PARENTALLY-PLACED PRIVATE SCHOOL STUDENTS WITH DISABILITIES POLICY

Definitions

District of Location ("DOL"): As used in this policy, "District of Location (DOL)" refers to the school district where the private school or facility is located. "DOL" is referred to as "Local Educational Agency (LEA)" in federal and state laws regarding parentally-placed private school students.

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

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 educational institution, program, arrangement, or facility not sponsored, maintained, or managed by the school district and for which a local education agency does not collect average daily attendance funds. A private preschool is only considered a "private school or facility" if it meets the definition of an elementary school under the law. "Elementary school" is defined in 34 C.F.R. § 300.12 as a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. California law defines "elementary school" in 5 C.C.R. § 4007 to be a school that has two or more elementary grades (K-6).

Private School Children with Disabilities: As used in this policy, "private school children with disabilities" means children with disabilities enrolled by a parent in a private elementary or secondary school or facility, other than students with disabilities placed by the school district in a nonpublic, nonsectarian school pursuant to California Education Code Section 56365. (Educ. Code § 56170)

Representatives of Private School Students: As used in this policy, "representatives of private school students" may include private school administrators, teachers, students, and parents.

Local Education Agencies within the Shasta County Special Education Local Plan Area ("SELPA") shall:

Locate, identify, and evaluate all students ages three (3) to twenty-two (22) with disabilities voluntarily enrolled by their parents in private schools, including religious schools, who may be eligible for special education services; and,

Offer a free appropriate public education ("FAPE") to all students ages three (3) to twenty-two (22) with disabilities voluntarily enrolled by their parents in private schools, including religious schools, who are determined to be eligible for special education services. Local education agencies

shall provide FAPE to all students ages three (3) to twenty-two (22) with disabilities who are determined to be eligible for special education who are enrolled in public schools.

I. Consultation with Private School Representatives

A. To ensure timely and meaningful consultation, the SELPA, on behalf of all Districts of Location ("DOL") within the SELPA, shall consult with representatives of private schools and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for children with special education needs. All DOLs will send a representative to the consultation with private school representatives. Such consultation shall be pursuant to PL 108-446 Section 612 (10)(A)(ii)(V)(iii)(I-V) and Education Code Section 56172(b) & (c):

1. 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;

2. The determination of the proportionate amount of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the amount was calculated;

3. The consultation process among the **DOL**, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the 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;

4. 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 those decisions will be made; and

5. How, if the **DOL** disagrees with the views of the private school officials on the provision of services or the types of services, the **DOL** will provide to the private school officials a written explanation of the reasons why the **DOL** chose not to provide services directly or through a contract. (20 U.S.C. 1412(a)(10)(A)(iii))

B. When timely and meaningful consultation as described above has occurred, the **DOL** shall obtain a written affirmation signed by the representatives of participating private schools. If the participating private schools do not provide such affirmation within a reasonable period of time, the SELPA shall, on behalf of the respective **DOLs**, forward the documentation of the consultation process to the California Department of Education ("CDE").

C. A private school official has the right to submit a complaint to the CDE, if:

1. The **DOL**'s consultation was not meaningful and timely, or
2. The **DOL** did not give due consideration to the views of the private school official.

D. If a complaint is filed:

1. The private school official must provide the basis of the complaint of noncompliance, and
2. The **DOL** must forward the appropriate documentation to the CDE.

E. If the private school official is dissatisfied with the decision of the CDE, he/she may appeal the decision to the U.S. Department of Education.

II. Child Find

A. The **DOL** shall undertake the following child find activities with regard to private school students ages five (5) to eighteen (18) and preschool students enrolled in a preschool at a private elementary school:

1. Consult with representatives of private school children with disabilities 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, and

2. Distribute materials to representatives of private school children with disabilities 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.

B. The proportionate share of federal funds described in Section VI (B), below, shall not be used for child find activities.

C. The **DOL** shall ensure child find activities undertaken for private school students are comparable to activities undertaken for students with disabilities aged under eighteen (18) in public schools.

