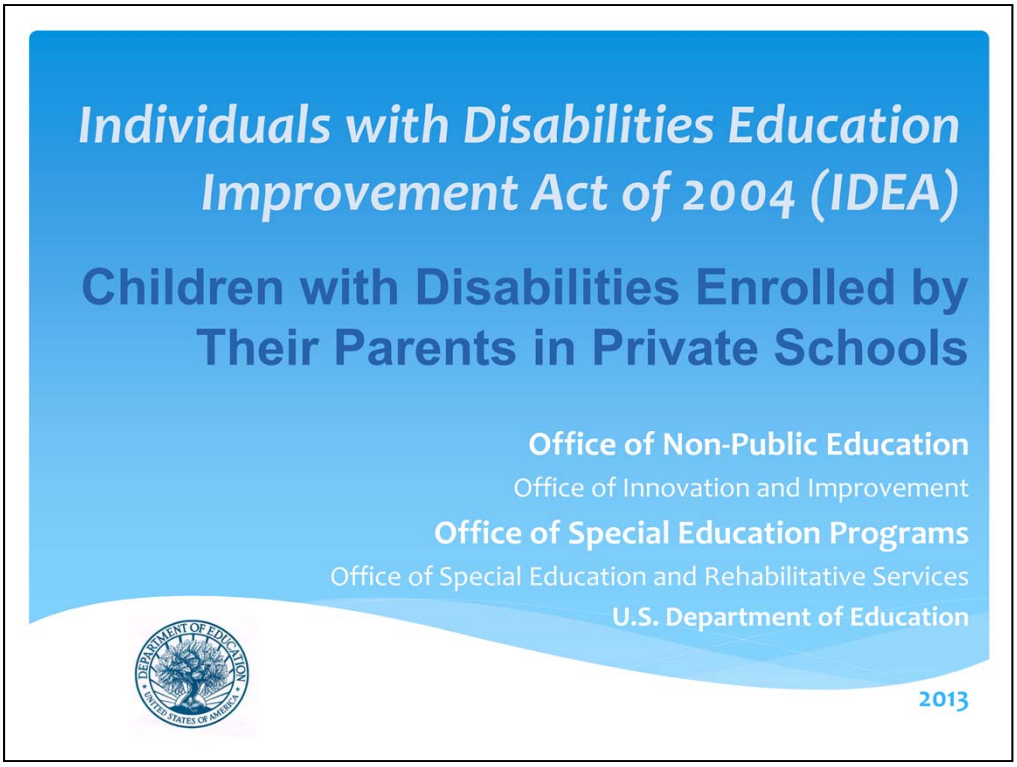
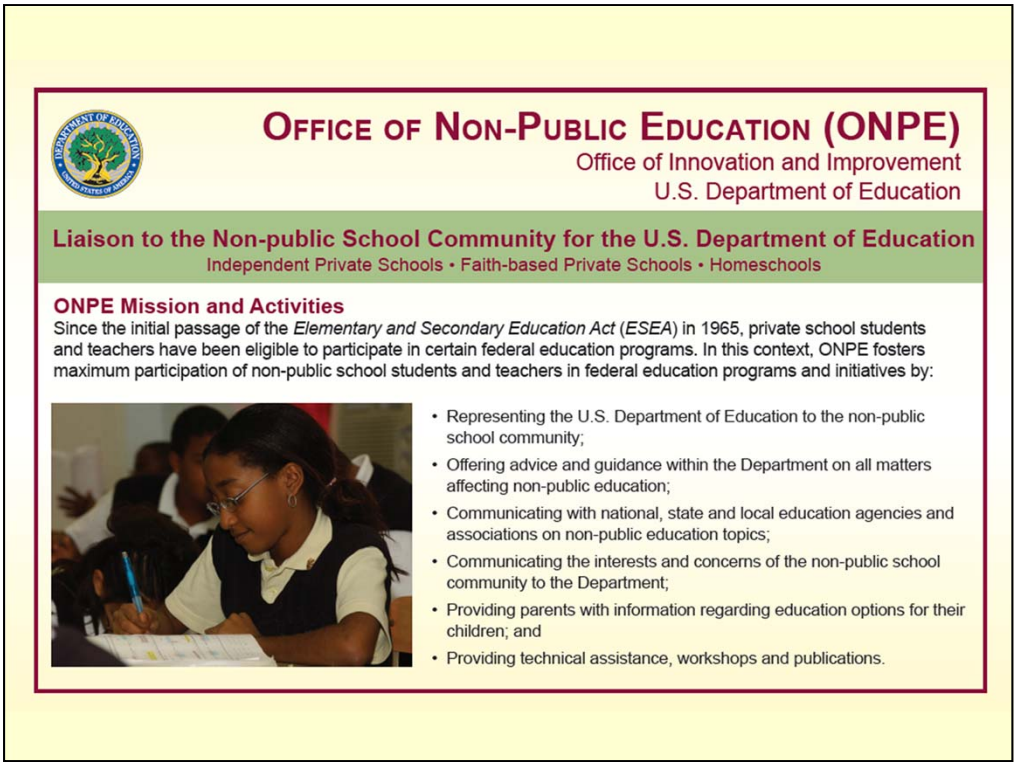
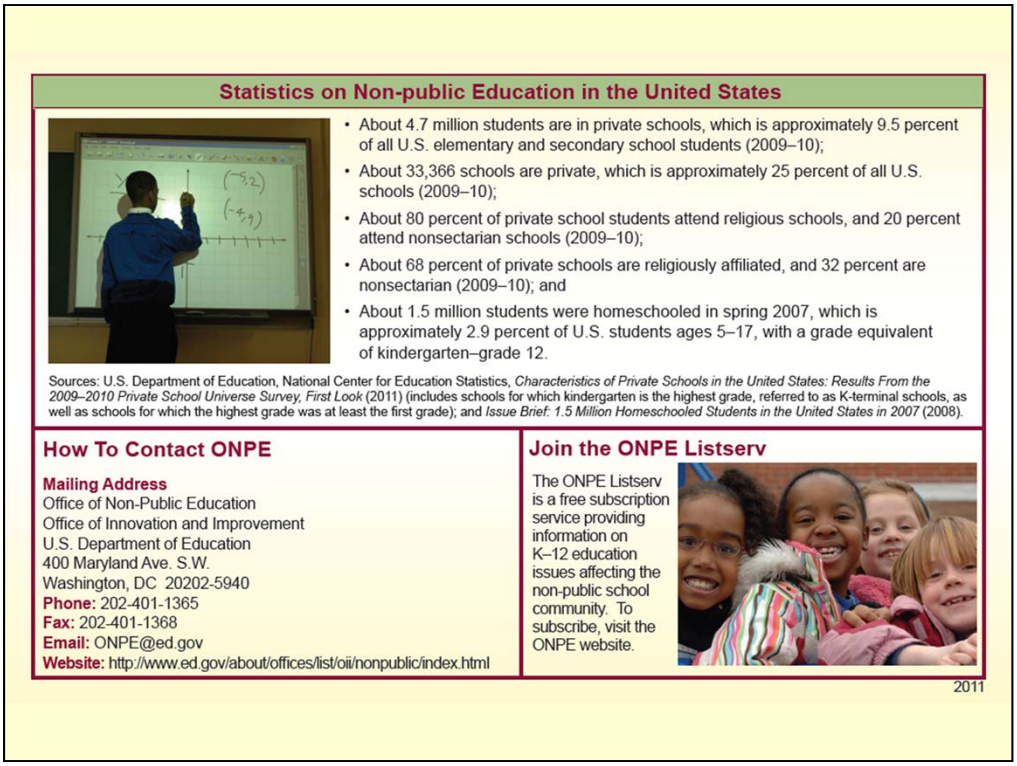


Welcome to the U. S. Department of Education's IDEA presentation focusing on children with disabilities enrolled by their parents in private schools. Today's presentation is part of a larger initiative related to Department's Equitable Services Implementation Plan (ESIP) which the Department released on March 14, 2013 to the Council of Chief State School Officers, State and local educational agencies, and the nonpublic school community.
Just as the Department is committed to advancing needed education reforms to improve educational outcomes for students in public schools, we are also committed to supporting the effective implementation of the equitable services requirements for private school students under IDEA. We also promote SEA and LEA accountability for the provision of those requirements for eligible private school students. Based on feedback from stakeholders, we believe there is an opportunity to improve the implementation of the IDEA equitable services requirements by SEAs and LEAs. In this regard, we developed the ESIP, which focuses on four major activities: Outreach, Promoting and Encouraging Promising Practices, Technical Assistance, and Monitoring. Within each focus area, the Department has identified key action items that we will execute over the coming months and beyond. This webinar is one of the Outreach and Technical Assistance activities that demonstrates our commitment to working with all stakeholders to enhance their knowledge of the IDEA provisions and to support and assist SEAs and LEAs in this effort. Note that this plan does not place any new requirements on SEAs and LEAs. Rather, it calls on them to meet their statutory obligations under current law to ensure the provision of IDEA equitable services for eligible private school students.



The Office of Non-Public Education's (ONPE) mission is to foster maximum participation of nonpublic school students and teachers in Federal education programs and initiatives. We do this by:

- Serving as the Department's liaison to the nonpublic school community;
- Providing advice and guidance on all matters affecting nonpublic education and the participation of private school students and teachers in Federal education programs and initiatives;
- Communicating with and provides technical assistance to nonpublic school officials, parents, and representatives of State and local educational agencies (SEAs/LEAs) regarding equitable participation in Department programs and initiatives;
- Providing a vehicle for the nonpublic school community to communicate its interests, activities, needs, and requests to the Department;
- Convening meetings and conference calls with the nonpublic school community and ED leadership to address education topics of interest and concern;
- Providing experience and expertise on choice and State regulation of private schools;
- Collaborating with OCO/TAF office to review and evaluate Teaching Ambassador Fellowship (TAF) applications and advise on private school applicants; and
- Collaborating with other Department offices to facilitate technical assistance, webinars, presentations, guidance, and the resolution of problems at the State and local levels regarding the implementation of equitable services.



