

## Analysis of LAUSD Magnet School Program Relative to Students Receiving Special Education Services

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The Los Angeles Unified School District (LAUSD) has a wide array of school choices for students and their parents. According to LAUSD's website, there are currently 169 magnet school programs and 183 charter schools, or a total of 352 schools of choice. About 78,000<sup>1</sup> LAUSD students attend charter schools and about 53,700<sup>2</sup> attend magnet programs; almost 20 percent (131,700) of LAUSD's 678,441<sup>3</sup> students participate in school choice. Overall, about 30 percent of LAUSD schools enroll students on the basis of choice. Although LAUSD does not have the largest percentage of choice schools in the country<sup>4</sup>, it does have the largest number of schools. In this context, the extent to which LAUSD's 83,358 students with disabilities<sup>5</sup> have an equal opportunity to attend a school of choice is extremely important.

As discussed in my prior review of charter schools, *Analysis of Documents Pertaining to the (Re)Approval of LAUSD Charter Schools & Compliance with State/Federal Special Education Law*, (May 2, 2009), when a smaller percentage of students with disabilities – especially those with significant disabilities – attend schools of choice, a larger percentage are left behind to attend traditional schools. This impact on traditional schools has grown over time and is likely to increase as more schools of choice (charter and magnet) are approved.

A percentage of students with disabilities at a school that significantly exceeds the districtwide rate of 12.3 has a tremendous impact on instruction and school culture, and makes it more difficult to educate those students in general education classes to the extent that might otherwise be possible with more natural enrollment proportions. Further, interest in attending an LAUSD magnet school is high and competitive. It is imperative that students with disabilities' have an equal educational opportunity to participate in these highly coveted programs.

*Over the past 31 years, as many as 65,000 applications are received each year for an estimated 16,000 magnet school openings. LAUSD 11/7/08 News Release*

This review focuses on policies and procedures used by LAUSD to administer its magnet program. The Office of the Independent Monitor (OIM) provided the following documents; additional documents obtained through the Internet are referenced in the report.

- 2010-2011 Choices Brochure (2011-2012 not yet available)
- 2011-2012 Choices Application Process Timeline

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<sup>1</sup> LAUSD Charter School Homepage

<sup>2</sup> Nov. 7, 2008 News Release

<sup>3</sup> LAUSD Fingertip Facts 2010-11

<sup>4</sup> About 75 percent of schools in New Orleans are chartered.

<sup>5</sup> CA Department of Education DataQuest (2009-2010 school year)

- Current Magnet/PWT/PSC Process System Design
- English & Spanish Parent Letters for Applicants with IEPs (acceptance, waiting list, and waiting list – no match)
- Magnet Program Resource Handbook Section Regarding Special Education Students in Magnets
- LAUSD News Release, Parents/Guardians to Receive 2009-2010 Magnet/Permits with Transportation/Public School Choice Brochures by Mail (Nov. 7, 2008)
- School Self Review Checklist, Students with Disabilities: 2004-2005
- Verification Process, Gifted/High Ability Magnet Centers
- Annual Year-End Evaluation for Magnet Schools and Centers
- LAUSD Division of Special Education’s Least Restrictive Environment Brochure
- Examples of the Elements in the Summary Offer of FAPE
- Los Angeles Unified School District Policy (in support of LRE)
- 2010-11 Staffing Ratios – Magnet Schools – as of May 10, 2010

### **Background**

Charter schools and magnet schools are similar but have different legal foundations and requirements regarding regulatory flexibility. Both, however, must meet the same federal and state special education legal standards.

