

Riverside County Special Education Local Plan Area (SELPA)

**Residency, Educational Rights and
The Provision of Special Education Services**

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Introduction

The Individuals with Disabilities Education Act (IDEA) requires that local education agencies (LEAs) consider the procedural safeguards afforded to parents of students with disabilities. The safeguards are intended to give parents a meaningful opportunity to participate in the decision-making process of their child's education. Most students with disabilities reside at home with their parents and utilize the standard enrollment procedures for the district in which they reside. There are other instances when residency, school setting, holder of educational rights, and/or transfer may change the enrollment and/or provision of special education responsibilities. In such cases the definition of a LEA becomes important as it can refer to a school district, county office of education, or charter school authorized as a LEA for special education.

The LEA responsible for the provision of special education services may change if a student is (1) attending based upon an approved inter-district transfer under district of choice or employment; (2) homeless; (3) an emancipated minor; (4) living with someone with a caregiver affidavit on file; (5) placed in a hospital, (6) in residential placement per an individualized education program (IEP); (7) placed in a foster home or licensed children's institution; (8) residing in multiple residences due to joint custody, (9) placement in juvenile hall; and/or (10) an eligible youth incarcerated in a county jail or prison.

Residency

All children are entitled to equal access to a basic public elementary and secondary education regardless of their actual or perceived race, color, national origin, citizenship, immigration status or the status of their parents/guardians. Each person between the ages of 6 and 18 not otherwise exempt must attend full time day school in the school district in which the residence of either the parent(s) or legal guardian is located (EC § 48200). To deny public school enrollment for a child "illegally admitted" to the United States is a violation of the equal protection clause of the Fourteenth Amendment to the Constitution, which protects "any person," not just "any citizen" (*Plyler v. Doe*, 457 US 202 [1982] cited by DWK, 2014).

"Residency" is defined as the place one remains when not called elsewhere for labor or other special or temporary purposes. There can only be one residence. Residence cannot be lost until another is gained. Residence can be changed only by the union of act and intent. Unmarried minor's residence is residence of parent with whom child shares place of abode and cannot be changed by minor's own act. Married persons have the right to retain legal residence in California notwithstanding legal residence or domicile of spouse (Government Code §244). A district must annually verify parents' address and student's residence (Title 5 California Code of Regulations §432). There is no guidance in law regarding sufficient proof of residency. Typically districts ask for tax bills, gas/electric bills, cancelled check with name and property address, voter registration, DMV registration, lease/rental agreement, bills mailed to residence, or affidavits of residency.

Per EC §48204(a), a pupil complies with the residency requirements for school attendance in a school district, if he or she is any of the following:

- (1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a placement under the Welfare and Institutions Code.
- (2) A pupil who is a foster child who remains in his or her school of origin pursuant to EC §48853.5 (d) & (e).
- (3) A pupil for whom inter-district attendance has been approved

- (4) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.
- (5) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the home of the caregiver.
- (6) A pupil residing in a state hospital located within the boundaries of that school district.

A school district may deem a pupil to have complied with the residency requirements for school attendance in the district if at least one parent or the legal guardian of the pupil is physically employed within the boundaries of that district for a minimum of 10 hours during the school week (EC §48204(b)).

Effective January 1, 2016, school districts are required to establish policies that deal with student residency investigations – before investigating any pupils. The policy is required to be approved during a public board meeting and shall:

- Identify the circumstances upon which the school district may initiate an investigation, and shall, at a minimum, require the school district employee to be able to identify specific, articulable facts supporting the belief that the parent or legal guardian of the pupil has provided false or unreliable evidence of residency.
- Describe the investigatory methods that may be used by the school district in the conduct of the investigation, including whether the school district will be employing the services of a private investigator. Before hiring a private investigator, the policy shall require the school district to make reasonable efforts to determine whether the pupil resides in the school district.
- Prohibit the surreptitious photographing or video recording of pupils who are being investigated, unless the images are collected in open and public view.
- Require that employees and contractors of the school district engaged in the investigation to identify themselves truthfully to individuals contacted or interviewed during the course of the investigation.
- Provide an appeal process and require that if an appeal is made, the burden of proof is placed on the appealing party to show why the decision of the school district should be overruled.

