

Pilot Study of Charter Schools' Compliance with the Modified Consent Decree and the LAUSD Special Education Policies and Procedures

Office of the Independent Monitor *Modified Consent Decree* June 5, 2009

Executive Summary

During the 2008-2009 school year, the Office of the Independent Monitor (OIM) initiated a pilot study to examine the roles and impact of the District's charter schools on its performance toward achieving the requirements of the Modified Consent Decree (MCD) and compliance with federal and state special education laws and regulations. The pilot was not intended to provide a comprehensive review of the special education programs at charter schools, but rather to provide a description of select indicators and features based on readily available information. To examine these issues, the pilot was guided by the following research questions:

1. Do the District's policies and procedures pertaining to charters promote compliance with the Modified Consent Decree, and federal and state special education law?
2. Do the District's policies and procedures promote equitable access and opportunity for students with disabilities (SWD) for a free and appropriate education at a District school of choice, such as charter schools?
3. Does the District demonstrate the organizational capacity to ensure the implementation and oversight of its charter schools associated with the mandated activities of the Modified Consent Decree and special education law?
4. Do charter schools present potential barriers or concerns related to the substantial systemic compliance of the District's special education programs and with the program accessibility requirements under federal and state law?

To address these questions, the OIM conducted the following:

- A review of documents related to charter school policy and compliance with special education law.
- An external review of such documents by Sue Gamm, Esq.
- Informal conversations/interviews with staff from the Charter School Division and Division of Special Education.
- Walk through of four selected charter schools.

Highlights from the pilot are presented below:

Charter School Policies and Compliance with the MCD, Special Education Law, and District Special Education Policies and Procedures

To determine if the policies require compliance with specific elements of federal and special education law and the MCD, a document review examined specific elements included within the relevant policies. The review found:

- The documents contained direct language that articulates a charter school's obligations for complying with the MCD, special education law, and District's special education policies and procedures.
- The review noted several areas that contained thorough descriptions of the charters' responsibilities related to compliance with special education law, such as: the documentation of special education services, complaint response and due process.
- Some areas identified as requiring additional information and/or clarification to ensure compliance include: Child Find and Assessment; Discipline and Expulsion; Governance; and, Access Compliance.
- Despite the clarity within the documentation that charters must adhere and comply with the District's special education policies and procedures, several challenges appear to present barriers to achieve such compliance.

Enrollment of Students with Disabilities at Charter Schools

The LAUSD has 148 charter schools which serve approximately 58,000 students. This represents approximately 15% of the District's schools and 8% of its student population. Enrollment data is important when identifying whether a charter school's policies promote equitable access for SWD. If the population of SWD attending charters is proportionate to that attending the District Operated (DO) schools, it could be indicative of equitable access. Conversely, if differences exist, it could be concluded that potential biases exist.

During the 2008-2009 school year:

- SWD attending charter schools made up 7.6% of the overall charter student population, while SWD consisted of 11.3% of the overall student population attending DO schools which indicates that SWD are disproportionately under-enrolled at charter schools.
- Students with low incidence disabilities attended charters representing 1.11% of the total charter enrollment, while students with low incidence disabilities made up 3.09% of the DO school population of SWD. Based on this, the relative risk ratio for students with low incidence disabilities to be enrolled in charter schools is 0.36, which means that students with low incidence disabilities enrolled at LAUSD charters are significantly under-represented.
- Differences in the enrollment of SWD were noted between affiliated, independent conversions and independent start-ups. These differences may be attributed to the affiliated and conversion schools previous standing as a DO school.

Policies and Procedures for the Recruitment, Enrollment and Retention of SWD at Charter Schools

Some of the areas within these policies that may be contributing to the disproportionate enrollment of SWD at charters may be related to the following processes: preference for petitioners that provide a comprehensive learning experience for students that are academically low-achieving; identification of the demographic target population intended to serve; recruitment plan for SWD; lottery/selection process for SWD; and, enrollment procedures of SWD. The review found:

- A lack of clarity or absence of preferences for schools that provide a comprehensive learning experience for a traditionally academically low-achieving group of students (students with disabilities), during the review process for the establishment of charters.
- Both the new charter application and the initial screening matrix (checklist) sections did not include nor require any reference to SWD in the identification of the schools demographic subgroups.
- Neither the application description, supplemental education program description, nor the Checklist addressed the petitioner's anticipated recruitment of SWD.
- Several areas of concern within the lottery/selection process such as: the absence of a uniform application for the enrollment applications utilized by schools, and a lack of specificity of the role and oversight assumed by the District within the lottery selection.
- The absence of guidance of the LAUSD's authority to require charter schools to expand its provision of special education services when the District believes that doing so would enable a student to be appropriately educated in that school.

Availability of Programming and Services

- During the 2008-2009 school year, 12 of 148 (8.1%) charter schools offered a special day program as an option for serving SWD. In contrast, 87% of DO schools provided this same program option. Collectively, the lack of such programs indicates a disproportionate availability of special education services offered at charters.
- The disproportionate availability of such programs may indicate a lack of oversight and responsibility by the District to ensure the equitable access to attend charter schools for SWD.
- The charter application lacks clarity for independent start-up charters on its obligations to provide transportation as a related service to SWD. This may be in violation of IDEA regulations particularly considering that the majority of charter schools do not offer any type of transportation service.

Accountability, Monitoring and Oversight of the MCD, and Special Education Compliance

Considering the different governance structure of charters, the organizational processes in place at charters to promote the implementation of the MCD, the LAUSD special education policies and procedures, and compliance with IDEA were examined. The pilot noted:

- Differences between charter schools and DO schools in the dissemination and oversight of the implementation of MCD Progress Reports, Targeted Strategy Plans and MCD Accountability Plan.
- Challenges in differences within the line authority for holding charters accountable such as limitations with holding independent charter school employees accountable since they are not LAUSD employees.
- That the Division of Special Education is in a unique position from other District departments as the only unit with direct policy implications and interaction with charter schools that influence day-to-day operations.
- The Charter School Division maintains a primary function of a facilitative role, with minimal authority to hold charters and its employees accountable.
- The District provides opportunities for charters to participate in the trainings to develop the necessary capacity to implement the requirements of the MCD and District's special education policy. These trainings appear to be minimally attended, possibly because the trainings are optional.
- Minimal compliance with the requirement to fully utilize the Welligent IEP system, particularly, the limited use of the Welligent service tracking feature.
- Differences in modes of communication for charters which primarily rely on email. Charters do not have access to *Inside LAUSD*, which contains features to distribute special education policy updates, bulletins, and memorandums.

Substantial Systemic Compliance with IDEA and the MCD

The MCD consists of performance outcomes that aim to improve the District's systemic compliance with IDEA and the MCD. To examine the impact of charter schools' on the District's substantial systemic compliance with the MCD, special education law and federal program accessibility requirements, the pilot found:

- That charter schools are not meeting the MCD target of the 60-day timeline and may imply a negative impact on the substantial systemic compliance of the District to complete timely initial evaluations.
- Potential systemic compliance issue with conducting annual IEP meetings in a timely manner as both charter schools (29.5%) and DO schools (19.5%) had overdue IEP meetings.

- Charters present a significant problem in the District's ability to ensure the delivery of special education services. Approximately 50% of all charters are not using the Welligent service tracking log feature, while 24.6% showed evidence of partial logs.
- The walk-through found three of four schools with overall program accessibility, while demonstrating a number of non-compliant ADA items. The fourth school was non-accessible.

Pilot Study of Charter Schools' Compliance with the Modified Consent Decree and the LAUSD Special Education Policies and Procedures

Office of the Independent Monitor *Modified Consent Decree* June 5, 2009

I. Introduction

The *Chanda Smith* Modified Consent Decree (MCD) is a federal class-action settlement agreement that requires the Los Angeles Unified School District (LAUSD) to address and improve its systemic compliance with special education law. Initiated in 1993 and modified in 2003, the agreement charges the federally appointed independent court monitor with the determination to disengage the LAUSD from court oversight upon achieving compliance with the requirements of the MCD and special education law.

The MCD clearly delineates the requirements the District must meet in order to be disengaged from court oversight. To summarize these requirements, the Independent Monitor may disengage the District upon the following¹:

The District has achieved each of the outcomes in accordance with Paragraph 87 above and, in the Independent Monitor's judgment the District's special education program has no systemic problems that prevent substantial compliance with applicable federal special education laws and regulations.

The Independent Monitor has certified that the District has entered into binding commitments to expend the \$67.5 million dollars required by Section 10 of this Modified Consent Decree and, in the Independent Monitor's judgment, the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

The MCD also states that this agreement is “binding on all public schools of the District, including, but not limited to, charter schools, alternative schools, charter complexes, magnet schools and to any schools formed or approved in the future by the District.”

II. Background of Charter Schools and Terms

The growth of charter schools has continued to evolve since the school reform efforts of the '80s and '90s to expand school choice options. Charter schools changed the landscape of the traditional structure of school choice by functioning under state charter statutes and providing a higher level of independence than options aligned with the public school system, such as magnet schools (Rhim, Ahearn & Lange, 2007). The charter model emphasized increased autonomy and freedom from district mandates, coupled with an increased accountability from charter contracts and parental choice, in order to foster the creation of new and innovating schools that would drive existing public schools to improve and compete for students (p. 50).

¹ To view all of the requirements necessary for disengagement, see MCD.

The LAUSD Board of Education Charter Policy (2002) reflects this framework and the legislative intent outlined by California Charter Act Law of 1992 which states:

47601. It is the intent of the Legislature, in enacting this part, to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following:

- (a) Improve pupil learning.
- (b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.
- (c) Encourage the use of different and innovative teaching methods.
- (d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.
- (g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools.

Consistent with the legislative intent, the Board of Education's policy promotes the approval of charter schools that increase learning opportunities for all students and expand schools of choice.

In the LAUSD, charter schools are established in two ways. Petitioners may initiate an independent charter as a "start-up," meaning that the school is being established from the ground-up. Petitioners may also be granted charter status to existing District Operated (DO) schools that petition to convert to charters. These schools are referred to as "conversion" charters and may petition to convert to either "independent" or "affiliated" status. These options represent the three charter "types" of the LAUSD and present some differing characteristics.

For example, independent charter schools operate independent of the LAUSD policies and procedures that govern its DO schools. In addition, independent charters may petition to be the exclusive employer of its employees, and its employees are not considered LAUSD personnel. Independent charters are recognized by the State as their own Local Education Agency (LEA) for certain purposes and may be either locally or directly funded². For the purpose of special education, charters are deemed public schools of the District and part of the LAUSD Special Education Local Plan Area (SELPA) (p.7).

Affiliated charters are semi-autonomous schools that operate similar to DO schools with respect to its policies and procedures. Affiliated charters may have some flexibility in areas related to the instructional program, mission and vision. These schools are not considered LEAs and its employees are LAUSD employees.

² LAUSD Draft Charter Schools Policy, 2009.

A primary difference between independent start-ups and conversion charter (affiliated or independent) schools is that conversion schools have already established instructional programs, special education programs and services, student populations and school site facilities.

The governance and accountability structure also varies for charter schools and by charter type. For instance, independent charters are afforded autonomy from District policies and governance structure. Independent charter schools are governed by a board of directors which functions much like the Board of Education, responsible for developing policy and oversight of its implementation. While independent charters are not subject to any direct-line authority from the LAUSD, they are monitored by the Charter Schools Division (CSD). The CSD's primary responsibilities include facilitating and coordinating the new and renewal petition process, and overseeing and monitoring the charter school's obligations and responsibilities as stipulated within their respective charter. The CSD also recommends to the Board of Education which petitions should be approved, renewed, revoked or denied. However, the CSD does not have any direct-line authority of an independent charter school's personnel or its board of directors.

District operated schools follow a direct-line authority of the local district structure which goes through the local district superintendent, directors and site principal. While affiliated charters share this same governance structure and line authority, independent charters do not.

III. Rationale of Pilot Study

Currently, the LAUSD has 148 charter schools which serve approximately 58,000 students. This represents approximately 15% of the District's schools and 8% of its student population. Of these schools, 136 are independent charters, while 12 are affiliated charters.

During the 2008-2009 school year, the Office of the Independent Monitor (OIM) initiated a pilot study to examine the roles and impacts of the District's charter schools on its performance toward achieving the requirements of the MCD and compliance with federal and state special education laws and regulations. The pilot aimed to broadly examine compliance with federal and state special education law, as well as the District's special education policies and procedures. The pilot was not intended to provide a comprehensive review of the special education programs at charter schools, but rather to provide a description of select indicators and features based on readily available information.

The pilot was designed to determine if potential areas of non-compliance exist collectively for charter schools that may affect the District's overall substantial systemic compliance. If identified, such areas of non-compliance may present potential barriers for the District to achieve disengagement from the MCD.

To demonstrate substantial systemic compliance, the District must show evidence of the necessary organizational capacity to effectively implement and monitor its special education programs. The issue of organizational capacity may have different implications for charter schools since these schools are afforded higher levels of autonomy and flexibility from District policy and oversight. For this reason, the pilot examined several indicators to determine the effectiveness of the District's organizational capacity to effectively implement and monitor the requirements of the MCD, special education law, and its special education policies and procedures at charter schools.

The pilot study sought to examine if non-compliance with the MCD, special education law and District policies and procedures existed. It was guided by the following research questions:

1. Do the District's policies and procedures pertaining to charters promote compliance with the Modified Consent Decree, and federal and state special education law?
2. Do the District's policies and procedures promote equitable access and opportunity for students with disabilities (SWD) for a free and appropriate education at a District school of choice, such as charter schools?
3. Does the District demonstrate the organizational capacity to ensure the implementation and oversight of its charter schools associated with the mandated activities of the Modified Consent Decree and special education law?
4. Do charter schools present potential barriers or concerns related to the substantial systemic compliance of the District's special education programs and with the program accessibility requirements under federal and state law?

IV. Methods

To examine these issues, the OIM conducted the following data collection activities:

1. An independent and internal review of the District's policies and procedures associated with the compliance of the MCD and special education laws at charter schools.
2. An independent and internal review of related documents pertaining to the petition and approval of new and existing (renewal) charters.
3. A review of District data associated with the MCD outcomes and special education programs.
4. Interviews/conversations with District personnel from the Division of Special Education and Charter Schools Division including:
 - Ylla De Leon, Coordinator, Charter/Private Schools, Division of Special Education
 - Sharon Bradley, Advisor, Charter Schools Division
 - Jose Cole-Gutierrez, Executive Director, Charter Schools Division
5. Site visits to conduct spot checks of compliance with the program accessibility requirements of federal and state law (ADA and Section 504).

The following documents were reviewed as part of this pilot.

- Los Angeles Unified School District Charter School Application Description (Application Description)
- Demographic Information for Prospective Site

- Charter Schools Guideline Checklist – Initial Screening
- Charter School Renewal Components
- LAUSD Charter Schools Division Renewal Criteria and Findings
- Required and Recommended Petition Language, including Special Education Program
- Guidance for Enrollment of Students with Disabilities
- LAUSD Power Point presentation by Donnalyn Jacque-Anton, Associate Superintendent and Didi Nubla, Deputy Budget Director on November 20, 2008
- Relevant California Education Code and Individuals with Disabilities Education Act (IDEA) provisions relevant to this issue
- Policy for Charter Schools, approved by the LAUSD Board of Education, June 25, 2002
- March 24, 2009 board reports for denial of renewal petitions for Charter of Los Angeles International Charter High School and Opportunities Unlimited Charter High School and to approve Equitas Academy Charter School
- Working Draft: Renewal Criteria and Findings & Refined Scoring System
- March 17, 2009, Audit Report: Approval Process for New Charter Schools, Office of the Inspector General
- Comprehensive site review tools
- California Charter Schools Act 1992
- The Field Act and Public School Construction: A 2007 Perspective, *California Seismic Safety Commission*

To obtain a legal perspective, the OIM contracted Sue Gamm, Esq. to conduct a review of the District's charter policies and procedures to identify areas of compliance with applicable special education law and the MCD. Gamm is a former senior school district administrator, Federal official and attorney with the Office of Civil Rights with expansive knowledge and experience with issues related to special education and charter school organizations. Her report, which includes a brief biography, is provided (Appendix A).

Data collection activities occurred between, November 2008 through May 2009. The pilot study's findings are organized to correspond with the four research questions.

V. Findings

Question #1

Do the District's policies and procedures pertaining to charters promote compliance with the Modified Consent Decree, and federal and state special education law?

