

SECTION 10

STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOL

POLICY

It shall be the policy of each LEA in this SELPA to assure that children with disabilities voluntarily enrolled by their parents in private school shall receive appropriate special education and related services pursuant to LEA coordinated procedures. The proportionate amount of federal funds will be allocated for the purpose of providing special education services to children with disabilities voluntarily enrolled in private school by their parents.

Federal Reference: 20 USC Section 1412 (a) (10)

DEFINITIONS

District of Residence, ("DOR"): As used in this policy, the district of residence refers to the school district within which boundaries the child with a disability resides.

Local Educational Agency, ("LEA"): As used in this part, the Local Educational Agency, LEA, refers to the school district where the private school or facility is located.

Private School Children with Disabilities: As used in this policy, "private school children with disabilities" means children with disabilities enrolled by their parents in private schools or facilities.

Private School or Facility: As used in this policy, "private school or facility" means: (1) private full-time day school pursuant to California Education Code section 48222 (including religious schools); (2) private tutor pursuant to California Education Code section 48224; and/or (3) any other California Department of Education ("CDE") identified educational institution, program, arrangement, or facility not sponsored, maintained, or managed by the school district and for which the school district does not collect average daily attendance funds; (4) CDE authorized private school affidavit.

PROCEDURES

The following procedures shall be followed by the school districts in the Solano County Special Education Local Plan Area ("SELPA") to ensure that the District:

Locates, identifies, and evaluates all children ages three (3) to twenty-two (22) with disabilities enrolled by their parents in private, including religious, elementary schools and secondary schools who may be eligible for special education services;

Offers a free and appropriate public education (FAPE) to all children ages three (3) to twenty-two (22) with disabilities, enrolled by their parents in private, including religious, elementary schools and secondary schools, who are determined to be eligible for special education services.

I. Consultation

The LEA shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, regarding—

- (A) 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;
- (B) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

- (C) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- (D) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
- (E) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

When timely and meaningful consultation as described above has occurred, the LEA shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the California Department of Education (CDE). A private school official has the right to submit a complaint to the CDE that:

- (A) The LEA did not engage in consultation that was meaningful and timely, or
- (B) The LEA did not give due consideration to the views of the private school official.

To file a complaint:

- (A) The private school official must provide the basis of the LEA's noncompliance to the CDE, and
- (B) The LEA must forward the appropriate documentation to the CDE.

If the private school official is dissatisfied with the decision of the CDE, he/she may appeal the decision by submitting a complaint to the Secretary of the U.S. Department of Education setting forth the basis for the LEA's noncompliance, and the LEA shall forward appropriate documentation to the Secretary of the U.S. Department of Education.

II. Child Find

- (A) The LEA shall undertake the child-find activities described in Section 3 of this Local Plan, as well as the following activities, with regard to private school children ages three (3) to twenty-two (22):
1. Consult with representatives of private schools and of parents of children with disabilities (such as private school administrators, teachers, parents, and students) regarding the child-find process, including, but not limited to, criteria for special education eligibility and special education referral procedures under federal and State laws and regulations.
 2. Distribute materials to representatives of private schools and of parents of children with disabilities (such as private school administrators, teachers, parents and students) regarding issues, including but not limited to, criteria for special education eligibility and special education referral procedures under federal and state laws and regulations.
 3. Consult with representatives of private schools and of parents of children with disabilities (such as private school administrators, teachers, parents, and students) regarding the determination of the proportionate share of federal funds described in Section VI(B) below. The proportionate share of federal funds shall not be used for child-find activities.
- (B) The LEA shall ensure child-find activities undertaken for private school students are comparable to activities undertaken for children ages three (3) to twenty-two (22) with disabilities in public schools. Child-find activities shall include consultation with representatives of private schools and of parents of private school children aged three (3) to twenty-two (22) with disabilities regarding how to carry out child-find activities.

III. Special Education Referral

- (A) Students must be referred for special education instruction and services only after the resources of the general education program have been considered and, where appropriate, utilized.
- (B) If after considering and, where appropriate, utilizing general education resources, representatives of private schools and of parents of private school children with disabilities determine that a private school child may be eligible for special education services, a referral shall be directed to the Director of Special Education of the LEA.

