

## Riverside County Special Education Local Plan Area

### Charter Schools and Special Education

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#### Introduction

Both special education and charter schools have been evolving over the last twenty years and they now intersect more than ever. “There is an overriding climate issue that must be taken into account, i.e., the *policy tension* between charter schools and special education that can give rise to conflict. The charter school concept, based on an exchange of greater autonomy for increased accountability, is driven in part by the desire to allow educators the freedom to be innovative about teaching and learning, but this can be difficult to do while remaining in compliance with a highly prescriptive federal statute such as the Individuals with Disabilities Education Act (hereinafter referred to as “IDEA”). In the area of special education, charter schools must juggle autonomy and compliance that at times can feel like fitting a square peg into a round hole” (Ahearn, 2012, p. 1). For example, the charter school foundation of parental choice is in tension with the IDEA individualized education program (hereinafter referred to as “IEP”) team shared decision making that operates within special education. Charter school authorizers and operators must understand and acknowledge these tensions and strive to identify appropriate solutions.

Historically, how a charter school will deliver special education services and/or ensure that students and parents receive their procedural safeguards has been a small part of the petition because the Education Code (hereinafter referred to as “EC”) does not explicitly require information about special education programming in charter petitions unless the charter school intends to operate as its own local educational agency (herein after referred to as “LEA”) in a

Special Education Local Plan Area (hereinafter referred to as “SELPA”) (Fagen, Friedman & Fulfroost, 2012). It has been up to each chartering authority to develop the criteria it will use to review whether a charter school petition is adequate, including whether it provides a “reasonably comprehensive” description of the required elements.

Given this historical picture, it may not be surprising that research documenting the intersection of special education and charter schools indicates that charter school operators “frequently are unprepared to navigate the complex special education regulatory web or offer special education services given their lack of established systems and technical expertise” (Rhim & O’Neill, 2012, p. 1). This document is designed to remedy some of these deficits.

### **Riverside County SELPA Membership**

This policy applies to all charter schools that are chartered by a local education agency (hereinafter referred to as “LEA”) in the Riverside County SELPA, or granted a charter on appeal by the Riverside County Board of Education, or chartered by the State Board of Education when oversight responsibilities have been assigned to the SELPA. This policy extends to a charter school that was chartered by, or assigned to, an entity that is a member of the SELPA, regardless of whether the charter school participates in this SELPA or another SELPA. The charter school’s participation in the SELPA will be determined by whether it operates as a school of its chartering district or an LEA member of a SELPA. The following LEAs are current members of the Riverside County SELPA Joint Powers Agreement:

- |   |  |
|---|--|
| Alvord Unified School District          | Banning Unified School District          |
| Beaumont Unified School District        | Coachella Valley Unified School District |
| Desert Center Unified School District   | Desert Sands Unified School District     |
| Empire Springs Charter School           | Harbor Springs Charter School            |
| Hemet Unified School District           | Jurupa Unified School District           |
| Lake Elsinore Unified School District   | Menifee Union School District            |
| Murrieta Valley Unified School District | Nuvview Union School District            |
| Palm Springs Unified School District    | Palo Verde Unified School District       |
| Perris Elementary School District       | Perris Union High School District        |
| River Springs Charter School            | Riverside County Education Academy       |
| Riverside County Office of Education    | Romoland Elementary School District      |
| San Jacinto Unified School District     | Santa Rosa Academy                       |
| Val Verde Unified School District       |  |

### **Legal Foundations**

“Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities” (Public Law 108-446). The 2004 regulations officially state that the major purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a “free appropriate public education” (hereinafter referred to as “FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
2. to ensure that the rights of children with disabilities and their parents are protected; and,
3. to help states, localities, educational service agencies, and federal agencies provide for the education of all children with disabilities; and to assess and ensure the effectiveness

of efforts to educate children with disabilities (National Dissemination Center for Children with Disabilities, April 2009).

California's Charter Schools Act authorized the establishment of charter schools for the intended purposes of improving pupil learning; increasing learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils identified as academically low achieving; encouraging the use of different and innovative teaching methods; creating new professional opportunities for teachers; providing parents and students with expanded educational opportunities within the public school system without the constraints of traditional rules and structure; providing schools a way to shift from a rule-based to a performance-based system of accountability; and to provide competition within the public school system to stimulate improvements in all public schools (EC §47601).

To be "chartered" means that a LEA has approved a charter school's petition and granted the charter school the authority to operate. Like traditional public schools, charter schools must have open enrollment, cannot charge tuition, and are subject to all California testing programs. Charter schools have some autonomy from state and local rules regarding staffing, curriculum and budget – in exchange for being subject to oversight and monitoring by their chartering entity. Specific goals and operating procedures for a charter school are detailed in an agreement or memorandum of understanding between the authorizing entity and the charter school developer. Written LEA policies and procedures governing charter school petition review and oversight are recommended (Fagen, Friedman & Fulfrost, 2012).

A local governing board must hold a public hearing for a proposed charter within 30 days of receipt of the completed petition and either approve or deny the charter school within 60 days. This timeline can be extended by 30 days if both parties agree to the extension. A LEA shall not deny the approval of a charter petition unless it makes written factual findings that (1) the charter school presents an unsound educational program; (2) the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition; (3) the petition does not contain the required number of signatures; (4) the petition does not contain an affirmation of each of the conditions; and/or (5) the petition does not contain reasonably comprehensive descriptors of all of the 16 required elements of the petition.