This question focused on identifying whether the policies complied with the following:

- Modified Consent Decree
- Federal and State Special Education and Charter School Law
- District special education policies and procedures

To determine if the District's policies and procedures pertaining to charters were compliant with the obligations of the MCD, federal and state laws and regulation, and the LAUSD special education policies and procedures, relevant documents were reviewed, including:

- New and renewal petition/application and checklists
- Special education boilerplate language
- Documents related to school facilities

This section provides highlights of the findings from the review of these documents conducted by Gamm and the OIM.

Compliance with the MCD and Federal and State Special Education Law

To determine if the policies comply with the MCD, it is necessary to identify direct language which requires charters to comply. Therefore, this acknowledgement will articulate the expectation that for the purpose of the MCD, charter schools are District schools and subject to the same mandates, oversight and accountability of the MCD and applicable special education laws.

The document review found direct language within the application documents that articulate charter schools responsibilities for complying with the MCD. The inclusion of this direct language supports the premise that for the purpose of the MCD, charters are accountable to the same standards as DO schools.

To determine if the policies require charter schools to comply with federal and state special education law, relevant documents were reviewed to identify such direct language. The document review found evidence of such language.

To determine if the policies require compliance with specific elements of federal and special education law and the MCD, a document review examined specific elements included within the relevant policies. In her review, Gamm noted several areas that contained thorough descriptions of the charters' responsibilities related to compliance regarding the documentation of special education services, complaint response and due process to contain many useful elements (p.4).

Areas identified as requiring additional information and/or clarification to ensure compliance are discussed below. For the purpose of discussion, only general descriptions of selected findings are included.

Child Find and Assessment

Gamm found a discrepancy between the language included in the charter petition application and the federal and state provisions of special education law. Specifically, the language in the special education program description states:

The special education program description states that the charter will conduct special education search and find activities for private school students residing in its pre-charter attendance areas in accordance with state, federal and District policy.

Gamm notes that the Individual with Disabilities Education Act (IDEA) and state provision requirements pertain to the school district in which the private school is located, regardless of whether the student resides in that district.

In addition, she found the area related to the referral and assessment of students with disabilities to require additional clarification. The program description within the application states that the charter school will:

Identify and refer students with disabilities who demonstrate early signs of academic, social or behavioral difficulty that may require assessments for special education eligibility and placement in a special education program.

Gamm indicates that this guidance may not be aligned with the language and intent of IDEA and state provisions associated with Child Find. The law requires the referral of students *suspected* of having a disability rather than students with *identified* disabilities. This guidance may also be problematic as it may not sufficiently promote the Child Find activities specified by law.

Furthermore, she notes this guidance may encourage charters to refer students with “early signs” of academic, social or behavioral difficulties for special education assessment. This guidance may result in the lack of implementation of pre-referral interventions and a response-to-intervention approach, as well as promote inappropriate identifications.

Discipline and Expulsion

Gamm found that the guidance in two areas related to discipline and expulsion may lack clarity to promote compliance with IDEA and state provisions. First, the special education program description states that charters will:

“...comply with laws, including discipline. Discipline procedures will include positive behavioral interventions. Prior to recommending expulsion for a student with disabilities, the charter school will convene a manifestation determination IEP”.

Gamm notes that “the subject of expulsion is much more complicated than the above description implies and it leaves an impression that more may not be required” (p.12). Mainly, the description lacks the necessary guidance for schools when a student with a disability is referred for expulsion and is found to have behavior that is not a manifestation of the disability. Specifically, Gamm notes that the description should include guidance on the following IEP team requirements:

- To identify the educational services that will enable the student to continue to participate in the general education curriculum and to progress toward meeting his/her IEP goals
- Specify how these services will be provided and identify the location for the delivery of such services.

Gamm also found the language on the Application Description under *Element 10, Suspensions and Expulsions* to require an update to be aligned with the revised criteria for the manifestation determination under IDEA and the revised LAUSD special education policies and procedures manual (p. 253). Specifically, under this section, *Special Education Discipline Language for Charter Petitions*, the following guidance is provided:

If it is determined [through a review committee] that the student's misconduct was not a manifestation of his or her disability, that the student was appropriately placed and was receiving appropriate services at the time of the misconduct, and that the behavior intervention strategies were in effect and consistent with the student's IEP, the student may be expelled (p 13).

She notes that under IDEA the criteria for the manifestation determination were revised during the 2004 reauthorization to read as follows:

- Was the conduct caused by or did it have a direct & substantial relationship to the disability?
- Was the conduct the direct result of a failure to implement the IEP?

Outcome 5 of the MCD requires the District to reduce suspensions for students with disabilities. One of the approved targeted strategies within the Outcome 5 Target strategy plan is the implementation of the District's Discipline Foundation Policy approved by the Board of Education. Since the implementation of this policy is an integral part of the efforts to comply with the MCD, the District's policy should be updated to reflect this requirement for its charter schools. Furthermore, since charters are public schools of the LAUSD SELPA, the lack of the implementation of this policy by all charters would constitute systemic non-compliance with this requirement of the MCD. The document review did not find language that addressed the implementation of the District-wide discipline policy as specified in the target strategy plan for Outcome 5 of the MCD.

Governance

Gamm found discrepancies between the federally required grievance procedures and those included within the charter petition documents. Specifically, she notes that the charter application does not identify Title VI of the Civil Rights Act of 1964 (race, color and national origin) and the ADA. The importance of these grievance procedures is to require the "designation of at least one employee to coordinate compliance efforts, posting of grievance procedures, including investigations of noncompliance and compliance with relevant admission and employment" laws (p 16).

Access Compliance/Facilities

To restate, the MCD requires the Independent Monitor to determine that the District has no systemic problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations.

A review of the petition documents related to facilities requires charters to certify that their buildings meet compliance with all applicable laws and LAUSD policies. Several forms contain broad language that may infer compliance with applicable laws, however, the documents do not contain specific language of the applicable laws (i.e., ADA, Section 504) related to access compliance.

Gamm's review found one general reference within the documents that indicate charters must comply with the requirements of ADA. Gamm's comments follow:

The Initial Application Checklist at Element 6 (Health and Safety) clearly states that the charter application must contain an assurance that the schools' facilities will comply with a variety of requirements, including the ADA. However, neither the 2002 Charter School Policy nor Initial Application Description provides any information about compliance with the ADA. The Policy only specifies that a potential site will be inspected and evaluated by a District engineer or facilities staff for structural issues, child safety issues, adjacent uses (such as drug rehabilitation centers). The Initial Application Description only requires information pertaining to insurance, indemnification, and asbestos management. The document's last section on facilities states that a "certificate of occupancy" is required at least 45 days before school is scheduled to open in the facility. However, it is unclear whether this certificate includes a review of ADA compliance (p. 15).

Program accessibility appears to be addressed by the certificate of occupancy issued by the city. The District does not seem to assume any role in the oversight to ensure that charter schools meet compliance with ADA and Section 504. Furthermore, new charters may be approved before the facility is identified and based on a temporary site. Finally, the range of buildings types may exacerbate limitations with program accessibility, since charters may be housed in older non-traditional buildings (i.e., storefronts, churches) that may be outdated or not designed to accommodate people with disabilities.

In California, the Field Act sets seismic standards for new public school buildings to ensure the safety of school aged children (K-14) attending public and private schools. However, the Charter Schools Act of 1992 (47610) exempted charter schools from the provisions of the Field Act unless it is otherwise specified in their charter. In the LAUSD, only charter schools with facilities that are publicly funded are required to comply with the Field Act.

Compliance with the District's Special Education Policies and Procedures

Another important indicator for determining systemic compliance is the acknowledgement that charter schools are required to abide by the LAUSD's Special Education Policies and Procedures Manual. This is important considering that charters are afforded flexibility and autonomy from District policies and procedures. In addition, since the majority of the LAUSD's charter schools are considered independent and generally exempt from District policies and procedures, the inclusion of such language is essential.

The documentation associated with the new and renewal petitions clearly communicate that as part of the LAUSD SELPA, all charters must adhere to the District's special education policies and procedures. Gamm points out that in accordance with this requirement, the District states its responsibility to provide information and training regarding special education decisions, policies and procedures to the same extent as DO schools.

Despite the clarity within the documentation that charters must adhere and comply with the District's special education policies and procedures, several challenges appear to ensure such compliance. These challenges may be a result of the lack of specificity within the petition application on the District's authority and manner in which it will carry out this authority to enforce these policies. Gamm notes that the application only requires petitioners to describe these provisions as areas of responsibilities and does not require schools to identify the local

procedures to implement such responsibilities. In essence, this description requires charters to describe what they need to do, but not how they intend to carry it out. She comments that a more thorough description of the local level procedures would “enable LAUSD to ensure that a petitioner has thought through the intricacies of management and implementation of special education services, and understands the expanse of activities involved and their related fiscal impact” (p. 6).

A particular challenge expressed by both the Division of Special Education (DSE) and the Charter Schools Division (CSD) is the nature of the governance structure which limits the line authority to enforce such non-compliance. This challenge is observed within the responsibilities of the District to provide the necessary information and training on its special education policies and procedures. Although the DSE provides charters the information for obtaining the policies and procedures manual, it does not directly provide or mandate that they obtain the manual. Furthermore, when the DSE extends charters the opportunity to participate in District-sponsored related trainings it has minimal authority to make charters comply.

This issue of line authority is complex as the DSE is the only instructional unit with such a clear and direct relationship to charter schools. As Gamm noted above, this relationship may benefit from additional language to clarify the roles and responsibilities of charters as members of the LAUSD SELPA, particularly for independent charters.

Question #2:

Do the District’s policies and procedures promote equitable access and opportunity for students with disabilities for a free and appropriate education at a District school of choice, such as charter schools?

This section examines the potential impact of the District’s policies and procedures on the enrollment of SWD at charters. To examine this issue the pilot reviewed the following:

- Enrollment data of SWD at charters and DO schools;
- Policies and procedures relevant to the recruitment, enrollment, selection, and retention of SWD; and,
- The availability of special education programs at charters.

To frame this discussion, relevant elements of federal and state law, District policies and procedures, and components of the MCD that promote the participation of SWD are discussed below.

Two primary tenets of the legislative intent of charter law are to increase the learning opportunities for academically low-achieving students and to expand school choice for students and parents. The District’s policies governing charter schools support this intent and contain elements aligned to federal and state law that encourage an increase of the educational opportunities and programs for SWD.

In addition, the California Education Code promotes the participation and enrollment of SWD at charters, and requires compliance with the following regulations:

Education Code Section 47605 (d) (2) (A) states: “A charter school shall admit all pupils who wish to attend the school.”

*Education Code Section 47646 (a) states, in pertinent part:
 “A child with disabilities attending the charter school shall receive special education instruction or designated instruction and services, or both, in the same manner as a child with disabilities who attends another public school of the local education agency.”*

The MCD contains performance outcomes designed to expand learning opportunities and school choice for SWD and their families³. Also, in accordance with federal and state law, the LAUSD policy requires that new charters and those seeking renewal affirm in their petitions that they will not discriminate against any pupil on the basis of ethnicity, national origin, gender or disability.

Enrollment of Students with Disabilities at Charter Schools

Enrollment data is important when identifying whether a charter school’s policies promote equitable access for SWD. If the population of SWD attending charters is proportionate to that attending DO schools, it could be indicative of equitable access. Conversely, if differences exist, it could be concluded that potential biases exist.

As mentioned earlier, the LAUSD has 148 charter schools with a student population of approximately 58,000 students representing approximately 8% of the overall student population. During this same time period, charter schools’ enrollment of SWD was approximately 4,400 or 7.6% of the District’s overall population of SWD. For DO schools, SWD consisted of 11.3% of the overall population (Table 1).

The data was disaggregated to show differences in the enrollment of SWD at charters for students with high and low incidence eligibilities. For the purposes of the MCD, students with high incidence eligibilities include: specific learning disability, speech and language impairment and other health impairments. Students with low incidence disabilities include all other eligibilities⁴.

Table 1. Number and Percentage of Students with High and Low Incidence Disabilities Enrolled by School Type

School Type	Total Enrollment N	Total SWD		High Incidence		Low Incidence	
		n	%	n	%	n	%
Total	696,076	76,355	10.97	55,990	8.04	20,365	2.93
District Operated	638,076	71,936	11.27	52,215	8.18	19,721	3.09
All Charters	57,980	4,419	7.62	3,775	6.51	644	1.11

³ Outcome 2: Performance on the Statewide Assessment Program; Outcome 6 and 7: Least Restrictive Environment - Increase time in the General Education Setting; Outcome 8: Home School.

⁴ Includes all other eligibilities such as: Autism, Mental Retardation, Traumatic Brain Injury, Visual Impairment, Deaf and Hard-of-Hearing, Orthopedic Impairment, Multiple Disabled and Emotional Disturbance.

To identify potential differences in the enrollment of SWD, particularly students with low-incidence disabilities, enrollment data were analyzed by charter type (i.e., independent start-up, independent conversion and affiliated). Table 2 illustrates these differences by charter type.

Affiliated charters demonstrate the highest enrollment of students with low-incidence disabilities (2.55%) compared to independent conversions and independent start-ups (1.34% and 0.73%, respectively). These differences may be due to the previous status of affiliated and independent conversion charters as DO schools. Overall, the data indicate that students with low incidence disabilities may have less access to enroll and attend charter schools, with the least access for attending independent charters.

Table 2. Number and Percentage of Students with High and Low Incidence Disabilities Enrolled by Charter School Type

School Type	Total Enrollment	Total SWD		High Incidence		Low Incidence	
	N	n	%	n	%	n	%
All Charters	57,980	4,419	7.62	3,775	6.51	644	1.11
Independent Start-ups	35,490	2,432	6.85	2,174	6.13	258	0.73
Independent Conversions	15,473	1,293	8.36	1,086	7.02	207	1.34
Affiliated	7,071	694	9.89	515	7.34	179	2.55

When examining the data, a composite index (CI) was used to measure the representativeness of one group to another. The 2008-2009 enrollment data indicate that the population of SWD attending charter schools made up 7.6% of the overall charter student population, while SWD consisted of 11.3% of the overall student population attending DO schools. To determine if disproportionality exists, the OIM considered whether the enrollment of SWD at charter schools differed by more than 20% of the DO population of SWD⁵. Thus, the population of SWD attending charter schools would need to fall within the variance range of 9.04% to 13.56%. Based on this criterion, the enrollment of SWD at charter schools is disproportionately low.

During the 2008-2009 school year, 644 students with low incidence disabilities attended charters representing 1.11% of the total charter enrollment. In contrast, students with low incidence disabilities made up 3.09% of the DO school population of SWD. Using the 20% criterion above, the difference observed is well below the 20% variance range of 2.47% - 3.70%, and demonstrates that students with low incidence disabilities are disproportionately under-enrolled at charter schools.

⁵ According to the National Center for Culturally Responsive Educational System's (NCREST) practitioner brief, Disproportionate Representation of Culturally Linguistically Diverse Students in Special Education: Measuring the Problem, this approach was adopted by the Office of Special Education, Us Department of Education, in its initial implementation of IDEA 1997 mandate to monitor disproportionality.

http://www.ncrest.org/briefs/studnets_in_SPED_Brief.pdf The California Department of Education also uses a composition index measure of 20% to determine overrepresentation.

Also calculated were the risk index and relative risk ratio to further examine the disproportionality of students with low incidence disabilities. The risk index measures the proportion of a specific group of student to be served in a particular population. For example, the risk of students with low incidence disabilities for being enrolled at charters is 1.11. This means that approximately 1 out of 100 students with low incidence disabilities are likely to be enrolled at a charter school. The risk for the enrollment at DO schools for students with low incidence disabilities is 3.09, or approximately 3 out of 100 students.

The relative risk ratio which compares the risk of two different groups to determine proportionality was also used to determine the degree or extent of this disproportionality. A relative risk ratio of 1.0 indicates precise proportionality, a risk ratio over 1.0 indicates over-representation, and a risk ratio of less than 1.0 indicates under-representation (Gibb & Skiba, 2008).

The relative risk ratio for students with low incidence disabilities to be enrolled in charter schools is 0.36. Gibb and Skiba note that risk ratios indicating concerns for under-representation are a risk ratio of 0.67 or less, while risk ratios of 0.50 or less indicate a level that indicates significant under-representation. This means that students with low incidence disabilities enrolled at LAUSD charters are significantly under-represented.

Data were analyzed by range of enrollment of SWD by school type to identify if differences exist between charters and DO schools. Table 3 compares the number and percentage of schools by range of enrollment of SWD by charter type and DO schools.

