

FAQ: 013-10

TOPIC: Private Pre-schools

Q: Parents unilaterally place their child with a disability in a private pre-school and request that the local school division provide speech therapy under the regulations governing “equitable services”. Although the school division’s equitable services include speech therapy, the school division determines that the private pre-school does not meet the definition of “elementary school.” School personnel notify the parents that the school division will not provide equitable services for their child.

- **Are there uniform standards for local school divisions to use in determining whether or not a pre-school facility meets the definition of “elementary school?”**
- **Does the Virginia Department of Education (VDOE) have a legal basis to override a school division’s determination that a private pre-school does not meet the definition of “elementary school?”**
- **Do the parents have dispute resolution options, other than the complaint system, for resolving the dispute?**

A:

Preliminary Note: The U.S. Department of Education reminds us that the IDEA requirements extend to pre-schoolers with disabilities. Specifically, U.S. DOE’s Office of Special Education Programs (OSEP) states that the IDEA requirements are equally applicable to pre-schoolers with disabilities. (OSEP Q&A, “On Serving Children with Disabilities Placed by Their Parents in Private Schools”, Question H-3, January 2007).

When parents unilaterally place their children with disabilities in private schools, federal and state regulations governing special education allow parents to request equitable services from the school division in which the private school is located. (34 CFR §300.137; corresponding Virginia Regulations at 8 VAC 20-81-150 C.6). When the school division receives these requests, the LEA must make two initial decisions:

- Is the facility a “non-profit” institutional day or residential school?
- Does the school meet the definition of “elementary school”; or “secondary school?”

[8 VAC 20-81-150 C.2.b]

With this foundation in mind, let us review each of the above questions:

- Are there uniform standards for local school divisions to use in determining whether or not a pre-school facility meets the definition of “elementary school?”**

The federal and state regulations governing special education define “elementary school” as a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. (8 VAC 20-81-150 C.1.b; 34 CFR §300.13). (emphasis added). Virginia state law, the *Code of Virginia*, does not include or exclude pre-schools in its definition of “elementary school.” (§22.1-1). We are guided, however, by the emphasis in the IDEA definition that the elementary school

“...provides elementary education.” Therefore, in order for an LEA to determine if the non-profit pre-school facility meets this definition, it is critical that the LEA review whether or not the private pre-school has an age appropriate curriculum. This does not mean that the private pre-school facility be attached to or be physically located in an elementary school. A private pre-school program’s attachment to an elementary school does not demonstrate whether the program provides elementary education, since a private elementary school may include a pre-school program that is simply a day care center. What more properly guides us in this matter is a review of the private pre-school’s curriculum as to whether that curriculum:

- aligns with the Virginia Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds;
 - includes developmental activities and opportunities (pre-literacy, early numeracy, problem solving opportunities, and exploration of the child’s environment) interfaced with age appropriate social interactions.
- Does the Virginia Department of Education (VDOE) have a legal basis to override a school division’s determination that a private pre-school does not meet the definition of “elementary school?”**

The determination of whether or not the private pre-school meets the definition of “elementary school” rests with the local school division where the private pre-school is located. The Virginia Department of Education has no legal basis to override a school division’s determination in this regard.

- Do the parents have dispute resolution options, other than the complaint system, for resolving the dispute?**

The parent’s dispute resolution options in this instance are limited to the complaint system. If the parent disagrees with the school division’s determination, the parent may file a complaint with VDOE, under 8 VAC 20-81-200, that the LEA failed to follow regulatory requirements for parentally placed private school children with disabilities.

The federal and state regulations governing special education preclude parents from using mediation or requesting due process to resolve this type of dispute. Those dispute resolution options apply only if the school division failed to meet the requirements of child find. (8 VAC 20-81-150 C.10.b; 34 CFR §300.140).

Practice Tip:

Documentation of determinations of whether a private pre-school meets the definition of “elementary school” may include: an examination of the private pre-school program and any curriculum manuals; identification of factors used in the examination of the private pre-school’s program and manuals; and/or summary of an on-site visit of the private pre-school and interviews with staff. Such documentation will ensure that the school division’s determination was not arbitrarily made.