

## Private School Children with Disabilities

*Note: The following information pertains primarily to the responsibility of school districts for referral, assessment and provision of service to students enrolled by their parents in private schools. It does not include requirements regarding consultation with representatives from private schools or expenditure of a proportionate share of federal funds. Details about these requirements are contained in SELPA Administrative Regulations.*

### **Definition**

#### District of Location (DOL)

The district of location (DOL) refers to the school district within which boundaries the private school is located.

#### District of Residence (DOR)

The district of residence (DOR) 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 a school district.

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Private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities. Preschool children with disabilities are only considered to be parentally-placed private school children if they are enrolled in private schools or facilities that meet the definition of "elementary school" below. Preschool children who attend day care centers will be considered public school referrals.

#### Elementary School Definition

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

#### Private School or Facility

A private school is defined as an institutional day or residential school that provides elementary education, as determined under State law (CFR 300.13). In order for a preschool to be considered a private school it must meet the

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previous definition. Private day care centers do not meet this requirement and therefore are not considered private schools.

### Legal Requirements

#### Child Find

Each Local Education Agency must locate, identify and assess all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA. In carrying out the requirements of this section, the LEA must undertake activities similar to the activities undertaken for the agency's public school children. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA.

Each LEA in which private, including religious, elementary and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools they attend are located.

#### Record Keeping

Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children:

- The number of children evaluated;
- The number of children determined to be children with disabilities; and
- The number of children served.

#### Annual Count

Each LEA must determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA and ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

#### Responsible Service Provider

To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services.

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### Determination of Services

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. Decisions about the services that will be provided to parentally-placed private school children with disabilities must be made in accordance with 300.134 and 300.137. The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must:

- Initiate and conduct meetings to develop, review and revise a services plan for the child; and
- Ensure that a representative of the religious school or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

### Service Providers

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing service in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements.

The provision of equitable services for children enrolled in private schools by their parents must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization or other entity. An LEA may use federal funds to pay for the services of an employee of a private school to provide services if:

- The employee performs the services outside of his or her regular hours of duty; and
- The employee performs the services under public supervision and control.

### Service Plan

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Each parentally-placed private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined it will make available to parentally-placed private school children with disabilities. The services plan must, to the extent appropriate:

- Meet the requirements of 300.320, or for a child ages three through five, meet the requirements of 300.323, with respect to the services to be provided; and
- Be developed, reviewed and revised consistent with 300.321 and 300.24.

### Services

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral and non-ideological.

Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation:

- From the child's school or the child's home to a site other than the private school; and
- From the service site to the private school, or to the child's home, depending on the timing of the services.

LEAs are not required to provide transportation from the child's home to the private school. The cost of the transportation may be included in calculating whether the LEA has met the requirement of 300.133.

### Due Process Complaints

Due process complaint procedures do not apply to complaints regarding the provision of services to parentally-placed private school children with disabilities.

Due process complaint procedures do apply to complaints regarding child find and evaluation and disagreements regarding the availability of a program appropriate for the child. Any due process complaint regarding the child find

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process must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

### Separate Classes

An LEA may not use funds for classes that are organized separately on the basis of school enrollment or religion of the children if:

- The classes are at the same site; and
- The classes include children enrolled in public schools and children enrolled in private schools.

### Property, Equipment and Supplies

A public agency must control and administer the funds used to provide special education and related services and hold title to and administer materials, equipment and property purchased with those funds for the uses and purposes provided in the Act. The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program. The public agency must ensure that the equipment and supplies placed in a private school:

- Are used only for Part B purposes;
- Can be removed from the private school without remodeling the private school facility.

The public agency must remove equipment and supplies from a private school if:

- The equipment and supplies are no longer needed for Part B purposes; or
- Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

No funds under Part B of the Act may be used for repairs, minor remodeling or construction of private school facilities.

### District Must Make FAPE Available

The local educational agency shall not be required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local educational agency made a free appropriate public education available to the child and the parent of the child elected to place the child in the private school or facility.

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### Reimbursement for Private School Costs

If a parent or guardian of an individual with exceptional needs, who previously received special education and related services under the authority of the local educational agency, enrolls the child in a private elementary or secondary school without the consent of or referral by the local educational agency, a court or a due process hearing officer may require the local educational agency to reimburse the parents for the cost of that enrollment if the court or due process hearing officer finds that the local educational agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

The cost of the reimbursement described above may be reduced or denied in the event of any of the following:

- a. At the most recent IEP meeting that a parent or guardian attended prior to removal of the child from the public school, the parent or guardian did not inform the IEP team that they were rejecting the placement proposed by the local educational agency to provide a free appropriate public education to the child, including stating his or her concerns and the intent to enroll the child in a private school at public expense.
- b. The parent or guardian did not give written notice to the local educational agency of the information described in subdivision (a) at least 10 business days, including any holidays that occur on a business day, prior to the removal of the child from the public school.
- c. Prior to the parent's or guardian's removal of the child from the public school, the local educational agency informed the parent of its intent to assess the child, including a statement of the purpose of the assessment that was appropriate and reasonable, but the parent or guardian did not make the child available for the assessment.
- d. Upon a judicial finding of unreasonableness with respect to actions taken by a parent or guardian.

