

Riverside County Special Education Local Plan Area Program Transfer Policy and Procedures

Table of Contents

Philosophy	1
Education Code Requirements	2
Transfer of Regional Program	2
Transfer of Groups of Students	2
Transfer of Program via Discontinuing Referrals to Regionalized Programs	3
Personnel Considerations	3
Certificated Positions	3
Classified Positions	4
Medical Benefits	4
Collective Bargaining Agreements	4
Transfer of Personnel Files	5
Facilities Planning	5
Program Transfer Timelines	6
Notification Year	6
Preparation Year	7
Implementation Year	7
Appendices	
1. Program Transfer Assurance Page	9
2. Required Detailed Plan for Special Education Program Transfer	10

Philosophy

The County Office of Education (COE) and other Local Education Agencies (LEA) can be a regionalized service provider for other LEAs within the Riverside County SELPA. The regionalized programs are designed to meet the needs of students with specific disability conditions, functional levels, and age/grade ranges. When a LEA is considering opening a regional program and/or pulling students from a regional program to open a district-only program, it is important that the LEA communicate with and discuss implications with the LEAs that may be impacted by this proposed plan by May 1. Nothing in policy overrides IEP team's right to make individual decisions regarding a student's placement in the least restrictive environment (LRE) or the provision of a free appropriate public education (FAPE).

Typically a regionalized program provides services to students from more than one LEA. The agency providing the program is required to develop a Memorandum of Understanding (MOU) with each LEA that is sending one or more students to the regionalized program. The MOU needs to specify responsibilities of each agency and the fee for service arrangements. The annual rates for programs need to be based on a "not for profit" philosophy such that the fees are designed to simply cover the costs for services. Preliminary notification of fee for service rates for the upcoming year must be provided by March 30 of the current fiscal year, with the final rates determined after the May Revise update.

Education Code Requirements

Pursuant to Education Code Section 56207(a):

No educational programs and services already in operation in school districts or a county office of education pursuant to Part 30 (commencing with Section 56000) shall be transferred to another school district or a county office of education or from a county office of education to a school district unless the special education local plan area has developed a plan for the transfer which addresses, at a minimum, all of the following:

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

To meet this requirement, each LEA pursuing a program transfer will be required to complete a “Detailed Plan for Special Education Program Transfers” (Appendix 1) and to sign off on the “Program Transfer Assurances” (Appendix 2) by February 15 of the year prior to initiating the new program services.

Transfer of Regional Program

A regional program provides services to students who are residents of multiple LEAs. If the new service provider is a LEA that intends to continue to service students from LEAs other than their own, then the transfer plan shall include a designation of which LEA will be considered as the operating agency and which other LEAs would be combining their resources to support the new class. All LEAs considering participating in the new program shall provide written notice per the timelines herein along with the LEA that will operate the program.

If the new class is being operated solely by the LEA for only LEA residents, then the LEA does not automatically become a regional service provider. If the LEA is not going to continue to provide services to the entire region, then the current regional service provider will need to account in the transfer plan for how those other affected students will access the services that they were receiving from the program prior to the transfer.

Transfer of Groups of Students

A non-regional program transfer involves the transfer of one or more groups of students, back to a LEA. The LEA may consider one or more classes, and/or a specified disability category (e.g., emotionally disturbed). When the transfer is a number of students instead of an entire class that is changing program operators, the LEA seeking the program transfer shall explain in their initial letter of intent the basis of selecting those students and the purpose of the

transfer. The responsibility for non-resident students who were part of the original class should be described in the transfer plan letter of intent.

Transfer of Program via Discontinuing Referrals to Regionalized Programs

Legal counsel found that there is no established timeline that states if a certain number of students within a certain timeline are transferred from one program to another that the formal program transfer procedures must be followed. However, the intent of Section 56207 is clear that the transfer of services and programs from one LEA to another are to comply with the specified transfer program requirements. Therefore, a LEA who is considering discontinuing referrals to a regionalized service program operated by another LEA within the SELPA shall be held accountable to the same procedures and timelines for notification of program transfer.

