



EL DORADO
COUNTYSELPA
Special Education Local Plan Area

SELPA Policies and Administrative Regulations

As of October 7, 2021

El Dorado County Office of Education

Dr. Ed Manansala, County Superintendent of Schools

Tamara Clay, Executive Director of Special Services/SELPA

El Dorado County SELPA Policies and Administrative Regulations (ARs) (10/7/21)

Policy 1:	Comprehensive Local Plan for Special Education	
	Adopted 6-4-20	1
AR 1:	Comprehensive Local Plan for Special Education	
	Adopted 6-4-20	3
Policy 2:	Identification and Evaluation of Individuals for Special Education	
	Adopted 6-4-20	6
AR 2:	Identification and Evaluation of Individuals for Special Education	
	Adopted 6-4-20	8
Policy 3:	Individualized Education Program	
	Adopted 6-4-20	12
AR 3:	Individualized Education Program	
	Adopted 6-4-20	14
Policy 4:	Procedural Safeguards	
	Adopted 6-4-20	26
AR 4:	Procedural Safeguards	
	Adopted 6-4-20	28
Policy 5:	Confidentiality of Student Records	
	Adopted 6-4-20	32
AR 5:	Confidentiality of Student Records	
	Adopted 6-4-20	34
Policy 6:	Part C - Transition	
	Adopted 6-4-20	39
AR 6:	Part C - Transition	
	Adopted 6-4-20	40
Policy 7:	Students with Disabilities Enrolled by their Parents in Private School	
	Adopted 6-4-20	49
AR 7:	Students with Disabilities Enrolled by their Parents in Private School	
	Adopted 6-4-20	50
Policy 8:	Compliance Assurances	
	Adopted 6-4-20	58
AR 8:	Compliance Assurances	
	Adopted 6-4-20	59
Policy 9:	Governance	
	Adopted 6-4-20	63
AR 9:	Governance	
	Adopted 6-4-20	64
Policy 10:	Personnel Qualifications	
	Adopted 6-4-20	68
AR 10:	Personnel Qualifications	
	Adopted 6-4-20	69
Policy 11:	Performance Goals and Indicators	
	Adopted 6-4-20	72
Policy 12:	Participation in Assessments	
	Adopted 6-4-20	73
AR 12:	Participation in Assessments	
	Adopted 6-4-20	74
Policy 13:	Supplementation of State, Local and Other Federal Funds	
	Adopted 6-4-20	75

Policy 14:	Maintenance of Effort	
	Adopted 6-4-20	76
AR 14:	Maintenance of Effort	
	Adopted 6-4-20	77
Policy 15:	Public Participation	
	Adopted 6-6-19 and Revised 9-5-19	81
Policy 16:	Suspension and Expulsion	
	Adopted 6-4-20	82
AR 16:	Suspension and Expulsion/Due Process	
	Adopted 6-4-20	83
Policy 17:	Access to Instructional Materials	
	Adopted 6-4-20	92
Policy 18:	Overidentification and Disproportionality	
	Adopted 6-4-20	93
Policy 19:	Prohibition on Mandatory Medicine	
	Adopted 6-4-20	94
Policy 20:	Data	
	Adopted 6-4-20	95
Policy 21:	Reading Literacy	
	Adopted 6-4-20	96
Policy 22:	Provision of Special Education Services to Students Voluntarily Enrolled in Charter Schools in the El Dorado County SELPA	
	Adopted 3-4-21	97
AR 22:	Provision of Special Education Services to Students Voluntarily Enrolled in Charter Schools in the El Dorado County SELPA	
	Adopted 3-4-21	98
Policy 23:	Behavioral Interventions for Special Education Students	
	Adopted 2-7-19	103
AR 23:	Behavioral Interventions for Individuals with Exceptional Needs	
	Adopted 2-7-19	104
Policy 24:	Nonpublic, Nonsectarian School and Agency Services for Special Education	
	Adopted 2-7-19	108
AR 24:	Nonpublic, Nonsectarian School and Agency Services for Special Education	
	Adopted 2-7-19	110
Policy 25:	Interagency Agreement	
	Adopted 3-4-21	113
AR 25:	Interagency Agreement	
	Adopted 3-4-21	114
Policy 26:	Program Transfer Policy	
	Adopted 9-7-17, revised 6-7-18 and revised 10-7-21	116

COMPREHENSIVE LOCAL PLAN FOR SPECIAL EDUCATION

The El Dorado County SELPA desires to provide a free and appropriate public education (FAPE) to all school aged K-12 individuals with disabilities, who are enrolled in the member districts, including children who have been suspended or expelled or placed by the member districts in a nonpublic school or agency services.

The governing board for each school district and the County Board of Education each approved the “Agreement for Participation” and the “Local Plan for Special Education.” Pursuant to these documents, the governing boards of each member district delegated the administrative policy-making process and procedures for carrying out that responsibility to the governance structure of the SELPA

Students shall be referred for special education instruction and services only after the resources of the regular education program have been considered, and where appropriate, utilized. (Ed. Code § 56303.)

In order to meet the needs of individuals with disabilities and employ staff with adequate expertise for this purpose, each district within the County shall participate as a member of the El Dorado County Special Education Local Plan Area (SELPA), with the exception of the Lake Tahoe Unified School District which shall, for purposes of special education, participate as a member of the Tahoe-Alpine SELPA.

The superintendent or designee of each member district shall extend each member district’s full cooperation to the SELPA. The policies and procedures of the SELPA shall be applied as policies and regulations to all member districts. Per the Local Plan, the El Dorado County SELPA Executive Committee considers the recommendations from the SELPA Steering Committee for the establishment of any policies and procedures.

The El Dorado County SELPA shall administer the Local Plan for Special Education and the allocation of special education funds. (Ed. Code §§ 56195, 56205, 56836.)

Legal Reference:

EDUCATION CODE

- 56000-56001 Education for individuals with exceptional needs
- 56020-56035 Definitions
- 56040-56046 General provisions
- 56048-56050 Surrogate parents
- 56055 Foster parents
- 56060-56063 Substitute teachers
- 56170-56177 Children enrolled in private schools
- 56190-56194 Community advisory committees
- 56195-56195.10 Local plans

56205-56208 Local plan requirements
56213 Special education local plan areas with small or sparse populations
56240-56245 Staff development
56300-56385 Identification and referral, assessment, instructional planning, implementation, and review
56440-56449 Programs for individuals between the ages of three and five years
56500-56508 Procedural safeguards, including due process rights
56520-56524 Behavioral interventions
56600-56606 Evaluation, audits and information
56836-56836.05 Administration of local plan
GOVERNMENT CODE
95000-95029 California Early Intervention Services Act

CODE OF REGULATIONS, TITLE 5
3000-3089 Regulations governing special education

UNITED STATES CODE, TITLE 20
1400-1485 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29
794 Rehabilitation Act of 1973, Section 504

UNITED STATES CODE, TITLE 42
12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34
99.10-99.22 Inspection, review and procedures for amending education records
104.1-104.39 Section 504 of the Rehabilitation Act of 1973
300.500-300.514 Due process procedures for parents and children
303.1-303.654 Early intervention program for infants and toddlers with disabilities

Management Resources:

WEB SITES
CDE, Special Education Division: <http://www.cde.ca.gov/spbranch/sed>
U.S. Department of Education, Office of Special Education Programs:
<http://www.ed.gov/offices/OSERS/OSEP>

COMPREHENSIVE LOCAL PLAN FOR SPECIAL EDUCATION

Definitions

Free and appropriate public education (FAPE) means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the California Department of Education including the requirements of sections 34 CFR 300.1 through 300.818; include appropriate services for school-aged children K through 12; and are provided in conformity with the student's individualized education program (IEP) that meets the requirement of sections 34 CFR 300.320 through 300.324. (34 CFR §§300.17, 300.101, 300.104.)

The right to FAPE extends to students who are suspended or expelled or placed by the district in nonpublic school or agency services. (34 CFR §§ 300.101, 300.104.)

Full educational opportunities means that students with disabilities have the right to full educational opportunities to meet their unique needs, including access to a variety of educational programs and services available to non-disabled students. The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (34 CFR § 300.109.)

Least restrictive environment means that to an appropriate extent, students with disabilities, including children in public or private institutions, shall be educated with children who are not disabled, including in nonacademic and extracurricular services and activities. (34 CFR §§ 300.107, 300.114, 300.117.)

Special education means specially designed instruction, at no cost to the parent/guardians, to meet the unique needs of individuals with disabilities, whose educational needs cannot be met with modification of the regular instruction program. It also includes related services, provided at no cost to the parent/guardian that may be needed to assist these individuals to benefit from specially designed instruction. Special education provides a full continuum of program options, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education, to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment. (Ed. Code § 56031.)

Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the district that apply to all students. (34 CFR § 300.39 (b)(3).)

Surrogate parent means an individual assigned by a public agency to act as a surrogate for the parents/guardians. The surrogate may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational

placement, reviewing and revising the IEP, and in other matters relating to the provision of FAPE to the individual with a disability. (34 CFR § 300.519; Ed. Code § 56050.)

Note: Pursuant to Government Code, section 7579.5, when a student is a ward of the court, the district would appoint a surrogate parent only when the court has limited the right of the parent/guardian to make educational decisions for his/her child and the student has no responsible adult, such as a foster parent, to represent him or her. Since Welfare and Institutions Code, sections 361 and 726 require the juvenile court to appoint a responsible adult when the court limits parental rights, it will rarely be necessary for the district to appoint a surrogate parent because that appointment would be superseded by the court's appointment of a responsible adult or foster parent.

Elements of the Local Plan

Note: Education Code, section 56205 details the elements that must be included in the local plan, including a requirement that the plan contain assurances of general compliance with Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the Individuals with Disabilities Education Act (20 USC §§ 1400-1485), and the Americans with Disabilities Act (42 USC §§ 12101-12213).

The special education local plan shall include, but not be limited to the following:

1. Assurances that policies, procedures and programs, consistent with state law, regulation, and policy, are in effect as specified in Education Code, section 56205 (a)(1) through (22) and in conformity with 20 USC § 1412(a) and 20 USC § 1413(a)(1). (Ed. Code § 56205.)
2. An annual budget plan and annual service plan adopted at a public hearing held by the special education local plan area. (Ed. Code § 56205 (b).)
3. A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method for ensuring that all requirements of each student's IEP are being met. (Ed. Code § 56205(c).)
4. A description of how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve students in isolated sites and maximizes the opportunities to serve students in the least restrictive environment. (Ed. Code § 56206.)
5. A description of a dispute resolution process. (Ed. Code 56205 (b)(6).)
6. Verification that the plan has been reviewed by the community advisory committee in accordance with Education Code, section 56205 (b)(7). (Ed. Code § 56205 (b)(7).)
7. A description of the process being utilized to refer students for special education instruction pursuant to Education Code, section 56303. (Ed. Code § 56205 (b)(8).)

The local plan, annual budget plan and annual service plan shall be written in language that is understandable to the general public. (Ed. Code § 56205 (d).)

Each special education local plan area shall develop written agreements to be entered into by entities participating in the plan. (Ed. Code § 56195.7)

Each entity providing special education shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to Education Code, sections 56195.1 and 56195.7. (Ed. Code § 56195.8)

Adopted by SELPA Superintendents' Council 6-4-20

IDENTIFICATION AND EVALUATION OF INDIVIDUALS FOR SPECIAL EDUCATION

It shall be the policy of each member LEA that all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, who are in need of special education and related services, are identified, located, and evaluated. A practical method has been developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

Each LEA Superintendent or designee shall follow SELPA procedures to determine when an individual is eligible for special education services and shall implement the SELPA procedures for special education program identification, screening, referral, assessment, planning, implementation, review, and triennial assessment. (Education Code § 56301) The district's process shall prevent the inappropriate disproportionate representation by race and ethnicity of students with disabilities.

Any procedures for the identification, evaluation, assessment, and instructional planning for children younger than age three will meet the requirements of Education Code, sections 56425 through 56432 and the California Early Intervention Services Act (Gov. Code §§ 95000-95029). The California Department of Education and local education agencies are responsible for providing early intervention services to infants and toddlers who have visual, hearing, or severe orthopedic impairment. The Department of Developmental Services and its regional centers must provide services to all other eligible children in this age group. The law also requires regional centers and local education agencies to coordinate family service plans for infants and toddlers and their families. Education Code, section 56441.11 sets forth eligibility criteria for preschool children ages three to five.

Legal Reference:

EDUCATION CODE

44265.5 Professional preparation for teachers of impaired students
56000-56885 Special education programs, especially:
56026 Individuals with disabilities
56170-56177 Children in private schools
56195.8 Adoption of policies
56300-56304 Identification of individuals with disabilities
56320-56331 Assessment
56340-56347 Instructional planning and individualized education program
56381 Reassessment of students
56425-56432 Early education for individuals with disabilities
56441.11 Eligibility criteria, children 3 to 5 years old
56445 Transition to grade school; reassessment

56500-56509 Procedural safeguards

GOVERNMENT CODE

95000-95029.5 California Early Intervention Services Act

CODE OF REGULATIONS, TITLE 5

3021-3029 Identification, referral and assessment

3030-3031 Eligibility criteria

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1412 State eligibility

1415 Procedural safeguards

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 Evaluation and placement

104.36 Procedural safeguards

300.1-300.756 Assistance to states for the education of students with disabilities

COURT DECISIONS

Agostini v. Felton, (1997) 521 U.S. 203, 117 S.Ct. 1997

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers

34 CFR 300a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep>

IDENTIFICATION AND EVALUATION OF INDIVIDUALS FOR SPECIAL EDUCATION

A student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and used where appropriate. (Ed. Code § 56303.) The LEA Superintendent or designee shall follow SELPA procedures providing that parents/guardians, teachers, appropriate professionals, and others may refer an individual for assessment for special education services. Identification procedures shall be coordinated with school site procedures for referral of students with needs that cannot be met with modifications to the regular instructional program. (Ed. Code § 56302).

The LEA Superintendent or designee shall notify parents/guardians in writing of their rights related to identification, referral, assessment, instructional planning, implementation, and review, including the SELPA's procedures for initiating a referral for an initial assessment to identify individuals who need special education services. (Ed. Code § 56301)

A district shall not determine that a student is eligible for special education if the dominant factor for finding eligibility is lack of appropriate instruction in reading, lack of instruction in mathematics, or limited English proficiency. (20 U.S.C. § 1414(b)(5); Ed. Code, § 56329, subd. (a)(2).)

All referrals for special education and related services from school staff shall include a brief reason for the referral and description of the regular program resources that were considered and/or modified for use with the student, and their effect. (5 CCR § 3021.)

Within 15 days of a referral for initial assessment, the district shall provide student's parent/guardian with a notice of procedural safeguards and a written proposed assessment plan. The 15-day period may be extended if the parent/guardian agrees in writing to an extension. If a district chooses to agree to an extension it should be known that they may be found in Data Identified Non-Compliance (DINC) with the California Department of Education. The 15-day period does not include days between the student's regular school session or term, or days of school vacation in excess of five school days from the date of receipt of the referral.

The proposed assessment plan shall meet all of the following requirements: (Education Code 56321). When assessing students, staff shall use appropriate tests to identify specific information about the individual student's abilities. (Ed. Code § 56320.)

1. Be in a language easily understood by the general public
2. Be provided in the native language of the parent/guardian or other mode of communication used by the parent/guardian unless it is clearly not feasible
3. Explain the types of assessment to be conducted
4. State that no individualized education program (IEP) will result from the assessment without parent/guardian consent

Upon receiving the proposed assessment plan, the parent/guardian shall have 15 days to decide whether or not to consent to the initial assessment. The assessment may begin as soon as

informed parental consent is received by the respective district. The member districts shall not interpret parent/guardian consent for initial assessment as consent for initial placement or initial provision of special education services. (Education Code 56321; 34 CFR 300.505)

If a parent/guardian refuses to consent to the initial evaluation or fails to respond to the request to provide consent, the member district may pursue an evaluation by utilizing the mediation and due process procedures found at 20 USC § 1415 and in accordance with Education Code, sections 56501, subd. (a) (3), and 56506, subd. (e). (See BP/AR 6159.1 - Procedural Safeguards and Complaints for Special Education.) In the event that authorized parent does not consent to an initial evaluation, the member districts shall not provide special education services and shall not be considered in violation of the requirement to provide FAPE. In addition, the district is not required to convene an IEP team meeting or to develop an IEP for that child. (20 USC § 1414(a)(1).)

Informed parental consent means that the parent/guardian:

1. Has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication;
2. Understands and agrees, in writing, to the assessment;
3. Understands that the granting of consent is voluntary on his/her part and may be revoked at any time.

(34 CFR § 300.500)

If the student is a ward of the state and is not residing with his/her parents/guardians, the district shall make reasonable efforts to obtain informed consent from the parent/guardian as defined in 20 USC, section 1401 for an initial evaluation to determine whether the student is a student with a disability. (20 USC § 1414(a)(1).)

The district shall not be required to obtain informed consent from the parent/guardian of a student for an initial evaluation to determine whether the student is a student with a disability if any of the following situations exists:

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent/guardian of the student.
2. The rights of the parent/guardian of the student have been terminated in accordance with California law.

The rights of the parent/guardian to make educational decisions have been subrogated by a judge in accordance with California law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student. (Education Code 56301; 20 USC 1414(a)(1)).

As part of the assessment plan, the parent/guardian shall receive written notice that:

1. Upon completion of the administration of tests and other assessment materials, an IEP team meeting that includes the parent/guardian or his/her representative shall be scheduled pursuant to Education Code, section 56341. At this meeting, the

team shall determine whether or not the student is a student with disabilities as defined in Education Code, section, 56026 and shall discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent/guardian.

2. If the parent/guardian disagrees with an assessment obtained by the district the parent/guardian has the right to obtain, at public expense, one independent educational evaluation of the student from qualified specialists, in accordance with 34 CFR § 300.502.

If the district observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to the independent educational evaluation. This equivalent opportunity shall apply to the student's current placement and setting as well as observation of the district's proposed placement and setting, regardless of whether the independent educational evaluation is initiated before or after the filing of a due process hearing proceeding.

3. The district may initiate a due process hearing pursuant to Education Code 56500-56508 to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent/guardian maintains the right for an independent educational assessment but not at public expense.

If the parent/guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the district with respect to the provision of a free appropriate public education to the student, and may be presented as evidence at a due process hearing regarding the student.

4. If a parent/guardian proposes a publicly financed placement of the student in a nonpublic school, the district shall have an opportunity to observe the proposed placement and, if the student has already been unilaterally placed in the nonpublic school by the parent/guardian, the district shall have the opportunity to observe the student in the proposed placement. Any such observation shall only be of the student who is the subject of the observation and may not include the observation or assessment of any other student in the proposed placement unless that student's parent/guardian consents to the observation or assessment. The results of any observation or assessment of another student in violation of Education Code, section 56329(d) shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other student.

(Ed. Code § 56329; 34 CFR § 300.502)

An IEP required as a result of an assessment shall be developed within a total time not to exceed 60 days from the date of the receipt of the parent/guardian's consent for assessment, unless the

parent/guardian agrees to an extension in writing. Should a district and parent make an agreement to extend a time line, it should be known that not meeting the 60-day time line will put the district at risk of Data Informed Noncompliance (DINC) with the California Department of Education. Should a district be found in DINC, there could be correlated corrective actions as deemed by the California Department of Education. The 60-day period does not include any days between the student's regular school sessions/terms, or days of school vacation in excess of five school days, (Ed. Code § 56043)

However, when a referral is made within 30 days of the end of the regular school year, an IEP required as a result of an assessment shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar. In the case of school vacations, the 60-day time shall recommence on the date that school reconvenes. (Ed. Code § 56344 (a).)

A meeting to develop an initial IEP for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services. (Ed. Code §§ 56043(f)(2); 56344 (a).)

Before entering kindergarten or first grade, children with disabilities who are in a preschool program shall be reassessed to determine if they still need special education and services. The IEP teams shall identify a means of monitoring the continued success of children who are determined to be eligible for less intensive special education programs to ensure that gains made are not lost by a rapid removal of individualized programs and supports for these individuals. (Ed, Code § 56445)

INDIVIDUALIZED EDUCATION PROGRAM

It shall be the policy of member districts the El Dorado County SEPLA, that an IEP, or an IFSP that meets the requirements of 20 USC § 436 (d), is developed, implemented, reviewed, and revised for each child with a disability who requires special education and related services in accordance with 20 USC § 1414 (d). It shall be the policy of this LEA that a of an IEP will be conducted on at least an annual basis to review a student's progress and make appropriate revisions.

The Governing Board of each member LEA desires to provide educational alternatives that afford students with disabilities full educational opportunities. Students with disabilities shall receive a FAPE and in the least restrictive environment as required by law.

The LEA Superintendent or designee shall implement the SELPA Procedural Guide. The Procedural guide outlines the composition of the IEP team, and the sets forth procedures regarding the contents, development, review, and revision of the IEP.