Private School Statistics

About 4.7 million students are in private schools, approximately 9.5 percent of all elementary and secondary school students in the United States (2009–10);

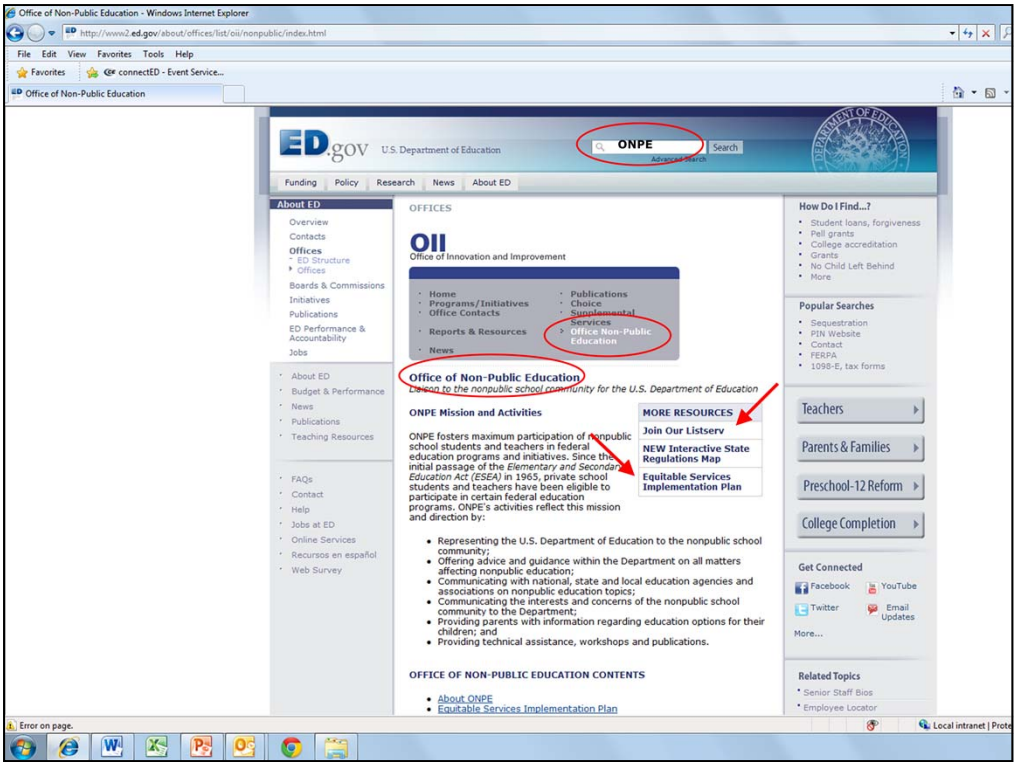
About 33,366 schools are private, approximately 25 percent of all U. S. schools (2009–10);

About 80 percent of private school students attend religious schools, and 20 percent attend nonsectarian schools (2009–10); and

About 68 percent of private schools are religiously affiliated, and 32 percent are nonsectarian (2009–10).

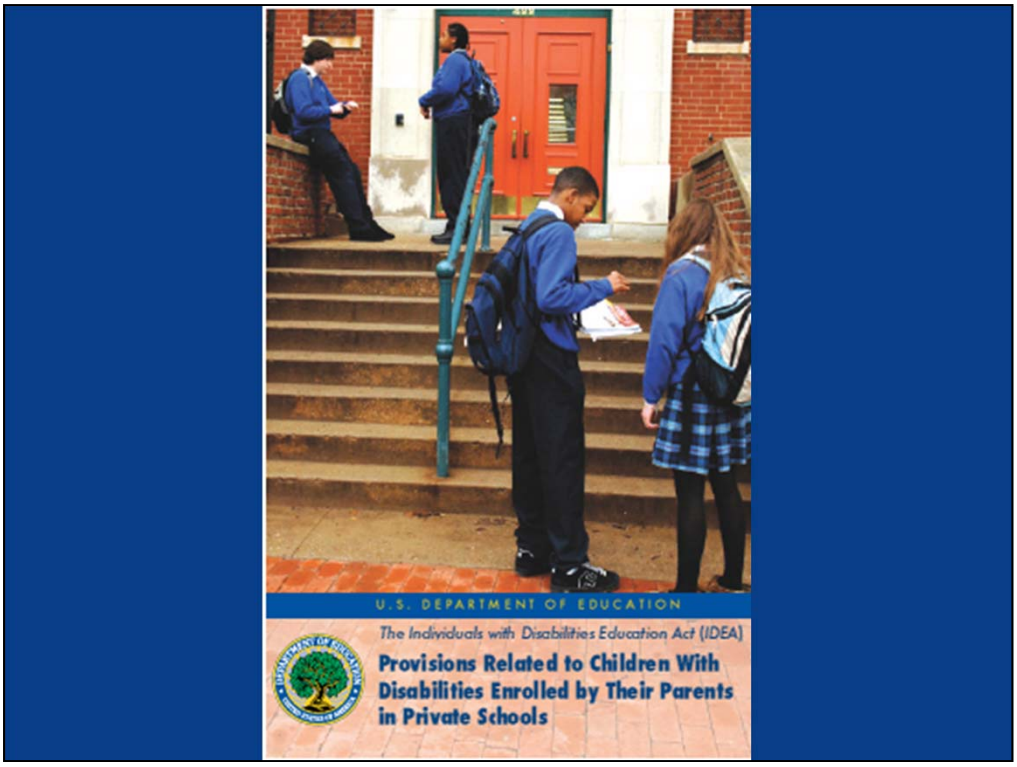
Join the ONPE Listserv

The ONPE listserv is a free service provided by ED that contains timely and important information on matters of interest related to the nonpublic school community. Subscribe on ONPE's home page. Be sure to check your inbox immediately after you subscribe as you will receive a confirmation email asking you to confirm your subscription. (Check your spam folder if the email doesn't arrive in a timely manner.)



ONPE's homepage can often be hard to find as the web address is quite long. One way to find the page is to write "ONPE" in the search bar at the top of the page. One of the first links to populate in the list should lead you to our homepage.

Notice the "More Resources" box. This section contains quick links to subscribe to the ONPE listserv as well as the Equitable Services Implementation Plan.



Today we'll be focusing on the Individual's With Disabilities Education Act (IDEA) as it related to children with disabilities enrolled by their parents in private schools. These students are often referred to as parentally-placed children with disabilities. Our discussion today will concentrate on this narrowly defined population of students.

IDEA is the federal law that ensures that all children with disabilities receive a free appropriate public education (FAPE). IDEA provides benefits and services to children with disabilities in public schools as well as in nonpublic schools (private, including those in religious schools). However, when parents choose to enroll their child with a disability in a private school, when the question of providing FAPE is not at issue, the public school district's responsibility will differ from its responsibility to serve public school students.

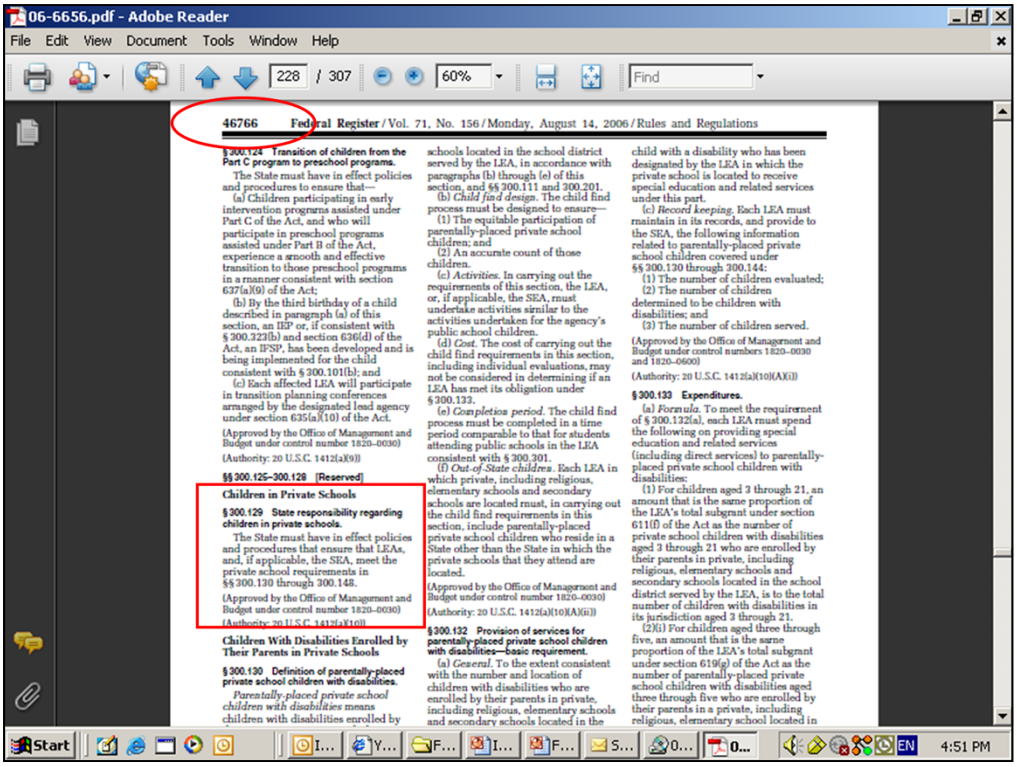
Under the IDEA, LEAs have an obligation to provide parentally placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally placed private school children with disabilities. The amount of Part B funds available for these services is based on the proportionate share calculation, which is discussed in the Expenditures section of this document.

ONPE has created a number of resources to help clarify the IDEA requirements. The booklet pictured here specifically addresses these requirements. It is available on the ONPE's website as PDF or you can order it from EDPubs in booklet format.

IDEA 2004 PowerPoint
Regulations: Citations and Page Numbers
Select Parentally-Placed Provisions

Regulation Topic	Citation	Page
Child Find	§300.131	46766
Compliance	§300.136	46767
Consent	§300.300(d)(4) §300.622(b)(3)	46784 46803
Consultation	§300.134	46767
Due Process	§300.137(a) §300.140	46767 46768
Equitable Services	§300.132(a) §300.137 §300.138	46766 46767 46768
Expenditures	§300.133	46766
Highly Qualified Special Education Teachers	§300.18(h) §300.138(a)(1)	46759 46768
Location of Services and Transportation	§300.139(a)	46768
Public Control of Funds	§300.144(a)	46769
Record Keeping	§300.132(c)	46766
Responsible LEA	§300.132(a)	46766
Services Plan	§300.37 §300.138(b)(2)	46761 46768
State Complaints	§300.140(c)	46768
Written Affirmation	§300.135	46767

Throughout this presentation, you will notice a number of regulatory (and statutory) citations. This particular handout shows where a particular regulation is located in the Code of Federal Regulations. The topic, citation, and page number are listed for your convenience as you examine the regulations and follow along with the presentation.



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§ 300.124 Transition of children from the Part C program to preschool programs.

The State must have in effect policies and procedures to ensure that—

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

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

(Authority: 20 U.S.C. 1412(a)(9))

§§ 300.125–300.128 [Reserved]

Children in Private Schools

§ 300.129 State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§ 300.130 through 300.148.

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

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

Children With Disabilities Enrolled by Their Parents in Private Schools

§ 300.130 Definition of parentally-placed private school children with disabilities.

Parentally-placed private school children with disabilities means children with disabilities enrolled by

schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.

(b) *Child find design.* The child find process must be designed to ensure—

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) *Activities.* In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) *Cost.* The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.

(e) *Completion period.* The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.

(f) *Out-of-State children.* Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

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

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

§ 300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.

(a) *General.* To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the

child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) *Record keeping.* Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§ 300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

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

§ 300.133 Expenditures.

(a) *Formula.* To meet the requirement of § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in

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Reading regulations is not as difficult as what might appear on the surface. The Federal Register page numbers are located in either the upper left of upper right hand corner. This is followed by the name, volume, and number of the publication, which is followed by the date and a brief description in the heading.

Regulations are listed in numerical order within each section. In this presentation, we will focus on the regulations in the "Children in Private Schools" section.

The symbol "§" means the "section" where the particular regulation is located in the document, such as §300.129, which is the regulation shown on this slide that begins the section related to private school students.

Any time you see two of these symbols together, it indicates that more than one sections being cited, such as §§330.130-300.144, which are the primary sections in the regulations that govern the equitable services provisions for children enrolled by their parents in private schools.

