California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN SELPA STEERING COMMITTEE MEETING
March 15, 2019

AGENDA

1.0 CALL TO ORDER

1.1 Adoption of Agenda – March 15, 2019

1.2 Adoption of Minutes – February 22, 2019

2.0 COMMITTEE MEMBERS COMMENTS/REPORTS

This is the time during the meeting when the California Association of Health and Education Linked Professions Joint Powers Authority (CAHELP JPA), Desert/Mountain Special Education Local Plan Area (SELPA), Desert/Mountain Charter Special Education Local Plan Area (SELPA), and Desert/Mountain Children's Center (DMCC) staff is prepared to receive concerns/requests regarding items on this agenda or any school-related special education issues. Discussion will include special education policies and procedures as they relate to local education agency (LEA) coordination and implementation of the SELPA and Charter SELPA Local Plans.

3.0 PRESENTATIONS

4.0 DIRECTORS OF EDUCATION REPORTS

5.0 DESERT/MOUNTAIN OPERATIONS AREA DIRECTOR'S REPORTS

6.0 CHIEF EXECUTIVE OFFICER'S REPORTS

6.1 Assistive Technology Exchange Information

6.2 Inter-District Transfers/Served By/For

6.3 Legislative Update

6.4 Suspensions Without Discipline Report

6.5 Statewide Access to Partnering with Parents Survey

6.6 Preschool Least Restrictive Environment

6.7 Science Test Opt Out

7.0 DIRECTOR'S REPORTS

7.1 Desert/Mountain Children's Center Clients Services Reports

AGENDA

8.0 PROGRAM MANAGER'S REPORTS

8.1 Professional Learning Summary

8.2 Resolution Support Services Summary

8.3 Transition Resource Fair

8.4 Directors' Training

8.5 California Alternative Diploma

8.6 2018/19 California Positive Behavior Intervention and Supports Recognition System

8.7 Compliance Update

8.8 Performance Indicator Review (PIR) Workshops

8.9 Desired Results Access Project Update

8.10 Special Education Data Collection in CALPADS

8.11 Nonpublic Schools Update

9.0 BUSINESS DEPARTMENT REPORTS

9.1 Special Education Concentration Grant

9.2 California State SELPA Finance Report

10.0 PROGRAM SPECIALISTS' REPORTS

10.1 Behavioral Emergency Report (BER) D/M 114

11.0 INFORMATION ITEMS

11.1 Monthly Occupational & Physical Therapy Services Reports

11.2 Monthly Audiological Services Reports

11.3 Monthly Nonpublic School/Agency Placement Report

11.4 Upcoming Professional Learning Opportunities

11.5 2019 California Multi-Tiered System of Support Professional Learning Institute

AGENDA

12.0 OTHER

13.0 MOTIVATION AND INSPIRATION

14.0 ADJOURNMENT

NEXT MEETING: APRIL 12, 2019 IN THE DESERT MOUNTAIN EDUCATIONAL SERVICE CENTER, APPLE VALLEY

Individuals requiring special accommodations for disabilities are requested to contact Jamie Adkins at (760) 955-3555, at least seven days prior to the date of this meeting.

California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
STEERING COMMITTEE MEETING
February 22, 2019

MINUTES

D/M SELPA MEMBERS PRESENT:
Academy for Academic Excellence and Norton Science & Language Academy – Amanda Gormley, Paul Rosell, Adelanto SD – Kristi Filip, Apple Valley USD – Renee Castillo, Barstow USD – Derek Delton, SBCSS-D/M Operations – Richard (Rich) Frederick, Excelsior Charter Schools – Marie Silva, Helendale SD – Michael Esposito, Hesperia USD – Matt Fedders, Teri McCollum, Lucerne Valley – Vici Miller, Needles USD – Jamie Wiesner (via Web Ex), Oro Grande SD – Derek Hale, Silver Valley USD – Cheri Rigdon (via Web Ex), Snowline JUSD – Diane Hannett, Trona JUSD – Nicole Yeager, Victor Elementary SD – Tanya Benitez, Denise Gleason, Victor Valley Union High School District (VVUHSD) – Francesca Copeland, Margaret Akinnusi.

CAHELP, SELPA, & DMCC STAFF PRESENT:
Jamie Adkins, Guille Burgos, Heidi Chavez, Danielle Cote, Lindsey Devor, Adrien Faamausili, Marina Gallegos, Bonnie Garcia, Renee Garcia, Colette Garland, Jenae Holtz, Kristee Laiva, Maurica Manibusan, Lisa Nash, Sheila Parisian, Kathleen Peters, Eddie Peterson, Karina Quezada, Daria Raines, Linda Rodriguez, Jennifer Rountree, Veronica Rousseau, Adrienne Shepherd-Myles, Jennifer Sutton.

1.0 CALL TO ORDER

The regular meeting of the California Association of Health and Education Linked Professions Joint Powers Authority (CAHELP JPA) D/M SELPA Steering Committee meeting was called to order by Chairperson Jenae Holtz at 9:01 a.m., at the Desert Mountain Educational Service Center, Apple Valley. The Meeting Agenda for February 22, 2019, and the Meeting Minutes for January 18, 2019 were adopted as presented.

2.0 COMMITTEE MEMBERS COMMENTS/REPORTS

Rich Frederick recognized Jenae Holtz for being named Association of California School Administrators (ACSA) Region 12 Student Services Administrator of the Year.

3.0 PRESENTATIONS

None.

4.0 DIRECTORS OF EDUCATION REPORTS

Matt Fedders asked for D/M SELPA to continue to look at reducing paperwork and instead use more electronic documents. He reasoned that there is a large amount of scanning that is required to ensure all documents are in the student files, including teacher reports, progress reports, and Desert/Mountain Children's Center reports. Matt would also like to have digital signatures considered as a possibility to move toward becoming completely paperless.

Jenae Holtz agreed that it is time to work towards reducing paper usage. She shared that she attended a meeting the day prior with Colette and Peggy regarding digital signatures. D/M SELPA will be moving forward with the programmers in understanding how to accomplish the transition.

MINUTES

5.0 DESERT/MOUNTAIN OPERATIONS AREA DIRECTOR'S REPORTS

Rich Frederick reported that San Bernardino County Superintendent of Schools (SBCSS) is currently in negotiations with California State Employees Association (CSEA) which is the bargaining unit for the paraeducators. The negotiations could affect the paraeducators working as bus aides on district buses after hours. Rich continued that there are approximately forty paraeducators that are working as bus aides so it could be a big issue. He stated that paraeducators cannot be mandated to work as bus aides and there is a challenge of getting the aides to the schools where the children attend. Rich stated that he will be in contact with district directors as the situation progresses. He concluded by asking for any suggestions to be shared with him.

6.0 CHIEF EXECUTIVE OFFICER'S REPORTS

6.1 English Language Development (ELD) Goals in IEPs

Karina Quezada reminded the committee that at last month's Steering Committee meeting, a director reported that during a recent Federal Program Monitoring (FPM) the reviewers were looking for ELD goals to be present in IEPs. Karina contacted CDE regarding the request. She shared that in the response she received from the CDE Technical Assistance and Monitoring Office it stated they are looking for current English Language Proficiency (ELP) performance levels, discussion of appropriate universal supports and accommodations for the ELP testing including language change from CELDT to ELPAC, and indication of linguistically appropriate academic goals. Karina stated that she spoke with the director of PK-12 Programs and Monitoring at Hesperia USD who strongly recommended that ELD goals be included as good practice and also recognized that it is not a requirement under federal or state law. This was also confirmed with Riverside County Office of Education and San Bernardino County Superintendent of Schools. Karina noted additional information was included in the Steering packet for LEAs to use as a reference when developing goals.

Jenae Holtz shared that the email from CDE is a good resource to share with a reviewer that is stating the goal is required.

6.2 Legislative Update

Jenae Holtz addressed Assembly Bill (AB) 8 - Pupil Health: Mental Health Professionals. Jenae stated AB 8 requires LEA schools (including charters) or county offices of education, on or before December 21, 2022, to have at least one mental health professional (as defined in the bill) accessible to students on campus during school hours. Jenae then recited the list of professionals that qualify as mental health professionals in AB 8. She concluded the list is broad enough that having the D/M Children's Center (DMCC) mental health providers providing services, member LEAs should meet the requirements of AB 8.

6.3 Attendance vs Suspension Data

Jenae Holtz reported she was informed through the SELPA Administrators of California group that there are large discrepancies between California Longitudinal Pupil Achievement Data System (CALPADS) and California Special Education Management Information System (CASEMIS) on LEA reported student attendance and suspension data. Jenae stated the CDE requested SELPAs to address this concern with LEAs. She explained that if a student is truly suspended (not accessing the curriculum or their special education related services), then they must be reported as suspended. The CDE has asked for the data to be corrected prior to June 30, 2019.

Colette Garland stated the SELPA does not collect the attendance data for CASEMIS. Colette added the SELPA is encouraging LEA MIS contacts to also review the data. Colette then encouraged directors to follow up with their CALPADS staff and review this data more frequently (if possible at least monthly). She recommended LEAs monitor and correct the data regularly as needed.

Vici Miller thanked Sheila Parisian for helping with a parent question. The parent asked if an in-house suspension would count in total days. Sheila went to great lengths to provide exact data to the LEA to present to the parent. Vici stated that when a student has in-house suspension, there is still access to special education curriculum and services so it does not count towards what is reported to the state.

6.4 Low Incidence Fund Update

Jenae Holts provided a low incidence fund update. She told directors to work with their business staff in submitting the invoices and receipts to D/M SELPA so the appropriate funds can be reimbursed to the LEAs. Jenae said that when requests for reimbursement are received after the funds are depleted, she will attach a letter to the returned request stating the cost is the responsibility of the district. Jenae continued that it is important for the directors to sign the low incidence fund requests and if the request is not signed by the director, the D/M SELPA business staff will be contacting the director for a verbal approval. The directors need to be aware of what is being requested because it could affect the LEA budget at the end of the year.

Diane Hannett stated that a majority of requests she receives for low incidence equipment (LIE), usually for visual impairment (VI) or deaf and hard of hearing (DHH), are for students that are served by county and the requests are coming from the county specialists. Diane has concerns about not being aware of the LIE recommendations until she receives the request forms. She asked how the financial responsibility is divided between her district and Desert/Mountain Operations.

Rich Frederick responded that he does sign the approval requests then forwards the forms to D/M SELPA business.

Jenae stated that Low Incidence Funding is under-funded. D/M SELPA is very fortunate to be able to re-use equipment and reassign it to other students. She continued that there is a tremendous need for LIE and it is not a fully funded mandate.

Rich said that he is working on building an equipment lending library through the VI department with SBCSS funding. There will be extra equipment not assigned to a specific student that can be used by districts.

Sheila Parisian shared that there are approximately 15 independent living centers that have established lending libraries. A person can log on to the website to see what equipment available and which facility has it then the facility will ship the equipment for free. Sheila continued the equipment can be borrowed for however long it is needed. Sheila will email the link to the directors.

Marina Gallegos stated that P1 was certified on February 20 and the 2018-19 allocation for LIE is a little more than reflected in the document provided.

Jenae reported that she has been working with Rich on the audiology process. She and Rich will be bringing a proposal to provide supports to the LEAs in their IEPs.

6.5 Each Mind Matters Mini Grant Applications for Middle and High Schools

Jenae Holtz presented information on the Each Mind Matters Mini Grant awards. She stated the funds are designated to be used to help increase mental health awareness among students, staff, and parents. The grant funds are available for 25 middle school, high school and college campuses. Jenae stated the applications are due March 1, and awards will be announced on April 1, 2019.

6.6 Policy Guidance on Endrew F. Decision

Jenae Holtz presented the December 7, 2017 U.S. Department of Education's Questions and Answers (Q&A) on the U.S. Supreme Court Case Decision *Endrew F*. v. Douglas County School District Re-1. She stated this decision impacted how goals and progress are looked at for students with disabilities. Jenae highlighted question 7, which addresses all students performing at grade level and those unable to perform at grade level must be offered an IEP that is "reasonably calculated to enable a child to make progress appropriate in the light of the child's circumstances." This standard is different from and more demanding than, the "merely more than *de minimis*" test applied by the Tenth Circuit. Jenae noted the takeaway from this case is to not use a standard across the board but to truly look at each child and how to help the child truly progress individually. She emphasized being thoughtful and meaningful when looking at developing the IEP goals for each individual child versus cookie cutter type plans.

Lisa Nash reminded the directors that some attorneys are still referring to *Board of Education v Amy Rowley* case which is a 25-year-old supreme court decision that established the basic floor of Free and Appropriate Public Education (FAPE). The *Endrew F.* decision is current and what should be referred to. Lisa continued that *Endrew F*. sets the standard of developing goals that are unique to the child's circumstances or "in light of the child's unique abilities".

Kathleen Peters stated that the offer of FAPE cannot contain different options. It is r however, appropriate to document that discussion occurred regarding what would be the best placement for the child. Kathleen continued that goals must change every year to show the goals are being changed to meet the child's needs and show progress. She also shared that lifting the language from the content standards is not enough because that is not where the child is missing learning: the child is missing the skills needed to meet the standard.

Sheila Parisian shared that Amy Rowley was a general education student that was progressing with the supports she was being given. Her parents requested a more restrictive approach which was American Sign Language. *Endrew F.* is different in that the student with more complex disabilities is in a restrictive environment. His baselines did not match the goals and he was not making any progress. She continued that in making the comparison between the two decisions, it is important to look at the individual circumstances and ensure there are appropriate baselines that are linked to the goals.

Adrienne Shepherd-Myles reminded the directors that it is extremely important for teachers to attend the PLOPs and Goals Training as well as the Transitional Planning Training. There is substantial time spent training on writing annual goals and post-secondary goals. Adrienne stated that it is important for veteran teachers to attend as well.

Kathleen stated that transitional goals are a red flag in potential due process filings. While the educational system is developing transitional plans, it is an expectation from the state for the students to be working so the plans are becoming more important.

7.0 DIRECTOR'S REPORTS

7.1 Desert/Mountain Children's Center Clients Services Reports

Linda Llamas reported the monthly DMCC Client Services reports are included in the individual LEA folders (as applicable). She stated directors may contact her should they have any questions about their report or DMCC services.

Linda addressed the rumor that DMCC is scheduling assessments 6-8 months after receiving referrals. Linda confirmed that the time frame is actually 4-6 weeks. She stated that DMCC receives approximately 400 referrals each month and 40-50 assessments are being scheduled each week. She explained that referrals are triaged when received and if

a child is coming out of the hospital or has high needs, the assessment is scheduled within 7 business days to ensure the child is connected to services immediately. Linda continued that children that do not have insurance that DMCC accepts, they are offered a sliding scale fee and are given a letter that states DMCC is at capacity but if they would like to pursue an assessment, it will be scheduled. Linda stated that the most high-risk students are taken first.

Jenae Holtz stated that students with disabilities are also put at the top of the list.

Matt Fedders stated the DM 100a does not specify if the child is in special education. He asked if DMCC researches if a child is in special education or should the form be modified.

Linda said the referral form is being reviewed and revised to make triage process quicker. She confirmed that DMCC staff does look in Web IEP for every referral to see if the child has special education services. If the child does, DMCC works to immediately contact the parent or caregiver and as soon as the parent/caregiver responds, the assessment is scheduled within 60 days if not sooner.

Jenae stated that by July 1 the revised referral form should be ready. The triage process will still include checking Web IEP for special education services and Medi-Cal.

8.0 PROGRAM MANAGER'S REPORTS

8.1 Professional Learning Summary

Jenae Holtz presented the January 2019 D/M SELPA Professional Learning Summary. She stated the individualized reports are in the LEA folders.

Jenae announced that D/M SELPA is looking in to becoming a teacher preparation academy by the Fall of 2020. The process has begun with an application with California Commission on Teacher Credentialing (CTC) and looking at what can be offered. Jenae stated that D/M SELPA will have to select one program to start with. She asked for feedback as to the needs of the LEAs.

After discussion, the group was divided between mild/moderate and moderate/severe.

Jenae said the goal is to have both at some point but there has to be a starting point. She continued that it will be evaluated and there will possibly be a survey with some questions so the needs of the LEAs can be met.

Danielle Cote said that in the past teachers could be hired as moderate/severe but teach emotional disturbance classes. She asked if that is still an option.

Diane Hannett responded that there is a chart that shows what disabilities the credential can teach. She concluded that emotional disturbance is the only one that can be under either.

Rich Frederick stated that students with Specific Learning Disability (SLD) or Other Health Impairment (OHI) that are going in to the SUCCESS program have to be with a teacher that has mild/moderate credentialing.

8.2 Resolution Support Services Summary

Kathleen Peters presented the Resolution Support Services Summary. Kathleen asked to be notified of any errors so adjustments can be made.

Kathleen said that when due process cases come in, there is not a lot of time to prepare and respond. She has found that documents being scanned in to Drop Box by LEAs are not always in order, are often duplicates, and are not kept together by student. This, at times causes confusion in the D/M SELPA office and is causing delays. Kathleen asked for the directors to make sure the staff is being purposeful and careful when scanning documents.

8.3 Compliance Update

Colette Garland provided updates on Compliance as follows:

2016-17 Disproportionality Review Cycle: The D/M SELPA is waiting for the final reviews from the CDE FMTA. Colette asked to be emailed a copy of any correspondence received from CDE.

2017-18 Disproportionality Initial Review Results: The submissions for Hesperia USD and Needles USD have already been submitted and approved.

2017-18 Significant Disproportionality: Victor Valley UHSD is continuing in the process but will not be in Significant Disproportionality next school year. CDE said their plan was the best and they will be using it as a sample.

2018-19 Data Identified Noncompliance (DINC): DINC Submission completed and approved.

2018-19 Performance Indicator Reviews (PIR): The final information has not been received yet. Colette did email the annual performance reports (APR) to the directors along with the updated PIR Workshop flyer. Because the final reports have not been received, the workshop dates were rescheduled as follows: March 8, 11, 18, April 12, and May 2, 2019 (if needed).

December 1, 2018 Pupil Count: The December 1 Pupil Count was completed and submitted to CDE.

Web IEP At-a-Glance Form: Colette shared the IEP At-a-Glance form is finalized; programming will be completed by February 28, 2019.

8.4 Performance Indicator Review (PIR) Workshops

Colette Garland stated the flyer included in today's packet has been revised with new dates. She concluded the updated flyer was sent via email to directors on February 21.

8.5 Nonpublic Schools Update

Jenae Holtz reported on nonpublic schools as follows:

Bright Futures Academy (BFA): Jenae stated the BFA Apple Valley campus moving to the Adelanto campus has been delayed due to challenges with city authorizations. The target date is mid-April.

Danielle Cote shared that she provided De-Escalation Strategy Training this week at Bright Futures. The staff was very receptive and it went very well. She also assisted in a classroom and said the environment was beautiful and the teacher was proud of her room which is an improvement on what she has seen in the past.

Jenae thinks they are making some improvements. She has received good reports on trainings that are happening on the campus and the staff receptiveness. The concern continues to be the stability of the staff and having consistency. Jenae stated D/M SELPA will continue to monitor the campus and will report any issues.

Desert View NPS: Jenae reported that Desert View NPS has a new principal. There were serious issues with the former principal and the CEO of Desert View NPS immediately took action bringing the principal from the San Dimas campus to the Hesperia campus. Jenae said that the campus is going through some adjustments which is typical when there is a new administrator trying to provide structure and change the campus culture. She is hopeful that over the next two to four weeks there will be a difference. Jenae said that D/M SELPA will be monitoring the site.

Jenae concluded by reminding the directors that Eddie Peterson will be doing the IEPs for the NPS students. She encouraged the LEAs to continue participating in the IEP meetings.

8.6 D/M SELPA and Charter SELPA Forms

The following forms were presented for review and adoption:

D/M 68A (revised) & 68H (new): Colette Garland presented the IEP Form 68A. She stated it was revised to add a checkbox for Annual/Matriculation meetings. Colette stated the SELPA also proposes creating 68H: Annual/Matriculation to be used for combination meetings.

Jenae Holtz asked Paul Rosell if charter schools that serve kindergarten through twelfth grade conduct matriculation IEPs. Paul confirmed they do not because the school only has one CDS code.

Colette confirmed that if the annual evaluation has already been done and not close to the matriculation date, the matriculation meeting will be an addendum. Forms D/M 68A and D/M 68H will only be used when matriculation and annual are due at the same time. It gives an end date for this year but allows services to continue in to the next year.

English Language Proficiency Assessments Decision Tree for Students with Disabilities & D/M 68F-ELPAC (New): Karina presented the revised English Language Proficiency Assessment Decision Tree for Students with Disabilities. She stated this tool can be used to assist with determining which assessments or components of assessment would be appropriate for a student. Karina explained the flow of the decision tree. She also presented the English Language Proficiency Assessment Participation Consideration (ELPAC) form 68F-ELPAC. Karina stated the decisions from the decision tree can be used to complete 68F.

Karina explained that the blue side of the decision tree reflects how to proceed when the student is partially participating in the ELPAC assessment. The orange side of the decision tree reflects how to proceed when a whole testing domain is eliminated, and an alternate assessment has to be administered. When a child is participating partially in either reading or writing and listening or speaking, the alternate assessment is not needed.

Karina continued that the Decision Tree is meant to assist IEP teams with completing the English Language Proficiency Assessment Participation Consideration form. If any of the items are checked "disagree", an alternate assessment is probably not necessary and there can be discussion on the extent of participation in the ELPAC.

Karina stated that the state has recognized that alternate assessments are necessary and they have asked educational professionals to assist in designing a state alternate assessment.

Karina shared that she will begin training on Ventura County Comprehensive Alternate Language Proficiency Survey (VCCALPS) next Fall or early winter. For this year, the IEP teams need to decide on which alternate assessment is to be administered. Karina does not want to train others until she has been trained herself by the creators of the VCCALPS.

Vici Miller asked Rich Frederick if students attending (English Language Learning) ELL county classes are being tested by the county or if it is the responsibility of the LEA.

Rich confirmed that the students are tested in the county classes.

Karina confirmed that form D/M 68F will only populate in Web IEP for students that are ELL.

Matt Fedders questioned there being an additional attachment documenting the discussion of alternate assessments.

Jenae agreed the attachment can be deleted.

D/M 68G Program Options and Rationale: Colette stated the D/M 68G: Program Options & Rationale was revised to include a checkbox for "Health Care Plan". Colette stated if the box is checked it will be notated on the IEP At-a-Glance form that the child does have a Health Care Plan in place.

Matt asked if there is another place where attendance can be addressed that stands out more for the IEP to address if the student's attendance is affecting their learning. It is important to motivate children to want to attend school by recognizing when they are on time and are attending class.

Michael Esposito stated that attendance was an issue at Helendale SD last year. They learned that it is best practice to have a Behavior Intervention Plan (BIP) addressing attendance in place before referring a student to School Attendance Review Board (SARB). Michael also stated that the BIP is not entered until the LEA has gone through their other four interventions. They look for patterns of absence: days of the week, missing certain class periods, etc.

Diane Hannett said that attendance should not be covered in a goal but there are strategies that can be placed on the Supplementary Supports and Aids page. She continued that it should be indicated in the notes that attendance issues were discussed.

Nelda Colvin requested a training on appropriate goals. She shared that a parent had requested the LEA to wake the student in the morning then transport the child to school. Nelda has concerns about the BIP and the IEP team's responsibilities.

Jenae stated that D/M SELPA does not recommend writing an attendance goal. It is important to have a BIP in place for a student that has serious attendance issues as best practice. LEAs are not responsible for parents waking their children and it is important to find ways to motivate students to want to come to school. Jenae said the issue will be taken to Program Team for discussion then brought back to Steering.

Kathleen Peters stated that SARB is where attendance issues should be addressed. If a student is in special education, the special education teacher should be included in the SARB meeting. The SARB meeting is where collaboration happens with the family.

Kristi Filip said when a student in special education goes through SARB, the SARB teams wants there to have been an IEP meeting that addressed the attendance issue.

Kristin continued that the BIP does require a behavior goal and asked how to write it for attendance.

Sheila Parisian stated that the IEP team would meet to determine what strategies and supports are needed and if they are listed under Supplementary Supports. Sheila continued that if there is a behavior issue, the IEP team would decide if a referral will go further and into a BIP.

Jenae agreed that developing a BIP is looking at the underlying root causes of attendance. The goal is not about attendance but what can be done to get the child engaged in learning that will bring the child to school more often.

Rich Frederick suggested adding a box to the form to specifically document that there was a discussion in consideration of other factors impacting the child's education.

Diane shared that she has received several requests to address bullying through an IEP. A BIP cannot be written to change the behavior of another student. Though bullying would not be an area of need if the student is the victim but instead something that is impacting attendance and education.

Cheri Rigdon commented that Silver Valley USD addresses bullying by adding that there will be a social skills model and practice to assist the student in dealing with the bully in Supplementary Supports.

9.0 BUSINESS DEPARTMENT REPORTS

None.

10.0 PROGRAM SPECIALISTS' REPORTS

10.1 PBIS Behavior Support Plan Form

Danielle Cote reported that Natalie Sedano and other Positive Behavioral Interventions & Supports (PBIS) staff have revised the PBIS Behavior Support Plan (BSP). It is for general education students and is aligned with special education behavior plans. The form will be posted on the CAHELP website in the Educator Portal.

Danielle shared she attended the Behavior Conference on February 21, 2019 where there was much discussion on behavior plans. The new plans she was shown are similar to what was used 15-20 years ago and are leaning towards simplicity.

11.0 INFORMATION ITEMS

11.1 Monthly Occupational & Physical Therapy Services Reports

11.2 Monthly Audiological Services Reports

11.3 Monthly Nonpublic School/Agency Placement Report

11.4 Upcoming Professional Learning Opportunities

12.0 OTHER

Jenae Holtz announced that CAHELP JPA has purchased the Spirit River business complex. There are 5-6 units already occupied by CAHELP JPA staff. The owner of Spirit River approached Jenae and explained that the rent of those units pays the mortgage on the complex. Jenae continued that there has been an immediate financial savings since escrow closed on February 14, 2019 and there is also revenue being received from the other businesses in the complex. The cost to build on the property that was purchased in Hesperia is extremely expensive. She continued that the plan is to save the money then build later. CAHELP JPA is currently leasing four suites off site and as those leases expire, the staff will be moved to the Spirit River complex. Jenae concluded that within a five-year timeframe, the saving will be approximately $1 million a year.

13.0 MOTIVATION AND INSPIRATION

Jenae Holtz shared a video, "A Letter to the Future from Kid President".

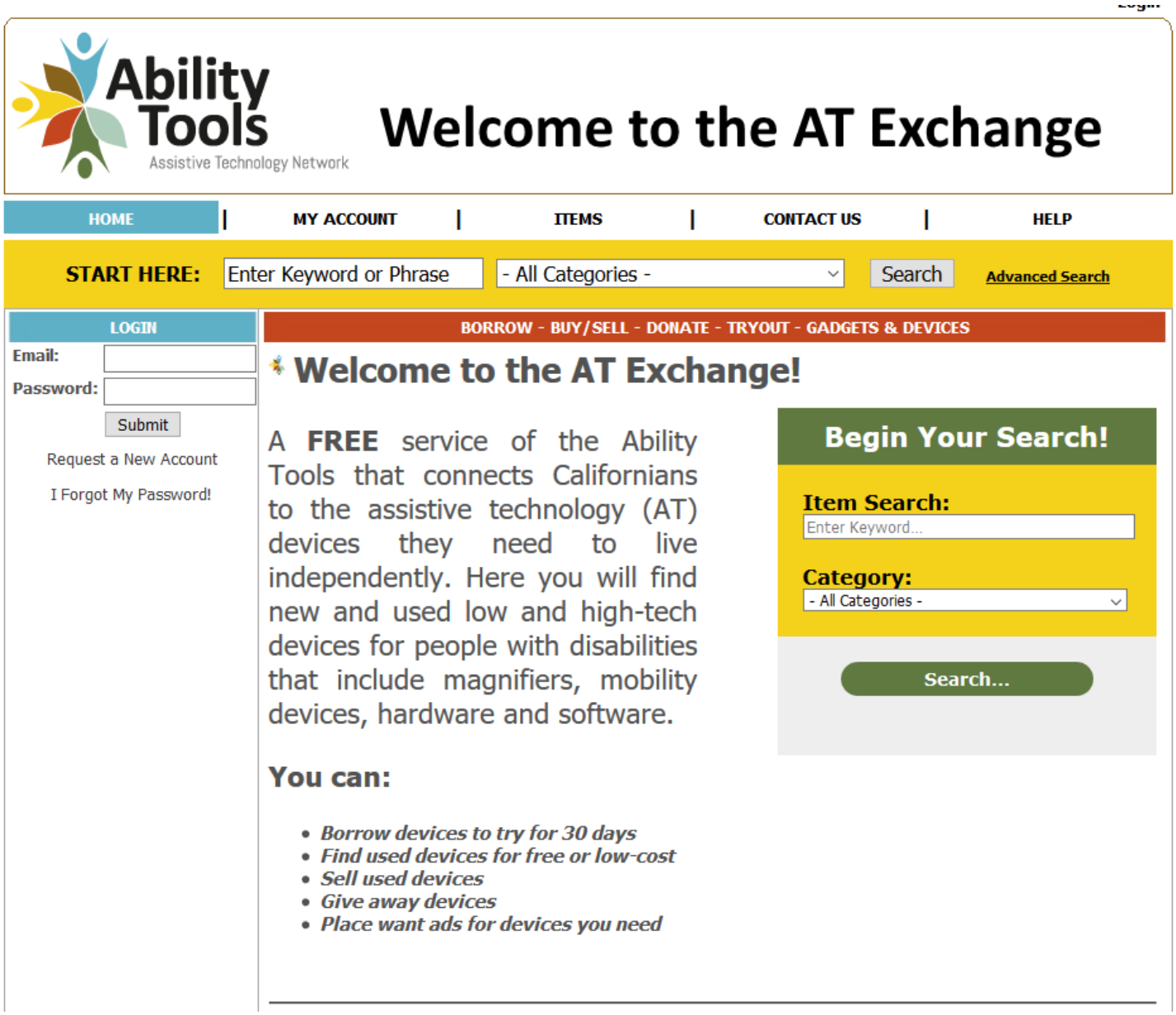
14.0 DIRECTORS TRAINING

15.0 ADJOURNMENT

Having no further business to discuss, the meeting was adjourned at 2:00 p.m.

NEXT MEETING: MARCH 15, 2019 IN THE DESERT MOUNTAIN EDUCATIONAL SERVICE CENTER, APPLE VALLEY

Individuals requiring special accommodations for disabilities are requested to contact Jamie Adkins at (760) 955-3555, at least seven days prior to the date of this meeting.


Ability Tools
Assistive Technology Network
Welcome to the AT Exchange
HOME | MY ACCOUNT | ITEMS | CONTACT US | HELP
START HERE: Enter Keyword or Phrase - All Categories - Search Advanced Search
LOGIN
Email:
Password:
Submit
Request a New Account
I Forgot My Password!
BORROW - BUY/SELL - DONATE - TRYOUT - GADGETS & DEVICES
Welcome to the AT Exchange!
A FREE service of the Ability Tools that connects Californians to the assistive technology (AT) devices they need to live independently. Here you will find new and used low and high-tech devices for people with disabilities that include magnifiers, mobility devices, hardware and software.
You can:
Borrow devices to try for 30 days
Find used devices for free or low-cost
Sell used devices
Give away devices
Place want ads for devices you need
Begin Your Search!
Item Search:
Enter Keyword...
Category:
- All Categories -
Search...

53 IDELR 303
109 LRP 69418

Morgan Hill (CA) Unified School District

Office for Civil Rights, Western Division, San Francisco (California)

09-09-1051

June 9, 2009

Related Index Numbers

405.030 Discrimination

514. TRANSFER STUDENTS

Judge / Administrative Officer

Arthur Zeidman, Director

Ruling

OCR found that a California district violated Section 504 and Title II when it revoked the interdistrict transfer of a high school student with a learning disability. OCR's investigation revealed that the district could not articulate a legitimate, nondiscriminatory reason for the revocation.

Meaning

Districts may not use disciplinary infractions by students with disabilities as an excuse to discriminate or avoid their duty to provide special education and related services. If a district decides to take the step of revoking a student's interdistrict transfer based on behavior, for instance, it must be ready with documented examples of behavior grave enough to warrant the action. In this case, a district could point to only a minor behavior issue -- texting -- which did not appear to be the true reason for the revocation. Unable to provide a valid explanation, the district's decision was found discriminatory.

Case Summary

A single instance of text messaging was a poor explanation for a district's decision to revoke a student's interdistrict transfer. OCR found that the revocation amounted to disability discrimination, since the district lacked a legitimate, nondiscriminatory reason for the drastic step. The student, a high schooler with a learning disability in mathematics, attended the district's high school since her freshman year and had an IEP. When she was a senior, the district informed her parents of the revocation by letter. The principal subsequently explained that the decision was based on the student's behavior. However, he could point only to a texting incident, and that incident occurred after the district mailed the letter. A county board of education later reinstated the student, as well as the only other senior whose transfer was revoked. That student also had a disability. OCR pointed out that under Section 504, districts may not afford a person with a disability an opportunity to participate or benefit that is not equal to that afforded to others. 34 CFR 104.4(b)(1). OCR noted that the incident relied on by the district was not a valid explanation, since it occurred after it reached its decision. Moreover, the severity of the sanction bore no logical proportion to the weight of the student's only cited misconduct. OCR also relied on teachers' statements that the student had no other misconduct issues. Finally, it pointed to a statement in the student's IEP that she did not have significant behavior problems. A resolution agreement signed by the district provided that OCR would monitor the high school's interdistrict transfer process.

Full Text

Dear Superintendent Nishino:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Morgan Hill Unified School District alleging that the District discriminated against the Student based on disability.[1] The issues OCR investigated were:

1. Whether the District failed to provide the Student a free, appropriate public education (FAPE).

2. Whether the District discriminated against the Student by revoking her inter-district transfer.

3. Whether the District subjected the Student to retaliation for protesting the revocation of the inter-district transfer.

OCR enforces Section 504 of the Rehabilitation

Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints of discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR has concluded its investigation of these issues. With regard to the first issue, OCR found that the District violated Section 504 (and Title II) when it failed to provide the Student a FAPE. With respect to the second issue, OCR found that the District discriminated against the Student on the basis of disability when it revoked the Student's inter-district transfer but that the actions of the District remedied this issue. Further, OCR found that the District did not retaliate against the Student subsequent to her protest of the revocation of her inter-district transfer. The District has agreed to implement the actions in a Resolution Agreement to resolve these compliance concerns.

OCR discussed the allegations with the Complainant and interviewed staff from the District. OCR also reviewed information provided by the Complainant and the District. The following is a summary of the applicable legal standards, the findings of fact, and the compliance determinations.

1. Whether the District failed to provide the Student a FAPE

The regulations implementing Section 504, at 34 C.F.R. § 104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections.

Based on its interviews and document review, OCR obtained the following information:

- The Student is a 12th grade student who began attending her high school in her freshman year on an inter-district transfer (IDT).

- The Student has a specific learning disability. On standardized tests, she demonstrates a severe discrepancy between her ability and achievement in mathematics. The Student's most recent comprehensive assessment occurred in March 2007 as part of her triennial IEP. A diagnostic placement test in August 2008 assessed the Student at a 5th grade math level. The Student receives services through the resource specialist program sixty percent of her day. Her IEP specifies goals and objectives in the areas of math and reading and specifically authorizes the Student to receive extra time on quizzes and tests, use of a word processor for written assignments, extra time on extensive written assignments, state mandated assessments may be taken in a small group setting, and she may use a calculator on math class assignments, quizzes and tests as mutually agreed upon by the case manager and the Student's teacher. However, the Student was not authorized to use a calculator until the present school year.

- A complete year of Algebra 1A is a graduation requirement of the District. The Student has been enrolled in Algebra 1A since the beginning of her sophomore year, including summer school 2007, but has not yet passed algebra. The Student enrolled in a collaborative algebra class during her junior year and is currently enrolled in an Algebra 1A class that has an RSP teacher who assists the primary teacher. The Student did not take a pre-algebra class during high school because the District does not offer a high school level pre-algebra class.

- In addition to taking algebra classes, the Student also enrolled in a high school exit exam

remedial math class during her junior and senior years. The Student passed the California High School Exit Exam (CAHSEE) in the fall of 2008 (senior year) on the ninth attempt. The Student is currently receiving additional math tutoring during her exit exam class because she no longer needs CAHSEE tutoring. The Student is also enrolled in an adult education algebra class through the District. The instructor is the same instructor that taught the 2008 summer school course that the Student partially attended. The Student has passed the first section of her adult education class and is currently enrolled in the second session.

- The Student's Algebra 1A class is taught by both an algebra teacher, who has no specific training in special education and a resource specialist teacher who has a background in mathematics. Both the primary instructor and the resource specialist hold tutoring sessions during the brunch and lunch breaks. The Student's IEP team determined that the Student should attend the lunch and brunch tutoring sessions on a daily basis to assist her in algebra. The Student has attended some tutoring sessions, but has not attended daily.

- In reviewing the Student's IEP's since 2007 and discussing this information with District staff, the IEP's contained only goals appropriate for general math and did not address specific needs in algebra. In December 2008, the Student's algebra teacher developed goals specific to her algebra needs.

- Each student with an IEP is assigned a case manager that is in charge of implementing students' IEPs. The case manager is also in charge of calling and recording IEP meetings and managing all the staff involved with the implementation of a student's IEP.

- The Student's case manager explained that after the overturn of the Students IDT, the filing of the complaint and the implementation of the behavior contract that she considered the Student "high profile," and has been tracking her progress much more diligently during the current school year in comparison to the 2007-2008 school year when she had first been assigned to the Student and did not track the Student's progress.

- The Student's Algebra 1A grade is determined in three parts -- homework, class work and exams. Although the Student's homework grade was based on attempt, the Student had such difficulty completing and turning in her homework without the proper support that she is therefore receiving a failing grade in algebra.

In providing a FAPE, a school district has the responsibility to evaluates student with a disability to determine what special education or related services are needed for the student's individualized needs. The school district must then provide those services and periodically re-evaluate the student in order to determine if the services provided are appropriate. In this case, OCR determined that the District did not recognize when it was necessary to reevaluate the Student with a team of knowledgeable persons, failed to identify strategies specifically designed to address the Student's disability in mathematics and the requirements the District set for a diploma, and did not fully implement those strategies that were adopted, i.e. use of calculator. Nor, when it became evident that she lacked the foundational skills to progress in math, did the District take additional steps to further evaluate the Student so that she may have an effective opportunity to meet the District's graduation math requirements.

If a school district determines that, in order to provide a FAPE designed to address his or her individual needs, a student with a disability should receive specified services, the district must provide those services. In this case, OCR found that there was sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II. The District could not provide information that it consistently implemented the Student's IEP with respect to her mathematics deficiencies.

Based on the above information, OCR concluded that the District did not adequately implement the provisions of the Student IEP with respect to her mathematics goals and objectives and failed to re-evaluate the Student; and therefore, did not comply

with Section 504/Title II and the regulations. Prior to the issuance of this letter, the District signed a resolution agreement with OCR. The District has committed to providing the Student with the appropriate services to provide her with a nondiscriminatory opportunity to pass algebra in order for her to graduate with a high school diploma.

2. Whether the District discriminated against the Student when it revoked her inter-district transfer.

Under the Section 504 and Title II regulations, at 34 C.F.R. § 104.4(b)(1)(i) (ii) and (iii), and 28 C.F.R. § 35.130(b}(1)(i), (ii) and (iii), school districts, in providing any aid, benefit or service, may not deny a qualified person with a disability an opportunity to participate, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others, or provide a qualified person with a disability with an aid, benefit or service that is not as effective as that provided to others.

The Student contends that her inter-district transfer (IDT) was revoked based on her disability. The Student further contends that following a successful appeal above the District level of the revocation, it was necessary for her to enter into a behavior contract with the District to insure that her IDT would not be revoked a second time. She contends she should not have been subjected to this contract. Our investigation found the following:

- OCR reviewed records of all students requesting IDTs during the 2007-2008 school year. The only senior students who were denied IDTs were the Student and another special education student who has also filed a complaint with OCR.

- On April 4, 2008, the Complainant was informed by letter that the Student's IDT would expire in June 2008. The Complainant met with the Principal on April 14, 2008 and was told that the revocation was based on the Student's behavior, but was not provided any information or examples regarding the Student's negative behavior.

- On April 21, 2008, the District held an IEP meeting for the Student. There was no discussion regarding the Student's alleged negative behaviors or the need for a behavior intervention plan during the IEP meeting. The IEP states that "there are no significant behavior problems" and that the Student does not require a behavior plan.

- OCR asked all the IEP team members as well as the Student's teachers and staff at the High School if the Student had any behavior problems. All the teachers and special education staff stated that the Student had no serious behavior problems during the 2007-2008 school year, with the exception of occasional texting on her cell phone. For this conduct the Student had her cell phone removed on April 14, 2008. However, each person also stated that the Student is no different from the average student at the High School.

- The Assistant Principal and Principal could not provide OCR with any additional information or examples of misbehavior by the Student, but both felt that the one incident when the cell phone was removed on April 14, 2009 was enough to not renew the Student's IDT, even though it had occurred after the initial letter of April 4, 2009.

- On May 2, 2008, the Principal sent the Complainant a formal letter stating that the Student's IDT would not be renewed and the Complainant responded to the District on May 20, 2008, contesting the denial of the IDT. A meeting was scheduled with the District on June 17, 2008, but the District refused to change its position.

- Meanwhile, the Student needed to take summer school algebra and attend cheer camp, but was refused enrollment and attendance following the revocation of the Student's IDT. Therefore, the Student enrolled in algebra in Gilroy (home district) and Student began attending.

- On July 15, 2008, the Complainants presented their case in front of the Santa Clara County School Board. The County Board asked the District for information regarding the Student's "behavior problems" but the District could not provide any

documentation of behavior incidents that would warrant a revocation of her IDT. The County Board overturned the denial of the IDT.

- Based on the County Board's statements during the appeal hearing, the Student's advocate requested that the District develop a behavior contract to insure that the Student's IDT would not be revoked a second time. The District agreed to the suggestion and the final behavior contract was signed and agreed upon on October 23, 2009; even though the Student had not exhibited any behaviors that would have warranted a behavior contract for any other student within the District.

