

Private School Placements

- I. **Private School Placement by Newport News Public Schools** or Comprehensive Services Act team
- A. When a child with a disability is placed by Newport News Public Schools or is placed for noneducational reasons by a Comprehensive Services Act team that includes Newport News Public Schools in a private school or facility that is licensed or has a certificate to operate, Newport News Public Schools shall be responsible for ensuring compliance with the requirements of this section, including participation in state- and division-wide assessments. Newport News Public Schools shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the private school or facility.
 - B. Before Newport News Public Schools places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the Newport News Public Schools will initiate and conduct a meeting in accordance with 8 VAC 20-81-110 to develop an IEP for the child. Newport News Public Schools will ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, Newport News Public Schools will use other methods to ensure participation by a private school or facility, including individual or conference telephone calls.
 - C. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, Newport News Public Schools will ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, Newport News Public Schools will use other methods to ensure participation by a private school or facility, including individual or conference telephone calls.
 - D. After the child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility or at the discretion of Newport News Public Schools.
 - E. If the private school or facility initiates and conducts these meetings, Newport News Public Schools will ensure that the parent or parents and Newport News Public Schools representative:
 - 1. Are involved in any decision affecting the child's IEP;
 - 2. Agree to any proposed changes in the program before those changes are implemented; and
 - 3. Are involved in any meetings that are held regarding reevaluation.
 - F. For a Newport News student placed in a private school or facility, implementation of the child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with Newport News Public Schools.

- G. When a child with a disability is placed by Newport News Public Schools or a Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this section will be extended to the child.
- H. If the parent or parents request a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent or parents and Newport News Public Schools prior to placement by the Comprehensive Services Act team.
- I. When a child with a disability is placed in a private school or facility that is out of state, the placement will be processed through the Interstate Compact on the Placement of Children, in accordance with the Code of Virginia.

II. Placement of Children by Parents if a Free Appropriate Public Education is at Issue

- A. This section does not require Newport News Public Schools to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if Newport News Public Schools made a free appropriate public education available to the child and the parent or parents elected to place the child in a private school or facility.
- B. Disagreements between a parent or parents and Newport News Public Schools regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to due process procedures of 8 VAC 20-81-210.
- C. If the parent or parents of a child with a disability, who previously received special education and related services under the authority of Newport News Public Schools, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of, or referral by the Newport News Public Schools, a court or a hearing officer may require Newport News Public Schools to reimburse the parent or parents for the cost of that enrollment if the court or hearing officer finds that Newport News Public Schools had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by Newport News Public Schools.
- D. The cost of reimbursement described in this section may be reduced or denied:
 - 1. If (i) at the most recent IEP meeting that the parent or parents attended prior to removal of the child from the public school, the parent or parents did not inform the IEP team that they were rejecting the placement proposed by Newport News Public Schools to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense or

- (ii) at least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent or parents did not give written notice to Newport News Public Schools of the information described above;
2. If, prior to the parent's or parents' removal of the child from the public school, Newport News Public Schools informed the parent or parents, through appropriate notice requirements of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent or parents did not make the child available for the evaluation; or
 3. Upon a judicial finding of unreasonableness with respect to actions taken by the parent or parents.
- E. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's or parents' failure to provide the notice to Newport News Public Schools if:
1. The parent is illiterate or cannot write in English;
 2. Compliance with this section would likely result in physical or serious emotional harm to the child;
 3. The school prevented the parent or parents from providing the notice; or
 4. The parent or parents had not received notice of the notice requirement in this section.

III. **Child Find for Private School, Home-Instructed, and Home-Tutored Children with Disabilities**

- A. Newport News Public Schools will locate, identify, and evaluate all private school children with disabilities, including children in religious schools, who attend school in the jurisdiction of Newport News Public Schools. The provisions of this subsection shall apply to children who are home-instructed and home-tutored in accordance with the Code of Virginia. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.
- B. Newport News Public Schools will consult with appropriate representatives of private school children with disabilities on how to carry out the child find activities.

- IV. **Placement of Children by Parents When a Free Appropriate Public Education is Not at Issue.** To the extent consistent with their number and location in the state, provision must be made for the participation of private school children with disabilities in the program carried out under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) by providing them with special education and related services in accordance with a services plan developed and implemented under this subsection.