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 school students with disabilities, determine that a private school student may be eligible for special education services, a referral shall be directed to the Director of Special Education of the District of Location ("DOL").

C. If the private school conducted a Student Study Team ("SST") meeting, the **DOL** shall request that the private school provide a copy of the SST documents to the **DOL** when private school representatives determine that a private school student may be eligible for special education services.

IV. Initial Individualized Education Program (IEP) Team Meeting

A. Upon identifying and locating a student suspected of having a disability, the DOL shall refer any student residing within the SELPA to his or her DOR. The DOR shall conduct an appropriate and timely initial assessment of the child's needs, if a current assessment has not been performed by another Local Educational Agency.

B. The assessing Local Educational Agency shall make the eligibility decision in accordance with applicable state and federal laws and regulations.

C. If the parents of a private school child with a disability are clearly 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 **DOL** shall develop an Individual Service Plan ("ISP") in accordance with this policy and federal and state laws and regulations.

D. In order to ensure that the parents' intentions are clear, the **DOR** shall request that the parents sign the following statement on a form. **DOR** should place the following text on district letterhead to create a "form" entitled "Certification of Parents' Decision Not to Enroll in Public School":

*Parents of_____hereby certify that we are not interested in enrolling our child,____, in the **DOR**. We are not interested in the development of an IEP for our child and the **DOR's** offer of a free appropriate public education. We are only interested in an Individual Service Plan from the **DOL**, the school district where the private school in which we are unilaterally placing our child is located. We have received the* Shasta County SELPA Notice of Procedural Safeguards and Parents' Rights*, and we understand the notice.*

This form and the **DOL**'s assessment, if applicable, shall be promptly forwarded to the child's **DOR.**

E. 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 **DOR** IEP team shall 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 by the **DOR** 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 **DOR** 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 my child a free appropriate public education, including an appropriate placement and services. However, I am voluntarily placing my child in a private school."

   If the parents are not in agreement with the above statement, the **DOR** should follow its procedures for when a parent is in disagreement with the district's offer of free appropriate public education.

3. The **DOR** shall not be required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if the district made a free appropriate public education available to the student and the parent of the child elected to place the child in the private school or facility. (Educ. Code § 56174)

4. If the parents voluntarily place their child in a private school, the **DOR** shall request that the **DOL** develop an Individual Service Plan ("ISP") on the SELPA ISP form in accordance with this policy and federal and state laws and regulations.

V. Student Count of Parentally-Placed Private School Students with Disabilities

A. The **DOL** shall determine the manner in which to conduct the annual count of the number of private school students with disabilities.

1. The student count shall be conducted for attendance on December 1 of the prior year. The student count shall be conducted by mail and follow-up phone call or e-mail, or via in-person contact as needed.

2. The student count shall be used to determine the proportionate amount of federal funds that the **DOL** must spend on providing special education and related services to private school students with disabilities in the fiscal year following the date on which the student count is conducted.

VI. The Individual Service Plan

A. No parentally-placed 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. A private school student with disabilities may receive a different amount of services than a student with disabilities enrolled in a public school receives pursuant to paragraph (2) of subsection (a) of Section 300.455 of Title 34 of the Code of Federal Regulations.

B. Pursuant to federal and state law and regulations, the **DOL** shall spend a proportionate share of federal funds made available under the Part B grant program for local assistance to provide special education and related services to private school students with disabilities ages five (5) to twenty-two (22) and preschool students enrolled in a preschool at a private elementary school 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 school children with disabilities, as described in Section I(A) (1-4) of this policy.

C. Following timely and meaningful consultation, the **DOL** will issue the following report to the private schools located within the **DOL**'s attendance boundaries:

After consulting with representatives of private school students with disabilities as required by law, the _____School District determined that the following services shall be provided to private school students with disabilities ages three (3) to twenty-two (22) who are determined to be eligible for special education services:

1. _____

2. _____

A district may determine that it will provide indirect services to parentally placed private school students with disabilities. These services may include consultative services, equipment, materials for eligible parentally placed children with disabilities, or training for private school teachers and other private school personnel.

