

**Special Education
Private School Services**

August 2004

INTRODUCTION

Prior to 1997, the law did not extensively address the education of children with disabilities placed in private schools by their parents. These children were served based on the limited provisions of the statutes and most frequently, the interpretation and policies of the local school districts and SELPAs.

The 1997 IDEA amendments included some of the old language and incorporated the long-standing policy interpretation.

Specifically, the final regulations clarify that:

The term "service plan" has been adopted for use in lieu of "IEP" for parentally-placed children in private schools;

Part B services must be provided in accordance with a "service plan" that, to the extent appropriate, meets specified IEP requirements;

Child find activities for private school children with disabilities must be comparable to that in the public schools;

Public agencies must consult with representatives of parentally-placed private school children with disabilities on how to conduct child find activities for those children in a way that is comparable to that for public school children;

Each LEA must consult with representatives of private school children with disabilities to decide how to conduct the annual count of the number of those children;

The costs of child find activities for private school children with disabilities may not be considered in determining whether the LEA met the minimum expenditure requirements; and,

The due process procedures under Part B apply to child find activities for private school children with disabilities, including evaluations, but do not apply to the other provisions regarding children with disabilities enrolled by their parents in private schools

This handbook has been compiled to provide the background, legal foundation, local policy and specifics that will encourage implementation of the regulations. The individual school district may develop a more expansive services policy but is cautioned against inconsistent application of services.

Darleen Jehnsen, Director
Kern County Consortium SELPA

Overview

Frequently Asked Questions and Definitions

Clarification and definitions pertaining to the expenditure of IDEA, Part B Funds allocated to provide services to individuals with disabilities has been provided in a number of different documents.

The most frequently asked questions are to obtain clarity on how the federal Individuals with Disabilities Education Act (IDEA) funds can be spent. Below is general information to answer this question.

There are several citations that control the use of the IDEA, Part B funding. These are summarized below. (Part B applies to individuals with disabilities with IEPs, ages 3 through 21. California receives two grants under Part B: section 611, for ages 3 through 21; and section 619, for ages 3 through 5 preschool).

Excess Cost/Supplanting/Maintenance of Effort

Under the Individuals with Disabilities Education Act (IDEA), Part A has definitions. One of these definitions is for excess cost.

"Excess cost" is defined:

The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting:

- (A) amounts received--
 - (i) under Part B of this title;
 - (ii) under Part A of Title I of the Elementary and Secondary Education Act of 1965; or
 - (iii) under part A of Title VII of that Act; and
- (B) any State or local funds expended for programs that would qualify for assistance any of those parts."

Then, under Part B, Section 613, of IDEA, are the laws that guide LEA eligibility. There is language here that states:

"Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and--

- (i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;
- (ii) shall be used to supplement State, local and other Federal funds and not to supplant such funds; and
- (iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year."

Thus, in summary, a Special Education Local Plan Area (SELPA) needs to spend these funds on expenditures that are in excess of their average prior year costs of educating students. See also 34 CFR Parts 300.184, 300.185, 300.230, 300.231, and 300.232.

Prohibitions

IDEA, Part B, Section 612 (a) (18) prohibits the IDEA funds from being commingled with state funds. It also requires funds to be used to supplement the level of Federal, State, and local funds expended for special education and related services provided to children with disabilities, and in no case to supplant such Federal, State and local funds.

Incidental Benefit

IDEA, Part B, Section 613, (a), (4), allows funds to be used for services and aids that also benefit non-disabled children: for the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in

accordance with the individualized education program of the child, even if one or more non-disabled children benefit from such services. See also 34 CFR Part 300.235.

Integrated and Coordinated Services System

IDEA, Part B, Sections 613 (a), (4) and (f) allow the use of funds to develop and implement a fully integrated and coordinated services system. No more than 5 percent of the Part B funds may be used to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families. See also 34 CFR Part 300.235.

Child Find

Costs related to child find may be charged to IDEA, Part B. Child find is described in 34 CFR Part 300.125 as the identification, location, and evaluation of children who are in need of special education and related services. Child find is to include private school children with disabilities. For these children in private schools, there is to be an official child count on either December 1 or the last Friday of October each year. (34 CFR Part 300.453) Child find costs for children placed in private schools by their parents may not be considered in determining the LEA's required proportionate share of funds for services provided to private school children with disabilities.

Educational Service Plans

For private school children with disabilities enrolled by their parents in private schools, LEAs must expend a minimum amount of IDEA Part B funds for special education and related services. This minimum amount is calculated three times: separately for each of the two part B grants-- Section 611 and Section 619; and must be calculated in two portions for Section 611 to match the two grants issued based on ages.

For section 611 subtracts to LEAs, the LEA must calculate for children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611 (g) as the number of private school children with disabilities ages 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction ages 3 through 21. (In California, this requirement applies to the three subtracts to LEAs, under PCA numbers 13379, 13008, and 13682. The 13379 grants are based on ages 5 year old non-preschoolers through 21. The 13008 grants are for State Operated Programs. The 13682 grants are for ages 3 through 5 year old preschoolers. Thus, the calculation of the proportionate share must be done twice in California for the section 611 subtracts to LEAs: once, for the preschool population, and again, for the school age population.)

For section 619 subtracts to LEAs, the LEA must calculate for children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section 619 (g) of the Act as the number of private school children with disabilities ages 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction ages 3 through 5. Expenditures for child find activities for children in private schools may not be considered in determining whether an LEA has met the requirements. See 34 CFR Parts 300.450, 300.451, 300.452, and 300.453. (In California, this requirement applies to the grants issued with PCA number 13430.)

