

POLICY 18

**PROVISION OF SPECIAL EDUCATION SERVICES
TO STUDENTS VOLUNTARILY ENROLLED IN
CHARTER SCHOOLS**

Adopted by Superintendents' Council 4/3/00

Revised 10/2/00, 4/2/01

SONOMA COUNTY SELPA

**PROVISION OF EDUCATION SERVICES TO STUDENTS
VOLUNTARILY ENROLLED IN CHARTER SCHOOLS**

INTRODUCTION

This policy applies to all charter schools that are chartered by any of the Sonoma County SELPA member districts or the Sonoma County Office of Education (SCOE), or are granted a charter on appeal by the Sonoma County Board of Education or the State Board of Education in which oversight responsibilities have been assigned to a district within the SELPA. This policy does not extend to a charter school that was chartered by, or assigned to, an entity that is not a member of the SELPA.

The purpose of this policy is to clarify the relationship between charter schools, member school agencies, and the SELPA. This policy has the further purpose of assisting applicable charter schools and chartering districts that are members of this SELPA with their individual and mutual responsibilities under the law. In addition, this policy has the purpose of assisting applicable charter schools and chartering agencies to meet the special education needs of all eligible students enrolled in applicable charter schools.

Pursuant to legal provisions of both federal and state law, eligible students enrolled in charter schools are entitled to special education services provided in the same manner as such services are provided in other public schools and charter schools within the SELPA. All parties shall comply with all applicable requirements of state and federal law regarding provision of special education services (Education Code 56000 et seq., Individuals with Disabilities Education Act 20 U.S.C. Chapter 33). It is understood that a charter school shall not discriminate against any pupil in its admission criteria on the basis of disability. Funding for special education services, participation in the governance structure, and responsibility for provision of services shall be based on the following: 1) whether the charter school is approved as an LEA or is deemed to be a public school within the LEA that granted the charter, and 2) the agreement (MOU) between the charter school and sponsoring LEA.

Charter schools and sponsoring districts must delineate in the charter or in a memorandum of understanding (MOU) the entity responsible for providing special education instruction and services. These documents should clarify the roles and responsibilities of each party with regard to IEP meetings, authorization of services, implementation of due process rights and legal representation. These documents must also reference any anticipated transfer of special

education funds between the granting entity and the charter school, if any, and any provisions for sharing costs, deficits and/or proration factors in funding.

The charter school recognizes the responsibility to deliver services to any eligible child enrolled in the charter school and shall not seek assistance, reimbursement, or any other type of responsibility from the school district where the child actually resides unless otherwise provided by law.

The charter should also acknowledge that in absence of SELPA approval that the charter school is an LEA for special education purposes, the charter school will be deemed a public school within the chartering entity¹.

SELPA INVOLVEMENT WITH APPROVAL AND RENEWAL OF CHARTERS

Prior to approval of a new charter school or renewal of an existing charter school, the charter school petitioner(s) are required to consult with both the superintendent or designee of the chartering entity and the SELPA Director to ensure awareness of district and SELPA guidelines and timelines as they relate to special education. Specifically, the charter presented and related MOU must provide assurances that all eligible students enrolled in the charter school will receive appropriate special education services in accordance with federal law and the SELPA Local Plan for Special Education (Local Plan).

Enrollment:

The charter shall provide that no student otherwise eligible to enroll in the charter school will be denied nor discouraged from enrollment due to a disability or due to the charter school's concerns about its ability to provide appropriate services². The charter school shall fully inform parents of students with disabilities seeking enrollment in the school of their rights, educational options available, and the category of charter school to which it belongs. A district reviewing the petition for the establishment or renewal of a charter school may not refuse to grant the petition solely because the charter school might enroll students with disabilities who reside in a SELPA other than the one in which the district is a member.

¹ The charter school is deemed a public school when first granted a charter and cannot be deemed an LEA in this SELPA until the charter school has complied with all procedures outlined in this policy.

² Petitioner must confirm in writing that they will not discriminate due to disability.

