

NONPUBLIC SCHOOL/AGENCY (NPS/NPA) PLACEMENTS

Definition

Nonpublic, Nonsectarian School

Nonpublic, nonsectarian school means a private, nonsectarian school that enrolls students with disability needs pursuant to an IEP and is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency or a public university or college. A nonpublic, nonsectarian school also shall meet standards as prescribed by the Superintendent and board.

Nonpublic, Nonsectarian Agency

Nonpublic, nonsectarian agency means a private, nonsectarian establishment or individual that provides related services necessary for a student with a disability to benefit educationally from the student's educational program pursuant to an IEP and that is certified by the California Department of Education. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, a public university or college or a public hospital. The nonpublic, nonsectarian agency shall also meet standards as prescribed by the superintendent and board.

Nonsectarian

Nonsectarian means a private, NPS or NPA that is not owned, operated, controlled by or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility and whose articles of incorporation and/or by-laws stipulate that the assets of such NPA or corporation will not inure to the benefit of a religious group.

Legal Requirements

District (LEA) Requirements

Services provided by nonpublic, nonsectarian schools, as defined pursuant to § 56034, and nonpublic, nonsectarian agencies, as defined pursuant to § 56035, shall be made available. These services shall be provided pursuant to § 56366, and in accordance with § 300.146 of Title 34 of the Code of Federal Regulations, under contract with the district to provide the appropriate special educational facilities, special education or designated instruction and services required by a student with a disability if no appropriate public education program is available.

Students enrolled in nonpublic, nonsectarian schools and agencies under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with § 41600) of Part 24 and § 42238. The district shall be eligible to receive allowances under Articles 3 (commencing with § 56836.165) and 4 (commencing with § 56836.20) of Chapter 7.2 for services that are provided to students with a disability pursuant to the contract.

Out of State Placement Requirements

Before contracting with a nonpublic, nonsectarian school or NPA outside of the state, the district shall document its efforts to utilize public schools or to locate an appropriate nonpublic, nonsectarian school or agency program, or both, within the state.

If a district places a student with a nonpublic, nonsectarian school or agency outside of this state, the student's IEP team shall submit a report to the Superintendent of the California Department of Education within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided, and shall indicate the efforts of the district to locate an appropriate public school or nonpublic, nonsectarian school or NPA, or a combination thereof, within the state. The Superintendent shall submit a report to the board on all placements made outside of this state.

If a district decides to place a student with a nonpublic, nonsectarian school or NPA outside of the state, that district shall indicate the anticipated date for the return of the student to a public or nonpublic, nonsectarian school or NPA placement, or a combination thereof, located in the state, and shall document efforts during the previous placement year to return the student.

In addition to meeting the requirements of § 56366.1, a nonpublic, nonsectarian school or NPA that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to students under the federal prior written notice (PWN) (20 U.S.C. § 1400 et seq.).

Contracting Requirements

It is the intent of the Legislature that the role of a nonpublic, nonsectarian school or NPA shall be maintained and continued as an alternative special education service available to a district and parents.

The master contract for nonpublic, nonsectarian school or NPA services shall be developed in accordance with the following provisions of EC § 56366.

The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased or contracted by a district for students enrolled in the nonpublic, nonsectarian school or NPA unless provided directly or subcontracted by that nonpublic, nonsectarian school or NPA.

A master contract for special education and related services provided by a nonpublic, nonsectarian school or NPA may not be authorized under this part, unless the school or NPA has been certified as meeting those standards relating to the required special education and specified related services and facilities for students with a disability. The certification shall result in the school or NPA receiving approval to educate students under this part for a period no longer than 18 months from the date of the initial approval.

