



Special Education and Charter Schools

**CARSNet 5th Annual
Charter Authorizers Conference
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Agenda

- Introduction
- Laws Applicable to Charter Schools
- Admission Obligations
- Special Education Services to Charter School Students – Relationship and Responsibilities
- SELPAs and Charter Schools
- Student Discipline
- Oversight





Intent of Charter Schools Act

- To provide opportunities to establish and maintain public schools that:
 - Improve school learning
 - **Increase learning opportunities for all pupils**, with emphasis on academically low achieving
 - Encourage innovative teaching methods
 - Create new professional opportunities
 - Provide parents with expanded choice
 - **Hold charters accountable for meeting pupil outcomes**
 - Provide vigorous competition to stimulate improvement





“Mega Waiver” – Ed. Code 47610

- A charter school is otherwise exempt from the laws governing school districts, except all of the following:
 - As specified in Section 47611. (CalSTRS/CalPERS)
 - As specified in Section 41365. (Charter School Revolving Loan Fund)
 - All laws establishing minimum age for public school attendance
 - The California Building Standards Code ... as adopted and enforced by the local building enforcement agency with jurisdiction over the area in which the charter school is located





Not Exempt From...

- Charter Schools Act (Ed. Code 47600 et seq.)
- State and Federal Constitution
- All federal laws (e.g., IDEA, ADA, and the Rehabilitation Act)
- Special Education Laws
- FERPA (student records)
- All laws that are a condition of funding for a specific program for which the charter school chooses to participate





Not Exempt From...

- State laws made expressly applicable to charter schools
 - No pupil fees (Ed. Code 49010 et seq.)
 - Immunization requirements (H&S Code 120325 et seq.)
 - Education of Foster Care and Homeless Students (Ed. Code 48850 et seq.)
 - Child Abuse and Neglect Mandated Reporter Training (Ed. Code 44691)



Types of Charter Schools

- Independent
- Authorizer operated (“dependent”)
- Conversion
- All-district charter school
- Countywide/Statewide





Charter School Process

- New charter school petitions
- Renewal
- Revocation
- Appeals
- Prop. 39 Charter Facilities
- Oversight





Petition Review – Elements

- “Reasonably comprehensive” description of the 15 elements.
 - Element 1 - Educational Program
 - Element 2 - Measurable Pupil Outcomes
 - Element 3 - Methods of Assessment
 - Element 8 - Admission Policies and Procedures
 - Element 10 – Student Discipline Procedures





Meeting Needs of All Students

- Charter petition must describe annual goals for each subgroup of students served, to be achieved in the 8 state priorities, and the specific annual actions to achieve those goals
- Potential Subgroups:
 - **Students with disabilities**
 - English Learners
 - Socioeconomically disadvantaged



Element 1 – Education Program

- (i) The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an “educated person” in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.
- (ii) The annual goals for the charter school **for all pupils and for each subgroup of pupils identified pursuant to Section 52052**, to be achieved in the state priorities, as described in paragraphs (2) to (8), inclusive, of subdivision (d) of Section 52060, **that apply for the grade levels served by the charter school**, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.
 - Revised by SB 75, effective 7/1/19 – charter schools were only required to address priorities “that apply for...the nature of the program operated by the charter school”



Element 2 – Measurable Pupil Outcomes

Element 3 – Methods for Assessment

- (B) **The measurable pupil outcomes identified for use by the charter school.** “Pupil outcomes,” for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school’s educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in subparagraph (B) of paragraph (3) of subdivision (a) of Section 47607. The pupil outcomes shall align with the state priorities, as described in paragraphs (2) to (8), inclusive, of subdivision (d) of Section 52060, that apply for the grade levels served by the charter school.
- (C) **The method by which pupil progress in meeting those pupil outcomes is to be measured.** To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.



Charter School Obligations Admissions and Discrimination

- Required Affirmations and Element 8 (Admission Procedures)
- Must admit all who wish to attend
- Admission shall not be determined by where in the state student or his/her parent or guardian resides
- Shall not discriminate against any student based on characteristics listed in Education Code section 220 (includes disability)
- Public random drawing (lottery) if the number of students who want to attend exceeds capacity



Lottery Process – Discretionary Preferences

- Preferences shall be consistent with federal law, the California Constitution, and Education Code section 200
- **Preferences shall not result in limiting enrollment access for pupils with disabilities**, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation



Special Education Responsibility

- If charter school is part of authorizer LEA (“school of the district”):
 - Authorizer is responsible (Ed. Code 47641; 47646)
- If charter school is its own LEA:
 - Charter school is responsible
 - Authorizer retains oversight responsibility more akin to other areas of operation



