

IDEA AS IMPACTS THE DOSP FREE STANDING EARLY CHILDHOOD PROGRAMS

1) What are the responsibilities of the LEA to children with disabilities ages 3-5?

Section 612(a)(1) of IDEA requires that States make a free appropriate public education (FAPE) available to eligible children with disabilities aged 3 through 21 in the State's mandated age range (34 CFR §§300.101-300.102). All States currently make FAPE available to 3 through 5 year old children with disabilities. Because many LEAs do not offer public preschool programs, particularly for 3 and 4 year old children, LEAs often make FAPE available to eligible preschool children with disabilities in a private school or facility. In these circumstances, there is no requirement that the private school or facility be an elementary school under State law.

In some instances, an LEA may make FAPE available in a private preschool program that the parent has selected. If there is a public preschool program available, the LEA of residence may choose to make FAPE available to a preschool child in that program. If the group of persons making the placement decision, as specified in 34 CFR §300.116(a)(1), places the child in a public or private preschool program and the parents reject the public agency's offer of FAPE because they want their child to remain in the private preschool program they have selected, the public agency is not required to provide FAPE to that child. The parent may challenge the public agency's determination of what constitutes FAPE for their child using the State complaint and due process procedures available under IDEA.

If a child aged 3 through 5 is enrolled in a private school or facility that meets the definition of "elementary school" in IDEA and the final regulations, the child would be considered parentally placed and the equitable participation provisions would apply. "Elementary school" is defined at 34 CFR §300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. The equitable participation provisions for children with disabilities aged 3-5 enrolled in private pre-schools would apply only if the State's definition of "elementary school" includes pre-school. The State's obligation to make FAPE available for children with disabilities ages 3 through 5 remains if the State's definition of "elementary school" does not include pre-school.

- **Does this responsibility change if the children enroll in a private pre-school in addition to receiving services to meet the needs of their disabilities?**

Three through five-year-old children with disabilities that are enrolled by their parents in a private school or facility in a State that includes preschool in its State's definition of "elementary school" would be considered parentally-placed and the equitable participation provisions would apply. The LEA where a child attends private school is responsible for ensuring equitable participation. In most States, the LEA of residence is generally responsible for making FAPE available to eligible children with disabilities. Therefore, if a parentally-placed private school child also resides in that LEA, then the LEA would generally be responsible for making FAPE available to the child, unless the parent makes clear his or her intent to keep the child enrolled in the private elementary school located in the LEA.

If a determination is made through the child find process by the LEA where the private school is located that a child needs special education and related services and the parent resides in a different LEA, the parents may request that the LEA of residence make FAPE available to the child. If a parent makes clear his or her intent to keep the child

enrolled in the private elementary school located in another LEA, the LEA where the child resides need not make FAPE available to the child.

- **Does it change if the private pre-school is part of a K-8 private school vs. a free-standing pre-school?**

Many elementary schools and educational facilities have preschool programs on premises. Whether a private preschool is free-standing or part of a K-8 school or facility is not of consequence. If a private school is located in a State that includes preschool in its definition of "elementary school", the equitable participation provisions would apply. If not, the State's obligation to provide FAPE to such children remains.

2) **Should children ages 3-5 with disabilities receive an IEP?**

An Individualized Education Program (IEP) or an Individualized Family Services Plan (IFSP) for children aged 3 through 5 must be written for eligible children with disabilities receiving FAPE (34 CFR §300.101). The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is consistent with State policy and agreed to by the agency and the child's parents (34 CFR §300.323(b)). Parentally placed children with disabilities do not have an individual entitlement to receive any or all of the services they would if enrolled in a public school program (34 CFR §300.137). The equitable participation provisions apply for eligible parentally placed children with disabilities and such children designated to receive special education and related services should receive a "services plan" (34 CFR §300.132(b)).

- **Does this change if the children are enrolled in a private pre-school program in addition to receiving services to meet the needs of their disabilities?**

An LEA's obligation to develop an IEP or IFSP for an eligible preschool child receiving FAPE does not change if the State's definition of "elementary school" does not include preschool. If a State's definition of "elementary school" includes preschool, the equitable services provisions apply and the LEA must develop a "services plan" for a parentally placed preschool student designated to receive special education and related services.

- **Does it change if the private pre-school is part of a K-8 private school vs. a free-standing private pre-school?**

As mentioned above, whether a private preschool is free-standing or part of a K-8 school or facility is not of consequence. The extent of an LEA's obligation to provide special education and related services to students aged 3 through 5 in accordance with equitable participation requirements is based on whether or not the State's definition of "elementary school" includes pre-school.