A "foster parent" is a licensed person, relative caretaker, or non-relative extended family member. When the juvenile court has limited the right of a parent/guardian to make educational decisions on behalf of his/her child and the child has been placed in a planned permanent living arrangement, a foster parent shall have the same rights relative to his/her foster child's education as a parent/guardian. To the extent permitted by federal law, a foster parent shall have the same rights relative to his/her foster child's IEP as a parent/guardian. (Ed. Code § 56055)

Legal Reference:

EDUCATION CODE

51225.3 Requirements for high school graduation and diploma 56055
Rights of foster parents pertaining to foster child's education 56136
Guidelines for low incidence disabilities areas
56195.8 Adoption of policies
56321 Development or revision of IEP
56321.5 Notice to include right to electronically record
56340.1-56347 Instructional planning and individualized education program
56350-56352 IEP for visually impaired students
56380 IEP reviews; notice of right to request
56390-56392 Certificate of completion, special education
56500-56509 Procedural safeguards
60640-60649 Standardized Testing and Reporting Program 60850
High school exit examination, students with disabilities
60852.3 High school exit examination, exemption for the class of 2006

FAMILY CODE

6500-6502 Age of majority

GOVERNMENT CODE

7572.5 Seriously emotionally disturbed child, expanded IEP team

WELFARE AND INSTITUTIONS CODE

300 Children subject to jurisdiction 601
Minors habitually disobedient
602 Minors violating law defined as crime

CODE OF REGULATIONS, TITLE 5

853-853.5 Standardized Testing and Reporting Program, accommodations
1215.5-1218 High School Exit Examination, accommodations for students with disabilities
3021-3029 Identification, referral and assessment
3040-3043 Instructional planning and the individualized education program

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974
1400-1482 Individuals with Disabilities Education Act

CODE OF FEDERAL REGULATIONS, TITLE 34

300.1-300.756 Individuals with Disabilities Education Act

ATTORNEY GENERAL OPINIONS

85 Ops.Cal.Atty.Gen. 157 (2002)

COURT DECISIONS

Schaffer v. Weast (2005) 125 S. Ct. 528
Shapiro v. Paradise Valley Unified School District, No. 69 (9th Circuit, 2003) 317 F.3d 1072
Sacramento City School District v. Rachel H. (9th Cir. 1994) 14 F.3d 1398

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers
34 CFR 300.a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

California Department of Education: <http://www.cde.ca.gov>
U.S. Department of Education, Office of Special Education and Rehabilitative Services:
<http://www.ed.gov/about/offices/list/osers/osep>

INDIVIDUALIZED EDUCATION PROGRAM

Members of the Individualized Education Program (IEP) Team

Each member LEA shall ensure that the individualized education program team for any student with a disability includes the following members:

1. One or both of the student's parents/guardians, and/or a representative selected by the parent/guardian;
2. At least one regular education teacher. If more than one regular education teacher is providing instructional services to the student, the district may designate one such teacher to represent the others;
3. At least one special education teacher or, where appropriate, at least one special education provider working with the student;
4. An administrator or administrator designee of the district who is:
 - a. Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - b. Knowledgeable about the general education curriculum;
 - c. Knowledgeable about the availability of district and/or special education local plan area (SELPA) resources;
 - d. Has the authority to commit district resources and ensure that whatever services are set out in the IEP will be provided;
5. An individual who can correctly credential or licensed to interpret the instructional implications of assessment results. This individual may already be a member of the team as described in items #2-4 above or in item #6 below;
6. At the discretion of the parent/guardian or district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the student shall be made by the party who invites the individual to be a member of the IEP team. (Ed. Code § 56341));
7. Whenever appropriate, the student with a disability;
8. For transition service participants:
 - a. The student, of any age, with a disability if the purpose of the meeting is the consideration of the student's postsecondary goals and the transition services needed

- to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered;
- b. To the extent appropriate, and with the consent of the parent/guardian, a representative of any other agency that is likely to be responsible for providing or paying for transition services;
 - c. If a representative of a local agency has been invited but does not attend the meeting, the district shall take steps to obtain participation of the agency in the planning of any transition services. (Ed. Code § 56341);
9. For students suspected of having a specific learning disability at least one individual who is qualified to conduct individual diagnostic examinations of the student, such as a school psychologist, speech language pathologist, or remedial reading teacher. In addition, at least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting. If the student is younger than five years or not enrolled in school, a team member shall observe the child in an environment appropriate for a child of that age. 34 CFR §§ 300.308, 300.542; Ed Code § 56341);
 10. For students who have been placed in a group home by the juvenile court, a representative of the group home;
 11. If a student with a disability is identified as potentially requiring mental health services, the district shall request the participation of the county mental health program in the IEP team meeting. (Ed. Code § 56331)

(20 USC § 1414(d)(1); 34 CFR § 300.321; Ed. Code §§ 56341, 56341.2, 56341.5)

Excusal of Team Member

A member of the IEP team shall not be required to attend an IEP team meeting, in whole or in part, if the parent/guardian consents and the district agrees, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting, prior to the meeting. If the meeting involves a discussion of the member's area of the curriculum or related service, the IEP team member may be excused from the meeting if the parent/guardian consents in writing to the excusal and the member submits to the parent/guardian and team written input into the development of the IEP prior to the meeting. (20 USC § 1414(d)(1)(C); 34 CFR § 300.321; Ed. Code § 56341)

Parent/Guardian Participation and Other Rights

The LEA Superintendent or designee shall take steps to ensure that one or both of the parents/guardians of the student with a disability are present at each IEP team meeting or are afforded the opportunity to participate. These steps shall include, at minimum, notifying the

parents/guardians of the meeting early enough to ensure that they will have the opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place. (34 CFR § 300.322; Ed. Code § 56341.5)

The LEA Superintendent or designee shall send parents/guardians a notice of the IEP team meeting that:

1. Indicate the purpose, time, and location of the meeting;
2. Indicate who will be in attendance at the meeting;
3. For students beginning at age 16 (or younger than 16 if deemed appropriate by the IEP team):
 - a. Indicate that the purpose of the meeting will be the consideration of postsecondary goals and transition services for the student as required by 20 USC, section 1414(d)(1)(A)(i)(VIII), 34 CFR, section 300.320(b), and Education Code, section 56345.1
 - b. Indicate that the district will invite the student to the IEP team meeting;
 - c. Identify any other agency that will be invited to send a representative.

(34 CFR § 300.322; Ed. Code § 56341.5)

At each IEP team meeting convened by the district, the district administrator or specialist on the team shall provide the parent/guardian and student of the federal and state procedural safeguards. (Ed. Code §§ 56321, 56500.1)

Before any IEP meeting, the parent/guardian shall have the right and opportunity to request to examine all of his/her child's school records. Upon receipt of an oral or written request, the district shall provide complete copies of the records within five business days. (Ed. Code § 56043)

If neither parent/guardian can attend the meeting, the LEA Superintendent or designee shall use other methods to ensure parent/guardian participation, including video conferences or individual or conference telephone calls. (20 USC 1414(f); 34 CFR 300.322; Education Code 56341.5)

An IEP team meeting may be conducted without a parent/guardian in attendance if the district is unable to convince the parent/guardian that he/she should attend. In such a case, the district shall maintain a record of its attempts to arrange a mutually agreed upon time and place for the meeting, including, but not limited to: (34 CFR § 300.322; Ed. Code § 56341.5)

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parent/guardian and any responses received;
3. Detailed records of visits made to the parent/guardian's home or place of employment and the

results of those visits.

Parents/guardians and the district shall have the right to audio record the proceedings of IEP team meetings, provided members of the IEP team are notified of this intent at least 24 hours before the meeting. If the district gives notice of intent to audio record a meeting and the parent/guardian objects or refuses to attend because the meeting would be audio recorded, the meeting shall not be audio recorded. Audio recordings made by a district, SELPA, or county office are subject to the federal Family Educational Rights and Privacy Act (20 USC § 1232g).

Parents/guardians have the right to:

1. Inspect and review the audio recordings;
2. Request that the audio recordings be amended if the parents/guardians believe they contain information that is inaccurate, misleading, or in violation of the student's privacy rights or other rights;
3. Challenge, in a hearing, information that the parents/guardians believe is inaccurate, misleading, or in violation of the student's privacy rights or other rights.

(Education Code 56341.1)

The district shall take any action necessary to ensure that the parents/guardians understand the proceedings of the meeting, including arranging for an interpreter for parents/guardians with deafness or whose native language is not English. (34 CFR 300.322; Education Code 56345.1)

The district shall provide the parents/guardians of a student with disabilities a copy of his/her child's IEP at no cost. (34 CFR 300.322)

Contents of the IEP

The IEP shall be a written statement determined in a meeting of the IEP team. It shall include, at minimum, all of the following:

1. A statement of the present levels of the student's academic achievement and functional performance, including:
 - a. The manner in which the student's disability affects his/her involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students);
 - b. For a preschool child, as appropriate, the manner in which the disability affects his/her participation in appropriate activities;
 - c. For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

2. A statement of measurable annual goals, including academic and functional goals, designed to do the following:
 - a. Meet the student's needs that result from his/her disability in order to enable the student to be involved in and progress in the general education curriculum;
 - b. Meet each of the student's other educational needs that result from his/her disability;
3. A description of the manner in which the progress of the student toward meeting the annual goals described in item #2, above, will be measured, and when the district will provide periodic reports on the progress the student is making toward meeting the annual goals; e.g., through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.
4. A statement of the specific special educational instruction and related services and supplementary aids and services, based on peer-reviewed research, to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to:
 - a. Advance appropriately toward attaining the annual goals;
 - b. Be involved and make progress in the general education curriculum in accordance with item #1 above and to participate in extracurricular and other nonacademic activities;
 - c. Be educated and participate with other students with disabilities and nondisabled students when receiving special education instruction and services.
5. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and other nonacademic activities described in item #4 (c) above.
6. A statement of any appropriate individual accommodations necessary to measure the academic achievement and functional performance of the student on state and district -wide assessments.

If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment, a statement of all of the following:

- a. The reason that the student cannot participate in the regular assessment;
- b. The reason that the particular alternate assessment selected is appropriate for the student.

Note: students with disabilities must be allowed to participate in any state and district

assessments, with appropriate accommodations. (20 USC § 1412 (a).)

7. The projected date for the beginning of the services and modifications described in item #4 above and the anticipated frequency, location, and duration of those services and modifications;
8. Beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger if determined appropriate by the IEP team, and updated annually thereafter, the following:
 - a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
 - b. The transition services, including courses of study, needed to assist the student in reaching those goals;
9. Beginning at least one year before the student reaches age 17, a statement that the student has been informed of his/her rights, if any, pursuant to Education Code 56041.5 that will transfer to the student upon reaching age 18.

20 USC 1414(d)(1)(A); 34 CFR 300.320; Education Code 56043, 56345, 56345.1)

Where appropriate, the IEP shall also include:

1. For students in grades 7-12, any alternative means and modes necessary for the student to complete the district's prescribed course of study, and to meet or exceed proficiency standards required for graduation;
2. Linguistically appropriate goals, objectives, programs, and services for students whose native language is not English;
3. Extended school year services when the IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE;
4. Provision for transition into the regular education program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular education program in a public school for any part of the school day;

The IEP shall include descriptions of activities intended to:

- a. Integrate the student into the regular education program, including indications of the nature of each activity and the time spent on the activity each day or week; and
- b. Support the transition of the student from the special education program into the

regular education program;

5. Specialized services, materials, and equipment for students with low incidence disabilities, consistent with the state guidelines (Ed. Code 56136.)

(Education Code 56345)

Development, Review, and Revision of the IEP

In developing the IEP, the IEP team shall consider all of the following:

1. The strengths of the student;
2. The concerns of the parents/guardians for enhancing the education of their child;
3. The results of the initial assessment or the most recent assessment of the student;
4. The academic, developmental, and functional needs of the student.

(20 USC § 1414(d)(3)(A); 34 CFR § 300.324; Ed Code §§ 56341.1, 56345)

Special Factors

The individualized education program team shall consider the following special factors: :

1. In the case of a student whose behavior impedes his/her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior;
2. In the case of a student with limited English proficiency, consider the language needs of the student as such needs relate to the student's IEP;
3. In the case of a student who is blind or visually impaired, provide for instruction in Braille and instruction in the use of Braille, unless the individualized education program team determines, after an assessment of the pupil's reading and writing skills, needs and appropriate reading and writing media, including an assessment of the pupil's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the pupil;
4. Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
5. Consider whether the pupil requires assistive technology devices and services (20 USC §

1401 (1)).

(Ed. Code § 56341.1)

If, in considering the special factors in items 1 through 5 above, the IEP team determines that a student needs a particular device or service, including an intervention, accommodation, or other program modification, in order to receive FAPE, the IEP team must include a statement to that effect in the student's IEP. (Ed. Code § 56341.1)

The team shall also consider the related services and program options that provide the student with an equal opportunity for communication access, including the following:

1. The student's primary language mode and language, which may include the use of spoken language, with or without visual cues, and/or the use of sign language;
2. The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan area-wide program or providing placement pursuant to Education Code, section 56361;
3. Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the student's primary language mode and language consistent with existing law regarding teacher training requirements;
4. Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.);
5. Each public agency shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 CFR § 300.113.)

(Ed. Code §56345)

The LEA Superintendent or designee shall ensure that the IEP team:

1. Reviews the IEP periodically, but at least annually, to determine whether the annual goals for the student are being achieved and the appropriateness of placement;
2. Revises the IEP, as appropriate, to address:
 - a. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
 - b. The results of any reassessment conducted pursuant to Education Code 56381;
 - c. Information about the student provided to or by the parents/guardians regarding

- review of evaluation data. (34 CFR 305(a)(2) and Education Code 56381(b).)
- d. The student's anticipated needs;
 - e. Any other relevant matter.
3. When reviewing the IEP, the IEP team will consider the special factors listed above. The IEP team shall also convene:
- a. Whenever the student has received an initial formal assessment and, when desired, when the student receives any subsequent formal assessment.
 - b. Upon request by the student's parent/guardian or teacher to develop, review, or revise the IEP.
(Education Code 56343)

(20 USC 1414(d)(4); 34 CFR 300.324; Ed. Code §§ 56043, 56341.1, 56380)

If a participating agency other than the member district fails to provide the transition services described in the student's IEP, the team shall reconvene to identify alternative strategies to meet the transition service objectives set out for the student in the IEP. (20 USC 1414(d); 34 CFR 300.324; Education Code 56345.1)

As a member of the IEP team, the regular education teacher shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of:

- 1. Appropriate positive behavioral interventions and supports and other strategies for the student;
- 2. Supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student, consistent with the federal regulations.

(20 USC 1414(d)(3)(C); 34 CFR 300.324; Education Code 56341; 34 CFR § 300.320.)

Whenever possible, the district shall attempt to consolidate any reassessment meetings and other IEP team meetings. (20 USC 1414(d)(3)(A); 34 CFR 300.324)

The student shall be allowed to provide confidential input to any representative of his/her IEP team. (Education Code 56341.5)

Amended IEPs

1. When a change is necessary to a student's IEP after the annual IEP team meeting for the school year has been held, the parent/guardian and the district may agree not to convene an IEP team meeting for the purpose of making the change and instead may develop a written document to amend or modify the student's current IEP.
2. The IEP team shall be informed of any such changes. Upon request, the district shall provide the parent/guardian with a revised copy of the IEP with the incorporated amendments. (20 USC 1414(d)(3)(D); 34 CFR 300.324)

When the district has placed a foster student in a nonpublic, nonsectarian school, the district must conduct an annual evaluation, as specified below. In addition, the nonpublic, nonsectarian school to report to the district regarding the educational progress made by the student. (Ed. Code § 56157.)

If a student with disabilities residing in a licensed children's institution or foster family home has been placed by the district in a nonpublic, nonsectarian school, the district shall conduct an annual evaluation as part of the IEP process of whether the placement is the least restrictive environment that is appropriate to meet the student's needs. (Education Code 56157)

Six Month Review of Residential Placements

When an IEP team places a student in a residential placement, the IEP must be reviewed at least **every six months**.

When an IEP calls for a residential placement as a result of a review by an expanded IEP team, the IEP shall include a provision for a review, at least every six months, by the full IEP team of all of the following:

1. The case progress;
2. The continuing need for out-of-home placement;
3. The extent of compliance with the IEP;
4. Progress toward alleviating the need for out-of-home care.

(Cal. Gov. Code §7572.5(c)(2).)

Timelines for the IEP and for the Provision of Services

At the beginning of each school year, each district shall have an IEP in effect for each student with a disability within each district's jurisdiction. (34 CFR 300.323; Education Code 56344)

The district shall ensure that, as soon as possible following development of the IEP, special education services and related services are made available to the student in accordance with his/her

IEP. (34 CFR 300.323; Education Code 56344)

When a parent/guardian requests an IEP team meeting to review the IEP, the team shall meet within 30 calendar days of receiving the parent/guardian's written request, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. If a parent/guardian makes an oral request, the district shall notify the parent/guardian of the need for a written request and the procedure for filing such a request. (Education Code 56043, 56343.5)

Each member district's policy must set forth procedures and timelines for the review of a classroom assignment of an individual with exceptional needs when so requested by that student's regular or special education teacher. (Ed. Code § 56195.8.) A mandatory IEP team meeting shall be held if, as a result of the review, there is a proposed change in the pupil's placement, instruction, related services, or any combination thereof. The Education Code does not specify any timeline for this review. The district shall develop procedures and timelines for such reviews, including procedures which will designate which personnel are responsible for the reviews.

The district shall ensure that the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. The district shall also ensure that such teachers and providers are informed of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided to the student in accordance with the IEP. (34 CFR 300.323)

Informed Parent Consent

Before providing special education and related services, the district shall seek to obtain informed parent consent pursuant to 20 USC 1414(a)(1). If the parent/guardian refuses to consent to the initiation of services, the district shall not provide the services or utilize the due process hearing procedures pursuant to 20 USC 1415(f). If the parent/guardian does not consent to all of the components of the IEP, then those components to which the parent/guardian has consented shall be implemented so as not to delay providing instruction and services to the student. (Education Code 56346)

If the parent/guardian refuses all services in the IEP after having consented to those services in the past, the district shall file a request for a due process hearing. If the district determines that a part of the proposed IEP to which the parent/guardian does not consent is necessary in order to provide the student FAPE, a due process hearing shall be initiated in accordance with 20 USC 1415(f). While the due process hearing is pending, the student shall remain in his/her current placement unless the parent/guardian and the district agree otherwise. (Education Code 56346)

Transfer Students

To facilitate a student's transfer to another district, each district shall take reasonable steps to promptly obtain the records of a student with disabilities transferring into that district, including his/her IEP and the supporting documents related to the provision of special education services. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from a district within the SELPA, the receiving district shall continue, without delay, to provide services comparable to those described in the existing IEP, unless the student's parent/guardian and district agree to develop, adopt, and implement a new IEP consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from a California LEA outside of the district's SELPA, the district/LEA shall provide the student with FAPE, including services comparable to those described in the previous LEA's IEP. Within 30 days, the district shall, in consultation with the parents/guardians, adopt the other LEA's IEP or shall develop, adopt, and implement a new IEP consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to the district during the school year from an out-of-state LEA, the district shall provide the student with FAPE, including services comparable to the out-of-state LEA's IEP, in consultation with the parent/guardian, until such time as the district conducts an assessment, if the district determines that such an assessment is necessary, and develops, adopts, and implements a new IEP, if appropriate. (34 CFR 300.323; Education Code 56325)

PROCEDURAL SAFEGUARDS

It shall be the policy of each member LEA that children with disabilities and their parents shall be afforded all procedural safeguards according to state and federal laws and regulations.

In order to protect the rights of students with disabilities, each member district shall follow all procedural safeguards as required by law. Parents/guardians shall receive written notice of their rights in accordance with law, Board Policy, and Administrative Regulation.

The LEA Superintendent or designee shall represent the district in any due process hearing conducted with regard to that district's students and shall inform their governing board about the results of the hearing.

Complaints for Special Education

A due process complaint is regarding the provision of FAPE and may only be filed by a parent, student, or LEA. The due process complaint is different from those complaints alleging a violation of state or federal law and that can be filed by anyone. Due process complaint procedures are described in detail in the accompanying administrative regulation. Complaints concerning compliance with state or federal law regarding special education shall be addressed in accordance with the district's uniform complaint procedures.

