SANTA CLARA COUNTY
NORTH WEST SPECIAL EDUCATION LOCAL PLAN AREA

NON-PUBLIC SCHOOL/AGENCY PLACEMENTS

10.1 NON-PUBLIC SCHOOL/AGENCY PLACEMENT PROCESS

Before a district, special education local plan area, or county office places a student with a disability in, or refers a student to, a NON-PUBLIC, nonsectarian school, the district, special education local plan area, or county office shall initiate and conduct a meeting to develop an individualized education program.

The IEP Team may recommend a NON-PUBLIC school placement when a public school placement cannot be identified, which will appropriately implement the IEP. The IEP Team shall take steps to find an appropriate special education and/or related service placement in a public program operated by another local public education agency or the county superintendent of schools. Following determination by the IEP Team that the student requires NON-PUBLIC school placement, the school district shall, in consultation with the parents and other public agencies, which may have financial responsibilities for the placement of the individual, select one or more NON-PUBLIC schools to determine which can implement the student's IEP.

(EC 56342)

10.2 OUT-OF-STATE NON-PUBLIC PLACEMENTS

Before contracting with a NON-PUBLIC, nonsectarian school or agency outside of this state, the district, special education local plan area, or county office shall document its efforts to utilize public schools or to locate an appropriate NON-PUBLIC, nonsectarian school or agency program, or both, within the state.

If a school district, special education local plan area, or county office of education decides to place a student with a NON-PUBLIC, nonsectarian school or agency outside of this state, the LEA shall indicate the anticipated date for the return of the student to a public or NON-PUBLIC, nonsectarian school or agency placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the student.

If a district, special education local plan area, or county office places a pupil with a NON-PUBLIC, nonsectarian school or agency outside of this state, the pupil's individualized education program team shall submit a report to the **California Department of Education** within fifteen (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 local educational agency to locate an appropriate public school or NON-PUBLIC, nonsectarian school or agency, or a combination thereof, within the state. (*E.C. 56365(a)*)

10.3 TRANSITION OF STUDENTS FROM ELEMENTARY DISTRICT TO HIGH SCHOOL DISTRICT

An elementary school district shall notify a high school district of all students placed in NON-PUBLIC school or agency programs prior to the annual review of the IEP for each pupil, who may transfer to the high school district.

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

10.4 INITIATION OF SERVICE CONTRACT/INDIVIDUAL SERVICE AGREEMENT

The Master Contract shall specify the general administrative and financial agreements, including teacher-to-pupil ratios, between the NPS and the LEA to provide the special education and related services, as well as transportation specified in each student's IEP. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting local educational agency to ensure that appropriate high school graduation credit is received by each pupil. The contract may allow for partial or full-time attendance at the NPS.

The Master Contract shall include an Individual Services Agreement (ISA) for each student placed by a LEA that will be negotiated for the length of time for which the NPS special education and designated instruction and services are specified in the student's IEP.

The Master Contract shall include a description of the process being utilized by the LEA to oversee and evaluate placements in NON-PUBLIC schools, as required by federal law. This description shall include a method for evaluating whether each student is making appropriate educational progress. At least once every year, the LEA shall do all of the following and, to the extent possible, the following shall be conducted as part of the development and provision of an IEP:

1. Evaluate the educational progress of each student placed in a NPS including all state assessment results;
2. Consider whether or not the needs of the student continue to be best met at the NPS and whether changes to the IEP of the student are necessary, including whether the student may be transitioned to a public school setting. This consideration shall be made at an IEP Team meeting;
3. Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to a student's IEP. At any time during the term of the contract or individual services agreement, the parent, the NPS, or the LEA may request a review of a student's IEP by the individualized education program team;
4. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each student's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the NPS and the LEA.
5. The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the student to a public school program. To terminate the contract either party shall give 20 days' notice;
6. The NPS shall provide all services specified in an IEP, unless the NPS, and the LEA agree otherwise in the contract or individual services agreement;
7. Related services provided pursuant to a NPS master contract shall only be provided during the period of a student's regular or extended school year program, or both, unless otherwise specified by the student's IEP;

8. The NPS shall report attendance of students receiving special education and related services;
9. A NPS is subject to the alternative accountability system in the same manner as public schools and each student placed in the NPS shall be tested by qualified staff of the NPS in accordance with that accountability program. The test results shall be reported by the NPS to the department;
10. Beginning with the 2014-15 school year testing cycle, each NPS shall determine its CAASPP testing period. The NPS shall determine this period based on completion of 85 percent of the instructional year at that NPS, plus and minus 10 days, resulting in a 21-day period. Each NPS shall notify the district of residence of a student enrolled in the school of its testing period. Staff at the NPS who administer the assessments shall attend the regular testing training sessions provided by the district of residence. If staff from a NPS have received training from one LEA, that training will be sufficient for all LEAs that send student to the NPS. The district of residence shall order testing materials for its students that have been placed in the NPS. The board shall adopt regulations to facilitate the distribution of and collection of testing materials;
11. The NPS shall prepare a school accountability report card;
12. 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 LEA for students enrolled in the NPS unless provided directly or subcontracted by that NPS.