Waiver Allowances

A district, nonpublic, nonsectarian school, or nonpublic, NPA may petition the Superintendent to waive one or more of the requirements under §§ 56365, 56366, 56366.3, and 56366.6. The petition shall state the reasons for the waiver request and shall include the following:

1. Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific student's IEP and the student's current placement.
2. The period of time that the waiver will be effective during any one school year.
3. Documentation and assurance that the waiver does not abrogate any right provided to students with a disability and their parents or guardians under state or federal law and does not hinder the compliance of a district with the federal prior written notice (PWN) (20 U.S.C. Sec. 1400 et

seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and federal regulations relating to those acts.

No waiver shall be granted for reimbursement of those costs prohibited under Article 4 (commencing with § 56836.20) of Chapter 7.2 of Part 30 or for the certification requirements pursuant to § 56366.1 unless approved by the board pursuant to § 56101.

In submitting the annual report on waivers granted under § 56101 and this section to the board, the Superintendent shall specify information related to the provision of special education and related services to students with a disability through contracts with nonpublic, nonsectarian schools and agencies located in the state, nonpublic, nonsectarian school and NPA placements in facilities located out of state and the specific section waived pursuant to this section.

Licensed Children's Institution (LCI) Prohibition

A LCI at which students with a disability reside shall not require, as a condition of residential placement, that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or NPA owned, operated by, or associated with, a LCI. Those services may only be provided if the SELPA determines that appropriate public alternative educational programs are not available.

Integration into Public Schools

The California Department of Education shall implement a program to integrate students with a disability placed in nonpublic, nonsectarian schools into public schools, as appropriate. Under the program, a student placed in a nonpublic, nonsectarian school and each individual who has the right to make educational decisions for the student shall be informed of all his or her rights relating to the educational placement of the student. Existing dispute resolution procedures involving public school enrollment or attendance shall be explained to a student placed in a nonpublic, nonsectarian school in an age and developmentally appropriate manner. The Foster Child Ombudsman shall disseminate the information on education rights to every foster child residing in a LCI or foster family home.

Note: As of this writing, the CDE has not implemented this requirement.

Collaboration with LCI Representative

A district shall invite at least one non-educational agency representative that has placement responsibility for a student residing in a LCI to collaborate with the district in the monitoring of a placement in a nonpublic, nonsectarian school or NPA.

Confidential Communication with IEP Team

A nonpublic, nonsectarian school shall ensure private and confidential communication between a student of the nonpublic, nonsectarian school and members of the student's IEP team, at the student's discretion.

Elementary District Notification to High School District

Review of the student's IEP shall be conducted at least annually by the district. The district shall ensure that review schedules are specified in the IEP and contract for the student. An elementary school 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.

Diploma Requirements

When a student with a disability meets district requirements for completion of prescribed course of study and adopted differential proficiency standards as designated in the student's IEP, the district that developed the IEP shall award the diploma.

Legal References

EC 48856; EC 56034; EC 56035; EC 56366; EC 56366.2; , EC 56366.9; EC 56366.11; EC 56366.12

Local Procedures

NPS placements are considered part of the continuum of services that districts must have available for students with disabilities. Districts may place students in NPSs only after exhausting all local resources. districts should consider placement opportunities and services within the district first and, after that, placements in other programs within the SELPA. If, after considering all local options, the IEP team determines that no appropriate public education program is available within the SELPA, the district may pursue placement in a NPS or NPA, provided that the NPS/A is certified by the state.

Licensed Children's Institution (LCI) Prohibitions/Out of Home Care

A LCI (also known as a group home) at which a student with a disability resides is forbidden by law to require, as a condition of residential placement, that the student attend a nonpublic, nonsectarian school or NPA owned, operated by or associated with that LCI. The student may be placed in the NPS only if the district and/or SELPA request such placement after determining that an appropriate public alternative educational program is not available.

Occasionally, when Child Welfare Services (CWS) or probation are trying to place a student out of county, the group home might refuse to take the student if the student doesn't have an IEP for a NPS. As a result, CWS or probation will request an IEP meeting for the student and expect the district to write an IEP for a NPS. The school does not have to agree to an NPS placement unless it feels it is appropriate for the students' educational needs.

