

DOCUMENT RESUME

ED 384 174

EC 304 011

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 TITLE Home Schools, Private Schools, Parochial Schools--What Are A Public School's Special Education Obligations?  
 PUB DATE Apr 94  
 NOTE 15p.; Paper presented at the Annual International Convention of the Council for Exceptional Children (72nd, Denver, CO, April 6-10, 1994).  
 PUB TYPE Speeches/Conference Papers (150) -- Legal/Legislative/Regulatory Materials (090) -- Guides - Non-Classroom Use (055)

EDRS PRICE MF01/PC01 Plus Postage.  
 DESCRIPTORS Compliance (Legal); Court Litigation; \*Disabilities; Educational Legislation; Educational Policy; Elementary Secondary Education; Federal Legislation; Federal Regulation; \*Home Schooling; \*Legal Responsibility; Parochial Schools; \*Private Schools; \*Public Schools; School Districts; \*School Responsibility; Special Education

IDENTIFIERS Individuals with Disabilities Education Act

ABSTRACT

This paper examines issues related to the provision of special education services by public schools to students in private, parochial, or home school settings and offers guidelines for local education agencies. First, the paper reviews federal statutory and regulatory obligations, particularly those under the Individuals with Disabilities Education Act (IDEA), the Education Department General Administrative Regulations (EDGAR), and advisory rulings of the Office of Special Education Programs and the Office for Civil Rights. It also reviews case law, including *Zobrest versus Catalina Foothills School District* (decided by the U.S. Supreme Court), *Goodall versus Stafford County School Board* (decided by the Fourth Circuit Court of Appeals), *Florence County District Four versus Carter* (U.S. Supreme Court), *Work versus McKenzie* (District Court in the District of Columbia), *McNair versus Cardimone* (Sixth Circuit Court of Appeals), *Wright versus Saco School Department* (decided by the Maine Supreme Court), *Tribble versus Montgomery County Board of Education* (U.S. District Court, Alabama), and *Felter versus Cape Girardeau School District* (U.S. District Court, Missouri). Noted is the ambiguity of advice from the Department of Education and the tendencies of the court system to rely upon the plain language of the law. The paper concludes with an outline of a public school's obligations for private school children, options for a public school, and parental rights and options. (DB)

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**TITLE:** Home Schools, Private Schools, Parochial Schools - What are a Public School's Special Education Obligations?

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All children with disabilities are entitled to a Free Appropriate Public Education. Public schools are obligated by Federal Law and Regulations to identify and to make available special education and related services to meet the needs of all children with disabilities who reside within their geographic area and who require special education. Does this obligation include children enrolled in public schools, private schools, parochial schools and home schools?

Many parents, dissatisfied with public education, are enrolling their children with disabilities at their own expense in home schools, private schools and parochial schools. Public schools are being requested by parents or by private schools to provide special education services at these private placements or to pay for these private placements.

The EDGAR Regulations require public schools to provide private school students with an "equitable opportunity to participate" in any Federally funded program including special education.

The Office for Special Education Programs has advised that private school children may participate in an LEA's IDEA services.

The Office for Civil Rights has advised that public schools have no obligation to provide special education services to students who are not enrolled in a public school.

The Home School Legal Defense Association has opined that schools have neither the obligation nor the right to contact the parents of students with disabilities once the parents have initiated an approved home schooling program.

Some courts have found that LEAs have met their obligations to private school child by providing access including transportation to the LEA's IDEA services.

The U. S. Supreme Court's Zobrest decision has been widely misquoted and misinterpreted to require public schools to provide special education services to eligible students enrolled in parochial schools.

Similarly, the Supreme Court's decision in Carter has been picked up by the popular press as permitting parents to place their children in non-approved private schools and requiring the public school to fund the placement. Is a public school required to provide special education services at a private school or a home school?

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What, if any, is the distinction between offering special education services and ensuring the provision of a free appropriate public education?

What is an "equitable opportunity to participate"?

How does a public school protect the educational rights of a child with a disability while respecting parental choice in the education of their child?