Once the new board policy requirements have been met, a “residency investigation” may be done for residency, residency based on parent employment, and/or residency based on caregiver affidavit. A district employee or private investigator can conduct a residency investigation. There are limitations on the investigation (e.g., investigator cannot demand or force entry into home but may request to inspect residence). School districts may not ask about a student’s or parents’ citizenship or immigration status to establish residency within the district or deny a homeless child (including a homeless child who is undocumented) enrollment because he or she cannot provide the required documents to establish residency. For more tactics, please see the table below (Sutherland, DWK, 2014).

Proof of Residency Tactics

School Districts May ...	School Districts May Not ...
Choose to include a parent’s state-issued identification or driver’s license among the documents that can be used to establish residency	Require a state-issued identification or driver’s license to establish residency or for other purposes where such a requirement would unlawfully bar a student whose parents are undocumented from enrolling in school.
Request documents to show that a student falls within the school district’s minimum and maximum age requirements (i.e., certificate showing date of birth, an entry in a family bible, an adoption record, an affidavit from a parent, a birth certificate, previously verified school records)	Prevent or discourage a child from enrolling or attending school because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.
If a school district requests a student’s social security number, it must inform the parent and student that providing it is voluntary and that refusing to provide it will not bar the student from enrolling in or attending school, and explain for what purpose the number will be used.	A school district may not prevent a student from enrolling in or attending school if the parent and/or student chooses not to provide the student’s social security number or require a parent to provide his or her own social security number in order for their child to enroll in or attend school.

Inter-district Transfer Request

An inter-district transfer request can be activated via district of choice or employment.

District of Choice

Senate Bill 680 and Education Code Section 48301 allows any school district to elect “District of Choice” status. It prohibits denial of transfer requests on the basis of cost but allows limit on number of transfers out if negative budget certification or for fiscal stability.

Employment

Residency based on employment in the district may deem a pupil to be a resident if the parent or legal guardian of the pupil is “physically” employed within district boundaries (EC §48204(b)). The district has discretion to deny or approve a transfer based on employment. Districts may not refuse to admit pupils based on race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration (EC §48204(b)(1)). Districts may consider a pupil’s discipline history or behavior but not the pupil’s grade point average or special education status. Either the sending or receiving district may prohibit transfer of the pupil if the governing board determines that the transfer would negatively impact a court-ordered or voluntary desegregation plan of the district (EC §48204(b)(2)). The receiving district may prohibit the transfer if the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer (EC §48204(b)(3)).

- **NOTE 1:** The Office of Civil Rights has determined that it is unlawful discrimination for school districts to prohibit the transfer of special education students because the cost of educating the pupil would exceed the amount of additional state aid received. However,

districts may deny a student's request because a new program or service would have to be created.

- **NOTE 2:** Once admitted, the pupil's residency can only be revoked if the parent/guardian is no longer physically employed in the district (EC §48204(b)(7)). An annual reapplication is not required but the district can verify that the parent/guardian is still employed in the district.

Homeless

The McKinney-Vento Homeless Assistance Act (Federal Law 42 USC Section 11432, et seq.) requires a local education agency to provide continuous and uninterrupted education to homeless children in the student's school of origin for the duration of their homelessness OR for remainder of academic year if pupil becomes permanently housed during the academic year UNLESS this is not in the pupil's best interest. The school of origin is defined as the school the pupil attended when permanently housed or the school in which the pupil was last enrolled.

Homeless pupils are defined as those who lack fixed, regular and adequate nighttime residence, **and** are (a) sharing housing due to loss of income, economic hardship, or similar reasons; (b) living in motels, hotels, trailer parks*, or camping grounds due to lack of adequate alternative accommodations; (c) living in public or private place not designated for sleeping (i.e., cars, parks, public spaces, abandoned buildings, bus or train stations, or substandard housing (i.e., lack electricity, heat, plumbing, etc.); (d) living in emergency or transitional shelters; (e) abandoned in hospitals; (f) awaiting foster care placement, and (g) migratory children.

* Trailer parks can be fixed, regular, and adequate residences. Asking questions about the condition and size of the trailer, the number of people living there, the intended length of stay, and whether the family or youth has an adequate alternative will help determine if the student is eligible for McKinney-Vento service.

"Unaccompanied youth" includes youth not in the physical custody or control of a parent or guardian, including youth living in runaway shelters, abandoned buildings, cars, on the street, or in other inadequate housing; and children and youth denied housing by their families; and school-aged unwed mothers, who have no other housing available. Such a determination should be made on a case-by-case basis, considering all factors of the child's living situation.