- Typically a LEA governing board is the entity to hear and approve a charter school petition to operate a charter school within its boundaries. The governing board of an elementary or high school district may approve a charter petition to serve grade levels not served by the district only if the petition also proposes to serve all of the grade levels served by the district.
- A petitioner can seek approval from a county board of education if the pupils to be served would normally be provided direct education and related services by the county office of education if (1) the petition has been previously denied by a local school district governing board within the county or (2) if the charter school will provide countywide services that cannot be provided by a district-approved charter school.
- If both of these entities deny a charter petition or if the charter school will provide services of a statewide benefit that cannot be met through approval by a local charter authorizing entity, a petitioner can request the State Board of Education (hereinafter referred to as "SBE") to approve its charter school petition.

### **Categories of Charter Schools**

Charter schools must comply with the IDEA by either operating as a school of its authorizing district or participating as an LEA member in a SELPA (EC § 47641, 47646.) The decision lies

with the charter school, and is made at the time it petitions for a charter. The charter school may apply to change status over time, depending on its charter language.

The degree to which a charter school is responsible for its special education programming and services depends upon whether the charter school is operating as an LEA for special education purposes or is operating as a school of the authorizing LEA. In general, charter schools that are their own LEAs are solely responsible for providing FAPE to students enrolled in the charter school, whereas charter schools that operate as a school of the district have the same responsibilities as individual schools within the authorizing agency, as determined by the authorizer and the charter school. Operating as a school of the authorizing agency, as a LEA in the local SELPA or as an out of geographic SELPA membership are described below.

### **Operating as a School of the District**

Operating as a public school of the district for the purpose of serving students with disabilities enrolled in the charter school is the default arrangement under the law (EC §47641). This occurs whenever the charter school has not gained acceptance in a SELPA as an independent LEA. A charter school that is a “school of the district” for purposes of special education must be treated by its authorizing entity like any other school in the district in terms of their receipt of special education services and funding, and the authorizer represents the charter school in the SELPA.

Absent agreement to the contrary, the authorizer is responsible for special education in the charter schools it authorizes. As such, it must assure that students with disabilities have equal access to the charter school and, once enrolled, are provided a high-quality education supported by appropriate special education personnel and services. The authorizing agency has direct liability for all areas of special education at the charter school, including serving students who enroll in the charter school, but do not reside within the authorizing district. The authorizer, as the provider of most, if not all of the special education services, is responsible for the provision of FAPE to charter school students, including defending the charter against complaints and/or due process litigation, just as it would any public school in the district. These responsibilities continue unless and until such time as the charter school elects to operate as an LEA member of a SELPA, and, the charter school has been accepted into SELPA membership.

The chartering entity is thus responsible for providing or funding appropriate special education services for all charter school students. The chartering entity receives all applicable special education funds as specified in the Riverside County SELPA Funding Allocation Plan. All placement decisions for students with disabilities must be made in compliance with applicable law, and must be based on an individual student's educational needs. EC §47646 requires each charter school operating under this model to contribute financially to district-wide special education services, programs and administration that the authorizing agency funds out of its general funds in excess of special education funding received. This contribution is typically referred to a “fair share contribution.”

Per Fagan, Friedman, & Fulfrost (2012), charter schools authorized by the County Office of Education (hereinafter referred to as “COE”) may be problematic because most COEs do not provide or receive funding for a full continuum of special education program options. Nevertheless, if a charter school is approved by the COE, the COE is responsible for ensuring all special education students receive a FAPE. If the SBE is the chartering entity, it may delegate its supervisory and oversight responsibilities to an LEA. The LEA and SBE must mutually agree to the delegation as, if the charter is not a LEA member of a SELPA, then the charter school is deemed a public school of the designated LEA.

While the charter school relies primarily on the authorizing agency to provide special education services, the charter school is obligated to comply with special education laws, including implementing each student's IEP and cooperating with the authorizer to discharge the special education responsibilities. The charter school must work with the authorizing agency to ensure that students are appropriately referred, assessed, identified for special education, and serviced in a timely manner. Service delivery, implementation and monitoring of each student's IEP are generally done by the charter school and authorizing LEA working collaboratively together. In most cases, the charter school will not receive any funding to carry out these functions, nor will the charter school have the ability to make independent decisions about how or by whom services are provided.

### **LEA Participant in Local SELPA**

Charter schools interested in becoming an LEA in the Riverside County SELPA must make application to the SELPA on or before February 1 of the school year proceeding the one in which the charter school anticipates operating as an LEA within the SELPA. LEA status will not become effective prior to July 1 of the year in which final approval was granted, and if such approval is provided after July 1, it will not be effective until the following July 1. The SELPA considers applications for LEA membership on a case by case basis, and retains discretion to determine membership, in compliance with the Local Plan. As such, the SELPA may consider a request to waive the above timelines and may grant approval of exceptions on an individual case basis.

When a charter school seeks to participate as an LEA in the Riverside County SELPA, the LEA application will be reviewed and analyzed in accordance with the SELPA's Local Plan and its charter school policies and procedures. The applicant charter school will be deemed an LEA if the SELPA Governance Council determines that the charter school has met all requirements to be included as a member LEA of the SELPA. Once granted LEA status, the charter school becomes directly eligible for special education funds and it must be capable of providing a full continuum of program and service options for all special education students that attend the school. If LEA status is not granted, the charter may not become a member of the SELPA, but may reapply in future years.

Only applications that demonstrate both the programmatic and fiscal capacity to independently comply with special education laws will be granted. LEA members of the Riverside County SELPA are expected to have the "systems" in place to ensure they can perform the necessary duties, and have the infrastructure and experience necessary to operate independently as an LEA. The *Technical Assistance for California Charter Schools* (CDE, 2007) document defines special education capacity as "having the human, fiscal, and legal resources required to fulfill the responsibilities articulated in the IDEA. At a minimum, capacity includes the ability to implement existing IEPs, refer eligible students to special education, conduct evaluations, develop IEPs, and provide special education and related services for all entitled students enrolled in the school. Authorizers need to be confident that petitioners either have established, or can access, the capacity they need to meet their special education responsibilities." The Riverside County SELPA will be guided by these principals in reviewing charter school applications.

