

UNILATERAL PLACEMENTS

How is placement generally defined?

Specific “educational placement” refers to a unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the student’s individualized educational program (IEP), in any one or a combination of public, private, home and hospital, or residential settings.

(5 C.C.R. § 3042(a).)

The IEP team shall document its rationale for a placement recommendation other than the pupil’s general education school and classroom, 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.

(5 C.C.R. § 3042(b).)

What is a Unilateral Placement?

A “unilateral placement” occurs when a parent/guardian believes that their child’s current educational placement is denying their child a free appropriate public education (FAPE), and the parent/guardian subsequently makes the decision to place their child in a private placement (where they believe FAPE can be achieved) against the recommendation and offer of placement from the District. If the parent/guardian is disputing the offer of FAPE made by the District, the parent/guardian may request reimbursement from the District for the unilateral placement.

When may reimbursement be reduced or denied?

When a parent(s)/guardian(s) believes the District is denying their child FAPE, they may remove the child to a private placement, but they do so at “their own financial risk.” Parent(s)/guardian(s) may be financially responsible for the private placement if a court later finds that the District offered and/or provided the child with a FAPE.

The court or hearing officer may reduce or deny reimbursement if:

- The parent(s)/guardian(s) did not make the student available for an assessment upon notice from the District before removing the student from public school; or
- If the parent(s)/guardian did not inform the District that they were rejecting the special education placement proposed by the District, including stating their concerns and intent to enroll the student in a private school at public expense.

Notice to the 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 District at least ten (10) business days before removing the student from their public school placement.

(20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; Ed. Code § 56176.)

When may reimbursement not be reduced or denied?

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

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

(20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; Ed. Code § 56177.)

What steps should the District consider when informed of a unilateral placement change?

1. Ensure that all related service providers, case managers, District Special Education staff, and SELPA are aware of the notice of unilateral placement.
2. Invite parent(s)/guardian(s) to an IEP Meeting to discuss their unilateral placement (within 10 days of the parent/guardian-provided notice).
3. Provide parent(s)/guardian(s) with a Prior Written Notice (PWN) outlining why the District's offer within the IEP is FAPE, respond to their concerns, and inform the parent(s)/guardian(s) of the District's refusal to reimburse the student's enrollment in private school.

May students who are parentally placed in private schools due to a FAPE dispute participate in publicly funded special education programs?

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

(20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); Ed. Code, § 56175.)