To examine differences between school type with higher enrollments of SWD, a criterion range of 7% or above of SWD was utilized. Affiliated charters demonstrate the largest percentage of its schools with enrollments of 7% or above, compared to independent conversions and independent start-ups (75% affiliated vs. 60% and 40%, respectively).

When compared to DO schools, independent start-ups demonstrate the lowest number and percent of schools with a range of enrollment of SWD of 7% or above (75%, DO vs. 41%). When examined by the largest enrollment range of SWD, the data highlight the large disparity between DO schools and independent start-ups (52.5% vs. 12%) in the number and percent of schools with a SWD population of 10% or more.

Table 3. Number and Percentage of Schools by Percent Range of SWD Enrolled, 2008-2009 School Year

School Type	Total	0-3%		3-7%		7-10%		10% +	
		N's	n	%	n	%	n	%	n
Total	996	123	12.3	167	16.8	240	24.0	466	46.8
District Operated	847	104	12.3	104	12.3	194	22.9	445	52.5
All Charters	149	19	12.8	63	42.3	46	30.9	21	14.0
Independent Start-ups	127	18	14.2	57	44.9	36	28.4	16	12.06
Independent Conversions	10	1	10.0	3	30.0	6	60.0	0	0.0
Affiliated	12	0	0.0	3	25.0	4	33.3	5	41.7

The differences in the enrollment of SWD by charter type provide some useful insight on which type of charters SWD attend. The District should consider closely monitoring the enrollment of SWD over time at its affiliated and independent conversion charters to ensure that the policies promote retention.

This disproportionality raises several questions and concerns related to the District's compliance with special education law and the MCD. Two primary questions emerge. First, do the processes for the recruitment, enrollment, and retention of SWD promote equitable access and opportunities for SWD? Second, is this disproportionality a result of systemic differences between charters and DO schools in their capacity to serve SWD?

Policies and Procedures for the Recruitment, Enrollment and Retention of SWD at Charter Schools

District policies and related documents regarding the recruitment, enrollment and retention of SWD were reviewed to determine if areas exist within these policies that may be contributing to the disproportionate enrollment of SWD at charters.

Some of the areas within these policies that may be contributing to the disproportionate enrollment of SWD at charters may be related to the following processes:

- Preference for petitioners that provide a comprehensive learning experience for students that are academically low-achieving;
- Identification of demographic target population charter will serve;
- Recruitment plan for SWD;
- Lottery/selection process for SWD; and,
- Enrollment procedures of SWD.

Gamm's review found that these documents contained efforts to address issues related to providing SWD access to charter schools and the provision of appropriate services. However,

she notes that the District's Charter School policies appear to "lack the full consideration and clear expectations regarding a variety of areas related to students with disabilities. Particularly, areas related to the enrollment of students with disabilities, including those with significant disabilities as well as specific considerations for their performance (p1)".

Preference for Petitioners that Provide a Comprehensive Learning Experience for Students that are Academically Low-Achieving

The California Education Code states that preference should be given to schools that provide a comprehensive learning experience for students that are considered academically low-achieving, during the review process for the establishment of charters. Based on Gamm's review of the documents, it is unclear how this preference would be demonstrated for SWD, which traditionally is an academically low-achieving group.

The lack of clarity or absence of such preferences may be contributing to the under-representation of SWD. To ensure equitable access, such preferences should include the provision of comprehensive learning experiences for students with moderate to severe disabilities

Identification of Demographic Target Population the Charter Proposes to Serve

The new charter application requires a "reasonably comprehensive" description of the students the school proposes to serve. Within this description, petitioners are required to identify the specific demographic target group and subgroups.

The document review found that both the new charter application and the initial screening matrix (checklist) sections require this description. However, neither include nor require any reference to the subgroup of SWD. Although it is unclear how the omission of this particular subgroup may affect enrollment, it may be reasonable to conclude that the lack of such specificity does not promote the enrollment of SWD at charters.

The inclusion of SWD in the renewal checklist, even though it's omitted from the new application checklist, raises the question as to whether there are different expectations for new and renewing charters schools.

The renewal checklist specifically includes SWD within the section that requires charters to include allowable demographic ranges. Gamm's review found language that lacked clarity and raised questions related to the standard of comparison. Primarily, she notes that a comparison of charter school enrollment of SWD to neighborhood schools may not provide a meaningful measure. It is unclear how placement factors that do not apply to students in the general education program are accounted for to avoid providing artificially "high" or "low" comparisons. For example, some neighborhood schools may offer programs where students are transported in from other sending schools, resulting in an "artificially high" population of SWD. In contrast, some schools may place "their" students at other schools resulting in an "artificially low" population.

The issue of comparability requires further examination. Overall, the enrollment data reviewed indicates a considerable non-comparable population of SWD attending at DO schools and those attending charters.

Recruitment Plan for SWD

The outreach and recruitment of students is an integral component of petitioning charters. Petitioners are required to include a description of its outreach and recruitment efforts. Such efforts are intended to recruit all students, primarily those from the neighborhood (unless otherwise stated). Additional are required to achieve racial and ethnic balance. The Application Description reflects this requirement and requires petitioners to provide detailed information about the *Means to Achieve Racial & Ethnic Balance*. This section requires a thorough description of the annual outreach efforts, including:

- What methods the school will use to advertise and recruit students (flyers, newspaper advertisements, informational fairs, etc.)
- How those outreach efforts will attain a racial and ethnic balance at the charter school that is reflective of the District.

The document review found no evidence of such description to recruiting SWD. Neither the application description, supplemental education program description, nor the Checklist addressed the petitioner's anticipated recruitment of SWD. The absence of such direction for the recruitment of SWD may have a direct impact on the enrollment of these students.

Gamm explains that the recruitment of SWD is required by charters and notes that this direction was issued by the Office of Civil Rights and includes a discussion of the issue as follows:

The US Department of Education's Office for Civil Rights addressed the issue of charter school recruitment of students with disabilities in its May 2000 document, *Applying Federal Civil Rights Laws to Public Charter Schools: Questions and Answers*⁶. In that document, the Department explained that students with disabilities must be included in a charter's recruitment activities. The charter school enrollment process is different from that of most public schools in that students are not simply assigned to attend a charter and (except in the case of conversion charters) they must apply to be considered for admission. Thus, petitions should describe how students with disabilities, especially those with significant disabilities, would be attracted and encouraged to apply. This description should be comparable to the requirements described above pertaining to the achievement of racial and ethnic balance (p. 9).

Lottery/Selection Process for SWD

The lottery and/or selection process is an integral component of the enrollment process for ensuring equitable access for SWD to attend charters. This process is within the control, oversight and authority of the District. Therefore, it should be able to establish and implement a process that promotes the mission and vision of the Board of Education that increases school choice for SWD.

⁶ http://www.uscharterschools.org/cs/spedp/view/sped_aud/2?section=pre#60 (page 5)

To determine if the District has such processes in place, a review of relevant documents was conducted. The review found several areas of concern within the lottery/selection process that should be addressed. First, there does not appear to be a uniform application for the enrollment applications utilized by schools. This means that each charter school is responsible for creating the enrollment application used. This practice may result in inconsistencies within the enrollment process, and may increase the potential for items within the application that may be used for screening SWD. The petition does appear to require schools to provide a copy of their respective enrollment application, however, it is unclear how these enrollment applications are evaluated and approved.

Considering that SWD are disproportionately under-enrolled at charter schools, particularly those with significant disabilities, oversight of the application process is instrumental in ensuring that these applications do not include information that would deter a charter school from selecting these students.

Petitioners are required to describe their lottery processes. The documents reviewed appeared to lack specificity of the role and oversight assumed by the District within this lottery selection. The CSD confirms that minimal and inconsistent oversight exists over the selection process, which is currently being addressed.

Gamm recommends that the LAUSD articulate the oversight responsibility for the lottery process when a charter enrolls a disproportionately low proportion of SWD, including those with moderate to severe disabilities. The rationale for this recommendation is included below:

Under California law, charters are required to admit all students wishing to attend the school unless the number seeking attendance exceeds the school's capacity. In this case, with a few exceptions attendance is determined by a public random drawing with preference given to students currently attending the charter and those residing in the district. The code also states that "other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law." Education Code at §47605(d)(2)(A) and (B).

In addition, the Application Description states that the charter school is subject to the requirements of the Crawford court order, and the school must provide a written plan to achieve and maintain the District's ethnic balance goal of 70:30 or 30:70 ratios. As discussed above, the MCD also contains ratios for LRE and home school placement. Finally, the IDEA implementing regulation specifies that for a charter school that is a school of an LEA the school district remains responsible for ensuring that IDEA requirements are met.

Given the above discussion of California, IDEA and MCD requirements, it appears that LAUSD has sufficient authority to ensure through a lottery supervision process or other preferences that each charter school enrolls a meaningful proportion of students with disabilities, including those with significant disabilities (p11-12).

The processes related to the selection of SWD are well within the control of the authorizing District. The selection process is a critical and instrumental element in addressing the

disproportionate under-representation of SWD, particularly those with moderate to severe disabilities. Furthermore, this process is an integral safeguard in promoting the mission and vision of the Board of Education, which aims to increase the learning opportunities of academically low-achieving students and increase school choice options for students and their parents.

Enrollment procedures of SWD

The California Education Code states that a charter shall admit all students who wish to attend the school. Upon the enrollment of a SWD, additional considerations regarding the provision of special education services specified within the child's IEP must be addressed by the school's IEP team. This process and considerations are consistent across all public schools and are not limited to charters. Although the law requires the enrollment of all students at charters, the process for reviewing the special education services specified in the child's IEP may influence the retention of SWD at charters.

Consistent with the California Education Code, the DSE provided a letter to charter school directors and principals with guidance for the enrollment of SWD⁷ Gamm summarizes the letter in the following key points:

- Charter schools may not refuse to enroll any student who has an IEP who would otherwise be admitted to the school. Therefore, the student should be enrolled immediately, even if it appears that the student might not be well served in the school's existing program.
- For any student with an IEP that cannot be implemented as written when the student enrolls, convene an IEP team meeting within 30 days to discuss FAPE for the student and make adjustments to the IEP.
- Include an LAUSD special education support unit representative at the IEP meeting if there is a concern that the school may not be able to serve the student effectively.
- If there is a disagreement between school staff and parents, contact the Support Unit Administrator (SUA) to determine next step (p.10).

Gamm found that the letter addresses some common special education enrollment issues, but does not address or describe the processes in place when a disagreement between the District and charter occurs regarding the school's ability to serve a SWD. She adds that guidance related to the enrollment process should include any authority LAUSD may have to require charter schools to expand its provision of special education services. This is particularly important when the District believes that doing so would enable a student to be appropriately educated in that school. Gamm comments on the lack of this guidance and its implications below:

The absence of binding guidance regarding a charter school's responsibilities with respect to enrolling students with disabilities (including those with significant disabilities) that are selected for admission and LAUSD's authority when disagreements occur could impact LAUSD compliance with IDEA, state and MCD requirements (p. 11).

⁷ Letter from Susan Melly, Dated December 20, 2005, Re: Guidance for Enrollment of Students with Disabilities

The DSE has expressed concerns related to the enrollment of SWD at charter schools. Primary among them is the minimal oversight over the local processes for enrolling SWD at charters. One particular concern expressed was the potential screening of the enrollment applications of SWD. The DSE reported observing instances of charters requesting copies of IEPs prior to a child's enrollment. As a result, the DSE no longer provides a copy of the IEP until the school provides evidence of the child's enrollment. Despite this additional safeguard, the DSE notes parents are required to disclose if their child has an IEP. Although this practice is consistent with the search and serve procedures of IDEA, the DSE expressed concerns that an enrollment may be denied or revoked if a parent failed to disclose such information.

The DSE also noted limitations of the letter that provides guidance on the enrollment of SWD. The DSE indicates that the process in place may promote recommendations by IEP teams that place students in DO schools. This may be due to the letter's emphasis on the process, which includes the role and authority of the District when determining a change of placement from the charter. Consistent with Gamm's observations, the DSE expressed concern that the letter may promote IEP teams to base a change of placement determination on a disparity between the services specified within the child's IEP and those services readily available at the charter. To promote the retention of SWD at charters, the letter should emphasize determining whether the charter is an appropriate placement for the student and how it will provide the programs and services at their respective schools.

Without this clarity of responsibilities, charters may hold IEP meetings to simply determine if such services can or cannot be met. This process provides minimal incentive for charters to increase the capacity of their special education services offered and encourage the enrollment and retention of SWD. Without this additional guidance, these policies may promote non-compliance with IDEA, which states "that students with disabilities attending charters are to receive special education instruction or designated instruction and services, or both, in the same manner as a child with disabilities who attends another public school of the local education agency" (34 CFR Section 300.209(b)(1)(i)).

Programming and Services

Data were analyzed to identify if differences exist between the special education programs offered at charter and DO schools. For the purpose of this review, only the availability of the resource specialist program and special day class program was examined.

During the 2008-2009 school year, 12 of 148 (8.1%) charter schools offered a special day program as an option for serving SWD (Table 4). These programs are only available at independent conversions and affiliated charter schools while all but one of the independent start-ups did not offer any special day programs. In contrast, 87% of DO schools provided this same program option. The data highlight a disparity that provides insights into the range of a school's special education program, as the majority of charters (84%) only provide resource specialist services, compared to 8.3% of DO schools.

Table 4. Program and Placement Type, by School Type

School Type	Total Schools	RSP Only		SDC	
		n	%	n	%
DO	708	59	8.3	619	87.43
All Charters	148	123	84.3	12	8.1
Independent Start-ups	127	115	90.6	1	0.07
Independent Conversions	8	3	37.5	5	62.5
Affiliated	11	5	45.5	6	54.6

These data raise several questions regarding the requirements of the program description included within the petition for new and renewal charters and the considerations taken by the District’s approval process.

Collectively, the lack of such programs indicates a disproportionate availability of special education services offered at charters. Since charters are considered a public school and part of the LAUSD SELPA, the onus lies solely on the District to ensure that its schools provide a range of programs and services as required by IDEA. This disproportionate availability of such programs may indicate a lack of oversight and responsibility by the District to ensure the equitable access to attend charter schools for SWD.

An additional factor that may contribute to the disproportionate availability of special education services is that charters are solely responsible for establishing its special education programs and services. The establishment of a special education program may require expertise and resources beyond that of a petitioning charter. The DSE reports having minimal influence in determining the programs or services provided at charters. Although the DSE provides support to charters and an option for “fee-based” services, this support is relatively limited. To establish its programs and provide services, some charters rely on the assistance and expertise of non-public agencies. The establishment of such programs may be additionally affected by the willingness of the District to approve charters and allow the development of such programs once in operation. This model promotes the disproportionate availability of special education services from the onset, and may present barriers for promoting equitable access to schools of choice for SWD.

Although the application process requires petitioners to describe the proposed special education program and services it proposed to offer, the DSE indicates that most charters describe an inclusive delivery model for SWD. Although this may be an effective model for SWD if implemented properly, its implementation requires considerable efforts, knowledge of effective instructional strategies for SWD and supports. Further, the data shows that charters, as a whole, have not utilized the service delivery model to include SWD.

Provision of Transportation

The provision of school transportation as a related service was also explored. Transportation is a related service that directly impacts access for students with physical, and moderate to severe

disabilities. Essentially, the lack of transportation to and from school will deny many students the necessary access to attend a school of choice, such as a charter school.

The charter application specifically outlines the responsibilities to provide transportation as a related service for SWD only for conversion charters. This specificity and lack of clarity for independent start-up charters may be in violation of IDEA regulations (§300.34(a)) which specify that related services, including transportation, when necessary to assist a student to benefit from special education. Furthermore, the CSD reports that the majority of charters do not offer any type of transportation service.

Question #3

Does the District demonstrate the organizational capacity to ensure the implementation and oversight of its charter schools associated with the mandated activities of the Modified Consent Decree and special education law?

This question examines the organizational processes in place at charters to promote the implementation of the MCD, the LAUSD special education policies and procedures, and compliance with IDEA. Considering the different governance structure of charters, only independent charters⁸ were examined for the purposes of this section. Analysis is based on the premise that for the purpose of the MCD, charter schools must adhere to the same standards as DO schools. The pilot study focused on four areas of organizational capacity, which include:

- Accountability, Monitoring and Oversight of the MCD and Special Education Compliance;
- Organizational Supports such as Professional Development;
- Data Systems; and,
- Communication.