Per legal counsel, the IEP process should not be used to expressly bypass the formal program transfer process. No educational programs and services already in operation shall be transferred unless the SELPA has developed a transfer plan that meets the specified requirements (Education Code §56207). To transfer students, pursuant to the IEP process, from their current placement to a new class in a LEA outside of the formal program transfer process could be deemed as not in conformity with this provision of the Education Code.

The IEP process is designed to determine an appropriate individualized education program for each student. To convene an IEP meeting because a new class has been established in a LEA is not generally a basis for an IEP meeting. (See Education Code §56343) On the other hand, if over the course of time, based on an evaluation of their individualized needs and/or lack of progress in their current placement, students are transferred to a new program established by a LEA, the formal transfer process may not be triggered. However, this should not be intentionally utilized as a means to bypass a formal transfer process. Further, the decisions to transfer a student during an IEP meeting to the new class need to be based on the student's individualized needs and not external factors.

Personnel Considerations

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

Certificated Positions

If the event that the proposed program transfer leads to a layoff, teachers currently employed by the program operator have "bumping" rights over other certificated staff with less seniority. Generally speaking, the same "bumping" rights apply to teachers who choose to transfer to the LEA with the new program. A variable which would affect this includes the LEA's collective bargaining agreement, which may need to be revised.

The Education Code sections governing transfers (See Ed. Code §§ 44903.7 and 45120.2.) do not distinguish between employees based on the type of credentials they possess. It is evident that the general intent of the relevant sections is to try and maintain an employee's status at the same or similar level, despite the transfer to another employer. Therefore, for those employees who are properly considered a "certificated" employee, the sections appear

to equally apply regardless of the type of credential the employee possesses. RCOE teachers on emergency, variable-terms waiver, intern, and pre-intern credentials are given senior credit from the first date of paid service, so they may well have greater seniority than a fully credential teacher. However, the LEA will need to establish the legal basis for retaining a teacher with one of these special credentials in order to retain them in preference to a fully credential teacher. Generally speaking a senior teacher can bump into any position which he or she is certificated and competent to fill. Consideration will be made for specialized authorizations and student disability class assignments. However, he or she doesn't get to choose from among those positions. Thus, the current program operator could keep a less senior teacher in an assignment, so long as it provides another assignment for the more senior teacher which he or she is qualified to fill.

Classified Positions

If the LEA uses Title I funds for the newly created program, its paraprofessionals must comply with No Child Left Behind. Therefore, if the paraprofessionals have any instructional duties, they must meet the following requirements. (1) Completed at least two years of study at an institution of higher education; (2) Obtained an associate's or higher degree; or (3) Met a rigorous standard of quality, and can demonstrate through a formal State or local academic assessment knowledge of, and the ability to assist in instructing, as appropriate. (See 34 C.F.R. § 200.58(c), Ed. Code § 45330)

Classified personnel providing support in a special education classroom that is the subject of a proposed program transfer do not have the same rights as certificated personnel. They have the right to transfer based on classified seniority in that position and in alignment with the new LEA program operator's bargaining agreement. For example, if the paraprofessional works for 6.5 hours with the regional program operator and the new LEA only offers 3.5 hour positions, the paraprofessional will be offered a 3.5 hour position.

Medical Benefits

Medical benefits for either certificated or classified positions affected by a program transfer to a new LEA will be provided per that LEA's bargaining union agreement.

The program transfer process may create a temporary gap in medical benefits coverage. Once an employee leaves the current regional service provider agency, he/she would no longer be eligible for the benefits that agency provides. However, he/she would be entitled to COBRA rights. The Education Code sections that govern these types of transfers do not provide for continued health coverage. (See Ed. Code §§ 44903.7 and 45120.2.) Therefore, there does not appear to be any legal obligation for the receiving district to reimburse the employee for out-of-pocket COBRA costs. However, such a practice would certainly be well received by the employees.

