



Chapter 19: Private Schools and Services

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Introduction

The U.S. Department of Education states, “The Department believes that the right of parents to choose where their children should be educated, whether at public or private school, is extremely important. Nevertheless, the rights of parentally-placed private school children with disabilities under Part B are not the same as those of children with disabilities that are enrolled in public schools and are served at public agency programs or public agency placements in private schools.” Based on the concepts set forth by the Individuals with Disabilities Education Act (IDEA) 2004, the Desert/Mountain Special Education Local Plan Area (SELPA) has developed a set of policies and procedures as they relate to parentally-placed private school children with disabilities.

On an annual basis, the SELPA shall consult with appropriate representatives of private schools regarding how to carry out the activities of locating, identifying, and assessing all private school children with disabilities, including religious-school children residing within the SELPA. These activities shall be comparable to those undertaken for children with disabilities in public schools, and the cost of carrying out the child find must not be a consideration.

On an annual basis, the SELPA shall consult with appropriate representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities. Upon conducting the annual count of the number of private school children with disabilities and determining the amount of the SELPA’s total sub-grant under sections 611(f) and 619(g) of the IDEA 2004 to be expended on private school children, the SELPA shall consult with appropriate representatives of private school children, on an annual basis, on the following issues:

- 1) Which children will receive services;
- 2) What services will be provided and by whom;
- 3) How and where the services will be provided; and
- 4) How the services provided will be evaluated.

The SELPA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding the issues listed above. Such consultation shall occur before the SELPA Board of Directors makes any decision that affects the opportunities of private school children with disabilities to participate in services offered by the public schools.

Each participating Local Education Agency (LEA) of the SELPA providing services shall initiate and conduct meetings to develop, review, and revise a services plan for a private school child with a disability who receives special education or related services from the LEA. Each LEA providing services shall ensure that a representative of the private school is involved in the development, review, or revision of a services plan and that the LEA in which the student resides is invited to the meeting. If a representative of a private school cannot attend a meeting to develop, review, or revise an Individual Education Plan (IEP), the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

Section A – Parentally Placed Students with Disabilities in Private Schools

E.C. 56170. As used in this part, “private school children with disabilities” means children with disabilities enrolled by a parent in schools or facilities, in accordance with Section 300.450 of Title 34 of the Code of Federal Regulations, other than individuals with exceptional needs placed by a district, special education local plan area, or county office in a nonpublic, nonsectarian school pursuant to Section 56365.

E.C. 56172. The district, special education local plan area, or county office shall make provision for the participation of private school children with disabilities in special education programs under this part by providing them with special education and related services in accordance with the provisions of this article.

E.C. 56174. The district, special education local plan area, or county office shall not be required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district, special education local plan area, or county office made a free appropriate public education available to the child and the parent of the child elected to place the child in the private school or facility.

With the reauthorization of IDEA in 2004, provisions were developed that outline the responsibility of State and LEAs to parentally-placed private school children with disabilities. The following are the major revisions that relate to parentally-placed private school children with disabilities according to the Office of Special Education:

1. Provision is made for the participation of children with disabilities enrolled by their parents in private preschool, elementary, and secondary schools, consistent with their number and location in the State, in the program assisted or carried out under Part B by providing for such children special education and related services.
2. Activities are conducted to locate, identify, and evaluate children placed by their parents in private schools, including religious schools, who may need special education and related services. This requirement is known as child find and is the responsibility of the LEA in which the private school is located.
3. A proportionate amount of federal funds available under Part B is expended for services for parentally-placed private school children with disabilities.
4. Special education and related services may be provided to parentally-placed private school children with disabilities on the premises of private, including religious schools, in a manner that does not violate the Establishment Clause of the First Amendment to the U.S. Constitution and is consistent with applicable State constitution and laws.

Section B – Guidelines for Participating LEAs, Children with Disabilities Enrolled by Parents in Private Schools

With respect to the California Education Code, the Desert/Mountain SELPA developed and approved the following operational guidelines to ensure participating LEAs in the Desert/Mountain SELPA, San Bernardino County:

- Locate, identify and evaluate all children ages three to 22 with disabilities enrolled by their parents in a private school who may be eligible for special education services; and
- Offer a Free and Appropriate Public Education (FAPE) to all children ages three to 22 with disabilities enrolled by their parents in private schools who are determined to be eligible for special education services.

A. Child Find

1. The Desert/Mountain SELPA will undertake the following child find activities for private school children ages three to 22:
 - a) Presentations 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.

- b) Distribution of 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.
2. The Desert/Mountain SELPA will ensure that child find activities undertaken for private school students are comparable to activities undertaken for children ages three to 22 with disabilities in public schools. Child find activities will include consultation with appropriate representatives of private school children ages three to 22 with disabilities regarding how to carry out such activities.

B. Special Education Referral

1. LEAs and private schools refer students for special education instruction and services only after the resources of the general education program have been considered and utilized, as appropriate by a student study or guidance team.
2. If, after considering, and, as appropriate, utilizing general education resources, representatives of private school children with disabilities, including private school administrators, teachers, and parents, determine that a private school child with a disability may be eligible for special education services; the referral shall be directed to the LEA within which the private school is located.

C. Initial Individualized Education Program (IEP) Team Meeting

1. The LEA in which the private school is located shall convene an initial IEP team meeting. If the IEP team determines that a private school child with a disability is eligible for special education services, the team shall refer the child to the child's LEA of residence to develop an IEP offering that child a Free Appropriate Public Education (FAPE) in accordance with federal and state laws and regulations. Such offer shall be recorded on appropriate IEP forms. If the parent refuses the offer of FAPE, the IEP shall indicate, "Eligible/No Plan." If the offer is accepted, an IEP or Individual Family Services Plan (IFSP) will be developed including the following: demographic information, student's language and English proficiency, eligibility, programs and designated instruction and services, present levels of performance, statements of need, goals, transition services language for students 16 and older, individual supports and services, and program options and rationale.
2. The plan of services shall include the nature of services and the physical location at which the services will be provided. A full continuum of services/service delivery options/program options offered include, but are not limited to, general education with special education support, Special Academic Instruction (SAI: RSP/SDC), and DIS/related services. A full continuum of services is included in the appendix to this document.

