



EL DORADO  
**CHARTERSELPA**

# SELPA Policies and Administrative Regulations

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## **El Dorado County Office of Education**

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Note:

In the policies below, Charter SELPA refers to the El Dorado Charter SELPA

Comprehensive Local Plan for Special Education

As members of the El Dorado Charter Special Education Local Plan Area (SELPA), (hereinafter referred to as Charter SELPA), each charter (as identified by the CDS (County, District, School) code issued by the State Board of Education) is considered an LEA (Local Education Agency) for purposes of special education.

The Charter SELPA further recognizes its' members as single charter partners or organization partners. Single Charter Partner is defined as an entity with one charter CDS code. An Organization Partner is an entity with multiple charters (CDS codes) as members of the Charter SELPA. An entity is defined as an organization with one governing board or one CEO (Chief Executive Officer) position. The title of CEO may differ by organization, but the intent is that final decision making in the organization is vested in one leadership position.

As members of the Charter SELPA, each Charter SELPA LEA (Local Education Agency) desires to provide a free and appropriate public education (FAPE) to all school aged K-12 individuals with disabilities, who are enrolled in the charter, including children who have been suspended or expelled or placed by the charter LEA in a nonpublic school or agency services. The SELPA will provide technical support to any Charter LEAs identified as the DOR for students age 18 to 21 who are incarcerated in a county jail and remaining eligible for special education to assist in meeting their obligation. The SELPA may facilitate collaboration with the county jails as requested.

Students shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Education Code 56303)

In order to meet the needs of individuals with disabilities and employ staff with adequate expertise for this purpose, the charter LEA participates as a member of the Special Education Local Plan Area (SELPA).

The Charter SELPA Local Plan is approved by the Charter CEO Council and reviewed by the El Dorado County Superintendent of Schools. Amendments to the Local Plan to revise LEA membership (additions) shall be approved by the Charter SELPA Selection Committee. Prior to Selection Committee approval, new LEA members shall be approved through the selection process as identified in Policy 22 and AR 22. Termination of membership shall be approved through the termination process as identified in Policy 26 or Policy 27. All membership changes shall be communicated with the Charter SELPA CEO Council at the next regularly scheduled meeting.

The Charter CEO Council will hold the required public hearings and approve the Annual Service Plan and the Annual Budget Plan. Notice of the public hearings shall be posted as required by law.

Upon entry into the Charter SELPA, the Governing Board for each LEA charter shall approve the Charter SELPA Local Plan and the Agreement for Participation.

Material changes to the Local Plan, other than for membership changes, shall be approved by the Charter SELPA CEO Council and reviewed by the El Dorado County Superintendent of Schools.

The Charter Chief Executive Officer or designee of the charter LEA shall extend the charter LEA's full cooperation to the SELPA. The policies and procedures of the Charter SELPA shall be applied as policies and regulations to all participating charter LEAs.

Charter SELPA policies and administrative regulations are approved by the Charter SELPA CEO Council.

The Charter SELPA shall administer a local plan and administer the allocation of funds. (Education Code 56195). The Charter SELPA CEO Council shall approve all allocation plan decisions that impact the allocation of funds.

Legal Reference:

EDUCATION CODE

56000-56001 Education for individuals with exceptional needs

56020-56035 Definitions

56040-56046 General provisions

56048-56050 Surrogate parents

56055 Foster parents

56060-56063 Substitute teachers

56170-56177 Children enrolled in private schools

56190-56194 Community advisory committees

56195-56195.10 Local plans

56205-56208 Local plan requirements

56213 Special education local plan areas with small or sparse populations

56240-56245 Staff development

56300-56385 Identification and referral, assessment, instructional planning, implementation, and review 56440-56449

Programs for individuals between the ages of three and five years

56500-56508 Procedural safeguards, including due process rights

56520-56524 Behavioral interventions

56600-56606 Evaluation, audits and information

56836-56836.05 Administration of local plan

GOVERNMENT CODE

95000-95029 California Early Intervention Services Act

CODE OF REGULATIONS, TITLE 5

3000-3089 Regulations governing special education UNITED STATES CODE, TITLE 20

1400-1485 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29

794 Rehabilitation Act of 1973, Section 504

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

99.10-99.22 Inspection, review and procedures for amending education records

104.1-104.39 Section 504 of the Rehabilitation Act of 1973

300.500-300.514 Due process procedures for parents and children

303.1-303.654 Early intervention program for infants and toddlers with disabilities

Management Resources: WEB SITES

CDE, Special Education Division: <http://www.cde.ca.gov/spbranch/sed> U.S. Department of Education, Office of Special

Education Programs: <http://www.ed.gov/offices/OSERS/OSEP>

## Comprehensive Local Plan for Special Education

### *Definitions*

Free appropriate public education (FAPE) means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet educational standards, and conform to the child's IEP. (20 U.S.C § 1401(9); 34 C.F.R. § 300.17.) The right to FAPE extends to students who are suspended or expelled or placed by the charter LEA in a nonpublic, nonsectarian school. (34 CFR 300.17, 300.101, 300.104)

**Full educational opportunities** means that students with disabilities have the right to full educational opportunities to meet their unique needs, including access to a variety of educational programs and services available to non-disabled students. The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (34 CFR 300.109)

Least restrictive environment means that, to the maximum extent appropriate, students with disabilities, including individuals in public or private institutions or other care facilities, shall be educated (including nonacademic and extracurricular activities and services) with students who are not disabled., (20 U.S.C. § 1412(a)(5), 34 CFR 300.107, 300.114, 300.117; Ed. Code § 56342, subd. (b).) Special classes, separate schooling, or other removal of students with disabilities from the general educational environment, shall occur only when the nature or severity of the disability is such that education in the general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Special education means instruction which is specially designed to meet the unique needs of students with disabilities whose educational needs cannot be met through modification of the regular instruction program and is provided at no cost to the parents. It also includes those related services that may be needed to assist students to benefit from specially designed instruction. Special education includes but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication, instruction in the home or instruction in hospitals or institutions. (Ed. Code, § 56361.)

Special education may include each of the following if the services otherwise meet the definition in the above paragraph: (Education Code 56031)

1. Speech language pathology services, or any other designated instruction and service or related service, pursuant to Education Code 56363, if the service is considered special education rather than designated instruction and service or related service under state standards
2. Travel training
3. Career technical education

4. Transition services for students with disabilities in accordance with 34 CFR 300.43 if provided as specially designed instruction, or a related service, if required to assist a student with disabilities to benefit from special education

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to ensure access of the student to the general curriculum, so that the student can meet the educational standards that apply to all students in the charter LEA. (34 CFR 300.39(b)(3))

**Surrogate parent** means an individual assigned to act as a surrogate for the parents/guardians when a parent cannot be identified or located with reasonable efforts. The surrogate parent may represent an individual with disabilities in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in other matters relating to the provision of FAPE to the individual. (34 CFR 300.519; Education Code 56050)

Note: Pursuant to Government Code 7579.5, when a student is a ward of the court, the charter LEA should appoint a surrogate parent only when the court has limited the rights of the parent/guardian to make educational decisions for his/her child and the student has no responsible adult, such as a foster parent, to represent him/her. Since Welfare and Institutions Code 361 and 726 require the juvenile court to appoint a responsible adult when the court limits parental rights, rarely will it be necessary for the Charter LEA to appoint a surrogate because that appointment would be superseded by the court's appointment of a responsible adult or foster parent.

### *Elements of the Local Plan*

Note: Education Code 56205 details the elements that must be included in the local plan developed by the special education local plan area (SELPA), including a requirement that the plan contain assurances of general compliance with Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the IDEA (20 USC 1400-1482), and the Americans with Disabilities Act (42 USC 12101-12213).

The special education local plan (SELPA) shall include, but not be limited to, the following:

1. Assurances that policies, procedures, and programs, consistent with state law, regulation, and policy, are in effect as specified in Education Code 56205(a)(1-22) and in conformity with 20 USC 1412(a), 20 USC 1413(a)(1), and 34 CFR 300.201.
2. An annual budget plan and annual service plan adopted at a public hearing held by the SELPA. The local plan, annual budget plan, and annual service plan shall be written in language that is understandable to the general public.
3. A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method for ensuring that all requirements of each student's IEP are being met.

4. A description of a dispute resolution process
5. Verification that the plan has been reviewed by the community advisory committee in accordance with Education Code 56205.
6. A description of the process being utilized to refer students for special education instruction pursuant to Education Code 56303.

(Ed. Code § 56025 (a).)

7. A description of how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve students in isolated sites and maximizes the opportunities to serve students in the least restrictive environment. (Ed. Code § 56206)

8. Funds for regionalized operations and services and the direct instructional support of program specialists shall be apportioned to the special education local plan areas. As a condition of receiving these funds, the special education local plan area shall ensure coordination of services to medical facilities pursuant to Education Code 56836.23. The SELPA Administrator, or designee, will facilitate the coordination of these services by the designated LEAs and provide technical assistance to the medical facilities and LEAs as appropriate. Each individual LEA is responsible for students with disabilities who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes when the hospital or facility is located within their boundaries, unless based on education code there is another district of special education accountability which would be responsible.

The local plan, annual budget plan, and annual service plan shall be written in language that is understandable to the general public. (Ed. Code § 56205)

Each entity providing special education shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to Education Code § 56195.1 and 56195.7. (Ed. Code § 56195.8)

Each entity providing special education shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to Education Code §§ 56195.1 and 56195.7. (Ed. Code § 56195.8)

## Identification and Evaluation of Individuals for Special Education

Note: Identification, evaluation, assessment, and instructional planning procedures for children younger than age three must conform with Education Code 56425-56432 and the California Early Intervention Services Act (Government Code 95000-95029). The California Department of Education and local education agencies are responsible for providing early intervention services to infants and toddlers who have visual, hearing, or severe orthopedic impairment; the Department of Developmental Services and its regional centers must provide services to all other eligible children in this age group. The law also requires regional centers and local education agencies to coordinate family service plans for infants and toddlers and their families. Education Code 56441.11 sets forth eligibility criteria for preschool children ages three to five.

The Governing Board of each member LEA recognizes the need to actively seek out and evaluate school age Charter LEA residents who have disabilities in order to provide them with appropriate educational opportunities in accordance with state and federal law.

Charter schools are currently authorized to serve school-aged students (grades k-12). If at any time the authorization changes, the Charter schools would follow all state and federal laws regarding children from age 0-2 and Child Find. Charter schools will assist families and make appropriate referrals for any students they find who would be outside the age or area of responsibility of the Charter schools.

The Charter Chief Executive Officer or designee shall follow SELPA procedures to determine when an individual is eligible for special education services and shall implement the SELPA procedures for special education program identification, screening, referral, assessment, planning, implementation, review, and triennial assessment. (Education Code 56301) The Charter LEAs' process shall prevent the inappropriate disproportionate representation by race and ethnicity of students with disabilities.

In addition to identifying students with disabilities residing in their district, each districts "child find" identification system shall identify highly mobile children with disabilities, such as migrant and homeless children. (20 USC § 1412(a)(3).)

Note: Services for a private school student, in accordance with an individualized education program (IEP), must be provided by the Charter LEA at no cost to the parent/guardian, unless the Charter LEA makes a free appropriate public education available to the student and the parent/guardian chooses to enroll the student in that private school. If the public school is providing services to the student, these services may be provided on the premises of the private school, including a parochial school, to the extent consistent with other provisions of law. 34 CFR 300.451 requires the Charter LEA to consult with appropriate representatives for private school students on how to carry out the "child find" requirement.

The Charter Chief Executive Officer or designee shall follow SELPA procedures providing that parents/guardians, teachers, appropriate professionals, and others may refer an individual for assessment for special education services. Identification procedures shall be coordinated with school site procedures for referral of students with needs that cannot be met with modifications to the regular instructional program. (Ed. Code § 56302)



When assessing students, staff shall use appropriate tests to identify specific information about the individual student's abilities. (Ed. Code § 56320.

The Charter Chief Executive Officer or designee shall notify parents/guardians in writing of their rights related to identification, referral, assessment, instructional planning, implementation, and review, including the SELPA's procedures for initiating a referral for an initial assessment to identify individuals who need special education services. (Ed. Code § 56301)

Legal Reference:

EDUCATION CODE

44265.5 Professional preparation for teachers of impaired students  
56000-56885 Special education programs, especially:  
56026 Individuals with disabilities  
56170-56177 Children in private schools  
56195.8 Adoption of policies  
56300-56304 Identification of individuals with disabilities  
56320-56331 Assessment  
56340-56347 Instructional planning and individualized education program  
56381 Reassessment of students  
56425-56432 Early education for individuals with disabilities  
56441.11 Eligibility criteria, children 3 to 5 years old  
56445 Transition to grade school; reassessment  
56500-56509 Procedural safeguards

GOVERNMENT CODE

95000-95029.5 California Early Intervention Services Act  
CODE OF REGULATIONS, TITLE 5  
3021-3029 Identification, referral and assessment  
3030-3031 Eligibility criteria  
UNITED STATES CODE, TITLE 20  
1232g Family Educational Rights and Privacy Act of 1974  
1412 State eligibility  
1415 Procedural safeguards  
CODE OF FEDERAL REGULATIONS, TITLE 34  
104.35 Evaluation and placement  
104.36 Procedural safeguards  
300.1-300.756 Assistance to states for the education of students with disabilities

COURT DECISIONS

Agostini v. Felton, (1997) 521 U.S. 203, 117 S.Ct. 1997

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers  
34 CFR 300a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

California Department of Education: <http://www.cde.ca.gov>  
U.S. Department of Education, Office of Special Education Programs:  
<http://www.ed.gov/about/offices/list/osers/osep>

### Identification and Evaluation of Individuals for Special Education

A student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and used where appropriate. (Education Code 56303)

The Charter LEAs shall not determine that a student is eligible for special education if the dominant factor for finding eligibility is lack of appropriate instruction in reading, lack of instruction in mathematics, or limited English Proficiency (20 U.S.C. § 1414(b)(5); Ed. Code, § 56329, subd. (a)(2).)

All referrals for special education and related services from school staff shall include a brief reason for the referral and description of the regular program resources that were considered and/or modified for use with the student, and their effect. (5 CCR § 3021.)

Within 15 days of a referral for initial assessment the LEA shall provide student's parent/guardian with a notice of parental rights and a written proposed assessment plan. The 15-day period does not include days between the student's regular school session or term, or days of school vacation in excess of five school days from the date of receipt of the referral.

The proposed assessment plan shall meet all of the following requirements: (Education Code 56321)

1. Be in a language easily understood by the general public
2. Be provided in the native language of the parent/guardian or other mode of communication used by the parent/guardian unless it is clearly not feasible
3. Explain the types of assessment to be conducted
4. State that no individualized education program (IEP) will result from the assessment without parent/guardian consent

Upon receiving the proposed assessment plan, the parent/guardian shall have at least 15 days to decide whether or not to consent to the initial assessment. The assessment may begin as soon as informed parental consent is received by the respective Charter LEAs. The Charter LEAs shall not interpret parent/guardian consent for initial assessment as consent for initial placement or initial provision of special education services. (Education Code 56321; 34 CFR 300.505)

However, an individualized education program required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each Charter LEA's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil schooldays reconvene. A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services pursuant to paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations. (Education Code 56344)

If a parent/guardian refuses to consent to the initial evaluation or failed to respond to the request to provide consent, the Charter LEAs may pursue an evaluation by utilizing the mediation and due process

procedures found at 20 USC § 1415 and in accordance with Education Code, sections 56501, subd. (a) (3), and 56506, subd. (e). See BP/AR 6159.1 - Procedural Safeguards and Complaints for Special Education) In the event that authorized parent does not consent to an initial evaluation the Charter LEAs shall not considered in violation of the requirement to provide FAPE. In addition, the Charter LEAs is not required to convene an IEP team meeting or to develop an IEP for that child. (20 USC § 1414(a)(1).)

Informed parental consent means that the parent/guardian:

1. Has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication
2. Understands and agrees, in writing, to the assessment
3. Understands that the granting of consent is voluntary on his/her part and may be revoked at any time

(34 CFR § 300.500)

If the student is a ward of the state and is not residing with his/her parents/guardians, the Charter LEAs shall make reasonable efforts to obtain informed consent from the parent/guardian as defined in 20 USC, section 1401 for an initial evaluation to determine whether the student is a student with a disability. (20 USC § 1414(a)(1))

The Charter LEAs shall not be required to obtain informed consent from the parent/guardian of a student for an initial evaluation to determine whether the student is a student with a disability if any of the following situations exists

1. Despite reasonable efforts to do so, the Charter LEAs cannot discover the whereabouts of the parent/guardian of the student.
2. The rights of the parent/guardian of the student have been terminated in accordance with California law.
3. The rights of the parent/guardian to make educational decisions have been subrogated by a judge in accordance with California law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

(Education Code 56301; 20 USC 1414(a)(1))

As part of the assessment plan, the parent/guardian shall receive written notice that:

1. Upon completion of the administration of tests and other assessment materials, an IEP team meeting that includes the parent/guardian or his/her representative shall be scheduled pursuant to Education Code, section 56341. At this meeting, the team shall determine whether or not the student is a student with disabilities as defined in Education Code, section 56026 and shall discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent/guardian.

2. If the parent/guardian disagrees with an assessment obtained by the Charter LEAs, the parent/guardian has the right to obtain, at public expense, an independent educational assessment of the student from qualified specialists, in accordance with 34 CFR §300.502.

If the Charter LEAs observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to the independent educational assessment. This equivalent opportunity shall apply to the student's current placement and setting as well as observation of the Charter LEA's proposed placement and setting, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

3. The Charter LEAs may initiate a due process hearing pursuant to Education Code 56500-56508 to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent/guardian maintains the right for an independent educational assessment but not at public expense.

If the parent/guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the Charter LEAs with respect to the provision of a free appropriate public education to the student, and may be presented as evidence at a due process hearing regarding the student. If the Charter LEAs observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to an independent educational assessment of the student in the student's current educational placement and setting, if any, proposed by the Charter LEAs, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing.

