

# The Individuals with Disabilities Education Act (IDEA)

## (Destiny Leadership Academy)

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children, supports early intervention services for infants and toddlers and their families, and awards competitive discretionary grants.

### IDEA and Private School

The Department of Education provides resources to assist parents in understanding the equitable services provisions for private school students under the IDEA. On the website for the United States Department of Education, Office of Special Education and Rehabilitative Services (Office of Special Education Programs), a document is provided for further and greater understanding of IDEA: “Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools.” OEP QA 22—01

Parents are encouraged to reference the entire article. We have provided the main thrust of the concept in this space (the February 2022 Revision).

**Part B** of the Individuals with Disabilities Education Act (IDEA Part B) at Section 612(a)(10)(A) and its implementing regulations at 34 C.F.R. §§ 300.130 through 300.144 contain specific requirements regarding State and local responsibilities for equitable services for parentally-placed private school children with disabilities.<sup>1</sup> The U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services (OSERS) issues this Questions and Answers (Q&A) document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, private school officials, advocacy organizations, and other interested parties with information regarding these requirements.<sup>2</sup>

Children with disabilities attending private schools will generally fall into one of three categories: (1) those placed by their parents, who are not enrolled in the LEA, and for whom the provision of a free appropriate public education (FAPE) is not at issue; (2) those placed by their parents and who are, or previously were, enrolled in the LEA and the provision of FAPE is at issue; and (3) those placed by the LEA as the means of ensuring that FAPE is made available. As used in this document, the phrase “FAPE is not at issue” means there is no disagreement between the parent and LEA about the availability of a program to provide FAPE

to the child, and the parent has placed the child in a private school and is not seeking financial reimbursement for the private school placement.

This Q&A document is intended to provide guidance regarding the IDEA requirements applicable to the first category of students—children with disabilities placed by their parents in private schools, who are not enrolled in the LEA, and for whom the provision of FAPE is not at issue.

As explained in this Q&A document, children with disabilities placed in private schools by their parents where FAPE is not at issue do not have an individual entitlement to the special education and related services they would receive if they were enrolled in a public school or placed in a private school by the LEA as a means of ensuring FAPE is made available.<sup>3</sup> Depending on State law, private schools may not be required to meet State personnel or curriculum standards.<sup>4</sup> Further, children with disabilities placed by their parents in private schools do not have the right to all of the protections under IDEA. For example, IDEA's due process procedures do not apply to issues regarding the provision of services to any particular parentally-placed private school child with a disability. Parents of such children may only use IDEA's due process procedures to resolve matters concerning an LEA's obligation to meet the child find requirements.

While IDEA provides no individual entitlement to children with disabilities whose parents have placed them in a private school when FAPE is not at issue, the law does require that an LEA spend a proportionate amount of its IDEA Part B funds to provide equitable services to this group of children, which could include direct and/or indirect services. In making these decisions, IDEA requires that the LEA engage in timely and meaningful consultation to determine which children with disabilities from this group will be designated to receive special education and related services. Therefore, it is possible that some of these parentally-placed private school children with disabilities will not receive any special education and related services. This Q&A document updates and supersedes the Department's guidance, titled Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools issued in April 2011 and includes additional questions and answers that address topics that have arisen as the field continues to implement the applicable provisions of IDEA and its implementing regulations. Some of the new questions reflect recent policy letters, while others address common questions that OSERS has received from stakeholders.

This Q&A document only addresses requirements under the IDEA related to equitable services for parentally-placed private school children with disabilities, including home-schooled children with disabilities as determined by State law. Children with disabilities also have rights under two civil rights laws that prohibit discrimination on the basis of disability—Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (Title II). Section 504 prohibits disability discrimination by recipients of Federal financial assistance, such as SEAs and LEAs. Title II prohibits discrimination by public entities, including SEAs and LEAs, regardless of receipt of Federal financial assistance. The Office for Civil Rights (OCR) in the U.S. Department of Education enforces Section 504 in public elementary and secondary schools. Also, in this context, OCR shares in the enforcement of Title II with the U.S. Department of Justice (DOJ). DOJ also provides technical assistance on the requirements of Title II. More information about these laws is available at: [www.ed.gov/ocr](http://www.ed.gov/ocr) and [www.ada.gov](http://www.ada.gov).

2 This Q&A document does not address requirements under the IDEA related 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 under 34 C.F.R. §§ 300.145 through 300.147. Further, this Q&A document does not address placement of children by their parents in private schools when there is a disagreement between the parents and a public agency about provision of a free appropriate public education (FAPE) to the child and the parent is seeking financial reimbursement for private school placement under 34 C.F.R. § 300.148