Contracting Requirements

Contracts with NPSs or agencies shall be made on forms provided by the SELPA and shall include a Master Contract for each NPS/NPA and an Individual Services Agreement for each student. Contracts may be for partial or full-time attendance at a NPS. Individual services agreements shall specify the frequency, intensity, and duration of services for each service to be provided by the NPS/NPA and the duration of the contract, not to exceed one year. Changes to the services or placement shall be made only on the basis of revisions to the student's IEP.

The Master Contract specifies the administrative and financial agreements/responsibilities between the nonpublic, nonsectarian school or NPA, the DOR, and the SELPA with regard to the provision of special education and related services, including transportation, as specified in the student's IEP. The contract specifies the responsibilities of each party and should be reviewed carefully by the placing district. In the Humboldt-Del Norte SELPA, the SELPA office negotiates in-county NPA rates and executes Master Contract Agreements with those NPAs. The ISP are the responsibilities of the district procuring services for a student, with assistance provided by the SELPA.

Dual Enrollment in Public and Nonpublic School

IEP teams should be aware that attending a NPS does not pre-empt a student's right to integrate into public school as he/she is able. The issue of integration should be addressed as appropriate at each IEP meeting and, when appropriate, students should integrate into public school for specified subjects/activities. If the NPS is close enough, students should be allowed to integrate into the public school DOR. If distance prohibits this possibility, students should be allowed to integrate into their public school where the NPS is located.

Interim Placements (aka Transfer Students)

In the case of a student who becomes a legal resident of a district while attending a NPS/NPA as per a current IEP, the district should follow the directions in the section of this manual titled Interim Placements and, if the district intends to continue the NPS placement at the conclusion of the interim placement period, follow the placement procedures above. If a student was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another SELPA, and this placement is not eligible for funding pursuant to § 56836.165, the SELPA that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends. (EC §56325(c)).

Out-of-State Placements

As part of the process of locating an appropriate placement, a district may place a student in a NPS outside the state of California, which is always done in consultation with the SELPA. Unless the district secures a waiver as discussed later in this section, the NPS must be certified or licensed by that state to provide special education and related services to students under the federal prior written notice (PWN). Out of state placements are rare, as they are highly restrictive placements. Regardless of the circumstances, if a district does place a student in an out-of-state, NPS, the district must comply with the following legal requirements:

1. The district must document its efforts to utilize public schools or to locate an appropriate nonpublic, nonsectarian school or NPA program, or both, within the state (this should be documented in the IEP).
2. The IEP team shall submit a report to the state Superintendent of Schools within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided and shall indicate the efforts of the district to locate an appropriate public school or nonpublic, nonsectarian school or NPA, or a combination thereof, within the state.
3. The district shall indicate the anticipated date for the return of the student to a public or nonpublic, nonsectarian school or NPA placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the student (this should be documented in the IEP).

Unilateral Parent Placements

It is possible that a parent could place a student in a NPS without the prior knowledge or consent of the district and subsequently request the district to pay for the placement. Parents are not necessarily entitled to reimbursement provided that the district complies with certain legal requirements. districts must be cautious in dealing with these requests. This topic is addressed in the section of this manual titled Private School Students.

Waiver of Certification Requirements

A district may petition the Superintendent of the California Department of Education to waive one or more of the requirements for certification of an NPS/NPA. The petition shall state the reasons for the waiver request, and shall include the following:

1. Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific student's IEP and the student's current placement.
2. The period of time that the waiver will be effective during any one school year.
3. Documentation and assurance that the waiver does not abrogate any right provided to students with a disability and their parents or guardians under state or federal law and does not hinder the compliance of a district with the federal prior written notice (PWN), Section 504 of the federal Rehabilitation Act of 1973, the federal Americans with Disabilities Act of 1990 and federal regulations relating to those acts.

These waivers, as needed, are to be completed by the SELPA.