“School of the District” – Default Arrangement

- If a charter school is deemed a school of the district for special education, the chartering district has direct liability for special education since the district becomes the responsible district (“district of residence”) for special education purposes
 - Even out-of-district students must receive special education services in the same manner as district students, at the chartering district’s expense
 - Services are not confined to those available on-site at charter school
 - Charter school must contribute an equitable share of its LCFF base grant to support district-wide special education services, commonly referred to as “encroachment” costs
 - Collaboration necessary for the district to do its job
- A charter school that is deemed to be a “school of the district” for purposes of special education must be treated like any other district school in the receipt of special education funding and services



Charter School as LEA

- A charter school may also become an independent LEA for special education if it can provide verifiable, written assurances to the district that the charter school will participate in a SELPA as a member-LEA
- A charter school cannot be forced to become its own LEA or have fiscal requirements placed on them which are not placed on other public schools in the LEA (Ed. Code 47646 and 47647)
- A charter may apply to any SELPA to become their own LEA, as outlined in the Local Plan (Ed. Code 47641(a))



Charter School as LEA

- Must be accepted by a SELPA in accordance with its charter school policy and legal requirements and timelines for SELPAs in order to be an LEA
- Specific timelines for notifying current SELPA of intent to become LEA
- Application process and timelines may be set by each SELPA
- Provide “verifiable, written assurances”
- Assume all the responsibilities of a district in the provision of services, ensuring compliance, and special education funding.



Charter School as LEA

- Participate in the SELPA governance structure
- May require revisions to SELPA allocation plan
- May apply to other SELPAs if refused membership
- As of January 1, 2010, SELPAs may accept out-of-area charter schools under certain conditions
 - SELPAs that accept out-of-area charter schools are Desert Mountain, Lodi, Yuba County, Sonoma County and EL Dorado Charter SELPA
 - Others been approved



Change of Status On Renewal

- *Today's Fresh Start Charter School v. Inglewood USD Case*
 - Charter School submitted a document to its authorizer entitled “Renewal and Material Revision of the Today's Fresh Start Charter School Petition”
 - Petitioners sought renewal of the charter and request to add a second location
 - Court held that a request for material revision of an existing charter is governed by different procedures than a petition for renewal of an existing charter, and that the school district was correct to consider them separately
- Election to change LEA status for purposes of SPED is a material revision requiring authorizer approval.



SELPA Responsibilities

- Assist districts in developing and implementing MOUs with charter schools
- Assure that charter schools fulfill special education requirements
- Assure that LEA charter schools receive equitable special education funding
- Adopt a charter school policy which delineates the requirements for charter schools, or other districts, to become members of the SELPA



SELPA Responsibilities

- Monitor that charter school students have access to services from other agencies
- Provide regionalized services and program specialist services
- Encourage charter school staff to participate in staff development opportunities



Charter School SELPAs (“CHELPAs”)

- Statewide benefit charters authorized by SBE
- Other charters seeking LEA status
- No geographic limitations
- Logistics challenges
- Financial impact
- Interagency agreements
- Provision for a full continuum of services
- El Dorado, Los Angeles County, and Sonoma County



Charter School Responsibilities

- Charter schools are independently responsible for their educational program and its compliance with applicable state and federal laws
 - If school of the district then district is responsible under IDEA
- This includes:
 - student recruitment
 - admissions
 - attendance
 - discipline
 - notices
 - Compliance with Section 504, Title IV of the Civil Rights Act of 1964 (race, color, or national origin), Title IX of the Education Amendments of 1972 (sex), Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act Amendments Act of 2008 (disability), and any other applicable federal and state laws



Admissions

- Occasionally a parent wants to give the child a “fresh start” and not reveal that the student was receiving special education services in the prior district
- Charter and authorizing district are responsible for child find and ensuring FAPE for all children
- Charter school enrollment materials may include statement that falsification of information will result in disenrollment of the child from the charter school
- Charter school may inquire if the parent had previously withdrawn permission for special education services in prior district



Admissions

- “Screening out” student practices
 - Charter school must not in any manner encourage parents to withdraw permission for special education in order to be admitted
 - Charter school must not, even subtly, discourage parents of children with disabilities from enrolling
- Intent to enroll/admission forms
 - What can/can’t be asked?
- District oversight should include careful monitoring of petitions and admission/enrollment practices/policies to ensure charter school is admitting all who wish to attend and not discriminating



Admissions – Ed. Code 47605(d)(4)

Added by SB 75 Effective July 1, 2019:

(A) A charter school shall not discourage a pupil from enrolling or seeking to enroll in the charter school for any reason including, but not limited to, academic performance of the pupil **or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2).**

- [(2)(B)(iii) **Preferences shall not result in limiting enrollment access for pupils with disabilities,** academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation.]