3. The nature of services include:
 - consultation to modify the core curriculum
 - clinical intervention for specific skill development
 - intensity, duration, and frequency of service
 - measurement of student outcomes based on the standards for all students
4. If the parent of a private school child with a disability agrees with, but wishes to decline, the IEP developed by the team shall:
 - a) Develop an Individual Services Plan (ISP) in accordance with this policy and federal and state laws and regulations using the appropriate ISP forms.
 - b) Ask the parent to indicate his/her agreement with, by checking the box next to the following statement on the appropriate service plan form “I agree that the district has offered my child a free appropriate public education. However, I am voluntarily placing my child in a private school.”

D. IEP/IFSP Policy

1. Pursuant to federal and state law and regulations, the LEAs served by the Desert/Mountain SELPA shall spend a proportionate share of federal funds on providing special education and related services to private school children ages three to 22 with disabilities eligible for special education services.
2. The Desert/Mountain SELPA shall develop an IEP/IFSP policy regarding the special education and related services to be provided to private school children ages three to 22 with disabilities eligible for special education services. Such IEP/IFSP Policy shall be developed 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 identify:
 - a) Disabling conditions that are served;
 - b) Services that will be provided;
 - c) How, where, and by whom services will be provided; and
 - d) How services will be documented and evaluated.
3. The IEP/IFSP Policy shall be reviewed by the Desert/Mountain SELPA annually by consultation with representatives of private school children ages three to 22 with disabilities including private school administrators, teachers, parents, and students.
4. The services provided pursuant to the ISP Services Policy may be provided at the SELPA, student’s residence school or LEA or at a private school, including a religious school, to the extent consistent with law. However, the Desert/Mountain SELPA and/or the LEA of residence shall not use IEP/IFSP Policy funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

5. The services provided to the private school staff could include consultation, disability awareness training, and materials, modifications to the general education curriculum, support for student study team development, and other services indicated on the IEP/IFSP.

E. Dispute Resolution

1. No LEA 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 LEA made a FAPE available to the child, and 2) the parents voluntarily elected to place the child in a private school.
2. Disputes regarding whether a LEA made a FAPE available to the child, as well as the initial location, identification and assessment of parentally-placed private school children with disabilities, may be resolved pursuant to local policies and procedures and/or by filing a request for due process hearing with the California Special Education Hearing office.
3. Disputes regarding the Desert/Mountain SELPA's Children with Disabilities Enrolled by Their Parents in Private Schools policy and procedures may be resolved pursuant to local uniform complaint policies and procedures, and/or by filing a complaint with the California Department of Education pursuant to Title V of the California Code of Regulations Section 4600 et seq.
4. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that he/she would receive if enrolled in a public school.
5. Issues requiring the provision of FAPE can be filed as a due process action as specified in Chapter 7.

F. Certification of Assurances

The Desert/Mountain Annual Service Plan has been adopted at a public hearing held by the special education local plan and notice of this hearing was posted in each LEA in the special education local plan area at least 15 days prior to the hearing.

The Desert/Mountain SELPA Board of Directors is responsible for holding the public hearings.