- The behavior contract, entered into on October 23, 2009, has three goal areas, academics, behavior and attendance (all three areas are stated that they are monitored during the IDT process). If the Student does not meet her goals, including one goal that required her to pass the CAHSEE, she could have her IDT revoked. The Student's contract states that it will be monitored every 3 weeks and if she breaks part of the contract, she may have to have class suspension, lunchtime clean-up or detention, after-school clean up, phone call to parent and school suspension.

- Due to the timing of the IDT revocation and appeal process, the Student was unable to complete a full summer school course in algebra in either Gilroy or the District.

Based on the facts of this case, OCR found that the District discriminated against the Student on the basis on her disability when it revoked her inter-district transfer. The District revoked the Student's IDT and claimed that it was based on behavior; however, the District did not provide OCR with any evidence that the Student engaged in any behavior that would warrant a revocation of her IDT. The District used the Student's behavior that occurred on April 14, 2009 (text-messaging), as its only example of the Student's inappropriate behavior. The District even agreed that the one instance of text-messaging was enough to warrant a behavior contract at the request of the advocate. This example was not persuasive with OCR primarily because the Complainant had been informed on April 4, 2008 that the Student's IDT would not be renewed. It was also difficult for OCR to see a logical degree of proportionality between the identified misconduct and the very serious consequences. Further, OCR took into account the consistent characterization of the Student's teachers stating that the Student was not a discipline problem. Further, the District held an IEP for the Student on April 21, 2008, and indicated that the Student had no behavior problems that would warrant the need for a behavior contract. The Santa Clara County Board of Education agreed that the revocation was inappropriate and following its determination the District reviewed its IDT revocations and reinstated the one other special education senior who had also had his IDT revoked.

OCR found that the District did not provide a legitimate non-discriminatory reason for the revocation of the IDT. This matter was largely rectified by the action of the County Board which reversed the determination of the District.

In the Resolution Agreement, the District agreed to discontinue the Student's behavior contract since there appeared to be no factual basis for the Student to be on one. OCR recognizes that this agreement was first proposed by the Student's advocate, not the District. Consequently, OCR did not conclude that imposition of the agreement was a separate act of discrimination but rather that its revocation was necessary to fully remedy the improper revocation of the IDT.

3. Whether the District subjected the Student to retaliation for protesting the revocation of her IDT.

The Section 504 regulations, at 34 C.F.R. § 104.61, incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. § 35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

When OCR investigates an allegation of retaliation, if examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action, if a preliminary connection is found, OCR asks whether the school district can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

The Student contends that the need for a behavior contract and three acts by the District were in retaliation for her contesting the revocation of her IDT: failing to allow the Student and her boyfriend admission into a back to school dance; accusing the Student of an act of graffiti on a lunch table; and not allowing her cheer squad to attend a national competition based on a technicality (this was eventually overturned by the District School Board). OCR's conclusion with regard to the behavior contract was presented in Issue 2 above. With regard to the other alleged examples of retaliation, OCR found no violation.

The three acts of retaliation alleged by the Student include, denying her boyfriend admission to a dance, misassigning her responsibility for graffiti on a lunch table, and denying her cheer squad an opportunity to attend a national competition. Our investigation found the following:

- The Student attempted to bring her boyfriend to a back-to-school dance in August 2008. The Student contends that she asked the administration if she could bring guests and was informed that it would be permissible. However, when she arrived at the dance she was informed by the assistant principal (the same administrator in charge of the summer school program that denied her enrollment or transfer from Gilroy) that her boyfriend would not be permitted into the dance but she would be allowed to attend without him. The Student noticed that there were other attendees that were not enrolled in the High School that were attending the dance. The District confirmed that the Student's boyfriend was not permitted in the dance and that other non-students were permitted into the dance by a different door monitor. The District explained that the dance was intended only for students that were enrolled in the High School. Further, for safety reasons, people who were not enrolled in the District were not permitted in the dance. Though asked, the District did not provide OCR with information demonstrating that this policy was enforced.

- On November 11, 2009, Student was asked to clean tables after there was alleged gang writing on a lunch table that was known to have permanent graffiti. During its subsequent investigation, OCR observed that the table was, in fact, covered in graffiti and that this appeared to be a persistent condition with many of the tables. Although the Student denied any acts of vandalism, she offered to clean up the graffiti and missed cheer practice, which caused her to miss cheering at the football game later in the week. The Student was one of 8 students present and only two students were called into the Principal's office. The Campus monitor knew that the Student had a behavior contract (which had just been signed two weeks prior) and stated to OCR that was one of the reasons that the Student was cited.

- One week after OCR interviewed staff at the High School, including the cheer coach; the cheer coach was informed by the Principal that she had not requested permission in a timely manner to take the Student's cheer squad to the National Competition. After protest by the cheer squad, parents of the cheer squad students and the Complainant and Student, the District School Board overturned the Principal's decision.

OCR's analysis of the three incidents of alleged retaliation begins by noting that the Student engaged in protected activity when she contested the revocation of her inter-district transfer on the basis of disability discrimination. The next issue to determine is whether the Student was subjected to adverse action

as a result of engaging in protected activity. The Student cites three incidents, in addition to the formation of the Student's behavior contract. Based on the three incidents OCR concluded that the Student was subject to adverse treatment subsequent to engaging in her protected activities.

The first alleged incident occurred at a back-to-school dance in August. Though it is clear that some exceptions were made for other couples that include nonstudents, the Administrator who made the decision in the case of the Student was not aware that the Student had previously asked if guests needed permission to attend the dance. More important, there is no evidence that the Administrator in question made any exceptions for any other student in his efforts to enforce a legitimate safety related school policy. Though it would have been desirable for the District to apply its rules and make exceptions in a consistent manner, OCR found no evidence that the particular decision-maker involved treated the Student differently from any other student. Consequently, we find that a preponderance of the evidence does not establish that his conduct reflects a retaliatory objective.

The Student's second alleged incident is that she was questioned because graffiti was allegedly discovered on a lunch table. The campus monitor was aware that the Student received special education services and that she had a behavior contract. Although the Student denied any acts of vandalism, she agreed to clean up the graffiti rather than tell on any of her friends. A preponderance of the evidence does not establish that the Student was singled out because of her protected activities but rather because she was on the behavior contract. In effect, being on such a contract placed a spotlight on her. Further, since she agreed to do the clean-up, the District had no reason to question additional students. Since OCR has concluded that imposition of the contract was neither discriminatory nor retaliatory, but something suggested by her advocate, we find no retaliation as to this incident.

The third incident was regarding the Student's cheer squad. The same Principal that revoked the Student's IDT made a determination that the cheer squad had failed to comply with District regulations for requesting permission to go on an overnight field trip. The regulation had not been enforced until after the Student filed her complaint.

With regard to the cheer squad, OCR determined that it is illogical and unlikely that a Principal would retaliate against an entire cheer squad and be subjected to school board disapproval just to retaliate against one student who had filed an OCR complaint. Consequently, a preponderance of the evidence does not support a finding of retaliation on this allegation.

OCR found that none of the three adverse incidents were implemented by the District for a retaliatory purpose. We do note that one situation, pertaining to the graffiti, was based on a dubious conduct contract.

Based on the information that OCR received through both interviews and data reviews, OCR has determined that the District has failed to re-evaluate the Student and failed implement the Student's IEP and treated the Student differently on the basis of her disability. In regards to the retaliation, OCR has determined that the District had non-discriminatory reason for its actions and those actions were not a pretext for retaliation.

OCR concludes that the District's full implementation of the enclosed Resolution Agreement will bring the District into compliance with Section 504 and Title II with respect to the compliance issues investigated in this case. OCR will monitor implementation of the Agreement. The District is being notified concurrently. The Complainants may file a private suit pursuant to section 203 of the Americans with Disabilities Act, whether or not OCR finds a violation of Title II.

Under the Freedom of information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released,

could reasonably be expected to constitute an unwarranted invasion of privacy.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

If you have any questions about this letter, please contact Jessica Pitt, at (415) 486-5525.

Resolution Agreement

Morgan Hill Unified School District

In order to resolve the compliance issues raised under Section 504 of the Rehabilitation Act of 1972 and Title II of the Americans with Disabilities Act of 1990, the District commits to implement the following actions:

A. Individual Remedy

I. The District shall continue to provide the Student with compensatory education regarding algebra:

a. The District shall offer continued one-to-one tutoring to the Student through the week of July 20, 2009, through a tutor of the Student's parent's choice, up to a maximum of $75.00 per week, subject to submission of receipts for payment.

b. The Student may continue with the second semester of algebra in Adult School or in the District's summer school at Live Oak High School. She has completed all of her other class work and has earned the required units to graduate except for the second semester of algebra. If she achieves a passing grade in either Adult School or summer school second semester algebra by the end of District's summer school, she shall be permitted to participate in graduation ceremonies on July 29, 2009.

II. On the basis of a review that establishes that a mistake was made in the calculation of the Student's prior grades in. algebra, the District shall correct the Student's transcript by removal of the pre-existing "F" grades in algebra.

III. The District shall ensure that the Student's inter-district transfer is not revoked on the basis of her disability or for the failure to implement educational services and supports related to her disability.

B. Systemic Remedy

I. The District will consult with experts or otherwise acquire expertise in preparing students with learning disabilities to meet high school math graduation requirements. Upon completion of this step, the District will review its texts, teaching approaches, and classroom organization to determine what steps are necessary to ensure that such students receive a nondiscriminatory opportunity to meet the District's mathematics graduation requirements. No later than the beginning of the second semester of the next school year, the District will adopt and implement a plan for implementing those steps it deemed necessary to provide such students with a nondiscriminatory opportunity to meet the District's mathematics graduation requirements.

II. OCR will monitor Sobrato High School's inter-district transfer process through the 2010-2011 school year. The Report shall pertain to both new requests and continuing requests and shall be divided by grade. The report will include: (i) the number of students that applied for inter-district transfers; (ii) the number of students accepted and; denied; and (iii) the number of students with disabilities that are accepted and denied. If students are denied inter-district transfers, the District shall provide OCR with an explanation for the denial.

C. Reporting

I. The District will provide OCR with reports documenting its actions in Item A on August 1, 2009. OCR will review these reports and notify the District if additional reporting or documentation will be required.

II. The District will provide OCR with a report explaining and documenting its actions to implement

B.I. no later than February 1, 2010.

III. The District will provide OCR with a summary report of all inter-district transfer requests for Sobrato High School as required, under Item B.II by August 1, 2009, and August 2010, for the ensuing school year.

[1]OCR notified the District of the identities of the Complainant and Student when the investigation was began. We are withholding the names from this letter to protect their privacy.

118 LRP 28138

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT

California State Educational Agency

2018020394

June 14, 2018

Judge / Administrative Officer

Cynthia Fritz, Administrative Law Judge

Full Text

DECISION

The Tahoe Truckee Unified School District filed a due process hearing request (complaint) with the Office of Administrative Hearings State of California, on February 8, 2018, naming Student. The matter continued for good cause on February 27, 2018.

Administrative Law Judge Cynthia Fritz heard this matter in Truckee, California, on May 15, 16, 17, 23, and 24, 2018.

Marcella Gutierrez and Alissa Bivens, Attorneys at Law, represented Tahoe Truckee. Corine Harvey, Executive Director of Student Services, attended the hearing on behalf of Tahoe Truckee.

Student's mother represented Student. Student's father attended portions of the hearing. Student attended the hearing on April 24, 2018. A Spanish language interpreter was provided throughout the hearing and conducted English to Spanish and Spanish to English translation for Parents whose primary language is Spanish. Additionally, an American Sign Language interpreter was present and provided translation for Student when he testified.

At the end of the hearing on May 24, 2018, the record was closed and the matter was submitted for decision.

PRELIMINARY MATTERS

The prehearing conference order identified Tahoe Truckee's issues for hearing as:

1. Does the District's offer to transport Student to and from Hidden Valley Elementary School in the Washoe County School District with the accommodations listed in the individualized educational program dated October 12, 2017 1, provide Student a free appropriate public education?

2. May District conduct social/emotional and AAC assessments of Student without parental consent?

The Order clarified that the issues were subject to the Order Denying

Narrowing Issue dated April 24, 2018 in this matter. It further specified that the entire IEP offer, drafted by both Tahoe Truckee and Washoe, must be analyzed to determine if Tahoe Truckee offered Student a FAPE. Tahoe Truckee was permitted to establish the IEP's collectively, both procedurally and substantively, offered Student a FAPE.

At the outset of the hearing, Tahoe Truckee requested a separate ruling that the placement and services IEP at Hidden Valley in Washoe constituted a FAPE. As detailed in the April 24, 2018, order, when only one portion of an IEP is analyzed, FAPE cannot be established. One cannot analyze a single element because it is the combination of all of the procedural and substantive elements present that results in a FAPE. (See Dublin Unified School Dist. v. Student (February 15, 2017) OAH Case No. 2016080413.) As discussed in more detail below, no separate finding will be made regarding the transportation offer from Tahoe Truckee and the placement and services offer at Hidden Valley in Washoe is a FAPE. The issues addressed in this decision are consistent with the pre-hearing rulings in this matter.

1 The IEP dated October 12, 2017 is two separate IEP documents that contain pages with July 19, October 12, 17, 27, and November 14, 2017 dates. For ease of reference, the IEP in its entirety, including both IEP documents, is referenced as the October 12, 2017 IEP unless otherwise noted.

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ISSUES 2

1. Does the October 12, 2017, IEP offer Student a free appropriate public education such that it can be implemented over parental objection?

2. May Tahoe Truckee assess Student in the areas of social emotional behavior and augmentative and alternate communication without parental consent as proposed in Tahoe Truckee's assessment plan?

SUMMARY OF DECISION

This Decision holds that Tahoe Truckee failed to meet its burden of proof that the October 12, 2017 IEP offered Student a FAPE in the least restrictive environment. This Decision further holds that Tahoe Truckee met its burden of proof as to its right and legal obligation to assess Student in social emotional functioning and augmentative and alternative communication without parental consent.

FACTUAL FINDINGS

1. Student is a 10-year-old, fourth grade student, residing with Parents within Tahoe Truckee's geographical boundaries and is eligible for special education and related services in the categories of deafness and speech and language impairment. Student has bilateral deafness and orally communicates utilizing cochlear implants, a personal FM system and a sign language interpreter.

2. Student became eligible for special education in 2010 at age three. Student attended Tahoe Truckee pre-kindergarten camp and used Tahoe Truckee bus transportation. On one occasion, Student arrived home from camp with his face painted by another student on the bus. Because of this, Parents and Student believed he was bullied on the bus. Parents complained and after an investigation, Tahoe Truckee determined that the incident was not bullying. Parents refused any further transportation during pre-kindergarten camp.

3. Student attended Tahoe Truckee kindergarten and was transported by a Tahoe Truckee bus to and from school. Tahoe Truckee agreed to set up a weekly check-in system with Parents to discuss any transportation issues due to the prior bus incident.

2 The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (J.W. v. Fresno Unified School Dist. (9th Cir. 2010) 626 F.3d 431, 442-443.)

3

4. While Student was in kindergarten in the 2013-2014 school year, a dispute arose between Parents and Tahoe Truckee regarding placement and services. Tahoe Truckee suggested a placement at a deaf education program located in Loomis, California. Parents wanted Student to attend the deaf education program at Hidden Valley in Nevada. Tahoe Truckee agreed to place Student in first grade in the deaf education program at Hidden Valley in Washoe County School District in Nevada, provided that Parents applied and were approved to attend the program by Washoe.

5. Tahoe Truckee submitted an agreement between the districts, drafted by Washoe in May 2017, titled "Tuition Agreement to Attend Washoe County School District," which was signed by the superintendents of Tahoe Truckee and Washoe. Pursuant to the agreement, Tahoe Truckee agreed to pay, "...the actual per pupil costs based on average daily enrollment [ADE] for each regular education student and for each special education student residing in the Adjoining District and enrolled in [Washoe.]" The agreement does not shift Tahoe Truckee's obligation to provide a student a FAPE to Washoe, nor did it specify Washoe accepted the obligation to provide a student a FAPE subject to the agreement. The document is silent as to FAPE.

6. Additionally, Tahoe Truckee asserted it entered into a "variance," with Washoe allowing Tahoe Truckee residents to attend school in Washoe. At hearing, Tahoe Truckee submitted a document titled "Application to Attend School Outside of District of Residence" signed in June 2017, which was discussed as the variance between the districts. Through this application, Parents "applied" for Student to attend Hidden Valley in Washoe. The

application is silent as to FAPE. Beginning in first grade, and repeated annually thereafter, Parents applied for Student to attend Hidden Valley through this process and Student was accepted. Additionally, Tahoe Truckee agreed to reimburse Parents for mileage to and from Hidden Valley, which was approximately 54 miles each way from Parents' residence.

7. An IEP for Student's educational placement and services at Hidden Valley was drafted in an IEP document entitled Washoe County School District, State of Nevada Individualized Education Program. This IEP document encompassed Student's placement, related services except transportation, and accommodations at Hidden Valley in Nevada. Tahoe Truckee representatives attended the IEP team meetings that Washoe convened for Student's educational placement at Hidden Valley in Nevada. Although Tahoe Truckee representatives attended the IEP team meetings held in Washoe, Washoe staff developed Student's IEP offer.

8. An IEP regarding transportation only was drafted each year by Tahoe Truckee using a California Placer County SELPA 3 form. This IEP included Student's transportation

3 A SELPA is a Special Education Local Plan Area that coordinates with school districts and the County Office of Education to provide a continuum of programs and services for disabled individuals from birth through 22 years of age.

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offer to and from Hidden Valley. Washoe representatives did not attend the IEP team meetings in Truckee, California and the IEPs related to transportation only were developed exclusively by Tahoe Truckee staff.

9. The Tahoe Truckee IEP team meetings were neither amendments nor addendums to the substantive placement and services IEP team meeting at Washoe, rather, independent meetings discussing transportation only. Both IEPs were concurrently operative IEPs with separate offers to Student.

10. For Student's first, second and third grade school years, Tahoe Truckee reimbursed Parents' mileage for Student's transportation to and from Hidden Valley. By the 2016-2017 school year, when Student was in third grade, Tahoe Truckee set up a dedicated bus route to Hidden Valley and requested that Student take Tahoe Truckee transportation in lieu of mileage reimbursement. Parents refused Tahoe Truckee transportation.

July 19, 2017 IEP Team Meeting in Tahoe Truckee Unified School District Regarding Transportation Only

11. Tahoe Truckee initiated an IEP team meeting on July 19, 2017, to amend its transportation offer from parent mileage reimbursement to Tahoe Truckee bus transportation. Mother, Tahoe Truckee special education coordinator Jeff Santos, Tahoe Truckee transportation coordinator Nanette Rondeau and a Spanish interpreter were present. No general education teacher or special education teacher attended the meeting. There is no evidence that Mother waived in writing the presence of these teachers.

12. Mr. Santos offered bus transportation in lieu of mileage reimbursement. Mother expressed concern over the prior bus incident in pre-kindergarten. Mr. Santos stated that the district's obligation is to provide bus transportation door-to-door and if Mother wants to transport student, she is voluntarily transporting without reimbursement from the district. Mr. Santos offered a transportation plan to address Student's social emotional, communication and restroom breaks during Tahoe Truckee transportation. Mother refused the offer and left the meeting. Tahoe Truckee IEP team members continued the meeting to a later date.

Student's Panic Attacks

13. Prior to August 2017, Parents sought medical advice over ongoing issues with Student. A doctor diagnosed Student with headaches due to issues with his cochlear implants and panic attacks related to Student's fear of headaches. A doctor's note dated

August 1, 2017, instructed the school to encourage Student to lie down, rest and try to fall asleep while Parents were contacted, and to also work with a school counselor to address fears as well as try to establish some coping mechanisms. The note stated that panic attack symptoms may include "abdominal pain, shortness of breath, sweating, shaking, pallor and

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fatigue." Mother informed Washoe on the first day of the 2017-2018 school year of Student's panic attacks.

October 12, 2017 IEP Team Meeting in Washoe County School District Regarding Student's Triennial Assessments and His Educational Placement and Services

14. Student's IEP team meeting convened on October 12, 2017, to review his triennial assessments. Student was in fourth grade. Mother, Student, Washoe administrative representative Robin Olsen, Washoe special education teacher Ms. Molloy, Washoe regular education teacher Mrs. Allen, Special Education Local Plan Area representative Patty Orr, Washoe audiology Tiffany Sherman, and Washoe deaf education representative Jodi Richards attended the meeting. Tahoe Truckee representative Jeff Santos, Tahoe Truckee SELPA representative Patsy Martin, and a Spanish interpreter also attended the meeting. Mother received procedural safeguards in her primary language of Spanish that conformed to the Individuals with Disabilities Act. The evidence failed to establish that Mother received California state procedural safeguards.

15. The proposed IEP noted "Student was recently diagnosed with panic attacks and should he present with abdominal pain, shortness of breath, sweating, shaking, pallor and/or fatigue, parents need to be contacted." This language appeared verbatim in the August 1, 2017 doctor's note, and confirms that Mother provided the doctor's note to the Washoe members of Student's IEP team.

16. The October 12, 2017 IEP, drafted by Washoe, identified Student's disability and contained the following: a statement of present levels of academic achievement and functional performance; assessment data; effect of Student's involvement and progress in general education; description of progress on previous goals; Student's strengths and areas of need; consideration of special factors; goals for math, language and communication; related services, supports and accommodations; statement of participation in assessment; and placement 70 percent of the time in general education and 30 percent of the time in the deaf education program. Academic goals specified they were aligned to "Nevada Academic Content Standards." Transportation was not offered as a related service in Washoe's IEP. It was noted in the IEP that transportation was contracted through Tahoe Truckee and not an aspect of Washoe's IEP offer. The proposed placement, goals, related services except for transportation, and accommodations, offered Student, was a product of a single IEP team meeting on October 12, 2017, at Washoe in Nevada. Mother consented to the October 12, 2017 offer of placement and services at Hidden Valley.

17. Jeff Santos, Dana Adams, Renee Welles and Mandy Morgan testified regarding the appropriateness of the educational placement and services proposed in the October 12, 2017 IEP. Their testimony failed to establish that the October 12, 2017 IEP drafted in Washoe met Student's needs and complied with California law.

18. Jeff Santos, Tahoe Truckee special education coordinator since July 2017, is a credentialed psychologist and school administrator, and previously worked as a director of

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special education, instructor, SELPA coordinator, school psychologist and program specialist. Mr. Santos participated in Student's July 19, October 12, 17, 27, and November 14 IEP team meetings, and reviewed Student's records and assessments. He briefly observed Student when

visiting different programs at Hidden Valley in 2018. When discussing academic assessments, Mr. Santos appeared unsure of specific aspects of the academic testing at Hidden Valley as it related to California testing. Mr. Santos did not work with Student, Washoe or Hidden Valley. He did not interview Student and did not give any specificity as to who he talked to at Hidden Valley regarding Student. Because of this, his opinion regarding the October 12, 2017 IEP was given less weight.

19. Dana Adams, a credentialed school psychologist since 1999, administers psychoeducational and social and emotional assessments, participates in IEPs, develops behavior plans, trains staff and provides counseling services to Tahoe Truckee students from preschool through age 22. Ms. Adams annually administered 50-70 assessments per year. Ms. Adams has not worked with Student but reviewed his records, assessments and attended two of his transportation IEP team meetings in 2017. She also briefly observed Student when she was visiting Hidden Valley programs in 2018. Ms. Adams did not work at Hidden Valley or work for Washoe and never attended an IEP team meeting for Student's educational placement or services. She did not interview Student or others at Hidden Valley. She opined to the appropriateness of related services such as audiology and placement in the October 12, 2017 IEP. Because of her lack of personal knowledge of Student and lack of expertise in audiology, her opinion was given less weight.

20. Renee Welles, a credentialed speech and language pathologist, has worked for Tahoe Truckee since 1991. Ms. Welles administers speech and language and augmentative and alternative communication assessments, gives device recommendations, programming recommendations, trains students, staff and parents on the use of augmentative and alternative communication, and participates in IEPs and parent meetings. Ms. Welles has not worked with Student but reviewed his records and assessments, attended two of his IEP team meetings in 2017, where transportation only was discussed, and briefly observed Student twice while visiting Hidden Valley programs in 2018. Ms. Welles did not work at Hidden Valley or work for Washoe. She did not attend Student's IEP team meeting for his educational placement or services, and failed to interview Student. Ms. Welles opined as to the appropriateness of the speech and language pathology assessment, IEP speech and language goals, speech services, interpreting services, and total communication. She admitted she was not an expert in audiology and could not opine as to the audiology related services in the October 12, 2017 IEP offer for placement and services at Hidden Valley.

21. Mandi Morgan was a Tahoe Truckee itinerant teacher for deaf and hard-of-hearing students since January 2018 and had worked with deaf children since 2007. She has a bachelor of science in communications sciences and disorders and a master's degree in deaf education. Ms. Morgan opined on the total communication program for Student at Hidden Valley. Ms. Morgan reviewed Student's records including his IEP. She visited Hidden Valley and observed Student's program twice in 2018 and spoke with Student for about 10 minutes. Ms. Morgan admitted that to properly assess a student, it takes 30 minutes to 1 hour

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for an interview. Because of this, her opinion regarding the IEP placement and services was given less weight.

22. Tahoe Truckee witness opinions were unpersuasive because their testimony was based on general information rather than careful consideration of Student's individual capacities and needs. The witnesses knew very little about Student. Not one witness ever worked with Student or properly interviewed Student. Any observations of Student were done while visiting different programs at Hidden Valley for a brief period of time in 2018 after the proposed IEP offers to Parents were made. No one spoke to service providers, instructional assistants or assessors and only briefly with Student's teachers

which was unclear and nonspecific. Tahoe Truckee did not present a witness to opine as to the appropriate audiology services in the October 12, 2017 IEP and the opinion regarding the academic offer was unreliable. Thus, their opinions were given little weight regarding the appropriateness of the October 12, 2017 IEP.

October 17, 2017 Reconvened IEP Team Meeting in Tahoe Truckee Unified School District to Discuss Transportation

23. Tahoe Truckee convened a continued IEP team meeting on October 17, 2017 regarding transportation. Parents, a Spanish interpreter, Tahoe Truckee SELPA representative Patsy Martin, Tahoe Truckee executive director Corine Harvey, and Tahoe Truckee special education coordinator Jeff Santos were present. Neither a general education teacher nor a special education teacher attended the meetings. There is no evidence that Parents waived in writing the presence of these teachers.

24. Parents informed Student's IEP team that he had anxiety and communication issues. Tahoe Truckee offered bus accommodations for Student's social emotional needs including to address his communication needs and to provide restroom breaks, snacks, and counseling services. Parents refused the offer.

October 27, 2017 Continued IEP Team Meeting in Tahoe Truckee Regarding Transportation

25. Tahoe Truckee continued the IEP team meeting to October 27, 2017. Parents, a Spanish interpreter, Tahoe Truckee executive director Corine Harvey, Tahoe Truckee special education coordinator Jeff Santos, Tahoe Truckee school nurse Ann Jacobson, Tahoe Truckee transportation coordinator Nanette Rondeau, Tahoe Truckee speech and language pathologist Renee Welles, Tahoe Truckee school psychologist Dana Adams, and SELPA representative Troy Tickle were present. Neither a general education teacher nor a special education teacher attended the meetings. There is no evidence that Parents waived in writing the presence of these teachers.

26. Mr. Tickle facilitated the meeting. Tahoe Truckee IEP team members reviewed Parents' concerns and discussed safety, bus driver training, bus inspections, tracking and cameras, social emotional development, timing, attendance, weather, traffic, Student independence and panic attacks. Parents reiterated previous concerns and that

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Student was stressed out over the idea of riding the bus to and from school. Mother admitted that Student took the school bus on field trips but stated also that she drove behind the bus. Tahoe Truckee IEP team members requested a release of medical information to work on a transportation plan for panic attacks. Parents refused to sign the release and also refused the transportation offer.

November 14, 2017 Continued IEP Team Meeting at Tahoe Truckee Regarding Transportation

27. Tahoe Truckee continued the IEP team meeting from October 27, 2017, to November 14, 2017. Parents, a Spanish interpreter, Tahoe Truckee executive director Corine Harvey, Tahoe Truckee special education coordinator Jeff Santos, Tahoe Truckee school nurse Ann Jacobson, Tahoe Truckee transportation coordinator Nanette Rondeau, Tahoe Truckee speech and language pathologist Renee Welles, Tahoe Truckee school psychologist Dana Adams, and SELPA representative Troy Tickle attended the meeting. Neither a general education teacher nor a special education teacher attended the meetings. There is no evidence that Parents waived in writing the presence of these teachers.

28. Mr. Tickle facilitated the IEP team meeting. Parents' concerns were discussed and Tahoe Truckee IEP team members reiterated some of the same areas as previously addressed, including emergencies, restroom breaks and bus driver communication. Parents stated that they had a doctor's note exempting Student from riding the bus. Tahoe Truckee requested a social emotional assessment of Student and release

of medical information.

29. At the November 14, 2017 IEP team meeting, Tahoe Truckee offered Parents a five-week transitional transportation plan that would result in Tahoe Truckee transporting Student in lieu of mileage reimbursement. The plan included: first drop off, last pick up; designated restroom stops while maintaining supervision; container for emergency purposes; a tablet to alert driver to social, emotional, medical or daily living needs; a lanyard for Student to communicate alternatively with driver; Student position in direct line of sight of driver; additional driver training; video surveillance monitor on transportation; updated road condition information; assigned seating to minimize peer conflicts; snacks and drinks; and 30 minutes monthly individual counseling with a Tahoe Truckee school psychologist . Counseling was offered to monitor and track Student's well-being while riding transportation. Parents refused the offer.

Hearing Testimony of Mother, Father and Student

30. Mother emphasized concerns about Student's panic attacks and his inability to ride bus transportation. She stated that Student continued to have symptoms of panic attacks in school and she picked him up approximately one time per week due to medical appointments, sickness and symptoms of panic attacks.

31. Student corroborated Mother's testimony related to his symptoms of panic attacks, such as stomach aches and shaking at school but could not specify the number of

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times that it occurred throughout the 2017-2018 school year. He stated he was scared to take Tahoe Truckee transportation.

32. Father also corroborated Mother's testimony with regard to the panic attack diagnosis, symptoms occurring during school and his concern for Student riding bus transportation due to the prior incident on the bus. Parents presented the August 1, 2017 letter from Student's doctor with the panic attack diagnosis and some documentary evidence related to sickness and difficulties with cochlear implants at school that corroborated some of their testimony.

33. Conversely, Tahoe Truckee failed to present any attendance records, nursing records, declarations or any witness testimony with personal knowledge to contradict Parents' and Student's statements. Mr. Santos testified that he contacted a Hidden Valley staff member that denied Student had any panic attacks at school. This information was unpersuasive due to the lack of any specificity, foundation and corroboration. Because of this, Parents' and Student's testimony was credible and was given more weight than that of Tahoe Truckee's witnesses.

Proposed Assessment Plan

34. During the November 14, 2017 IEP team meeting, Ms. Adams presented Parents with a proposed social emotional functioning assessment plan, procedural safeguards and a release of information in Spanish to Parents. Parents did not consent to the proposed assessment plan.

35. On January 10, 2018, Mr. Santos mailed an amended proposed assessment plan to Parents for a social emotional assessment and an augmentative and alternative communication assessment. Along with the proposed assessment plan was a letter of explanation and the notice of procedural safeguards. All documents were provided to Parents in Spanish, their primary language. The proposed assessment plan stated that assessment may include classroom observations, rating scales, interviews, record review, one-to-one testing and other types or combination of tests. It further advised that assessments and special education services would not proceed without parental consent.

36. The proposed assessment plan contained a brief, clear textual explanation of the assessments and identified the professional who would perform the assessment as follows:

"Social Emotional/Behavior - These assessments

will indicate how your child feels about him/herself, gets along with others, and takes care of personal needs at home, school and in the community. Examiner Title: Psychologist (Adams)."

"Language/Speech Communication Development - These assessments measure your child's ability to understand and use

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language and speak clearly and appropriately. AAC Assessment (communication system between transportation driver and student.)"

37. The letter attached to the proposed assessment plan identified that a Tahoe Truckee employee specializing in all forms of communication, including deaf and hard-of-hearing, would perform the augmentative and alternative communication assessment.

38. Ms. Adams and Ms. Welles testified at hearing. As discussed more fully below, each credibly provided several persuasive reasons why Tahoe Truckee needed to reassess Student consistent with the January 10, 2018 proposed assessment plan.

Assessment Need and Adequacy

39. Mother verbalized her concerns over Student's social emotional needs related to bullying at the July 19, 2107 transportation IEP team meeting. She further verbalized her concerns about panic attacks at the October 12, 17, 27 and November 14, 2017 IEP team meetings.

40. Tahoe Truckee proposed a social and emotional assessment. Ms. Adams believed it is appropriate because the IEP team determined it was an area of need for bus transportation and the only current information Tahoe Truckee had was input from Parents. According to Ms. Adams, goals were included for social emotional needs in the IEP transportation offer but the assessment plan would help determine what kinds of social and emotional support services to provide Student to support his unique needs on a school bus.

41. Ms. Adams plans to administer the social emotional assessment. The assessment would consist of reviewing records, interviewing teacher, Parents and Student, administering behavior rating scales, observations in school and on transportation and administering the behavioral assessments. The tests are non-discriminatory, age appropriate, administered per instructions, and valid.

42. Tahoe Truckee proposed an augmentative and alternative communication assessment that consists of reviewing records, interviewing teacher, Parents and Student, and observations of Student in school, home, and with friends. Ms. Welles would look into Student's positioning in a vehicle and bus and determine what devices would be a good fit for Student. Ms. Welles would devise a picture exchange system and a higher technology programmed IPAD with a software application called Proloquo2go for communication with the bus driver that would meet Student's needs on bus transportation. The tests are nondiscriminatory, age appropriate, and valid. Ms. Welles credibly testified that the proposed assessment is needed to gather information to meet Student's communication needs for district transportation. Ms. Morgan would assist Ms. Welles with the augmentative and alternative communication assessment.

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43. Tahoe Truckee established by uncontroverted evidence that the proposed assessments involve a variety of assessment tools and strategies to gather functional, developmental, and academic information. Each assessment called for the use of technically sound instruments that are valid and reliable. The proposed assessments would be selected and administered in Student's native language, are age appropriate and non-discriminatory. Further, the assessments would be administered by trained and knowledgeable personnel who maintain the required education and licensure to correctly administer the assessments according to the instructions provided by the producer of such assessments.

44. Tahoe Truckee has insufficient information

about Student to determine an appropriate transportation plan for him. The evidence at hearing showed that Student suffers panic attacks and is being treated by a doctor. Reassessments, therefore, are necessary to provide Tahoe Truckee with updated information on Student's present levels of performance and unique needs to offer an appropriate IEP for Student.

LEGAL CONCLUSIONS

Introduction - Legal Framework under the IDEA4

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) 5 et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. §

4 Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

5 All subsequent references to the Code of Federal Regulations are to the 2006 edition.

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300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In Board of Education of the Hendrick Hudson Central School District v. Rowley (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (" Rowley") , the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. Rowley expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (Id. at p. 200.) Instead, Rowley interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (Id. at pp. 200, 203-204.)

4. In a recent unanimous decision, the United States Supreme Court declined to interpret the FAPE provision in a manner that was at odds with the Rowley court's analysis, and clarified FAPE as "markedly more demanding than the 'merely more

than the de minimus test'..." (Endrew F. v. Douglas County Sch. Dist. RE-1 (2017) 580 U.S.____[137 S. Ct. 988, 1000-1001] (Endrew F.).). The Supreme Court in Endrew F. stated that school districts must "offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (Id. at p. 1002.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.)

6. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (Schaffer v. Weast (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Tahoe Truckee had the burden of proof on all issues.

Issue 1: Tahoe Truckee's Offer of FAPE

7. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed,

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reviewed, and revised for each child with a disability. (Honig v. Doe (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.)

8. Tahoe Truckee contends that it offered Student a FAPE when it held an IEP team meeting for placement and services on October 12, 2017 in Washoe County, Nevada, then convened separate transportation IEP team meetings on July 19, October 17, 27, and November 14, 2017 in Truckee, California. As found below, this approach led to multiple violations of the IDEA and California law governing special education. Accordingly, Tahoe Truckee failed to meet its burden to establish that it offered Student a FAPE in the offers collectively referred to herein as the October 12, 2017 IEP.

OFFER OF TWO CONCURRENT OPERATIVE IEP'S

9. Here, Tahoe Truckee arranged to have separate IEPs for goals, placement, accommodations, and most related services in Washoe and a second, independent IEP for transportation only. This arrangement deprived Student of a comprehensive IEP team that had a complete understanding of his educational needs. The "modus operandi" of the IDEA, is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." (School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass. (1985) 471 U.S. 359, 368 [105 S.Ct. 1996; 85 L.Ed.2d 385].) The fractured approach applied here left Student with multiple operative IEPs, one for his program and services at Hidden Valley in Washoe County, and the other for transportation services. Student failed to have one comprehensive and holistic IEP that included all the requisite procedural and substantive elements, and inclusive discussions on all aspects of his educational plan with appropriate staff. Further, Student failed to receive an offer where both entities communicated and had the requisite information about Student's needs in all aspects of his educational plan. Because of this, Tahoe Truckee failed to propose an integrated and comprehensive IEP offer designed to address the unique needs of Student. As discussed further below, this arrangement led to a procedural violation of the IDEA and California law, failing to have the required team members at IEP team meetings held in Tahoe Truckee.

JULY 19, OCTOBER 17, 27, NOVEMBER 14, 2017 IEP TEAM COMPOSITION

10. An IEP team is required to include: one or both of the student's parents or their representative; a

regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs.

(34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

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11. A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parents and school district agree that the attendance of such a member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. (20 U.S.C. § 1414(d)(1)(C)(i).) A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related service if (i) the parent and the school district consent to the excusal, (ii) the member submits written input to the team prior to the meeting for development of the IEP, and (iii) the consent is in writing. (20 U.S.C. § 1414(d)(1)(C)(ii) and (iii).)

12. The Ninth Circuit has held that "the plain meaning of the terms used in section 1414(d)(1)(B) compels the conclusion that the requirement that at least one regular education teacher be included on an IEP team, if the student may be participating in a regular classroom, is mandatory - not discretionary." (M.L. v. Federal Way School Dist. (9th Cir. 2005) 394 F.3d 634, 643.) A regular education teacher, to the extent appropriate, must participate in the development, review and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the pupil, and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student. (20 U.S.C. § 1414(d)(3)(C); Ed. Code, § 56341(b)(2)

13. The IEP team meetings held on July 19, October 17, 27, and November 14, 2017, failed to include a general education or special education teacher, and Parents did not excuse their absence. Tahoe Truckee's assertion that these teachers were not required because the IEP team met only to discuss transportation is unpersuasive. Mother repeatedly complained that Student had panic attacks at school and she feared his anxiety would impede his ability to be transported on a bus. Other than Parents, there was no IEP participant at any IEP team meeting discussing transportation who was directly involved with, taught, or worked with Student in any capacity at any time. Besides Parents, not one person had any familiarity with Student and his needs. Tahoe Truckee failed to explain why general and special education teachers were not invited to attend the transportation IEP team meetings, as Student was mainstreamed 70 percent of the time in a regular classroom and 30 percent of the time outside of the regular classroom.

14. The failure to include a regular education teacher on the IEP team deprives the team of "important expertise regarding the general curriculum and the general education environment." (M.L., supra, 394 F.3d at p. 646; see also, Target Range, supra, 960 F.2d at p. 1485 [affirming trial court's finding that school district deprived the student of FAPE by developing an IEP without the input and participation of student's parents and a regular education teacher].) Without a general education teacher, a reviewing court has no means to determine whether an IEP team would have developed a different program after considering the views of a regular education teacher, and a failure to include at least one general education teacher is a structural defect in the constitution of the IEP team. (M.L., supra, 394 F.3d at p. 646.)

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15. While the transportation IEP team meetings focused exclusively on amending the current mileage reimbursement for bus transportation, input from Student's teacher was warranted. Tahoe Truckee failed to gather information regarding Student's transportation for field trips, and communication and medical issues at school. A general education and special education teachers' participation could have apprized the team members on: absences; panic attack symptoms at school; bus transportation behavior; and implemented accommodations on field trip transportation. Tahoe Truckee was legally required to include the general education teacher and special education teacher at the IEP team meetings, even those discussing transportation only. The failure to do so was a procedural violation of the IDEA and state law regarding a properly composed IEP team.

SPECIAL EDUCATION STUDENT'S PLACEMENT AND RELATED SERVICES OFFER IN OUT-OF-STATE PUBLIC SCHOOL

16. Education Code section 2000 provides that, "[t]he county superintendent of schools of any county contiguous to an adjoining state may grant permission to pupils residing in the county to attend elementary school or high school in a school district of the adjoining state and may provide for the transportation of the pupils to the school." Washoe's Tuition Agreement executed by both districts' superintendents satisfies this requirement. This code section applies to all students residing in contiguous counties and does not limit a special education student's rights guaranteed under the IDEA and California law. As discussed below, Tahoe Truckee failed to establish Student was offered an appropriate program that comported with California special education law.

17. Under Education Code section 48200, a school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district, subject to several specified exceptions. (Id. at pp. 186-187, citing Union School District v. Smith (9th Cir. 1994) 15 F.3d 1519, 1525, fn. 1(Union) [Ed. Code § 48200 determines the local educational agency responsible for providing a special education program].) Here, there is no dispute that the Student resides with Parents within the jurisdictional boundaries of Tahoe Truckee under Educational Code section 48200.

18. There are exceptions to the requirement that the residence of the parent determines what LEA is responsible for a child's FAPE, such as an interdistrict transfer. (Ed. Code, §§§ 48204, 48645.2, 56325, subd. (c).) While one may argue that this is akin an interdistrict transfer, Tahoe Truckee did not establish that the arrangement between it and Washoe meet the California requirements as the transfer is not to another California public school.

19. Tahoe Truckee claims that the variance and tuition agreement with Washoe discharges it from responsibility for FAPE except for transportation services, despite the fact that Student and Parents reside in the Tahoe Truckee district. State educational agencies are ultimately responsible for ensuring that every child with a disability has access to FAPE. (Ed. Code § 48200.)

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20. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. (34 C.F.R. § 104.33.) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed. (34 C.F.R. § 104.33(b)(3).) Education Code section 56369 states that a local educational agency may contract with another public agency to provide special education or related services to and individual with exceptional needs, not to transfer IEP responsibility. (Ed. Code, §

56369.)

