

Special Education Rights in Private Schools

An Overview for Families Considering Florida's Family Empowerment Scholarship for Unique Abilities



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Quick Reference of Acronyms

ADA: The Americans with Disabilities Act is a federal law that protects individuals with disabilities from discrimination in government settings, public accommodations, and work environments. This law provides exemptions for religious organizations and private membership clubs.

FAPE: Free Appropriate Public Education is the central principle of the Individuals with Disabilities Education Act and means special education and related services that have been provided at

- public expense, under public supervision and direction, and without charge,
- meet the standards of the State educational agency,
- include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- are provided in conformity with the IEP

FERPA: Family Educational Rights and Privacy Act is a federal law that protects the privacy of student education records and gives parents certain rights with respect to their children's education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FES – UA: Family Empowerment Scholarships for Unique Abilities is a scholarship sponsored by the state of Florida that offers families funding that can be used to provide services, purchase materials, or pay private school tuition for a student with disabilities whose parents elect non-public education options.

IDEA: The Individuals with Disabilities Education Act is a grant law that provides states and school districts with funding and establishes a framework to:

- identify and evaluate all children within the state suspected of having a disability,
- determine if they are a child in need of special education, and
- support the public special education, including any needed related services or supplemental aids, of children with eligible disabilities.

IEP: Individualized Educational Program is a legally binding contract between the school district and the parents of a child requiring special education and related services to be provided to the child according to its specifications.

The IEP will, at a minimum, include

- 1) a statement of the student's present levels of academic achievement and functional performance,
- 2) a statement of measurable goals and objectives,
- 3) a description of how the child's progress toward meeting the annual goals will be measured,
- 4) a statement of special education services and supplemental aids to be provided to the child,
- 5) an explanation of the extent to which the child will not participate with their peers without disabilities,
- 6) details including the setting dates, frequency, duration, and provider of the services, and, if relevant,
- 7) any transition services or
- 8) extended school year services required.

LRE: Least Restrictive Environment is a condition that requires children with disabilities to be educated in the classroom or other school environments along with peers without disabilities to the maximum extent appropriate.

Section 504: Section 504 of the Rehabilitative Act of 1973 prohibits any program that receives financial assistance from the federal government from discriminating against individuals with disabilities. The Section 504 regulation requires a school district to provide a "free appropriate public education" (FAPE) to each qualified person with a disability who is in the school district's jurisdiction.

USDOE: United States Department of Education regulates and provides federal funding to public schools. They may also provide federal grants to non-profit private schools for federal programs.

Introduction

Special education, school choice, and parental rights have made headlines in Florida for years. There has been debate about who can and should provide the best services for children with special education needs, who determines what is best for them, and what options are available. In Florida, there are many public and non-public educational options from which parents have the right to choose what is best for their children.

Of all the educational options available to families in Florida, public education has the most extensive regulation and oversight concerning special education and arguably the most resources and skilled personnel. Yet, with financial support from the state through the Family Empowerment Scholarship for Unique Abilities (FES-UA), many families enroll their children with disabilities in private schools. In the school year 2022-2023, almost 70,000 Florida students were awarded the FES-UA, with over 2,000 private schools participating¹.

This document attempts to explain the implications for the rights of children with special education needs who are parentally placed in private schools using the FES-UA. It will begin with an overview of the rights and protections for public school students with special education needs, then cover the limited services and rights for parentally placed private school students with special education needs established by the U.S. Department of Education (USDOE). Then it will discuss the requirements and award amounts for FES-UA. Lastly, is a comparison of the rights and protections afforded to students with disabilities parentally placed in non-religious and religious private schools.

Protections and Services Entitled to Students in Public Schools

When a student with disabilities is enrolled in a public school, many laws protect them from discrimination and guarantee special education services. Federal regulations established under the civil rights laws of Section 504 of the Rehabilitative Act of 1973 ("Section 504") and the Americans with Disabilities Act (ADA) protect individuals with disabilities in public schools from discrimination. The Individuals with Disabilities Education Act (IDEA) establishes federal laws that entitle students with qualifying disabilities and special education needs enrolled in public schools rights to special education and related services at the public's expense.

IDEA is a grant law that provides states and local school districts or local educational agencies ("school districts") funding and establishes a framework to:

- identify and evaluate all children within the state suspected of having a disability,
- determine if they are a child in need of special education, and
- support the public special education, including any needed related services^a or supplemental aids, of children with eligible disabilities.

Identifying, Evaluating, and Determining the Eligibility of Special Education Students

Under IDEA, states and school districts are required to perform, at no expense to the family, Child Find activities to identify and evaluate, with parental consent, all children in the state suspected of having a disability and, therefore, needing special education or related services.^{b, 2} A complete and individual initial evaluation is required before any child may be determined eligible for special education and related services entitled to them under IDEA.³

^a Related services include speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. It also includes transportation to these services as needed.