In recognition of the value of magnet schools, the US Department of Education administers the Magnet Schools Assistance program, which provides grants to assist in the desegregation of public schools by supporting the elimination, reduction, and prevention of minority group isolation in elementary and secondary schools with substantial numbers of minority group students. In doing so, grantees are selected that:

... support the development and implementation of magnet schools that assist in the achievement of systemic reforms and provide all students with the opportunity to meet challenging academic content and student academic achievement standards. Projects support the development and design of innovative education methods and practices that promote diversity and increase choices in public education programs. The program supports capacity development—the ability of a school to help all its students meet more challenging standards—through professional development and other activities that will enable the continued operation of the magnet schools at a high performance level after funding ends. Finally, the program supports the implementation of courses of instruction in magnet schools that strengthen students’ knowledge of academic subjects and their grasp of tangible and marketable vocational skills.<sup>6</sup>

In alignment with the above, LAUSD’s magnet program was established by Court order to address the five following harms of racial isolation:

- Low academic achievement

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<sup>6</sup> <http://www2.ed.gov/programs/magnet/index.html>

- Low self-esteem
- Lack of access to postsecondary opportunities
- Interracial hostility and intolerance; and
- Overcrowded Conditions.<sup>7</sup>

LAUSD's magnet schools feature high interest programming in such areas as fine and performing arts; communications; law, government, police; and math, science and technology. Reflecting its respected work in this area, the US Department awarded LAUSDs Magnet Program a grant of \$3.6 million to support significant revision of three existing magnet schools and the establishment of a new magnet school.

### **LAUSD Magnet Program Documents**

The following relevant information was reflected in the various documents provided by the OIM.

#### **2010-2011 Choices Brochure**

The 2010-2011 Choices brochure encourages all District students, including those receiving special education services, to apply.

Gifted/High Ability & Highly Gifted. The brochure states that specific criteria apply only for magnets designated for gifted/high ability and highly gifted students. No information is provided in the brochure or elsewhere on the magnet program website regarding the extent to which any accommodations or alternative assessments is provided in determining whether a student receiving special education services may meet relevant criteria.

Students with IEPs. In another section, the brochure specifies additional criteria for students with IEPs:

Students with Individualized Education Programs (IEPs) may be eligible for Magnet School placement, providing it is determined that a free appropriate public education (FAPE) is available at the proposed site. The first consideration is to ensure that the IEP team recommendations, based on the student's assessed needs, can be met.

Transportation. The brochure also specifies when LAUSD will provide free transportation services for students:

District-paid transportation is provided for elementary (k-5) applicants if they reside outside a two-mile radius or outside the Magnet School attendance boundary, whichever is further. The eligibility distance for SECONDARY students (grades 6-12) has been extended to three miles. Permits with Transportation (PWT) is a Court-Ordered voluntary integration program available to residents of the Los Angeles Unified School District who live within a PWT sending school area.

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<sup>7</sup> 2010-2011 Choices Brochure

## **Magnet Program Resource Handbook Section Regarding Special Education Students in Magnets**

According to the August 2009 Magnet Program Resource Handbook, having an IEP does not automatically preclude a child from participating in a magnet program. However, the information appears to restrict the enrollment of students with disabilities in various circumstances.

For magnet students enrollment in a magnet program:

Elementary: The IEP must not require a full-day placement in a Special Day Program (SDP); RSP students are eligible for an elementary Magnet program.

Secondary. The student's IEP must not require placement for more than 50% of the school day in an SDP. (The student must be enrolled in a minimum of three Magnet classes to be considered a Magnet student.)

According to the information provided, it appears that the Special Education Support Unit staff must review a student's IEP prior to enrollment. Presumably, this review is designed to ensure that the school can provide the student with a free appropriate public education (FAPE) at the relevant magnet school. Other than the information above for students already enrolled, no additional criteria or guidance is provided for the FAPE review. If the Special Education Support Unit staff approve the placement, parents receive a "provisional acceptance letter stating that student is eligible to attend the Magnet provided the IEP is rewritten by the sending school. Parents are referred to the Unit for assistance in getting the IEP rewritten.