Effective January 1, 2016, students identified as "homeless" have education-related rights similar to foster youth students. AB 1166 clarifies that homeless students are eligible for the exemption from local graduation requirements even if they are not notified of this right within 30 days of enrollment, are no longer homeless, or if they transfer to another school or district.

Emancipated Minor

In many countries when a child reaches the age of majority — often 18 years old — he or she is said to be fully emancipated from parental control. This means that he or she can enjoy all the privileges and responsibilities of adulthood, such as voting, marriage and financial independence. An emancipated minor is a child who has been granted the status of adulthood by a court order or other formal arrangement. This status is not automatically bestowed on minors who have simply moved away from their parents' homes. The majority of legally emancipated minors are working teenagers who have demonstrated the ability to support themselves financially. For example, a professional actress or musician who is at least 14 years old is more likely to be considered an emancipated minor than a runaway who works part-time for minimum wage.

A minor who has been emancipated in California does not need parental approval to move out and live where he wants, or to apply for jobs or college courses. Though parental consent is

needed, getting married and joining the military are two circumstances that grant immediate emancipation status to minors in California. Once a minor is emancipated, his or her parents don't have custody or control of him or her anymore and they can do some things without parental permission, including: get medical care, apply for a work permit, and sign up for school or college. However, an emancipated minor must go to school, must get parental permission before getting married, and will go to juvenile court if they break the law.

Caregiver Affidavit

Use of a Caregiver Affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code. Completion of the following items and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care: The minor named below lives in my home and I am 18 years of age or older. Name of minor. Minor's birth date. Caregiver's name (adult giving authorization) and home address.

Completion of the following additional items is required to authorize any other medical care: The caregiver is a grandparent, aunt, uncle, or other qualified relative of the minor. "Qualified relative" means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution. The caregiver must indicate if he/she has advised the parent(s) or other person(s) having legal custody of the minor of his/her intent to authorize medical care, and have received no objection OR that he/she is unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor. The law may require the caregiver, if not a relative or a currently licensed foster parent, to obtain a foster home license in order to care for a minor.

A person who relies on this affidavit has no obligation to make any further inquiry or investigation. EC § 48204 provides that a signed affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver. The school district may require additional reasonable evidence that the caregiver lives at the address provided

Hospital Setting

Due to medical need, some students receive special education programs and related services in a hospital environment. The district in which the hospital resides is responsible for providing or contracting for special education services.

Residential Placement via the IEP

A residential facility is a nonsectarian school where a student with emotional disturbance resides on a 24-hour basis and receives special education and related services at the school. When the residential placement is offered as necessary for a student to receive a free appropriate public education (FAPE), the district where the parent resides is responsible for the special education services received by the student, no matter where the residential facility is located (in or out of state). The definition of a "parent" includes the guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child. If a judicial decree or order identifies a specific person to act as the parent of a child to make

educational decisions on behalf of the child, then that person shall be determined to be the parent under Education Code §56028. Therefore, where “the defacto parent” resides becomes the district of residence for purposes of special education, including the need to fund an IEP team decision for residential placement. Should the parent of the student move during the school year, the district that placed the student residentially through the IEP process shall be financially responsible for the remainder of the school year, including extended school year. Should a LEA decide on residential placement outside of the SELPA adopted procedures, it shall be responsible for both the education and residential costs.

Residential Placement by an Outside Agency

The Department of Social Services has the responsibility to remove a child from their home under conditions associated with child abuse and/or neglect. The Department of Probation, in conjunction with a court order and work with the District Attorney, can place a student into a residential setting. The Regional Center also has the ability to place a student with significant cognitive and behavioral challenges into a residential upon the request of the parents. A child may be placed in a foster home or a licensed children’s institution (LCI).

Foster Home

A Foster Family Home (FFH) or a home certified by a Foster Family Agency (FFA) is a family residence which is licensed by the state, or other public agency, to provide 24-hour nonmedical care and supervision for not more than six foster children, including, but not limited to, individuals with exceptional needs. AB 490 (State law Chapter 862, Statutes of 2003) strongly favors educating pupils in foster care in their school of origin. If a dispute over placement arises, the pupil may remain in the school of origin until the dispute is resolved. The local education agency must designate an educational liaison for foster children. If the liaison and parent/guardian agree to placement other than school of origin, the pupil must be enrolled in the new placement immediately. A FFH/FFA staff member is responsible for enrolling the child in the district in which they reside. Enrollment data should include all relevant contact information for the student, including who holds educational decision making rights. The pupil must be enrolled even if the records normally required cannot be produced. The district in which the foster home is located is responsible for providing or contracting for special education services.