When a charter school is accepted as an LEA member, the charter school becomes independently obligated to discharge all the responsibilities of a school district in the provision of services to students with disabilities, including receiving and properly expending special education funds and ensuring compliance. Once granted LEA status, unless other provisions are made, a charter school will represent the needs of the charter school and participate on an equal basis with other members in the governance of the SELPA. The LEA charter school will

choose representatives to the Governance Council, Coordinating Council, and SELPA Finance. The representative to the Governance Council must be the chief executive officer of the charter school pursuant to the Riverside County SELPA Joint Powers Agreement. The representative to the Coordinating Council must be a special education administrator designated by the governing board of the charter school. The charter schools Chief Business Official or designee represents the charter on the SELPA Finance Committee.

Each time SELPA membership changes, the SELPA's Local Plan must be revised to reflect that. Acceptance of a charter school as an LEA SELPA member requires the submission of a revised SELPA Local Plan to the California Department of Education (hereinafter referred to as "CDE"), and that plan is subject to review and approval by CDE (EC §56121 and §56123). The revised Local Plan must continue to embody the content that establishes compliance with IDEA.

### **Out of Geographic or All Charter SELPA Membership**

Whereas traditional public schools operate as LEAs, an entity that has responsibility for the education of all children who reside within a designated geographical area of a state, charter schools' legal identities and linkages to their local LEAs are often less clear (NASDSE, 2008). For example, a charter school may also apply to participate in a SELPA other than the one in which it is located. The State Board of Education ("SBE") allows SELPAs to accept out-of-area charter schools and/or to operate as an all charter SELPA. These geographically distant and all charter SELPAs were created for purposes of providing charter schools with options to become LEA members of SELPAs other than the SELPA in which their authorizer is a member.

Membership in a geographically distant SELPA has significant financial impacts in the geographic area in which the charter school is located. It not only immediately reduces the SELPA's overall special education funding per the charter school's average daily attendance ("ADA"), it can also accelerate the movement of the SELPA's base rate downward towards the state wide target rate. As such, charter schools based within the local plan area are encouraged to apply for membership in the Riverside County SELPA before applying to any other SELPA for membership.

Even if a charter school is a member of a SELPA other than the Riverside County SELPA, its authorizing district continues to have oversight and monitoring roles to ensure the charter school is appropriately serving students.

## **Charter School Responsibilities**

Historically enrollment of students with disabilities in charter schools lags behind that in traditional public schools (American Institutes of Research, 2011). Charter schools are public schools that can present new educational opportunities, and it is critical that they implement policies, procedures and practices that ensure that all students, including students with disabilities, have access to these options.

### **Critical Elements of a Petition**

Charter school petitioners are required to provide a "reasonably comprehensive" description of the required 16 elements listed in EC §47605, which includes the charter school's plan regarding special education and serving students with disabilities within the school's overall general educational program. Because the charter school's petition becomes its governing document (its "charter"), it is the ideal place to establish broad special education expectations for the charter school. Various resources have identified the critical elements that petitioners need to include and authorizers need to look for in reviewing a charter school petition in relation to special education and related services (See *Technical Assistance Guide on Charter Schools and Special Education* [CDE, 2007], *Technical Assistance for California Charter Schools on*

*Implementing Special Education Requirements* [CDE, 2007], Fagan, Friedman & Fulfrost [2012], Rhim & O'Neill [2012], Lozano Smith [2013], USDE OCR [2014]).

- Admissions and Enrollment – Admission criteria cannot be discriminatory; a charter cannot deny enrollment to a student based upon the student’s special education status; applicants should project to enroll and plan for approximately the same proportion of students with disabilities as is enrolled in local neighborhood schools;
  - Charter schools must allow a student with a preexisting IEP to enroll, complete an interim placement, and implement the provisions to the best of its ability for up to 30 days.
    - To determine if services are comparable, look at the child’s unique needs, existing goals/objectives, placement and related services from the transfer IEP – changes in form rather than substance may be okay.
    - During that time, the IEP team must meet and determine whether the student’s needs can be met in the charter school’s program, and if not, how and where the charter will provide the necessary services.
  - A charter school can utilize a lottery system or deny enrollment if the program is full as long as it uses non-discriminatory practices applied equally across applicants.
- Zero Rejection of Children with Disabilities – admissions requirements, policies and practices; if a student is struggling, the charter must address the issues with the IEP team; a school may not disenroll a student with an IEP outside of the IEP process (i.e., for behavior, absences or parent refusal to sign a parent contract);
- Child Find – policies and practices in place to identify and assess students who may be eligible to receive special education and related services; nondiscriminatory evaluation; confidentiality;
- IEP – the process by which a team of professionals, in collaboration with parents, develop and plan to provide special education and related services to a student identified as eligible for such services; provision of a free appropriate public education (hereinafter referred to as “FAPE”); consideration of the least restrictive environment (hereinafter referred to as “LRE”); provision of the distinct set of special education and related services outlined in IEPs to ensure students with disabilities have access to the general education curriculum and achieve the goals outlined in their IEPs;
- Curriculum, Instruction, and Assessment – the core content to be delivered in the school and the method of delivering the content; providing access for students with disabilities to the regular education curriculum, instruction, and assessment; the tools used to measure academic progress;
  - If student is interested in independent study or home school program, the charter school must allow the student to enroll and then ensure that parents are prepared to teach their child at home, able to implement the curriculum correctly, and collect data for progress monitoring.
- Human Resources Staffing and Administration –charter personnel must have the necessary background in the areas of curriculum, instruction and assessment; the number and nature of specialized staff to be hired to administer programs and provide special education and related services; and a professional development plan;