4. If a parent/guardian proposes a publicly financed placement of the student in a nonpublic school, the Charter LEAs shall have an opportunity to observe the proposed placement and, if the student has already been unilaterally placed in the nonpublic school by the parent/guardian, the student in the proposed placement. Any such observation shall only be of the student who is the subject of the observation and may not include the observation or assessment of any other student in the proposed placement unless that student's parent/guardian consents to the observation or assessment. The results of any observation or assessment of another student in violation of Education Code, section 56329(d) shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other student.

(Education Code 56329; 34 CFR 300.502)

An IEP required as a result of an assessment shall be developed within a total time not to exceed 60 days from the date of the receipt of the parent/guardian's consent for assessment, unless the parent/guardian agrees to an extension in writing. The 60-day period does not include any days

between the student's regular school sessions/terms, or days of school vacation in excess of five school days, (Ed Code § 56043)

However, when a referral is made within 30 days of the end of the regular school year, an IEP required as a result of an assessment shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar. In the case of school vacations, the 60-day time shall recommence on the date that school reconvenes. (Ed. Code § 56344 (a).)

A meeting to develop an initial IEP for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services. (Ed. Code §§ 56043(f)(2); 56344 (a).)

Before entering kindergarten or first grade, children with disabilities who are in a preschool program shall be reassessed to determine if they still need special education and services. The IEP teams shall identify a means of monitoring the continued success of children who are determined to be eligible for less intensive special education programs to ensure that gains made are not lost by a rapid removal of individualized programs and supports for these individuals. (Ed. Code § 56445)

## Individualized Education Program

The Governing Board of each participating LEA shall provide educational alternatives that afford students with disabilities full educational opportunities. Students with disabilities shall receive a FAPE in the least restrictive environment as required by law.

The Charter Chief Executive Officer or designee shall implement the SELPA Procedural Guide. The Procedural Guide outlines the composition of the IEP team, and sets forth procedures regarding the development, review, and revision of the IEP.

### Legal Reference:

#### EDUCATION CODE

51225.3 Requirements for high school graduation and diploma  
56055 Rights of foster parents pertaining to foster child's education  
56136 Guidelines for low incidence disabilities areas  
56195.8 Adoption of policies  
56321 Development or revision of IEP  
56321.5 Notice to include right to electronically record  
56340.1-56347 Instructional planning and individualized education program  
56350-56352 IEP for visually impaired students  
56380 IEP reviews; notice of right to request  
56390-56392 Certificate of completion, special education  
56500-56509 Procedural safeguards  
60640-60649 Standardized Testing and Reporting Program  
60850 High school exit examination, students with disabilities  
60852.3 High school exit examination, exemption for the class of 2006

#### FAMILY CODE

6500-6502 Age of majority

#### GOVERNMENT CODE

7572.5 Seriously emotionally disturbed child, expanded IEP team

#### WELFARE AND INSTITUTIONS CODE

300 Children subject to jurisdiction  
601 Minors habitually disobedient  
602 Minors violating law defined as crime

#### CODE OF REGULATIONS, TITLE 5

853-853.5 Standardized Testing and Reporting Program, accommodations  
1215.5-1218 High School Exit Examination, accommodations for students with disabilities  
3021-3029 Identification, referral and assessment  
3040-3043 Instructional planning and the individualized education program

#### UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1400-1482 Individuals with Disabilities Education Act

#### CODE OF FEDERAL REGULATIONS, TITLE 34

300.1-300.756 Individuals with Disabilities Education Act

ATTORNEY GENERAL OPINIONS  
85 Ops.Cal.Atty.Gen. 157 (2002)

COURT DECISIONS

Schaffer v. Weast (2005) 125 S. Ct. 528

Shapiro v. Paradise Valley Unified School District, No. 69 (9th Circuit, 2003) 317 F.3d 1072

Sacramento City School District v. Rachel H. (9th Cir. 1994) 14 F.3d 1398

Management Resources:

FEDERAL REGISTER

34 CFR 300.a Appendix A to Part 300 - Questions and Answers

34 CFR 300.a1 Attachment 1: Analysis of Comments and Changes

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

U.S. Department of Education, Office of Special Education and Rehabilitative Services:

<http://www.ed.gov/about/offices/list/osers/osep>

Individualized Education Program

*Members of the Individualized Education Program (IEP) Team*

The Charter LEA shall ensure that the individualized education program team for any student with a disability includes the following members:

1. One or both of the student's parents/guardians, and/or a representative selected by the parent/guardian.
2. If the student is or may be participating in the regular education program, at least one regular education teacher  
  
If more than one regular education teacher is providing instructional services to the student, the Charter LEA may designate one such teacher to represent the others.
3. At least one special education teacher or, where appropriate, at least one special education provider working with the student
4. A representative of the Charter LEA who is:
  - a. Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities.
  - b. Knowledgeable about the general education curriculum.
  - c. Knowledgeable about the availability of Charter LEA and/or special education local plan area (SELPA) resources.
  - d. Has the authority to commit Charter LEA resources and ensure that whatever services are set out in the IEP will be provided.
5. An individual who can interpret the instructional implications of assessment results  
  
This individual may already be a member of the team as described in items #2-4 above or in item #6 below.

Note: Pursuant to Education Code 56341 and 34 CFR 300.321, the determination as to whether an individual identified in item #6 below has "knowledge or special expertise" must be made by the party (either the Charter LEA or parent) who invited the individual to the IEP team meeting.

6. At the discretion of the parent/guardian or Charter LEA, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate  
  
(The determination of whether the individual has knowledge or special expertise regarding the student shall be made by the party who invites the individual to be a member of the IEP team. (Ed. Code § 56341))



7. Whenever appropriate, the student with a disability
8. For transition service participants:
  - a. The student, of any age, with a disability if the purpose of the meeting is the consideration of the student's postsecondary goals and the transition services needed to assist the student in reaching those goals  
If the student does not attend the IEP team meeting, the Charter LEA shall take other steps to ensure that the student's preferences and interests are considered.
  - b. To the extent appropriate, and with the consent of the parent/guardian, a representative of any other agency that is likely to be responsible for providing or paying for transition services.
  - c. If a representative of a local agency has been invited but does not attend the meeting, the Charter LEA shall take steps to obtain participation of the agency in the planning of any transition services. (Ed. Code § 56341)
9. For students suspected of having a specific learning disability at least one individual who is qualified to conduct individual diagnostic examinations of the student, such as a school psychologist, speech language pathologist, or remedial reading teacher. In addition, at least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting. If the student is younger than five years or not enrolled in school, a team member shall observe the child in an environment appropriate for a child of that age. 34 CFR §§ 300.308, 300.542; Ed Code § 56341);
10. For students who have been placed in a group home by the juvenile court, a representative of the group home
11. If a student with a disability is identified as potentially requiring mental health services, the Charter LEA shall request the participation of the county mental health program in the IEP team meeting. (Ed. Code § 56331)

(20 USC § 1414(d)(1); 34 CFR § 300.321; Ed. Code §§ 56341, 56341.2, 56341.5)

#### *Excusal of Team Member*

A member of the IEP team shall not be required to attend an IEP team meeting, in whole or in part, if the parent/guardian consents and the Charter LEA agrees, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting. If the meeting involves a discussion of the member's area of the curriculum or related service, the IEP team member may be excused from the meeting if the parent/guardian consents in writing to the excusal and the member submits to the parent/guardian and team written input into the development of the IEP prior to the meeting. (20 USC § 1414(d)(1)(C); 34

CFR § 300.321; Ed. Code 56341)

*Parent/Guardian Participation and Other Rights*

The Charter CEO or designee shall take steps to ensure that one or both of the parents/guardians of the student with a disability are present at each IEP team meeting or are afforded the opportunity to participate. These steps shall include, at minimum, notifying the parents/guardians of the meeting early enough to ensure that they will have the opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. (34 CFR § 300.322; Ed. Code 56341.5)

The Charter CEO or designee shall send parents/guardians a notice of the IEP team meeting that:

1. Indicate the purpose, time, and location of the meeting
2. Indicate who will be in attendance at the meeting
3. For students beginning at age 16 (or younger than 16 if deemed appropriate by the IEP team):
  - a. Indicate that the purpose of the meeting will be the consideration of postsecondary goals and transition services for the student as required by 20 USC, section 1414(d)(1)(A)(i)(VIII), 34 CFR, section 300.320(b), and Education Code, section 56345.1
  - b. Indicate that the Charter LEA will invite the student to the IEP team meeting
  - c. Identify any other agency that will be invited to send a representative

At each IEP team meeting convened by the Charter LEA, the Charter LEA administrator or specialist on the team shall provide the parent/guardian and student of the federal and state procedural safeguards (Ed. Code § 56321, 56500.1)

Before any IEP meeting, the parent/guardian shall have the right and opportunity to request to examine all of his/her child's school records. Upon receipt of an oral or written request, the Charter LEA shall provide complete copies of the records within five business days. (Ed. Code § 56043)

If neither parent/guardian can attend the meeting, the Charter CEO or designee shall use other methods to ensure parent/guardian participation, including video conferences or individual or conference telephone calls. (20 USC 1414(f); 34 CFR 300.322; Education Code 56341.5)

An IEP team meeting may be conducted without a parent/guardian in attendance if the Charter LEA is unable to convince the parent/guardian that he/she should attend. In such a case, the Charter LEA shall maintain a record of its attempts to arrange a mutually agreed upon time and place for the meeting, including, but not limited to: (34 CFR § 300.322; Ed. Code § 56341.5)

1. Detailed records of telephone calls made or attempted and the results of those calls

2. Copies of correspondence sent to the parent/guardian and any responses received
3. Detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits

Parents/guardians and the Charter LEA shall have the right to audiotape the proceedings of IEP team meetings, provided members of the IEP team are notified of this intent at least 24 hours before the meeting. If the Charter LEA gives notice of intent to audiotape a meeting and the parent/guardian objects or refuses to attend because the meeting would be audiotaped, the meeting shall not be audiotaped. Audiotape recordings made by a LEA, SELPA, or county office are subject to the federal Family Educational Rights and Privacy Act (20 USC § 1232g).

Parents/guardians have the right to:

1. Inspect and review the audiotapes
2. Request that the audiotapes be amended if the parents/guardians believe they contain information that is inaccurate, misleading, or in violation of the student's privacy rights or other rights
3. Challenge, in a hearing, information that the parents/guardians believe is inaccurate, misleading, or in violation of the student's privacy rights or other rights  
(Education Code 56341.1)

The Charter LEA shall take any action necessary to ensure that the parents/guardians understand the proceedings of the meeting, including arranging for an interpreter for parents/guardians with deafness or whose native language is not English. (34 CFR 300.322; Education Code 56345.1)

The Charter LEA shall provide the parents/guardians of a student with disabilities a copy of his/her child's IEP at no cost. (34 CFR 300.322)

#### *Contents of the IEP*

The IEP shall be a written statement determined in a meeting of the IEP team. It shall include, at minimum, all of the following:

1. A statement of the present levels of the student's academic achievement and functional performance, including:
  - a. The manner in which the student's disability affects his/her involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students)
  - b. For a preschool child, as appropriate, the manner in which the disability affects his/her participation in appropriate activities
  - c. For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

2. A statement of measurable annual goals, including academic and functional goals, designed to do the following:
  - a. Meet the student's needs that result from his/her disability in order to enable the student to be involved in and progress in the general education curriculum
  - b. Meet each of the student's other educational needs that result from the his/her disability
3. A description of the manner in which the progress of the student toward meeting the annual goals described in item #2 above will be measured and when the Charter LEA will provide periodic reports on the progress the student is making toward meeting the annual goals, e.g. through the use of quarterly or other periodic reports, concurrent with the issuance of report cards
4. A statement of the specific special educational instruction and related services and supplementary aids and services, based on peer-reviewed research, to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to:
  - a. Advance appropriately toward attaining the annual goals
  - b. Be involved and make progress in the general education curriculum in accordance with item #1 above and to participate in extracurricular and other nonacademic activities
  - c. Be educated and participate with other students with disabilities and nondisabled students when receiving special education instruction and services.
5. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and other nonacademic activities described in item #4 above

Note: 34 CFR 300.320, as amended by 71 Fed. Reg. 156, and Ed. Code 56345 require a description of the individual accommodations that will be used by the student and, if the student will not participate in the regular assessment, a statement as to the reason that determination was made and what alternate assessment will be provided.

6. A statement of any appropriate individual accommodations necessary to measure the academic achievement and functional performance of the student on state and Charter LEA-wide assessments

If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or Charter LEA-wide assessment, a statement of all of the following:

- a. The reason that the student cannot participate in the regular assessment
- b. The reason that the particular alternate assessment selected is appropriate for the student

Note: students with disabilities must be allowed to participate in any state and LEA assessments, with appropriate accommodations. (20 USC § 1412 (a).)

- 7. The projected date for the beginning of the services and modifications described in item #4 above and the anticipated frequency, location, and duration of those services and modifications
- 8. Beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger if determined appropriate by the IEP team, and updated annually thereafter, the following:
  - a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills
  - b. The transition services, including courses of study, needed to assist the student in reaching those goals
- 9. Beginning at least one year before the student reaches age 18, a statement that the student has been informed of his/her rights, if any, pursuant to Education Code 56041.5 that will transfer to the student upon reaching age 18

20 USC 1414(d)(1)(A); 34 CFR 300.320; Education Code 56043, 56345, 56345.1)

Where appropriate, the IEP shall also include:

- 1. For students in grades 7-12, any alternative means and modes necessary for the student to complete the Charter LEA's prescribed course of study and to meet or exceed proficiency standards required for graduation
- 2. Linguistically appropriate goals, objectives, programs, and services for students whose native language is not English
- 3. Extended school year services when the IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE
- 4. Provision for transition into the regular education program if the student is to be transferred from a special class or center or nonpublic, nonsectarian school into a regular education program in a public school for any part of the school day

The IEP shall include descriptions of activities intended to:

- a. Integrate the student into the regular education program, including indications of the nature of each activity and the time spent on the activity each day or week; and

- b. Support the transition of the student from the special education program into the regular education program
5. Specialized services, materials, and equipment for students with low incidence disabilities, consistent with the state guidelines (Ed. Code 56136)

(Education Code 56345)

*Development, Review, and Revision of the IEP*

In developing the IEP, the IEP team shall consider all of the following:

1. The strengths of the student
2. The concerns of the parents/guardians for enhancing the education of their child
3. The results of the initial assessment or the most recent assessment of the student
4. The academic, developmental, and functional needs of the student

(20 USC § 1414(d)(3)(A); 34 CFR § 300.324; Ed Code §§ 56341.1, 56345)

*Special Factors*

The individualized education program team shall consider the following special factors:

1. In the case of a student whose behavior impedes his/her learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior
2. In the case of a student with limited English proficiency, the language needs of the student as such needs relate to the student's IEP
3. In the case of a student who is blind or visually impaired provide for instruction in Braille and instruction in the use of Braille, unless the individualized education program team determines, after an assessment of the pupil's reading and writing skills, needs and appropriate reading and writing media, including an assessment of the pupil's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the pupil;
4. Consider the communication needs of the student, and in the case of a student who is deaf or hard hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
5. Consider whether the pupil requires assistive technology devices and services (20 USC § 1401

(1)) (Ed. Code § 56341.1)

If, in considering the special factors in items 1 through 5 above, the IEP team determines that a student needs a particular device or service, including an intervention, accommodation, or other program modification, in order to receive FAPE, the IEP team must include a statement to that effect in the student's IEP. (Ed. Code § 56341.1)

The team shall also consider the related services and program options that provide the student with an equal opportunity for communication access, including the following:

- a. The student's primary language mode and language, which may include the use of spoken language, with or without visual cues, and/or the use of sign language
- b. The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan area-wide program or providing placement pursuant to Education Code, section 56361
- c. Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the student's primary language mode and language consistent with existing law regarding teacher training requirements
- d. Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.).
- e. Each public agency shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 CFR § 300.113.)

(Ed. Code § 56345)

The Charter CEO or designee shall ensure that the IEP team:

1. Reviews the IEP periodically, but at least annually, to determine whether the annual goals for the student are being achieved and the appropriateness of placement
2. Revises the IEP, as appropriate, to address:
  - a. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate
  - b. The results of any reassessment conducted pursuant to Education Code 56381
  - c. Information about the student provided to or by the parents/guardians regarding

review of evaluation data (34 CFR 305(a)(2) and Education Code 56381(b).)

- d. The student's anticipated needs
  - e. Any other relevant matters
3. When reviewing the IEP, the IEP team will consider the special factors listed in items above. The IEP team shall also convene:
- a. Whenever the student has received an initial formal assessment and, when desired, when the student receives any subsequent formal assessment
  - b. Upon request by the student's parent/guardian or teacher to develop, review, or revise the IEP

(Education Code 56343)

(20 USC 1414(d)(4); 34 CFR 300.324; Ed. Code §§ 56043, 56341.1, 56380)

If a participating agency other than the Charter LEA fails to provide the transition services described in the student's IEP, the team shall reconvene to identify alternative strategies to meet the transition service objectives set out for the student in the IEP. (20 USC 1414(d); 34 CFR 300.324; Education Code 56345.1)

As a member of the IEP team, the regular education teacher shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of:

- 1. Appropriate positive behavioral interventions and supports and other strategies for the student.
- 2. Supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student, consistent with the federal regulations.

(20 USC 1414(d)(3)(C); 34 CFR 300.324; Education Code 56341; 34 CFR § 300.320.)

Whenever possible, the Charter LEA shall attempt to consolidate any reassessment meetings and other IEP team meetings. (20 USC 1414(d)(3)(A); 34 CFR 300.324)

The student shall be allowed to provide confidential input to any representative of his/her IEP team. (Education Code 56341.5)

*Amended IEPs*

- 1. When a change is necessary to a student's IEP after the annual IEP team meeting for the school year has been held, the parent/guardian and the Charter LEA may agree not to convene an IEP team meeting for the purpose of making the change and instead may develop a written document to amend or modify the student's current IEP.



2. The IEP team shall be informed of any such changes. Upon request, the Charter LEA shall provide the parent/guardian with a revised copy of the IEP with the incorporated amendments. (20 USC 1414(d)(3)(D); 34 CFR 300.324)

When the Charter LEA has placed a foster student in a nonpublic, nonsectarian school, the Charter LEA must conduct an annual evaluation, as specified below. In addition, the nonpublic, nonsectarian school to report to the Charter LEA regarding the educational progress made by the student. (Ed. Code § 56157.)

