

Public School Services for Home Schoolers with Disabilities

What Benefits Remain in Texas after Dual Enrollment?

by Sandra Burns

Major changes became effective March 6, 2001, limiting benefits and remedies available to students with disabilities placed in private schools by their parents under Part B of the Individuals with Disabilities Education Act (IDEA), and there are more changes on the way. Although these changes are lengthy, this article will highlight the main points that affect students in private schools and their families, focusing on the remaining benefits and remedies.

Private Schools

Included under the heading of private schools are: parochial schools, church schools, schools of different religious denominations, non-religious private schools, and home schools.

The Leeper case in Texas established home schools as private schools thus exempting their students from state compulsory attendance laws. Home schools are clearly private schools in Texas, and home-school students are entitled to the same benefits and remedies under these regulations as other private school students in Texas.

Federal & State Regulations

These regulations originated under the U.S. Department of Education, which has written, "the right of parents to choose where their students should be educated, whether at public or private schools, is extremely important. Nevertheless, the rights of parentally-placed private school students with disabilities under Part B are not the same as those of students with disabilities who are enrolled in public schools and are served at public agency programs or public agency placements at private schools." How each state implements these federal regulations varies. This article will only examine "dual enrollment" in Texas.

Dual Enrollment

The "old" dual enrollment allowed a private school student to attend his private school for most classes but attend public school for special education and related services. The "new" rules still permit dual enrollment for a student in both private and public school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five, subject to IDEA Part C regulations.

* Texas does not use the federal label of "developmental delays" but uses "non categorical early childhood-NCEC" for 3-5-year-olds evaluated as showing the following: learning disability, mental retardation, autism, and emotional disability.

* IDEA Part C establishes a separate program of services for students from birth until their third birthday. These services are provided by the Texas Interagency Council on Early Childhood Intervention (ECI) (www.eci.state.tx.us) for interagency coordination and a smooth transition from Part C to Part B.

Child Find

Child Find obligations, including individual evaluations, exist independently from the services provision. Public schools are still required by federal law to identify, locate, and evaluate all students with disabilities (birth thru 21) to insure that appropriate early intervention services are available. Districts must consult with "appropriate representatives" on how to carry out Child Find activities for all infants and toddlers with disabilities and their families. How the district implements

Child Find must be comparable to the method used for students with disabilities in public schools. Referrals and evaluation activities for students in private school must meet the timelines established in the Texas Education Code.

* Write and ask what practical method has been implemented to determine which students with disabilities need special education and related services and which are currently receiving them.

* Remember students with invisible disabilities (learning and ADD) are included. Nothing requires that students be classified by their disability as long as each student who has a disability listed in §1401 of IDEA (see below) and (by reason of that disability) needs special education and related services.

* 20 USC 1401. SEC. 602. DEFINITIONS. Except as otherwise provided, as used in this Act:

(A) IN GENERAL. The term 'child with a disability' means a child-

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) CHILD AGED 3 THROUGH 9. The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child-

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

Evaluation

A full and individual initial evaluation shall be conducted after obtaining informed parental consent. If parents refuse, the district may seek due process procedures. The student shall be reevaluated if the parents or teacher request, or conditions warrant but no later than every three years. The private school student should be assessed in all areas of suspected disability (cognitive, physical, developmental, and behavioral) using a variety of technically sound tools. A single procedure as the sole criterion is not allowed. Tests and other evaluation materials are administered by qualified personnel in the student's native language and must be current. Tests must measure what they are purported to measure rather than the student's impaired skills unless that is the intent of that particular test. Functional and developmental information are included along with parental information. The student's parents along with qualified professionals are members of the eligibility team and entitled to evaluation reports and documentation.

* Investigate the various diagnostic testing and evaluation before having your student tested in order to maximize the benefits to the student and your family. Obtaining these tests and evaluations can be of substantial benefit to the family.

"Free Appropriate Public Education"

The local school district is not responsible for the cost of education, including special education and related services, of private school students with disabilities if the district provides a program that insures a free appropriate public education (FAPE). If the parents dispute this determination, they then have the option of a due process procedure provided they conform to all prerequisites.