- Discipline – policies and procedures that outline behavioral expectations and the consequences for students who do not meet the expectations; suspension and expulsion policies, including an understanding of the due process rights of students, particularly students with disabilities; and options available for attendance alternatives (e.g., independent study options);
- Special Education Funding – operators must demonstrate that they are likely able to successfully implement the program set forth in the petition, including a realistic financial and operational budget plan showing projected revenue and allocations to cover expenditures; management and accounting systems for special education funds; and procedures for the flow of special education funds and reporting requirements;
- Facility – consideration of the school’s physical plant, including classrooms, administrative space, and the external spaces use by students;
- Family and Community Engagement – efforts taken to engage parents and the broader community in the success of the school, including due process and parental involvement;
- Transportation – the services provided to students to transport them between their home and school;
- The Charter School Board must adopt the SELPA LEA assurances of compliance with applicable federal and state special education laws.

The above list is not exhaustive but rather a guide to key issues that potential charter petitioners and authorizers reviewing petitions should take into account. The responses to the questions will depend upon whether the charter school is operating as a school of the authorizer or its own LEA, the charter, the characteristics of the individual charter school, and agreements reached between the authorizer and charter school regarding discharge of special education responsibilities.

### **Legal Foundations to Guide Charter Schools**

Per federal laws, state laws, and the CDE, as public schools, charter schools may not discriminate against students with disabilities. Charter schools are legally required to maintain open enrollment policies and practices that allow students with disabilities to enroll on the same basis and to the same degree as students without disabilities.

- Children with disabilities applying to or enrolled in charters may not be treated differently from all other students based on their disability.
- Students, whether disabled or non-disabled, may not be “counseled out” or “counseled-in” to the charter school program, and the charter school may not otherwise influence an enrollment decision based on the child’s disability.
- Advising families of students with disabilities that they are not allowed to attend or should not attend due to their disability related needs (i.e. education program does not have the services, modifications or accommodations necessary to enable the student to attend) is discriminatory and illegal.

Whether and to what extent a charter school may be required to modify or otherwise add to or change its educational programming options to meet the unique needs of a student with a disability depends upon whether the charter school is operating as an LEA for special education purposes or is operating as a school of the authorizing LEA. In general,



- Charter schools that are their own LEAs are solely responsible for providing a FAPE in the LRE in accordance with their SELPA's Local Plan to all students who are enrolled.
- Charter schools that are operating as a school of the authorizing LEA share this responsibility in like manner with other schools in the authorizing LEA, as outlined in the SELPA Local Plan, including schools that may offer specialized or regional programs for students with certain types of disabilities.

The United States Department of Education Office of Civil Rights (hereinafter referred to as "OCR") sent a letter to the field (May 14, 2014) about the applications of federal civil rights laws to all operations of a charter school, including recruiting, admissions, academics, educational services and testing, school climate (including prevention of harassment), disciplinary measures (including suspensions and expulsions), athletics and other nonacademic and extracurricular services and activities, and accessible buildings and technology. The OCR enforces Title VI of the Civil Rights Act of 1964 prohibiting discrimination based on race, color, or national origin; Title IX of the Education Amendments of 1972 prohibiting discrimination based on sex; and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 prohibiting discrimination based on disability. The following obligations must be followed:

- Nondiscrimination in eligibility criteria for admissions applied in a nondiscriminatory manner. This includes ensuring that language-minority parents who are not proficient in English receiving meaningful access to the same admissions information and other school-related information in a manner and form they can understand (i.e., providing free interpreter and/or translation services, Braille materials or a sign language interpreter).
- FAPE for students with disabilities – that is, regular or special education and related aids and services that are designed to meet a student's individual educational needs as adequately as the needs of students without disabilities are met. Evaluation and placement procedures are among the requirements that must be followed if a student needs, or is believed to need, special education or related services due to a disability. Charter school may not ask or require students or parents to waive their right to FAPE in order to attend the charter school. The school must provide nonacademic and extracurricular services and activities in such a manner that students with disabilities are given an equal opportunity to participate.
- Charter schools must take "affirmative steps" to help English learners overcome language barriers, including, (1) timely identification of language-minority students who have limited proficiency in reading, writing, speaking or understanding English; and (2) the provision of an effective language instruction educational program that also affords meaningful access to the school's academic content to identified students.
- All public schools, including charter schools, are obligated to avoid and redress discrimination in the administration of school discipline. This applies over the entire course of the discipline process, from behavior management in the classroom, to referral to the office, and to resolution of the disciplinary incident. The *Guidance on the Nondiscriminatory Administration of School Discipline* provides assistance in this area (see <http://www.ed.gov/ocr/letters/colleague-201401-title-vi.pdf>.)

## **Authorizer Responsibilities**

Once approved by the authorizing agency, the petition becomes the charter. In addition to petition review and the power to approve or revoke a charter, authorizers must (at a minimum) continually monitor the charter school for fiscal performance and soundness, assure the charter school files all necessary reports, and visit each school at least annually (EC §47604.32). These

requirements and recommendations hold true regardless of which agency is the authorizing entity.