If a student with disabilities residing in a licensed children's institution or foster family home has been placed by the Charter LEA in a nonpublic, nonsectarian school, the Charter LEA shall conduct an annual evaluation as part of the IEP process of whether the placement is the least restrictive environment that is appropriate to meet the student's needs. (Education Code 56157)

#### *Six Month Review of Residential Placements*

When an IEP team places a student in a residential placement, the IEP must be reviewed at least every six months.

When an IEP calls for a residential placement as a result of a review by an expanded IEP team, the IEP shall include a provision for a review, at least every six months, by the full IEP team of all of the following:

1. The case progress
2. The continuing need for out-of-home placement
3. The extent of compliance with the IEP
4. Progress toward alleviating the need for out-of-home care

(Cal. Gov. Code § 7572.5(c)(2).)

#### *Timelines for the IEP and for the Provision of Services*

At the beginning of each school year, the Charter LEA shall have an IEP in effect for each student with a disability within Charter LEA jurisdiction. (34 CFR 300.323; Education Code 56344)

The Charter LEA shall ensure that a meeting to develop an initial IEP is conducted within 30 days of a determination that a student needs special education and related services. The Charter LEA shall also ensure that, as soon as possible following development of the IEP, special education services and related services are made available to the student in accordance with his/her IEP. (34 CFR 300.323; Education Code 56344)

An IEP required as a result of an assessment of the student shall be developed within 60 days (not counting days between the student's regular school sessions, terms or days of school vacation in excess of five school days) from the date of receipt of the parent/guardian's written consent for assessment,

unless the parent/guardian agrees, in writing, to an extension. (Education Code 56344)

However, an IEP required as a result of an assessment of a student shall be developed within 30 days after the commencement of the subsequent regular school year for a student for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of school vacations, the 60-day time limit shall recommence on the date that student's school days reconvene. (Education Code 56344)

When a parent/guardian requests an IEP team meeting to review the IEP, the team shall meet within 30 days of receiving the parent/guardian's written request, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. If a parent/guardian makes an oral request, the Charter LEA shall notify the parent/guardian of the need for a written request and the procedure for filing such a request. (Education Code 56043, 56343.5)

The Charter LEA's policy must set forth procedures and timelines for the review of a classroom assignment of an individual with exceptional needs when so requested by that student's regular or special education teacher. (Ed. Code § 56195.8) A mandatory IEP team meeting shall be held if, as a result of the review, there is a proposed change in the pupil's placement, instruction, related services, or any combination thereof. The Education Code does not specify any timeline for this review. The Charter LEA shall develop procedures and timelines for such reviews, including procedures which will designate which personnel are responsible for the reviews.

The Charter LEA shall ensure that the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. The Charter LEA shall also ensure that such teachers and providers are informed of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided to the student in accordance with the IEP. (34 CFR 300.323)

#### *Informed Parent Consent*

Before providing special education and related services, the Charter LEA shall seek to obtain informed parent consent pursuant to 20 USC 1414(a)(1). If the parent/guardian refuses to consent to the initiation of services, the Charter LEA shall not provide the services or utilize the due process hearing procedures pursuant to 20 USC 1415(f). If the parent/guardian does not consent to all of the components of the IEP, then those components to which the parent/guardian has consented shall be implemented so as not to delay providing instruction and services to the student. (Education Code 56346)

If the parent/guardian refuses all services in the IEP after having consented to those services in the past, the Charter LEA shall file a request for a due process hearing. If the Charter LEA determines that a part of the proposed IEP to which the parent/guardian does not consent is necessary in order to provide the student FAPE, a due process hearing shall be initiated in accordance with 20 USC 1415(f). While the due process hearing is pending, the student shall remain in his/her current placement unless the parent/guardian and the Charter LEA agree otherwise. (Education Code 56346)

#### *Transfer Students*

To facilitate a student's transfer to another, this Charter LEA shall take reasonable steps to promptly obtain the records of a student with disabilities transferring into this Charter LEA, including his/her IEP and the supporting documents related to the provision of special education services. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to this Charter LEA during the school year from a Charter LEA within the SELPA, this Charter LEA shall continue, without delay, to provide services comparable to those described in the existing IEP, unless the student's parent/guardian and Charter LEA agree to develop, adopt, and implement a new IEP consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to this Charter LEA during the school year from a California LEA outside of this Charter LEA's SELPA, this Charter LEA shall provide the student with FAPE, including services comparable to those described in the previous LEA's IEP. Within 30 days, this Charter LEA shall, in consultation with the parents/guardians, adopt the other LEA's IEP or shall develop, adopt, and implement a new IEP consistent with state and federal law. (34 CFR 300.323; Education Code 56325)

If a student with disabilities transfers to this Charter LEA during the school year from an out-of-state LEA, this Charter LEA shall provide the student with FAPE, including services comparable to the out-of-state LEA's IEP, in consultation with the parent/guardian, until such time as this Charter LEA conducts an assessment, if this Charter LEA determines that such an assessment is necessary, and develops, adopts, and implements a new IEP, if appropriate. (34 CFR 300.323; Education Code 56325)

## Procedural Safeguards

In order to protect the rights of students with disabilities, the Charter LEA shall follow all procedural safeguards as required by law. Parents/guardians shall receive written notice of their rights in accordance with law, Board policy, and administrative regulation.

Note: Education Code 56195.8 authorizes the policy to include provisions for involving Charter LEA Board members in any due process hearing procedure activities.

The Charter CEO or designee shall represent the LEA in any due process hearing conducted with regard to that LEA's students and shall inform their governing board about the results of the hearing.

### *Complaints for Special Education*

A due process complaint is regarding the provision of FAPE and may only be filed by a parent, student, or LEA. The due process complaint is different from those complaints alleging a violation of state or federal law and that can be filed by anyone. Due process complaint procedures are described in detail in the accompanying administrative regulation.

Complaints concerning compliance with state or federal law regarding special education shall be addressed in accordance with the member LEA's uniform complaint procedures.

#### Legal Reference:

##### EDUCATION CODE

56000 Education for individuals with exceptional needs

56001 Provision of the special education programs

56020-56035 Definitions

56195.7 Written agreements

56195.8 Adoption of policies for programs and services

56300-56385 Identification and referral, assessment

56440-56447.1 Programs for individuals between the ages of three and five years

56500-56509 Procedural safeguards, including due process rights

56600-56606 Evaluation, audits and information

##### CODE OF REGULATIONS, TITLE 5

3000-3100 Regulations governing special education

4600-4671 Uniform complaint procedures

##### UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1400-1482 Individuals with Disabilities Education Act

##### UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act

##### UNITED STATES CODE, TITLE 42

11434 Homeless assistance

##### CODE OF FEDERAL REGULATIONS, TITLE 34

99.10-99.22 Inspection, review and procedures for amending education records

104.36 Procedural safeguards

300.1-300.818 Assistance to states for the education of students with disabilities, especially:

300.500-300.520 Procedural safeguards and due process for parents and students

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep>

## Procedural Safeguards and Complaints for Special Education

Under California law, due process hearings pursuant to the IDEA (20 USC 1400-et seq) are held only at the state level. Related rights and procedures for due process are set forth in Education Code §§ 56501et. Seq. and 5 CCR §§ 3080 et. seq. When California law provides greater protections to students and parents, it supersedes federal law.

Due process hearing rights extend to the student only if he/she is an emancipated student or a ward or dependent of the court with no available parent or surrogate parent. (Ed. Code § 56501; see AR 6159.3 - Appointment of Surrogate Parent for Special Education Students.)

### *Informal ADR Process/Pre-Hearing Mediation Conference*

Before requesting a due process hearing, the Charter Chief Executive Officer or designee of the Charter LEA and a parent/guardian may agree to meet informally to resolve any dispute relating to the identification, assessment or education and placement of a student with disabilities. The Charter Chief Executive Officer or designee shall have the authority to resolve the dispute through an informal alternative dispute resolution (“ADR”) process. (Ed. Code § 56502)

In addition, either party may file a request with the Superintendent of Public Instruction for a Pre-Hearing Mediation Conference (commonly referred to as “mediation only”) to be conducted by a person designated by the California Department of Education. Based on the Pre-Hearing Mediation Conference, the Charter Chief Executive Officer or designee may resolve the issue(s) in any manner that is consistent with state and federal law, and is to the satisfaction of both parties. (Education Code 56500.3)

Attorneys may not attend the Informal ADR session or the Prehearing Mediation Conference. Attorneys may attend, or otherwise participate in, only those mediation conferences that are scheduled pursuant to a request for a due process hearing. (Ed. Code §§ 56500.3, 56501)

If the parties do not resolve their dispute through Informal ADR and/or a Pre-Hearing Mediation Conference, either party may file a request for a due process hearing.

### *Due Process Complaint Notice and Hearing Procedures*

Due process hearing procedures may be initiated by a parent/guardian, the Charter LEA, and/or a student who is emancipated or a ward or dependent of the court, under the following circumstances.

1. There is a proposal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student
2. There is a refusal to initiate or change the identification, assessment or educational placement of the student or the provision of a free, appropriate public education to the student
3. The parent/guardian refuses to consent to an assessment of his/her child; and/ or

4. There is a disagreement between a parent/guardian and the Charter LEA regarding the availability of a program appropriate for the student, including the question of financial responsibility.

(20 USC § 1415(b); Education Code 56501)

Prior to initiating a due process hearing, the party requesting the hearing, or the party's attorney, must provide the opposing party a confidential due process complaint notice, specifying:

1. The student's name
2. The student's address or, in the case of a student identified as homeless pursuant to the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), any available contact information for that student
3. The name of the school the student attends
4. A description of the nature of the student's problem relating to the proposed or refused initiation or change, including facts relating to the problem
5. A proposed resolution to the problem to the extent known and available to the complaining party at the time

(20 USC § 1415(b); 34 CFR § 300.508 (b).)

#### *Resolution Session*

When a parent seeks to initiate a request for due process, before their request is filed, they must provide the Charter LEA with the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 USC § 1415[f][1][B]; 34 CFR § 300.510)

The Charter LEA has fifteen (15) days from the date it received the parents' due process hearing request to convene the resolution session. The sessions shall include a representative of the LEA who has decision-making authority and not include an attorney of the school LEA unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the Charter LEA agree in writing to waive the meeting. If the Charter LEA has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 USC § 1415[f][1][B]; 34 CFR § 300.51)

A due process complaint must be filed within two years of the date that the parent/guardian or Charter LEA knew or should have known about the situation that forms the basis of the complaint.

*Response to the Due Process Hearing Request*

If the Charter LEA has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint notice, the Charter LEA shall send a response to the parent/guardian within 10 days of receipt of the complaint specifying:

1. An explanation of why the Charter LEA proposed or refused to take the action raised in the complaint
2. A description of other options that the individualized education program (IEP) team considered and the reasons that those options were rejected
3. A description of each evaluation procedure, assessment, record, or report the Charter LEA used as the basis for the proposed or refused action
4. A description of the factors that are relevant to the Charter LEA's proposal or refusal

(20 USC 1415(c)(1))

If the Charter LEA sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the Charter LEA may, within 10 days of receipt, send a response specifically addressing the issues in the complaint. (20 USC § 1415(c)(1))

Parties requesting a due process hearing shall file their request with the Superintendent of Public Instruction or designated contracted agency and give a copy of the request, at the same time, to the other party. (Ed. Code § 56502)

*Prior Written Notice*

The Charter Chief Executive Officer or designee shall send to parents/guardians of any student with a disability a prior written notice within a reasonable time before:

1. The Charter LEA initially refers the student for assessment
2. The Charter LEA proposes to initiate or change the student's identification, evaluation, educational placement or the provision of a free, appropriate public education
3. The Charter LEA refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education
4. The student graduates from high school with a regular diploma

(Ed. Code §§ 56500.4, 56500.5; 20 USC § 1415(c); 34 CFR § 300.503)

The prior written notice shall include:

1. A description of the action proposed or refused by the Charter LEA
2. An explanation as to why the Charter LEA proposes or refuses to take the action
3. A description of any other options that the IEP team considered and why those options



- were rejected
4. A description of each evaluation procedure, test, record or report the Charter LEA used as a basis for the proposed or refused action
  5. A description of any other factors relevant to the Charter LEA's proposal or refusal
  6. A statement that the parents/guardians of the student have protection under procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained
  7. Any resources for parents/guardians to obtain assistance in understanding these provisions

(20 USC § 1415(c); 34 CFR § 300.503)

Students with disabilities and their parents/guardians shall be provided written notice of their rights in language easily understood by the general public and in the primary language of the parent/guardian or other mode of communication used by the parent/guardian, unless to do so is clearly not feasible. The notice shall include, but not be limited to, those rights set forth in Education Code, section 56341. (Ed. Code §§ 56341, 56506; 34 CFR § 300.503)

If the native language or other mode of communication of the parent/guardian is not a written language, the Charter LEA shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication
2. The parent/guardian understands the contents of the notice
3. There is written evidence that items #1 and #2 have been satisfied

(34 CFR § 300.503)

#### *Notice of Procedural Safeguards*

A notice of procedural safeguards shall be made available to parents/guardians of students with a disability once a year and upon:

1. Initial referral for evaluation
2. Each notification of an IEP meeting
3. Reevaluation of the student
4. Registration of a complaint
5. Filing for a pre-hearing mediation conference or a due process hearing

(Ed. Code § 56301; 20 USC 1415(d)(1))

The notice of procedural safeguards shall include information on the procedures for requesting an informal meeting, pre-hearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; the type of representative who may be invited to participate; and the right of the parent/guardian and/or the Charter LEA to electronically record the proceedings of IEP meetings in accordance with Education Code 56341. A copy

of this notice shall be attached to the student's assessment plan and referred to at each IEP meeting. (20 USC 1415(d)(2); Ed. Code §§ 56321, 56321.5)

In addition, the notice of procedural safeguards shall include a full explanation of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints to initiate due process hearings; the student's placement while due process proceedings are pending; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parent/guardians of students in private schools at public expense. (20 USC 1415(d)(2); 34 CFR 300.504)

### Confidentiality of Student Records

The Charter LEA Governing Board recognizes the importance of keeping accurate, comprehensive student records as required by law. Procedures for maintaining the confidentiality of student records shall be consistent with state and federal law.

The Charter CEO or designee shall establish regulations governing the identification, description and security of student records, as well as timely access for authorized persons. These regulations shall ensure parental rights to review, inspect and copy student records. In addition, the regulations will ensure and shall protect the privacy rights of student and the student's family.

The Charter CEO or designee shall designate a certificated employee to serve as custodian of records for student records at the Charter LEA level. At each school, the principal or a certificated designee shall act as custodian of records for students enrolled at that school. The custodian of records shall be responsible for implementing Board policy and administrative regulation regarding student records. (5 CCR § 431)

#### Legal Reference:

##### EDUCATION CODE

48201 Student records for transfer students who have been suspended/expelled

48904-48904.3 Withholding grades, diplomas, or transcripts of pupils causing property damage or injury; transfer of pupils to new school Charter LEAs; notice to rescind decision to withhold

48918 Rules governing expulsion procedures

49060-49079 Pupil records

49091.14 Parental review of curriculum

##### CODE OF CIVIL PROCEDURE

1985.3 Subpoena duces tecum

##### FAMILY CODE

3025 Access to records by non-custodial parents

##### GOVERNMENT CODE

6252-6260 Inspection of public records

##### HEALTH AND SAFETY CODE

120440 Immunizations; disclosure of information

##### WELFARE AND INSTITUTIONS CODE

681 Truancy petitions

16010 Health and education records of a minor

##### CODE OF REGULATIONS, TITLE 5

430-438 Individual pupil records

16020-16027 Destruction of records

##### UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

##### CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

300.500 Definition of "personally identifiable"

300.501 Opportunity to examine records for parents of student with disability

300.573 Destruction of information

##### COURT DECISIONS

Falvo v. Owasso Independent School District, 220 F.3d. 1200 (10th Cir. 2000)

#### Management Resources:

##### WEB SITES

U.S. Department of Education, Family Policy Compliance Office: <http://www.ed.gov/offices/OM/fpco/>

### Confidentiality of Student Records

Charter LEAs shall establish, maintain and destroy pupil records according to regulations adopted by the State Board of Education. The following guidelines apply to confidential special education records.

*Access:*

Special education records are subject to the same privacy and access right as other Mandatory Interim pupil records. In addition, parents have the right to examine all school relating to the identification, assessment, and educational placement of the child. Even though records may be stamped “confidential” or contain sensitive information, the parent or eligible student has full rights of access. Parents have the right to receive copies within five (5) business days of making the request, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing the records, but if this cost prevents the parent from exercising their right to receive the copies, the copies shall be reproduced at no cost to the parents. (Ed. Code §§ 49060 et seq.; 5 CCR §§ 430 et seq.)

The LEA will not permit access to any child’s records without written parental permission except as follows:

- a. Charter LEA officials and employees who have a legitimate educational interest including a school system where the child intends to enroll
- b. Certain state and federal officials for audit purposes
- c. Certain law enforcement agencies for purposes listed in Education Code and Federal Law
- d. A pupil 16 years of age or older, having completed the 10<sup>th</sup> grade who requests access
- e. Students who are married even if younger than 18 years of age
- f. Charter SELPA Employees

(Ed. Code § 49076.)

The LEA may release information from the student’s records for the following:

- a. In cases of emergency when the knowledge of such information is necessary to protect the health or safety of the child and/or others
- b. To determine the child’s eligibility for financial aid
- c. To accrediting organizations to the extent necessary to their function
- d. In cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not connected with the research and provided that their personally identifiable information is destroyed when no longer needed
- e. To officials and employees of private schools or school systems in which the child is enrolled or intends to enroll.

(Ed. Code § 49076.)

Test Protocols are considered to be a part of a pupil’s confidential file. Protocols must be maintained in a pupil’s confidential file and copies provided to the parent upon request.

*Confidentiality of Records:*

All procedural safeguards of the Individuals with Disabilities in Education Act shall be established and maintained. A custodian of records must be appointed by each LEA to ensure the confidentiality of any personally identifiable student information. This is usually the case manager, but may be another person who has been trained in confidentiality procedures.