Legal Reference:

EDUCATION CODE

56000 Education for individuals with exceptional needs

56001 Provision of the special education programs

56020-56035 Definitions

56195.7 Written agreements

56195.8 Adoption of policies for programs and services

56300-56385 Identification and referral, assessment

56440-56447.1 Programs for individuals between the ages of three and five years

56500-56509 Procedural safeguards, including due process rights

56600-56606 Evaluation, audits and information

CODE OF REGULATIONS, TITLE 5

3000-3100 Regulations governing special education

4600-4671 Uniform complaint procedures

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1400-1482 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act

UNITED STATES CODE, TITLE 42

11434 Homeless assistance

CODE OF FEDERAL REGULATIONS, TITLE 34

99.10-99.22 Inspection, review and procedures for amending education records

104.36 Procedural safeguards

300.1-300.818 Assistance to states for the education of students with disabilities, especially:

300.500-300.520 Procedural safeguards and due process for parents and students

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep>

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Under California law, due process hearings pursuant to the IDEA (20 USC 1400 et seq.) are held only at the state level. Rights and procedures for due process are set forth in Education Code § 56501 et. seq. and 5 CCR §§ 3080 et. seq. When California law provides greater protection to students and parents, it supersedes federal law.

Due process hearing rights extend to the student only if he/she is an emancipated student or a ward or dependent of the court with no available parent or surrogate parent. (Ed. Code § 56501; see AR 6159.3 - Appointment of Surrogate Parent for Special Education Students.)

Informal Resolution Process/Pre-Hearing Mediation Conference

Before requesting a due process hearing, the LEA Superintendent or designee and a parent/guardian may agree to meet informally to resolve any dispute relating to the identification, assessment or education and placement of a student with disabilities. The LEA Superintendent or designee shall have the authority to resolve the dispute through an informal alternative dispute resolution (“ADR”) process. (Ed. Code § 56502)

In addition, either party may file a request with the Superintendent of Public Instruction for a Pre-hearing Mediation Conference (commonly referred to as “mediation only”) to be conducted by a person designated by the California Department of Education. Based on the Pre-Hearing Mediation Conference, the LEA Superintendent or designee may resolve the issue(s) in any manner that is consistent with state and federal law and is to the satisfaction of both parties. (Education Code 56500.3)

It is recommended that attorneys do not attend the informal resolution session or the Prehearing Mediation Conference. Attorneys may attend, or otherwise participate in, only those mediation conferences that are scheduled pursuant to a request for a due process hearing. (Ed. Code §§ 56500.3, 56501)

If the parties do not resolve their dispute through informal resolution session and/or a Pre-Hearing Mediation Conference, either party may file a request for a due process hearing.

Due Process Complaint Notice and Hearing Procedures

Due process hearing procedures may be initiated by a parent/guardian, the LEA, and/or a student who is emancipated or a ward or dependent of the court. under the following circumstances:

1. There is a proposal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student;
2. There is a refusal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student;
3. The parent/guardian refuses to consent to an assessment of his/her child; and/or

There is a disagreement between a parent/guardian and the district regarding the availability of a program appropriate for the student, including the question of financial responsibility.

(20 USC § 1415(b); Education Code 56501)

Prior to initiating a due process hearing, the party requesting the hearing, or the party's attorney, must provide the opposing party a confidential due process complaint notice specifying:

1. The student's name
2. The student's address or, in the case of a student identified as homeless pursuant to the McKinney-Vento Homeless Assistance Act(42 USC 11434a(2)), any available contact information for that student;
3. The name of the school the student attends;
4. A description of the nature of the student's problem relating to the proposed or refused initiation or change, including facts relating to the problem;
5. A proposed resolution to the problem to the extent known and available to the complaining party at the time.

(20 USC §1415(b); 34 CFR § 300.508 (b).)

Resolution Session

When a parent seeks to initiate a request for due process, before their request is filed, they must provide the district with the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 USC § 1415[f][1][B]; 34 CFR § 300.510)

The district has fifteen (15) days from the date it received the parents' due process hearing request to convene the resolution session. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 USC § 1415[f][1][B]; 34 CFR § 300.51)

A due process complaint must be filed within two years of the date that the parent/guardian or district knew or should have known about the situation that forms the basis of the complaint.

Response to the Due Process Hearing Request

If the district has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint notice, the district shall send a response to the parent/guardian within 10 days of receipt of the complaint specifying:

1. An explanation of why the district proposed or refused to take the action raised in the complaint
2. A description of other options that the individualized education program (IEP) team considered and the reasons that those options were rejected
3. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action
4. A description of the factors that are relevant to the district's proposal or refusal.

(20 USC 1415(c)(1))

If the district sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the district may, within 10 days of receipt, send a response specifically addressing the issues in the complaint. (20 USC § 1415(c)(1))

Parties requesting a due process hearing shall file their request with the Superintendent of Public Instruction or designated contracted agency and give a copy of the request, at the same time, to the other party. (Ed. Code §56502)

Prior Written Notice

The LEA Superintendent or designee shall send to parents/guardians of any student with a disability a prior written notice within a reasonable time before:

1. The district initially refers the student for assessment
2. The district proposes to initiate or change the student's identification, evaluation, educational placement or the provision of a free, appropriate public education
3. The district refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education
4. The student graduates from high school with a regular diploma

(Ed. Code §§ 56500.4, 56500.5; 20 USC § 1415(c); 34 CFR § 300.503)

The prior written notice shall include:

1. A description of the action proposed or refused by the district;
2. An explanation as to why the district proposes or refuses to take the action;
3. A description of any other options that the IEP team considered and why those options were rejected;
4. A description of each evaluation procedure, test, record or report the district used as a basis for the proposed or refused action;
5. A description of any other factors relevant to the district's proposal or refusal;
6. A statement that the parents/guardians of the student have protection under procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained; and
7. Any resources for parents/guardians to obtain assistance in understanding these provisions.

(20 USC §1415(c); 34 CFR §300.503)

Students with disabilities and their parents/guardians shall be provided written notice of their rights in language easily understood by the general public and in the primary language of the parent/guardian or other mode of communication used by the parent/guardian, unless to do so is clearly not feasible. The notice shall include, but not be limited to, those rights set forth in Education Code, section 56341. (Ed. Code §§ 56341, 56506; 34 CFR § 300.503)

If the native language or other mode of communication of the parent/guardian is not a written language, the district shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication
2. The parent/guardian understands the contents of the notice
3. There is written evidence that items #1 and #2 have been satisfied
(34 CFR § 300.503)

Notice of Procedural Safeguards

A notice of procedural safeguards shall be made available to parents/guardians of students with a disability once a year and upon:

1. Initial referral for evaluation
2. Each notification of an IEP meeting
3. Reevaluation of the student
4. Registration of a complaint
5. Filing for a pre-hearing mediation conference or a due process hearing

(Ed. Code § 56301; 20 USC 1415(d)(1))

The notice of procedural safeguards shall include information on the procedures for requesting an informal meeting, pre-hearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; the type of representative who may be invited to participate; and the right of the parent/guardian and/or the district to electronically record the proceedings of IEP meetings in accordance with Education Code 56341. A copy of this notice shall be attached to the student's assessment plan and referred to at each IEP meeting. (20 USC 1415(d)(2); Ed. Code §§ 56321, 56321.5)

In addition, the notice of procedural safeguards shall include a full explanation of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints to initiate due process hearings; the student's placement while due process proceedings are pending; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parent/guardians of students in private schools at public expense.. (20 USC 1415(d)(2); 34 CFR 300.504)

CONFIDENTIALITY OF STUDENT RECORDS

It shall be the policy of member LEAs that the confidentiality of personally identifiable data, information, and records maintained by the LEA relating to children with disabilities and their parents and families shall be protected pursuant to the Family Educational Rights and Privacy Act, non-academic programs, and services available to non-disabled children."

The LEA Superintendent or designee shall establish regulations governing the identification, description and security of student records, as well as timely access for authorized persons. These regulations shall ensure parental rights to review, inspect and copy student records. In addition, the regulations will ensure protect the privacy rights of student and the student's family.

The LEA Superintendent or designee shall designate a certificated employee to serve as custodian of records for student records at the district level. At each school site, the principal or a certificated designee shall act as custodian of records for students enrolled at that school. The custodian of records shall be responsible for implementing Board policy and administrative regulation regarding student records. (5 CCR § 431)

Legal Reference:

EDUCATION CODE

48201 Student records for transfer students who have been suspended/expelled
48904-48904.3 Withholding grades, diplomas, or transcripts of pupils causing property damage or injury; transfer of pupils to new schools; notice to rescind decision to withhold
48918 Rules governing expulsion procedures
49060-49079 Pupil records
49091.14 Parental review of curriculum

CODE OF CIVIL PROCEDURE

1985.3 Subpoena duces tecum

FAMILY CODE

3025 Access to records by non-custodial parents

GOVERNMENT CODE

6252-6260 Inspection of public records

HEALTH AND SAFETY CODE

120440 Immunizations; disclosure of information

WELFARE AND INSTITUTIONS CODE

681 Truancy petitions
16010 Health and education records of a minor

CODE OF REGULATIONS, TITLE 5

430-438 Individual pupil records

16020-16027 Destruction of records

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

300.500 Definition of "personally identifiable"

300.501 Opportunity to examine records for parents of student with disability

300.573 Destruction of information

COURT DECISIONS

Falvo v. Owasso Independent School District, 220 F.3d. 1200 (10th Cir. 2000)

Management Resources:

WEB SITES

U.S. Department of Education, Family Policy Compliance Office: <http://www.ed.gov/offices/OM/fpco/>

Adopted by SELPA Superintendents' Council 6-4-20

CONFIDENTIALITY OF STUDENT RECORDS

Districts shall establish, maintain and destroy pupil records according to regulations adopted by the State Board of Education. The following guidelines apply to confidential special education records.

Access:

Special education records are subject to the same privacy and access right as other Mandatory Interim pupil records. In addition, parents have the right to examine all school records relating to the identification, assessment, and educational placement of their child. Even though records may be stamped “confidential” or contain sensitive information, the parent or eligible student has full rights of access. Parents have the right to receive copies within **five business days** of making the request, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing the records, but if this cost prevents the parent from exercising their right to receive the copies, the copies shall be reproduced at no cost to the parents. (Ed. Code §§ 49060 et seq.; 5 CCR §§ 430 et seq.)

The LEA will not permit access to any child’s records without written parental permission pursuant to the Family and Educational Rights and Privacy Act (FERPA), **except** as follows:

- a. District and County Office of Education officials and employees who have a legitimate educational interest including a school system where the child intends to enroll;
- b. Certain state and federal officials for audit purposes;
- c. Certain law enforcement agencies for purposes listed in Education Code and Federal Law;
- d. A pupil 16 years of age or older, having completed the 10th grade who requests access;
- e. Students who are married even if younger than 18 years of age;
- f. District Employees.

(Ed. Code § 49076.)

The LEA may release information from the student’s records for the following:

- a. In cases of emergency when the knowledge of such information is necessary to protect the health or safety of the child and/or others;
- b. To determine the child’s eligibility for financial aid;
- c. To accrediting organizations to the extent necessary to their function;
- d. In cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not; connected with the research and provided that their personally identifiable information is destroyed when no longer needed;
- e. To officials and employees of private schools or school systems in which the child is enrolled or intends to enroll.

(Ed. Code § 49076.)

Test Protocols are considered to be a part of a pupil's confidential file. Protocols must be maintained in a pupil's confidential file and copies provided to the parent upon request.

Confidentiality of Records:

All procedural safeguards of the Individuals with Disabilities in Education Act shall be established and maintained. A custodian of records must be appointed by each LEA to ensure the confidentiality of any personally identifiable student information. This is usually the case manager but may be another person who has been trained in confidentiality procedures.

The custodian of records is responsible for ensuring that files are not easily accessible to the public. Records of access are maintained for individual files, which include the name of party, date, and purpose of access.

(Ed. Code §§ 49060 et seq.; 5 CCR §§ 430 et seq.)

Transfer of Records:

When a student moves from one school to another, records should be transferred in accordance with state and federal law. Federal law requires the LEA from which the student moves to notify the parent of the transfer of records along with the parent's right to review, challenge and/or receive a copy of the transferred record. California law specifies that the LEA which receives the student shall be responsible for the notification. Procedurally, both requirements can be met if the district provides an annual notification to the parents of every student which specifies that records will be transferred and outlines the other rights cited above. This notice should be provided to all parents each fall and to the parents of every new student upon enrollment. (Ed. Code § 49068; 5 CCR §§ 438.)

CALIFORNIA SCHOOLS ARE NOT REQUIRED TO OBTAIN PARENT PERMISSION TO FORWARD RECORDS - IN FACT, THEY ARE REQUIRED TO FORWARD RECORDS TO ANY CALIFORNIA SCHOOL OF NEW OR INTENDED ENROLLMENT "WITHIN FIVE (5) DAYS. *

Records cannot be withheld for nonpayment of fees or fines. (Ed. Code §49060)

Mandatory Permanent Pupil records must be forwarded to all schools; the original, or a copy, must be retained by the sending LEA. Mandatory Interim Pupil records must be forwarded to California public schools and may be forwarded to any other schools. Permitted pupil records may be forwarded at the discretion of the custodian of the records. Private schools in California are required to forward Mandatory Permanent Pupil Records. (Ed. Code § 49068; 5 CCR §§ 438.)

If an agency or person provides a written report to the district, it becomes a part of the pupil's record and, as such, is available to the parent even though it may be marked "confidential." (Technically, it becomes a part of the record only when it is filed or maintained. The custodian of the records should give serious consideration to the educational value of sensitive information

before routinely including it as a pupil record. As alternatives, the report may be summarized in a more useful form, it may be returned for revision, or it may be rejected and destroyed before it becomes a record.)

Correction or Removal of Information (Ed. Code § 49070):

Parents have the right, on request, to receive a list of the types and locations of education records collected, maintained and used by the educational agency. Parents may challenge the content of the student's record if they believe the information in education records collected, maintained or used is inaccurate, misleading, or in violation of the privacy or other rights of the child. This right to challenge becomes the sole right of the student when the student turns 18 or attends a post-secondary institution. The request to remove or amend the content of the student record must be made in writing.

Within 30 days of receiving the request, the LEA Superintendent or designee shall meet with the parent/student and with the employee (if still employed) who recorded the information in question. The LEA Superintendent shall then decide whether to sustain the allegations and amend the records as requested or deny the allegations. If the allegations are sustained, the LEA Superintendent shall order the correction or removal and destruction of the information.

When a student grade is involved, the teacher who gave the grade shall be given an opportunity to state orally, in writing, or both, the reasons why the grade was given before the grade is changed either by the LEA Superintendent or at the decision of the district's Governing Board. Insofar as practical, the teacher shall be included in all discussions relating to the changing of the grade.

If the LEA Superintendent disagrees with the request to amend the records, the parent/student may write within 30 days to appeal this decision to the district's governing board. Within 30 days of receiving the written appeal, the district's governing board shall meet in closed session with the parent and the employee (if still employed) who recorded the information in question. The district's governing board shall then decide whether or not to sustain or deny the allegations. If the district's Governing Board sustains any or all of the allegations, it shall order the LEA Superintendent to immediately correct or remove and destroy the information in question. The decision of the district's governing board is final. The records of the district's governing board proceedings shall be maintained in a confidential manner for one year, after which they will be destroyed, unless the parent initiates legal proceedings within the prescribed period relative to the disputed information.

If the final decision of the district's governing board is unfavorable to the parent or if the parent accepts an unfavorable decision by the district, the parent shall have the right to submit a written statement commenting on the record or explaining any reasons the parent disagrees with the decision of the LEA Superintendent or the district governing board. This explanation shall be included in the records of the child for as long as the record or contested portion is maintained by local educational agency. If the records of the child, or contested portion, is given by the agency to any party, the explanation must also be given to the party.

At the beginning of each school year, parents shall be notified of the availability of the above procedures for challenging student records.

In order to avoid potential challenges, it is recommended that each member district's staff receive training which alerts them to the requirements of privacy and access laws. To the degree that a statement describes a student's behavior, the statement can withstand challenges. Ambiguous terms should be avoided, and staff members should restrict their comments to areas of training. In addition, only those observations which have educational relevancy should be recorded. Statements describing unrelated family incidents or unsubstantiated claims are inappropriate for a student's record.

Record Classification and Destruction:

All school public records are classified as continuing records until such time as their usefulness ceases. While they are continuing records, their destruction is governed by a rather complicated set of guidelines. Certain items are specifically excluded from destruction restrictions. Copies of originals, pupil passes, tardy slips, admit slips, notes from home, including verification of illness and individual memorandum between employees of the district are not records and may be destroyed at any time. (5 CCR § 16022.)

Pupil records are defined within the three categories: **mandatory permanent, mandatory interim, and permitted.** (See below for a full explanation of each category.)

Mandatory Permanent pupil records become Class 1 permanent records when their usefulness ceases, and thus are never destroyed. *Caveat:* These records or a copy, are retained for every pupil who was ever enrolled in the district. A copy of the mandatory permanent records is forwarded for students who transfer.

Mandatory Interim pupil records can be classified as Class 1 permanent or Class III disposable when their usefulness ceases. The district is responsible for the classification subject to district governing board approval. If mandatory interim records are classified as disposable, they are to be destroyed in accordance with CCR Title 5, §16027. This requires that they be retained for three years beyond the date of origination.

The third category of pupil records – **Permitted** - may be destroyed whenever their usefulness ceases without the waiting period. However, if a student transfers, graduates or otherwise terminates attendance, such records shall be held six months and then destroyed.

As Mandatory Permanent pupil records, special education records may be classified as Class III, disposable, when they are deemed as no longer useful. This could occur only after transfer or withdrawal from a special education program. Even after classified as disposable, Mandatory Interim records must be retained for **at least three years** beyond the date of the record's creation.

An important exception applies to those records which were used in assessment for a special education candidate who does not become a special education student. In such cases the records are

Permitted pupil records and can be classified as Class III, disposable, and destroyed whenever their usefulness ceases.

(5 CCR §§ 432, 437.)

Adopted by SELPA Superintendents' Council 6-4-20

PART C - TRANSITION

It shall be the policy of this LEA that children participating in Early Intervention Programs (Individuals with Disabilities Education Act, Part C) and who will participate in preschool programs (Individuals with Disabilities Education Act, Part B) experience a smooth and effective transition between these programs.

Legal References:

EDUCATION CODE

56205(B)(3)

EC 56429

14 GC 95000 et seq.

17 CCR 52000-52175

UNITED STATES CODE, TITLE 20

1431-35

PART C –TRANSITION

Definitions/Descriptions:

Alta California Regional Center (ACRC) is the local regional center and the agency referred to when regional center is noted within the regulation.

IDP is the El Dorado County Office of Education Infant Development Program. IDP provides Early Start/Early Intervention services to children birth to three in the El Dorado County SELPA on behalf of the LEAs in El Dorado County. Part C (formerly known as Part H) governs the federal “early intervention” program for infants and toddlers, aged birth through two years.

The California Early Intervention Services Act is designed “to provide a statewide system of coordinated, comprehensive, family-centered, multidisciplinary, interagency programs, responsible for providing appropriate early intervention services and support to all eligible infants and toddlers and their families.” [California Government Code (Cal. Gov. Code) Sec. 95002.]

All school districts (in El Dorado County IDP) and regional centers in California are responsible for providing early intervention and education services to eligible infants and toddlers younger than 3. The DDS has been designated as lead agency responsible for the administration and coordination of the statewide service delivery system. [Cal. Gov. Code Secs. 95006 & 95007.]

The California Department of Education is responsible for administering services and providing educational programs for infants who meet the following criteria:

- 1) Have solely “low incidence” disabilities - conditions occurring in less than 1% of the school population which are solely visual, hearing, or severe orthopedic impairments, or any combination of those conditions;
- 2) Require intensive special education and services.

The local regional center is responsible for providing early intervention services to all other eligible infants, including children who have developmental delays or are at risk of delay. [Cal. Ed. Code Secs. 56026 & 56026.5; Cal. Gov. Code Sec. 95008; Cal. Welfare & Institutions (Welf. & Inst.) Code Sec. 4435; 5 California Code of Regulations (C.C.R.) Sec. 3031.] Having said that, some counties, including El Dorado County are required to operate their programs for infants and toddlers at the same level they did during the 1980 – 81 fiscal year. [Cal. Ed. Code Sec. 56425; Cal. Gov. Code Sec. 95014(c).] This requirement is sometimes referred to as the district’s (IDP’s) “maintenance of effort” or in SEIS this is noted in services as LEA funded.

Funded Capacity means the number of eligible infants, between 12 and 16 students per instructional unit, that the California Department of Education requires LEAs to serve to maintain funding for their classes/programs/services in a given year pursuant to Education Code section 56728.8 as it read on November 1, 1993.

For infants and toddlers who are eligible to receive services from both a regional center (ACRC) and a local school district (IDP), the regional center is responsible for providing or purchasing appropriate Early Start services that are beyond the responsibilities of the district—but only to the extent these services are required by the federal early intervention law. [Cal. Gov. Code Sec. 95014(c).]

Payor of last resort means the regional center or LEA (IDP) that is required to pay for early intervention services listed on the IFSP when third party payers or other agencies do not have an obligation to pay as required by 34 CFR 303.527.