How can a public school safeguard itself against claims of denial of special education services and demands for tuition reimbursement, compensatory services, and even monetary damages?

This paper will:

1. Review the Federal statutory and regulatory obligations of public schools to provide special education services to private school children;
2. Review rulings from the Office of Civil Rights and the Office of Special Education Programs (OSEP) concerning a public school's obligation for providing special education services to students with disabilities privately placed in private schools or home schooled.
3. Review the Zobrest, Carter and other significant court decisions applicable to unilateral private placements;
4. Recommend policies and procedures which will foster compliance with Federal obligations while ensuring that the rights of parents and the needs of their children with disabilities are appropriately addressed.

For purposes of this paper:

1. The term "private school child" means a student with a disability as defined by IDEA who is enrolled by his/her parents at parental expense in a home school, private schools or parochial school.
2. The term "Home School" means a program of educational instruction typically provided to a child by the parent and limited to the family unit.
3. The term "FAPE" means a free appropriate public education as defined by 34 CFR 300.8.
4. The term "LEA" means the school administrative unit with responsibility for providing FAPE to an eligible student.

## FEDERAL LAW AND REGULATIONS

The Individuals with Disabilities Education Act Law and Regulations state that the purpose of the law is:

*To assure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs, and that the rights of children and their parents are protected, (20 USC 1400(c), 34 CFR 300.1(a),(b)).*

All means all. Congress and the U.S. Department of Education intended for all children to have available to them appropriate special education and related services. This obligation, in the spirit of "Cooperative Federalism", was directed to each State Educational Agency as a condition of the receipt of Federal funding. Each State Agency in turn directed each Local Educational Agency to ensure that a free appropriate public education was available to all eligible children residing within the geographic borders of the LEA.

Within the IDEA and more specifically within the IDEA Regulations, Congress and the U.S. Department of Education recognized that some children with disabilities have been placed by their parents in private and parochial schools. But how could the U.S. Department of Education fulfill the congressional intent of "assuring that all children with disabilities have available to them ... a free appropriate public education..." while recognizing the right of parents to enroll their children in private and parochial schools at the parent's expense and simultaneously safeguarding the public schools from the financial burden of paying for private placements?

34 CFR Sections 300.403 and 300.450 through 300.452 of the Federal Regulations addresses the public school's obligation to these children who are privately placed.

Section 300.403 states:

*(a) If a child with a disability has FAPE available and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Sections 300.450-300.452.*

*(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Sections 300.500-300.515.*

Critical to an understanding of this requirement is the provision that if FAPE is available to the child through the LEA, then the LEA is not responsible for the tuition at the private school. However, as the Supreme Court has found in both the Burlington and the Carter cases, the LEA is responsible for the cost of the child's education in the private school if the LEA has not made a free appropriate public education available.

What are the Federal regulations concerning children with disabilities enrolled by their parents in private schools?

The term "private school children with disabilities" is defined at 34 CFR 300.450 as:

*"...children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under Sections 300.400-300.402."*

The Regulations at 300.400-300.402 apply to children with disabilities who have been placed in or referred to a private school or facility by a state or local educational agency in order to receive a FAPE. This paper does not address an LEA's obligation to these children.

State educational agency and local educational agency responsibility for private school children is specified at Secs. 300.451 - 300.352. Please note that the obligations under Secs. 300.451 - 300.452 are waived and the U. S. Department of Education is required by 34 CFR 300.480 to implement a "by-pass" if an SEA is, and was on December 2, 1983, prohibited by state law from providing for the participation of private school children with disabilities in the program provided under the IDEA.

The IDEA Regulations at 34 CFR 300.451 state:

*The SEA shall ensure that -*

*(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school children with disabilities in the program assisted or carried out under this part by providing them with special education and related services; and*

*(b) The requirements of 34 CFR Sections 76.651-76.662 are met.*

It would appear that this regulation (and the IDEA at 1413(a)(4)(A)) permits a certain limitation on the obligation to provide all children with disabilities with a FAPE. Somehow the SEA is required to ensure the provision of special education and related services to private school children consistent with their number and location. Does this mean that the SEA may limit the provision of services to private school children based on some standard such as population density or geographic isolation? Similarly of interest is the change in the language from ensuring the provision of a FAPE to merely providing special education and related services. Is this a lower standard than FAPE?