AB 216, effective September 2013, placed new notification requirements and timelines on LEAs aimed at protecting pupils in foster care. If a pupil in foster care transfers between schools after the pupil’s second year of high school (determined either by credit completion or duration), the pupil must be exempted from district coursework and other requirements that are in addition to statewide requirements, unless the school district determines that the pupil is reasonably able to complete the additional local graduation requirements in time to graduate from high school by the end of the pupil’s fourth year. A LEA may not require a pupil to accept the exemption and may not deny the pupil enrollment in courses for which he or she is otherwise eligible. The LEA must give pupils in foster care the option of completing a fifth year of high school, if desired, in order to satisfy the local graduation requirements. If a pupil exempt from local requirements then completes statewide coursework before the end of his or her fourth year, the LEA may not require or request that the pupil graduate early. Once granted, an exemption may not be revoked or terminated, even if the pupil is no longer under the court’s jurisdiction.

Licensed Children’s Institution (LCI)

A LCI is a residential facility (such as a group home) which is licensed by the state, or other public agency, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. AB 490 (State law Chapter 862, Statutes of 2003) strongly favors educating pupils in LCI in school of origin. If a dispute over placement arises, the pupil may

remain in the school of origin until the dispute is resolved. The local education agency must designate an educational liaison for foster children. If the liaison and parent/guardian agree to placement other than school of origin, a LCI staff member can enroll the student in the district in which the LCI is based. Enrollment data should include all relevant contact information for the student, including who holds educational decision making rights. The pupil must be enrolled in the new placement immediately, even if the records normally required cannot be produced. The district in which the LCI is located is responsible for providing or contracting for special education services.

Juvenile Hall

Individuals with exceptional needs who have been adjudicated by the juvenile court may be placed in a juvenile hall or court school program. The County Office of Education is responsible for providing special education services for students residing in such settings. The student's district of residence may be asked to participate in the IEP process. Incarcerated youth are not considered homeless under McKinney-Vento.

Correctional Facility (Jail)

Adults (aged 18 to 21 years) incarcerated in California adult jails and prisons who are entitled to a free appropriate public education (FAPE) if they meet the following criteria: (1) not graduated with a high school diploma; (2) at the time they turned 18, were identified as an individual with exceptional needs and had an individualized education program (IEP) under the IDEA. However, an individual who was not identified as an individual with exceptional needs or did not have an IEP under the IDEA in the educational placement prior to his or her incarceration in an adult correctional facility, is not entitled to a FAPE.

In December, 2013, the California Supreme Court unanimously ruled in *LAUSD v. Garcia* that, under EC §56041, the school district where the pupil's parent resides is responsible for providing special education and related services to a qualifying individual who is incarcerated in a county jail. This decision means that every school district in California can be held responsible to provide, or contract to provide, special education and related services to eligible incarcerated young adults if the youth's parent resides in the district, even if the student is incarcerated outside of the school district's boundaries. This includes obligations for all of the rights afforded by the IDEA and related state law including child find/search and serve, the provision of FAPE in the least restrictive environment (LRE), and the right to due process. The following special education requirements do not apply to eligible individuals who are convicted as adults under State law and incarcerated in adult prisons:

1. The requirements relating to participation in general assessments; eligible individuals incarcerated in adult prisons are exempted from participation in state and district-wide assessment programs under the IDEA.
2. The requirements relating to transition planning and transition services do not apply with respect to such individuals whose eligibility under the IDEA will end because of their age before he or she will be released from prison.
3. The IEP Team may modify the individual's IEP or placement notwithstanding the LRE requirements and the IEP contents requirements if there is a bona fide security or compelling legal interest that cannot otherwise be accommodated.

Holder of Educational Rights

The biological or adoptive parent is presumed to hold the educational rights for their child. Per the IDEA §300.30, parent means:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with §300.519.

This section addresses the exceptions that can arise under caregiver affidavits, court appointed surrogate parents, educational representatives, parent transfer of rights, surrogate parents, and the transfer of rights at age 18.