For services to infants and toddlers who may be eligible for services from both the regional center and school district (IDP). The regional center is the “payer of last resort” and, therefore, ultimately responsible for providing and/or paying [Cal. Gov. Code Sec. 95014(c).]

Preschool Assessment Team (PAT) - The program that completes the Part C to Part B assessments for children in El Dorado County SELPA on behalf of LEAs who have received Early Intervention services on behalf of the child’s district of residence.

Early Start Program

1. Infant Services For Ages 0 to 2-11

The infant services of El Dorado County SELPA (Early Start Program) are based on a clearly defined philosophy which affects all program decisions including staff hiring and development, curriculum, assessment, team decision making, budgetary decisions and community outreach and are compatible with Part C legislation.

- a. Key philosophical premises of infant services for the El Dorado County SELPA include the following:
 - 1) A primary service provider model that utilizes parent coaching. The parent is or is capable of becoming the child's best teacher and advocate. It is the responsibility of the staff to encourage the parent in his/her role.
 - 2) The program shall provide a full range of infant development services including developmental education, speech and language therapy, occupational therapy, physical therapy, team assessment, parent support and advocacy.
 - 3) Interagency collaboration is critical in order to assure comprehensive, coordinated, and non-duplicated services.
 - 4) A variety of program options shall be available to infants with special needs and their families within a natural environment as defined by Part C regulations.
 - 5) When appropriate, play groups within natural environment are conducted which help families to be comfortable, have access to other disciplines, connect with community and promote modeling of quality parenting skills.

- b. The Early Start Infant Program (IDP) shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance the development of the infant.
- c. Receipt of a referral by any initial contact agency begins a 45-day timeline, at which time an Individual Family Service Plan meeting must be held.

2. *Child Find (Procedures for Public Search)*

- a. It is the responsibility of the SELPA in conjunction with the SELPA Steering Committee to ensure that:
 - 1) The public agencies, private schools, appropriate professional persons and parents are notified about special education programs and resources, eligibility requirements, and referral process through:
 - i. public forums, websites
 - ii. brochures
 - 2) Materials describing the special education services available within the SELPA, the referral process and the contact person are prepared. This includes Early Intervention services and information regarding the referral process.
 - 3) Prepared materials are distributed to:
 - i. local child care centers
 - ii. local health care facilities (i.e. physicians, prenatal and postnatal care facilities, hospitals, pediatrician offices)
 - iii. Interagency meetings
 - iv. public health facilities and social services agencies
 - v. parent organizations and support groups
 - 4) Districts work with the Regional Center (ACRC) to locate all infants and toddlers who may be eligible for early intervention services. The Regional Center (ACRC) and LEA shall inform primary referral sources of the:
 - i. eligibility criteria for early intervention services;
 - ii. types of early intervention services available through the Early Start Program;
 - iii. contact persons and telephone numbers for The Regional Center (ACRC), LEA's and IDP; and
 - iv. information reflecting the federal requirement that a referral shall be made to the regional center or LEA (IDP) within two (2) working days of identification of an infant or toddler who is in need of early intervention services.
- b. It is the responsibility of the SELPA in conjunction with the SELPA Steering Committee to ensure that:
 - 1) presentations are made to local professional groups, philanthropic organizations and other organizations established to inform and/or serve culturally diverse populations;

- 2) district staff are trained in public search procedures;
- 3) the record number of inquiries received through public search effort are recorded; and
- 4) that all inquiries initiated through public search efforts are processed.

3. *Evaluation and Assessment*

- a. Upon receipt of a referral, telephone contact is made with the parent regardless if the child is referred through ACRC or call in directly to IDP. A written Consent to Exchange Information is obtained along with further information regarding the child's and family's needs. Through telephone or team conferences with the appropriate agencies, the funding agency is determined, a timeline determined and an evaluation planned.
- b. Evaluation to determine eligibility is completed through a multi-disciplinary procedure. Specific disciplines will be represented as infant family needs dictate. Pertinent medical and developmental information will be obtained if available at assessment or using Exchange of Information (with parent signature) and included in the evaluation and eligibility process.
- c. Assessment procedures (including the eligibility assessment) will be ongoing throughout the child's enrollment.
- d. Assessments may include all developmental areas (physical including vision and hearing, cognitive, communication, social-emotional, and adaptive behavior) and a family directed assessment of their concerns, priorities, and resources.

4. *Individualized Family Service Plans (IFSP)*

- a. If immediate needs exist, an interim IFSP is developed by the service coordinator and the family. This does not alter the need for an IFSP to be held within 45 days from the date of referral. (5 CCR § 52107.)
- b. An initial meeting to develop the IFSP is called within 45 days from the date of referral. All involved agencies will have a representative attend the meeting and/or provide written input for team consideration. (5 CCR § 52102.)
- c. The IFSP includes strengths and needs of the child. A voluntary statement of the parent's resources and priorities of the child may be included. It documents all evaluation results and will include specific outcomes for the child and family. The agency responsible for funding the outcomes and specific actions and timelines are written into the IFSP. An additional responsibility of the IFSP team is to designate a permanent service coordinator for the family. (5 CCR § 52106.)

- d. A periodic review of the IFSP for an infant or toddler and the infant's or toddler's family shall be conducted every six months, or more frequently if service needs change, or if the parent requests such a review. Documentation of each periodic review of the IFSP by the service coordinator shall include:
 - 1) The degree to which progress toward achieving the outcomes is being made;
 - 2) All modifications or revisions of the outcomes or services as necessary.

The periodic review of the IFSP may be carried out by a meeting or by another means that is acceptable to the parent and other participants.

The IFSP will be reviewed every six months, or more frequently if needed or requested by the family, and an IFSP team meeting will be held at least every six months.

(5 CCR § 52102.)

5. *Transdisciplinary Team*

Decisions regarding services for infants and toddlers will be made by transdisciplinary teams including representatives from education, IDP providers, regional centers and active parent participation. (5 CCR § 52104.)

6. *Provision of Specialized Services to Infants and Toddlers with Low Incidence Disabilities*

Part C of the Individuals with Disabilities Act responsibility is to provide appropriate early intervention services for the children who have a solely low-incidence disability. For infants and toddlers, program location options include home based, group services including but not limited to Early Head Start, home and group options provided in the natural environment. The natural environment means settings that are natural or typical for age peers who have no disability including the home and community settings in which children without disabilities participate. A natural environment is a location at which the program would still exist if children with disabilities did not attend. Natural learning environments are the places where children experience everyday, typically occurring learning opportunities that promote and enhance behavioral and developmental competencies. For Deaf/ Hard of Hearing children whose language is primarily sign language or speaking programs if child has cochlear implant or total communication, placements can also include a setting where other children with similar age and language modalities will be present. (5 CCR § 52110.)

7. *Service Coordination*

The role of the service coordinator is to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards, and services authorized. The service coordinator is to facilitate implementation of the IFSP and to coordinate services with other agencies and persons. Services coordination is an Early Intervention service and includes such areas as:

- a. providing the initial notice to the parent;

- b. obtaining consent;
- c. serving as the primary point of contact for coordinating services and assistance for the infant's or toddler's parent, service providers and regional center and/or public agencies;
- d. informing the parent of the availability of additional non-required services of these regulations which may provide assistance to the family;
- e. facilitating the delivery of services on the initiation date identified in the IFSP;
- f. continuously seeking the appropriate services and service providers necessary to enhance the development of each infant or toddler being served for the duration of the infant's or toddler's eligibility;
- g. coordinating the performance of initial and subsequent evaluations and assessments;
- h. participating in the development and review of the IFSP;
- i. monitoring the delivery of services and the degree to which progress toward achieving outcomes is being made through the periodic review of the IFSP;
- j. informing the parent of advocacy services and procedural safeguards contained in these regulations;
- k. facilitating the exchange of information between service providers including health providers, medical case managers, regional centers and LEAs; and
- l. facilitating the development of transition steps in the IFSP.

(34 C.F.R. § 303.34.)

8. *Local Interagency Agreements*

Regional centers and LEAs (IDP) shall develop and maintain local interagency agreements. Local interagency agreements shall include, but not be limited to the following:

- a. the responsibilities of each LEA (IDP) and regional center for meeting the terms of the agreement;
- b. procedures for coordination of child find activities with local public agencies and regional centers to identify infants and toddlers who may be eligible for early intervention services;
- c. specific procedures for coordination of referrals for evaluation and assessment;
- d. procedures for the assignment of a service coordinator;
- e. interagency procedures for identifying the responsibilities of the regional center and LEA(IDP) for completing the evaluation and assessment and determining eligibility within the appropriate time requirements and when an infant or toddler may receive services from both the regional center and LEA;
- f. procedures for the timely exchange of information between regional centers and LEA (IDP);
- g. mechanisms for ensuring the availability of contacts at regional centers and LEA (IDP) at all times during the year;
- h. procedures for interagency IFSP development when infants and toddlers may be eligible for early intervention services from the regional center and the LEA or other state or local programs or services;
- i. procedures to ensure the provision of services during periods of school vacation when services are required on the IFSP;
- j. transition planning procedures which begin at least three months prior to a toddler's third birthday, and as early as six months at the parent's discretion;

- k. procedures for the training and assignment of surrogate parents; and
- l. procedures for accepting transfers of infants or toddlers with existing IFSPs.

(17 CCR § 52140.)

9. *Transition at Age Three*

- a. At least three (3) months prior to the child reaching age three, and as early as six months, in recognition of potential rapid growth and change, the service coordinator will coordinate with the family the development of a Transition Planning Conference (TPC) which will include the steps to be taken to support the transition of the child, at age three, to appropriate services or placement. The Early Start service coordinator shall:
 - 1) notify the parent of a toddler who may be eligible for special education and related services under Part B of the Individuals with Disabilities Education Act that transition planning will occur within the next three to six months; a TPC meeting date will be determined;
 - 2) notify the Preschool Assessment Team that there will be an IFSP meeting requiring the attendance of an LEA (PAT) representative before the toddler is two years nine months, or at the discretion of all parties, up to six months before the toddler turns three years old to specify the transition steps necessary for movement into services under Part B of the Individuals with Disabilities Education Act; and
 - 3) The service coordinator and LEA (PAT) shall agree on the date for the TPC to specify the transition steps necessary for movement into services under Part B.
- b. These steps will be completed with regards to the transition:
 - 1) Discussions will be held and information will be provided to parents regarding:
 - i. the toddler's transition to special education for a toddler with a disability who may be eligible for special education and related services under Part B of the Individuals with Disabilities Education Act; and
 - ii. steps to prepare the toddler for changes in service delivery, including steps to help the toddler adjust to, and function in, a new setting.
- c. For toddlers who may be eligible for preschool services from the LEA under Part B of the Individuals with Disabilities Education Act, the transition steps necessary for movement into services under Part B or other appropriate program, written at the TPC meeting before the toddler is two years nine months, or at the discretion of all parties, up to six months before the toddler's third birthday, shall include the following:
 - 1) with parental consent, the transmission of information about the toddler to the LEA (PAT) including evaluation and assessment information and copies of the IFSP that have been developed and implemented;
 - 2) identification of needed assessments to determine regional center (ACRC) and special education eligibility and determining the regional center or LEA (PAT) responsible and time lines for completing the needed assessments;

- 3) statements of the steps necessary to ensure that the referral to (PAT), is received by in a timely manner to ensure that assessments required under the provisions of Part B of the Individuals with Disabilities Education Act are completed and an IEP is implemented by the toddler's third birthday;
- 4) a referral for evaluation and assessment for services under Part B of the Individuals with Disabilities Education Act no later than the time that the toddler is two years nine months of age or before (PAT) breaks in school services if the toddler will become three years of age during a break in school services. The TPC shall contain steps necessary to satisfy the referral and IEP development requirements contained in Education Code Sections 56321 and 56344;
- 5) identification of the people responsible for convening an IEP and final IFSP meeting, and the person responsible for convening an Individual Program Plan (ACRC process for children who are eligible for ACRC services past their third birthday) IPP meeting, if necessary, for a toddler by age three to:
 - i. review the progress toward meeting the early intervention services outcomes identified in the IFSP;
 - ii. determine the eligibility for special education and develop the IEP; and
 - iii. develop the IPP if the toddler is also eligible for services under the Lanterman Developmental Disabilities Services Act as required in Welfare and Institutions Code Section 4646.
- 6) If a toddler is older than two years and six months on the date of the initial IFSP, the IFSP shall include steps to ensure transition to Special Education Services under Part B of the Individuals with Disabilities Education Act or other services that may be appropriate.
- 7) Regional centers may continue providing or purchasing services for a preschooler who has been determined eligible for regional center services
 - i. until the beginning of the next school term after the toddler's third birthday during a period when the LEA special education preschool program is not in session; and,
 - ii. when the multidisciplinary team determines that services are necessary until the LEA special education program resumes.

10. Family Involvement Activities

- a. The parent is fully involved in the referral-assessment-IFSP process. Parents are involved in assessment and parent input is valued and encouraged; the parent is a full member and an active participant of the IFSP team.
- b. Efforts will be made to link parents with other parents for support and encouragement. This includes encouraging parents to participate in local resources provided by our local HUBs, Warmline, Community Advisory Committee, etc.
- c. Parents will be encouraged to actively participate in Community Advisory Committee meetings.
- d. Staff development activities will focus on the infant and toddler with special needs and their families as a dynamic system. Staff members will be encouraged participate in staff development provided through EDCOE and SELPA.
- e. Staff members will work as a transdisciplinary team to provide assessment for eligibility, ongoing assessment, IFSP development and ongoing program implementation. The

transdisciplinary team may include, but need not be limited to, qualified persons from the following disciplines:

- 1) early childhood special education;
- 2) speech and language therapy;
- 3) nursing, with a skill level not less than that of a registered nurse or licensed vocational nurse; and
- 4) social work, psychology or mental health
- 5) Occupational Therapist
- 6) Physical Therapist.

11. *Dispute Resolution*

The same dispute resolution procedure which is utilized for 3-21 year olds shall be applicable.

12. *Child Services for Ages 3-4*

Services for all 3 and 4 year olds are delivered through the processes described in the Procedural Handbook under identification, referral, assessment, instructional planning, implementation and review and could include PAT.

13. *Private Schools/Students Unilaterally Placed by Parents*

Member Districts shall identify and serve disabled private school students pursuant to the requirements set forth in SELPA Board Policy 7; Students with Disabilities Enrolled by their Parents in Private School.

Legal Reference:

GOVERNMENT CODE

California Early Intervention Services Act:

95016 et seq. - Services

17 California Code of Regulations- Public Health:

52020, 52022 - Eligibility

52040, 52060 - Child Find and Referral

52082, 52086 - Evaluation and Assessment

52100 - Individualized Family Service Plan (IFSP)

52102, 52104, 52106, 52107, 52108- Content and Procedures for the IFSP

52112 - Transfer and Transition Procedures

52120 - Service Coordination

52121 - Service Coordination Responsibilities

52140 - Local Interagency Agreements

Adopted by SELPA Superintendents' Council 6-4-20

STUDENTS WITH DISABILITIES (AGES 5 THROUGH 21) ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOL

It shall be the policy of the member districts of the El Dorado County SELPA to ensure that children with disabilities voluntarily enrolled by their parents in private school shall receive special education and related services in accordance with federal law, local procedures adopted by the district where the private school is located, and the corresponding SELPA. The proportionate amount of funds will be allocated for the purpose of providing special education services to children with disabilities voluntarily enrolled in private schools by their parents.

PRESCHOOL STUDENTS ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

Preschool students aged 3-5 enrolled in private schools are not “parentally placed private school students” and treated the same as other students aged 3-5. Preschool students shall be provided with an IEP by the responsible LEA pursuant to Parts VII and VIII of Administrative Regulation 7. Private preschool students shall not be provided with an ISP nor otherwise denied their right to a free and appropriate public education.

Legal Citations:

Title 20 United States Code section 1412(a)(10) (A)
Cal. Education Code §§ 56170 et seq.

STUDENTS WITH DISABILITIES (AGES 5 THROUGH 21) ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOL

DEFINITIONS:

District of Residence, ("DOR"): As used in this policy, the district of residence refers to the school district within which boundaries the child with a disability resides.

Facility Local Educational Agency, ("Facility LEA"): As used in this policy, the Local Educational Agency, LEA, refers to the school district where the private school or facility is located.

Private School Children with Disabilities: As used in this policy, "private school children with disabilities" refers to children with disabilities (ages 5 through 22) enrolled by their parents in private schools or facilities but does not refer to any preschool students aged 3-5 enrolled in private schools.

Private School or Facility: As used in this policy, "private school or facility" means: (1) private full-time day school as defined in Education Code section 48222 (including religious schools); (2) private tutor pursuant to California Education Code section 48224; and/or (3) any other California Department of Education ("CDE") identified educational institution, program, arrangement, or facility not sponsored, maintained, or managed by the school district and for which the school district does not collect average daily attendance funds; (4) CDE authorized private school affidavit.

PROCEDURES:

The following procedures shall be followed by the member districts in the El Dorado County Special Education Local Plan Area ("SELPA") to ensure that each member district:

1. Locates, identifies, and evaluates all children ages three (3) to twenty-two (22) with disabilities enrolled by their parents in private schools, including religious schools, who may be eligible for special education services;
2. Offers a Free and Appropriate Public Education (FAPE) to all children ages three (3) to twenty-one, not yet twenty-two with disabilities, enrolled by their parents in private schools including religious schools, who are determined to be eligible for special education services.

PART I. CONSULTATION

The SELPA/facility LEAs 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:

- (A) 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;
- (B) 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;
- (C) the consultation process among the facility 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;
- (D) 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
- (E) how, if the facility 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 facility 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 SELPA/facility 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 SELPA/facility LEAs 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:

- (A) The SELPA/facility LEA's consultation was not meaningful and timely, or
- (B) The SELPA/ facility LEA did not give due consideration to the views of the private school official.

If a complaint is filed:

- (A) The private school official must provide the basis of the complaint of noncompliance, and
- (B) The SELPA/facility LEA must forward the appropriate documentation to the CDE.

If 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.

(Ed. Code § 56172.)

PART II. CHILD-FIND

Child find for children enrolled by their parents in private school is the responsibility of the facility LEA (district in which the private school or facility is located).

- (A) The DOR and/or the facility LEA shall undertake the following child-find activities with regard to private school children ages three (3) to twenty-two (22):
 1. Consult with representatives of private school children with disabilities (including private school administrators, teachers, parents, and students) regarding the child-find process, including, but not limited to, criteria for special education eligibility and special education referral procedures under federal and State laws and regulations.
 2. Distribute materials to representatives of private school children with disabilities (including private school administrators, teachers, parents and students) regarding issues, including but not limited to, criteria for special education eligibility and special education referral procedures under federal and State laws and regulations.
 3. The proportionate share of federal funds described in Section VI (B) below, shall not be used for child-find activities.
- (B) The facility LEA and/or DOR shall ensure child-find activities undertaken for private school student are comparable to activities undertaken for children with disabilities ages three (3) to twenty-two (22) with disabilities in public schools. Child-find activities shall include consultation with representatives (staff and parents) of private school children three (3) to twenty-two (22) with disabilities regarding how to carry out child-find activities.

(Ed. Code § 56171.)

PART III. SPECIAL EDUCATION REFERRAL

- (A) Students must be referred for special education instruction and services only after the resources of the general education program have been considered and, where appropriate, utilized.

- (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 may be eligible for special education services, a referral shall be directed to the Special Education Administrator of the facility LEA who shall notify the DOR.

PART IV. INITIAL INDIVIDUAL EDUCATION PROGRAM (IEP) TEAM MEETING

- (A) Upon identifying a child suspected of being a child with a disability the facility LEA or DOR shall, after obtaining parent permission, conduct an appropriate and timely initial assessment of the child's needs.
- (B) If the child is found eligible for special education services, an appropriate offer of FAPE is made at the IEP meeting. If the parents of a private school child with a disability have indicated they are 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 facility LEA shall develop an Individual Service Plan ("ISP") in accordance with this policy and federal and state laws and regulations.
- (C) The facility LEA or DOR shall make the eligibility decision in accordance with applicable State and federal laws and regulations.
- (D) If the parents decline the ISP, in order to ensure that the parents' intentions are clear, the facility LEA/ DOR shall request that the parents participate in and sign the El Dorado County SELPA Individual Service Plan (ISP) indicating their understanding of the offer of services through an ISP.
- (E) 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 shall develop an IEP for the child.

1. If the parents of a private school child with a disability agree with and consent to the IEP developed by the IEP team, the IEP shall be implemented without undue delay following the IEP team meeting.
2. If the parents of a private school child with a disability agree with, and 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 facility LEA/ 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."

- (F) If the Parents provide their agreement as indicated in above, the facility LEA will develop an Individual Service Plan in accordance with this policy and federal and state laws and regulations.

PART V. CHILD COUNT REQUIREMENTS

- (A) The facility 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 in the facility LEA boundaries.
 - 1. 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.
 - 2. The child count shall be used to determine the amount that the facility 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.
- (B) Following the consultation, the SELPA/facility LEA shall conduct an annual count of the number of private school children with disabilities.

