



ADA, IDEA and Private School

How does the ADA affect private schools?

Title III of the ADA prohibits discrimination by public accommodations. They must eliminate unnecessary eligibility standards that deny access to individuals with disabilities, make reasonable modifications in policies practices and procedures that deny access to individuals with disabilities—unless a fundamental alteration in the nature of the program would result—and furnish auxiliary aids such as interpreters, note takers, or readers when necessary to ensure effective communication—unless an undue burden of fundamental alteration would result.

Private schools often agree to provide accommodations like extra time on tests and the use of assistive technology. A services plan tends to be less comprehensive than an IEP.

Be aware that Title III does not cover religious institutions; thus, private schools which are directly operated by religious institutions are not covered by the ADA.

IDEA rights at private schools

The amended federal statute is clear: **“No parentally placed 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.”**

IDEA provides services to private school students through what is called proportionate share funding: Funding is provided for services, but it is limited according to the proportion of students with disabilities that private schools serve. Further, there is **no guarantee of access to a due process hearing**. If parents take issue with special education services provided, their only recourse is through a state complaint procedure.

Most states do not provide IDEA rights and protections to private school students. When parents place a child in a private school, they basically waive their rights to the individual substantive guarantee of an appropriate education and for the procedural safeguards of due process. IDEA requires public school districts to assess the needs of special education students enrolled in private schools, but districts are not required to provide those children with the same services they would receive in a public setting. (Most private schools are subject to the antidiscrimination provisions of the Americans with Disabilities Act, but that does not entail the same individual substantive guarantees of a free appropriate education.)

*******When a parent moves a child with a disability from public school to a private school, the child's rights under IDEA change.** Specifically, when a child with a disability is enrolled in a private school by his or her parents or guardians (i.e., a parentally placed private school student), regardless of participation in a private school choice program, the child is no longer entitled to FAPE and other key rights and protections under IDEA.³⁴ There is no requirement under IDEA or in Education's regulations that parents be told about this change in rights to services when enrolling their children in private schools.

Updated by Cathy C, Reviewed 8/29/2019 Nate C