Similarly, an employer's workers compensation coverage continues to apply to an employee who has a claim and leaves employment. Therefore, it seems that the current program operator's plan would continue processing claims by employees that sustain injuries while at that agency, even after they are employed by a different LEA.

Collective Bargaining Agreements

The Education Code sections that govern these types of transfers do not contain obligations with regard to the terms of collective bargaining agreements ("CBA") between transferring and receiving LEAs. The intent of these sections is to protect the continued employment of employees when these programs are reorganized and transferred. Once an employee

transfers from one employer to another, that employee would then become a member of the relevant bargaining group at the new employer. Further, the employee would be covered by the relevant CBA at the new employer. There does not appear to be any authority suggesting that the receiving employer has to honor the terms of the applicable CBA of the transferring employer. Rather, the receiving employer should apply its CBA provisions and policies just as it does with all of its other employees. Generally speaking, the same “bumping” rights apply to classified staff that chooses to transfer to the LEA with the new program.

Transfer of Personnel Files

A regional service provider (like RCOE) is a separate employer from the individual LEAs. Although the Education Code requires LEAs initiating the program transfer to accept the current program operator employees pursuant to a transfer, there does not appear to be any authority authorizing the RCOE to send personnel file documents and/or information to individual districts. Based on privacy protections afforded to personnel files, absent a waiver from an employee, the current service provider should not send personnel files to receiving LEA as a matter of course. Instead, it is recommended that the current service provider agency provide a release for the employee to sign as part of the job transfer.

Facilities Planning

A LEA’s facilities funding eligibility is based on an Eligibility Baseline, which is derived from an examination of current enrollment, enrollment projections, and existing school building capacity. (See Title 2, Cal. Code of Regs. §§ 1859.30 and 1859.40) When the LEA takes back a program, it will receive an “influx” of students. The LEA may revise its request for additional new construction funding to reflect the “influx” of students. An increase in students enrolled in the LEA after the transfer will increase the Eligibility Baseline by increasing the number of students that need to be housed.

In some cases the LEA request may also include taking back actual facilities built by RCOE. Space allocation and cost for facilities will need to be negotiated directly with RCOE, beginning with the facilities department. With respect to the transfer of program facilities, the Eligibility Baseline for a LEA may also be adjusted in certain circumstances which are delineated in Section 1859.51 of Title 2 California Code of Regulations. If the transfer of program facilities falls under one of the circumstances by which the Eligibility Baseline may be adjusted, then the influx of program students into a LEA after a program transfer will not increase funding eligibility because the Eligibility Baseline would be decreased to reflect an increase in facilities. For example, Section 1859.51(i) of Title 2 of the California Code of Regulations provides that the Eligibility Baseline must be reduced by the number of students housed in any “Classroom Provided” after the Eligibility Baseline was calculated.

“Classroom Provided” is defined as: “A classroom acquired by lease, lease-purchase, or purchase for which a contract has been signed for the construction or acquisition of the classroom.” Legal counsel stated that a transfer of program facilities from a county office of education administered SELPA to a school district is not done pursuant to a lease, lease-purchase or a purchase agreement. As such, the transfer of program facilities to a district would not, pursuant to Section 1859.51(i), decrease the Eligibility Baseline by the number of students served by those facilities. However, other Section 1859.1 provisions may apply and the district should seek legal advice to determine if its specific arrangement with the current program operator would require an Eligibility Baseline adjustment.

The CDS (County-district-School) code system is an identifier used by the California Department of Education as a unique code for the tracking of schools. The CDS code number is assigned to a school, not a program. If special education students are housed at satellite locations, then each location they are at will likely have an existing CDS code based on the combination of their county, district and school placement. There will not be a separate CDS code issued for a group of students that are assigned to various locations because they are under one administration.

Program Transfer Timelines

Pursuant to EC Section 56207(b), a program transfer may take effect no earlier than the first day of the second fiscal year beginning after the date on which the sending or receiving agency has informed the other agency and Governance Council. On a case by case basis, the program transfer may take effect earlier (beginning of the next school year) if all parties involved in the transfer agree. If timelines are missed but all parties currently utilizing the existing program involved in the transfer agree, the case shall be presented to the SELPA Governing Board for approval. When timelines are met, all program transfer cases shall go to the SELPA Governing Board as an action item at the mid-year meeting.