Admissions – Ed. Code 47605(d)

(B) A charter school shall not request a pupil's records or require a parent, guardian, or pupil to submit the pupil's records to the charter school before enrollment.

(C) A charter school shall not encourage a pupil currently attending the charter school to disenroll from the charter school or transfer to another school for any reason including, but not limited to, academic performance of the pupil **or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2)**. This subparagraph shall not apply to actions taken by a charter school pursuant to the procedures described in subparagraph (J) of paragraph (5) of subdivision (b).



New Parent Notice & Complaint Process

- Parent Notice Requirement
 - CDE shall develop a notice of the requirements
 - Notice shall be posted on a charter school's website and charter school shall provide a parent/guardian, or a pupil if the pupil is 18 years of age or older, a copy of this notice at all of the following times: (i) When a parent, guardian, or pupil inquires about enrollment; (ii) Before conducting an enrollment lottery; (iii) Before disenrollment of a pupil.
- Complaint Process
 - A person who suspects that a charter school has violated the requirements may file a complaint with the chartering authority
 - CDE shall develop a template to be used for filing such complaints



Transfers and Interim Placements

- Implement the student's IEP, or provide comparable services as those included in the IEP, in effect at the time student transfers to charter school (Ed. Code 56043)



School of District – Oversight and Special Education

- Authorizing district is ultimately responsible for ensuring all students with disabilities, including students attending charter schools, receive FAPE. Is FAPE different at a charter school?
- Due process hearing requests are filed against the district, and sometimes can be filed against the charter school as well, although they are not a necessary party. Proper?



Oversight and Special Education

- Ed. Code 47646(c) specifies:

“the local educational agency (district) that granted the charter shall ensure that each charter school that is deemed a public school for purposes of special education also contributes an equitable share of its charter school block grant funding to support district-wide special education instruction and services.”



Oversight and Special Education

- Authorizer must ensure equitable distribution of special education funds and/or services, in the authorizer's discretion
- Districts may provide district staff to provide services with disabilities in charter schools
- Contract for services
- Use MOU for sharing funding and services
 - District allocates appropriate funding to charter school, or charter submits bills for reimbursement by the district



What about...?

- CDE Compliance Complaints
- Office for Civil Rights
- Uniform Complaint Procedures/Parent Complaints
- ACLU



Charter Schools and Student Discipline

- Charter must describe the procedures by which pupils may be suspended or expelled
- Charter schools are not obligated to comply with Education Code
- Procedural components must be tailored to a charter school's governance/administrative structure, and must provide due process, commensurate with the level of discipline sought to be imposed
- Careful attention must be given to discipline procedures for special education students
 - Does the Charter School provide due process for all students?
 - Does the Charter demonstrate an understanding of the rights of students with disabilities in regard to suspension and expulsion?



Scott B. Case

- In *Scott B. v. Board of Trustees of Orange County High School of Arts* (June 14, 2013) 217 Cal.App.4th 117, the California Court of Appeal, Fourth District, ruled that a charter school student was not entitled to an evidentiary hearing before being "dismissed" by the charter school
- Found no denial of fundamental right to an education
- The Court reasoned – unlike public schools generally, the charter school was a school of choice. No student is required to attend.
- The Court distinguished dismissal from expulsion in that dismissal did not preclude the student from enrolling in another school like an expulsion would
 - Student was “free to enroll in another school without the loss of classroom time”



Scott B. Impact?

- The decision does not address or establish precedent on charter school students' constitutional right to due process in being disciplined
- Ruling did not consider placement, rehabilitative and safety implications for the student or students/staff at the school the student enrolls in after "dismissal"
- Impact of Changes in the law effective January 1, 2018



Element 10 - Student Discipline Procedures

- Charters must include a reasonably comprehensive description of the following:
 - The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed, disenrolled, dismissed, transferred, or terminated from the charter school for any reason. **These procedures, at a minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements.**
 - Express minimum due process requirements added for suspensions and expulsions

(Ed. Code 47605(b)(J), added by AB 1360, effective 1/1/18.)



Element 10 Student Discipline Procedures

- **Charters must contain a clear statement** that no pupil shall be involuntarily removed, disenrolled, dismissed, transferred, or terminated by the charter school for any reason, unless the parent or guardian of the pupil has been provided written notice of intent to remove, disenroll, dismiss, transfer, or terminate the pupil no less than five school days before the effective date of this action.

(Ed. Code 47605(b)(J)(iii), added by AB 1360, effective 1/1/18.)



Discipline Oversight

- Understand and oversee charter school recruiting/outreach and admission practices, and monitor changes to student enrollment
- Education Code requires charter schools to notify district of residence and authorizer if a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason
- Shall upon request also provide a copy of the cumulative record of the pupil, including a transcript of grades or report card, and health information



Questions





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