APPENDIX A: Individualized Education Plan/IFSP

<p>DESERT/MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA (CODE 3601) DESERT/MOUNTAIN CHARTER SPECIAL EDUCATION LOCAL PLAN AREA (CODE 3651) 17800 HIGHWAY 18 • APPLE VALLEY, CA 92307 • (760) 552-6700</p> <p> <input type="checkbox"/> Individualized Family Service Plan <input type="checkbox"/> Individualized Education Program <input type="checkbox"/> Individualized Services Plan <input type="checkbox"/> Not Eligible <input type="checkbox"/> Eligible No Plan Parentally Placed in Private School <input type="checkbox"/> Eligible No Plan Other Reasons </p>	<p>PURPOSE OF MEETING</p> <p> <input type="checkbox"/> Eligibility / Initial Placement <input type="checkbox"/> Transfer Placement SELPA Code: _____ <input type="checkbox"/> Annual <input type="checkbox"/> Triennial <input type="checkbox"/> D/IM 119 Completed <input type="checkbox"/> Other: _____ </p>	<p>DATE: _____</p> <p>TIMELINE INFORMATION (DATES)</p> <p>Please mark the appropriate box and complete all information as they relate to the child.</p> <p> <input type="checkbox"/> CHECK HERE IF INFANT (AGE 0-2) <input type="checkbox"/> CHECK HERE IF CHILD IS AGE 3-22 </p> <p>Referred by for Initial Assessment: _____</p> <p>Date LEA Received Signed AP: _____ Initial Referral Date: _____</p> <p>Initial IEP Meeting Date: _____ Pre-referral intervention w/in last 2 Years: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If assessment not completed prior to student's 3rd birthday, specify Code No.: _____</p> <p>If assessment not completed within 60-day timeline, specify Code No.: _____</p> <p>Low Incidence Disability: <input type="checkbox"/> Yes <input type="checkbox"/> No Disability Code: <input type="checkbox"/> 220 <input type="checkbox"/> 230 <input type="checkbox"/> 250 <input type="checkbox"/> 270 <input type="checkbox"/> 300</p> <p>Original S.E. Entry Date: _____ Exit S.E. Date: _____ S.E. Re-entry Date: _____</p> <p>Exit S.E. Code: _____</p> <p>Current Annual Date: _____ Next Annual Review Date: _____</p> <p>Annual Delay Date: _____ Reason for Delay: _____</p> <p>Current Triennial Date: _____ Next Triennial Date: _____</p> <p>Triennial Delay Date: _____ Reason for Delay: _____</p> <p>Early Start Transition Plan Meeting Date: _____</p> <p>Home Language Code: _____ English Language Learner: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Migrant: <input type="checkbox"/> Yes <input type="checkbox"/> No Extended School Year: <input type="checkbox"/> Yes <input type="checkbox"/> No No. of Days: _____</p> <p>Agency Services: <input type="checkbox"/> CCS <input type="checkbox"/> Rehab <input type="checkbox"/> CARE <input type="checkbox"/> Reg. Ctr. <input type="checkbox"/> Other: _____</p> <p> <input type="checkbox"/> Severe Disability <input type="checkbox"/> Non-severe Disability <input type="checkbox"/> Solely Low Incidence Disability (0-2 Years Only) </p>
<p>STUDENT INFORMATION:</p>		
Last: _____ First: _____ Mid. Initial: _____ Suffix: _____ DOB: _____ Age: _____ Student No.: _____ Gender: <input type="checkbox"/> M <input type="checkbox"/> F Grade: _____ Ethnicity: Select one only <input type="checkbox"/> YES, Hispanic or Latino OR <input type="checkbox"/> NO, not Hispanic or Latino Indicate one or more race(s) below: (1) _____ (2) _____ (3) _____ Medi-Cal Eligible: <input type="checkbox"/> Yes <input type="checkbox"/> No Medi-Cal No.: _____ SSID No.: _____ Parent/Guardian/Surrogate: _____ Home Phone: _____ Address: _____ Work Phone: _____ Mailing Address: _____ Emg. Phone: _____ Contact Person (if student address different): _____ Contact Phone: _____ Student's Address (if different): _____ Residency Code: _____ LEA of Residence: _____ School of Residence: _____ LEA of Service: _____ Attending School: _____ School Type Code: _____ Weekly % of Time the Student is in the General Education Setting: _____ Infant Setting (Ages 0-2): _____ Preschool Setting (Ages 3-5): _____ School Age Setting (Ages 6-22): _____		
<p>DISABILITY:</p> <p> PRIMARY DISABILITY: _____ SECONDARY DISABILITY: _____ Check all that apply below and indicate the Primary and Secondary Disability Codes in the space provided above: (*Low Incidence) <input type="checkbox"/> Intellectual Disability (210) <input type="checkbox"/> Hard of Hearing (220)* <input type="checkbox"/> Deafness (230)* <input type="checkbox"/> Speech / Lang. Imp. (240) <input type="checkbox"/> Visual Impairment (250)* <input type="checkbox"/> Emotional Disturbance (260) <input type="checkbox"/> Orthopedic Impairment (270)* <input type="checkbox"/> Other Health Imp. (280) <input type="checkbox"/> Est. Med. Disability (281) <input type="checkbox"/> Spec. Learning Disability (290) <input type="checkbox"/> Deaf / Blindness (300)* <input type="checkbox"/> Multiple Disabilities (310) <input type="checkbox"/> Autism (320) <input type="checkbox"/> Traumatic Brain Injury (330) </p>		
<p>GRADUATION INFORMATION</p>		
Participate in High School Curriculum to Graduate with a Diploma <input type="checkbox"/> Yes <input type="checkbox"/> No High School Program Leading to a Certificate of Completion <input type="checkbox"/> Yes <input type="checkbox"/> No		
<p>SPECIAL TRANSPORTATION INFORMATION</p>		
Check if student requires special transportation arrangements to participate in special education services. <input type="checkbox"/> Eligible (indicate type and provider) <input type="checkbox"/> Eligible - Parent Declined <input type="checkbox"/> Not Eligible Type: _____ Provider: _____		
<p>REASON FOR DECISION / ELIGIBILITY STATEMENT:</p>		
_____ _____ _____		

APPENDIX B: Frequently Asked Questions (OSEP, March 2007)

Frequently Asked Questions on Obligations of Public Agencies in Serving Children with Disabilities Placed by Their Parents at Private Schools

(Q&A from OSEP, March 2007)

Questions and Answers on Serving Children with Disabilities Placed by Their Parents at Private Schools March 2006.

The obligation of states and local education agencies (LEAs) to children with disabilities enrolled by their parents in private elementary schools and secondary schools changed on July 1, 2005, the effective date of these provisions in the *Individuals with Disabilities Education Improvement Act of 2004 (Act)*. Section 612(a)(10)(A)(i)(II) of the Act requires that the LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA [emphasis added]. In addition, section 612(a)(10)(A)(i) of the Act makes clear that the obligation to spend a proportionate amount to provide services to children with disabilities enrolled by their parents in private schools now refers to children enrolled by their parents in private elementary schools and secondary schools “in the school district served by a local education agency.” Because these are significant changes in policy, the Department issued a memorandum to all states on June 27, 2005, informing them of these changes. The purpose of the questions and answers below is to provide additional guidance to states and LEAs in complying with the requirements in Section 612(a)(10) of the Act. We anticipate posting additional questions and answers in the future regarding the responsibilities of states and LEAs to serve parentally-placed private school children with disabilities. The Department wants to stress that the following questions and answers do not address all the provisions in Section 612(a)(10) of the Act. States are bound by all the provisions in the Act and, until the final regulations are in effect, the existing regulations that are not inconsistent with the Act. If there is an inconsistency between the statutory provisions in the Act and the provisions in the current regulations (i.e., the 1999 regulations implementing the Individuals with Disabilities Education Act Amendments of 1997 [*IDEA 97*]), the provisions in the Act would supersede those in the current regulations. In addition, the final regulations, which will specify an effective date, will supersede current regulations and any Departmental guidance pertaining to the Act provided prior to the effective date of the final regulations, including the guidance in the questions and answers that follow.

A. Consultation with Private School Representatives and Representatives of Parents of Parentally-Placed Private School Children with Disabilities

Authority: The requirements for consultation are in Section 612(a)(10)(A)(i)(II) and 612(a)(10)(A)(iii) through (v) of the Act.

Question A-1: What is consultation?

Answer: Consultation involves discussions between the LEA, private school representatives, and representatives, as defined in the Act, of parents of parentally-placed private school children with disabilities on key issues that affect the ability of eligible private school children with disabilities to participate equitably in federally funded special education and related services (See more on the provision of equitable services in Part C of these questions and answers.). Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA. Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally-placed private school children with disabilities.

A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation. Only after discussing key issues relating to the provision of special education and related services with all representatives should the LEA make its final decisions with respect to the services to be provided to eligible private school children with disabilities.

Question A-2: What must the consultation process include?