^b IDEA lists 13 classifications of disability: intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments (including ADHD), or specific learning disabilities. For children ages 3 through 9, this may also include developmental delays.

Students' eligibility must be determined at least every three years. To maintain eligibility, a reevaluation should be performed no later than three years after the previous evaluation. Reevaluations may be completed, with parental consent, before the three years have passed but no sooner than one year since the last evaluation unless agreed to by both the parents and the school district⁴.

Evaluations should be comprehensive and determine the following:

- 1) *Whether the student is a student with a disability; or, in case of a reevaluation of the student, whether the student continues to have a disability;*
- 2) *The educational needs of the student;*
- 3) *The present levels of academic achievement and related developmental needs of the student;*
- 4) *Whether the student needs special education and related services or, in the case of a reevaluation of the student, whether the student continues to need special education and related services; and,*
- 5) *Whether any additions or modifications [...] are needed [...] to the student's IEP and to participate, as appropriate, in the general curriculum.*⁵

For either the initial evaluation or a reevaluation, if the parents do not agree with the evaluation results, they may request an Independent Educational Evaluation at the district's expense. Parents may elect to have either of the evaluations performed by private licensed professionals at personal expense and submit the results to the school district to determine eligibility.

Students determined to have disabilities that do not impair their learning ability and therefore, do not need specialized instruction are not qualified for services under IDEA. But, all individuals with disabilities are protected under Section 504, a civil rights law covering any entity receiving federal funds, including public schools and private schools receiving federal assistance. *The Section 504 regulation requires a school district to provide a "free appropriate public education" (FAPE) to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability.* These schools must provide an appropriate education [which may be comprised of] education in regular classes, education in regular classes with the use of related aids and services, or special education and related services in separate classrooms for all or portions of the school day.⁶

Qualifying schools will have a 504 Plan which describes accommodations to support eligible students' access to education. The USDOE recommends that qualifying private schools implement an IEP and follow the guidelines under IDEA for students with special educational needs, similar to what is required in public schools.

Free Appropriate Public Education

IDEA aims to *improve educational results for children with disabilities and ensure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities*⁷. The conditions that IDEA set forth for states' eligibility is that eligible students with disabilities receive a free appropriate public education (FAPE) with a full educational opportunity goal provided in the least restrictive environment (LRE), as outlined in an individualized educational program (IEP)⁸. Let's break that down.

The central principle of IDEA is that FAPE is available to all public school^c children with disabilities between the ages of 3 and 21, inclusive⁹. The term FAPE means *special education and related services that*

- 1) *have been provided at public expense, under public supervision and direction, and without charge,*
- 2) *meet the standards of the State educational agency,*
- 3) *include an appropriate preschool, elementary school, or secondary school education in the State involved; and*
- 4) *are provided in conformity with the IEP.*¹⁰

In short, every student with an eligible disability has a right to an education, including related services and supplementary aids, that meets state standards and is provided to them by a public agency at no cost.

^c IDEA and FAPE also apply to students placed in private schools by the state or school district at the state or school district's expense. For simplicity, these students are considered students of public entities.

To determine what qualifies as an “appropriate” education, we examine the courts’ interpretation of the phrase “full educational opportunity,” which means *children with disabilities have equal access to the general education curriculum and a detailed timeline for accomplishing that goal*¹¹. Court opinions have determined that while this definition does not intend to require an optimal benefit from education, it does call for school districts to offer students the opportunity to make *meaningful educational progress in all relevant domains under the IDEA, including behavioral, social, and emotional domains*,¹² and *provide related services including transportation, developmental, corrective, and supportive services necessary for a [child with disabilities] to fully benefit from special education*.¹³

There is no specific rule on the amount of benefit required for an appropriate IEP; instead, *a benefit is determined by carefully considering each special education student’s individual abilities and potential, and then determining the benefit on an individualized basis*.¹⁴ *“Mere advancement from grade to grade is not [determinative] that a child with disabilities is receiving sufficient educational benefits to satisfy the requirements of FAPE.”*¹⁵

IDEA recognizes that there will be many different outcomes for students with disabilities after their public school education ends. Therefore, an IEP should consider an appropriate timeline for completing the curriculum and providing transition services to *facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation*.¹⁶

Once it is determined what is an appropriate education, the condition that FAPE is provided in the LRE requires that children with disabilities be *educated in the classroom or other school environments along with peers without disabilities to the maximum extent appropriate. Students with disabilities should only be removed from regular education settings when the nature or severity of their disability is such that education in a regular class with the use of supplementary aids and services cannot be achieved satisfactorily*.¹⁷ The setting of services is detailed in the student’s IEP.

Individualized Education Program

An IEP is a legally binding contract between the school district and the parents of a child requiring special education and related services to be provided to the child according to its specifications. The IEP is developed by a team of school administrators, educators, specialists, the parents of a student with special education needs, and, when appropriate, the student. This group of stakeholders is referred to as the IEP team¹⁸. This team meets to design an IEP that details the student’s goals and objectives and the services, accommodations, and resources that will be provided to support their education. The IEP also includes how the student’s progress and implementation of the services and resources will be monitored throughout the year.