Definition of "Parentally-Placed Private School Children with Disabilities"

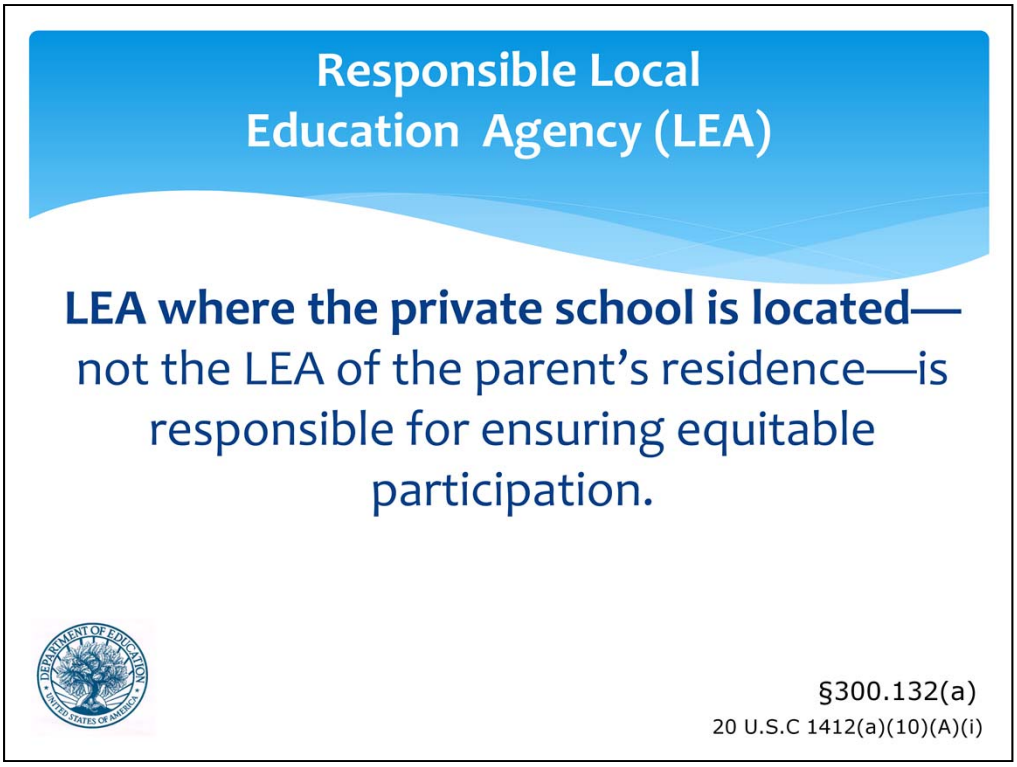
Children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36

NOTE: Does not include children with disabilities who are placed in private schools by public agencies

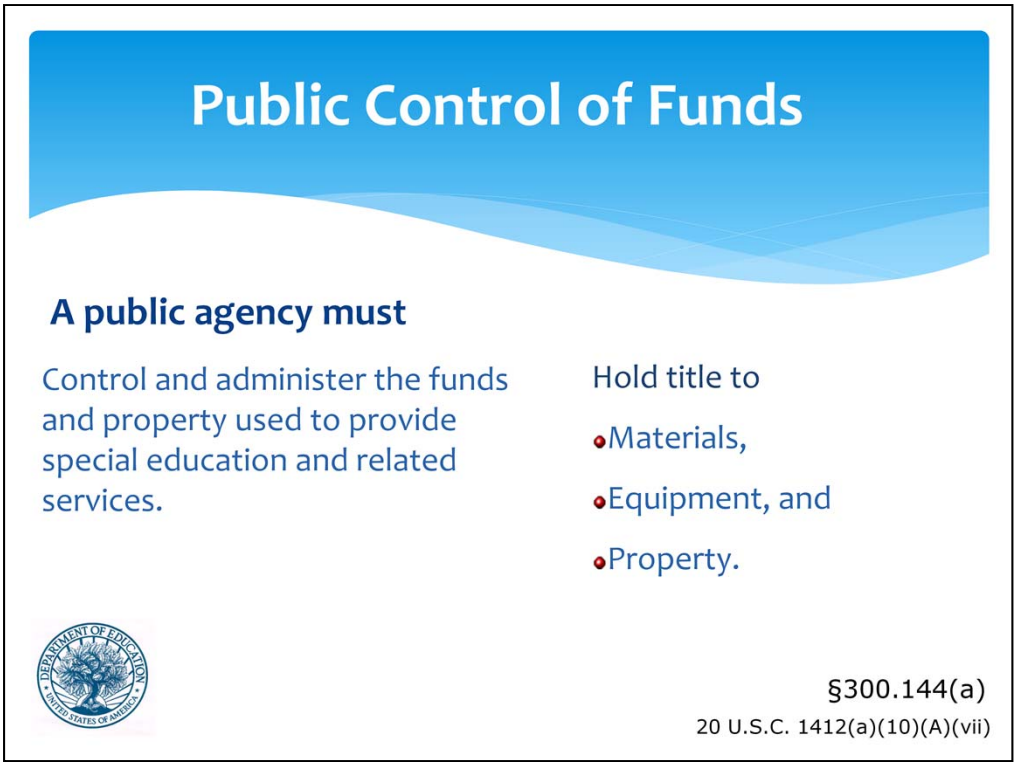
§300.130

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

Let's begin with the definition of parentally-placed private school children with disabilities. In general, when a child is enrolled in a private school by his parents because they have made an independent choice to do so, for the purposes of IDEA, the child is considered to be parentally-placed. This regulation is located at §300.130. The cross references in this section are related to the definitions of an elementary school and a secondary school.

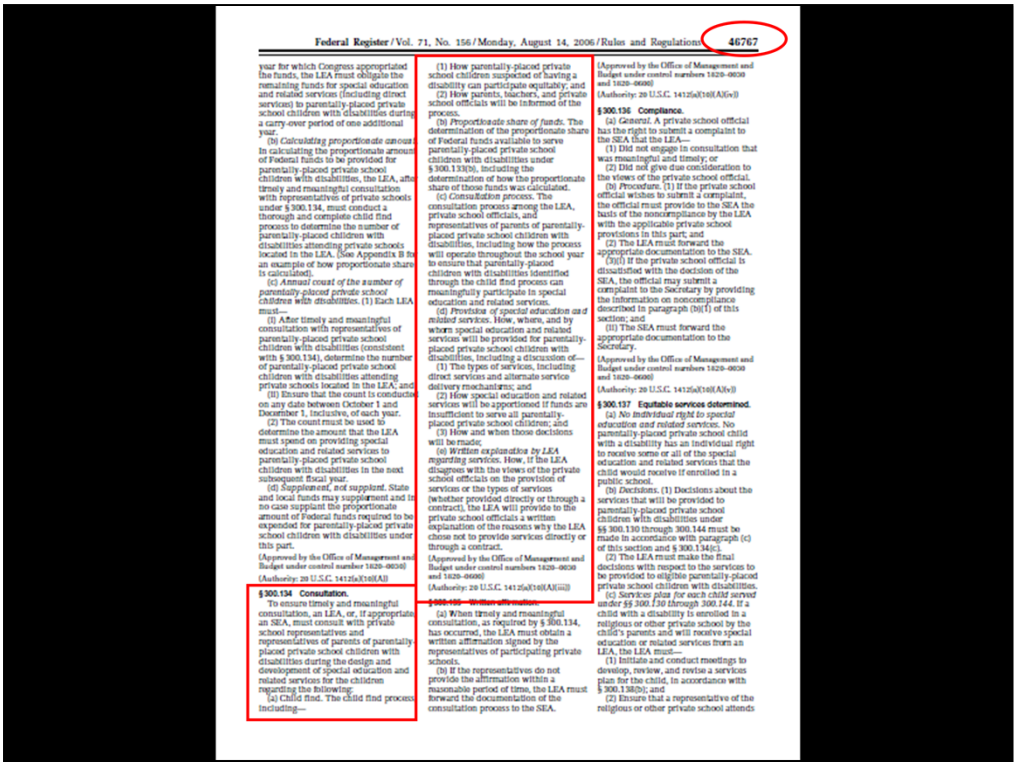


IDEA requires that the LEA, after timely and meaningful consultation with private school representatives, conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located within the LEA regardless of where those students live. (Note that we'll talk about child find and consultation in greater detail later in this presentation.) These requirements make clear that the obligation to spend a proportionate amount of IDEA Part B funds to provide services to children with disabilities enrolled by their parents in private schools now refers to children enrolled by their parents in private elementary schools and secondary schools "in the school district served by a local educational agency."



Important to note that the public agency must always keep control of and administer the IDEA funds used to provide special education and related services to parentally placed private school children with disabilities. Part B funds for equitable services may not be paid directly to a private school. The LEA must also hold the title to any materials, equipment, and property that might be used by an eligible parentally-placed student who receives services under IDEA. Further, an LEA may not use Part B funds to finance the existing level of instruction in a private school, and such funds may not be used for meeting the needs of a private school or the general needs of the students enrolled in the private school.

The regulations in §300.132(c) require the LEA to maintain in its records and provide to the SEA the number of parentally placed private school children evaluated, the number of parentally placed private school children determined to be children with disabilities under Part B of the IDEA, and the number of children who are provided equitable services.



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year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) *Calculating proportionate amount.* In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

(c) *Annual count of the number of parentally-placed private school children with disabilities.* (1) Each LEA must—

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with § 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) *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 children with disabilities under this part.

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

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

§ 300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including—

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) *Proportionate share of funds.* The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under § 300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) *Consultation process.* The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children 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 children 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 children; and

(3) How and when those decisions will be made;

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

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

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

§ 300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by § 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

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

§ 300.136 Compliance.

(a) *General.* A private school official has the right to submit a complaint to the SEA that the LEA—

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) *Procedure.* (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

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

§ 300.137 Equitable services determined.