### **Monitoring Approved Charter School**

The charter authorizer retains oversight responsibility, and must monitor the charter school to ensure it operates according to the charter petition, including accountability for the measurable goals and objectives outlined in the charter, in a fiscally sound manner in compliance with applicable law. This oversight responsibility includes monitoring approved charter schools to ensure the special education laws are appropriately implemented. The rubric created by Rhim and O'Neill (2012) is designed to help authorizers track, assess, and ensure that a currently operating charter school is enrolling and providing appropriate services to students with disabilities. They recommend reviewing the following core elements:

- Enrollment and retention numbers and categories of students with disabilities;
- Admission of students without discrimination and in accordance with applicable law;
- Identify students at risk for disabilities and seek appropriate evaluations (e.g., child find and referral procedures);
- IEP and related records properly created, maintained, and updated;
- Services provided in accordance with IEPs;
- Evaluations conducted appropriately and on a timely basis;
- Discipline procedures carried out lawfully and in accordance with the school's policy (especially regarding suspensions and expulsions);
- Students included in district and statewide testing in accordance with IEPs (i.e., appropriate accommodations provided during assessments);
- Special education funding properly utilized.

The American Institutes of Research (2011) cite the following barriers to service delivery for students with disabilities in charter schools: (a) finding and retaining qualified staff; (b) determining a student's disability status; (c) developing high-quality programs with limited resources; (d) understanding the procedural requirements of IDEA; (e) getting forthright information from parents about a child's disability; and, (f) obtaining records from students' previous schools. To overcome these barriers, check out the National Charter School Resource Center, which provides easy access to high-quality resources to help charter school communities understand the law and effective ways of meeting its requirements, as well as case studies and research (i.e., *Building the Capacity of Charter Schools: Effectively Serving Students With Disabilities*).

The Riverside County SELPA and Riverside County Office of Education also have resources to assist authorizers and charter schools in implementing their special education responsibilities appropriately. These include an "*Authorizer's Toolkit*" (RCOE, 2010) for use by LEAs for periodic check-ups to gauge areas where the charter school they have sponsored is operating effectively or to determine if the school may be in need of support in a specific area. The toolkit includes guidance for both Charter School Authorizers and Charter School Operators in the following areas: General Requirements, Fiscal and Business Operations, Educational Performance, Facilities, Governance, Personnel, and Student Services. Each of the topics addressed in the kit has a separate "tool" and these can be used at the discretion of the LEA.

### **Renewal Petition Considerations**

In order to continue, every charter must be re-authorized or renewed at least every five years. A renewal application must meet the same legal requirements and cover all of the elements of an initial petition. It must include criteria demonstrating school progress and success, including state Academic Performance Index (API) data. It must also include any new requirements

added by law or policy of the chartering entity that were not addressed in the previous petition application.

A chartering authority may revoke a charter if the authority finds, through a showing of substantial evidence, that the charter school did any of the following: (1) committed a material violation of any of the conditions, standards, or procedures set forth in the charter; (2) failed to meet or pursue any of the pupil outcomes identified in the charter; (3) failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement; or (4) violated any provision of law (EC §47607(c)). The ruling in a recent court case determined that charter school authorizers must consider increases in pupil academic achievement for all groups of pupils served by the charter as “the most important factor” in determining whether to revoke a charter and the revocation records must reflect substantial evidence to support a finding that student performance was considered as such (*American Indian Model Schools v. Oakland Unified School District et al.*, June 23, 2014)

Education Code also requires each charter to contain a description of the procedures to be used if the school closes. This plan must include a final audit, plans for disposing of all assets (fixed assets and remaining fund balances), and maintenance and transfer of pupil records. Most of this work is done between the charter school and its authorizing agency. However, all funds and pupil records related to special education must also be addressed with the SELPA.

Per changes to the California Code of Regulations (CCR §11966) effective November 23, 2011, when determining whether to approve a renewal charter petition, the authorizer (a school district governing board or county board of education) must consider the past performance of the school's academics, finances, and operations to evaluate the likelihood of future success, along with the charter school's plans for improvement. The board must take action on a renewal petition within 60 days of receipt or the charter will automatically be renewed for a five year term. The 60 day time period may be extended for an additional 30 days only by written agreement between the parties involved. If a school district board denies a renewal petition, the charter school may appeal to the county board of education no later than 30 days after the denial. This deadline can be extended for an additional 30 days by written mutual agreement. If the charter school does not submit its renewal petition to the county board within the required timelines, the petition will be deemed denied with no further administrative appeal options.

Rhim and O'Neill (2012) recommend the following structure for authorizers to examine individual charter school practices when a renewal application is being considered.

- Review of records – enrollment, IEPs, discipline, funding, etc.;
- Comparison of actual practices to official school policies;
- Analysis of compliance with applicable law, rules and regulations;
- Review of how the charter school handled problems related to delivery of special education and related services;
- Performance metrics that document the degree to which students with disabilities are benefiting from access to the general education curriculum (i.e., progress on IEP goals, percentage of time in general education classroom, retention rates, graduation data or post-school outcomes).

## **SELPA Involvement with Approval and Renewal of Charters**

The SELPA is charged with establishing a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the SELPA's Local Plan area (EC § 56195.1(b)(2)). The SELPA must submit to the state a Local Plan to assure identification, evaluation, and access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan (EC §

56205(d)). The SELPA's Local Plan must ensure all students with disabilities living in the local plan area are identified and appropriately served, regardless of what public school they attend, or from whom or where that public school receives its special education.

To facilitate this, prior to approval of a new charter school or renewal of an existing charter school, the charter school petitioner should consult with the Superintendent or designee of the chartering entity and the Riverside County SELPA Executive Director to ensure that the charter school is knowledgeable of and in compliance with district and SELPA guidelines and timelines as they relate to special education. The petition presented must provide assurances that all eligible students enrolled in the charter school will receive appropriate special education services in accordance with appropriate state and federal law and the SELPA Local Plan for Special Education.