The IEP will, at a minimum, include

- 1) a statement of the student’s present levels of academic achievement and functional performance,
- 2) a statement of measurable goals and objectives,
- 3) a description of how the child’s progress toward meeting the annual goals will be measured,
- 4) a statement of special education services and supplemental aids to be provided to the child,
- 5) an explanation of the extent to which the child will not participate with their peers without disabilities,
- 6) details including the setting dates, frequency, duration, and provider of the services, and,
- 7) if relevant, any transition services or
- 8) extended school year services required¹⁹.

To meet the objectives outlined in IDEA and provide meaningful educational benefits to the student, *the IEP must be reasonably calculated to afford the child the opportunity to receive meaningful educational benefit*²⁰ and *must be designed to offer the child the opportunity to make progress in all relevant domains under the IDEA, including behavioral, social, and emotional domains*.²¹

Procedural Safeguards under IDEA

Under IDEA, children with disabilities and their parents are guaranteed procedural safeguards concerning their rights to FAPE. Procedural safeguards describe the ground rules for how parents and schools will work together. There are several safeguards included in IDEA to protect families from impropriety during the special education

process including, but not limited to, a required Notice of Procedural Safeguards, parent participation and consent, access to records and confidentiality of information, Prior Written Notice when the school district denies any request, and dispute resolution options. The law also provides for interpreters at no cost to families²².

Under IDEA, children with disabilities, or suspected of having disabilities, are protected from alternate placement or expulsion for behavior that is a manifestation of their disability. A manifestation determination review is required when a child is suspended^d, or being considered for expulsion or suspension, for more than ten (10) cumulative days in the school year. The review determines if the conduct in question had a direct and substantive relationship to the disability or was the direct result of the school's failure to implement the IEP. If the conduct is determined to be a manifestation of the child's disability, the school shall maintain the placement of the child and conduct a functional behavioral assessment and implement a positive behavioral intervention plan. In either case, FAPE must be provided when the student is out of their regular educational setting.²³ The USDOE has similar requirements under their obligations under Section 504.²⁴

Dispute resolution processes established by IDEA include mediation, state complaints, and due process hearings. Some states, including Florida, offer impartial facilitators to overcome communication challenges during IEP meetings²⁵. All these services are available to families of children with disabilities attending public schools free of charge. Further disputes regarding FAPE can be escalated to the state's educational agency or the USDOE.

Limited Services for Students Parentally Placed in Private Schools

When a child with special education needs is parentally placed in a private school, they lose their entitlement to FAPE. In particular, school districts do not cover the expenses for non-public educational options, and there is no framework to ensure an appropriate education, as defined above.

However, not all services provisioned under the IDEA are forgone. The Child Find activities required by the state and district apply to all children suspected of having a disability within the state, regardless of their educational placement. If a child is suspected or previously determined to have a disability, an evaluation is provided at least every three years at the public's expense.

Equitable Services for Students Enrolled in Non-profit Private Schools

Parentally placed children in private schools are not entitled to all services under IDEA. However, some special education services are available to students enrolled in non-profit private schools through a requirement for Equitable Services established under IDEA.

Equitable Services are special education and related services, including direct services, provided to children with disabilities parentally placed in non-profit private schools at the school district's expense. School districts are obligated to reserve funds provided under IDEA based on the number of eligible students in the school district who attend non-profit private schools. Services are limited and determined annually by consultation among the school district, representatives of private schools, and parents. These services are not guaranteed to any individual student, for example, if funds are depleted before all eligible students receive their services. Equitable services are not available to children placed in for-profit private schools. Services may be provided at the private school, if allowed by the private school, at a local public school, or another location, but services must be secular, neutral, and nonideological.

An evaluation is required before a student is eligible to receive Equitable Services. The school district, representatives from the private school, and the child's parents must develop, review, and revise a service plan. The service plan developed for the child will be less comprehensive than an IEP designed for a child in a public school and will only reflect services offered through the Equitable Services agreement. IDEA does not specify the timeline for reviewing and revising the plan; however, it suggests that service plans be reviewed periodically, not less than annually.

^d The term "suspension" is used for simplicity, however, it includes any time that a child is removed from their regular educational setting for disciplinary reasons including being sent home, in-school suspension, detention, and out-of-school suspension.

Procedural safeguards established in IDEA apply to Equitable Services, with some exceptions. Mediation and due process procedures do not apply. Disputes between school districts and parents regarding Equitable Services are subject to the State complaint procedures.²⁶

Family Empowerment Scholarship for Unique Abilities

In the state of Florida, the Family Empowerment Scholarship for Unique Abilities (FES-UA) offers families funding that can be used to provide services, purchase materials, or pay private school tuition for a student with disabilities whose parents elect non-public education options. There are many options for educating a child outside the public school system, but for the scope of this article, it is assumed that the child is parentally enrolled in a private school.