The regulations go on to describe a number of prohibitions and allowances for the use of the funds to children with disabilities enrolled by their parents in private schools. 34 CFR Parts 300.458, 300.459, 300.460, 300.461, and 300.462 provide the allowances and restrictions. Funds under either section 611 or 619 may not be used if classes are organized on the basis of school enrollment or religion; may not finance the existing level of instruction or benefit a private school; and may not meet the general needs of students enrolled in the private schools.

Funds under either section 611 or 619 may be used to make public school personnel available in other than public facilities, and may be used to pay for the services of an employee of a private school if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control.

Definition of Local Educational Agency

IDEA draws a distinction between a Local Educational Agency (LEA) and an Educational Service Agency. As described in IDEA, Part B, under the definition:

An Educational Service Agency is:

- (A) means a regional public multi service agency,
 - (i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and
 - (ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and
- (B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

A Local Educational Agency is:

- (A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.
- (B) The term includes-
 - (i) an educational service agency

IDEA Part B, Section 613, (e) (4) goes on to say:

"If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies shall not apply to the administration and disbursement of any payments received by that educational service agency, and be carried out only by that educational service agency."

The California Education Code defines a SELPA in section 56195.1 (d).

"The service area covered by the local plan developed under subdivision (a), (b), or (c) shall be known as the special education local plan area."

California law requires educational service agencies (SELPAs) to carry out programs under IDEA. A SELPA is the service area covered by the local plan. The language in IDEA that refers to Local Education Agencies (LEAs) is directed to SELPAs in California. IDEA requires approved local plans and updated policies/procedures before funds can flow. Thus, in California, because of the requirements for SELPAs as an educational service agency, any references in IDEA to LEAs for the administration and disbursement of payments refers to SELPAs.

CDE - Last Modified: Friday, April 09, 2004

Private School Proportionate Amount Of Federal Funds Awarded Under Part B of the Individuals with Disabilities Education Act, As Amended

The 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) require local school districts to spend a proportionate amount of funds awarded under this Act on children with disabilities enrolled in private schools. For the past couple of years this office has interpreted that to mean a district must set aside the per child allocation for each private school child reported on the district's child count. However, a recent interpretation of this requirement by the National Association of State Directors of Special Education (NASDSE), which was approved by the US Department of Education, Office of Special Education Programs (OSEP), requires a different formula for determining this amount. Here is a summary of the interpretation:

- (i) Districts must determine the number of all children in their district who are enrolled in private schools and who are eligible for special education. This includes private school children reported on the district's child count, as well as, all other eligible private school children whose parents refused the district's offer of a free appropriate public education.

For example, the child count for a district is three hundred five (305) children.

Five (5) of these children are private school students who received specially designed instruction and related services, or related services only, from the district. However in this example, there are fifteen (15) other children enrolled in private schools whose parents refused services after the children were evaluated and determined eligible by the district. In this example there are twenty (20) eligible special education students enrolled in private schools. (This includes the five (5) reported on the child count **plus** the fifteen (15) whose parents refused services after the district offered a free appropriate public education.)

- (ii) To determine the proportionate amount that must be spent to provide services for special education students enrolled in private schools, the district must divide the twenty (20) children (which is the number of all eligible private school children) by three hundred twenty (320) children (which is the sum of the 305 students on the count, plus the fifteen (15) eligible students not reported on the count) to determine the percentage of eligible children that are private school students. In this example, 20 divided by 320 is 6.25 percent.
- (iii) The final step is to multiply the percentage above by the total allocation. (if, for example, the allocation were \$152,500 then, $6.25\% \times \$152,500 = \$9,531.25$). The product (\$9,531.25) is the proportionate amount to be spent on private school children enrolled in private schools by their parents.

This same formula is also used for the Preschool (Section 619) funds awarded under the IDEA, except the district uses its count of children ages three through five and eligible private school children of this same age.

The Child Count data entry program for the prior year (beginning December 1, 1999) includes data elements for districts to report the number of eligible private school children ages 3-5 and 3-21 in the district who are included on the count, as well as, children who are not included on the count because the parents refused services. These numbers will be used to determine the prorated amount of the district's next year IDEA funds the district must spend on services for private school students.

Regulatory language related to the proportionate amount:

34 CFR 300.453 (b)(1) states:

(1) Each LEA shall -

- (i) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and
 - (ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year.
- (2) The child count must 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 next subsequent fiscal year.

The language contained in this regulation is specific as to when to count the eligible children. California has chosen to conduct its child count on December 1, not the last Friday of October. This means that the number of eligible private school children must be counted on December 1. This count will be used to determine the proportionate amount of funds to spend on private school children with disabilities during the subsequent school year. For example, the count conducted on December 1, 1999 determines the proportionate amount for the 2000-2001 school year.

34 CFR 300.453 (c) goes on to say-- Expenditures for Child Find may not be considered. Expenditures for Child Find activities described in 300.451 may not be considered in determining whether the LEA has met the requirements of paragraph (a) of this section.

Note: Paragraph (a) of 300.453 establishes the formula for determining the proportionate amount. 34 CFR 300.451 requires LEAs to locate, identify and evaluate all private school children with disabilities residing within their jurisdiction. In Kentucky private schools are non-public schools and include parochial, non-parochial, and home schools.

Kern County Consortium SELPA

Expanded Procedures for Serving Students with Disabilities Placed by Their Parents at Private Schools

Whenever students, ages 3 through 21, are offered a Free Appropriate Public Education (FAPE) in a public school but are enrolled by their parents in a private school, the District shall provide an Individual Services Plan to determine their eligibility for alternative services.