- A. The provisions of this subsection shall apply to children who are home-instructed or home-tutored in accordance with the Code of Virginia.
- B. Newport News Public Schools ensures that a services plan is developed and implemented for each parentally placed private school child with a disability who has been designated to receive special education and related services under this part.
- C. Newport News Public Schools will maintain for its records, and submit to the Virginia Department of Education, the number of parentally placed private school students evaluated, the number of students determined eligible for special education and related services and the number of students actually served.
- D. Expenditures
 - 1. To meet the requirement of the Individuals With Disabilities Education Act (20 USC § 1400 et seq.), Newport News Public Schools will spend the following on providing special education and related services to private school children with disabilities:
 - a. For children, aged three to 21, inclusive, an amount that is the same proportion of Newport News Public Schools' total subgrant under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) as the number of private school children with disabilities, aged three to 21, inclusive, residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction, aged three to 21, inclusive; and
 - b. For children, aged three to five, inclusive, an amount that is the same proportion of Newport News Public Schools' total subgrant under the act as the number of private school children with disabilities, aged three to five, inclusive, residing in its jurisdiction, is to the total number of children with disabilities in its jurisdiction, aged three to five, inclusive.
 - 2. To ensure a thorough and complete child find process, Newport News Public Schools will conduct timely and meaningful consultation with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities and ensure that the count is conducted between October 1 and December 1 and provides for equitable participation by each of these students. The child count must be used to determine the amount that Newport News Public Schools must spend on providing special education and related services to private school children with disabilities in the subsequent fiscal year. Any funds not expended on special education and related services, including direct services in any given year, will be expended during a carry-over period of one additional year. The division will consult with private school representatives and representatives of parentally placed private school children on how and when decisions will be made regarding the apportioned funds.

3. Expenditures for child find activities, including evaluation and eligibility, described in 8 VAC 20-81-50 through 8 VAC 20-81-80, may not be considered in determining whether Newport News Public Schools has met the expenditure requirements of the Individuals With Disabilities Education Act (20 USC § 1400 et seq.). Federal funds are only used to supplement and not supplant the proportionate amount of federal funds expended in accordance with this subsection.
4. Newport News Public Schools are not prohibited from providing services to private school children with disabilities in excess of those required by this section.

D. Services determined

1. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities must be made in accordance with subdivisions *D 2* and *3* of this subsection.
2. Consultation with representatives of private school children with disabilities
 - a. Newport News Public Schools will consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide (i) which children will receive services; (ii) what services will be provided; (iii) how and where the services will be provided; and (iv) how the services provided will be evaluated.
 - b. Newport News Public Schools will give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.
 - c. The consultation required by this section will occur before Newport News Public Schools make any decision that affects the opportunities of private school children with disabilities to participate in services.
 - (1) The consultation process will include the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
 - (2) The determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities, including the determination of how the amount was calculated;

meeting. If the representative cannot attend, Newport News Public Schools shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

E. Services provided

1. The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, may be public school employees or contracted personnel, except that private elementary and secondary school teachers who are providing equitable services to those children do not have to meet the requirements for highly qualified special education teachers.
2. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
3. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
4. Services provided in accordance with a services plan
 - a. Each private school child with a disability who has been designated to receive services under this subsection must have a services plan that describes the specific special education and related services that Newport News Public Schools will provide to the child in light of the services that Newport News Public Schools has determined it will make available to private school children with disabilities.
 - b. The services plan must, to the extent appropriate, meet the requirements for the content of the IEP (8 VAC 20-80-62 F) with respect to the services provided, and be developed, reviewed, and revised consistent with 8 VAC 20-80-62 B 1, B 2, B 3, B 4, C, D, and E.

F. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law.

G. Transportation

1. If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation:
 - a. From the child's school or the child's home to a site other than the private school; and
 - b. From the service site to the private school or to the child's home depending on the timing of the services.

2. Newport News Public Schools is not required to provide transportation from the child's home to the private school.
 3. The cost of the transportation described in this subsection may be included in calculating whether Newport News Public Schools has met the requirement of this section.
- H. Procedural safeguards, due process and complaints
1. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that Newport News Public Schools has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.
 2. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that Newport News Public Schools has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for private school children with disabilities (subsection *III* of this section).
 3. State complaints. Complaints that the Virginia Department of Education or Newport News Public Schools has failed to meet the requirements of this section may be filed under the procedures in 8 VAC 20-81-200
- I. Separate classes prohibited. Newport News Public Schools will not use funds available under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools.
- J. Requirement that funds not benefit a private school. Newport News Public Schools may not use funds provided under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to finance the existing level of instruction in a private school or to otherwise benefit the private school. Newport News Public Schools will use funds provided under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or the general needs of the students enrolled in the private school.
- K. Use of public school personnel. Newport News Public Schools may use funds available under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for private school children with disabilities and if those services are not normally provided by the private school.

- L. Use of private school personnel. Newport News Public Schools may use funds available under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to pay for the services of an employee of a private school to provide services to a child enrolled in private school by the child's parent or parents, if the employee performs the services under public supervision and control.

- M. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities
 - 1. Newport News Public Schools must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the Newport News Public Schools acquires with funds under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) for the benefit of private school children with disabilities.
 - 2. Newport News Public Schools may place equipment and supplies in a private school for the period of time needed for the program.
 - 3. Newport News Public Schools ensures that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.
 - 4. Newport News Public Schools will remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.
 - 5. No funds under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) may be used for repairs, minor remodeling, or construction of private school facilities.