Answer: Section 612(a)(10)(A)(iii) of the Act provides that each LEA must consult, in a timely and meaningful way, 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 parentally-placed private school children. The public agency must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities. The consultation process must include the following:

- 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;
- The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
- How the consultation process among representatives of the agency, private school and of parents of parentally-placed private school children will take place, including how the 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;
- How, where, and by whom special education and related services will be provided, including a discussion of types of services – including direct services and alternate service-

delivery mechanisms, as well as how such services will be apportioned if funds are insufficient to serve all children – and how and when these decisions will be made; and

- How, if the LEA representatives disagree 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 LEA will provide to the private school officials, a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials.

Question A-3: What records on consultation must an LEA maintain?

Answer: When timely and meaningful consultation has occurred, the LEA must obtain a written affirmation signed by the representative of the participating private school. If the representatives do not provide the affirmation with a reasonable period of time, the LEA must forward the documentation of the consultation process to the state education agency (SEA).

Question A-4: Do private school officials have the right to complain?

Answer: A private school official has the right to complain to the SEA that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official. A complaint must provide the basis of the official's belief that the LEA did not comply with the consultation requirements. The LEA must forward to the SEA appropriate documentation. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the secretary of the U.S. Department of Education providing the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation to the secretary.

B. Child Find and Individual Evaluations

Authority: The requirements for child find and individual evaluations are in Section 612(a)(10)(A)(i)(II) and (V), 612(A)(10)(a)(ii) and 614(a) of the Act.

Question B-1: Which LEA is responsible for conducting child find for parentally-placed private school children?

Answer: The LEA where the private school is located. Section 612(a)(10)(A)(i)(II) of the Act makes clear that the LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. [Note: Under the prior provisions of the IDEA, the responsibility to conduct child find to parentally-placed private school children rested with the LEA in which the children resided.]

Question B-2: How does the LEA meet its child find responsibilities to parentally-placed private school children?

Answer: The LEA where the private elementary school or secondary school is located has options as to how it ensures its child find responsibilities are met. For example, it may assume the

responsibility itself, contract with another public agency or make other arrangements. The Act does not permit parentally-placed private school children to be excluded from child find activities.

Question B-3: What is the purpose of child find for parentally-placed private school children?

Answer: The child find process for such children must be designed to ensure the equitable participation of parentally-placed private school children with disabilities and must ensure an accurate count of these children.

Question B-4: What specific child count information must the LEA maintain and report to the SEA?

Answer: The LEA must maintain in its records and provide to the SEA the number of parentally-placed private school children evaluated, the number of parentally-placed private school children determined to be children with disabilities under Part B of the Act, and the number of children provided equitable services.

Question B-5: Why is it important to identify the number of parentally-placed private school children with disabilities located in the LEA where the private school is located?

Answer: An accurate count of the number of eligible private school children with disabilities enrolled by their parents in private schools located in the LEA is needed to calculate the proportionate share of Part B funds that the LEA must expend annually for services for parentally-placed private school children with disabilities.

Question B-6: Must the child find activities and the evaluation procedures for parentally-placed private school children be similar to the child find activities and evaluation procedures for children enrolled in public schools?

Answer: Yes. The child find activities carried out by LEAs for parentally-placed private school children must be similar to activities undertaken for child find for children in public schools. Activities for child find must be completed in a time period comparable to those activities for public school students. This means that LEAs may not delay conducting child find, including individual evaluations, for parentally-placed private school children until after child find for public school children is conducted. In addition, evaluations of all children suspected of having disabilities under Part B of the Act, regardless of whether they are enrolled by their parents in private elementary schools or secondary schools, must be conducted in accordance with the requirements in Section 614(a) of the Act, which describes the procedures for evaluations and reevaluations for all children with disabilities.

Question B-7: Can amounts expended for child find, including individual evaluations, be deducted from the required amount of funds to be expended on services for parentally-placed private school children with disabilities?

Answer: No. There is a distinction under the Act between the obligation to conduct child find activities, including individual evaluations, for parentally-placed private school children with disabilities, and the obligation to use an amount of funds equal to a proportionate amount of the

federal grant to provide special education and related services to parentally-placed private school children with disabilities. The obligation to conduct child find, including individual evaluations, exists independently from the services provision; and the costs of child find activities, such as evaluations, may not be considered in determining whether the LEA has spent an appropriate amount on providing special education and related services to parentally-placed private school children with disabilities.

Question B-8: In conducting the individual evaluations of suspected children with disabilities enrolled in private schools by their parents, may an LEA exclude children suspected of having certain disabilities, such as those with specific learning disabilities?

Answer: No. The LEA where private elementary schools and secondary schools are located must identify and evaluate all children suspected of having a disability as defined under Section 602(3) of the Act. LEAs may not exclude children suspected of having certain disabilities, such as those with specific learning disabilities, from their child find activities. The Department recommends that LEAs and private elementary schools and secondary schools consult on how best to implement the state's evaluation criteria for identifying children with specific learning disabilities enrolled in private schools by their parents.

Question B-9: Which LEA is responsible for ensuring that a reevaluation of each parentally-placed private school child with a disability is conducted at least once every three years?

Answer: The LEA where the private elementary school or secondary school is located is responsible for conducting reevaluations of children with disabilities enrolled by their parents in the private elementary and secondary schools located within the district.

C. Provision of Services

Authority: The requirements for the provision of equitable services are in Section 612(a)(10)(A)(i) and (iii) (V) of the Act, and current 34 CFR §§300.452 through 300.454(a), (b)(4) and (c), and 300.455 through 300.462.

Question C-1: What is the process for making decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities?

Answer: After consultation with private schools representatives and representatives of parents of parentally-placed private school children with disabilities, the LEA is responsible for making final decisions about all aspects of the services to be provided to parentally-placed private school children with disabilities. However, if the LEA 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 LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to accept the recommendations of the private school officials.

Question C-2: Are there any particular kinds of services or specified amounts of services that must be provided to parentally-placed private school children with disabilities under Part B of the Act?

Answer: No. Children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school other than child find, including evaluations. Under the Act, LEAs have the obligation to provide the group of parentally-placed private school children with disabilities with equitable participation in the services funded with federal IDEA funds.

Question C-3: May an LEA provide additional services to parentally-placed private school children in excess of the required federal equitable participation services requirement that is covered by the federal proportionate share?