Eligible students for the Unique Abilities scholarship are between the ages of 3 and 21 years, residents of Florida, eligible to enroll in a Florida public school, and diagnosed with one of 23 qualifying disabilities or conditions confirmed by a qualifying licensed healthcare professional^e. An evaluation or IEP is not required to determine the child's eligibility, with a few exceptions²⁷.

Private schools that qualify for the FES-UA program must comply with the Student and Parental Rights and Educational Choices Act regulations. These laws provide the minimum requirements for a private school that may accept School Choice and Family Empowerment Scholarship funds from the state of Florida, including, but not limited to, requirements for teacher qualifications and background checks for all personnel that would be in contact with students, which are above the required standards for a private school in the state of Florida.²⁸ There are no requirements for accreditation or non-profit status.

The state also requires that eligible private schools *publish on the school's website, or provide in a written format, information for parents regarding the school, including, but not limited to, a statement that a parentally placed private school student with a disability does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school under the Individuals with Disabilities Education Act (IDEA).*²⁹

It is the obligation of parents of students with disabilities who are eligible for the scholarship to *meet with the private school's [administration] to review the school's academic programs and policies, specialized services, code of student conduct, and attendance policies before his or her student is enrolled. When the student receives a scholarship, the district school board is not obligated to provide the student with a free appropriate public education [FAPE]. ... A participating student has only those rights that apply to all other unilaterally parentally placed students, except that, when requested by the parent, school district personnel must develop an IEP or matrix level of services.*³⁰

Matrix Levels

The FES-UA uses a matrix of awarded amounts based on the school district in which the student resides, the student's grade, and the level of support needed. The school district determines matrix levels after an evaluation, and more funds are granted to students who require a higher level of support.

The matrix is designed with five levels in each of the five domain areas. Level 1 represents the lowest level of service and Level 5 represents the highest level of service. Critical factors that impact decision making on the appropriate level of service include the frequency and intensity of the service and the qualifications of personnel required to provide the service.^f

^e Qualifying disabilities or conditions for the FES-UA include Anaphylaxis, Autism Spectrum Disorder, Cerebral Palsy, Down Syndrome, Emotional or Behavioral Disability, Hearing Impairment (including Deafness), High-risk Child, Hospital or Homebound, Identification as Dual Sensory Impaired, Intellectual Disability, Language Impaired, Muscular Dystrophy, Orthopedic Impairment, Other Health Impairment (including ADHD), Phelan-McDermid Syndrome, Prader-Willi Syndrome, Rare Diseases (defined by NORD), Specific Learning Disability, Speech Impairment, Spina Bifida, Traumatic Brain Injury, Visual Impairment (including Blindness), Williams Syndrome

^f See Appendix B for the 2023-2024 Matrix Funding Levels.

- **Level 1** indicates that the student requires no services or assistance beyond those ordinarily available to all students. Students with a disability should be rated higher than 1 in at least one domain based on the services required to meet their needs.
- **Level 2** indicates the student receives periodic assistance or minor support, assistance, or services. Level 2 services include presentation, response, scheduling or setting accommodations, minimal accommodations to assist in accessing curriculum or learning environment, monthly services, and consultation among service providers.
- **Level 3** indicates the student is receiving accommodations to the learning environment that are more complex or is receiving services on a more frequent schedule, weekly services, collaboration between service providers, and assistance for some learning activities.
- **Level 4** indicates that for most learning activities, the student receives specialized approaches, assistance, or equipment or more extensive modifications to the learning environment. Services received daily are generally included at this level. Level 4 services and supports include very specialized or different programs or approaches, daily or very frequent services, and assistance needed for most learning activities.
- **Level 5** indicates that the student receives continuous and intense (one-on-one or very small group) assistance, multiple services, or substantial modifications for most learning activities. Level 5 services and supports include continuous or constant intervention or assistance, intensive or individualized approaches and services for most of the school day, and multiple services.³¹

The parent of a student with a disability who [seeks an initial evaluation] or a reevaluation of an existing IEP may request an IEP meeting and evaluation from the school district [where the private school is located] to obtain or revise a matrix of services.³² For a student who is parentally placed in a private school, the IEP is solely for determining the matrix level. The IEP provides information regarding the student's needs, but the private school is not obligated to provide the services listed on the IEP.

The school district must provide the student's parent and the department with the student's matrix level within ten (10) calendar days after completion of the evaluation. A school district may change a matrix of services only if the change is a result of an IEP reevaluation or to correct a technical, typographical, or calculation error.³³

Because parentally placed children in private schools are entitled to evaluation procedures by the school district, the procedural safeguards that IDEA allows to families apply to the evaluation process, including, but not limited to, the right to ask for an Independent Education Evaluation at the public's expense if they disagree with the results of an evaluation performed by the school district.