### **Least Restrictive Environment (LRE) Brochure**

LAUSD's LRE brochure contains information regarding how decisions should be made with respect to LRE. It states:

The IEP team must consider your child's individual needs and decide the least restrictive placement based on your child's needs.... Decisions must be based on individual needs in the IEP, and **not** on:

- The child's disability ... this also means that a student can not be placed in a special class just because a child needs extra services;
- Where the District's staff is located;
- Amount of funds that are available; or
- What is easy for the school district.

### **Los Angeles Unified School District Policy**

The District has a policy that supports the placement of students in the least restrictive environment (LRE), stating its commitment to providing students with disabilities the same access to neighborhood schools, open enrollment schools, magnet schools and centers, and charter schools as their nondisabled peers. In relevant part, the policy supports the use of dual enrollment options for students with disabilities to have access to the general curriculum; and to be educated with their nondisabled peers to the maximum extent appropriate, as follows:

Dual enrollment occurs with the IEP team determines that a student with a disability should be educated part-time in a nonpublic school (NPS) and part-time on a general education campus in general education classes, resource specialist programs, or Special Day programs. (Age appropriate general education schools or campuses may include preschools, elementary schools, middle schools, high schools in the student's neighborhood or near the nonpublic school, *including magnet schools....*) *Administrative convenience shall not be a factor in determining a student's placement.* (Emphasis added.)

### **Procedures Applicable to Magnets for Educating Students with Disabilities**

One document provided by the OIM contained information for magnets with respect to the review of special education services. Magnet programs are required to complete *The School Self-Review Checklist, Students with Disabilities*. Two other documents that would be relevant to the education of students with disabilities are: Annual Year-End Evaluation for Magnet Schools and Centers; and 2010-11 Staffing Ratios – Magnet Schools – as of May 10, 2010. Neither of these documents have any reference to the needs of students with disabilities; they are not specifically considered in the year-end evaluation or staffing needs.

### **Regulatory Requirements**

The education of students with disabilities in magnet schools is governed by Section 504 of the Rehabilitation Act (Section 504), which parallels the requirements of the Americans with Disabilities Act, and the Individuals with Disabilities Education Act (IDEA).

#### **Section 504**

Under Section 504's implementing regulation, no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. Further explaining this provision, the regulation specifies that with respect to qualified persons with disabilities recipients (e.g., school districts) are prohibited from:

- Denying the opportunity to participate in or benefit from an aid, benefit or service;
- Afford an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;
- Provide an aid, benefit or service that is not as effective as that provided to others.<sup>8</sup>

#### **IDEA**

The relevant IDEA provisions are those LRE selections that promote interaction between students with and without disabilities and govern the removal of students from regular classes:

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<sup>8</sup> 34 C.F.R. 104.4

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>9</sup>

In addition, US Department of Education comments to its final regulation state that in all cases placement decisions must be individually determined on the basis of each student's abilities and needs and each student's IEP, *and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience.*

### **Administrative Guidance**

Very few cases in LRP's on-line legal research tool have been reported regarding admission of students with disabilities to magnet schools by the Office for Civil Rights (OCR), state education (SEA) agency due process decisions or courts. No court decisions were reported; only two relevant OCR decisions and three SEA decisions were reported. Of the seven reported cases, only one supported a student's admission into a magnet school over the district's preferred placement. Notably, a California hearing officer made this determination in 2009 against the Fresno Unified School District. These decisions are summarized below.

#### **Office for Civil Rights**

When OCR reviews allegations regarding a district's actions with respect to the placement of a student with disabilities, it will review the extent to which the district, among other things, drew upon information from a variety of sources and ensured that the placement decision was made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement option. As long as a district complies with this procedure, OCR will not second-guess the resulting placement decision.<sup>10</sup> Based on this standard of review, OCR supported the school district's actions in each of the following cases:

- A District did not discriminate against a student with XYY sex chromosome on the basis of disability when it denied him the opportunity to attend a magnet Montessori School because district staff demonstrated that the student's educational needs could not be met at the school. The student was nonverbal, was not independent, and could not respond to a basic direction; the Montessori approach is not language based and is designed for students who are self-motivated and independent learners. The decision was consistent with the district's policy that a student can be denied a place in a magnet school if the student's IEP requires a program not located in the school. See *Charlotte-Mecklenburg (NC) Schools*, 108

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<sup>9</sup> 34 C.F.R. 300.114

<sup>10</sup> 34 C.F.R. § 104.35(c).