Answer: Yes. The Act in no way prohibits states or LEAs from spending additional state or local funds to provide special education or related services to parentally-placed private school children with disabilities in excess of those required in Section 612(a)(10)(A) of the Act, consistent with state law or local policy.

Question C-4: Prior to the reauthorization of IDEA, if a state were spending more than the federal proportionate share of funds using state funds, then the state would not have to spend any federal dollars on parentally-placed private school children. Is this permissible under the Act?

Answer: No. IDEA 2004 added a “supplement, not supplant” requirement in Section 612(a)(10)(A)(i)(IV) of the Act. This requirement provides that state and local funds may supplement but in no case supplant the proportionate amount of the federal IDEA funds required to be expended under this provision.

Question C-5: What is the process for developing a services plan for a parentally-placed private school child with a disability?

Answer: Each parentally-placed private school child with a disability who has been designated by the LEA in which the private school is located to receive special education or related services must have a services plan. The services plan describes the specific special education or related services that the LEA will provide to the child. The LEA must ensure that a representative of the private school attends each meeting to develop the services plan and, if the representative cannot attend, use other methods to ensure participation by the private school, including individual or conference telephone calls. This provides the opportunity for private school staff to learn more about the child's strengths and needs.

Question C-6: What is the difference between an individualized education program (IEP) and a services plan?

Answer: Children with disabilities enrolled in public schools or who are publicly-placed in private schools are entitled to a free appropriate public education (FAPE) and must receive the full range of services under Part B that are determined by the child's IEP team to be necessary to meet the child's individual needs and provide FAPE. The IEPs for these children generally will be more comprehensive than the more limited services plans developed for parentally-placed private school children with disabilities designated to receive services. A services plan should reflect only the services offered to a parentally-placed private school child with a disability designated to receive services and must, to the extent appropriate, meet the IEP content requirements described in

Section 614(d) of the Act, or, when appropriate, for children aged three through five, the Individual Family Services Plan (IFSP) requirements described in Section 636(d) of the Act as to the services that are to be provided.

Question C-7: Who provides equitable services to parentally-placed private school children with disabilities?

Answer: Equitable services must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization or other entity. An LEA may use Part B funds to make public school personnel available in other than public facilities to the extent necessary to provide equitable services for private school children with disabilities and if those services are not normally provided by the private school. An LEA may use Part B funds to pay for the services of an employee of a private school to provide equitable services if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control.

Question C-8: Where may equitable services be provided to parentally-placed private school children with disabilities?

Answer: Services offered to parentally-placed private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law, or at another location. In the interests of the child, efforts should be made to provide services as near as possible to the child's private school so as not to unduly disrupt the child's education experience. The phrase "extent consistent with law" is statutory, and we interpret it to mean that the provision of services on the premises of a private school takes place in a manner that would not violate the Establishment Clause of the First Amendment to the U.S. Constitution and would not be inconsistent with applicable state constitutions or law.

Question C-9: How is the location where services will be provided to parentally-placed private school children with disabilities determined?

Answer: The location of services is one of the subjects discussed during the consultation process among LEA officials, private school representatives, and representatives of parents of parentally-placed private school children with disabilities. The public agency makes the final decision, after this consultation process.

Question C-10: May private school officials order or purchase materials and supplies needed for the special education and related services and be reimbursed by an LEA?

Answer: No. Private school officials may not obligate or receive Part B funds. The LEA must control and administer the funds used to provide special education and related services to parentally-placed private school children with disabilities, and maintain title to materials, equipment and property purchased with those funds.

Question C-11: May public agency place equipment and supplies for equitable services in a private school?

Answer: The public agency may place equipment and supplies in a private school for the period of time needed for the program. The public agency must ensure that equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

Question C-12: May Part B funds for equitable services be paid directly to a private school?

Answer: No. Part B funds for equitable services may not be paid directly to a private school.

Question C-13: May Part B funds for equitable services be used for repairs, minor remodeling or construction of private school facilities?

Answer: No. Part B funds for equitable services may not be used for repairs, minor remodeling, or construction of private school facilities.

D. Preschool Children with Disabilities

Question D-1: Do the child find and equitable participation requirements apply to children with disabilities, aged three through five, enrolled by their parents in private elementary schools?

Answer: Yes, under certain conditions. The requirements in Section 612(a)(10) of the Act regarding child find and equitable participation are fully applicable to children with disabilities aged three through five enrolled by their parents in private elementary schools. A private preschool or day care program is considered an elementary school if it meets the definition of elementary school in Section 602(6) of the Act. The Act defines an elementary school as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law.

E. Out-of-State Students with Disabilities

Question E-1: What is the responsibility of the LEA where the private elementary schools and secondary schools are located to conduct child find activities for parentally-placed private school children who reside outside the state?

Answer: Section 612(a)(10)(A)(i) of the Act makes clear that the LEA where the private elementary schools and secondary schools are located is responsible for conducting child find, including individual evaluations, of all parentally-placed private school children suspected of having a disability. This includes children from other states attending private elementary schools and secondary schools located in the LEA.

Question E-2: Who is responsible for determining and paying for services provided to out-of-state parentally-placed private school children with disabilities?

Answer: The LEA where the private elementary schools and secondary schools are located, in consultation with private school officials and representatives of parents of parentally-placed private school children with disabilities, is responsible for determining and paying for the services to be provided to out-of-state parentally-placed private school children with disabilities. These out-of-state children must be included in the group of parentally-placed children with disabilities whose needs are considered in determining which parentally-placed private school children with disabilities will be served and the types and amounts of services to be provided.

F. Miscellaneous Questions

➤ Offer of a Free Appropriate Public Education (FAPE)

Question F-1: If a parentally-placed private school child is identified through the child find process as a child eligible for special education and related services, which LEA is responsible for offering FAPE to a parentally-placed private school child with a disability?

Answer: If a determination is made that a child has a disability and needs special education and related services, the LEA where the child resides is responsible for making FAPE available to the child. If the parents make clear their intention to keep their child enrolled in the private elementary school or secondary school, the LEA of residence need not develop an IEP for the child.

