



Education Law Center

Making sure that all of Pennsylvania's children
have access to quality public schools

Getting Help for Children with Disabilities in Private Schools

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

My child goes to a private school, but she is having trouble learning.

Can I get my child tested?

If you might enroll your child in your local school district, you should ask the **school district** to test her to see if she needs special education services. Your request for an evaluation should be in writing. The school district has 60 calendar days (minus the summer) to evaluate her from the date you give your written permission. The evaluation will determine if your child is eligible for services, and the type of services that she needs.

If you do not want to enroll your child in public school but still want her evaluated, the letter asking for an evaluation should be sent to the "**Intermediate Unit**" (IU) where the private school is located. The IU must also evaluate your child within 60 calendar days (minus the summer) from the date you give your written permission. Contact information for school districts and Intermediate Units is available from the Pennsylvania Department of Education on the following website:
<http://www.edna.ed.state.pa.us/#county>.

What if an evaluation shows that my child needs special education?

If your child needs special education, and you enroll her in public school or a public charter school, the school must offer her a "free appropriate public education" or FAPE. FAPE means the special education and supportive services she needs to make meaningful educational progress. If you decide to keep your child in private

school, your local school district is not responsible for providing her with FAPE. To learn more about the rules on special education evaluations and your child's right to special education in a public school, visit ELC's website at www.elc-pa.org.

What if the IU or the school district decides that my child is not eligible for special education help and I disagree?

The IU or the school district must inform you of its decision and the reasons in writing on a form called a Notice of Recommended Education Placement/Prior Written Notice (NOREP/PWN). If you disagree, you have a right to a hearing to challenge that decision. For more details on how the special education hearing system works, see ELC's fact sheet called, *How to Resolve Special Education Disputes*, at www.elc-pa.org.

I know my child has a disability and needs help, but I do not want to enroll my child in public school.

Can my child get any help if she is enrolled in a private school?

While your child is not eligible for all of the special education services she would receive if she were enrolled in a public school, if the private school is a **non-profit** private elementary or secondary school, the IU where the private school is located may have some help to offer. What services are offered depends on what the IU decides to provide. To apply for services, contact the IU and ask to speak to the "Non-Public School Office."

What happens if the IU agrees to provide some special education or therapies to my child?

If the responsible IU offers some special education services to your child, it must develop a services plan. The plan, called an "Equitable Participation Services Plan" or **EP Services Plan**, must list the services the IU will provide your child. You should participate in the meeting to develop your child's EP Services Plan. The plan should be reviewed annually, and revised if necessary.

An EP Services Plan is different from the Individualized Education Program (IEP) that is developed for children attending a public school. Different from an IEP, the IU does not have to provide the services listed in an EP Services Plan if circumstances change (for example, if the IU spends all of the state and federal money it has set aside to help private school students). Also, the IU does not have to agree to include in the EP Services Plan everything the child needs to help with academic and/or behavioral skills. Unlike a child with an IEP who is enrolled in a

public school, you cannot have a hearing if you are dissatisfied with the services the IU is offering.

Why do different IUs provide different services to children with disabilities in private schools?

The IUs must set aside some federal funds and IUs also receive some separate state funding¹ to help children with disabilities whose parents place them in private schools. However, the IUs have flexibility in how they spend these funds. For example, the IU could decide to spend all of the federal money on training private school teachers, and not offer any services directly to students. The IU must meet with representatives from the private schools located in the IU and representatives of parents who placed their children in these private schools to decide what services to provide.

Can services be provided to my child at her private school?

Although most may be provided at the private schools, including religious schools, there is no requirement that services be provided on-site. There is an exception for services for children who have visual disabilities or who are blind. If services are provided to children with visual disabilities at public schools, these same services, including but not limited to mobility services, must be provided on-site to these children at the private schools they are attending.

I could not get my child the services she needs from the IU - is there any other place to turn for help?

Can my child get any services from our local school district?

A child with a disability who is enrolled by her parents at a private school does not have a right to FAPE from her school district. However, an option for some services is "**dual enrollment.**" Dual enrollment means that your child is enrolled in both the local public school and the private school. You should be able to register your child in the public school district where you live for the limited purpose of getting special education services (although not an IEP) for your child at the public school.

¹ These state-funded services provided by IUs are called **Act 89 Services** (or "auxiliary" services). They include speech and hearing services, counseling services, psychological services, services for exceptional children, and math and reading remediation. Every IU must have a program for nonpublic school students set up to provide these auxiliary services.

A child who has a disability and needs help in school but who is not eligible for special education can also use dual enrollment to get services like speech therapy, physical therapy, or occupational therapy. The child must participate during scheduled times when the special education or other service is offered by the school district. However, the law is not clear about how much service the school district must offer. Your private school may be able to assist you in contacting the local district and applying for such services.

What transportation services are available for my child?

School districts must provide students who attend a non-profit elementary or secondary school with the same kind of transportation it provides to public school students if the private school is located within 10 miles of the school district. The IU is responsible for providing your child with transportation if it is necessary for your child to get to a service that the IU has agreed to provide.

Does my child's private school have to make accommodations for my child with a disability?

It depends. If your child's private school receives **federal financial assistance** (even if it is a religious school), the school **may not exclude** a child with a disability if the child can, **with minor adjustments**, be provided an appropriate education by the school. If your child attends a private religious school that does not receive any federal funding, then that school is not required to provide accommodations for your child.

If your child attends a **non-religious private school**, then that school must follow these rules set out in the Americans with Disabilities Act (ADA):

- If a non-religious private school was built after January 26, 1992, the school must be built readily accessible to, and usable by, students with disabilities, including those who use wheelchairs.
- If the school was built before January 26, 1992, the school must remove architectural barriers and communication barriers that are structural in nature, where such removal is "readily achievable," that is, easily accomplished without much difficulty or expense.
- All schools, regardless of when they were built, generally must make **reasonable modifications** to their policies, practices, and procedures if necessary to allow your child to participate in all aspects of the school experience.
- All schools must generally provide auxiliary aids and services to students with disabilities if necessary to ensure that they are not excluded, denied

services, segregated, or otherwise treated differently. "Auxiliary aids and services" as defined by the ADA are services or devices, such as an interpreter for a person who is deaf or large print or Brailled materials for a person who is blind, that assists someone with vision or hearing disabilities to communicate effectively. [Please note: These accommodations are different from the services that IUs provide to students at private schools under a state law called Act 89. See page 3 of this fact sheet for more information about Act 89 services.]

If there are physical barriers to your child attending the private school, or if there are reasonable modifications or auxiliary aids and services needed for your child to participate in all parts of the program, you should talk to officials at the school. They may be able to take steps to make the school more accessible or to provide specific accommodations. For more information about the Americans with Disabilities Act, visit the Department of Justice's website at www.ada.gov.

For more information about the rights of children with disabilities, see ELC's website at web address listed below, or contact the Disability Rights Network at 800-692-7443.

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Disability Rights Network of Pennsylvania (DRN), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. DRN is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.drnpa.org.

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