



## **Private Schools: Students With Disabilities Enrolled By Their Parents**

**SP:M-21**

All member districts of the Antelope Valley Special Education Local Plan Area (SELPA) shall comply with federal and state laws regarding the identification, assessment and program development for all students suspected of having disabilities residing within the SELPA districts. This includes students eligible for special education and related services who are unilaterally placed by their parents in private schools, including children enrolled in parochial schools, residing in one of the SELPA districts. A child eligible for special education and related services who is voluntarily enrolled by his or her parents in a private school has no 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.

Districts shall assist private schools in child find activities, accept referrals from private schools and conduct appropriate assessments, in accordance with administrative regulations. If a district determines that a student is eligible to receive special education and related services, an offer of a free appropriate public education (FAPE) will be made through the individualized education program (IEP) process. Upon an offer of FAPE, a parentally-placed private school student must be enrolled in a public school program in order for the IEP to be implemented. In the event the parents elect to forego a public school placement and initiate or continue the enrollment of their child in a private school, an individual services plan (ISP) will be developed, if appropriate, in accordance with this policy and accompanying administrative regulations.

Member districts shall consult with appropriate representatives of private schools regarding how to locate, identify and evaluate private school children with disabilities. In cooperation with the SELPA Office, districts shall annually notify the private schools within their boundaries of the policies and procedures related to parentally-placed private school students who may be eligible for special education and related services. Staff from the private schools within the SELPA shall be invited to participate in SELPA-sponsored staff development opportunities.

For purposes of this policy and accompanying administrative regulations, the following definitions will be used:

**District of Residence (DOR):** This refers to the school district within which boundaries the child with a disability resides.

**District of School Location (DOL):** This refers to the school district where the private school or facility is located.

**Private School Students with Disabilities:** This refers to students with disabilities enrolled by their parents in private schools or facilities.

**Private School or Facility:** This refers to (1) private full-time day school pursuant to California Education Code, Section 48222 (including religious schools).

**Disability:** This refers to one of the disabilities stipulated in the Individuals with Disabilities Education Act (IDEA) that requires special education and related services because of that disability.

**Parentally Placed Private School Students:** As used in this policy, “private school children with disabilities” mean children with disabilities enrolled by a parent in a private school or facilities that meet the definition of elementary or secondary school, other than students with disabilities placed by the school district in a nonpublic, nonsectarian school pursuant to EC 56365; 56170.

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

**Secondary Schools:** A nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

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

**Service Plan (SP):** describes the specific special education and/or related services that the DOL/LEA will provide to the student that is parentally placed in a private school with a disability who is designated to receive services.

**Preschool Students:** Preschool students with disabilities are only considered to be parentally placed private school students if they are enrolled in private schools or facilities that meet the definition of “elementary school” above. Preschool students who attend private preschools, day care centers, or the home, are addressed through the IEP process with the DOR.

**Transitional Kindergarten Students:** Transitional Kindergarten (TK) students with disabilities are only considered to be parentally placed private school students if they are enrolled in private schools or facilities that meet the definition of "elementary school" above. TK students who attend private preschools, day care centers, or the home, are addressed through the IEP process with the DOR.

Legal Reference

EDUCATION CODE, 56170-56177

PUBLIC LAW, 108-446 December 3, 2004; 118 Stat. 2678, 2679, 2680, 2681

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**AR:M21a**

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

Locates, identifies and evaluates all children ages three (3) through twenty-one (21) with disabilities enrolled by their parents in private schools including religious schools who may be eligible for Special Education services;

Offers a free appropriate public education (FAPE) to all children ages three (3) through twenty-one (21) with disabilities, enrolled by their parents in private schools including religious schools, who are determined to be eligible for Special Education services.

### **I. Consultation**

On behalf of all member districts, the SELPA shall engage in meaningful consultation with private school representatives and representatives of parents of parentally-placed private school students with disabilities during/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, 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 students 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/or related services will be provided for parentally-placed private school students 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 SELPA 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 SELPA will

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 SELPA 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 SELPA shall forward the documentation of the consultation process to the State Educational Agency. A private school official has the right to submit a complaint to the California Department of Education (CDE), if:

- A. the SELPA consultation was not meaningful and timely, or
- B. the SELPA did not give due consideration to the views of the private school official.

**Upon filing a complaint**

- A. the private school official must provide the basis of the complaint of noncompliance, and
- B. the SELPA must forward the appropriate documentation to the CDE.