➤ Home Schooled Children With Disabilities

Question F-2: Are home-schooled children considered parentally-placed private school children?

Answer: Whether home-schooled children with disabilities are considered parentally-placed private school children with disabilities is determined by the state. If the state recognizes home schools or home day care as private elementary schools and secondary schools, children with disabilities in those home schools or home day care must be treated in the same way as other parentally-placed private school children with disabilities.

➤ Procedural Safeguards

Question F-3: If the LEA where the private elementary or secondary school is located conducts an individual evaluation on a child and the parents disagree with the evaluation and wish to have an independent educational evaluation (IEE) conducted, to which LEA must the parents bring their request – the LEA where the private school is located, or the LEA where the child resides?

Answer: Parents should file the request for an IEE with the LEA that conducted the evaluation with which the parents disagree.

APPENDIX C: Letter to Lieberman, 50 IDELR 137 (OSEP, 2008)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN 25 2008

Honorable Joseph I. Lieberman
United States Senator
One Constitution Plaza, 7th floor
Hartford, Connecticut 06103

Dear Senator Lieberman:

This letter is in response to your October 24, 2007 letter addressed to Assistant Secretary Terrell Halaska, Office of Legislation and Congressional Affairs, U. S. Department of Education (Department), on behalf of your constituent, [REDACTED] of [REDACTED] Connecticut. In your letter, you seek information regarding the obligation of [REDACTED] County, New Jersey, to pay for supplemental instructional services at the [REDACTED] Academy in [REDACTED] New Jersey, for [REDACTED] son, [REDACTED]. Your letter was referred to the Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), within the Department, for reply.

In your letter, you state that [REDACTED] was evaluated by [REDACTED] County Special Services, determined to be eligible for special education services, and "...classified as an out-of-state parentally placed private school student, though he maintains a residence in [REDACTED] County." However, [REDACTED] expressed to you "...that [REDACTED] County is unwilling to pay for [REDACTED] supplemental instruction services." The information contained in this letter is provided for your consideration in responding to [REDACTED].

The obligation of States and local educational agencies (LEAs) to children with disabilities, enrolled by their parents in private elementary schools and secondary schools, changed on July 1, 2005, the effective date of new provisions in the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA). Under 34 CFR §§300.130-300.144 of the final Part B regulations (copy enclosed), the LEA where the private school is located is now responsible for child find, including individual evaluations, and the provision of equitable services for children with disabilities enrolled by their parents in private schools. The new provisions reflect a significant change in IDEA. As a result, the LEA where [REDACTED] attends school is responsible for making decisions about services for parentally-placed private school children with disabilities rather than the district where [REDACTED] resides, as was previously the case (although, as you point out, this change would not be significant for [REDACTED] as he also maintains a residence in [REDACTED] County).

Under 34 CFR §§300.130 through 300.144, children with disabilities who are enrolled by their parents in private schools may receive equitable services under a services plan. The services plan is not an IEP and whether [REDACTED] receives such services is determined by the LEA where the private school is located, as the result of timely and meaningful consultation with the private schools within its jurisdiction. Not all children with disabilities may be served or receive the same services they would receive if enrolled in public schools.

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www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

It is important to point out that, "Children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school other than child find, including evaluations. Under the Act, LEAs have the obligation to provide the group of parentally placed private school children with disabilities with equitable participation in the services funded with federal IDEA funds." (See page 7, answer to question C-2, of: *Questions and Answers on Serving Children With Disabilities Placed by Their Parents at Private Schools, March 2006* (copy enclosed)).

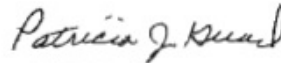
If [REDACTED] has any questions about how the requirements of IDEA are implemented in the State of New Jersey, she may wish to contact the New Jersey State educational agency, as follows:

Dr. Roberta Wohle, Director
Office of Special Education Programs
New Jersey Department of Education
100 Riverview Plaza
P.O. Box 500
Trenton, New Jersey 08625-0500
Telephone number: (609) 292-4469

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Thank you for writing on behalf of [REDACTED]. I hope this information is helpful. If OSEP can be of any further assistance regarding this matter, or in the future, please feel free to contact me, or Ms. Susan Falkenhan, OSEP's Part B State contact for New Jersey, at (202) 245-7491.

Sincerely,

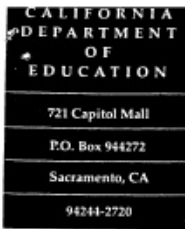


Patricia J. Guard
Acting Director
Office of Special Education
Programs

Enclosures

cc: Roberta Wohle

APPENDIX D: Home School in California



DELAINÉ EASTIN
State Superintendent of Public Instruction

May 16, 1995

John Burton
San Bernardino County Office of Education
601 North E Street
San Bernardino, CA 92410-3093

Dear Mr. Burton:

I am responding to your request for information on home schooling in California. Home schooling, a situation where non-credentialed parents teach their own children, exclusively, at home, whether using a correspondence course or other curricula, is not authorized in California. There are three options available to parents who want to provide a setting other than a public school classroom.

The first option is private tutoring which is a statutory exemption from the compulsory public school attendance law (Education Code sections 48200, 48224). The tutor (who may be any person including a parent) must have a valid California teaching credential for the grade level being taught and instruction must be in the branches of study required in the public schools. Tutoring must be provided for at least three hours per day, between 8:00 a.m. and 4:00 p.m., and for at least 175 days per calendar year, and in the English language. The affidavit required of a private school (discussed below) is not required of a tutor. If a parent does not hold a teaching credential for the grades taught, the tutor exemption is not satisfied.

The second option, which is also a statutory exemption from attendance in the public school system, is to enroll students in a private full-time day school (Education Code section 48222). Private schools also must instruct pupils in all the branches of study required in the public schools. Private school authorities must keep attendance in a register, indicating every absence by a pupil of a half day or more for each day that school is maintained. The law does not set any minimum standards for private schools with regard to number of students, number or length of school days, and does not require that instructors be credentialed. Private school instructors must be "capable of teaching." The California Attorney General has interpreted this to mean that teachers in private schools should meet standards comparable to those required for public school teachers in similar positions, excepting only the credentials (3 Ops.Cal.Atty.Gen. 193).