D. Transportation

1. If the ISP team determines that transportation is necessary for the student to benefit from or participate in the services provided in the student's ISP, a private school student with a disability shall be provided transportation depending upon the scheduling of the services. Such transportation may be provided:

    a) From the student's school or the student's home to a service site other than the private school; and/or

    b) From the service site to the private school or to the student's home, depending on the timing of the services.

2. The **DOL** shall not provide transportation from the student's home to the private school.

3. The cost of transportation described in this section shall be included in calculating whether the **DOL** has spent a proportionate amount of federal funds on private school children with disabilities.

E. Each private school student with a disability who has been designated to receive services under this policy shall have an ISP that describes specific special education and related services that the **DOL** shall provide to the student as determined by the **DOL** pursuant to this policy. The **DOL** must develop the ISP in the same way that an IEP is developed, including convening the mandatory IEP team members to develop the ISP. The **DOL** shall ensure that a representative of the private school attends each meeting involving an individual student's ISP. If the private school representative cannot attend, the **DOL** shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

F. The services offered pursuant to this policy shall be reviewed by the **DOL** at least annually by means of a **DOL**-wide consultation with representatives of private school students with disabilities ages three (3) to twenty-two (22).

G. The services provided pursuant to this 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 ISP. Service providers shall be hired and supervised by the **DOL**.

H. The **DOL** shall keep title to and control all property, equipment, and supplies acquired for the benefit of private school students with disabilities.

I. The **DOL** 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.

J. A child aged three through five enrolled by his or her parents in a private school or facility that does not meet California's definition of "elementary school" would not be eligible for equitable services under an ISP.

VII. IEP Meetings/Assessments after the Initial IEP Team Meeting

A. All students with disabilities eligible for special education who reside in the **DOR** are entitled to receive FAPE from the **DOR** if they are enrolled in public school. One year after an eligible private school student's initial IEP team meeting and annually thereafter, the **DOR** shall notify the child's parents in writing (in a letter and form created on **DOR** letterhead) that the **DOR**:

1. Continues to offer FAPE in accordance with federal and state laws and regulations;

2. 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 participating in the IEP process.

B. Unless Paragraph VII (C), below, applies, the parents shall be requested to send the document back to the **DOR** and indicate their agreement with one of the following statements:

> *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, and I would like my child to continue to receive services pursuant to his/her Individual Services Plan (ISP). I am not interested in enrolling my child in public school or receiving an updated offer of free appropriate public education.* (In this case, the **DOR** will forward within three (3) business days a copy of this document to the **DOL**.)

[or]

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, and I would like to schedule an IEP meeting for my child to update his/her IEP and offer of free appropriate public education.

C. Notwithstanding Paragraph VII (A) and (B), above, the DOL shall conduct an assessment at least every three (3) years in order to determine the student's continuing eligibility for special education. If the parent of the student does not consent to reassessment, the **DOL** should follow its procedures with regard to obtaining consent for triennial re-assessments.

VIII. Dispute Resolution

A. When FAPE is not at issue, special education due process procedures are not available to parents for resolving disagreements about the **ISP** services provided to private school children unilaterally placed by their parents.

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

C. Disputes regarding whether the DOR made FAPE available to the student, (as well as the initial location, identification, and assessment of the parentally-placed private school student with disabilities by the DOL and/or the DOR, 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 SELPA's policy regarding Parentally-Placed Private School Students with Disabilities may be resolved pursuant to local policies and procedures, and/or by filing a complaint with the California Department of Education pursuant to Title V of the California Code of Regulations, section 4600 et seq.

California Department of Education
Special Education Division
Procedural Safeguards Referral
Service 1430 N Street Suite 2401
Sacramento, California
95814 Attn: PSRS Intake

Legal Citations: Title 20 United States Code Section 1412(a) (10) (A) California Education Code Sections 56170-56177

Legal References: Section 612(a)(10)(A) of the IDEA and 34 CFR §§300.130 through 300.144