(a) *No individual right to special education and related services.* No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) *Decisions.* (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§ 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and § 300.134(c).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

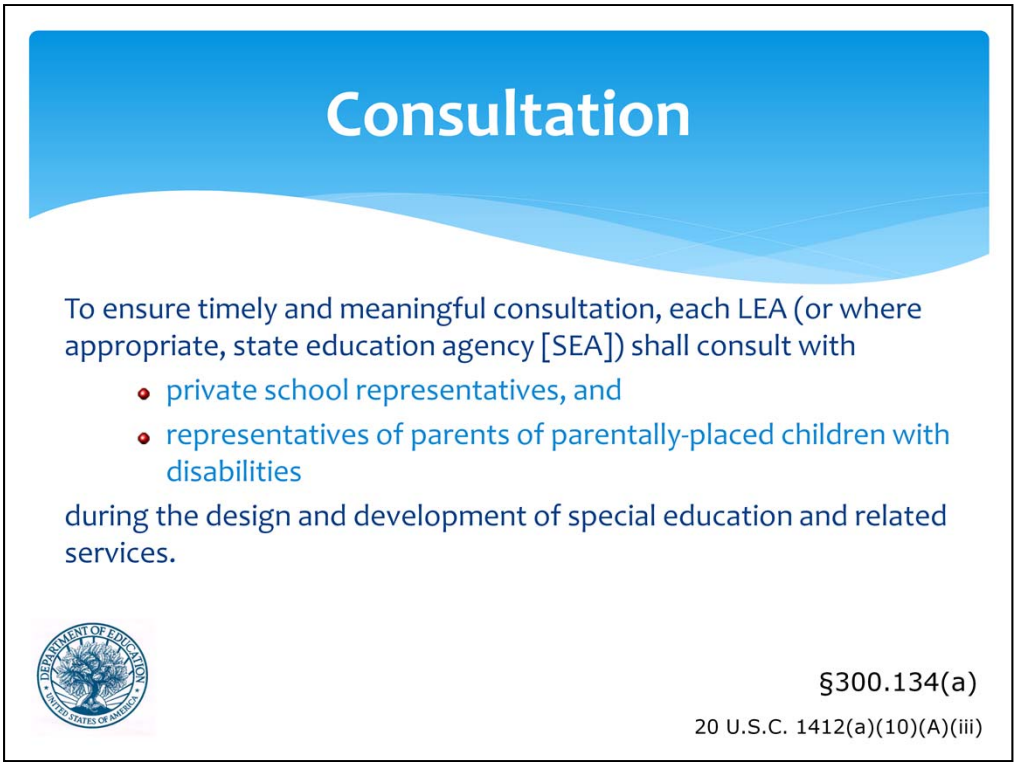
(c) *Services plan for each child served under §§ 300.130 through 300.144.* If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.138(b); and

(2) Ensure that a representative of the religious or other private school attends

Now we are going to address consultation, which is one of the most significant components governing this part of IDEA. The regulation that describes the consultation requirements is located at §300.134.

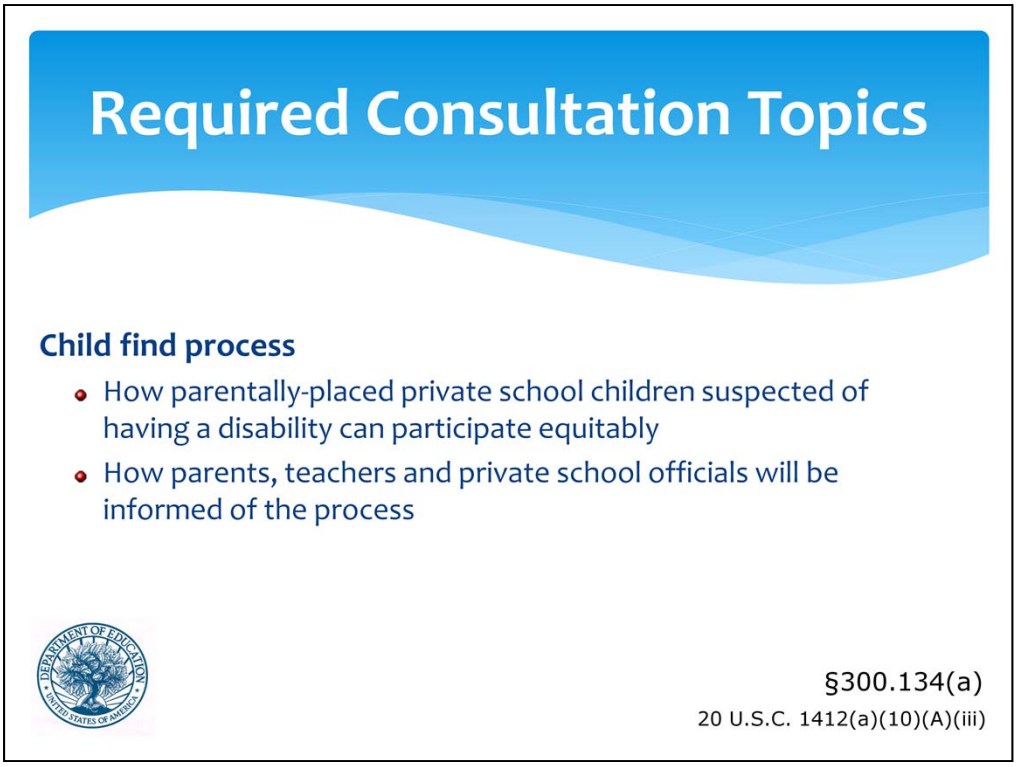
Consultation is a mandatory process that involves discussions between the LEA, private school representatives, and representatives of parents of parentally placed private school children with disabilities on key issues relating to the equitable participation of eligible private school children with disabilities in Federally funded programs providing special education and related services.



As used in the regulations, consultation is a mandatory process that involves discussions between the LEA, private school representatives, and representatives of parents of parentally placed private school children with disabilities on key issues relating to the equitable participation of eligible private school children with disabilities in Federally funded special education and related services.

Each LEA (or, if appropriate, an SEA) must consult, in a timely and meaningful way, with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for parentally placed private school children.

A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation, as such an offer does not meet the basic requirements of the consultation process. Only after discussing key issues relating to the provision of special education and related services with all representatives may the LEA make its final decisions with respect to the services to be provided to eligible private school children with disabilities.



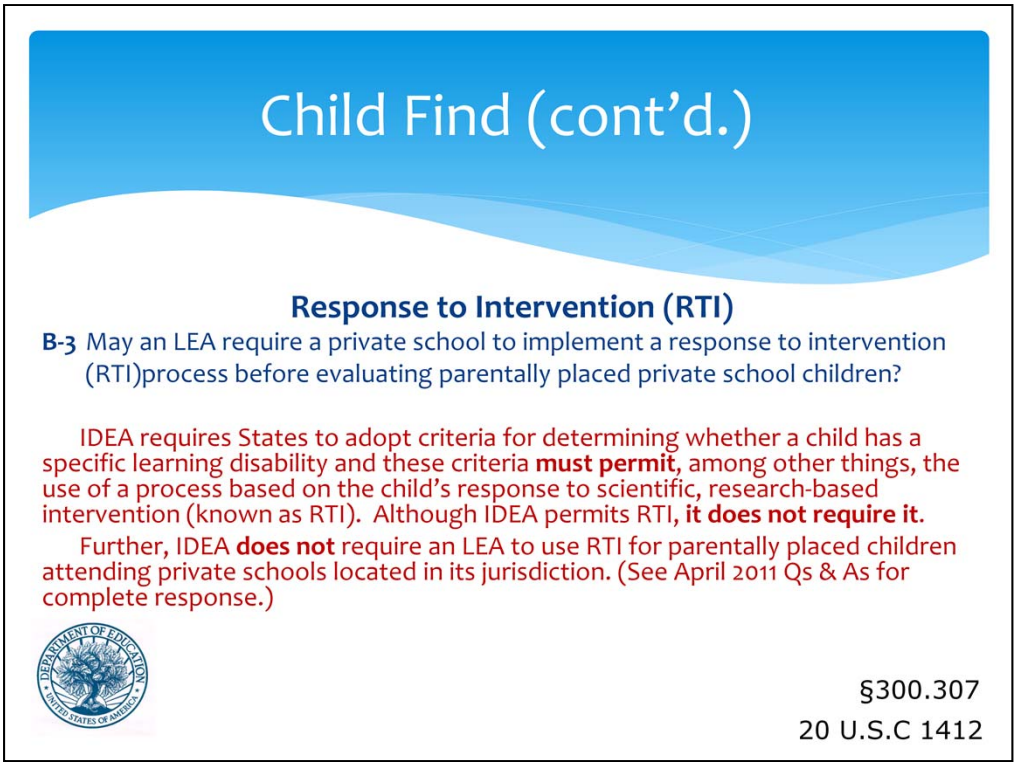
Throughout the consultation process, there are topics that are required points of consultation. The first is located at §300.134(a) and addresses the child find process.

Child find is an ongoing process. Therefore, if a child who enters a private school without having been previously identified as a child with a disability is suspected of having a disability during the school year, the LEA where the private school is located is responsible for ensuring such a child is identified, located, and evaluated. In addition, it is possible that a child who was previously evaluated and determined not eligible for special education and related services by another LEA, may in fact be determined eligible for special education and related services at a later time through the child find process conducted by the LEA where the private school is located.

An accurate count of the number of eligible private school children with disabilities enrolled by their parents in private schools located in the LEA is needed to calculate the proportionate share of Part B funds that the LEA must expend annually for services for parentally placed private school children with disabilities.

Under §300.131, the LEA where the private school is located is responsible for conducting child find for parentally placed private school children. The child find requirements for parentally placed children make clear that the LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools *located in the LEA*.

The LEA is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in §300.13, and secondary schools, as defined in §300.36, located in the LEA. The LEA, in conducting child find for parentally placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency's public school children. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA. The LEA where the private elementary or secondary school is located has a number of options as to how it meets its child find responsibilities. For example, the LEA may assume the responsibility itself, contract with another public agency (including the public agency where the child resides), or make other arrangements by contracting with a third party to conduct child find activities.



The IDEA and its implementing regulations in §§300.301–300.311 establish requirements with which LEAs must comply when conducting an initial evaluation to determine if a child qualifies as a child with a disability under Part B; these requirements do not apply to private schools. IDEA requires States to adopt criteria for determining whether a child has a specific learning disability, as defined in §300.8(c)(10), and these criteria must permit, among other things, the use of a process based on the child's response to scientific, research-based intervention (known as RTI). See §300.307(a)(2). Thus, although IDEA permits the use of RTI in evaluating children suspected of having learning disabilities, it does not require LEAs to use RTI.

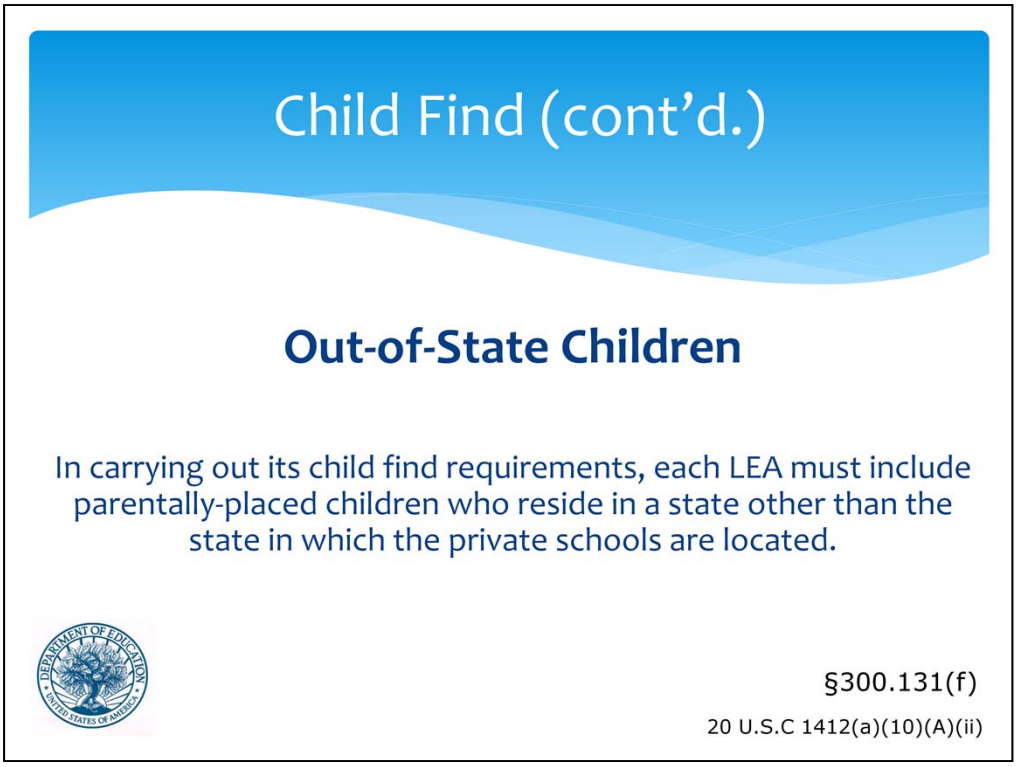
Even if a State's criteria permit LEAs to use RTI in evaluating children suspected of having learning disabilities, IDEA does not require an LEA to use RTI for parentally placed children attending private schools located in its jurisdiction. It would be inconsistent with the IDEA evaluation provisions in §§ 300.301-300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process with a child suspected of having learning disabilities and has not reported the results of that process to the LEA.