34 CFR 300.452 articulates the responsibility of local educational agencies:

*Each LEA shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency.*

What one rule taketh away another rule giveth. Shall means shall and places a positive obligation on the LEA to implement a rule. The regulatory language is clear and unambiguous: "Each LEA shall provide special education and

related services designed to meet the needs of private school children with disabilities". Are we now back to a FAPE standard? Have we removed the population density and geographic isolation standards arguable under 300.451? Note the limiting language - "residing in the jurisdiction of the agency". Does this rule limit an LEA's obligation to only those children residing within the geographic boundaries of the LEA? Is this the only limitation to an LEA's obligation for private school children? Perhaps the EDGAR Regulations provide some guidance for LEAs.

#### EDGAR REGULATIONS

300.451 (b) requires that each SEA ensure that the requirements of 34 CFR Secs. 76.651 - 76.662 are met. These regulations, commonly known as the EDGAR regulations, address the obligations of the SEA and any subgrantees (LEAs) concerning federally funded programs administered by the state. The IDEA is a federally funded program which flows monies to each SEA which in turns provides subgrants to each LEA. Therefore, each LEA is obligated to comply with the EDGAR regulations as a subgrantee.

The following is a summary of the obligations under the EDGAR Regulations of an LEA.

1. Each LEA shall provide private school children with a genuine opportunity for equitable participation... consistent with the number of eligible private school children and their needs..., (34 CFR 76.651).
2. Each LEA shall consult with representatives of private school children and consider:
  - (a) Which children will receive benefits;
  - (b) How their needs will be identified;
  - (c) What benefits will be provided;
  - (d) How the benefits will be provided; and
  - (e) How the project will be evaluated, (34 CFR 76.652).
3. Each LEA shall determine the above on a basis comparable to that used in providing for public school students, (34 CFR 76.653).
4. Each LEA shall provide private school children with benefits comparable in quality, scope, and opportunity for participation as provided to students enrolled in public school, (34 CFR 76.654).
5. Each LEA shall spend the same average amount of program funds on private and public school students. If the average cost of meeting the needs of private school students is different from the average cost of meeting the needs of students enrolled in public school, the LEA shall spend a different average amount, (34 CFR 76.655).

6. Each LEA shall include the following information in its subgrant application:
- (a) A description of how the applicant will meet the Federal requirements for participation of private school children.
  - (b) The number of private school children who have been identified as eligible to receive benefits under the program.
  - (c) The number of private school children who will receive benefits under the program.
  - (d) The basis used to select the students.
  - (e) The manner and extent to which the LEA consulted with private school representatives.
  - (f) The places and the times that the private school children will receive benefits.
  - (g) The differences, if any, between the benefits the LEA will provide to public and private school students, and the reasons for any differences, (76.656).

So what does this all mean? It appears that LEAs are required to consult with representatives of private school students (parents, teachers, administrators of private schools) and to determine who, what, where, when and how private school children will be able to have an "equitable opportunity to participate in the federally funded program". The basis for the determination shall be comparable to that used for public school children. The benefits provided to private school children will be comparable in quality, scope and opportunity to that provided by public school children. And the average amount expended upon private school children will be comparable to that spend on public school children unless the average cost for private school children is more in which case the public school will spend a different amount!

#### OSEP/ OCR ADVISORY RULINGS

The Federal Regulations set the basic obligations of each SEA and LEA. States and local school systems can gather further insights into their Federal obligations by turning to Advisory Rulings from the Office of Special Education and Rehabilitation Services (OSERS), the Office of Special Education Programs (OSEP) and the Office for Civil Rights (OCR). Following are highlights from applicable advisory rulings from these offices.

