Information Sheet – 11/10/2020 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.5

FR: Celli Coeville

DATE: October 9, 2020

RE: Revised Board Policy and Administrative Regulation, BP/AR 6159.2, Nonpublic, Nonsectarian School and Agency Services for Special Education, Consider for Adoption

Board Policy 6159.2, Nonpublic, Nonsectarian School and Agency Services for Special Education, has been updated to include the provision of nonpublic, nonsectarian school and agency (NPS/A) services in the comprehensive local plan of the Special Education Local Plan Area. The policy reflects New Law (AB 1172, 2019) which requires districts to verify that the NPS/A provides staff training in the use of practices and interventions specific to the unique behavioral needs of the student population at the NPS/A. The policy also reflects the requirement for the district to pay the full amount of the school's tuition or, as amended by AB 1172, the fees for the agency. The Legal cite for Education Code 56366.3 has been deleted as it has been repealed.

The Administrative Regulation has been updated to include the maximum term of the master contract between the district and NPS/A, expand the components of the contract in accordance with state law and regulations, and to include the ability to terminate the contract for cause with 20 days' notice. The regulation also provides more detail regarding the annual IEP review focused on NPS/A students. The new section on "On-Site Visits" reflects New Law (AB 1172, 2019) which (1) requires the district to conduct an on-site visit of an NPS/A the first time the district places a student at that NPS/A, and (2) requires the district to annually conduct an on-site monitoring visit to review the services provided to the student, the facilities, and the student's progress.

I've highlighted the proposed changes and indicated the differences in red font.

Recommended Action: Approve Revised BP/AR 6159.2, Nonpublic, Nonsectarian School and Agency Services for Special Education

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Note: Education Code 56195.8 mandates districts to adopt policies for the special education programs and services they operate, including nonpublic, nonsectarian services provided to students with disabilities when no appropriate public education program is available to meet their special education needs. The nonpublic, nonsectarian school or agency (NPS/A) must be certified as meeting state standards pursuant to Education Code 56366 and 56366.1.

The following policy and accompanying regulation should be revised to comply with the policies and regulations of the Special Education Local Plan Area in which the district operates.

The Governing Board recognizes its responsibility to provide a free appropriate public education to students with disabilities in accordance with law. When the district is unable to provide direct special education and/or related services to students with disabilities, the ~~The~~ Board ~~of Trustees~~ may enter into a contract with a ~~state-certified~~ nonpublic, nonsectarian schools or ~~agencies~~ agency (NPS/A) to meet the student needs consistent with the comprehensive local plan of the Special Education Local Plan Area. ~~provide special education services or facilities when an appropriate public education program is not available.~~

(cf. 0430 - Comprehensive Local Plan for Special Education)
~~*(cf. 1312.3 - Uniform Complaint Procedures)*~~
~~*(cf. 3541.2 - Transportation for Students with Disabilities)*~~
~~*(cf. 4112.23 - Special Education Staff)*~~
~~*(cf. 6146.4 - Differential Graduation and Competency Standards for Students with Disabilities)*~~
~~*(cf. 6159 - Individualized Education Program)*~~
~~*(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)*~~
(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

Note: Pursuant to Education Code 56366 and 56366.1, a district contracting with an NPS/A must verify that the NPS/A meets certification requirements. 5 CCR 3067 allows the district to request, in writing, that the California Department of Education review the certification status of an NPS/A.

Beginning in the 2020-21 school year, Education Code 56366.1, as amended by AB 1172 (Ch. 454, Statutes of 2019), also requires districts to verify that the NPS/A provides staff training in the use of evidence-based practices and interventions specific to the unique behavioral needs of the NPS/A's student population.

Prior to entering into a contract to place any student in an NPS/A, the Superintendent or designee shall verify that the school or agency is certified to provide special education and related services to individuals with disabilities and complies with staff training requirements in accordance with Education Code 56366 and 56366.1. In addition, the Superintendent or designee shall monitor, on an ongoing basis, the certification of any NPS/A with which the

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district has a contract to ensure that the certification has not expired.

No district student shall be placed in an NPS/A unless the student's individualized education program (IEP) team has determined that an appropriate public education alternative does not exist and that the placement is appropriate for the student. (Education Code 56342.1)

(cf. 6159 - Individualized Education Program)

Note: Pursuant to Education Code 56365, students enrolled in an NPS/A are deemed to be enrolled in public schools for state apportionment purposes. Districts then pay to the NPS/A the full amount of the school tuition or, as amended by AB 1172, the agency fees for participating students.

The district shall pay to the NPS/A the full amount of the tuition or fees, as applicable, for students with disabilities who are enrolled in programs or receiving services provided by the NPS/A. (Education Code 56365)

In accordance with law, any student with disabilities placed in an NPS/A shall have all the rights and protections to which students with disabilities are generally entitled, including, but not limited to, procedural safeguards, due process rights, and periodic review of the student's IEP.