To examine this capacity, informal interviews and a review of related documents were conducted. These findings are considered preliminary and may be expanded through future inquiries.

Accountability, Monitoring and Oversight of the MCD, and Special Education Compliance

Several mechanisms to promote the implementation, monitoring and oversight of the requirements of the MCD exist. At the core of the MCD are the data based performance measures and accountability system. In addition, District and State mandated mechanisms are in place to monitor and oversee the special education programs at schools. The pilot study inquired about the following:

1. MCD Progress Report and Snapshot Report
2. Targeted Strategy Plans (TSP)
3. MCD Accountability Plan

⁸ Affiliated charters maintain the governance structure of District Operated schools.

4. District Validation Review (DVR)
5. Schools Self-Review Checklist
6. Charter Schools Division oversight visits

MCD Progress Report and Snapshot Report

The DSE monitors the implementation and performance of the MCD outcomes of all its schools, including charters. To provide this oversight, the DSE prepares periodic reports referred to as *MCD Progress Report* and *Snapshot Report*. The former provides comprehensive performance updates on the 18 Outcomes of the MCD, while the latter is designed to address the performance of one or more specific outcomes. Both are used to provide schools with their current performance compared to the required target of a specified outcome. For schools not achieving the desired target(s), District contact, support and intervention is initiated.

A review of the implementation and accountability structure associated with this oversight mechanism was conducted to determine if differences exist between charters and DO schools.

For DO schools, these reports are disseminated directly through the local district including the local district superintendent, directors and principals. In instances where schools are not meeting the performance targets of specific outcomes, the local district superintendent and director are responsible for conferring with the school principal. In some cases, the local special education support unit administrators and/or personnel from the DSE provide assistance and support. This is consistent with the processes outlined within the Targeted Strategy Plan (TSP) and Accountability Plan of the MCD.

The aforementioned process differs for charters since the *MCD Progress Reports* are provided to schools directly by the DSE. These reports are not consistently provided to the CSD. There does not seem to be a clear process of support or accountability for schools not meeting the target levels. Schools are provided with these reports, but appear to receive minimal follow-up by the District.

Targeted Strategy Plans

The MCD's Targeted Strategy Plan (TSP) guides the short and long-term action planning for meeting specific outcomes of the MCD. TSPs are developed collaboratively by multi-disciplinary departments of the District and are led by the DSE. The TSPs contain a framework to guide the implementation of specific strategies and accountability at the central, local district, and school level.

For DO schools, the dissemination and oversight of the implementation of TSPs maintain a similar process as noted with the *MCD Progress Report* and *Snapshot Report*. The process associated with the TSP includes additional support and involvement from specific departments within the DSE. For example, the behavior unit of the DSE may provide direct support for the implementation of the TSP for Outcome 5: Suspension. This is consistent with the processes outlined in the TSPs and Accountability Plan of the MCD.

Conversely, TSPs are only made available to charter schools via the DSE website. At the time of this report, the DSE reported no oversight of the implementation of the TSP, but acknowledged it will begin to monitor this process.

MCD Accountability Plan

The MCD accountability plan provides a framework that outlines the line authority in place to ensure the implementation of activities associated with the MCD and for holding schools accountable. For DO schools, this line authority includes the local district superintendents, directors, principals and assistant principals. The accountability plan also requires that performance of MCD outcomes be embedded within the performance evaluations of administrators responsible for the implementation of the MCD.

For charter schools, the accountability structure in place is not aligned with that outlined for DO schools. Therefore, differences are noted within the accountability structure. One common challenge reported by both the DSE and CSD is the differences within the line authority for holding charters accountable. Both acknowledge that independent charter school employees are not LAUSD employees, and therefore the District is limited in its ability to hold employees accountable.

This is particularly more difficult to navigate for the DSE. The DSE is in a unique position from other District departments as the only unit with direct policy implications and interaction with charter schools that influence day-to-day operations.

The accountability structure of charters is facilitated by the CSD. The CSD reports several processes and procedures in place to address various performance measures for charters. These processes may include: notification to schools of the issue or concern; conferencing with charter directors; corrective action plans; annual school evaluations; and, recommendations for the renewal or revocation of the schools charter. Although these processes are similar to those of DO schools, the CSD primarily functions in a facilitative role, providing oversight and supporting accountability, with minimal authority to hold charters and its employees accountable.

District Validation Review

The DVR is a state required internal compliance review conducted triennially at all public schools. In the LAUSD, the reviews are conducted by the Division of Special Education Compliance Unit. The DVR consists of a review of various indicators of compliance with IDEA and state regulations. When non-compliant areas are identified, schools are provided a corrective action and are required to follow-up with the compliance unit upon completion of the corrective actions.

In the LAUSD, charter schools are included in the DVR process and subject to the same processes and procedures as DO schools. The DVR report is provided to the Charter School administrator, the Executive Director of the CSD, and the DSE Coordinator for Charters and Private Schools. When non-compliant areas are identified, as with DO schools, charter schools are provided a corrective action and are required to follow-up with the compliance unit upon completion of the corrective action.

Schools Self-Review Checklist

The Schools Self-Review Checklist is an annual measure of compliance with applicable special education laws as required by the LAUSD. This checklist is completed at the beginning of the school year and returned to the DSE. The DSE provides support and guidance to DO schools when areas of non-compliance are found and require remediation.

Charter schools also are required to complete this checklist. Unlike DO schools, however, charters return the checklist to the CSD and do not provide a copy to the DSE. The responsibility to follow-up then lies on the CSD. It is also unclear how the findings from the checklist are considered in the charter school's evaluation or for renewal.

Supports and Professional Development

Professional development or trainings specific to the implementation of relevant MCD activities and special education policy are offered by the District to charters. While offered, these trainings are not required for charter schools. The trainings are typically provided by the local district support units or the DSE. Some examples of training topics offered include: Welligent IEP; Special Education Policies and Procedure Manual; Transition Services; Student Discipline and Behavior Supports; and, How to Write an IEP.

While the training sessions are not mandatory, specific activities of the MCD are, including the utilization of the Welligent IEP system and the implementation of the District's policies and procedures. This incongruity raises questions of the processes in place to effectively implement requirements of the MCD at charters.

The DSE expressed concerns that many charters do not respond or attend these trainings. To illustrate this, the DSE noted that during the 2007-2008 school year, the District held four trainings specifically for charters on the Welligent IEP system. These sessions were held at different locations to facilitate attendance, and yielded the participation of approximately six schools for each session.

New charters are expected and mandated to attend a one-time orientation for potential charter representatives prior to submitting a charter petition. The orientation presents a general overview of their responsibilities and does not include specific information on things such as: compliance requirements, accountability, and/or the development of special education programs.

Overall, the District seems to provide opportunities for charters to participate in the trainings to develop the necessary capacity to implement the requirements of the MCD and District's special education policy. These trainings appear to be minimally attended, possibly because the trainings are optional. This finding questions the District's effectiveness in implementing the MCD and its special education policies and procedures at charter schools. Finally, the DSE and CSD both report that the local district support units provide frontline support to charters.

Data Systems

The implementation and success of the MCD relies heavily on utilization, maintenance and accuracy of its data systems. The performance measures of the MCD are quantitative by design, relying on timely and accurate data. Three primary data systems are utilized by DO schools and include: Welligent IEP system; Student Information System (SIS); and, Integrated Student Information System (ISIS).

Consistent with the mandates of the MCD, charter schools are required to utilize both the Welligent IEP system and ISIS. Charters are not required to maintain the SIS, which contains integral data indicators for monitoring the MCD, such as student suspension and graduation data. While all affiliated schools and some independent charters have elected to utilize the SIS system, many independents have chosen to maintain other systems. This practice has raised several concerns with the District and OIM.

Two primary concerns are related to the timeliness and accuracy of the data reported. First, for charters not on the SIS, the District is unable to upload data directly from these schools. This places the ability to obtain timely data on the responsiveness and cooperation of individual charter schools. While some provide data in a timely manner, this has been a source of frustration for the District and OIM. A particular challenge expressed by the District in obtaining timely data is the lack of line authority to hold charter schools accountable. This concern was recently addressed by the IM, DSE and CSD. An agreement was reached that holds the Director of the Charter School Division accountable for the timely provision of special education data at charters.

Second, the maintenance of separate student information systems raises concerns over the accuracy of the data. Since the inception of the MCD, the District and OIM have engaged in considerable efforts to validate and improve the accuracy of its data systems. As a result of these efforts, edits and policy bulletins to promote the accurate entry and maintenance of data have been implemented. For charters that do not utilize the SIS, the District is responsible for reconciling these data fields and integrating this into the SIS system. This process of integrating and reconciling data from separate systems presents the potential for inaccurate data.

The utilization of the Welligent IEP system is required at all charter schools. While it appears that all charters are using the Welligent system to conduct and maintain IEP information, only a few are fully using the Welligent service tracking feature. The limited use of this feature has considerable implications on the performance of Outcome 13: Delivery of Services, of the MCD, as well as the District's ability to effectively monitor the special education programs and services at charters. The DSE acknowledges the impact of schools not fully implementing the Welligent IEP system, and cite limitations with the line authority for holding charters accountable.

Another concern expressed by the DSE is the utilization of the Welligent System by Non-Public Agencies that may not have proper log-on access or training. This may have implications on the roles and effectiveness of the IEP team at charters, as school administrators may designate NPAs to represent them as administrators with the authority to expend District services and resources.

Communication

Two factors that may affect lines of communication between the District and charter schools is the autonomous nature of charters and its use of separate data systems. For this reason, the pilot made inquiries regarding the impact of communication between charters and the District as it relates to the implementation of the MCD and the LAUSD special education policies.

For DO schools, the LAUSD maintains several modes of communication for distributing information, such as: policy updates, informational bulletins, memorandums, and periodic reports. The LAUSD website contains features to facilitate this dissemination. For example, the District's website contains a feature known as *Inside LAUSD*, which contains all of the memorandums, bulletins and policies it sends out. School administrators are able to log-on and reference these bulletins when necessary. Within the *Inside LAUSD* there is a feature referred to as *Learning Zone*, which helps coordinate attendance at District trainings.

For charters, these forms of communication are not readily available. The primary mode of communication between these schools and the District is email. Special education policy updates, bulletins, and memorandums are emailed directly to schools by the DSE. Charters do not have access to *Inside LAUSD* because the schools lacked the assigned access since its employees are not District employees. However, special education reference guides, bulletins, and memorandums are available to the public on the Division of Special Education website in the eLibrary. The District reports that independent charters will be assigned this sign-on access by the end of August 2009.

Last, the DSE reports that the communication between charters and the Division has been further hampered as special education items have not been a regular agenda at the periodic charter directors meetings held by the CSD. In the past, the DSE felt these meetings were a valuable opportunity to disseminate information and support charter schools.

Question #4:

Do charter schools present potential barriers or concerns related to the substantial systemic compliance of the District's special education programs and with the program accessibility requirements under federal and state law?

The MCD consists of performance outcomes that aim to improve the District's systemic compliance with IDEA. In addition, the MCD requires the District's school facilities to comply with the program accessibility requirements of the ADA and Section 504.

This section examines the impact of charter schools' on the District's substantial systemic compliance with the MCD, special education law and federal program accessibility requirements. To gauge this impact, the following compliance indicators were reviewed:

- Integration of Students with Moderate to Severe Disabilities in the General Education Setting
- Timely Completion of Initial Evaluations and Annual IEP Meetings
- Delivery of Special Education Services
- Program Accessibility at Select Schools

Integration of Students with Moderate to Severe Disabilities in the General Education Setting

The MCD contains a two-part performance outcome aimed at increasing the number of students with moderate to severe disabilities in the general education setting. The first, Outcome 7A, focuses on students with all other eligibilities, such as: mental retardation, deaf and hard-of-hearing, emotional disturbance, and traumatic brain injury. Outcome 7B, addresses the integration of students with multiple disabilities-orthopedic (MDO). To achieve this goal, the District must increase and demonstrate internal capacity at its schools to effectively integrate these students.

Table 5 demonstrates that charter schools integrate students with all other eligibilities at a higher percentage (83.4%) than the target of Outcome 7A and DO schools (51% and 54%, respectively). While the data may indicate high levels of integration of these students, the differences in the population of SWD may limit comparisons and inferences of best practice. However, the District may consider inquiring into the instructional models at charters to identify potential effective practices that could be implemented at charters and DO schools.

Table 5. Time Category in the General Education Setting for Students with All Other Disabilities, by School Type

School Type	Total SWD	More than 40% in General Education Setting		Less than 40% in General Education Setting	
		N	%	n	%
District Operated	12,072	6,528	54.08	5,544	45.92
All Charters	457	381	83.37	76	16.63
Independent Start-ups	168	163	97.02	5	2.98
Independent Conversions	137	91	66.42	46	33.58
Affiliated	152	127	83.55	25	16.45
Total	12,529	6,909	55.14	5,620	44.86
Target			51.0		

Charters have minimal impact on the District's performance for integrating students with MDO due to the low number of students enrolled (Table 6). Considering the District is well below the required target of Outcome 7B, it can be reasonably concluded that charter schools have a negative impact on the District's compliance with this outcome.

Interestingly, the majority of the students with MDO enrolled are integrated in the general education setting for 40% or more of the day. Although, these students are located in 3 schools, the District should similarly consider reviewing these programs to identify potential best practices that may be implemented at both charters and DO schools.

Table 6. Time Category in the General Education Setting for Students with MDO, by School Type

School Type	Total SWD	More than 40% in General Education Setting		Less than 40% in General Education Setting	
		n	%	n	%
District Operated	1,045	101	9.67	944	90.33
All Charters	12	7	58.33	5	41.67
Independent Start-ups	5	5	100.0	0	0.0
Independent Conversions	1	1	100.0	0	0.0
Affiliated	6	1	16.67	5	83.33
Total	1,057	108	10.22	949	89.78
Target			23.0		

Timely Completion of Initial Evaluations and Annual IEP Meetings

The timely completion of an initial evaluation is a cornerstone of compliance with IDEA. The target for completing initial evaluations within 60 days (90%) is aligned with performance levels indicative of substantial systemic compliance. Table 7 shows that charter schools are not meeting the target of the 60-day timeline and may imply a negative impact on the substantial systemic compliance of the District. Conversely, DO schools are meeting or exceeding all of the targets of Outcome 10.

Table 7. Timely Completion of Initial Evaluations, by Time Category

School Year	Total # IEPs	Within 60 Days		Within 75 Days		Within 90 Days		Over 90 Days	
		n	%	N	%	n	%	n	%
2007-08	547	446	81.54	491	89.76	515	94.15	32	5.85
2008-09*	325	267	82.15	298	91.69	309	95.08	16	4.92
		Target	90.0	Target	95.0	Target	98.0%		

* Data through March 15, 2009

The IDEA requires that annual IEP meetings be held in a timely manner for SWD. Charters demonstrate higher rates (29.5%) of overdue annual IEP meetings than DO schools (19.5%). While both indicate a potential compliance issue, charters have a higher percentage of IEP meetings overdue by more than four months (43.6% vs. 34.8%, DO schools). This issue should be addressed by both charters and DO schools. For charters, this issue should provide an opportunity to observe the effectiveness of the accountability plan of the MCD and oversight mechanisms of the CSD (Table 8).

Table 8. Overdue Annual IEPs Over Time, by School Type

Overdue	Total # IEPs	Total Overdue		2 Months		4-12 Months		Over 12 Months	
	N	n	%	n	%	n	%	N	%
DO	56,527	11,045	19.5	7,201	65.2	3,444	31.18	400	3.6
Charters	2,067	609	29.5	343	56.3	222	36.45	44	7.2

Delivery of Special Education Services

A fundamental tenet of the IDEA is the delivery of services specified in a student’s IEP. These services constitute a student’s free and appropriate education as offered by the District and agreed to by the IEP team. The IM has reminded the District that the failure to provide the services specified in IEPs constitutes substantial noncompliance with Federal and State law⁹. In addition, the IM directed the District to ensure that all service providers entered their logs in the Welligent system.

Outcome 13 requires that 93% of SWD show evidence of service delivery. The Welligent tracking log is the only measure utilized for determining the District’s compliance with this outcome. To examine charters schools impact on Outcome 13, data from the Welligent service tracking log feature provided by the DSE¹⁰ and analyzed by the OIM. For the purpose of this review, frequency and duration data were not included within the analysis.

