the extent necessary to provide services under §§ 300.450–300.462 for private school children with disabilities; and
- (b) If those services are not normally provided by the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.461 Use of private school personnel.

An LEA may use funds available under section 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—

- (a) The employee performs the services outside of his or her regular hours of duty; and
- (b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.

(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

- (1) Are used only for Part B purposes; and
- (2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment and supplies from a private school if—

- (1) The equipment and supplies are no longer needed for Part B purposes; or
- (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 1412(a)(10)(A))

PROCEDURES FOR BY-PASS

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if an SEA is, and was on December