The custodian of records is responsible for ensuring that files are not easily accessible to the public. Records of access are maintained for individual files, which include the name of party, date, and purpose of access.

(Ed. Code §§ 49060 et seq.; 5 CCR §§ 430 et seq.)

*Transfer of Records:*

When a student moves from one school to another, records should be transferred in accordance with state and federal law. Federal law requires the LEA from which the student moves to notify the parent of the transfer of records along with the parent's right to review, challenge and/or receive a copy of the transferred record. California law specifies that the LEA which receives the student shall be responsible for the notification. Procedurally, both requirements can be met if the Charter LEA provides an annual notification to the parents of every student which specifies that records will be transferred and outlines the other rights cited above. This notice should be provided to all parents each fall and to the parents of every new student upon enrollment. (Ed. Code § 49068; 5 CCR §§ 438.)

**CALIFORNIA SCHOOLS ARE NOT REQUIRED TO OBTAIN PARENT PERMISSION TO FORWARD RECORDS - IN FACT, THEY ARE REQUIRED TO FORWARD RECORDS TO ANY CALIFORNIA SCHOOL OF NEW OR INTENDED ENROLLMENT "WITHIN FIVE (5) DAYS. \*** Records cannot be withheld for nonpayment of fees or fines. (Ed. Code §49068)

Mandatory Permanent Pupil records must be forwarded to all schools. (The original, or a copy, also must be retained by the sending LEA.) Mandatory Interim Pupil records must be forwarded to California public schools and may be forwarded to any other schools. Permitted pupil records may be forwarded at the discretion of the custodian of the records. Private schools in California are required to forward Mandatory Permanent Pupil Records. (Ed. Code § 49068; 5 CCR §§ 438.)

If an agency or person provides a written report to the Charter LEA, it becomes a part of the pupil's record and, as such, is available to the parent even though it may be marked "confidential." (Technically, it becomes a part of the record only when it is filed or maintained. The custodian of the records should give serious consideration to the educational value of sensitive information before routinely including it as a pupil record. As alternatives, the report may be summarized in a more useful form, it may be returned for revision, or it may be rejected and destroyed before it becomes a record.)

*Correction or Removal of Information (Ed. Code § 49070):*

Parents have the right, on request, to receive a list of the types and locations of education records collected, maintained and used by the educational agency. Parents may challenge the content of the student's record if they believe the information in education records collected, maintained or used is

inaccurate, misleading, or in violation of the privacy or other rights of the child. This right to challenge becomes the sole right of the student when the student turns 18 or attends a post-secondary institution. The request to remove or amend the content of the student record must be made in writing.

Within 30 days of receiving the request, the Charter CEO or designee shall meet with the parent/student and with the employee (if still employed) who recorded the information in question. The Charter CEO shall then decide whether to sustain the allegations and amend the records as requested or deny the allegations. If the allegations are sustained, the Charter CEO shall order the correction or removal and destruction of the information.

When a student grade is involved, the teacher who gave the grade shall be given an opportunity to state orally, in writing, or both, the reasons why the grade was given before the grade is changed either by the Charter CEO or at the decision of the LEA board. Insofar as practical, the teacher shall be included in all discussions relating to the changing of the grade.

If the Charter CEO disagrees with the request to amend the records, the parent/student may write within 30 days to appeal this decision to the LEA board. Within 30 days of receiving the written appeal, the LEA board shall meet in closed session with the parent and the employee (if still employed) who recorded the information in question. The Charter LEA Governing Board shall then decide whether or not to sustain or deny the allegations. If the Charter LEA Governing Board sustains any or all of the allegations, it shall order the Charter CEO to immediately correct or remove and destroy the information in question. The decision of the Charter LEA Governing Board is final. The records of the Charter LEA Governing Board proceedings shall be maintained in a confidential manner for one year, after which they will be destroyed, unless the parent initiates legal proceedings within the prescribed period relative to the disputed information.

If the final decision of the Charter LEA Governing Board is unfavorable to the parent or if the parent accepts an unfavorable decision by the Charter LEA, the parent shall have the right to submit a written statement commenting on the record or explaining any reasons the parent disagrees with the decision of the Charter CEO or the Charter LEA Governing Board. This explanation shall be included in the records of the child for as long as the record or contested portion is maintained by local educational agency. If the records of the child, or contested portion, is given by the agency to any party, the explanation must also be given to the party.

At the beginning of each school year, parents shall be notified of the availability of the above procedures for challenging student records.

In order to avoid potential challenges, it is recommended that Charter LEA staff receive training which alerts them to the requirements of privacy and access laws. To the degree that a statement describes a student's behavior, the statement can withstand challenges. Ambiguous terms should be avoided, and staff members should restrict their comments to areas of training. In addition, only those observations which have educational relevancy should be recorded. Statements describing unrelated family incidents or unsubstantiated claims are inappropriate for a student's record.

*Record Classification and Destruction:*

All school public records are classified as continuing records until such time as their usefulness ceases.

While they are continuing records, their destruction is governed by a rather complicated set of guidelines. Certain items are specifically excluded from destruction restrictions. Copies of originals, pupil passes, tardy slips, admit slips, notes from home, including verification of illness and individual memorandum between employees of the Charter LEA are not records and may be destroyed at any time. (5 CCR § 16022.)

Pupil records are defined within the three categories: mandatory permanent, mandatory interim, and permitted. (See below for a full explanation of each category.)

Mandatory Permanent pupil records became Class 1 permanent records when their usefulness ceases, and thus are never destroyed. *Caveat:* These records or a copy, are retained for every pupil who was ever enrolled in the Charter LEA. A copy of the mandatory permanent records is forwarded for students who transfer.

Mandatory Interim pupil records can be classified as Class 1 permanent or Class III disposable when their usefulness ceases. The Charter LEA is responsible for the classification subject to Charter LEA governing board approval. If mandatory interim records are classified as disposable, they are to be destroyed in accordance with CCR Title 5, §16027. This requires that they be retained for three years beyond the date of origination.

The third category of pupil records – Permitted - may be destroyed whenever their usefulness ceases without the waiting period. However, if a student transfers, graduates or otherwise terminates attendance, such records shall be held six months and then destroyed.

As Mandatory Permanent pupil records, special education records may be classified as Class III, disposable, when they are deemed as no longer useful. This could occur only after transfer or withdrawal from a special education program. Even after classified as disposable, Mandatory Interim records must be retained for at least three years beyond the date of the record's creation.

An important exception applies to those records which were used in assessment for a special education candidate who does not become a special education student. In such cases the records are permitted pupil records and can be classified as Class III, disposable, and destroyed whenever their usefulness ceases.

(5 CCR §§ 432, 437.)

Part C - Transition

Charter schools in the El Dorado Charter SELPA currently do not serve students in Part C or preschool students. If students are transitioning from preschool to a Charter LEA and are eligible for Part B services, the Charter LEA will participate to ensure a smooth and effective transition between programs.

*Authority:*  
(CFR Title 34 §300.209(b))



Students with Disabilities Enrolled by their Parents in Private School

It shall be the policy of this Charter LEA to assure that children with disabilities voluntarily enrolled by their parents in private school shall receive special education and related services in accordance with federal law, local procedures adopted by the student's district of residence, and the corresponding SELPA.

Legal Reference:

UNITED STATES CODE, TITLE 20  
Section 1412(a)(10)(A)

Compliance Documents

The governing board of each member LEA shall adopt the local plan as the basis for the operation and administration of special education programs for that LEA. Each member LEA of the SELPA will meet all applicable requirements of state and federal laws and regulations, including compliance with the Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) and the provisions of Part 30 the California Education Code (Ed. Code §§56000 et seq.)

Upon entry into the Charter SELPA, the Governing Board for each LEA charter shall approve the Charter SELPA Local Plan and the Agreement for Participation.

Legal Reference:  
EDUCATION CODE  
56205(A)(11)  
56195.7

UNITED STATES CODE, TITLE 20 1412

Governance

Each LEA Charter SELPA member shall comply with the provisions of the governance structure and provide any necessary administrative support to implement the Local Plan.

Legal Reference:

EDUCATION CODE

56205(a)(12)

56001

56190-4

56195.1(b)(c)

56195.3

56205(b)(4)

56205(b)(5)

47640-47647

56195.7

56030

56200

56200(c)(2)

56140

56195

56140(b)(2)

UNITED STATES CODE, TITLE 20

1412(a)

1413(a)(1)

1413(a)(5)

## Governance

### *Administrative Unit*

The El Dorado County Office of Education is the Administrative Unit (AU) for the Charter SELPA. Pursuant to the provisions of Education Code Section 56030 et seq., the AU shall receive and distribute regionalized service funds, provide administrative support and coordinate the implementation of the El Dorado Charter Local Plan for Special Education. The AU shall perform such services and functions required to accomplish the goals set forth in the plan, including development of the Annual Service and Budget Plan. In addition, pursuant to Education Code 56836.01(a)(b)(c) the SELPA AU will oversee the fiscal administration of the Annual Budget Plan and the allocation of state and federal funds allocated to the special education local plan area for the provision of special education and related services by those entities, in accordance with the Local and Allocation Plans approved by the CEO Council, and be responsible for the reporting and accounting requirements prescribed by this part.

California Education Code Section 56200(c)(2) requires that the Local Plan, “specify the responsibilities of each participating county office and district governing board in the policy- making process, the responsibilities of the superintendent of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the plan.” In accordance with this provision, the El Dorado Charter SELPA has developed the following governance structure and policy development and approval process.

### *Responsibilities of each Governing Board in the policy-making process and procedures for carrying out the responsibility*

As identified in CEO Policy 1, the Charter SELPA Local Plan is approved by the Charter CEO Council and reviewed by the El Dorado County Superintendent of Schools. Amendments to the Local Plan to revise LEA membership (additions) shall be approved by the Charter Selection Committee. Prior to the Selection Committee approval, new LEA members shall be approved through the selection process as identified in Policy 22 and AR 22. Termination of membership shall be approved through the termination process as identified in Policy 26 or Policy 27. All membership changes shall be communicated with the Charter SELPA CEO Council at the next regularly scheduled meeting. Material revisions to the Local Plan, other than membership, shall be approved by the Charter SELPA CEO Council and reviewed by the El Dorado County Superintendent of Schools

The Charter CEO Council will hold the required public hearings and approve the Annual Service Plan and the Annual Budget Plan. Notice of the public hearings shall be posted in each charter school at least 15 days prior to the hearing, as required by law.

Upon entry into the Charter SELPA, the Governing Board for each LEA charter shall approve the Charter SELPA Local Plan and the Agreement for Participation.

As described within these documents, the charter LEA member boards delegate the administrative policy-making process and procedures for carrying out that responsibility to the governance structure of the Charter SELPA as outlined below.

### *Charter CEO Council*

The Charter CEO Council membership consists of the CEO or designee of each charter LEA member. Each charter LEA member has one vote. Organization Partners, that operate more than one charter school, may have a single representative for all schools operated, but such representative shall have a number of votes

Approved CEO Council 3-31-2008

Approved Revision 05-22-2014

Approved Revision 5-26-2016

Approved Revision 5-23-2019

Approved CEO Council 10-7-2020

equal to the number of charter LEAs represented.

Charter CEO Council meetings are subject to California Open Meeting laws, specifically the Brown Act (Government Code 54950-54963), which requires that CEO Council members conduct business at properly noticed and agendized public meetings.

A majority of the LEAs present at a regularly scheduled and posted CEO Council meeting shall constitute a quorum.

The Charter CEO Council will meet regularly with the El Dorado County Superintendent of Schools and/or designees to direct and supervise the implementation of the Local Plan. A minimum of two meetings per year will be held; September/October (Fall) and May (Spring).

The Charter CEO Council is responsible to approve Charter SELPA policies and administrative regulations.

The Charter CEO Council is responsible to approve the Allocation Plan, which is the framework for distribution of funds within the Charter SELPA.

#### *Responsibilities of the Charter SELPA Executive Committee*

The Executive Committee shall serve as an informal advisory body to the Charter SELPA AU. The Executive Committee shall be comprised of all Charter SELPA CEO Council members who have an interest in participating as a Committee member. Committee participation shall be at the discretion of individual members who shall be free to attend, or not attend, meetings as they choose. However, at no time shall an Executive Committee meeting be conducted with a majority of SELPA members.

Committee meetings shall occur from time to time on an informal basis as the Committee may determine. The Committee shall have no continuing subject matter jurisdiction. However, it is contemplated that the Committee shall, from time to time, consider and advise the Charter SELPA AU on administrative matters including, but not limited to, program operations, future strategic planning, procedural matters, and fiscal considerations.

An invitation to participate in the Executive Committee shall be issued annually at the first CEO Council meeting for the fiscal year. The El Dorado County Superintendent/designee shall serve as an ex officio member of the Executive Committee.

Summaries of the Executive Committee meetings shall be transmitted to the full membership of the Charter CEO Council.

#### *Charter SELPA Membership Appeals Committee*

The Charter SELPA Membership Appeals Committee meets on an “as needed basis” to hear selection committee appeals and membership termination appeals. The El Dorado County Superintendent/designee shall serve as an ex officio member of the Charter SELPA Membership Appeals Committee. An invitation to participate in the Membership Appeals Committee shall be issued annually prior to the first selection committee meeting per the application timeline.

Charter SELPA Membership Appeals committee meetings are subject to California Open Meeting laws, specifically, the Brown Act (Government Code 54950-54963) which requires that SELPA Membership Appeals committee members conduct business at properly noticed and agendized public meetings.

Approved CEO Council 3-31-2008

Approved Revision 05-22-2014

Approved Revision 5-26-2016

Approved Revision 5-23-2019

Approved CEO Council 10-7-2020

*Charter SELPA Professional Learning Network*

The SELPA conducts regular Professional Learning Network meetings (September-May) in person and online (webinar) to share information, identify training and support needs, and assist in networking and resource sharing with partners within the SELPA. Program representatives are designated by the CEO for each LEA partner.

*Charter SELPA Special Education Fiscal Committee*

The Fiscal Committee meets twice per year. The designated fiscal representative from each charter LEA member is invited to attend. Charter CEOs and Special Education Administrative contacts are invited to attend as well. Meetings take place through webinars/ teleconference. The meeting serves as a communication tool to inform fiscal contacts of actions taken by CEO Council that may have budgeting and financial reporting considerations.

*Charter SELPA Selection Committee*

As outlined in Policy 22, the Charter SELPA Selection Committee is comprised of:

- The El Dorado County Superintendent of Schools/Designee
- One Charter CEO, member of the CEO Executive Committee
- One Charter CEO selected by the El Dorado County Superintendent of Schools/Designee

The Charter SELPA Selection Committee will meet, review all documents and approve or reject members. Because of a high volume of applications to the Charter SELPA, the Selection Committee may include more than one member of the CEO Executive Committee or CEO Council and more than one Charter CEO selected by the EDCOE County Superintendent/Designee in order to efficiently review the number of applications submitted. Meetings may take place through teleconference. For the purposes of this section, “teleconference” means a meeting where the members are in different locations, connected by electronic means, through either audio, video, or both.

The Charter SELPA Selection Committee will inform the CEO Council members of their decision. The Charter SELPA AU shall inform the charter school of the decision.

*Special Education Community Advisory Committee (CAC)*

Each charter school may select a parent representative to participate in the Special Education Community Advisory Committee to serve staggered terms in accordance with E.C. § 56191 for a period of at least two years. Selected representatives may be composed of parents of individuals with exceptional needs enrolled in public or private schools, parents of other pupils enrolled in school, pupils and adults with disabilities, regular education teachers, special education teachers and other school personnel, representatives of other public and private agencies, and persons concerned with the needs of individuals with exceptional needs. This group will advise the Charter SELPA AU on the implementation of the El Dorado Local Plan for Special Education in Charter Schools (“Local Plan”) as well as provide local parent training options in accordance with the duties, responsibilities and requirements of E.C. § 56190-56194.

Because of the geographic diversity anticipated within the El Dorado Charter SELPA, meetings may take place through teleconference. For purposes of this section, “teleconference” means a meeting where the members are in different locations, connected by electronic means, through either audio, video, or both.

Personnel Qualifications

Each member LEA within the El Dorado County Charter SELPA will ensure that personnel providing special education related services meet the highly qualified requirements as defined under federal law, including that those personnel have the content knowledge and skills to serve children with disabilities. This policy shall not be construed to create a right of action on behalf of an individual student for the failure of a particular LEA staff person to be highly qualified or to prevent a parent from filing a State complaint with the CDE about staff qualifications.

Each member LEA will support and assist the state’s efforts and activities to ensure an adequate supply of qualified special education, general education, and related services personnel. This shall include recruitment, hiring, training and efforts to retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

Legal Reference:  
EDUCATION CODE  
56205(a)(13)  
56058  
56070  
56368

State Board Policy 6/11/98

UNITED STATES CODE, TITLE 20  
1412(a)(14-15)  
1413(a)(3)

Personnel Qualifications

*Special Education Staff*

Teachers assigned to serve students with disabilities shall possess the credential that authorizes them to teach the primary disability of the students within the program placement in the student's individualized education program (IEP). (5 CCR §§ 80046.5 through 80048.6) The Charter CEO or designee shall ensure that caseloads for special education teachers are within the maximum caseloads established by law, or set by the Charter LEA. (See Ed. Code § 56362 [Resource Specialists], and 56363.3 & 56441.7 [language, speech, and hearing specialists].)

*Resource Specialists*

Any Charter LEA providing special education must adopt policies regarding resource specialists. (Ed. Code § 56195.8) In accordance with this requirement.