Child Find (cont'd.)

- **Costs**—including initial evaluations, may not be considered in determining whether the LEA has met its obligation for expenditures (§300.133)
- **Activities**—similar to those for the agency's public school children
- **Completion period**—comparable to that for students attending public schools in the LEA, consistent with requirements for initial evaluations (§300.301)

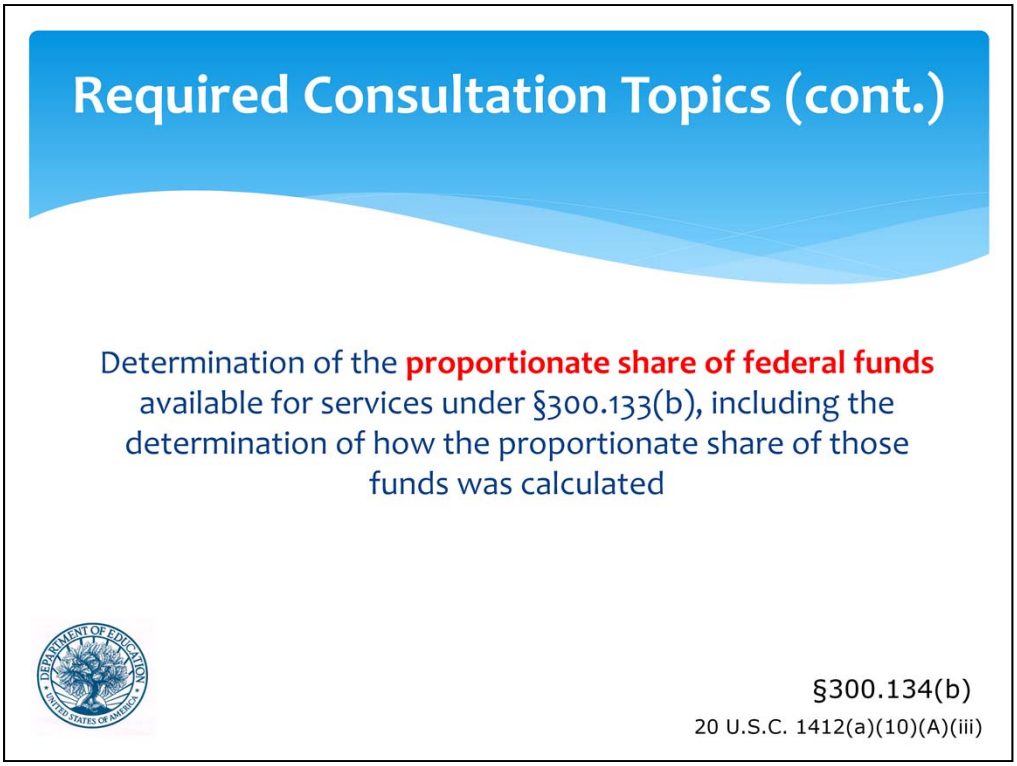
§300.131(c)-(e)
20 U.S.C. 1412(a)(10)(A)(ii)

There is a distinction under the IDEA between the obligation to conduct child find activities, including individual evaluations, for parentally placed private school children with disabilities, and the obligation to use an amount of funds equal to a proportionate amount of an LEA's subgrant to provide special education and related services to parentally placed private school children with disabilities. The obligation to conduct child find, including individual evaluations, exists independently from the obligation to provide equitable services. The costs of child find activities, such as evaluations, may not be considered in determining whether the LEA has spent an appropriate amount on providing special education and related services to parentally placed private school children with disabilities.



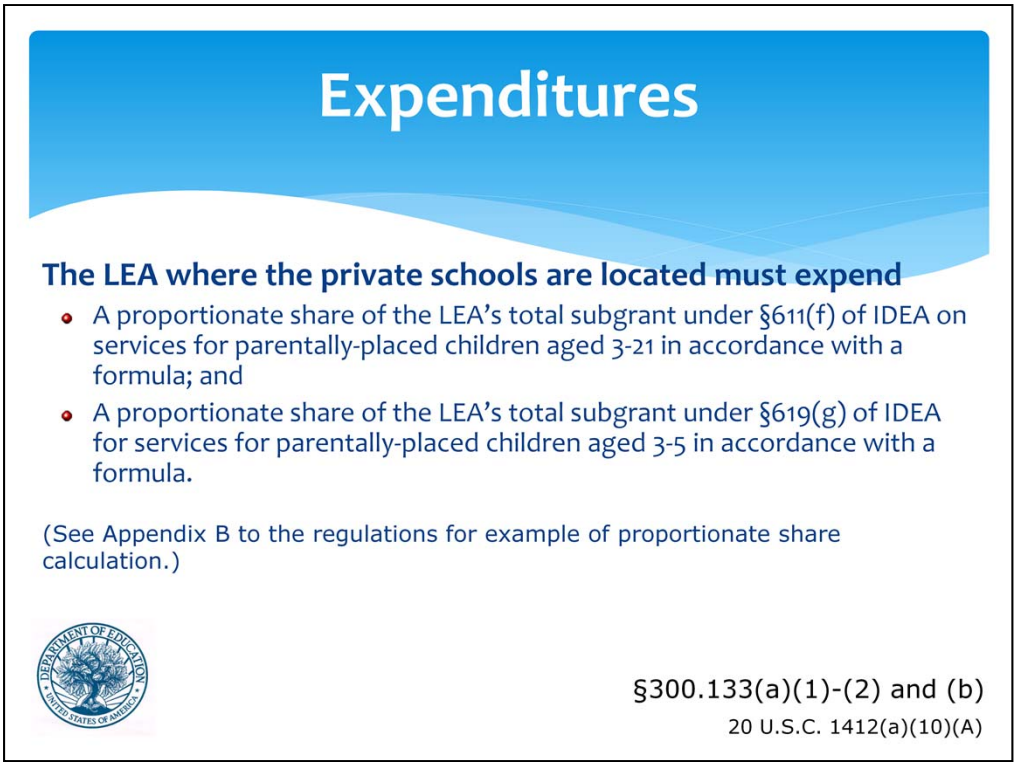
The child find provision in §300.131(f) makes clear that the LEA where the private elementary and secondary schools are located is responsible for conducting child find, including individual evaluations, of all parentally placed private school children suspected of having a disability enrolled in private elementary and secondary schools located in the LEA, regardless of where those children reside. This includes all children from other States who may be attending private elementary schools and secondary schools located in the LEA.

The LEA where the private school is located, in consultation with private school officials and representatives of parents of parentally placed private school children with disabilities, is responsible for determining and paying for the services to be provided to out-of-State parentally placed private school children with disabilities attending private elementary and secondary schools located in that LEA. Under §300.131(f), these out-of-State children must be included in the group of parentally placed children with disabilities whose needs are considered in determining which parentally placed private school children with disabilities will be served and the types and amounts of services to be provided.



Another required topic of consultation involves the determination of the proportionate share of federal funds available for services under §300.133(b), including a discussion of how the proportionate share was calculated.

The revisions to the IDEA in 2004 made a significant change in the manner in which the proportionate share is calculated. Under the 2004 amendments to the IDEA, the proportionate share calculation must be based on the total number of children with disabilities who are enrolled in private schools located in the LEA, whether or not the children or their parents reside in the LEA.



More specifically, each LEA must spend the following amounts on providing special education and related services (including direct services) to parentally placed private school children with disabilities:

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

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

Appendix B of the regulations provides an example of how to make this calculation.

Expenditures (cont'd.)

Preschool

Children with disabilities aged 3-5 must be enrolled in a private school that meets the definition of *elementary school* in §300.13.

Elementary school is defined in §300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.

§300.133

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

An LEA's obligation to serve children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and the final regulations. "Elementary school" is defined in §300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. Accordingly, three- through five-year-old children with disabilities who are enrolled by their parents in a private school or facility that meets the State's definition of "elementary school" would be considered parentally placed and the equitable participation provisions would apply.

A child aged three through five enrolled by his or her parents in a private school or facility that does not meet the State's definition of "elementary school" would not be eligible to be considered for equitable services. However, the State's obligation to make FAPE available to such a child remains. Section 612(a)(1) of the IDEA requires that States make FAPE available to eligible children with disabilities aged three through 21 in the State's mandated age range (§300.101). Because many LEAs do not offer public preschool programs, particularly for three- and four-year-olds, LEAs often make FAPE available to eligible preschool children with disabilities in private schools or facilities in accordance with §§300.145 through 300.147. In these circumstances, there is no requirement that the private school or facility be an "elementary school" under State law.

Expenditures (cont'd.)

Annual Count

Each LEA must

- After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, determine the number of parentally-placed students with disabilities attending private schools located in the LEA;
- Ensure that the count is conducted between Oct. 1 and Dec. 1 of each year; and
- Use the count to determine the amount the LEA must spend on providing special education and related services in the next fiscal year.

§300.133(c)

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

An accurate count of the number of eligible private school children with disabilities enrolled by their parents in private schools located in the LEA is needed to calculate the proportionate share of Part B funds that the LEA must expend annually for services for parentally placed private school children with disabilities.

As we have already discussed, the regulations in §300.132(c) require the LEA to maintain in its records and provide to the SEA the number of parentally placed private school children evaluated, the number of parentally placed private school children determined to be children with disabilities under Part B of the IDEA, and the number of children who are provided equitable services. This puts emphasis on the need to maintain accurate and complete records.

The discussion must also address how the consultation process among representatives of the agency, the private schools, and the parents of parentally placed private school children will take place, including how the process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services.

Sample
Organizational Chart for Consultation*

The following checklist is designed to assist LEAs in meeting the consultation requirements at 34 CFR 300.134.
**This is not an official U.S. Department of Education document. It is provided only as a sample.*

Regulation	Description	Task (Sample)	Action Item (Sample)	Staff Assignment	Completion Date
300.134	The LEA must **consult** with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services…	**Develop a consultation working group**	**Contact** appropriate representatives from all private school groups located in LEA (e.g., Catholic Schools Office in Diocese, Montessori, Lutheran, Independent, Christian, Jewish, etc…) and invite them to participate in the consultation working group.		
			• Contact appropriate representatives of parents of parentally placed students with disabilities and invite them to participate in the consultation working group (if needed, ask private school officials for suggestions of parents to include). • Earmark several calendar dates that the LEA will begin meeting with the consultation working group. • Share these dates/times with group members and get feedback on best dates to meet.		
		Set first meeting date	**Select** date and location		
			Once date is confirmed, send written invitation to private school officials and representatives of parents of parentally placed students inviting them to be part of the consultation working group and to attend first meeting *Allow sufficient time between invitation and meeting date (3-4 weeks) to ensure that key stakeholders can attend.* *Include a preliminary agenda of general topics that will be discussed during meeting (see below).*		
		Develop draft timeline of future meetings and topics	**Develop a timeline** listing all topics that will be discussed during the consultation process throughout the school year. **Bring this to the first consultation meeting** so that the group can provide input and be aware of topics for future meetings.		

Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA before the LEA makes any decision that has an impact on services to parentally placed private school children with disabilities. Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation. This chart shows a partial example of a sample timeline that could be used to help monitor the consultation process. The complete sample is located on the IDEA pages of the ONPE website.

Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally placed private school children with disabilities.

Consultation Topics (cont'd.)

Equitable Services

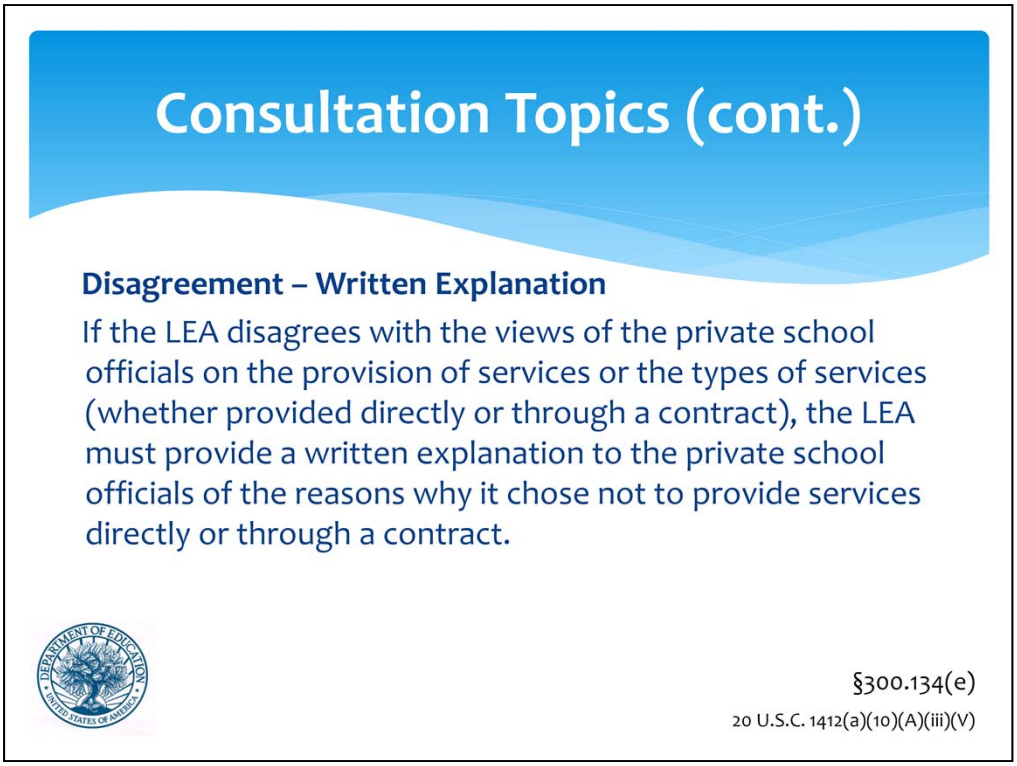
How, where and by whom special education and related services will be provided for parentally-placed private school students with disabilities, including a discussion of

- Types of services, including direct services and alternate service delivery mechanisms;
- How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed children; and
- How and when these decisions will be made.

§300.134(d)

20 U.S.C. 1412(a)(10)(A)(iii)

The consultation process is important to ensure the provision of equitable services. With that in mind, the LEA must also discuss how, where, and by whom special education and related services will be provided, including a discussion of types of services--including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children--and how and when decisions regarding services will be made. See §300.134(d).



Finally, sometimes there will be disagreement about equitable services. As such, if the LEA representatives disagree with the views of the private school officials on the provision of services or the types of services whether provided directly or through a contract, the LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials.

Equitable Services

Basic Requirement

Consistent with the number and location of children with disabilities enrolled by their parents in private schools located in the school district served by the LEA, provision is made for the **equitable participation** of those children in Part B programs.

Equitable services are special education and related services, including direct services, determined in accordance with the requirements in §300.137, including the **consultation process**. The exception to the requirement is if the secretary has arranged for the provision of services to such children under the by-pass provisions in §§300.190 through 300.198.

§300.132(a)

20 U.S.C. 1412(a)(10)(A)(i)

Let's now address the basic requirements for the provision of equitable services. It is important to note that timely and meaningful consultation must occur before any decisions are made that will affect the participation of parentally placed children in Part B programs. Thus, decisions about services may not be made in advance or in the absence of timely and meaningful consultation. After timely and meaningful consultation has occurred with private schools representatives and representatives of parents of parentally placed private school children with disabilities, the LEA is responsible for making final decisions about all aspects of the services to be provided to parentally placed private school children with disabilities. See 34 CFR §300.137 for additional details.

Equitable Services (cont'd.)

Equitable Services Determined and Provided

- A parentally-placed child with a disability **does NOT have an individual right** to some or all of the special education and related services the child would receive if enrolled in a public school.
- Those children designated to receive services may receive a different amount of services than children with disabilities enrolled in public schools.
- Decisions about the services that will be provided must be made in accordance with the services plan requirements in 300.137(c) and the consultation requirements in 300.134(c).
- The LEA must make the final decision about services to be provided.

§§300.137(a)-(b) and 300.138(a)(2)

20 U.S.C. 1412(a)(10)(A)(i)

Decisions about which services and the amounts of services children with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the children designated to receive services. These children have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. See 34 CFR §300.137(a).

It is important to note that a unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation, as such an offer does not meet the basic requirements of the consultation process. Only after discussing key issues relating to the provision of special education and related services with all representatives may the LEA make its final decisions with respect to the services to be provided to eligible private school children with disabilities.

Equitable Services (cont'd.)

Services Plan

Based on the services the LEA makes available to parentally-placed students with disabilities, a **services plan** must be developed and implemented for each student designated by the LEA to receive services.

§§300.132(b) and 300.138(b)

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

The consultation process is important to ensure the provision of equitable services. How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities is determined during the consultation process. See §300.134(d).

Equitable services for a parentally placed private school child with a disability must be provided in accordance with a services plan. A services plan must describe the specific special education and related services that will be provided to a parentally placed private school child with disabilities designated to receive services. §300.138(b).

Equitable Services (cont'd.)

Services Plan Definition

A written statement that describes the special education and related services that the LEA will provide to a parentally-placed child with a disability who has been designated to receive services, including

- Location of the services, and
- Any transportation necessary.

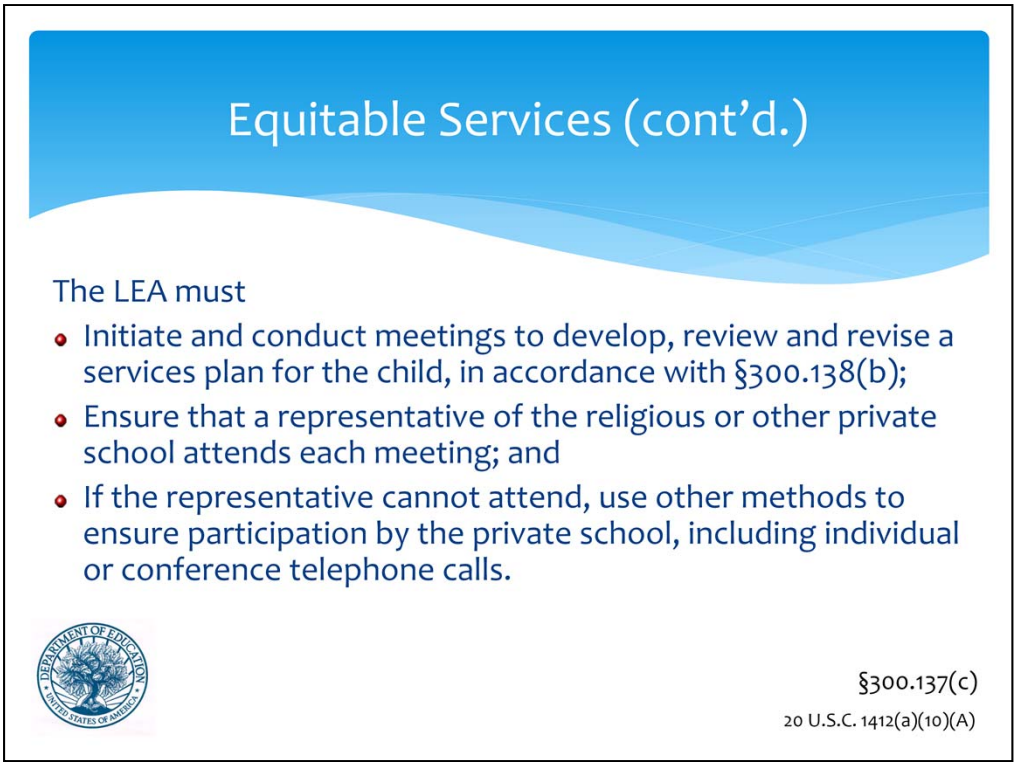
NOTE: Plan must be consistent with 300.132 and developed and implemented in accordance with the equitable services requirements in §§300.137 through 300.139. Section 300.138(b)(2) addresses the relevant IEP requirements that are applicable to services plans.

§§300.37 and 300.138(b)(2)
20 U.S.C. 1412(a)(10)(A)

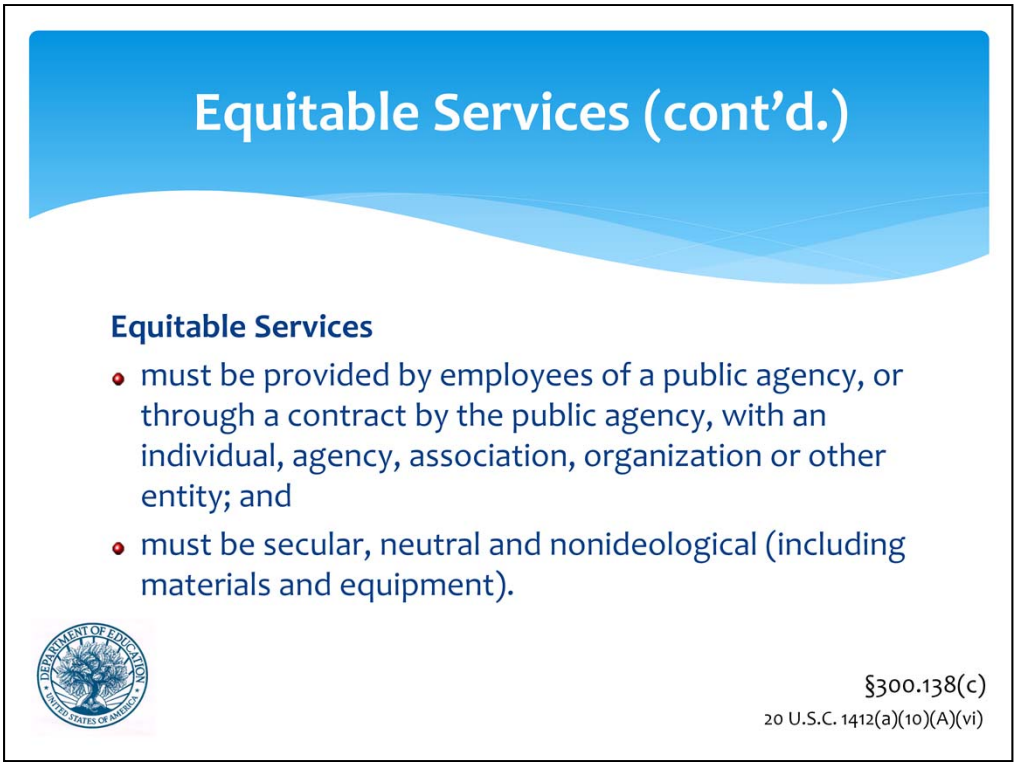
A services plan should reflect only the services offered to a parentally placed private school child with a disability designated to receive services.