Within the requirements of Education Code Section 47605 (5)(A), the charter must contain a reasonably comprehensive description of the charter school's educational program, as it relates to the provision of special education services, including the following:

- Assurances that the charter school will comply with all provisions of federal law and implementing regulations related to the rights of disabled students and their parents (20 U.S.C. Chapter 33, the Individuals with Disabilities Education Act).
- Assurances that the charter school will adhere to the policies, procedures, and requirements of the SELPA Local Plan for Special Education.
- A description of the means by which the charter school intends to serve students with disabilities. This will include a specific reference as to whether the charter school intends to be deemed an LEA or public school for the provision of special education services.
- The procedures for ensuring that students are referred, assessed and served in a timely manner.
- Assurances that staff members providing special education services are appropriately credentialed.
- Assurances that the facility used by the charter school does not present physical barriers that would limit an eligible student's full participation in the educational and extracurricular program³.
- Assurances that the charter school will follow all federal laws regarding discipline and change of placement of special education students.
- Dispute resolution procedures that will apply to any disputes between educational entities, including the SELPA, regarding the provision of special education services in the charter school.

It is recognized that specific detail about procedures and delivery systems may be set forth in a MOU between the charter school and the chartering entity rather than the charter itself. However, the SELPA encourages the parties to confirm the details prior to approval or extension

³ Affirms charter school responsibilities under Section 504 of the Rehabilitation Act of 1973 (34 CFR 104) hereinafter "504".

of the charter.

CATEGORIES OF CHARTER SCHOOLS

For the purposes of provision of special education services only, charter schools shall be deemed either a public school within the chartering district or separate LEA that receives special education funds and provides services independent of the chartering entity. It is understood that this status is separate and apart from the actual legal status of the charter school as provided in Education Code section §47604. All approved charter schools will be deemed public schools within the chartering entity until the charter school has been deemed an LEA following this policy. The categorization as a separate LEA will become effective on the first day of the fiscal year (July 1), following final approval by the SELPA Superintendents' Council.

A. Public School Within a School District or SCOE

As set forth in the Education Code, charter schools that are deemed to be public schools within the chartering entity will participate in state and federal funding in the same manner as other schools or programs within the chartering entity. The chartering entity will be responsible for ensuring that all children with disabilities enrolled in the charter school receive special education and designated instruction and services in a manner that is consistent with all applicable provisions of SELPA policies and federal law. To that end, the chartering entity and the charter school petitioner must clarify by way of the charter or a Memorandum of Understanding the responsibilities of each party for the actual delivery of special education services including referral, assessment and funding. The chartering entity and the charter school will determine the policies and procedures necessary to ensure that the protections of special education law extend to students in the charter school in the same manner as students enrolled in other schools or programs administered by the chartering entity.

The chartering entity will:

- Receive all applicable special education funds as specified in the SELPA's Special Education Funding Allocation Plan. The allocation per ADA and pupil count in the charter school will be the same as that received by the chartering entity.
- Represent the needs of the charter school in the SELPA governance structure.

The charter or Memorandum of Understanding will clarify the following:

- Procedures and designation of responsibilities for ensuring that all eligible students enrolled in the charter school are appropriately referred, assessed and served in a timely manner.
- Procedures and responsibility for procuring and funding appropriate special education services for enrolled students.
- Procedures and responsibilities for procuring necessary special education services or contracts for services with public or private educational agencies.
- Responsibility for costs of services, which exceed funding
- Responsibility, if any, for excess costs of chartering entity
- Responsibility for costs related to legal fees and due process proceedings.
- Designation of administrative costs related to the above.

It is also recommended that a Memorandum of Understanding or Business Services Agreement address the following items:

1. If the district will assume responsibility for the direct provision of special education services for students with disabilities attending the charter school:
 - A description of what services will be provided, who will provide the services, and how and where the services will be provided.
 - An assurance that a student with disabilities attending the charter school will have access to special education services in the same manner as a student with a disability who attends another public school of that district.
 - An assurance that the charter school and its employees will work under the direction of the district with regard to the delivery of services.
2. If the charter school will assume direct responsibility for the provision or procurement of special education services for students with disabilities attending the charter school, the MOU shall include a description of the distribution of the charter school's equitable share of state and federal special education funding based on the SELPA's Special Education Funding Allocation Plan. A description of

what assistance, if any, shall be provided by the District.

