

**Summary of Proposed IDEA Regulations
Relating to Private School Children With Disabilities**

Children in Private Schools

Proposed §300.129, concerning State responsibilities regarding children in private schools, would revise the current requirements in §300.133, by removing the requirement that a State must have on file with the Secretary policies and procedures that ensure that the requirements of current §§300.400 through 300.403 and current §§300.460 through 300.462 are met. Proposed § 300.129 would make clear that the State must have in effect policies and procedures that ensure that LEAs and, if appropriate, the SEA, meet the private school requirements in proposed §§300.130 through 300.148.

Children with Disabilities Enrolled by Their Parents in Private Schools

Proposed §300.130, regarding the definition of parentally-placed private school children with disabilities, would incorporate the current provisions in §300.450.

Proposed §300.131, regarding child find for parentally placed private school children with disabilities, generally would retain the current requirements in §300.451, but would clarify, consistent with the changes in proposed §§300.132 and 300.133, that the provisions governing parentally-placed private school children with disabilities apply to children who are enrolled in private schools located in the school district served by the LEA. 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 available to them because of practical obstacles posed when they attend a private school located outside their district of residence.

Proposed regulations in §300.131(b) through (e) also would include new provisions that incorporate the new requirements in section 612(a)(10)(A)(ii) of the Act, designed to ensure that child find for parentally-placed private school children suspected of having disabilities is comparable to child find for public school children suspected of having disabilities. Proposed §300.131 would require that the participation in child find for parentally placed private school children with disabilities be equitable, the counts be accurate, the activities undertaken be similar to child find activities for public school children with disabilities, and the period for completion of the child find process be comparable to the period for

completion for public school children with disabilities when a parent consents to the evaluation. Similar to the current provision in §300.453(c), and consistent with section 612(a)(10)(A)(ii)(IV) of the Act, proposed §300.131(d) would provide that the costs of carrying out the child find requirements for parentally-placed private school children with disabilities, including individual evaluations, may not be considered in determining whether an LEA has met its obligations under proposed §300.133.

The proposed regulation would remove current §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.

Proposed §300.132(a), regarding the provision of services for parentally-placed private school children with disabilities, would revise current §300.452(a) in light of changes in section 612(a)(10)(A) of the Act, which refers to children "enrolled in private elementary schools and secondary schools in the school district served by a local educational agency." Therefore, proposed §300.132(a) would clarify that the provision of services under the proposed regulations refers only to children with disabilities enrolled by their parents in private schools located in the school district served by the LEA. The proposed regulation also would add a reference to the by-pass provisions in proposed §§300.190 through 300.198. Proposed §300.132(b) generally would retain current §300.452(b), regarding a services plan for each private school child with a disability designated to receive special education and related services under Part B. Proposed §300.132(c) would require each LEA to maintain and provide to the SEA records on the number of private school children with disabilities evaluated, the number determined to be children with disabilities, and the number of private school children with disabilities served, consistent with section 612(a)(10)(A)(i)(V) of the Act.

Proposed §300.133, regarding expenditures for providing special education and related services to parentally-placed private school children with disabilities, would revise current §300.453(a), regarding the formula used in determining the proportionate amount of expenditures, in light of changes in section 612(a)(10)(A)(i)(II) of the Act.

Proposed §300.133(a) would provide that the calculation of the proportionate amount of funds allocated for services for parentally-placed private school children be based on the count of parentally-placed private school children attending

private schools located in the LEA. The proposed regulation would establish the formula as the number of children with disabilities, ages 3 through 21, who are enrolled by their parents in private schools located in the school district served by the LEA, divided by the total number of children with disabilities, ages 3 through 21, in the LEA's jurisdiction.

Proposed §300.133(b) would incorporate the provision in section 612(a)(10)(A)(i)(II) of the Act regarding a thorough and complete child find process.

Proposed §300.133(c), regarding child count, generally would retain the current provision in §300.453(b), but for clarity, would use the term parentally-placed private school children with disabilities. The existing provision in § 300.453(c) would be removed, as similar content would be more fully addressed in proposed §300.131(d). Proposed § 300.133(d) would incorporate the statutory provision regarding supplementing not supplanting in section 612(a)(10)(A)(i)(IV) of the Act.

Proposed §§300.134 and 300.135 would incorporate new provisions in section 612(a)(10)(A)(iii) and (iv) of the Act, regarding timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities, including a discussion of: how parentally placed children identified through the child find process can meaningfully participate; how, where, and by whom special education and related services will be provided; and how, if the LEA disagrees with the views of the private school officials and the services to be provided, the LEA will provide a written explanation of why the LEA chose not to provide services directly or through a contract.

Proposed §300.135 would require, in accordance with section 612(a)(10)(A)(iv) of the Act, a written affirmation signed by the representatives of the participating private schools that timely and meaningful consultation has occurred. The current provisions in §300.454(b)(1) through (3), regarding the consultation process, would be removed because they were superceded by new statutory requirements related to consultation in section 612(a)(10)(A)(v) of the Act.

Proposed §300.136, regarding the right of a private school official to submit to the SEA a complaint related to the LEA's compliance with the timely and meaningful consultation requirements, would incorporate the new provisions in section 612(a)(10)(A)(v) of the Act.

