

WEST CONTRA COSTA SELPA

**CHILDREN WITH DISABILITIES
ENROLLED BY THEIR PARENTS
IN
PRIVATE SCHOOLS**



July 2019

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

Introduction.

Private schools present challenges to public special educators. In some instances the district is required to offer FAPE, in other instances a service plan. Which district is responsible, the one where the school is located or the one where the parent lives, is also puzzling. The relationship of preschool students to private schools is unique because, generally speaking, there is no public general education program for preschoolers. This policy and procedure addresses these issues with regard to children with disabilities enrolled by their parents in private schools, including religious, elementary or secondary schools or facilities.

Policy

The West Contra Costa County Special Education Local Plan Area (SELPA) will develop a policy to ensure that the school district locates, identifies and evaluates all children ages three to twenty-two enrolled by their parents in private schools who have disabilities, who may be eligible for special education services, and who reside in the district or attend private schools located within the district, including religious, elementary or secondary schools or facilities.

This policy will also ensure that the school district makes a free and appropriate public education (FAPE) available to all children ages three to twenty-two with disabilities enrolled by their parents in private schools who are determined to be eligible for special education services.

This policy and procedure is intended to ensure compliance with all federal and state laws and regulations concerning children ages three to twenty-two with disabilities enrolled by their parents in private schools.

Legal Citations: 20 U.S. Code § 1412
 34 Code of Fed. Regs. §§ 300.130-300.146
 Educ. Code §§ 56170-56177

I. Parentally Placed Students In Private Schools.

Parentally placed private school students with disabilities means children with disabilities enrolled by their parents in private, including religious, elementary or secondary schools or facilities. The parents elect to place their child in private school, understanding that they will not receive special education services by the school district. This does not include children with disabilities referred or placed by public agencies.

(20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. § 300.130; 20 U.S.C. § 1412(a)(10)(B); 34 C.F.R. § 300.145.)

A school district is not required to pay for the cost of special education and related services of a child with a disability at a private school or facility if it made FAPE available and the parents elect to place the child in private school. However, the public agency must include that child in the population whose needs are addressed.

(20 U.S.C. §§ 1412(a)(10)(A)-(B); 34 C.F.R. §§ 300.130 through 300.145.)

- A. **Child Find.** Under Federal and State law, all school districts are required to locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district. This obligation also applies to preschool age students. The child find design must ensure the equitable participation of parentally placed private school children with disabilities with other children in the district and the accurate count of these children.

(20 U.S.C. § 1412(a)(10)(a)(ii); 34 C.F.R. § 300.131; Educ. Code § 56171.)

1. **Responsible School District.** The school district where the private school is located is responsible for identifying and ensuring equitable participation to parentally placed children. The school district where the private school is located is also responsible for child find even if a parentally placed child with a disability resides in a different state.

(20 U.S.C. § 1412(a)(10)(a)(ii); 34 C.F.R. § 300.131(f); Educ. Code § 56171.)

PRACTICE POINTER. In most instances, the school district where the parent resides and the school district where the private school is located will be the same. However, this will not always be the case.

2. **Costs.** The cost of carrying out the child find requirements is not considered when determining if a school district has met its expenditure obligations. In other words, child find activities cannot be charged against the private school children's proportionate share of federal funds.

(34 C.F.R. § 300.131(d).)

3. **Must The Child Find Activities And Evaluation Procedures For Parentally Placed Private School Children Be Similar To The**

Child Find Activities And Evaluation Procedures For Children Enrolled In Public Schools? The child find activities must be similar to activities undertaken for child find for children in public schools. School districts cannot delay conducting child find, including evaluations, for parentally placed private school students until after child find for public school students is conducted.

(Questions and Answers on Serving Children With Disabilities Placed by Their Parents at Private Schools, Office of Special Education Programs, April 2011, hereinafter, Q & A on Private Schools 2011.)

4. **Does The School District Where The Private School Is Located Have An Obligation To Make An Offer Of FAPE?** No, unless the parent resides in that district. However, if a determination is made through the child find process by the school district where the private school is located that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in that private school located in another school district, the school district where the parent resides need not make FAPE available to the child.

(Q & A on Private Schools 2011.)

5. **May A Parent Request Evaluations From The District Where The Private School Is Located As Well As The District Where The Child Resides?** It is legally possible for the parent to request evaluations from the district where the private school is located as well as from the district where the child resides. The United States Department of Education, however, does not encourage this practice. It does not believe that subjecting a child to repeated testing by separate school districts in close proximity of time is the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability or of obtaining an appropriate assessment of the child's educational needs. In addition, an important factor to consider here is the confidentiality of records. IDEA 2004 regulations specifically prohibit the exchange of personally identifiable information on a student between officials in the local educational agency ("LEA") where the private school is located and officials in the LEA of the parent's residence in this situation, without parent consent.