PART VI. INDIVIDUAL SERVICE PLAN (ISP) POLICY

- (A) 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.
- (B) Pursuant to federal and state law and regulations, the SELPA/facility LEA shall spend a proportionate share of federal funds to provide special education and related services to private school children with disabilities ages five (5) to twenty-one (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:
 - 1. Which disabling conditions will be served;
 - 2. What services shall be provided;
 - 3. How and where and by whom services will be provided; and
 - 4. How services will be evaluated.
- (C) Following timely and meaningful consultation, the SELPA/facility LEA will issue the following report to the respective private schools:

After consulting with representatives of private school children with disabilities, the SELPA/facility LEA determined that the following services shall be provided to private school children with disabilities ages five (5) to twenty-one (22) who are determined to be eligible for special education services:

- Speech and Language Therapy (for S/L eligible students) - 10 hours per school year
 - Vision Services (for Visually Impaired eligible students) - 10 hours per school year
- (D) 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 facility LEA shall provide to the child as determined by the SELPA/facility LEA in this policy. The facility 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 facility LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
- (E) The services offered in this policy shall be reviewed by the SELPA and member districts at least annually by means of a survey initiated by the SELPA and member districts and/or consultation with representatives of private school children with disabilities ages five (5) to twenty-one (22) (including private school administrators, teachers, parents and students).

PART VII. IEP MEETINGS AFTER THE INITIAL IEP TEAM MEETING

- (A) All children with disabilities eligible for special education who reside in the Facility LEA are entitled to receive a FAPE from the facility LEA if they are enrolled in public school. One year after an eligible private school child's initial IEP team meeting and annually thereafter, the facility LEA shall notify the child's parents in writing that the facility LEA:
1. Continues to offer a FAPE in accordance with federal and state laws and regulations;
 2. Is ready, willing, and able to schedule an IEP team meeting for their child in order to offer the child a FAPE, subject to assessment, if appropriate, if the parents express an interest in enrolling their child in public school.

Unless the paragraph, below applies, the parents shall be requested to send the document back to the facility LEA and indicate their agreement with **one** of the following statements:

1. ___ I understand that the facility LEA 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.
or
___ I would like to schedule an IEP for my child.
2. ___ 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: _____ in order to schedule the IEP meeting.
(Form to be developed by SELPA to be used in all districts.)

- (B) Notwithstanding the paragraph above, the facility LEA shall convene an IEP team meeting at least every three years in order to determine continuing eligibility for special education.

PART VIII. PRIVATE PRESCHOOL STUDENTS WITH DISABILITIES (AGE 3.0 - 5.11)

- (A) If an IEP team determines that a preschool child with a disability is eligible for special education services the IEP team shall develop an IEP offering placement and related services to that student.
- (B) Preschool children who qualify for speech and language services through an IEP will receive that service at the district of residence.

PART IX. DISPUTE RESOLUTION

- (A) 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.
- (B) No facility 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 a FAPE available to the child, and (2) the parents voluntarily elected to place their child in a private school.
- (C) 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 facility 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.

- (D) Disputes regarding the SELPA's/facility LEA's policy regarding *Students 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.

Legal Citations:

Title 20 United States Code section 1412(a)(10) (A)
Cal. Education Code §§ 56170 et seq.

COMPLIANCE ASSURANCES

It shall be the policy of the El Dorado County SELPA that the local plan shall be adopted by the appropriate governing board(s) of each member district, and is the basis for the operation and administration of special education programs; and that the agency(ies) herein represented will meet all applicable requirements of state and federal laws and regulations, including compliance with the Individuals with Disabilities Education Act (IDEA), the Federal Rehabilitation Act, Section 504 of Public Law and the provisions of the California Education Code, Part 30.

Legal References:

EDUCATION CODE
56205(A)(11)
56195.7

UNITED STATES CODE, TITLE 20
1412

Adopted by SELPA Superintendents' Council 6-4-20

COMPLIANCE ASSURANCES

Monitoring Compliance with State and Federal Laws

Education Code Section 56195.7 requires development of written agreements to be entered into by the entities participating in the Local Plan for Special Education which include regionalized services to local program. Among the regionalized services is the provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem.

SELPA monitoring activities to meet the Education Code requirement specified above may include but not be limited to the following:

- Observation of special education programs operated by each member district
- Periodic review of Individualized Education Program (IEP) documents developed by member district IEP teams
- Review and analysis of member district CALPADS data
- Participation in the California Department of Education's (CDE) Quality Assurance Process (QAP) (i.e., Self Reviews, Intensive Reviews and follow-up corrective action activities) for each member district
- Participation in selected member district IEP team meetings
- Review of selected member district assessment reports
- Provision of ongoing training and technical assistance regarding compliant special education procedures

Correction of identified problems may be carried out through the following means:

- Consultation with the administrative personnel responsible for the member district's special education programs
- Provision of training and technical assistance as necessary to clarify compliant practices with appropriate staff of member districts
- Assistance with correction of noncompliant procedures or practices identified through state or local compliance complaint investigations

In cases where the identified problem persists following implementation of such steps as outlined above, the LEA Superintendent shall be notified regarding the issue.

The districts within the El Dorado County SELPA shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of Section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Individuals with Disabilities Education Act (IDEA) and the California Department of Education (CDE)

Federal and state law requires the California Department of Education (CDE), as the state education agency (SEA), to enforce local compliance with laws guaranteeing children with disabilities a free appropriate public education (20 U.S.C. Section 1412(a)(11); 34 C.F.R. Section 300.600; Ed. Code Section 56000). CDE has established a process to monitor complaints and timelines associated with complaints through individual compliance complaint investigations, intensive review, and the quality assurance process (QAP). A complaint investigation is a formal inquiry required by federal and state law when it is alleged that a public education agency (PEA) has not followed a special education law or regulation. An investigation is required when it is alleged that:

- A due process final decision has not or is not being implemented;
- The health, safety, and welfare of a student or students are of concern;
- Federal law (Part B of IDEA) is not being followed;
- The student's IEP is not being implemented as written;
- A public agency, other than the member district has failed or refused to comply with an applicable law or regulation relating to the provision of free appropriate public education to students with disabilities (Government Code Section 7570, i.e., mental health, etc.).

The districts within the El Dorado County SELPA will follow the timelines and processes established by the CDE as it relates to compliance issues. Upon receipt of a complaint, the member districts will within the 10 calendar-day timeline for local resolution (if appropriate):

- Contact the CDE complaint investigator to clarify the complaint and to negotiate the local findings needed to clear the complaint;
- Contact the parent to clarify the issues;
- Conduct a fact-finding process on the case related specifically to the complaint allegations (determine what will need to be reviewed: IEP, assessment plan, site logging procedure to referral, timelines for assessment/IEP, etc.) within 10 calendar days.

The member district will work with the family to resolve the complaint. The following three outcomes could occur:

#1 – Resolution

The district and parent are able to resolve the issues identified in the complaint document.

- The district will use the CDE-provided complaint resolution form to record:
 - Information gathered in the investigation.
 - Resolution achieved.

- Obtain appropriate signatures.
- Fax and send hard copy of the report to the CDE investigator.
- If necessary, hold an IEP to document agreement

#2 - Resolution in Process

The district will attempt to negotiate a resolution to the issues identified in the complaint document if the complaint is not settled by the ninth day of the ten-day timeline.

- By the ninth day of the ten-day timeline, the member district will contact the CDE (verbal or written communication) and provide an update as to the status of the case.
- The district will attempt to secure a timeline extension with the parent in order to continue a negotiated resolution at the local level.
- The district will provide CDE a copy of the written time extension. The district will request that CDE approve the timeline extension.
- The district will receive written communication from CDE with a copy to the parent of the agreements related to extending the time line in order to continue to resolve the issues at the local level.

#3 – No Resolution

No resolution due to (but not limited to) the following:

- District investigation findings do not substantiate the parent's complaint allegations.
- District and parent are unable to find a "win-win" resolution to the allegations substantiated in the investigation.
- District and special education service provider are not able to negotiate a resolution.

The district contacts CDE to notify that no resolution can be reached.

CDE will conduct their own investigation and provide both parties with their findings.

If the member district disagrees with the CDE finding or concessions, that district may choose not to sign the Report of Complaint Resolution, implying continued CDE investigation. If the district agrees with CDE findings and signs the document, the district will ensure that the finding is cleared within the timelines agreed to by the district.

Member districts acknowledge their responsibility and liability to their fellow SELPA members by following federal and state laws and timelines related to the filed complaint. Districts recognize that any prolonged and substantial noncompliance, determined through CDE monitoring or investigation may result in CDE imposed sanctions that may have a negative effect on the entire El Dorado County SELPA.

The SELPA Director will inform the district Superintendent and the SELPA Superintendents' Council at a public meeting of a member district's prolonged and substantial noncompliance.

The SELPA Director will provide supportive documentation to the district compliant investigation findings.

- Attempts to resolve the case locally.
- Interactions with CDE in an attempt to resolve the issues.
- Requests for mediation through the Office of Administrative Hearing (OAH) and the mediation outcomes.

The SELPA Superintendent's Council may:

- Provide a directive to the district through an action.
- Ask the County Superintendent/designee to mediate with one or all parties.

Section 504 of the Rehabilitation Act of 1973

The districts within El Dorado County SELPA recognize the need to identify and locate every qualified disabled person enrolled in their districts who is not receiving a public education and take appropriate steps to notify those persons and their parents or guardians of the district's duties under Section 504 of the Rehabilitation Act of 1973. Specifically, the districts shall make efforts to identify students with physical and/or mental impairments which substantially limit a major life activity in order to provide those students with appropriate educational opportunities. Major life activities include, but are not limited to seeing, hearing, speaking, walking, breathing, learning, working, caring for oneself, and performing manual tasks. The districts' governing boards further adopt a policy of nondiscrimination in provision of educational services. Eligible disabled students who have not graduated are covered by these procedures.

The districts recognize that special procedures and guidelines may be necessary when disciplining an identified 504 student in order to ensure that the student is not disciplined for conduct which is caused by his or her disability. Parents or guardians who allege that the LEA has violated the provisions of Section 504 may:

1. File a complaint with the Section 504 Coordinator, who will investigate the allegations to the extent warranted by the nature of the complaint in an effort to reach a prompt and equitable resolution; or
2. Contact the SELPA to see if SELPA mediation could assist in reaching resolution
3. File a complaint with the Office of Civil Rights.

Adopted by SELPA Superintendents' Council 6-4-20

GOVERNANCE

It shall be the policy of each member district in the El Dorado County SELPA to support and comply with the provisions of the governance structure and any necessary administrative support to implement the Local Plan.

Legal References:

EDUCATION CODE

- 56205(a)(12)
- 56001
- 56190-4
- 56195.1(b)(c)
- 56195.3
- 56205(b)(4)
- 56205(b)(5)
- 47640-47647
- 56195.7
- 56030
- 56200
- 56200(c)(2)
- 56140
- 56195
- 56140(b)(2)

UNITED STATES CODE, TITLE 20

- 1412(a)
- 1413(a)(1)
- 1413(a)(5)

Adopted by SELPA Superintendents' Council 6-4-20

GOVERNANCE

GOVERNANCE AND ADMINISTRATIVE STRUCTURE

The El Dorado County SELPA is a multi-district SELPA comprised of fourteen local education agencies, and the El Dorado County Office of Education. The participating LEAs agree to leverage collective resources to provide for the coordinated delivery of programs and services to special needs students. The El Dorado County Office of Education is the designated Responsible Local Agency (RLA) for the El Dorado County SELPA. The El Dorado County Office of Education is considered an LEA for all purposes of this agreement except where referred to as the RLA. In adopting the local plan, each participating LEA agrees to carry out the duties and responsibilities assigned to it within the plan and to ensure equal access to programs and services to eligible persons requiring special education in the service region.

The governance structure of the SELPA is established by agreement among the governing boards of the member LEAs. It consists of the SELPA Superintendents' Council, the SELPA Executive Committee, and the Community Advisory Committee. The SELPA Administrator may convene additional committees. The SELPA Administrator is responsible for the coordination of the SELPA and the implementation of the local plan.

ADMINISTRATIVE UNIT

Pursuant to the provisions of Education Code Section 56030 et seq., the Administrative Unit (AU) shall receive and distribute regionalized service funds, provide administrative support and coordinate the implementation of the El Dorado County Local Plan for Special Education in all member districts located within the El Dorado County SELPA. The AU shall perform such services and functions required to accomplish the goals set forth in the plan.

California Education Code Section 56200(c)(2) requires that the Local Plan, "specify the responsibilities of each participating county office and district governing board in the policy-making process, the responsibilities of the superintendent of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the plan." In accordance with this provision, the El Dorado County SELPA has developed the following governance structure and policy development and approval process:

RESPONSIBILITIES OF EACH GOVERNING BOARD IN THE POLICY-MAKING PROCESS AND PROCEDURES FOR CARRYING OUT THE RESPONSIBILITY

The governing board for each district and the County Board of Education approves the Agreement for Participation and the Local Plan for Special Education. As described within those documents, the Boards of Education delegate the administrative policy-making process and procedures for carrying out that responsibility to the governance structure of the SELPA.

SELPA SUPERINTENDENTS' COUNCIL

The SELPA Superintendents' Council (SSC) is an administrative body that shall consist of a superintendent from each of the participating LEAs and the superintendent of the AU or a designee, each of whom shall provide a liaison function between the LEA governing board and the

SSC. LEA superintendents exercise their authority and responsibilities in accordance with policies and procedures of their local governing boards and within the voting procedures of the SSC. The SSC shall consider recommendations submitted by the SELPA and take action as appropriate. The SELPA will have the responsibility for the coordination and implementation of SSC decisions. The SSC shall have final authority to act upon fiscal and policy recommendations.

Effective July 1, 2020, the allotted votes on the SELPA Superintendents’ Council shall be as follows:

District Name	Votes
Black Oak Mine Unified	1
Buckeye Union	1
Camino Union	1
El Dorado Union High School District	1
El Dorado County Office of Education	1
Gold Oak Union	1
Gold Trail Union	1
Indian Diggings	1
Latrobe	1
Mother Lode Union	1
Pioneer Union	1
Placerville Union	1
Pollock Pines	1
Rescue Union	1
Silver Fork	1
Total	15

The El Dorado County Office of Education is considered an LEA for all purposes of this agreement except where referred to as the AU.

Representatives of a majority of member LEAs must be present in order to form a quorum and take action on any item. For instance, to form a quorum requires attendance by fifty percent (50%) plus one of the members (8 LEAs). Approval of any action requires a majority vote of the quorum.

The SCC shall adopt a public meeting schedule annually according to Brown Act requirements to receive and take action on information or SELPA recommendations.

SELPA EXECUTIVE COMMITTEE

The SELPA Executive Committee serves as an informal advisory body to the SELPA Administration. The Committee may consider and advise the SELPA administration on matters including, but not limited to, program operations, policies and procedures, and fiscal considerations. The committee shall have no continuing subject matter jurisdiction.

The Committee shall be comprised of superintendents representing one (1) high school district, one (1) unified district, and three (3) elementary districts and representatives from the County Office of Education. When considering and advising matters pertaining to the SELPA, Superintendents on the committee will represent the interests of other Local Education Agencies of similar size, and with like interests.

At no time shall an Executive Committee meeting be conducted with a majority of SELPA members. Summaries of the Executive Committee meetings shall be transmitted to the full membership of the SELPA Superintendents' Council.

SPECIAL EDUCATION COMMUNITY ADVISORY COMMITTEE – CAC

Each district shall be entitled to appoint one parent representative, approved by the LEA governing board, to participate in the Special Education Community Advisory Committee to serve staggered terms in accordance with E.C. § 56191 for a period of at least two years. Selected parents will be the parent of a child with a disability. This does not prohibit additional parents from participating in CAC meetings or activities. This group will advise the SELPA Administrator on the implementation of the El Dorado County Local Plan for Special Education (“Local Plan”).

The Community Advisory Committee shall have the authority and fulfill the responsibilities that are defined for it in the local plan. The responsibilities shall include, but need not be limited to, all the following:

- (a) Advising the policy and administrative entity of the special education local plan area regarding the development, amendment, and review of the local plan. The entity shall review and consider comments from the community advisory committee.
- (b) Recommending annual priorities to be addressed by the plan.
- (c) Assisting in parent education and in recruiting parents and other volunteers who may contribute to the implementation of the plan.
- (d) Encouraging community involvement in the development and review of the local plan.
- (e) Supporting activities on behalf of individuals with exceptional needs.
- (f) Assisting in parent awareness of the importance of regular school attendance.

- (g) Supporting community involvement in the parent advisory committee established pursuant to Section 52063 to encourage the inclusion of parents of individuals with exceptional needs to the extent these pupils also fall within one or more of the definitions in Section 42238.01.

PERSONNEL QUALIFICATIONS

It shall be the policy of member LEAs to ensure that personnel providing special education related services are appropriately and adequately prepared and trained, and that those personnel have the content knowledge and skills to serve children with disabilities. This policy shall not be construed to create a right of action on behalf of an individual student for the failure of a particular LEA staff person to be highly qualified or to prevent a parent from filing a State complaint with the California Department of Education (CDE) about staff qualifications.

Each member district will support and assist the state's efforts and activities to ensure an adequate supply of qualified special education, general education, and related services personnel. This shall include recruitment, hiring, training and efforts to retain appropriately qualified personnel to provide special education and related services under this part to children with disabilities.

Legal References:

EDUCATION CODE

56205(a)(13)
56058
56070

State Board Policy 6/11/98

UNITED STATES CODE, TITLE 20

1412(a)(14-15)
1413(a)(3)

Adopted by SELPA Superintendents' Council 6-4-20

PERSONNEL QUALIFICATIONS

Special Education Staff

Teachers assigned to serve students with disabilities shall possess the credential that authorizes them to teach the primary disability of the students within the program placement in the student's Individualized Education Program (IEP). (5 CCR §§ 80046.5 through 80048.6.) Special education teachers who teach core academic subjects shall possess the qualifications required by the No Child Left Behind Act. (20 USC §§ 1401, 6319, 7801; 34 CFR §§ 200.55- 200.57, 300.18; 5 CCR §§ 6100-6126)

The LEA Superintendent or designee shall ensure that caseloads for special education teachers are within the maximum caseloads established by law.

Education Specialists

Member districts providing special education must adopt policies regarding education specialists. In accordance with this requirement, each member district's Governing Board shall employ certificated education specialists to provide services including but not limited to the following:

1. Instruction and services for students whose needs have been identified in an individualized education program (IEP) and who are assigned to regular classroom teachers for the majority of their school day;
2. Information and assistance to students with disabilities and their parents/guardians;
3. Consultation with and provision of resource information and material regarding students with disabilities to their parents/guardians and other staff members;
4. Coordination of special education services with the regular school programs for each student enrolled in the special education program;
5. Monitoring of student progress on a regular basis, participation in the review and revision of IEPs as appropriate, and referral of students who do not demonstrate sufficient progress to the IEP team; and
6. Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

The special education program shall be directed by a person in possession of a valid CA Administrative Services Credential.

No education specialist shall have a caseload which exceeds 28 students. As necessary, and with the agreement of the education specialist, the member district Governing Board may request a waiver from the State Board of Education to increase the caseload to no more than 32 students, provided that an individual education specialist does not have a caseload exceeding 28 students for more than two school years and has the assistance of an instructional aide at least five hours daily during the period of the waiver.

Education specialists shall not simultaneously be assigned to serve as education specialists and to teach regular classes.

Related Services Personnel and Paraprofessionals

Related services personnel and paraprofessionals must have qualifications established by the member district that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

The member district must ensure that related services personnel who deliver services in their discipline or profession meet the requirements to be licensed within their profession, having not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

The member district must allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, to be used to assist in the provision of special education and related services under this part to children with disabilities.

Legal Reference:

EDUCATION CODE

44250-44279 Credentials, especially:

44256 Credential types, specialist instruction

44265 Special education credential

56195.8 Adoption of policies 56361

Program options

56441.7 Maximum caseload (programs for individuals with exceptional needs between the ages of three and five inclusive)

CODE OF REGULATIONS, TITLE 5

3051.1 Language, speech and hearing development and remediation; appropriate credential

3100 Waivers of maximum caseload for resource specialists

80046.5 Credential holders authorized to serve students with disabilities

80048-80048.6 Credential requirements and authorizations

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

200.61 Parent notification regarding teacher qualifications

300.18 Highly qualified special education teachers

300.156 Personnel Qualifications

Management Resources:

WEB SITES

California Association of Resource Specialists and Special Education Teachers:

<http://www.carsplus.org>

California Speech-Language-Hearing Association: <http://www.csha.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

PERFORMANCE GOALS AND INDICATORS

Each member district of the El Dorado County SELPA will comply with the requirements of the performance goals and indicators developed by the CDE and provide data as required by the CDE.