Children with disabilities enrolled in public schools or who are publicly placed in private schools are entitled to a FAPE and must receive the full range of services under Part B of the IDEA. These services are determined by the child's IEP team and are necessary to meet the child's individual needs and provide FAPE. The IEPs for these children generally will be more comprehensive than services plans developed for parentally placed private school children with disabilities who are designated to receive services. This is because parentally placed children do not have an individual entitlement to any or all of the services that the children would receive if enrolled in a public school.

In addition, a services plan is required to meet the IEP content requirements described in section 614(d) of the IDEA, or, when appropriate, for children aged three through five, the Individualized Family Service Plan (IFSP) requirements described in section 636(d) of the IDEA, to the extent appropriate, and only in relation to the services that are to be provided.

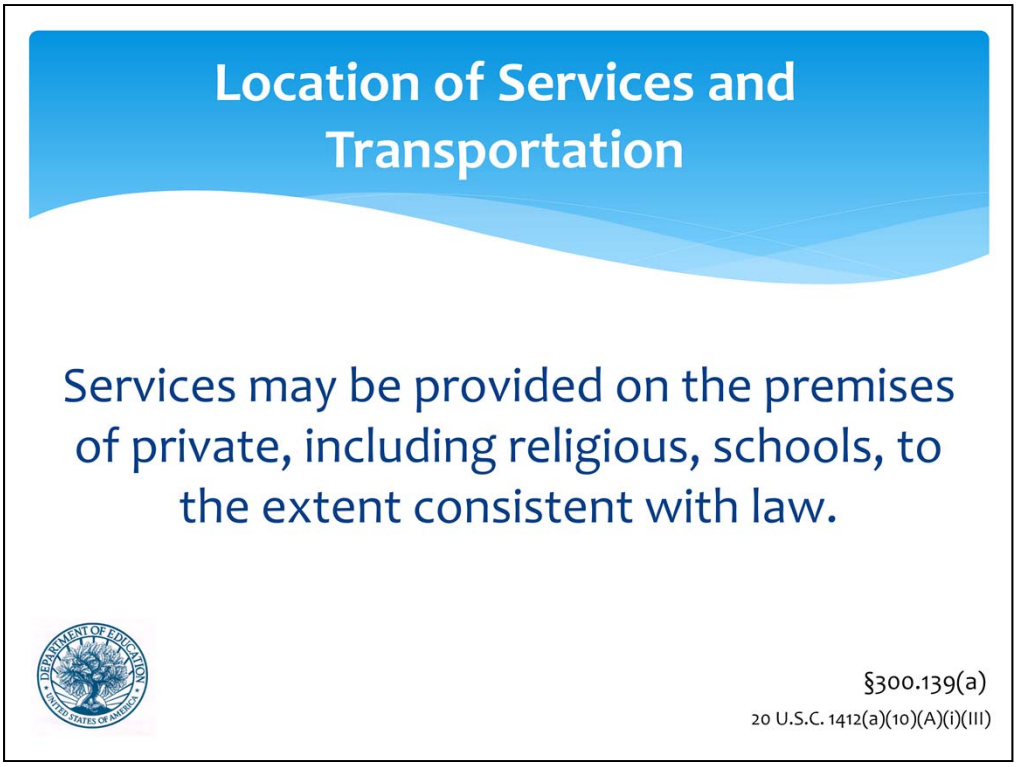


The LEA must initiate and conduct meetings to develop, review, and revise a services plan for a parentally placed private school child with a disability designated to receive services. The LEA must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. See 34 CFR §300.137(c). The services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with 34 CFR §§300.321 through 300.324. See 34 CFR §300.138(b)(2)(ii).



The regulations at §300.138(c) clarify that equitable services must be provided by employees of a public agency; or through contract by the public agency with an individual, association, agency, organization, or other entity. An LEA may use Part B funds to make public school personnel available in nonpublic facilities to the extent necessary to provide equitable services for private school children with disabilities and if those services are not normally provided by the private school. See §300.142(a). An LEA may use Part B funds to pay for the services of an employee of a private school to provide equitable services 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. See §300.142(b).

Further, all services must be secular, neutral and nonideological, including materials and equipment that students may require.



The phrase "to the extent consistent with law" is in section 612(a)(10)(A)(i)(III) of the IDEA. The Department interprets this to mean that the provision of services on the premises of a private school must take place in a manner that would not violate the Establishment Clause of the First Amendment of the U.S. Constitution and would not be inconsistent with applicable State constitutions or laws. The Department generally believes that, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child's private school, so as not to unduly disrupt the child's educational experience.

The location of services is one of the subjects that must be discussed during the consultation process among LEA officials, private school representatives, and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.134(d). Under 34 CFR §300.137(b), after the consultation process and giving due consideration to the views of the private school officials, the LEA makes the final decision. See 34 CFR §300.137(b).

Location of Services and Transportation (cont'd.)

Transportation

If necessary for the child to benefit from services provided under the services plan, transportation must be provided by the LEA

- From the child's school or the child's home to a site other than the private school; and
- From the service site to the private school, or to the child's home, depending on the timing of the services.

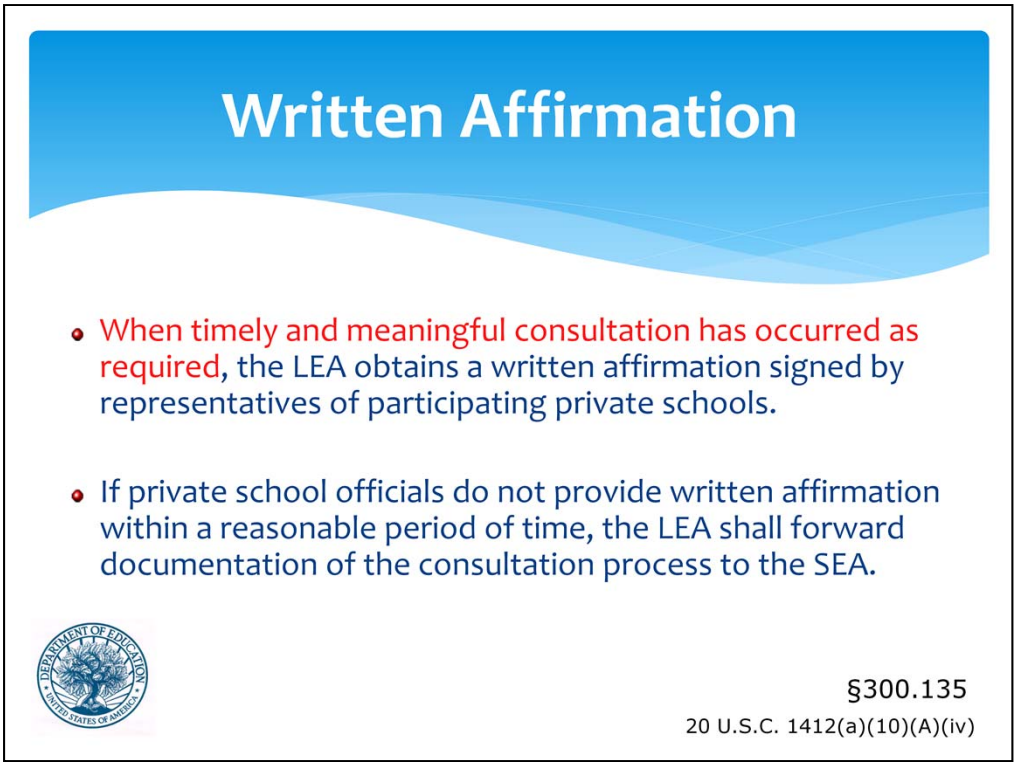
In addition:

- LEAs are not required to provide transportation from the child's home to the private school.
- The cost of transportation may be included in the proportionate share calculation.

§300.139(b)

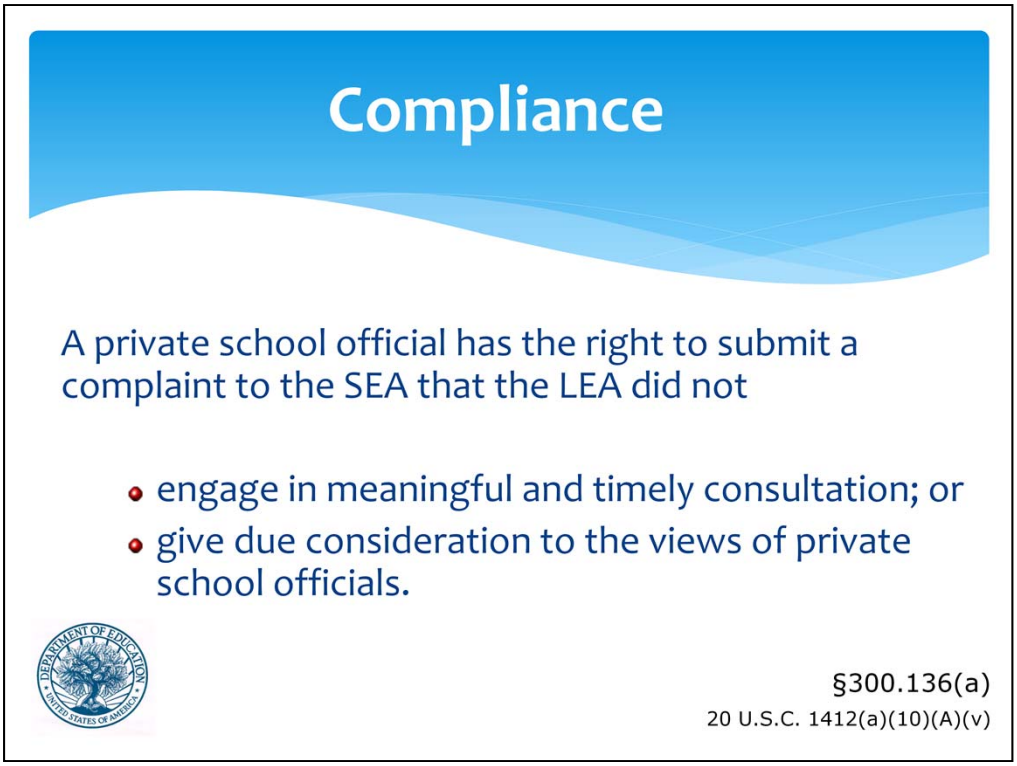
20 U.S.C. 1412(a)(10)(A)

The regulations in §300.139(b) require that if necessary for the child to benefit from or participate in the services provided under the private school provisions, an LEA must provide a parentally placed private school child with a disability transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services. The IDEA does not require LEAs to provide transportation from the child's home to the private school. The LEA may include the cost of the transportation in calculating whether it has spent the proportionate share of Federal Part B funds on providing services to parentally placed private school children with disabilities as required by §300.133.