Caregiver Affidavit

A form completed through the Child Welfare and Attendance (CWA) Office of a local education agency (LEA) documents when a caregiver assumes responsibility for a student when the child or youth resides with them. Per Family Code Section 6550(a-d), a pupil may attend a district in which he or she lives with a caregiver so long as the Caregiver Affidavit is submitted with the required information. Any adult caregiver who completes the affidavit may enroll the minor in school and provide consent to school-related medical care on behalf of the minor. Anyone over 18 who fills-out items 1-4 and signs the affidavit can be a caregiver. However, only "qualifying family members" are able to authorize any non-school related medical care and must complete items 5-8 on the form. The caregiver is responsible for notifying the school if the minor stops living with them, thereby making the affidavit invalid. A person relying on the affidavit has no obligation to make any further inquiry or investigation but schools may conduct residency investigations or ask for verification.

Court Appointed Surrogate Advocate (CASA)

A CASA worker is appointed by the court to make decisions, including educational decisions, on behalf of a student with a disability. They are typically volunteers who advocate for the best interests of abused and neglected children in courtrooms and communities. When empowered directly by the courts, they offer judges the critical information they need to ensure that each child's rights and needs are being attended to while in foster care. Per Education Code §56028, if a judicial decree or order identifies a specific person to act as the parent of a child to make educational decisions on behalf of the child, the district in which the CASA worker resides is responsible for the special education services provided to the student.

Educational Representative

An educational representative is the responsible adult who holds the educational rights for a child when the parents or guardians educational rights have been limited by the court (California *Rules of the Court*, Rule 5.502(13)). The appointed educational representative has the same rights and responsibilities as a surrogate parent regarding special education. If the court cannot identify an educational representative and the child is or may be eligible for special education and related services, the court must refer to the LEA (California *Rules of the Court*, Rule 5.650).

Joint Custody

IDEA and state special education laws and regulations clearly describe parental rights and the school district's duty to meet them. Most rights are unchanged by divorce. The divorce decree, the legal document describing the individual parent's obligations after the marriage ends, should clearly define the relationship among the parents, their child, and the education system. The

IDEA focuses on the procedural safeguards afforded to parents of special needs students and their intent to give parents a meaningful opportunity to participate in the decision-making process of their child's education. Congress never intended to deny a noncustodial parent the right to ensure his or her child is receiving a FAPE. The Office of Special Education Programs (OSEP) acknowledges that disputes between parents who share the right to make educational decision for their child, and who disagree about the provision of special education and related services for their child, may place a LEA in a difficult decision.

Married, divorced, separated, or never-married parents may disagree. Their issues regarding divorce decrees, custody orders, separation agreements, restraining orders, and relevant state statutes should be addressed in family law, which is vested in state law. LEAs can get caught between family law decisions and the IDEA, which requires that both parents of a special needs child be afforded ALL of their rights under the IDEA, UNLESS these rights are altered by a specific provision in the custody order, issued by the state court (71 Fed. Reg. 46,568 [2006]). The IDEA requires parental consent for evaluations, eligibility, initial placement of the child, change in placement as well as parental participation in notice, attendance at IEP meetings, access to student records, and the right to file for mediation / due process.

Legal custody is defined as the parent or guardian who has decision-making authority, including education, and is responsible for the care, control, and maintenance of a child (Black's Law Dictionary, 9th ed. 2009). When questions arise over who has legal custody, it is recommended that the LEA obtain current copies of the family court order as it or the divorce decree will typically set forth whether legal custody of the child is sole or joint. Joint legal custody means that both parents keep the right to make important decisions about their children's education, health care, and religious training. Under joint legal custody, unless the decree is written differently, both parents have the right to:

- Receive written notice of special education meetings to each parent who has legal custody of the child and has provided the school with an address. (34 C.F.R. § 300.322(a); EC §56304 & 56341.5.)
- Afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); EC §56500.4.)
- Exercise their due process rights
- Receive progress reports
- Have the chance to agree or disagree with plans for initial evaluation and placement in special education.

If the parents have joint legal custody but only one parent has physical custody, both parents would keep the rights to receive information, see records, and make decisions regarding special education UNLESS the parent no longer has that right pursuant to state law or court order (34 CFR §99.4 & 300.613). Where one parent has sole legal custody, the non-custodial parent still retains the right to access the child's school records (34 CFR §99.4 & 300.613). Under the IDEA, there is no requirement that written consent [on an assessment plan or IEP] be provided by both parents. LEAs typically only require the signature of one parent. When parents are divorced or separated, it is important for the LEA to check the court order and not assume they are compliant if they have the consent of one parent.