21. Here, Tahoe Truckee has provided no authority supporting its contention that it is able to delegate its IEP and FAPE responsibility of a California resident by contract or otherwise to an out-of-state public school and at the same time take responsibility through a California IEP for transportation services only, without addressing all aspects of Student's educational needs.

22. As noted above, Student is a California resident whose IEP must conform to California law. As determined below, Tahoe Truckee did not meet its burden to establish that the offer conformed to California law. Such examples include failing to align goals to California content standards, failing to timely provide procedural safeguards regarding California law, and failing to follow California law regarding serving deaf and hard of hearing students.

OCTOBER 12, 2017 GOALS NOT ALIGNED WITH GRADE-LEVEL CALIFORNIA STATE STANDARDS

23. The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable that will be provided to the student. (20 U.S.C. §1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).)

24. In a November 16, 2015 joint letter, the Office of Special Education and Rehabilitative Services and the Office of Special Education Programs state that IEP goals must align with state academic content standards for the grade in which the special education student is enrolled. The agencies explained that aligning IEP goals with grade-level content

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standards reflects the IDEA's emphasis on having high expectations for students with disabilities. 6 (Dear Colleague Letter, 66 IDELR 227 (OSERS 2015).)

25. Student's October 12, 2017 IEP included annual goals. However, the academic goals in particular, specifically state that they are based on Nevada academic content standards, not California state standards. Further, there was no testimony or documentary evidence that Nevada academic content standards were similar to California state standards. Thus, Tahoe Truckee failed to meet its burden to establish that the IEP goals aligned with grade-level California state standards.

OCTOBER 12, 2017 PROCEDURAL SAFEGUARDS

26. State and federal law require districts to provide the parent of a child eligible for special education with a copy of a notice of procedural safeguards upon initial referral, and thereafter at least once a year, as part of any assessment plan, and at other designated times. (20 U.S.C. § 1415(d)(1); 34 C.F.R. § 300.504(a); Ed. Code, § 56321, subd. (a).) The notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent. (20 U.S.C. §1415(d)(2); 34 C.F.R. §§ 300.503(c)(1) & 300.504.) Furthermore, at each IEP team meeting, the district must inform a parent of state and federal procedural safeguards. (Ed. Code, § 56500.1, subd. (b).)

27. At the March 12, 2017 IEP Mother received procedural safeguards that only addressed the Individuals with Disabilities Act. Tahoe Truckee failed to show that California State procedural

safeguards were distributed to Mother. Tahoe Truckee provided no procedural safeguards as documentary evidence in this matter and no witness testified that California procedural safeguards were given to Mother during the March 12, 2017 IEP team meeting located in Reno, Nevada, or at any time within the preceding year. California procedural safeguards would include specific information about state complaint procedures and the appropriate addresses in California to direct due process hearings and mediation. Tahoe Truckee failed to show that the appropriate procedural safeguards were distributed.

CALIFORNIA SPECIFICS FOR DEAF AND HARD-OF-HEARING

28. Federal and State law require that, in developing an IEP, the team must consider both general and special factors. (20 U.S.C. § 1414(d)(3); 34 C.F.R.§ 300.324(a)(2006); Ed. Code, § 56441.1.) The general and special factors are stated in broad terms, and do not include the requirement to consider a specific service, program option or parental request.

6 These offices are a division of the United States Department of Education and are charged with administrating the IDEA and developing its regulations.

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29. For a pupil who is deaf or hard-of-hearing, the special factors include a consideration of "the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode." (20 U.S.C. § 1414(d)(B)(iv); see also 34 C.F.R. § 300.324(a)(2)(iv)(2006); Ed. Code, § 56341.1, subd. (b)(4).) In addition, the special factors include a consideration of whether the child needs assistive technology devices and services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v)(2006); Ed. Code, § 56341.1, subd. (b)(5).)

30. California law has an extra set of special factors that an IEP must consider in developing the IEP for a pupil who is deaf or hard-of-hearing. (Ed. Code, § 56345, subd. (d).) State procedures that more stringently protect the rights of disabled pupils and their parents are consistent with the purposes of the IDEA, and are enforceable. (Union School Dist. v. Smith (9th Cir. 1994) 15 F.3d 1519, 1527.) Education Code section 56345, subdivision (d), provides, in part: "Consistent with Section 56000.5 and Section 1414(d)(B)(iv) of Title 20 of the United State Code, it is the intent of the Legislature that, in making a determination of services that constitute an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related service and program options that provide pupil with an equal opportunity for communication access."

31. The IEP team shall specifically discuss: (1) the language and communication needs of the student, including the pupil's primary language mode and language; (2) the opportunities for direct communications with peers of similar abilities, which may be met by consolidating services into a local plan area wide program; (3) appropriate, direct, and ongoing language access to special education teacher and other specialists who are proficient in the student's primary language mode and language; (4) services to ensure communication-accessible academic instructions, school services, and extracurricular activities; (5) ensure that hearing aids worn in school by children with hearing impairments, including deafness are functioning properly; (6) ensure that external components of surgically implanted medical devices are functioning properly; and (7) public agency is not responsible for postsurgical maintenance, programming or replacement of the medical device that has been surgically implanted, or of an external component of the surgically implanted medical device. (20 U.S.C. § 1414(d)(3)(iv); Ed Code § 56345, subds. (d)(1)-(7).)

32. Here, Tahoe Truckee failed to meet its

burden to establish that either IEP team considered some of the above items. Ms. Welles, Ms. Morgan and Ms. Adams opined that the IEP developed in Washoe appropriately addressed Student's speech and language and audiology needs. They failed to establish the IEP team considered the California specific requirements such as services to ensure communication accessible academic instructions, school services and extracurricular activities. The witnesses also failed to show that the IEP team discussed the functioning of the cochlear implant external components.

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33. At the October 12, 2017 IEP team meeting, the team reviewed Student's triennial assessment for speech and language and formulated Student's special education program for fourth grade. Tahoe Truckee failed to establish that Student's IEP team considered all of the overlapping general and special factors, including the specialized considerations mandated in California law that a school district must consider in developing the IEP for a deaf or hard-of-hearing Student. Because of this, Tahoe Truckee failed to meet its burden of proof that its offer to Student was legally compliant.

34. As found above, Tahoe Truckee was responsible for offering Student a FAPE in the least restrictive environment. Student was offered two separate IEP's, one including goals, placement, related services except for transportation, and accommodations. The other offering transportation services only. This approach led to offers that were fatally flawed such that a determination regarding the substantive appropriateness, including the offered transportation services, is not reached. Therefore, Tahoe Truckee failed to meet its burden that it offered Student a FAPE.

Issue 2: Tahoe Truckee's Request to Assess

35. Tahoe Truckee requests permission to administer social and emotional and augmentative and alternative communication assessments to Student without Parents' consent. Parents oppose any further assessments because Student was assessed for speech and language in 2017, and they believe no further assessments should be done at this time.

36. A local educational agency must assess a student in all areas of suspected disability. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless parents and district agree, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. A local educational agency has an obligation to reassess a student if it has received new information about a student's functioning that impacts his education or otherwise has reason to suspect that his educational and related service needs may have changed such that a reassessment is warranted. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56831, subds. (a)(1), (2).)

37. Reassessment requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain consent, a school district must develop and propose to the parents a reassessment plan and give proper notice to student and parent. (20 U.S.C. § 1414(b)(1); 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and companion state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must: appear in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The district must give the parents and or student 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

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ASSESSMENT PLAN NOTICE

38. Tahoe Truckee met its burden of persuasion through the credible testimony from Ms. Adams and Mr. Santos that it complied with all statutory

requirements regarding its assessment plan. At the November 14, 2017 IEP team meeting, Parents received a copy of an assessment plan for social emotional functioning and notice of rights and procedural safeguards, both in their primary language, Spanish. It provided notice of the type of assessment to be completed, a description of it, who would be conducting it, and advised Parents that the assessment would not proceed without parental consent. No concern over notice, procedural safeguards or the form of the assessment plan was presented at hearing.

39. On January 10, 2018, Mr. Santos mailed an updated assessment plan for social emotional functioning and augmentative and alternative communication to Parents, with a letter of further explanation and the notice of rights and procedural safeguards. All documents were in Parents primary speaking language, Spanish. It provided notice of the type of assessments to be completed, a description of both, and designated a Tahoe Truckee psychologist to conduct the social emotional functioning assessment. In the letter attached to the assessment plan, it designated a Tahoe Truckee employee specializing in all forms of communication, including deaf and hard-of-hearing, to conduct the augmentative alternative communication assessment. Further, the plan advised Parents that assessments and special education services would not proceed without parental consent.

40. Tahoe Truckee made reasonable efforts to obtain parental consent to the plan and provided at least 15 days to review and sign the plan. As of the date of the hearing, Parents received the assessment plan but had not provided consent.

REASSESSMENT IS WARRANTED

41. If a student's parents do not consent to an assessment plan, the school district can conduct the reassessment only by showing at a due process hearing that it needs to reassess that student and is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(a)(3)(i), (c)(ii); Ed. Code, §§ 56381, subd. (f)(3); 56501, subd. (a)(3).)

42. Parents who want their child to receive special education services must allow reassessment by the district. (Gregory K. v. Longview Sch. Dist. (9th Cir. 1987) 811 F.2d 1307, 1315; Dubois v. Conn. State Bd. of Ed. (2d Cir. 1984) 727 F.2d 44, 48.)

43. Accordingly, to proceed with reassessment over a parent's objection, a school district must demonstrate at a due process hearing (1) that the parent was provided an appropriate written assessment plan to which the parent has not consented, and (2) that the student's triennial reassessment is due, that conditions warrant reassessment, or that the student's parent or teacher has requested reassessment. (Ed. Code, § 56381, subd. (a).)

44. Here, Student became eligible for special education in 2010 and was last assessed in 2017 for speech and language in preparation for his triennial assessment. The

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speech and language assessment did not include an augmentative or alternative communication evaluation. At Student's IEP team meeting on October 12, 2017, Parents raised concerns regarding Student's panic attacks. Parents further raised the same concerns at the October 17, 27, and November 14, 2017 IEP team meetings and added concerns for safety and bus driver communication. Tahoe Truckee considered Parents' input at the IEP team meetings held regarding transportation and requested the assessments since no up-to-date information was available in these areas.

45. Without the data, Tahoe Truckee does not know what accommodations to offer Student, how to serve him and how his disability impacts his ability to access his education. Tahoe Truckee is seeking assessments to understand Student's present levels of functional and educational needs to accurately identify the appropriate services, accommodations, and other supports needed by Student.

46. Without these assessments, the IEP team

simply lacks the necessary information to determine accommodations, develop goals or decide upon necessary services. The evidence showed that conditions warrant reassessment of Student in the areas proposed by the January 10, 2018 assessment plan due to the issues Parents raised.

DISTRICT ASSESSORS ARE KNOWLEDGEABLE AND COMPETENT

47. The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

48. The determination of what tests are required is made based on information known at the time. (See Vasheresse v. Laguna Salada Union School Dist. (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

49. Reassessments, like initial assessments, shall be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(B)(iv); 34 C.F.R. §300.34(c)(1)(iv); Ed. Code, § 56322.) Psychological

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assessments shall be performed in accordance with the procedures set forth in Education Code section 56320, by assessors who are trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324.) Any psychological assessment of a pupil shall be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a)).

50. Ms. Adams and Ms. Welles competently testified and identified several types of measures to assess Student, including one-to-one tests, multiple tests, observations, interviews, and review of records. All proposed tests are non-discriminatory, in Student's primary language, valid, with trained, knowledgeable and competent individuals who would administer the tests per the instructions. At hearing, Student did not present any concerns over the proposed assessors' ability to conduct assessments in accordance with the assessment procedures in Education Code section 56320. The evidence established that a credentialed school psychologist will conduct the assessment of Student's social-emotional functioning assessment. A credentialed speech and language pathologist will perform the augmentative and alternative communication assessment.

51. Tahoe Truckee established that the January 10, 2018 assessment plan complied with all applicable statutory requirements regarding form, function and notice. Tahoe Truckee also established that Parents raised concerns at previous IEP team meetings that warrant social emotional and augmentative and alternative communication assessments.

52. The credible uncontradicted testimony of Ms. Adams and Ms. Welles regarding assessments proved that they are necessary given Tahoe Truckee's current lack of information of Student in these areas. The evidence further demonstrated that the proposed evaluators are competent and the proposed

assessments meet the requirements under the IDEA. Thus, Tahoe Truckee established that it is entitled to assess Student over parental objection.

ORDER

1. Tahoe Truckee failed to meet its burden establish that its IEP, collectively referred to in this decision as the October 12, 2017, IEP offer 7, constituted an offer of FAPE. Tahoe Truckee may not implement the IEPs without Parents' consent.

2. Tahoe Truckee is entitled to reassess Student in conformance with the January 10, 2018 assessment plan in social emotional functioning and augmentative and alternative communication without Parents' consent.

7 The IEP dated October 12, 2017 is two separate IEP documents that contain pages with July 19, October 12, 17, 27, and November 14, 2017 dates. For ease of reference, the IEP in its entirety, including both IEP documents, is referenced as the October 12, 2017.

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PREVAILING PARTY

Under California Education Code section 56507, subdivision (d), the hearing

Decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on issue number one. Tahoe Truckee prevailed on issue number two.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties.

(Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of

competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

SANDABS

San Bernardino County District Advocates for Better Schools

Legislative Update

San Bernardino County Superintendent of Schools
Ted Alejandre, County Superintendent

SANDABS Website: To view additional SANDABS information, including their State and Federal Legislative Platforms, current SANDABS positions on active education-related California bills, and a monthly legislative tracking report prepared by Capitol Advisors Group, LLC, follow: http://bit.ly/2xSidsR

Sacramento Update

Prepared by Capitol Advisors Group, LLC

At 12:30 today, Governor Newsom held a press conference and signed **SB 126 (Leyva/O'Donnell)** , a bill to require charter schools to comply with similar transparency and conflicts of interest laws as traditional public schools. Below is Press Release from Governor Newsom sent prior to signing the bill:

TODAY: Governor Newsom Signed Long-Discussed Charter School Transparency Legislation

SACRAMENTO -- Governor Gavin Newsom will be joined by representatives from the California Charter Schools Association, California Teachers Association, California School Employees Association, the California Federation of Teachers and SEIU California to sign Senate Bill 126 authored by Senator Connie Leyva (D-Chino) and Assemblymember Patrick O'Donnell (D-Long Beach). This legislation requires charter schools to abide by the same public records and open meetings laws as public schools.

Governor Newsom to Sign Charter School Transparency Legislation

What: Governor Newsom signs SB126 charter transparency bill

When: Today, Tuesday, March 5, 2019 at 12:30 p.m.

Who: Governor Gavin Newsom

- Senator Connie Leyva
- Assemblymember Patrick O'Donnell
- Myrna Castrejón, President and CEO, California Charter Schools Association
- Terri Jackson, Member, Board of Directors, California Teachers Association
- Keith Pace, Executive Director, California School Employees Association
- Ron Rapp, Legislative Director, California Federation of Teachers
- Tia Orr, Government Relations Director, SEIU California

Where: California State Capitol, Governor's Office, Sacramento, CA 95814

Here is a link to our recent **analysis of SB 126** .

What's Next? Charter schools are on the receiving end of major reform efforts

After a bruising election last year, which also saw the exit of long-time charter school supporter Jerry Brown, charter schools are now playing defense on several proposals to curtail their growth and give more power to local districts in approval and renewal of charter petitions.

While the language in SB 126 was clearly agreed to ahead of time by legislative leadership, the Governor, labor and the Charter Schools Association, negotiations around the bills below are far from predetermined. We already expect amendments to the major reform bill, carried by Assembly Member Patrick O'Donnell (D-Long Beach), and amendments to other bills in the reform package will likely take shape as policy committees begin to unpack the proposals.

The bills included in the charter bill package are described below, along with any information we have on expected amendments.

AB 1505 (O'Donnell): Charter Schools: Petitions

As introduced, this bill would make sweeping changes to the charter school petition process, including abolishing county and state board authorizations and renewals and giving local school boards near full discretion in charter school decisions. We expect the bill to be amended in the coming week to walk back some of the more controversial portions of the initial proposal. After those amendments are taken, the bill is expected to do the following:

- Provide local governing boards more control in the charter process by allowing, not requiring, approval of a charter petition, even if it demonstrates sound educational practice.
- Establish an appeals process, only to county boards of education, and only if the petitioner believes there has been a procedural error in the district's review. If the county board substantiates that claim, the petition will be remanded back to the district for reconsideration.
- Prevent a charter petitioner from including new or revised material in the appeal to the county board.
- Allow county-authorized charters for students the county office of education would otherwise serve.
- Grandfather in county-authorized charters, and permit the schools to seek renewal at either the county or district level.
- Permit renewal for between two and five years.
- Remove academic achievement data as the most important factor when considering a charter school renewal.

AB 1506 (McCarty): Charter Schools: Statewide Total

Responding to calls that charter school growth has continued unchecked to the academic and fiscal peril of traditional schools, Assembly Member Kevin McCarty (D-Sacramento) has introduced a bill that will put a cap on the number of charters that can be authorized in the state. As of now, that language is not fully articulated, but according to the author, his intent is to make the cap the number of charters currently authorized, roughly 1,320, and to only permit new charter schools as others close their operations.

AB 1507 (Smith): Charter Schools: Location

This bill would delete the two provisions under which a charter can locate outside of the boundaries of its authorizing district (either a lack of facilities or on a temporary basis during project construction or expansion). The bill's author, freshman Assembly Member Christy Smith (D-Santa Clarita), was a Newhall School District board member at a time when a neighboring district authorized charter schools that landed within the Newhall borders, making it difficult for parents, teachers and administrators who had to explain that while the school was local, the chartering authority was over 20 miles away.

AB 1508 (Bonta): Charter Schools: Petitions

Adding to the discretion local boards have in charter decisions, AB 1508 would permit authorizers to consider the financial, academic, and facilities impacts a new charter school would have on neighborhood public schools. The bill is still in intent form, but we have some clues from previous legislation on the guardrails that Assembly Member Rob Bonta (D-Alameda) might pursue, such as allowing an authorizer to deny a petition if there has been three or more years of ADA decline in the district.

Outside of the official charter school package, but relevant to the discussion, is **AB 967** , also by Assembly Member Smith. The bill would add several new accountability requirements to both districts and charter schools, and would require charters to get their LCAPs approved by the county superintendent of schools. Considering the amendments we expect to AB 1505, it is unclear how the language in AB 967 might change.

The current political landscape adds intrigue to the charter reform proposal. Labor strikes in Los Angeles and Oakland Unified both had distinct anti-charter undercurrents, leading the LAUSD board to request the state Legislature adopt a moratorium on new charter schools. That proposal has not yet taken shape in the Legislature, but Governor Newsom and

Superintendent Tony Thurmond are working closely to assess the financial impact of charter school growth on traditional schools. Thurmond, who has previously said a “pause” in charter growth makes sense, is assembling a workgroup that is expected to report back to the Governor by July 1.

As you can tell, there are several weighty proposals that are still very much in flux. We will continue to update you on these bills and any others that enter the charter arena.

Please let us know if we can provide any additional information.

We will keep you apprised of any additional updates provided by Capitol Advisors Group, LLC.

Supriya Barrows, Legislative Services Manager

Intergovernmental Relations

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SB-126 Charter schools. (2019-2020)

Date Published: 03/05/2019 09:00 PM

Senate Bill No. 126

CHAPTER 3

An act to add Section 47604.1 to the Education Code, relating to charter schools.

[Approved by Governor March 05, 2019. Filed with Secretary of State March 05, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 126, Leyva. Charter schools.

(1) The Ralph M. Brown Act requires that all meetings of the legislative body, as defined, of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.

This bill would expressly state that charter schools and entities managing charter schools are subject to the Ralph M. Brown Act, unless the charter school is operated by an entity governed by the Bagley-Keene Open Meeting Act, in which case the charter school would be subject to the Bagley-Keene Open Meeting Act, except as specified.

This bill would require specified charter schools or entities managing charter schools to hold meetings in specified locations. The bill would prohibit a meeting of the governing body of a charter school to discuss items related to the operation of the charter school from including the discussion of any item regarding an activity of the governing body that is unrelated to the operation of the charter school.

(2) The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This bill would expressly state that charter schools and entities managing charter schools are subject to the California Public Records Act, except as specified.

(3) Existing law prohibits certain public officials, including, but not limited to, state, county, or district officers or employees, from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members, except as provided.

This bill would expressly state that charter schools and entities managing charter schools are subject to these provisions, except that the bill would provide that an employee of a charter school is not disqualified from serving as a member of the governing body of the charter school because of that employment status. The bill would require a member of the governing body of a charter school who is also an employee of the charter school to abstain from voting on, or influencing or attempting to influence another member of that body regarding, any matter uniquely affecting that member's own employment.

(4) The Political Reform Act of 1974 requires every state agency and local governmental agency to adopt a conflict-of-interest code, formulated at the most decentralized level possible, that requires designated employees

of the agency to file statements of economic interest disclosing any investments, business positions, interests in real property, or sources of income that may foreseeably be affected materially by any governmental decision made or participated in by the designated employee by virtue of that employee's position.

This bill would expressly state that charter schools and entities managing charter schools are subject to the Political Reform Act of 1974, except as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 47604.1 is added to the Education Code, to read:

47604.1. (a) For purposes of this section, an "entity managing a charter school" means a nonprofit public benefit corporation that operates a charter school consistent with Section 47604. An entity that is not authorized to operate a charter school pursuant to Section 47604 is not an "entity managing a charter school" solely because it contracts with a charter school to provide to that charter school goods or task-related services that are performed at the direction of the governing body of the charter school and for which the governing body retains ultimate decisionmaking authority.

(b) A charter school and an entity managing a charter school shall be subject to all of the following:

(1) The Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), except that a charter school operated by an entity pursuant to Chapter 5 (commencing with Section 47620) shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) regardless of the authorizing entity.

(2) (A) The California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(B) (i) The chartering authority of a charter school shall be the custodian of records with regard to any request for information submitted to the charter school if either of the following apply:

(I) The charter school is located on a federally recognized California Indian reservation or rancheria.

(II) The charter school is operated by a nonprofit public benefit corporation that was formed on or before May 31, 2002, and is currently operated by a federally recognized California Indian tribe.

(ii) This subparagraph does not allow a chartering authority to delay or obstruct access to records otherwise required under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code.

(4) (A) The Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(B) For purposes of Section 87300 of the Government Code, a charter school and an entity managing a charter school shall be considered an agency and is the most decentralized level for purposes of adopting a conflict-of-interest code.

(c) (1) (A) The governing body of one charter school shall meet within the physical boundaries of the county in which the charter school is located.

(B) A two-way teleconference location shall be established at each schoolsite.

(2) (A) The governing body of one nonclassroom-based charter school that does not have a facility or operates one or more resource centers shall meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside.

(B) A two-way teleconference location shall be established at each resource center.

(3) (A) For a governing body of an entity managing one or more charter schools located within the same county, the governing body of the entity managing a charter school shall meet within the physical boundaries of the county in which that charter school or schools are located.

(B) A two-way teleconference location shall be established at each schoolsite and each resource center.

(4) (A) For a governing body of an entity that manages two or more charter schools that are not located in the same county, the governing body of the entity managing the charter schools shall meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools managed by that entity reside.

(B) A two-way teleconference location shall be established at each schoolsite and each resource center.

(C) The governing body of the entity managing the charter schools shall audio record, video record, or both, all the governing board meetings and post the recordings on each charter school's internet website.

(5) This subdivision does not limit the authority of the governing body of a charter school and an entity managing a charter school to meet outside the boundaries described in this subdivision if authorized by Section 54954 of the Government Code, and the meeting place complies with Section 54961 of the Government Code.

(d) Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, an employee of a charter school shall not be disqualified from serving as a member of the governing body of the charter school because of that employee's employment status. A member of the governing body of a charter school who is also an employee of the charter school shall abstain from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment.

(e) To the extent a governing body of a charter school or an entity managing a charter school engages in activities that are unrelated to a charter school, Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code) shall not apply with regard to those unrelated activities unless otherwise required by law.

(f) A meeting of the governing body of a charter school to discuss items related to the operation of the charter school shall not include the discussion of any item regarding an activity of the governing body that is unrelated to the operation of the charter school.

Today, the Senate Education Committee unanimously passed **Senate Bill (SB) 126 (Leyva/O'Donnell)** , a bill to specifically apply the Ralph M. Brown Act, California Public Records Act, Political Reform Act, and Government Code 1090 to charter schools and entities managing charter schools. These laws already apply to traditional school district governing boards.

The bill is being fast-tracked through the Legislature and comes on the heels of an **opinion by the State Attorney General (AG)** stating that these laws currently apply to charter schools. But because his opinion is only advisory, the debate will continue until the matter is clarified by statute or case law.

There are a few important caveats to the applicability of the Brown Act and Government Code 1090 referenced in SB 126, specifically around board meeting locations, accommodations for those attending remotely, and protections for charter school employees who also sit on the charter's governing board. You can read the full text of the bill by clicking on the link above.

"Entity Managing a Charter School"
The bill defines an "entity managing a charter school" as any non-profit public benefit corporation that operates a charter school consistent with the definition in **Education Code Section 47604** .

The bill states an entity that is not authorized to operate a charter school under Section 47604 is not an "entity managing a charter school" solely because it contracts with a charter school to provide to that charter school goods or task-related services that are performed at the direction of the charter school governing board and for which the charter school governing body retains ultimate decision-making authority.

The bill also recognizes that some charter school governing boards may have governance duties unrelated to the charter school and segregates those decisions from these provisions. Specifically, the bill clarifies that a meeting of the governing body of a charter school to discuss items related to the operation of the charter school shall not include discussion on any item regarding an activity of the governing body that is not related to the operation of the charter school.

Political Analysis
Given the strong public and institutional support for these reforms and lack of opposition, SB 126 appears to be a juggernaut. It's widely expected to pass the Legislature and has Governor Newsom's support. The only opposition to the bill comes from the Charter School Development Center.

The California Charter Schools Association (CCSA) has a neutral position on the bill. In a letter to the Senate Education Committee, CCSA writes, "we view SB 126 as a balanced and comprehensive resolution to the longstanding debate about the applicability to charter schools of California's open meetings, public records, and conflict of interest laws."

Support for the bill includes statewide labor, management, and social justice groups, specifically:

- California Teachers Association (CTA)
- California Federation of Teachers (CFT)
- AFSCME, local 57
- SEIU California
- State PTA
- Association of School Administrators (ACSA)
- Small School Districts Association (SSDA)
- California School Boards Association (CSBA)
- California Association of School Business Officials (CASBO)
- California County Superintendents Educational Services Association (CCSESA)
- ACLU
- NAACP
- Public Advocates
- And several individual school agencies

In a letter signed by organizations supporting SB 126, supporters say, “transparency necessitates that we require companies and organizations that manage charter schools to release to parents and the public how they spend taxpayer money, including their annual budgets and contracts. Companies and organizations that manage charter schools must open board meetings to parents and the public, similar to public school board meetings. The public’s business should be transacted in public. Public agencies must take their actions openly and their deliberations must be conducted openly.”

What’s Next?
SB 126 is headed directly to the Senate Floor as the bill is not considered a fiscal bill, meaning it will avoid the Appropriations Committees in both houses (absent amendments to make it fiscal). Because the bill is a compromise between the Newsom Administration, CTA, CCSA, and Legislative leaders, we don’t expect significant amendments to the bill as it quickly moves to the Governor’s desk.

Lastly, don’t expect SB 126 to be the only charter school reform legislation in 2019, in fact we anticipate several bill introductions on the topic this week. Those bills will address, among other things, charter school governance, authorization, appeals, location/siting, and transparency. While many legislators will be itching to address these issues, the Governor’s appetite for these changes is unknown. Anyone who follows charter school debates knows that means it’s time to get your popcorn ready and buckle up.

We'll update you as things develop. In the meantime, please let us know if we can provide any additional information.

Thanks,
-Barrett

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AB-1505 Charter schools: petitions. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL No. 1505

Introduced by Assembly Members O'Donnell, McCarty, and Smith
(Principal coauthor: Assembly Member Kalra)
(Coauthor: Senator Skinner)

February 22, 2019

An act to amend Sections 42238.02, 47604.5, 47605, 47607, 47607.3, and 47613 of, to add Section 47605.9 to, and to repeal Sections 47605.5, 47605.6, 47605.8, and 47607.5 of, the Education Code, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, as introduced, O'Donnell. Charter schools: petitions.

(1) The Charter Schools Act of 1992 provides for the establishment and operation of charter schools. Existing law generally requires a petition to establish a charter school to be submitted to the governing board of a school district, and, under specified circumstances, authorizes a petition to be submitted to and approved by a county board of education or the State Board of Education. Existing law authorizes a county board of education to approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. Existing law also authorizes a petition for the operation of a state charter school to be submitted directly to the state board, and authorizes the state board to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state.

This bill would repeal those provisions authorizing a county board of education or the state board to approve a petition to establish a charter school, and would specify that, on and after January 1, 2020, a petition to establish a charter school may be submitted only to the school district the boundaries within which the charter school would be located. The bill would provide that charter schools operating under a charter approved by a county board of education or the state board may continue to operate under those charters only until the date on which the charter is up for renewal.

(2) Existing law prohibits the governing board of a school district from denying a petition to establish a charter school unless it makes written factual findings in support of one or more specific findings.

This bill would authorize the governing board of a school district to also deny a petition if it makes written factual

findings, specific to the particular petition, setting forth certain facts to support one or more specified findings.

(3) If a petition to establish a charter school is denied by the governing board of a school district, existing law authorizes the petitioner to submit the petition to the county board of education, which may grant or deny the petition.

This bill would repeal those provisions.

(4) Existing law authorizes a charter school to appeal a school district's decision to deny a petition for a charter to the county board of education and, if the county board of education upholds the decision, to appeal the county board of education's decision to the state board.

This bill would delete those provisions.

(5) Existing law authorizes a charter to be granted by a chartering authority under designated provisions for a period not to exceed 5 years. Existing law requires that charter renewals are for periods of 5 years.

This bill would instead provide that a renewal of a charter would be for a period of between one and 5 years. The bill would require a chartering authority, in deciding whether to grant a renewal, to consider specified issues relating to a school's financial condition. The bill would specify procedures to be followed by a county superintendent of schools when a charter school requests technical assistance due to academic performance issues.

(6) Existing law authorizes a chartering authority to revoke a charter if the authority finds, through a showing of substantial evidence, that the charter school has committed any of several designated acts. Existing law requires the chartering authority to consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter. Existing law also provides for a procedure for an appeal of a revocation decision by a chartering authority.

This bill would delete the provision relating to increases in pupil academic achievement as the most important factor in determining whether to revoke a charter. The bill would also delete the process for appeal of a revocation of a charter by a chartering authority.

(7) This bill would also make conforming and nonsubstantive changes.

To the extent the bill would impose additional requirements on local educational agencies and charter schools, the bill would impose a state-mandated local program.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 42238.02 of the Education Code is amended to read:

42238.02. (a) The amount computed pursuant to this section shall be known as the school district and charter school local control funding formula.

(b) (1) For purposes of this section "unduplicated pupil" means a pupil enrolled in a school district or a charter school who is either classified as an English learner, eligible for a free or reduced-price meal, or is a foster youth. A pupil shall be counted only once for purposes of this section if any of the following apply:

(A) The pupil is classified as an English learner and is eligible for a free or reduced-price meal.

(B) The pupil is classified as an English learner and is a foster youth.

(C) The pupil is eligible for a free or reduced-price meal and is classified as a foster youth.

(D) The pupil is classified as an English learner, is eligible for a free or reduced-price meal, and is a foster youth.

(2) Under procedures and timeframes established by the Superintendent, commencing with the 2013–14 fiscal year, a school district or charter school shall annually submit its enrolled free and reduced-price meal eligibility, foster youth, and English learner pupil-level records for enrolled pupils to the Superintendent using the California Longitudinal Pupil Achievement Data System.

(3) (A) Commencing with the 2013–14 fiscal year, a county office of education shall review and validate certified aggregate English learner, foster youth, and free or reduced-price meal eligible pupil data for school districts and charter schools under its jurisdiction to ensure the data is reported accurately. The Superintendent shall provide each county office of education with appropriate access to school district and charter school data reports in the California Longitudinal Pupil Achievement Data System for purposes of ensuring data reporting accuracy.

(B) The Controller shall include the instructions necessary to enforce paragraph (2) in the audit guide required by Section 14502.1. The instructions shall include, but are not necessarily limited to, procedures for determining if the English learner, foster youth, and free or reduced-price meal eligible pupil counts are consistent with the school district's or charter school's English learner, foster youth, and free or reduced-price meal eligible pupil records.

(4) The Superintendent shall make the calculations pursuant to this section using the data submitted by local educational agencies, including charter schools, through the California Longitudinal Pupil Achievement Data System. Under timeframes and procedures established by the Superintendent, school districts and charter schools may review and revise their submitted data on English learner, foster youth, and free or reduced-price meal eligible pupil counts to ensure the accuracy of data reflected in the California Longitudinal Pupil Achievement Data System.

(5) The Superintendent shall annually compute the percentage of unduplicated pupils for each school district and charter school by dividing the enrollment of unduplicated pupils in a school district or charter school by the total enrollment in that school district or charter school pursuant to all of the following:

(A) For the 2013–14 fiscal year, divide the sum of unduplicated pupils for the 2013–14 fiscal year by the sum of the total pupil enrollment for the 2013–14 fiscal year.

(B) For the 2014–15 fiscal year, divide the sum of unduplicated pupils for the 2013–14 and 2014–15 fiscal years by the sum of the total pupil enrollment for the 2013–14 and 2014–15 fiscal years.

(C) For the 2015–16 fiscal year and each fiscal year thereafter, divide the sum of unduplicated pupils for the current fiscal year and the two prior fiscal years by the sum of the total pupil enrollment for the current fiscal year and the two prior fiscal years.

(D) (i) For purposes of the quotients determined pursuant to subparagraphs (B) and (C), the Superintendent shall use a school district's or charter school's enrollment of unduplicated pupils and total pupil enrollment in the 2014–15 fiscal year instead of the enrollment of unduplicated pupils and total pupil enrollment in the 2013–14 fiscal year if doing so would yield an overall greater percentage of unduplicated pupils.

(ii) It is the intent of the Legislature to review each school district and charter school's enrollment of unduplicated pupils for the 2013–14 and 2014–15 fiscal years and provide one-time funding, if necessary, for a school district or charter school with higher enrollment of unduplicated pupils in the 2014–15 fiscal year as compared to the 2013–14 fiscal year.

(6) The data used to determine the percentage of unduplicated pupils shall be final once that data is no longer used in the current fiscal year calculation of the percentage of unduplicated pupils. This paragraph does not apply to a change that is the result of an audit that has been appealed pursuant to Section 41344.

(c) Commencing with the 2013–14 fiscal year and each fiscal year thereafter, the Superintendent shall annually calculate a local control funding formula grant for each school district and charter school in the state pursuant to this section.

(d) The Superintendent shall compute a grade span adjusted base grant equal to the total of the following amounts:

(1) For the 2013–14 fiscal year, a base grant of:

(A) Six thousand eight hundred forty-five dollars ($6,845) for average daily attendance in kindergarten and grades 1 to 3, inclusive.

(B) Six thousand nine hundred forty-seven dollars ($6,947) for average daily attendance in grades 4 to 6,

inclusive.

(C) Seven thousand one hundred fifty-four dollars ($7,154) for average daily attendance in grades 7 and 8.

(D) Eight thousand two hundred eighty-nine dollars ($8,289) for average daily attendance in grades 9 to 12, inclusive.

(2) In each year the grade span adjusted base grants in paragraph (1) shall be adjusted by the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 10 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 10 of the preceding fiscal year, as reported by the Department of Finance.

(3) (A) The Superintendent shall compute an additional adjustment to the kindergarten and grades 1 to 3, inclusive, base grant as adjusted for inflation pursuant to paragraph (2) equal to 10.4 percent. The additional grant shall be calculated by multiplying the kindergarten and grades 1 to 3, inclusive, base grant, as adjusted by paragraph (2), by 10.4 percent.

(B) Until paragraph (4) of subdivision (b) of Section 42238.03 is effective, as a condition of the receipt of funds in this paragraph, a school district shall make progress toward maintaining an average class enrollment of not more than 24 pupils for each schoolsite in kindergarten and grades 1 to 3, inclusive, unless a collectively bargained alternative annual average class enrollment for each schoolsite in those grades is agreed to by the school district, pursuant to the following calculation:

(i) Determine a school district's average class enrollment for each schoolsite for kindergarten and grades 1 to 3, inclusive, in the prior year. For the 2013–14 fiscal year, this amount shall be the average class enrollment for each schoolsite for kindergarten and grades 1 to 3, inclusive, in the 2012–13 fiscal year.

(ii) Determine a school district's proportion of total need pursuant to paragraph (2) of subdivision (b) of Section 42238.03.

(iii) Determine the percentage of the need calculated in clause (ii) that is met by funding provided to the school district pursuant to paragraph (3) of subdivision (b) of Section 42238.03.

(iv) Determine the difference between the amount computed pursuant to clause (i) and an average class enrollment of not more than 24 pupils.

(v) Calculate a current year average class enrollment adjustment for each schoolsite for kindergarten and grades 1 to 3, inclusive, equal to the adjustment calculated in clause (iv) multiplied by the percentage determined pursuant to clause (iii).

(C) School districts that have an average class enrollment for each schoolsite for kindergarten and grades 1 to 3, inclusive, of 24 pupils or less for each schoolsite in the 2012–13 fiscal year, shall be exempt from the requirements of subparagraph (B) so long as the school district continues to maintain an average class enrollment for each schoolsite for kindergarten and grades 1 to 3, inclusive, of not more than 24 pupils, unless a collectively bargained alternative ratio is agreed to by the school district.

(D) ~~Upon full implementation of the local control funding formula, as~~ *As* a condition of the receipt of funds in this paragraph, all school districts shall maintain an average class enrollment for each schoolsite for kindergarten and grades 1 to 3, inclusive, of not more than 24 pupils for each schoolsite in kindergarten and grades 1 to 3, inclusive, unless a collectively bargained alternative ratio is agreed to by the school district.

(E) The average class enrollment requirement for each schoolsite for kindergarten and grades 1 to 3, inclusive, established pursuant to this paragraph shall not be subject to waiver by the state board pursuant to Section 33050 or by the Superintendent.

(F) The Controller shall include the instructions necessary to enforce this paragraph in the audit guide required by Section 14502.1. The instructions shall include, but are not necessarily limited to, procedures for determining if the average class enrollment for each schoolsite for kindergarten and grades 1 to 3, inclusive, exceeds 24 pupils, or an alternative average class enrollment for each schoolsite pursuant to a collectively bargained alternative ratio. The procedures for determining average class enrollment for each schoolsite shall include criteria for employing sampling.

(4) The Superintendent shall compute an additional adjustment to the base grant for grades 9 to 12, inclusive, as adjusted for inflation pursuant to paragraph (2), equal to 2.6 percent. The additional grant shall be calculated by multiplying the base grant for grades 9 to 12, inclusive, as adjusted by paragraph (2), by 2.6 percent.

(e) The Superintendent shall compute a supplemental grant add-on equal to 20 percent of the base grants as specified in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (d), as adjusted by paragraphs (2) to (4), inclusive, of subdivision (d), for each school district's or charter school's percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b). The supplemental grant shall be calculated by multiplying the base grants as specified in subparagraphs (A) to (D), inclusive, of paragraph (1), as adjusted by paragraphs (2) to (4), inclusive, of subdivision (d), by 20 percent and by the percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b) in that school district or charter school. The supplemental grant shall be expended in accordance with the regulations adopted pursuant to Section 42238.07.

(f) (1) The Superintendent shall compute a concentration grant add-on equal to 50 percent of the base grants as specified in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (d), as adjusted by paragraphs (2) to (4), inclusive, of subdivision (d), for each school district's or charter school's percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b) in excess of 55 percent of the school district's or charter school's total enrollment. The concentration grant shall be calculated by multiplying the base grants as specified in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (d), as adjusted by paragraphs (2) to (4), inclusive, of subdivision (d), by 50 percent and by the percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b) in excess of 55 percent of the total enrollment in that school district or charter school.

(2) (A) For a charter school physically located in only one school district, the percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b) in excess of 55 percent used to calculate concentration grants shall not exceed the percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b) in excess of 55 percent of the school district in which the charter school is physically located. For a charter school physically located in more than one school district, the charter school's percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b) in excess of 55 percent used to calculate concentration grants shall not exceed that of the school district with the highest percentage of unduplicated pupils calculated pursuant to paragraph (5) of subdivision (b) in excess of 55 percent of the school districts in which the charter school has a school facility. The concentration grant shall be expended in accordance with the regulations adopted pursuant to Section 42238.07.

(B) For purposes of this paragraph and subparagraph (A) of paragraph (1) of subdivision (f) of Section 42238.03, a charter school shall report its physical location to the department under timeframes established by the department. ~~For a charter school authorized by a school district, the department shall include the authorizing school district in the department's determination of physical location. For a charter school authorized on appeal pursuant to subdivision (j) of Section 47605, the department shall include the sponsoring school district in the department's determination of physical location.~~ The reported physical location of the charter school shall be considered final as of the second principal apportionment for that fiscal year. For purposes of this paragraph, the percentage of unduplicated pupils of the school district associated with the charter school pursuant to subparagraph (A) shall be considered final as of the second principal apportionment for that fiscal year.

(g) The Superintendent shall compute an add-on to the total sum of a school district's or charter school's base, supplemental, and concentration grants equal to the amount of funding a school district or charter school received from funds allocated pursuant to the Targeted Instructional Improvement Block Grant program, as set forth in Article 6 (commencing with Section 41540) of Chapter 3.2, for the 2012–13 fiscal year, as that article read on January 1, 2013. A school district or charter school shall not receive a total funding amount from this add-on greater than the total amount of funding received by the school district or charter school from that program in the 2012–13 fiscal year. The amount computed pursuant to this subdivision shall reflect the reduction specified in paragraph (2) of subdivision (a) of Section 42238.03.