LRP 62748 (OCR 2007)

- The district's rejection of a kindergarten student with a visual impairment and speech/language delays for admission to a magnet arts program was based on information in his application package, parent input, and comments in his special education evaluation that raised questions regarding his social adjustment skills, flexibility, and independence. *Portland (OR) Sch. Dist. 1J*, 1 ECLPR 236 , 1 LRP 9554 (OCR 1992).

Unlike OCR, due process hearing officers weigh the evidence to make an independent and impartial judgment about a district's proposed placement for a student. In the first two cases below, the hearing officer supported the districts' determination that the magnet school would be unable to provide the students with FAPE:

- It was "clear" that the only viable placement for a student's best interests was in the district's collaborative kindergarten program in the school nearest to his home; the IEP called for placement in that program. The parents wanted him to attend a magnet school, but the magnet school could not fulfill the requirements of the student's IEP and was located far from his home. Accordingly, the IEP was affirmed. *In re: Student with a Disability*, 105 LRP 13107 (SEA VA 2004).
- A student's best placement would be at a regular high school because it would be very difficult for the student to succeed at the parents' preferred magnet school, even with class modifications, because of the magnet school's rigorous academic program. Testimony indicated the student with a developmental disability could become frustrated by his lack of ability to perform the required work at the magnet school. *Washoe County Sch. Dist.*, 36 IDELR 80 (SEA NV 2002).

In the final and most recent case reported, the hearing officer ruled against the Fresno Unified School District on behalf of a high school student with mild mental retardation:

The district failed to show that a high school student with mild mental retardation could not be educated in her regular magnet school classes with the use of supplementary aids and services. Because the district failed to establish that the student was not progressing in the school, and that a special day class which offered minimal interaction with nondisabled peers was less restrictive, the ALJ denied its request to compel the SDC placement. *Fresno Unified Sch. Dist.*, 52 IDELR 150 (SEA CA 2009).

### Analysis

About 30 percent of LAUSD schools are classified as either a magnet or charter school. To ensure that students receiving special education services are provided an equal educational opportunity to attend a school of choice and that traditional schools are not disproportionately impacted by students excluded from choice schools, it is important for the District to have clear relevant policies and procedures in place.

Clearly, magnet schools offer enriched opportunities that are not available in traditional schools. Further, the enrollment of students with disabilities in magnet schools helps the District to meet the goals of its magnet program. These policies and procedures should be designed to

encourage applications to schools of choice on behalf of students with disabilities. Any review of a student's enrollment in a magnet school for the provision of FAPE should be based on clear procedures to ensure that a placement is not denied inappropriately. The following are areas of concerns based on the documents provided for review and summarized above:

- The Choices brochure and other information does not indicate the extent to which assessments of students with disabilities for gifted/high ability and highly gifted programs may be provided through alternative means or with accommodations. Some students with disabilities may be highly intelligent but have difficulty expressing what they know (because of their disability) through traditional means.
- The Choices brochure encourages students receiving special education to apply, however, the criteria for no-cost transportation do not reflect that students with disabilities who do not meet them, nevertheless, may be entitled to transportation as a related service. The absence of this clarifying information may discourage a parent from submitting a magnet school application on behalf of his/her child with disabilities who requires transportation.
- It is unclear why the Special Education Support Unit is involved with the review of magnet school acceptance for every student with an IEP as opposed to only those that a magnet school believes it is unable to support.
- Given LAUSD's policy on dual enrollment for students receiving special education services, it is not clear why the Magnet Program Resource Handbook excludes students with an IEP requiring placement for more than 50% of the day in an SDP.
- It is not clear why the Magnet Program Resource Handbook limits presumptive eligibility to students receiving resource support and does not discuss other elements of eligibility.
- The IEP review process by the Special Education Support Unit is not clearly described. For example:
  - Does a group of persons knowledgeable about the student and the meaning of the evaluation data review information, or is it reviewed by one administrator only?
  - Is the review based on the magnet school's current configuration of services or does it consider additional services that can be made available at the school?
  - Does the review consider whether the student's IEP can be modified to be more inclusive because of the magnet school's program and the student's interests, or other considerations?
  - Does the review exclude consideration of administrative convenience as a primary consideration?

- It is not clear why a parent receiving a “provisional” acceptance letter stating that a student is eligible to attend a magnet school has the burden to obtain a rewritten IEP for the student by the sending school. Should the administrative burden be placed on the Special Education Support Unit? It is also not clear why the IEP team needs to meet to enter a new serving school, i.e., does the IEP team meet each time a student’s residence changes within LAUSD and (s)he transfers schools? If the IEP needs content change, could not the magnet school initiate the change?
- It is not clear why the Annual Year-End Evaluation for Magnet Schools and Centers do not include specific provisions to assess instruction and performance outcomes for students with disabilities, including any challenges and recommendations for improvement.
- It may be appropriate for the Staffing Ratios document for magnet schools to include information relevant to special education.

### **Additional Areas of Inquiry**

The following information may be helpful to determine the extent to which students receiving special education are applying to magnet schools and/or enroll at expected levels:

- For the 2010-11 school year, how many students receiving special education services applied to the magnet school program; by disability?
- Of the students who applied, how many were approved for enrollment; by disability?
- How many students with disabilities currently attend magnet schools by school and disability?
- Of the students that were denied approval for enrollment, what were the reasons for denial?
- What is the process used to review the appropriateness of a student’s enrollment in a magnet school? Is the process different for a charter school? If so, why?
- Regarding the administrative IEP/FAPE review process, who is involved; what documents are reviewed; to what extent are new or different services considered; and what is the expertise of the reviewers with respect to the student’s area of needs and knowledge of inclusive instruction?

## Sue Gamm - Brief Biography

Sue Gamm, Esq., served as the Chief Officer of Specialized Services for the Chicago Public Schools for eight years beginning in 1995. In that capacity, she was accountable for implementing and/or monitoring compliance with education laws and rules regarding the identification, evaluation, provision of related services, student/family confidentiality and procedural safeguards for nearly 50,000 students with disabilities. She was also responsible for, among other things, implementing an aggressive and successful Medicaid/Children's Health Insurance Program outreach initiative. Prior to her work at Chicago Public Schools, Ms. Gamm spent 12 years as the Director of Elementary and Secondary Education Division and Assistant Civil Rights Attorney for the Office for Civil Rights in the U.S. Department of Education with responsibility for elementary and secondary compliance and technical assistance activities in Illinois, Wisconsin and Minnesota.

Since her retirement from CPS, Sue has provided consultation services to the Public Consulting Group (PCG), Urban Special Education Leadership Collaborative, Council of Great City Schools; various state educational agencies (IL, LA, RI and NV); numerous school districts across the country, including those in New York City (NY), New Orleans (LA), Philadelphia (PA), New Orleans (LA), Baltimore (MD), Washington, DC, San Diego, St. Paul (MN), St. Louis (MO), Hartford (CN), Charleston (SC), Waukegan (IL), and Evanston/Skokie District #65 (IL); the federal IDEA monitor's office for Los Angeles Unified School District; and charter schools in Illinois. In addition, she has been involved in over 30 reviews of districtwide special education programs in 28 states. 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*.