The petition shall provide that no student otherwise eligible to enroll in the charter school will be denied enrollment due to a disability or to the charter school's inability to provide necessary services, regardless of the availability of services the student needs within the charter school's regular education program. Each charter petition must contain a reasonably comprehensive description of the charter school's educational program, as it relates to the provision of special education services. The California Charter Schools Association (CCSA) is a statewide organization that works to advance the charter school movement by providing resources and advocacy to improve the range and quality of educational options available to serve students with disabilities in charter schools. Toward this end, it developed the *Self-Assessment Checklist: Criteria and Best Practices for Charter Schools Seeking LEA Status for Special Education (CCSA, 2013)*, which includes the following key checklist components, including detailed best practices:

1. Special Education Program and Administration – special education policy, technical assistance and professional development, monitoring and reporting data for students with disabilities, and enrollment of students with disabilities;
2. Child Find and Assessment – pre-referral interventions, special education referral, and special education assessment;
3. Evaluation Criteria – IEP development and review, IEP implementation (evidence the charter school has on staff or available via contract special education teachers and service providers for all types of need and has access to the full continuum of special education placement options); student behavior and discipline;
4. Risk Mitigation/Due Process – risk mitigation, dispute resolution
5. Budget – accounting

### **Memorandum of Understanding**

Many of the operational challenges for charter schools, their authorizing agency, and the SELPAs in which they are located can be minimized or mitigated through a clearly defined memorandum of understanding (“MOU”) regarding the roles and responsibilities for the provision of special education services among the entities.

The SELPA encourages charter schools and their authorizers to develop a MOU to delineate the entity responsible for providing special education instruction and related services and the process through which such compliance will be achieved, regardless of whether they operate as a school of the district or an LEA member of a SELPA. The MOU should describe any anticipated transfer of special education funds between the granting LEA and the charter school, or the SELPA and the charter school, and any provisions for sharing deficits and/or proration factors in funding. The SELPA should be provided with a copy of the MOU prior to the

release of funds to the chartering entity or the charter school. The Riverside County SELPA staff is available to meet with its members to discuss different operational models, and assist in the development of MOUs to memorialize the model chosen.

In practice, the relationships between authorizers, charter schools, and SELPA can vary significantly and a MOU becomes a critical document for clarifying arrangements and agreements. Although each is individualized, in general, the following components are included within the special education services section of a MOU:

- Charter status as school of authorizing agency or LEA of SELPA
- IDEA
- Program, Policies and Procedures
- Forms, Reports and Records
- Special Education Trainings
- Child Find (Search and Serve Notices)
- Identification and Referral
- IEP Meetings
- Implementation and Progress Monitoring
- Student Discipline
- Student Withdrawal from Charter School
- Responsibility for Processing Complaints
- Initiating Due Process Requests
- Special Education Funding
- Section 504
- Division and Coordination of Responsibility
- District and SELPA Policy
- Expertise and Responsibility of School
- Attendance Accounting and Reports
- Pre-Referral Process and Interventions
- SELPA Services
- Assessments
- Offer of FAPE and LRE Considerations
- Interim Placement Procedures
- Alternative Placements
- Revocation of Consent
- Correspondence About Special Education
- Due Process Hearings
- Charter School Contribution
- Indemnification

## **Operational and Financial Implications of Changing Charter School Status**

A charter may seek affiliation with a special education cooperative to provide all or some of the capacity needed to comply with federal and state special education requirements by pooling their resources, distributing risk, and maximizing their special education expertise and resources (Rhim, Ahearn, Lange, & McLaughlin, 2006). If a charter school intends to change its SELPA it must inform both SELPAs at least one year prior to the change, e.g., by June 30 of the year preceding the year in which it intends to join the new SELPA (EC §47642). The following summarizes the operational and financial implications of a charter school becoming an LEA member of either the Riverside County SELPA or an out-of-geographic area SELPA. It also outlines the oversight implications for the SELPA and the authorizing entity.

### ***A. Operational Implications of Changing from a School of the Authorizing Agency to a LEA Member of a SELPA***

1. After a charter school is a LEA member of a SELPA, the authorizing agency:
  - a. will no longer have any obligation to provide special education placements or services to students enrolled in the charter school, and will no longer be obligated to serve as the charter school's special education provider or funding source;
  - b. will no longer have direct liability for special education issues arising at the charter school or involving charter school students, assuming discharge of proper oversight;

- c. will retain its legal responsibility to oversee the charter school in general, including its compliance with special education laws, but will no longer have any obligation to fund or provide for such services; and,
  - d. may compel the charter school's independent compliance with special education laws.
2. As an LEA, the charter school:
- a. becomes solely and independently responsible for its compliance with all state and federal special education laws, and must make the continuum of program options available to all students enrolled or seeking to enroll in the charter school;
  - b. bears all liability associated with discharging its obligations to students with disabilities who qualify for special education, and gains the responsibility to defend itself when any other complaints involving special education are filed;
  - c. will participate in SELPA governance unless other provisions are approved and have access to SELPA services and support in the same manner as other member districts;
  - d. will use SELPA forms, and operate its special education programs in accordance with SELPA direction;
  - e. will obtain services from the SELPA in the same manner and to the same extent as other member districts of its size; and
  - f. may utilize SELPA or other consultants to assist it in developing appropriate special education programs, procedures, expertise, and building capacity to be responsible for their own special education programming.