Legal References:

EDUCATION CODE

56205(a)

UNITED STATES CODE, TITLE 20

1412(a)(16)

Adopted by SELPA Superintendents' Council 6-4-20

PARTICIPATION IN ASSESSMENTS

Each member district of the El Dorado County SELPA shall ensure that all students with disabilities participate in state and district-wide assessment programs. The IEP team determines how a student will access assessments with or without accommodations, or access alternate assessments, consistent with state standards governing such determinations.

The LEA Superintendent or designee shall administer mandatory student assessments within the California Assessment of Student Performance and Progress (CAASPP) program as required by law and in accordance with LEA Superintendent policy and administrative regulation.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATE CODE, TITLE 20
1412(a)(17)

Adopted by SELPA Superintendents' Council 6-4-20

PARTICIPATION IN ASSESSMENTS

The member districts within El Dorado County SELPA are committed to all students having access to state and/or district assessments. Through the IEP process each student's strengths and weaknesses will be evaluated as to the content of the district and/or statewide assessment to determine appropriate means of access to the assessment(s).

The SELPA IEP forms include an assessment plan as well as statements related to district and statewide assessment.

Special education students shall be tested with the designated state achievement test and the standards-based test, unless their individualized education program specifically identifies that the student will be tested with the state-approved alternate assessment. The IEP team will determine which assessment will be most appropriate for each student based on guidance provided by the California Department of Education.

A student shall be permitted to take exams or assessments with the accommodation(s) and/or modification(s) as identified in his/her IEP or 504 plan. These accommodations and/or modifications must be in compliance with the current testing accommodation/modification guidelines provided by the California Department of Education.

School personnel have a responsibility to ensure special education students have appropriate accommodations and/or modifications to meet the individual needs of the students and allow access to all State and district assessments. Each member district will follow and implement the California State Board of Education policies and administrative regulations related to assessment, data collection and waivers.

Legal References:

EDUCATION CODE

56205(a), 56345, 60640, 5 CCR 853, 5 CCR 850

SUPPLEMENTATION OF STATE, LOCAL AND OTHER FEDERAL FUNDS

Funds received by the El Dorado County SELPA from Part B of the IDEA shall be expended in accordance with the applicable provisions of the IDEA and shall be used to supplement, and not to supplant State, local, and other Federal funds.

State and federal funds received by El Dorado County SELPA are allocated and distributed among the local educational agencies in the SELPA according to the adopted El Dorado County SELPA Allocation Plan.

EDUCATION CODE:

56195
56195.7(i)
56205(a)(12)(D)(ii)(II)
56205(a)(16)
56841(a)(2)

Legal Reference:

20 USC §1413 (a)(2)(A)(ii)
34 CFR §300.202(a)

Adopted by SELPA Superintendents' Council 6-4-20

FEDERAL MAINTENANCE OF EFFORT (MOE)

Compliance

The El Dorado County SELPA (SELPA) shall meet federal MOE regulations that require the use of federal funds to pay the excess costs of providing special education and related services to children with disabilities and to supplement and not supplant state and local funds for special education (34 CFR 300.202-300.205).

The SELPA Administrative Unit (AU), as the grantee of federal funds from the California Department of Education (CDE), shall distribute all or part of the federal funds received to participating eligible local education agencies (LEAs) within the SELPA through a sub-granting process.

LEAs will annually compile, and submit to the SELPA, budget and expenditure information required to conduct the federally-required calculations and compliance testing, determining the status of MOE compliance for the SELPA as a whole and for each LEA.

Eligibility

The state has directed the SELPA, as the conduit for IDEA Part B grant funds, to be responsible for determining eligibility of an LEA to retain funds received and to receive future funds. To fulfill these requirements, IDEA establishes four annual compliance tests on two different data sets.

The two data sets are:

1. Comparison of the grant year budget to preceding year actual expenditures.
2. Comparison of Prior Year actuals to second prior year actuals, pursuant to the subsequent year rule.

Subsequent Year Rule

When an LEA fails to meet any of the four required MOE tests on either of the two data sets in a year, the LEA is required in subsequent fiscal years to maintain effort at the level prior to the failure. Thus, the LEA must calculate its level of effort based on the most recent fiscal year in which the MOE test was passed.

MOE standards and test procedures are provided by the CDE based on federal requirements and are included as an AR to this policy.

Legal References:

20 USC § 1413 (a)(2)
34 CFR §300.203

EDUCATION CODE

56205(a)(17)
56841

Adopted by SELPA Superintendents' Council 6-4-20

FEDERAL MAINTENANCE OF EFFORT (MOE)

Introduction

The El Dorado County SELPA (SELPA) shall meet the federal maintenance of effort (MOE) regulations requiring that federal funds provided under Part B of the IDEA not be used to reduce the level of expenditures for the education of children with disabilities made from local funds below the level of those expenditures for the preceding fiscal year except as provided in federal law and regulations. (ref: Title 34 Code of Federal Regulations C.F.R. Sections 300.203-300.205).

Determination of Maintenance of Effort Compliance

The California Department of Education (CDE) monitors compliance with the MOE requirement at the SELPA level. The administrative unit (AU) of the El Dorado County SELPA monitors compliance of its member LEAs. There are two required data sets upon with testing must be performed to determine MOE compliance:

First Comparison – Grant Year Budget to Preceding Year Actual Expenditures (SEMB)

- LEA will submit to the SELPA the required MOE documentation each year.
- Budgeted local, or state and local expenditures must equal or exceed preceding year expenditures for each LEA and for the SELPA as a whole, subject to the federal Subsequent Years rule.
- SELPA must ensure LEA meets the eligibility comparison test before the allocation of Part B funds are made to the LEA.

Section 1 - Exempt Reduction Under 34 CFR Section 300.204

Each year LEAs should record if any of the allowable exceptions to MOE are present. If an LEA determines that a reduction in expenditures occurred as a result of one or more of the following conditions, the LEA may calculate a reduction to the required MOE standard. Reductions may apply to local only MOE standard, combined state and local MOE standard or both.

1. Voluntary departure, or departure for just cause, of special education or related services personnel, who may be replaced by qualified, lower-salaried staff.
2. Decrease in the enrollment of children with disabilities.
3. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:
 - a. Has left the jurisdiction of the agency;
 - b. Has reached the age at which the obligation of the agency to provide free appropriate public education (FAPE) to the child has terminated; or
 - c. No longer needs the program of special education.
4. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

Section 2 – “50 Percent Rule”

LEAs who have a “meets requirements” compliance determination under IDEA, Section 613(a) and not found to be *Significantly Disproportionate* for the current year are eligible to use this option to reduce their MOE requirement by:

LEA may reduce the level of local or state and local expenditures otherwise required by the LEA MOE requirement by calculating 50% of the increase in federal sub-grant allocation received for the current fiscal year compared to the prior fiscal year and reducing the LEA’s state and local MOE requirement by that amount.

The LEA must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the Elementary and Secondary Education AC (ESEA) of 1965. This amount includes any activities under Title 1, Impact Aid, and other ESEA programs.

The LEA may not use this Section in conjunction with voluntary use of 15% of the federal grant for Coordinated Early Intervening Services (CEIS) or Response to Intervention (RTI) costs.

Section 3 – Four MOE Test Methods to Maintain Effort

Either local or state and local funding sources are used for comparison at the SELPA level as well as for each individual LEA. In addition, the comparison may be per capita (per child with a disability). The four methods to maintain effort are:

1. The combination of state and local funds
2. Local funds only
3. The combination of state and local funds on a per capita basis
4. Local funds only on per capita basis

If the SELPA as a whole passes Comparison 1, the SELPA as a whole is eligible to receive Part B funding. If the SELPA as a whole should not meet MOE under Comparison 1, the SELPA as a whole, and all of its participating LEA members, will be ineligible to receive Part B funding until budgetary revisions are made to enable the SELPA, as a whole, to meet MOE requirements.

If the SELPA as a whole passes Comparison 1, but one or more individual LEA sub-grant recipients fail Comparison 1, the LEA(s) shall have until First Interim certification occurs to comply with MOE requirements.

If an LEA has not rectified the problem by the date that First Interim certification is made, its proportionate share of the federal funds shall be re-distributed, on a proportionate share basis, to those LEA sub-grant recipients that complied with the MOE requirements at Comparison 1, but only to the extent that they do not reduce state and local or “local only” expenditures to the point that they create MOE difficulties for the receiving LEA. Any remaining funds from this distribution will be retained by the SELPA AU and used for eligible federal expenditures.

When an LEA fails to meet the MOE test in one year, the LEA is required in subsequent fiscal years to maintain effort at the level prior to the failure. Thus, the LEA must calculate its level of effort on the most recent fiscal year in which the MOE test was met.

Second Comparison – Prior Year Actuals vs. Second-Preceding Year Actuals or the most recent year LEA met using the method

- Actual local or state and local expenditures must equal or exceed preceding year expenditures, subject to the federal Subsequent Years rule.
- Comparison is made annually after unaudited actuals data is submitted to CDE following the end of the fiscal year.

Section 1 – Each year LEAs should record any of the allowable exceptions that may reduce the amount required to meet MOE, listed below:

1. Voluntary departure or departure for just cause, of special education or related services personnel, who may be replaced by qualified, lower-salaried staff.
2. Decrease in the enrollment of children with disabilities.
3. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:
 - a. Has left the jurisdiction of the agency;
 - b. Has reached the age at which the obligation of the agency to provide free appropriate public education (FAPE) to the child has terminated; or
 - c. No longer needs the program of special education.
4. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

Section 2 – “50 Percent Rule”

LEAs who have a “meets requirements” compliance determination under IDEA, Section 613(a) and not found to be *Significantly Disproportionate* for the current year are eligible to use this option to reduce their MOE requirement by:

LEA may reduce the level of local or state and local expenditures otherwise required by the LEA MOE requirement by calculating 50% of the increase in federal sub-grant allocation received from the current fiscal year compared to the prior fiscal year and reducing the LEA’s state and local MOE requirement by that amount.

The LEA must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the Elementary and Secondary Education AC (ESEA) of 1965. This amount includes any activities under Title 1, Impact Aid, and other ESEA programs.

The LEA may not use this Section in conjunction with voluntary use of 15% of the federal grant for Coordinated Early Intervening Services (CEIS) or Response to Intervention (RTI) costs.

Section 3 – Four MOE Test Methods

Either local or state and local funding sources are used for comparison at the SELPA level as well as for each individual LEA. In addition, the comparison may be per capita (per child with a disability). The four methods to maintain effort are:

1. The combination of state and local funds
2. Local funds only
3. The combination of state and local funds on a per capita basis
4. Local funds only on per capita basis

If the SELPA as a whole still fails MOE in Comparison 2 after applying the exceptions, the SELPA will be billed by the State for the amount the SELPA, collectively, failed to spend from local or state and local funds to maintain its level of effort.

The SELPA AU will then bill the individual LEA sub-grant recipients that failed MOE Comparison Test 2 for the amount the LEA(s) failed to spend from local or state and local funds to maintain its level of effort.

If the SELPA as a whole passes Comparison 2 but one or more individual LEA sub-grant recipients fail to spend from local or state and local funds to maintain their level of effort, the SELPA AU will bill on behalf of CDE for the amount that the LEA failed to spend from local or state and local funds to maintain their level of effort. Any amount billed to an LEA must be paid to CDE by the LEA from its state and local funding in the budget year.

When an LEA fails to meet the MOE test in one year, the LEA is required in subsequent fiscal years to maintain effort at the level prior to the failure. Thus, the LEA must calculate its level of effort on the most recent fiscal year in which the MOE test was met.

For the purposes of MOE, the SELPA AU is the recipient of the federal funds from CDE and is, in turn, a grantor of all, or part, of those funds as sub-grants to participating LEAs.

PUBLIC PARTICIPATION

The SELPA will ensure that there are opportunities for public participation prior to the adoption of any SELPA policies or procedures. In order to support and encourage public participation, the SELPA will hold public hearings, provide adequate notice of the hearings, and provide opportunities for members of the public, including individuals with disabilities and parents of children with disabilities, to review and comment on any proposed policies, procedures, and/or regulations necessary for compliance with part B of the IDEA.

Pursuant to the Local Plan, any proposed policies (or amendments to policies) are presented to the SELPA Superintendents' Council for a first reading and then brought back for revision, review and/or adoption at a later meeting.

While under SELPA Superintendents' Council review, the proposed policies are available for review and comment by member districts, the public, parents of children with disabilities, and individuals with disabilities. During this period of review, the Council may decide to request that the proposed policies (or amendments) be reviewed by other ad hoc committees or groups.

EDCOE SELPA Policy Revision Process

1. The SELPA identifies the need to revise a policy.
2. The SELPA creates a draft policy.
3. The draft policy is presented to the SELPA Executive Committee for input and approval to present to SELPA Superintendents' Council for a first reading.
4. Presented for a first reading to the SELPA Superintendents' Council.
5. Solicit public input (Steering Committee, Community Advisory Committee, EDCOE SELPA Website) for no less than twenty (20) days.
6. The SELPA will compile input and consider revisions based on public input.
7. The compiled public input will be presented to the SELPA Executive Committee.
8. The SELPA will provide public notice of the pending adoption at the next SELPA Superintendents' Council Meeting.
9. The policy and compiled input will be presented to the SELPA Superintendents' Council for approval.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATE CODE, TITLE 20
1412(a)(19)

Adopted by SELPA Superintendents' Council – 6-6-19
Revision Process Added and Adopted by SELPA Superintendents' Council – 9-5-19

SUSPENSION/EXPULSION

Each member district in the El Dorado County SELPA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. If a member district finds significant discrepancies in its rate of long terms suspensions and/or expulsions of students with disabilities, the member district will review, and revise, as required by law, its policies, procedures and practices related to the development and implementation of IEPs.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATES CODE, TITLE 20
1412(a)(22)

Adopted by SELPA Superintendents' Council 6-4-20

SUSPENSION AND EXPULSION/DUE PROCESS

Where California law provides greater protections to students, California law supersedes federal law.

Applicability to Students on 504 Plans

Neither state nor federal law requires IDEA procedures apply to students identified under Section 504 of the federal Rehabilitation Act of 1973 (“Section 504”) (29 USC § 794). However, in some instances, each member district may find it appropriate to apply portions of these procedures (e.g., the limitation that a student with a disability may not be suspended for more than 10 consecutive or cumulative school days) to students with a qualifying disability pursuant to their Section 504 Plan. Districts that wish to apply IDEA procedures to Section 504 students should modify the following regulation accordingly.

IDEA Eligible Students are not Exempt from Suspension and Expulsion

A student identified as an individual with a disability pursuant to the Individuals with Disabilities Education Act (“IDEA”) is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been identified as a student with a disability pursuant to IDEA, and who has engaged in behavior that violated the district's code of student conduct may assert any of the protections under IDEA only if the member district had “knowledge” that the student was disabled before the behavior that precipitated the disciplinary action occurred. (20 USC § 1415(k)(5); 34 CFR § 300.534)

The member district shall be deemed to have “knowledge” that the student has a disability if any of the following conditions exists:

1. The parent/guardian has expressed concern to district supervisory or administrative personnel in writing, or to a teacher of the student, that the student needs special education or related services;
2. The parent/guardian has requested an evaluation of the student for special education pursuant to 34 CFR §§ 300.300 through 300.311; or
3. The teacher of the student or other district personnel has expressed specific concerns directly to the district's director of special education or to other supervisory district personnel about a pattern of behavior demonstrated by the student.

(20 USC 1415(k)(5); 34 CFR 300.534)

The district would not be deemed to have knowledge that a student is disabled if the parent/guardian has not allowed the student to be evaluated for special education services or has refused services. In addition, the district would not be deemed to have knowledge if the district conducted an initial evaluation pursuant to and determined that the student was not an individual with a disability. When a district is deemed to not have knowledge of the disability, the student shall be disciplined in accordance with procedures established for students without disabilities who engage in comparable behavior. (20 USC § 1415(k)(5); 34 CFR § 300.534)

If, during the time period in which the student is subject to disciplinary measures under 34 CFR § 300.530, a request is made to evaluate the student for IDEA eligibility, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities. (20 USC § 1415(k)(5); 34 CFR § 300.534)

Suspension

Member districts of the El Dorado County SELPA who are receiving funds under the IDEA may suspend a student for no more than 10 consecutive or cumulative school days, if the removal does not constitute a change in placement. (20 USC § 1415(k)(1), 34 CFR §§ 300.530, 300.536; see also *Honig v. Doe* (1988) 484 US 305 Under California law, a student may not be suspended for more than 20 cumulative school days in a school year. (Ed. Code § 48903.)

- Bus and “in school suspensions”

Note: Whether a bus suspension or "in school suspension" counts as a day of suspension affecting the cumulative total depends on the unique circumstances of each case. (See *Analysis of Comments to the Federal Regulations*, (2006) 71 Fed. Reg. 156, pg. 46715.) For instance, whether bus transportation is part of the student's individualized education program (IEP). In addition, an "in-school suspension" or "supervised suspension classroom" would not count towards the 20-day cumulative limit described above as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, receive the services specified in his/her IEP, and participate with nondisabled students to the extent he/she would have in the current placement. However, the district should be careful that such actions do not constitute a change of placement and should carefully monitor such suspensions.

The LEA Superintendent or designee may suspend a student with a disability for up to 10 consecutive or cumulative school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement as defined in 34 CFR 300.536. (Ed. Code § 48903; 34 CFR § 300.530)

The principal or designee shall monitor the number of days, including portions of days, in which a student with an IEP has been suspended during the school year.

The member district shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change of placement. A change of placement shall be deemed to have occurred under any of the following circumstances:

1. The removal is for more than 10 consecutive or cumulative school days; or
2. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
 - a. The series of removals total more than 10 school days in a school year;
 - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals; and
 - c. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement.

(34 CFR § 300.536)

If the removal has been determined to be a change of placement as specified in items #1 or #2 above, the student's IEP team shall determine the appropriate educational services to be provided. (34 CFR § 300.530.)

Services During Suspension

Member districts are required to provide " FAPE to all students, including any students with disabilities who have been suspended for more than 10 school days in a year.(20 USC § 1412(a)(1)(A), 34 CFR § 300.530.) The district is not required to provide a student who has been suspended for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same setting as the student was receiving prior to the imposition of discipline. (See *Analysis of Comments to the Federal Regulations* (2006) 71 Fed. Reg. 156, pg. 46716.) However, the services the student does receive must enable him/her to continue to participate in the general curriculum and to progress toward his/her IEP goals.

When a disabled student is removed for 10 school days or less, the member district does not have to provide services as long as the member district does not provide services to nondisabled students removed for the same amount of time.

Any student suspended for more than 10 school days in the same school year shall continue to receive services during the term of the suspension. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed as provided in 34 CFR § 300.101(a), so as to enable the student to continue to participate in the general education curriculum in another setting and to progress toward meeting the goals as set out in

his/her IEP. (20 USC § 1412(a)(1)(A); 34 CFR § 300.530)

If a student with a disability is excluded from school bus transportation, the student shall be provided with an alternative form of transportation at no cost to the student or his/her parent/guardian, if transportation is specified in his/her IEP. (Ed. Code § 48915.5.)

Interim Alternative Educational Placement Due to Dangerous Behavior

The district may unilaterally place a student with a disability in an appropriate interim alternative educational setting (“IAES”) for up to 45 school days, without regard to whether the behavior is a manifestation of the student’s disability, when the student commits one of the following acts while at school, going to or from school, or at a school-related function:

1. Carries or possesses a weapon. “Weapon” refers to a “dangerous weapon” as defined in 18 USC § 930 and includes any device which is capable of causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length.
2. Knowingly possesses or uses illegal drugs;
3. Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V; or
4. Inflicts serious bodily injury upon another person. “Serious bodily injury” is defined as bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC § 1365).