McCann, Regional Director, OCR Region I, 1985

- \* An LEA must provide parents with prior notice that, under state law, enrollment in a home school program terminates the LEA's obligation to provide a FAPE to their child, (Kaagan Letter of Findings, FHLR 352:03)

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Bellamy, Dir. OSEP, 1988

- \* An LEA must provide a genuine opportunity for equitable participation in the public school program.
- \* Parents May Refuse Special Education for Nonpublic or Home Students

- \* "There is no Federal authority to override a parent's decision not to have their (private school child) participate in special education services", (Wierda Letter, EHLR 213:148).

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O'Malley, Exec. Assist. Private Ed. U. S. DOE, 1988.

- \* An LEA is required to provide a FAPE to all handicapped children within an agency's jurisdiction.
- \* Nothing in the IDEA was intended to interfere with the right of parents to educate their children at home or in a private school.
- \* IDEA and EDGAR regulations do not mandate public education for private school children, (Ferris Letter, 213:142).

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Shrag, Dir. OSEP, 1989.

- \* An LEA is obligated to permit private school children to participate in the program assisted or carried out under IDEA.
- \* An LEA's obligation to private school children is not limited to services provided solely by IDEA funds, (Moore Letter, 16 EHLR 222).

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Davila, Assist. Sec. OSERS, 1990

- \* The Supreme Court's Decision in Aguilar v. Felton which prohibits the provision of Chapter 1 services on parochial school grounds does not extend to the IDEA.
- \* An LEA would need to apply the requirements of 300.451 to the facts to determine an appropriate method to provide IDEA services to eligible children enrolled in parochial schools, (Orschel Letter, 16 EHLR 1368).

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Davila, Assist. Sec. OSERS, 1990

- \* An LEA does not necessarily have to provide services on the premises of private schools in order to meet their obligations under IDEA.
- \* An LEA may provide private school children with a genuine opportunity for equitable participation by serving them at a public school or neutral site, (Goodall Letter, 16 EHLR 1398).

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Shrag, Dir. OSEP, 1991

- \* Private school children do not have an individual entitlement to FAPE.
- \* The nature and extent of services and the number of private school children served are determined by the SEA and LEA.
- \* An LEA may elect not to serve every private school child.
- \* An LEA is not obligated to make the full range of services available to private school children whom it elects to serve, (Mentink Letter, 18 IDELR 276).



Davila, Assist. Sec. OSERS, 1991.

- \* LEAs generally meet the obligation to make FAPE available by providing special education and related services through the public schools.
- \* An LEA must ensure the private school children have an equitable opportunity to participate in the IDEA program.
- \* An LEA is not required under IDEA or EDGAR to provide IDEA services to all private school children, (17 EHLR 1117).

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Davila, Assist. Sec. OSERS, 1991.

- \* An LEA is not required to make FAPE (interpreter services) available to a private school child at the private (parochial) school if FAPE has been made available in the LEA.
- \* A parent who is dissatisfied with an LEA's determination concerning the nature and extent of services provided to a private school child may initiate a due process hearing or file a complaint with the SEA, (Livingston Letter, 17 EHLR 523).

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Davila, Assist. Sec. OSERS, 1992

- \* An LEA is not required to provide a private school student with a FAPE if the LEA has made a FAPE available to the child and the parents have elected to enroll the child in a private school.
- \* An LEA is obligated to provide a FAPE if the child re-enrolled in the public school.
- \* There is no individual entitlement to services for a private school child.
- \* An LEA may provide services at the agency's discretion on a case by case basis.
- \* Providing services to one child would not obligate the LEA to provide services for all children. (Grassley Letter, 19 IDELR 629)

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Shrag, Dir. OSEP, 1992

- \* IDEA does not require that special education services be provided to each and every private school child.
- \* The determination of which private school children are served and the types of special education and related services provided to them must be made in consultation with representatives of the private school.
- \* The determination of which private school children are served must be made in consultation with the representatives of the private schools and based upon an equitable method using the process set forth in 34 CFR Part 76.
- \* If under state law, home schooling constitutes enrollment in a private school or facility, then the requirements of 34 CFR Sec. 300.403 and 300.452 would apply. (Williams Letter, 18 EHLR 742)

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Shrag, Dir. OSEP, 1993.

