

Rule 6A-6.030281 is substantially rewritten to read (see Florida Administrative Code for current text).

6A-6.030281 Provision of Equitable Services to Parentally-Placed Private School Students with Disabilities Development of Services Plans for Students with Disabilities Enrolled in Private School by their Parents and Provided with Specially Designed Instruction and Related Services by the Local School Board. School districts must maintain policies and procedures in accordance with this rule to ensure the provision of equitable services to students with disabilities who have been placed in private schools by their parents where the provision of free appropriate public education (FAPE) is not at issue.

(1) Definition of parentally-placed private school students with disabilities. For purposes of this rule, parentally-placed private school students with disabilities means students with disabilities enrolled by their parents in private, including religious, non-profit schools or facilities that meet the definition of elementary school or secondary school under Rules 6A-6.03011 through 6A-6.0361, FAC., and does not include students with disabilities who have been placed in private schools by their parents when FAPE is at issue.

(2) Child find for parentally-placed private school students with disabilities. Each school district must locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, in accordance with this rule and the child find provisions of these rules. The child find process must be designed to ensure the equitable participation of parentally-placed private school students and an accurate count of those students.

(a) Activities. In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(b) Cost. The cost of carrying out the child find requirements in this rule, including individual evaluations, may not be considered in determining if a school district has met its obligation under subsection (4) of this rule.

(c) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the school district.

(d) Out-of-State students. Each school district in which private, including religious, elementary and secondary schools are located must, in carrying out the child find requirements in this rule, include parentally-placed private school students who reside in a State other than Florida.

(3) Confidentiality of personally identifiable information. If a student is enrolled, or is going to enroll in a private school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district of the parent's residence.

(4) Provision of services for parentally-placed private school students with disabilities - basic requirement. To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, provision is made for the participation of those students in the program assisted or carried out under Part B of the Individuals with Disabilities Education Act (IDEA) by providing them with special education and related

services, including direct services determined in accordance with subsections (12) and (13) of this rule, unless the U.S. Secretary of Education has arranged for services to those students under the by-pass provisions in 34 C.F.R. §§300.190 through 300.198.

(a) Services plan for parentally-placed private school students with disabilities. In accordance with subsections (12) and (13) of this rule, a services plan must be developed and implemented for each private school student with a disability who has been designated by the school district in which the private school is located to receive special education and related services under this rule.

(b) Record keeping. Each school district must maintain in its records, and provide to the Department of Education, the following information related to parentally-placed private school students covered under this rule:

1. The number of students evaluated;
2. The number of students determined to be students with disabilities; and
3. The number of students served.

(5) Expenditures. To meet the requirements of this rule, each school district must spend the following on providing special education and related services (including direct services) to parentally-placed private school students with disabilities:

(a) For children and students aged three (3) through twenty-one (21), an amount that is the same proportion of the school district's total subgrant under Section 611(f) of the IDEA as the number of private school students with disabilities aged three (3) through twenty-one (21) who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, is to the total number of students with disabilities in its jurisdiction aged three (3) through twenty-one (21).

(b) For children aged three (3) through five (5), an amount that is the same proportion of the school district's total subgrant under Section 619(g) of the IDEA as the number of parentally-placed private school students with disabilities aged three (3) through five (5) who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, is to the total number of students with disabilities in its jurisdiction aged three (3) through five (5).

(c) Children aged three (3) through five (5) are considered to be parentally-placed private school students with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school under Florida law.

(d) If a school district has not expended for equitable services all of the funds described in paragraphs (5)(a) and (b) above by the end of the fiscal year for which Congress appropriated the funds, the school district must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students with disabilities during a carry-over period of one additional year.

(6) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school students with disabilities, the school district, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete child find process to determine the number of parentally-placed students with disabilities attending private schools located in the school district. (See Appendix B to the IDEA regulations for an example of how proportionate share is calculated).

(7) Annual count of the number of parentally-placed private school students with disabilities. Each school district must, after timely and meaningful consultation with representatives of

parentally-placed private school students with disabilities (consistent with this rule), determine the number of parentally-placed private school students with disabilities attending private schools located in the school district and ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year. The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally-placed private school students with disabilities in the next fiscal year.

(8) 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 students with disabilities under this rule.

(9) Consultation with private school representatives. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and related services for the students regarding the following:

(a) The child find process, including how parentally-placed private school students suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;

(b) The determination of the proportionate share of Federal funds available to serve parentally-placed private school students with disabilities, including the determination of how the proportionate share of those funds was calculated;

(c) The consultation process among the school district, private school officials, and representatives of parents of parentally-placed private school students with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed students

with disabilities identified through the child find process can meaningfully participate in special education and related services;

(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 students with disabilities, including a discussion of:

1. The types of services, including direct services and alternate service delivery mechanisms; and

2. How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school students; and

3. How and when those decisions will be made.

(e) How, if the school district disagrees with the views of private school officials on the provision of services or the types of services (whether provided directly or through a contract) the school district will provide to such private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

(10) Written affirmation. When timely and meaningful consultation, as required by subsection (9) of this rule has occurred, the school district must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the Department of Education.