Proposed §300.137(b) and (c), regarding determination of services to parentally-placed private school children with disabilities, generally would retain the current

provisions in §300.454(a), (b)(4), and (c).

Proposed § 300.137(a) also would include language from current §300.455(a)(3), providing that a parentally-placed private school child with a disability has no individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school. This is an important clarification of the different responsibilities that public schools have for providing special education and related services to parentally-placed private school children with disabilities. Under the Act, LEAs have an obligation to provide the group of parentally-placed private school children with disabilities with equitable participation in the services funded with Federal IDEA funds. Because Federal funding constitutes only a portion of the excess costs of providing special education and related services to a child with disabilities, LEAs, in consultation with representatives of the private schools, will have to make decisions about how best to use the available Federal funds to address the needs of the parentally-placed private school children with disabilities as a group. In some LEAs, geography, school location, and the needs of the parentally-placed private school children with disabilities may make it possible for most, or even all of those children to receive some services under section 612(a)(10)(A) of the Act. In other cases, the Federal funds available may not be sufficient to provide all of these children with special education and related services. Decisions about how best to use the available Federal funds to ensure equitable participation of the group of parentally-placed private school children with disabilities are left to LEA personnel, in consultation with the private school representatives, who understand what is feasible and appropriate in particular situations.

Proposed §300.138, regarding equitable services provided to parentally-placed private school children with disabilities, would retain the current provisions in § 300.455(a)(1) and (2), and (b), regarding standards for personnel who provide services to parentally-placed private school children, different amounts of services that may be provided to parentally-placed private school children as compared with those provided to children in public schools, and the provision of services for each parentally-placed private school child who has been designated to receive services in accordance with a services plan. The proposed regulation also would include language from section 612(a)(10)(A)(vi) of the Act, which provides that the special education and related services be provided directly by employees of the public agency or through contract and that special education and related services, including materials and equipment, be secular, neutral and nonideological.

Proposed §300.139, regarding the location of services and transportation, generally would retain the current provisions in §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.

Proposed §300.140, regarding the unavailability of due process complaints, except for child find and the availability of State complaints, would retain the current provisions in §300.457. Proposed §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 §300.134.

Proposed §300.141, regarding the requirement that funds not benefit a private school, would retain the current provisions in §300.459.

Proposed §300.142 would combine the requirements of current §§300.460 and 300.461 regarding the use of public school personnel and private school personnel.

Proposed §300.143, regarding the prohibition of separate classes, would retain the requirements in current §300.458.

Proposed §300.144 would incorporate provisions in section 612(a)(10)(A)(vii) of the Act regarding property, equipment, and supplies for the benefit of private school children with disabilities and would replace the current provisions in §300.462(a). The proposed regulation would retain the current provisions in §300.462(b) through (e).

Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue

Proposed §300.148, relating to placement of children with disabilities in private schools when the provision of FAPE is at issue, generally would retain the current provisions in §300.403(a), (c), and (d). Proposed §300.148 would remove, as unnecessary, language currently in §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. Consistent with statutory language, proposed § 300.148(b) would include the term "school" after "elementary." Proposed §300.148(d) would modify current § 300.403(e), based on the specific provisions in section 612 (a)(10)(C)(IV) of the Act.

The current provision on documentation of SEA responsibility for general supervision in §300.141(a) and (b) would be removed consistent with statutory changes regarding documentation. Proposed §300.149, regarding SEA responsibility for general supervision, would replace current §300.600(a) and incorporate language in section 612 (a)(11) of the Act to include a new provision referencing the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431. We also are adding a phrase to §300.149(a)(2) to clarify that the SEA is not responsible for exercising general supervision for education programs for children with disabilities in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. Current §300.600(b) also would be removed as a result of statutory changes regarding submission of State information. New language referencing the State monitoring and enforcement responsibilities in proposed §§300.602 and 300.606 through 300.608 would be added in §300.149(b) because State monitoring and enforcement are central to the SEA's exercise of general supervision.

Proposed §300.149(c) and (d) respectively, would incorporate current §300.600(c), clarifying that Part B does not limit the responsibility of agencies other than educational agencies to provide or pay for some or all of the cost of FAPE and §300.600(d), regarding the ability of a Governor or other individual to assign to a public agency, other than the SEA, responsibility for ensuring that the requirements of Part B are met for students with disabilities convicted as adults and incarcerated in adult prisons. As a general matter, for educational purposes, students who had been enrolled in a BIA funded school and are subsequently convicted as an adult and incarcerated in an adult prison are the responsibility of the State where the adult prison is located. The Secretary is seeking comment on whether further clarification on this issue is warranted.

Proposed §300.150 would incorporate language from current §300.143 regarding SEA implementation of procedural safeguards, with a revision. Consistent with other changes to remove State documentation requirements, proposed § 300.150 would require States to have policies in effect, rather than on file with the Department. The crossreference also would be updated. Current §300.145, regarding recovery of funds for misclassified children, would be removed. Under section 611 of the Act, funds are

no longer distributed based on a count of the children with disabilities served in a given fiscal year.