

CSBA Update 09/21

Administrative Regulation

Instruction

AR 6164.41

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOL

Definitions

Note: 34 CFR 300.131 requires the district to conduct a thorough "child find" process to determine the number of ~~parentally-placed~~ **parentally-placed** children with disabilities attending private schools located in the district. The requirements of this administrative regulation do not apply to those situations in which a district has placed a student with a disability in a private school as a means of fulfilling the district's obligations to provide a free appropriate public education (FAPE) or when the parent/guardian has made a unilateral placement of the student in a private school when the provision of FAPE is an issue. See BP/AR 6159.2 - Nonpublic, Nonsectarian School and Agency Services for Special Education.

~~Parentally placed~~ **Parentally-placed** *private school children with disabilities* means children with disabilities who are voluntarily enrolled by their parents/guardians in a private school or facility within district boundaries, including children who are attending a private school or facility within district boundaries but who reside in another district or state. (34 CFR 300.130, 300.131)

Private school or facility means a private full-time day school, including a religious school, located within district boundaries, that has filed an affidavit with the California Department of Education pursuant to Education Code 33190 and is registered in the California Private School Directory.

Consultation with Private School Representatives

The Superintendent or designee shall consult with all private school representatives and representatives of parents/guardians of ~~parentally-placed~~ **parentally-placed** private school children with disabilities during the design and development of equitable services for the children. In order to ensure a meaningful and timely consultation, the consultation shall include: **(Education Code 56301; 20 USC 1412(a)(3)-20 USC 1412(a)(10)(A)(iii); 34 CFR 300.134; Education Code 56301)**

1. The child find process and how ~~parentally-placed~~ **parentally-placed** private school children suspected of having a disability can participate equitably

Note: In the **Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act**, the U.S. Department of Education (USDOE) lists the following as examples of practices for keeping parents/guardians, teachers, and private school officials informed of the child find process: **holding professional development sessions for private school teachers on Individuals with Disabilities Education Act's evaluation and reevaluation requirements; posting flyers in private school facilities to inform stakeholders of the availability of child find; and facilitating round table discussion with community members.**

2. **The manner in which** How parents/guardians, teachers, and private school officials will be informed of the child find process

Note: Pursuant to 34 CFR 300.132 and 300.133, a district must spend a "proportionate share" of federal funds on ~~parentally-placed~~ **parentally-placed** private school children with disabilities. "Proportionate share" is a calculation based on the total number of eligible students in the district that are enrolled in both public and private schools, based on the formula detailed in 34 CFR 300.133.

3. The determination of the proportionate share of federal funds available to serve ~~parentally placed~~ **parentally-placed** private school children with disabilities and how this share is calculated
4. How the consultation process **among district staff, private school officials, and representatives of parents of parentally-placed private school children with disabilities** will operate throughout the school year to ensure that identified children can meaningfully participate in equitable services
5. ~~How~~ **The provision of equitable special education and related services including how,** when, and by whom **such** services will be provided including a discussion about the types of services, alternate service delivery mechanisms, how services will be apportioned if funds are insufficient to serve all of the identified children, and how and when those decisions will be made
6. In the event that the district and private school disagree on the provision of or the types of services, how the district will provide the private school officials with a written explanation of the reasons that the district chose to not provide the services

Note: **20 USC 1412 and** 34 CFR 300.136 ~~specifies~~ **specify** that a private school official may file a complaint with the California Department of Education (CDE) if ~~he/she~~ **the official** believes that the district did not engage in meaningful, timely consultation or did not give due consideration to the views of the private school official. The district must forward appropriate documentation to the CDE or, if necessary, to the ~~U.S. Department of Education (USDOE)~~ **USDOE**.

When meaningful and timely consultation has occurred, the district shall obtain a written affirmation signed by the representatives of participating private schools. If the private school representatives do not provide the affirmation within a reasonable period of time, the district shall forward documentation of the consultation process to the California Department of Education. (~~Education Code 56172;~~ **20 USC 1412;** 34 CFR 300.135; ~~Education Code 56172~~)

After the consultation has occurred, the district shall ensure an annual count of the number of ~~parentally-placed~~ **parentally-placed** children with disabilities attending private schools located within the district. This count shall be conducted between October 1 and December 1 each year and shall be used to determine the amount the district must spend on providing equitable services to the children in the subsequent fiscal year. (34 CFR 300.133)

Provision of Services

Note: Pursuant to 34 CFR 300.137, a ~~parentally placed~~ **parentally-placed** private school child has no individual right to receive the special education services that ~~he/she~~ would have **been** received in the public school. Rather, the public school must meet with private school officials and representatives of private school children with disabilities to decide how to spend the money on all of the identified children.

A child with a disability ~~parentally placed~~ **parentally-placed** in a private school has no individual right to receive some or all of the special education and related services that ~~he/she~~ would **have been** received if enrolled in public school. Such a child may receive a different amount of services than students with disabilities in public schools. (34 CFR 300.137, 300.138)

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

Note: The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46592, ~~makes clear~~ **clarifies** that the law (20 USC 1412 and 34 CFR 300.131 ~~and 20 USC 1412~~) requires the district where the private school is located, not the district where the child resides, to conduct individual evaluations and subsequent reevaluations of children for purposes of determining the provision of equitable services. **However, the Analysis of Comments to the federal regulations acknowledges that a district of residence could be required to evaluate a child even if it is not the district where the private school is located if the parent requests such an evaluation for purposes of having a program of FAPE made available to the child by the district of residence.**

In its Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private School, USDOE has emphasized that districts may not require a private school to implement a response to intervention (RTI) process before evaluating parentally-placed private school children.