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

~~When entering into agreements with nonpublic, nonsectarian schools or agencies, the Board shall consider the needs of the individual student and the recommendations of the individualized education program (IEP) team. The IEP team shall remain accountable for monitoring the progress of students placed in nonpublic, nonsectarian programs towards the goals identified in each student's IEP.~~

During the period when any student with disabilities is placed in an NPS/A, the student's IEP team shall retain responsibility for monitoring the student's progress towards meeting the goals identified in the IEP.

Note: The following optional paragraph may be modified to reflect district practice.

The Superintendent or designee shall notify the Board prior to approving an out-of-state placement for any district student.

The Superintendent or designee may apply to the Superintendent of Public Instruction to waive any of the requirements of Education Code 56365, 56366, and 56366.6. (Education Code 56366.2)

(cf. 1431 - Waivers)

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Legal References:

EDUCATION CODE
56034-56035 Definitions of nonpublic, nonsectarian school and agency
56042 Placement not to be recommended by attorney with conflict of interest
56101 Waivers
56163 Certification
56168 Responsibility for education of student in hospital or health facility school
56195.8 Adoption of policies
56342.1 Individualized education program; placement
56360-563~~70~~ 69 Implementation of special education
56711 Computation of state aid
56740-56743 Apportionments and reports
56760 Annual budget plan; service proportions
56775.5 Reimbursement of assessment and identification costs
56836.20-56836.21 Special education funding; SELPA contracts with nonpublic nonsectarian schools
GOVERNMENT CODE
7570-7588 Interagency responsibilities for providing services to children with disabilities, especially:
7572.55 Seriously emotionally disturbed child; out-of-state placement
FAMILY CODE
7911-7912 Interstate compact on placement of children
WELFARE AND INSTITUTIONS CODE
362.2 Out-of-home placement for IEP
727.1 Out-of-state placement of wards of court
CODE OF REGULATIONS, TITLE 5
3001 Definitions
3051-3051.24 Special education; standards for related services and staff qualifications
3061-30~~69~~ 70 Nonpublic, nonsectarian school and agency services
UNITED STATES CODE, TITLE 20
1400-1487 Individuals with Disabilities Education Act
CODE OF FEDERAL REGULATIONS, TITLE 34
300.400-300.487 Children with disabilities in private schools
COURT DECISIONS
Agostini v. Felton, (1997) 521 U.S. 203, 117 S.Ct. 1997

Management Resources:

CDE LEGAL ADVISORIES
0317.99 Nonpublic School/Agency Waivers and Reimbursement to Parents
~~FEDERAL REGISTER~~
~~34 CFR 300.a Appendix A to Part 300 – Questions and Answers~~
~~34 CFR 300.a1 Attachment 1: Analysis of Comments and Changes~~
WEB SITES
CDE: http://www.cde.ca.gov
US Department of Education, Office of Special Education and Rehabilitative Services: http://www.ed.gov/offices/list/OSERS

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Note: The following administrative regulation may be revised to reflect district practice and the procedures of the Special Education Local Plan Area in which the district participates.

Master Contract

Note: Education Code 56366 details the provisions that must be included in a master contract with nonpublic, nonsectarian schools or agencies (NPS/As) for the purpose of special education services.

Every master contract between the district and a nonpublic, nonsectarian school or agency (NPS/A) shall specify the general administrative and financial agreements for providing the special education and designated instruction and services. The master contract shall be for a term not to exceed one year and shall be renegotiated prior to June 30. Provisions of the contract shall include, but not be limited to: (Education Code 56366; 5 CCR 3062)

1. Student-teacher ratios

2. Transportation specified in a student's individualized education program (IEP)

(cf. 3541.2 - Transportation for Students with Disabilities)

> The contract shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by the district for students enrolled in the NPS/A unless provided directly or subcontracted by that NPS/A.

3. Procedures for recordkeeping and documentation

4. The maintenance of school records by the district to ensure that appropriate high school graduation credit is received by any participating student

(cf. 3580 - District Records)
(cf. 5125 - Student Records)
(cf. 6146.1 - High School Graduation Requirements)

5. An individual services agreement for each student, which will be negotiated for the length of time for which NPS/A special education and designated instruction and services are specified in the student's IEP

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6. A description of the process to be utilized by the district to oversee and evaluate placements in the NPS/A, including a method for evaluating whether each student is making appropriate educational progress

7. Procedures and responsibilities for attendance and unexcused absences

8. General provisions related to modifications and amendments to the contract, waivers, disputes, contractor's status, conflicts of interest, termination, inspection and audits, compliance with applicable state and federal laws and regulations, and indemnification and insurance requirements

9. Payment schedules, including, but not limited to, payment amounts, payment demand, right to withhold, and audit exceptions

The contract may allow for partial or full-time attendance at the **NPS/A**. (Education Code 56366)

With mutual agreement of the district and NPS/A, changes may be made to the administrative and financial agreements in the master contract at any time, provided the change does not alter a student's educational instruction, services, or placement as outlined in the student's individual services agreement. (Education Code 56366)

The master contract or individual services agreement may be terminated for cause if either party gives 20 days' notice. However, the availability of a public education program initiated during the period of the contract shall not give cause for termination unless the parent/guardian agrees to transfer the student to the program. (Education Code 56366)