* Ask the district to implement specific actions in order to produce a FAPE. If that fails, then look on the website of the Texas Education Agency (TEA) {www.tea.state.tx.us/special.ed/} and instigate a due process hearing if you believe that your student would not get the mandated FAPE and you have conformed to all prerequisites.

Required Services

No individual right exists for private school students to receive some or all of the services that the students would receive if enrolled in public school. The district must consult in a timely and meaningful way, with appropriate representatives of private school students with disabilities as to the number, need, and location of students to be served. These representatives shall have a genuine opportunity to express their views, and this consultation must occur before the district makes any final decisions. The district must conduct meetings to develop, review, and revise a service plan for each student who has been designated to receive services. An individualized service plan is similar to an individual education plan (IEP) and must meet IEP requirements. Personnel standards must be the same for those providing services to both public and private school students. Services may be provided on-site at a religious-based private school in a manner that does not violate the Establishment Clause of the First Amendment of the U.S. Constitution and is consistent with applicable state constitutions and laws. Services may be provided on-site at the private school. Transportation may be provided between a student's home and a service site if necessary for the student to benefit from or participate in the services offered.

* Insure that a private school representative attends or otherwise participates in each meeting.

* Inquire into the professional standards of those providing services for private school and public school students.

Proportionate Share

Based on a formula, the district must spend a "proportionate share" of its federal IDEA Part B funds serving private school students in whatever manner the district, after consultation with private school representatives, deems appropriate. Formulas exist for ages 3-21 and 3-5 based on an accounting of students in private schools (including home schools) and students in public schools.

* Write to your school district and ask which private school representatives (including home school representatives) are being consulted about expenditures and how they are selected.

* Request the numbers used in the district's formulas and an audit of expenditures.

Student Count

The official count used to gather the numbers for determining the proportionate share shall be conducted in Texas on the last Friday of October of each year. Private school representatives must be consulted but districts make the final decisions. This count shall be used to determine the amount that the district spends on providing special education and related services in the next fiscal year. Any expenditure for Child Find may not be considered in determining whether the district meets its requirements.

* Inquire how the district conducts its student count and what the numbers are. Some districts are using the number of dual-enrolled students in private schools from the last year of dual enrollment instead of a new and full count of all students in private schools on the day of the official count. Representatives of Private School Students "Representatives of private schools" are referred to many times throughout these regulations. There is no direct reference made as to how these representatives of private school students are to be selected. Home schools are clearly private schools and entitled to be counted in these formulas and entitled to representatives in Texas.

* Contact your district and inquire how representatives of private schools are selected.

* Contact home school and/or private school families and evaluate if mutual involvement would be beneficial.

Complaints

Due process including the right to a hearing, lawsuit, attorney's fees, mediation, and "stay put" only applies for Child Find and evaluations. Complaints about service plans, expenditures, individual rights to services, representation, services, amounts of services, locations, transportation, separate classes, fund benefits, use of public school personnel, use of home educators, and equipment may be filed with the state for investigation.

* If you have complaints, contact TEA-Parent Information Line at 800-252-9668 and inquire as to their procedures.

Additional Services Permitted

The state and districts may augment services to private school students beyond those required by IDEA, which are consistent with state law and local policy. School districts should be encouraged by their constituents to provide comparable services to both public and private school students with disabilities. Money spent to augment services for these students will generally mean money saved in social services over the lifespan of the students.

* Texas does not currently augment these required services and remedies. If the students attend a private school outside Texas, contact the district and ask if they augment these required services and remedies.

Expiration of Services

The "new" rules which permit dual enrollment for students in both private and public schools beginning on the students' third birthdays and continuing until the end of the school year in which the students turn five, subject to IDEA Part C regulations, expire June 30, 2004.

* Various groups who desire their local districts to make state-funded disability services available for all students in their districts (not just for the students who attend public schools) should lobby their state legislators.

Website Access

€ www.tea.state.tx.us/special.ed/rules/sbs.html

€ www.capitol.state.tx.us/statutes/edtoc.html

€ www.tea.state.tx.us/ESC/

€ www.eci.state.tx.us

€ www.tea.state.tx.us/special.ed/medcom

€ www.ideapractices.org

€ www.christianlaw.org

€ www.thsc.org

€ www.thearcoftexas.org

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