(h) (1) The Superintendent shall compute an add-on to the total sum of a school district's or charter school's base, supplemental, and concentration grants equal to the amount of funding a school district or charter school received from funds allocated pursuant to the Home-to-School Transportation program, as set forth in former Article 2 (commencing with Section 39820) of Chapter 1 of Part 23.5, former Article 10 (commencing with Section 41850) of Chapter 5, and the Small School District Transportation program, as set forth in former Article 4.5 (commencing with Section 42290), as those articles read on January 1, 2013, for the 2012–13 fiscal year. A school district or charter school shall not receive a total funding amount from this add-on greater than the total amount received by the school district or charter school for those programs in the 2012–13 fiscal year. The amount computed pursuant to this subdivision shall reflect the reduction specified in paragraph (2) of subdivision

(a) of Section 42238.03.

(2) If a home-to-school transportation joint powers agency, established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code for purposes of providing pupil transportation, received an apportionment directly from the Superintendent from any of the funding sources specified in paragraph (1) for the 2012–13 fiscal year, the joint powers agency may identify the member local educational agencies and transfer entitlement to that funding to any of those member local educational agencies by reporting to the Superintendent, on or before September 30, 2015, the reassignment of a specified amount of the joint powers agency's 2012–13 fiscal year entitlement to the member local educational agency. Commencing with the 2015–16 fiscal year, the Superintendent shall compute an add-on to the total sum of a school district's or charter school's base, supplemental, and concentrations grants equal to the amount of the entitlement to funding transferred by the joint powers agency to the member school district or charter school.

(i) (1) The sum of the local control funding formula rates computed pursuant to subdivisions (c) to (f), inclusive, shall be multiplied by:

(A) For school districts, the average daily attendance of the school district in the corresponding grade level ranges computed pursuant to Section 42238.05, excluding the average daily attendance computed pursuant to paragraph (2) of subdivision (a) of Section 42238.05 for purposes of the computation specified in subdivision (d).

(B) For charter schools, the total current year average daily attendance in the corresponding grade level ranges.

(2) The amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed pursuant to paragraphs (1) to (4), inclusive, of subdivision (d), as multiplied by subparagraph (A) or (B) of paragraph (1), as appropriate.

(j) The Superintendent shall adjust the sum of each school district's or charter school's amount determined in subdivisions (g) to (i), inclusive, pursuant to the calculation specified in Section 42238.03, less the sum of the following:

(1) (A) For school districts, the property tax revenue received pursuant to Chapter 3.5 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(B) For charter schools, the in-lieu property tax amount provided to a charter school pursuant to Section 47635.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of Division 2 of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2 of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount, if any, received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), less any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance and that is not an amount received pursuant to Section 33492.15, or paragraph (4) of subdivision (a) of Section 33607.5, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(7) The amount, if any, received pursuant to Sections 34177, 34179.5, 34179.6, 34183, and 34188 of the Health and Safety Code.

(8) Revenue received pursuant to subparagraph (B) of paragraph (3) of subdivision (e) of Section 36 of Article XIII of the California Constitution.

(k) A school district shall annually transfer to each of its charter schools funding in lieu of property taxes pursuant to Section 47635.

(l) (1) Nothing in this section shall be interpreted to authorize a school district that receives funding on behalf of a charter school pursuant to Section 47651 to redirect this funding for another purpose unless otherwise authorized in law pursuant to paragraph (2) or pursuant to an agreement between the charter school and its chartering authority.

(2) A school district that received funding on behalf of a locally funded charter school in the 2012–13 fiscal year pursuant to paragraph (2) of subdivision (b) of Section 42605, Section 42606, and subdivision (b) of Section 47634.1, as those sections read on January 1, 2013, or a school district that was required to pass through funding to a conversion charter school in the 2012–13 fiscal year pursuant to paragraph (2) of subdivision (b) of Section 42606, as that section read on January 1, 2013, may annually redirect for another purpose a percentage of the amount of the funding received on behalf of that charter school. The percentage of funding that may be redirected shall be determined pursuant to the following computation:

(A) (i) Determine the sum of the need fulfilled for that charter school pursuant to paragraph (3) of subdivision (b) of Section 42238.03 in the then current fiscal year for the charter school.

(ii) Determine the sum of the need fulfilled in every fiscal year before the then current fiscal year pursuant to paragraph (3) of subdivision (b) of Section 42238.03 adjusted for changes in average daily attendance pursuant to paragraph (3) of subdivision (a) of Section 42238.03 for the charter school.

(iii) Subtract the amount computed pursuant to paragraphs (1) to (3), inclusive, of subdivision (a) of Section 42238.03 from the amount computed for that charter school under the local control funding formula entitlement computed pursuant to subdivision (i) of this section.

(iv) Compute a percentage by dividing the sum of the amounts computed to clauses (i) and (ii) by the amount computed pursuant to clause (iii).

(B) Multiply the percentage computed pursuant to subparagraph (A) by the amount of funding the school district received on behalf of the charter school in the 2012–13 fiscal year pursuant to paragraph (2) of subdivision (b) of Section 42605, Section 42606, and subdivision (b) of Section 47634.1, as those sections read on January 1, 2013.

(C) The maximum amount that may be redirected shall be the lesser of the amount of funding the school district received on behalf of the charter school in the 2012–13 fiscal year pursuant to paragraph (2) of subdivision (b) of Section 42605, Section 42606, and subdivision (b) of Section 47634.1, as those sections read on January 1, 2013, or the amount computed pursuant to subparagraph (B).

(3) Commencing with the 2013–14 fiscal year, a school district operating one or more affiliated charter schools shall provide each affiliated charter school schoolsite with no less than the amount of funding the schoolsite received pursuant to the charter school block grant in the 2012–13 fiscal year.

(m) Any calculations in law that are used for purposes of determining if a local educational agency is an excess tax school entity or basic aid school district, including, but not limited to, this section and Sections ~~42238.03,~~ 41544, *42238.03,* 47632, 47660, 47663, 48310, and 48359.5, and Section 95 of the Revenue and Taxation Code, shall be made exclusive of the revenue received pursuant to subparagraph (B) of paragraph (3) of subdivision (e) of Section 36 of Article XIII of the California Constitution.

(n) The funds apportioned pursuant to this section and Section 42238.03 shall be available to implement the activities required pursuant to Article 4.5 (commencing with Section 52059.5) of Chapter 6.1 of Part 28 of Division 4.

(o) A school district that does not receive an apportionment of state funds pursuant to this section, as implemented pursuant to Section 42238.03, excluding funds apportioned pursuant to the requirements of subparagraph (A) of paragraph (2) of subdivision (e) of Section 42238.03, shall be considered a "basic aid school district" or an "excess tax entity."

SEC. 2. Section 47604.5 of the Education Code is amended to read:

47604.5. The state ~~board, whether or not it is the authority that granted the charter,~~ *board* may, based upon the recommendation of the Superintendent, take appropriate action, including, but not limited to, revocation of the school's charter, when the state board finds any of the following:

(a) Gross financial mismanagement that jeopardizes the financial stability of the charter school.

(b) Illegal or substantially improper use of charter school funds for the personal benefit of any officer, director, or fiduciary of the charter school.

(c) Substantial and sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school's pupils.

(d) Failure to improve pupil outcomes across multiple state and school priorities identified in the charter pursuant to subparagraph (A) of paragraph (5) of subdivision (b) of Section ~~47605 or subparagraph (A) of paragraph (5) of subdivision (d) of Section 47605.6.~~ *47605.*

SEC. 3. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions is met:

(A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

(B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (c) of Section 41365 may be circulated by one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having ~~his or her~~ *their* child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, there shall be a material revision to the charter school's charter.

(5) A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:

(A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing board of the school district ~~shall~~ *may* grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school

district shall not ~~deny a petition for the establishment of a charter school unless it makes~~ *be required to approve a petition for the establishment of a charter school, and may deny approval by making* written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels ~~served, or the nature of the program operated, by the charter school,~~ *served* and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.

(iii) If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A to G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in ~~subparagraph (B) of~~ paragraph ~~(3)~~ *(4)* of subdivision (a) of Section 47607. The pupil outcomes shall align with the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels ~~served, or the nature of the program operated,~~ *served* by the charter school.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

(D) The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the charter school.

(F) The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall require all of the following:

(i) That each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

(ii) The development of a school safety plan, which shall include the safety topics listed in subparagraphs (A) to (H), inclusive, of paragraph (2) of subdivision (a) of Section 32282 and procedures for conducting tactical responses to criminal incidents.

(iii) That the school safety plan be reviewed and updated by March 1 of every year by the charter school.

(G) The means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission policies and procedures, consistent with subdivision (d).

(I) The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. These procedures, at a minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:

(i) For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present ~~his or her~~ *the pupil's* side of the story.

(ii) For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:

(I) Provide timely, written notice of the charges against the pupil and an explanation of the pupil's basic rights.

(II) Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.

(iii) Contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil's parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil's educational rights holder, and shall inform ~~him or her~~ *that individual* of the right to initiate the procedures specified in clause (ii) before the effective date of the action. If the pupil's parent, guardian, or educational rights holder initiates the procedures specified in clause (ii), the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision. For purposes of this clause, "involuntarily removed" includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions specified in clauses (i) and (ii).

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) The rights of an employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents, legal guardians, and teachers regarding the charter school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the

pupil, or of ~~his or her~~ *that pupil's* parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the charter school.

(B) If the number of pupils who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Preferences, including, but not limited to, siblings of pupils admitted or attending the charter school and children of the charter school's teachers, staff, and founders identified in the initial charter, may also be permitted by the chartering authority on an individual charter school basis. Priority order for any preference shall be determined in the charter petition in accordance with all of the following:

(i) Each type of preference shall be approved by the chartering authority at a public hearing.

(ii) Preferences shall be consistent with federal law, the California Constitution, and Section 200.

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

(iv) In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the charter school from expanding enrollment to meet pupil demand.

(3) 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 report cards or a transcript of grades, and health information. If the pupil is subsequently expelled or leaves the school district without graduating or completing the school year for any reason, the school district shall provide this information to the charter school within 30 days if the charter school demonstrates that the pupil had been enrolled in the charter school. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

(e) The governing board of a school district shall not require an employee of the school district to be employed in a charter school.

(f) The governing board of a school district shall not require a pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school and upon the school district. The description of the facilities to be used by the charter school shall specify where the charter school intends to locate. The petitioner or petitioners also shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) 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 that section read before July 19, 2006.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board.

~~(j)(1)If the governing board of a school district denies a petition, the petitioner may elect to submit the petition~~

~~for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the state board, and the state board may approve the petition, in accordance with subdivision (b). A charter school that receives approval of its petition from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the entity to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.~~

~~(2)In assuming its role as a chartering agency, the state board shall develop criteria to be used for the review and approval of charter school petitions presented to the state board. The criteria shall address all elements required for charter approval, as identified in subdivision (b), and shall define "reasonably comprehensive," as used in paragraph (5) of subdivision (b), in a way that is consistent with the intent of this part. Upon satisfactory completion of the criteria, the state board shall adopt the criteria on or before June 30, 2001.~~

~~(3)A charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.~~

~~(4)If either the county board of education or the state board fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny the petition shall be subject to judicial review.~~

~~(5)The state board shall adopt regulations implementing this subdivision.~~

~~(6)Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the department and the state board.~~

~~(k)(1)The state board may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the state board to any local educational agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.~~

~~(2)The designated local educational agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the state board.~~

~~(3)A charter school that is granted its charter through an appeal to the state board and elects to seek renewal of its charter shall, before expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the charter school's petition for renewal, the charter school may petition the state board for renewal of its charter.~~

~~(l)~~

(j) Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

~~(m)~~

(k) A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering ~~entity,~~ *authority,* the Controller, the county superintendent of schools of the county in which the charter school is ~~sited, unless the county board of education of the county in which the charter school is sited is the chartering entity,~~ *sited* and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering ~~entity~~ *authority* pursuant to Section 41020.

~~(n)~~

(l) A charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.

SEC. 4. Section 47605.5 of the Education Code is repealed.

~~47605.5.A petition may be submitted directly to a county board of education in the same manner as set forth in Section 47605 for charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services. Any denial of a petition shall be subject to the same process for any other county board of education denial of a charter school petition pursuant to this part.~~

SEC. 5. Section 47605.6 of the Education Code is repealed.

~~47605.6.(a)(1)In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may approve a countywide charter only if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school. The petition may be submitted to the county board of education for review after either of the following conditions is met:~~

~~(A)The petition is signed by a number of parents or guardians of pupils residing within the county that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days' notice of the petitioner's intent to operate a charter school pursuant to this section.~~

~~(B)The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days' notice of the petitioner's intent to operate a charter school pursuant to this section.~~

~~(2)An existing public school shall not be converted to a charter school in accordance with this section.~~

~~(3)After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education shall notify the school districts where those sites will be located. The charter school shall also request a material revision of its charter by the county board of education that approved its charter and the county board of education shall consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the charter school's approved charter.~~

~~(4)A petition shall include a prominent statement indicating that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.~~

~~(b)No later than 60 days after receiving a petition, in accordance with subdivision (a), the county board of education shall hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. However, this date may be extended by an additional 30 days if both parties agree to the extension. A county board of education may impose any additional requirements beyond those required by this section that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a charter school under this part only if it is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605. The county board of education shall deny a petition for the establishment of a charter school if it finds one or more of the following:~~

~~(1)The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.~~

~~(2)The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.~~

~~(3)The petition does not contain the number of signatures required by subdivision (a).~~

~~(4)The petition does not contain an affirmation of each of the conditions described in subdivision (e).~~

~~(5)The petition does not contain reasonably comprehensive descriptions of all of the following:~~

~~(A)(i)The educational program of the charter school, designed, among other things, to identify those pupils whom the charter school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.~~

~~(ii)The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.~~

~~(iii)If the proposed charter school will enroll high school pupils, the manner in which the charter school will inform parents regarding the transferability of courses to other public high schools. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered to be transferable to other public high schools.~~

~~(iv)If the proposed charter school will enroll high school pupils, information as to the manner in which the charter school will inform parents as to whether each individual course offered by the charter school meets college entrance requirements. Courses approved by the University of California or the California State University as satisfying their prerequisites for admission may be considered as meeting college entrance requirements for purposes of this clause.~~

~~(B)The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and aptitudes specified as goals in the charter school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in subparagraph (B) of paragraph (3) of subdivision (a) of Section 47607. The pupil outcomes shall align with the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school.~~

~~(C)The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.~~

~~(D)The location of each charter school facility that the petitioner proposes to operate.~~

~~(E)The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.~~

~~(F)The qualifications to be met by individuals to be employed by the charter school.~~

~~(G)The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall require all of the following:~~

~~(i)That each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.~~

~~(ii)The development of a school safety plan, which shall include the safety topics listed in subparagraphs (A) to (H), inclusive, of paragraph (2) of subdivision (a) of Section 32282 and procedures for conducting tactical responses to criminal incidents.~~

~~(iii)That the school safety plan be reviewed and updated by March 1 of every year by the charter school.~~

~~(H)The means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.~~

~~(I)The manner in which annual, independent financial audits shall be conducted, in accordance with regulations established by the state board, and the manner in which audit exceptions and deficiencies shall be resolved.~~

~~(J)The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. These procedures, at a minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:~~

~~(i)For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present his or her side of the story.~~

~~(ii)For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:~~

~~(I)Provide timely, written notice of the charges against the pupil and an explanation of the pupil's basic rights.~~

~~(II)Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.~~

~~(iii)Contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil's parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil's educational rights holder, and shall inform him or her of the right to initiate the procedures specified in clause (ii) before the effective date of the action. If the pupil's parent, guardian, or educational rights holder initiates the procedures specified in clause (ii), the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision. For purposes of this clause, "involuntarily removed" includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions specified in clauses (i) and (ii).~~

~~(K)The manner by which staff members of the charter school will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.~~

~~(L)The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.~~

~~(M)Admission policy and procedures, consistent with subdivision (e).~~

~~(N)The public school attendance alternatives for pupils residing within the county who choose not to attend the charter school.~~

~~(O)The rights of an employee of the county office of education, upon leaving the employment of the county office of education, to be employed by the charter school, and any rights of return to the county office of education that an employee may have upon leaving the employment of the charter school.~~

~~(P)The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of public records.~~

~~(6)A declaration of whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).~~

~~(7)Any other basis that the county board of education finds justifies the denial of the petition.~~

~~(c)A county board of education that approves a petition for the operation of a countywide charter may, as a condition of charter approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report to the county board of education on the operations of the charter school. The county board of education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the county board of education.~~

~~(d)(1)Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.~~

~~(2)Charter schools shall on a regular basis consult with their parents and teachers regarding the charter school's educational programs.~~

~~(e)(1)In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, gender identity, gender expression, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state.~~

~~(2)(A)A charter school shall admit all pupils who wish to attend the charter school.~~

~~(B)If the number of pupils who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the county except as provided for in Section 47614.5. Preferences, including, but not limited to, siblings of pupils admitted or attending the charter school and children of the charter school's teachers, staff, and founders identified in the initial charter, may also be permitted by the chartering authority on an individual charter school basis. Priority order for any preference shall be determined in the charter petition in accordance with all of the following:~~

~~(i)Each type of preference shall be approved by the chartering authority at a public hearing.~~

~~(ii)Preferences shall be consistent with federal law, the California Constitution, and Section 200.~~

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

~~(iv)In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.~~

~~(C)In the event of a drawing, the county board of education shall make reasonable efforts to accommodate the growth of the charter school and in no event shall take any action to impede the charter school from expanding enrollment to meet pupil demand.~~

~~(3)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 report cards or a transcript of grades, and health information. If the pupil is subsequently expelled or leaves the school district without graduating or completing the school year for any reason, the school district shall provide this information to the charter school within 30 days if the charter school demonstrates that the pupil had been enrolled in the charter school. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.~~

~~(f)The county board of education shall not require an employee of the county or a school district to be employed in a charter school.~~

~~(g)The county board of education shall not require a pupil enrolled in a county program to attend a charter school.~~

~~(h)The county board of education shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school, any school district where the charter school may operate, and upon the county board of education. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.~~

~~(i)In reviewing petitions for the establishment of charter schools within the county, the county board of education 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 that section read before July 19, 2006.~~

~~(j)Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the school districts within the county, the Superintendent, and the state board.~~

~~(k)If a county board of education denies a petition, the petitioner shall not elect to submit the petition for the~~

~~establishment of the charter school to the state board.~~

~~(l)Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.~~

~~(m)A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to the county office of education, the Controller, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.~~

~~(n)A charter school may encourage parental involvement but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.~~

SEC. 6. Section 47605.8 of the Education Code is repealed.

~~47605.8.(a)A petition for the operation of a state charter school may be submitted directly to the state board, and the state board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a state charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools. The petitioner shall submit a copy of the petition, for notification purposes, to the county superintendent of schools of each county in which the petitioner proposes to operate the state charter school. The petitioner also shall ensure that the governing board of each school district in which a site is proposed to be located is notified no later than 120 days prior to the commencement of instruction at each site, as applicable.~~

~~(b)The state board shall not approve a petition for the operation of a state charter school pursuant to this section unless the state board makes a finding, based on substantial evidence, that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the state board in this regard shall be made part of the public record of the proceedings of the state board and shall precede the approval of the charter.~~

~~(c)The state board, as a condition of charter petition approval, may enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the state charter school. The state board may prescribe the aspects of the operations of the state charter school to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the state charter school to the state board.~~

~~(d)The state board shall not be required to approve a petition for the operation of a state charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.~~

SEC. 7. Section 47605.9 is added to the Education Code, to read:

47605.9. (a) On and after January 1, 2020, a petition to establish a charter school under this part may be submitted only to the governing board of the school district within the boundaries of which the charter school proposes to locate.

(b) A charter school operating under a charter approved by a county board of education or the state board pursuant to Section 47605, 47605.5, 47605.6, or 47605.8, as those sections read on January 1, 2019, may continue to operate under the authority of those chartering authorities only until the date on which the charter is up for renewal, at which point the charter school shall submit a petition for renewal to the governing board of the school district within the boundaries of which the charter school is located.

SEC. 8. Section 47607 of the Education Code is amended to read:

47607. (a) (1) A charter may be granted ~~pursuant to Sections 47605, 47605.5, and 47606~~ for a period not to exceed five ~~years. A charter granted by a school district governing board, a county board of education, or the state board~~ *years, and* may be granted one or more subsequent renewals by ~~that entity. Each renewal shall be~~

the chartering authority for a period of *between one and* five ~~years.~~ *years for each renewal. If a charter school has been identified for technical assistance from the chartering authority, the charter school shall be renewed for less than five years.* A material revision of the provisions of a charter petition may be made only with the approval of the ~~authority that granted the charter. The authority that granted the charter~~ *chartering authority. The chartering authority* may inspect or observe any part of the charter school at any time.

(2) Renewals and material revisions of charters are governed by the standards and criteria in Section 47605, and shall include, but not be limited to, a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed. *The chartering authority shall consider during renewal whether the charter school maintains sound management of its business and financial operations, and whether the school is expected to meet its financial obligations for the current and two subsequent fiscal years.*

~~(3)(A)The authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal.~~

~~(B)~~

(3) As part of the oversight responsibilities, a chartering authority shall develop a program to anonymously call charter schools as prospective parents with children who have exceptional needs or parents with children who are English language learners and record the response. The chartering authority shall provide guidelines to staff, create scripts for consistency, and provide anonymous cell phones. The chartering authority shall notify the charter school of the results of the calls made pursuant to this program, and shall consider during renewal the extent to which the results of the program determine whether the charter school is open and receptive to pupils with exceptional needs and English language learners.

(4) For purposes of this section, "all groups of pupils served by the charter school" means a numerically significant pupil subgroup, as defined by paragraph (3) of subdivision (a) of Section 52052, served by the charter school.

(b) Commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever date occurs later, a charter school shall meet at least one of the following criteria before receiving a charter renewal pursuant to paragraph (1) of subdivision (a):

(1) Attained its Academic Performance Index (API) growth target in the prior year or in two of the last three years both schoolwide and for all groups of pupils served by the charter school.

(2) Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.

(3) Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school in the prior year or in two of the last three years.

(4) (A) The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

(B) The determination made pursuant to this paragraph shall be based upon all of the following:

(i) Documented and clear and convincing data.

(ii) Pupil achievement data from assessments, including, but not limited to, the Standardized Testing and Reporting Program established by Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 for demographically similar pupil populations in the comparison schools.

(iii) Information submitted by the charter school.

(C) A chartering authority shall submit to the Superintendent copies of supporting documentation and a written summary of the basis for any determination made pursuant to this paragraph. The Superintendent shall review the materials and make recommendations to the chartering authority based on that review. The review may be the basis for a recommendation made pursuant to Section 47604.5.

(D) A charter renewal may not be granted to a charter school prior to 30 days after that charter school submits

materials pursuant to this paragraph.

(5) Qualified for an alternative accountability system pursuant to subdivision (h) of Section 52052.

(c) Notwithstanding any other law, the following shall apply to charter schools:

(1) The evaluation rubrics and performance criteria adopted by the state board pursuant to Section 52064.5 shall be applied equally to both school districts and charter schools.

(2) If the governing body of a charter school requests technical assistance, the county superintendent of schools shall provide technical assistance consistent with subparagraph (A) or (B) of paragraph (4). If a charter school has not been identified for technical assistance pursuant to paragraph (4) and if the service requested creates an unreasonable or untenable cost burden for the county superintendent of schools, the county superintendent of schools may assess the charter school a fee not to exceed the cost of the service.

(3) If a county superintendent of schools does not approve a local control and accountability plan or annual update to the local control and accountability plan approved by a governing body of a charter school, the county superintendent of schools shall provide technical assistance focused on revising the local control and accountability plan or annual update so that it can be approved.

(4) For any charter school for which one or more pupil subgroups identified pursuant to Section 52052 meets the criteria established pursuant to subdivision (g) of Section 52064.5, the county superintendent of schools shall provide technical assistance focused on building the charter school's capacity to develop and implement actions and services responsive to pupil and community needs, including, but not limited to, any of the following:

(A) Assisting the charter school to identify its strengths and weaknesses in regard to the state priorities described in subdivision (d) of Section 52060. This shall include working collaboratively with the charter school to review performance data on the state and local indicators included in the California School Dashboard authorized by subdivision (f) of Section 52064.5 and other relevant local data, and to identify effective, evidence-based programs or practices that address any areas of weakness.

(B) Working collaboratively with the charter school to secure assistance from an academic, programmatic, or fiscal expert or team of experts to identify and implement effective programs and practices that are designed to improve performance in any areas of weakness identified by the charter school. The county superintendent of schools, in consultation with the charter school, may solicit another service provider, which may include, but is not limited to, a school district, county office of education, or charter school, to act as a partner to the charter school in need of technical assistance.

(C) Obtaining from the charter school timely documentation demonstrating that it has completed the activities described in subparagraphs (A) and (B), or substantially similar activities, or has selected another service provider pursuant to paragraph (7) to work with the charter school to complete the activities described in subparagraphs (A) and (B), or substantially similar activities, and ongoing communication with the charter school to assess the charter school's progress in improving pupil outcomes.

(D) Requesting that the California Collaborative for Educational Excellence provide advice and assistance to the charter school, pursuant to subdivision (g) of Section 52074.

(5) Upon request of a county superintendent of schools or a charter school, a geographic lead agency identified pursuant to Section 52073 may provide technical assistance pursuant to paragraph (4). A geographic lead agency identified pursuant to Section 52073 may request that another geographic lead agency, an expert lead agency identified pursuant to Section 52073.1, a special education resource lead identified pursuant to Section 52073.2, or the California Collaborative for Educational Excellence provide the assistance described in this subdivision.

(6) A charter school shall accept the technical assistance provided by the county superintendent of schools pursuant to paragraphs (3) and (4). For purposes of accepting technical assistance provided by the county superintendent of schools pursuant to paragraph (4), a charter school may satisfy this requirement by providing the timely documentation to, and maintaining regular communication with, the county superintendent of schools as specified in subparagraph (C) of paragraph (4).

(7) This section shall not preclude a charter school from soliciting technical assistance from entities other than the county superintendent of schools at its own cost.

(d) The Superintendent shall make recommendations to the Legislature, including the appropriate policy committees in the Assembly and the Senate, by September 1, 2020, regarding charter school student academic achievement criteria that shall prohibit a charter school from being renewed, charter school student academic

achievement criteria that may warrant a charter school not to be renewed, and charter school student academic criteria that may warrant charter revocation.

~~(c) (1)~~

(e) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds, through a showing of substantial evidence, that the charter school did any of the following:

~~(A)~~

(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.

~~(B)~~

(2) Failed to meet or pursue any of the pupil outcomes identified in the charter.

~~(C)~~

(3) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.

~~(D)~~

(4) Violated any ~~provision of~~ law.

~~(2)The authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter.~~

~~(d)~~

(f) Before revocation, the authority that granted the charter shall notify the charter school of any violation of this section and give the school a reasonable opportunity to remedy the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

~~(e)~~

(g) Before revoking a charter for failure to remedy a violation pursuant to subdivision ~~(d),~~ *(f),* and after expiration of the school's reasonable opportunity to remedy without successfully remedying the violation, the chartering authority shall provide a written notice of intent to revoke and notice of facts in support of revocation to the charter school. No later than 30 days after providing the notice of intent to revoke a charter, the chartering authority shall hold a public hearing, in the normal course of business, on the issue of whether evidence exists to revoke the charter. No later than 30 days after the public hearing, the chartering authority shall issue a final decision to revoke or decline to revoke the charter, unless the chartering authority and the charter school agree to extend the issuance of the decision by an additional 30 days. The chartering authority shall not revoke a charter, unless it makes written factual findings supported by substantial evidence, specific to the charter school, that support its findings.

~~(f)(1)If a school district is the chartering authority and it revokes a charter pursuant to this section, the charter school may appeal the revocation to the county board of education within 30 days following the final decision of the chartering authority.~~

~~(2)The county board of education may reverse the revocation decision if the county board of education determines that the findings made by the chartering authority under subdivision (e) are not supported by substantial evidence. The school district may appeal the reversal to the state board.~~

~~(3)If the county board of education does not issue a decision on the appeal within 90 days of receipt, or the county board of education upholds the revocation, the charter school may appeal the revocation to the state board.~~

~~(4)The state board may reverse the revocation decision if the state board determines that the findings made by the chartering authority under subdivision (e) are not supported by substantial evidence. The state board may uphold the revocation decision of the school district if the state board determines that the findings made by the chartering authority under subdivision (e) are supported by substantial evidence.~~

~~(g)(1)If a county office of education is the chartering authority and the county board of education revokes a charter pursuant to this section, the charter school may appeal the revocation to the state board within 30 days following the decision of the chartering authority.~~

~~(2)The state board may reverse the revocation decision if the state board determines that the findings made by the chartering authority under subdivision (e) are not supported by substantial evidence.~~

~~(h)If the revocation decision of the chartering authority is reversed on appeal, the agency that granted the charter shall continue to be regarded as the chartering authority.~~

~~(i)During the pendency of an appeal filed under this section, a charter school, whose revocation proceedings are based on subparagraph (A) or (B) of paragraph (1) of subdivision (c), shall continue to qualify as a charter school for funding and for all other purposes of this part, and may continue to hold all existing grants, resources, and facilities, in order to ensure that the education of pupils enrolled in the school is not disrupted.~~

~~(j)Immediately following the decision of a county board of education to reverse a decision of a school district to revoke a charter, the following shall apply:~~

~~(1)The charter school shall qualify as a charter school for funding and for all other purposes of this part.~~

~~(2)The charter school may continue to hold all existing grants, resources, and facilities.~~

~~(3)Any funding, grants, resources, and facilities that had been withheld from the charter school, or that the charter school had otherwise been deprived of use, as a result of the revocation of the charter shall be immediately reinstated or returned.~~

~~(k)~~

(h) A final decision of a revocation ~~or appeal of a revocation~~ pursuant to subdivision ~~(c)~~ *(e)* shall be reported to the chartering authority, the county board of education, and the department.

SEC. 9. Section 47607.3 of the Education Code is amended to read:

47607.3. (a) If a charter school fails to improve outcomes for three or more pupil subgroups identified pursuant to Section 52052, or, if the charter school has less than three pupil subgroups, all of the charter school's pupil subgroups, in regard to one or more state or school priority identified in the charter pursuant to subparagraph (A) of paragraph (5) of subdivision (b) of Section 47605 or subparagraph (A) of paragraph (5) of subdivision (b) of Section 47605.6, in three out of four consecutive school years, all of the following shall apply:

(1) Using an evaluation rubric adopted by the state board pursuant to Section 52064.5, the chartering authority shall provide technical assistance to the charter school.

(2) At the request of the chartering authority, the California Collaborative for Educational Excellence may, after consulting with the Superintendent, and with the approval of the state board, provide advice and assistance to the charter school pursuant to Section 52074.

(b) A chartering authority shall consider for revocation any charter school to which the California Collaborative for Educational Excellence has provided advice and assistance pursuant to subdivision (a) and about which it has made either of the following findings, which shall be submitted to the chartering authority:

(1) That the charter school has failed, or is unable, to implement the recommendations of the California Collaborative for Educational Excellence.

(2) That the inadequate performance of the charter school, based upon an evaluation rubric adopted pursuant to Section 52064.5, is either so persistent or so acute as to require revocation of the charter.

~~(c)The chartering authority shall consider increases in pupil academic achievement for all pupil subgroups served by the charter school as the most important factor in determining whether to revoke the charter.~~

~~(d)~~

(c) A chartering authority shall comply with the hearing process described in subdivision ~~(e)~~ *(g)* of Section 47607 in revoking a charter. A charter school may not appeal a revocation of a charter made pursuant to this section.

SEC. 10. Section 47607.5 of the Education Code is repealed.

~~47607.5.If either a school district governing board or a county board of education, as a chartering agency, does not grant a renewal to a charter school pursuant to Section 47607, the charter school may submit its application for renewal pursuant to the procedures pertaining to a denial of a petition for establishment of a charter school, as provided in subdivision (j) of Section 47605.~~

SEC. 11. Section 47613 of the Education Code is amended to read:

47613. (a) Except as set forth in subdivision (b), a chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

(b) A chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering authority.

(c) A local educational agency that is given the responsibility for supervisorial oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, *as it read on January 1, 2019,* may charge for the actual costs of supervisorial oversight, and administrative costs necessary to secure charter school funding. A charter school that is charged for costs under this subdivision may not be charged pursuant to subdivision (a) or (b).

(d) This section does not prevent the charter school from separately purchasing administrative or other services from the chartering authority or any other source.

(e) For purposes of this section, "chartering authority" means a school ~~district, county board of education, or the state board, that granted the charter to the charter school.~~ *district.*

(f) For purposes of this section, "revenue of the charter school" means the amount received in the current fiscal year from the local control funding formula calculated pursuant to Section 42238.02, as implemented by Section 42238.03.

(g) For purposes of this section, "costs of supervisorial oversight" include, but are not limited to, costs incurred pursuant to Section 47607.3.

SEC. 12. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

AB-1506 Charter schools: statewide total. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL No. 1506

Introduced by Assembly Members McCarty and O'Donnell

February 22, 2019

An act to amend Section 47602 of the Education Code, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1506, as introduced, McCarty. Charter schools: statewide total.

The Charter Schools Act of 1992 limits the number of charter schools authorized to operate in this state, as provided.

This bill would make nonsubstantive changes to those provisions, including deleting an obsolete provision relating to a Legislative Analyst's Office report.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 47602 of the Education Code is amended to read:

47602. (a) ~~(1)~~In the 1998–99 school year, the maximum total number of charter schools authorized to operate in this state shall be 250. In ~~the 1999–2000 school year, and in~~ each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. For ~~the~~ purposes of implementing this section, the ~~State Board of Education~~ *state board* shall assign a number to each charter petition that it grants pursuant to subdivision (j) of Section 47605 or Section 47605.8 and to each charter notice it receives pursuant to this part, based on the chronological order in which the notice is received. ~~Each~~ *The* number assigned by the state board ~~on or after January 1, 2003,~~ shall correspond to a single petition that identifies a charter school that will operate within the geographic and site limitations of this part. The ~~State Board of Education~~ *state board* shall develop a numbering system for charter schools that identifies each school associated with a charter and that operates within the existing limit on the number of charter schools that can be approved each year. For purposes of this section, sites that share educational programs and serve similar pupil populations ~~may~~ *shall* not be counted as separate schools. Sites that do not share a common educational program shall be considered separate schools for purposes of this section. The limits contained in this ~~paragraph may~~ *subdivision*

may not be waived by the ~~State Board of Education~~ *state board* pursuant to Section 33050 or any other ~~provision of~~ law.

~~(2)By July 1, 2003, the Legislative Analyst shall, pursuant to the criteria in Section 47616.5, report to the Legislature on the effectiveness of the charter school approach authorized under this part and recommend whether to expand or reduce the annual rate of growth of charter schools authorized pursuant to this section.~~

(b) ~~No~~ *A* charter shall *not* be granted under this part that authorizes the conversion of ~~any~~ *a* private school to a charter school. ~~No~~ *A* charter school shall *not* receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. The ~~State Board of Education~~ *state board* shall adopt regulations to implement this section.

AB-1507 Charter schools: location. (2019-2020)

Date Published: 02/22/2019 09:00 PM

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL No. 1507

Introduced by Assembly Members Smith, McCarty, and O'Donnell
(Principal coauthor: Assembly Member Kalra)

February 22, 2019

An act to amend Section 47605 of the Education Code, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1507, as introduced, Smith. Charter schools: location.

Existing law authorizes a charter school that is unable to locate within the jurisdiction or geographic boundaries of the chartering school district to establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either the charter school has attempted to locate a single site or facility to house the entire program, but such a site or facility is unavailable in the area in which the school chooses to locate, or the site is needed for temporary use during a construction or expansion project.

This bill would delete the authority of a charter school to locate outside the jurisdiction or geographic boundaries of the chartering school district because the charter school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the charter school chooses to locate, or the site is needed for temporary use during a construction or expansion project.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing

board of the school district for review after either of the following conditions is met:

(A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

(B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (c) of Section 41365 may be circulated by one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having ~~his or her~~ *their* child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, ~~there~~ *they* shall be a material revision to the charter school's charter.

~~(5)A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:~~

~~(A)The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.~~

~~(B)The site is needed for temporary use during a construction or expansion project.~~

~~(6)~~

(5) Commencing January 1, 2003, a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.

(iii) If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A to G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in subparagraph (B) of paragraph (3) of subdivision (a) of Section 47607. The pupil outcomes shall align with the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

(D) The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the charter school.

(F) The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall require all of the following:

(i) That each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

(ii) The development of a school safety plan, which shall include the safety topics listed in subparagraphs (A) to (H), inclusive, of paragraph (2) of subdivision (a) of Section 32282 and procedures for conducting tactical responses to criminal incidents.

(iii) That the school safety plan be reviewed and updated by March 1 of every year by the charter school.

(G) The means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission policies and procedures, consistent with subdivision (d).

(I) The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. These procedures, at a minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:

(i) For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present ~~his or her~~ *their* side of the story.

(ii) For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:

(I) Provide timely, written notice of the charges against the pupil and an explanation of the pupil's basic rights.

(II) Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.

(iii) Contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil's parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil's educational rights holder, and shall inform ~~him or her~~ *them* of the right to initiate the procedures specified in clause (ii) before the effective date of the action. If the pupil's parent, guardian, or educational rights holder initiates the procedures specified in clause (ii), the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision. For purposes of this clause, "involuntarily removed" includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions specified in clauses (i) and (ii).

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) The rights of an employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents, legal guardians, and teachers regarding the charter school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of ~~his or her~~ *their* parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the charter school.

(B) If the number of pupils who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Preferences, including, but not limited to, siblings of pupils admitted or attending the charter school and children of the charter school's teachers, staff, and founders

identified in the initial charter, may also be permitted by the chartering authority on an individual charter school basis. Priority order for any preference shall be determined in the charter petition in accordance with all of the following:

(i) Each type of preference shall be approved by the chartering authority at a public hearing.

(ii) Preferences shall be consistent with federal law, the California Constitution, and Section 200.

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

(iv) In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the charter school from expanding enrollment to meet pupil demand.

(3) 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 report cards or a transcript of grades, and health information. If the pupil is subsequently expelled or leaves the school district without graduating or completing the school year for any reason, the school district shall provide this information to the charter school within 30 days if the charter school demonstrates that the pupil had been enrolled in the charter school. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

(e) The governing board of a school district shall not require an employee of the school district to be employed in a charter school.

(f) The governing board of a school district shall not require a pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school and upon the school district. The description of the facilities to be used by the charter school shall specify where the charter school intends to locate. The petitioner or petitioners also shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) 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 that section read before July 19, 2006.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the state board, and the state board may approve the petition, in accordance with subdivision (b). A charter school that receives approval of its petition from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the entity to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering ~~agency,~~ *authority,* the state board shall develop criteria to be used for the review and approval of charter school petitions presented to the state board. The criteria shall address all elements required for charter approval, as identified in subdivision (b), and shall define "reasonably comprehensive," as used in paragraph (5) of subdivision (b), in a way that is consistent with the intent of this part. Upon satisfactory completion of the criteria, the state board shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the state board fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny the petition shall be subject to judicial review.

(5) The state board shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the department and the state board.

(k) (1) The state board may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the state board to any local educational agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local educational agency shall have all monitoring and supervising authority of a chartering ~~agency,~~ *authority,* including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the state board.

(3) A charter school that is granted its charter through an appeal to the state board and elects to seek renewal of its charter shall, before expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the charter school's petition for renewal, the charter school may petition the state board for renewal of its charter.

(l) Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering ~~entity,~~ *authority,* the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering ~~entity,~~ *authority,* and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering ~~entity~~ *authority* pursuant to Section 41020.

(n) A charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.

AB-1508 Charter schools: petitions. (2019-2020)

Date Published: 02/22/2019 09:00 PM

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL No. 1508

Introduced by Assembly Members Bonta, McCarty, O'Donnell, and Smith
(Principal coauthor: Assembly Member Kalra)
(Coauthor: Senator Skinner)

February 22, 2019

An act relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1508, as introduced, Bonta. Charter schools: petitions.

The Charter Schools Act of 1992 provides for the establishment and operation of charter schools. The act authorizes the governing board of a school district, a county board of education, and the State Board of Education to approve a petition for the establishment of a charter school and to act as a chartering authority.

This bill would express the intent of the Legislature to enact legislation that would permit chartering authorities to consider, in determining whether to approve a new charter school petition, the financial, academic, and facilities impacts the new charter school would have on neighborhood public schools.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to enact legislation that would permit chartering authorities to consider, in determining whether to approve a new charter school petition, the financial, academic, and facilities impacts the new charter school would have on neighborhood public schools.

GRR UPDATE
MARCH 2019

Legislative Calendar

- February 22nd was the deadline to introduce bills.
- “Spot” bills must be amended by first week in March to get referred to policy committees.
- Budget committees and policy committees will hold hearings throughout March and April.
- Spring Recess begins on April 11th upon adjournment.

Supported Bills

AB 428 (Medina) – Special Education Finance Reform

Summary: Would establish a funding mechanism to support special education preschool programs, by adding preschoolers to the AB 602 funding formula. Would equalize special education funding rates to the 95th percentile over time. Would provide supplemental grants to support students with greater needs. Would allow school districts to calculate a declining enrollment adjustment based on district, rather than SELPA, ADA.

Status: Will be heard in the Assembly Education Committee on Wednesday, March 13th.

Position: SUPPORT

Introduced Bills

SB 217 (Portantino) – Special Education: Early Education Programs

Summary: Would expand TK to students with exceptional needs. Would establish the Special Education Early Intervention Grant Program, allocating $4,000 per child with special needs in TK, state preschool, and Head Start. Would require SELPAs to provide certain data related to the program to CDE.

Status: Referred to Senate Education Committee.

Recommended Position: None at this time. Engage with author's office and Senate leadership to provide feedback.

Introduced Bills

AB 236 (Garcia) – Family Empowerment Centers

Summary: Would require CDE to give priority to Family Empowerment Center grant applicants in regions of the state that currently do not have centers. Would increase the minimum base rate for grants from $150,000 to $223,000. Would impose additional requirements on centers as a condition of receiving grants.

Status: Will be heard in the Assembly Education Committee on March 13, 2019.

Recommended Position: SUPPORT

Introduced Bills

AB 605 (Maienschein) – Special Education: Assistive Technology Devices

Summary: Would require an LEA to provide access to assistive technology devices on a continuous basis and up to six months post graduation.

Status: Referred to the Assembly Education Committee.

Recommended Position: None at this time. Discuss potential costs.

