

# **Federal Assurance Policy**

**Special Education Local Plan**

**FAP 10**

## **PRIVATE SCHOOLS**

It shall be the policy of this LEA to assure that children with disabilities voluntarily enrolled by their parents in private school shall receive appropriate special education and related services pursuant to LEA coordinated procedures. The proportionate amount of federal funds will be allocated for the purpose of providing special education services to children with disabilities voluntarily enrolled in private school by their parents.

*Legal References:*

### **EDUCATION CODE**

56171

56172

### **FEDERAL REFERENCES**

20 USC 1412 Section 612 (a)(10)(A-C)

34 CFR 300.131-300.147

# Federal Assurance Administrative Regulation

Special Education Local Plan

FAAR 10

## PRIVATE SCHOOLS

The SELPA/Local Education Agency will hold an annual meeting to consult with private school representatives and parents of parentally placed private school children with disabilities. The meeting will consist of the following agenda items:

- Determination of the proportionate amount of Federal funds available to serve parentally placed private school children
- Determine what related services will be provided and how they will be apportioned
- Determine how, where, and by whom related services will be provided
- Discussion of process for continued child find

Upon the completion of the annual consultation meeting, the SELPA/Local Education Agency will obtain a signed letter of affirmation on the decisions made through consultation with the private schools from each private school provider. The documentation of the consultation process will be forwarded to the State Special Education Department, with all signed affirmations received by that time.

The SELPA/Local Education Agency will notify the private school representatives in writing with an explanation of the reasons why services will not be provided if there is a disagreement on the provision of services or types of services to be provided.

A private school official has the right to submit a complaint to the California Department of Education if the Local Education Agency did not engage in meaningful and timely consultation or did not give due consideration to the views of the private school official. If the private school official is dissatisfied with the decision of the California Department of Education, he/she may appeal the decision to the US Department of Education.

The SELPA/LEA will conduct child find for private school children in a similar manner that is undertaken for public school children. The SELPA/LEA will maintain records on private school children in the areas of evaluation, eligibility and children served. Each child eligible for special education who is served in the private school setting must have an Individual Service Plan developed and implemented.

A private school student count will be taken at the same time as the December 1 unduplicated count. The proportionate amount of federal funds will be determined based on the previous year December 1 counts. No private school child with a disability has an 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.

The special education services, instructional materials, and equipment provided to parentally placed private school children with disabilities shall be secular, neutral, and not ideological. The services may be provided on the premises of private schools, including religious schools, to the extent consistent with the law.

***Consultation***

The LEA shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, regarding:

- 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;
- 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;
- 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 children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- 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 children, and how and when these decisions will be made; and
- How, if the local educational agency 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 local educational agency shall 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 LEA 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 LEA 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:

- The LEA's consultation was not meaningful and timely, or
- The LEA did not give due consideration to the views of the private school official.
- If a complaint is filed:
  - The private school official must provide the basis of the complaint of noncompliance, and
  - The LEA must forward the appropriate documentation to the CDE.

The private school official is dissatisfied with the decision of the CDE, he/she may appeal the decision to the U.S. Department of Education.

### ***Child Find***

- The Trinity County SELPA will undertake the following child-find activities with regard to private school children ages three to 22:
- Presentation 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.
- Distribution of 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.

The Trinity County SELPA will ensure that child find activities undertaken for private school students are comparable to activities undertaken for children age three to 22 with disabilities in public schools. Child find activities will include consultation with appropriate representative of private school children ages three to 22 with disabilities regarding how to carry out such activities.

***Special Education Referral***

- District of Residence (DOR). The district in which the child lives.
- District of Location (DOL). The district in which the private school is located.

School districts shall refer a student 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, representative of private school children with disabilities (including private school administrators, teachers, and parents) determine that a private school child with a disability may be eligible for special education services, the referral shall be directed to the private school child's district of residence if the private school is located in the district of residence. If private school is not located in the child's district of residence then request goes to the district where the private school is located.

***Initial Individual Education Program (IEP) Team Meeting***

- Upon identifying and locating a child suspected of being a child with a disability, the District of Location (DOL) for the child shall conduct an initial assessment of the child's needs.
- The DOL shall make the eligibility decision in accordance with applicable state and federal laws and regulations.
- 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 DOL shall develop an Individual Service Plan (ISP) in accordance with this policy and federal and state laws and regulations.
- In order to ensure that the parents' intention is clear, the District of Residence (DOR) shall request that the parents sign a form entitled "Certification of Parent Decision Not to Enroll 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 DOR IEP developed by the IEP team, the IEP shall be implemented without undue delay following the IEP team meeting.

If the parents of a private school child with a disability agree with, but decline the IEP developed by the IEP team, the IEP team shall:

- Ask the parents to indicate their agreement with the following statement on the student's IEP form: "I agree that the District of Residence has offered to my child a free appropriate public education, including appropriate services in special education. However, I am voluntarily placing my child in a private school."

