

---

## What is an Elementary School? California Department of Education Revises on Equitable Services and Proportionate Share for Parentally-Placed Private School Preschoolers

---

August 19, 2024  
Number 37

**Written by:**

Sarah Garcia  
Partner  
San Luis Obispo

Joshua Walden  
Senior Counsel  
San Diego Office

The California Department of Education (CDE) recently released updated guidance regarding equitable services and proportionate share funding for parentally-placed private school students with disabilities. Reversing prior guidance, CDE now opines that the equitable services provisions *do apply* to preschool students with disabilities, when they are parentally-placed at a private school that offers transitional kindergarten, kindergarten, or other elementary grades.

### **Equitable Services and Service Plans for Preschool Students**

The federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and its corresponding regulations contain the equitable services provisions for parentally-placed private school (PPPS) students with disabilities. The IDEA defines PPPS students with disabilities as those enrolled by their parents in private schools or facilities that meet the definition of “elementary school” or “secondary school.”

CDE now says the local educational agency’s obligation to serve children ages three through five under the equitable services provisions depends on whether the preschooler is enrolled in a private school that meets the IDEA’s definition of “elementary school.” The IDEA defines “elementary school” as a “nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.”

### **Previous CDE Guidance**

CDE previously issued [CALPADS Update FLASH #167](#), dated December 13, 2019, and revised on October 31, 2022, which stated that children ages three to five and not yet in kindergarten, who attended a private preschool must be on an IEP and not on an individualized service plan to receive IDEA services. CDE conjectured in that guidance that California law did not define “elementary school,” as contemplated in the IDEA, so “children, ages 3 to

5 not in Kindergarten, parentally-placed in a private school, cannot be on [a service plan], and instead must be on an IEP and enrolled in a public school.”

## Most-Recent CDE Guidance

CDE has now altered that position, issuing new guidance entitled [Equitable Services for Students with Disabilities](#), stating the equitable services provisions apply to any student with a disability age three to five enrolled by their parents in a private school that offers preschool *and* any other elementary grade(s).

Although remarking that California still does not have a uniform definition of “elementary school,” CDE noted that the Education Code indicates that “kindergarten (including transitional kindergarten or TK) is considered elementary education,” citing to California Education Code sections 48000, subdivision (d), 46114, subd. (c), and 46115. Consistent with this operational definition, CDE further determined that the equitable services provisions do apply to a student with a disability, ages three to five, enrolled at a private school “that offers not only preschool, but also any of the grades TK or above.”

Significantly, CDE also determined that the equitable services provisions *do not apply* to PPPS three- to five-year-old students with a disability enrolled at “stand-alone” private preschools, as those programs fall outside their interpretation of “elementary school.” CDE declined to expressly define a “stand-alone” private preschool. Local educational agencies should be aware of the inconsistencies this may cause between similarly situated preschool students depending on the school in which they are enrolled and should be cognizant of the equity issues which might arise from those inconsistencies.

## Takeaways

CDE’s updated guidance has serious implications for local educational agencies in calculating proportionate share expenditures and data reporting on the California Longitudinal Pupil Achievement Data System (CALPADS) for PPPS preschoolers with disabilities. Local educational agencies should consider reviewing the grades served at any particular private school serving PPPS preschoolers with disabilities within the local educational agencies’ jurisdictional boundaries to determine whether each is a “stand-alone” private preschool or a private school offering “any of the grades TK or above” and therefore qualifying as an “elementary school.” Qualifying students in the latter will be entitled to individualized service plans as an option for accessing services, while students in the former will need to consent to IEPs in order to access services.

If you have any questions about CDE’s recent guidance regarding “Equitable Services for Students with Disabilities,” please contact the authors of this Client News Brief or any attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

# Client News Brief

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*