Introduced Bills

AB 895 (Muratsuchi) – School-Based Early Mental Health Intervention and Prevention

Summary: Would provide early mental health intervention and prevention grants to preschool and TK students. Would allow LEAs to partner with counties to provide direct linkages to services.

Status: Introduced.

Recommended Position: Watch.

Introduced Bills

AB 525 (Rivas) – Teacher Credentialing

Summary: Makes various changes to teacher credentialing process to ease the teacher shortage.

Status: Referred to Assembly Education Committee.

Recommended Position: Watch.

Introduced Bills

AB 216 (Weber) – Special Education: Behavioral Interventions

Summary: Spot bill on Seclusion & Restraint.

Status: Introduced.

Recommended Position: Watch

Other Bills of Interest

SB 2 (Gazer et al) – Statewide Longitudinal Student Database

SB 328 (Portantino) – School Start Time

AB 571 (O'Donnell) – Pupil Assessments

AB 996 (Bigelow) – Autism Behavioral Services Pilot Program

Early Wins…

- **Senator Beall proposal for adding FASD as a new disability category**

- **Assembly Member Cooper proposal on providing parents and advocates with draft assessments**

Governor's Budget Proposal

- Coalition Sign-on Letter
- Meeting with Governor's Office
- Meetings with Budget Committee staff
- Collaboration with CAFSE

Administrative

- CCS update: Providing a memorandum to new Governor's Administration officials to ask for assistance with CCS challenges.

- Possible new Director of the Department of Health Care Services.

Questions?

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.,	)	
Plaintiff,	)	
v.	)	Civil Action No. 18-cv-1636 (TSC)
ELIZABETH (BETSY) DEVOS, SECRETARY OF EDUCATION; JOHNNY W. COLLET, ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES; U.S. DEPARTMENT OF EDUCATION,	)	
Defendants.	)	

MEMORANDUM OPINION

This decision resolves three motions currently pending before the court: (1) Defendants' Motion to Dismiss, ECF No. 14; (2) Plaintiff's Motion for Summary Judgment, ECF No. 16; and (3) Defendants' Cross-Motion for Summary Judgment, ECF No. 22.

Having reviewed the parties' filings, the record, and the relevant case law, the court, for reasons set forth below, hereby **DENIES** Defendants' Motion to Dismiss, ECF No. 14; **GRANTS** Plaintiff's Motion for Summary Judgment, ECF No. 16; **DENIES** Defendants' Cross-Motion for Summary Judgment, ECF No. 22; and **VACATES** "the Delay Regulation," Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 83 Fed. Reg. 31306 (July 3, 2018).

I. BACKGROUND

A. IDEA

The Individuals with Disabilities Education Act ("IDEA") was enacted to improve educational outcomes for students with disabilities by "ensur[ing] that [they] receive needed special education services." *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 748 (2017). The statute requires States to implement various provisions or risk losing federal funding. *See* 20 U.S.C. §§ 1411, 1412; Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children With Disabilities, 81 Fed. Reg. 10968-01, 10970 (Mar. 2, 2016).

Congress has amended IDEA numerous times because of the over-representation of minority students in various special education programs. *See, e.g.,* 20 U.S.C §§ 1400(c)(12)(B) ("More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population."); (C) ("African-American children are identified as having intellectual disabilities and emotional disturbance at rates greater than their White counterparts."); (D) ("In the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities."); (E) ("Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education."). *See also* Compl. ¶¶ 30-50.

In 1997 Congress amended the IDEA after finding that "[g]reater efforts [were] needed to prevent the intensification of problems connected with mislabeling . . . among minority children with disabilities." Pub. L. No. 105-17, § 601(c)(8)(A), 111 Stat. 37, 40 (1997). This was the first time Congress "expressly identified racial over-representation in special education as a problem." Compl. ¶ 51. To address this problem, Congress required States to collect and

examine data to determine if significant disproportionality based on race was occurring in the identification and placement of students with disabilities, and to provide reviews and appropriate revisions of policies, practices, and procedures utilized in identifying students with disabilities. Individuals with Disabilities Education Act Amendments for 1997, Pub. L. No. 105-17, § 618(c), 111 Stat. 37, 102 (1997).

Seven years later, when reauthorizing and amending the IDEA, Congress expanded the significant disproportionality provisions beyond the identification and placement of children with disabilities to cover the "the incidence, duration, and type of disciplinary actions, including suspensions and expulsions." Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, § 618(d)(1)(C); 118 Stat. 2647, 2739 (2004). *See id.* § 618(d)(1)(A) (identification); *id.* § 618(d)(1)(B) (placement). If school districts (also referred to as local education agencies ("LEAs")) are identified as having significant disproportionality in any of these respects, States must: (1) "provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement;" *id.* § 618(d)(2)(A); (2) require school districts to spend 15% of their federal IDEA money "to provide comprehensive coordinated early intervening services to serve children in the local educational agency particularly children in those groups that were significantly overidentified;" *id.* § 618(d)(2)(B), *see id.* § 613(f); and (3) "require the local educational agency to publicly report on the revision of policies, practices, and procedures." *Id.* § 618(d)(2)(C).

B. 2016 Regulations

From 2006 through 2016, the Department of Education's (hereinafter "the Department" or "the government") regulations implementing the IDEA gave States "the discretion to define [significant disproportionality] for the LEAs and for the States in general." Assistance to States

for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46540, 46738 (Aug. 14, 2006). This approach started to shift in 2014, when the Government Accountability Office ("GAO") reported that "the way some States defined overrepresentation made it unlikely that any districts would be identified." U.S. Gov't Accountability Office, GAO-13-137, Individuals with Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education (2013), https://www.gao.gov/products/GAO-13-137. The GAO recommended "a standard approach for defining significant disproportionality to be used by all states." *Id.* at 22.

In 2014, following the GAO report, the Department issued a Request for Information, 79 Fed. Reg. 35154 (June 19, 2014), because of "concern[] that the definitions and procedures for identifying LEAs with significant disproportionality that many States have established may set the bar so high that even LEAs with significant racial and ethnic disparities in the identification of children for special education are not identified as having significant disproportionality." *Id.* at 35155.

After considering the responses to the Request for Information, the Department issued a Notice of Proposed Rulemaking that would "require States to use a standard methodology . . . when making determinations of significant disproportionality." Notice of Proposed Rulemaking Regarding Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 81 Fed. Reg. 10968, 10978 (Mar. 2, 2016). In response to comments, the Department revised the proposed regulations and adopted its final regulations in 2016. Final Regulation Regarding Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 81 Fed. Reg. 92376, 92378 (Dec. 19, 2016) (hereinafter "2016 Regulations"). In issuing the 2016 Regulations, the Department

noted that "[m]any commenters" asserted that the proposed regulations "would put into place racial quotas that would interfere with the appropriate identification of children with disabilities based purely on the children's needs." *Id.* at 92385. The Department "recognize[d] the possibility that, in cases where States select particularly low risk ratio thresholds, LEAs may have an incentive to avoid identifying children from particular racial or ethnic groups in order to avoid a determination of significant disproportionality." *Id.* To counter that incentive, the Department explained that the final regulations "provide[] States the flexibility to set their own reasonable risk ratio thresholds, with input from stakeholders and State Advisory Panels." *Id.* This process, the Department believed, would "help States and LEAs to address large racial and ethnic disparities without undermining the appropriate implementation of child find procedures." *Id.* The Department further explained that "nothing in these regulations establishes or authorizes the use of racial or ethnic quotas limiting a child's access to special education and related services" and that "use of racial or ethnic quotas . . . would almost certainly conflict with the LEA's obligations to comply with other Federal statutes, including civil rights laws governing equal access to education" and "would almost certainly result in legal liability under Federal civil rights laws, including title VI of the Civil Rights Act of 1964 and the Constitution." *Id.* Moreover, the Department intended to "conduct an evaluation of the implementation of this regulation to assess its impact, if any, on how LEAs identify children with disabilities." *Id.* It explained that this evaluation would "include an examination of the extent to which school and LEA personnel incorrectly interpret the risk ratio thresholds and implement racial quotas in an attempt to avoid findings of significant disproportionality by States, contrary to IDEA." *Id.*

The 2016 Regulations set "common parameters for analysis, which each State must use to determine whether significant disproportionality is occurring at the State and local level." 81

Fed. Reg. at 92391. As part of this analysis, States were required to use "risk ratios" to analyze disparities across seven racial and ethnic groups and compare each group to the children in the school district in fourteen categories. *See* 81 Fed. Reg. 10968, 10973; 34 C.F.R. §§ 300.647(a)(6), (b)(2)–(4).[1] Plaintiff explains that "a risk ratio of 1.0 indicates that children from a given racial or ethnic group are no more or less likely than children from all other racial or ethnic groups to experience a particular outcome" and that, for instance, a risk ratio of 2.0 means that one groups is twice as likely to experience that outcome. Compl. ¶ 67. As previously mentioned, States were given "the flexibility to set their own reasonable risk ratio thresholds, with input from stakeholders and State Advisory Panels," 81 Fed. Reg at 92454, because the Department expected States to "work with stakeholders to identify particular risk ratio thresholds that help the State to address large racial and ethnic disparities without undermining the appropriate implementation of child find and evaluation procedures." *Id.* In explaining the benefit of this collaborative approach, the Department noted that

> it is important for States to take time to consult with their stakeholders and State Advisory Panels to ensure that, when setting risk ratio thresholds, they balance the need to identify significant disproportionality in LEAs with the need to avoid perverse incentives that would inhibit a child with a disability from being identified or placed in the most appropriate setting based on the determination of the IEP Team.

Id. at 92394.

The risk ratio threshold is the point at which disproportionality based on race or ethnicity can be determined to be significant. 34 C.F.R. § 300.647(a)(7). The regulation provides that if the risk ratio for a group exceeds the risk ratio threshold, then an LEA may be identified as significantly disproportionate. *Id.* § 300.647(b)(6). If "a determination of significant

[1] A "risk ratio is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA." 34 C.F.R. §300.647(a)(6).

disproportionality with respect to the identification of children as children with disabilities or the placement in particular educational settings" is made, the State must "review and, if appropriate, revis[e] . . .the policies, practices, and procedures used in identification or placement in particular education settings," *id.* § 300.646(c)(1). The LEA is required to "publicly report on the revision of policies, practices, and procedures," *id.* § 300.646(c)(2), and must "identify and address the factors contributing to the significant disproportionality," *id.* § 300.646(d)(1)(ii). Although the regulations took effect on January 18, 2017, the Department set the compliance date for States at July 1, 2018 to provide "States time to plan for implementing these final regulations, including to the extent necessary, time to amend the policies and procedures necessary to comply." 81 Fed. Reg. at 92378.

In addition to allowing States to set the risk ratio threshold applicable to their own school districts, subject to a requirement of reasonableness, 81 Fed. Reg. at 92388; 34 C.F.R. § 300.647(b)(1)(i), (b)(1)(iii)(B), the regulations gave States discretion in two additional respects. First, States had flexibility to determine when there were sufficient children in a particular racial or ethnic group to permit application of the regulation's methodology. 34 C.F.R. §§ 300.647(a)(3), (4). Second, States had discretion not to identify as significantly disproportionate if the risk ratio for a racial or ethnic group in the relevant category had not exceeded the risk ratio threshold for three prior consecutive years, or if the district had demonstrated reasonable progress in lowering its risk ratio for the group in each of the two prior years. 34 C.F.R. §§ 300.647(d)(1), (2).

C. The 2018 Postponement of the 2016 Regulations – The "Delay Regulation"

In February 2018 the Department issued a Notice of Proposed Rulemaking, proposing to "postpone the compliance date [of the 2016 Regulations] by two years, from July 1, 2018 to July

1, 2020." Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 83 Fed. Reg. 8396 (Feb. 27, 2018). In seeking public comment, the Department noted it would "consider comments on proposed delayed compliance dates only and [would] not consider comments on the text or substance of the final regulations." *Id.* In July 2018, citing concerns that the 2016 Regulations "may create an incentive for LEAs to establish de facto quotas," the Department issued its final rule postponing the compliance date of the 2016 Regulations by two years. Final Rule Delaying Compliance Date Regarding Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 83 Fed. Reg. 31306, 31308 (July 3, 2018) (hereinafter the "Delay Regulation"). In support of the delay, the Department argued that data from Texas corroborated its concern that the 2016 Regulations could incentivize LEAs to employ de facto quotas. *Id.* at 31308, 31311. The Department decided it was "more prudent to delay the compliance date [of the 2016 Regulations] and address that concern through a review of the standard methodology before States [were] required to implement the regulations rather than during implementation." *Id.* at 31310. The Delay Regulation, however, allowed States to use the standard methodology from the 2016 Regulations. *Id.* at 31309 ("States may implement the standard methodology or may use any methodology of their choosing to collect and examine data to identify significant disproportionality in their LEAs until the Department evaluates the regulations and issues raised in this rulemaking."). Indeed, the Department predicted that when the Delay Regulation went into effect, many States would implement the standard methodology. *Id.* at 31312 ("States may, and many States have commented that they intend to, implement the standard methodology in the 2016 significant disproportionality regulations even if the Department delays these regulations.").

D. Plaintiff's Lawsuit

Plaintiff Council of Parent Attorneys and Advocates, Inc. ("COPAA") is a "national not for-profit organization of parents of children with disabilities, their attorneys, and their advocates," whose mission is "to protect and enforce the legal and civil rights of students with disabilities and their families." Compl. ¶ 12. COPAA advances its mission by:

> providing resources, training, and information to parents, advocates, and attorneys to assist them in obtaining the equal educational opportunity to which children with disabilities are entitled under the federal civil rights laws, including the IDEA; educating members of the public and policy makers, including federal agencies, about the educational experiences of children with disabilities and their families (including the intersection of race and disability); and educating COPAA members about developments in the federal civil rights laws and policies affecting education of children with disabilities.

Id. ¶ 14. To help prepare its educational materials, COPAA relies "on information and research it collects about what school districts are doing with regard to disability and race, including how States identify school districts as significantly disproportionate and how school districts respond (with or without their states' assistance) to determinations of significant disproportionality." *Id.* ¶ 17. COPAA relies heavily on reports and analyses generated after school districts are identified as significantly disproportionate, including publicly available reports of revisions to school districts' policies, practices, and procedures, and analyses of identifying factors contributing to the significant disproportionality determinations, known as "root-cause analyses." Compl. ¶ 119; 34 C.F.R. §§ 300.646(c)(2), (d)(1)(ii). COPAA claims these "reports and analyses are an important source of information relied upon by COPAA in preparing educational materials, in adopting policy positions, and in advocating on behalf of children before federal agencies." Compl. ¶ 119.

On July 3, 2018 the Department published the Delay Regulation in the Federal Register. Nine days later, COPAA filed suit, requesting that this court declare the Delay Regulation

unlawful; vacate and set aside the Delay Regulation; enjoin the Department of Education and its officers, employees, and agents from implementing the Delay Regulation; award COPAA its reasonable costs and attorney's fees incurred in the prosecution of this action; and award such other equitable and further relief as this court deems just and proper. Compl. ¶ 133.

COPAA claims, among other injuries, that the Delay Regulation will "reduce the number of school districts that are identified as significantly disproportionate in the 2018-19 school year compared to what would occur if compliance with the 2016 Final Regulations were required for the 2018-19 school year in all States." Compl. ¶ 116. COPAA asserts that the reduction "will have certain inevitable consequences that will injure COPAA, its members, and students," *id.* ¶ 117; that it will "reduce the number of school districts that must engage in a review of their policies, practices, and procedures," *id.* ¶ 118, and "reduce the amount of information available to COPAA and its members," *id.* ¶ 119. *See* Plaintiff's Opposition to Defendants' Motion to Dismiss and Plaintiff's Motion for Summary Judgment, ECF No. 16 at 9 ("Pl.'s Opp'n to Defs.' Mot. to Dismiss and Pl.'s Mot. for Summ. J.") ("The two-year delay of the 2016 Regulations hampers COPAA's public education activities by reducing the amount of information available to it about significant disproportionality at the state and local levels compared to what it would have received under the 2016 Regulations."). COPAA further asserts that some of its members will be individually harmed by the Delay Regulation because they have children "enrolled in school districts that would have been identified as significantly disproportionate absent the Delay Regulation." *Id.* These parents, COPAA maintains, "have lost important practical services that would have flowed from a determination of disproportionality, including an automatic review provided by the state of the policies, practices and procedures—including individual review of their child's identification, placement, or discipline—and mandatory revisions of any illegal

practices," *id.* at 9-10, and "the opportunity for their district[s] to engage in a root-cause analysis to ensure that the comprehensive coordinated early intervening services ("CEIS") are used toward reducing such disparities," *id.* at 10 (citing Compl. and Almazan, Adams, Cone, and Gerland Affidavits).

Defendants have moved to dismiss for lack of standing, and both parties have moved for summary judgment.

II. MOTION TO DISMISS

A. Legal Standard

A motion pursuant to Federal Rule of Civil Procedure 12(b)(1) "presents a threshold challenge to the court's jurisdiction." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987). "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The plaintiff bears the burden of establishing the elements of standing, *id.* at 561, and each element "'must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.,* with the manner and degree of evidence required at the successive stages of the litigation.'" *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015) (quoting *Lujan*, 504 U.S. at 561). The plaintiff must "show a 'substantial probability' that it has been injured, that the defendant caused its injury, and that the court could redress that injury." *Sierra Club v. E.P.A.*, 292 F.3d 895, 899 (D.C. Cir. 2002) (citation omitted). With respect to a facial 12(b)(1) motion to dismiss, the court must "accept the well-pleaded factual allegations as true and draw all reasonable inferences from those allegations in the plaintiff's favor." *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). At the summary judgment stage, the plaintiff "must support each

element of its claim to standing by affidavit or other evidence." *Scenic Am., Inc. v. U.S. Dep't of Transp.*, 836 F.3d 42, 48 n.2 (D.C. Cir. 2016).

Under the law of this Circuit, COPAA "'can assert standing on its own behalf, on behalf of its members, or both.'" *PETA v. USDA*, 797 F.3d 1087, 1093 (D.C. Cir. 2015) (quoting *Equal Rights Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011)). In asserting standings on its own behalf, i.e., organizational standing, COPAA must, "like an individual plaintiff," show "[1] actual or threatened injury in fact [2] that is fairly traceable to the alleged illegal action and [3] likely to be redressed by a favorable court decision." *Id.* (quotation marks and citations omitted). In asserting standing on behalf of its members, i.e., associational standing, COPAA must show "(1) at least one of its members has standing in its own right, (2) the interests [it] seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested requires the participation of an individual . . . member in the suit." *Interstate Nat. Gas Ass'n of Am. v. FERC*, 494 F.3d 1092, 1095 (D.C. Cir. 2007) (citation omitted).

B. Organizational Standing

1. Injury in Fact

COPAA claims that the Delay Regulation has denied it the information it would have received if the 2016 Regulations had not been delayed. An Article III injury in fact occurs if the government cuts off information that legally must be publicly disclosed. "[A] plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *FEC v. Akins*, 524 U.S. 11, 21 (1998) (citations omitted). "To establish such an injury, a plaintiff must espouse a view of the law under which the defendant (or an entity it regulates) is obligated to disclose certain information that the plaintiff has a right to obtain." *ASPCA v. Feld Entm't, Inc.*, 659 F.3d 13, 23 (D.C. Cir. 2011).

The D.C. Circuit has set forth well-established principles for determining standing. In *Action All. of Senior Citizens of Greater Philadelphia v. Heckler*, 789 F.2d 931, 935 (D.C. Cir. 1986), plaintiffs were "four organizations that endeavor[ed], through informational, counseling, referral, and other services, to improve the lives of elderly citizens." *Id.* They sued the Department of Health and Human Services (HHS), alleging that HHS's regulation "significantly restrict[ed]," the flow of "information regarding services available to the elderly" that, if possessed by plaintiffs, "would enhance [their] capacity . . . to refer members to appropriate services and to counsel members when unlawful age discrimination may have figured in[to] a benefit denial." *Id.* at 937. The D.C. Circuit found that the plaintiffs established standing, because the regulations kept plaintiffs from "access to information and avenues of redress they wish[ed] to use in their routine information-dispensing, counseling, and referral activities. Unlike the mere 'interest in a problem' or ideological injury in *Sierra Club* [*v. Morton*, 405 U.S. 727, 739 (1972)], plaintiffs had "alleged inhibition of their daily operations, an injury both concrete and specific to the work in which they [were] engaged." *Id.* at 937-38 (quotation marks omitted) (footnote omitted).

In *PETA*, Plaintiff, an animal rights organization, sued the USDA, asking the court to order USDA to "extend enforcement of the AWA [Animal Welfare Act] to birds covered by the AWA, by enforcing the general AWA standards that presently exist." 797 F.3d at 1091 (quotation marks omitted) (footnote omitted). PETA claimed that USDA's failure to investigate allegations of bird mistreatment denied the public reports of those alleged instances, and that PETA used the information in the reports to educate its members and the public. *Id.* at 1095, 1096. The district court found that PETA had standing because USDA's decision not to apply the AWA to birds "precluded PETA from preventing cruelty to and inhumane treatment of these

animals through its normal process of submitting USDA complaints and it deprived PETA of key information that it relies on to educate the public." *Id.* at 1094 (quotation marks and citation omitted). The D.C. Circuit affirmed, noting that "[t]he key issue is whether PETA has suffered a concrete and demonstrable injury to [its] activities, mindful that, under our precedent, a mere setback to [PETA's] abstract social interests is not sufficient." *Id.* at 1093 (second alteration in original) (quotation marks and citations omitted). The Circuit explained that in determining "whether an organization's injury is concrete and demonstrable," a court asks "first, whether the agency's action or omission to act injured the [organization's] interest and, second, whether the organization used its resources to counteract that harm." *Id.* at 1094 (alteration in original) (quotation marks and citations omitted). Applying these standards, the Court found that PETA's alleged injuries were "materially indistinguishable from those alleged by the organizations in *Action Alliance*[]." *Id.* It held that the "USDA's allegedly unlawful failure to apply the AWA's general animal welfare regulations to birds has perceptibly impaired PETA's ability to both bring AWA violations to the attention of the agency charged with preventing avian cruelty and continue to educate the public." *Id.* at 1095 (quotation marks and brackets omitted). PETA established organizational standing because it had expended resources to counter its injuries. *Id.*

In *Waterkeeper All. v. EPA*, 853 F.3d 527, 530 (D.C. Cir. 2017), plaintiffs challenged an EPA regulation that "generally exempt[ed] farms from [statutory] reporting requirements for air releases from animal waste." The Court of Appeals found here, too, that the challenged regulation inflicted "informational injury." *Id.* at 533. Invoking the rule "that the plaintiff must assert 'a view of the law under which the defendant (or an entity it regulates) is obligated to disclose certain information that the plaintiff has a right to obtain,'" *id.* (quoting *ASPCA*, 659 F.3d at 22-23), the Court explained that the question is "whether a reporting mandate under

CERCLA triggers a requirement of public disclosure. If so, exempting a release from the mandate extinguishes the corresponding disclosure." *Id.* The Court held "the EPA's allegedly unlawful CERCLA exemption reduces the information that must be publicly disclosed under EPCRA. As a result Waterkeeper (and others) who previously sought that information no longer have a statutory right to access it. For the purpose of standing, that's injury enough." *Id.*

This trio of cases – *Action Alliance*, *PETA*, and *Waterkeeper* – controls this court's decision. The Delay Regulation prevents COPAA from receiving information to which it is legally entitled. Because 20 U.S.C. § 1418(b)(1) directs States to "publicly report[]" information that the Department requires they collect, States must publicly disclose the significant disproportionality designation of LEAs. *See* 83 Fed. Reg. at 31313 ("States will continue to report to the Department and the public whether each LEA was identified with significant disproportionality and the category or categories of analysis under which the LEA was identified."). The IDEA also requires States to publicly disclose revisions made to LEAs' policies, procedures, and practices. 20 U.S.C. § 1418(d)(2)(C); 34 C.F.R. § 300.646(c)(2).

COPAA has convincingly shown that the Delay Regulation deprives it of information it would have received if the 2016 Regulations had gone into effect, that this information would assist it, including with educating its members and the public, and that it has expended resources counteracting the loss of information.

First, COPAA explains that to fulfill its mission "to protect and enforce the legal and civil rights of students with disabilities and their families," Compl. ¶ 12, it relies on information related to significant disproportionality. Specifically:

> COPAA relies on information and research it collects about what school districts are doing with regard to disability and race, including how States identify school districts as significantly disproportionate and how school districts respond (with or without their states' assistance) to determinations of significant disproportionality.

Id. ¶ 17; *see also* Almazan Aff. ¶ 6 ("In conducting these activities to fulfill its mission, including its public education activities, COPAA relies on public information and research it collects about what school districts are doing with regard to disability and race, including how States identify school districts as significantly disproportionate and how school districts respond (with or without their States' assistance) to determinations of significant disproportionality, including revising policies, practices, and procedures and spending their IDEA funds on comprehensive coordinated early intervention services.").

Second, COPAA explains "[t]he delay in the compliance date will necessarily reduce the amount of information available to COPAA and its members because it will reduce the number of school districts determined to be significantly disproportionate and, in turn, reduce the number of school districts subject to two information-generating provisions of the IDEA and the 2016 Final Regulations." Compl. ¶ 119. COPAA identifies two types of information that it will lose: "first, a report, which will be made publicly available, of revisions, if any, of the school district's policies, practices, and procedures, 34 C.F.R. § 300.646(c)(2); and second, an analysis that identifies the factors contributing to the significant disproportionality, *i.e.*, a root–cause analysis, *id.* § 300.646(d)(1)(ii)." *Id.* COPAA explains that "[t]hese reports and analyses are an important source of information relied upon by [it] in preparing educational materials, in adopting policy positions, and in advocating on behalf of children before federal agencies." *Id.*; *see also* Almazan Aff. ¶ 8.

Third, COPAA demonstrates that the information it will be deprived of is of the type "on which it relies to educate its members and the public" and that it uses that information as part of its "routine information–dispensing activities." *Id.* ¶ 120. COPAA explains that this, in turn, prevents its members from "learn[ing] what school districts that would otherwise be determined

to be significantly disproportionate under the 2016 Regulations are doing." *Id*.; *see also* Almazan Aff. ¶¶ 8-12.

Fourth, COPAA explains that the loss of information will necessarily result in the additional expenditure of revenues.

> [I]n order to continue to educate the public, policy makers, and its members, COPAA will have to find the same information elsewhere. Such efforts include independent investigation and public records requests to numerous states and LEAs; researching the labyrinth of state significant disproportionality formulas and thresholds; and reaching out to parents directly. These more costly methods hardly guarantee the same information, impairing COPAA's ability to provide the same robust guidance to the public and its members.

Pl.'s Mem. in Opp'n to Defs.' Mot. to Dismiss and in Supp. of Pl.'s Mot for Summ. J. at 14 (citations omitted). *See also* Almazan Aff. ¶ 15; Compl. ¶ 122.

COPAA demonstrates that even its own independent research efforts will not provide access to the same quality of information that would be available under the 2016 Regulations. It explains that the "Department of Education does not make publicly available data that would allow COPAA to calculate racial disparities in identification, placement, and discipline of students with disabilities at the school district level disaggregated by disability type (as opposed to as the state level)." Almazan Aff. ¶ 7. Similarly, "in virtually all States, there is very little public data available that would allow COPAA to calculate racial disparities in identification, placement and discipline of students with disabilities at the school district level." *Id.* Therefore, COPAA "relies on the determinations of significant disproportionality announced by the States in determining which school districts have the most significant racial disparities in the State and consequently are in most need of COPAA's monitoring and education functions." *Id.* ¶ 8.[2]

[2]The government claims that, because States maintain considerable discretion "under the 2016 Regulations, Plaintiff will still lack comparable information on racial disproportionality . . .

In sum, because COPAA's alleged injury—i.e., denial of access to significant disproportionality information—is "concrete and specific to the work in which [it is] engaged," and because it has expended resources to counter that injury, COPAA has alleged a cognizable injury sufficient to support organizational standing. *PETA*, 797 F.3d at 1095.[3]

The government argues on several fronts that COPAA fails to establish organizational standing. First, it contends that the underlying premise of COPAA's injury-in-fact argument – "that ED's postponement of the compliance date for the 2016 regulations will result in fewer school districts being identified with significant disproportionality than would have occurred absent the postponement" – is "speculative." Defendants' Motion to Dismiss at 19, ECF No. 14 ("Defs.' Mot. to Dismiss"); *see also id.* at 3, 14, 18, 23, 28, 31. "Plaintiff simply assumes without any factual basis that States would have chosen to implement the 2016 Regulations in such a way as to result in more school districts being identified with significant disproportionality," and therefore COPAA's alleged injuries are "conjectural and hypothetical, as

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[because] the amount and types of information made available through school districts' reports will still necessarily vary." Defendants' Reply in Support of Motion to Dismiss at 13, ECF No. 19 ("Defs.' Reply in Supp. of Mot. to Dismiss") (quotation marks omitted). The government's prior statements undercut its current assertion. In 2018, the government stated that "the only benefits we believe could be reasonably argued to be delayed as a result of this regulatory action would be the reduction in the use of inappropriate policies, practices, and procedures, and the increased comparability of data across States." 83 Fed. Reg. at 31316. The government said the same in 2016. *See* 81 Fed. Reg. at 92457 ("The Department believes this regulatory action to standardize the methodology States use to identify significant disproportionality will provide clarity to the public, increase comparability of data across States . . . [and] will accrue benefits to stakeholders in reduced time and effort needed for data analysis and a greater capacity for meaningful advocacy."); *see also id.* at 92386, 92407. Therefore, the Delay Regulation hampers Plaintiff's ability to conduct comparability assessments of data across States.

[3] There is reason to believe that for informational standing COPAA does not need to demonstrate a diversion of resources. *See, e.g., Campaign Legal Center v. FEC*, 245 F. Supp. 3d 119, 127–128 (D.D.C. 2017). But the court need not decide this question because COPAA has shown that the Delay Regulation has forced it to expend resources trying to collect the information.

opposed to actual or imminent," *id.* at 20. The essence of the government's argument is that the likelihood of fewer school districts being identified "depends on the independent actions of entities not before the Court and not parties to this litigation . . . ," *id.*, and those entities have wide latitude in implementing the regulations. In particular, States had three types of discretion in implementing the 2016 Regulations: (1) States could set a reasonable risk ratio threshold applicable to their own schools districts, 81 Fed. Reg. at 92388; 34 C.F.R. §§ 300.647(b)(1)(i), (b)(1)(iii)(B); (2) States had flexibility to determine when there were sufficient children in a particular racial or ethnic group to permit application of the regulations' methodology in the first instance, 34 C.F.R. §§ 300.647(a)(3), (4); and (3) States had discretion not to identify an LEA as significantly disproportionate if the risk ratio for a racial or ethnic group in the relevant category of analysis had not exceeded the risk ratio threshold for three prior consecutive years or if the district had demonstrated reasonable progress in lowering its risk ratio for the group in the relevant category of analysis in each of the two prior years, 34 C.F.R. §§ 300.647(d)(1), (2). This discretion, the government argues, renders any prediction about whether the 2016 Regulations would have led to more schools being identified as significantly disproportionate as an exercise in speculation. Defs.' Mot. to Dismiss at 23.

In further support of this argument, the government also points to the fact that when it issued the 2016 final regulations, the Department admitted that it was uncertain "how many LEAs would be newly identified in future years, particularly given the wide flexibilities provided to States in the final regulations," 81 Fed. Reg. at 92388, and that it was "possible that these regulations may not result in any additional LEAs being identified as having significant disproportionality." *Id.* at 92458. Finally, the government argues that Plaintiff has not proffered "markers or allegations to suggest how the States intended to implement the 2016 Regulations,

or how they intend to act following postponement of the compliance date." Defs.' Mot. to Dismiss at 26.

The government's own statements undermine its argument that an increase in LEAs being identified as significantly disproportionate is speculative. Indeed, these statements demonstrate that an increase in the number of LEAs found to be significantly disproportionate was likely had the 2016 Regulations gone into effect. Although the Department said that it is possible that these regulations may not result in any additional LEAs being identified as having significant disproportionality, it found this outcome "unlikely" and that "400 LEAs above baseline represents the most reasonable estimate of the likely costs associated with these final rules." 81 Fed. Reg. at 92458, 92462. In a similar vein, when the Department promulgated the Delay Regulation, it estimated there would be fewer LEAs identified as having significant disproportionality. *See* 83 Fed. Reg. at 31316 ("[W]e also estimate that 150 additional LEAs will be identified with significant disproportionately in Year 1 [2018-2019], 220 in Year 2 [2019-2020], and 400 in Year 3 [2020-2021]."). While the court notes that these projections were not made "with a high degree of certainty," 81 Fed. Reg. at 92388, COPAA's "burden of proof is not to demonstrate certainty but to show a *substantial probability*" of injury. *In re Idaho Conservation League*, 811 F.3d 502, 508 (D.C. Cir. 2016) (quotation marks and citation omitted) (emphasis in original). Moreover, although the government now argues that these estimates were "proffered without explanation or analytical support," Defs.' Reply in Supp. of Mot. to Dismiss at 1, this claim is undercut by the government's pre-litigation statement that its estimates were based on "the expertise of its staff members and relevant external sources." Adams Decl. II ¶ 37, Plaintiff's Reply in Support of its Motion for Summary Judgment and Opposition to Defendants' Cross-Motion for Summary Judgment, ECF No. 25 at 5 ("Pl.'s Reply Supp. Mot.

for Summ. J. and Opp'n to Defs.' Cross-Mot. for Summ. J.") (quoting an e-mail from Ms. Hill, the Department of Education Press Secretary).

Furthermore, information from three states that have not implemented the 2016 Regulations – Colorado, Missouri, and South Dakota – shows that had they done so, more LEAs would have been identified. The Colorado Department of Education "did not expect to identify any districts as significantly disproportionate in the 2018-19 school year under the non-federal methodology Colorado has opted to use instead of the 2016 federal regulations." Adams Decl. I ¶ 5, Pl.'s Opp'n to Defs.' Mot. to Dismiss and Pl.'s Mot. for Summ. J., Ex. E. "[F]ive LEAs . . . would have been identified as significantly disproportionate for the 2018-19 school year under the 2016 federal regulations." *Id.* ¶ 6. Missouri did not expect to identify any LEAs using its methodology, while predicting it would have identified 33 school districts as significantly disproportionate for the 2018-19 school year if using the 2016 Regulations. *Id.* ¶¶ 15, 16. South Dakota reported that under its methodology, one school district would likely be identified as significantly disproportionate. *Id.* ¶ 21. Under the 2016 Regulations, South Dakota would have identified ten. *Id.* ¶ 22. This information from the States shows that the likelihood of increased identification of LEAs as significantly disproportionate if the 2016 Regulations had gone into effect is not speculative.[4]

The government also contends that COPAA's informational injury is speculative, because the likelihood of additional information being publicly reported would require a school

[4] The government nonetheless argues that the States' own reporting was "uncertain," and that "States did not indicate whether they did or would exercise any of the discretion afforded to them under the 2016 Regulations." Defs.' Reply in Supp. of Mot. to Dismiss at 5-6. However, COPAA confirmed with Missouri, South Dakota and Colorado that they "took into account all the flexibilities permitted by the Final Regulations when the department identified school districts as significantly disproportionate." Adams Decl. II ¶ 3; *see also id.* ¶¶ 14-15.

district to determine that a change to its "policies, practices, or procedures" is necessary for compliance and then actually make a change. Defs.' Mot. to Dismiss at 43 (citing 34 C.F.R. § 300.646(c)(2)). Again, the government's prior statements refute its current argument. In promulgating the 2016 Regulations, the government estimated that "half of the new LEAs identified with significant disproportionality . . . would need to revise their policies, practices, and procedures." 81 Fed. Reg. at 92461. This estimate remained unchanged when the government adopted the Delay Regulation. 83 Fed. Reg. at 31316.

The government next argues that COPAA is in the same position it has always been in and cannot show any injury to its daily operations and activities because the regulations' compliance date was postponed, and so school districts were never required to adopt the standard methodology. Defs.' Mot. to Dismiss at 29. This argument is misplaced because the compliance date for the 2016 Regulations was July 1, 2018, two days before the Delay Regulation was published in the Federal Register. Moreover, "the baseline for measuring the impact of a change or rescission of a final rule is the requirements of the rule itself, not the world as it would have been had the rule never been promulgated." *Air All. Hous. v. EPA*, 906 F.3d 1049, 1068 (D.C. Cir. 2018). The government's argument that COPAA cannot show injury because it did not previously have access to the increased information about significant disproportionality is inconsistent with both *PETA* and *Action Alliance*. In those cases, the Court of Appeals found injury in fact even though plaintiffs claimed an entitlement to information to which they previously did not have access. *See PETA*, 797 F.3d at 1089 ("Although the Agency has taken steps to craft avian-specific animal welfare regulations, it has yet to complete its task after more than ten years and, during the intervening time, it has allegedly not applied the Act's general animal welfare regulations to birds."); *Action Alliance*, 789 F.2d at 937.

The government further contends that none of the cases on which COPAA relies "involves an alleged informational injury that arises from the Government's non-regulation of non-parties to the litigation and which is therefore contingent on how third-party actors will exercise their discretion." Defendants' Reply in Support of Motion to Dismiss, ECF No. 19 at 9 (Defs.' Reply in Supp. of Mot. to Dismiss). However, in *Waterkeeper,* a statute required certain private entities to notify state or local governments if the entities released hazardous substances into the environment. 853 F.3d at 534. The state or local government was required to make the "followup emergency notices" from the entity available to the public. *Id.* (internal brackets and quotation marks omitted). A federal agency sought to exempt certain entities from the reporting requirement, and the Court of Appeals held that petitioners had standing to challenge the exemption because it "reduces the information that must be publicly disclosed." *Id.* at 533. Petitioners did not have to show how many local and state governments would comply with the disclosure requirements, or how many emergency notices would be submitted by exempted third parties to local and state governments. The Court concluded that petitioners had informational standing, even though the production of information required the involvement of two sets of parties not before the court.[5]

[5] The government argues that Plaintiff's inability to obtain "root-cause analyses" cannot create standing, because Plaintiff does not have a statutory right to that information. *See, e.g., PETA*, 797 F.3d at 1103 (Millett, J., concurring dubitante); *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016). The court need not decide this question, because COPAA adequately alleges informational harm based on the loss of information on disproportionality designations, to which COPAA has a legal right. *See* 20 U.S.C. §§ 1418(b)(1), (d)(2); 83 Fed. Reg. at 31313; 34 C.F.R. § 300.646(c)(2).

2. Causation and Redressability

The causation element of standing requires "a fairly traceable connection between the plaintiff's injury and the complained-of conduct." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998) (citation omitted). Because the 2016 Regulations required States to use a standard methodology, but for the Delay Regulation COPAA would have the information it seeks. Therefore, COPAA has satisfied the causation element. To satisfy the redressability requirement, COPAA must show "a likelihood that the requested relief will redress the alleged injury." *Id.* COPAA does not have "'to *prove* that granting the requested relief is *certain* to alleviate' [its] injury." *Int'l Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795, 811 (D.C. Cir. 1983) (quoting *Cmty. Nutrition Inst. v. Block*, 698 F.2d 1239, 1248 (D.C. Cir. 1983), *rev'd on other grounds*, 467 U.S. 340 (1984)) (emphasis in original). If this court vacates the Delay Regulation, the 2016 Regulations will likely provide COPAA access to the information it seeks. Therefore, COPAA has satisfied the redressability element.[6]

C. Associational Standing

A plaintiff asserting associational standing must show that "(1) at least one of its members has standing in its own right, (2) the interests [plaintiff] seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested requires the participation of an individual . . . member in the suit." *Interstate Nat. Gas Ass'n of Am. v. FERC*, 494 F.3d 1092, 1095 (D.C. Cir. 2007) (citation omitted). Based on the record before it, the court finds that COPAA has satisfied this standard.

[6] The government's argument on causality and redressability relies on its erroneous conclusion that the likelihood of more LEAs being identified as significantly disproportionate if the 2016 Regulations were implemented is only speculative. *See* Defs.' Mot. to Dismiss at 41-43.

In its Cross-Motion for Summary Judgment, *see* Pl.'s Mem. in Opp'n to Defs.' Mot. to Dismiss and in Supp. of Pl.'s Mot for Summ. J., COPAA identified two members, Cone and Gerland, whose children are enrolled in LEAs in States where, but for the Delay Regulation, the LEAs would have been identified as significantly disproportionate. *See* Almazan Aff. ¶ 21; Adams Aff. ¶¶ 3-7; Cone Aff. ¶¶ 3-5, 7-8; Gerland Aff. ¶¶ 3-7.[7]

These individual members suffered two types of injuries caused by the Delay Regulation: First, they suffered informational injuries because the loss of the disproportionality information undercuts their ability to keep abreast of important developments that shape their children's education under the IDEA, such as picking school districts and coordinating individual educational plans. *See, e.g.*, Cone Aff. ¶ 8; Gerland Aff. ¶ 7. "[W]e have recognized that a denial of access to information can work an injury in fact for standing purposes, at least where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them." *ASPCA v. Feld Entm't, Inc.*, 659 F.3d at 22 (citations and quotation marks omitted). Members also suffered an injury because they lost the opportunity to adjust and correct their children's treatment. A failure to designate their LEAs as significantly disproportionate denies members an automatic

[7] Cone and Gerland were not identified in COPAA's Complaint, and the government argued that this fact was fatal to COPAA's associational standing argument. *See* Defs.' Mot. to Dismiss at 38-39. Cone and Gerland were subsequently identified through affidavits in COPAA's motion for summary judgment, after which the government ceased to press its argument. Although the D.C. Circuit has not held that a plaintiff need not identify an affected member by name at the pleading stage, numerous other courts have so found. *See, e.g., Ass'n of Am. Physicians & Surgeons, Inc. v. Sebelius*, 901 F. Supp. 2d 19, 31 (D.D.C. 2012) (collecting cases and stating that at the pleading stage "the plaintiff need not identify an affected member by name"). The court finds that the addition of Cone and Gerland's names in pleadings filed after the Complaint was sufficient.

state review to identify students who are misidentified, misplaced, or improperly disciplined. *See* Cone Aff. ¶¶ 6-7; Gerland Aff. ¶ 7. As a result, these members are deprived of the beneficial effect of these reviews, which would lead to corrections and improvements to their children's education.

