

United States Conference of Catholic Bishops

Department of Education

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Special Education Services to Parentally-Placed Private School Students

Introduction

The Individuals with Disabilities Education Act (IDEA) has not provided equitable services to children with disabilities who are enrolled by their parents in private or religious schools. Many parentally-placed private school children receive no services at all. Others receive "consultation" for their classroom teacher with special education personnel from the district. Some students receive limited services based on the federal funds available to serve children with disabilities in private schools.

In some of these instances, the reason for limited service is statutory. In other cases, the reason is local misapplication of the law. In many cases, either because the law does not provide for equitable services or because it is difficult to apply the law fairly and effectively, parentally-placed private school children with disabilities do not receive fair and just services through IDEA.

The principles below outline the provisions that any revision of the Individuals with Disabilities Act should contain in order to serve parentally-placed private school students with disabilities to the maximum extent possible. The United States Conference of Catholic Bishops (USCCB) strongly urges policy makers not to think simply within the current *system* of IDEA which essentially serves students attending public schools, but, rather, think in terms of the *children* that IDEA seeks to serve.

We are proposing fundamental changes in the way private school students with disabilities are served. First, we must find new mechanisms for the delivery of services to parentally-placed private school students. USCCB proposes that IDEA offer parents a certificate that they can use to help defray the cost of a special education program in their child's private school or to use to purchase special education and related services that they believe best meet the needs of their child.

We also believe Child Find must be fundamentally reformed—both in the way it is used to generate funds to serve private school students with disabilities and the checks and balances to ensure it is timely and accurate.

We believe many new safeguards are needed to protect the rights of private school students with disabilities—safeguards such as sign-off by private school officials, application assurances by the LEAs and SEAs, federal monitoring, and federal data collection so those outside of the system can also monitor IDEA implementation for private school students.

In summary, we are looking toward a new IDEA that is not designed to fit a public school model, inserting the participation of students with disabilities in private schools as an after-thought. Nor are we looking for an IDEA that supports an education system rather than supporting the education of a child. We are working toward a new IDEA that is child-centered and parent-directed so that the best educational decisions can be made for each and every child.

Reauthorization Issues for Serving Parentally-Placed Private School Students Under IDEA

- 1. Encourage states and localities to take seriously their responsibility to leave no child behind, including parentally-placed private school children with disabilities.**

The USCCB continues to advocate for making available the full range of services to the maximum extent possible for parentally-placed private school children with disabilities. Federal education law is predicated on the assumption that public agencies—in this case education agencies—have an obligation to ensure that all children receive fair and equitable treatment in federally-assisted programs. This responsibility should not be taken lightly. At the very least, private school students with disabilities should receive fair and equitable services with funds generated through IDEA and the oversight and enforcement of this should be an integral part of the IDEA process for the U.S. Department of Education, SEAs and LEAs.

Proposal: Require that the state's application include an assurance that the local educational agencies in the state have complied with the provisions of Child Find and delivery of services pertaining to the maximum participation of private school students with disabilities. Furthermore, each local educational agency should be required to maintain in the agency's records and provide to the state education agency a written affirmation signed by officials of each private school with students with disabilities who reside in the LEA that the consultation required has occurred.

- 2. State services for IDEA should not be permitted to supplant the federal services required by IDEA for parentally-placed private school students.**

Some state and local education agencies are required by state law to provide special education and related services to parentally-placed private school students. However, based on a question from the Notice of Proposed Rulemaking and the subsequent answer in the Final Regulations, SEAs and LEAs can count their state and local program costs toward their IDEA federal obligation. Therefore, even though both the federal and a state law require services to private school children with disabilities, the private school children only receive the value of the federal services.

Proposal: Regardless of state law, private school students with disabilities should receive their fair share of the federal dollars generated by them. IDEA should require SEAs and LEAs to set aside the proportionate amount of federal funds generated by parentally-placed private school students with disabilities to serve this group of students.

3. Separate the count of students generating funds from the Child Find process.

Currently, districts receive funds according to a base-year amount equal to the state's allocation before the trigger for the new funding formula was reached. Eighty-five percent of the additional funding they receive is based on the number of children ages 3 to 21; 15 percent of the additional funding is based on the number of children of those ages living in poverty. The new formula was an attempt to eliminate any incentive for educators to over-identify children with disabilities in order to receive added federal funding.

To determine federal funds available to serve parentally-placed private school students with disabilities, districts count the number of children through the Child Find process who were found to have a disability. They must then allocate the per pupil allocation of federal funds times the number of children found to have a disability for serving this group of children.

This has created a serious disincentive for districts to identify parentally-placed private school children through Child Find. To do so means less funding for their already strapped programs. As a result, private school parents find it very difficult to have their children fairly evaluated through Child Find and, when evaluated, find that the results concluding the child does not have a disability are inconsistent with the evaluations of private evaluators who have identified a disability.

