

# Section L

Students with Disabilities Enrolled  
by Their Parents in Private School



## Introduction

IDEA 2004 and the California Department of Education (CDE) require that Local Education Agencies (LEAs) identify and serve students with disabilities who are placed by their parents in private schools. LEAs are responsible for services to students to attend school within their attendance area.

In the SLO SELPA, students who are parentally placed in private schools and identified through Child Find activities are then, with parent permission, assessed by their District of Residence (DOR) and offered an IEP for services in a LEA program. Students who qualify for special education services and whose parents refuse such services or withdraw their child from public school and enroll them in a private school are eligible for a Service Plan (SP).

If a student fits the criteria for a SP, the LEA in which the private school is located writes that plan. It is important to note that IDEA 2004 makes it clear that a student with disabilities who is parentally placed in a private school does not have an individual right to receive special education services equal to those of a student enrolled in the LEA nor do they have due process rights. The CDE has established that the amount of service provided to eligible students within a SELPA is based on the proportional share of federal funds the LEAs would receive if those students were enrolled in public programs.

No LEA 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 DOR made a FAPE available to the child, and
- (2) The parents voluntarily elected to place their child in a private school.

After consulting with representatives of private school children with disabilities, the LEA as part of SEOC shall determine services to be provided to private school children with disabilities ages three (3) to twenty-two (22) who are determined to be eligible for special education services.

## Definitions

1. District of Residence (DOR): As used in this manual, the DOR refers to the school district within which boundaries the child with a disability resides.
2. District of Service (DOS): As used in this manual means, the LEA where private school services are received.
3. Local Educational Agency: (LEA): As used in this manual, the LEA refers to the school district where the private school or facility is located.

4. Private School Students with Disabilities: As used in this manual means, students with disabilities enrolled by their parents in private schools or facilities.
5. Private School or Facility: As used in this manual means:
  - a. Private full-time day school pursuant to California Education Code section 48222 (including religious schools);
  - b. Private tutor pursuant to California Education Code section 48224; and/or any other California Department of Education (CDE) identified 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;
  - c. CDE authorized private school affidavit.

## General Responsibilities and Child Find

### LEA Responsibilities

The following procedures shall be followed by the LEAs in the San Luis Obispo County Special Education Local Plan Area (SELPA) to ensure that the LEAs are:

1. Locating, identifying, and evaluating all children ages three (3) to twenty-two (22) with disabilities enrolled by their parents in private schools including religious schools who may be eligible for special education services.
2. Surveying private school providers concerning students that may need screening and/or services.
3. Offering a free and appropriate public education (FAPE) to all children ages three (3) to twenty-two (22) with disabilities, enrolled by their parents in private schools including religious schools, who are determined to be eligible for special education services.
4. Consulting with private schools in their attendance area concerning how, where, and by whom special education and related services will be provided to private schools.

### SELPA Responsibilities

In San Luis Obispo County, the SELPA and the individual LEAs shall part in ongoing Child Find activities. SELPA-wide activities include:

1. Advertising Child Find responsibilities in the media.
2. Meeting and consulting with private school providers and parents of students with disabilities who have been parentally placed in private schools during the fall of each school year. At this meeting, the SELPA will 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. Providing private school providers with information concerning the process; the determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated.
4. Discussing 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.
5. Providing upon request to private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.
6. Forwarding to the private school officials the decision of the Special Education Operations Committee (SEOC) concerning the services to be provided by the LEAs of the SELPA.
7. Helping any private school who wishes to submit a complaint to CDE with this process.

## **Special Education Operations Committee (SEOC)**

### **Responsibilities**

In the SLO SELPA, the Special Education Operations Committee (SEOC) determines the types of service provided to students with disabilities who are placed in private school yearly. This decision takes into account input from the private school providers and parents of students with disabilities who are parentally placed in private schools. Individual LEAs are allowed to provide direct services; however, this is not common practice. SEOC shall be responsible on a yearly basis for the following:

1. Review the proportional federal funds total based on the December SEIS count.
2. Agree upon services to be provided to private schools based on available proportional federal funds.

# Identification and Referral

## **Students with Disabilities in Private School Settings**

Private school teachers, administrators, or the parent of students enrolled in a private school may refer a student with a suspected disability for assessment for eligibility for special education services. The procedures and legal requirements that govern referral and identification of all students must be followed. These include:

1. 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 schools (including private school administrators, teachers, and parents) may refer a student with a suspected disability to determine if that private school child may be eligible for special education services. A referral shall be directed to the director of special education of the LEA where the private school is located.

2. During Child Find activities, a LEA may identify a student suspected of being an individual with a disability. In this case, the LEA shall appropriately and timely conduct an initial assessment for special education eligibility. **If the LEA who locates the student is not the DOR of the student, and the DOR is within the SLO SELPA, it shall refer the student to the student's DOR for an appropriate and timely initial assessment for special education eligibility.**

If the student is from outside of the SLO SELPA, the DOS may contact the DOR and provide the DOR with the opportunity to assess. However, it is the DOS's responsibility to conduct the assessment. (34 CRF 300.131)

3. Parents are required by the LEA to sign a "permission to assess" form prior to any assessment taking place. The LEA assessment team shall have 60 days to assess the student during which time the student may stay enrolled in the private school. Parents are required to make the student available for such assessments to take place.
4. Once the assessment is completed, if the student is determined not to be eligible for special education services, the LEA shall share the assessment results with the parents. If the student is found to be eligible an IEP meeting shall be scheduled.

