

**Regulation 6164.41: Children With Disabilities Enrolled By Their Parents In Private School**

Status: ADOPTED

Original Adopted Date: 03/01/2007 | Last Revised Date: 09/01/2021 | Last Reviewed Date: 09/01/2021

**Definitions**

*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 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)(10)(A)(iii); 34 CFR 300.134)

1. The child find process and how parentally-placed private school children suspected of having a disability can participate equitably
2. The manner in which parents/guardians, teachers, and private school officials will be informed of the child find process
3. The determination of the proportionate share of federal funds available to serve 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. 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

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)

After the consultation has occurred, the district shall ensure an annual count of the number of 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**

A child with a disability parentally-placed in a private school has no individual right to receive some or all of the special education and related services that 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)

The district shall evaluate all identified 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)

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 is not required to develop an IEP if the parent/guardian makes clear 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 the child enrolled in private school, including the fact that 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.

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.

The district shall develop and implement for each identified 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 determined by the district after the consultation process with private school representatives. (34 CFR 300.138)

The ISP shall be developed, reviewed, and revised consistent with 20 USC 1414. 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)

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)

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**Policy Reference Disclaimer:**

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

<b>State</b>	<b>Description</b>
Ed. Code 51744-51749.6	<a href="#"><u>Independent study</u></a>
Ed. Code 56000	<a href="#"><u>Special education; legislative findings and declarations</u></a>
Ed. Code 56020-56035	<a href="#"><u>Definitions</u></a>
Ed. Code 56170-56177	<a href="#"><u>Children enrolled in private schools</u></a>
Ed. Code 56195.8	<a href="#"><u>Adoption of policies</u></a>
Ed. Code 56300-56385	<a href="#"><u>Identification and referral; assessment, instructional planning</u></a>
Ed. Code 56500-56509	<a href="#"><u>Procedural safeguards</u></a>
Ed. Code 56600-56606	<a href="#"><u>Evaluation, audits and information</u></a>
<b>Federal</b>	<b>Description</b>
20 USC 1232g	<a href="#"><u>Family Educational Rights and Privacy Act (FERPA) of 1974</u></a>
20 USC 1400-1482	<a href="#"><u>Individuals with Disabilities Education Act</u></a>

20 USC 1412	<a href="#">State eligibility</a>
29 USC 794	<a href="#">Rehabilitation Act of 1973; Section 504</a>
34 CFR 300.1-300.818	<a href="#">Assistance to states for the education of students with disabilities</a>
34 CFR 300.130-300.144	<a href="#">Children with disabilities enrolled by their parents in private schools</a>
<b>Management Resources</b>	<b>Description</b>
Court Decision	Agostini v. Felton (1997) 521 U.S. 203, 117 S.Ct. 1997
Federal Register	Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845
U.S. Department Of Education Publication	Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families, July 2021
U.S. Department Of Education Publication	Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act, August 2021
U.S. Department of Education Publication	A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA): Memorandum 11-07, January 2011
U.S. Department of Education Publication	Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, April 2011
Website	<a href="#">CSBA District and County Office of Education Legal Services</a>
Website	<a href="#">California Department of Education, Special Education</a>
Website	<a href="#">U.S. Department of Education, Office of Special Education Programs</a>

## Cross References

<b>Code</b>	<b>Description</b>
0430	<a href="#">Comprehensive Local Plan For Special Education</a>
0430	<a href="#">Comprehensive Local Plan For Special Education</a>
6159	<a href="#">Individualized Education Program</a>
6159	<a href="#">Individualized Education Program</a>

- 6159.1 [Procedural Safeguards And Complaints For Special Education](#)
- 6159.1 [Procedural Safeguards And Complaints For Special Education](#)
- 6164.4 [Identification And Evaluation Of Individuals For Special Education](#)
- 6164.4 [Identification And Evaluation Of Individuals For Special Education](#)