If joint custody, look for details regarding each parent's right to make educational decisions. It is also recommended that LEAs maintain a policy as part of the enrollment process that requires parents to provide current copies of family court order such as divorce decrees, custody orders, separation agreements, and restraining orders. A domestic violence restraining order may designate custody arrangements, preclude or limit contact with a student or the other parent,

and/or further restrict one parent from school grounds. The first step when dealing with any consent issues related to a student of divorced parents, is for the district to review the custody order to determine whether one or both parents need to consent or if there are any nuances regarding consent that may apply – such as one parent having final authority if a dispute arises. Understanding the court order is critical!

If there is no court order, go back to the basic proposition that both parents of a child with special education needs must be afforded all of their rights under IDEA. Both parents are permitted to participate in the IEP team meeting, even if one parent has sole custody UNLESS there is a court order precluding a parent from participating in a child's education or otherwise barring the parent from school grounds. If a parent has educational decision-making authority but there is a court order precluding a parent from participating in a child's education or barring the parent from school, consider getting parent input via the telephone and/or convening two meetings. Without consent from both parents, a LEA would be hard pressed to classify and provide a special education program for a child (Machado, LRP Conference, 2014).

The OSEP *Letter to Cox* (2009) indicates that when both parents have joint custody and the joint decision-making authority for a child on an IEP and one parent revokes consent, the LEA must provide prior written notice, cease providing services, and treat any subsequent evaluation request by either parent as a request for an initial evaluation. The other parent cannot file for due process to reinstate services because due process must allege a violation of the IDEA and revocation of consent is not an action taken by the LEA. OSEP determined that such disputes are to be settled privately or through the state family court. In a *Letter to Ward* (2010), OSEP rejected the argument that only the parent who gave consent has the right to revoke that consent – the non-consenting parent with joint decision-making authority can also revoke consent for services under the IDEA.

If the parents cannot agree, school personnel can use informal means such as school meetings to try to resolve the conflict. If agreement is still not reached, either parent or the school may initiate the alternative dispute resolution (ADR) process to try and reach a mutual understanding in the best interests of the child. Various court cases (see Machado presentation at LRP Conference, 2014, for specific case references) have addressed parental rights to file for due process and mediation. Where parents have joint custody and the order is silent as to who makes the final decision, both parents have standing to file for due process and mediation. When parents have joint custody and the order designates one parent with final decision-making authority, the other parent does not have standing to file for due process and mediation.

When the issue of the hearing involves a change in educational placement, in most cases the student will “stay put” in the current school program until the matter is decided. The first step after filing for due process is to conduct a resolution meeting to try once again to reach consensus. Mediation with an impartial hearing officer is another option to attempt to reach a settlement agreement with the parties still in control of the decision making. In a due process hearing, the parties must provide evidence packets and witness testimony to argue their case, an Administrative Hearing Judge will make the decision and the parties must comply with or appeal that decision.

If parents are in so much conflict that they are unable to work on behalf of the child in the special education process, either parent has the option of consulting an attorney about returning to court to ask that the divorce decree be altered.

Parent Transfer of Rights

When a parent gives up their rights to make educational decisions about their child and transfers such rights to another person in writing (e.g., a letter, preferably notarized).

Surrogate Parent

A “surrogate parent” is an adult appointed by a local educational agency (LEA) or special education local plan area (SELPA) to represent a pupil (aged 0-21) for the purpose of their individual education program (IEP) to ensure that the rights of the pupil to a free appropriate public education are protected (when the biological parents cannot be found or the courts have removed their educational rights and have not assigned them to another). See Riverside County SELPA “Surrogate Parent Requirements and Training” document for more detail.

Transfer at Age 18

The Notification of the Transfer of Educational Rights Form is an optional form for districts to use. On or before the student’s 17th birthday, explanation must be given to the student and the parent that all special education rights and protections upon turning 18 will be assumed by the student (unless a conservator has been appointed through the court).

The Provision of Special Education Services

The agency responsible for the provision of special education services may change depending on if the student is protected by the McKinney-Vento Homeless Act, enrolled in a dependent charter or independent charter, has an inter- or intra-district transfer or an inter- or intra-SELPA transfer, a transfer is requested under NCLB, open enrollment opportunities are accessed, or the student attends a private school.