IV. Initial Individualized Education Program (IEP) Team Meeting

- (A) Upon identifying and locating a child suspected of being a child with a disability, the LEA shall conduct an appropriate and timely initial assessment of the child's needs unless the student's District of Residence opts to conduct the initial assessment. Upon its completion of the initial assessment, the LEA shall convene an IEP meeting to determine whether the student is eligible for special education and related services, and the LEA shall invite the student's District of Residence to such meeting.
- (B) If the parents of a private school child with a disability notify the District of Residence in writing that they are not interested in enrolling their child in public school, and if the child is eligible for special education and related services as a child with a disability, the District of Residence shall develop a Service Plan ("SP") in accordance with this policy and federal and state laws and regulations.
- (C) In order to ensure that the parents' intention are clear, the District of Residence shall request that the parents sign the following statement on a form entitled Certification of Parent's Decision Not to Enroll in Public School: Parents of _____ hereby certify that we are not interested in enrolling our child, _____, in the District. We are not interested in the development of an IEP for our child, the District's offer of a free appropriate public education, and are only interested in a service plan from the school district where the private school in which we are unilaterally placing our child is located. We have received the Solano County SELPA Notice of Parents' Rights, and we understand the notice.
- (D) If the parents of a private school child with a disability are interested in enrolling their child in public school, or are unsure of their intentions, the District of Residence shall convene an IEP meeting to develop an IEP for the child.
1. If the parents of a private school child with a disability agree with and consent to the IEP developed by the IEP team, the IEP shall be implemented without undue delay following the IEP team meeting.
 2. If the parents of a private school child with a disability agree with, but decline the IEP developed by the IEP team, the IEP team shall:
 - Ask the parents to indicate their agreement with the following statement on the student's IEP form: "I agree that the District of Residence has offered to my child a free appropriate public education, including appropriate services in special education. However, I am voluntarily placing my child in a private school."
 - Request the LEA to develop a service plan on the LEA service plan form in accordance with this policy and federal and State laws and regulations.

V. Child Count

- (A) The LEA shall engage in a timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with Sec. 300.134 of Title 34 of the Code of Federal Regulations) to determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA..
1. The child count shall be conducted for attendance on December 1 of the prior year. The child count shall be conducted by mail and follow-up phone or in-person contact as needed.
 2. The child count shall be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the fiscal year following the date on which the child count is conducted.
- (B) Following the consultation, the LEA shall conduct an annual count of the number of private school children with disabilities.

VI. Service Plan Policy

- (A) 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 public school.
- (B) Pursuant to Federal and State law and regulations, the LEA shall spend a proportionate share of Federal funds to provide special education and related services to private school children with disabilities ages three (3) to twenty-two (22) eligible for special education services. Decisions about the services that shall be provided to private school children with disabilities are made after consulting, in a timely and meaningful way, with representatives of private schools and of parents of children with disabilities (such as private school administrators, teachers, parents and students) in order to determine:
1. Which disabling condition(s) will be served;
 2. What service(s) shall be provided;
 3. How and where and by whom service(s) will be provided; and
 4. How service(s) will be evaluated.
- (C) Each private school child with a disability who has been designated to receive services under this policy shall have a service plan that describes specific special education and related services that the LEA shall provide to the child as determined by the LEA in this policy. The LEA shall ensure that a representative of the private school attends each meeting involving an individual child's service plan. If the private school representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or

conference telephone calls.

- (D) Following timely and meaningful consultation with representatives of private schools and of parents of children with disabilities, the LEA will issue the following report to the respective private schools:

- 1. Following the consultation with representatives of private school children with disabilities, as required by law, the following services were determined to meet the prioritized needs of the eligible private school students with disabilities in the _____ District within the Solano County SELPA:

- a. _____

- b. _____

- 2. Transportation: If the Service Plan team determines that transportation is necessary for the child to benefit from or participate in the services provided in the child's Service Plan, a private school child with a disability shall be provided transportation depending on the scheduling of the services:

- a. from the child's school or home to the service site other than the private school; and/or
- b. from the service site to the private school or child's home. The LEA shall not provide transportation from the child's home to the private school.

The cost of transportation shall be included in calculating whether the LEA has spent a proportionate amount of funding on private school children with disabilities.

- (E) The services offered in this policy shall be reviewed by the LEA at least annually by means of a survey initiated by each LEA and/or consultation with representatives of private schools and of parents of private school children with disabilities ages three (3) to twenty-two (22) (including private school administrators, teachers, parents, and students).
- (F) The services provided pursuant to the policy may be provided at a private school, including a religious school, to the extent consistent with law. The location of the services shall be set out in the student's SP. Service providers shall be hired and supervised by, or a contractor of, LEA. The LEA shall also control all property, equipment, and supplies allocated to benefit private school students with disabilities. However, the LEA shall not use its proportionate share of federal funding to finance the existing level of instruction in a private school or to otherwise benefit the private school.