Overall, charters present a significant problem in the District’s ability to ensure the delivery of special education services. Approximately 50% of all charters are not using the Welligent tracking log feature, while 24.6% showed evidence of partial logs (Table 9). This low rate of utilization indicates the ineffectiveness of the District to carry out the mandates of the MCD at charters schools. Conversely, DO schools are either meeting or close to meeting the 93% target of service delivery.

Table 9, Charter School Level of Utilization of the Welligent Tracking Logs, by Service

Use of Welligent	RSP		LAS		PUC		DHH		Other		Total	
	N	%	N	%	n	%	N	%	N	%	N	%
Yes	37	27.2	24	21.4	18	19.4	18	48.6	37	26.0	134	25.8
Partial	54	39.7	26	23.2	20	21.5	11	29.7	17	8.2	128	24.6
No	45	33.1	62	55.4	55	59.1	8	21.6	86	65.8	256	49.3
Total	136	100	112	100	93	100	37	100	141	100	519	100

⁹ Re: Report on the Progress and Effectiveness of the Los Angeles Unified School District’s Implementation of the Modified Consent Decree during the 2007-2008 School Year – Part I, Dated October 1, 2008, p. 14

¹⁰Services were compared between those listed on CASEMIS and Welligent tracking logs.

Program Accessibility

To examine the impact of charter schools on the District's substantial systemic compliance with the program accessibility requirements, the OIM and Disability Access Consultants conducted a walk-through of four schools. The walk-through was not intended to be a comprehensive inspection to measure compliance with ADA and Section 504, but rather to obtain a general observation of program accessibility at charter schools.

Schools were selected based on the different types of sites. For instance, two new schools were visited, one built through the processes of the LAUSD and DSA; the other built through the City of Los Angeles and managed by the charter. The third school is a leased community annex at a church. The fourth is a charter-owned site of a converted business.

The walk-through found three of four schools with overall program accessibility, while demonstrating a number of non-compliant ADA items.

Charter School #1: Newly Built LAUSD School

This new school was constructed under the management of the LAUSD and oversight of DSA. The school was overall compliant and offered program accessibility with two major exceptions: non-compliant parking and drinking fountains.

Charter School #2 – Non-LAUSD Newly Constructed School

This school was built independent of the District's facilities division and DSA. The school was designed, built and opened within three years of the land being purchased. The review found some non-compliant findings, particularly in the school's auditorium, which did not have an accessible entrance or seating. Overall, general program accessibility was noted to be compliant.

Charter School #3 Leased Facility – Church

This school is located within the community buildings of a church. The school overall was overall non-compliant, with no compliant parking, accessible entrance, accessible bathrooms or accessible common areas. The site did not offer program accessibility.

Charter School #4 – Older Converted Building

Some non-accessible features were noted at this converted business. The walk-through observed a non-accessible entrance at the front of the school. The school indicated the rear entrance was the primary entry for all students and public. This entrance offered general program accessibility, yet found some non-compliant findings which could be remedied. It was noted that the school had gone through several renovations which included work to enhance program accessibility.

References

Gibb, A.C. & Skiba, R. (2008). Using data to address equity in special education. Education Policy Brief. 4(3), Bloomington, IN: Center for Evaluation & Policy.

Rhim, L. M., Ahearn, E. M. & Lange, C. M. (2007). Charter School Statutes and Special Education: Policy Ambiguity?. *The Journal of Special Education*. 41, (1) 50-63.

Analysis of Documents Pertaining to the (Re)Approval of LAUSD Charter Schools & Compliance with State/Federal Special Education Law

**By Sue Gamm, Esq.
Educational Strategies & Support**

May 2, 2009

Pursuant to a request from the Office of the Independent Monitor, Modified Consent Decree (MCD), this document reflects an analysis of the policies and procedures used by the Los Angeles Unified School District (LAUSD) with respect to charter schools and their access by students with disabilities. This analysis focuses on the District's guidance for potential charter operators, requirements relating to the submission and review of initial and renewal charter petitions, and related policies and documents to determine whether they sufficiently promote equal educational opportunities for students with disabilities and comply with applicable state and federal special education law.

Generally, as evident in its supplemental guidance pertaining to special education, LAUSD is making efforts to address issues involved in providing students with disabilities access to charter schools and providing them with appropriate services. This area is one that many school districts find challenging as they try to balance the innovative nature of the charter school movement with the rights and particular needs of this group of students.

However, when viewing the District's Charter School Policy and documents related to the initial and renewal of charter applications, it does not appear that LAUSD has fully considered and communicated expectations regarding a variety of areas related to students with disabilities. Most notably, these include their enrollment, including those with significant disabilities; and specific consideration of their performance.

According to the District's mission, LAUSD will encourage and nurture the development and confirmation of charter schools that are accountable for improved student learning and that can:

- ✓ Provide possible solutions to urban school challenges through practices that help:
 - Ease the shortage of school facilities and seat space
 - Narrow the achievement gap among students of various backgrounds
 - Increase responsible parent and student involvement in learning
 - Improve teacher quality and performance evaluation systems.
- ✓ Provide data to help identify and evaluate issues that affect quality educational programs and student learning and achievement.
- ✓ Serve as laboratories to test, demonstrate and disseminate ideas that can promote better educational practices.
- ✓ Provide an additional educational option for parents

Also, the Policy requires charters to increase learning opportunities for all students, with special emphasis on expanded learning experiences for those who are identified as academically low achieving.

While the inclusion of students with disabilities is clearly aligned with the District's mission and emphasis on increased learning opportunities for those who are academically low achieving, without expressed and specific language that articulates its expectations, requirements and

accountability it is foreseeable that the enrollment of these students will be proportionately small. In addition, it is foreseeable that charter enrollment will exclude most students with significant disabilities unless the District clearly articulates an expectation that they do so. This may be accomplished through inclusionary practices where these students are educated within the regular education classroom and/or through cooperative agreements whereby charters specialize in instruction for students with particular learning and instructional needs. Whatever the means, any results that exclude a meaningful proportion of all students, including those with significant disabilities, will be counter to LAUSD's mission and stated intent. In addition, accountability measures must ensure that the performance of this subgroup counts and is not masked by overall higher performances of other students.

The following documents were considered in this review; additional documents that were utilized are referenced accordingly.

- Los Angeles Unified School District Charter School Application Description (Application Description)
- Demographic Information for Prospective Site
- Charter Schools Guideline Checklist – Initial Screening
- Charter School Renewal Components
- LAUSD Charter Schools Division Renewal Criteria and Findings
- Required and Recommended Petition Language, including Special Education Program
- Guidance for Enrollment of Students with Disabilities
- LAUSD Power Point presented by Donnalyn Jacque-Anton, Associate Superintendent and Didi Nubla, Deputy Budget Director on November 20, 2008
- Relevant California Education Code and Individuals with Disabilities Education Act (IDEA) provisions relevant to this issue
- Policy for Charter Schools, approved by the LAUSD Board of Education, June 25, 2002
- March 24, 2009 board reports for denial of renewal petitions for Charter of Los Angeles International Charter High School and Opportunities Unlimited Charter High School and to approve Equitas Academy Charter School
- Working Draft: Renewal Criteria and Findings & Refined Scoring System

Prior to addressing specific comments about the documents reviewed, the following are two general overall observations.

- The term *special education students* was used throughout the Application Description. The use of *people first* language is preferred, such as students receiving special education, students with disabilities, students with special needs, etc.
- A second prevalent term used was *special education programs*. To some, this term connotes a defined set of services that may be viewed as relevant for specific disability areas or categories, e.g., autism. A preferred view is to describe *special education services*, including specialized instruction, related services, supplemental aids and services, accommodations, modifications, interventions, etc., that are individualized and based on the needs of students with disabilities. Under this paradigm, schools do not have specific *programs* that a student may *fit into*; rather they have an array of services that exist or may be introduced to meet the needs of students.

The following describes positive features of the LAUSD charter school application and renewal process as they pertain to students receiving special education services; issues the documents

raise in light of relevant legal requirements; and the extent to which the preference for petitions that demonstrate the capability to provide comprehensive learning experiences to students identified as academically low achieving pertains to students with disabilities.

Initial Application

1. The Checklist is not aligned with all of the elements referenced in the Application Description and the Checklist does not appear to provide a transparent method for documenting results.

In the area of Operational Contents, the Initial Application Checklist (Checklist) addresses a number of areas that are addressed in the Application Description. However, the Application Description contains core areas that the petition is required to address that are absent from the Checklist, including the following:

- Instructional program and curriculum, including how it addresses the needs of the targeted student population, the evidence (research-based) of success, teacher recruitment, professional development, etc.; and
- How the instructional program will meet the needs of students who are English language learners (ELL), socioeconomically disadvantaged, gifted, achieving below grade level, and receiving special education.
- The proposed special education program that is described on five pages in a March 27, 2008, supplement to the Application Description that was prepared by the Charter Schools Division.

Given the lack of alignment between these two documents, it is not clear how all of the critical elements contained in the Application Description would be objectively and consistently assessed by reviewers and documented in the Checklist. This lack of alignment is particularly noteworthy in the area of assessing a petition's capacity for providing special education services since this area is neither referenced nor scored in the Checklist.

In addition, the following two issues are relevant:

- The Education Code at §47605(b)(5)(h) states that in reviewing petitions for the establishment of charter schools, preference must be given to those demonstrating the capability to provide comprehensive learning experiences to students identified by the petitioner or petitioners as academically low achieving. It is not clear from the Checklist how this preference would be demonstrated for students with disabilities, which traditionally is an academically low achieving subgroup.
- None of the documents clarify how each item in the Checklist is scored and whether any weight is given to the various items based on their relative importance. For example, some of the items include numerous subsections. It is unclear, however, if each subsection is scored separately and given an overall score or if only one score is noted for each area. As discussed above, the area of special education services has pages of descriptive guidance but it is absent from Element 1, Operational Contents. It would seem that scoring to reflect this important area would be given more of a weight than Item 14, for example, which is to reflect procedures to resolve disputes relating to provisions of the charter that match LAUSD "Boiler Plate" Language.

In sum, there does not appear to be a transparent and meaningful connection between the Application Description, and Checklist scoring and results, including an objective and measured consideration of special education support. Further, it appears that a charter school application could have serious deficiencies in the area of special education but score high enough in other areas to support its approval. The scoring process should be reviewed and revised as necessary to ensure that this outcome will not occur.

2. *The required demographic data reflecting the target population of students the school proposes to serve does not include the subgroup of students with disabilities.*

Referencing Element 1 (The Educational Program) requirements, the Application Description states that the petition must identify and describe as clearly as possible the students the school proposes to serve. The description must include demographic data for the target population and the petitioner must document this information on an attached matrix. The matrix also requires the input of data from surrounding LAUSD and charter schools in the following areas: number of students, multi-track school, program improvement, met schoolwide growth target, met subgroup growth targets, API score, API state ranking, similar schools rank, students eligible for free/reduced lunch, and major ethnicity. Finally, the Application Description requires the petition to describe other applicable characteristics of the target population (e.g., potential dropouts, newcomer populations, etc.)

Notably, neither the matrix nor examples of other applicable characteristics of the target population require any reference to data pertaining to students with disabilities. Further, the matrix does not seem to provide a category for those students that the charter school *proposes* to serve. To fulfill the stated intent of this section, LAUSD should require petitions to document the targeted number of students with disabilities it proposes to serve and specify its intent to include students with significant disabilities.

3. *LAUSD's guidance for petitioners to describe their provision of special education services contains many useful elements.*

In my experience, many school districts are struggling with the challenge of enabling charter schools to operate independently and creatively to provide an educational program of high quality for children and youth, and ensuring that students with disabilities are included equitably and supported meaningfully. It is evident that LAUSD is striving to meet this challenge by describing for petitioners the type of information pertinent to special education services that it expects to see in successful petitions and important elements of accountability and fiscal responsibility. The Charters Schools Division document addresses a variety of key areas, including the following:

- ***Legal Requirements.*** Adherence to federal and state laws and regulations pertaining to students with disabilities, LAUSD policies and procedures, *Chanda Smith* Consent Decree and court orders; and submission of documents and information, participation in reviews, and attendance at informational sessions and meetings;
- ***Documentation.*** Use of LAUSD forms, accurate data entry into LAUSD's designated data system, maintenance of copies for review, submission of required reports, participation in state quality assurance process, internal validation reviews, etc.;
- ***Service Provision.*** Implementation of programs and services, including providing related services, required by the IEPs of students enrolled at the charter school; and permitting

- ***Transferring Students.*** Procedures for service provision and financial support in some cases for students transferring from District schools or affiliated charters;
- ***Programmatic Issues.*** Support for educating students with disabilities in the least restrictive environment and with their nondisabled peers; professional development and participation in available appropriate LAUSD training; and assurances that teachers and others are knowledgeable about student IEP content;
- ***Transportation.*** For conversion schools, description of responsibility for transportation services based on various circumstances;
- ***Complaints.*** Recognition that LAUSD investigates and responds to all special education complaints it receives pertaining to charter schools; charter school cooperation and provision of pertinent data; and responsibility for any applicable costs associated with the investigation and implementation of any corrective action required;
- ***Policies & Procedures.*** A clear statement that charter schools authorized by LAUSD are public schools within the district for purposes of providing special education services and a recognition that the District determines the policies and procedures necessary to ensure that the protections of special education law extends to all LAUSD students, including those enrolled in charter schools. Also, a recognition that the District will provide information and training to charter schools regarding special education decisions, policies and procedures to the same extent as they are provided to other LAUSD schools.
- ***Funding.*** A recognition that LAUSD will collect a fair share contribution from independent charter schools for districtwide costs for special education instruction and services, which include but not limited to: 1) maintaining a full continuum of program options; 2) professional development and training; 3) consultation and technical support for programs; 4) administration of due process proceedings, excluding any legal representation; 5) investigation of complaints; 5) assistance/participation at IEP team meetings and other opportunities from special education support units; and 6) implementation of the MCD.
- ***Due Process.*** A thorough and well thought-out provision regarding charter/district responsibility in the area of due process, including charter responsibility for attorney fees and costs when parents are the prevailing party as a result of a due process hearing or settlement agreement based on the charter school's alleged failure to fulfill its responsibilities under state/federal special education requirements. (Other fiscal issues related to this policy are discussed below.)

4. *Areas in which LAUSD's guidance may be strengthened or clarified.*

As discussed below, there are a number of important areas in which the Charters Schools Division document pertaining to special education services may be strengthened or clarified.

a. *Clarify that the description of special education services is required boilerplate.*

The document's caption for its section on special education states *Special Education Required Language* yet it is not accompanied by an asterisk, which according to the

document designates *required* language. Given the importance of this area and LAUSD's requirements under *Chanda Smith*, it is important to clearly articulate pertinent standards for charter school petitions.

b. *Clearly articulate LAUSD's authority and manner in which it will carry out its authority to enforce provisions related to special education services.*

Although the Application Description discusses various aspects relating to charter school compliance with special education requirements, it does not clearly articulate the manner in which LAUSD will enforce these requirements during the charter's term. For example, as referenced above, the section on special education explains that the charter schools are bound by LAUSD policies and procedures. However, the document does not describe the steps the District will take to enforce this provision during the term of the charter. Even if LAUSD may later decide not to renew a charter due to its noncompliance in this area the guidance should clarify the steps the District will take to bring the charter into compliance when issues are first identified.

c. *Require petitioners to describe how they will carry out key requirements.*

Even if the provisions contained in the Application Description pertaining to special education are required, the provisions merely describe areas of responsibility. None of the provisions require a petitioner to *describe* the local procedures it would use to implement these areas of responsibility. Such a description would enable LAUSD to ensure that a petitioner has thought through the intricacies of management and implementation of special education services, and understands the expanse of activities involved and their related fiscal impact.

For example, the Special Education Technical Assistance for Charter Schools Project (SPEDTACS) developed primers and a web program to provide critical knowledge and resources for charter schools.¹ The primer developed for charter operators suggests that they address areas that include the following, in their proposals:

- Describe how you are aware of the responsibilities entailed in the general assurance;
- Articulate your plan regarding governance, service delivery and finance of special education;
- Explain how you will plan to:
 - Identify, evaluate and serve children and youth with disabilities;
 - Develop, review, and revise IEPs;
 - Integrate special education into the general education program;
 - Deliver special education and related services;
 - Implement transition plans and work with relevant post-school agencies; and
 - Project the cost of special education in the school.

Through this type of descriptions, LAUSD would have a better understanding of the extent to which a petitioner understands its responsibilities pertaining to students with disabilities and has a plan and means for carrying them out. (See Appendix A for additional information that is contained in the Primer.)