A. CHILD FIND

1. The Kern County Consortium SELPA will undertake the following Child Find activities with regard to private school children age 3 through 21:

- a. Distribution of materials to representatives of private school children with disabilities regarding issues including, but not limited to, criteria for special education eligibility and special education referral procedures under federal and state laws and regulations.
- b. Presentations to representative of private school children with disabilities (including private school administrators, teachers, and parents) regarding issues including, but not limited to, criteria for special education eligibility and special education referral procedures under federal and state laws and regulations.

2. The Kern County Consortium SELPA will ensure that Child Find activities undertaken for private school students are comparable to activities undertaken for children ages 3 through 21 with disabilities in public schools. Child Find activities will include consultation with appropriate representatives of private school children age 3 through 21 with disabilities regarding how to carry out such activities.

B. SPECIAL EDUCATION IDENTIFICATION

1. Referral

- a. The public school District of Residence must refer students for special education only after the resources of the general education program have been considered, and when 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 with a disability may be eligible for special education services, the referral shall be directed to the private school child's public school District of residence or the public school/SELPA Child Find Office ("Search and Serve").

2. Assessment

Once a referral is received, the District shall conduct or arrange for the assessments and/or re-assessments of students referred for evaluation of eligibility for special education services as follows:

- a. Shall provide the parent(s) with a proposed written assessment plan within fifteen (15) days upon receipt of a written request for a special education assessment or re-assessment; and
- b. Shall conduct a multi-disciplinary assessment within fifty (50) days of receipt of the approved assessment plan.
- c. Shall conduct an Individualized Education Plan (IEP) meeting within fifty (50) calendar days of the receipt of the signed assessment plan.

3. Individualized Education Program (IEP) Team Meeting

The District of residence shall convene an IEP Team meeting and develop the IEP to determine student eligibility, identify placement/services, and document FAPE.

- a. The District's written notification of the scheduled IEP Team meeting will be mailed to the parent(s) and will include a letter stating that the meeting will include a discussion of alternative services offered to students in private schools, if necessary.
- b. A copy of the notification to attend the meeting and the letter will also be mailed to the private school administrator and teacher of the student.
- c. Document in the IEP that FAPE has been offered to an eligible student to be provided upon enrollment in a public school.

1. Parent agrees FAPE has been offered, student enrolls in public school.

If the parents of a private school child with a disability with the IEP agree that FAPE has been offered to their child to be provided upon enrollment at a public school, and decide to do so, the IEP team shall:

- a. Document in the IEP that FAPE has been offered upon enrollment in a public school and parents choose to enroll their child in a public school. The IEP meeting will be implemented immediately upon enrollment.

2. Parent agrees FAPE has been offered, student enrolls in private school.

If the parents agree with the IEP and that FAPE has been offered but they wish to decline the IEP and choose to place the child at a private school, the IEP team shall:

- a. Document in the IEP the parents agree that FAPE has been offered, and will be implemented upon enrollment in a public school, but decline services and choose to place their child in a private school; and
- b. Conclude the IEP meeting and immediately convene an Individual Services Plan (ISP) meeting to determine the student's eligibility for alternative services while enrolled in private school.

3. Parent disagrees FAPE has been offered, student enrolls in private school.

If the parents disagree with the provision of special education services and/or the offer of FAPE and choose to place their child in private school, the IEP team shall:

- a. Ensure that the parents document their disagreement in the IEP and
 - b. Document in the IEP that the parents disagree with the special education services and/or the offer of FAPE and choose to place their child in a private school, and conclude the IEP meeting to immediately convene an Individual Services Plan meeting even though FAPE is an issue.
- d. If the student does not meet eligibility criteria established in law, the IEP team shall provide the appropriate documentation on the IEP.

C. ISP SERVICES POLICY

1. This ISP Service Policy shall be reviewed by Kern County Consortium SELPA at least every three years by means of a SELPA-wide survey and/or consultation with representatives of private school children ages 3 to 22 with disabilities (including private school administrators, teachers, and parents).

2. 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, the District shall not use ISP Services funds to finance the existing level of instruction in private school or to otherwise benefit the private school.

3. 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 the transportation may be included in calculating whether the District has met the obligation to spend a proportionate share of federal funds on providing special education and related services to private children with disabilities eligible for special education services. Transportation to and from school/home is not an obligation of the District.

D. ALTERNATIVE SERVICES

Whether or not FAPE is an issue for a student who is parentally placed in a private school, the District shall develop an Individual Services Plan describing alternative services for consultation and/or professional development to enable the student to be involved and to progress in the general curriculum of the private school.

1. Consultation Services

Consultative service is provided to the teachers and parents of students eligible for special education and will be within the following guidelines:

a. Services will be provided only at private school sites that are located within the District's boundaries.

1. Up to a maximum of ten (10) consultative sessions during a twelve (12) month period excluding holidays and vacations;
2. Up to sixty (60) minutes for each consultative session may be scheduled during the hours of work corresponding to the District personnel's hours of service providing consultation;
3. Utilization of strategies for instruction, modifications and adaptations, positive behavior support planning, and/or social skill building to facilitate the teaming in the general education classroom; and
4. Evaluation of student progress using student observations, work samples,

and conferences with the teacher(s) and/or parent(s) will be recorded on a consultation log for each session.

2. Professional Development

a. The District and SELPA shall offer to the staff of the student's private school the opportunity to attend special education training and other professional development activities such as: Instruction, Strategies, Accommodations for Instruction in the Core Curriculum, Positive Behavioral Support Plans, Transition Plans, and other pertinent sessions.

b. If the private school accepts this alternative service or staff development activities, the following applies:

1. The District and SELPA shall ensure that notices of scheduled activities are mailed to the private schools.
 2. Each private school shall be responsible for any substitute personnel it requires and the costs to release its staff to attend any activities.