3. An agreement which clarifies what responsibility either party has to defend, indemnify, and hold harmless the other party and its employees against any liability arising from the acts or omissions of the charter school and/or districts, its agents or employees while performing services under the MOU and charter.

B. Charter School As An LEA Within The SELPA

A charter school that was chartered by or assigned to a SELPA member may apply to the SELPA Superintendents' Council to become an LEA for the provision of special education services. Application must be made to the SELPA on or before February 1 of the school year preceding the school year in which the charter school anticipates operating as an LEA within the SELPA. LEA status will not become effective prior to July 1 of the year in which final approval was granted. Once granted LEA status, a charter school will participate in the governance of the SELPA in the same manner as all other LEAs in the SELPA.

The applicant charter school will be deemed an LEA if the SELPA Superintendents' Council determines that the charter school has met all requirements to be included as a member LEA of the SELPA as specified in this policy and the Local Plan. These requirements include:

- Provide assurances that all eligible individuals with disabilities (ages birth to 22) shall have access to appropriate special education programs and services
- Provide assurances of its knowledge and understanding of applicable special education laws
- Provide assurances that each certificated employee is appropriately credentialed to serve in his/her assignment
- Provide necessary staff as required to meet federal mandates
- Follow all requirements of the SELPA Local Plan
- Utilize SELPA approved forms
- Provide transportation as indicated on the student's IEP

- Provide assurances that the charter school understands its sole legal and financial responsibility to provide appropriate services to eligible students and that the charter school shall not seek defense or indemnification from the SELPA or SELPA members unless liability is the result of acts or omissions of other agencies, their agents or employees, while performing services under an agreement

Once deemed an LEA, the charter school shall:

- Participate in governance of the SELPA in the same manner as all other LEAs in the SELPA
- Contribute to, participate in, and receive the benefits of reimbursement from all SELPA fiscal pools and participate in any chargebacks in the same manner as other members
- Receive state and federal funding for special education in accordance with the SELPA Special Education Funding Allocation Plan
- Be responsible for all costs incurred in the provision of special education services to students enrolled in the charter school. These costs may include, but are not limited to, instruction, related services, transportation, nonpublic school/agency placements, inter/intra SELPA placements, due process proceedings, complaints and attorney fees
- Document that all state and federal special education funds apportioned to the charter school are used for the sole purpose of providing special education instruction and/or services to identified students with disabilities

LEA status may be initially granted for a period up to five years congruent with the terms of the district and charter school agreement and may be granted one or more renewals by the Superintendents' Council. Each renewal shall be for a period of five years.

LEA status may be revoked by the Superintendents' Council if it finds that the charter school did any of the following:

- Committed a material violation of any of the conditions, standards, or procedures set forth in this policy or the Local Plan.

- Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement of special education funds.
- Violated any provision of law applicable to the charter school relating to special education.

The Superintendents' Council shall examine the pattern of conduct by the charter school in implementing special education laws. The decision to revoke may be based on the ability of the charter school to cure and correct violations and/or the charter school's ability to ensure ongoing, consistent compliance with all applicable special education laws.

Prior to revocation, the Superintendents' Council shall notify the charter school of any violation of this policy and give the charter school a reasonable opportunity to cure the violation, unless the Superintendents' Council determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

C. Charter School Affiliated With an LEA Outside of the SELPA

When a charter school has no affiliation with an LEA within the SELPA, neither the SELPA nor the local district within which the charter school is located has an obligation to reach agreement on the provision of special education services. If the charter school is granted status by an entity outside of the SELPA, the charter school is responsible for working with its sponsoring district and related SELPA in order to meet all special education obligations, including assessments except as provided in the SELPA policy, Admission of Local Educational Agencies to the Sonoma County SELPA. The provisions for programs and services by Sonoma County SELPA, or members, shall, if any, be determined in advance through written inter-SELPA agreements.

Any charter school in the State that is deemed to be an LEA may apply to join the SELPA as a member LEA pursuant to the requirements of the SELPA policy, Admission of Local Educational Agencies to the Sonoma County SELPA.