If a student is enrolled in a NPS, the approval of the LEA prior to agreement to a contract or individual services agreement, the LEA shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem tuition rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

If after 60 days the master contract or individual services agreement has not been finalized either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the NON-PUBLIC, nonsectarian school or agency contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract, which shall be binding upon both parties.

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

When written parental consent to the placement has been obtained, the authorized representative of the student's district of residence is responsible for initiating contract negotiations with the NON-PUBLIC school, agency or institution. The following provisions appear in Education Code 56366:

- The contract shall specify the administrative and financial agreements between the NON-PUBLIC school and the district, SELPA or county office to provide the services included in the pupil's IEP. The rates determined at that time shall not be increased for the duration of the

contract unless mutually agreed upon by both parties. The contract may allow for partial or full-time attendance at the NON-PUBLIC school. The administrative provisions shall include procedures for record keeping and documentation and the maintenance of school records by the contracting district, SELPA, or county office to ensure that appropriate high school graduation credit is received by the pupil.

- The contract shall be negotiated for the length of time for which NON-PUBLIC school services are specified in the pupil's IEP.
- Changes in educational instruction, services or placement provided under contract may only be made on the basis of revisions to the student's IEP.
- The contract may be terminated for cause. Such cause shall not be the availability of a public class initiated during the period of the contract, unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract, either party shall give 20 days' notice.
- The NON-PUBLIC school shall provide all services specified in the IEP, unless the NON-PUBLIC school and the district, SELPA, or county office agrees otherwise in the contract.
- All districts, SELPAs, and county office will use an "Individual Agreement for NON-PUBLIC, Nonsectarian School Agency Services" that has been approved by the State.

(EC 56366)

10.5 PROGRESS REPORTS

As specified in the original contract agreement, the NON-PUBLIC school shall provide written reports of the educational progress of individuals placed in the school.

The contractual services agreement between the educational agency and the NON-PUBLIC school agency follows the State Master Contract form (Santa Clara County Approved Format) and includes the following terms and conditions pertaining to pupil progress evaluation:

- The NON-PUBLIC school is required to comply with all elements of the student's IEP.
- The NON-PUBLIC school is required to provide the IEP Team with written behaviorally specific and/or performance-based documentation of its compliance with all elements of the IEP.
- The local district is required to review, at least annually, the student's IEP and to assess and evaluate the educational progress of each student placed in NON-PUBLIC school.
- The NON-PUBLIC school shall comply with Education Code section 48911.5, which requires the NPS site principal to have the same duties and responsibilities with respect to the suspension of pupils with previously identified exceptional needs as set forth in section 48911.
- The NON-PUBLIC school is required to allow representatives of the contracting educational agency to monitor, assess, and verify pupil progress through site visits conducted at reasonable intervals.

10.6 TRANSPORTATION OF STUDENTS

The IEP Team determines whether transportation to and from the NON-PUBLIC school is required as part of the student's IEP. The local district may provide transportation or may reimburse the parent or NON-PUBLIC school subject to a written agreement or contract for cost of actual and

necessary travel incurred in transporting the individual with special needs at a rate to be determined by the public education agency governing board. The rate shall be no less than the rate allowed for travel by the public education agency employees.

Special education transportation services included in the NPS contract may not be provided through the use of equipment owned or leased by a district, SELPA, or county office unless through a waiver under Education Code Section 56366. The request for waiver will include information and assurances that the use of the equipment owned or leased by the contracting agency costs less than equipment of a private vendor, and that the service is specified in the pupil's IEP and individual services agreement.

10.7 CHANGE OF PUPIL RESIDENCE

10.7.A Transfer of Student Receiving Services in NON-PUBLIC School

When an individual, receiving services in a NON-PUBLIC school, moves outside of the boundaries of the local district, the parent shall immediately report the change of residence to the administrator of both the former and new public school and the NON-PUBLIC school. As agreed by the terms of the contract, the contracting NON-PUBLIC school shall immediately notify the superintendent of the public education agencies in both the former and new residence areas. The superintendent (or designee) of the local district making payment to the NON-PUBLIC school must immediately notify the new local district of the transfer and provide a copy of the student's records, including the IEP, and the contract for services with the NON-PUBLIC school. The fiscal responsibility of the former local district shall terminate on the last day of the individual's residence in that district.