The following timelines, displayed as an example, shall be followed for all program transfer requests:

Example:	Notification date for program transfer:	June 30, 2011
	Preparation year:	2011-2012
	Implementation year:	2012-2013
	(beginning with next school year calendar)	

Notification Year

It is recommended that any district considering the possibility of making a formal written notification of intent to transfer programs or stop making referrals to a regional provider discuss this with their neighboring districts and the current provider in the spring.

- June 30: Two years prior to implementation (basically one year and a day), pursuant to Education Code Section 56205, the LEA(s) interested in considering transfer of one or more programs from one provider to another shall notify Riverside County SELPA and Riverside County Superintendent of Schools or other regionalized service provider of intent to transfer program(s).

Any written preliminary notification shall include whether or not the interested LEA plans to be a regional service provider. LEAs affected by the program transfer are also responsible for submitting a notification of intent letter if they are interested in having the new provider serve their students. Each initial program transfer notification letter shall be provided as an information item on the next Coordinating Council, SELPA Finance, and Governance Council agendas.

- May 1: Notification of potential program transfer request to LEAs that may be impacted by the proposed plan

Preparation Year

- September 15: Riverside County Office of Education or other regionalized service providers to notify interested LEA of any possible financial and programmatic impact. The current service provider will address the following in their report:

Determine any adverse fiscal and/or programmatic impact on the remaining county or LEA operated program;
 - i. Identify and evaluate any facility issues; and,
 - ii. Address any personnel issues.
The above report shall be provided as an information item on the next Coordinating Council, SELPA Finance, and Governance Council agendas.
- October 31: Interested LEA(s) to notify Riverside County SELPA and Riverside County Superintendent of Schools or other service provider whether or not the LEA will be taking back program(s).
- November or December: The next scheduled Governance Council agenda will include an action item to approve or disapprove the special education program transfer request. The approval is dependent upon a simple majority vote of the members in attendance.
- February 15: The required Assurances Page (Appendix 1) and Detailed Plan for Program Transfer (Appendix 2) will be completed and turned into the Riverside County SELPA, with a copy provided to the current program service provider.
- February through June: In any type of program transfers, the new program operator shall be responsible for administrative activities such as scheduling IEP meetings, transfer of files, coordination of related services, notification to parents, and other activities associated with the program transfer.

Note from legal counsel: It is a requirement of all SELPA transfer plans that the functional continuation of the current IEP's of all affected students be provided for. (Ed. Code, §56207(a)(3)) An IEP meeting is required to be convened when there is a request to develop, review or revise the individualized education program of a student. (Ed. Code, §56343) A student's educational placement is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP..." (Cal. Code Regs., tit. 5, §3042). If the alternation of a program operator truly has no impact on the facility, personnel, location or equipment provided to the student, then the change in program operator would not require that an IEP meeting be convened for each affected student.
- June: The new program operator is responsible for developing a MOU with any other LEA that also provided program transfer notification who plans to access the new program.
- June: A LEA utilizing a regionalized program other than a county operated class shall complete an Intra-SELPA Transfer form for each student attending such program.

Implementation Year

- The new program operator will begin providing services effective the beginning of the next school year calendar. The current program operator provides services during extended school year unless negotiated otherwise. In such cases, the existing MOU applies.