¹ Funding for the primers was received by the National Association of State Directors of Special Education (NASDSE) by the U.S. Dept. of Education. http://www.uscharterschools.org/cs/spedp/print/uscs_docs/spedp/operators.htm

In addition, the description should describe charter school responsibility for transporting students with disabilities having IEPs that include this benefit as a related service. The IDEA's implementing regulation at §300.34(a) specifies that related services includes transportation services as are required to assist a student to benefit from special education. Thus, this requirement is not limited to a converting charter and applies even if a school does not generally provide transportation services to its students.

d. Articulate the extent to which charter schools are required or encouraged to educate students with significant disabilities.

One major issue that has been discussed about charter schools generally is their recruitment, enrollment and support of students with significant disabilities. If a school district's charter schools do not educate an equitable proportion of these students, as the district authorizes a larger number of charters fewer traditional schools remain available for their education and disproportionality increases. To the extent that this disproportionality is true for LAUSD, it could impact its ability to comply with IDEA and MCD requirements.

LAUSD charter schools educate nearly half (5.5-6%) the percentage of students with disabilities than do traditional LAUSD schools (11%) and a smaller rate than charter schools statewide (6-7%).² Furthermore, students at charter schools generally tend to have mild to moderate disabilities, e.g. Speech and Language Impaired (S/L) or Learning Disabilities (LD), and they have a limited number of students with intensive needs.

There are several MCD performance outcomes that are relevant to this issue:

- **Placement of students with disabilities in the least restrictive environment (LRE - ages 6-18)**
 - < **Excluding LD, S/L and OHI.** No less than 51% of students are removed from general education more than 60% of the time and no more than 49% are removed 61-100% of the time.
 - < **Students with multiple disabilities orthopedic.** No less than 23% of students are removed from general education 60% of the time and no more than 77% are removed 61-100% of the time.
- **Home school placement/LRE.** The district will increase the percentage of students with disabilities (excluding SLD and SLI) educated in their home school:
 - < In kindergarten and 6th grade to 65% and in 9th grade to 60%
 - < In grades 1-5 to 62.0%;
 - < In middle school grades (7-8) to 55.2%; and in HS grades (10 and above) to 36.4%.

In the context of charter schools, a charter would be a student's home school if the student applied and was selected through a lottery or other approved process used by the charter to select students.

² LAUSD Power Point presented by Donnalyn Jacque-Anton, Associate Superintendent and Didi Nubla, Deputy Budget Director on November 20, 2008.

It would be difficult for LAUSD to achieve these performance outcomes if charter schools do not enroll students with disabilities beyond those with typical disabilities, i.e., LD, SLI and OHI/ADHD. To achieve higher enrollment rates for this population, the relevant documents should discuss LAUSD's expectations in this regard and request information regarding [1] recruitment, and [2] support for students with significant disabilities. In addition, documents should describe [3] LAUSD's authority to ensure that such students are not denied enrollment without sufficient educational justification, and [4] oversight of the lottery/selection process. These four areas are discussed in more detail below.

e. Require petitions to describe how students with disabilities, including those with significant disabilities, will be recruited.

According to the LAUSD's Working Draft of its Charter Schools Policy, the Board of Education expects charter schools to represent the diversity of the District community's student demographics, and demonstrate a primary commitment and specific outreach plan to attract and serve all students, especially in traditionally underserved populations (English Learners, Latino and African American students, students with disabilities, and students eligible for free and reduced-price lunch). This expectation is consistent with the provisions of the Education Code at §47605(b)(5)(h).³

However, neither the Application Description, supplemental education program description nor the Checklist addresses the petitioner's anticipated recruitment of students with disabilities. Within the context of race and ethnic balance, however, the Application Description for Element 7 provides detailed information about the *Means to Achieve Racial & Ethnic Balance* and requires a thorough description of the annual outreach efforts, including:

- What methods the school will use to advertise and recruit students (flyers, newspaper advertisements, informational fairs, etc.)
- How those outreach efforts will attain a racial and ethnic balance at the charter school that is reflective of the District.

To get a sense of whether charter school websites contain information pertinent to students with disabilities, 18 were randomly googled. Thirteen of the schools had a website that was developed specifically for the school. Ten (77%) contain no description of any special education services or supports for students with disabilities. Two of the 10 published rosters of staff that included one special education teacher; one additional website referenced only a special education assistant trainee. Six charter schools did not have websites but did have small references on other websites that give information about Los Angeles schools. These six also provided no information about special education services. (See Appendix B for more information about school websites reviewed.)

The following three websites provide special education information that would be very interesting and inviting to concerned parents:

³ In reviewing petitions for the establishment of charter schools within the school district, the governing board of the school district shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the department under Section 54032 as it read prior to July 19, 2006.

- ***Kenter Canyon School*** has a wonderful description of their special education services, including those for students with a variety of disabilities. It also has developed a separate website page devoted to special education See: kentercanyon.org/about-special.html; and <http://web.me.com/sheardnicole/Site/Welcome.html>
- The ***CHIME Charter School's*** website highlights that it was originally known as the Community Honoring Inclusive Model Education (CHIME) Project and it uses a transdisciplinary approach where designated instructional services and therapies are provided in the context of the regular classroom. This enables the specialists to model special interventions for the paraprofessionals and general education teachers. <http://www.chimeinstitute.org/default.htm>
- ***Open Magnet Charter School*** has a website that includes in its frequently asked questions one about special education services. In response, the charter states:

All students who are accepted through the Choices/Magnet program are eligible for enrollment at the Open School, regardless of ability. The Open School has many students with special needs including students with specific learning disabilities, physical disabilities, and students on the autism spectrum. All of the special needs students are fully integrated into the general education classrooms. There are no special day classes at Open School. The school has a full-time, credentialed special education resource teacher and a full-time assistant. LAUSD provides behavioral, speech, and occupational therapy and adapted P.E. for students determined eligible at their IEP. <http://homepage.mac.com/opencharter/>

The US Department of Education's Office for Civil Rights addressed the issue of charter school recruitment of students with disabilities in its May 2000 document, *Applying Federal Civil Rights Laws to Public Charter Schools: Questions and Answers*.⁴ In that document, the Department explained that students with disabilities must be included in a charter's recruitment activities. The charter school enrollment process is different from that of most public schools in that students are not simply assigned to attend a charter and (except in the case of conversion charters) they must apply to be considered for admission. Thus, petitions should describe how students with disabilities, especially those with significant disabilities, would be attracted and encouraged to apply. This description should be comparable to the requirements described above pertaining to the achievement of racial and ethnic balance.

- f. Require each petitioner to describe how it will provide support for students with disabilities, including those with significant disabilities.***

Unless a charter has planned proactively for the enrollment of students with significant disabilities, it will have difficulty providing the supports necessary for such students to be successful. To facilitate and support this activity, LAUSD should articulate its expectation in this regard and require the petition to address the matter fully.

- g. Articulate the process LAUSD will use to review a charter schools' belief that it is unable to provide an appropriate placement for a student with disabilities.***

⁴ http://www.uscharterschools.org/cs/spedp/view/sped_aud/2?section=pre#60 (page 5)

The special education program description articulates that a charter school is expected to invite an LAUSD special education representative to an IEP team meeting whenever it is anticipated that special education services outside of the charter school (e.g., in a District school, a nonpublic or private school, etc.) will be considered. According to the description, if an IEP is developed without District representation on the IEP team, the charter will be fully responsible for the quality of the program and for any costs incurred for such a placement.

This process reflects good policy with respect to what was described. However, it does not address any authority LAUSD may have to require the charter school to expand its provision of special education services, including supplemental aids and services, when District staff has good reason to believe that doing so would enable a student to be appropriately educated in the school.

The Education Code at §47606(d)(2)(A) states that a charter shall admit all pupils who wish to attend the school. In a letter to charter school directors and principals, LAUSD provided guidance for the enrollment of students with disabilities.⁵ That guidance contains the following key points:

- Charter schools may not refuse to enroll any student who has an IEP who would otherwise be admitted to the school. Therefore, the student should be enrolled immediately, even if it appears that the student might not be well served in the school's existing program.
- For any student with an IEP that cannot be implemented as written when the student enrolls, convene an IEP team meeting within 30 days to discuss FAPE for the student and make adjustments to the IEP.
- Include an LAUSD special education support unit representative at the IEP meeting if there is a concern that the school may not be able to serve the student effectively.
- If there is a disagreement between school staff and parents, contact the Support Unit Administrator (SUA) to determine next step.

While the letter addresses a common special education enrollment issue, it appears that the information is neither considered to be policy nor is mandatory. In addition, there does not appear to be other bulletins or memoranda that specifically address this or other key special education issues through required procedures.

No documents appeared to address circumstances in which there may be a disagreement between the SUA and the charter school administration regarding a school's ability to appropriately serve a student with disabilities. For example, typical disagreements arise in school districts regarding a school's education of a student with significant behavioral challenges. Further impacting the discussion could be LAUSD's payment for students referred by a charter school to a costly nonpublic school (NPS), which could cost \$27,000 to \$40,000 per year.⁶ Presumably, the dispute resolution process at Element 14 outlined in the Application Description applies in this circumstance. However, that process is

⁵ Susan Melly, LAUSD Director, Legislation and Parent and Community Support/SELPA, Division of Special Education, December 20, 2005.

⁶ LAUSD Power Point presented by Donnalyn Jacque-Anton, Associate Superintendent and Didi Nubla, Deputy Budget Director on November 20, 2008.

ultimately culminates in mediation and arbitration, with no reference to the application of special education legal standards, including case law.

The absence of binding guidance regarding a charter school's responsibilities with respect to enrolling students with disabilities (including those with significant disabilities) that are selected for admission and LAUSD's authority when disagreements occur could impact LAUSD compliance with IDEA, state and MCD requirements. Guidance should be available that is based on current case law pertaining to "home school" attendance for students with disabilities and expectations regarding the types of supports and services charter schools should provide. As these requirements and charter school plans are documented and reviewed during the initial petition process, there would be fewer concerns and issues resulting from charter school provision of services to this population of students.

h. Establish a uniform application or template for enrollment applications.

The Application Description does not require the attachment of an enrollment application for the school or provide a model document. Thus, it appears that schools develop unique applications that are not subject to approval or review by the District. Given the disproportionately low enrollment of students with disabilities in charter schools, especially those with significant disabilities, it is extremely important that the application process does not include information that would deter a charter school from selecting these students.

i. Articulate LAUSD oversight responsibility for the lottery/selection process when a charter enrolls a disproportionately low proportion of students with disabilities, including those with significant disabilities.

Although the various documents reviewed outline the lottery/selection process for charters, there is no information describing how these processes are subject to review and/or approval by LAUSD.

Under California law, charters are required to admit all students wishing to attend the school unless the number seeking attendance exceeds the school's capacity. In this case, with a few exceptions attendance is determined by a public random drawing with preference given to students currently attending the charter and those residing in the district. The code also states that "other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law." Education Code at §47605(d)(2)(A) and (B).

In addition, the Application Description states that the charter school is subject to the requirements of the *Crawford* court order, and the school must provide a written plan to achieve and maintain the District's ethnic balance goal of 70:30 or 30:70 ratios. As discussed above, the MCD also contains ratios for LRE and home school placement. Finally, the IDEA implementing regulation specifies that for a charter school that is a school of an LEA the school district remains responsible for ensuring that IDEA requirements are met.⁷

⁷ §300.209(b)(2)(i)

Given the above discussion of California, IDEA and MCD requirements, it appears that LAUSD has sufficient authority to ensure through a lottery supervision process or other preferences that each charter school enrolls a meaningful proportion of students with disabilities, including those with significant disabilities.

j. *Revise the description pertaining to assessment.*⁸

The special education program description states that the charter school will:

Identify and refer students with disabilities who demonstrate early signs of academic, social or behavioral difficulty that may require assessments for special education eligibility and placement in a special education program.

This provision is problematic for two reasons:

- The description should refer to students *suspected of* having a disability rather than students *with* disabilities.
- Students demonstrating “early signs of academic, social or behavioral difficulty” may benefit from early intervening services or response to intervention (RTI) strategies. In general, encouraging charter schools to identify and refer for special education services students with “early signs” of difficulties may lead to false positive identifications. Instead, LAUSD should require (or minimally encourage reward) petitioners to describe their process for providing general education early academic and positive behavioral interventions and supports, preferably through three tiers of increasingly intense interventions, progress monitoring and review.

k. *Revise various provisions pertaining to discipline.*

Two provisions related to the Application Description and one included in the Checklist pertaining to discipline present several issues:

1) *Positive behavior supports & manifestation determination.* The special education program description⁹ states that the charter school will:

... comply with laws, including discipline. Discipline procedures will include positive behavioral interventions. Prior to recommending expulsion for a student with disabilities, the charter school will convene a manifestation determination IEP.

First, the use of positive behavioral interventions and supports (PBIS) should be provided in a context broader than discipline and include proactive activities to reduce the likelihood of discipline issues. Petitioners should be required or at least encouraged to develop and implement a system of PBIS and incorporate disciplinary consequences within that system.

Second, the subject of expulsion is much more complicated than the above description implies and it leaves an impression that more may not be required. For example, even if a student with disabilities who is referred for expulsion is found to have behavior that is not a manifestation of the disability, the IEP team is required to identify (and the school to provide) educational services that will enable the student

⁸ Page 2.

⁹ Page 3.

to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting his/her IEP goals. Another example applies to the three special circumstances¹⁰ in which a student may be removed from the charter school regardless of whether the behavior is a manifestation of the student's disability. In this case, the student must also continue to receive educational services consistent with the statement above.

- 2) **Expanded criteria.** Problematic language also appears on the Application Description under Element 10, Suspensions and Expulsions. Under this section, *Special Education Discipline Language for Charter Petitions*, the following is provided:¹¹

If it is determined [through a review committee] that the student's misconduct was not a manifestation of his or her disability, *that the student was appropriately placed and was receiving appropriate services at the time of the misconduct, and that the behavior intervention strategies were in effect and consistent with the student's IEP, the student may be expelled. (Emphasis added.)*

The issue pertaining to expulsion when there is no manifestation of disability is discussed above. It is unclear, however, whether the two additional criteria (appropriate placement and receipt of services) are intended to supplement the manifestation determination criteria or be components of the manifestation determination. Under the IDEA, reauthorized in 2004, criteria for the manifestation determination were revised, as follows:

- a. Was the conduct caused by or did it have a direct & substantial relationship to the disability?
- b. Was the conduct the direct result of a failure to implement the IEP?

If the two additional factors included in the above guidance do not reflect LAUSD or state policy, they should be deleted.

- 3) **Obligations upon expulsion.** In addition, the Checklist contains seven assurances to which the petition must attest. The last pertains to expulsion:¹²

If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including a transcript of grades or report card, and health information.

The Application Description should provide clear and complete guidance about the expulsion process for students with disabilities and, when there is no manifestation determination or one of the special three circumstances described above, the manner

¹⁰ The three circumstances are: Carrying or possessing a weapon; knowingly possessing illegal drugs or selling/soliciting sale of controlled substance; or causing "serious bodily injury" to others

¹¹ Page 13.

¹² Page 1.

in which the charter must provide educational services to the student to enable him/her to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting IEP goals. A user-friendly description of IDEA discipline procedures that may be modified for LAUSD is provided at Appendix C.

l. Clarify child find responsibilities for conversion schools regarding students attending private schools.

The special education program description states that the charter will conduct special education search and find activities for private school students residing in its pre-charter attendance areas in accordance with state, federal and District policy.

This provision is unclear in that IDEA/state provisions in this area have particular requirements for child find when students attend a private school. In this case, the requirements pertain to the school district in which the private school is located, regardless of whether the student resides in that district. Thus, if LAUSD policy requires the child find duty to be placed on the public/charter school having boundaries within which the private school is located, the provision should be revised accordingly. Note that parents of students residing in the school's boundaries but attending a private school in another school district also has the right to ask LAUSD (public/charter school) to conduct an evaluation of their child.

m. Provide a list of website resources available to support individuals preparing charter school petitions.