Within fifteen (15) working days of receiving the student's records, the receiving district in the SELPA shall conduct a review of the pupil's IEP to determine whether or not the NON-PUBLIC school placement is still appropriate. The following factors shall be considered in determining the appropriateness of the pupil's current placement:

- No appropriate public education program is available.
- To move the individual at the time of change of residence would be harmful to the health, welfare or educational progress of the individual.
- The NON-PUBLIC school continues to be within a reasonable distance and/or travel time from the home of the individual.
- Other contingencies that necessitate the individual remaining at the NON-PUBLIC school as determined by the IEP team.

If the student's NON-PUBLIC school placement is considered appropriate in keeping with the federal mandate of the least restrictive environment, the receiving local district shall negotiate a new contract for services with the NON-PUBLIC school. If the placement is considered inappropriate, the new local district shall, after a review of the IEP and with the consent of the parent/guardian, provide the needed special education services and facilities.

10.7.B Transfer of Student in a Residential Non-Public School

When a student was placed and residing in a residential NPS prior to transferring to a school district in another special education local plan area, and this placement is not eligible for

funding pursuant to Section 56836.16, the special education local plan area that contains the district that made the residential NPS placement shall continue to be 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 56324(c))

10.8 OUT- OF- HOME PLACEMENTS

The district that places the student in an out-of-home placement through the IEP process has the responsibility for payment for the NON-PUBLIC school costs as well as the Board and Care costs.

If NON-PUBLIC school placement is considered necessary, the educational costs for the non-public school are the responsibility of the LEA.

Out-of-Home Placements by Courts, Social Services, Regional Center, and Other Public Agencies.

1. **Residential Costs**

   Placements made by courts, social services and regional centers are not made by LEAs and are not necessary for the student to receive a free appropriate public education. In most of these cases, the child's district of residence (i.e. the district in which their parents or legal guardians reside) is not financially responsibility for the costs associated with the residential placement.

   In those cases where an educational agency did not make the placement decision, the court, regional center for the developmentally disabled, or public agency (other than an educational agency) placing the individual in the institution or home will be responsible for the residential and other non-educational costs. (*EC 56159, EC 56155)*

2. **Educational Costs for NON-PUBLIC School Placement**

   Licensed Children's Institutions (LCIs): If the IEP Team determines that NON-PUBLIC school placement is necessary to meet the goals of the IEP and the student is placed in a licensed children's institution (LCI) the educational costs will the responsibility of the county office in which the institution is located (*EC 56156.4).*

   Question: Which facilities are considered LCIs such that SCCOE is responsible for the child's NPS placement, and which facilities are considered foster family homes, such that the school district where the foster family home is located is responsible for the child's NPS placement?

   Response: (*please see Table below*)

Licensed Childrens' Institutions, for which SCCOE is responsible for NPS Placement	**Foster Family Homes, for which the District of Location is responsible for NPS Placement**	**Homeless Shelters, for which the Parent's District of Residence is responsible for NPS Placement, absent execution of a caregiver affidavit**	**Adult Group Living Facilities, for which the Parent's or Conservator's District of Residence is responsible for NPS Placement**
• Group home • Short-term residential therapeutic program • Children's crisis residential program • Group home for children with special health care needs. • Enhanced behavioral supports home (if serving children)	• Foster family home • Small family home • Certified family home of a foster family agency (HSC 1506) • Resource family (HSC 1517)	• Transitional shelter care facility • Youth homelessness prevention center • Transitional housing placement provider	• Enhanced behavioral supports home (if serving adults) • Community crisis home • Social rehabilitation facility
EC §§ 56155.5(a); 56156.4(b); SELPA Handbook 10.8.2; HSC §1502(a)(13), (15), (18), (21), (22)	*EC §§ 56155.5(b); 56156.4(b); SELPA Handbook 10.8.2; HSC §§1502(a)(4), (5), (6); 1506; 1517*	*EC § 48204(d); HSC § 1502(a)(11), (12), (14)*	*EC § 56041; HSC § 1502(a)(7), (15), (16)*

Foster Family Home: If the student is in a foster family home the NPS costs are the responsibility of the district in which the foster family home is located *(EC 56156.5 (c).)*

Homeless Shelter: When students are placed by a court or non-educational public agency in a homeless shelter, the student's school district of residence will be the district where his/her parent or legal guardian resides unless the shelter staff have executed a caregiver affidavit with regard to the student. When a caregiver affidavit has been executed, the district where the shelter is located will be responsible for educating the student (*EC 48204(d).)*

The Residency and Responsibility Chart *(please see next page*) on residential placements for individuals with exceptional needs, pursuant to Education Code Section 56026 (when FAPE is not at issue), provides guidance to IEP Teams to determine which LEA or placing agency is responsible for educational and non-educational costs.