The district shall evaluate all identified ~~parentally placed~~ **parentally-placed** private school children with disabilities for purposes of considering them for equitable services. This evaluation shall be conducted in accordance with the timelines and procedures for evaluating public school students with disabilities pursuant to 34 CFR 300.300-300.311 **and as specified in BP/AR 6164.4 - Identification and Evaluation of Individuals for Special Education**, including **obtaining parent/guardian consent and** providing the parent/guardian with a copy of the procedural safeguards notice. (34 CFR 300.131, 300.504)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

Note: According to the Analysis of Comments, 71 Fed. Reg. 156, pg. 46593, if after an evaluation, the district where the private school is located determines that the child needs special education and related services, it would be the responsibility of the district where the child resides to make FAPE available. According to ~~the~~ **USDOE's**, ~~in~~ **Questions and Answers on Serving Children with Disabilities Placed by Their Parents at in Private Schools**, if the parent/guardian makes clear **his/her the** intention to keep the child enrolled in private school, then the district of residence need not make FAPE available to the child nor develop an individualized education program (IEP). In such a case, it is recommended that the district obtain written confirmation of that intention from the parent/guardian, as specified below.

If the child resides in the district and is eligible for an individualized education program (IEP), the district shall make a free appropriate public education (FAPE) available to the child. However, the district ~~shall not~~ **is not required** to develop an IEP if the parent/guardian makes clear **his/her the** intention to keep the child enrolled in private school. In such situations, the district shall obtain written certification confirming the parent/guardian's intention to keep **his/her the** child enrolled in private school, including the fact that ~~he/she~~ **the parent/guardian** is

not interested in the development of an IEP or the district's offer of FAPE. If the parent/guardian does not provide confirmation in writing, the district shall obtain oral confirmation of the parent/guardian's intention and confirm the conversation in writing.

In order to ensure that each child entitled to special education and related services from the district receives an offer of a free appropriate public education (FAPE), the district where the child resides shall develop an individualized education program (IEP) for each identified child who attends a private school located in the district and who resides in the district.

However, the district shall not develop an IEP if the parent/guardian makes clear his/her intention to keep the child enrolled in private school. In such situations, the district shall obtain written certification confirming the parent/guardian's intention to keep his/her child enrolled in private school, including the fact that he/she is not interested in the development of an IEP or the district's offer of FAPE. If the parent/guardian does not provide confirmation in writing, the district shall obtain oral confirmation of the parent/guardian's intention and confirm the conversation in writing.

Note: In the Analysis of Comments, 71 Fed. Reg. 156, pg. 46593, the USDOE acknowledges there may be a situation where two different districts are evaluating the same child, although for different purposes. 34 CFR 300.622 requires parent/guardian consent for the release of information about **parentally-placed parentally-placed** private school children.

If the child resides in a different district, then this district and the district of residence shall work together to ensure that the parent/guardian receives an offer of FAPE in accordance with law.

Note: 34 CFR 300.138 requires the district to develop an individual services plan (ISP) for each identified child that describes the specific equitable services that will be provided by the district, as agreed to by the district and private school representatives during the consultation process. According to the USDOE's **in Questions and Answers on Serving Children with Disabilities Placed by Their Parents at in Private Schools**, the individual services plan (ISP) will be more limited than **an** IEP developed for public school children.

The district shall develop and implement **an individual services plan (ISP)** for each identified **private school** child with a disability **enrolled by their parents/guardians in a private school within the district's boundaries** an individual services plan (ISP) that describes the equitable services that the district will provide, as **agreed to determined** by the district **after and private school representatives during** the consultation process **with private school representatives**. (34 CFR 300.138)

Note: The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46592-46593 clarifies that the ISP must, to the extent appropriate, meet the IEP content, development, review, and revision requirements **described in 20 USC 1414**.

The ISP shall be developed, reviewed, and revised consistent with **20 USC 1414 34 CFR 300.121-300.324**. A representative of the private school shall be invited to attend each ISP team meeting. If the representative cannot attend the meeting, the district shall use other methods to ensure the representative's participation, including individual or conference calls. (34 CFR 300.137, 300.138)

(cf. 6159 - Individualized Education Program)

Note: 34 CFR 300.142 details how federal funds may be used by the district to pay for the personnel services described below.

The district may provide services on the private school premises, including a religious school, to the extent consistent with law. The services shall be provided by personnel meeting the same standards as personnel providing services in the public school **except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the special education teacher qualification requirements specified in 34 CFR 300.156.** The personnel shall either be district employees or contractors of the district. (34 CFR 300.138, 300.139)

The district shall offer transportation to the child if services are provided on a site other than the child's school and the ISP team determines that transportation is necessary for the child to benefit from or participate in the services provided in the ISP. Depending on the timing of the services, the district shall provide transportation from the child's school or home to the service site and from the service site to the child's school or home. (34 CFR 300.139)

The district may place equipment and supplies in a private school for the period of time necessary to provide the services pursuant to the ISP. All such equipment shall remain the property of the district and must be able to be removed without **remodeling or** causing damage to the private school. The district shall remove the equipment when no longer required by the child, when the child no longer attends the private school, or when removal is necessary to prevent unauthorized use. (34 CFR 300.144)

PERRIS UNION HIGH SCHOOL DISTRICT
Perris, California

Regulation approved: July 18, 2007
revised: December 14, 2022 (pending board approval)