E. SERVICES PLAN

1. Immediately following an IEP meeting that determines a private school student eligible for special education services, the public school of residence shall develop an Individual Services Plan

(ISP) by convening an Individual Services Plan Team meeting. The ISP meeting shall include the following individuals:

Parent(s)/guardian(s) of the student
District administrator/administrative designee
Private school administrator
Teacher
Student, if appropriate
Other District personnel as appropriate

- a. If a private school representative cannot attend, participation shall be ensured by means of an individual or conference telephone call.
- b. Every private school pupil with a disability who has been designated to receive public school IDEA services must have a services plan that describes the specific special education and related services that the public school will provide. The ISP must be developed by the IEP Team in the same manner as IEPs are developed, with the additional requirement that the public school must ensure that a private school representative either attends the IEP team meeting or provides input through other means. 34 CFR section 3400.454 (c).
- c. The ISP must state present levels of education performance, contain annual goals, short-term objectives and/or benchmarks. It must also state the special education and related services that will be provided, indicate the degree to which the child will not be placed in a regular classroom, state the starting dates for service, frequency and duration of services, and show how the student's progress will be measured and reported to the parent. Depending on the public school services provided to the pupil, the ISP should address participation in statewide or District-wide assessments, transition services, and transfer of rights to the pupil upon reaching the age of majority.
- d. The ISP must be reviewed at least annually by a fully and properly constituted ISP team. A parent notice of the meeting to develop/review the ISP must be provided in the same manner as for IEP meetings. All special factors that would normally be considered in the IEP development process must also be considered with respect to individual services plans. A three year reassessment process must also be provided to the student.

2. Transportation

- a. The ISP will document the need for transportation services and any arrangements that may be agreed upon.
- b. If the individual District policy elects to expend the proportionate share for the direct services, private school pupils who receive direct Speech and Language services from a school District as a result of an Individual Services Plan will be served on the public school campus closest to the pupil's home school as possible. Pupils may be delivered to the public school campus from the designated location or dropped off from the public school campus to the drop off location as designated by the District of Residence.
- c. All transportation services will be provided within the boundaries of the District of residence only. The District of Residence's transportation policies regarding the time of pick-up and delivery of pupils, designated transportation or walking zones, health/safety regulations and other related practices will apply to these pupils.

3. Consultative Services

- a. If the student's IEP meets the eligibility criteria for a consultative service, the ISP shall be completed by the team as follows:
 1. The consultative service for which the student is eligible;
 2. The student's present level of performance for a consultative service;

3. The annual goal and objectives for the consultative service;
4. The frequency, duration, and time when sessions are scheduled to occur;
and
5. The method(s) of evaluating progress towards the goal and objectives.

- b. If the student's eligibility does not meet one of the consultation criteria, consultative service will not be provided.

4. IEP Reviews and Re-assessments

- a. Unless the parents request a re-assessment or an IEP meeting, a student receiving service shall have only the Individual Services Plan reviewed at an annual Services Plan team meeting conducted at the public school District of residence.
- b. Each three-year review of a private school student's eligibility shall occur at an IEP meeting conducted by the public school District of residence, upon obtaining parent permission for the re-assessment recommended in the previous year's Individual Services Plan (ISP).
- c. The District of Residence shall send a letter to parents of an eligible student not receiving a consultative service to offer an IEP review and/or re-assessment at the public school District of residence based on the student's current IEP.

F. MAINTENANCE OF RECORDS

1. Parents shall receive a copy of all reports developed by the District as the result of the assessment or reassessment of the student. Reports will be mailed/delivered to the parents five (5) days before the IEP or ISP meeting.
2. Psychological and educational records of parentally placed private school students shall be maintained at the appropriate District Office of the District of residence.
3. The public school District of residence shall maintain the records of parentally placed private school students in the following manner:
 - a. Create a special education folder to file copies of IEPs, Individual Services Plan, offer letters, correspondence with parents and private school, and consultation logs.
 - b. Forward a special education folder to: a new school of residence upon notification.
 - c. Non-eligible students will have a file maintained consistent with District policy for non-eligible students to the District Special Education Director/designee.
4. Establish a tracking system to assure timely reviews/reassessments of students who have an ISP and those students eligible for an IEP but declined services.

G. DISPUTE RESOLUTION

1. Due process hearing procedures do not apply to disputes over the Individual Services Plan. Due process hearing procedures apply whenever there is a dispute over the provision of special education services that include assessments, the IEP process, and the offer of FAPE.
2. Parents or other individuals have the right to file a signed written complaint pursuant to the District's Uniform Complaint Procedure and/or the California Department of Education regarding the District's failure to provide Child Find services or services specified in the student's Individual Services Plan.

Kern County Consortium SELPA

Summary of Procedures: Private Schools (ISP) Development Individualized Education Program (IEP) Team Meeting

The District of residence shall convene an IEP Team meeting and develop the IEP to determine student eligibility, identify placement/services, and document FAPE

- a. The District's written notification of the scheduled IEP Team meeting will be mailed to the parent(s) and will include a letter stating that the meeting will include a discussion of alternative services offered to students in private schools, if necessary.
- b. A copy of the notification to attend the meeting and the letter will also be mailed to the private school administrator and teacher of the student.
- c. Document in the IEP that FAPE has been offered to an eligible student to be provided upon enrollment in a public school

1. Parent agrees FAPE has been offered, student enrolls in public school.

If the parents of a private school child with a disability with the IEP agree that FAPE has been offered to their child to be provided upon enrollment at a public school, and decide to do so, the IEP team shall:

Document in the IEP that FAPE has been offered upon enrollment in a public school and parents choose to enroll their child in a public school. The IEP meeting will be implemented immediately upon enrollment.