Placement and Services

~~Procedures specified in law shall govern the selection of appropriate nonpublic school or agency services.~~

For any student to be placed in an NPS/A, the Superintendent or designee shall develop an individual services agreement based on the student's IEP. ~~Contracts with a nonpublic school or agency shall be made on forms provided by the California Department of Education and shall include an individual services agreement negotiated for each student~~. Each ~~i~~individual services agreements shall ~~be for~~ specify the length of time authorized ~~for which nonpublic, nonsectarian school services are specified~~ in the student's individualized education program (IEP) for the NPS/A services, not to exceed one year. Changes in a student's educational instruction, services or placement shall be made only on the basis of revisions to the student's IEP. (Education Code 56366)

(cf. 6159 - Individualized Education Program)

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~~The master contract shall specify the general administrative and financial agreements between the nonpublic, nonsectarian school or agency and the district to provide the special education and designated instruction and services, as well as transportation specified in the student's IEP. The administrative provisions of the contract shall also include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting district to ensure that appropriate high school graduation credit is received by the student. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school. (Education Code 56366)~~

~~*(cf. 3541.2 - Transportation for Students with Disabilities)*~~

~~The master contract shall include a description of the process being utilized by the district to oversee and evaluate placements in nonpublic, nonsectarian schools. This description shall include a method for evaluating whether the student is making appropriate educational progress.~~
At least once each year, the district shall: (Education Code 56366)

Note: Pursuant to Education Code 56366, each student placed in an NPS/A will be administered the California Assessment of Student Performance and Progress by NPS/A staff who have attended the regular testing training sessions provided by the district or another local educational agency. Student assessment results are reported in accordance with the state's alternative accountability system (Dashboard Alternative School Status). See BP 0500 - Accountability.

1. Evaluate the educational progress of each student placed in an NPS/A, including a review of state assessment results

2. During the annual meeting held to review the student's IEP pursuant to Education Code 56343, consider whether the student's needs continue to be best met at the NPS/A and whether changes to the student's IEP are necessary, including whether the student may be transitioned to a public school setting

Note: The following paragraph is for use by elementary school districts.

Prior to the annual review of a student's IEP, the Superintendent or designee shall notify any high school district to which the student may transfer of the student's enrollment in an NPS/A. (5 CCR 3069)

~~The district IEP team shall annually review the IEP of a student placed in a nonpublic, nonsectarian school or agency. The student's IEP and contract shall specify the review schedules. (5 CCR 3068~~)

~~The Superintendent or designee of an elementary school district shall notify a high school district of all students placed in nonpublic school or agency programs prior to the annual review of the IEP for each student who may transfer to the high school district. (5 CCR 3068)~~

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When a special education student meets the district requirements for completion of the prescribed course of study ~~and adopted differential proficiency standards~~ as designated in the student's IEP, the district ~~which developed the IEP~~ shall award the student a diploma of graduation. (5 CCR 3069)

(cf. 6146.4 - Differential Graduation and Competency Standards for Individuals with Exceptional Needs)

Out-of-State Placements

Before contracting with ~~a nonpublic, nonsectarian school or agency~~ an NPS/A outside California, the Superintendent or designee shall document the district's efforts to use public schools and/or to find an appropriate program offered by ~~a nonpublic, nonsectarian school or agency~~ an NPS/A within California. (Education Code 56365)

Within 15 days of any decision for an out-of-state placement, the student's IEP team shall submit to the Superintendent of Public Instruction a report with information about the services provided by the out-of-state program, the ~~related~~ costs of the special education and related services provided, and the district's efforts to locate an appropriate public school or ~~nonpublic, nonsectarian school or agency~~ NPS/A within California. (Education Code 56365)

If the district decides to place a student with ~~a nonpublic, nonsectarian school or agency~~ an NPS/A outside the state, the district shall indicate the anticipated date of the student's return to a placement within California and shall document efforts during the previous year to return the student to California. (Education Code 56365)

On-Site Visits

Note: Beginning with the 2020-21 school year, Education Code 56366.1, as amended by AB 1172 (Ch. 454, Statutes of 2019), requires a district that enters into a master contract with an NPS/A to conduct on-site visits to the NPS/A as described in the following section. Findings from the monitoring visit must be reported to CDE using criteria published by CDE.

The Superintendent or designee shall conduct an on-site visit to an NPS/A before the placement of a student at the school or agency, if the district does not have any other students currently enrolled at the NPS/A. (Education Code 56366.1)

At least once per year, the Superintendent or designee shall conduct an on-site monitoring visit to each NPS/A at which the district has a student attending and with which it maintains a master contract. The monitoring visit shall include, but is not limited to: (Education Code 56366.1)

1. A review of services provided to the student through the individual services agreement

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2. A review of progress the student is making toward the goals set forth in the student's IEP

3. A review of progress the student is making toward the goals set forth in the student's behavioral intervention plan, if applicable

4. An observation of the student during instruction

5. A walkthrough of the facility

The district shall report the findings resulting from the monitoring visit to CDE within 60 calendar days of the on-site visit. (Education Code 56366.1)