

UNILATERAL PLACEMENTS

How is Placement generally defined?

- Specific educational placement means 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, in any one or a combination of public, private, home and hospital, or residential settings.
- The IEP team shall document its rationale for placement in other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil were not disabled. The documentation shall indicate why the pupil's disability prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services.

(CCR §3042)

What is a Unilateral Placement?

A Unilateral Placement occurs when a parent believes that their child's current educational placement is denying the child FAPE and makes a decision to place the child in a private placement (where they believe FAPE can be achieved) against the agreement of the IEP Team. Parent either notifies LEA/district of this Unilateral Placement at the last IEP meeting before the placement was made, or via a letter 10 business days prior to the Unilateral Placement change.

May students who are parentally placed in private schools participate in publicly funded special education programs?

Students who are enrolled by their parents in private schools may participate in publicly funded special education programs. The LEA/district must consult with private schools and with parents to determine the services that will be offered to private school students. Although LEAs/districts have a clear responsibility to offer FAPE to students with disabilities, those students, when placed by their parents in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE.

(20 USC 1415[a][10][A]; 34 CFR 300.137 and 300.138; EC 56173)

If a parent of a student with exceptional needs who previously received special education and related services under the authority of the LEA/district enrolls that student in a private elementary school or secondary school without the consent of or referral by the local educational agency, the LEA/district is not required to provide special education if the LEA/district has made FAPE available. A court or a due process hearing officer may require the LEA/district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing officer finds that the LEA/district had not made FAPE available to the student in a timely manner prior to that enrollment in the private elementary school or secondary school, and that the private placement is appropriate.

(20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56175)

When may reimbursement be reduced or denied?

When parents believe a LEA/district is denying their child FAPE, they may remove the child to a private placement, but they do so at "their own financial risk." Parents may be financially responsible for the private placement if a court later finds that the LEA/district provided an appropriate FAPE. The court or hearing officer may reduce or deny reimbursement if parent(s) did not make the student available for an assessment upon notice from the LEA/district before removing the student from public school. Parents may also be denied reimbursement if they did



not inform the LEA/district that they were rejecting the special education placement proposed by the LEA/district, including stating their concerns and intent to enroll the student in a private school at public expense.

Notice to the LEA/district must be given either:

- At the most recent IEP team meeting attended before removing the student from the public school, or
- In writing to the LEA/district at least ten (10) business days (including holidays) before removing the student from the public school.

(20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56176)

When may reimbursement not be reduced or denied?

A court or hearing officer must not reduce or deny reimbursement to parent(s) if they failed to provide written notice to the LEA/district for any of the following reasons:

- The school prevented parent(s) from providing notice
- Parent(s) had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the LEA/district
- Providing notice would likely have resulted in physical harm to the student
- Illiteracy and inability to write in English prevented them from providing notice, or
- Providing notice would likely have resulted in serious emotional harm to the student

(20 USC 1412[a] [10] [C]; 34 CFR 300.148; EC 56177)

What steps may the LEA/district consider when informed of a Unilateral Placement change?

- Ensure that all related service providers, case managers, and LEA/district Special Education staff are aware of the Unilateral Placement and suspend providing services.
- Provide parents with a Prior Written Notice (PWN) indicating that services provided by the LEA/district will be suspended based on parent's Unilateral Placement decision.
- Invite parents to an IEP Meeting to discuss Unilateral Placement (preferably within 10 days of when parent provided notice).
- Contact your SELPA Program Specialist.
- Contact your legal counsel.