Second, COPAA seeks to protect and enforce the legal and civil rights of students with disabilities and their families. *See* Compl. ¶ 12. COPAA's litigation goals in this suit are "germane" to this mission. This requirement is not demanding, requiring "only that an organization's litigation goals be pertinent to its special expertise and the grounds that bring its membership together." *Humane Soc'y of the U.S. v. Hodel*, 840 F.2d 45, 56 (D.C. Cir. 1988) (footnote omitted).

Third, COPAA's members do not have to participate in the litigation for this court to issue injunctive and declaratory relief. *See id. at* 53 ("[T]he declaratory and injunctive relief requested by [the plaintiff organization] is clearly not of a type that requires the participation of any individual member."); *see also id.* at n.8.

The government contends that the fact that Cone and Gerland "would *read* school district reports issued under 34 C.F.R. § 300.646(c) does not . . . demonstrate that the absence of those reports has or will imminently *undermine their parental involvement* . . . ." Defs.' Reply in Supp. of Mot. to Dismiss at 16 (emphasis in original). But the Supreme Court rejected this argument in *Havens Realty*:

> As we have previously recognized, [t]he actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing. Section 804(d), which, in terms, establishes an enforceable right to truthful information concerning the availability of housing, is such an enactment. A tester who has been the object of a misrepresentation made unlawful under § 804(d) has suffered injury in precisely the form the statute was intended to guard against, and therefore has standing to maintain a claim for damages under the Act's provisions. That the tester may have approached the real estate agent fully expecting that he would receive false

> information, and without any intention of buying or renting a home, does not negate the simple fact of injury within the meaning of § 804(d).

Havens Realty Corp. v. Coleman, 455 U.S. 363, 373-74 (1982) (alteration in original) (quotation marks and citations omitted).

The government also denies that COPAA's members are injured by the loss of automatic reviews because the IDEA and the Department do not require those reviews to "identify *individual instances* of student misidentification, misplacement, or improper discipline." Defs.' Reply in Supp. of Mot. to Dismiss at 17 (emphasis in original). This argument ignores case law holding that losing the opportunity to review the child's school district is injury enough. "We have held that 'a plaintiff suffers a constitutionally cognizable injury by the loss of an *opportunity to pursue a benefit* . . . even though the plaintiff may not be able to show that it was *certain to receive* that benefit had it been accorded the lost opportunity.'" *Teton Historic Aviation Found. v. U.S. Dep't of Defense.*, 785 F.3d 719, 724 (D.C. Cir. 2015) (quoting *CC Distribs., Inc. v. United States*, 883 F.2d 146, 150 (D.C. Cir. 1989) (emphasis in original)).

For the reasons discussed above, the court finds that COPAA has proven both organizational and associational standing. Because the court is denying the government's motion to dismiss, it will now address the parties' cross-motions for summary judgment.

III. SUMMARY JUDGMENT

A. Legal Standard

A court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When a plaintiff challenges an agency's final action under the Administrative Procedure Act ("APA"), summary judgment "is the mechanism for deciding whether as a matter

of law an agency action is supported by the administrative record and is otherwise consistent with the APA standard of review." *Louisiana v. Salazar*, 170 F. Supp. 3d 75, 83 (D.D.C. 2016) (citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971)).

The APA requires courts to "hold unlawful and set aside" an agency's action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The court's role is to "consider whether the [agency's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43 (quotation marks and citations omitted). An agency must provide a satisfactory explanation for departing from its prior position. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("[T]he agency must show that there are good reasons for the new policy.").

B. Analysis

The court finds that the Department of Education violated the APA in two ways. First, it failed to provide a reasoned explanation for delaying the 2016 Regulations. Second, it failed to consider the costs of delay, rendering the Delay Regulation arbitrary and capricious.[8]

[8] COPAA argues the Delay Regulation is arbitrary and capricious for two additional and independent reasons: (1) the government failed to consider reasonable alternatives; and (2) the government failed to provide for meaningful participation in the rulemaking. *See* Pl.'s Opp'n to Defs.' Mot. to Dismiss and Pl.'s Mot. for Summ. J. at 39-45. Because the court finds that the government's failure to provide a reasoned explanation and its failure to consider costs render the Delay Regulation arbitrary and capricious, it will not reach these two arguments.

1. The Government Failed to Provide a Reasoned Explanation

The government implemented the Delay Regulation because it was concerned that the 2016 Regulations could incentivize LEAs to use racial quotas to avoid findings of significant disproportionality. This decision did not have adequate support in the rulemaking record.

The issue of the 2016 Regulations acting as an incentive for racial quotas was thoroughly discussed and dealt with years before 2018, when the government cited it as the basis for implementing the Delay Regulation. In adopting the 2016 Regulations, the government responded to comments arguing that the regulations "would create an incentive [for LEAs] to not identify children for special education and related services in order to reduce disproportionality numbers," 81 Fed. Reg. at 92454, by acknowledging this possibility, but concluded that it was limited to States that selected "particularly low risk ratio thresholds." *Id.* ("[T]he Department recognizes the possibility that, in cases where States select particularly low risk ratio thresholds, LEAs may have an incentive to avoid identifying children from particular racial or ethnic groups in order to avoid a determination of significant disproportionality.").

Although the government in 2016 found this danger to be smaller than some commenters proposed, it nonetheless worked to address them in the final regulations. The preamble to the final 2016 Regulations condemned the use of racial quotas. *Id.* at 92381 ("[N]othing in these regulations establishes or authorizes the use of racial or ethnic quotas limiting a child's access to special education and related services."). The government expressly stated that the use of quotas violates the IDEA. *Id.* at 92393 ("[I]t is a violation of IDEA for LEAs to attempt to avoid determinations of significant disproportionality by failing to identify otherwise eligible children as children with disabilities."). The preamble also warned that the use of quotas would expose an LEA to various forms of legal liability. *See id.* at 92381 ("[A]n LEA's use of quotas to

artificially reduce the number of children who are identified as having a disability, in an effort to avoid a finding of significant disproportionality, would almost certainly conflict with their obligations to comply with other Federal statutes, including civil rights laws governing equal access to education."); *id.* at 92385 ("[T]he establishment of any such quotas would almost certainly result in legal liability under Federal civil rights laws, including title VI of the Civil Rights Act of 1964 and the Constitution."). And the government stated that it had "added a new § 300.646(f) to make clear that these regulations do not authorize a State or an LEA to develop or implement policies, practices, or procedures that result in actions that violate any IDEA requirements." *Id.*

The government implemented additional safeguards beyond these warnings. Because the government found that States which "select particularly low risk ratio thresholds," *id.*, were most likely to be incentivized to use quotas, the 2016 Final Regulations "provide[d] States the flexibility to set their own reasonable risk ratio thresholds, with input from stakeholders and State Advisory Panels." *Id.* The government explained that "[a]s part of the process of setting risk ratio thresholds, States must work with stakeholders to identify particular risk ratio thresholds that help States and LEAs to address large racial and ethnic disparities without undermining the appropriate implementation of child find procedures." *Id.*

Moreover, the government committed to "monitor States for any use of risk ratio thresholds that may be unreasonable and take steps, as needed, to ensure the States' compliance." *Id.* at 92419. The regulations required "States to report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress, and the rationales for each," and these rationales had to "include a detailed explanation of why the numbers are reasonable and how they ensure appropriate analysis for significant disproportionality." *Id.* at

92460. The government also committed "to publish guidance to help schools to prevent racial discrimination in the identification of children as children with disabilities, including over-identification, under-identification, and delayed identification of disabilities by race." *Id.* at 92397. Finally, the regulations included monitoring of States and LEAs. *Id.* at 92385 ("[T]he Department intends to conduct an evaluation of the implementation of this regulation to assess its impact, if any, on how LEAs identify children with disabilities."). This evaluation would "include an examination of the extent to which school and LEA personnel incorrectly interpret the risk ratio thresholds and implement racial quotas in an attempt to avoid findings of significant disproportionality by States, contrary to IDEA." *Id.* at 92386.

In 2018, the government rejected its prior conclusion that the 2016 Regulations adequately protected against the risk of States using racial quotas to avoid findings of significant disproportionality. However, the government did not explicitly find that the safeguards in the 2016 Regulations *were* insufficient or that the 2016 Regulations *would* result in the use of quotas. Rather, it stated it needed more time to determine whether the regulations "may" incentivize quotas. 83 Fed. Reg. at 31308 ("We want to evaluate whether the numerical thresholds in the 2016 significant disproportionality regulations may incentivize quotas or lead LEAs to artificially reduce the number of children identified as children with disabilities under the IDEA."). Such equivocation pervades the explanation for the Delay Regulation. *See, e.g.,* 83 Fed. Reg. at 31307 ("We are *concerned* the 2016 significant disproportionality regulations *could* result in de facto quotas …."); *id.* at 31308 (Quotas are "precisely the risk[] that the Department *believes* the standard methodology *may* pose."); *id.* ("The Department is *concerned* that the 2016 significant disproportionality regulations *may* create an incentive for LEAs to establish de facto quotas …."); *id.* ("[T]he regulations themselves *may*, in fact, incentivize quotas."); *id.* ("We want

to evaluate whether the numerical thresholds in the 2016 significant disproportionality regulations *may* incentivize quotas …."); *id.* at 31309 ("*may* result in encouraging quotas"); *id.* at 31311 ("*may* result in de facto quotas"); *id.* at 31312 ("*concerned* that the 2016 significant disproportionality regulations, *potentially* create[] an express or implied incentive for LEAs to set quotas") (emphasis added to all).

The Delay Regulation either did not address the 2016 Regulations' safeguards to deter the use of racial quotas or responded to them in an inadequate or cursory manner. The Delay Regulation dismissed the explicit warning in the 2016 Regulations against the use of quotas as "insufficient" to protect "against [LEAs] creating de facto quotas because, regardless of the disclaimer, the regulations themselves may, in fact, incentivize quotas." 83 Fed. Reg. at 31308. In response to its earlier commitment to provide public guidance and conduct an evaluation of whether States erected quotas in implementing the 2016 Regulations, the government in 2018 stated only that the efficacy of these measures "require[d] careful review, which we will do during this delay." *Id.* at 31315. The Delay Regulation did not address the other specific safeguards in the 2016 Regulations. Moreover, the safeguards built into the 2016 Regulations were not meant to operate in isolation; they worked together to prevent LEAs from being incentivized to use quotas. In implementing the Delay Regulation, the government failed to explain why the safeguards as a whole would not prevent against the risk of quotas being used by LEAs.

The government did not explain why it had changed its position that the 2016 safeguards would be effective. Instead, it concluded that the 2016 Regulations *could* incentivize the use of quotas—a conclusion that was contrary to and inconsistent with its prior determination. While "[a]gencies are free to change their existing policies," in doing so they must "provide a reasoned

explanation for the change." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (citations omitted). The Supreme Court has explained an agency's obligation when it departs from a prior decision:

> When an agency changes its existing position, it need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate. But the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy. In explaining its changed position, an agency must also be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account. In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. It follows that an [u]nexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.

Id. at 2125-26 (quotation marks and citations omitted) (alteration in original).

The government's "concerns"—drenched in qualification—about the possibility of incentivizing racial quotas amount to the type of speculation the Supreme Court and the D.C. Circuit have rejected. "Though an agency's predictive judgments about the likely economic effects of a rule are entitled to deference . . . deference to such ... judgment[s] must be based on some logic and evidence, not sheer speculation." *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 708 (D.C. Cir. 2014) (quotation marks and citations omitted) (alteration in original). *See also Nat'l Lifeline Ass'n v. FCC*, No. 18-1026, 2018 WL 4154794 (D.C. Cir. Aug. 10, 2018) (per curiam); *Sorenson Commc'ns, Inc.*, 755 F.3d at 708 ("[A]gency action based on speculation rather than evidence is arbitrary and capricious.").

Moreover, if the "new policy rests upon factual findings that contradict those which underlay its prior policy," the agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate" by providing "a reasoned explanation … for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Fox Television Stations, Inc.*, 556 U.S. at 515-16. Again, the government here provides no such

"reasoned explanation." It relies exclusively on data from Texas to justify its change in position regarding the possible use of racial quotas and the adequacy of the safeguards to prevent their use. During a monitoring visit to Texas in February 2017, Department officials "determined that some ISDs [Independent School Districts] took actions specifically designed to decrease the percentage of children identified as children with disabilities under the IDEA to 8.5 percent or below." Texas Part B 2017 Monitoring Visit Letter at 1, AR-001290, ECF No. 28. The report showed that ISDs believed that reducing identification rates below 8.5 percent could result in "less monitoring." *Id.* at 2, AR-001291. This information, the government concluded, was "a clear example of what can happen when schools are required to meet numerical thresholds in conjunction with serving children with disabilities." 83 Fed. Reg. at 31308.

The Texas data proves nothing new. First, it sheds no light on how likely LEAs are to incorrectly identify students *based on their race or ethnicity* to avoid significant disproportionately findings, because, as the government concedes, the Texas example did not involve the use of racial or ethnic quotas. Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment at 19, ECF No. 22 ("Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J."). As noted, the 2016 Regulations emphasize the danger of legal liability to deter LEAs from utilizing racial quotas. *See* 42 U.S.C. §§ 1983, 1988, 2000d. By contrast, the IDEA does not allow recovery of civil damages. Second, the fact that numerical limitations could incentivize the use of quotas was not new information to the government, which was aware of this risk when drafting the 2016 Regulations, and which included safeguards to prevent the use of quotas. The Texas system did not contain those safeguards.

The insufficiency of the government's explanation for its policy change is highlighted by the fact that, while the government expressed "concern" about using standard methodology incentivizing quota use, the Delay Regulation did not forbid LEAs from using this methodology. Rather, it allowed states to comply voluntarily with the 2016 Regulations during the delay. 83 Fed. Reg. at 31309 ("States may implement the standard methodology or may use any methodology of their choosing to collect and examine data to identify significant disproportionality in their LEAs until the Department evaluates the regulations and issues raised in this rulemaking."). Indeed, the government acknowledged that "many States have commented that they intend to . . . implement the standard methodology in the 2016 significant disproportionality regulations even if the Department delays these regulations." *Id.* at 31312.[9] This inconsistency between the government's purported concern about the risk of using the standard methodology and the government's decision to permit LEAs to use the standard methodology is amplified by the government's decision to allow the use of the standard methodology *without* the 2016 Regulations safeguards designed to deter racial and ethnic quotas.

The government denies any inconsistency. It argues that

> ED did not find that the 2016 regulations would *result* in racial quotas, or even that they would *incentivize* racial quotas. Rather, ED simply concluded that the regulations may or potentially could incentivize [districts] to establish quotas. In light of this perceived risk, ED chose not to require nationwide compliance with the standard methodology while it studied the issue. At the same time, it chose not to divest States of the ability to decide for themselves what type of methodology to use.

Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J. at 28-29 (quotation marks and citations omitted) (emphasis in original) (alteration in original). This explanation merely

[9] The government predicted: "20 States will implement the 2016 significant disproportionality regulations on July 1, 2018. We further assume 10 States will implement the standard methodology on July 1, 2019, with the remainder doing so on July 1, 2020, if the standard methodology is required by law then." 83 Fed. Reg. at 31316.

reinforces the point that the government never "even" found that the 2016 Regulations would incentivize the use of racial quotas. *See id.* The inconsistency in the government's argument only serves to show that there was no need for the delay at all, and it renders the Delay Regulation arbitrary and capricious. *See Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 59 (D.C. Cir. 2015) ("We have often declined to affirm an agency decision if there are unexplained inconsistencies in the final rule.") (citations omitted).

The government also urges the court to defer to its "predictive judgment" concerning its regulatory actions, "even in the absence of evidence." Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J. at 20 (quoting *Fox Television Studios, Inc.*, 556 U.S. at 521). The court is hard-pressed to classify the government's many equivocations about the effect of the 2016 Regulations as "predictive judgments." As noted, the government itself emphasizes that it never found "that the 2016 regulations would result in racial quotas, or even that they would incentivize racial quotas . . . [and] simply concluded that the regulations may or potentially could incentivize [districts] to establish quotas." In any event, as the D.C. Circuit has made clear, "[T]hough an agency's predictive judgments about the likely economic effects of a rule are entitled to deference . . . deference to such . . . judgment[s] must be based on some logic and evidence, not sheer speculation." *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 708 (D.C. Cir. 2014) (quotations marks and citations omitted).

The government in 2018 likewise failed to adequately explain why it needed to delay the implementation of the 2016 Regulations to further evaluate whether the regulations could incentivize using quotas. This failure also renders the Delay Regulation arbitrary and capricious. As the D.C. Circuit has explained:

> Agencies regularly reconsider rules that are already in effect [and] a decision to reconsider a rule does not simultaneously convey authority to indefinitely delay the

> existing rule pending that reconsideration. Thus, the mere fact of reconsideration, alone, is not a sufficient basis to delay promulgated effective dates specifically chosen by [an agency] on the basis of public input and reasoned explanation.

Air All. Hous. v. EPA, 906 F.3d 1049, 1067 (D.C. Cir. 2018) (quotation marks and citations omitted). In delaying a regulation, an agency must explain "how the effectiveness of the rule would prevent [the agency] from undertaking notice and comment or other tasks for reconsideration, why a delay is necessary to [the agency's] process, or how the [underlying] Rule becoming effective on schedule would otherwise impede [the agency's] ability to reconsider that rule." *Id.* (citation omitted). *See Pub. Citizen v. Steed*, 733 F.2d 93, 102 (D.C. Cir. 1984) ("Without showing that the old policy is unreasonable, for [the agency] to say that no policy is better than the old policy solely because a new policy *might* be put into place in the indefinite future is as silly as it sounds.") (emphasis in original).

In promulgating the Delay Regulation, the government explained that it was "more prudent to delay the compliance date and address [its] concern through a review of the standard methodology before States are required to implement the regulations rather than during implementation." 83 Fed. Reg. at 31310. The government contends that this distinguishes the Delay Regulation from *Air All. Houston* because "ED chose postponement pending reevaluation to avoid a specific, undesirable outcome—here, incentivizing the use of de facto quotas—while its study of such issues took place, in contrast to EPA's explanation [in *Air All. Houston*] for delay, which rested on 'the mere fact of reconsideration alone.'" Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J. at 21 n.4 (quoting *Air All. Hous. v. EPA*, 906 F.3d at 1067) (comma from *Air All. Houston* omitted in the government's pleading).

The argument is unavailing. In *Air All. Houston*, the EPA delayed a regulation, pointing to "a specific, undesirable outcome," Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for

Summ. J at 21 n.4, namely "security risks and other hypotheticals raised by industry" even though the EPA did not conclude that the underlying rule "would increase such risks." *Air All. Hous. v. EPA*, 906 F.3d at 1065 (quotation marks and citations omitted). The Court of Appeals found that the EPA did not provide a "sufficient basis [for] delay," *id.* at 1067, because it did not explain how implementing the rule would interfere with reconsideration of the rule. *Id*. Here too, the government has not shown that delay is necessary to permit reconsideration of the 2016 Regulations.[10]

2. Failure to Consider the Cost was Arbitrary and Capricious

The Delay Regulation is also arbitrary and capricious because the government failed to consider all the relevant factors when considering the cost of the regulation. "Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions." *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) (emphasis in original).[11] Courts must be deferential when reviewing "an

[10] In its briefing, COPAA addressed several other rationales included in the Delay Regulation. *See* Pl.'s Opp'n to Defs.' Mot. to Dismiss and Pl.'s Mot. for Summ. J.at 32-34. The government neither responded to COPAA's arguments concerning these rationales nor independently advanced them. COPAA therefore argued that the government "abandoned" these reasons as "bases for the delay." Pl.'s Reply Supp. Mot. for Summ. J. and Opp'n to Defs.' Cross-Mot for Summ. J. at 12 n.5. The government did not respond to this abandonment argument in its Reply, and the court deems those arguments abandoned.

[11] The government contended in its Motion for Summary Judgment that because its regulatory impact analysis was conducted pursuant to Executive Orders, it is not subject to judicial review. Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J. at 29-30. Similarly, it argued that the IDEA does not provide a statutory cause of action to challenge its cost-benefit analysis. *Id.* at 30-31. These arguments are contrary to D.C. Circuit precedent. Because the government relied on its cost-benefit analysis in its Delay Regulation, *see* 83 Fed. Reg. at 31314, a flaw in that analysis can render the regulation arbitrary and capricious. *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1039-40 (D.C. Cir. 2012) (explaining that although an agency

agency's cost/benefit analysis," *Am. Trucking Ass'ns, Inc. v. Fed. Motor Carrier Safety Admin.*, 724 F.3d 243, 254 (D.C. Cir. 2013), and their review is limited to deciding whether the agency's "decision was based on a consideration of the relevant factors and whether there has been a clear error in judgment," *Ctr. For Auto Safety v. Peck*, 751 F.2d 1336, 1342 (D.C. Cir. 1985). Here, the government failed to adequately account for two relevant factors—the States' reliance cost and the cost of delay on children, parents, and society.

An agency must consider reliance costs when delaying a regulation. "In explaining its changed position, an agency must also be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (quotation marks and citations omitted). As the government concedes, for 18 months—the time between the effective and compliance dates of the 2016 Regulations—States and LEAs incurred costs by coming into compliance with the 2016 Regulations. *See* 83 Fed. Reg. at 31316 (explaining that the costs incurred by States in implementing the standard methodology in reliance on the 2016 Regulations were "expenditures already incurred by entities that cannot be recovered in any case"). The government labels these costs "sunk investments" and explains that "[r]egardless of whether the Department delayed the required compliance date, States would be unable to recover those expenses, and therefore it would not be appropriate to assign their value as either a cost or benefit of this action." *Id.* The government, however, does not explain *why* this would be inappropriate. Under this logic, the requirement to consider reliance costs would become illusory, because an agency could simply

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may "not have a statutory duty to demonstrate that the benefits of the amended rule outweigh its costs," if the "agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable") (citations omitted). The government did not press this argument in its Reply Brief.

rebrand "reliance costs" as "sunk costs." Tellingly, the government cites no law in support of this proposition.

The Delay Regulation also fails to account for the costs to children, their parents, and society. In promulgating the Delay Regulation, the government identified "five sources of benefits" for children with disabilities, their parents, and society from the 2016 Regulations: "(1) Greater transparency; (2) increased role for the State Advisory Panels; (3) reduction in the use of inappropriate policies, practices, and procedures; (4) increased comparability of data across States; and (5) expansion of activities allowable under comprehensive CEIS." 83 Fed. Reg. at 31315. In so far as the delay in implementation undercuts these benefits, the Delay Regulation imposes costs that must be accounted for. But the government has not fully accounted for these costs. As to the potential losses of the transparency benefit and the increased stakeholder participation, the government claims that the mere preparation for the 2016 Regulations effectively achieve those benefits. *See id.* This argument ignores the fact that "part of the purpose of the standard methodology [was] to foster greater transparency in how States identify significant disproportionality," and that States would adopt "simple and easily interpreted analyses" when identifying LEAs with significant disproportionality. 81 Fed. Reg. at 92404. This is a loss for which the government does not account. Similarly, the government fails to explain how preparation for stakeholders' expanded involvement would also have occurred if compliance with the standard methodology were required.

IV. REMEDY

The D.C. Circuit has stated that "vacatur is the normal remedy" for an APA violation. *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014). The APA "itself contemplates vacatur as the usual remedy when an agency fails to provide a reasoned

explanation for its regulations. 5 U.S.C. § 706(2)(A) ('The reviewing court *shall* . . . hold unlawful *and set aside* agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . .'" *AARP v. U.S. Equal Emp't Opportunity Comm'n*, 292 F. Supp. 3d 238, 242 (D.D.C. 2017) (emphasis in original). The presumption of vacatur, "however, is not absolute, and a remand without vacatur may be 'appropriate [if] "there is at least a serious possibility that the [agency] will be able to substantiate its decision' given an opportunity to do so, and when vacating would be 'disruptive."'" *Bauer v. DeVos*, 332 F. Supp. 3d 181, 184 (D.D.C. 2018) (quoting *Radio-Television News Dirs. Ass'n v. FCC*, 184 F.3d 872, 888 (D.C. Cir. 1999)) (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 151 (D.C. Cir. 1993)) (alterations in original). "Courts in this Circuit . . . have long recognized that 'when equity demands, an unlawfully promulgated regulation can be left in place while the agency provides the proper procedural remedy.'" *Shands Jacksonville Med. Ctr. v. Burwell*, 139 F. Supp. 3d 240, 267 (D.D.C. 2015) (quoting *Fertilizer Inst. v. EPA,* 935 F.2d 1303, 1312 (D.C. Cir. 1991) (citation omitted) (footnote omitted).

Whether to remand without vacatur "depends on the 'seriousness of the order's deficiencies' and the likely 'disruptive consequences' of vacatur." *Allina Health Servs.*, 746 F.3d at 1110 (quoting *Allied–Signal, Inc. v. U.S. Nuclear Regulatory Comm'n,* 988 F.2d 146, 150-51 (D.C. Cir. 1993)). As discussed above, the government's deficiencies were substantial, and the court finds it unlikely that the government could justify its decision on remand. The government stresses that if the court remanded without vacatur, it would be able to "provide a more fulsome explanation of what occurred in Texas, the lessons it took from that experience, and the reasons why the conclusions it drew from that example support the action it took in the

2018 Final Rule." Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J. at 44. However, this court has already found the Texas example provides no evidence of whether the 2016 Regulations incentivize LEAs to use racial quotas, and the government has not been able to explain how, on remand, it could extract more useful information from the Texas study than it was able to do during its rulemaking and in its summary judgment pleadings. "To the extent the Secretary bears the burden of demonstrating that the 'normal remedy' of vacatur does not apply, *Allina Health Servs.,* 746 F.3d at 1110, [the government] has failed to show that the flaw in the rule was not serious." *Shands Jacksonville Med. Ctr. v. Burwell*, 139 F. Supp. 3d 240, 268 (D.D.C. 2015).

The court must also consider the second *Allied-Signal* factor—the disruptive consequences—of vacating the Delay Regulation. The government argues that vacatur "*could be* extremely disruptive." Defs.' Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J. at 44 (emphasis added). But the suggestion that States were unprepared to comply with the 2016 Regulations is not supported by the record and inconsistent with the fact that for eighteen months between the effective date of the 2016 Regulations and the compliance date, States were preparing to utilize the standard methodology. And as noted earlier, the Delay Regulation rulemaking record showed that even if the government decided to delay the 2016 Regulations, many States planned to use the standard methodology. 83 Fed. Reg. at 31312 ("The Department notes that, in any event, States may, and many States have commented that they intend to, implement the standard methodology in the 2016 significant disproportionality regulations even if the Department delays these regulations."). Moreover, the government's contention that States *might* have to shift funding in the middle of the school year, Defs.' Reply in Supp. Mot. for Summ. J. at 25, is both speculative and without support in the record.

In weighing the two *Allied-Signal* factors, the court finds that they both favor vacatur as the appropriate remedy. Moreover, ordering vacatur for the illegal delay of a legal regulation differs from ordering vacatur of a new rule on a clean slate. "This is not a case in which 'the egg has been scrambled and there is no apparent way to restore the status quo ante.' Rather, vacating the Delay Rule would simply allow the [the original rule] to take effect, as the agency originally intended." *Nat'l Venture Capital Ass'n v. Duke*, 291 F. Supp. 3d 5, 21 (D.D.C. 2017) (quoting *Sugar Cane Growers Co-op of Fla. v. Veneman*, 289 F.3d 89, 97 (D.C. Cir. 2002)). To order remand without vacatur "would simply remedy the agency's delay with more delay." *Id.* Considering this court's findings above, and the weighing of the *Allied-Signal* factors, the appropriate remedy is vacatur.

V. CONCLUSION

The court hereby **DENIES** Defendants' Motion to Dismiss, ECF No. 14; **GRANTS** Plaintiff's Motion for Summary Judgment, ECF No. 16; **DENIES** Defendants' Cross-Motion for Summary Judgment, ECF No. 22; and **VACATES** "the Delay Regulation," Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 83 Fed. Reg. 31306 (July 3, 2018).

An appropriate Order will accompany this Memorandum Opinion.

Date: March 7, 2019

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge

No	District	School	SSID	Disciplinary Action Duration In Days (CALPADS Discipline File)	Days In School Suspension (CALPADS Attendance File)	Days Out School Suspension (CALPADS Attendance File)	File Containing Correct Information	Explanation (only needed if neither set of data is correct)
1	XYC Unified Example 1	Joe Doe High	1234567890	0.00	0.00	1.00	Attendance	
2	XYC Unified Example 2	Joe Doe High	1234567891	0.00	0.00	1.00	Discipline	Input error. The student's brother actually received the suspension.
3	XYC Unified Example 3	Jane Doe Charter	1234567892	0.00	0.00	1.00	Neither	This student does not belong to this SELPA.

Subject: FW: Statewide Access to Partnering with Parents Survey

From: bounce-1603995-5157110@mlist.cde.ca.gov <bounce-1603995-5157110@mlist.cde.ca.gov> **On Behalf Of** SPECEDINFOSHARE
Sent: Monday, March 4, 2019 4:19 PM
To: Jenae Holtz <Jenae.Holtz@cahelp.org>
Subject: Statewide Access to Partnering with Parents Survey

Date: March 4, 2019

Subject: Information Sharing from the Programs and Partnerships Unit of the Special Education Division

The California Department of Education (CDE), Special Education Division (SED), is pleased to announce statewide availability of the Partnering with Parents Survey. Previously, the survey was only available to parents from local educational agencies (LEAs) that were under Comprehensive Review. The survey is now accessible to all parents in California as an option to provide feedback to the SED.

The survey questions span four critical areas for parents and families:

- school's efforts to partner with parents
- quality of services
- impact of special education services on families
- parent participation

The survey will be open during the school year from September 1 through May 31. It can be completed online in English or Spanish at: https://seedsofpartnership.org/pwpsurvey/index.html.

The information gathered from this survey will assist the CDE, SED to gain parent perspective of their experience and their child's experience with special education. The survey will also provide the opportunity to identify areas of strength as well as areas that may need program improvement.

If you have any questions regarding this subject, please contact Noelia Hernández, Education Programs Consultant, Special Education Division, by phone at 916-322-5101, or by email at nhernandez@cde.ca.gov.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 9, 2017

Dear Colleague:

We are writing to reaffirm the position of the U.S. Department of Education (ED or Department) that all young children with disabilities should have access to inclusive high-quality early childhood programs where they are provided with individualized and appropriate supports to enable them to meet high expectations. Over the last few years, States and communities have made progress in expanding early learning opportunities for young children, with all but four States investing in free public preschool programs.[1] The Federal government, while aligning with the movement of States, has led several efforts to increase access to and the quality of early childhood programs, such as the Preschool Development Grants and expansion of Head Start. States have focused on improving the quality of early learning programs, including the development of early learning program standards and incorporating these into Quality Rating and Improvement Systems (QRIS).[2]

In September 2015, ED and the U.S. Department of Health and Human Services (HHS) issued a policy statement on promoting inclusion in early childhood programs to set a vision on this issue and provide recommendations to States, local educational agencies (LEAs), schools, and public and private early childhood programs.[3] Despite the expansion of early childhood programs, there has not yet been a proportionate expansion of inclusive early learning opportunities for young children with disabilities. Given this concern and the ED-HHS policy statement on early childhood inclusion, the Office of Special Education Programs (OSEP) is updating the February 29, 2012, Dear Colleague Letter (DCL) to reaffirm our commitment to inclusive preschool education programs for children with disabilities and to reiterate that the least restrictive environment (LRE) requirements in section 612(a)(5) of the Individuals with Disabilities

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[1] Walter N. Ridley Lecture: Pre-Kindergarten Access and Quality are Essential for Children's Growth and Development (November 2, 2016), available at: http://www.ed.gov/news/speeches/walter-n-ridley-lecture-pre-kindergarten-access-and-quality-are-essential-childrens-growth-and-development. For more detailed but less recent information on State investments in public preschool see: Barnett, W.S., Friedman-Krauss, A., Gomez, R.E., Squires, J.H., Clarke Brown, K., Weisenfeld, G.G., & Horowitz, M. (2016). *The state of preschool 2015: State preschool yearbook*. New Brunswick, NJ: National Institute for Early Education Research.

[2] QRIS statewide systems are implemented in over half of the States and others are developing such systems. ED and the of Department of Health and Human Services have supported States in further developing such systems under Race to the Top-Early Learning Challenge and the Child Care Development Fund. For more information see: https://qrisguide.acf.hhs.gov/index.cfm?do=qrisabout.

[3] See U.S. Departments of Education and Health and Human Services Policy Letter on the Inclusion of Children with Disabilities in Early Childhood Programs (September 14, 2015), available at: http://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-full-text.pdf.

Education Act (IDEA or Act) are fully applicable to the placement of preschool children with disabilities.[4] This DCL supersedes the 2012 OSEP DCL and includes additional information on the reporting of educational environments data for preschool children with disabilities and the use of IDEA Part B funds to provide special education and related services to preschool children with disabilities.

The LRE requirements have existed since passage of the Education for all Handicapped Children Act (EHA) in 1975 and are a fundamental element of our nation's policy for educating students with disabilities (the Education of the Handicapped Act was renamed the IDEA in 1990). These requirements reflect the IDEA's strong preference for educating students with disabilities in regular classes with appropriate aids and supports. Under section 612(a)(5) of the IDEA, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are not disabled. Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The LRE requirements in section 612(a)(5) of the IDEA apply to all children with disabilities who are served under Part B of the IDEA, including preschool children with disabilities aged three through five, and at a State's discretion, to two-year-old children who will turn three during the school year.[5] IDEA's LRE provision does not distinguish between school-aged and

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[4] Although not discussed here, other Federal laws apply to preschool-aged children with disabilities as well. These laws include section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and Title II of the Americans with Disabilities Act of 1990, as amended (ADA). The Department's Office for Civil Rights (OCR) enforces Section 504 and pursuant to a delegation by the Attorney General of the United States, OCR shares (with the U.S. Department of Justice and HHS) in the enforcement of Title II of the ADA in the education context. HHS has Title II jurisdiction over public preschools. 35 CFR §35.190(b)(3). Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the Department. 29 U.S.C. § 794, 34 CFR §104.4(a). Section 104.38 of the Department's Section 504 regulations specify that recipients of Federal financial assistance from the Department that provide preschool education may not on the basis of disability exclude qualified persons with disabilities, and must take into account the needs of these persons in determining the aid, benefits, or services to be provided. 34 CFR §104.38. Title II prohibits discrimination on the basis of disability by public entities, including public schools, regardless of whether they receive Federal financial assistance. 42 U.S.C. §§ 12131-12134, 28 CFR Part 35 (Title II). Additionally, as applicable, entities providing preschool education must comply with the nondiscrimination requirements set forth in Title III of the ADA that prohibit discrimination on the basis of disability in places of public accommodation, including businesses and nonprofit agencies that serve the public. The U.S. Department of Justice enforces Title III of the ADA. 42 U.S.C. §§ 12181-12189, 28 CFR Part 36 (Title III).

[5] Under section 612(a)(1) of the IDEA, a State must make a free appropriate public education (FAPE) available to all children with disabilities residing in the State within the State's mandated age range. All States make FAPE available beginning on a child's third birthday. All requirements in Part B of the IDEA, including the LRE requirements in section 612(a)(5), apply to children with disabilities aged three through five and two-year-old

preschool-aged children and, therefore, applies equally to all preschool children with disabilities. Despite this long-standing LRE requirement and prior policy guidance,[6] ED continues to receive inquiries asking whether IDEA's LRE requirements apply to preschool children with disabilities.

Key Statutory and Regulatory Requirements

A preschool child with a disability who is eligible to receive special education and related services and his or her parents are entitled to all the rights and protections guaranteed under Part B of the IDEA and its implementing regulations in 34 CFR Part 300. One of these guaranteed rights is the right to be educated in the LRE in accordance with section 612(a)(5) of the IDEA and 34 CFR §§300.114 through 300.118. The LRE requirements under Part B of the IDEA state a strong preference for educating children with disabilities in regular classes alongside their peers without disabilities. The term "regular class" includes a preschool setting with typically developing peers.[7] Under 34 CFR §300.116(a), in determining the educational placement of a child with a disability, including a preschool child with a disability, the public agency[8] must ensure that each child's placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options and is made in conformity with the LRE provisions in 34 CFR §§300.114 through 300.118. The child's placement must be based on the child's individualized education program (IEP) and determined at least annually. 34 CFR §300.116(b)(1) and (2). In addition, the IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. 34 CFR §300.320(a)(5).

Before a child with a disability can be placed outside the regular educational environment, the group of persons making the placement decision must consider whether supplementary aids and services could be provided that would enable the education of the child, including a preschool child with a disability, in the regular educational setting to be achieved satisfactorily. 34 CFR §300.114(a)(2). If a determination is made that the education of a particular child with a

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children who will turn three during the school year, if they are included in the State's mandated age range. See also 20 U.S.C. 1413(a)(1) (applying these LRE requirements to LEAs).

[6] See OSEP Memorandum 87-17, OSEP – Division of Assistance to States Policy Regarding Educating Preschool Aged Children with Handicaps in the Least Restrictive Environment (June 2, 1987); Letter to Neveldine, 16 LRP 842 (March 23, 1990); Letter to Wessels, 19 LRP 2074 (November 27, 1992); Letter to Neveldine, 20 LRP 2355 (May 28, 1993); Letter to Neveldine, 22 LRP 3101 (January 25, 1995); Letter to Neveldine, 24 LRP 3821 (April 17, 1996); Letter to Hirsh, 105 LRP 57671 (August 9, 2005); Letter to Anonymous, 108 LRP 33626 (March 17, 2008).

[7] See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46666 (August 14, 2006).

[8] The term "public agency" includes the State educational agency, LEAs, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. See 34 CFR §300.33.

disability cannot be achieved satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that child then could be placed in a setting other than the regular educational setting. The public agency responsible for providing a free appropriate public education (FAPE) to a preschool child with a disability must make available the full continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, to meet the needs of all preschool children with disabilities for special education and related services. 34 CFR §300.115. In selecting the LRE, consideration also must be given to any potential harmful effect on the child or on the quality of services that the child needs. 34 CFR §300.116(d).

Preschool Placement Options

The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the LRE where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the LEA operates public preschool programs for children without disabilities. An LEA may provide special education and related services to a preschool child with a disability in a variety of settings, including a regular kindergarten class, public or private preschool program, community-based child care facility, or in the child's home.

If there is an LEA public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the LEA's public preschool program. While the number of public pre-kindergarten programs has increased, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three-year-olds. In these situations, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs (such as Head Start or community-based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular public elementary schools; or (4) providing home-based services. If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.[9]

Additionally, preschool children with disabilities are often identified as children with disabilities while participating in regular public preschool programs, such as Head Start or a regular public

[9] See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46589 (August 14, 2006); and OESP Letter to Anonymous (March 17, 2008), available at http://www2.ed.gov/policy/speced/guid/idea/letters/2008-1/redacted031708privschool1q2008.doc.

pre-kindergarten program. The following requirements apply when determining placement options for a child with a disability who already participates in a regular public preschool program, including a community-based regular public preschool program operated by a public agency other than the LEA. Under 34 CFR §300.116(c), unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In addition, under 34 CFR §300.116(d), the placement team, which includes the child's parent and may include the child's current teacher, must consider any potential harmful effect on the child and on the quality of services that he or she needs before removing the child from the current regular public preschool setting to another more restrictive setting. Consistent with these requirements, IDEA presumes that the first placement option considered for a preschool child with a disability is the regular public preschool program the child would attend if the child did not have a disability. Therefore, in determining the placement for a child with a disability who already participates in a regular public preschool program, the placement team must consider whether the LEA, in collaboration with the regular public preschool program, can ensure that the child receives all of the special education and related services and supplementary aids and services included in the child's IEP in order to meet the needs of the particular child with a disability.

Reporting Educational Environments Data for Preschool Children with Disabilities

In accordance with the data collection requirements in section 618(a) of the Act, the Department requires States to report on educational environments for preschool children with disabilities. This data collection requires States to report on the number of preschool children with disabilities who attend a Regular Early Childhood Program and whether they receive the majority of hours of special education and related services in the Regular Early Childhood Program or another location.[10] For data collection purposes, the Department defines a Regular Early Childhood Program as a program that includes a majority (at least 50 percent) of nondisabled children (i.e., children who do not have IEPs) and that may include, but is not limited to:

- Head Start;
- Kindergartens;
- Preschool classes offered to an eligible pre-kindergarten population by the public school system;
- Private kindergartens or preschools; and

[10] For additional information on the data collection requirements under section 618 of the Act, see the Child Count and Educational Environment information available at: http://www2.ed.gov/programs/osepidea/618-data/collection-documentation/index.html

- Group child development centers or child care.[11]

We have received questions regarding whether more informal settings, such as weekly school-based or neighborhood playgroups, or home settings may be considered a Regular Early Childhood Program. For the purpose of the Department's annual data collection under section 618 of the Act, we do not consider these informal settings as Regular Early Childhood Programs because they are generally not required to comply with a State's early learning programs standards or curricula.

As noted above, States are required to report whether children attending a Regular Early Childhood Program receive the majority of hours of special education and related services in the Regular Early Childhood Program or in some other location.[12] It has come to our attention that additional clarification is needed regarding when special education and related services can be considered as being received in the Regular Early Childhood Program. Specifically, stakeholders have asked whether "in the Regular Early Childhood Program" means a child must receive the majority of special education and related services in the child's classroom, or whether some other location within the building would also be considered "in the Regular Early Childhood Program." Special education and related services delivered in the child's classroom in the course of daily activities and routines in which all children in the classroom participate (e.g., "circle time", "learning centers"), would be considered as being received in the Regular Early Childhood Program. However, services delivered in other locations that remove the child from the opportunity to interact with nondisabled children would not be considered as being received in the Regular Early Childhood Program. These include, but are not limited to, services delivered in a 1:1 therapeutic setting, or in a small group comprised solely of children with disabilities in another location within the building where the regular early childhood program is located.

To further address these questions, the reporting instructions in the ED*Facts* C089 file specifications for IDEA Section 618 Part B Child Count and Educational Environment will be updated for School Year 2017-2018. The updated file specifications will address informal settings as a Regular Early Childhood Program and will clarify when special education and related services are considered as being provided in the Regular Early Childhood Program.

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[11] This is the definition that the Department uses in its annual data collection under section 618 of the IDEA on the number of children with disabilities aged three through five served under the IDEA Part B program according to their educational environments.