2. Parent agrees FAPE has been offered, student enrolls in private school.

If the parents agree with the IEP and that FAPE has been offered but they wish to decline the IEP and choose to place the child at a private school, the IEP team shall:

- a. Document in the IEP the parents agree that FAPE has been offered, and will be implemented upon enrollment in a public school, but decline services and choose to place their child in a private school; and
- b. Conclude the IEP meeting and immediately convene an Individual Services Plan (ISP) meeting to determine the student's eligibility for alternative services while enrolled in private school.

3. Parent disagrees FAPE has been offered, student enrolls in private school.

If the parents disagree with the provision of special education services and/or the offer of FAPE and choose to place their child in the private school, the IEP team shall:

- a. Ensure that the parents document their disagreement in the IEP and
- b. Document in the IEP that the parents disagree with the special education services and/or the offer of FAPE and choose to place their child in a private school, and
- c. conclude the IEP meeting to immediately convene an Individual Services Plan meeting even though FAPE is an issue.

4. If the student does not meet eligibility criteria established in law, the IEP team shall provide the appropriate documentation on the IEP.

Private School Proportionate Amount For Children with Disabilities

Questions and Answers:

Question: What is meant by proportionate amount for private school children with disabilities?

Answer: Under the 1997 amendments to the Individuals with Disabilities Education Act (IDEA), Congress wanted to make sure that eligible children with disabilities enrolled by their parents in private or other non-public schools benefited from this legislation. However, Congress also wanted to make it clear that these students give up their right to a free appropriate public education as a result of this unilateral placement on the part of the parent(s). As a result, IDEA and its implementing regulations specify how local districts are to determine the services that will be provided to eligible private school students and the minimum amount of funds a district must spend providing these services. The minimum amount is the proportionate amount of funds the district must spend to provide services to private school students enrolled unilaterally by their parents. It is called proportionate because the amount must equal a proportionate share of the federal funds the district receives under the Individuals with Disabilities Education Act.

Question: How is the "proportionate" amount of funds determined?

Answer: Though the language in the 1997 Amendments to the individuals with Disabilities Education Act (IDEA) and its subsequent federal regulations is specific to the requirement of the proportionate amount, the formula for determining this amount has been confusing. The National Association of State Directors of Special Education (NASDSE) issued a memo in 1999 containing a formula, approved by the US DOE, Office of Special Education Programs, for calculating this amount. Stated simply, the proportionate amount is based on the percentage obtained by dividing the number of eligible private school students by the number of all eligible students. This percentage is multiplied by the district's federal allocation under the IDEA to determine the proportionate amount.

Question: When does a district count its eligible private school children to use in determining the proportionate amount?

Answer: This question is answered specifically in the regulations (See 34 CFR 300.453). The count of the eligible private school children used for making this determination is the same date as the count of all children with disabilities. That date is December 1 of the previous school year in California.

Question: What is an eligible private school child?

Answer: An eligible private school child is a child that an Individualized Education Program (IEP) has evaluated and determined eligible for special education and related services under the Individuals with Disabilities Education Act. A child maintains their eligible status for three years when they must be reevaluated to determine continuing eligibility. Public school children whose parents refuse specially designed instruction and related services are also considered eligible children and are part of the set of all eligible children when determining the percentage eligible private school children are of all eligible children. (Note: Under 34 CFR 300.403, if the IEP team determines the child eligible, it should develop an IEP and determine placement in the least restrictive environment so that the district can make an offer of a free appropriate public education.)

Question: Do we count home schooled children too?

Answer: Yes. In California, home schools are considered private schools. Children enrolled in home schools must be considered when determining the proportionate amount.

Question: If there are eligible private school children on December 1, when the count is conducted, and these children either leave the district, are no longer eligible, or their numbers are significantly reduced is the proportionate amount of funds that must be spent on services for private school children reduced accordingly?

Answer: No. The proportionate amount is still determined based on the previous year's December 1 count of eligible private school children and the proportion their numbers are of all eligible children as described above. The proportionate amount does not change and is not impacted as a result of subsequent changes in this data.

Question: Since the proportionate amount does not change due to reduced numbers of eligible private school children during the service year, are districts required to spend the entire proportionate amount if all necessary services to these children are provided but the proportionate amount has not been met?

Answer: This is a difficult question to answer as it is not specifically addressed either in the IDEA or its implementing regulations. However, Joleta Reynolds, Assistant to the Director of the US DOE Office of Special Education Programs, when asked if there were no eligible children during the service year, provided this paraphrased response that she said was approved by their General Counsel.

Districts must make sure that they have an effective child find in place and that there are no eligible children with disabilities in private, parochial, home or other non-public schools during the entire year (July 1 through June 30) for which the "*proportionate*" funds were to be spent. If there are no eligible private school children during this period, then districts are not required to spend the "proportionate" amount. Since there must not be any eligible private school children during the entire year, districts should wait until the next year begins prior to committing these funds for other expenditures.

Note: This answer does not specifically address concerns when there are eligible private school children but their numbers are greatly reduced. The proportionate amount is a total and is not a per child amount.

Question: Do the expenditures incurred for Child Find activities (e.g., evaluation, brochures to the private schools, etc.) for private school children count as expenditures against the proportionate amount?

Answer: No. The federal regulations clearly state that expenditures for child find activities may not be considered in determining if the district has met the requirements for spending the proportionate amount. (See 34 CFR 300.453.) The proportionate amount of funds must be spent on services that directly benefit private school children.

Question: Can the money spent for transportation of private school children count as expenditures against the Proportionate amount?

Answer: Yes. The cost of transportation may be included in the calculation to determine if the district spent the amount required under 34 CFR 300.453. (See 34 CFR 300.456.)