- \* An LEA is required under childfind to evaluate all children enrolled in a private school suspected of having a disability, regardless of the nature or severity of the disability.
- \* Private school children do not have an individual entitlement to FAPE.
- \* An LEA may elect not to serve or to discontinue serving every private school child residing in its district, (Peters Letter, 19 IDELR 974).

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Peelen, Director, Elementary and Secondary Policy Division, OCR, 1993.

- \* An LEA could meet its Section 504 Childfind obligations by providing notice to private schools, state and local agencies, and placing notices in newspapers.
- \* If an LEA has made a FAPE available at the public school, Section 504 does not require the recipient to provide services to private school children and children in home schooling programs, (Veir Letter, 20 IDELR 864).

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Guard, Acting Dir., OSEP, 1993

- \* Matters involving home schooling provisions under state law are generally beyond the scope of OSEP's authority.
- \* Under the applicable state law the student was permitted to attend public school part time and be home schooled for the remainder.
- \* This dual enrollment permitted the provision of special education services at the public school, (Letter of 4/26/93, 20 IDELR 177).

#### CASE LAW

The U.S. Supreme Court Decision in June of 1993 entitled Zobrest v. Catalina Foothills School District is perhaps most important for what it did not decide. Zobrest does not require the provision of special education and related services in parochial schools. Zobrest was decided on the very narrow constitutional question concerning whether the Establishment Clause of the U.S. Constitution would bar the provision of a publicly funded sign language interpreter in a parochial school. The public school's obligations under IDEA were neither the basis for the appeal nor the decision.

While the Zobrest decision is limited to the constitutional argument of the separation of church and state, the Supreme Court makes some interesting conclusions within the decision. These conclusions either demonstrate a lack of understanding of the IDEA Regulations and OSEP Advisory Rulings we have been reviewing or set the stage for a broader interpretation of a public school's obligations under the IDEA. Chief Justice Rehnquist notes:

*"The IDEA creates a neutral government program dispensing aid not to schools but to individual handicapped children. If a*

*handicapped child chooses to enroll in a sectarian school, we hold that the Establishment Clause does not prevent the school district from furnishing him with a sign-language interpreter there in order to facilitate his education."*

*"The (interpreter) service at issue in this case is part of a general government program that distributes benefits neutrally to any child qualifying as "handicapped" under the IDEA, without regard to the "sectarian - nonsectarian, or public - nonpublic nature" of the school the child attends. By according parents freedom to select a school of their choice, the statute ensures that a government paid interpreter will be present in a sectarian school only as a result of the private decision of individual parents." (Zobrest v. Catalina Foothills School District, 19 IDELR 921).*

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Another almost identical case entitled Goodall v. Stafford County School Bd. (17 EHLR 745) was decided differently by the Fourth Circuit Court of Appeals in 1991, 2 years prior to Zobrest. Goodall was argued under both constitutional grounds and under IDEA.

The Fourth Circuit found:

1. Neither state nor federal statutory law mandated the provision of a cued speech interpreter to a child with a hearing impairment who was unilaterally placed at a parochial school.
2. 34 CFR 300.452 must be read to relinquish a school district's obligations to pay for related services when parents opt to place their children at private schools.
3. The parent's request for interpreter services at the parochial school would violate the Establishment Clause of the First Amendment.

Of note is that Goodall has been recently refiled in District Court in light of the Zobrest decision. This case has the potential for specifically addressing an LEA's responsibility under the IDEA for providing special education and related services to a private school child. Although a different court could rule differently, it is important to recognize that the parents lost in both district and circuit court on both the constitutional and the statutory (IDEA) arguments. While the Constitutional argument will probably fall, the statutory argument may prevail. The Goodall decision is controlling in Maryland, North Carolina, South Carolina, Virginia, and West Virginia. LEA's within these states may wish to monitor this case closely. The district court's decision is anticipated during the fall of 1994.