[12] See the Child Count and Educational Environment information available at: http://www2.ed.gov/programs/osepidea/618-data/collection-documentation/index.html

Use of IDEA Part B Funds for Preschool Children with Disabilities

We have received questions regarding the use of IDEA Part B (section 611 and section 619) funds to provide special education and related services to preschool children with disabilities. LEAs must ensure that Part B funds are used in conformity with IDEA Part B requirements, including the requirements in 34 CFR §300.202. In general, LEAs must use IDEA Part B section 619 funds, and as applicable IDEA Part B section 611 funds, only to pay the excess costs of providing special education and related services to children with disabilities ages three through five and, at a State's discretion, to two-year-old children with disabilities who will reach age three during the school year, such as costs for special education teachers and administrators; related services providers; materials and supplies for use with preschool children with disabilities; professional development for special education personnel; professional development for general education teachers who teach preschool children with disabilities; and specialized equipment or devices to assist preschool children with disabilities.[13] 34 CFR §§300.202 and 300.800.

Because the availability of regular public preschool programs varies across States, we understand that the use of State and local funds will also differ across States and LEAs. Consequently, how States and LEAs use IDEA Part B funds to provide special education and related services to preschool children with disabilities also will differ based on the specific circumstances in each State and LEA. For example, if an LEA provides universal preschool to all children ages three, four, and five, using State and local funds, the LEA must use IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities in those preschool programs.

The excess cost requirement, however, does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages three, four, or five if no local or State funds are available for nondisabled children of these ages. For example, if an LEA offers no regular public preschool programs for children without disabilities, and a preschool child with a disability is already participating in a private preschool program that is being paid for by the child's parents, the child's placement team may determine that, based on the child's IEP and the LRE provisions, placement in a private preschool program is necessary for the child to receive FAPE in the LRE. In such situations, the LEA responsible for providing FAPE to the child must pay for all of the costs associated with the provision of special education and related services in the LRE, as stated in the child's IEP. See 34 CFR §§300.145 through 300.147. Specifically, if the placement team determines, based on the child's IEP, that placement in an inclusive private preschool program is necessary to provide FAPE to a

[13] See OSEP Letter to Couillard (March 7, 2013) available at: http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-011637r-wi-couillard-rti3-8-13.doc

child who needs interaction with nondisabled peers, the LEA is responsible for making available an appropriate program in the LRE and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to the parents.[14]

Conclusion

Placement decisions regarding a preschool child with a disability who is served under Part B of the IDEA must be individually determined based on the child's abilities and needs as described in the child's IEP. 34 CFR §300.116(b)(2). State educational agencies and LEAs should engage in ongoing short- and long-term planning to ensure that a full continuum of placements is available for preschool children with disabilities. To achieve this goal, a variety of strategies, including staffing configurations, community collaboration models, and professional development activities, that promote expanded preschool options are available. For additional information regarding the IDEA and services for preschool children with disabilities, see the Early Childhood Technical Assistance Center at http://ectacenter.org/ and the Department's Early Learning Inclusion webpage at: http://www2.ed.gov/about/inits/ed/earlylearning/inclusion/index.html.

We hope this information is helpful in clarifying the applicability of LRE requirements to preschool children with disabilities who receive special education and related services under Part B of the IDEA. Thank you for your continued interest in the importance of providing inclusive early learning opportunities for young children with disabilities.

Sincerely,

/s/
Ruth E. Ryder
Acting Director
Office of Special Education Programs

[14] See OSEP Letter to Neveldine, 22 IDELR 630 (January 25, 1995). We also note that there may be circumstances where a placement team determines that a specific service needed by a child could be provided in a variety of settings and would not require interaction with nondisabled peers, assuming all other Part B requirements, including the LRE requirements, are met. In those instances where the placement team has determined that provision of that service is all that is required to provide FAPE to the child, the public agency is only responsible for providing the required service and that service could be provided in a variety of settings.

6.7 Science Test Opt Out

Verbal report, no materials

DMCC
Desert / Mountain Children's Center

Desert / Mountain Children's Center
17800 Highway 18
Apple Valley, CA 92307-1219

P 760-552-6700
F 760-946-0819
W www.dmchildrenscenter.org

MEMORANDUM

DATE: March 14, 2019

TO: Special Education Directors

FROM: Linda Llamas, Director

SUBJECT: Desert/Mountain Children's Center Client Reports

Attached are the opened and closed cases for the following services:

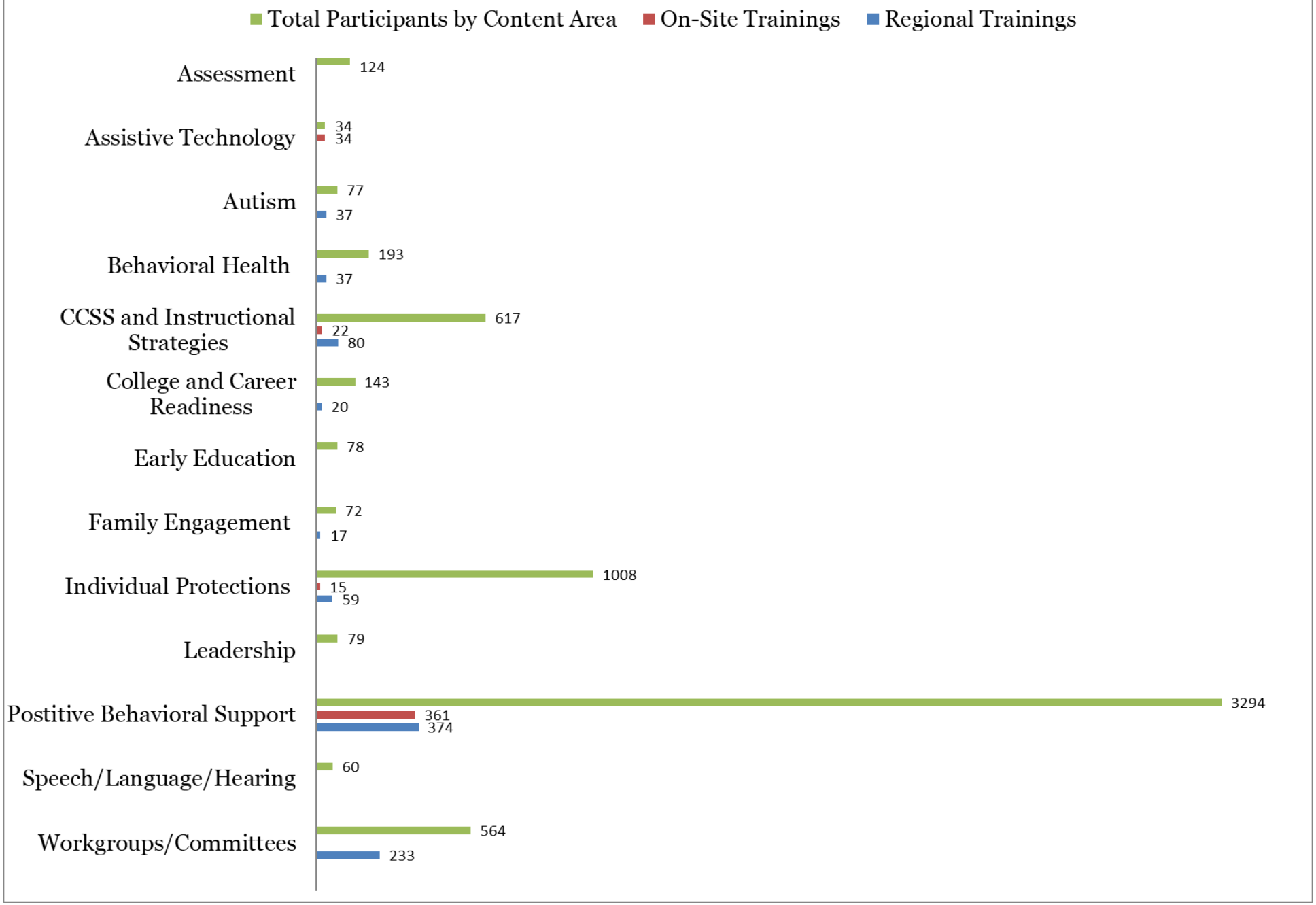
- Screening, Assessment, Referral and Treatment (SART)
- Early Identification Intervention Services (EIIS)
- School-Age Treatment Services (SATS)
- Therapeutic Behavioral Services (TBS)
- Student Assistance Program (SAP)
- Children's Intensive Services (CIS)
- Speech and occupational therapy

If you should have any questions, please contact me at (760) 955-3606 or by email at linda.llamas@cahelp.org

D/M SELPA PROFESSIONAL LEARNING PARTICIPATION SUMMARY

FEBRUARY 2019 - 1,289 PARTICIPANTS

6,373 YEAR-TO-DATE PARTICIPANTS



Desert/Mountain SELPA
Resolution Support Services Summary
July 1, 2018 - March 15, 2019

D = Complaint Dismissed W = Complaint Withdrawn

DISTRICT													CASE ACTIVITY FOR CURRENT YEAR				
	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	Total		D /W	Resolution	Mediation	Settled	Hearing
Adelanto SD	0	2	0	3	6	5.5	2.5	5	3	1	28		0	0	0	1	0
Apple Valley USD	2	1.33	0	0	2	1	1.5	1.5	0	3.5	12.83		0.5	0	0	2	1
Baker USD	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Barstow USD	0	1	0	0	0	0	1	3.5	0	2	7.5		0	0	0	2	0
Bear Valley USD	0	0	1	0	0	0	0	1	2	0	4		0	0	0	0	0
Helendale SD	0	0	0	0	0	0	0	0	1	0	1		0	0	0	0	0
Hesperia USD	2.5	1	5.5	4	3	5	7.5	7	6	6	47.5		1	0	0	4.5	0
Lucerne Valley USD	0	4	0	1	2	1	1	2	0	1.5	12.5		1	0	0.5	0	0
Needles USD	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Oro Grande SD	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Silver Valley USD	0	0	1	0	0	0	0	0	0	0	1		0	0	0	0	0
Snowline USD	0	0	2	1	1	5	4.5	6.5	2	7.5	29.5		0	0.5	3	4	0
Trona USD	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Victor Elementary SD	1	1	1	1	4.33	3.33	1.83	2.5	6.5	0	22.49		0	0	0	0	0
Victor Valley Union High SD	2.5	0	2	4	3.33	4.3	7.83	4	4	8	40		1	1	0	5.5	1
Academy for Academic Excellenc	0	1.33	0	0	4	2	0	1	2	1	11.33		0	0	1	0	0
CA Charter Academy	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Desert/Mountain OPS	0	0.34	0.5	1	1.33	0.83	4.33	3	1.5	3	15.83		0.5	0.5	0	2	0
Excelsior Education Center	0	0	0	0	0	0	0	0	0	0.5	0.5		0	0	0	0.5	0
Explorer Elementary	0	0	0	0	0	0	0	0	1	0	1		0	0	0	0	0
High Tech Elementary P. L.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	1	0		0	1	0	0	0
High Tech Middle	0	0	0	0	0	0	0	0	1	0	1		0	0	0	0	0
High Tech High	0	0	2	2	0	1	0	0	0	0	5		0	0	0	0	0
High Tech High International	0	0	0	1	2	0	0	0	0	0	3		0	0	0	0	0
High Tech High Media Arts	0	2	0	0	2	0	0	0	0	0	4		0	0	0	0	0
High Tech Middle Media Arts	0	0	0	0	0	0	0	0	2	0	2		0	0	0	0	0
High Tech High Statewide Benefi	0	1	2	0	2	1	1	3	2	0	12		0	0	0	0	0
SELPA-WIDE TOTALS	**8**	**15**	**17**	**18**	**33**	**29.96**	**33**	**40**	**34**	**35**	**262**		**4**	**3**	**4.5**	**21.5**	**2**

Districts showing a value of .50 above indicates that the district is a co-respondent with another district.
Districts showing a value of .25 above indicates that the district is a co-respondent with 3 other districts.

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
1. Apple Valley USD Case No. 2018070020	1. Placement and supports 2. Levels, types, frequency & duration of services 3. Assessments and additional services 4. Denial of FAPE	06/27/18	07/05/18	N/A	08/10/18	08/22/18	8/10/18 – settlement agreement signed - CLOSED
2. Hesperia USD Case No. 2018070273 **(Sibling of Case 3)**	1. Placement and supports 2. Levels, types, frequency & duration of services 3. Assessments and additional services 4. Denial of FAPE	07/03/18	07/17/18	08/21/18	10/08/18	10/16/18 – 10/18/18	Resolution was held and no settlement was reached; parents and district agreed to attend mediation – settled at mediation - CLOSED
3. Hesperia USD Case No. 2018070287 **(Sibling of Case 2)**	1. Placement and supports 2. Levels, types, frequency & duration of services 3. Failure to hold annual IEP Team meetings 4. Behavioral assessments and supports 5. Denial of FAPE	07/03/18	07/17/18	08/21/18	09/10/18	09/18/18 – 09/20/18	Resolution was held and no settlement was reached; parents and district agreed to attend mediation – Settled at mediation - CLOSED
4. Apple Valley USD & SBCSS D/M Ops Case No. 2018071093	1. Lack of appropriate progress toward goals 2. Failure to provide BCBA behavior interventionist 3. Denial of FAPE	07/24/18	07/31/18; rescheduled to 08/15/18	N/A	09/07/18	09/19/18	8/15/18 – case withdrawn by parents at resolution – CLOSED

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
5. Hesperia USD & Excelsior Charter School Case No. 2018071045	1. Child find; failure to assess 2. Failure to assess in all areas of suspected disability/inadequate assessment 3. Goals are not meaningful or appropriate 4. Program and supports 5. Procedural safeguards; denial of parent right to meaningfully participate in education program 6. Denial of FAPE	07/25/18	08/09/18	09/20/18	10/19/18	10/30/18-11/01/18	All-day resolution was held with parent and advocate (attorney declined to attend); offer of settlement was negotiated/tendered but full settlement has not been reached 09/20/18 – mediation 10/04/18 – settled following mediation with written agreement - CLOSED
6. Hesperia USD Case No. 2018071261	1. Program and supports 2. Placement 3. Failure to assess in all areas of suspected disability 4. FBA/ERMHS Assessments 5. Speech and language assessment 6. Assistive Technology assessment 7. Denial of FAPE	07/31/18	08/13/18	N/A	09/17/18	09/26/18	8/13/18 – case settled at resolution with written agreement – CLOSED

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
7. Hesperia USD Case No. 2018080008	1. Failure to conduct triennial assessment 2. Failure to assess in all areas of suspected disability 3. Supports and services 4. Procedural safeguards; denial of parent right to meaningfully participate in education program 5. PLPs and goals 6. Denial of FAPE	08/01/18	08/13/18	N/A	09/17/18	09/25/18	Prior to resolution, LEA learned parent had not been a resident of the district nor resided at the address listed in the complaint prior to the end of 17/18 school year; parent had not filed Inter-District Transfer for student or his five siblings. At resolution, parent admitted her address was not within district boundaries and her attorney stopped the resolution in order to address the factual inconsistencies in the complaint – 08/28/18 - withdrawn at resolution - CLOSED
8. Victor Valley UHSD Case No. 2018080981	1. Placement and supports 2. Assessments and additional supports 3. FAPE	08/23/18 10/26/18	09/05/18	N/A	10/08/18	10/17/18	09/05/18 – resolution meeting 10/04/18 – awaiting NPS placement decision 10/26/18 – still awaiting resolution settlement agreement – delayed due to placement options and death

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
							in the family; settled prior to hearing - CLOSED
9. Apple Valley USD D/M Operations Case No. 2018090014	1. Placement and supports 2. Assessments 3. LRE 4. FAPE	08/31/18	09/13/18	11/30/18		01/29 – 01/31/19	09/13/18 – resolution meeting – agreed to reconvene after NPS visits take place 11/30/18-Mediation held; no settlement reached 01/17/19 – settlement delayed due to fees from $91,000 to $11,000; CLOSED
10. Victor Valley UHSD Case No. 2018090033	1. Placement and supports 2. Assessments 3. FAPE	08/31/18	09/28/18		09/28/18	10/12/18	9/28/18 – CLOSED written settlement county provision w/1:1 aide, not stayput; transportation; IEE for SLA & AAC;
11. Apple Valley USD & Victor Valley UHSD Case No. 2018090305	1. Withheld info when failed to offer behavior plan 2. Denied FAPE when failed to address behaviors 3. Deprived of Ed Benefit when failed to provide AAC 4. Denied FAPE – no SLP assessment	09/14/18	10/02/18		03/15/19	03/26 - 03/28/19	Pursuing the waiving of statute of limitations; likely going to hearing; seeking placement 10/26/18 – placement issue 02/12/19 – interim placement 20 days
12. Victor Valley UHSD Case No. 2018090720	1. Academic struggles; SL deficits; behavior problems	09/18/18	10/02/18	12/06/18		02/05 – 02/07/19	10/26/18 – agreed to requested IEE, parent refused to sign; student

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
							expelled May 2018 for assault on teacher; resolution stopped by attorney; settled 01/17/19 psycho ed provided and ERMHS placement agreement; CLOSED
13. Barstow USD Case No. 2018090940	1. Failure to hold IEP pursuant to assessment of 9/28/17 2. Goals not reasonably calculated 3. Failure to conduct ERMHS 4. Denied FAPE with no referral for CAPD	09/25/18	10/22/18	12/10/18	01/04/19	01/15-01/17/19	10/22/18 – resolution meeting scheduled; matter proceeding to mediation on 12/10/18; CLOSED
14. Apple Valley USD Case No. 2018090891	1. Failure to assess 2. Child Find	09/27/18	10/03/18				10/03/18 – settled at resolution meeting; provide assessment; provide comp. ed. - CLOSED
15. Victor Valley UHSD Case No. 2018090862	1. Denial of FAPE 2. LRE placement	09/25/18	10/10/18		11/09/18	11/20/18	WITHDRAWN - CLOSED
16. Snowline JUSD Case No. 2018100029	1. Appropriate placement and services	09/28/18	10/10/18		11/19/18	11/27/18	10/18/18 – settled at resolution meeting 1. Behavior intervention training 2. NPA at training 3. IEE – FBA – CLOSED
17. Barstow USD	1. Ongoing behavior issues 2. Denial of FAPE	10/09/18	10/23/18	01/10/19		03/05 – 03/07/19	Seeking comp ed

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
Case No. 2018100504							IEE – Psycho Ed, FBA BII/BCBA, ERMS; settled at mediation; CLOSED
18. Hesperia USD Case No. 2018100445	1. Child Find 2. Failure to assess in all areas 3. Procedural	10/09/18	Waived	~~12/12/18~~ 02/11/19	~~01/18/19~~ 03/22/19	~~01/29 – 01/31/19~~ 04/02-04/04/19	Mediation timeline waived; mediation held, not settled
19. Victor Valley UHSD Case No. 2018110333	1. Child find 2. Behavior 3. Declining grades 4. Residential placement	11/08/18	12/3/18	TBD	12/24/18	01/03/19	Student incarcerated; settlement offer pending parent approval; settled 12/14/18; CLOSED
20. Snowline JUSD Case No. 2018110496	1. Manifestation determination dispute & expulsion 2. Extensive discipline history without FBA or ERMHS 3. Counseling & compensatory education	11/13/18	11/19/18	TBD		01/08 – 01/10/19	Expedited dates were dismissed by parent attorney; settled post-resolution
21. Snowline JUSD (district filing against parent) Case No. 2018110911	1. Lack of parent consent to implement IEP 2. Order to implement	11/27/18	N/A	TBD	12/12/18	12/27/18	District has not been able to secure parent consent to implement the student's IEP and seeks order from OAH; parent has cross-filed against district (see #23 below); CLOSED
22. Snowline JUSD/DM Operations Case No. 2018120028	1. Failure to assess in all areas 2. Denial of FAPE a. IEP not specially designed	11/30/18	12/11/18	TBD	01/18/19	01/24/19	02/05/19 – settled; settlement delayed due to fees from $99,000 to $14,000; CLOSED

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
	b. Goals not reasonably calculated 3. Lack of educational benefit a. All issues not related to DHH 4. Seeking Implementation of complete IEE, ESY services, etc.						
23. Snowline JUSD/Adelanto Elem SD Case No. 2018120063	1. Lack of progress on goals 2. Goals repeated year after year 3. Violation of classroom care plan 4. Hostile environment 5. Least restrictive environment 6. Seeking 1:1 nurse and NPS	12/04/18	Waived	Cancelled	04/12/19	04/23/19	Parent cross-filing for #21 above, against both district of residence and current district of service; cases combined
24. Lucerne Valley USD/Sky Mtn Case No. 2018110130	1. LRE – Home School Charter vs. SDC placement 2. Denial of FAPE 3. IEE 4. Denial of services 5. Transportation	12/19/18	01/15/19	TBD	02/01/19	02/12/19-02/14/19	12/19/18 – resolution meeting scheduled; Parent has advocate, not attorney. CDE complaint filed. Amended complaint filed to add Lucerne Valley USD who previously held Sky Mtn. Charter
25. Victor Valley UHSD & Adelanto SD 2018120901	1.Failure to provide safe placement 2. Services not provided 3. Procedural violations as a result of extended absence	01/07/19	01/18/19	TBD	02/06/19	02/20/19 – 02/21/19	Settlement pending

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
26. Lucerne Valley & Colton USD 2019010519	1. Denial of FAPE 2. Failure to assess 3. RTC	01/15/19	Pending reschedule	TBD	03/04/19	03/12 – 03/14/19	The case is against Sky Mountain chartered by Lucerne Valley USD; not our SELPA; requesting to dismiss Lucerne Valley USD
27. Snowline JUSD & D/M Operations Case No. 2019010954	Denial of FAPE: 1. Failure to make progress 2. Failure to provide AAC 3. Failure to perform timely services 4. Delay in providing BCBA	01/24/19	Pending		03/11/19	03/19 – 03/21/19	Timeline waived
28. Hesperia USD 2019011096	Denial of FAPE 1. MD violation 2. Failure to provide behavior, social skills, and ERMH support 3. Failure to assess for OT, SLP, and transition	01/29/19		02/11/19	02/11/19	02/19 – 02/20/19	Expedited for M.D. issues; settled 02/07/19; CLOSED
29. VVUHSD 2019020345	Denial of FAPE 1. Not implementing IEP 2. Not providing home school teacher	02/08/19	02/20/19 03/04/19 continued		03/25/19	04/03 – 04/09/19	03/04/19 agreement reached at resolution; CLOSED
30. Snowline JUSD 2019020574	Failure to assess in all areas: 1. ERMHS 2. FBA 3. OT	02/05/19	02/27/19		03/29/19	04/09 – 04/11/19	Premature filing; resolution held; no agreements; IEP to be held next day;

Desert/Mountain SELPA
Resolution Support Services Activity Summary
July 1, 2018 – March 15, 2019

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
	4. SCIA Denial of FAPE "de minimis benefit"; Child Find August 2017 – September 2018;						
31. VVUHSD 2019020955	Denial of FAPE 1. Failure to provide 1:1 2. Failure to assess for FBA 3. Failure to provide OT, SLP, ITP 4. Failure to provide 3 year assessment 5. Last IEP January 2018	02/25/19	03/12/19		04/15/19	04/23 – 04/25/19	Seeking: IEEs – Psycho Ed, FBA, SLP, OT;
32. High Tech Elem 2019021048	Denial of FAPE 1. Inadequate placement, support, LRE; 2. Failure to provide supports and services to make progress; 3. Failure to provide SLP 4. Failure to provide behavior support	02/27/19	03/14/19		04/15/19	04/23 – 04/25/19	Reading support; communication system; OT; Comp. education;

Desert/Mountain SELPA
Resolution Support Services Legal Expense Summary
As of March 15, 2019

SCHOOL YEAR	TOTALS
2000-2001	$39,301.51
2001-2002	$97,094.90
2002-2003	$37,695.13
2003-2004	$100,013.02
2004-2005	$136,514.09
2005-2006	$191,605.08
2006-2007	$140,793.00
2007-2008	$171,614.04
2008-2009	$263,390.71
2009-2010	$114,076.96
2010-2011	$293,578.50
2011-2012	$567,958.10
2012-2013	$321,646.04
2013-2014	$250,372.65
2014-2015	$297,277.76
2015-2016	$204,756.26
2016-2017	$233,130.03
2017-2018	$247,459.52
2018-2019	$186,024.96

The Desert/Mountain SELPA

Transition Resource Fair

Presented by Tranistion Partnership Program, Employment Network, WorkAbility, California Career Innovations Program, WIOA GenerationGO!, and CaPROMISE

Attendees

Parents, 9th - 12th grade students, employers, and educators

When

Tuesday, April 23, 2019
5:30 - 7:30 p.m.

Where

Desert Mountain Educational Service Center
17800 Highway 18, Apple Valley, CA 92307

Purpose

To network with agencies that provide services and employment opportunities for students transitioning from school to adult life.

Come and Explore the Many Resources and Opportunities!

- Transition Partnership Program
- WorkAbility
- Department of Rehabilitation
- Employment Network
- CaPROMISE
- WIOA GenerationGo!
- Social Vocational Services
- Inland Regional Center
- State Council on Developmental Disabilities
- VIP, Inc.
- California Career Innovations
- Military
- People's Care
- Vocational Schools
- Financial Institutions
- Brandman University
- Victor Valley College
- Rolling Start
- Cole Vocational Services
- And More!

CALIFORNIA ASSOCIATION OF HEALTH AND EDUCATION LINKED PROFESSIONS
17800 Highway 18 • Apple Valley, CA 92307 • (760) 552-6700 Main • (760) 242-5363 Fax

PROFESSIONAL LEARNING OPPORTUNITY

STEERING COMMITTEE MEETING
SPECIAL EDUCATION DIRECTORS' TRAININGS

Upcoming Training Information: Special education directors will participate in trainings focusing on areas of need or interest in the area of special education research, programs, or legal compliance. All meetings will be held at the Desert Mountain Educational Service Center.

Contact: If you have any questions regarding the Steering Committee Meetings/Directors' Training, please contact April Hatcher at (760) 955-3581 or by e-mail at April.hatcher@cahelp.org or Kaori Hartzler at (760) 843-3982 ext. 200 or by e-mail at kaori.hartzler@cahelp.org.

Dates:

October 12, 2018- The Truth about Transgender and Suicide
presented by: Cheryl Babb, Behavioral Health Counselor Supervisor

November 9, 2018- Overview of The Resilience Breakthrough
presented by: Christian Moore, Why Try Founder, Author, Speaker, and Social Worker

February 22, 2019- How NOT to go to Due Process
presented by: Jack Clarke, Esq. Partner with the law firm of Best, Best & Krieger

April 12, 2019- School to Work Services for Youth
presented by: Adrienne Shepherd, Program Manager

February 5, 2019

Kristin Wright, Director of Special Education
California Department of Education
1430 N Street
Sacramento, CA

The members of the CA Transition Alliance leadership team respectfully submit our suggestions for the California Alternative Diploma for students with severe cognitive disabilities. We believe that every student who can achieve a standard diploma should be provided the opportunity to achieve the diploma. And we believe that high expectations and sufficient instruction supports provide students the opportunity to learn. California recognizes two ways to achieve the diploma: (1) Meet A-G requirements (2) Career Pathway completion. The Career Pathway option requires the state mandates for the course of study with an emphasis on 2 CTE courses. The generic high school diploma course of study requires 1 class. The state course of study requirements allows both options. We base our recommendations on the state course of study because it is the foundation of the diploma for the preponderance of students in the state of California and offers the greatest level of flexibility.

Our recommendations are based on the federal legal requirements for an alternative diploma:

(bb) all students with the most significant cognitive disabilities in the cohort, as adjusted under clause (i), assessed using the alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) and awarded a State-defined alternate diploma that is—(AA) standards-based;(BB) aligned with the State requirements for the regular high school diploma; and(CC) obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(1)); and(II) shall not include any student awarded a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential

We also reviewed current CA Education Code Language regarding the course of study for the high school diploma and college and career indicators outlined in DASS. We reviewed the resources available to address standards through the California Alternative Assessment and Standards system outlined in the National Center State Collaborative CCSSS.

We propose utilizing the state requirements for the diploma with stipulations that credits may be earned in classes utilizing multi-tiered systems of support, Universal Design for Learning, and Differentiated Instruction. (We use the term differentiated instruction instead of modified curriculum to avoid the perception that it is not standards based.

Current CA Ed Code EC 51225.3 lists the classes that are required to earn a diploma and stipulates "alternative means" that can be used to meet the diploma standards. We recommend including alternative means for earning a diploma that includes the Dashboard work-based learning and Certifications and DASS options for students with an IEP.

We recommend that all options regarding one year of <u>visual or performing arts</u>, <u>foreign language</u>, or commencing with the 2012-13 school year**,** career technical education be included**.** We believe that some students may have talents in visual and performing arts or foreign language, which includes sign language. We

also agree that students may participate in CTE classes, but suggest they include work experience, WorkAbility I, apprenticeships, Transition Partnership program as meeting the CTE requirement. (This recommendation is not in the final version we are submitting. Since participation in CTE is a challenge, it is worth considering.

Suggested Language for the Alternative Diploma

The CA Alternative Diploma may award the individual with exceptional needs with significant cognitive disabilities and who has participated in the CA Alternative Assessment program if the following requirements are met:

(a) The individual has satisfactorily met the state prescribed course of study defined in Education Code 51225: A three courses in English, (B) two courses in mathematics, (C) two courses in science including biological and physical sciences (D) three courses in social studies, (E) One course in visual or performing arts, foreign language (including sign language) or Career-Technical Education, (F) two courses in physical education

(b) The individual may demonstrate satisfactory completion of the course of study courses when the instruction methodology includes universal design for learning, differentiated instruction, and contextual learning. The student may utilize accommodations and modifications to meet their learning needs.

(c) The individual may utilize alternative means for achieving the diploma as outlined in Education Code 51225(b) that includes practical demonstration of skills and competencies, supervised work experience, or other outside work experience, career technical classes, interdisciplinary study, independent study, and credit at a post-secondary institution. Demonstration of skills and competencies may also be achieved through Pre-Apprenticeship Programs, Industry Certification for employment, Workforce Readiness Strategic Skills certificate Program Completion indicators and Work-Based Learning indicators through WorkAbility I or Transition Partnership Programs.

(d) the individual may meet the social science requirements for economics by completing a course in financial literacy or independent living skills if approved by the local education agency.

(e) the issuance of the Alternative Diploma allows the individual to continue to be eligible for special education and related services

This is the legislation regarding the certificate of completion you reviewed with us: We based the recommendations on the ed code pertaining specifically to the diploma 51225.3

.56390.

Notwithstanding Section 51412 or any other provision of law, a local educational agency may award an individual with exceptional needs a certificate or document of educational achievement or completion if the requirements of subdivision (a), (b), or (c) are met.

(a) The individual has satisfactorily completed a prescribed alternative course of study approved by the governing board of the school district in which the individual attended school or the school district with jurisdiction over the individual and identified in his or her individualized education program.

(b) The individual has satisfactorily met his or her individualized education program goals and objectives during high school as determined by the individualized education program team.

(c) The individual has satisfactorily attended high school, participated in the instruction as prescribed in his or her individualized education program, and has met the objectives of the statement of transition services.

(Added by renumbering Section 56375 by Stats. 2000, Ch. 1058, Sec. 111. Effective January 1, 2001.)

We recognize that if this proposal is adopted there is more work to be done.

We believe the state needs to provide clarification regarding the reason to continue in school if the Alternative Diploma requirements are met. Federal law stipulated you are required to issue a diploma once it is earned. Rationales may include needing to continue to work on the high school diploma or develop independent living skills that are not addressed in the course of study.

Local control is an issue because the LEA must approve the option and could add additional requirements.

The local options of providing a certificate of completion needs to be defined.

The language must address the issues regarding the Regional Center. The language specifies they will provide services only if the student has achieved a diploma or certificate of completion. Attaining an alternative diploma and continuing to be eligible for educational services needs to be addressed.

We hope this is helpful and meets the vision you had when we met. If you need additional clarification, please notify us.

Sincerely,

Sue Sawyer Vicki Shadd Liz Zastrow Richard Rosenberg

The CA Transition Alliance

2018/2019 California PBIS Recognition System

Recognition Application Window is Open

By applying for CA PBIS recognition, California schools and districts have an opportunity to reflect and celebrate on their progress implementing and sustaining School-Wide PBIS

Important Dates

Application Process:

Completed online at pbisca.org	Timeline
Application window opens	March 5, 2019
Application window closes	May 17, 2019
Letters of notification	September 1, 2019
Website posting	September 1, 2019
Displayed at the CA PBIS Conference	Oct. 28 & 29, 2019

Important Information

- Visit **pbisca.org** to review the Recognition Criteria along with helpful videos.
- Use 2019 **Recognition-at-a-Glance** to guide your process.
- Collect all information prior to starting application process.
- Read and follow all directions carefully.
- Be sure to complete application by May 17, 2019. There will be no extensions.
- Each school must have an External Evaluator who completed the External Review Evaluator Training (ERAT) after 8/1/2017 and before the completion of the TFI.
- Contact **capbiscoalition@gmail.com** if you have any questions.
- Twitter: Use the hashtag **#PBISCA** and Follow the CPC **@PBIS_CA**
- Follow this link for last year's recognized schools: **17/18 Recipients**

8.7 Compliance Update

Verbal report, no materials

Professional Learning Opportunity | CAHELP

Desert Mountain Education Service Center
17800 Highway 18
Apple Valley, CA 92307

Cindy Quan
cindy.quan@cahelp.org 760.955.3557

CAHELP. ORG
sbcss.k12oms.org

California Association of Health and Education Linked Professions

Performance Indicator Review

The Performance Indicator review (PIR) is a component of the Annual Submission Process (ASP). The PIR is a part of the Special Education Division (SED) overall Quality Assurance Process. It is designed to meet, along with other processes, the requirement of the system of general supervision required by Title 23, Code of Federal regulations, Section 300.600. There are eight Performance Indicators that are reviewed for PIR. Indicator 1 - Graduation Rate (4 yr. cohort); indicator 2 - Dropout Rate; indicator 3 - Statewide Assessments; indicator 4A - Suspension and Expulsion; indicator 5 - Least Restrictive Environment (LRE); indicator 6 - Preschool LRE (*new for PIR); indicator 8 - Parent Involvement; indicator 14 - Post-School Outcomes: Child Find (*new for PIR).

Day 1: **March 8, 2019** | 1:00 - 4:00 pm
SELPA team to provide PIR presentation to Local Educational Agency (LEA), discuss possible PIR team members and SELPA role, collect signed Assurances form, review previous PIR plans (if applicable), and review process checklist.

Day 2: **March 11, 2019** | 1:00 - 4:00 pm
SELPA team to provide PIR presentation to LEAs as needed and assist with the PIR planning process.

Day 3: **March 18, 2019** | 1:00 - 4:00 pm
SELPA team to assist with the PIR plan.

Day 4: **April 12, 2019** | 2:00 - 4:00 pm
SELPA team to assist with the PIR plan.

Day 5: **May 2, 2019** | 1:00 - 4:00 pm
SELPA team to assist with the PIR plan. LEAS to submit draft to SELPA for final review.

Registration

Please register online using code PIR at:
https://sbcss.k12oms.org/162408

Cost

None

A light snack is included with your registration.

Audience

This workshop is intended for LEAs that have been indicated by California Department of Education (CDE) in the PIR process.

Presenter

SELPA Team

Special Accommodations

Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

Desired Results Access Project

DR Access Data:
Updates and Next Steps

DRDP (2015) Data Collection Transition

Starting Spring 2019, SELPAs will submit DRDP (2015) data for children with IFSPs and IEPs to the Desired Results Access Project through a new website:
DR Access Data (www.draccessdata.org)

DR Access Data is an online data collection system supported by the Desired Results Access Project

Submission Process Changes

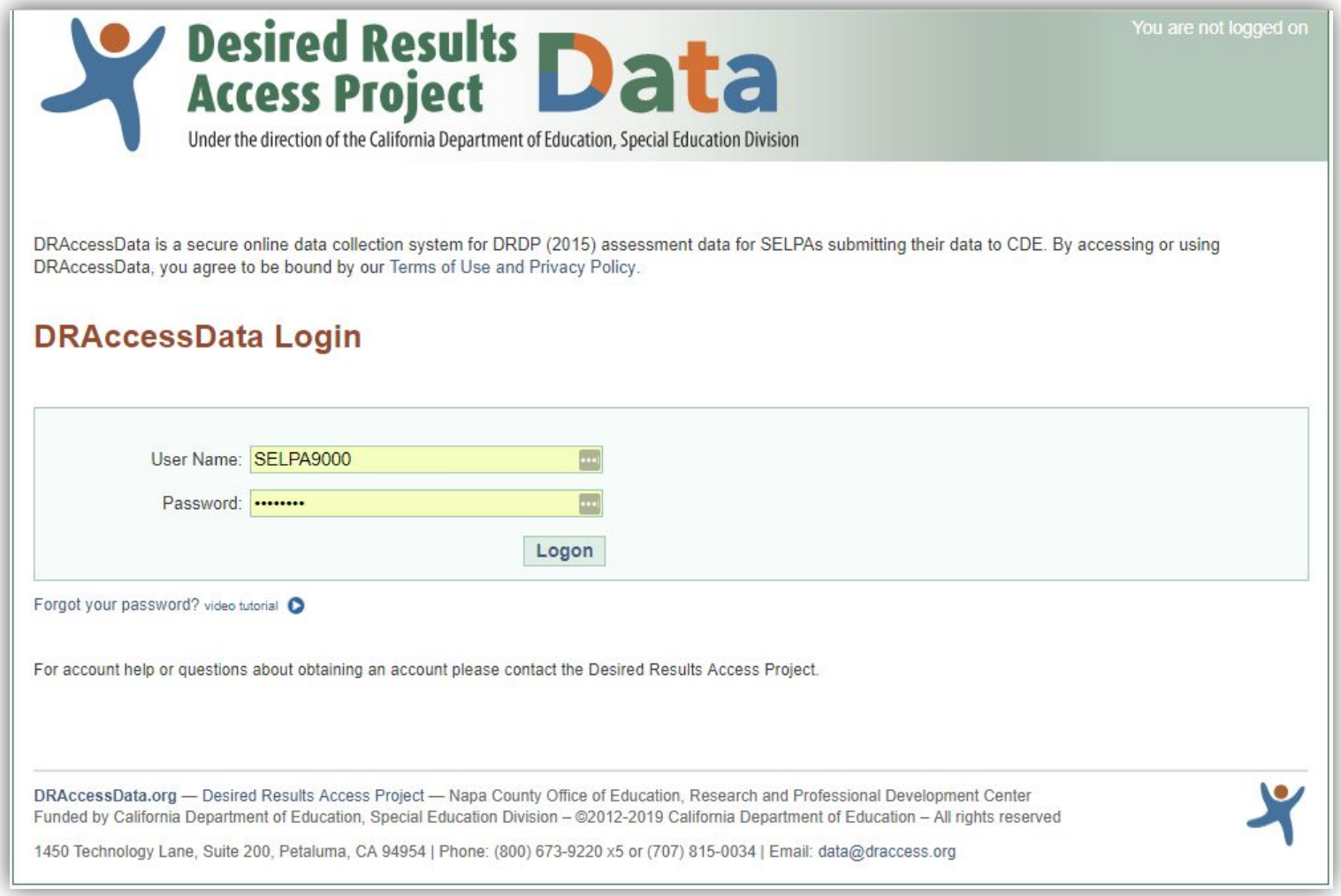
- The format for data submission to DR Access Data will remain the same as it has been for CASEMIS.
  - The .csv file format that you presently use for the CASEMIS submission will still be used.
- An updated Technical Assistance Guide will be released by April 1, 2019.
- Data Submission deadlines remain the same:

Assessment Period	General Period for Observation and Documentation	General Period to Submit DRDP Data to SELPA	Date by which SELPAs Must Submit Data to CASEMIS
Fall	Oct. 1 – Jan. 1	December – January	February 1
Spring	March 1 – June 1	May – June	July 1

Fall 2018 Pilot Study

- **9 SELPAs** piloted the data collection via DR Access Data this Fall.
- Participating SELPAs included those who use SEIS, SIRAS Systems, and DR Access Reports to manage their DRDP data.
- Pilot study results have informed the design of the data collection system, guidance for users, and support for SELPAs for the rollout in Spring 2019.

Demo of DR Access Data



Spring 2019 Implementation and Training

- All SELPAs will submit their DRDP data to DR Access Data in Spring 2019
- Training will be available through online tutorials and live webinars in April and May of 2019
- User's Manual is available on DR Access Data

Support and Other Resources

- Support is available from the Desired Results Access Project staff
  - Email: data@draccess.org
  - Phone: 1-800-673-9220 Ext. 5
- The DR Access Project currently provides all support related to the DRDP (2015) for special education, including:
  - www.draccess.org : main website
  - www.draccessreports.org : reports for teachers
  - indicator7reports.draccess.org : preschool child outcomes

Desired Results Access Project

Thank you!