Sample 1

**Proportionate Share Calculation for
Parentally-Placed Private School Children with Disabilities**

FOR FLINTSTONE SCHOOL DISTRICT:

# of eligible children in public schools	=	300
# of eligible children in private schools	=	20
Total # of eligible children	=	320

AT DECEMBER 1 CHILD COUNT:

# of children served in public schools	=	300
# of children served in private schools	=	5
Total # of public & private children served	=	305

Note: 305 is the number turned in to OSEP for children served with IEP or service plan.

FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT:

Total allocation to Flintstone = \$152,500

FORMULA FOR CALCULATING PROPORTIONATE SHARE:

$$= X$$

Note: Proportionate share for parentally-placed private school children is based on total children eligible, not children served.

FLINTSTONE SCHOOL DISTRICT OBLIGATION:

$$\frac{\$152,500}{320} \times 20$$

$$X = \$9,531.25$$

(This amount must be spent for the group of parentally-placed children in private schools)

ANNUAL NOTICE TO PARENTS OF PARENTALLY PLACED STUDENTS
WITH DISABILITIES IN PRIVATE SCHOOLS

Dear (Name of parents]:

On (date) the (name of schools district) met to develop an IEP and placement for (name of student) that offered a free appropriate public education for your child. You declined the IEP and placement offered for your child in the public school because you have decided to have your child attend (name of private school).

As a result of your decision to have your child attend (private school), the district developed a Service Plan to be in effect while (name of student) is enrolled at (name of private School). This Service Plan will be updated annually.

If at any time you wish to (re-)enroll your child in the (name of school district), please let us know so that we can arrange to develop a new IEP and placement offer for your child.

Should you have any questions regarding educational services for your child, please contact (name of person), (title), at (phone number).

Sincerely,

insert services plan page here

Insert supplemental ISP here

SELECTED CALIFORNIA EDUCATION CODE SECTIONS

Subject: 30 EC 56170 - Definition of Private School Children With Disabilities

Text of Code:

*30 EC 56170 - Definition of Private School Children With Disabilities*56170. As used in this part, "private school children with disabilities" means children with disabilities enrolled by a parent in private schools or facilities, in accordance with Section 300.450 of Title 34 of the Code of Federal Regulations, other than individuals with exceptional needs placed by a district, special education local plan area, or county office in a nonpublic, nonsectarian school pursuant to Section 56365.

Subject: 30 EC 56171 - Obligation to Locate, Identify, and Assess All Private School Children With Disabilities

Text of Code:

*30 EC 56171 - Obligation to Locate, Identify, and Assess All Private School Children With Disabilities*56171. Districts, special education local plan areas, and county offices shall locate, identify, and assess all private school children with disabilities, including religiously affiliated school age children, who have disabilities and are in need of special education and related services residing in the jurisdiction of the district, special education local plan area, or county office in accordance with Section 56301. The activities undertaken to carry out this responsibility for private school children with disabilities shall be comparable to activities undertaken in accordance with the provisions of Section 300.451 of Title 34 of the Code of Federal Regulations.

Subject: 30 EC 56172 - Make Provision for Participation of Private School Children With Disabilities

Text of Code:

*30 EC 56172 - Make Provision for Participation of Private School Children With Disabilities*56172. The district, special education local plan area, or county office shall make provision for the participation of private school children with disabilities in special education programs under this part by providing them with special education and related services in accordance with the provisions of this article.

Subject: 30 EC 56173 - Federal Grant Funds; Proportionate Amount for Children Enrolled in Private Schools

Text of Code

*30 EC 56173 - Federal Grant Funds; Proportionate Amount for Children Enrolled in Private Schools*56173. To meet the requirements of Section 56172, each district, special education local plan area, or county office shall spend on providing special education and related services to private school children with disabilities enrolled by a parent in private elementary and secondary schools, an amount of federal state grant funds allocated to the state under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) that is equal to a proportionate amount of federal funds made available under the Part B grant program for local assistance, in accordance with Section 300.453 of Title 34 of the Code of Federal Regulations and as provided in paragraph (2) of subsection (b) of Section 300.456 and Sections 300.458, 300.459, 300.460, 300.461, and 300.462 of Title 34 of the Code of Federal Regulations.

Subject: 30 EC 56174 - Not Required to Pay Cost of Education in Private School if LEA Made FAPE Available

Text of Code:

*30 EC 56174 - Not Required to Pay Cost of Education in Private School if LEA Made FAPE Available*56174. The district, special education local plan area, or county office shall not be required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district, special education local plan area, or county office made a free appropriate public education available to the child and the parent of the child elected to place the child in the private school or facility.

Subject: 30 EC 56174.5 - Private School Individuals with Exceptional Needs: Different Amount of Services

Text of Code:

*30 EC 56174.5 - Private School Individuals with Exceptional Needs: Different Amount of Services*56174.5. (a) Private school individuals with exceptional needs may receive a different amount of services than individuals with exceptional needs in public school receive pursuant to paragraph (2) of subsection (a) of Section 300.455 of Title 34 of the Code of Federal Regulations. No private school individuals with exceptional needs is entitled to any amount of service the child would receive if enrolled in a public school pursuant to paragraph (3) of subsection (a) of Section 300.455 of Title 34 of the Code of Federal Regulations. (b) Decisions about the services provided to private school individuals with exceptional needs pursuant to this article shall be made pursuant to this section and Sections 300.454, 300.455, and 300.456 of Title 34 of the Code of Federal Regulations

Subject: 30 EC 56175 - Enrollment in Private School When FAPE Not Made Available

Text of Code:

*30 EC 56175 - Enrollment in Private School When FAPE Not Made Available*56175. If a parent or guardian of an individual with exceptional needs, who previously received special education and related services under the authority of the district, special education local plan area, or county office, enrolls the child in a private elementary or secondary school without the consent of or referral by the district, special education local plan area, or county office, a court or a due process hearing officer may require the district, special education local plan area, or county office to reimburse the parent or guardian for the cost of that enrollment if the court or due process hearing officer finds that the district, special education local plan area, or county office had not made a free appropriate public education available to the child in a timely manner prior to that enrollment in the private elementary or secondary school and that the private placement is appropriate, in accordance with subsection (c) of Section 300.403 of Title 34 of the Code of Federal Regulations.

