



Together, We Can Make A Difference  
Office 770-577-7771 Toll Free 1-800-322-7065  
[www.peppinc.org](http://www.peppinc.org)

## Private Schools

### **(1) PRIVATE SCHOOL STUDENTS PLACED BY LOCAL SCHOOL SYSTEMS OR STATE-OPERATED PROGRAMS.**

For Students with disabilities who have been placed in or referred to a private school or facility by a local school system (LSS) or state-operated program (SOP) as a means of providing special education and related services, the following requirements apply. [refer to 34 CFR 300.400]

- The student shall be provided special education and related services in conformance with an individualized education program (IEP) that meets the requirements of the Individuals with Disabilities Education Act (IDEA) and Rule 160-4-7-.09 Individualized Education Program. [refer to 34 CFR 300.401(a)(1)]
- The special education and related services shall be provided at no cost to the parent. [refer to 34 CFR 300.401(a)(2)]
- The student shall be provided an education that meets the standards that apply to education provided by the state education agency and the LSS/SOP. [refer to 34 CFR 300.401(b)]
- The student shall have all the rights of a student with a disability who is served by the LSS/SOP. [refer to 34 CFR 300.401©]

### **(2) PRIVATE SCHOOL STUDENTS ENROLLED BY PARENT IF FAPE IS AT ISSUE.**

If the LSS or SOP made a free appropriate public education (FAPE) available to a student and the student's parent(s)/guardian(s)/surrogate(s) elect(s) to place the

student in a private school or facility, the LSS or SOP is not required to pay for the cost of the education, including special education and related services, for the student at the private school or facility.

- *Disagreements between a parent(s)/guardian(s)/surrogate(s) and a LSS or SOP:* Such disagreements regarding the availability of a program appropriate for the student and the question of financial responsibility are subject to the procedural safeguards provided in Rule 160-4-7-.05 Procedural Safeguards/Parents Rights. [refer to 34 CFR 300.403(b)]
- *Reimbursement for Private School Placement:* If the parent(s)/guardian(s)/surrogate(s) of a student with a disability, who previously received special education and related services in a LSS/SOP, enroll the student in private school without the consent of a referral by the LSS/SOP, a court or administrative law judge (ALJ) may require the LSS/SOP to reimburse the parent(s)/guardian(s)/surrogate(s) for the cost of the enrollment if the court or ALJ determines that: [refer to 34 CFR 300.403©]
- The LSS/SOP had not made a FAPE available to the student in a timely manner prior to that enrollment, and [refer to 34 CFR 300.403©]
- The private placement is appropriate. [refer to 34 CFR 300.403©]
- A private placement may be found to be appropriate by an ALJ or a court even if it does not meet the state standards that apply to education provided by the state or LSSs. [refer to 34 CFR 300.403©].
- *Limitation on Reimbursement:* The cost of reimbursement described in paragraph 2 immediately above may be reduced or denied, as to a student already receiving FAPE from a public agency, if: [refer to 34 CFR 300.403(d)]
- At the most recent IEP meeting that the parent(s)/guardian(s)/surrogate(s) attended prior to the removal of the student from the LSS/SOP, the parent(s)/guardian(s)/surrogate(s) did not inform the IEP Committee that they were rejecting the placement proposed by the LSS/SOP to provide a FAPE to the student and did not state their concerns or their intent to enroll the student in a private school at public expense; or [refer to 34 CFR 300.403(d)(1)(i)]
- At least 10 business days prior to the removal of the student from the LSS/SOP, the parent(s)/guardian(s)/surrogate(s) did not give written notice to the LSS/SOP that they were rejecting the placement proposed by the LSS/SOP to provide a FAPE to the student and did not state their concerns or their intent to enroll the student in private school at public expense. [refer to 34 CFR 300.403(d)(1)(ii)]

- If, prior to the parent(s)/guardian(s)/surrogate(s) removal of the student from the LSS/SOP, the LSS/SOP informed the parent(s)/guardian(s)/surrogate(s) through the notice requirements of its intent to evaluate the student, including a statement of the purpose and scope of the evaluation that was appropriate and reasonable, but the parent(s)/guardian(s)/surrogate(s) did not make the student available for evaluation. [refer to 34 CFR 30.403(d)(2)]
- A judicial finding of unreasonableness with respect to actions taken by the parent(s)/guardian(s)/surrogate(s) has been rendered. [refer to 34 CFR 300.403(d)(3)]
- *Exception to Limitation on Reimbursement:* The cost of reimbursement may not be reduced or denied for a parent(s)/guardian(s)/surrogate(s) failure to provide the notice to the LSS/SOP described in paragraph 4 immediately above if: [refer to 34 CFR 300.403(e)]
- The parent(s)/guardian(s)/surrogate(s) is/are illiterate and cannot write in English; [refer to 34 CFR 300.403(e)(1)]
- Providing notice as described in paragraph 4 immediately above would likely result in physical or serious emotional harm to the student; [refer to 34 CFR 300.403(e)(2)]
- The school prevented to parent(s)/guardian(s)/surrogate(s) from providing the notice; or [refer to 34 CFR 300.403(e)(3)]
- The parent(s)/guardian(s)/surrogate(s) had not been provided a copy of the parent(s)/guardian(s)/surrogate(s) rights under IDEA and therefore, had not been notified of the requirement to provide the notice described in paragraph 4 immediately above. [refer to 34 CFR 300.403(e)(4)]