***B. Financial Implications of Changing from a School of the Authorizing Agency to an LEA Member of Riverside County SELPA***

- 1. The SELPA will continue to obtain from the State the special education revenue generated by the charter school, but it will pass the funding through to the charter school and not its authorizer.
- 2. The SELPA will allocate special education funding to the charter school, instead of to the authorizing district, in accordance with the Local Plan and Allocation Plan. For examples, the LEA charter shall:
  - a. receive grant dollars based on its appropriate eligibility determination;
  - b. contribute to, participate in, and receive the benefits of reimbursement from centralized funding pools (e.g. IDEA Mental Health Funds, Out-of-Home Care Funding) in the same manner as other members;
  - c. be responsible for all costs incurred in the provision of special education services. These costs may include, but are not limited to, instruction, services, transportation, nonpublic school/agency placements, inter/intra SELPA placements, due process proceedings, complaints and attorney fees;
  - d. document that all State and Federal special education funds apportioned to the charter school are used for the sole purpose of providing special education instruction and/or services to identified students with disabilities; and
  - e. ensure that special education apportionment is used solely for the purpose of providing special education instruction and/or services to identified students with

disabilities. Any apportionment not used for provision of special education may be recaptured per the Allocation Plan.

### **C. Financial Implications of Changing from a School of the Authorizing Agency to an LEA Member of an Out-of-Geographic SELPA**

1. When a charter moves to an out of geographic area SELPA, neither the authorizing agency nor the local SELPA will be allocated the special education funding generated by charter school ADA. The authorizing agency's ADA would decrease and each local SELPA members special education funding could be decreased proportionately by the departing ADA.
2. The departure of charter schools from the SELPA in which they are located also decreases the rate per ADA for special education funding in the region.
  - a. The transfer of ADA from one SELPA to another (when a charter school joins an out-of-geographic SELPA) accelerates the SELPA's base rate for special education funding towards the (usually lower) statewide target rate.
  - b. The SELPA the charter school leaves loses funding at its unique base rate per charter school ADA.
3. The receiving SELPA and charter school receive funding in their new SELPA at the (usually lower) statewide target rate per ADA.
4. If/when charter school students return to the original SELPA (whether as a school of its authorizer or an LEA), they will return to the SELPA at the state-wide target rate, not the rate a student generated before the change in SELPA.

Given the fiscal and logistical challenges created by a charter school leaving the SELPA in which it is located, the SELPA encourages charter schools to operate as either a school of the authorizing entity or as an LEA participant of the local SELPA for purposes of compliance with special education. Charter schools must comply with all requirements imposed by CDE, as described in the "*Special Education Local Plan Area Out-of-Geographic Charter School Checklist*." With these implications in mind, the Riverside County SELPA Executive Director is available to meet with LEAs and charter school operators to ensure they understand the above implications and have access to the resources and information needed to discharge special education responsibilities appropriately.

### **Charter LEA Application to SELPA**

To encourage charters to remain in the local SELPA, the Riverside County SELPA has developed the following processes through which applications from charter schools seeking LEA membership will be considered. The process provides for maximum flexibility for the SELPA, its members, charter schools operating in the Local Plan area, and potential out-of-geographic charter school applicants while also ensuring the charter schools are willing and able to comply with the responsibilities listed below.

#### **Planning to Apply for LEA Status**

As charter schools grow and demonstrate their expertise in serving students with unique needs, a natural progression will be to seek autonomy in funding, oversight and service delivery in relation to special education services. In order to obtain this flexibility, a charter must become an LEA for the purposes of special education by joining a SELPA. Being designated an LEA for special education purposes is equivalent to being treated as a school district, and an LEA charter school assumes the full responsibility for providing quality and compliant special

education programs and services, while ensuring that all eligible students receive a free appropriate public education as dictated by the IDEA.

During the initial planning phase, it is important to give thought to how the charter school's purpose and mission will be relevant to a wide range of students. The *Special Education Toolkit* developed by the California Charter Schools Association (2011) provides the following questions for a charter school to consider in deciding whether it is ready to become an LEA for special education:

- Does the charter school have procedures for identifying and assessing students for special education?
- Does the charter school have procedures for conducting a full range of special education assessments that are consistent with state and federal laws?
- Does the charter school have credentialed special education teachers and qualified related services providers for all types of need? Some related services that the school may be required to provide include: adapted PE, counseling, occupational therapy, physical therapy, speech-language therapy, psychological services, social work services, etc.
- Does the charter school have access to the full continuum of special education placement options? Examples of placement options that may need to be secured include: supplemental aides and services in the general education setting, related services, special education classrooms, non-public schools, and home hospital services.
- Does the charter school have a clearly articulated plan for providing transportation to students who may require transportation assistance pursuant to an IEP?
- Does the charter school have the administrative capacity to conduct Child Find activities, oversee IEP development and implementation, and resolve legal disputes?

Prior to applying for LEA status in any SELPA, Riverside County SELPA encourages charter schools to meet with their authorizers and SELPA representatives to discuss options and impacts of various courses before decisions are made.

### **Process to Become a LEA in Riverside County SELPA**

Notwithstanding the fiscal and programmatic incentives for retaining charters in the local SELPA and/or accepting out-of-geographic charter schools the SELPA and member districts may have valid concerns with a charter school's LEA application, their special education programming and incidence of service, and/or capacity to carrying out all the requirements of an LEA. To address these concerns, it is recommended that the SELPA, in conjunction with the authorizing district, discuss all issues with a prospective charter school applicant through internal working groups established to consider the application (e.g., Coordinating Council, SELPA Finance, and Governance Council). Those groups will specifically lay out the charter school's obligations as an LEA member and describe how those obligations will be accomplished and monitored without having to make global changes to the Local Plan. In this way, the governance committees can provide any additional training and support the charter school may need to build the capacity necessary to operate as an LEA participant of the SELPA. In addition, Riverside County SELPA will be able to retain the special education funding generated by charter school ADA and the charter school will be able to work closely with the SELPA to ensure it is meeting its obligations as an LEA member.