Subject:

30 EC 56176 - Reasons for Reducing or Denying Reimbursement for Private School Enrollment

Text of Code:

30 EC 56176 - Reasons for Reducing or Denying Reimbursement for Private School Enrollment56176. The cost of the reimbursement described in Section 56175 may be reduced or denied in the event of any of the following: (a) At the most recent individualized education program meeting that a parent or guardian attended prior to removal of the child from the public school, the parent or guardian did not inform the individualized education program team that they were rejecting the placement proposed by the district, special education local plan area, or county office to provide a free appropriate public education to the child, including stating his or her concerns and the intent to enroll the child in a private school at public expense. (b) The parent or guardian did not give written notice to the district, special education local plan area, or county office of the information described in subdivision (a) at least 10 business days, including any holidays that occur on a business day, prior to the removal of the child from the public school. (c) Prior to the parent's removal of the child from the public school, the district, special education local plan area, or county office informed the parent, through the notice requirements described in paragraph (1) of subdivision (a) of Section 56500.4, of its intent to assess the child, including a statement of the purpose of the assessment that was appropriate and reasonable, but the parent did not make the child available for the assessment. (d) Upon a judicial finding of unreasonableness with respect to actions taken by a parent.

Subject: 30 EC 56177 - Exceptions to Reducing or Denying Reimbursement for Private School Enrollment

Text of Code:

30 EC 56177 - Exceptions to Reducing or Denying Reimbursement for Private School Enrollment56177. Notwithstanding the notice requirement in subdivision (a) of Section 56176, the cost of reimbursement may not be reduced or denied for failure to provide the notice in the event of any of the following: (a) The parent is illiterate and cannot write in English. (b) Compliance with subdivision (a) of Section 56176 would likely result in physical or serious emotional harm to the child. (c) The school prevented the parent from providing the notice.(d) The parent had not received notice of the due process hearing rights under Chapter 5 (commencing with Section 56500).

Subject: 30 EC 56192 - Community Advisory Committee Composition

Text of Code:

30 EC 56192 - Community Advisory Committee Composition56192. The community advisory committee shall be composed of parents of individuals with exceptional needs enrolled in public or private schools, parents of other pupils enrolled in school, pupils and adults with disabilities, regular education teachers, special education teachers and other school personnel, representatives of other public and private agencies, and persons concerned with the needs of individuals with exceptional needs.

Subject: 30 EC 56205 - SELPA Submitting Local Plan Shall Demonstrate It Has In Effect Policies, Procedures, and Programs

Text of Code:

*30 EC 56205 - SELPA Submitting Local Plan Shall Demonstrate It Has In Effect Policies, Procedures, and Programs*56205. (a) Each special education local plan area submitting a local plan to the superintendent under this part shall assure, in conformity with subsection (a) of Section 1412 of, and paragraph (1) of subsection (a) of Section 1413 of, Title 20 of the United States Code, that it has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing the following: (1) Free appropriate public education. (2) Full educational opportunity. (3) Child find and referral. (4) Individualized education programs, including development, implementation, review, and revision. (5) Least restrictive environment. (6) Procedural safeguards. (7) Annual and triennial assessments. (8) Confidentiality. (9) Transition from Subchapter III (commencing with Section 1431) of Title 20 of the United States Code to the preschool program. (10) Children in private schools. (11) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part. (12) (A) A description of the governance and administration of the plan, including identification of the governing body of a multi district plan or the individual responsible for administration in a single district plan, and of the elected officials to whom the government [rest of local plan content section deleted]

30 EC 56301 - Continuous Child-Find System

Subject:

Text of Code:

*30 EC 56301 - Continuous Child-Find System*56301. (a) All individuals with disabilities residing in the state, including pupils with disabilities who are enrolled in elementary and secondary schools and private schools, including parochial schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and assessed as required by paragraph (3) and clause (ii) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code. (b) In accordance with Section 300.125 of Title 34 of the Code of Federal Regulations, the requirements of this section also apply to highly mobile individuals with exceptional needs, such as migrant and homeless children, and children who are suspected of being an individual with exceptional needs pursuant to Section 56026 and in need of special education, even though they are advancing from grade to grade. (c) Each special education local plan area shall establish written policies and procedures pursuant to Section 56205 for use by its constituent local agencies for a continuous child-find system that addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. The policies and procedures shall include, but need not be limited to, written notification of all parents of their rights under this chapter, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs. Parents shall be given a copy of their rights and procedural safeguards upon initial referral for assessment, upon notice of an individualized education program meeting or reassessment, upon filing a complaint, and upon filing for a prehearing mediation conference pursuant to Section 56500.3 or a due process hearing request pursuant to Section 56502. (d) Child find data collected pursuant to this chapter, or collected pursuant to a regulation or an interagency agreement, are subject to the confidentiality requirements of Section 300.125 and Sections 300.560 to 300.577, inclusive, of Title 34 of the Code of Federal Regulations

Subject: 30 EC 56500.6 - Due Process and Complaint Procedures for Children Enrolled in Private Schools by Their Parents

Text of Code:

30 EC 56500.6 - Due Process and Complaint Procedures for Children Enrolled in Private Schools by Their Parents
56500.6. Due process and state complaint procedures for children enrolled in private schools by their parents pursuant to Sections 56170 to 56174.5, inclusive, shall be in accordance with Section 300.457 of Title 34 of the Code of Federal Regulations.