Each Charter LEA's Governing Board shall employ certificated resource specialists to provide services including, but not be limited to the following:

1. Instruction and services for students whose needs have been identified in an individualized education program (IEP) and who are assigned to regular classroom teachers for a majority of the school day
2. Information and assistance to students with disabilities and their parents/guardians
3. Consultation with and provision of resource information and material regarding students with disabilities to their parents/guardians and other staff members
4. Coordination of special education services with the regular school programs for each student enrolled in the resource specialist program
5. Monitoring of student progress on a regular basis, participation in the review and revision of IEPs as appropriate, and referral of students who do not demonstrate sufficient progress to the IEP team
6. Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

(Ed. Code § 56362):

The resource specialist program shall be directed by a resource specialist who is a credentialed special education teacher or who has a clinical services credential with a special class authorization, and who has three or more years of teaching experience, including both regular and special education teaching experience. (Ed. Code § 56362)

No resource specialist shall have a caseload which exceeds 28 students. As necessary and with the agreement of the resource specialist, the Charter LEA Governing Board may request a waiver from the State Board of Education to increase the caseload to no more than 32 students, provided that an individual resource specialist does not have a caseload exceeding 28 students for more than two school years and has the assistance of an instructional aide at least five hours daily during the period of the waiver. (Ed. Code§ 56362; 5 CCR § 3100) Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes. (Ed. Code § 56362)



*Related Services Personnel and Paraprofessionals:*

Related services personnel and paraprofessionals must have qualifications established by the Charter LEA that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.

The Charter LEA must ensure that related services personnel who deliver services in their discipline or profession meet the requirements to be licensed within their profession, having not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

The charter LEA must allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, to be used to assist in the provision of special education and related services under this part to children with disabilities.

*Program Specialist*

Pursuant to Education Code 56368 (a) A program specialist is a specialist who holds a valid special education credential, clinical services credential, health services credential, or a school psychologist authorization and has advanced training and related experience in the education of individuals with exceptional needs and a specialized in-depth knowledge in preschool disabilities, career vocational development, or one or more areas of major disabling conditions.

(b) A program specialist may do all the following:

- (1) Observe, consult with, and assist resource specialists, designated instruction and services instructors, and special class teachers.
- (2) Plan programs, coordinate curricular resources, and evaluate effectiveness of programs for individuals with exceptional needs.
- (3) Participate in each school's staff development, program development, and innovation of special methods and approaches.
- (4) Provide coordination, consultation and program development primarily in one specialized area or areas of his or her expertise.
- (5) Be responsible for assuring that pupils have full educational opportunity regardless of the district of residence.

(c) For purposes of Section 41403, a program specialist shall be considered a pupil services employee, as defined in subdivision (c) of Section 41401.

*Education Specialist*

Pursuant to Education Code 44265 Credentials for teaching specialties, including, but not limited to, bilingual **education**, early childhood **education**, and special **education**, shall be based upon a baccalaureate degree from an accredited institution, completion of a program of professional preparation, and any other standards which the commission may establish.

In adopting the necessary rules and regulations establishing the requirements for the preparation of special **education** specialties, the commission shall ensure that teachers have sufficient knowledge of subject matter that is the core of the California public school curriculum and experience with nonspecial **education** pupils to the extent deemed appropriate by the commission.

All administrative regulations governing special **education specialists** credentials that were in effect on December 31, 1989, shall continue to be operative until the commission amends or repeals those regulations to implement the provisions of this section.

Legal Reference:

EDUCATION CODE

44250-44279 Credentials, especially:

44256 Credential types, specialist instruction

44265 Special education credential

56195.8 Adoption of policies

56361 Program options

56362 Resource specialist program, contents, direction; resource specialists, case-loads, assignments, instructional aide; pupil enrollment

56362.1 Caseload

56362.5 Resource specialist certificate of competence

56362.7 Bilingual-cross cultural certificate of assessment competence

56363.3 Average caseload limits

56368 Implementation

56441.7 Maximum caseload (programs for individuals with exceptional needs between the ages of three and five inclusive)

CODE OF REGULATIONS, TITLE 5

3051.1 Language, speech and hearing development and remediation; appropriate credential

3100 Waivers of maximum caseload for resource specialists

80046.5 Credential holders authorized to serve students with disabilities

80048-80048.6 Credential requirements and authorizations

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

200.61 Parent notification regarding teacher qualifications

300.18 Highly qualified special education teachers

300.156 Personnel Qualifications

Management Resources:

WEB SITES

California Association of Resource Specialists and Special Education Teachers: <http://www.carsplus.org>

California Speech-Language-Hearing Association: <http://www.csha.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

Performance Goals and Indicators

It shall be the policy of this Charter Local Education Agency (LEA) to comply with the requirements of the performance goals and indicators developed by the CDE and provide data as required by the CDE.

Legal References:

EDUCATION CODE

56205(a)

UNITED STATES CODE, TITLE 20

1412(a)(16)

Participation in Assessments

It shall be the policy of the Charter LEA that all students with disabilities shall participate in state and district-wide assessment programs. The IEP team determines how a student will access assessments with or without accommodations, or access alternate assessments, consistent with state standards governing such determinations.

The CEO or designee shall administer mandatory student assessments within the state Standardized Testing and Reporting (STAR) Program as required by law and in accordance with CEO policy and administrative regulation.

Legal References:

EDUCATION CODE  
56205(a)

UNITED STATE CODE, TITLE 20  
1412(a)(17)

**Participation in Assessments**

The member LEAs within El Dorado Charter SELPA are committed to all students having access to state and/or LEA assessments. Through the IEP process each student's strengths and weaknesses will be evaluated as to the content of the LEA and/or statewide assessment to determine appropriate means of access to the assessment(s).

The Charter SELPA IEP forms include an assessment plan as well as statements related to LEA and statewide assessments.

Special education students shall be tested with the designated state achievement test and the standards-based test, unless their individualized education program specifically identifies that the student will be tested with the California Alternate Assessment (CAA). The IEP team will determine which assessment will be most appropriate for each student based on guidance provided by the California Department of Education.

A student shall be permitted to take exams or assessments with the accommodation(s) and/or modification(s) as identified in his/her IEP or 504 plan. These accommodations and/or modifications must be in compliance with the current "Testing Variations, Accommodations, and Modifications Matrix" provided by the California Department of Education.

School personnel have a responsibility to ensure special education students have appropriate accommodations and/or modifications to meet the individual needs of the students and allow access to all State and LEA assessments. Each member LEA will follow and implement the California State Board of Education policies and administrative regulations related to assessment, data collection and waivers.

Legal Reference:  
EDUCATION CODE  
56205(a), 56345, 60640, 5 CCR 853, 5 CCR 850

Supplementation of State, Local and Other Federal Funds

Funds received by the El Dorado Charter SELPA from Part B of the IDEA shall be expended in accordance with the applicable provisions of the IDEA and shall be used to supplement, and not to supplant State, local and other Federal funds.

State and federal funds received by El Dorado Charter SELPA are allocated and distributed among the local educational agencies in the SELPA according to the El Dorado Charter SELPA adopted plan.

EDUCATION CODE:

56195

56195.7(i)

56205(a)(12)(D)(ii)(II)

56205(a)(16)

56841(a)(2)

Legal Reference:

20 USC §1413 (a)(2)(A)(ii)

34 CFR §300.202(a)

### Federal Maintenance of Effort Requirement

The Charter SELPA shall meet federal MOE regulations that require the use of federal funds to pay the excess costs of providing special education and related services to children with disabilities and to supplement and not supplant state and local funds for special education (34 CFR 300.202-300.205).

The SELPA Administrative Unit (AU), as the grantee of federal funds from the California Department of Education, shall distribute all or part of the federal funds received to participating eligible local education agencies (LEAs) within the SELPA through a sub-granting process and shall annually conduct and report to the CDE the required MOE information.

The LEAs will annually compile, and submit to the SELPA, budget and expenditure information that meets CDE MOE reporting requirements. The SELPA will then conduct the two required calculations determining MOE for the SELPA as a whole, and for each LEA. The SELPA-wide data is compiled and submitted in the format required by CDE.

### *Eligibility*

The State has directed the SELPA, as the distributor of IDEA Part B funds to eligible LEAs, to be responsible for the determination of eligibility of an LEA to receive IDEA Part B funds. The SELPA shall monitor individual LEAs based on these standards. The goal is to assure that the practices of one LEA are not detrimental to other LEAs or the SELPA as a whole and that all available funds are expended within the SELPA to prevent return of funds to the State.

Two required MOE calculations are:

1. Grant year budget to preceding year actual expenditures.
2. Prior Year actuals to second preceding year actuals, pursuant to the subsequent year rule.

### *Subsequent Year Rule*

When an LEA fails to meet a particular MOE test in one year, the LEA is required in subsequent fiscal years to maintain effort at the level prior to the failure. Thus, the LEA must calculate its level of effort based on the most recent fiscal year in which the MOE test was passed.

MOE standards and test procedures are provided by CDE based on federal requirements and are included as an AR to this policy.

### *LEA Election to not Participate in Federal Funding*

The Charter SELPA Allocation Plan provides the formula for distribution of federal funds to member LEAs. Should an LEA voluntarily elect to not participate in federal funds, the funds shall be used as follows:

If the election to not participate occurs prior to December in the budget year, the funds will be distributed per the Allocation Plan to all other eligible members.

If the election to not participate occurs after December in the budget year and funds have already been distributed to charter members, the SELPA is authorized to use the funds for eligible federal expenditures at the SELPA level.

***Recapture of Federal Funds***

Allocation to eligible LEAs is based on the SELPA's Allocation Plan, including the allocation of recaptured funds from one LEA to other eligible LEAs.

The SELPA shall recapture funding from an LEA under specific circumstances when the SELPA has determined that LEA is not eligible to receive IDEA Part B funds. Recapture of funding from LEAs found not eligible shall be limited to the portion of IDEA Part B funds allocated to the LEA and not to exceed the amount of disparity in meeting the requirements of the maintenance of effort.

Any amount billed to an LEA must be paid to CDE by the LEA from its state and local funding in the budget year. The Charter SELPA may withhold charter LEA special education apportionments in order to make repayment directly to CDE.

***SELPA AU Not Subject to MOE Requirements***

For the purposes of MOE, the SELPA AU is the recipient of the federal funds from CDE and is, in turn, a grantor of all, or part, of those funds as sub-grants to participating LEAs. In its capacity as the SELPA AU, El Dorado County Office of Education is not a sub-grant recipient and, therefore, is not required to meet MOE requirements.

Legal References:  
20 USC § 1413 (a)(2)  
34 CFR 300.200-300.205  
EDUCATION CODE:  
56205(a)(17)  
56841





**Maintenance of Effort (MOE)**

*Introduction*

The El Dorado Charter SELPA shall meet the federal maintenance of effort (MOE) regulations requiring that federal funds provided under Part B of the IDEA not be used to reduce the level of expenditures for the education of children with disabilities made from local funds below the level of those expenditures for the preceding fiscal year except as provided in federal law and regulations. This test must be met on either an aggregate or a per capita basis. (ref: Title 34 Code of Federal Regulations C.F.R. Sections 300.203-300.205).

*Determination of Maintenance of Effort*

The California Department of Education (CDE) monitors compliance with the MOE requirement at the SELPA level. The administrative unit (AU) of the El Dorado Charter SELPA monitors compliance of its member LEAs. There are two required comparison tests determining MOE:

**First Comparison – Grant Year Budget to Preceding Year Actual Expenditures (SEMB)**

- LEA will submit to the SELPA the required MOE documentation each year.
- Budgeted local, or state and local expenditures must equal or exceed preceding year expenditures for each LEA and for the SELPA as a whole subject to the federal Subsequent Years rule.
- SELPA must ensure LEA meets the eligibility comparison test before the allocation of Part B funds are made to the LEA.

**Section 1 - Exempt Reduction Under 34 CFR Section 300.204**

Each year LEAs should record if any of the allowable exceptions to MOE are present. If an LEA determines that a reduction in expenditures occurred as a result of one or more of the following conditions, the LEA may calculate a reduction to the required MOE standard. Reductions may apply to local only MOE standard, combined state and local MOE standard or both.

1. Voluntary departure, or departure for just cause, of special education or related services personnel, who may be replaced by qualified, lower-salaried staff.
2. Decrease in the enrollment of children with disabilities.
3. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:
  - a. Has left the jurisdiction of the agency;
  - b. Has reached the age at which the obligation of the agency to provide free appropriate public education (FAPE) to the child has terminated; or
  - c. No longer needs the program of special education.
4. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

**Section 2 – “50 Percent Rule”**

LEAs who have a “meets requirements” compliance determination under IDEA, Section 613(a) and not found to be **Significantly Disproportionate** for the current year are eligible to use this option to reduce their MOE requirement by:

LEA may reduce the level of local or state and local expenditures otherwise required by the LEA MOE requirement by calculating 50% of the increase in federal sub-grant allocation received for the current fiscal year compared to the prior fiscal year and reducing the LEA’s state and local MOE requirement by that amount.

The LEA must use an amount of local funds equal to the reduction in expenditures to carry out

activities that could be supported with funds under the Elementary and Secondary Education Act (ESEA) of 1965. This amount includes any activities under Title 1, Impact Aid, and other ESEA programs.

The LEA may not use this Section in conjunction with voluntary use of 15% of the federal grant for Coordinated Early Intervening Services (CEIS) or Response to Intervention (RTI) costs.

### Section 3 – Four MOE Test Methods to Maintain Effort

Either local or state and local funding sources are used for comparison at the SELPA level as well as for each individual LEA. In addition, the comparison may be per capita (per child with a disability). The four methods to maintain effort are:

1. The combination of state and local funds
2. Local funds only
3. The combination of state and local funds on a per capita basis
4. Local funds only on per capita basis

If the SELPA as a whole passes Comparison 1, the SELPA as a whole is eligible to receive Part B funding. If the SELPA as a whole should not meet MOE under Comparison 1, the SELPA as a whole, and all of its participating LEA members, will be ineligible to receive Part B funding until budgetary revisions are made to enable the SELPA, as a whole, to meet MOE requirements.

If the SELPA as a whole passes Comparison 1, but one or more individual LEA sub-grant recipients fail Comparison 1, the LEA(s) shall have until First Interim certification occurs to comply with MOE requirements.

If an LEA has not rectified the problem by the date that First Interim certification is made, its proportionate share of the federal funds shall be re-distributed, on a proportionate share basis, to those LEA sub-grant recipients that complied with the MOE requirements at Comparison 1, but only to the extent that they do not reduce state and local or “local only” expenditures to the point that they create MOE difficulties for the receiving LEA. Any remaining funds from this distribution will be retained by the SELPA AU and used for eligible federal expenditures.

When an LEA fails to meet the MOE test in one year, the LEA is required in subsequent fiscal years to maintain effort at the level prior to the failure. Thus, the LEA must calculate its level of effort on the most recent fiscal year in which the MOE test was met.

### **Second Comparison – Prior Year Actuals vs. Second-Preceding Year Actuals or the most recent year LEA met using the method**

- Actual local or state and local expenditures must equal or exceed preceding year expenditures, subject to the federal Subsequent Years rule.
- Comparison is made annually after unaudited actuals data is submitted to CDE following the end of the fiscal year.

Section 1 – Each year LEAs should record any of the allowable exceptions that may reduce the amount required to meet MOE, listed below:

1. Voluntary departure or departure for just cause, of special education or related services personnel, who may be replaced by qualified, lower-salaried staff.
2. Decrease in the enrollment of children with disabilities.
3. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA,

because the child:

- a. Has left the jurisdiction of the agency;
  - b. Has reached the age at which the obligation of the agency to provide free appropriate public education (FAPE) to the child has terminated; or
  - c. No longer needs the program of special education.
4. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

### Section 2 – “50 Percent Rule”

LEAs who have a “meets requirements” compliance determination under IDEA, Section 613(a) and not found to be **Significantly Disproportionate** for the current year are eligible to use this option to reduce their MOE requirement by:

LEA may reduce the level of local or state and local expenditures otherwise required by the LEA MOE requirement by calculating 50% of the increase in federal sub-grant allocation received from the current fiscal year compared to the prior fiscal year and reducing the LEA’s state and local MOE requirement by that amount.

The LEA must use an amount of local funds equal to the reduction in expenditures to carry out activities that could be supported with funds under the Elementary and Secondary Education AC (ESEA) of 1965. This amount includes any activities under Title 1, Impact Aid, and other ESEA programs.

The LEA may not use this Section in conjunction with voluntary use of 15% of the federal grant for Coordinated Early Intervening Services (CEIS) or Response to Intervention (RTI) costs.

### Section 3 – Four MOE Test Methods

Either local or state and local funding sources are used for comparison at the SELPA level as well as for each individual LEA. In addition, the comparison may be per capita (per child with a disability). The four methods to maintain effort are:

1. The combination of state and local funds
2. Local funds only
3. The combination of state and local funds on a per capita basis
4. Local funds only on per capita basis

If the SELPA as a whole still fails MOE in Comparison 2 after applying the exceptions, the SELPA will be billed by the State for the amount the SELPA, collectively, failed to spend from local or state and local funds to maintain its level of effort.

The SELPA AU will then bill the individual LEA sub-grant recipients that failed MOE Comparison Test 2 for the amount the LEA(s) failed to spend from local or state and local funds to maintain its level of effort.

If the SELPA as a whole passes Comparison 2 but one or more individual LEA sub-grant recipients fail to spend from local or state and local funds to maintain their level of effort, the SELPA AU will bill on behalf of CDE for the amount that the LEA failed to spend from local or state and local funds to maintain their level of effort. Any amount billed to an LEA must be paid to CDE by the LEA from its state and local funding in the budget year.

When an LEA fails to meet the MOE test in one year, the LEA is required in subsequent fiscal years to maintain effort at the level prior to the failure. Thus, the LEA must calculate its level of effort on the most recent fiscal

year in which the MOE test was met.

For the purposes of MOE, the SELPA AU is the recipient of the federal funds from CDE and is, in turn, a grantor of all, or part, of those funds as sub-grants to participating LEAs. In its capacity as the SELPA AU, the El Dorado County Office of Education is not a sub- grant recipient and, therefore, is not required to meet MOE requirements.

Public Participation

It shall be the policy of the Charter SELPA that public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities, are held prior to the adoption of any policies and/or regulations needed to comply with part B of the IDEA.

Per the Charter SELPA Local Plan, policies are adopted by the Charter CEO Council. The Charter SELPA AU may request input from the Executive Committee as policies are developed.

Appropriate notice shall be provided prior to adoption of policies by the Charter SELPA CEO Council. Proposed policies will be posted to the El Dorado Charter SELPA website. This will allow for review and comment by the public, parents of children with disabilities, or individuals with disabilities.

Charter CEO Council typically meets twice per year and meetings may take place through teleconference. For the purposes of this section, “teleconference” means a meeting where the members are in different locations, connected by electronic means, through either audio or video, or both.