VII. IEP Meetings After the Initial IEP Team Meeting

(A) All children with disabilities eligible for special education who reside in the District of Residence are entitled to receive a FAPE from the District of Residence if they are enrolled in public school. One year after an eligible private school child's initial IEP team meeting and annually thereafter, the District of Residence shall notify the child's parents in writing that the District of Residence:

1. Continues to offer a FAPE in accordance with federal and State laws and regulations;
2. Is ready, willing, and able to schedule an IEP team meeting for their child in order to offer the child a FAPE, subject to assessment, if appropriate, if the parents express an interest in enrolling their child in public school.

Unless Paragraph VII. B, below, applies, the parents shall be requested to send the document back to the District of Residence and indicate their agreement with one of the following statements:

1. I understand that the District of Residence continues to offer my child a free appropriate public education (including appropriate special education and related services) if he/she is enrolled in public school. I continue to unilaterally place my child in a private school; and:

___ I would like my child to continue to receive services pursuant to his/her service plan. I am not interested in enrolling my child in public school. (In this case, the District of Residence will forward within 3 business days a copy of this document to the LEA.)

or

___ I would like to schedule an IEP for my child.

2. I am interested in enrolling my child in public school. I would like to schedule an IEP team meeting for my child. Please call me at: [parent inserts phone number] in order to schedule the IEP meeting.

(B) Notwithstanding Paragraph VII(A) above, the District of Residence shall convene an IEP team meeting at least every three years in order to determine continuing eligibility for special education.

VIII. Private Preschool Students with Disabilities (Age 3.0 - 5.11)

(A) If the IEP team determines that a preschool child with a disability is eligible for special education services and develops an IEP offering only related services (i.e., placement is not a component of FAPE), the eligible preschool student shall be considered a public school student. The District of Residence shall provide the eligible preschool child with a disability

with a FAPE in accordance with federal and State laws and regulations, and the IEP.

(B) If :

1. an IEP team determines that a preschool child with a disability is eligible for special education services and develops an IEP offering placement and related services; and
2. the parent agrees with the IEP developed by the IEP team, but declines public preschool placement in order to unilaterally enroll his/her child in a private preschool, then the eligible preschool child with a disability shall be considered a unilaterally placed private school student. In such case, the LEA shall offer a service plan for the student.

IX. Dispute Resolution

(A) With the exception of disputes related to child find, special education due process procedures are not available to parents for resolving disagreements about the services provided to private school children with disabilities who are placed by their parents in private schools when FAPE is not at issue.

(B) No LEA of District of Residence is required to pay for the cost of educating a child with a disability at a private school (including special education and related services) if: (1) the District of Residence made a FAPE available to the child, and (2) the parents voluntarily elected to place their child in a private school.

(C) Disputes regarding whether the LEA complied with child find requirements (such as the initial location, identification, and assessment of the parentally placed private school child with disabilities by the LEA and/or the District of Residence, as appropriate) may be resolved pursuant to local policies and procedures and/or by filing a request for a due process hearing with the Office of Administrative Hearings.

(D) Disputes regarding the LEA's policy regarding *Children with Disabilities Enrolled by their Parents in Private Schools* Policy may be resolved pursuant to local policies and procedures, and/or by filing a complaint with the California Department of Education pursuant to Title 5 of the California Code of Regulations, section 4600 et seq.

Legal References:

UNITED STATES CODE, TITLE 20

Section 1412(a)(10) (A)

Administrative Regulation

Procedure for determining proportionate amount of Federal Funds available to serve parentally placed private school students with disabilities:

Private School Funding Calculation

To calculate the proportionate share that an LEA must spend, use the figures found on the prior year 611 (3-21 year olds) and 619 (3-5 year olds) Grants letters and the pupil count from the most recent December 1 count.

Sample Calculations:

Step 1:

$$\frac{\text{Eligible Parentally Placed Private School Students (3-22)}}{\text{Total LEA (3-21)}} \times \text{611 grant amt.} = \text{Total amount to expend for private school students 3-22.}$$

Eligible ADA (including above number)

Example:

$$\frac{10}{2500} = 0.004 \quad \times \quad \$2,500,000.00 = \quad \mathbf{\$ 10,000.00}$$

Step 2:

$$\frac{\text{Eligible Parentally Placed Private School Students (3-5)}}{\text{Total LEA (3-5)}} \times \text{619 grant amt.} = \text{Total preschool amount to expend for private school students 3-5.}$$

Eligible ADA (including above number)

Example:

$$\frac{2}{200} = 0.01 \quad \times \quad \$175,000 = \quad \mathbf{\$ 1,750.00}$$

Total Federal funds to be expended based on # of privately placed children = **\$ 11,750.00**