(Q & A on Private Schools 2011; 34 C.F.R. § 300.622(b)(3).)

<p>PRACTICE POINTER. Nothing in the IDEA or the regulations prohibits parents from requesting that both the school district where</p>
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the child resides and the school district where the private school is located evaluate the child. Open communication between school districts early in the assessment process is key to avoiding the negative effects associated with two school districts conducting concurrent assessments. The school district where the private school is located may seek a release of information that allows not only an exchange of information but also asks whether the student has ever been assessed, or is currently being assessed, for special education and by whom. Once the assessment is complete, and assuming parent's consent, the school district should convene a joint IEP team meeting with the school district of residence for purposes of determining eligibility for both ISP services and IEP services. This may limit the potential for conflicting determinations of eligibility.

6. **Which School District Is Responsible For Ensuring That A Reevaluation Of Each Parentally Placed Private School Child With A Disability Is Conducted At Least Once Every Three Years?**

The school district where the private elementary school or secondary school is located is responsible for conducting reevaluations of children with disabilities enrolled by their parents in the private elementary schools and secondary schools located within the district.

(Q & A on Private Schools 2011.)

7. **What If The Parent Of A Student In A Private School Will Not Consent To An Assessment?**

If the parent of a child who is placed in a private school at private expense does not consent to assessment or reassessment or fails to respond to a request for consent, the LEA may not use the due process procedure to override the lack of consent. However, the LEA is not required to consider the child as eligible for services.

(34 C.F.R. § 300.300(d)(4)(i); Educ. Code § 56346(g).)

- B. **Consultation Process.** Consultation involves discussions among the school district, private school representatives, and parent representatives on key issues that affect the ability of eligible private school children to participate equitably in federally funded special education and related services.

Several issues must be addressed during the consultation process, such as: (1) the child find process; (2) the determination of the proportionate amount of federal funds; (3) the consultation process itself; (4) how, where and by whom services will be provided; and (5) any district decision not to provide services.

(20 U.S.C. § 1412(a)(10)(A)(iii); 34 C.F.R. § 300.134.)

- C. **Services For Parentally Placed Private School Children With Disabilities.** No parentally placed private school child with a disability has the right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. However, a services plan must be developed and implemented for each private school child with a disability who has been designated to receive services by the school district in which the private school is located. It is important to note that parentally placed private school children with disabilities may receive a different amount of services from children with disabilities in public schools and some may receive no services.

(20 U.S.C. § 1412(a)(10)(A); 20 U.S.C. § 1412(a)(10)(A)(vi); 34 C.F.R. §§ 300.137 and 300.138; Q & A on Private Schools 2011.)

1. **Equitable Services.** School districts only have an obligation to provide parentally placed private school children with disabilities an opportunity for equitable participation in the services funded with Part B dollars that the school district has determined, after consultation, to make available to its population of parentally placed private school children with disabilities. These services must be provided in accordance with a services plan, the requirements of which are discussed more fully below.

(20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. §§ 300.132 and 300.137-300.138; Q & A on Private Schools 2011.)

- (a) **Where May Equitable Services Be Provided To Parentally Placed Private School Children With Disabilities?** The services may be provided on-site at a child's private school, including a religious school, to the extent consistent with law, or at another location.

(Q & A on Private Schools 2011.)

- D. **Services Plan Consultation.** In developing a services plan, the school district and representatives of the parentally placed private school child should include how, where and by whom special education and related services will be provided. This should include a discussion of:

1. The types of services, including direct services and alternate services delivery mechanisms;

2. How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and,
3. How and when those decisions will be made.

(20 U.S.C. § 1412(a)(10)(A)(iii); 34 C.F.R. § 300.134; Letter to Talbot (OSEP March 23, 2007) 107 LRP 45662.)

- (a) **What Is The Difference Between An Individualized Education Program ("IEP") And A Services Plan?** Children enrolled in public schools or who are publicly placed in private schools are entitled to FAPE and must receive a full range of services under Part B that are determined by a child's IEP team to be necessary to meet the child's individual needs and provide FAPE. IEPs for these children will be more comprehensive than the more limited services plans developed for parentally placed private school children. A services plan should describe the special education and related services offered to a parentally placed private school student designated to receive services. The plan must, to the extent appropriate, meet the IEP content requirements of the IDEA, or when appropriate, the Individualized Family Services Plan (IFSP) requirements.