Legal References:  
EDUCATION CODE  
56205(a)

UNITED STATE CODE, TITLE 20  
1412(a)(19)

### Suspension/Expulsion

Each member LEA in the El Dorado Charter SELPA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. If a member LEA finds significant discrepancies in its rate of long terms suspensions and/or expulsions of students with disabilities, the member LEA will review, and revise, as required by law, its policies, procedures and practices related to the development and implementation of IEPs.

Legal Reference:  
EDUCATION CODE  
56205(a)

UNITED STATES CODE, TITLE 20  
1412(a)(22)

Suspension and Expulsion/Due Process

Where California law provides greater protections to students, California law supersedes federal law.

*Applicability to Student on 504 Plans*

Neither state nor federal law requires IDEA procedures apply to students identified under Section 504 of the federal Rehabilitation Act of 1973 ("Section 504") (29 USC § 794). However, in some instances, each member LEA may find it appropriate to apply portions of these procedures (e.g., the limitation that a student with a disability may not be suspended for more than 10 consecutive school days) to students with a qualifying disability pursuant to their Section 504 Plan. Charter LEAs that wish to apply IDEA procedures to Section 504 students should modify the following regulation accordingly.

*IDEA Eligible Students are not Exempt from Suspension and Expulsion*

A student identified as an individual with a disability pursuant to the Individuals with Disabilities Education Act ("IDEA") is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

*Procedures for Students Not Yet Eligible for Special Education Services*

A student who has not been identified as a student with a disability pursuant to IDEA, and who has engaged in behavior that violated the LEA's code of student conduct may assert any of the protections under IDEA only if the member LEA had "knowledge" that the student was disabled before the behavior that precipitated the disciplinary action occurred. (20 USC § 1415(k)(5); 34 CFR § 300.534)

The member LEA shall be deemed to have "knowledge" that the student has a disability if any of the following conditions exists:

1. The parent/guardian has expressed concern to LEA supervisory or administrative personnel in writing, or to a teacher of the student, that the student is in need of special education or related services.
2. The parent/guardian has requested an evaluation of the student for special education pursuant to 34 CFR §§ 300.300 through -300.311.; or
3. The teacher of the student or other LEA personnel has expressed specific concerns directly to the LEA's director of special education or to other supervisory LEA personnel about a pattern of behavior demonstrated by the student. (20 USC 1415(k)(5); 34 CFR 300.534)

The LEA would not be deemed to have knowledge that a student is disabled if the parent/guardian has not allowed the student to be evaluated for special education services or has refused services. In addition, the LEA would not be deemed to have knowledge if the LEA conducted an evaluation pursuant to 34 CFR 300.300-300.311 and determined that the student was not an individual with a disability. When a LEA is deemed to not have knowledge of the disability, the student shall be disciplined in accordance with procedures established for students without disabilities who engage in comparable behavior. (20 USC § 1415(k)(5); 34 CFR § 300.534)

If, during the time period in which the student is subject to disciplinary measures under 34 CFR § 300.530, a request is made to evaluate the student for IDEA eligibility, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities. (20 USC § 1415(k)(5); 34 CFR § 300.534)

*Suspension*

Member LEAs of the El Dorado Charter SELPA who are receiving funds under the IDEA may suspend a student



for no more than 10 consecutive or cumulative school days, as long as the removal does not constitute a change in placement. (20 USC§ 1415(k)(1), 34 CFR §§ 300.530, 300.536; see also *Honig v. Doe* (1988) 484 US 305 Under California law, a student may not be suspended for more than 20 cumulative school days in a school year. (Ed. Code § 48903.)

Note: Whether a bus suspension or "in school suspension" counts as a day of suspension affecting the cumulative total depends on the unique circumstances of each case. (See *Analysis of Comments to the Federal Regulations*, (2006) 71 Fed. Reg. 156, pg. 46715.) For instance, whether bus transportation is part of the student's individualized education program (IEP). In addition, an "in-school suspension" or "supervised suspension classroom" would not count towards the 20-day cumulative limit described above as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, receive the services specified in his/her IEP, and participate with nondisabled students to the extent he/she would have in the current placement. However, the LEA should be careful that such actions do not constitute a change of placement and should carefully monitor such suspensions.

The Charter CEO or designee may suspend a student with a disability for up to 10 consecutive or cumulative school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement as defined in 34 CFR 300.536. (Ed. Code§ 48903; 34 CFR § 300.530)

The principal or designee shall monitor the number of days, including portions of days, in which a student with an IEP has been suspended during the school year.

The member LEA shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change of placement. A change of placement shall be deemed to have occurred under any of the following circumstances:

1. The removal is for more than 10 consecutive or cumulative school days; or
2. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
  - a. The series of removals total more than 10 school days in a school year;
  - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals; and
  - c. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement.

(34 CFR § 300.536)

If the removal has been determined to be a change of placement as specified in items #1 or#2 above, the student's IEP team shall determine the appropriate educational services to be provided. (34 CFR § 300.530.)

### *Services During Suspension*

Note: Member LEAs are required to provide FAPE to all students, including any students with disabilities who have been suspended for more than 10 school days in a year. (20 USC § 1412(a)(1)(A), 34 CFR § 300.530.) The LEA is not required to provide a student who has been suspended for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same setting as the student was receiving prior to the imposition of discipline. (See *Analysis of Comments to the Federal Regulations* (2006) 71 Fed. Reg. 156, pg. 46716.) However, the services the student does receive must enable him/her to continue to participate in the general curriculum and to progress toward his/her IEP goals.

When a disabled student is removed for 10 school days or less, the member LEA does not have to provide services as long as the member LEA does not provide services to nondisabled students removed for the same amount of time.

Any student suspended for more than 10 school days in the same school year shall continue to receive services during the term of the suspension. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed as provided in 34 CFR § 300.101(a), so as to enable the student to continue to participate in the general education curriculum in another setting and to progress toward meeting the goals as set out in his/her IEP. (20 USC § 1412(a)(1)(A); 34 CFR § 300.530)

If a student with a disability is excluded from school bus transportation, the student shall be provided with an alternative form of transportation at no cost to the student or his/her parent/guardian, provided that transportation is specified in his/her IEP. (Ed. Code § 48915.5)

#### *Interim Alternative Educational Placement Due to Dangerous Behavior*

The LEA may unilaterally place a student with a disability in an appropriate interim alternative educational setting ("IAES") for up to 45 school days, without regard to whether the behavior is a manifestation of the student's disability, when the student commits one of the following acts while at school, going to or from school, or at a school-related function:

1. Carries or possesses a weapon. "weapon" refers to a "dangerous weapon" as defined in 18 USC § 930 and includes any device which is capable of causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length.
2. Knowingly possesses or uses illegal drugs;
3. Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V; or
4. Inflicts serious bodily injury upon another person. "Serious bodily injury" is defined as bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC § 1365).

(20 USC § 1415(k)(1)(G); 34 CFR § 300.530)

The student's IAES shall be determined by his/her IEP team. (20 USC § 1415(k)(1)(G), 34 CFR § 300.531)

On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the LEA's decision and provided the notice of procedural safeguards pursuant to 34 CFR § 300.504. (20 USC § 1415(k)(1)(H); 34 CFR § 00.530)

A student who has been removed from his/her current placement because of dangerous behavior shall receive services to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

#### *Manifestation Determination*

The following procedural safeguards shall apply: (1) when a student is suspended for more than 10 consecutive school days; (2) when a series of removals of a student constitutes a pattern; and/or (3) when a change of

placement of a student is contemplated due to a violation of the LEA's code of conduct:

1. Notice: On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 3 § 00.504. (20 USC § 1415(k)(1)(H); 34 CFR § 300.530)
2. Manifestation Determination: Immediately if possible, but in no case later than 10 school days after the date the decision to take disciplinary action is made, a determination shall be made on whether the student's conduct in question was a manifestation of his/her disability. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

The member LEA, the student's parent/guardian, and relevant members of the IEP team (as determined by the LEA and parent/guardian) shall convene a manifestation determination meeting and review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents/guardians, and determine whether the conduct in question was either of the following:

- a. Caused by or had a direct and substantial relationship to the student's disability; or
- b. A direct result of the LEA's failure to implement the student's IEP, in which case the LEA shall take immediate steps to remedy those deficiencies

(20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

If, at the manifestation determination meeting, the team determines that a condition in either #a or #b above was met, the conduct shall be determined to be a manifestation of the student's disability. (20 USC § 1415(k)(1)(E); 34 CFR § 300.530)

3. Determination that Behavior is a Manifestation of the Student's Disability: When the conduct has been determined to be a manifestation of the student's disability, the IEP team shall conduct a functional behavioral assessment, unless a functional behavioral assessment had been conducted before the occurrence of the behavior that resulted in the change of placement, and shall implement a behavioral intervention plan for the student. If a behavior intervention plan has already been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530)

The student shall be returned to the placement from which he/she was removed, unless the parent/guardian and member LEA agree to a change of placement as part of the modification of the behavioral intervention plan. (20 USC § 1415(k)(1)(F); 34 CFR § 300.530)

4. Determination that Behavior is Not a Manifestation of the Student's Disability: If, at the manifestation determination meeting, the team determines that the student's behavior was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

The student shall receive services to the extent necessary to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC § 1415(k)(1)(D); 34 CFR § 300.530)

*Due Process Appeals*

If the parent/guardian disagrees with any LEA decision regarding placement under 34 CFR § 300.530 (suspension and removal for dangerous circumstances) or 34 CFR § 300.531 (interim alternative placement), or the manifestation determination he/she may appeal the decision by requesting a due process hearing. The member LEA may request a hearing if the Charter LEA believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. In order to request a hearing, the requesting party shall file a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). (20 USC 1415(k)(3); 34 CFR 300.532) The party filing the due process complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62.)

Whenever a hearing is requested as specified above, the parent/guardian or the LEA shall have an opportunity for an expedited due process hearing. (See 34 CFR §§ 300.507, 300.508 (a)-(c), and 300.510 through 300.514.)

If the student's parent/guardian or the LEA has initiated a due process hearing as detailed above, the student shall remain in the IAES pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent/guardian and LEA agree otherwise. (20 USC § 1415(k)(4); 34 CFR § 300.533)

*Readmission*

Readmission procedures for students with disabilities shall be the same as those used for all students. Upon readmission, the member LEA shall convene an IEP team meeting.

*Suspension of Expulsion*

The member LEA Governing Board's criteria for suspending the enforcement of an expulsion order shall be applied to students with disabilities in the same manner as they are applied to all other students. (Ed. Code § 48917)

*Notification to Law Enforcement Authorities*

The principal of a school or the principal's designee are required to notify law enforcement officials regarding a student's suspension or expulsion as follows:

1. Prior to the suspension or expulsion of any student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities of any act of assault with a deadly weapon which may have violated Penal Code 245. (Education Code 48902)
2. Within one (1) school day after a suspension or expulsion of a student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which may violate Education Code 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind;

The principal or designee shall also notify appropriate city or county law enforcement authorities of acts by any student with a disability which may involve the possession or sale of narcotics or of a controlled substance or possession of weapons or firearms in violation of Penal Code §§ 626.9 or 626.10.

A principal or designee, or any other person reporting a known or suspected act under either subdivision (a) or (b), above, is not civilly or criminally liable for making a report unless it is shown that:

1. The report was false; and

2. The person making the report either:
  - a. Knew that the report was false; or
  - b. The report was made with reckless disregard for the truth or falsity of the report.

(Ed. Code § 48902.)

When a principal or designee reports a criminal act committed by a school age individual with exceptional needs (eligible for special education) he/she is required to transmit copies of the student's special education and disciplinary records for consideration by the authorities to whom he/she reported the criminal act. When sending records for this purpose, the member LEA, principal, or designee must still comply with all FERPA requirements, (Ed. Code § 48902.)

#### *Report to County Superintendent of Schools*

The LEA CEO is required to report to the County Superintendent of Schools when any special education student has been expelled or suspended for more than 10 school days. The report shall include the student's name, last known address, and the reason for the action. The County Superintendent will review the reports and determine whether either the interest of the student or the welfare of the state may need further examination. If so, the County Superintendent, shall bring the reports to the attention of the member LEA's Governing Board and the County Board of Education. (Ed. Code § 48203.)

#### Legal Reference:

##### EDUCATION CODE

35146 Closed sessions (re suspensions)  
 35291 Rules (of governing board)  
 48203 Reports of severance of attendance of disabled students  
 48900-48925 Suspension and expulsion  
 56000 Special education; legislative findings and declarations  
 56320 Educational needs; requirements  
 56321 Development or revision of individualized education program  
 56329 Independent educational assessment  
 56340-56347 Individual education program teams  
 56505 State hearing

##### PENAL CODE

245 Assault with deadly weapon  
 626.2 Entry upon campus after written notice of suspension or dismissal without permission  
 626.9 Gun-Free School Zone Act  
 626.10 Dirks, daggers, knives, razors or stun guns

##### UNITED STATES CODE, TITLE 18

930 Weapons  
 1365 Serious bodily injury

##### UNITED STATES CODE, TITLE 20

1412 State eligibility

1415 Procedural safeguards

##### UNITED STATES CODE, TITLE 21

812(c) Controlled substances

##### UNITED STATES CODE, TITLE 29

706 Definitions

794 Rehabilitation Act of 1973, Section 504

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 Evaluation and placement

104.36 Procedural safeguards

300.1-300.818 Assistance to states for the education of students with disabilities, especially:

300.530-300.537 Discipline procedures

COURT DECISIONS

Schaffer v. Weast (2005) 125 S. Ct. 528

Parents of Student W. v. Puyallup School LEA, (1994 9th Cir.) 31 F.3d 1489

M.P. v. Governing Board of Grossmont Union High School LEA, (1994) 858 F.Supp. 1044

Honig v. Doe, (1988) 484 U.S. 305

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep/index.html>

**Access to Instructional Materials**

Each member LEA of the El Dorado County SELPA shall provide instructional materials to blind students or other students with print disabilities in a timely manner according to the state adopted National Instructional Materials Accessibility Standard.

Legal Reference:  
EDUCATION CODE  
56205(a)

UNITED STATES CODE, TITLE 20  
1412(a)(24)

**Overidentification and Disproportionality**

The El Dorado Charter SELPA and its member LEAs shall prevent the inappropriate overidentification or disproportional representation by race and ethnicity of students with disabilities.

Legal Reference:  
EDUCATION CODE  
56205(a)

UNITED STATES CODE, TITLE 20  
1412(a)(24)



Prohibition on Mandatory Medicine

The El Dorado County Charter SELPA and its member LEAs shall prohibit school personnel from requiring a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation for special education, or receiving special education services.

Legal References:

EDUCATION CODE

56205(a)

56040.5 (a)

UNITED STATES CODE, TITLE 20

1412(a)(25)

Data

The El Dorado Charter SELPA and its member LEAs shall provide data or information to the SELPA and the California Department of Education if required by regulations.

Legal Reference:  
EDUCATION CODE  
56205(a)

UNITED STATES CODE, TITLE 20  
1418 (a-d)

Reading Literacy

A. RATIONALE

The California Reading Initiative is intended for all students. Reading proficiency is an important goal for virtually all students who receive special education services. It is basic to ongoing school success and essential for successful participation in society. Without reading proficiency, students are excluded from full participation and opportunity to achieve academic success in school.

B. POLICY STATEMENT

In order to improve the educational results for students with disabilities, the Charter LEAs in the El Dorado Charter SELPA ensure that all students who require special education will participate in the California Reading Initiative, just as do all other students in the El Dorado Charter LEAs. In order to facilitate that effort, the Charter LEAs assure that special education instructional personnel will participate in staff development in-service opportunities in the area of literacy, including:

1. information about current literacy and learning research;
2. state-adopted student content standards and frameworks; and
3. research-based instructional strategies for teaching reading to a wide range of diverse learners

Each of the Charter LEAs will include special education staff in their curriculum materials selection process, in order to support alignment with State standards. Each will also include all special education staff in all staff development on phonemics and phonics, as well as in any additional state or regional training based on new legislation, e.g., the California Reading and Literature Subject Matter Project, the rollouts on the frameworks, AB466 training.

The goals of the Charter LEAs are to increase the participation of students with disabilities in statewide student assessments, to increase the percentage of children with disabilities who are literate, and to assure that students with disabilities attain higher standards in reading.

In order to reach these goals, we assure that students with disabilities will have full access to:

1. all required core curriculum including state-adopted core curriculum textbooks and supplementary textbooks; and
2. instructional materials and support.

Admission of Local Education Agencies to the El Dorado County Charter SELPA

Any charter school may apply to the Charter SELPA Selection Committee to become a LEA member of the SELPA. The Charter SELPA will establish an annual timeline for submission of applications, generally January of the school year preceding the school year in which the charter LEA anticipates operating as a member within the SELPA. Once granted membership, the charter LEA will participate in the governance of the SELPA in the same manner as all other charter LEA members in the SELPA. The timeline for submission may be amended by the Charter SELPA AU Superintendent/designee for unique circumstances, including State Board of Education charter approvals.

The applicant member, not an expansion of an existing member, will be deemed a member of the SELPA upon approval of the Charter SELPA Selection Committee, and subsequent Local Plan Membership amendment approved by El Dorado County Superintendent of Schools and the California Department of Education. The applicant member charter LEA board must also take action to approve membership.

The Charter SELPA Selection Committee shall review applicants to determine if they meet the requirements of the application process as established by the Charter SELPA, pursuant to AR 22. The Charter SELPA Selection Committee will inform the CEO Council members of their decision.

Applications for additional schools of a current Charter SELPA member, shall be approved by the Charter SELPA AU, pursuant to AR 22, and are not required to be reviewed by the Charter SELPA Selection Committee. Because they are current members, the Charter SELPA AU has significant documentation available to assess the new charter LEA capacity.

The applicant member, an expansion of an existing member, will be deemed a member of the SELPA after approval of the Charter SELPA AU, and subsequent Local Plan Membership amendment approved by the El Dorado County Superintendent of Schools and the California Department of Education. The applicant member charter LEA board must also take action to approve membership.