None of the documents reviewed provided any on-line resources relevant to the provision of special education in charter schools. There are a number of resources available that would be beneficial to petitioners, such as:

- *Applying Federal Civil Rights Laws to Public Charter Schools: Questions and Answers*, US Department of Education's Office for Civil Rights, May 2000.¹³
- *Primers on Implementing Special Education in Charter Schools*, provide valuable information for operators, authorizers and state officials during various operational phases: pre-authorization; preparing for start-up; operating a charter school; accountability and renewal; and non-renewal, revocation, and relinquishment. The primers were developed through a grant to the National Association of State Directors of Special Education (NASDSE).¹⁴

5. Some special education charter school funding policies may have unanticipated negative consequences.

One of the difficult balancing acts required for the administration of charter schools is the anticipation of and having the fiscal resources necessary to fund unusually high special education costs. In part, the fear of these high costs and an insufficient fiscal base may deter some charter schools from aggressively recruiting and serving students with disabilities, including those with significant disabilities. With the many schools of LAUSD, there is an

¹³ http://www.uscharterschools.org/cs/spedp/view/sped_aud/2?section=pre#60

¹⁴ Funding for the primers was received by the National Association of State Directors of Special Education (NASDSE) by the U.S. Dept. of Education. http://www.uscharterschools.org/cs/spedp/print/uscs_docs/spedp/operators.htm

economy of scale that is more able to support high costs that may be associated with one student (e.g., nursing, physical and occupational therapy, paraprofessional support, assistive technology, etc.). In fact, providing such services may not be so much a function of whether the services may be brought to a school site to support a student but the ability to find and pay for them. While this review does not include an in-depth study of charter school funding policy, the following fiscal issues are noted:

- **High cost of litigation.** LAUSD has established a sound policy related to charter school responsibility for certain costs related to due process and settlement agreements that may have unanticipated consequences. According to the special education program description, charter schools are responsible for attorney fees and costs when parents prevail in a due process hearing or settlement agreement because of a charter's alleged failure to fulfill its responsibilities under state/federal special education requirements. While this policy supports charter school accountability, it should be noted that few schools may have the funding base to pay out a very large unanticipated claim.
- **NPS funding.** Apparently, LAUSD funds any costly placements of students with disabilities from charter schools to NPS.¹⁵ Although such placements could have a disproportionate impact on a school's budget, the absence of any cost-sharing could provide an incentive for charter schools to try to justify such placements rather than focus on ways in which the student could be supported appropriately at the charter school.
- **Funding based on ADA.** According to the June 25, 2002 Policy for Charter Schools:
Charter schools receive their allocated share of AB602 special education funds. The allocated amount will be calculated using a funding model based on pupil population (average daily attendance).

This funding scheme, however, is based on a presumption that school districts educate students having a need for specialized services that ranges from mild to very intense. When charters receive the same per student funding regardless of special education needs, the formula provides no incentive for enrolling those with more intense needs.

6. Neither the 2002 Charter School Policy nor guidance for the Initial Application adequately addresses the Americans with Disabilities Act (ADA) facility accessibility requirements.

The Initial Application Checklist at Element 6 (Health and Safety) clearly states that the charter application must contain an assurance that the schools' facilities will comply with a variety of requirements, including the ADA. However, neither the 2002 Charter School Policy nor Initial Application Description provides any information about compliance with the ADA. The Policy only specifies that a potential site will be inspected and evaluated by a District engineer or facilities staff for structural issues, child safety issues, adjacent uses (such as drug rehabilitation centers). The Initial Application Description only requires information pertaining to insurance, indemnification, and asbestos management. The document's last section on facilities states that a "certificate of occupancy" is required at least 45 days before school is scheduled to open in the facility. However, it is unclear whether this certificate includes a review of ADA compliance.

¹⁵ LAUSD Power Point presented by Donnalyn Jacque-Anton, Associate Superintendent and Didi Nubla, Deputy Budget Director on November 20, 2008.

In summary, given the potential costs and serious programmatic issues associated with ADA accessibility, LAUSD should clearly articulate the requirements in this area, ensure that facilities are inspected for ADA compliance and specify the consequences of noncompliance.

7. *The Checklist cites an incorrect citation to require details for funding and providing special education services; the information required is unclear.*

Item 13 of the Checklist requires an agreement between the charter school and its sponsoring agency to detail funding and services for students receiving special education services. Section 47612(a)(2) is cited as the statutory reference. Section 47612(a) specifies that a charter school is under the exclusive control of school districts for purposes of the State Constitution for appropriation of public moneys; that provision does not have a section (1) or (2). Because the cited statutory reference could not be located, it is not clear what information this provision is intended to produce.

The description of funding and provision of special education services is broad and complicated. While guidance for addressing special education services is provided somewhat in LAUSD's special education program description, that document does not discuss funding. More detailed guidance should clarify the intent of this item.

8. *Element 4 (Governance) does not fully identify all of the federal laws required to have a grievance process.*

This element provides for the designation of at least one employee to coordinate compliance efforts, posting of grievance procedures, including investigations of noncompliance and compliance with relevant admission and employment relevant to Title IX of the Education Amendments of 1972 (Title IX) and Section 504 of the Rehabilitation Act of 1973 (Section 504). However, it does not address two additional federal laws that also require grievance procedures: Title IV of the Civil Rights Act of 1964 (race, color and national origin) and the ADA.

9. *The Application Description and Checklist are not aligned with an Education Code requirement.*

The Checklist identifies 14 areas for assessment, the first five of which are identical to the Education Code: a description of the educational program of the school, designed, *among other things*, to [1] identify those whom the school is attempting to educate, [2] what it means to be an "educated person" in the 21st century, and [3] how learning best occurs. [4] The goals identified in that program shall include the [5] objective of enabling pupils to become self-motivated, competent, and lifelong learners.¹⁶

The Checklist also identifies a sixth area that is similar to but not the same as the one described in the statutory reference. The Checklist cites the requirement for specific goals for providing and ensuring *equal access to* academically low achievement students. The Education Code refers to a mandated preference to petitions that demonstrate *the capability to provide comprehensive learning experiences* to students identified by the petitioner as academically low achieving.¹⁷ A school may provide academically low achieving students

¹⁶ §47605(b)(5)(A)

¹⁷ §47605(b)(5)(h)

access but not demonstrate the capability to actually provide comprehensive learning experiences. This demonstration should be required to meet the State's requirements.

Charter Renewal

According to the LAUSD Charter School Renewal Components (Renewal Components) document, revised September, 2008, the renewal petition is very similar to the initial charter petition, but with a few important differences. The renewal process provides the charter with an opportunity to *look back* and reflect on the initial charter term, analyze strengths and weaknesses, and assess the extent to which the school has achieved the goals it initially set out to achieve.

The Renewal Components specifically includes the subgroup of students with disabilities (along with other subgroups) in the discussion of student achievement and educational performance where the charter operator is asked to answer questions, which include:

- Is the school an academic success as it relates to student achievement and educational performance?
- Are all student subgroups, including English Language Learners (ELL) and students with special needs showing progress? How do you know?
- Is your school effectively closing the achievement gap?
- How has the program met the needs of subgroups, including students with disabilities?

While these questions focus on the subgroup of students with disabilities they do not address the issues discussed above with reference to the initial application process, such as the proportion and severity of students with disabilities enrolled in a charter school.

The Renewal Criteria and Findings (Renewal Checklist) reviews charter performance in four areas: 1) student achievement and educational performance, 2) governance and organizational management; 3) fiscal operations; and 4) fulfilling the charter. The Renewal Checklist and relevant parts of the District's revised working draft of January 29, 2009 are discussed below.

1. Student Achievement & Educational Performance

In the area of student achievement and educational performance, LAUSD staff review and analyze data regarding the extent to which the charter provided a sound education and increasing academic achievement for all students. This area has eight subsections, one pertaining to special education only and another that is broader in scope but specifically includes students with disabilities.

a. Section 1.6 (Special Education)

The area of special education is addressed at Section 1.6 in the current Renewal Checklist. Although Section 1 pertains to achievement and performance, there is no data reported in this subsection relevant to this topic. Instead, the following areas are addressed:

- ✓ Adherence to all federal and state laws pertaining to special education services, including *Chanda Smith* Consent Decree and related outcomes;
- ✓ Fulfillment of the specific special education instructional plan and goals as set forth in the petition; and

- ✓ There is clear understanding and agreement regarding respective roles and responsibilities of parties involved in contracted Special Education Services.

Numerous deficiencies pertaining to the Initial Application were discussed above that are relevant to the second area: fulfillment of the petition's special education instructional plan and goals. While indicators may be met, they are only as good as their content.

Further, there is no information to indicate whether all three subcomponents have equal weight. For example, compliance with relevant special education requirements may be more important than understanding and agreeing about roles pertaining to special education contract services, especially when the latter does not impact the former.

The Draft Renewal Checklist modifies this area by deleting the second two components. The first of these two components, special education instructional plan/goals, is addressed in a revised Criterion 4 section and will be addressed below. While it is not clear why the District eliminated the third section pertaining to collaboration between parties involved in contracted special education services, it may be due to a belief that sufficient collaboration would be necessary to meet the outcome measure related to compliance with federal/state laws, including the *Chanda Smith* Consent Decree. Some inquiry may be appropriate to determine whether potential issues are likely to go unaddressed if this provision continues to be deleted in the final document.

b. Academic Achievement & Performance)

Several of the subsections (1.1, 1.2, 1.3, 1.4 and 1.7) review data related to academic achievement and performance using both absolute and growth measures. This data, however, is not disaggregated by subgroups. The Working Draft Renewal Checklist includes this information in different subsections (Category 1, 1.1, 1.2, and 1.5) but it maintains the oversight of not reporting subgroup performance.

The absence of subgroup performance appears to be in direct contravention of LAUSD's 2002 Charter School Policy, which states the following at page 14:

The District expects that all students in charter schools, ***including subgroup populations***, meet their targeted growth and demonstrate increased learning, in keeping with District's mission of reducing the achievement gap for low-income students. Failure to meet growth targets for three or the four years prior to renewal may result in non-renewal of the charter. (Emphasis added.)

The importance of this requirement is reinforced on page 16 of the Policy:

Accountability for increased student learning plays a considerable role on whether or not a charter is renewed. The charter is expected to meet API target growth overall and ***for each student population***, and provide evidence of reducing the achievement gap between minority and white students, if applicable. (Emphasis added.)

One of the most important accountability measures of *No Child Left Behind* has been the requirement of subgroup reporting to ensure that a higher performance by some subgroups do not mask a very low performance by others. The absence of this critical

measure in the current and proposed Renewal Checklist is an important oversight and arguably violates the District's Charter School Policy.

c. Section 1.8 (Demographics)

Last for discussion in this area is Section 1.8, which includes three subsections that address a charter's demographics; the Working Draft Renewal Checklist modifies this information to some extent. Both the current and revised draft are discussed below.

1) Allowable Demographic Ranges.

The first component states the following:

The school's demographic ranges (based on CBEDS data) are within five percent of the median enrollment demographics of comparable district schools¹⁸, including ranges for traditionally low-performing subgroups: students with disabilities, ELLs, students eligible for free and reduced lunch, African American students and Latino students. *The Draft allows a 15 percent differential for all subgroups except for students with disabilities, which remains at 5 percent.*

In relevant part, this component analyzes whether the charter is within five percent of the median enrollment of students with disabilities in comparable district schools. This provision's focus on the representation of students with disabilities in charter schools is positive. However, comparing a charter school's enrollment to other neighboring schools may not provide a meaningful measure for a number of reasons:

- Depending on the extent to which the comparison schools educate LAUSD students with disabilities from other schools in special day classes, the number and percentage of students with disabilities in the comparison schools may be artificially high. Conversely, if none of these comparison schools have been "receiving schools" for such students and are not educating their home school students with significant disabilities, the presence of students with disabilities may be artificially low.
- Some of the comparison schools may enroll a disproportionate number of students with disabilities and their eligibility may not be based on appropriate policies, procedures and practices. As a result, they may not be a valid comparison group.

Also, there are several areas that may need clarity related to the standard for comparison; discussion with a statistician may be useful to answer the following questions:

- Is median the appropriate measure for comparison?
- Does median refer to the number or percentage of students with disabilities? Comparing a raw number of students is meaningless unless based on its proportion to the total student population.
- Does the five percent differential refer to an actual five percent of the median or five percentage points of the median? For example, assuming the medium refers

¹⁸ The LAUSD Charter Schools Division Renewal Criteria and Findings define comparable neighborhood schools as follows: Grades 6-12 are schools within a 5-mile radius; Grades K-5 schools are within a 2-mile radius.

Suggestions for Consideration of Data Pertaining to Students with Disabilities

Other methods for analyzing demographic data pertaining to students with disabilities for charter schools seeking renewal are described below.

- ***Students with Typical Disabilities***

Determine the districtwide average of students with disabilities enrolled in similar noncharter schools and grades comparable to the charter being reviewed. Only consider students with typical disabilities (e.g., learning disabilities, speech/language, mild cognitive disabilities, etc.) Identify a reasonable differential from the identified average (i.e., a few percentage points) to establish an acceptable range for the charter's review.

For example, if a charter high school is seeking renewal, the District would gather data from its comprehensive high schools (excluding students without typical disabilities) and determine the overall average. If the overall average is 15 percent, the charter's allowable range may be from 12 to 18 percent.

- ***Students with Significant Disabilities***

Assuming for discussion that LAUSD expects charter schools to provide an equal educational opportunity to students with nontypical disabilities, the review of a renewal petition will depend on whether the charters are expected to educate such students through inclusive services within each school and/or through a clustered and collaborative service model.

In the first instance, each renewal petition may consider the extent to which such students have been included in the applicable charter school using the method described above for students with typical disabilities. In the second instance, the District might annually review all of the charter schools to determine whether, as a group, they are educating a comparable proportion of students to those that are educated in a group of similar noncharter schools.

If any charter school (individually or as a group in the case of students with significant disabilities) is found to have deficient enrollment practices, the District would then focus its review on the aggressiveness and meaningfulness of recruitment activities and appropriate school supports available for these students.

2) *Recruitment & Diversity Targets*

The second demographic component states the following:

Focused and effective implementation of the charter's strategic recruitment plan and progress toward its stated diversity goals/ranges, as well as admission policies. *The Draft revised this statement as follows: Established and effectively implemented a strategic*

recruitment plan that provides access for members of underserved groups. The statement deletes reference to admission policies.

The current Renewal Checklist's second component focuses on effective implementation of a charter's strategic recruitment plan and progress toward its stated diversity goals/ranges, and its admission policies. As discussed in the Initial Application section, recruitment and diversity only addressed race/ethnicity. Therefore, unless this area of review is expanded in the initial application/renewal processes, it will continue to provide no data relevant to students with disabilities.

Further, the Draft Renewal Checklist deletes the reference to admission policies. Charters that have implemented excellent recruitment plans for students with disabilities may nevertheless enroll proportionately few students because of admission policies and practices. The deletion of this information could eliminate important information relevant to this issue.

3) *Enrollment Diversity Targets.*

The last demographic component states:

The school has met or made significant progress towards its enrollment diversity targets listed in its charter (as benchmarked against comparable district schools).

As discussed above, the Initial Application does not include any targets for enrolling students with disabilities. Therefore, there are no targets reflected in this document. *The Working Draft deletes this provision but addresses adherence to fulfillment of charter components in Criterion 4; this issue is discussed further below.*

2. *Governance and Organizational Management*

Section 2.5, Facility and Learning Environment, addresses whether the school site is well maintained and ensures the health and safety of students and staff. In neither the current provision nor the Draft Renewal Checklist (2.3) does this section address whether a charter school has complied with ADA structural requirements. Given the importance of physical access and its impact on health and safety, the District must ensure that each charter school has complied with this important legal provision.

3. *Fulfillment of Charter*

The Working Draft Renewal Checklist proposes a material shift from the current Criterion 4, which requires adherence to all aspects of the approved charter and material amendments. The draft revision provides for the charter school to meet all of the following four areas:

- ✓ API, AYP and CST targets stated in the charter.
- ✓ EL reclassification, special education, graduation-related and other academic performance targets.
- ✓ Enrollment diversity, attendance and retention targets stated in the charter.
- ✓ Targets stated in the charter regarding its instructional programs, enrichment, student services and parental involvement.

The following comments apply to the proposed revision of Criterion 4:

a. *Lack of any targets for the subgroup of students with disabilities.*

As discussed above, a major deficiency in the Initial Application is that it has no requirements for a potential charter school to provide performance targets for students with disabilities. Unless this deficiency is corrected, there are no targets relevant for this subgroup of students and the school may be approved in spite of their extremely and comparatively low performance rates.

b. *Special Education*

- ✓ As discussed above in section 1.a. pertaining to the area of special education, the subsection for “fulfillment of the specific Special Education instructional plan and goals as set forth in the petition” has been deleted and presumably is intended to be addressed in the second subsection of Criterion 4 (EL reclassification, special education, graduation-related and other academic performance targets).