Americans with Disabilities Act and Private Schools

So where does that leave a child with disabilities enrolled by their parents in a private school? Thus far, we have determined that all children have access to an evaluation provided by the school district where they attend private school. Equitable Services are available only to students enrolled in non-profit private schools, are limited, and are not guaranteed. IDEA stops short of ensuring these students receive individualized special education instruction or services or requiring an appropriate education. So, if awarded the FES-UA scholarship, will a parentally placed child in a private school have legal rights to special education, related services, or classroom accommodations? The answer depends on whether the private school is religious or not.

Non-Religious Private Schools

For students enrolled in non-religious private schools, where the benefits of IDEA drop off, the ADA picks up. The ADA prohibits discrimination on the basis of disability by public accommodations.³⁴ Private schools are listed under the definition of places of public accommodation and are therefore regulated by ADA regulations.³⁵

The ADA defines disability *with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment; or being regarded as*

having such an impairment.^{§ 36} Even with no documented disability, schools are prohibited from discriminating against individuals based on a suspicion of a disability.

Places of public accommodation, as defined in the ADA, are prohibited from *imposing or applying eligibility criteria that screen out individuals or classes of individuals with disabilities from fully and equally enjoying or accessing the goods, services, facilities, privileges, advantages, or accommodations ("services, etc."), unless such criteria can be shown to be necessary for the provision of the [services, etc.] being offered*³⁷. This statement does not prohibit schools from screening out children if the modifications needed for the student to benefit from the educational services would fundamentally change the services provided by the private school.

The laws under the ADA require that no individual or class of individuals shall be discriminated against based on disability in the full and equal enjoyment of, the opportunity to participate in, or benefit from the *[services, etc.]* that are equal to that afforded to other individuals. The services may not be separate or different from those provided to others³⁸ and must be in the most integrated setting appropriate to the needs of the individual³⁹. This applies to all school services, including educational settings, physical activities, extracurricular activities, and after-school programs. This clause has a very similar purpose to the LRE requirements in the IDEA laws. It requires that students with disabilities in private schools be integrated into an education setting with their peers without disabilities as much as appropriate. Similarly, there are exceptions when there is a direct threat to the health or safety of self or others.

Private schools *may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of accommodations such as the provision of auxiliary aids [...] and reasonable modifications [...] that are provided to individuals with disabilities*⁴⁰. Schools may include the overall costs of the modifications, services, or aids in the expenses covered by tuition that all students in the school pay.

The ADA requires places of public accommodation to make *reasonable modifications in policies, practices, or procedures* for students with special education needs so long as modifications required to do so do not inherently change or damage the services the private school is using to provide public accommodations or cause an undue hardship. However, the requirements for the FES-UA do not require an IEP or comprehensive evaluation of a student with an eligible disability to determine which modifications, services, or aids may be necessary for a student to benefit equally from the services. Parents of children with disabilities may have the school district or private practitioner perform a comprehensive evaluation to determine which accommodations are needed for the child to benefit equally from the private school's educational services.

While the ADA requires non-religious private schools to provide modifications and accommodations to ensure equal access and benefit from the services provided by the school, there is nothing written in this law that requires private schools to implement an individualized learning plan similar to an IEP with individualized goals to obtain an appropriate education. The law provides no context for what it means to benefit equally from the services.

Procedural Safeguards for Non-Religious Private Schools

Procedural safeguards related to special education and privacy are limited in private schools when federal laws do not have jurisdiction. Parents should check the school handbook for a Statement of Nondiscrimination, Privacy Policy, and procedures for accessing records. Handbooks will have procedures for addressing parent concerns internally.

School handbooks will list any accreditations they have received. Accrediting bodies may have privacy or anti-discrimination policies above what relevant jurisdictions require, but most do not. These policies are usually available to the public or posted on their website. Accrediting bodies will have complaint procedures for violations of their policies.

[§] Physical or mental impairment is defined as any *physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.*

If a private school accepts federal grants, protections under Section 504 are required and the Family Educational Rights and Privacy Act (FERPA) establishes procedural safeguards such as access to records and confidentiality for families in private schools. FERPA also applies to any school district services for evaluations and Equitable Services.

Because private schools do not fall under the jurisdiction of the IDEA, parents with children in private schools cannot access its dispute resolution processes concerning special education, provision of accommodations and services, or the least restrictive environment. These issues are covered under the ADA, or Section 504 if the school accepts federal grants.