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The Supreme Court's Decision in Florence County Dist. Four v. Carter 1993, (20 IDELR 532) like Zobrest, has spawned its own mythology. Carter does not permit parents to place their children in any unapproved school and automatically require the public school to pay the tuition. In fact, the

argument of placement in a non-approved school was a red herring since South Carolina keeps no publicly available list of approved private schools but instead approves private school placements on a case by case basis.

Shannon Carter had been offered an IEP for her 10 grade year which provided 3 periods per week of resource services for reading with a proposed annual gain of only a 4 month grade equivalent (5.4 - 5.8 G.E.)

The Supreme Court found that retroactive reimbursement is appropriate when:

1. The public school has failed to provide a FAPE;
2. The private school has provided an appropriate program;
3. The private school is substantially in compliance with IDEA;
4. The tuition for the private school is reasonable.

The Supreme Court, building on their Burlington decision (EHLR 556:389), held that a court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under IDEA and enroll the child in a private school that provides an appropriate education that is substantially in compliance with IDEA, but does not meet state standards by being on an "approved school list". The Court noted that parents who make unilateral placements do so at their own financial risk. Furthermore, the Court noted that in ordering reimbursement courts "must consider all relevant factors, including the appropriate and reasonable level of reimbursement..." and that "total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable".

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OSEP has held the position that Hearing Officers have the authority to award tuition reimbursement for a unilateral private placement upon a finding that the LEA's program was not appropriate and that the program selected by the parents was otherwise proper, (EHLR 211:429a, restated in OSEP Memorandum 94-14, 1/21/94).

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Work v. McKenzie, 1987, (EHLR 558:431) The District Court in D.C. noted that a public school is not obligated to pay the tuition at a private school if an appropriate education has been made available at a public school. The Court specifies that in the event that the private school:

*"...lacks a special education component that the child requires, for example, speech therapy, (the public school) would then be required to furnish that service and to provide transportation where necessary."*

The Court concluded that this standard did "not mean, however, that the (public school) is required to transport (the student) to and from the (private school)" since the public school had a full time program determined to be appropriate for the student in the public school. The Court's ambiguous standard apparently obligates the public school to provide a special education component that a private school child requires to benefit from the child's education.

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McNair v. Cardimone, EHLR 441:381 - The Sixth Circuit Court of Appeals noted in a 1989 decision that 34 CFR 300.403(a) requires an LEA to "make services available" to a private school child. The McNair Court established a four part standard to determine if an LEA is responsible for the provision of a related service to a private school child:

1. The child has a disability;
2. The service is a related service;
3. The related service is designed to meet the unique needs of the child; and
4. The LEA is responsible under the IDEA for providing related services based upon the actual facts of each case.

The court found that transportation was not a required related service since the child's deafness did not require any special transportation. The McNair Court finessed the issue of an LEA's responsibility under the IDEA since in this case the parents failed on the third standard. The court noted: "We leave that (the fourth standard) for another court on another day." The Sixth Circuit includes the states of Ohio, Kentucky, Tennessee, and Michigan.

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The Maine Supreme Court case entitled Wright v. Saco School Department, 1992 (19 IDELR 99, 18 IDELR 505) ruled that the LEA had met its obligation under the IDEA and State Law by providing special education and related services at the public school and assuring access by providing transportation from the parochial school to the public school.

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Tribble v. Montgomery County Board of Education, 1992, (19 IDELR 102, 20 IDELR 661) - The U. S. District Court, Middle District of Alabama concluded that all children including private school children were entitled to special education and related services under the IDEA. The public school was ordered to provide the O.T., P.T., Speech and Language services and the transportation needed to access these services in the public school. The Court did not require the provision of the services in the private school.