The law requires private school authorities to file a Private School Affidavit with the State Superintendent of Public Instruction disclosing certain information (Education Code section

John Burton
May 16, 1995
Page 2

33190). This affidavit is solely for statistical purposes and publishing a directory of private K-12 schools in the state. It is not a license or approval to operate a private school. Both the private school exemption (Section 48222) and the affidavit requirement (Section 33190) explicitly state that filing the Private School Affidavit is not to be construed as an approval of the school or its courses. Therefore, filing the affidavit has no effect on the status of a person or institution; it does not transform a parent into a private school. People v. Turner (1953) 121 Cal.App.2d Supp. 861, appeal dismissed 347 U.S. 972, rejected the concept that parents may designate their own home instruction program a "private school" in order to avoid the credential requirement. That conclusion was affirmed in In re Shinn (1961) 195 Cal.App.2d 683. The Shinn decision also specifically addressed the use of correspondence courses and held that use of such courses does not constitute a "private full-time day school" within the meaning of the Education Code (id., at 693-694).

As a third option, the Department encourages parents to consider independent study through the local public school system (Education Code section 51745 and following). This is an alternative to classroom instruction, and is consistent with the local school district's course of study. Although enrollment in the public school is required, independent study allows students to pursue educational opportunity outside the classroom within the framework of a written agreement that specifies minimum requirements and assures general supervision of each pupil's independent study by a credentialed employee of the school district. A child with exceptional needs may participate in independent study only if his or her individualized education program, developed pursuant to Education Code section 56340 and following, provides for that participation (Education Code section 51745(c)). If the district does not offer independent study, we encourage parents to contact their county office of education for information on programs that may be offered through the county or other districts in their area.

Except for the Education Code sections referenced, this letter is exemplary. It is not binding on local educational agencies or other entities or persons. Local school districts have the primary responsibility to ensure that all compulsory school age children in the district are either in attendance at a public school or legally exempt. I hope this information will be of assistance to you.

Sincerely,



Carolyn Pirillo
Deputy General Counsel
(916) 657-2453

CP:c

Maurica Manibusan

From: Ronald Powell
Sent: Monday, December 08, 2008 12:59 PM
To: Maurica Manibusan
Subject: FW: Home Schooling and independent study Legal Opinions

Maurica,
FYI
Ron

-----Original Message-----

From: SELPADirectors-owner@marin.mar.k12.ca.us [mailto:SELPADirectors-owner@marin.mar.k12.ca.us] On Behalf Of Jarice Butterfield
Sent: Sunday, December 07, 2008 9:03 AM
To: SELPADirectors@marin.k12.ca.us
Subject: Home Schooling and independent study Legal Opinions

Following are the two home school related legal opinions I told Jim Hemsley I would send out.

1) LEGAL OPINION REGARDING HOME SCHOOL AND PROVISION OF ISP SERVICES by Wes Parsons 9/2008

(1) Home Schooling: long story short - a parent can meet compulsory education requirements by either: (1) the private tutor exemption where the child must be taught by a credentialed teacher or (2) under the private school exemption where a parent must annually file an affidavit with the CDE but there is NO requirement that the child be taught by a credentialed teacher (and a school district's only obligation is to verify whether a private school affidavit has been filed but has no authority or obligation to confirm that the private school is in compliance with other requirements of the private school exemption).

Longer story: the California Court of Appeal in Jonathan L. v. Superior Court (Los Angeles County Department of Children and Family Services), recently held that California statutes permit home schooling when conducted as private schools. In its decision, the Court of Appeal analyzed the California Constitution, compulsory education law (Ed. Code § 48200) and its private school and private tutor exemptions (Ed. Code §§ 48222 and 48224, respectively). The aforementioned exemptions excuse children from the ages of 6 and 18 from attending a public full-time day school. Under the private tutor exemption, a child must be taught by a credential teacher. However, under the private school exemption, a child who attends a private full-time day school need not be taught by a credentialed teacher. Moreover, in order for the private school exemption to be valid, a private school must annually file an affidavit with the California Department of Education ("CDE") providing information in accordance with Education Code section 33190. The court observed that a school district's obligation is only to verify whether a private school affidavit has been filed, but it has no authority or obligation to confirm that the private school is in compliance with other requirements of the private school exemption. This case affirms the availability of home schooling when conducted as a private school. However, it does not change/expand a school district's current responsibility regarding private schools, i.e., to verify that a private school affidavit has been filed with the CDE.

Wes Parsons
Fagen Friedman & Fulfrost, LLP
6300 Wilshire Blvd.
17th Floor

2) LEGAL OPINION REGARDING PUBLIC HOME SCHOOL PROGRAMS AND PROVISION OF SPED SERVICES FROM HOWARD FULFROST 9-22-08

This e-mail responds to your inquiry regarding which school district is responsible if a student enrolls in a public home school program in a district other than the student's

district of residence. This e-mail is also intended to clear up any confusion regarding F3's opinion regarding this issue.

It is my understanding that the district of attendance is collecting average daily attendance (ADA) for the student's participation in the public home school program. It is unknown at this time whether the student is attending the school district of attendance (i.e., the school district in which the public home school program is located) on an inter-district attendance permit.

It is our opinion that the school district of attendance (i.e., the school district receiving ADA for the student's participation in the public home school program) cannot condition a student's attendance on the school district of residence's agreement to provide all special education services. Further, the school district of attendance (i.e., the school district receiving ADA for the student's participation in the public home school program) cannot condition a student's attendance on the school district of residence's agreement to pay the excess costs of providing special education services to the student. Both of these scenarios have been determined by the United States Department of Education Office for Civil Rights (OCR) to be unlawful disability-based discrimination.

If the school district of attendance accepts the student and collects ADA for the student, the school district of attendance should be responsible for providing special education services to that student. We do recommend that the two school districts enter into an inter-district permit (see Ed. Code section 46600 et seq.) to formalize this agreement. In such circumstances, the student would be deemed a student of the district of attendance.

I hope this clarifies F3's opinion on this issue. Should you have any questions or need further information, please do hesitate to contact me.