Schools' handbooks will have internal procedures for addressing parents' concerns. However, there may be circumstances when parents feel their children's rights have been violated and should seek legal counsel. Matters related to violations of the ADA in non-religious private schools fall under the jurisdiction of the Department of Justice, Civil Rights Division⁴¹. FERPA complaints can be filed with the USDOE.⁴²

Religious Schools

Unfortunately, the ADA does not cover religious institutions, including their private schools. Section 307 of the ADA provides that "the provisions of this title shall not apply to . . . religious organizations or entities controlled by religious organizations, including places of worship." ... The ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations. Religious organizations and entities controlled by religious organizations have no obligations under the ADA.⁴³

This does not mean that all religious schools accepting the FES-UA are exempt from anti-discrimination laws protecting children with disabilities. If a religious school participates in any federal program or receives funding from any federal program, it must comply with Section 504, may not discriminate against individuals with disabilities, and must provide reasonable accommodations. Section 504 states, "*No otherwise qualified individual with a disability in the United States, [...] shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance*"⁴⁴

Because the funding for the FES-UA comes from the state of Florida, federal laws will only apply if the school falls under federal jurisdiction for other reasons. No state laws require religious schools accepting the scholarship funds to comply with the ADA, Section 504, or other laws protecting individuals with disabilities from discrimination. Therefore, there is no guarantee that a religious school accepting the FES-UA falls under any anti-discrimination regulatory jurisdiction requiring them to provide special education services or accommodations for students with disabilities so they may benefit from the educational services offered.

If this is the case, how can parents feel secure that their children will receive special education, related services, or accommodations in their religious school? Parents must inquire with the school about their policies regarding discrimination protections and accommodations or services provided to children with special educational needs. The school should provide parents with a policy that lists the accommodations and services provided for their students and if there are any additional costs to the parents. If a child already has an evaluation or IEP from their school district or a private practitioner, providing that to the private school will be a great starting point for this discussion. If there is an agreement between the parents and the school regarding accommodations and services that will be provided to the child, putting the agreement in writing signed by both parties will help when there are disputes to resolve.

Procedural Safeguards for Religious Schools

Schools' student or parent handbooks are a great source of information about the anti-discrimination and privacy policies the school abides by. However, because religious organizations and their schools are exempt from most federal jurisdictions, disputes are mostly handled internally. There are a few exceptions.

If the school is accredited, those accreditations will be listed in the handbook. Most accrediting bodies will require a Statement of Non-discrimination and Privacy Policy in the handbook. Parents are advised to read the statement carefully, as most accrediting bodies do not require schools to cover individuals with disabilities in their non-discrimination policies unless otherwise required by federal laws or other relevant laws and jurisdictions.

The accrediting bodies have written standards for the schools that receive their approvals. Many of these companies will post their standards online or send them to anyone who requests them. The accrediting standards will list the minimum requirements for anti-discrimination policies and accommodations or services for students with disabilities.

If parents feel that the school has violated the policies set forth by their handbook or the accrediting body and addressing their concerns is necessary, school handbooks will describe the procedures for handling disputes between families and the school internally. However, contacting the accrediting body may be necessary if those procedures are exhausted and disputes still need to be resolved. Accrediting bodies' complaint procedures or contact information are listed on their websites.

If the school accepts federal funding, Section 504 has jurisdiction over matters related to discrimination and access to FAPE; FERPA has jurisdiction over privacy issues and access to records. Seeking legal counsel is advised if you feel your rights have been violated and internal dispute resolution procedures do not resolve your issues. Legal complaints regarding discrimination may be directed to the Office for Civil Rights (OCR) of the USDOE ⁴⁵. FERPA complaints can be filed with the USDOE.

Conclusion

Protections against discrimination and obtaining the proper services for children with special educational needs are important factors for parents of children with disabilities. Public schools offer the best protections under the law for students with disabilities. They are regulated by federal laws, including IDEA, ADA, and Section 504. However, many families do not feel public schools can offer their children an education that meets their expectations.

Florida offers families the Family Empowerment Scholarship for Unique Abilities (FES-UA) to subsidize the costs of choosing non-public options for their children with disabilities. However, the school choices available to parents using the FES-UA are not covered by the federal laws under IDEA and, therefore, do not guarantee that students receive all of the special education services needed for equal access to the educational programs offered by these schools. There are limitations to the required services provided by private schools, and there is no provision of services under IDEA except for evaluation services and possibly Equitable Services. Before placing their children into private schools, parents need to understand the protections and services provided to students with disabilities.

Non-religious private schools must comply with anti-discrimination laws established by the ADA. They must provide reasonable modifications and accommodations so that students with disabilities may have equal access to and benefit from the services offered by the private school.

Section 504 protects children with disabilities enrolled in private religious schools participating in federal programs or receiving federal grants. The ADA does not cover religious schools. Otherwise, unless required by an accrediting body, religious schools are not required to have non-discrimination policies protecting children with disabilities or provide accommodations or services to grant them equal access to the school's educational services.

Florida's scholarship program does not prohibit participating religious schools from discriminating based on disability. Florida puts the onus of procuring special education services on parents who place their children into private schools. Parents should be aware of the lack of protections for students with disabilities required by religious schools and inquire with the school about the school's policies for educating their children before enrolling them.

