SAN MATEO COUNTY SELPA

Special Education Local Plan Area

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POLICY

PARENTALLY PLACED PRIVATE SCHOOL STUDENTS WITH DISABILITIES

DEFINITIONS

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

Private School or Facility: As used in this policy, and as defined by state and federal laws, private school or facility that meets the definition of "elementary school" in 34 C.F.R. Section 300.13 or "secondary school" in 34 C.F.R. section 300.26, which may include the following: (1) private fulltime 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 the school district does not collect average daily attendance funds, including private homeschool programs that have filed a private school affidavit with CDE.

Private School Children with Disabilities*:* As used in this policy, and as defined by sate and federal laws, private school children with disabilities means children with disabilities enrolled by a parent in a private, including religious, elementary or secondary school or facility, or facilities that meet the definition of "elementary school" in 34 C.F.R. Section 300.13 or "secondary school" in 34 C.F.R. section 300.26. This does not include students with disabilities placed by the school district in a nonpublic, nonsectarian school pursuant to EC 56365. (EC 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.

Districts within the San Mateo County Special Education Local Plan Area (SELPA) shall:

Locate, identify, and evaluate all students ages three (3) to twenty-one (21) 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 and whose parents request an Individualized Education Program (IEP). 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.

Consultation with Private School Representatives

To ensure timely and meaningful consultation, the DOL 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. 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 parentally placed private school 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, whether provided directly or through a contract, 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))

Timely and meaningful consultation as described above will be facilitated by the SELPA for all private schools within San Mateo County SELPA boundaries, with appropriate LEAs included. The SELPA will maintain evidence of its efforts to obtain representatives of private schools participation, including copies of invitation letters, surveys of needed supports, and sign in sheets at annual meetings. If such representatives do not participate, the DOL shall forward the documentation of its efforts to the State Educational Agency. The DOL retains its obligation to engage in additional consultation if required or appropriate with private schools within the DOL boundaries.

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

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

If a complaint is filed:

a. The private school official must provide the basis of the complaint of noncompliance by the DOL;
b. The DOL must forward the appropriate documentation to the CDE.

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

Parents have no legal right to request a due process hearing based upon a school district's alleged violation of the "meaningful consultation" requirements described above.

Child Find

Both DOR and DOL have child find obligations. The DOL shall undertake the following child find activities with regard to private school students ages three (3) to twenty-one (21):

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

The DOL shall ensure child find activities undertaken for private school students are comparable to activities undertaken for students with disabilities ages three (3) to twenty-one (21) in public schools.

Special Education Referral

Through consultation with private school representatives, the DOL shall instruct private schools and parents of private school students to refer students for special education assessment when a private school student is suspected of having a disability. If the parent's referral or request is not in writing, the DOL will assist the parent with putting the request in writing. 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.

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 DOL. If the child resides in a district outside of the DOL, then the Director of Special Education of the DOL will request that the parent sign a release of information to allow the DOL to exchange information with the DOR.

If the parent signs the release of information, the Director of Special Education of the DOL will notify the DOR of the referral. The DOL shall offer the parent an assessment plan with prior written notice within the appropriate timeline pursuant to Education Code sections 56043(a) and 56321(a). The DOL shall evaluate the student and convene an initial IEP team meeting to review the assessments within 60 days after receipt of the signed assessment plan and invite the DOR.

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

Upon identifying and locating a student suspected of having a disability, the DOL shall conduct an appropriate and timely initial assessment of the child's needs, if a current assessment has not already been performed by the DOR. If the parent of a parentally placed private school child disagrees with an evaluation by the DOL, the parent may request an independent educational evaluation ("IEE") at public expense from that agency.

DOL shall make eligibility decisions in accordance with applicable state and federal laws and regulations.

Initial Individualized Education Program (IEP) Team Meeting

All children with disabilities eligible for special education who reside in the DOR are entitled to receive a FAPE from the DOR if they are enrolled in public school. One year after an eligible private school child's initial IEP team meeting and annually thereafter, the DOR shall notify the child's parents in writing that the DOR continues to offer a FAPE in accordance with federal and state laws and regulations and 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.

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.