Catholic school students tested with public resources are less likely to be diagnosed with disabilities than those tested with private resources. In a study commissioned by USCCB and conducted by the Center for Educational Partnerships (CEP), a not-for-profit organization based in Chicago, IL, it found that, of the Catholic schools who referred students for testing to the public schools, nearly 50 percent also referred students for private evaluation. Twenty-nine percent of this group states the reason for this referral was because the public school found no disability. The same 29 percent reported that 100 percent of the students referred for testing to private evaluators were found to have a disability.

Proposal: The federal share of funding under IDEA for serving parentally-placed private school children with disabilities should be determined by applying the percentage of disabled students in the district to the number of private school students residing in the district and attending private schools located within or outside of the district. If the LEA can, through a thorough and complete Child Find process, accurately determine the number of parentally-placed private school children residing in the district, regardless of the location of their private school, and the private school officials can certify their satisfaction with the accuracy of the process, the LEA can use the Child Find number in lieu of the proportional amount to generate funds to serve parentally-placed private school students.

4. Improve the Child Find process by putting realistic time lines in place and options for parents when time line requirements are unmet.

The Child Find process is often a difficult one for parents of private school students suspected of having a disability. Students in the "system" generally are evaluated ahead of the requests of private school parents. The Child Find process from start to finish can often take nearly an entire school year. These are valuable weeks and months during which a child with a disability should be being served. Instead, they are increasingly struggling in the regular classroom because everyone—parents, teachers, and students—are waiting for evaluation results. Because the system is so difficult to access for students in private schools, Catholic schools have had to employ a variety of innovative strategies for identifying and evaluating students suspected of having a disability.

Proposal: Require that the Child Find process be completed within 90 days from the date of request for evaluation. If the

Child Find process is not completed within this time, parents may choose to have Child Find conducted by a private evaluator with a demonstrated record of effectiveness that is selected by the parents and approved for that purpose by the state education agency in accordance with reasonable criteria. The cost of this evaluation will be borne by the district.

5. Make consultation ongoing just as the Child Find process is ongoing.

The consultation provisions in IDEA are stated generally and do not address the unique situations that are present for Child Find and delivery of special education and related services. The consultation process should reflect the nature of the program to effectively provide the forum to discuss and make decisions about key elements of services to parentally-placed private school children with disabilities.

Proposal: To ensure timely, meaningful, and ongoing consultation during all phases of the special education program, a local educational agency shall consult with appropriate private school representatives on issues such as:

- *The Child Find process and how private school students suspected of having a disability can participate fairly and equitably, including the means by which parents, teachers, and private school administrators will be informed of the process;*
- *The generation of funds available to serve parentally-placed private school children with disabilities, including the determination of how those funds will be generated, the sign-off by the private school official on the process for counting parentally-placed private school children with disabilities and the amount of funds generated to serve parentally-placed private school children with disabilities;*
- *The consultation process between the district, private school officials, and parents of parentally-placed private school children with disabilities that will be in effect throughout the school year to ensure that children identified through Child Find can meaningfully participate in special education and related services while remaining a student in the private school if the parents still opt for this placement;*
- *How, where, and by whom special education and related services will be provided for each type of*

disability, including a discussion of alternate service delivery mechanisms, including delivery of services by a third party provider and, whenever possible, ensure the location of evaluation and delivery of services will be on-site at the private school;

- *Which parentally-placed private school children with disabilities will receive services through IDEA if funds are insufficient to serve all children and how and when these collaborative decisions will be made; and*
- *How the plan for services to each parentally-placed private school child with a disability will be developed, when it will be reevaluated, and how the services provided will be assessed in light of the plan and its goals.*

6. Ensure that early intervention services for children suspected of having a disability are equitably provided to private school students.

In examining the implementation of IDEA, many educators are questioning the identification of children as learning disabled and the overrepresentation of minority children in special education. Students who are achieving below grade level may be referred to special education, even though they might be better served by academic support programs in general education. One key to better identification, classification, and placement of students is through early intervention that works to ameliorate reading problems and other academic difficulties that may lead to an incorrect placement in special education.

Proposal: Ensure that early intervention programs provide the maximum amount of services to private school students with similar academic needs and that access to these programs is provided in a way that gives private school students an equal opportunity to participate in early intervention services.

7. Provide alternative service delivery mechanisms to serve parentally-placed private school students with disabilities.

In nearly all districts, the services provided to parentally-placed private school students through IDEA are provided directly by the district. The current law does not require that a discussion of alternate service delivery mechanisms be discussed during consultation. As a result, the ability of parentally-placed private school students with

disabilities can be limited because of the timing and location of services. In other cases, parents have deliberately chosen to send their child to an educational environment other than the public school and do not want special education and related services to be provided in the public school setting. And in still other situations, parents are paying additional costs for special education and related services in Catholic schools.

This problem is compounded because currently not all parentally-placed private school children with disabilities are offered anything other than services as a student in the public school. In fact, less than one-half of the students diagnosed as having a disability and attending Catholic schools receive services from IDEA. Therefore, some parents are completely closed out from any possibility for services, based on the funds available and possibly based on the type of disability if the public school has determined that with limited funds they can only offer parentally-placed private school children with disabilities service for specific disabilities.

