

## **Q & A: Private School Education for K-12 Students with Disabilities**

Rights and entitlements of students in private school settings differ from those in public school settings. Whether or not the private school in question receives federal funds and who decided the student would attend the private school also impacts which laws and regulations apply.

### **What laws apply to private schools that receive federal funding?**

Private schools that receive federal financial assistance are covered by Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). Section 504 defines “federal financial assistance” as any grant, loan, contract, or other arrangement where the federal Department of Education provides assistance through funds, services, federal personnel, real or personal property or interest or use in such property. A private school must comply with Section 504 if it receives federal funds directly or indirectly. Contracts or state law may require private schools to comply with the Individuals with Disabilities Education Act (IDEA).

### **What laws apply to private schools that do not receive federal funding?**

Private schools that do not receive federal funding are considered public accommodations covered by Title III of the ADA. These schools must comply with the ADA’s general prohibition against discrimination by public accommodations. These schools are not required to develop and implement IEPs or service plans for students with disabilities.

### **Do these laws apply to private parochial or religious schools?**

No. Religious organizations or entities controlled by religious organizations are generally exempt from these laws.<sup>1</sup>

### **What if the public school district decides to place the student in a private school?**

Under the IDEA, a public school district must provide a free appropriate public education (**FAPE**) to eligible school aged children within its boundaries. The district evaluating the student may decide placement in a private school setting would be necessary to provide FAPE to meet the student’s needs. Such placement would be at no cost to the parent. The district must cover tuition and other costs of the private school in this situation. A district seeking to place a student in a private school must conduct a meeting to develop an Individualized Education Program (IEP) for the student consistent with IDEA placement requirements.<sup>2</sup>

A representative of the private school must be included in the IEP meeting deciding private school placement. Once a student is placed in a private school, the district has discretion to develop the IEP or have the school do so. When the private school develops the IEP, the parent and the district must be involved in any decisions regarding the student’s IEP. The district is ultimately responsible for the provision of FAPE.

---

<sup>1</sup> (42 USC 12187)

<sup>2</sup> See 34 C.F.R. § 104.35 for placement requirements and IEP meeting requirements under 34 CFR § 300.320 through 300.325.

For more information on FAPE, see: [The Right to a Free Appropriate Education](#)

**[Are students placed in private schools by the district still entitled to IEP meetings that discuss postsecondary transition services?](#)**

Yes. Students placed in private school by a public school district generally retain all the same right as students with disabilities in public educational settings.

**[What if the district determines the student no longer needs special education or related services in a private school?](#)**

The eligibility and exit criteria for students attending public schools also apply to students placed in private schools by a public school district. If the student is no longer eligible for special education and related services because of a disability, the district may exit the student.

**[Can a parent place a student in a private school without waiting for the school district to do so?](#)**

A parent may place their student in a private school on their own, but they should do so with extreme caution. A student is still entitled to FAPE if a parent places them in a private school unilaterally if the district's IEP was inappropriate to meet the student's needs. However, if the district's IEP was appropriate, or FAPE was otherwise made available to the child, the parents will be responsible for paying the cost of the private school placement.

**[Are parentally-placed students in private schools entitled to tuition reimbursement from the public school district?](#)**

Tuition reimbursement may be available where a court or hearing officer finds that the district was given the opportunity to but did not make FAPE available to the student in a timely manner prior to the private enrollment and the private placement is appropriate. There is never any guarantee in these circumstances, so parents should be prepared for a decision that does not allow them to get reimbursed for paying private school tuition fees.

**[Can a student still get an IEP after a parental-placement in a private school?](#)**

A district is required under the IDEA to identify students with disabilities and may be required to develop an IEP for such students regardless of that student's attendance to private school. A district may use an IEP for parentally-placed students, but most instead receive a service plan that must be consistent with regulations under Section 504 and the IDEA.

A service plan is a written plan to describe the special education and related services, including location of services and necessary transportation the district will provide. Districts must develop, review, and revise a service plan consistent with requirements under the IDEA for IEPs. A service plan team must review the service plan at least annually to determine whether the student is achieving the annual goals set out in the plan. The team should make appropriate revisions following the review.

