

Off. of Spec. Educ. and Rehab. Services, Education

§ 300.147

classes that are organized separately on the basis of school enrollment or religion of the children if—

(a) The classes are at the same site; and

(b) The classes include children enrolled in public schools and children enrolled in private schools.

(Approved by the Office of Management and Budget under control number 1820-0030)

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

§ 300.144 Property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under §§ 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

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

(c) The public agency must 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 must 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.

(Approved by the Office of Management and Budget under control number 1820-0030)

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

CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

§ 300.145 Applicability of §§ 300.146 through 300.147.

Sections 300.146 through 300.147 apply only 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.

(Approved by the Office of Management and Budget under control number 1820-0030)

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

§ 300.146 Responsibility of SEA.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for § 300.18 and § 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

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

§ 300.147 Implementation by SEA.

In implementing § 300.146, the SEA must—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

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(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

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

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

§ 300.148 Placement of children by parents when FAPE is at issue.

(a) *General.* This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) *Disagreements about FAPE.* Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.

(c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) *Limitation on reimbursement.* The cost of reimbursement described in

paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) *Exception.* Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—

(1) Must not be reduced or denied for failure to provide the notice if—

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—

(i) The parents are not literate or cannot write in English; or