### **(3) STUDENT WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS**

- As used in this part, the term “*private school students with disabilities*” means students with disabilities enrolled voluntarily by their parent(s)/guardian(s)/surrogate(s) in private schools, when the provision of a FAPE is not at issue. The term does not include private school students with disabilities placed by the LSS/SOP as a means of providing special education and related services. [refer to 34 CFR 300.450]

- The LSS shall locate, identify, and evaluate all private schools students with disabilities, including religious-school students residing in the jurisdiction of the LSS, in accordance with Child Find activities utilized to comply with this requirement must be comparable to activities utilized to comply with this requirement must be comparable to activities undertaken for students with disabilities in the LSS. [refer to 34 CFR 300.451(a)]
- The LSS shall consult with appropriate representatives of private school students with disabilities on how to carry out Child Find activities. [refer to 34 CFR 300.451(b)]
- To the extent consistent with their number and location in the state, provision must be made for the participation of private school students with disabilities in programs provided under Part B of the IDEA by providing students with special education and related services in accordance with paragraph 6 immediately below. [refer to 34 CFR 300.452(a)]

**To meet the requirements for provision of services above, each LSS shall adhere to the following guidelines regarding expenditures. [refer to 34 CFR 300.453(a)]**

- For students ages 3-21, the LSS must expend an amount that is the same proportion of the LSS's total VI-B flow through funding as the number of private school students with disabilities, ages 3-21, residing in its jurisdiction is to the total number of students with disabilities, ages 3-21, in its jurisdiction; and [refer to 34 CFR 300.453(a)(1)]
- For students ages 3-5, the LSS must expend an amount that is the same proportion of the LSS's federal preschool funding as the number of private school students with disabilities, ages 3-5, residing in its jurisdiction is to the total number of students with disabilities, ages 3-5, in its jurisdiction. [refer to 34 CFR 300.453(a)(2)]
- Expenditures for Child Find activities may not be considered in determining whether the LSS has met these requirements. [refer to 34 CFR 300.453(c)]
- Nothing in this rule shall prohibit a LSS from providing services to private school students with disabilities in excess of those required above. [refer to 34 CFR 300.453(d)]
- Each LSS shall consult with representatives of private school students in deciding how to conduct the annual count of the number of private school students with disabilities who reside in its jurisdiction. [refer to 34 CFR 300.453(b)(1)(i)]
- Each LSS shall ensure that the child count is conducted on December 1 each year. [refer to 34 CFR 300.453(b)(1)(ii)]

- The child count shall be used to determine the amount the LSS must spend on providing special education and related services to private school students with disabilities in the following fiscal year, as indicated in the paragraph above. [refer to 34 CFR 300.453(b)(2)]
- No private school student with a disability has an individual right to receive some or all of the special education and related services he/she would receive if enrolled in a LSS. Decisions about the service(s) to be provided to private school students with disabilities shall be made in consultation with appropriate representatives of private school students with disabilities. [refer to 34 CFR 300.454(a)(1)(2)]
- The consultation shall be conducted in a timely and a meaningful way and shall consider the funding requirements indicated in the paragraph above, the needs of private school students with disabilities, and the location of the private school students with disabilities. [refer to 34 CFR 300.454(b)(1)]
- The consultation should result in a decision of *which* students will receive services *what* services will be provided, *how and where* the services will be provided, and *how* the services will be evaluated. [refer to 34 CFR 300.454(b)(1)(i)(ii)(iii)(iv)]
- Each LSS shall give appropriate representatives of private school students with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements immediately above. [refer to 34 CFR 300.454(b)(2)]
- The consultation shall occur before the LSS reaches any decision that affects the opportunities of private school students with disabilities to participate in services, as described above. [refer to 34 CFR 300.454(b)(3)]
- The LSS shall make the final decisions with respect to the services to be provided to eligible private school students with disabilities. [refer to 34 CFR 300.454(b)(4)]

**A services plan shall be completed for each private schools student with disabilities who will receive special education related services provided by the LSS and the LSS shall:** [refer to CFR 300.454©]

- Initiate and conduct meetings to develop. Review, and revise a service plan for the student, and [refer to 34 CFR 300.454©(1)]
- Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the LSS shall use other measures to ensure

participation, including individual or conference telephone calls. [refer to 34 CFR 300.454©(2)]