While the current Renewal Checklist devotes one subsection solely to special education, , the draft revision would include it with three other significant issues. With this change, it is very unlikely that any significant issues involving a charter’s compliance with its described special education instructional plan and goals would have much impact if any on its renewal when other areas are compliant. The District’s proposed Refined Scoring System is not likely to overcome this problem:

- 4 = School met at least 90% of the requirements
- 3 = School met 75%-89% of the requirements
- 2 = School met 50%-74% of the requirements
- 1 = School met less than 50% of the requirements

Thus, with other areas being highly compliant, it is possible for a charter to receive a “3” and maybe a “4” even though it may have significant special education issues.

4. *Overall Performance*

None of the documents reviewed indicate if the four areas of the Renewal Components are weighted in importance, e.g., whether achievement and performance is weighted more than governance or organizational management. The same lack of differential consideration seems to apply to each subsection in any given area. As a result, some areas that may be less important than others are considered equally. If an overall rating is higher than two, conditions may be recommended due to lower ratings in certain subsections; however, these subsections are not identified. To this end, the Renewal Components do not seem to reflect the District’s commitment to the principle that *[a] quality authorizer designs and implements a transparent and rigorous process that uses comprehensive data to make merit-based renewal decisions.*¹⁹

The relatively small overall weight apparently provided to equitable access by students with disabilities and the provision of appropriate special education services may explain why no

¹⁹ National Association of Charter School Authorizers.

information relevant to this subgroup of students was included in the District's March 24, 2009 rationale for not renewing two charters.²⁰

Conclusion

In conclusion, LAUSD has taken steps to proactively address charter schools' equitable and appropriate provision of special education services to students with disabilities. The above analysis and comments are offered to support this effort and provide suggestions for strengthening the charter school authorization and renewal process to promote higher academic outcomes for students with disabilities and to ensure compliance with relevant IDEA, state and MCD requirements.

²⁰ Charter of Los Angeles International Charter High School and Opportunities Unlimited Charter High School and to approve Equitas Academy Charter School

Appendix A

Operators: Special Education Requirements and Including Students with Disabilities in Charter Schools²¹

The questions below were included in the above-referenced document, which is one in a series of primers developed by the Special Education Technical Assistance for Charter Schools Project (SPEDTACS) and published in June 2004. The project was supported through funds awarded to the National Association of State Directors of Special Education (NASDSE). The questions are a useful basis for a charter school's presentation of the manner in which it will carry out special education requirements and include students with disabilities in its school.

Some of these questions have been addressed by California's Education Code and LAUSD. In addition, questions may be formulated to address each charter's recruitment of various types of students with disabilities, including those with significant disabilities, and any additional information relevant to the provision of services for students with significant disabilities.

Funding for Special Education

- Is there a formula for determining how much special education funding to include in our budget?
- What is the formula and how is it determined?
- What funds will we receive for special education services? (e.g., federal, state, local funds, fundraising)

Space and Facilities

- Where will we conduct student evaluations?
- Where will we conduct IEP meetings?
- Where can we store confidential student records?
- Where will we provide (pullout) services?
- Where can related services personnel meet with individual students?
- Where will we store supplies and equipment used by students with disabilities (e.g., educational, medical, mobility, assistive technology)?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals, including adults, with physical disabilities?
- Who will make repairs to ensure school remains accessible to students with disabilities?

Human Resources

- How many students will the school enroll?
- How many teachers will I need to hire?
- How many special education teachers will I need to hire?
- What kind of certification will the teachers need?
- Can I hire dual-certified teachers?
- Can I hire part-time or retired special education teachers?
- Can we use student teachers from area universities?
- What type of related services personnel will we need?
- How will we obtain these services and contract with these individuals?
- What other types of services will our school need?

²¹ http://www.uscharterschools.org/cs/spedp/print/uscs_docs/spedp/operators.htm

- Legal counsel with special education expertise
- Accountants/bookkeepers/number crunchers

Curriculum

- What curriculum will my school offer?
- How does our curriculum align with the state's suggested curriculum or standards for student learning?
- How will we modify the curriculum to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum for children with disabilities in inclusive classrooms?
- What types of assistive technology will be needed by our students?

Service Provision

- How will we provide special education related services (e.g., occupational and physical therapy, orientation and mobility, speech therapy)?
- What should our Child Find activities look like?
- How will we conduct student identification, evaluation and special education determination meetings?
- Who will participate in IEP development and implementation?
- What types of special staff or consultants will we need to implement our students' IEPs?

Professional Development

- How will we provide my teachers with professional development?
- What type of specialized professional development will be needed by school staff (including teachers, paraprofessionals, administrators) to support children with disabilities?
- Does the LEA or the SEA operate a professional development program or network that I can utilize?

Administration

- Who will administer the special education program?
- Who will be responsible for collecting, managing and reporting data related to children with disabilities?
- What equipment/supplies/programs will be needed to collect and store data and records? How will we obtain these? What training will be needed to use these efficiently and appropriately?
- Can we create our own system to administer special education or do we need to adopt the policies/procedures dictated by my authorizer, local district, other administrative unit (e.g., a BOCES or a Cooperative)?

Transportation

- Will we provide students with transportation?
- Can we access district or state transportation dollars to offset costs?
- How will we meet transportation needs of students who receive transportation as a related service that is required by their IEP?
- How will we arrange transportation for a student in a wheelchair?

Appendix B

Information Pertinent to Students with Disabilities: Survey of a Few Websites

Websites with Excellent Information Pertaining to Students with Disabilities, Including Those with Significant Disabilities

- Kenter Canyon School <http://www.kentercanyon.org/about-special.html> and <http://web.me.com/sheardnicole/Site/Welcome.html>
- CHIME <http://www.chimeinstitute.org/history.htm>
- Open Magnet Charter School <http://homepage.mac.com/opencharter/>

Websites with No Apparent Information Pertaining to Students with Disabilities, Including Those with Significant Disabilities

Academia Advance: <http://avance.camote.org/about.html>

Accelerated Charter: <http://www.accelerated.org/>

Alain Leroy Locke Charter <http://www.lockehs.org/>

Colfax Charter Elementary <http://www.colfaxelementary.org/index.php?section=1&page=3>

Ivy Academia <http://www.ivyacademia.com/>

KIPP Academy of Opportunity: <http://www.kippla.org/KAO/about/About-KIPP-LA.cfm>

Pacifica Community School: <http://pacificaschool.org/>

New Millennium Charter HS: <http://www.newmillenniumschool.org/home.aspx>

Larchmont Charter School <http://www.larchmontcharter.org/>

Wisdom Academy for Young Scientists: <http://wisdomacademy.org/about.html>

Appendix C
IDEA DISCIPLINE PROCEDURES
SUE GAMM, PUBLIC CONSULTING GROUP

SPECIAL CIRCUMSTANCES PRESENT

- I. SPECIAL CIRCUMSTANCES:** Can remove a student for up to 45-school days IAES²² WITHOUT a Manifestation Determination.

Applies when at school, on school premises, or going to or at a school function under the district's jurisdiction, the student:

1. Carries or possesses a weapon;
2. Knowingly possesses illegal drugs or sells/solicits sale of controlled *substance*; (*Note: alcohol and tobacco are not "controlled substances"*); or
3. Causes "serious bodily injury" to others: *Involves 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.*

II. PROCESS

- B. IEP Team.** Determines:

1. **Continuation of Educational Services.** Must provide services to student that enable him/her to continue to participate in general education curriculum (although in another setting) and to progress toward meeting.
2. **IAES Setting.** If home instruction is being used for an IAES, care must be taken to ensure that the services will satisfy the above requirements.
3. **FBA/BIP.** Conduct, as appropriate, a functional behavioral assessment (FBA) and design a behavioral intervention plan (BIP) to address the student's behavior related to the violation so it doesn't recur.

- C. Parental Notice.** On date the district decides to remove a student to an IAES or another setting, must notify parents of decision and provide procedural safeguards notice.

III. RIGHT TO EXPEDITED DUE PROCESS HEARING (During process, student stays in IAES)

- A. Expedited Due Process Hearing.** Parents²³ who disagree with IAES appropriateness may request an expedited due process hearing to contest services.
- B. Discipline Hearing.** Parents who disagree with a *factual basis* for a disciplinary removal may request a hearing under the regular Code of Student Conduct
- C. Placement During Appeal.** Student remains in the IAES pending the due process hearing process.

IV. TO EXTEND IAES:

If engaging in an act that constitutes a Special Circumstance would require removal for more than 45 school days the IEP Team may conduct a manifestation determination and

²² Interim alternative educational setting

²³ Information pertinent to parent(s) is relevant for guardian(s), foster parents and surrogate parents, also.

take actions described in the procedures on the following pages. Begin the process sufficiently early in the 45-school day time period to ensure it is completed by the end of this time period. All of the procedures beginning at Section 2, below, apply. Parents and district representatives may agree to a change in placement pursuant to the IEP process.

NO SPECIAL CIRCUMSTANCES PRESENT

I. **DETERMINE IF REMOVAL CONSTITUTES A CHANGE IN PLACEMENT**

A. **Criteria. The removal is –**

1. Not more than 10 consecutive school days or
2. More than 10 total school days but does not create a *Pattern of Removals* that constitute a change in placement

B. **Pattern of Removals Factors.** The following factors are considered to determine if the removal constitutes a pattern and therefore a change in placement:

1. Behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and additional factors combine to
2. Length of each suspension (e.g., 1 day, 4 days, etc.)
3. Total cumulative days of suspensions (e.g., 11 days, 14 days, etc.)
4. Proximity of (time between) suspensions (e.g., 1 week apart, 2 months apart, etc.)

Also, consider whether suspensions are: from the same class on a regular basis; on the same day of the week; at the same time of day; for the same activity; involving same staff or other students. If so, consider whether an FBA should be completed to guide development or revision of a behavior intervention plan.

If the removals constitute a pattern, follow the process below for Change of Placement at Section 2 below.

II. **REMOVAL IS NOT A CHANGE OF PLACEMENT (LESS THAN 10 CONSECUTIVE DAYS & NO PATTERN OF SUSPENSIONS)**

- A. On or before 11th day of total suspensions, must continue to provide educational services.
- B. Determine services and IAES setting in consultation with **at least 1 of the student's teachers**:
 1. **Standard.** Must provide services to student that enable him/her to continue to participate in general ed curriculum (although in another setting) and to progress toward meeting IEP goals
 2. **FBI/BIP.** Conduct, as appropriate, an FBA and design a BIP to address the student's behavior related to the disciplinary violation so it doesn't recur.
 3. **Extent of Services & Type of Instruction:** Depends on the length of removal, extent to which the student was removed previously and his/her needs and educational goals. For example, students removed for only a few days and

performing near grade level wouldn't likely need same level of services as one with significant learning difficulties and performing well below grade level.

III. REMOVAL IS A CHANGE IN PLACEMENT (PATTERN OF REMOVALS EXISTS)

A. Process

1. **Parental Notice:** On date decide to remove student, must notify parents of decision and provide procedural safeguards notice.
2. **Set up IEP Meeting:** Call the parent to request participation and immediately confirm with an IEP Notice form. (Document at least 3 attempts to contact parent if contact is unsuccessful. Follow IEP procedures to review and communicate IEP changes.)
3. **Manifestation Determination.** Determine within 10 school days of decision to change placement. Based on review of all relevant information, including IEP, any teacher observations and any relevant information provided by parents, answer these 2 questions:
 - a. **Was conduct caused by or have direct & substantial relationship to disability?**
 - b. **Was conduct the direct result of a failure to implement the IEP?** (If so, the principal/designee must take immediate steps to ensure the identified deficiencies are remedied.)

Manifestation is present if the answer to *either* question is "yes."

4. **Behavior is NOT Manifested**
 - a. May apply to the student relevant disciplinary procedures in the same manner applicable to students without disabilities *except* educational services must continue consistent with the standard below
 - b. IEP Team: Identifies educational services that will enable the student to continue to participate in general education curriculum (although in another setting) and to progress toward meeting IEP goals
2. **Behavior IS Manifestation of Disability**
 - a. **FBA.** Complete an FBA (unless one has previously been completed)
 - b. **BIP.** IEP Team designs a BIP. If one was developed previously, the IEP Team reviews and modifies the plan, as necessary, to address the behavior so it won't reoccur.
 - c. **Student's Placement.** Return the student to the placement from which (s)he was removed *unless* the parent and school officials agree to a change of placement as part of the BIP
 - d. **Injurious Behavior.** If the principal/designee believes that the student's behavior is substantially likely to result in injury to the student or to others if s(he) remains in his/her placement, the district may request an expedited due process hearing.

B. Right to Expedited Due Process Hearing

1. Expedited Due Process Hearing

- a. **Parents.** For parents who disagree with the manifestation determination or IAES/services appropriateness
- b. **District.** For district if staff members believe a student's behavior that is manifested by the disability is substantially likely to result in injury to the student or to others.

2. Regular Discipline Hearing. Parents who disagree with the *factual basis* for a disciplinary removal may request a hearing under the district's Code of Student Conduct

3. Placement During Appeal. Unless parents and the district agree otherwise –

- a. **Behavior is NOT Manifestation of Disability.** Student remains in the IAES or other setting pending the due process hearing process.
- b. **Behavior IS Manifestation of Disability.** Student remains in placement (s)he was in at the time of the disciplinary event in question.

Students without an IEP Plan Who Violate Code of Conduct

I. Deemed To Have Knowledge (Thought to Be a Student with a Disability). The district is deemed to have knowledge that a student may have a disability if, prior to the behavior resulting in a disciplinary action any of the following occurred:

- A. Parent expressed concern in writing to supervisory or administrative personnel, or student's teacher about a need for special education and related services;
- B. Parent requested an evaluation; or
- C. Student's teacher or other school personnel expressed specific concerns about student's pattern of behavior demonstrated directly to director of special education or other supervisory personnel

If any of these circumstances are present, the district must consider the disciplinary action as if the student has a disability.

II. No Knowledge. The district is not deemed to have knowledge when:

- A. Parent did not allow an initial evaluation of the student
- B. Parent refused special education and related services for the student **or**
- C. The student was evaluated and was determined not to have disability.

If any of these circumstances are present, the student may be subjected to the same disciplinary measures applied to those without disabilities engaging in similar behaviors.

III. Request for Evaluation during Time Period of Disciplinary Measures

Conduct the evaluation in expedited manner but the student remains in educational placement determined by the district pending the evaluation results. If student's determined to have a disability develop an IEP, provide special education and related services and reconsider the placement in light of the new information.

Sue Gamm, Esq.
Educational Strategies & Support
Biography

Sue Gamm is the former Chief Specialized Services Officer for the Chicago Public Schools (CPS) where she was responsible for the management of special education, student support services, alternative education, and safe and drug free programs. With the Office for Civil Rights (OCR), U.S. Department of Education, she served as an assistant civil rights attorney and Division Director with responsibility for elementary and secondary compliance and technical assistance activities in Illinois, Wisconsin and Minnesota.

Since her retirement from CPS, Sue has worked with a variety of national organizations including the Council of Great City Schools, Urban Special Education Leadership Collaborative, and the Public Consulting Group. Independently and through these groups, she has provided consultation services to a number of states (IL, RI and NV) and school districts, including those in New York City, Los Angeles, San Diego, Boston, New Orleans, Philadelphia, Baltimore, Washington, St. Paul, St. Louis, Hartford, Yonkers, Rochester, Charleston (SC); and several school districts and a charter school organization in Illinois. Sue has testified about special education matters before the U.S. Senate Finance Committee, the U.S. Senate HELP Committee, the Illinois legislature, and the President's Commission on Excellence in Special Education's Accountability Systems Task Force.

From her unique perspective as an attorney and former Federal official, senior large school district administrator and special educator, Sue has shared her knowledge of IDEA and its related issues at numerous national, state and local conferences. In addition to writing numerous articles, periodicals and special education policy and procedural manuals, she co-authored with Dr. Thomas Hehir *Special Education: From Legalism to Collaboration*, in *Law and School Reform: Six Strategies for Promoting Educational Equity*. Sue is also the author of three LRP Publications: *Disproportionality in Special Education: Determining When and Why Overidentification of Minority Students Occurs*; *Cracking the Code: IDEA and NCLB Alternate Assessment Rules Made Simple*; and *When OCR Comes Calling: An Insider's Guide to Handling Disability Complaint Investigations and Compliance Reviews*.