These situations have caused parents and Catholic school administrators to find other means to provide services where IDEA services fail. The CEP study found that parents pay a significant portion of the cost of special education and related services for their children with disabilities.

Proposal: When a child attending a private school is identified as having a disability, the parents must be offered FAPE and offered the option of accepting a certificate in the amount of the IDEA funds generated by the child or accepting LEA special education and related services while remaining in the private school. The certificate will be sufficiently flexible to allow parents, in consultation with appropriate public and private school officials, to use the value of the funds individually or to pool them among the group of eligible private school students. The certificate can be used toward the cost of special education services in the private school the child attends or may be provided by a provider with a demonstrated record of effectiveness that is selected by the parents and approved for that purpose by the state education agency in accordance with reasonable criteria.

8. **Provide recourse to parents when services to their parentally-placed child with a disability are not effective.**

Parents whose parentally-placed private school children are

determined to have a disability are offered FAPE. If they decline to transfer their children to a public school, they are determined to have refused an offer of FAPE. At that point, they no longer have due process rights under IDEA. This is true even for parents whose children receive IDEA services through a services plan, which in other ways has the same substantive requirements as an IEP.

If their child does not receive services, the parents have no due process rights to appeal the decision of loss of all services because they have refused an offer of FAPE. Even if their child is receiving services through a services plan, they have no due process rights to appeal the *quality* of the service or the *effectiveness* of the district in carrying out the services plan.

In the same study referred to above, CEP found that approximately two-thirds of the Catholic school students suspected of having and, through evaluation, found to have a disability do not receive special education and related services from the LEA during the time they are enrolled in the Catholic school.

Proposal: Parents of children with a services plan or IEP will have due process rights. A services plan will be developed for each private school child with a disability whose parents elect to have them remain in the private school, including those who opt for a certificate to obtain the services elsewhere.

9. Strengthen the existing complaint procedure and by-pass language.

In the current law, if a state is or was prohibited by state law in effect on December 3, 1983, from providing for the participation in special programs for children with disabilities enrolled in private elementary and secondary schools, the Secretary shall arrange for the provision of services to these children through a by-pass. Unlike the Elementary and Secondary Education Act, IDEA does not provide for a by-pass if the state substantially fails or is unwilling to provide special education services to students with disabilities in private schools. There is no provision in IDEA for the Secretary to consider quality, size, scope, or location of program services in making the determination for a by-pass.

Proposal: Use the Standards for a By-Pass, Complaint Process, and By-Pass Determination Process in Title IX, Sections

9502-9504 of the Elementary and Secondary Education Act of 1965, as amended . Those standards are reflected as follows:

- *The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violation of the equitable services standards for Child Find and delivery of special education and related services. The individual or organization shall submit the complaint to the state educational agency for a written resolution within a reasonable period of time.*
- *The resolution of the complaint may be appealed to the Secretary by an interested party not later than 30 days after the SEA resolves the complaint or fails to respond within a reasonable period of time. The Secretary shall investigate and resolve the complaint within 120 days.*
- *If, by reason of any provisions of state law, an SEA, LEA or other entity is prohibited from providing for the equitable participation of parentally-placed private school children with disabilities, or if the Secretary determines that the entity has substantially failed or is unwilling to provide for that participation, the Secretary shall waive the requirements for the entity and arrange for the provision of equitable services to eligible children.*
- *In making the determination for a by-pass, the Secretary shall consider one or more factors, including quality, size, scope, and location of the program, and the opportunity of parentally-placed private school children with disabilities to participate equitably in the program.*

10. Require federal oversight of special education services to private school students with disabilities.

Federal monitors who evaluate the implementation of IDEA programs do not have a requirement to monitor the program, including the process for Child Find, for private school students, nor do they currently have an obligation to include private school officials in their monitoring interviews and deliberations. Additionally, the annual report to Congress does not require the Department of Education to report on students in private schools who are referred, evaluated, identified, and served through the IDEA program in the LEA. Because private school officials are not included in the monitoring process and the process does not require monitoring of the private school program, federal oversight does not occur in a regular and systematic way. Because statistics are not reported for private school students with disabilities, monitoring and oversight by those outside of the system is very difficult.

Proposal: Require the annual federal report to Congress to provide separate data on all referred, evaluated, identified, and served children in public and private, including religious, schools. Further, require federal monitors to evaluate the implementation of IDEA programs, including Child Find, for students attending private elementary and secondary schools and in the course of monitoring, request the input of private school officials whose students are found to have or were suspected of having a disability.

11. Fully fund IDEA

Because IDEA provides services to parentally-placed private school students with disabilities only to the extent of federal funding, it is critical that federal funding meet the 40 percent level originally promised by Congress. Inadequate funding serves to exacerbate the service delivery problems detailed above. While fully funding IDEA will not alleviate the systemic problems the law currently holds for parentally-placed private school students, it will provide the financial means, once reform has improved Child Find, service delivery, and oversight, to reach more children with disabilities.

Proposal: Fully fund IDEA to the 40 percent level that was originally promised by Congress.