The cost of reimbursement shall not be reduced or denied for failure to provide the notice in the event of any of the following:

1. The school prevented the parent or guardian from providing the notice.
2. The parents had not received notice, pursuant to Section 1415 of Title 20 of the United States Code, of the notice requirement in sub clause (l) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.
3. Compliance with the federal provision cited in paragraph (2) would likely result in physical harm to the child.

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In the discretion of a court or a hearing officer, the cost of reimbursement may not be reduced or denied for failure to provide the notice in either of the following circumstances:

1. The parent or guardian is illiterate or cannot write in English.
2. Providing the notice described in sub clause (l) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code would likely result in serious emotional harm to the child.

### Legal References

EC 56171; EC 56172; EC 56173; EC 56174; EC 56174.5; EC 56175  
EC 56176; EC 56177  
34 CFR 300:130-148

### Timelines

The same timelines apply to private school students as apply to public school students:

- 15 days from receipt of referral to the development of an Assessment Plan.
- 60 days, excluding school breaks longer than 5 days, from receipt of consent to assess to the development of the IEP or ISP.
- Service Plans must be reviewed and revised as necessary annually.
- Students must be reevaluated triennially.

### Local Procedures

#### Overview

According to federal and state statute, the district of location (DOL) is responsible for processing special education referrals for students attending a private school located within the district's boundaries. The district of residence (DOR) is ultimately responsible for the provision of a free appropriate public education (FAPE) to all eligible students residing within their attendance area.

The school districts in the Tehama County Special Education Local Plan Area (SELPA) agree to comply with the following:

- The DOL shall locate, identify and assess all private school children with disabilities, including religiously affiliated school age children, who have

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disabilities and are in need of special education and related services attending private school.

- The DOR will offer a free and appropriate public education (FAPE) to all children, enrolled by their parents in private schools, including religious schools, who are determined to be eligible for special education services.

### Referral

Prior to private school staff referring a student for a special education evaluation, the private school should conduct a student study team meeting to consider and, where appropriate, utilize the resources of the general education program.

If after considering and, where appropriate, utilizing general education resources, it is determined that a private school child may be eligible for special education services, the private school should direct a referral to the District of Location. The DOL will process the referral in the same manner that it processes referrals for public school students. The DOL will forward referrals for preschool children to the Preschool Assessment team at the Tehama County Department of Education.

*Note: Most, if not all, preschools in Tehama County do not meet the definition of a private school. Therefore, referrals are treated as public school referrals.*

Parent and agency referrals for private school students should be treated the same as parent or agency referrals for public school students.

### Evaluation

1. The DOL shall respond to the referral request with a written assessment plan or a written refusal to assess, i.e. prior written notice, within 15 days of the date of receipt of referral.
2. If an evaluation is deemed appropriate, the DOL shall complete a comprehensive evaluation in the same manner that it evaluates public school children.

Although the law places the burden on the DOL to identify, assess and serve private school children, the responsibility for the offer of FAPE rests with the DOR. Therefore, it is critical that the DOL collaborate with the DOR throughout the process. For this reason the DOL shall request written permission from the parent to share assessment results with the DOR at the same time that consent is requested for the evaluation.



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If the parent does not provide consent or fails to respond to the request to provide consent, the district may, but is not required to, pursue initial evaluation of the child by pursuing mediation or one of the due process procedures. The district does not violate its obligation if it declines to pursue the evaluation.

### (IEP) Team Meeting and Offer of FAPE

1. Within 60 days of the receipt of consent to assess, the DOL shall conduct an IEP meeting.

*Note: The DOL shall also invite the DOR to attend the IEP.*

2. The IEP Team shall share the results of the evaluation and make the appropriate determination regarding eligibility. If the IEP Team finds the student is eligible for services, the district of location will advise the parents regarding the rights of students placed by their parents in private schools including the difference between an IEP and a services plan and do one of the following:
  - a. If the parents are interested in enrolling their child in public school or are unsure of their intentions, the IEP team shall assist the DOR representative to develop an IEP for the child (offer of FAPE). It is imperative that the DOR develop an IEP in the same manner that it develops IEPs for students attending school within the district. If the parents agree and consent to the IEP, the IEP shall be implemented without delay following the IEP meeting and following the proper enrollment of the student at the DOR. If the parents agree with the IEP but decide to have their child attend the private school, the IEP Team shall have the parents sign the SELPA form *Certification of Parent Decision Not To Enroll in Public School* (SAE 10f) and offer to develop a service plan for the student.
  - b. If the parents are clearly not interested in enrolling their child in public school but request that special education services be provided, the IEP Team shall have the parents sign the certification form and develop a Service Plan ("SP").
  - c. If the parents of a private school child with a disability indicate that they do not intend to enroll their child in a public school and do not want special education services for their child, the IEP Team shall have them sign the certification form but will not develop an IEP or Service Plan.
  - d. If the parents do not sign the certification form, the IEP Team should develop an IEP.