## Application Requirements

An application for consideration as an LEA member of the Riverside County SELPA must:

1. Include the following information about the charter school applicant: Date of Authorizer's Approval and Current Term, Name of Applicant Charter School, Address, Telephone, FAX, Email address, Name of Director, Name of Special Education Contact, Name of Chartering School District, Grades Served, and CASEMIS Information. For the last item, petitioners can attach data which provides the pupil count by instructional setting and disability.
2. Describe the charter's process to modify the general education program, curriculum and instruction prior to a student's referral for special education services including the use of a school site team or another process that may be used.
3. Describe the charter's plan for child find, referral, assessment, IEP process and delivery of services.
4. Describe the charter's process to refer a student for assessment if there may be a need for special education services.
  - Include a description of who will conduct assessments in all areas of suspected disability.
  - If the charter will conduct assessments, list the appropriate credentials of staff that authorizes them to conduct assessments.
  - If the charter will contract for assessments, specify the district and/or agency that have agreed to conduct assessments. Include a letter of commitment to provide assessment services from the superintendent and/or agency director.
5. Describe how the charter will provide the full continuum of special education placements and related services:
  - Include a description of who will provide the instruction for each of the categories (specialized academic instruction, related services) and list appropriate credentials or licenses, and meets requirements of No Child Left Behind (NCLB) to serve in the assignment;
  - If the charter will hire new staff to provide instruction, provide appropriate credentials/licenses to serve;
  - If the charter will contract for instructional services, application specifies the district and/or agency that have agreed to provide the services. Include a letter of commitment to provide instructional services from the Superintendent and/or Agency director;
  - Include description of how transportation will be provided for students if required by the IEP to access special education services.
6. Describe charter's knowledge and understanding of special education laws and regulations:
  - Description of how charter will comply with all federal and state laws regarding discipline and change of placement of special education students;
  - Include a copy of charter's policies and procedures regarding the discipline of special education students.
7. Describe the knowledge level of Charter School Administration and/or staff in the legal and policy requirements of special education, or if the charter school administration and staff are not experienced or knowledgeable in the legal and policy requirements of special education, describe how the charter school will gain access to such knowledge.

- Documentation of any existing special education non-compliance issues or state complaints, including corrective actions to resolve these, if appropriate.
8. Describe charter's process for maintaining student records and procedures for maintaining confidentiality;
    - Identification of the custodian of student records and process for transferring of records.
  9. Process for monitoring accurate California Special Education Management Information System (CASEMIS) and Average Daily Attendance (ADA).
  10. The application must also contain:
    - A list of services to be provided directly by the LEA Charter and services to be provided through agreement or contract with another LEA or another qualified special education provider, if any;
    - Qualifications of service providers, including credentials and/or certificates.
    - A list of students currently enrolled in the charter school in the most recent reporting period –reporting period dates specified;
    - The number of students in the charter school receiving special education and related services;
    - The number of students anticipated to need special education and related services;
    - Copy of charter's current operating budget in order to assure fiscal responsibility in accordance with EC §§ 42130 and 42131; and
    - Copy of the charter school's petition, as approved by the chartering entity and any subsequently approved amendments, revisions, or renewals of the charter.

### **Applicant Assurances**

The Applicant's Board must certify and assure that they will carry out the following:

1. Will meet all applicable requirements of state and federal laws and regulations, including compliance with the Individuals with Disabilities Education Act (IDEA, 20 USC 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 and the provisions of the California Education Code related to special education, § 56000 et seq.;
2. Will ensure that all individuals with exceptional needs (ages 3 to 22) shall have access to appropriate special education programs and services;
3. Will assure that no child eligible for special education and related services seeking to enroll in the charter school will be denied nor discouraged from enrollment due to disability or due to the charter school's concern about its ability to provide appropriate services;
4. Will assure that the charter school will fully inform parents of students with disabilities seeking enrollment in the charter school of their rights and educational options available;
5. Will deliver special education and related services to any eligible child enrolled in the charter;
6. Will expend all state and federal special education funds for the sole purpose of providing special education instruction and/or services to eligible students with disabilities; Any apportionment not used for provision of special education will be reviewed by the Governance Council and Finance Committee for potential recapture and/or reallocation of funds;
7. Will assure the charters obligation to "search and serve," pay the costs of special education whether or not those costs are adequately covered from the charter's SELPA

allocation, and that it has adequate reserves to cover those costs; These costs may include, but are not limited to, instruction, services, transportation, nonpublic school/agency placements, inter/intra SELPA placements, due process proceedings, complaints and attorney fees;

8. Will assure the charter will adhere to all policies, procedures, obligations and requirements of the SELPA Local Plan For Special Education, including the Funding Allocation Model;
9. Will utilize SELPA-approved forms and documents including use of internet based IEPs, and will follow all SELPA agreements, policies, and procedures;
10. Will ensure that students will be instructed in a safe environment with no physical barriers that would prevent full participation in educational and extracurricular activities;
11. Will provide the SELPA with a copy of the charter school's petition, as approved by the chartering entity and any subsequently approved amendments, revisions or renewals of the charter;
12. Will follow all federal and state laws regarding discipline and assume funding responsibility for change of placement/alternative settings due to disciplinary issues;
13. Will provide SELPA with a copy of charter's current operating budget in order to assure fiscal responsibility in accordance with EC §§42130 and 42131;
14. Understands its legal and financial responsibilities to provide appropriate special education services to eligible students. Financial responsibilities may include, but are not limited to, instruction, related services, transportation, non-public school/agency placements, inter/intra SELPA placements, due process hearing proceedings and attorney fees; and
15. Will not seek defense or indemnification from the SELPA or SELPA members unless liability is the sole result of independent acts or omissions of other agencies, their agents or employees, while performing services under an agreement.
16. If less than 5% of the Charter School's enrollment is eligible for special education, then the SELPA and Charter School shall enter into an MOU outlining the transfer and use of special education funding as a condition of becoming an LEA in the SELPA.

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