Howard Fulfrost
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also affects temporary disability payments, but does not preclude an employee from continuing to use available accrued leave under the Education Code or contract.

**COURT REVERSES SELF AND ALLOWS HOME SCHOOLING OF STUDENTS
BY PARENTS WHO LACK TEACHING CREDENTIALS**

After concluding in a controversial decision that home schooling was not permitted in California unless the parent held an appropriate teaching credential, a California Court of Appeal reversed itself and held that the Education Code impliedly allows home schooling, even where the parent has no teaching credential. *Jonathan L. v. The Superior Court of Los Angeles County (Los Angeles County Department of Children and Family Services)* (2008) 165 Cal.App.4th 1074.

The case involved the home schooling of eight children by a mother who did not possess a teaching credential (and had completed the 11th grade). Three of the children reported physical and emotional mistreatment by the father. An attorney representing the two youngest children requested that the court order that the parents be required to send them to public or private school so that the children would be in contact with mandated reporters and others who could observe whether the children were properly treated. The juvenile dependency court declined to grant the request, even though it concluded that the home schooling the children were receiving was "lousy," "meager," and "bad," and that keeping the children at home deprived them of situations where they could interact with people outside the family. The dependency court determined that the parents have a constitutional right to home school their children.

Over the years, the parents gave various reasons for not sending the children to school. Previously they stated that they do not believe in the policies of the public school system. More recently they asserted that they home school because of their religious beliefs. The father also stated that educating children outside of the home exposes them to "snitches."

In February 2008, the Court of Appeal held that parents do not have a constitutional right to home school their children, and that the Education Code does not permit home schooling unless the parent providing instruction holds an appropriate teaching credential. The decision caused public outcry, and was challenged by home school advocates, religious leaders, and even Governor Schwarzenegger. The court then allowed for a rehearing, and reversed itself in August, though it did not hold that *these* parents are entitled to home school their children.

California has a compulsory education law (Section 48200) requiring mandatory full-time education for children between the ages of six and 18 years, unless an exemption applies. The only exemptions that possibly applied to home schooling are the private school exemption and the private tutor exemption. Under the private tutor exemption (Section 48224), the person providing instruction must be credentialed for the appropriate grade level. Thus, it would not apply in this case, or in most of the home schooling cases.

The private school exemption authorizes children to attend full-time private day school (Section 48222). The school must be in the English language and offer instruction in the branches of study required to be taught in the public schools. The private school must keep attendance and annually submit certain information to the Superintendent of Public Instruction, including enrollment.

At one time, the Education Code specifically permitted home schooling. It was expressly permitted by a 1903 statute, impliedly permitted by a 1919 statute, and apparently prohibited by the addition of the credential requirement to the private tutor exemption in 1929. Subsequently, two court decisions confirmed that California parents lacking teaching credentials did not have a right to home school their children.

Despite this legislative history and the prior court decisions, the court concluded in its second decision that the Education Code *impliedly* recognizes a parent's right to home school. For example, the Superintendent of Public Instruction is required to compile a list of all private schools but is not required to compile information on private schools with five or fewer students. Similarly, a parent or guardian "working exclusively with his or her children" is exempt from the fingerprinting requirements [Section 44237(b)(4)]. The court also pointed to other statutory references to home schooling [Section 56346(g) referring to special education services; Section 42301.9 which exempts from hazardous air emissions prohibitions, "any private school in which education is primarily conducted in private homes"]. The court concluded that defining home schools as "private schools" complied with the Legislature's intent to ensure that all children received an education.

The court also cited to amicus briefs filed by the Superintendent of Public Instruction, Department of Education, Governor, Attorney General, and the Los Angeles Unified School District (the home district for the children at issue here), which stated that it was legally permissible for a parent to home school his or her children even if the parent did not possess a teaching credential.

The court also held that parents do not have an unfettered constitutional right to home school their children. The U.S. Supreme Court held in 1972 that Amish parents had the right to exempt their children from compulsory education after the eighth grade. The U.S. Supreme Court did not hold that parents have an absolute right to home school their children, and this court also declined to reach that conclusion. Parents possess a "constitutional liberty interest in directing the education of their children, but the right must yield to state interests in certain circumstances."

Here, the children sought schooling outside the home because of concerns about their safety if they did not have contact with school officials and mandated reporters. The court noted that both parents had attempted to interfere with the dependency proceedings, including barring access of social workers and coaching the children to not respond to questions by social workers or the children's own legal counsel and that a history of abuse existed in the home, abuse that the father continued to deny. The court held that a dependency court could hold that because of a history of abuse and neglect in a family, it was requiring a dependent child to have regular contact with mandated reporters in order to guarantee the child's safety. It remanded the case for a determination as to whether the children needed to be educated outside of the home in order to protect their safety.

COMMENT: The second decision in this case appeared to bow to public pressure to allow home schooling by reinterpreting the same legislative and case history to reach an opposite conclusion. The court did include a discussion of home schooling statutes from other states, an unobvious hint to the Legislature that it should address the issue.

**FACT THAT EMPLOYEE CONTINUES TO WORK IN SIMILAR JOB ELSEWHERE
DOES NOT AUTOMATICALLY BAR FAMILY LEAVE FROM EMPLOYER**

An employee who performed similar duties for two employers could claim that she had a serious health condition which necessitated family leave from one employer while continuing to work for the second, the California Supreme Court held. *Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201.

Antonina Lonicki was employed as a certified technician in Sutter Health Central's sterile processing department. The hospital became a level II trauma center and Lonicki claimed that it led to a major increase in her workload and more stress. After the resignations of two supervisors, Lonicki's work hours were changed and she was denied a request for vacation. She went home in tears and subsequently presented a note justifying her absence for "medical reasons" for one month. The hospital disputed the note and sent her to its physician. After a brief exam, the hospital's physician determined that Lonicki was able to work without restrictions. Lonicki went to a psychiatrist who said that she was disabled by major depression, that her symptoms were work-related and that she required sick leave for another month. When she presented that note to the hospital, she was informed that she had been discharged for failing to return to work after the hospital's physician released her.

Lonicki was also employed at a Kaiser hospital in a part-time job with substantially similar duties to her position at Sutter Health. When Lonicki sued, claiming that the