Admission of Local Education Agencies to the El Dorado Charter SELPA

By October 1, of each year, the Charter SELPA AU will publish the timeline and process for new applications to the Charter SELPA. The timeline shall include an appeal process. The appeal process shall include a timeline and criteria for the appeal. Appeals shall be heard by the Charter SELPA Appeals Committee.

The application process shall include:

Charter school LEAs, not expansions from current members, may apply to the Charter SELPA from the following paths:

1. New Start-Up Charter State Board Approved:  
Completed comprehensive application including fiscal documents and a detailed plan for service delivery.
2. Charters who are currently operating in another SELPA:  
Completed comprehensive application including fiscal documents, detailed plan for service delivery and a copy of the one-year notice to the current SELPA or a copy of the agreed-upon early SELPA release.
3. New Start-Up Charters:  
Completed comprehensive application including fiscal documents and a detailed plan for service delivery.

The Charter SELPA will develop a process for reviewing all applications that includes a scoring methodology and will clearly communicate the scoring process. In addition, the CEO Council may annually approve growth priority guidelines for the new member selection process.

Charter school LEAs, expansions of Single Charter Partners or Organization Partners, will follow a simplified application process because the Charter SELPA AU has considerable documentation on file regarding the LEA capacity. There are two types of expansions of Partners:

1. They are a participating Single Charter Partner adding a new start-up charter school or an existing school(s).
2. They are a participating Organization Partner SELPA member adding additional new charter school(s) or an existing school(s).

In the case of either a or b above, the following application process will be followed:

1. Notice of Intent: The single charter partner or organization partner will inform the Charter SELPA AU of their desire to add additional school(s) for the following school year by submitting an expansion application during the aforementioned application period.
2. The single charter partner or organization partner will provide the SELPA with information regarding the school, information regarding the relationship and responsibilities of the Organization Partner, affirmation that the expansion charter is part of the Organization Partner's network, and any other data requested by the Charter SELPA AU. For existing schools, member of another SELPA, a copy of the one-year notice to the current SELPA or a copy of the agreed-upon early SELPA release.
3. The Charter SELPA AU will review all information. It is understood that the Charter SELPA AU may request additional information, as needed, to conduct a comprehensive review prior to approving the expansion application. The Charter SELPA AU may approve the addition. If the AU has questions or concerns the information may be sent to the Charter SELPA Selection Committee for further review.

Behavioral Interventions for Special Education Students

A special education student's minor behavioral problems shall be subject to the disciplinary measures applicable to all students for such infractions.

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies and supports, including positive behavioral interventions, to address that behavior consistent with the law and SELPA procedures. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a)(2)(i), (b); Ed. Code § 56341.1, subd. (b)(1).)

The Charter CEO or designee shall ensure that staff is informed of the El Dorado Charter SELPA's policy and regulations governing the systematic use of behavioral and emergency interventions.

Legal Reference:

EDUCATION CODE

49001 Prohibition of corporal punishment

56321 Notice of parental rights; consent of parents

56500-56507 Procedural safeguards, including due process rights

56520-56524 Behavioral Interventions

56341.1

CODE OF REGULATIONS, TITLE 5

3001 Definitions

3052 Designated positive behavioral interventions

## Behavioral Interventions for Individuals with Exceptional Needs

Behavior of an individual with exceptional needs shall be subject to the disciplinary measures applicable to all students for such infractions unless the behavior is determined to be a manifestation of the student's disability.

Behavioral problems shall be addressed through the systematic use of behavioral and emergency interventions as provided below.

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies and supports, including positive behavioral interventions, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a)(2)(i), (b); Ed. Code § 56341.1, subd. (b)(1).)

The Charter LEA *may* employ a Board-Certified Behavior Analyst ("BCBA") to conduct behavior assessments and provide behavioral intervention services, but the law does not require that these services be provided by a BCBA. (Ed. Code, § 56525.)

Note: With the Repeal of the Hughes Bill, (Assembly Bill 86, effective July 1, 2013 ("AB 86")) the law does not contain a specific definition of "behavioral intervention" and does not impose any specific requirements for how to conduct or implement a behavior assessment or behavior intervention plan. LEAs are no longer required to conduct a Functional Analysis Assessment ("FAA") for students with serious behavioral problems. (Ed. Code, § 56523.)

### *Behavioral Intervention Plan*

A functional behavioral assessment and behavioral intervention plan be developed no later than 10 business days after a student is suspended for more than 10 school days in a school year or after a change of placement occurs. (34 CFR § 300.530; see SELPA Policy 16, and AR 16)

Within 10 business days after removing a student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement, the Charter LEA shall implement a behavioral intervention plan in accordance with 34 CFR 300.520, SELPA policy and administrative regulations. (BP/AR 16)

Note re Terminology: BIP and BSP

The IDEA uses the term Behavior Intervention Plan ("BIP") to refer to a less intensive behavior plan developed by the IEP team. Previously, the Hughes Bill (repealed by AB 86) used the term "BIP" to refer to a more intensive behavior plan required whenever an FAA was performed. California also had previously used the term Behavior Support Plan ("BSP") to distinguish between the less intensive plan required by the IDEA and the more-intensive "BIP" required by the Hughes Bill. Now, with the repeal of the Hughes Bill by AB 86, it is recommended that member districts use only the term BIP for all types of behavior plans. (Ed. Code, § 56523.)

### *Emergency Interventions*

Emergency interventions not specified in a student's behavioral intervention plan shall be used only

when necessary to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual with exceptional needs or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior. Emergency interventions shall not be used as a substitute for a systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation. (Ed. Code, § 56521.1(a) through (c))

Only emergency interventions approved by the SELPA may be used. (Ed. Code § 56521.1)

The following emergency interventions, included in "Risk Behavior" training, are approved by the El Dorado County Charter SELPA for use by **CPI (Crisis Prevention Institute) trained staff only** and may only be used as a ***last resort when a person is an immediate danger to self or others:***

- a.) CPI's Disengagement Skills
- b.) Nonviolent Physical Crisis Intervention and Team Intervention:
  - ✓ "Standing Position" utilizing one-two team members
  - ✓ "Seated Position" utilizing two team members
  - ✓ "Team Control Position" utilizing at least two team members
  - ✓ "Children's Control Position" for students who are considerably smaller than the staff person

Parents/guardians/residential care provider, if appropriate, shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs. A behavior emergency report shall immediately be completed, kept in the student's file, and forwarded to the Charter CEO or designee for review. This report shall include:

1. The name and age of the student
2. The setting and location of the incident
3. The name of the staff or other persons involved
4. A description of the incident and the emergency intervention used
5. A statement of whether the student is currently engaged in a systematic behavioral intervention plan
6. Details of any injuries sustained by students or others, including staff, as a result of the incident (Ed. Code § 56521.1 (e).)

If the behavior emergency report is for a student who does not have a behavioral intervention plan, the Charter CEO or designee shall, within two days, schedule an IEP team meeting to review the emergency report, determine the necessity for a functional behavioral assessment, and determine the necessity for an interim behavioral plan. When applicable, the IEP team shall document the reasons for not conducting a functional behavioral assessment and/or not developing an interim plan. (Ed. Code § 56521.1 (g).)

If the behavior emergency report is for a student who has a positive behavioral intervention plan, any incident involving a previously unseen serious behavior problem or where a previously designed intervention is not effective shall be referred to the IEP team. The IEP team shall review the incident



and determine whether the student's behavioral intervention plan needs to be modified. (Ed. Code § 56521.1 (h).)

All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator. (Ed. Code § 56521.1(f).)

*Prohibited Interventions*

The Charter LEA prohibits any use of the following:

1. Any intervention designed or likely to cause physical pain
2. Releasing noxious, toxic or otherwise unpleasant sprays, mists or substances near the student's face
3. Any intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort or access to the bathroom
4. Any intervention that subjects the student to verbal abuse, ridicule, humiliation or excessive emotional trauma
5. Use of any material or objects which simultaneously immobilize all hands and feet, except that prone containment or similar techniques may be used by trained staff as a limited emergency intervention
6. Locked seclusion, unless in a facility otherwise licensed or permitted by law to use a locked room
7. Any intervention that precludes adequate supervision of the student
8. Any intervention that deprives the student of one or more of his/her senses
9. Force exceeding what is reasonable and necessary under the circumstances

(Ed. Code, § 56521.2.)

Legal Reference:

EDUCATION CODE

49001 Prohibition of corporal punishment

56321 Notice of parental rights; consent of parents

56341.1 Individualized Education Programs

56500-56508 Procedural safeguards, including due process rights

56520-565254 Behavioral Interventions

CODE OF REGULATIONS, TITLE 5

3001 Definitions

UNITED STATES CODE, TITLE 20

1412 State eligibility

1414 Individualized Education Programs

1415 Procedural safeguards

CODE OF FEDERAL REGULATIONS, TITLE 34

300.1-300.818 Assistance to states for the education of students with disabilities

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, page 46539-46845

Nonpublic, Nonsectarian School and Agency Services for Special Education

Nonpublic, nonsectarian school (NPS) and agency (NPA) services shall be available to pupils in the SELPA. When no appropriate public educational services are available within the El Dorado County Charter SELPA, neighboring counties or SELPAs, or state special schools, a designated member of the IEP team shall contact the Charter LEA CEO/designee if this type of placement might be considered at an upcoming IEP meeting.

The Charter LEA governing board may contract with a state-certified NPS or NPA to provide special education services or facilities when an appropriate public education program is not available.

When entering into agreements with an NPS or NPA the Charter LEA board shall consider the needs of the individual student and the recommendations of the individualized education program (IEP) team. The Charter LEA IEP team shall remain accountable for monitoring the progress of any student placed in an NPS toward his/her IEP goals.

Legal Reference:

EDUCATION CODE

- 56034-56035 Definitions of nonpublic, nonsectarian school and agency
- 56042 Placement not to be recommended by attorney with conflict of interest
- 56101 Waivers
- 56163 Certification
- 56168 Responsibility for education of student in hospital or health facility school
- 56195.8 Adoption of policies
- 56360-56369 Implementation of special education
- 56711 Computation of state aid
- 56740-56743 Apportionments and reports
- 56760 Annual budget plan; services proportions
- 56775.5 Reimbursement of assessment and identification costs

GOVERNMENT CODE

- 757-7588 Interagency responsibilities for providing services to children with disabilities, especially:
- 7572.55 Seriously emotionally disturbed child; out-of-state placement

FAMILY CODE

- 7911-7912 Interstate compact on placement of children

WELFARE AND INSTITUTIONS CODE

- 362.2 Out-of-home placement for IEP

- 727.1 Out-of-state placement of wards of court

CODE OF REGULATIONS, TITLE 5

- 3001 Definitions
- 3061-3069 Nonpublic, nonsectarian school and agency services

UNITED STATES CODE, TITLE 20

- 1400-1482 Individuals with Disabilities Education Act

CODE OF FEDERAL REGULATIONS, TITLE 34

- 300.129-300.148 Children with disabilities in private schools

COURT DECISIONS

- Agostini v. Felton, (1997) 521 U.S. 203, 117 S.Ct. 1997

Management Resources:

CDE LEGAL ADVISORIES

0317.99 Nonpublic School/Agency Waivers and Reimbursement to parents

FEDERAL REGISTER

Rules and Regulations, August 114, 2006, Vol. 71, Number 156, page 46539-46845

WEB SITES

CDE: <http://www.cde.ca.gov>

Us Department of Education, Office of Special Education and Rehabilitative Services: [http://www.](http://www.Ed.gov/offices/OSERS)

[Ed.gov/offices/OSERS](http://www.Ed.gov/offices/OSERS)

## Nonpublic, Nonsectarian School and Agency Services for Special Education

### *Placement and Services*

Contracts with an NPS or NPA shall include an individual services agreement (“ISA”) negotiated for each student. ISAs shall be for the length of time for which NPS and/or NPA services are specified in the student’s individualized education program (“IEP”), but not to exceed one year. Changes in educational instruction, services or placement shall be made only on the basis of revisions to the student’s IEP. (Ed. Code § 56366.)

The master contract shall specify the general administrative and financial agreements between the NPS or NPA and the Charter LEA to provide the special education and designated instruction and services, as well as transportation specified in the student’s IEP. The administrative provisions of the master contract shall also include procedures for record keeping and documentation, and the maintenance of school records by the contracting charter LEA to ensure that the NPS provides appropriate high school graduation credit to the student. The contract may allow for partial or full-time attendance at the nonpublic nonsectarian school. (Ed. Code § 56366.)

In order for a Charter LEA to contract with an NPS or NPA, the NPS and NPA must be certified as meeting state standards. (Ed Code § 56366.) A master contract may be terminated for cause with 20-days’ notice. However, the availability of a public education program initiate during the period of the master contract cannot give cause for termination unless the parent/guardian agrees to transfer the student to the public program.

The master contract shall include a description of the process being utilized by the Charter LEA to oversee and evaluate placements in the NPS. This description shall include a method for evaluating whether the student is making appropriate educational progress. (Ed. Code 56366)

The Charter CEO or designee of an elementary Charter LEA shall notify a high school district of all students placed in NPS or NPA programs prior to the annual review of the IEP for each student who may transfer to the high school district. (5 CCR § 3069.)

When a special education student meets the district requirements for completion of prescribed course of study as designated in the student’s IEP, the district which developed the IEP shall award the diploma. (5 CCR § 3070.)

### *Out-of-State Placements*

Out-of-state placement of children who are seriously emotionally disturbed and/or wards of the court may only be made after in-state alternatives have been considered and found not to meet the child’s needs. (Gov. Code § 7572.55; Welf. & Inst. Code §§ 362.2 and 727.1.)

Before contracting with an NPS or NPA outside California, the Charter CEO or designee shall document the LEAs efforts to find an appropriate program offered by a nonpublic, nonsectarian school or agency within California. (Ed. Code § 56365.)

Within 15 days of a decision to place a student in an out-of-state placement, the student's IEP team shall submit to the Superintendent of Public Instruction a report with information about the services provided by the out-of-state program, the related costs, and the district's efforts to locate an appropriate public school or nonpublic, nonsectarian school or agency within California (Ed. Code § 56365.)

If the Charter LEA decides to place a student with an NPS or NPA outside the state, the Charter LEA shall indicate the anticipated date of the student's return to a placement within California and shall document efforts during the previous year to return the student to California. (Ed. Code § 56365.)

*LEAs Shall Ensure that the NPS has a Written Seclusion and Restraint Policy*

Prior to executing a Master Contract with an NPS, the LEA shall ensure that the NPS has a written policy governing the use of seclusions and restraints by NPS personnel. The NPS's written seclusion and restraint policy shall include, at minimum, the following:

1. Require all staff working with students receive comprehensive training in the safe and appropriate use of seclusion and restraint. Comprehensive training includes, but is not limited to Non-Violent Crisis Intervention or a course of comparable scope and depth;
2. Prohibits untrained staff from restraining students;
3. Authorizes the use of seclusion or restraint only when there is an emergency involving the immediate risk of physical harm to student or others;
4. Requires staff members to end the restraint and/or seclusion when the emergency justifying the restrain and/or seclusion has ended;
5. Requires the NPS to contact the responsible LEA and/or law enforcement, as appropriate, whenever a restraint exceeds 30 minutes in length;
6. Requires direct continuous observation of all students placed in seclusion;
7. Prohibits the use of chemical restraints or any restraint technique, such as prone restraints, that obstructs breathing or is otherwise harmful to the student based on the individual needs of the student including any medical or health related conditions;
8. Prohibits NPS staff members from using seclusion or restraint to discipline students; and
9. Requires the NPS staff to notify the responsible LEA within one school day whenever an LEA's student has been secluded or restrained.

The master contract shall not be executed until an LEA administrator or designee has reviewed the policy and determined that it complies with the requirements of this section.

*Placement Procedures*

The Charter LEA administrator or designee shall review all documented efforts to utilize any public-school options prior to utilizing an NPS or NPA. The Charter LEA will process referrals and locate an appropriate NPS to meet the student's needs. The SELPA may assist and/or collaborate with the Charter LEA to locate an appropriate NPS.

Each Charter LEA agrees to use the Master Contract and ISA adopted by the SELPA. The SELPA office will ensure that the Master Contract has been approved by SELPA's legal counsel and is updated per federal or state requirements. The NPS is required by the Master Contract and the IEP to annually evaluate the pupils (formally and informally) to determine if the student is making appropriate educational progress. As part of the IEP review process, each Charter LEA that contracts with an NPS shall evaluate the placement of its pupil(s) on at least an annual basis. The Charter LEA representative shall collaboratively review the NPS evaluation data to ensure that the results are appropriate, reliable, and valid for measuring pupil progress. The Charter LEA may elect to conduct the annual evaluation(s) and/or administer additional assessments with parent consent.

Legal References:  
EDUCATION CODE  
56205(c)  
56198(b)(1)

**Administration – Conflict of Interest**

The El Dorado Charter SELPA hereby adopts this Conflict of Interest Code (“CIC”) in order to ensure that the SELPA officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Gov. Code. § 81001.)

**General Provisions**

It is the policy of the SELPA that no SELPA official shall make, participate in making or in any way attempt to use his/her official position to influence a SELPA decision in which he/she knows or has reason to know he/she has a financial interest. (Gov. Code § 87100.)

The CIC shall be updated and amended in accordance with provisions of Government Code, section 87303.

**Political Reform Act – Adoption of Conflict of Interest Provisions**

Pursuant to the Political Reform Act (“PRA”)(Gov. Code §§ 81000, et seq.), every public agency is required to adopt and promulgate a CIC. (Gov. Code § 87300.) The Fair Political Practices Commission (“FPPC”) developed a model CIC and adopted it by regulation. (2 CCR § 18730.) Pursuant to this regulation, an agency shall be considered to have adopted and promulgated a CIC in accordance with the PRA, if it does all of the following:

1. Incorporates by reference the terms of the CIC contained in the regulations (@ CCR § 18730.);
2. Designate the employees as required by the PRA; and
3. Formulates disclosure categories as required by the PRA

(2 CCR § 18730.)

The requirements of the PRA are hereby satisfied by this CIC and the attached Appendix.

By enacting this policy the El Dorado Charter SELPA hereby incorporates the conflict of interest provisions of Title 2, California Code of Regulations, section 18730. Copies of the regulation can be obtained from the El Dorado Charter SELPA. The SELPA Chief Executive Officer’s Council “CEO Council” members shall abide by the terms of this CIC.