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

**II. Child Find**

- A. The SELPA shall undertake the following child-find activities with regard to private school children ages birth through twenty-one (21) :
  - 1. Consult with representatives of private school students with disabilities (including private school administrators, teachers, parents, and students) regarding the child-find process, including, but not limited, criteria for Special Education eligibility and Special Education referral procedures under federal and state laws and regulations.
  - 2. Distribute materials to representatives of private school children with disabilities (including 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. The proportionate share of federal funds described in Section VII(B) below, shall not be used for child-find activities.
- B. The **SELPA** shall ensure child-find activities undertaken for private school students are comparable to activities undertaken for children with disabilities ages birth through twenty-one (21) with disabilities in public schools. Child-find activities shall include consultation with representatives (staff and parents) of private school children from birth through twenty-one (21) 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 school children with disabilities (including private school administrators, teachers and parents) 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 DOR. If the referral is directed to the DOL, the DOL will advise the parent or legal guardian to initiate the referral process with the DOR. However, a parent or legal guardian will not be precluded from directing the referral for assessment to the Director of Special Education of the DOL, instead of the DOR, if requested by parent/guardian.
- C. A release of information is obtained from the parent of the private school student to allow the DOR and the private school to consult and share records.
- D. A release of information is obtained from the parent of the private school student to allow the DOR to obtain any information from private or outside providers such as counseling or speech.
- E. If the private school conducted a Student Study Team (SST) meeting, the DOR shall request that the private school provide a copy of the SST documents and relevant cumulative records including testing, grades, etc.
- F. After consideration and review of all available information and within 15 calendar days of a referral, the DOR will provide Prior Written Notice with an assessment plan to conduct a comprehensive evaluation to determine if the student is eligible

for special education services, or provide a Prior Written Notice denying the assessment and documenting the reasons for the refusal.

**IV. Special Education Assessment**

- A. For students who reside in the Antelope Valley SELPA, upon identifying and locating a child suspected of being a student with a disability, and after written consent by the parent or legal guardian, the DOR shall complete a timely initial assessment of the student's areas of need to determine whether the student qualifies for special education and related services. This assessment by the DOR is intended to serve as assessment on behalf of and in lieu of direct assessment by the DOL. However, this does not preclude the DOL from directly conducting its own assessment of the student if instead requested by the student's parent or legal guardian.
- B. For students who reside outside the Antelope Valley SELPA and within the Los Angeles County, but who attend a private school within the Antelope Valley SELPA, the Greater Los Angeles Area SELPAs (GLAAS) procedure will be followed.

**V. Individualized Education Program (IEP) Team Meeting**

- A. The DOR will ensure that a representative of the private school will attend the meeting. If the representative cannot attend, the DOR/LEA shall use other methods to ensure participation by the private school
- B. If the DOR IEP team determines the student is eligible for Special Education services, an IEP shall be developed and an offer of a Free Appropriate Public Education (FAPE) shall be made to the parents and student.
- C. If the parents of a private school student 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 and upon enrollment of the student in a public school in the DOR.
- D. If the parents of a private school student with a disability agree with, but decline the IEP developed by the DOR IEP team, the IEP team shall refer the parent to the DOL. The DOL shall develop a Service Plan in accordance with the DOL's local policies and procedures, as well as federal and state laws and regulations.
- E. If the parent declines the Offer of FAPE, the initial provision of services, and the Service Plan, no further offers of FAPE will be made, unless the parent, private school representative, or other party request assessment or concerns are raised through Child Find. The DOR shall annually provide Prior Written Notice to the

parent notifying them they are ready, willing, and able to provide and implement FAPE for the student.

- F. In order to ensure that the parent's intentions are clear, the parent will be asked to complete and sign a document entitled "Annual Parent Certification of Intent".
- G. 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 or facility if the district made a FAPE available to the student and the parent of the student elected to place the student in the private school or facility. (EC 56174)

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

- A. The SELPA on behalf of all member districts shall conduct the annual count of the number of private school students with disabilities in accordance with state and federal reporting requirements each year. 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.
  - 1. The student count shall be conducted for attendance on the October Census Day of the prior year.
- B. Each LEA must maintain in its records, and provide to the California Department of Education, the following information related to parentally placed private school students:
  - The number of students evaluated;
  - The number of students determined to be students with disabilities; and
  - The number of students served

**VII. Individual Services Plan**

- A. No private school student with a disability has an individual right to receive some or all of the Special Education services that the student would receive if enrolled in public school.
- B. Pursuant to federal and state law and regulations, the DOL shall spend a proportionate share of federal funds to provide Special Education and related services to private school students with disabilities ages six through twenty-one (21) eligible for Special Education services. Decisions about the services that

shall be provided to private school students with disabilities, as described in Section I of this policy.