(20 USC § 1415(k)(1)(G); 34 CFR § 300.530)

The student's IAES shall be determined by his/her IEP team. (20 USC § 1415(k)(1)(G), 34 CFR § 300.531)

On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the district’s decision and provided the notice of procedural safeguards pursuant to 34 CFR § 300.504. (20 USC § 1415(k)(1)(H); 34 CFR § 300.530)

A student who has been removed from his/her current placement because of dangerous behavior shall receive services to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

Manifestation Determination

The following procedural safeguards shall apply: (1) when a student is suspended for more than 10 consecutive or cumulative school days; (2) when a series of removals of a student constitutes a pattern; and/or (3) when a change of placement of a student is contemplated due to a violation of the district's code of conduct:

1. Notice: On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR § 300.504. (20 USC § 1415(k)(1)(H); 34 CFR § 300.530)
2. Manifestation Determination: Immediately if possible, but in no case later than 10 school days after the date the decision to take disciplinary action is made, a determination shall be made on whether the student's conduct in question was a manifestation of his/her disability. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

The member district, the student's parent/guardian, and relevant members of the IEP team (as determined by the district and parent/guardian) shall convene a manifestation determination meeting and review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents/guardians, and determine whether the conduct in question was either of the following:

- a. Caused by or had a direct and substantial relationship to the student's disability;
or
- b. A direct result of the district's failure to implement the student's IEP, in which case the district shall take immediate steps to remedy those deficiencies

(20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

If, at the manifestation determination meeting, the team determines that a condition in either a or b above was met, the conduct shall be determined to be a manifestation of the student's disability. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

3. Determination that Behavior is a Manifestation of the Student's Disability: When the conduct has been determined to be a manifestation of the student's disability, the IEP team shall conduct a functional behavioral assessment, unless a functional behavioral assessment had been conducted before the occurrence of the behavior that resulted in the change of placement, and shall implement a behavioral intervention plan for the student. If a behavior intervention plan has already been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530)

The student shall be returned to the placement from which he/she was removed, unless

the parent/guardian and member district agree to a change of placement as part of the modification of the behavioral intervention plan. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530). As noted above, if a student is excluded from school bus transportation, alternative transportation must be provided at no cost, provided that transportation is specified in the student's IEP (see section entitled "Services During Suspension", above). (Ed. Code § 48915.5.)

4. Determination that Behavior is Not a Manifestation of the Student's Disability: If, at the manifestation determination meeting, the team determines that the student's behavior was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

The student shall receive services to the extent necessary to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

Due Process Appeals

If the parent/guardian disagrees with any district decision regarding placement under 34 CFR § 300.530 (suspension and removal for dangerous circumstances) or 34 CFR § 300.531 (interim alternative placement), or the manifestation determination he/she may appeal the decision by requesting a due process hearing. The member district may request a hearing if the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. In order to request a hearing, the requesting party shall file a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). (20 USC 1415(k)(3); 34 CFR 300.532) The party filing the due process complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62.)

Whenever a hearing is requested as specified above, the parent/guardian or the district shall have an opportunity for an expedited due process hearing. (See 34 CFR §§ 300.507, 300.508 (a)-(c), and 300.510 through 300.514.)

If the student's parent/guardian or the district has initiated a due process hearing as detailed above, the student shall remain in the IAES pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent/guardian and district agree otherwise. (20 USC § 1415(k)(4); 34 CFR § 300.533)

Readmission

Readmission procedures for students with disabilities shall be the same as those used for all students. Upon readmission, the member district shall convene an IEP team meeting.

Suspension of Expulsion

Each member district shall apply its own Governing Board's criteria for suspending the enforcement of an expulsion order to students with disabilities in the same manner as they are applied to all other students. (Ed. Code § 48917.)

Notification to Law Enforcement Authorities

The principal of a school or the principal's designee are required to notify law enforcement officials regarding a student's suspension or expulsion as follows:

- a) Prior to the suspension or expulsion of any student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities of any act of assault with a deadly weapon which may violate Penal Code § 245.
- b) Within one (1) school day after a suspension or expulsion of a student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which may violate Education Code 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind;
- c) The principal or designee shall also notify appropriate city or county law enforcement authorities of acts by any student with a disability which may involve the possession or sale of narcotics or of a controlled substance or possession of weapons or firearms in violation of Penal Code §§ 626.9 or 626.10.

(Ed. Code § 48902.)

A principal or designee, or any other person reporting a known or suspected act under either subdivision (a) or (b), above, is not civilly or criminally liable for making a report unless it is shown that:

- 1) The report was false; and
- 2) The person making the report either:
 - a. Knew that the report was false; or
 - b. The report was made with reckless disregard for the truth or falsity of the report.

(Ed. Code § 48902.)

When a principal or designee reports a criminal act committed by a schoolage individual with exceptional needs (eligible for special education) he/she is required to transmit copies of the student's special education and disciplinary records for consideration by the authorities to whom

he/she reported the criminal act. When sending records for this purpose, the member district, principal. Or designee must still comply with all FERPA requirements, (Ed. Code § 48902.)

Report to County Superintendent of Schools

The LEA Superintendent is required to report to the County Superintendent of Schools when any special education student has been expelled or suspended for more than 10 school days. The report shall include the student's name, last known address, and the reason for the action. The County Superintendent will review the reports and determine whether either the interest of the student or the welfare of the state may need further examination. If so, the County Superintendent shall bring the reports to the attention of the member district's Governing Board and the County Board of Education. (Ed. Code § 48203.)

Legal Reference:

EDUCATION CODE

35146 Closed sessions (re suspensions)
35291 Rules (of governing board)
48203 Reports of severance of attendance of disabled students
48900-48925 Suspension and expulsion
56000 Special education; legislative findings and declarations
56320 Educational needs; requirements
56321 Development or revision of individualized education program
56329 Independent educational assessment
56340-56347 Individual education program teams
56505 State hearing

PENAL CODE

245 Assault with deadly weapon
626.2 Entry upon campus after written notice of suspension or dismissal without permission
626.9 Gun-Free School Zone Act
626.10 Dirks, daggers, knives, razors or stun guns

UNITED STATES CODE, TITLE 18

930 Weapons

1365 Serious bodily injury

UNITED STATES CODE, TITLE 20

1412 State eligibility

1415 Procedural safeguards

UNITED STATES CODE, TITLE 21

812(c) Controlled substances

UNITED STATES CODE, TITLE 29

706 Definitions

794 Rehabilitation Act of 1973, Section 504

CODE OF FEDERAL REGULATIONS, TITLE 34

Education Specialist Instruction Credential or Pupil Services Credential 104.35 Evaluation and placement

104.36 Procedural safeguards

300.1-300.818 Assistance to states for the education of students with disabilities, especially:

300.530-300.537 Discipline procedures

COURT DECISIONS

Schaffer v. Weast (2005) 125 S. Ct. 528

Parents of Student W. v. Puyallup School District, (1994 9th Cir.) 31 F.3d 1489

M.P. v. Governing Board of Grossmont Union High School District, (1994) 858 F.Supp. 1044

Honig v. Doe, (1988) 484 U.S. 305

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep/index.html>

Adopted by SELPA Superintendents' Council 6-4-20

ACCESS TO INSTRUCTIONAL MATERIALS

Each member district of the El Dorado County SELPA shall provide instructional materials to blind students or other students with print disabilities in a timely manner according to the state adopted National Instructional Materials Accessibility Standard.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATES CODE, TITLE 20
1412(a)(24)

Adopted by SELPA Superintendents' Council 6-4-20

OVERIDENTIFICATION AND DISPROPORTIONALITY

The El Dorado County SELPA and its member districts shall prevent the inappropriate overidentification or disproportional representation by race and ethnicity of students with disabilities.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATES CODE, TITLE 20
1412(a)(24)

Adopted by SELPA Superintendents' Council 6-4-20

PROHIBITION ON MANDATORY MEDICINE

The El Dorado County SELPA and its member districts shall prohibit school personnel from requiring a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation for special education, or receiving special education services.

Legal References:

EDUCATION CODE

56205 (a)

56040.5 (a)

UNITED STATES CODE, TITLE 20

1412(a)(25)

Adopted by SELPA Superintendents' Council 6-4-20

DATA

The El Dorado County SELPA and its member districts shall provide data or information to the California Department of Education if required by regulations.

Legal References:

EDUCATION CODE
56205(a)

UNITED STATES CODE, TITLE 20
1418 (a-d)

Adopted by SELPA Superintendents' Council 6-4-20

READING LITERACY

A. RATIONALE

The California Reading Initiative is intended for all students. Reading proficiency is an important goal for virtually all students who receive special education services. It is basic to ongoing school success and essential for successful participation in society. Without reading proficiency, students are excluded from full participation and the opportunity to achieve academic success in school.

B. POLICY STATEMENT

In order to improve the educational results for students with disabilities, the member districts in the El Dorado County SELPA ensure that all students who require special education will participate in the California Reading Initiative, just as do all other students in the El Dorado County districts. The SELPA and member districts will follow the Core Messages developed by the *California Special Education Reading Task Force. In order to facilitate that effort, the member districts assure that special education instructional personnel will participate in staff development inservice opportunities in the area of literacy, including:

- a. information about current literacy and learning research;
- b. state-adopted student content standards and frameworks;
- c. research-based instructional strategies for teaching reading to a wide range of diverse learners; and
- d. the California Reading Initiative and Special Education Reading Task Force Core Messages.

Each of the member districts will include special education staff in their curriculum materials selection process, in order to support alignment with State standards. Each member district will also include special education staff as appropriate in all staff development on phonemics and phonics, as well as in any additional state or regional training based on new legislation frameworks, and AB466 training. The goals of the member districts are to increase the participation of students with disabilities in statewide student assessments, to increase the percentage of children with disabilities who are literate, and to ensure that students with disabilities attain higher standards in reading.

In order to reach these goals, SELPA and the member districts ensure that students with disabilities will have full access to:

1. all required core curriculum including state-adopted core curriculum textbooks and supplementary textbooks; and
2. instructional materials and support.

*California Reading Initiative and Special Education in California
<http://www.calstat.org/readingmessages.html>

PROVISION OF SPECIAL EDUCATION SERVICES TO STUDENTS VOLUNTARILY ENROLLED IN CHARTER SCHOOLS IN THE EL DORADO COUNTY SELPA

It shall be the policy of the El Dorado County SELPA that special education and related services shall be provided to all eligible individuals within the jurisdiction of the El Dorado County SELPA in accordance with the El Dorado County SELPA Local Plan. Students enrolled in charter schools chartered within El Dorado County shall receive services in a manner similar to students enrolled in member districts with the El Dorado County SELPA. Funding for special education services, participation in the governance structure and responsibility for provision of services shall be based on the status of the individual charter school.

This policy applies to all charter schools that are chartered by educational entities located within the geographic boundaries of the member districts of the El Dorado County SELPA. This policy also applies to any charter school petition granted by the State Board of Education (SBE) in which oversight responsibilities have been assigned to a district within the El Dorado County SELPA. As students enrolled in charter schools are entitled to special education services as required by State and Federal funding, the charter schools will comply with all requirements of state and federal law regarding provision of special education services. Children with disabilities and their parents shall retain all rights under the IDEA.

For the provision of special education services, charter schools may be categorized as either a separate LEA or a public school within a district. All approved charter schools will be deemed public schools within a district unless the charter school has applied for and has been deemed an LEA by the El Dorado County SELPA Superintendents' Council and approved by the County Superintendent of Schools.

Legal References:

EDUCATION CODE
47605.5 (k)(1)
56000 et seq.

UNITED STATES CODE, TITLE 20
Chapter 33

Adopted by SELPA Superintendents' Council 3-4-21

PROVISION OF SPECIAL EDUCATION SERVICES TO STUDENTS VOLUNTARILY ENROLLED IN CHARTER SCHOOLS IN THE EL DORADO COUNTY SELPA

A. El Dorado County SELPA Involvement with Approval and Renewal of Charter Schools

Prior to a district's or county office's approval of a new charter, or renewal of an existing charter, the superintendent or designee of the chartering entity shall consult with the SELPA Director regarding the status of the charter school.

The chartering entity will provide assurances that all eligible students, including those students enrolled in the charter school, will receive appropriate special education services. Prior to approval of a petition for a charter school, the charter school must explain in writing a description of how special education services will be provided consistent with the Local Plan and/or policies and procedures, including the SELPA Allocation Plan.

B. Status of Charter Schools

For the purposes of provision of special education services, charter schools may be deemed either an LEA or a public school within the chartering district. All approved charter schools will be deemed public schools within a district unless the charter school has been deemed an LEA by the Superintendents' Council of the El Dorado County SELPA and approved by the County Superintendent of Schools.

1. Public School within a School District

Charter schools that are deemed to be public schools within a district will participate in state and federal funding in the same manner as other schools within the chartering district. The chartering district will be responsible for ensuring that all children with disabilities enrolled in the charter school receive special education and designated instructional services in a manner that is consistent with all applicable provisions of state and federal law. The district will determine the policies and procedures necessary to ensure that the protections of special education law extend to students in the charter school in the same manner as students in the regular program. The Charter School will agree to implement the SELPA policies and procedures.

The chartering district will receive all applicable special education funds per the SELPA Allocation Plan. The chartering district will represent the needs of charter schools, in the same manner as other schools with the district, in the SELPA governance structure. The chartering district will be responsible for ensuring that all eligible students are appropriately served. The district will be responsible for procuring and funding appropriate special education services, even though the student may reside anywhere in the State of California.

The district and the charter school may enter into agreements whereby the charter school is billed for excess costs associated with providing special education services to identified students, including the administration of special education programs.

2. Charter School as an LEA within the SELPA
A charter school may apply to become an LEA for the provision of special education services. Requirements for notification of their intent to operate programs must be consistent with notification requirements for individual districts within the SELPA. Application must be made to the SELPA Director by June 30 of the school year preceding the school year in which the charter school anticipates operating as an LEA within the SELPA. The charter school will complete an application and requirements set forth in the application procedure. The El Dorado County SELPA Superintendents' Council and the County Superintendent of Schools will make the final determination whether the charter school has met all requirements of an LEA. These requirements include:
 - a. Be located within the geographical boundaries of the El Dorado County Special Education Local Plan Area.
 - b. Complete the El Dorado County SELPA application. Incomplete applications will not be accepted. Applications must first be submitted to the El Dorado County SELPA.
 - c. In addition to the completed application form, charters must submit the following:
 1. Most recently approved charter petition
 2. A copy of audit reports for the past two years (if applicable)
 3. Income/expense reports for special education programs for the past two years
 4. SBAC Scores for the school for at least 2 years if available
 5. A copy of the School Accountability Report Card (SARC)
 6. List of credentials for all certificated staff – name, position, credential number, if highly qualified
 7. Provide a list of non-credentialed staff providing instruction in non-core classes (not instructional assistance, e.g. Artist of Residence).
 8. A signed copy of the SELPA Assurance Statement (separate document)
 9. Proof of Liability Insurance
 10. A copy of the notice of withdrawal from an existing SELPA (if appropriate)

11. Completed Representations and Warranties Document (separate document)
- d. **Two (2) electronic copies** of the application and supporting documentation must also be submitted to the SELPA office in the following format:

The applications must be submitted in a view binder (with the charter school's name on the front cover and spine) with binder tabs identified and organized as follows:

1. SELPA Application
2. Charter Petition
3. Income/Expense Reports
4. API Scores
5. SARC
6. Credentials
7. SELPA Assurances
8. Liability Insurance
9. Withdrawal From Existing SELPA (if appropriate)
10. Representations and Warranties

Once deemed an LEA, the charter school will be responsible for and entitled to the following:

- a. Participate in governance of the SELPA in the same manner as other districts within the SELPA.
- b. Receive state and federal funding for special education in the same manner as other districts within the SELPA.
- c. Be responsible for all costs and liabilities incurred in the provision of special education services. These costs may include, but are not limited to, instruction, transportation, nonpublic school/agency placements, inter/intra SELPA placements, due process proceedings, complaints and attorney fees.

C. Other Administrative Guidelines

1. The governing board of each school district shall not approve a petition for creation of a charter school unless the petition contains adequate assurances that the proposed school will comply with all provisions of federal law and state guidelines implementing regulations related to the rights of disabled students and their parents (20 U.S.C. Chapter 33, the Individuals with Disabilities Education Act).

2. The governing board shall require that a petition include the means by which the charter school intends to serve students with disabilities. This will include a specific reference as to whether the charter school intends to be deemed an LEA or a public school for the provision of special education services.
3. The governing board shall require that a petition contain assurances that no student will be denied admission to the charter school based on disability or lack of available services.
4. Prior to approving a charter school petition, the superintendent or designee of the chartering entity shall consult with the SELPA Director regarding the provision of special education services to students enrolled in the prospective charter school.
5. Once admitted to a charter school, any special education services required by enrolled students will be provided by the chartering district, if the school is deemed a public school of the district, or by the charter school, if deemed an LEA.
6. Consistent with district placement requirements a charter school IEP team may place a student in a special education program provided by another educational entity, i.e., a county office or another district, only with agreement between responsible educational entities and parental consent. If a charter school IEP team places a student in a special education program provided by another educational entity, i.e., a county office or another district, the charter school will be responsible for any excess costs or agreements attributable to the placement on the same terms as applied to districts in any school year.
7. A district IEP team may place a student in a charter school program only with agreement between responsible educational entities and parental consent. Under such circumstances, the placing district will be responsible for any excess costs in accordance with the Local Plan (dependent upon petition).
8. The chartering district will be allocated all special education funds that are generated by a charter school that is deemed a public school. The chartering district will represent the needs of charter schools that are deemed public schools in the SELPA governance structure. The charter school will receive SELPA services in the same manner as other schools within the chartering district.
9. If the charter school wishes to be deemed an LEA, the charter school will complete an application and submit it by June 30 of the preceding school year to the El Dorado County SELPA Director.
10. Charter schools that are deemed an LEA will be allocated special education funds in the same manner as other districts within the SELPA. Charter schools that are

deemed an LEA will be included in the SELPA governance structure in the same manner as districts.

11. If the approval of a charter school requires a change in any SELPA policy, procedure or agreement, such change shall be adopted pursuant to the policy making process outlined in the SELPA Local Plan.
12. When a charter school operating within the jurisdiction of the El Dorado County SELPA has no affiliation with an LEA within the El Dorado County SELPA, neither the El Dorado County SELPA nor the local district within which the charter school is located has an obligation to reach agreement on provisions of special education services. If the charter school is granted by an entity outside of the El Dorado County SELPA, provisions for programs and services will be determined through inter-SELPA agreements.
13. Charter schools may enroll students who reside outside of the El Dorado County SELPA, and the allocation plan shall not exclude such students, contingent upon the state funds following the student.
14. All state and federal funding for special education apportioned on behalf of students enrolled in charter schools shall be included in the SELPA Allocation Plan adopted by the El Dorado County SELPA.
15. Consistent with district requirements neither charter schools operating as LEA's or districts sponsoring charter schools can commit resources of the SELPA beyond those resources available through the approved SELPA Allocation Plan.
16. Consistent with district requirements an LEA charter school may purchase services from a district or the county office of education in order to provide a full continuum of services and placement options for disabled students. The charter school purchasing services will pay for actual or agreed upon services including any costs in excess of the state and federal funding provided the charter school.
17. The terms of this policy are severable. In the event that any of the provisions are determined to be unenforceable or invalid for any reason, the remainder of the policy shall remain in effect, unless mutually agreed otherwise by the members of the El Dorado County SELPA Superintendents' Council. Members of the El Dorado County SELPA Superintendents' Council agree to meet to discuss and resolve any issues or differences relating to invalidated provisions in a timely and proactive fashion.

Adopted by SELPA Superintendents' Council 3-4-21

BEHAVIORAL INTERVENTIONS FOR SPECIAL EDUCATION STUDENTS

A special education student's minor behavioral problems shall be subject to the disciplinary measures applicable to all students for such infractions.

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies and supports, including positive behavioral interventions, to address that behavior consistent with the law and SELPA procedures. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a)(2)(i), (b); Ed. Code § 56341.1, subd. (b)(1).)

The LEA Superintendent or designee shall ensure that staff is informed of the El Dorado County SELPA's policy and regulations governing the systematic use of behavioral and emergency interventions.

Legal Reference:

EDUCATION CODE

- 49001 Prohibition of corporal punishment
- 56321 Notice of parental rights; consent of parents
- 56500-56507 Procedural safeguards, including due process rights
- 56520-56524 Behavioral Interventions
- 56341.1

CODE OF REGULATIONS, TITLE 5

- 3001 Definitions
- 3052 Designated positive behavioral interventions

BEHAVIORAL INTERVENTIONS FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS

Behavior of an individual with exceptional needs shall be subject to the disciplinary measures applicable to all students for such infractions unless the behavior is determined to be a manifestation of the student's disability.

Behavioral problems shall be addressed through the systematic use of behavioral and emergency interventions as provided below.

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies and supports, including positive behavioral interventions, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a)(2)(i), (b); Ed. Code § 56341.1, subd. (b)(1).)

Member districts *may* employ a Board-Certified Behavior Analyst ("BCBA") to conduct behavior assessments and provide behavioral intervention services, but the law does not require that these services be provided by a BCBA. (Ed. Code, § 56525.)

Note: With the Repeal of the Hughes Bill, (Assembly Bill 86, effective July 1, 2013 ("AB 86")) the law does not contain a specific definition of "behavioral intervention" and does not impose any specific requirements for how to conduct or implement a behavior assessment or behavior intervention plan. LEAs are no longer required to conduct a Functional Analysis Assessment ("FAA") for students with serious behavioral problems. (Ed. Code, § 56523.)

Behavioral Intervention Plan

A functional behavioral assessment and behavioral intervention plan shall be developed no later than 10 business days after a student is suspended for more than 10 school days in a school year or after a change of placement occurs. (34 CFR § 300.530; see SELPA Policy 16, and AR 16.)