Approved by Executive Council:
SELPA I 5/23/24
SELPA II 5/24/24
SELPA III 5/23/24
SELPA IV 5/24/24
SELPA VII 5/31/24

Residency and Responsibility Chart: Residential Placements For Individuals with Exceptional Needs Pursuant to Education Code Section 56026 (when FAPE is not an issue)

(Adopted from Fagen Friedman Fulfrost)

Student Placed in Residential Setting By:	Student's Location	Parent/Guardian Residence	Type of Placement	Educational Responsibility	Responsibility for Residential and Non-Educational Costs	Legal Authority
Referral by Student's IEP Team (Parent's District of Residence)	Within or Outside of District	Within District	In-State or Out-of-State Residential Placement	Parent's District of Residence (LEA)	Parent's District of Residence (LEA)	Ed. Code §§ 48200, 56363; 34 C.F.R. § 300.104; Stats.2011, c.43 (A.B. 114) § 26
Parent or Legal Guardian	Within or Outside of District	Within or Outside of District	In-State or Out-of-State Residential Placement	Parent or Legal Guardian	Parent or Legal Guardian (District where school is located is responsible for ISP)	Ed. Code § 48200; Gov. Code § 7581
Public Agency (without the involvement of the District, SELPA or COE)[2]	Outside of District	Within District	Out-of-State Residential Placement	Placing Agency	Placing Agency	Gov. Code § 7579(d)
Court, Regional Center, or Public Agency (other than an Educational Agency)	Within or Outside of District	Within District	In-State Residential Placement (not an LCI or foster home)	Parent's District of Residence (LEA)[1]	Placing Agency	Ed. Code § 48200; Gov. Code § 7581
Court, Regional Center, or Public Agency (other than an Educational Agency)	Within or Outside of District	Within or Outside of District	LCI or Foster Home Within California	SELPA where placement is located, District, or COE depending on whether there is an agreement[2]	Public Agency or Regional Center[3]	Ed. Code §§ 48204(a)(1)(A); 56155.5; 56156.4; 56159; 56155; Gov. Code § 7579(b)
Court, Regional Center, Public Agency (other than an Educational Agency) or Parent	Within or Outside of District	Within or Outside of District	State Hospital/Health Facility For Medical Purposes Only[4]	District where hospital/facility is located	Placing Agency or Parent	Gov. Code §§ 7581; 7578; Ed. Code § 48204(a)(6); 56167
Court, Department of Probation/Corrections, or Public Agency (other than an Educational Agency)	Within or Outside of District	Within or Outside District	Juvenile Hall	County Office of Education (Juvenile Court Schools) where Juvenile Hall is located	Placing Agency	Ed. Code §§ 48645.1; 48654.2
Court, Department of Probation/Corrections, or Public Agency (other than an Educational Agency)	Within or Outside of District* *If non-conserved & qualified for special education before incarceration. *If not previously qualified, then no right to FAPE.	Within District	Adult Jail	Last District of Residence responsible prior to age of majority *until* Parents move – then Parent's new District of Residence (LEA)	Placing Agency	Ed. Code §§ 48200; 56000(a); 56040(b); 56041(a); *Student v. LAUSD,* OAH Case No. 2009060442

[1] Based on Ed. Code § 48200 and a lack of any other statute/regulation identifying any other responsible entity.

[2] When there is no local agreement, responsibility varies depending on whether the COE is part of the SELPA. If the COE is part of the SELPA, the COE in the county in which the institution is located is responsible for special education for students residing in LCIs. If the COE is part of the SELPA, the district in which the foster family resides is responsible for providing special education. If the COE is not part of the SELPA, special education services for students residing in LCIs shall be the responsibility of the local agency or other administrative entity of the SELPA. (Ed. Code § 56156.4(c).)

[3] The law is not clear regarding who is responsible for residential and non-educational costs when a court places a student.

[4] Public Hospitals, State Licensed Children's Hospitals, Psychiatric Hospitals, Proprietary Hospitals, and Health Facilities are governed by Ed. Code §§ 48207 and 56167.