Parental rights and participation are critical components for the success of any student's special education program. School choice allows parents to enroll their children in schools that meet their educational expectations. The Family Empowerment Scholarships for Unique Abilities help families afford to send their children with special educational needs to their schools of choice. However, with these choices, parents are responsible for vetting schools to ensure their children's special needs are adequately addressed and that their children with disabilities do not face discrimination.

Appendix A – Table: Rights and Protections for Children with Disabilities

Rights and Protections for Students with Disabilities		Public Schools	Non-Religious Private Schools For-Profit Non-Profit		Religious
Federal Laws Protecting Children with Disabilities	ADA	Yes	Yes	Yes	No
	Section 504	Yes	No	No ^α	No ^α
	IDEA	Yes	No	No	No
Special Education Services	Evaluation	Yes	Yes	Yes	Yes
	Right to FAPE	Yes	No	No ^α	No
	IEP	Yes	No ^β	No ^β	No ^β
	Accommodations	Yes	Yes	Yes	No ^α
	Transition Services	Yes	No	No	No
	Equitable Services	Yes	No	Yes ^γ	Yes ^γ
Procedural Safeguards for Special Education in the learning environment ^δ	Informed Consent	Yes	No	No ^α	No ^α
	Access to Records	Yes	No	No ^α	No ^α
	Confidentiality	Yes	No	No ^α	No ^α
	Written Notice	Yes	No	No	No
	Written Prior Notice	Yes	No	No	No
	Mediation	Yes	No	No	No
	Due Process	Yes	No	No	No
	State Complaint	Yes	No	No	No
	ADA Complaint	Yes	Yes	Yes	No ^α

^α Unless the school accepts federal funding

^β IEPs are available to parentally placed private school students awarded the FES-UA only for matrix evaluation purposes

^γ Equitable Services are not guaranteed to any individual student parentally placed in a private school

^δ Evaluation and Equitable Services provided by the school district fall under the public school services, except that mediation and due process are not available to Equitable Services.

Appendix B – Family Empowerment Scholarship for Unique Abilities Matrix Funding Schedule