In accordance with the PRA, this CIC shall have the force of law and any violation of the CIC by a designated employee shall be considered a violation of the PRA. (Gov. Code § 87300.)

Each participating charter in the SELPA shall be responsible for adopting appropriate conflict of interest and ethics policies and regulations applicable to their representatives.

**Incompatible Offices**

El Dorado Charter SELPA CEO Council members shall not hold any other office, engage in any employment, or pursue any activity that is inconsistent, incompatible, or in any other way conflicts with his/her duties as a CEO Council member as set forth in Government Code, section 1099.

Legal Reference:  
G.C. §§ 81000, et seq.  
2 CCR § 18730

Appendix

Designated Positions/Disclosure Categories

It has been determined that persons occupying the following positions manage public investments and shall file a full statement of economic interests pursuant to Government Code, section 87200:

- Governing Board Members
- Superintendent of Schools

**Category 1: Agency Positions that Manage Public Investments:** Persons occupying the following positions are designated employees in **Category 1:**

- Deputy/Assistant/Associate Superintendent

Designated persons in **Category 1** must report:

- a. Interests in real property located entirely or partly within district/county office boundaries, or within two miles of district/county office boundaries or of any land owned or used by the district/county office. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
  - (1) Are engaged in the acquisition or disposal of real property within the district/county office
  - (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district/county office or
  - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district/county office.

(Gov. Code, § 87314.)

**Category 2: Positions Which Involve the Making or Participation in the Making of Decisions Which May Foreseeably Have a Material Effect on Any Financial Interest.** Persons occupying the following positions are designated employees in **Category 2**

- None

Designated persons in **Category 2** must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category a principal’s department is his/her entire school.

(Gov. Code § 87406.)

**Consultants** On a case-by-case basis, the Superintendent or designee may designate any consultant performing work for the district/county office as a **Category 1** or **Category 2** individual required to disclose his/her financial interests. The Superintendent or designee’s written determination shall include a description of the consultant’s duties and a statement of the specific disclosure requirements related to those duties. All such determinations are public records and shall be retained for public inspection along with this CIC.



A “consultant” is defined as an individual who, pursuant to a contract with the district/county office, makes a governmental decision whether to:

- a. Approve a rate, rule or regulation;
- b. Adopt or enforce a law;
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement;
- d. Authorize the district/county office to enter into, modify or renew a contract that requires district/county office approval;
- e. Grant district/county office approval to a contract or contract specifications which require district/county office approval and in which the district/county office is a party;
- f. Grant district/county office approval to a plan, design, report, study or similar item; or
- g. Adopt or grant district/county office approval of district/county office policies, standards or guidelines.

(2 CCR § 18701)

A consultant is also an individual who, pursuant to a contract with the district/county office, serves in a staff capacity with the district/county office and in that capacity participates in making a governmental decision as defined in Title 2 California Code of Regulations, section 18702.2, or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district’s CIC. (2 CCR § 18701.)

Membership Revocation of Local Education Agencies in El Dorado Charter SELPA

Membership may be revoked by the Charter SELPA, if it finds that the charter LEA did any of the following:

- a) Committed a material violation of any of the conditions, standards, or procedures set forth in the Charter SELPA Policies, Participation Agreement, Local Plan, or state and federal laws applicable to the LEA relating to special education.
- b) Charter has significant special education noncompliance and, in the opinion of the Charter SELPA AU, is not committed to the necessary organizational investment in training and staffing to ensure future compliance.
- c) Charter is experiencing leadership issues that cause the El Dorado Charter SELPA to believe the charter is not able to appropriately provide services to students with special needs.
- d) Other issues identified by Charter SELPA staff that impact the ability of the charter to adequately provide special education services to students.

The charter member shall be provided an opportunity to address the concerns and, if good faith efforts are expended sufficient to cause Charter SELPA AU to believe the charter member has the capacity to be an LEA, the notice to revoke membership shall be rescinded.

If Charter SELPA AU does not make a finding of capacity to be an LEA, the charter member shall be provided with the notice of intent to revoke membership (in writing) and such notice shall include the reasons for the request to revoke membership.

Appeal Process:

If a charter does not agree with the findings and wishes to appeal, they must request, in writing, an appeal to the Charter SELPA Membership Appeals Committee.

The appeal may request the opportunity to meet directly with the Charter SELPA Membership Appeals Committee. After the appeal is heard, the Appeals Committee shall make a finding and direct the Charter SELPA AU to notify the charter of their findings.

Timeline:

- a) El Dorado Charter SELPA AU will provide written notice by June (one year prior to revocation date).
- b) Charters are expected to immediately pursue other options for SELPA membership; however, there is an appeal process in place for consideration. Appeals must be submitted by November 1.
- c) Charter SELPA Membership Appeals Committee will schedule a meeting in November and will provide written notice of their findings by December 1.
- d) Charter SELPA Membership Appeals Committee may provide conditions the charter must meet in order to have the written revocation rescinded.
- e) A review of charter compliance with the conditions of approval must be met by March 1. By March 1, the Charter SELPA AU will meet with the charter to determine compliance with any conditions provided by the Appeals Committee. By March 15, the Charter SELPA AU will provide the charter with written notice if they have met the conditions. If conditions are met, notice of revocation will be rescinded in writing and the charter may continue membership for the next year.

The timeline and appeal process above does not preclude the Charter SELPA from initiating and completing the termination process in less than 12 months or by June 30th of the year if the member demonstrates:

- a) Egregious disregard of state and federal requirements to provide services to students and/or

- b) Demonstrated systemic and material issues that would cause the Charter SELPA AU to make a finding of “going concern” based on leadership, programmatic and/or fiscal solvency that would cause Charter SELPA AU to believe the Charter SELPA would be harmed by the continued membership of the LEA.

## **Charter School Closures and Exits**

### **Closure**

A charter school may choose to close voluntarily, close involuntarily through non-renewal, or close involuntarily through revocation by their authorizing LEA. When these instances arise the LEA is required to complete closure procedures below. Additionally, there are circumstances that require an LEA's CDS code to change; in these instances the SELPA will determine if closure procedures are necessary on a case by case basis.

#### **1. Documentation and Notice of Closure**

The LEA will immediately provide the SELPA:

- a. Written notification of the school closure.
- b. A copy of the charter's closure policy contained in the most recently approved charter petition.

The LEA must send notice of its closure to the following parties/entities:

- a. Parents or guardians of students.
- b. The authorizing entity.
- c. The county office of education (if the county board of education is not the authorizing entity);
- d. The El Dorado Charter SELPA
- e. The retirement systems in which the school's employees participate.
- f. The California Department of Education.

Notification of all the parties/entities above must include at least the following:

- a. The effective date of the closure.
- b. The name(s) of and contact information for the person(s) handling inquiries regarding the closure.
- c. The students' school districts of residence.
- d. How parents or guardians may obtain copies of student records, including specific information on completed courses and credits that meet graduation requirements.

The notification and documentation requirements are not limited to the items listed above.

The Charter SELPA may require additional information from the charter as needed to ensure:

- a. Appropriate transition of special education services for students served by the charter;
- b. Compliance with state and federal laws;
- c. Compliance with state and federal funding requirements; and/or
- d. Accuracy and reliability of any data submitted to the Charter SELPA.

#### **2. SELPA Written Notification to Closing Charter**

Consistent with Education Code and CDE requirements, charter school closure procedures must include plans for transfer and maintenance of school and student records, including any special education records, filing of expenditure and other fiscal reports, and completion of a final audit. After receiving notification of an LEA closure, the Charter SELPA will, in writing:

- a. Remind the charter of its closure obligations;
- b. Request from the charter information necessary to process the closure internally; and

- c. Notify the charter of any action deemed necessary to minimize financial loss to the Charter SELPA.

### 3. Financial Closeout

If there are no funding restrictions in place, upon determination of satisfactory completion of items outlined in the required written notification from the Charter SELPA, any amounts owed to the charter may be released. The required written notification from the Charter SELPA will state that, because of the timing of the annual audit and SELPA receipt of federal funds, final funds may not be released for up to eight months after the charter has closed.

The Charter SELPA may release ERMHS funds before the final charter audit is issued if all program and fiscal documentation is on file as required by the Charter SELPA and there are no conditions that would cause the Charter SELPA to be concerned about the reliability of data submitted.

In the event of a bankruptcy, the release of funds may be impacted by the direction of the courts.

If the Charter SELPA makes a finding that it would not release any final amounts owing to the charter, that finding will be disclosed to the Executive Committee.

### 4. Release of Claims

When an LEA closes, the LEA forever releases and discharges the Charter SELPA and its past and present principals, members, partners, officers, directors, affiliate employees, agents, successors, assigns, attorneys and insurers, collectively with the Charter SELPA, from any and all claims arising out of the operations of the LEA. Accordingly, the closing LEA shall promptly withdraw and/or cause to be filed dismissals with prejudice of all applications, requests, reports, complaints, or appeals, if any, filed or made as to any such claims.

Consistent with the release language above, closure of an LEA terminates the ability for the LEA and associated entities affiliated with the LEA to submit claims to any funding or to any Charter SELPA Risk Pool (e.g. Legal Risk Pool, SELPA Set Aside, Rate Smoothing Pool, etc.) effective the date of the LEA closure and/or termination of membership pursuant to CEO Policy 26. Termination of the ability to submit funding and SELPA Risk Pool claims may be suspended for an Organization Partner with LEAs that will continue as Charter SELPA members.

#### Exit

An LEA may elect to exit the El Dorado Charter SELPA and return to their geographic SELPA or join an alternate SELPA. The LEA is required to notify, in writing, the Charter SELPA, any other impacted SELPAs, participating county offices of education, and the CDE by June 30<sup>th</sup> of the year prior to their intended exit, per Education Code 56195.3(b). If the LEA did not provide the year and one-day notice, the LEA must obtain a letter of agreed-upon early release from the Charter SELPA before accepting membership in an alternate SELPA for the coming school year.

If the LEA did provide the year and one-day notice, a Final Notice of the LEA's intention to leave the Charter SELPA is required by February 1 of the current year to the SELPA. The Final Notice allows the Charter SELPA sufficient time to prepare for any revenue and staffing changes in response to changes in the composition of the Charter SELPA and allocation plan. If the LEA did not provide the February 1 notice, the LEA must obtain a

letter of agreed-upon release from the Charter SELPA before accepting membership in an alternate SELPA for the coming school year. Once the LEA's exit is confirmed, the LEA is required to follow the procedures below.

### **1. Documentation and Notice of Change in SELPA**

The LEA must send notice of its change in SELPA (as applicable) to:

- a. Parents and/or guardians of students
- b. The County Office of Education (if the county board of education is not the authorizing entity)
- c. The geographical Special Education Local Plan Area (SELPA) of the authorizing entity
- d. The California Department of Education

Notification of all the parties above must include (at minimum) the following:

- a. The effective date of the change
- b. The name(s) and contact information of the person(s) handling inquiries regarding the change

### **2. RECORD TRANSFER AND RETENTION**

- a. The transfer and maintenance of school and student records should be followed per SELPA policies and procedures.

### **3. CDE Reporting**

The LEA is responsible to ensure the following:

- a. All CALPADS reporting processes are to be completed and certified as appropriate prior to any transfer of electronic student records to the new LEA/SELPA. Please note, once the records are transferred, the SELPA will be unable to provide additional support around reporting or amending data and your new SELPA will not be able to support or amend data submitted while part of the El Dorado Charter SELPA, thus accurate and timely submission is of the utmost importance.
- b. All Special Education monitoring and compliance processes (targeted review, intensive review, preschool review, data informed noncompliance, disproportionality, significant disproportionality) are completed and certified, where possible, prior to any transfer of electronic student records to the new LEA/SELPA. For those compliance processes which span academic years, please work with your current program specialist and the SELPA data team to facilitate transfer of any necessary documentation to your new SELPA.
- c. All required special education pupil count data and special education personnel data reports are filed appropriately.

### **4. FINANCIAL COMPLIANCE & CLOSEOUT**

The LEA is responsible to ensure the following:

1. File all attendance reports for the final year of operation (P-1, P-2, annual).
2. Submit any current year Risk Pool claims to the Charter SELPA Business Department.
3. Submit all special education financial reports.
4. Submit for review any other documentation that would be necessary to ensure the reliability of special education financial data.
5. If receiving current year federal revenue, complete Maintenance of Effort (MOE) reporting and pass MOE testing requirements. NOTE: Any current year federal revenue already distributed to the school must be refunded if this requirement is not met.
6. Submit audit report(s) for the final year of operation.

Legal References:

EDUCATION CODE

47604.32

47605

47605.6

47607

56195.3(b)

CALIFORNIA CODE OF REGULATIONS, TITLE 5 (5 CCR) 11962

11962.1

## SELPA OVERSIGHT

The Charter SELPA is responsible for monitoring all required areas of compliance with federal, state and Charter SELPA policies. The purpose of all monitoring and oversight activities is to ensure legal and effective LEA practices are in place to meet the needs of students with disabilities. This policy outlines areas of oversight and indicators that may cause the initiation of a Charter SELPA review process. Charter SELPA administration will keep the CEO Council informed of SELPA oversight activities and determinations.

If compliance, performance and/or student population data for an LEA in the Charter SELPA varies significantly from expected results or standards, it may be an early warning for the Charter SELPA to initiate contact. In this case, the Charter SELPA will contact the LEA to confirm the data, discuss any underlying issues which may impact the data, and identify how the Charter SELPA can assist the LEA in any necessary corrective action.

The Charter SELPA will monitor special education practices and data continuously to determine whether practices are in line with the LEA's responsibilities to students with disabilities and SELPA policies. Data will be collected and reviewed by the Charter SELPA. Examples of existing indicators and standards include but are not limited to:

- Identification rate of special education students that is below 4% or greater than 14%
- State Performance Plan Indicators
- Significant swings in enrollment and/or enrollment trends that are not aligned to the LEA's instructional calendar
- Pattern of compliance complaints or due process hearings
- Evidence of exclusionary practices
- Significant and/or abrupt change in leadership or staff
- No/low participation or engagement in the Charter SELPA (CEO Council, Steering Committee, professional development offerings, etc.)
- Unspent funds greater than 25%
- Annual independent audit which shows serious fiscal solvency issues or material findings (e.g. findings related to internal control or program compliance, high debt ratios, deficit spending, going concern findings, adequate reserves, and adequate cash)

## SELPA REVIEW PROCESS

If one or more of the preceding triggers indicates a potential problem, the Charter SELPA may initiate a program and/or fiscal review. Program and fiscal reviews are facilitated by the appropriate Charter SELPA administrator. Charter SELPA's goal in each review process is to clearly identify the areas of SELPA concern, discuss any underlying issues which may be impacting the findings, and identify how the Charter SELPA can assist the LEA in any necessary corrective action. The Charter SELPA may request additional information as necessary to resolve identified concerns.

When multiple or connected concerns exist, the Charter SELPA may implement an Integrated Review Team (IRT) visit. An Integrated Review Team (IRT) visit consists of Charter SELPA program and business administrators meeting directly with the charter LEA leadership team.



### CHARTER SCHOOLS AT-RISK

Whether through a Charter SELPA review process or other source, or if significant matters arise that are potentially harmful to students, demonstrate negligence, may harm the SELPA, or there is a concern that funds are not being spent appropriately for special education, Charter SELPA administration is empowered to act in the best interests of the SELPA as a whole. Such matters include, but are not limited to:

- Pattern of noncompliance with federal, state or Charter SELPA regulations
- Notice of revocation
- Notice of bankruptcy
- FCMAT extraordinary audit
- Annual audit with material findings and identification of operational issues that cause concern regarding the long-term viability of the organization
- Other circumstances that create a concern that a loss to the SELPA is possible or funds are not being spent appropriately for special education

Charter SELPA administration may make a determination and proceed to:

- Notify appropriate public agencies;
- Notify the LEA's governing board;
- Withhold state and/or federal funding;
- Move an LEA to reimbursement-based state funding, requiring expenditure reporting prior to cash distribution;
- Require an LEA to submit proof of actual expenditures; and/or
- Initiate termination of membership pursuant to CEO Policy 26.

Interagency

It shall be the policy of this LEA that interagency agreements or other mechanisms for interagency coordination are in effect to ensure services required for free appropriate public education are provided, including the continuation of services during an interagency dispute resolution process.

Legal Reference:

Title 17 of the *California Code of Regulations* (17 CCR) Section 52140

UNITED STATES CODE, TITLE 20 1412  
20 USC Section 1412(a)(12)

## Interagency

Pursuant to Title 17 of the *California Code of Regulations* (17 CCR) Section 52140, LEAs must develop and maintain local interagency agreements with Regional Centers. Agreements must include (as applicable to charter LEAs):

1. The responsibilities of each LEA and Regional Center in meeting the terms of the agreement;
2. Procedures for coordination of child find activities with local public agencies and Regional Centers to identify infants and toddlers who may be eligible for early intervention services;
3. Specific procedures for coordination of referrals for evaluation and assessment;
4. Procedures for the assignment of a service coordinator;
5. Interagency procedures for identifying the responsibilities of the regional center and LEA for completing the evaluation and assessment and determining eligibility within the time requirements contained in Section 52086 of these regulations, when an infant or toddler may receive services from both the Regional Center and LEA;
6. Procedures for the timely exchange of information between Regional Centers and LEAs;
7. Mechanisms for ensuring the availability of contacts at Regional Centers and LEAs at all times during the year;
8. Procedures for interagency individualized family service plan (IFSP) development when infants and toddlers may be eligible for early intervention services from the Regional Center and the LEA or other state or local programs or services;
9. Procedures to ensure the provision of services during periods of school vacations when services are required on the IFSP;
10. Transition planning procedures which begin at least six months prior to a toddler's third birthday pursuant to EC Section 52112 of these regulations;
11. Procedures for resolving disputes between regional centers and LEAs;
12. Procedures for the training and assignment of surrogate parents; and
13. Procedures for accepting transfers of infants or toddlers with existing IFSPs.

Local interagency agreements must be dated and signed by representatives of the Regional Center and LEA. Interagency agreements must be reviewed by both parties annually, revised as necessary, dated, and signed by both parties as needed.