

CSBA Sample Board Policy

Instruction

BP 6164.41(a)

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOL

Note: If the Special Education Local Plan Area (SELPA) in which the district participates maintains a policy on this topic, then the following policy and administrative regulation may be deleted and/or modified for consistency with the SELPA's procedures. Districts that delete and/or modify this policy should consult legal counsel as appropriate.

Pursuant to Education Code 56171 and 20 USC 1412(a)(3), districts, county offices of education, or SELPAs, as appropriate, are required to locate, identify, and evaluate all children with disabilities enrolled by their parents/guardians in private schools, including religious schools. 34 CFR 300.131 and 300.134 require the district, after a timely and meaningful consultation with private school representatives, to conduct a thorough "child find" process to determine the number of parentally-placed children with disabilities attending private schools located in the district, including those residing outside of the district or in another state. Pursuant to 34 CFR 300.131, the responsibility for "child find" is that of the district where the private school is located.

Education Code 56301 **mandates** that districts, county offices of education, or SELPAs, as appropriate, have policies and procedures to locate, identify, and evaluate all children with disabilities enrolled by their parents/guardians in private schools, including religious schools. See BP/AR 6164.4 - Identification and Evaluation of Individuals for Special Education for language regarding "child find" procedures for other district residents.

The Analysis of Comments to the federal regulations, 71 Fed. Reg. 156, pg. 46593, lists examples of "child find" activities such as distributing informational brochures, providing regular public service announcements, staffing exhibits at health fairs and other community activities, and creating direct liaisons with private schools. This policy may be modified to reflect the specific child find activities that the district will undertake.

The requirements of this policy and administrative regulation do not apply to those situations in which a district has placed a student with a disability in a private school as a means of fulfilling the district's obligations to provide a free appropriate public education (FAPE) or when the parent/guardian has made a unilateral placement of the student in a private school because the provision of FAPE by the district is an issue. See BP/AR 6159.2 - Nonpublic, Nonsectarian School and Agency Services for Special Education.

The Governing Board recognizes its obligations under state and federal to locate, identify, evaluate, and provide equitable services to children voluntarily enrolled by their parents/guardians in private schools located within the district.

(cf. 0430 - Comprehensive Local Plan for Special Education)

The Superintendent or designee shall ensure that activities to locate, identify, and evaluate children with disabilities enrolled by their parents/guardians in private schools within the district are comparable to activities undertaken for individuals with disabilities aged three to 22 in public schools within the district. (Education Code 56171; 34 CFR 300.131)

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOL (continued)

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

Note: Pursuant to 34 CFR 300.132 and 300.133, a district must spend a "proportionate share" of federal funds on parentally-placed private school children with disabilities. See the accompanying administrative regulation. However, the law is unclear as to the district's obligation to provide services to such children if the district's proportionate share of federal funds has been expended before the end of the school year or if an identified student's needs do not fall within the types of services agreed to in the consultation process with private school representatives. Legal counsel should be consulted as appropriate.

The Superintendent or designee shall develop a budget for the provision of services to children with disabilities enrolled by their parents/guardians in private school based on the proportionate share of federal funds received and the number of eligible children, including the possibility of mid-year enrollees, and the types of services to be provided.

Legal Reference:

EDUCATION CODE

56000 Education for individuals with exceptional needs

56020-56035 Definitions

56170-56177 Children in private schools

56195.8 Adoption of policies for programs and services

56300-56385 Identification and referral, assessment

56500-56509 Procedural safeguards, including due process rights

56600-56606 Evaluation, audits and information

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1400-1482 Individuals with Disabilities Education Act, especially:

1412 State eligibility

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act

CODE OF FEDERAL REGULATIONS, TITLE 34

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

300.100-300.144 Children with disabilities enrolled by their parents in private schools

FEDERAL REGISTER

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

COURT DECISIONS

Agostini v. Felton (1997) 521 U.S. 203

Management Resources: (see next page)

**CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN
PRIVATE SCHOOL (continued)**

Management Resources:

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act, August 2021

Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families, July 2021

A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA): Memorandum 11-07, January 2011

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, April 2011

WEB SITES

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

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

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