If the parent of the child fails to respond or refuses to consent to the initiation of services, the district shall not pursue mediation or due process.

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If the parent of the child refuses to consent to the initial provision of special education and related services or if the parent fails to respond to a request to provide the consent, both of the following are applicable:

- The district shall not be considered to be in violation of the requirement to make available a free and appropriate public education to the child or the failure to provide the child with the special education and related services for which the district requests consent.
- The district shall not be required to convene an individualized education program team meeting or develop an individualized education program under this part for the child for the special education and related services for which the district requests consent.

### Students Residing Outside the SELPA and Attending a Private School Inside the SELPA

In cases where the DOR is located outside the Tehama County SELPA, the DOL will collaborate with the DOR in the same manner as addressed above. If this is not feasible, the DOL shall process the referral without the involvement of the DOR.

### Students Residing Inside the SELPA and Attending Private Schools Outside the SELPA

Federal law requires that the district where the private school is located be responsible for child find and processing referrals. Therefore, the DOL for a private school located outside of the boundaries of the Tehama County SELPA may or may not include the DOR in the referral process. If contacted, the DOR will collaborate with the DOL as appropriate and be prepared to offer FAPE at the IEP meeting. The DOR may conduct its own assessments as appropriate with parental consent.

When a DOR receives a referral for a student attending a private school outside the SELPA, the DOR shall refer the parent to the DOL. The DOR shall collaborate with the DOL and be prepared to offer FAPE at the IEP meeting.

### Services

1. Each private school child with a disability, who has been designated to receive services under this policy, shall have an SP that describes specific special education and related services that the DOL shall provide to the child. The services available on a service plan are determined by the SELPA Administrator in consultation with private school representatives.

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2. The DOL must:
  - Initiate and conduct meetings to develop, review and revise a services plan for the child; and
  - Ensure that a representative of the religious school or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
3. If the service plan (SP) team determines that transportation is necessary for the child to benefit from or participate in the services provided in the child's service plan, the child 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.Transportation shall not be provided from the child's home to the private school. The cost of transportation shall be included in calculating whether the Tehama County SELPA has spent its required proportionate amount of federal funding on private school children with disabilities.
4. No private school child with a disability has an individual right to receive some or all of the special education services that the child would receive if enrolled in public school.
5. The services provided pursuant to a service plan 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. Services and, when appropriate, materials and equipment must be secular, neutral and non-ideological. The SELPA 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.
6. Services must be provided by personnel meeting the same standards as personnel providing services in the public schools with the exception that they do not have to meet the highly qualified requirement for special education teachers. Services may be provided by employees of a public school or through contract with an individual, agency, organization or other entity. The district may contract with private school personnel to provide services if the services are provided outside that person's regular school day and under the supervision of district personnel.

*Note: Upon the initial development of a service plan, and each year after, the DOL shall send a copy of the service plan to the DOR with consent from the student's parents.*

### Annual Offers of a Free and Appropriate Public Education

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1. All children with disabilities eligible for special education who reside in the Tehama County SELPA are entitled to receive FAPE from the district of residence, if they are enrolled in public school. The DOR must keep track of all eligible special education students living within its attendance area that attend a private school, whether or not the child is receiving services through a service plan. One year after an eligible private school child's initial IEP team meeting and annually thereafter, the DOL shall obtain parent consent and shall send the DOR copies of service plans for all students currently receiving service and a list of students who are eligible for special education and not currently receiving services. Annually, the DOR shall notify the parents of eligible children in writing (see SELPA form SAE 10g) that the district of residence:
  - a. Continues to offer FAPE in accordance with federal and state laws and regulations;
  - b. Is ready, willing and able to schedule an IEP team meeting for the child in order to offer the child FAPE, subject to assessment, if appropriate, if the parents express an interest in enrolling their child in public school.

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:

- a.  I understand that the District of Residence continues to offer my child a free and appropriate public education (including appropriate special education and related services) if s/he is enrolled in public school. I choose to continue to parentally place my child in a private school; and:  
 I am not interested in receiving any special education services under either a service plan or IEP, at this time.  
Or  
 I would like my child to continue to receive services pursuant to his/her SP. I am not interested in enrolling my child in public school.
- b.  I am interested in enrolling my child in public school and/or discussing service and placement options in the 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.