**Services provided to private school students with disabilities must be provided by personnel who meet the same standards as personnel providing services in the LSS.**

- Private school students with disabilities may receive a different amount of services than students with disabilities in the LSS.
- No private school student with a disability is entitled to any service or to any amount of service the student would receive if he or she were enrolled in the LSS, [refer to 34 CFR 300.455(a)(3)]
- Each private school student with disabilities who has been designated to receive special education and related services shall have a *services plan* that describes the specific special education and related services that the LSS will provide to the student. [refer to 34 CFR 300.455(b)(1)]
- The service plan, to the extent appropriate, provide a statement of the special education and related services and supplementary aids and services to be provided to the student. [refer to 34 CFR 300.455(b)(2)(i)]
- The service plan must be in effect at the beginning of each school year and must be reviewed periodically, but not less than annually. [refer to 34 CFR 300.455(b)(2)(ii)]

**Services provided to private school students with disabilities may be provided on site at the student's private school, including a religious school. [refer to 34 CFR 300.456(b)(1)(i)]**

- If it is necessary for the student to benefit from or participate in the services provided under his or her services plan, the private school students with disabilities must be provided transportation according to the following; [refer to 34 CFR 300.456(b)(1)(i)]
- From the student's school or home to a site other than the private school; and [refer to 34 CFR 300.456(b)(1)(a)]
- From the service site to the private school, or to the student's home, depending on the timing of the services. [refer to 34 CFR 300.456(b)(1)(i)(B)]
- Local school systems are not required to provided transportation from the student's home to the private school. [refer to 34 CFR 300.456(b)(1)(ii)]

- The cost of transportation as described in this rule may be included in calculating whether the LSS has met the requirements of the paragraph above. [refer to 34 CFR 300.456(b)(2)]

**The procedural safeguards outlined in this Rule 160-4-7-.05 Procedural Safeguards/Parent Rights *do not* apply to complaints that a LSS has failed to meet requirements of paragraphs (3)(a)(3-17) of this rule, including the provision of services indicated on the student's services plan. [refer to 34 CFR 300.457(a)]**

- The procedural safeguards outlined in rule 160-4-7-.05 Procedural Safeguards/Parent Rights *do* apply to complaints that a LSS has failed to meet the requirements of paragraph (3)(a)(1-2), Child Find, of this rule, including the requirements in rule 160-4-7-.07 Evaluation and Eligibility Determination. [refer to 34 CFR 300.457(b)]
- The formal complaint procedures contained in Rule 160-4-7-17 Complaint Procedures *do* apply to complaints that the LSS has failed to meet the requirements of paragraph (3)(a)(1-17) of this rule. [refer to 34 CFR 300.457(c)]

**A LSS *may not use* VI-B flow-through or federal preschool funds for classes that are organized separately on the basis of school enrolment or religion of the students if: [refer to 34 CFR 300.458]**

- The classes are at the same site; and [300.458(a)]
- The classes include students enrolled in public schools and students enrolled in private school. [300.458(b)]

**A LSS *may not use* VI-B flow-through or federal funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. A LSS shall use funds provided under the IDEA to meet the special education and related services needs of students enrolled in private schools but *not* for: [refer to 34 CFR 300.459(a)(b)]**

- The needs of the private school; or [refer t 34 CFR 300.459(b)(1)]
- The general needs of the students enrolled in the private school. [refer to 34 CFR 300.459(b)(2)]

**A LSS *may* use VI-B flow-through or federal funds to provide personnel in a private school to the extent necessary to provide services under this rule to private school students with disabilities if those services are not normally provided by the private school. [refer to 34 CFR 300.460]**

**In order to provide services to private school students with disabilities as described in this rule, a LSS *may* use VI-B flow-through or federal preschool funds to pay for the services of an employee of a private school if the employee performs the services outside of his or her regular hours of duty and under LSS supervision and control. [refer to 34 CFR 300.461]**

**Property, Equipment, Supplies Which Benefit Private School Students with Disabilities. The LSS may place equipment and supplies in a private school for the period of time needed for the program. [refer to 34 CFR 300.462(b)]**

- The LSS must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LSS acquires with VI-B flow-through or federal preschool funds for the benefit of private school students with disabilities. [refer to 34 CFR 300.462(a)]
- The LSS shall ensure that the equipment and supplies placed in a private school are used only for special education purposes and can be removed from the private school without remodeling the private school facility. [refer to 34 CFR 300.462(d)]
- The LSS shall remove equipment and supplies from a private school if they are no longer needed for special education purposes or the removal is necessary to avoid their unauthorized use for other than special educational purposes. [refer to 34 CFR 300.462(d)]
- The LSS *may not use* IDEA funds for repairs, minor remodeling, or construction of private school facilities. [refer to 34 CFR 300.462(e)]



Reprinted from the  
Georgia State Board of Education Rules  
Rules Pertaining to Special Education  
Adopted: August 10, 2000