District Responsibilities

The DOR is responsible for the provision of free appropriate public education (FAPE) for students placed in NPSs/agencies and, in this regard, must play an active role in monitoring the appropriateness of the placement and progress of the student. The responsibilities of the DOR include but are not limited to the following:

1. Schedule IEP meetings according to the timelines set forth in the IEP and Master Contract but at least annually. In the case of students placed in residential settings, it is advised that the IEP be reviewed every 3 months.
2. Ensure that the IEP is written or revised to meet the unique needs of the student.
3. Review evaluations conducted by the NPS/A to ensure that they are appropriate and valid for measuring student progress.
4. Review all progress reports submitted by the NPS/A, and follow up with areas of concern as necessary.
5. Administer additional assessments as necessary, with parent consent, to determine whether the student is making appropriate educational progress.
6. Post course credits for high school students.
7. When a student with a disability meets the district requirements for completion of prescribed course of study and adopted differential proficiency standards as designated in the student's IEP, the district which developed the IEP shall award the diploma.
8. A district shall invite at least one non-educational NPA representative that has placement responsibility for a student residing in a LCI to collaborate with the district in the monitoring of a placement in a nonpublic, nonsectarian school or NPA.
9. The Superintendent or designee of an elementary school 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. The elementary school district shall invite a representative of the high school district to participate in the IEP meeting.

Confidential Consultation

At the student's discretion, members of the IEP team shall be available for private and confidential communication with the student. This means that if the NPS/NPA contacts the district to arrange a consultation at the request of a student, the district must make the appropriate IEP team member available. This requirement is discussed further in the IEP Team Members section of this manual.

Responsibility for Compliance

As stated earlier, the DOR is ultimately responsible for the provision of free appropriate public education (FAPE) to its students attending NPSs/agencies. For this reason, it is important that the DOR monitor the NPS/NPA to ensure that it complies with the requirements of each student's IEP. To accomplish this, districts should, at a minimum, monitor and review all academic reports from the NPS to determine educational benefit, follow-up on all areas of concern, and make on-site visitations periodically to observe the program. If a NPS is non-compliant or a student is not making expected progress, the district must schedule an IEP meeting and either correct the area of non-compliance or consider a change in placement.

Local Forms:

The Master Contract template can be provided by the SELPA upon request.

The Individual Service Plan (ISP) can be found in the individual student data section in SEIS.

FAQs

What happens if the curriculum at the NPS does not meet district requirements and the district will not grant course credit?

A NPS is not expected to implement a curriculum consistent with the DOR for every one of its students. They are expected to adopt a curriculum consistent with the district where the NPS is located. Regardless, the placing district should review the curriculum prior to placing a student and, if the curriculum is not acceptable, find another NPS.

Does the NPS have to provide every service in a student's IEP?

Not necessarily, the NPS must be certified to provide a related service and it may not be certified to provide certain services. Even if it is, the district has the right to decide whether to contract with the NPS for the service or provide the service in another manner.

How does a district monitor a placement in another state?

A SELPA Program Manager will be assigned to assist districts in monitoring the student's placement and making site visits. The district will need to continue to monitor the student for progress, as it is still responsible for providing the student with a FAPE.

In the case of dual enrollments, which public school does the student attend?

That is up to the IEP team. Considering that a student who is ready to integrate part time might eventually be a good candidate for returning full time to his or her DOR, it would seem that integration in a school in the DOR would be preferable. If distance prohibits the student from attending a school in the DOR, the student has a right to attend the district where the NPS is located.

REMINDERS

- The DOR is responsible for the provision of FAPE for all of its students, including those attending nonpublic schools/agencies.
- The district that wrote the IEP for a NPS is responsible for administering the diploma.
- Group homes may not limit placements dependent upon a student's enrollment in a NPS affiliated with the group home.
- Districts may only place students with a disability in CDE-certified nonpublic schools/agencies.
- Students may be placed in a NPS in another state if an appropriate program is not available in state.
- Students in nonpublic schools have the right to consult confidentially with a member of the IEP team.