INSERT IDEA REGULATIONS PAGES HERE

Kern County Area Private Schools

California law (Education Code Section 33190) requires private schools offering or conducting a full-time elementary or secondary level day school for students between the ages of 6 and 18 file an affidavit with the California Department of Education (CDE). Filing an affidavit with CDE does not constitute certification of status as a private school. The Information below, lists only private schools reporting enrollments of 6 or more students on their Private School Affidavits.

Inclusion of a school in this directory should not be interpreted as meaning that the State of California, the State Superintendent of Public Instruction, the California State Board of Education, or any other agency has made any evaluation, approval, or endorsement of any school listed.

A downloadable Excel file containing contact and demographic information collected from private schools that have submitted affidavits to the State Superintendent of Public Instruction each year (1999-2003).

This is the final data for the 2003-2004 year. It contains the addresses, phone numbers, school administrators, grade span, programs offered, and enrollment by grade. The actual database has many additional data points that have not been included on this summary page. The complete database may be found on the CDE website www.cde.ca.gov/sp/se

(A current list will be distributed yearly and should be inserted behind this page)
INDIVIDUALS WITH DISABILITIES ACT (IDEA)

SPECIAL EDUCATION & REHABILITATIVE SERVICES Parentally-placed Children in Private Schools -- Topic Brief March 1999

Major Changes Since NPRM.

Below are major changes to the Part B regulations since the NPRM regarding children with disabilities enrolled by their parents in private schools:

Replacing "IEPs" with "Services Plans." Because "IEP" is an explicit term used in the definition of "FAPE" (and because parentally-placed children with disabilities in religious or other private schools are not entitled to FAPE in connection with their private school placements), the NPRM provisions related to IEPs for these children have been deleted, and have been replaced as follows:

SERVICES PLANS.The term "services plan" has been adopted for use with parentally placed children in private schools, in lieu of "IEP." Thus, each private school child with a disability who has been designated to receive Part B services "must have a services plan that describes the specific special education and related services that the LEA will provide to the child..." (See §§300.455(b)(1).)

SERVICES PLANS MUST MEET SPECIFIED IEP REQUIREMENTS(i.e., to the extent appropriate, the services plan must -- (A) meet the IEP content requirements of §§300.347, and (B) be developed, reviewed, and revised consistent with the IEP process requirements of §§300.342-300.346). (See §§300.455(b)(2).)

SEA RESPONSIBILITY FOR SERVICES PLANS.The final regulations make clear that the SEA -- in addition to ensuring IEPs for eligible public school children (see §§300.341) -- is also responsible for ensuring that a services plan is developed for each private school child with a disability who has been designated to receive services under Part B. (See §§300.452(b).)

CHILD FIND FOR CHILDREN IN PRIVATE SCHOOLS -- Comparable to Public Schools.The final regulations provide that -- (1) child find activities for private school children with disabilities must be comparable to those in the public schools; and (2) public agencies must consult with appropriate representatives of private school children with disabilities on how to carry out those activities. (See §§300.451.)

EXPENDITURES (child count; child find; additional funds).The "expenditures" requirement in the final regulations includes the following new provisions:

CHILD COUNT.The regulations provide that each LEA must -- (A) consult with representatives of private school children with disabilities to decide how to conduct the annual count of the number of those children, and (B) ensure that the count is conducted on December 1 or the last Friday of October of each year. The regulations further provide that the count data must be used to determine the amount of Part B funds to be earmarked for these children in the next fiscal year.) (See §§300.453(b).)

CHILD FIND EXPENDITURES MAY NOT BE CONSIDERED.Expenditures for child find activities may not be considered in determining whether the LEA met the expenditures requirement in §§300.453(a). (See §§300.453(c)).

ADDITIONAL SERVICES PERMITTED.SEAS and LEAS are not prohibited from providing services to private school children with disabilities beyond the services required by this part, consistent with state law or local policy (see § 300.453(d)).

SERVICES DETERMINED.The final regulations specify that each LEA must --

CONSULT WITH REPRESENTATIVES OF PRIVATE SCHOOL CHILDREN with disabilities on "where" services will be provided (see §§300.454(b)(1));

CONDUCT MEETINGS to develop, review, and revise a "services plan," in accordance with §§300.455(b), for each private school child with a disability who has been designated to receive services under this part (see §§300.454(c)(1)); and

ENSURE THAT A REPRESENTATIVE OF THE PRIVATE SCHOOL attends, or otherwise participates in, each meeting (see §§300.454(c)(2)).

LOCATION OF SERVICES. The final regulations make clear that, while transportation might be provided between a child's home or private school and a service site (if necessary for the child to benefit from or participate in the services offered), LEAs are not required to provide transportation between the child's home and the private school. (See §§300.456(b).)

COMPLAINTS (Due Process Applies Only to Child Find and Evaluation). The final regulations specify that the due process procedures under Part B apply to child find activities for private school children with disabilities, including evaluations (but do not apply to the private school provisions under §§300.452-300.462). (See §§300.457.)

On October 22, 1997, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register to amend the regulations under Part B of the Individuals with Disabilities Education Act (IDEA). The purposes of the NPRM were to implement changes made by the IDEA Amendments of 1997, and make other changes that facilitate the implementation of Part B. The changes made since the NPRM are based mainly on public comments received.

See §§300.452(b), §§300.454(c), and §§300.455(b), and the discussion of §§300.341 and §§300.350 in the analysis of comments.