If the parents do not return the form, the DOR shall send an IEP meeting notice to parents, convene an IEP meeting and complete an offer of FAPE at the IEP meeting.

2. On the year when the triennial evaluation is due, the DOR shall conduct the triennial evaluation, as necessary and convene an IEP team meeting including a representative from the DOL. The IEP Team shall determine the student's continuing eligibility for special education and, if the student

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continues to be eligible for services, either develop an IEP or service plan, as appropriate.

### Child Count

The SELPA Administrator shall conduct an annual count of the total number of private school children with disabilities enrolled in private schools physically located within the boundaries of the Tehama County SELPA regardless of where the child resides. The count will include a survey of private school administrators and an analysis of data contained in the SELPA management information system.

The child count shall be conducted for attendance on December 1 of the current year for private schools within the Tehama County SELPA boundaries.

The DOL shall maintain and annually report to the SELPA the following information related to parentally-placed private school children:

- The number of children evaluated;
- The number of children determined to be children with disabilities; and
- The number of children served.

### Parent Request for Reimbursement

Parents have the right to file for a due process hearing and request reimbursement for the cost of a private school, including a nonpublic school, if the district did not make a free appropriate public education available for their child. A hearing officer can reduce or deny the request in the event of any of the following:

- At the most recent IEP meeting the parent did not reject the proposed placement and state his/her concerns and intent to enroll the child in a private school; or
- The parent did not submit written notice of the previous information at least 10 business days prior to placing the student in a private school; or
- Prior to the parent's removal of the child from school, the district proposed to conduct an evaluation and presented the parents with an assessment plan and copy of Procedural Safeguards but the parent did not make the child available for the assessment; or
- Upon a judicial finding of unreasonableness with respect to actions taken by a parent or guardian.

So, what should the district do if the parents do inform them, either at an IEP meeting or in a letter that they disagree with the current or recommended

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placement and are going to enroll their child in a private school? Unless the district agrees with the parent and is willing to pay for the placement, the district should immediately develop a comprehensive assessment plan and present it to the parents, along with a copy of their Procedural Safeguards, as soon as possible but definitely within the 10 business days mentioned above. Provided that the parents make the student available for the evaluation, the district should proceed with its evaluation, making sure to also investigate and consider the concerns of the parents. At the IEP meeting, the district must be sure to develop an appropriate offer of FAPE. While this will not necessarily prevent the parent from filing for due process, it will put the district in a stronger position if the case does go to a hearing.

The district must also be cautious to avoid any procedural errors which could result in financial penalties. Following are examples of scenarios that districts should avoid.

The cost of reimbursement shall not be reduced or denied for the parent's failure to provide proper notice in the event of any of the following:

- The district prevented the parent or guardian from providing the notice; or
- The parents had not received notice of their Procedural Safeguards; or
- If providing the 10 day written notice would likely result in physical harm to the child.

The cost of reimbursement may not be reduced or denied for failure to provide the notice in either of the following circumstances:

- The parent or guardian is illiterate or cannot write in English.
- Providing the notice would likely result in serious emotional harm to the child.

### Local Forms

*Individual Service Plan (ISP)*

*Certification of Parent Decision Not To Enroll in Public School (SAE 10f)*

*Annual Letter to Parents with Offer of FAPE (SAE 10g)*

*Authorization for Release of Information (to the DOR)*

### FAQs

**What if the district wants to provide services other than the agreed upon services in the service plan?**

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The DOL, in cooperation with the SELPA, determine the services to be provided to private school students. It is important for consistency purposes that each DOL only provide the agreed upon service(s).

### What if the district writes an IEP for a private school student?

The IDEA intentionally limited the rights of students who attend private schools. While recognizing their right to a proportionate share of federal funds, it never intended for them to be entitled to the same level of service as students attending public schools. Writing an IEP for a student attending a private school defeats that purpose and leaves the district open to due process.

### Who keeps track of whether the DOLs are spending their proportionate share of federal funds on private school students?

The SELPA does.

#### ***Don't Forget***

- *Referrals for private schools students should be treated the same as referrals for public school students.*
- *Time lines are the same for private school referrals as public school referrals.*
- *Services may be provided at the private school but instruction must be secular, neutral and non-ideological.*
- *The DOL is responsible for child find, evaluation and services.*
- *The DOR is responsible for the offer of FAPE.*
- *Services must be provided to private school students through a service plan NOT an IEP.*
- *The SELPA decides what services the DOL will provide.*
- *In the case of a dispute about child find or evaluation, the parents must file due process against the DOL not the DOR.*
- *If the DOR does not make FAPE available to the parents, they could possibly be responsible for the cost of the private school.*
- *The DOL should get a signed release of information to share information with the DOR.*