(11) Compliance. A private school official has the right to submit a complaint to the Department of Education that the school district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. If the private school official wishes to submit a complaint, the official must provide to

the Department of Education the basis of the noncompliance by the school district with the applicable private school provisions in this rule and the school district must forward the appropriate documentation to the Department of Education. If the private school official is dissatisfied with the decision of the Department of Education, the official may submit a complaint to the U.S. Secretary of Education by providing the information on noncompliance, and the Department of Education must forward the appropriate documentation to the U.S. Secretary of Education.

(12) Equitable services determined. No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Decisions about the services that will be provided to parentally-placed private school students with disabilities under this rule must be made in accordance with this rule. The school district will make the final decisions with respect to the services to be provided to eligible parentally-placed private school students with disabilities.

(13) Services plan for each student served. If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must initiate and conduct meetings to develop, review, and revise a services plan for the student and ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. Each parentally-placed private school student with a disability who has been designated by the school district to receive services must have a services plan that describes the specific direct special education services that the school

district will provide to the student in light of the services that the school district has determined it will make available to parentally-placed private school students with disabilities. The services plan must be developed, reviewed, and revised consistent with the requirements for IEP development, review and revision.

(14) Equitable services provided. The provision of equitable services must be by employees of the school district or through contract by the school district with an individual, association, agency, organization, or other entity. The services provided to parentally-placed private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary and secondary school teachers who are providing equitable services to parentally-placed private school students with disabilities do not have to meet the highly qualified special education teacher requirements under Florida law. Parentally-placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools. Special education and related services provided to parentally-placed private school students with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(15) Location of services and transportation. Equitable services to parentally-placed private school students with disabilities may be, but are not required to be, provided on the premises of private, including religious, schools. If necessary for the student to benefit from or participate in the services provided under this rule, a parentally-placed private school student with a disability must be provided transportation from the student's school or the student's home to a site other than the private school and from the service site to the private school, or to the student's home, depending on the timing of the services. School districts are not required to provide transportation from the student's home to the private school. The cost of any transportation

provided under this section may be included in calculating whether the school district has expended its proportionate share.

(16) Due process hearings and procedural safeguards. Except as provided herein, the procedures related to procedural safeguards, mediation and due process hearings do not apply to complaints that a school district has failed to meet the requirements of this rule, including the provision of services indicated on the student's services plan. However, such procedures do apply to complaints that a school district has failed to meet the requirements of this rule related to child find, including the requirements related to conducting appropriate evaluations of students with disabilities. Any request for due process hearing regarding the child find requirements must be filed with the school district in which the private school is located and a copy must be forwarded to the Department of Education.

(17) State complaints. Any complaint that a school district has failed to meet the requirements of this rule related to the provision of equitable services, services plans, expenditures, consultation with private school representatives, personnel, or equipment and supplies must be filed in accordance with the State Complaint procedures described in Rules 6A-6.03011 through 6A-6.0361, FAC. A complaint filed by a private school official under this section must be filed with the Department of Education in accordance with its State Complaint procedures as prescribed in Rule 6A-6.03311(5), FAC.

(18) Requirement that funds not benefit a private school. A school district may not use funds provided under the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The school district must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private

school students with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school.

(19) Use of personnel. A school district may use funds available under the IDEA to make public school personnel available in other than public facilities to the extent necessary to provide equitable services under this rule for parentally-placed private school students with disabilities if those services are not normally provided by the private school. A school district may use funds available under the IDEA to pay for the services of an employee of a private school to provide equitable services under this rule if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control.

(20) Separate classes prohibited. A school district may not use funds available under the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in private schools.

(21) Property, equipment, and supplies. A school district must control and administer the funds used to provide special education and related services under this rule and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in this rule. The school district may place equipment and supplies in a private school for the period of time needed for the provision of equitable services. The school district must ensure that the equipment and supplies placed in a private school are used only for IDEA purposes and can be removed from the private school without remodeling the private school facility. The school district must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for IDEA purposes or removal is necessary to

avoid unauthorized use of the equipment and supplies for other than IDEA purposes. No funds under IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a)(b), 1003.57, F.S. Law Implemented

1001.42(4)(l), 1003.01(3)(a)(b), 1003.57, 1011.62(1)(c)(e), 1001.03(8) F.S. History - New 9-20-04, Amended