Source: Step Up for Students

District	ESE Levels 1-3			ESE Level 4	ESE Level 5	District	ESE Levels 1-3			ESE Level 4	ESE Level 5
	PK3-Grade3	Grades 4-8	Grades 9-12				PK3-Grade3	Grades 4-8	Grades 9-12		
Alachua	\$ 9,866	\$ 9,239	\$ 9,177	\$ 21,196	\$ 31,480	Lake	\$ 9,929	\$ 9,302	\$ 9,240	\$ 21,158	\$ 31,442
Baker	\$ 10,438	\$ 9,793	\$ 9,730	\$ 22,136	\$ 32,704	Lee	\$ 10,958	\$ 10,323	\$ 10,260	\$ 21,810	\$ 32,219
Bay	\$ 9,954	\$ 9,327	\$ 9,265	\$ 21,284	\$ 31,568	Leon	\$ 10,543	\$ 9,916	\$ 9,854	\$ 21,251	\$ 31,535
Bradford	\$ 10,526	\$ 9,881	\$ 9,818	\$ 22,224	\$ 32,792	Levy	\$ 10,562	\$ 9,917	\$ 9,854	\$ 22,260	\$ 32,828
Brevard	\$ 9,922	\$ 9,295	\$ 9,233	\$ 21,252	\$ 31,536	Liberty	\$ 10,914	\$ 10,269	\$ 10,206	\$ 22,612	\$ 33,180
Broward	\$ 10,205	\$ 9,563	\$ 9,500	\$ 21,659	\$ 32,182	Madison	\$ 10,758	\$ 10,113	\$ 10,050	\$ 22,096	\$ 32,664
Calhoun	\$ 10,756	\$ 10,111	\$ 10,048	\$ 22,454	\$ 33,022	Manatee	\$ 10,123	\$ 9,496	\$ 9,434	\$ 21,332	\$ 31,616
Charlotte	\$ 10,306	\$ 9,679	\$ 9,617	\$ 21,636	\$ 31,920	Marion	\$ 9,881	\$ 9,254	\$ 9,192	\$ 21,178	\$ 31,462
Citrus	\$ 10,573	\$ 9,946	\$ 9,884	\$ 21,176	\$ 31,460	Martin	\$ 10,568	\$ 9,933	\$ 9,870	\$ 21,963	\$ 32,374
Clay	\$ 9,876	\$ 9,249	\$ 9,187	\$ 21,206	\$ 31,490	Monroe	\$ 13,174	\$ 12,518	\$ 12,453	\$ 25,119	\$ 35,879
Collier	\$ 12,263	\$ 11,604	\$ 11,539	\$ 23,507	\$ 34,311	Nassau	\$ 10,207	\$ 9,580	\$ 9,518	\$ 21,537	\$ 31,821
Columbia	\$ 10,389	\$ 9,744	\$ 9,681	\$ 21,790	\$ 32,358	Okaloosa	\$ 10,324	\$ 9,697	\$ 9,635	\$ 21,341	\$ 31,625
Dade	\$ 10,130	\$ 9,491	\$ 9,428	\$ 21,703	\$ 32,175	Okeechobee	\$ 10,224	\$ 9,579	\$ 9,516	\$ 21,922	\$ 32,490
DeSoto	\$ 11,109	\$ 10,464	\$ 10,401	\$ 22,103	\$ 32,671	Orange	\$ 9,976	\$ 9,343	\$ 9,281	\$ 21,431	\$ 31,812
Dixie	\$ 10,513	\$ 9,868	\$ 9,805	\$ 22,211	\$ 32,779	Osceola	\$ 9,976	\$ 9,349	\$ 9,287	\$ 21,212	\$ 31,496
Duval	\$ 9,952	\$ 9,320	\$ 9,258	\$ 21,377	\$ 31,735	PalmBeach	\$ 10,445	\$ 9,790	\$ 9,725	\$ 22,362	\$ 33,100
Escambia	\$ 9,950	\$ 9,323	\$ 9,261	\$ 21,280	\$ 31,564	Pasco	\$ 10,065	\$ 9,438	\$ 9,376	\$ 21,204	\$ 31,488
Flagler	\$ 10,644	\$ 10,017	\$ 9,955	\$ 21,155	\$ 31,439	Pinellas	\$ 10,219	\$ 9,590	\$ 9,528	\$ 21,524	\$ 31,839
Franklin	\$ 11,303	\$ 10,658	\$ 10,595	\$ 23,001	\$ 33,569	Polk	\$ 10,022	\$ 9,395	\$ 9,333	\$ 21,214	\$ 31,498
Gadsden	\$ 10,460	\$ 9,815	\$ 9,752	\$ 22,052	\$ 32,620	Putnam	\$ 10,328	\$ 9,683	\$ 9,620	\$ 22,026	\$ 32,594
Gilchrist	\$ 10,742	\$ 10,097	\$ 10,034	\$ 22,440	\$ 33,008	St.Johns	\$ 9,961	\$ 9,334	\$ 9,272	\$ 21,291	\$ 31,575
Glades	\$ 11,039	\$ 10,394	\$ 10,331	\$ 22,737	\$ 33,305	St.Lucie	\$ 10,792	\$ 10,165	\$ 10,103	\$ 21,327	\$ 31,611
Gulf	\$ 10,907	\$ 10,262	\$ 10,199	\$ 22,605	\$ 33,173	SantaRosa	\$ 10,072	\$ 9,445	\$ 9,383	\$ 21,182	\$ 31,466
Hamilton	\$ 11,348	\$ 10,703	\$ 10,640	\$ 22,437	\$ 33,005	Sarasota	\$ 10,992	\$ 10,355	\$ 10,292	\$ 22,184	\$ 32,638
Hardee	\$ 10,613	\$ 9,968	\$ 9,905	\$ 21,845	\$ 32,413	Seminole	\$ 9,923	\$ 9,296	\$ 9,234	\$ 21,253	\$ 31,537
Hendry	\$ 9,718	\$ 9,073	\$ 9,010	\$ 21,311	\$ 31,879	Sumter	\$ 10,772	\$ 10,145	\$ 10,083	\$ 21,900	\$ 32,184
Hernando	\$ 10,361	\$ 9,734	\$ 9,672	\$ 21,161	\$ 31,445	Suwannee	\$ 10,112	\$ 9,467	\$ 9,404	\$ 21,810	\$ 32,378
Highlands	\$ 10,087	\$ 9,442	\$ 9,379	\$ 21,780	\$ 32,348	Taylor	\$ 10,382	\$ 9,737	\$ 9,674	\$ 22,080	\$ 32,648
Hillsborough	\$ 9,981	\$ 9,347	\$ 9,285	\$ 21,413	\$ 31,797	Union	\$ 10,602	\$ 9,957	\$ 9,894	\$ 22,300	\$ 32,868
Holmes	\$ 10,937	\$ 10,292	\$ 10,229	\$ 22,394	\$ 32,962	Volusia	\$ 9,785	\$ 9,158	\$ 9,096	\$ 21,115	\$ 31,399
IndianRiver	\$ 10,215	\$ 9,588	\$ 9,526	\$ 21,545	\$ 31,829	Wakulla	\$ 10,128	\$ 9,483	\$ 9,420	\$ 21,826	\$ 32,394
Jackson	\$ 10,664	\$ 10,019	\$ 9,956	\$ 22,156	\$ 32,724	Walton	\$ 11,734	\$ 11,107	\$ 11,045	\$ 22,792	\$ 33,076
Jefferson	\$ 12,365	\$ 11,720	\$ 11,657	\$ 23,420	\$ 33,988	Washington	\$ 10,737	\$ 10,092	\$ 10,029	\$ 22,435	\$ 33,003
Lafayette	\$ 10,841	\$ 10,196	\$ 10,133	\$ 22,539	\$ 33,107						

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