Request the District of Location (DOL) to develop an ISP, on the SELPA ISP form in accordance with this policy and federal and state laws and regulations.

**District of Location Responsibilities for Private School Student**

- Referral
- Assessment
- Review assessment results with DOR
- Eligibility
- DOR offers FAPE
- If FAPE declined DOL offers ISP

**District of Residence Responsibilities for Private School Student**

If private school is located in your district:

- Referral
- Assessment
- Eligibility
- Offer FAPE
- Decline offer of FAPE then provide ISP

If private school is located in another district:

- Offer FAPE

***Child Count***

The LEA shall consult with representatives of private school children to decide how to conduct the annual count of the number of private school children with disabilities.

- The child count shall be conducted for attendance on December 1 of the prior year. The child count shall be conducted by mail and follow-up phone or in-person contact as needed.
- The child count shall be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the fiscal year following the date on which the child count is conducted.

Following the consultation, the SELPA shall conduct an annual count of the number of private school children with disabilities.

***Individual Service Plan (ISP) Services***

No 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 LEA shall spend a proportionate share of federal funds to provide special education and related services to private school children with disabilities ages 3 to 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 (including private school administrators, teachers, parents and students) in order to determine:

- Which disabling conditions will be served;
- What services shall be provided;
- How and where and by whom services will be provided; and
- How services will be evaluated.

Following timely and meaningful consultation, the SELPA will issue a report to the respective private schools representatives as to what services were determined to the prioritized need of the eligible private school students with disabilities in Trinity SELPA.

The LEA shall not provide transportation from the child's home to the private school.

Each private school child 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 LEA shall provide to the child as determined by the LEA in this policy. The LEA shall ensure that a representative of the private school attends each meeting involving an individual child's ISP. 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 services offered in this policy shall be reviewed by the LEA at least annually by means of a survey initiated by each SELPA and/or consultation with representatives of private school children with disabilities ages 3 to 22 (including private school administrators, teachers, parents, and students).

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 ISP. The LEA shall also control all property, equipment, and supplies allocated to benefit private school students with disabilities. However, the SELPA/LEA 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.

***IEP Meetings after the Initial IEP Team Meeting***

All children with disabilities eligible for special education who reside in the District of Residence are entitled to receive a FAPE from the District of Residence if they are enrolled in public school. One year after an eligible private school child's initial IEP team meeting and annually thereafter, the District of Residence shall notify the child's parents in writing that the District of Residence:

- Continues to offer FAPE in accordance with federal and state laws and regulations;
- Is ready, willing, and able to schedule an IEP team meeting for their child in order to offer the child FAPE, subject to assessment, if appropriate, if the parents express an interest in enrolling their child in public school.

Parents will need to return the notification to the District of Residence (DOR) stating if the parent wants to continue with ISP or wants an IEP:

- I understand that the District of Residence continues to offer my child a free appropriate public education (including appropriate special education and related services) if he/she is enrolled in public school. I continue to unilaterally place my child in a private school; and:

\_\_\_ I would like my child to continue to receive services pursuant to his/her ISP. I am not interested in enrolling my child in public school. (In this case, the District of Residence will forward within 3 business days a copy of this document to the LEA.)

or

- I am interested in enrolling my child in public school. I would like to schedule an IEP team meeting for my child. Please call me at: parent inserts phone number] in order to schedule the IEP meeting.

The DOR shall convene an IEP team meeting at least every three years in order to determine continuing eligibility for special education.

***Private Preschool Students with Disabilities (Age 3.0 – 5.11)***

If the IEP team determines that a preschool child with a disability is eligible for special education services and develops an IEP offering only related services (i.e., placement is not a component of FAPE), the eligible preschool student shall be considered a public school student. The District of Residence shall provide the eligible preschool child with a disability with FAPE in accordance with federal and state laws and regulations, and the IEP.

If an IEP team determines that a preschool child with a disability is eligible for special education services and develops an IEP offering SDC placement and related services; and the parent agrees with the IEP developed by the IEP team, but declines public preschool placement in order to unilaterally enroll his/her child in a private preschool, then the eligible preschool child with a disability shall be considered a unilaterally placed private school student. In such case, the LEA shall offer an ISP for the student.

***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.

No LEA or District of Residence is required to pay for the cost of educating a child with a disability at a private school (including special education and related services) if: (1) the District of Residence made FAPE available to the child, and (2) the parents voluntarily elected to place their child in a private school.

Disputes regarding whether the District of Residence 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 District of Residence, 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 regarding *Children with Disabilities Enrolled by their Parents in Private Schools* Policy may be resolved pursuant to local 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.

# **Federal Administrative Exhibit**

**Special Education Local Plan**

**FAE 10**

## **INDIVIDUAL SERVICE PLAN FORMS**

The following documents are included:

- Certification of Parent Decision not to Enroll in Public School
- Private School Service Questionnaire
- Consultation Meeting with Private School
- Letter of Services Determination
- Affirmations
- ISP Form
- Private School Related Law

See the current year SELPA Binder for ISP forms and directions.