- C. Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, must be secular, neutral and non-ideological.
- D. The parent of a student with a disability enrolled in a private school will receive annual notification of the SP and be asked to complete and sign a document entitled “*Annual Parent Certification of Intent*”. Parent will receive the “*Annual Parent Certification of Intent*” from the DOL and once parent indicates a SP is desired the DOL will develop the SP.
- E. The DOL in conjunction with the AV SELPA member district Special Education Provider will provide proportionate share services in alignment with the *Private School Student—Proportionate Share Services Plan*. The consultation services should exhaust the proportionate share of funding required. If additional funds remain, the AV SELPA, member LEA’s, and representatives from private schools will consider additional options during the annual meeting to ensure timely and meaningful consultation.

**VIII. IEP Meetings After the Initial IEP Team Meeting**

- A. All students with disabilities eligible for Special Education are entitled to receive a FAPE from their District of Residence (DOR) if they are enrolled in public school. For parentally placed private school children with disabilities, parents of the child may request an offer of FAPE from the DOR by requesting an IEP team meeting. Enrollment in public school is not a prerequisite to receive an offer of FAPE from the DOR.

Within a year of an eligible private school student’s initial IEP team meeting and annually thereafter, the District of Location shall notify the student’s parents in writing that the District of Residence:

- i. Is ready, willing and able to schedule an IEP team meeting for their child upon request in order to offer the child a FAPE, subject to assessment, if appropriate
- ii. Requests the parents to complete and return the “*Annual Parent Certification of Intent*”, indicating their intention regarding the provision of FAPE.

- B. The DOL shall notify the parent of its recommendation to conduct an assessment every three (3) years to determine the student’s continuing eligibility for special



education by sending the parent “*Annual Parent Certification of Intent—Triennial Review*”.

- i. If the parent does not respond within 30 days, the DOL will consider the parent’s lack of response to indicate they are no longer interested in special education services. The DOL will send Prior Written Notice indicating that they understand that the parent is no longer interested in special education and related services and will consider the student to be no longer eligible for special education.
- ii. If the parent indicates consent to the proposed assessment by completing and signing the “*Annual Parent Certification of Intent—Triennial Review*”, then the student will be assessed and continued eligibility for special education will be determined by the DOR.
  1. An IEP meeting will be scheduled to discuss continued special education eligibility and education needs of the student.
  2. The DOR will invite the DOL to the IEP meeting so an SP can be developed if the parent elects to keep the student in private school.

**IX. Dispute Resolution**

- A. 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.
- B. No DOL or DOR is required to pay for the cost of educating a student with a disability at a private school (including special education and related services) if: (1) the school DOR made FAPE available to the student 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 via the IEP, as well as disputes about identification and evaluation of parentally-placed private school children with disabilities, may be resolved through local policies and or procedures and/or pursuant to due process procedures specified in the “Parent Rights and Procedural Safeguards.”
- D. Parents have the right to file a California Department of Education complaint alleging a violation by the SELPA or district in implementation of state or federal law on any other issue, according to complaint procedures specified in the “Parent Rights and Procedural Safeguards.”

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- E. 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.

Legal Reference

UNITED STATES CODE, Title 20  
Section 1412(a)(10)(A)

CODE OF FEDERAL REGULATIONS, Title 34  
Sections 300.130 – 300.144

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**Appendix A:**

**AR:M21**

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 IDEA Part B, Section 611, (6-21 year old) Grant letter and the pupil count from the prior year December 1 CASEMIS.

**Sample Calculations:**

**Step 1:**                                    **Eligible Parentally**  
$$\frac{\text{Placed Private School Students (6-21)}}{\text{Total LEA (6-21) Eligible pupil count (including above number)}} \times \text{611 grant amt.} = \text{Total amount to expend for private school students 6-21.}$$

**Example:**                                     $\frac{10}{2500} = 0.004 \quad \times \quad \$2,500,000.00 = \$10,000.00$

Total Federal funds to be expended based on # of privately-placed children = \$ 10,000.00