If the parents of a private school child with a disability agree with and consent to the IEP developed by the DOR, the IEP shall be implemented by the DOR without undue delay following the IEP meeting.

The district 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 if the district made FAPE available to the student and the parent of the child elected to place the child in the private school or facility. (EC 56174)

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. No private school student with disabilities is entitled to any amount of service the student would receive if enrolled in a public school pursuant to paragraph (3) of subsection (a) of Section 300.455 of Title 34 of the Code of Federal Regulations.

Student Count of Parentally Placed Private School Students with Disabilities

The DOL shall determine the manner in which to conduct the annual count of the number of private school students with disabilities. The student count shall be conducted for attendance on CALPADS Census Day from the prior year. The student count shall be conducted by mail and follow-up phone call, by e-mail, or via in-person contact as needed.

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.

DOLs must consider those parentally placed private school children with disabilities enrolled in private schools that meet the definition of elementary or secondary school pursuant to 34 C.F.R. Section 300.13.

The Individual Service Plan

If the parents of a private school child with a disability do not request an IEP, 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. The IEP team shall ask the parent to indicate his/her IEP agreement with the following statement on the student's IEP: "I agree that the IEP provides a free appropriate public education; however, I am voluntarily placing my child in a private school. I have received my Parent Rights and am only interested in an ISP from the District." The DOL shall send parent a prior written notice that their student is deemed a parentally placed private school student and is no longer entitled to receive a FAPE, unless and until the parent requests an IEP.

The DOR shall offer to conduct an assessment at least every three (3) years in order to determine the student's continuing eligibility for special education.

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.

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 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 school children with disabilities, as described in this policy.

Following timely and meaningful consultation, the DOL will inform the private schools located within the DOL's attendance boundaries of their determination of the type or nature of services to be provided on behalf of children with disabilities enrolled in the private schools. Such notification may be provided via email, letter or at ISP meetings. The DOL may wish to utilize the following language to inform the private schools of their determination:

> *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. *(List services)*

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 shall ensure that a representative of the private school attends meetings involving student's ISP. If the private school representative cannot attend, the DOL shall use other methods to ensure participation by the private school.

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

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, if any, shall be hired and supervised by the DOL.

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

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.

Transportation

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, as outlined in the ISP, depending upon the scheduling of the services. Such transportation may be provided:

1. From the student's school or the student's home to a service site other than the private school;
2. From the service site to the private school or to the student's home, depending on the timing of the services.

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

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.

Private Preschool Students with Disabilities

If, after appropriate assessment, the IEP team determines that a preschool child with a disability is eligible for special education services, the DOR will develop an IEP offering appropriate special education and related services. Upon enrollment in the DOR, the eligible preschool child shall be considered a public school student. The DOR shall provide the eligible preschool child with a disability with FAPE in accordance with federal and state laws and regulations.

If:
The IEP team determines that a preschool child with a disability is eligible for special education services and the DOR develops an IEP offering placement and related services; and the parent agrees with the IEP developed by the DOR IEP team, but declines public preschool placement in order to parentally place their child in a private school; then,

The eligible preschool child with a disability shall be considered a parentally placed private school student. In such case, the DOR may wish to consider any other potential offer for educational services.

If a private preschool student attends a private preschool that meets the definition of elementary school under 34 C.F.R. Section 300.13, the private preschool student is considered to be parentally placed., and the DOL may provide an ISP If the private preschool does not meet the definition of elementary school under 34 C.F.R. Section 300.13, the private preschool student is still entitled to related services that may be provided through an IEP, or when applicable, an individualized family service plan as described in 34 C.F.R. Section 303.344.

Dispute Resolution

When FAPE is not at issue, special education due process procedures are not available to parents for resolving disagreements about the services provided to private school children unilaterally placed by their parents. In other words, parents cannot use the due process procedures to dispute a parentally-placed private school student's ISP services, but they can file a complaint with the California Department of Education or seek local alternative dispute resolution options. A parent of a child enrolled by that parent in a private school has the right to request mediation or file a due process complaint regarding the child find requirements in 34 C.F.R. section 300.131 only.

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.

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.

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. Complaints may be sent to:

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

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