**[Can a parent challenge a service plan?](#)**

Due process procedures available to challenge an IEP do not apply to complaints that the district failed to provide services indicated on the student's service plan. However, parents may file a due

process complaint for allegations that the district failed to meet its Child Find requirements if the student was not appropriately identified.

For more information about Child Find, see: [Child Find](#)

### **Can private schools require additional eligibility requirements for admission or participation in school programs?**

Under Section 504, a private school that receives federal financial assistance may not discriminate against students with disabilities based on disability if the student can, with minor adjustments,<sup>3</sup> be provided an appropriate education within that school's programs or activities. A student with a disability is qualified to attend a private school or program if they meet the essential eligibility requirements. A private school providing special education must do so consistently with Section 504's regulations for evaluation, placement, and procedural safeguards for students with disabilities.<sup>4</sup>

### **Can private schools charge extra fees for education and services provided to a student with disabilities?**

No. A private school may not charge more for providing an appropriate education to students with disabilities unless an additional charge is justified by a substantial increase in cost to the school. There is currently no definition of "substantial increase in cost" under Section 504, nor any guidance from courts or agencies. For comparison, the "undue burden" analysis under the ADA's requirement to provide reasonable accommodations considers the cost of the suggested accommodation and the overall resources of the entity to provide the accommodation.

### **What does the ADA require of private schools?**

The ADA prohibits discrimination by private schools against a person based on a disability or because of their relationship or association with a person with a disability. A private school discriminates when it excludes or otherwise denies equal goods, services, facilities, privileges accommodations or other opportunities to someone with a disability. Public accommodations, including private schools, are prohibited from surcharging individuals with disabilities for their service animals. The ADA also proscribes regulations for building and facility accessibility requirements.

Private schools must make reasonable accommodations and provide auxiliary aids and services to students with disabilities to ensure they are not excluded, segregated, or otherwise treated differently than other students. Unless the private school can show that providing such would fundamentally alter the nature of the good, service, facility, or privilege, or would result in an undue burden.

Reasonable accommodations must effectively meet the unique needs of the student with a disability to provide a level playing field to access and accomplish their education. The types of accommodations needed will depend on the student's particular needs. Determining reasonable

---

<sup>3</sup> Section 504 does not define "minor adjustments", but Letters of Findings from the Office for Civil Rights suggest that minor adjustments are similar to reasonable accommodations required by the ADA.

<sup>4</sup> 34 CFR 104.35-36.

accommodations should be an interactive process between the student and the school. Examples of reasonable accommodations include:

- Large print textbooks and other print materials
- Extra time to complete exams
- Recordings of classes and lectures
- Assistive technologies for reading like screen readers
- Low distraction work areas
- Assistance for note-taking

### **What services may the student receive from a private school in the event of emergency school closures?**

When the district continues to provide educational services to the general population, it is responsible for providing equitable services to private school students with disabilities during emergency school closures, including those related to a pandemic. Under such circumstances, the district must communicate with private schools to inform them that equitable services are available.

### **Where can I go for more information?**

- [The Colorado Department of Education](#)
- The Office of Special Education and Rehabilitative Services
  - [Q & A document on Parental Placements in private schools](#)
  - [Information and resources for students with Long-COVID](#)
  - [Q & A on the IDEA's disciplinary requirements and procedures](#)
- [ADA Standards for Accessible Design 2010 for Public Accommodations](#)
  - [DOJ guidance on the ADA Standards for Accessible Design](#)

For Section 504 violations, you have a right to file a complaint with the [U.S. Department of Education's Office for Civil Rights](#) (within 180 days of the alleged discrimination) or the [U.S. Department of Justice](#).

For IDEA violations, mediation or a complaint can also be pursued through the [Colorado Department of Education](#) (CDE).

If you need help or have questions about your rights, you can contact [Disability Law Colorado](#)

\*\*\* DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights. \*\*\*

*Last updated:  
February 28, 2023*