## Parental Rights and Actions Related to IEP Services

If a student is found eligible for services, one of the following shall occur:

1. Offer of a FAPE through the IEP Process

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 IEP team shall develop an IEP for the child which offers a FAPE. 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 without undue delay following the IEP team meeting. Services will be delivered in a location determined by the IEP team, usually the home school of the student.

2. Parental Refusal of Services in a Public School

If the parents of a private school child with a disability agree with, but decline the development of an IEP, the LEA team shall ask the parents:

- a. To indicate they do not wish to receive services by checking the box on the signature page of IEP form and signing after the following statement:

"Refused because of enrollment in private school, without consent, referral, or placement by the LEA. Therefore, I don't require the LEA to write an IEP for my child."

A copy of the IEP Signature page may be found in the appendix of this manual.

- b. Insure a SP is developed on the SP form in accordance with this policy and federal and state laws and regulations if the students attend a private school within the DOR's attendance area or,
- c. Inform the DOS that a SP is necessary and forward that information to the special education director of that LEA.

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 following shall take place:

1. The LEA that assesses shall make the eligibility decision in accordance with applicable state and federal laws and regulations.
2. The DOS shall develop a Service Plan (SP) in accordance with this policy and federal and state laws and regulations.

In order to ensure that the parents' intentions are clear, the DOR shall request that the parents sign the following statement on the IEP form or a letter containing the following statement:

"Parents of \_\_\_\_ hereby certify that we are not interested in enrolling our child, in the \_\_\_\_\_ District. We are not interested in the development of an IEP for our child, the district's offer of a free appropriate public education, and are only interested in a SP from the LEA where the private school in which we are unilaterally placing our child is located. We have received the San Luis Obispo County SELPA Notice of Parents' Rights, and we understand the notice."

## Service Plan (SP)

### SP Meetings

The LEA shall ensure that a representative of the private school attends each meeting involving an individual child's SP. If the private school representative

cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

The LEA shall complete the SP on the SLO SELPA SP form. A copy of this form shall be forwarded to the DOR if it is different from the DOS. A blank copy of this form along with a sample completed form is found at the end of this section.

### **Services Under a SP**

If a parent refuses public school services offered by an IEP team, or requests not to have an IEP developed for their parentally placed private school student, then the LEA shall develop a SP. The services and protections under a SP are not the same as those afforded to students with an IEP.

1. Private school students with a disability do not have 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 LEA shall spend a proportionate share of federal funds to provide special education and related services to private school children with disabilities ages three (3) to twenty-two (22) eligible for special education services.
2. Procedural safeguards applying to students with an IEP do not apply; however, parents do have the right to file a complaint with the CDE.
3. The services provided pursuant to the 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 SP.

### **Transportation Related to SP Services**

If the SP team determines that transportation is necessary for the child to benefit from, or participate in the services provided in the child's SP, a private school child with a disability shall be provided transportation depending on the scheduling of the services: from the child's school or home to the service site other than the private school; and/or from the service site to the private school or child's home. The LEA shall not provide transportation from the child's home to the private school.

The cost of transportation shall be included in calculating whether the LEA has spent a proportionate amount of funding on private school children with disabilities.

### **Continued Eligibility of Students with a SP**

The DOR shall convene an IEP team meeting, or offer to convene a meeting, at least every three years in order to determine continuing eligibility for special education for all private preschool students with disabilities.

## **Completion of SEIS Requirements Concerning SPs**

1. Students who are special education eligible but whose parents have placed them in a private school remain in the SEIS system; however, their status changes as follows: For students whose parents refuse a FAPE offered by the DOR and whose private school placement will be within the DOR, the LEA director or designee shall insure that a SP is developed for the student. The status in SEIS shall change from IEP to SP.
2. For students who were previously receiving special education services whose parents refuse a FAPE offered by the DOR and enroll their child outside of the DOR, the LEA shall exit the student from SEIS as “exited, known to continue.” The DOR shall notify the district of attendance and forward appropriate records to that district. The district of attendance shall develop a SP and so note that fact on the appropriate forms and in the SEIS program.

## Dispute Resolution

Only when a FAPE or eligibility is at issue, are special education due process procedures available to parents for resolving disagreements. Disagreements concerning the services provided to private school children, unilaterally placed by their parents, do not qualify for IDEA protections/due process. However, parents of students who are parentally placed in a private school are eligible and encouraged to use SELPA-wide Alternative Dispute Resolution (ADR) procedures. Information and access to those procedures may be obtained by contacting the SLO SELPA.

Disputes regarding whether the DOR made a FAPE available to the child (as well as the initial location, identification, and assessment of the parentally placed private school child with disabilities by the LEA 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 LEA's policy, “Children with Disabilities Enrolled by Their Parents in Private Schools,” may be resolved pursuant to local policies and procedures, and/or by filing a complaint with the CDE pursuant to Title 5 of the California Code of Regulations, section 4600 et seq.

## Legal References

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

Approved by SEOC on March 15, 2007