

**RADTKE EDUCATION LAW, LLC
EDLAW NUGGET FOR PARENTS**

Special Education Services in Private Schools

Question: Are public schools required to guarantee special education services to students attending private school?

Answer: It depends.

Yes, if a court decides the public school is not capable of providing a free, appropriate public education (FAPE) to a student, the student was moved to a private school for that reason and the services in the private school are appropriate to the child's educational needs.

No, if a court decides the public school is capable of providing a free, appropriate public education (FAPE) to a student OR if the parents placed their student in a private school due to family preference or religious reasons.

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- The Individuals with Disabilities Education Act (**IDEA**) is the federal law which gives aid to states and school districts for providing special education to students with disabilities.
 - **IDEA** requires schools receiving federal aid to provide a free appropriate public education (**FAPE**) to students with disabilities.
 - **IDEA** does not create a specific and enforceable entitlement to special education services in private schools – unless the public school is not meeting its FAPE obligation.

There are many court cases on the subject. This is a highlight of two cases in which the U.S. Supreme Court concluded that parents could be reimbursed for private school tuition for their special needs child.

Oregon: School didn't diagnose disability

In 2009, some Oregon parents became fed up with their local school's failure to help their son with his learning problems. Like many students, he had difficulty paying attention in class and he struggled to complete assignments. However, public school officials found he didn't have a learning disability, so they denied the parents' pleas for special education services.

After an outside specialist diagnosed the boy as having ADHD, his parents put him in a private school for children with special needs and he did much better. The US Supreme Court ruled that the public school district may have to pay back the boy's parents for the cost of the private schooling.

New York: School recommended inappropriate placement and private school chosen by parent was appropriate

In 2007, a parent in New York disagreed with the public school's recommended Individual Education Plan (IEP) and enrolled his son in a private school that specializes in educating students with special needs. The parent sought private school tuition reimbursement from the public school.

The public school followed all procedures in developing the IEP. However, the court agreed (on a 4-4 vote) with the parent that the school had not offered an appropriate education.

For example – Although the district determined that the student performed on a fourth grade level in math computation, they recommended he be placed in a class where some children perform math at a kindergarten level. The teacher tried to explain this discrepancy by indicating that the children work individually and then discuss their work in “circles.” The court said it was not altogether clear what a higher functioning child would learn when kindergarten-level materials are being discussed in the circles.

Note: This is a strong case for parents. The court confirmed that the parent could challenge a school district's IEP without first “trying out” the school recommended in the IEP.