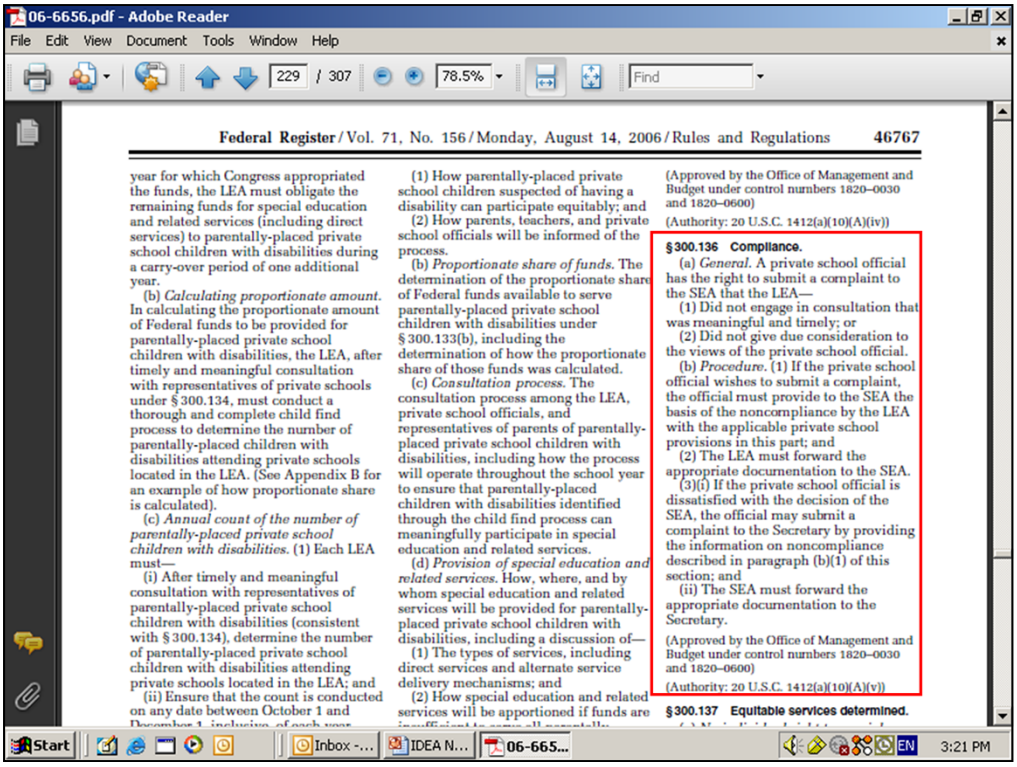
When timely and meaningful consultation has occurred, the LEA must maintain documentation that the consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 CFR §300.135.

Some have asked if signing an attendance sheet at a meeting is all that is needed to document adequately that timely and meaningful consultation has occurred. Though these attendance sheets provide an accounting of who has attended meetings, the sheets themselves do not provide evidence that ongoing consultation has occurred. Therefore, the written affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.



Under §300.136, a private school official has the right to complain to the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. Under this provision a complaint must provide the basis of the private school official's belief that the LEA did not comply with the consultation requirements.

The LEA must forward appropriate documentation related to the complaint to the SEA. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary providing the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation related to the complaint to the Secretary.



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year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) *Calculating proportionate amount.* In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

(c) *Annual count of the number of parentally-placed private school children with disabilities.* (1) Each LEA must—

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with § 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) *Proportionate share of funds.* The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under § 300.133(b), including the determination of how the proportionate share of those funds was calculated.

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

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

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

§ 300.136 Compliance.

(a) *General.* A private school official has the right to submit a complaint to the SEA that the LEA—

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) *Procedure.* (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

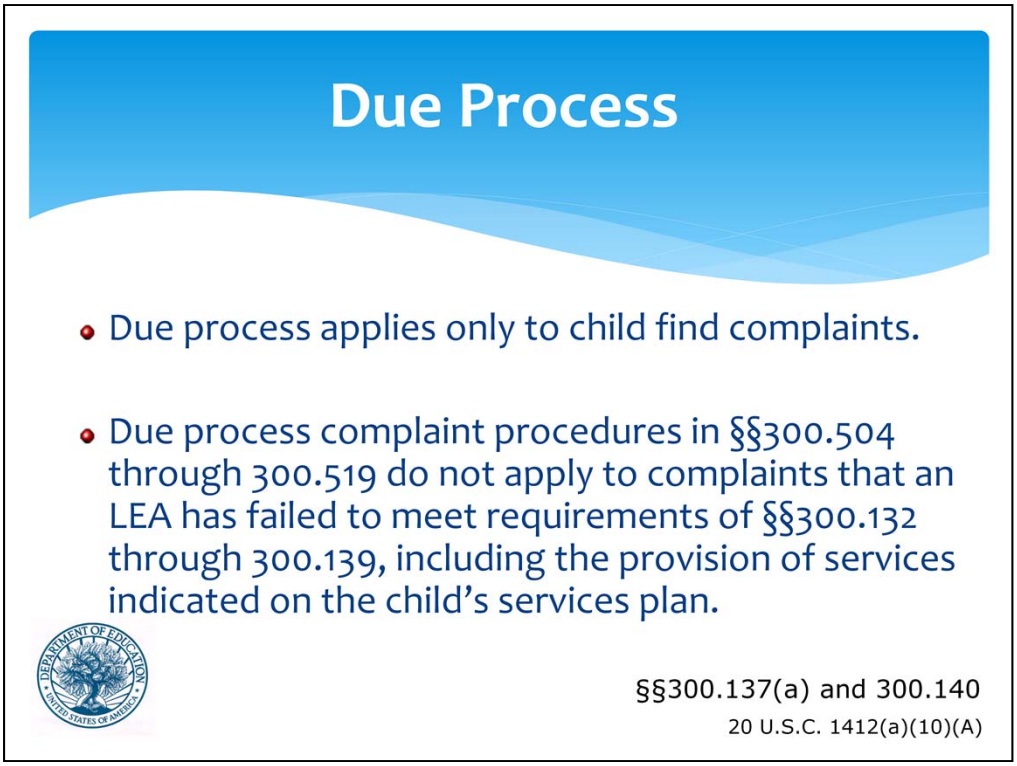
(ii) The SEA must forward the appropriate documentation to the Secretary.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

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

§ 300.137 Equitable services determined.

For those of you following along in the Federal Register, the compliance regulation §300.136 is located on page 46767 of the regulations.



As provided in §300.140(b), a parent of a child enrolled by that parent in a private school has the right to file a due process complaint regarding the child find requirements in §300.131, including the requirements in §§300.300 through 300.311. Such a complaint must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA by the LEA.

The due process provisions in section 615 of the Act and §300.504 through 300.519 of the regulations do not apply to issues regarding the provision of services to any particular parentally placed private school child with disabilities whom an LEA has agreed to serve because there is no individual right to services for such children under the IDEA.

Disputes that arise about equitable services are, however, properly subject to the State complaint procedures in §§300.151 through 300.153. As provided in §300.140(c), a parent may file a signed written complaint in accordance with the State complaint procedures alleging that an SEA or LEA has failed to meet the private school requirements, such as failure to properly conduct the consultation process.

State Complaints

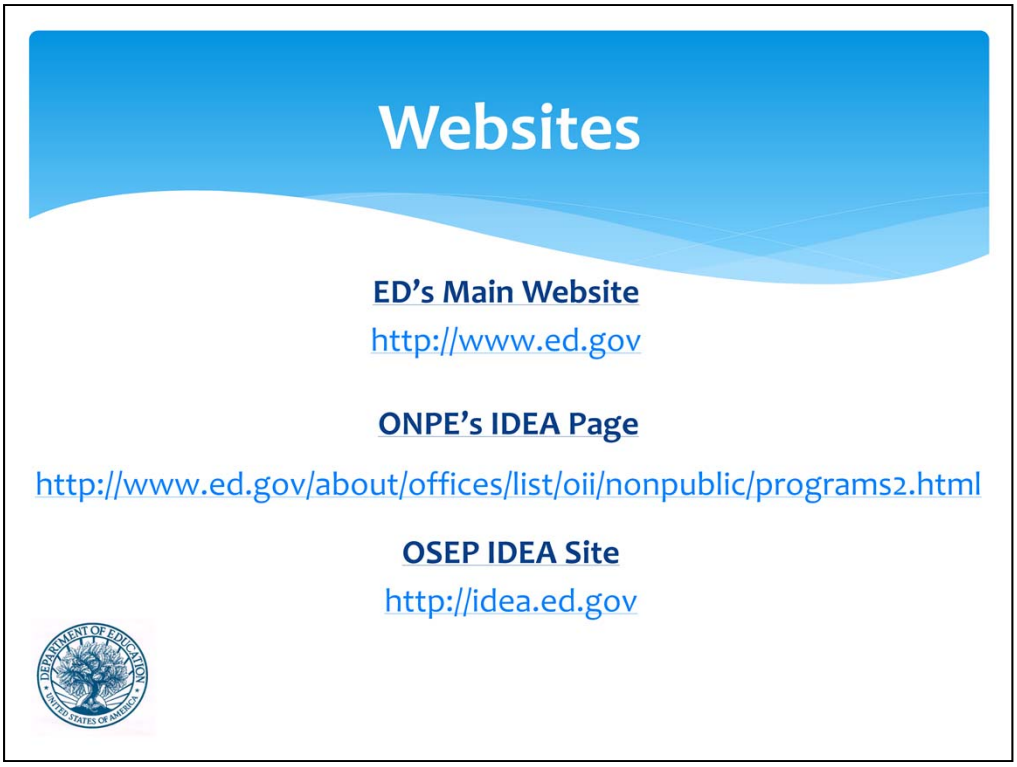
- An organization or individual may file a state complaint, using the procedures in §§300.151 through 300.153, to allege that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and §§300.137 through 300.144.
- Complaints by private school officials regarding consultation must be filed in accordance with procedures described in Slide 36 – Compliance.

§300.140(c)

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

Under §300.136, a private school official has the right to complain to the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. Under this provision a complaint must provide the basis of the private school official's belief that the LEA did not comply with the consultation requirements.

The LEA must forward appropriate documentation related to the complaint to the SEA. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary providing the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation related to the complaint to the Secretary.



The Department maintains numerous resources on the web for your convenience. All of these resources support the Equitable Services Implementation Plan (ESIP) that was mentioned at the beginning of this presentation. We hope that you find them helpful in your work. Should you need additional materials or resources, please let us know and we will be happy to consider your request.

We welcome the opportunity to assist you. Please feel free to contact us if you have additional questions or need further clarification.

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