PROGRAM TRANSFER ASSURANCES

The _____ School District certifies that the agency herein represented will comply with all applicable requirements of federal and state laws and regulations and special education local plan area policies, including compliance with the Individuals with Disabilities Education Act, Section 504 of Public Law, and the provisions of the California Education Code, Part 30, specifically:

- Section 56207(a) – develop a detailed program transfer plan
- Section 56207(a)(1) and (3) – pupil needs and the continuation of the current IEP for all affected students
- Section 56207(a)(2) and (4) – availability of the full continuum of program placements and services in the least restrictive environment for all affected students
- Section 56207(a)(5) – maintenance of all appropriate support services to include qualified support staff and administrative support
- Section 56207(a)(7) – involvement and representation of parents of all affected students and staff (e.g., special and non-special education teachers, itinerant specialists, administrators, and classified) in the planning process
- Section 44903.7 – certificated employee rights
- Section 45120.2 – classified employee rights
- Section 56822 – transfer of equipment
- Section 56207(c) – & Section 56205(b)(5) – resolving disagreements related to program transfers

Attached is the required **Detailed Plan for Special Education Program Transfers** that delineates how the LEA has or will fulfill these obligations.

Signature of Special Education Administrator

Signature of LEA Superintendent

Date

Date

DETAILED PLAN FOR SPECIAL EDUCATION PROGRAM TRANSFERS

LEA Name: _____ Date of Submission: _____

This required Detailed Plan for Special Education Program Transfers complies with Section 56207(a) and other procedural safeguards.

1. Section 56207(a) (1) and (3) – pupil needs and the continuation of the current individualized education program (IEP) for all affected students.

(a) Direct Instruction

Sample Language:

The students will continue to receive all services as required in their current Individualized Education Programs (IEPs) in the least restrictive environment. New IEPs will be held if needed.

(b) Related Services and Equipment

Sample Language:

The students will continue to be provided all required appropriate supports, including related services, pursuant to their IEPs. All required related services will be provided by qualified support staff with the appropriate training and administrative support. The LEA plans to provide the following required related services: speech and language; counseling and guidance; adapted physical education; health and nursing services; and transition services. The LEA will provide other related services when the needs of students so dictate the need for additional supports.

Regarding equipment, the low incidence equipment will follow the student. The current regionalized service provider will conduct an inventory of current equipment to determine which equipment will stay with the transferring students. The receiving LEA has built funds into the budget to purchase required equipment.

(c) Facilities

Sample Language:

Outlined below is a list of facilities by school available to house the students involved in the program transfer.

School Site	Available Facility	Comments

(d) Services from Non-Educational Agencies

Sample Language:

Interagency agreements with California Children's Services, Department of Mental Health, and Inland Regional Services are coordinated by the SELPA. The program transfers will not affect the involvement of these non-educational agencies.

2. Section 56207(a)(2),(4) – the availability of the full continuum of program services for all affected students and the provision of services in the least restrictive environment from which pupils can benefit.

(a) Contingency plans for providing services other than those called for in the IEPs

Sample Language:

The LEA may continue to contract with another LEA for special education programs and/or specialized services. The proposed program transfers do not include the all the regionalized service and the current provider will continue to operate these classes. Also, there will be no change in nonpublic school placements and/or nonpublic agency services.

The opportunities for participation in general education classes and curriculum will be enhanced and more accessible. There will be more opportunities for mainstreaming as the local schools will have ownership of these programs. The LEA is committed to implementing collaborative programs between general and special education (e.g., Learning Centers, Individual and Small Group Instruction, etc.).

(b) If program transfer involves students with low-incidence disabilities, the following will occur:

Sample Language:

The SELPA provides a separate low incidence allocation line item for each LEA. Existing equipment and materials/supplies purchased with low incidence dollars will follow the child. Low incidence students will receive services pursuant to their IEPs.

3. Section 56207(a) (5) – the maintenance of all appropriate support services.

(a) Number (FTEs), Qualifications, and Experience of Support Staff

Sample Language:

All education codes related to employee rights will be followed in cooperation with the current service provider and the receiving LEA. Those position not filled by existing staff will be filled by qualified LEA-employed staff. The LEA will make every effort in recruiting to fill these positions with qualified staff.

(b) Availability of other support services

Sample Language:

Administrative support will include _____ FTE Special Education Coordinator to be hired in the spring prior to the transfer of programs to ensure planning, preparation, and a smooth program transition. A _____ FTE clerical will be hired as well.