Within 10 business days after removing a student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement, the member district shall implement a behavioral intervention plan in accordance with 34 CFR 300.520, SELPA policy, and administrative regulations. (BP/AR 16)

Note re Terminology: BIP and BSP

The IDEA uses the term Behavior Intervention Plan ("BIP") to refer to a less intensive behavior plan developed by the IEP team. Previously, the Hughes Bill (repealed by AB 86) used the term "BIP" to refer to a more intensive behavior plan required whenever an FAA was performed. California also had previously used the term Behavior Support Plan ("BSP") to distinguish between the less intensive plan required by the IDEA and the more-intensive "BIP" required by the Hughes Bill. Now, with the repeal of the Hughes Bill by AB 86, it is recommended that member districts use only the term BIP for all types of behavior plans. (Ed. Code, § 56523.)

Emergency Interventions

Emergency interventions not specified in a student's behavioral intervention plan shall be used only when necessary to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual with exceptional needs or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior. Emergency interventions shall not be used as a substitute for a systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation. (Ed. Code, § 56521.1(a) through (c))

Only emergency interventions approved by the SELPA may be used. (Ed. Code § 56521.1) The following emergency interventions, included in "Risk Behavior" training, are approved by the El Dorado County SELPA for use by **CPI (Crisis Prevention Institute) trained staff only** and may only be used as a ***last resort when a person is an immediate danger to self or others:***

- a) CPI's Disengagement Skills
- b) Nonviolent Physical Crisis Intervention and Team Intervention:
 - "Standing Position" utilizing one-two team members
 - "Seated Position" utilizing two team members
 - "Team Control Position" utilizing at least two team members
 - "Children's Control Position" for students who are considerably smaller than the staff person

Parents/guardians/residential care provider, if appropriate, shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs. A behavior emergency report shall immediately be completed, kept in the student's file, and forwarded to the LEA Superintendent or designee for review. This report shall include:

1. The name and age of the student
2. The setting and location of the incident
3. The name of the staff or other persons involved
4. A description of the incident and the emergency intervention used
5. A statement of whether the student is currently engaged in a systematic behavioral intervention plan
6. Details of any injuries sustained by students or others, including staff, as a result of the incident

(Ed. Code § 56521.1 (e).)

If the behavior emergency report is for a student who does not have a behavioral intervention plan, the LEA Superintendent or designee shall, within two days, schedule an IEP team meeting to review the emergency report, determine the necessity for a functional behavioral assessment, and determine the necessity for an interim behavioral plan. When applicable, the IEP team shall document the reasons for not conducting a functional behavioral assessment and/or not developing an interim plan. (Ed. Code § 56521.1 (g).)

If the behavior emergency report is for a student who has a positive behavioral intervention plan, any incident involving a previously unseen serious behavior problem or where a previously designed intervention is not effective shall be referred to the IEP team. The IEP team shall review the incident and determine whether the student's behavioral intervention plan needs to be modified. (Ed. Code § 56521.1 (h).)

All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator. (Ed. Code § 56521.1(f).)

Prohibited Interventions

Each member district of the El Dorado County SELPA prohibits any use of the following:

1. Any intervention designed or likely to cause physical pain
2. Releasing noxious, toxic or otherwise unpleasant sprays, mists or substances near the student's face
3. Any intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort or access to the bathroom
4. Any intervention that subjects the student to verbal abuse, ridicule, humiliation or excessive emotional trauma
5. Use of any material or objects which simultaneously immobilizes all hands and feet, except that prone containment or similar techniques may be used by trained staff as a limited emergency intervention
6. Locked seclusion, unless in a facility otherwise licensed or permitted by law to use a locked room
7. Any intervention that precludes adequate supervision of the student
8. Any intervention that deprives the student of one or more of his/her senses
9. Force exceeding what is reasonable and necessary under the circumstances

(Ed. Code, § 56521.2.)

Legal Reference:

EDUCATION CODE

49001 Prohibition of corporal punishment
56321 Notice of parental rights; consent of parents
56341.1 Individualized Education Programs
56500-56508 Procedural safeguards, including due process rights
56520-56525 Behavioral Interventions

CODE OF REGULATIONS, TITLE 5

3001 Definitions

UNITED STATES CODE, TITLE 20

1412 State eligibility
1414 Individualized Education Programs
1415 Procedural safeguards

CODE OF FEDERAL REGULATIONS, TITLE 34

300.1-300.818 Assistance to states for the education of students with disabilities

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, page 46539-46845

NONPUBLIC, NONSECTARIAN SCHOOL AND AGENCY SERVICES FOR SPECIAL EDUCATION

Nonpublic, nonsectarian school (NPS) and agency (NPA) services shall be available to pupils in the SELPA. When no appropriate public educational services are available within the El Dorado County SELPA, neighboring counties or SELPAs, or state special schools, a designated member of the IEP team or a SELPA Administrator shall contact the LEA Superintendent or designee if an NPS placement and/or NPA services placement might be considered at an upcoming IEP meeting.

Each member district's governing board may contract with a state-certified NPS or NPA to provide special education services or facilities when an appropriate public education program is not available.

When entering into agreements with an NPS or NPA, each member district's governing board shall consider the needs of the individual student and the recommendations of the individualized education program (IEP) team. The member district's IEP team shall remain accountable for monitoring the progress of any student placed in an NPS toward his/her IEP goals.

Legal References:

EDUCATION CODE

- 56034-56035 Definitions of nonpublic, nonsectarian school and agency
- 56042 Placement not to be recommended by attorney with conflict of interest
- 56101 Waivers
- 56163 Certification
- 56168 Responsibility for education of student in hospital or health facility school
- 56195.8 Adoption of policies
- 56360-56369 Implementation of special education
- 56711 Computation of state aid
- 56740-56743 Apportionments and reports
- 56760 Annual budget plan; services proportions
- 56775.5 Reimbursement of assessment and identification costs

GOVERNMENT CODE

757-7588 Interagency responsibilities for providing services to children with disabilities, especially:

7572.55 Seriously emotionally disturbed child; out-of-state placement

FAMILY CODE

7911-7912 Interstate compact on placement of children

WELFARE AND INSTITUTIONS CODE

362.2 Out-of-home placement for IEP

727.1 Out-of-state placement of wards of court

CODE OF REGULATIONS, TITLE 5

3001 Definitions

3061-3069 Nonpublic, nonsectarian school and agency services

UNITED STATES CODE, TITLE 20

1400-1482 Individuals with Disabilities Education Act

CODE OF FEDERAL REGULATIONS, TITLE 34

300.129-300.148 Children with disabilities in private schools

COURT DECISIONS

Agostini v. Felton, (1997) 521 U.S. 203, 117 S.Ct. 1997

Management Resources:

CDE LEGAL ADVISORIES

0317.99 Nonpublic School/Agency Waivers and Reimbursement to parents

FEDERAL REGISTER

Rules and Regulations, August 114, 2006, Vol. 71, Number 156, page 46539-46845

WEB SITES

CDE: <http://www.cde.ca.gov>

Us Department of Education, Office of Special Education and Rehabilitative Services:

[http://www. Ed.gov/offices/OSERS](http://www.Ed.gov/offices/OSERS)

NONPUBLIC, NONSECTARIAN SCHOOL AND AGENCY SERVICES FOR SPECIAL EDUCATION

Placement and Services

Applicable provisions of California and federal law govern the provision of special education and related services by non-public schools (“NPS”) and non-public agencies (“NPA”). Contracts with an NPS or NPA shall include an individual services agreement (“ISA”) negotiated for each student. ISAs shall be for the length of time for which NPS and/or NPA services are specified in the student’s individualized education program (“IEP”), but not to exceed one year. Changes in educational instruction, services or placement shall be made only on the basis of revisions to the student’s IEP. (Ed. Code § 56366.)

The master contract shall specify the general administrative and financial agreements between the NPS or NPA and the member district to provide the special education and designated instruction and services, as well as transportation specified in the student’s IEP. The administrative provisions of the master contract shall also include procedures for record keeping and documentation, and the maintenance of school records by the contracting district to ensure that the NPS provides appropriate high school graduation credit to the student. The master contract may allow for partial or full-time attendance at the NPS. (Ed. Code § 56366.)

In order for a member district to contract with an NPS or NPA, the NPS and NPA must be certified as meeting state standards. (Ed. Code § 56366.) A master contract may be terminated for cause with 20-days’ notice. However, the availability of a public education program initiated during the period of the master contract cannot give cause for termination unless the parent/guardian agrees to transfer the student to the public program.

The master contract shall include a description of the process being utilized by the member district to oversee and evaluate placements in the NPS. This description shall include a method for evaluating whether the student is making appropriate educational progress. (Ed. Code 56366.)

The LEA Superintendent or designee of an elementary district shall notify a high school district of all students placed in NPS or NPA programs prior to the annual review of the IEP for each student who may transfer to the high school district. (5 CCR § 3069.)

When a special education student meets the district requirements for completion of prescribed course of study as designated in the student’s IEP, the district which developed the IEP shall award the diploma. (5 CCR § 3070.)

Out-of-State Placements

Out-of-state placement of children who are seriously emotionally disturbed and/or wards of the court may only be made after in-state alternatives have been considered and found not to meet

the child's needs. (Gov. Code § 7572.55; Welf. & Inst. Code §§ 362.2 and 727.1.)

Before contracting with an NPS or NPA outside California, the LEA Superintendent or designee shall document the member district's efforts to find an appropriate program offered by an NPS or NPA within California. (Ed. Code § 56365.)

Within 15 days of a decision to place a student in an out-of-state placement, the student's IEP team shall submit to the Superintendent of Public Instruction a report with information about the services provided by the out-of-state program, the related costs, and the district's efforts to locate an appropriate public school or nonpublic, nonsectarian school or agency within California (Ed. Code § 56365.)

If the member district decides to place a student with an NPS or NPA outside the state, the member district shall indicate the anticipated date of the student's return to a placement within California and shall document efforts during the previous year to return the student to California. (Ed. Code § 56365.)

LEAs Shall Ensure that NPS Has Written Seclusion and Restraint Policy

Prior to executing a Master Contract with an NPS, the LEA shall ensure that the NPS has a written policy governing the use of seclusions and restraints by NPS personnel. The NPS's written seclusion and restraint policy shall include, at minimum, the following:

1. Require all staff working with students receive comprehensive training in the safe and appropriate use of seclusion and restraint. Comprehensive training includes, but is not limited to Non-Violent Crisis Intervention or a course of comparable scope and depth;
2. Prohibits untrained staff from restraining students;
3. Authorizes the use of seclusion or restraint only when there is an emergency involving the immediate risk of physical harm to student or others;
4. Requires staff members to end the restraint and/or seclusion when the emergency justifying the restraint and/or seclusion has ended;
5. Requires the NPS to contact the responsible LEA and/or law enforcement, as appropriate, whenever a restraint exceeds 30 minutes in length;
6. Requires direct continuous observation of all students placed in seclusion;
7. Prohibits the use of chemical restraints or any restraint technique, such as prone restraints, that obstructs breathing or is otherwise harmful to the student based on the individual needs of the student including any medical or health related conditions;

8. Prohibits NPS staff members from using seclusion or restraint to discipline students; and
9. Requires the NPS staff to notify the responsible LEA within one school day whenever an LEA's student has been secluded or restrained.

The master contract shall not be executed until an LEA administrator or designee has reviewed the policy and determined that it complies with the requirements of this section.

Placement Procedures

The LEA Superintendent or designee shall review all documented efforts to utilize any public school options prior to utilizing an NPS or NPA. The member district will process referrals and locate an appropriate NPS to meet the student's needs. The SELPA may assist and/or collaborate with the member district to locate an appropriate NPS.

Each member district agrees to use the Master Contract and ISA adopted by the SELPA. The SELPA office will ensure that the Master Contract has been approved by the SELPA's legal counsel and is updated per federal or state requirements. The NPS is required by the Master Contract and the IEP to annually evaluate the pupils (formally and informally) to determine if the student is making appropriate educational progress. As part of the IEP review process, each member district that contracts with an NPS shall evaluate the placement of its pupil(s) on at least an annual basis. The member district representative shall collaboratively review the NPS evaluation data to ensure that the results are appropriate, reliable, and valid for measuring pupil progress. The member district may elect to conduct the annual evaluation(s) and/or administer additional assessments with parent consent.

Legal References:

EDUCATION CODE
56205(c)
56198(b)(1)

]

SELPA Superintendents' Council Approval 2-7-19

INTERAGENCY

It shall be the policy of this LEA that interagency agreements or other mechanisms for interagency coordination are in effect to ensure services required for free appropriate public education are provided, including the continuation of services during an interagency dispute resolution process.

Legal Reference:

Title 17 of the *California Code of Regulations* (17 CCR) Section 52140

UNITED STATES CODE, TITLE 20 1412
20 USC Section 1412(a)(12)

Adopted by SELPA Superintendents' Council 3-4-21

INTERAGENCY

Pursuant to Title 17 of the *California Code of Regulations (17 CCR)* Section 52140, LEAs must develop and maintain local interagency agreements with Regional Centers. Agreements must include (as applicable to charter LEAs):

1. The responsibilities of each LEA and Regional Center in meeting the terms of the agreement;
2. Procedures for coordination of child find activities with local public agencies and Regional Centers to identify infants and toddlers who may be eligible for early intervention services;
3. Specific procedures for coordination of referrals for evaluation and assessment;
4. Procedures for the assignment of a service coordinator;
5. Interagency procedures for identifying the responsibilities of the regional center and LEA for completing the evaluation and assessment and determining eligibility within the time requirements contained in Section 52086 of these regulations, when an infant or toddler may receive services from both the Regional Center and LEA;
6. Procedures for the timely exchange of information between Regional Centers and LEAs;
7. Mechanisms for ensuring the availability of contacts at Regional Centers and LEAs at all times during the year;
8. Procedures for interagency individualized family service plan (IFSP) development when infants and toddlers may be eligible for early intervention services from the Regional Center and the LEA or other state or local programs or services;
9. Procedures to ensure the provision of services during periods of school vacations when services are required on the IFSP;
10. Transition planning procedures which begin at least six months prior to a toddler's third birthday pursuant to *EC* Section 52112 of these regulations;
11. Procedures for resolving disputes between regional centers and LEAs;
12. Procedures for the training and assignment of surrogate parents; and
13. Procedures for accepting transfers of infants or toddlers with existing IFSPs.

Local interagency agreements must be dated and signed by representatives of the Regional Center and LEA. Interagency agreements must be reviewed by both parties annually, revised as necessary, dated, and signed by both parties as needed.

Adopted by SELPA Superintendents' Council 3-4-21

PROGRAM TRANSFER POLICY

According to Education Code Section 56207, special education programs may be transferred from a county office of education to school districts, from school districts to the county superintendent of schools and from one district to another. For the purpose of this policy, programs may also be transferred to charter schools that have been granted LEA status.

A program transfer occurs when the proposed change involves a change in the LEA of services and involves the movement of funding locally from one service provider (LEA) to another. A program transfer is defined as either or both of the following:

- A change in the entity responsible for the operation of a regional program.
- An LEA developing program(s) in the district to deliver services for a group of students in place of an existing regional program.

Transfer Guidelines

Prior to transferring special education programs from one LEA to another, the sending and receiving LEAs will develop a plan to transfer the program (the “Detailed Plan for Special Education Program Transfers”). The plan will address all of the following:

1. Pupil needs;
2. The availability of a full continuum of services to affected pupils;
3. The functional continuation of the current IEPs of all affected pupils;
4. The provision of services in the least restrictive environment from which affected pupils can benefit;
5. The maintenance of all appropriate services;
6. The assurance that there will be compliance with all federal and state laws and regulations and special education local plan area policies; and
7. The means through which parents and staff were informed and involved during the planning process.

Timelines

Transferring a special education program requires adequate notice to ensure that students have uninterrupted access to programs and services as required by their educational programs. Program transfers require a three-year process:

- Year One – Notification
- Year Two – Preparation
- Year Three – Implementation

YEAR ONE - NOTIFICATION:

Prior to February 1, the LEA initiating the transfer request shall submit in writing to the SELPA notice of intent to transfer a special education program. The SELPA will confirm receipt of the notification and will notify the Executive Committee and SELPA Superintendents’ Council of the proposed transfer.

YEAR TWO – PREPARATION:

The program transfer process requires the transference of the operation of a program from one LEA to another. Both the receiving and sending LEAs are required to complete and sign a Notice of Intent to Transfer Special Education Programs form. When the initiating LEA intends to receive a special education program, the initiating LEA shall identify an LEA to send the program. Conversely, when the initiating LEA intends to send the program, the LEA shall identify an LEA that agrees to receive the program. The Notice of Intent to Transfer Special Education Programs form shall be completed and submitted to the SELPA no later than September 30.

Both the sending and receiving LEAs shall submit a signed Program Transfer Assurances Form and a Detailed Plan for Special Education Program Transfers to the SELPA prior to November 30, addressing all of the required program transfer plan components set forth in section 56207 of the California Education Code, this policy, employment responsibilities, and any other elements necessary to ensure the consistent provision of services.

SELPA administration will review the plan and certify that it contains all required elements. Once the plan has been reviewed and certified by the SELPA, it will be added to the Executive Committee and SELPA Superintendents' Council agendas as an information item.

Any revisions to the plan shall be submitted no later than February 1. Once received, changes will be reviewed and recertified by SELPA administration and may be presented to superintendents.

YEAR THREE – IMPLEMENTATION

The receiving LEA officially assumes operation of the program as of July 1.

Waiver Provisions

The Superintendents' Council has the authority to waive the required timelines for the implementation of the program transfer pursuant to Section 56207(b) of the California Education Code. A request for a waiver of the timeline shall be submitted to the SELPA office and the sending LEA no later than February 1 and requires unanimous approval from the Council.

Funding

Funding for the program throughout the transfer process aligns with the approved Allocation Plan.

LEA Responsibilities When Operating Programs

The SELPA assures services to students by offering centralized and regionalized programs and services provided by member LEAs. When a program transfer is proposed for regional programs and services, the receiving LEA will guarantee the continuation and/or provision of services to students that may reside outside the LEA's attendance area. Requests to relinquish programs must be submitted in writing to the SELPA office. The SELPA administrator will forward requests to the Executive Committee and SELPA Superintendents' Council for consideration. Until the transfer procedure has been completed, the services will remain the responsibility of the current LEA. Any action to transfer the program and services will follow the procedures and timelines outlined in this policy.

Program/Service Standards

When transferring a regional program, the receiving LEA agrees to maintain the program and/or service delivery provided by the sending LEA unless approved by the SELPA Superintendents' Council. LEAs may only change the nature of the program if they can continue to implement the IEPs of the students affected by the program transfer. The receiving LEA agrees to operate the program and services for at least three years unless otherwise agreed to by the SELPA Superintendents' Council.

Personnel Considerations

The following personnel factors need to be considered and addressed in the program transfer plan: rights of certificated personnel, classified personnel qualifications, medical benefits, and collective bargaining agreements.

Facilities

Transfer of facilities, when appropriate, will be negotiated on a case-by-case basis by the sending and receiving LEAs. Whenever a program is transferred from one LEA to another, the receiving LEA assumes responsibility for the facilities (i.e., portable classrooms, etc.) currently occupied by the program when owned by the receiving LEA.

Materials and Equipment

Transfer of materials and equipment will be negotiated on a case-by-case basis by the sending and receiving LEAs. There is an understanding that LEAs have made significant local contributions to the operations of special education programs. Therefore, it is difficult to determine whether special education funds have, in fact, been used to purchase any specific materials and equipment. In considering what materials and equipment are to be transferred with the program, the sending LEA shall consider the underlying principles of fairness, equitable distribution of all materials and equipment that have been routinely utilized by the transferred program, and the needs of the students continuing in the transferred program. Any material or equipment purchased with Low Incidence funds is the property of the California Department of Education and will remain with the student.

Student Records

When the transfer of a program has received final approval, the sending and receiving LEAs will develop a plan for the transfer of all student records to the receiving LEA.

Special Considerations

The SELPA may consider any other factors, which are deemed relevant to the proposed program transfer, such as LEA identification rates, impact on transportation, etc. The primary consideration, however, must be to provide service to all identified students within the SELPA by qualified personnel under IDEA and Every Student Succeeds Act (ESSA).

Disputes

Whenever there is a dispute within the SELPA over the transfer of special education programs as described above, the involved agencies will follow the dispute resolution procedures described in the governance section of the Local Plan.

Appeal to CDE to Resolve Questions on Program Transfers

Because of ambiguities in the definition of a program transfer, CDE will allow any LEA or parent to request, in writing, for the Department to undertake a determination whether a proposed change constitutes a program transfer. All requests should be signed by the LEA or parent and a copy should be forwarded to a SELPA Administrator. The Department will make a determination within 60 days and issue a public opinion in writing to the relevant LEA(s) and SELPA.

Adopted by SELPA Superintendents' Council 9-7-17
Revised by SELPA Superintendents' Council 6-7-18
Revised by SELPA Superintendents' Council 10-7-21