McKinney-Vento Homeless Act

Students have the right to stay in “school of origin” to the extent feasible for the duration of homelessness, if it is in the best interest of the student, and/or by parents’ request. “School of origin” is the school the child attended when permanently housed or last enrolled. When there is a disagreement about enrollment, the school must:

- Immediately enroll student in school according to parent’s wishes;
- Keep the student until the dispute is settled;
- Provide or arrange transportation to the school of origin;
- Explain the decision in writing to parents;
- Contact liaison to assist in settling the dispute with parents, guardian, or youth;
- Refer the case to the county liaison if the dispute is not resolved at the district level;
- Refer to state coordinator if case is still not resolved.

In regards to transportation, if crossing district boundaries, the two districts must either reach an agreement on transportation or split the cost equally. For unaccompanied youth, the district must provide or arrange transportation to and from the school of origin at the LEA homeless liaison’s request. Provide transportation to/from school on request if transportation creates a barrier to attendance. The transportation provided must be comparable to what is provided to other students (i.e., if other students are expected to walk, then homeless students are expected to walk; if students are expected to take public transportation, then a bus pass is provided).

Dependent Charter

Charter schools that are deemed to be a public school within the District/SELPA participate in either the same manner as other schools within the District or as described in a memorandum of understanding. The district in which the charter school is dependent on is responsible for ensuring and/or providing special education services.

Independent Charter

Charter schools that are deemed a local education agency (LEA) for the purpose of special education must participate in an approved special education local plan (SELPA) as a LEA. The independent charter is responsible for providing a full continuum of special education services for all students with disabilities enrolled in their school.

Inter-District Transfer

Parents can request that their child be released from attending their district of residence and enroll the child in another district through the inter-district transfer process. When a district accepts the enrollment of a student under the inter-district transfer process, that district becomes responsible for the provision of FAPE but the parent is responsible for transportation. Terms and conditions for granting/denying permits need to be in writing and conditions for revocation need to be specified in the agreement. Districts have broad discretion to refuse for any legitimate, nondiscriminatory reason. A district may consider a student's disciplinary history or behavior, grade point average, but not special education status.

- NOTE 1: In the Cotati-Rohnert Park USD case (48 IDELR 226), it was determined that the district violated Section 504 and the Americans with Disabilities Act by habitually denying transfer requests submitted by students with disabilities.
- NOTE 2: Effective 1-1-11, no reapplication is required unless districts agree otherwise. In addition, districts cannot rescind existing transfer permits for students entering 11th or 12th grade (EC §46600(a); AB 2444).

Intra-District Transfer

Parents can request that their child be released from attending their neighborhood (home) school and enroll the child in another school within the district through the intra-district transfer process. When a district accepts the enrollment of a student under the intra-district transfer process, the parent assumes responsibility for transportation.

Inter-SELPA Transfer

When the district of residence of a student with a disability is unable to provide for the special education services a student needs, the district can initiate an Inter-SELPA transfer to another SELPA for the provision of the needed services. The Inter-SELPA transfer paperwork clarifies responsibilities of the SELPAs and LEA in regards to provision of services, transportation, and fee for services.

Intra-SELPA Transfer

When the district of residence of a student with a disability is unable to provide for the special education services a student needs, the district can initiate an Intra-SELPA transfer to another LEA within the same SELPA for the provision of the needed services. The Intra-SELPA transfer paperwork clarifies responsibilities of the SELPA and LEAs in regards to provision of services, transportation, and fee for service. The LEA providing the service(s) may also initiate a memorandum of understanding with the district of residence regarding other provisions.

Transfers Pursuant to NCLB

Students attending a school that is in program improvement may request a transfer out of the school to another school or another district. The district needs to have this option on their transfer form, deadlines to request and approve such transfers, criteria to consider in reviewing transfers, and implications of the transfer. Once accepted, the district receiving the student becomes responsible for the provision of any needed special education service.

Open Enrollment

As a condition for receipt of state funding, the governing board of a school district is required to establish a policy of open enrollment within the district for residents of the district. The policy is required to include a statement that the parent or guardian may select the school that their child shall attend, irrespective of his or her residence in the district, EXCEPT that the district retains the authority to maintain appropriate racial and ethnic balances among the respective schools. The LEA needs to have a selection policy for any school that receives requests for admission in excess of the capacity of the school through a random, unbiased process that prohibits consideration of pupil academic or athletic performance. However, priority may be provided if (a) special circumstances exist that might be harmful or dangerous to the student in their current attendance area; (b) sibling of pupil is already in attendance at school; or (c) parent is employed at that school. Effective July 1, 2017, a pupil complies with a school district's residency requirements in instances where the pupil's parent or legal guardian resides outside of the boundaries of that school district but is employed and lives with the pupil at the place of his or her employment within the boundaries of the school district for a minimum of three days during the school week. The LEA policy needs to include a statement that no student who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area. Acceptance of a student via open enrollment process makes that student the responsibility of the new district.

