

NPS/A Definition and Legal Requirements

Per EC **56034**. "Nonpublic, nonsectarian school" means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program, employs at least one full-time teacher who holds an appropriate credential authorizing special education services, and is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, or a public university or college. A nonpublic, nonsectarian school also shall meet standards as prescribed by the superintendent and board.

30 EC **56365** - Nonpublic, Nonsectarian School Services; Contracts; Allowances for Services; Tuition; Report; Out-of-State Programs

56365. (a) Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. These services shall be provided pursuant to Section 56366 under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs when no appropriate public education program is available.

(b) Pupils enrolled in nonpublic, nonsectarian schools and agencies under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with Section 41600) of Part 24 and Section 42238. The district, special education local plan area, or county office shall be eligible to receive allowances under Chapter 7.2 (commencing with Section 56836) for services that are provided to individuals with exceptional needs pursuant to the contract.

(c) If the state participates in the federal program of assistance for state-operated or state-supported programs for individuals with exceptional needs (P.L. 89-313, Sec. 6), pupils enrolled in nonpublic, nonsectarian schools shall be deemed to be enrolled in state-supported institutions for all purposes of that program and shall be eligible to receive allowances under Chapter 7.2 (commencing with Section 56836) for supplemental services provided to individuals with exceptional needs pursuant to a contract with a district, special education local plan area, or county office of education. In order to participate in the federal program, the state must find that participation will not result in any additional expenditures from the General Fund.

(d) The district, special education local plan area, or county office shall pay to the nonpublic, nonsectarian school or agency the full amount of the tuition for individuals with exceptional needs that are enrolled in programs provided by the nonpublic, nonsectarian school pursuant to the contract.

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

(f) If a district, special education local plan area, or county office places a pupil with a nonpublic, nonsectarian school or agency outside of this state, the pupil's individualized

education program team shall submit a report to the superintendent within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided, and shall indicate the efforts of the local educational agency to locate an appropriate public school or nonpublic, nonsectarian school or agency, or a combination thereof, within the state. The superintendent shall submit a report to the State Board of Education on all placements made outside of this state.

(g) If a school district, special education local plan area, or county office of education decides to place a pupil with a nonpublic, nonsectarian school or agency outside of this state, that local education agency shall indicate the anticipated date for the return of the pupil to a public or nonpublic, nonsectarian school or agency placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the pupil.

(h) In addition to meeting the requirements of Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(i) A nonpublic, nonsectarian school or agency that is located outside of this state is eligible for certification pursuant to Section 56366.1 only if a pupil is enrolled in a program operated by that school or agency pursuant to the recommendation of an individualized education program team in California, and if that pupil's parents or guardians reside in California.

(j) In accordance with subsections (b) and (c) of Section 300.402 of Title 34 of the Code of Federal Regulations, the department shall disseminate copies of applicable standards to each nonpublic, nonsectarian school and nonpublic, nonsectarian agency to which a district, special education local plan area, or county office has referred or placed an individual with exceptional needs and shall provide an opportunity for those nonpublic, nonsectarian schools and nonpublic, nonsectarian agencies to participate in the development and revision of state standards that apply to those entities.

EC 56366 - Nonpublic, Nonsectarian Schools; Legislative Intent; Alternative Special Education Service; Contracts; Warrants; Certification; Standards

56366. It is the intent of the Legislature that the role of the nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents.

(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master contract shall specify the general administrative and financial agreements between the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office to provide the special education and designated instruction and services, as well as transportation specified in the pupil's

individualized education program. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting district, special education local plan area, or county office to ensure that appropriate high school graduation credit is received by the pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) (A) The master contract shall include an individual services agreement for each pupil placed by a district, special education local plan area, or county office that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction services are specified in the pupil's individualized education program.

(B) The master contract shall include a description of the process being utilized by the school district, county office of education, or special education local plan area to oversee and evaluate placements in nonpublic, nonsectarian schools. This description shall include a method for evaluating whether the pupil is making appropriate educational progress.

(3) Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent; nonpublic, nonsectarian school or agency; or district, special education local plan area, or county office may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office.

(4) The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(5) The nonpublic, nonsectarian school or agency shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office agree otherwise in the contract or individualized services agreement.

(6) Related services provided pursuant to a nonpublic, nonsectarian agency master contract shall only be provided during the period of the child's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(7) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services as defined by Section 46307 for purposes of submitting a warrant for tuition to each contracting district, special education local plan area, or county office.

(b) The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a district, special education local plan area, or county office for

pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a school district or county office for costs related to the provision of nonpublic, nonsectarian school or agency placements if the superintendent finds that the local education agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If the pupil is enrolled in the nonpublic, nonsectarian school or agency with the approval of the district, special education local plan area, or county office prior to agreement to a contract or individual services agreement, the district, special education local plan area, or county office shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem tuition rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the master contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

(d) No master contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be authorized under this part unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school's or agency's receiving approval to educate pupils under this part for a period no longer than four years from the date of the approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections 56836.16 and 56836.20 shall be developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.