Of particular note is the court's discussion of the various advisory rulings from the U.S. Department of Education:

*"The deference normally due to OSEP interpretations is compromised by the existence of a host of rulings that reject the agency's interpretation of the statute and regulations on the issue at hand. Further, the explicit language of the IDEA's implementing regulations states that children who are placed in private schools by their parents and not by a public agency must be provided with special education and related services."*

The trouble with Tribble is that the "host of rulings" cited by the court was limited to 1 Circuit Court Decision (McNair), 1 D.C. District Court Decision (Work v. McKenzie), 1 Maine State Supreme Court Decision (Wright v. Saco), and

## 5 State Level Due Process Hearing Decisions.

Pending an appeal to the U.S. Court of Appeals, Eleventh Circuit, the school board had changed its policy to permit the provision of special education services at certain private schools. Both parties motioned for dismissal as moot. The District Court decision was vacated and remanded for dismissal. Therefore, this case has no legal weight, although the arguments are still outstanding just waiting for another opportunity to be raised.

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A U.S. District Court in Missouri, Felter v. Cape Girardeau School District, 1993, (19 IDELR 764, 20 IDELR 434) astutely noted that "there is a shortage of federal case law construing the IDEA." The Court found the public school responsible for providing transportation as a related service from the sidewalk of the parochial school to the public school so that the student who had dual enrollment could participate in her afternoon special education program in the public school. This finding was based on the statements by the IEP Committee that transportation was a necessary related service.

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An interesting side note is an Iowa Supreme Court case that, in 1989, found that the State could use the child protection code to compel school attendance since the parents' refusal to permit a home schooled mentally retarded student to attend public school special education classes critical to his development and welfare was sufficient to prove neglect, (In the interest of B.B., A Child, v. STATE OF IOWA, EHLR 441:407).

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## SUMMARY/ CONCLUSIONS

Sorting through the morass of OSEP Advisories and case law is a lot like panning for gold. You need to shovel through a lot of silt to find a few nuggets. What is striking is the ambiguity of the advice from the U. S. Department of Education and the tendencies of the Court to rely upon the plain language of the law. Some have commented that OSEP Advisories are an oxymoron. Others have recognized that OSEP's refusal to be overly prescriptive permits SEAs considerable flexibility in the design and implementation of special education and related services.

What is unavoidable is the history of special education. As educators we have frequently failed to meet our most basic obligation - to educate all children. As educators we have frequently relinquished our role in the development of sound educational policy and let lawyers and the courts dictate that policy.

What are some general principles and standards which appear consistently throughout the record? How can an LEA practice defensive, proactive special education administration in order to meet the legal obligations of the IDEA and avoid unnecessary, costly and time consuming litigation?

### A Public School's Obligations for Private School Children

A careful analysis of the applicable Federal Law, Regulations, OSEP Advisories and Case Law suggests that each LEA has the following obligations for all private school children:

1. To inform all parents of the LEA's responsibility to offer a free, appropriate public education to all children.
2. To conduct childfind for all students within the LEA's geographic area.
3. To annually convene an IEP Team to develop, review and revise the IEPs of all eligible children.
4. To offer a FAPE to all eligible children regardless of their enrollment.
5. To permit private school children to participate in the IDEA program.
6. To consult with representatives of private schools to determine which children would be served and the types of services provided.
7. To advise the parents of eligible children of their procedural safeguards.
8. To document, document, document.

### Options for a Public School

An LEA may wish to consider the following options as possible methods for meeting its obligations to private school children:

1. Permit dual enrollment of the private school child.
2. Offer transportation and IDEA services at the public school at the start of the school day.
3. Provide transportation from the private school to the public school's IDEA services.
4. Provide IDEA services at the private school or a neutral third site.

### Parental Rights and Options

Parents may:

1. Elect to place their children in private programs or home schools.
2. Elect to refuse to permit their private school children to participate in a special program.
3. Challenge the provision or denial of IDEA services through Due Process.
4. Seek retroactive reimbursement for private school tuition if the LEA has failed to make an appropriate program available.

Recognizing these obligations and rights will meet the stated purpose of the IDEA - "To assure that all children with disabilities have available to them a free appropriate public education, (20 USC 1400(c)).