(Q & A on Private Schools 2011.)

- E. **Individual Services Plan Requirements.** The school district where the private school is located must initiate and conduct meetings to develop, review, and revise an individual services plan ("ISP") for a child. The school district must ensure that a representative of the private school attends each meeting. If the representative cannot attend, the school district must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. The parents should also participate in the meeting to develop the services plan for their child.

(20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. § 300.137.)

(This policy was developed in consultation with Mt. Diablo USD SELPA, San Ramon Valley USD SELPA, Contra Costa County SELPA; and after meeting with members of the private school community.)

1. **Must The Parent Of A Parentally Placed Private School Child Participate In The Development Of A Services Plan?** Under the regulations, a services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with IEP requirements. Given the emphasis on parent involvement in the

IDEA, the DOE believes that parents should participate in the meeting to develop the services plan for their child.

(Q & A on Private Schools 2011.)

2. **How Often Must A Services Plan Be Written?** The IDEA and its implementing regulations do not specify how often a services plan must be written. A services plan must, to the extent appropriate, be developed, reviewed and revise in accordance with the IEP requirements which dictate that a child's IEP be reviewed periodically and not less than annually. The DOE therefore believes that generally a services plans should be reviewed annually and revised, as appropriate.

(Q & A on Private Schools 2011.)

3. **How Often Must The ISP Services Policy Be Reviewed?** The ISP services Policy shall be reviewed by WCCUSD SELPA at least every three years by means of a SELPA-wide survey and/or consultation with representatives of private school children ages three to twenty-two with disabilities (including private school administrators, teachers, parents and students).
4. **Where May Services Provided Pursuant to the ISP Policy Be Provided?** The services provided pursuant to the ISP Services Policy may be provided at a private school, including a religious school, to the extent consistent with law. However, WCCUSD SELPA shall not use ISP Services Policy funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

If necessary for the child to benefit from or participate in the services provided pursuant to the ISP Services Policy, a private school child with a disability must be provided transportation to/from the service location. The cost of transportation may be included in calculating whether the WCCUSD SELPA has met its obligation to spend a proportionate share of federal funds on providing special education and related services to private school children with disabilities eligible for special education services.

5. **Is There A Dispute Resolution Process?** Yes. Disputes regarding whether the District of Residence made a FAPE available to the child (as well as the initial location, identification and assessment of parentally placed private school children with disabilities) 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.

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.

Disputes regarding the WCCUSD SELPA's Children With Disabilities Enrolled by Their Parents in Private Schools policy and procedures may be pursuant to local uniform complaint policies and procedures, and/or by filing a complaint with the California Department of Education pursuant to Title 5 of the California Code of Regulations section 4600 et seq.

II. **Preschool Students And Private Schools**

A. **Obligation of School Districts To Parentally Placed Preschoolers With Disabilities.** The Office of Special Education Programs ("OSEP"), issued an opinion regarding the extent to which school districts must provide services to parentally placed private preschoolers with disabilities. IDEA 2004 changed the definition of a parentally placed private school child with a disability. This affects the provision of services to parentally placed private preschool students. While each school district must make available a proportionate share of preschool grants for students with disabilities for parentally placed private preschool students ages three to five, the final regulations implementing IDEA 2004 now clarify that a child aged three to five is a parentally placed private preschooler when he or she is enrolled in a private school that meets the definition of an "elementary school."

1. **Definition Of "Elementary School."** In California, an "elementary school" is defined as a public school offering instruction for any of grades K-8. Consequently, parentally placed private preschool children with disabilities will not be eligible for proportionate share services, including child find, evaluation or an individual services plan ("ISP"), unless the child is enrolled in a private school that includes a preschool program and at least one grade K-8. Although these private preschool children may not be eligible for proportionate services under an ISP, they nonetheless may be eligible for services pursuant to an IEP.

(Letter to Smith (OSEP 2007) 47 IDELR 105.)

Note. In California, special education funding cannot be used for regular preschool services.

(Educ. Code § 56446.)

2. **Preschool Students And Child Find.** As previously discussed, the child find obligations also apply to preschool age students. This child find obligation includes preschool children who reside in the district and preschool students who attend private preschools located in the school district that meet the definition of "elementary school" whether or not such children reside within the district.

(20 U.S.C. § 1412(a)(10)(a)(ii); 34 C.F.R. § 300.131; Letter to Smith (OSEP 2007) 47 IDELR 105.)