Private School

Parents may choose to enroll their child in a private school. The private school is responsible for providing interventions, holding problem solving team meetings, and referring an individual with a suspected disability to the district in which the private school is located. Per the Riverside County SELPA Private School Procedures, the district where the parent resides is responsible for responding to the referral, conducting any necessary individualized assessments, completing the IEP process, and making an offer for a free appropriate public education. The district wherein the private school is located is responsible for providing interventions and the provision of services agreed.

Approved: February 2011; Latest Revision: October 2015

Residency and Responsibility Chart: Residential Placements For Individuals with Exceptional Needs Pursuant to Education Code Section 56026 (When FAPE Is Not at Issue)

Student's Residence	Parent/Guardian Residence	Student Placed in Residential Setting By:	Educational Responsibility	Responsibility for Residential and Non-Educational Costs	Legal Authority
Within District	Within or Outside of District	Referral by Student's IEP Team (Parent's District of Residence)	Parent's District of Residence (LEA)	Parent's District of Residence (LEA)	Cal. Ed. Code §§ 48200, 56363; 34 C.F.R. § 300.104; Stats.2011, c.43 (A.B. 114) § 26
Outside of District (In-state or Out-of-State Residential Placement)	Within District	Referral by Student's IEP Team (Parent's District of Residence)	Parent's District of Residence (LEA)	Parent's District of Residence (LEA)	Cal. Ed. Code §§ 48200, 56363; 34 C.F.R. § 300.104; Stats.2011, c.43 (A.B. 114) § 26
Within District (Placed in an LCI or a foster home)	Within or Outside of District	Court, Regional Center, or Public Agency (other than an Educational Agency)	SELPA where placement is located, or a District by agreement or by COE if no agreement	Placing Agency	Cal Ed. Code §§ 48204(a)(1)(A); 56155.5; 56156.4; 56159
Outside of District (Placed in an LCI or a foster home)	Within District	Court, Regional Center, or Public Agency (other than an Educational Agency)	SELPA where placement is located, or a District by agreement or by COE if no agreement	Placing Agency	Cal Ed. Code §§ 48204(a)(1)(A); 56155.5; 56156.4; 56159
Outside of District (Out-of-State RTC)	Within District	Public Agency without the involvement of the District, SELPA or COE	Placing Agency	Placing Agency	Cal. Gov. Code § 7579
Outside of District (In-State RTC – not an LCI or foster home)	Within District	Court, Regional Center, or Public Agency (other than an Educational Agency)	Parent's District of Residence (LEA)	Placing Agency	Cal. Ed. Code § 48200; Cal. Gov. Code § 7581
Within or Outside of District	Within or Outside of District	Parent or Legal Guardian	Parent or Legal Guardian	Parent or Legal Guardian (District where school is located is responsible for ISP)	Cal. Ed. Code § 48200; Cal. Gov. Code § 7581
State Hospital/Health Facility For Medical Purposes Only (Within or Outside of District)	Within or Outside of District	Court, Regional Center, Public Agency (other than an Educational Agency) or Parent	District where hospital is located	Placing Agency or Parent	Cal. Gov. Code §§ 7581; 7578; Cal. Ed. Code § 48204(a)(5); 56167
Juvenile Hall (Within or Outside of District)	Within or Outside of District	Court, Department of Probation/Corrections or Public Agency (other than an Educational Agency)	County Office of Education (Juvenile Court Schools) where Juvenile Hall is located	Placing Agency	Cal. Ed. Code §§ 48645.1; 48654.2
Adult Jail (Within or Outside of District)* *If non-conserved & qualified for special education before incarceration. If not previously qualified, then no right to FAPE.	Within or Outside of District	Court, Department of Probation/Corrections or Public Agency (other than an Educational Agency)	Last District of Residence responsible prior to age of majority until Parents move – then Parent's new District of Residence (LEA)	Placing Agency	Cal. Ed. Code §§ 48200; 56000(a); 56040(b); 56041(a); Student v. LAUSD, OAH Case No. 2009060442

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