3. **Obligation To Provide FAPE.** If, through the child find process, a preschool student is found eligible for special education, the student is entitled to the development of an IEP by student's home district. If the parents decline the school district's offer of FAPE, the district may develop a services plan, as previously discussed.

Note. For students that attend private preschools that do not meet the definition of elementary school, discussed more fully below, these students may take advantage of FAPE if their private preschool services are personal expenses undertaken to enrich their experience.

(20 U.S.C. §§ 1412(a)(1)(A) and (a)(4); 34 C.F.R. §§ 300.323 and 300.325.)

4. **Preschool Services Plan.** As previously discussed, a privately placed preschool student who has been designated to receive special education and related services, and whose parents have declined a school district's offer of FAPE is entitled to a services plan. While this entitles such children to special education and related services consistent with their need, they have no individual entitlement to services. Further, school districts have no obligation to develop IEPs for such students. The previously discussed services plan requirements, including the consultation process, applies.

(20 U.S.C. § 1412(a)(10)(A)(iii); 34 C.F.R. § 300.134; Letter to Talbot (OSEP March 23, 2007) 107 LRP 45662.)

Note. California allows school districts to offer related services-only IEPs, if the service can be considered special education. It appears that a student who would otherwise qualify for a related service pursuant to an IEP, even without a preschool placement, should be considered to be potentially eligible for a services plan. In the preschool context, only speech/language services will likely fall into this category.



West Contra Costa Unified School District
Special Education Department
2465 Dolan Way, San Pablo, CA 94806
Phone: 510-307-4630 Fax: 510-724-8829

Matthew Duffy
Superintendent

Nick Berger
SELPA Director

Date:

TO: Parent(s) of:

From: Nick Berger, SELPA Director, West Contra Costa Unified School District

RE: Serving Children with Disabilities Enrolled by Their Parent(s) in a Nonprofit Private School

Please be advised that the West Contra Costa Unified School District, your school district of residence, continues to make available a free and appropriate public education for your child.

If you express an interest in enrolling (or re-enrolling) your child in a public school, in the West Contra Costa Unified School District, the school district may be required to complete an assessment of your child in order to obtain the current data necessary to develop your child's Individualized Education Program (IEP). The district will then convene an IEP team meeting to develop your child's IEP, and implement that IEP if and when you enroll your child in a public school within the West Contra Costa Unified School District.

If it is your clear intent to maintain your child's enrollment in private school, your child may be (or will continue to be) eligible to receive services, under a Service Plan (SP) from the District where your child's private school is located.

Please inform us of how you intent to proceed by completing the attached form and returning it. Your prompt attention to this inquiry is appreciated. If you have any questions or need further information, please do not hesitate to contact us at (510) 307-4630.

Please fill out the attached form, and return it by: **June 1, 2019**
to: **Perla Ponce, Administrative Technician**
West Contra Costa Unified School District, Special Education Office, 2465 Dolan Way, San Pablo CA, 94806

A second copy of this correspondence along with a copy of your parental rights is enclosed for your records.



West Contra Costa Unified School District
Special Education Department
2465 Dolan Way, San Pablo, CA 94806
Phone: 510-307-4630 Fax: 510-724-8829

Student's name: _____ Student's Date of Birth: _____

Parent name: _____

Date: _____ Signature: _____

- I have received my Parental Rights and Procedural Safeguards for Special Education. Please contact me as I am interested in enrolling my child in a public school and would like to schedule an assessment and subsequent IEP team meeting to develop an IEP for my child.

Day Time Phone: _____ Evening Phone: _____

- I have no interest in enrolling my child in a public school at this time. I intend to maintain my child's enrollment in private school. I understand that my district of residence continues to offer a free appropriate public education to my child. I have received my Parental Rights and Procedural Safeguards for Special Education and I understand the notice.

- My child **does** currently receive a Service Plan (SP) from the West Contra Costa Unified School District, which is the district where _____, the private school in which I have placed my child, is located. (name of private school)

- My child **does not** currently receive a Service Plan (SP) from the West Contra Costa Unified School District, which is the district where _____, the private school in which I have placed my child, is located. (name of private school)

And ***I am not interested in pursuing*** a Service Plan (SP) at this time.

However, ***I am interested in pursuing*** a Service Plan (SP) ***at this time. Please contact me.***

Day Time Phone: _____ Evening Phone: _____

Enclosed: Parental Rights and Procedural Safeguards for Special Education
A copy of this letter to keep for your records

5/15/19