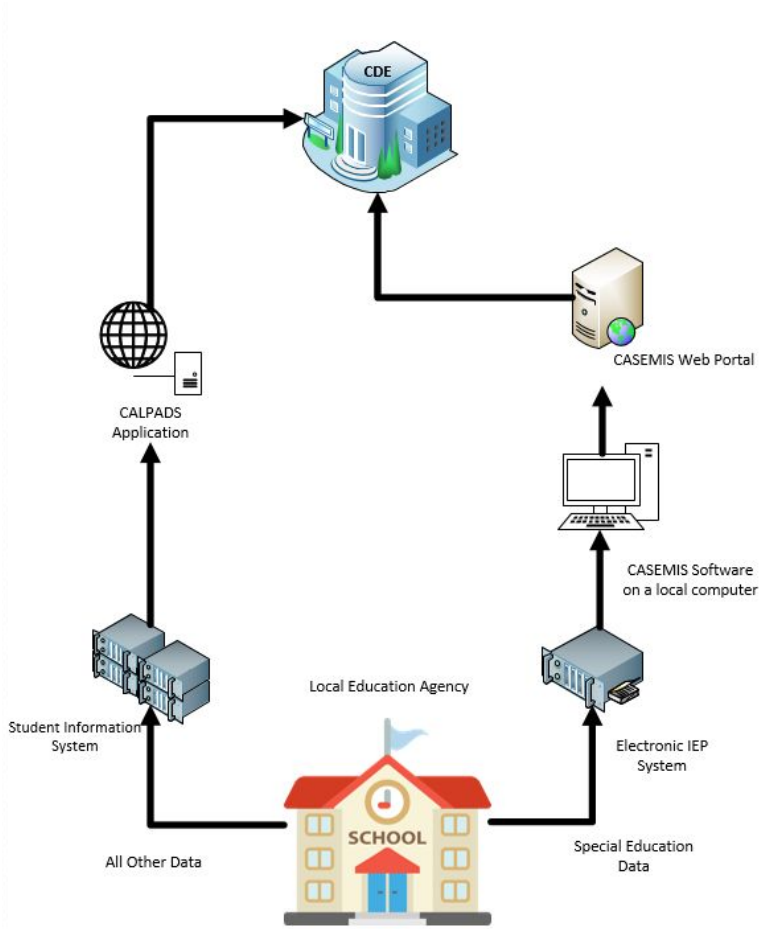
Special Education Data Collection in CALPADS
Training for SELPAs

CALIFORNIA DEPARTMENT OF EDUCATION
Tony Thurmond, State Superintendent of Public Instruction

CALIFORNIA DEPARTMENT OF EDUCATION
Tony Thurmond, State Superintendent of Public Instruction

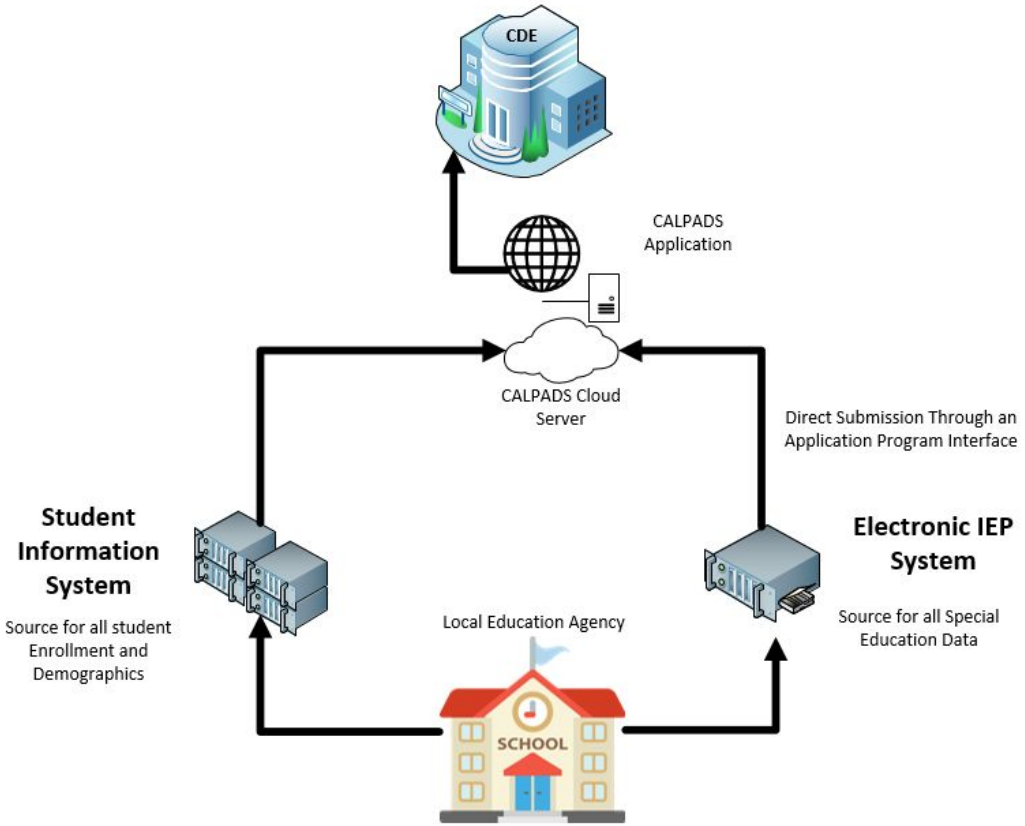
The Old Way (CASEMIS)

SELPAs will no longer be required to *upload data* to *CASEMIS*



The New Way (CALPADS)

LEAs will be able to *transfer their data* directly to *CALPADS* from the Special Education Data System



How will the data get to CDE?

- Using Direct Data Transfer, the LEAs will be able to submit their data directly to CALPADS from the Special Education Data System.
- The data transfer will review for reporting errors and require LEAs to correct data before it is accepted in CALPADS.

Reviewing and Approving Data

- LEAs will be required to review and approve their data in CALPADS.
- SELPAs will then be required to review and data approved by their data CALPADS.
- SELPAs will be notified via e-mail when reports are available for your review. You will also see a ‘Ready for SELPA Review’ status upon logging in to CALPADS.
- Once both the LEA and SELPA have reviewed & approved, the data will be considered ‘Certified’.

Reviewing and Approving Data

- LEA Submits Data
- LEA Approves Data
- SELPA Approves Data
- Data is Certified

Reviewing and Approving Data

- LEAs will need to log into CALPADS to approve data submitted through the Direct Data Transfer.
- The approval process for SELPAs will involve logging in to CALPADS and approving the data for each of your LEAs.
- SELPA-level and LEA-level aggregated reports for each of the LEAs will be available for your review.
- The aggregated reports are supported by reports with detail data.

Fall 1 Certification 2019-20

1. Staff must work jointly to review and approve their respective reports at the LEA-level.

Fall 1 Data and Reports

Student Information System/CALPADS Staff

- Graduates and Dropouts
- Title III Immigrants and English Learners
- Enrollment Counts
- Unduplicated Pupil Percentage Counts for LCFF
- Special Education Student Count by Primary Disability
- Special Education Services

Special Education Staff

Fall 1 Certification 2019-20

2. Once an LEA has approved the LEA-level submission, the SELPA(s) that the district belongs to must review and approve the LEA's Fall 1 special education data and reports.

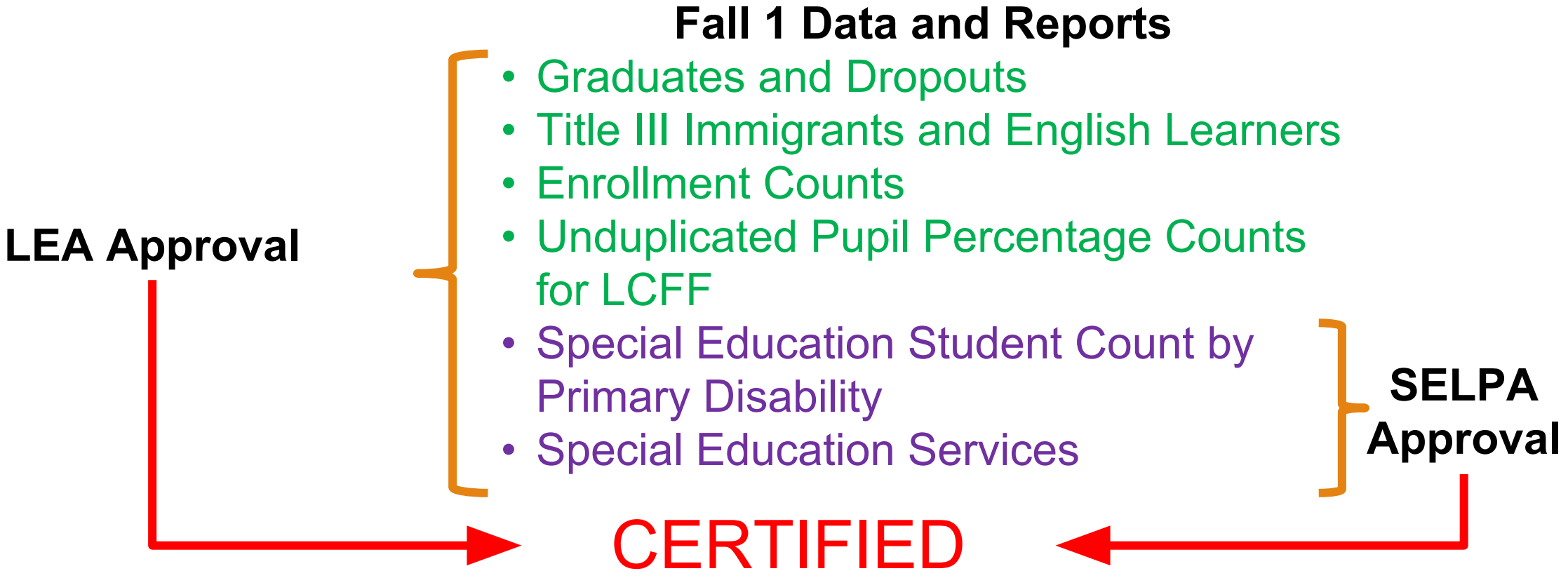
Fall 1 Data and Reports

- Graduates and Dropouts
- Title III Immigrants and English Learners
- Enrollment Counts
- Unduplicated Pupil Percentage Counts for LCFF
- Special Education Student Count by Primary Disability
- Special Education Services

} **Requires SELPA Approval**

Fall 1 Certification 2019-20

3. Only after both the LEA and SELPA have reviewed and approved the Fall 1 data and reports will the submission be “Certified”.



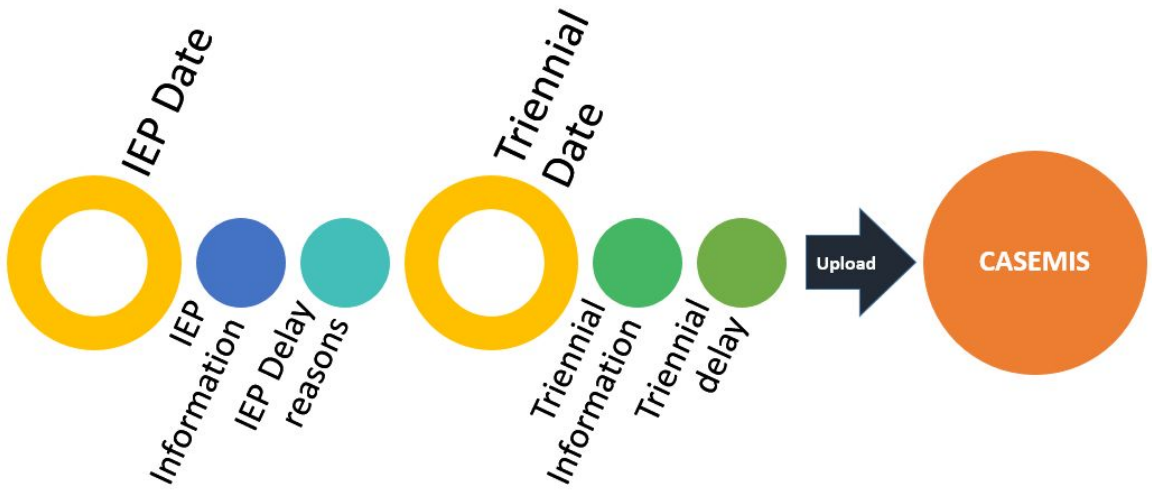
Reviewing and Approving Data

- Once all aggregated reports have been reviewed, the SELPA will have a chance to ‘Approve’ or ‘Disapprove’ the data.
  - Approving the data completes the data certification process.
  - If you need to ‘Disapprove’ the data, the system will notify the LEA via e-mail that there is an issue with the data. The LEA and SELPA will need to coordinate to correct the data in the local SEIS (or SIS), and repeat the data transfer and review/approval process in CALPADS.

New Transactional Processing

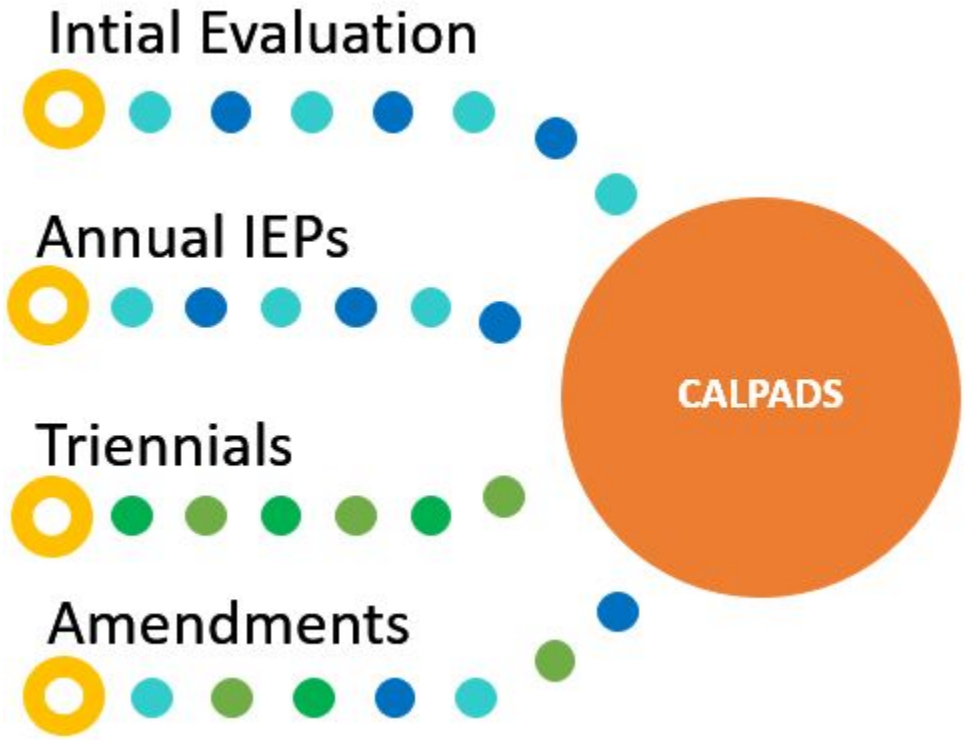
The Old Way (CASEMIS)

One student record was submitted with data on all Special Education meeting types



The New Way (CALPADS)

Separate student records will be submitted for each Special Education meeting type



Upload of Previous Years' Data

- CDE will upload previous CASEMIS data into CALPADS system in preparation for the Fall 2019 Submission.
- This will be used to ensure that LEAs are not misidentified for monitoring

Monthly Submissions

- Data will now be transferred to CALPADS, at minimum, monthly, as opposed to twice annually.
- Data will only be certified twice per year, but uploads will happen for updated IEPs.
- SELPAs can see the data as it is revised during the certification window.

CALPADS Accounts

- SELPA accounts will be created and maintained by CDE.
- Accounts will be created by September.
- Once your account has been created, you will receive an email from CALPADS with instructions to confirm your account and log in.

Beta Testing / Deadlines

- Beta testing with a cross section of SELPAs and LEAs will commence in June/July 2019.
- CALPADS will be available to SELPAs in September 2019.
- The Fall Reporting Period will open October 2, 2019.
- Fall submission approvals will be due (specific dates to be announced):
  - For LEAs - December 2019.
  - For SELPAs - In January 2020.

8.11 Nonpublic Schools Update
Verbal report, no materials

The FISCAL REPORT an informational update

Volume 39 For Publication Date: February 22, 2019 No. 4

Ask SSC . . . Special Education Concentration Grant

Q. I've read your articles about the Special Education Concentration Grant and am thinking through various scenarios. I can foresee a local educational agency (LEA) spending the funds to build a wildly impactful early identification/pre-referral program and bolster the service offerings through the Special Education program, the net effect of which is that their overall students with disabilities (SWD) identification percentage shrinks below the statewide average.

What happens to the ongoing Special Education Concentration Grant funding for an LEA that qualifies in the first year but not in the following year?

A. Great question. Because the proposed program eligibility is based on an annual calculation, an LEA could move into or out of eligibility each year based on its unduplicated pupil percentage (UPP) and/or its three-year average percentage of SWD in grades kindergarten through twelve compared to the state average. There is no particular language about districts coming in or out of eligibility and smoothing that transition—so it seems that an LEA could get "ongoing" funding one year and not the next, and vice versa. Districts that are well above the 55% UPP concentration *and* well above the statewide average of SWD would not have to worry about this possibility; however, those closer to either of the eligibility lines would need to consider the effects of losing funding eligibility in the next year.

Another consideration for planning year over year is the amount of ongoing funds provided per pupil. Because of the fluid eligibility described above, the per-pupil amount would also be fluid: if more students become eligible for funding statewide, then the per-pupil amount would drop because the $390 million (which would increase by a proposed cost-of-living adjustment each year) is divided by more eligible pupils. On the other hand, the per-pupil amount would increase if the number of eligible pupils drops.

—Michelle McKay Underwood

posted 02/15/201

The FISCAL REPORT an informational update

Volume 39 For Publication Date: February 22, 2019 No. 4

Estimated "Special Education Concentration Grant" Per-Pupil Rate

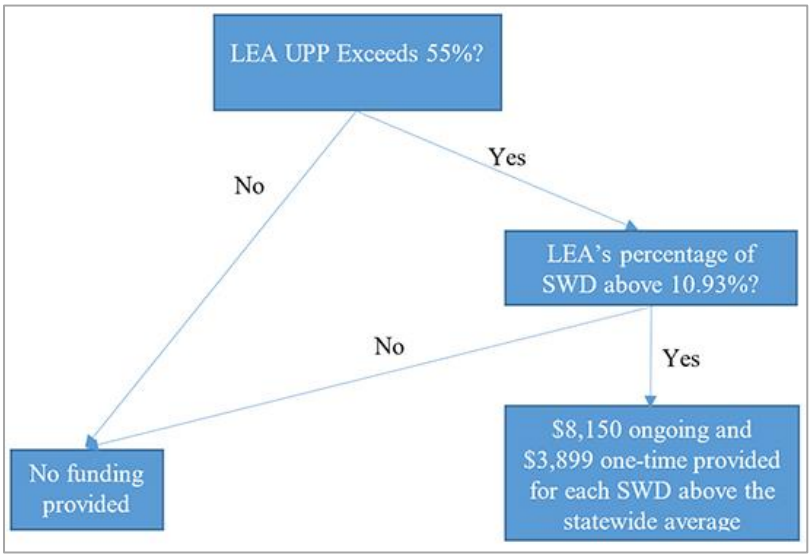
As described in "2019-20 Trailer Bill Language—'Special Education Concentration Grant'", Governor Gavin Newsom proposes, in his 2019-20 State Budget, to provide funding to certain local educational agencies (LEAs) based on the number of students with disabilities (SWDs) above the statewide average. While the framework of the idea was detailed in the trailer bill language released on February 1, 2019, a per-pupil rate was not made available.

The grant is limited to LEAs (school districts, county offices of education, and charter schools) with an Unduplicated Pupil Percentage (UPP) exceeding 55% and where the percentage of SWDs exceeds the state average.

Based on the proposed formula outlined in the education omnibus trailer bill and data from the California Department of Education, it is estimated that the statewide average rate of SWDs in grades Kindergarten through Twelfth is approximately 10.93%.

With those limiters, the grant would only be for the number of pupils above the statewide average within an LEA. Of the $390 million in ongoing funding for this grant, we estimate the per-pupil rate would be $8,150. The one-time funding for these same students is estimated at $3,899 per pupil above the statewide average.

For an LEA to determine their estimated funding amount, the formula is as follows:



With these factors—the statewide average percentage of SWDs and the per-pupil funding rate in ongoing and one-time funds—LEAs can estimate how much, if any, funding will be received locally from the Governor's proposal.

—Dave Heckler

posted 02/12/2019

SELPA ADMINISTRATORS OF CALIFORNIA
Finance Committee
February/March 2019

State News

The **AB 602 Principal Apportionment (P-1)** for Fiscal Year 2018-19 was posted on Feb 20 at:

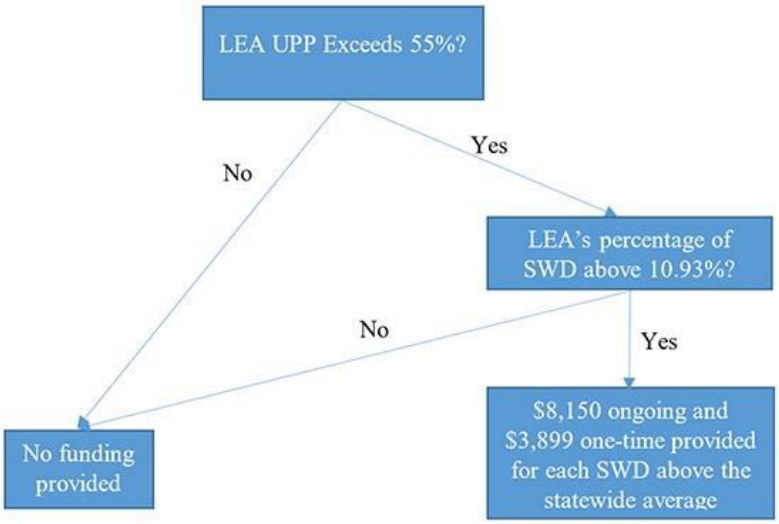
- https://www.cde.ca.gov/fg/aa/se/ab602apptdat.asp
  - Select Period: **18-19 P1**
  - Select Entity: **SELPA Admin Unit**
  - Select Program: **Special Education Funding Exhibit**
  - Select Name and Code: **Scroll down and select your SELPA**
  - Check out the Section B Base proration factor of 0.9686846121 on line B-7, which is a 3.13% deficit at P-1.
  - The 2017-18 Annual Certification Base proration factor increased from 0.9756017071 at P-2 to 0.98880626379 at Annual, which is a 1.12% deficit but more $ of your allocation comes to you. The 2017-18 Extraordinary Cost Pool proration factor is 0.3288029893, which is a 67.12% deficit. This is a larger deficit, which indicates more LEAs applied for reimbursement under the Cost Pool Guidelines.
  - 2016-17 Annual R2 Recertification Base proration factor decreased slightly from 0.9737068668 at Annual R1 to 0.9737003170 at Annual R2, which is still a 2.63% deficit. This represents a very small amount that LEAs will not receive - there will be no need for settle up or other reduction of funds for current year.
  - 2019-20 estimated AB 602 Statewide Target Rate (STR) increases to $558.35 per ADA
    - An official 2018-19 AB 602 STR has not yet been released as the CDE is still calculating the effect of separating the Program Specialists and Regionalized Services funding out of the existing formula in the 2018-19 State Budget
    - No funding is proposed to increase and equalize AB 602 base rates

Education Omnibus Trailer Bill was released. Special Ed Concentration Grant starts on pg 34

- "Special Education Concentration Grant" would be allocated to school districts, county offices of education, and charter schools with an unduplicated pupil percentage (UPP) above 55% and an identified percentage of SWDs above the three-year statewide average - currently 10.93%. Funds would be allocated on a per-pupil basis for the number of SWDs in excess of the statewide average.

- The "intent of the Legislature" is for the funding to be used to supplement existing Special Education resources and "may be used" for services such as:
  - Early intervention services, including preschool, not identified in an IEP or IFSP that may benefit the future educational outcomes of the child
  - One-time programs that are not medically or educationally necessary in an IEP, but which may have a positive impact on a SWDs
  - Strategies identified through the state system of support to build upon or expand local MTSS, including inclusive programming that ensures placement in the LRE
  - Wraparound services for SWDs not required by law
  - PD activities and the coordination of services with other educational agencies

- Limitations on UPP and SWD % means the grant would only be for the number of pupils above the statewide average within an LEA. Of the $390 million in ongoing funding for this grant, SSC estimates the per-pupil rate would be $8,150. The one-time funding for these same students is estimated at $3,899 per pupil above the statewide average.
    - For an LEA to determine their estimated funding amount, the formula is as follows:



    - This means that some LEAs will receive ZERO additional funding and funding can vary from year to year.
- **Special Education "Concentration Funds" - FAQ -** SSC Article

Legislative Analyst Office - Prop 98 Educational Analysis

- $2.9 Billion in New Proposition 98 Spending Proposals. These proposals consist of:
    - $2.8 billion for K-12 schools
    - $367 million for the California Community Colleges
    - $289 million downward adjustment to account for cost shifts.
- Most funds are ongoing commitments, including $2.5B to cover an estimated 3.46% COLA for the LCFF and other K-14 programs. Total K-12 funding per student would grow to $12,018 in 2019-20, an increase of $444 (3.8 %) over the revised 2018-19 level.

- **Prepare for Possibility That Proposition 98 Funding Is Somewhat Lower by May.**
    - Economic events suggest that estimates of the guarantee could be revised down in the coming months. Coupled with LAO estimate of higher program costs, the Proposition 98 budget could be tighter by May. (State Revenues Fall Short - SSC)
    - Legislature may want to begin identifying proposals it would be willing to reject or reduce. Legislature should consider building a budget cushion by replacing some of the Governor's new ongoing commitments with one-time initiatives.
- **Proposed Special Education Concentration Grants Are Unlikely to Achieve Core Objectives.** Creating a new categorical program works counter to the administration's stated policy goals of improving coordination between general and special education, reducing complexity, and alleviating administrative burden. LAO recommends rejecting the proposal and considering better alternatives for augmenting special education funding.

- **Consider Two Better Options for Addressing Key Special Education Issues.**

The Legislature could equalize funding rates, which range from $500 to $900 per student. LAO estimates equalizing rates at the 90th percentile would cost $333 million. The Legislature could spread this cost over several years. Alternatively, the Legislature could provide funding for preschool-aged SWDs. Depending upon specific implementation decisions, these costs could range between $150 million and $500 million annually.

- **Historical Prop 98 Funding - Three Tests**

Figure 4

Tracking Changes in Proposition 98 Funding

(In Millions)

	2017-18			2018-19		
	June 2018 Estimate	January 2019 Estimate	Change	June 2018 Estimate	January 2019 Estimate	Change
Minimum Guarantee						
General Fund	$53,381	$52,843	-$538	$54,870	$54,028	-$842
Local property tax	22,236	22,610	374	23,523	23,839	316
Total Guarantee	**$75,618**	**$75,453**	**-$164**	**$78,393**	**$77,867**	**-$526**
General Fund above guarantee	$0	$44	$44	$0	$0	—
Settle-up payment for LCFF	0	0	—	0	475	475
Total Funding	**$75,618**	**$75,498**	**-$120**	**$78,393**	**$78,342**	**-$50**
Operative "Test"	2	1	—	2	3	—

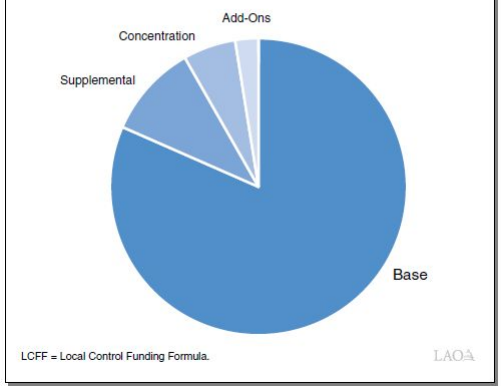
LCFF = Local Control Funding Formula.

- **LCFF Funding** - LCFF consists of base, supplemental, and concentration grants, as well as several small add ons for Targeted Instruction and Transportation. Figure 8 shows the share of total LCFF funding attributable to each of these components.

Figure 8

Base Grants Comprise About 80 Percent of LCFF Funding

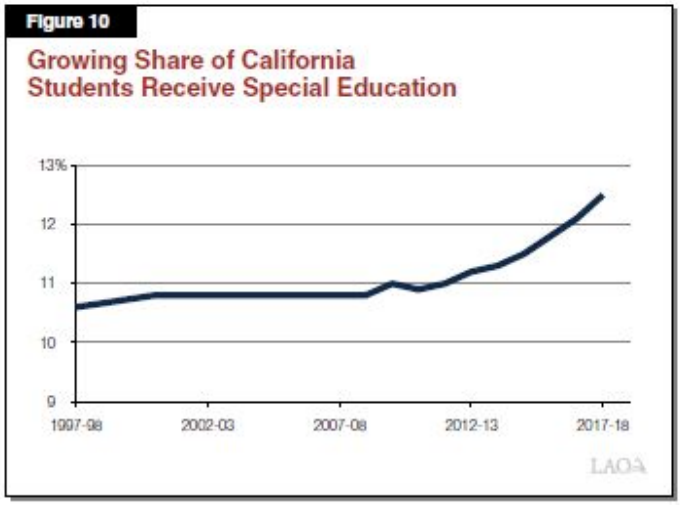
2018-19



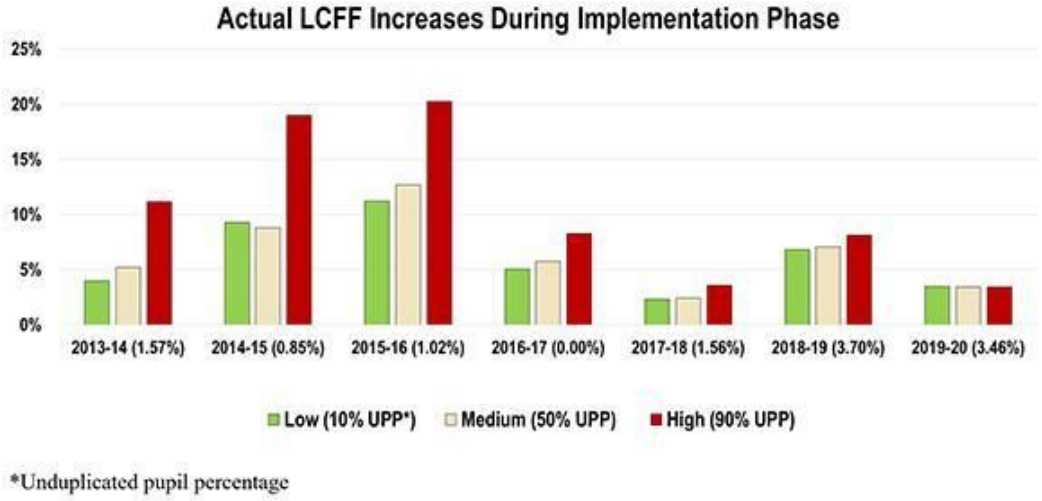
Transition to LCFF resulted in larger increases for districts with large proportions of EL/LIs and/or historically low funding levels. Districts receiving the largest LCFF increases have seen growth of more than 70 percent per student. Districts receiving the smallest LCFF increases have experienced growth closer to 20 percent per student.

- **Share of California Students Receiving Special Education Has Increased in Recent Years.**

In 2017-18, about 12.5 percent of California students received special education. As Figure 10 shows, the share of California students receiving special education was virtually flat from 1997-98 through 2007-08, then grew notably over the last ten years. The share of students diagnosed with autism has increased at an especially fast rate, more than doubling over the past ten years—rising from 0.7 percent of all students in 2007-08 to 1.8 percent in 2017-18.



- **Local Control Funding Formula: Fully Funded status as of 2018-2019.**
  - Governor's January budget proposal includes $2 billion to provide 3.46% cost-of-living-adjustment for LCFF.
- Impact of COLA on LCFF - funding increases not keeping pace with growth and needs of students, and greatly impacted by proration factors. SSC article on whether COLA is sufficient to keep pace.



- You can find LCFF base rates, COLA information and big picture funding rates here: https://www.cde.ca.gov/fg/aa/pa/pa1819rates.asp

Funding Proposals

What	Governor's Proposed Budget	AB 428 Medina/Reyes	SB 217 Portantino/Roth	AB 39 Muratsuchi
K -12	1. $390M, ongoing Allocation is based on Districts with >55% of students in supplemental/ concentration groups (mirrors the LCFF concentration grant), AND Percentage of students in the district with IEPs exceeds statewide average 2. $176M one-time money	Five-year plan to equalize AB 602 funds to SELPAs across California at 95%ile AB 428 provides supplemental grant to support students with greater needs, including students on the autism spectrum, and students who are blind, deaf or HOH, and ID.	Younger students who have an IEP would be eligible to attend Transitional Kindergarten	Increases base grant targets for LCFF *$11,799* for ADA in K and grades 1 to 3, inclusive. *$11,975* for ADA in grades 4 to 6, inclusive. *$12,332* for ADA in grades 7 & 8. *$14,289* for ADA in grades 9 to 12, inclusive.
PreK	Intent is for funding to be available to support preschoolers with disabilities	AB 428 establishes a funding mechanism to support special education preschool programs, by adding preschoolers to the AB 602 funding formula.	Funding to districts for 3 and 4-year old students with disabilities to attend preschool in settings such as state, Head Start or private preschool. The funding is outside AB 602. Not certain if funding is part of Prop 98.	
Other		AB 428 would allow school districts the ability to calculate a declining enrollment adjustment based		

		on district, rather than SELPA, ADA		

Federal News

Congress began appropriations work for FY 2019 in April 2018. The enactment of the 2018 Bipartisan Budget Act increased defense and non-defense discretionary spending caps and has effectively allowed appropriators to begin to draft spending bills without a formal budget resolution.

Education is funded as part of the Labor-Health Human Services-Education Appropriations. The appropriations for 2019 have already been PASSED for this area for the amount of $180B.

Federal Grant Amounts released for 2018-2019 Link here

MOE Workgroup

Feb 27, 2019 Meeting

- **Annual Budget Plan** draft document was finalized and submitted to CDE for final checking and alignment with 508 compliance. The content of the form has been approved. The official form may have to be saved and sent to CDE and posted as 508 Compliant PDFs. CDE may be suggesting an additional page that would isolate only their required items, which would lose all the graphical interface but should be simple to complete after you've completed the other information.
    - SELPA Association will continue to advocate for use of the excel and word doc with the graphic pieces for accountability, transparency and parent friendly features.
    - There were ongoing conversations about how to account accurately and in a timely manner about actual LCFF or other general fund revenues and expenditures to account for the actual costs of special ed. Attempts to consider Excess Cost, Base funding and specific resource codes all continue to pose challenges. Options may include using ADA, pupil count, % or Median methods.
- **Subsequent Year Tracking Form** has been updated and will be disseminated at the April SELPA meeting
- **Excess Cost Form** has been updated and will be disseminated at the April SELPA meeting.
- Instructions for both forms will be included. There will be an additional step required to compute the FTE calculation this year, and instruction will be provided.
- **18-19 Grants** have been finalized and approved. Waiting for the grant packets - timeline undetermined, but should be soon. Long term plan is to improve this timing.
- Final payments for 17-18 are still pending - if you have not submitted your final expenditure report please review with your business department to make sure you have claimed all funds.
- Notice for FUTURE coding - SACS code software will be updated for the **2020-2021 year** - RES code 5770 and 5750 will be deleted and replaced with a single code - **RES 5760. Resource Code 5760 will be for Special Education services - 5 - 22.**
    - Note: Many LEAs may use code 5760 for low incidence - another local code will have to be identified.
- Trailer Bill Language conversation

PCRA Resources

- Please find attached three links to three SHORT videos that discuss PCRA and the potential impact on Special Education MOE. Since PCRA is allocated at close of books it is not included in budget projections.
- The final video is the one with the key thought – You decide locally how to allocate the factors, which means that you do not have to allocate to special education on final close of books if you do not wish you MOE to increase.
- Thanks to Eddie Davidson of Fresno County for the videos!
- The Program Cost Report Allocation can have a significant impact on special education reporting. The following youtube videos may provide a basic understanding of its components:
    - Part 1 of 3: https://youtu.be/GSEUHdDztqI
    - Part 2 of 3: https://youtu.be/pcMlb0v_Xcw
    - Part 3 of 3: https://youtu.be/b7XlG3qEut8
    - Link to PPT slides: http://selpa.fcoe.org/accounting

The May Revision is a statutorily required action every year. Governor Gavin Newsom will adjust January State Budget proposals and present new proposals in view of a revised revenue outlook and stakeholder feedback. The May Revision Workshop will incorporate the results of revised revenue estimates, finalize the Local Control Funding Formula (LCFF) provisions for 2019-20, provide the latest on Special Education funding, incorporate any revisions of the accountability system, and revise the out-year estimates for LCFF funding for your multiyear projections.

The Workshop Will Provide:

- A revised School Services of California, Inc. Dartboard
- Updated per-pupil revenue amounts
- Planning factors for the out years of the multiyear projection
- Updates on accountability rubrics, the Local Control and Accountability Plan, and other significant policy issues
- The appropriate use of ending balances and other resources
- Operational guidance for new revenues, new regulations, and increasing expenditure obligations
- Other challenges and opportunities for local school agency leaders
- Issues to consider when closing the books for 2018-19
- Discussion and analysis of major education policy issues

Online

DESERT/MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA
DESERT/MOUNTAIN CHARTER SPECIAL EDUCATION LOCAL PLAN AREA
17800 HIGHWAY 18 • APPLE VALLEY, CA 92307
(760) 552-6700 • (760) 242-5363 FAX

Behavioral Emergency Report (BER)

DIRECTIONS: Review/complete the information below and mark the appropriate box. Forward the completed Behavioral Emergency Report (BER) to the site administrator and to the director of special education for review. The director of special education will forward the information to SELPA (Attn: MIS Support Analyst). Please note that a BER ***must*** be completed immediately whenever an emergency intervention is used (such as a Pro-ACT®/CPI approved behavioral restraint/seclusion) or serious property damage occurs. The parent(s)/guardian(s) and residential care provider, if applicable, must be notified of the incident within one school day.

(NOTE: The existing law requires the IEP team to consider the use of positive behavioral interventions and supports to address behaviors that impede the learning of the child and others. U.S.C. 1414(d)(d)(B)(i) and EC 56521.2)

☐ If the student *does not have a behavioral plan* (**Behavioral Intervention Plan** - BIP): If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both. *EC 56521.1(g)*

☐ If the student *has a behavioral intervention plan* (**BIP**): If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan. *EC 56521.1(h)*

Student Name: _____ Age: _____ Gender: ☐ Male ☐ Female

Race/Ethnicity: _____ LEA of Attendance: _____ LEA of Residence: _____

Date of Incident: _____ Time of Incident: _____ Setting and Location of Incident: _____

Describe the incident: *(including, in specific terms the triggers of the challenging behavior, the types of non-verbal, verbal, and/or physical (behavioral restraint and/or seclusion) interventions that were used by team members from least to most restrictive, and student and staff debriefing)*

Explain the details of injuries sustained by the student(s) and staff:

Explain any serious property damage that was sustained during the incident *(ex: school wall graffiti, broken windows/furniture, damage to walls or personal property of others)*:

IEP meeting scheduled: **Date:** _____ **Time:** _____

Report completed by: _____ Title/Position: _____

A copy of the Behavioral Emergency Report was provided to the following:

☐ Site Administrator	Date/Time: _____	☐ phone ☐ fax ☐ e-mail ☐ other:	_____
☐ Parent/Guardian (within 1 school day)	Date/Time: _____	☐ phone ☐ fax ☐ e-mail ☐ other:	_____
☐ Special Education Director	Date/Time: _____	☐ phone ☐ fax ☐ e-mail ☐ other:	_____
☐ SELPA	Date/Time: _____	☐ phone ☐ fax ☐ e-mail ☐ other:	_____

CALIFORNIA ASSOCIATION OF HEALTH AND EDUCATION LINKED PROFESSIONS
17800 Highway 18 • Apple Valley, CA 92307 • (760) 552-6700 Main • (760) 242-5363 Fax

MEMORANDUM

DATE: March 15, 2019

TO: Directors of Special Education

FROM: Kathleen Peters, Program Manager

SUBJECT: Occupational and Physical Therapy Reports

Attached are the occupational and physical therapy *Referral Status, and Current Students Direct Services* reports by district.

If you have any questions concerning either report, please contact me at (760) 955-3568 at kathleen.peters@cahelp.org.

CAHELP

California Association of Health & Education Linked Professions
17800 Highway 18
Apple Valley, CA 92307-1219

P 760-552-6700
F 760-242-5363
W www.cahelp.org

MEMORANDUM

Date: March 6, 2019

To: Directors of Special Education

From: Jenae Holtz, Chief Executive Officer

Subject: Audiological Service Reports

Attached are the Audiological Service Reports for the month of February 2019 by district.

If you have any questions concerning these reports, please contact Linda Rodriguez, Program Specialist at (760) 955-3681 or via email at linda.rodriguez@cahelp.org.

Desert Mountain SELPA

2018-2019 Non-Public School Placement Report

	January				February				March				April				May				June			
	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL
Adelanto	6		3	9	6		3	9	7		3	10												
Apple Valley	11		7	18	13		7	20	14		10	24												
Baker																								
Barstow	1	2		3	3	2		5	4	2		6												
Bear Valley		3		3		2		2		1		1												
Helendale																								
Hesperia	8	1		9	7	1		8	7	1		8												
High Tech High																								
Lucerne Valley		1		1						1		1												
Needles																								
Oro Grande																								
Silver Valley																								
Snowline	9	6		15	8	5		13	8	5		13												
Trona																								
Victor Elem	4	1		5	7	1		8	7			7												
VVUHSD	17	4		21	19	4		23	19	5		24												
TOTALS	**56**	**18**	**10**	**84**	**63**	**15**	**10**	**88**																
2017-18 TOTALS	32	17	5	54	30	16	5	51	33	16	6	55	30	17	5	51	21	17	6	44	23	17	5	45
2016-17 TOTALS	88	21	15	124	79	20	13	112	79	17	14	110	87	17	14	118	90	19	14	123	90	21	14	125
2015-16 TOTALS	89	25	15	129	86	23	13	122	90	25	17	132	88	21	20	129	93	21	16	130	89	25	15	129

California Association of Health and Education Linked Professions

Upcoming Trainings

Date/Time	Event	Location
3/19/2019 8:30 AM - 3:00 PM	MEANINGFUL PARENT PARTICIPATION	DMESC
3/19/2019 8:30 AM - 3:30 PM	NONVIOLENT CRISIS INTERVENTION TRAINING (CPI)	DMESC
3/20/2019 1:00 PM - 4:00 PM	WEBIEP AFTERNOON SESSION	DMESC
3/20/2019 8:30 AM - 11:30 A	WEBIEP MORNING SESSION	DMESC
3/21/2019 3:00 PM - 5:00 PM	SUPPORTING AND UNDERSTANDING CHILDREN FROM ADVERSE BACKGROUNDS	DMESC
3/21/2019 8:30 AM - 3:30 PM	TRAUMA, TOXIC STRESS, BEHAVIOR, AND THE DEVELOPING BRAIN AND ADVERSE BACKGROUNDS	DMESC
3/27/2019 12:30 PM - 4:00 PM	PBIS TOT TRAINING PREP	DMESC
3/28/2019 12:30 PM - 3:30 PM	REINFORCEMENT	DMESC
3/28/2019 8:00 AM - 4:00 PM	RESTORATIVE CONFERENCES	DMESC
4/2/2019 8:30 AM - 3:30 PM	BSP THROUGH THE PBIS LENS	DMESC

Upcoming Trainings

Date/Time	Event	Location
4/2/2019 8:30 AM - 3:30 PM	PBIS SUSTAINABILITY NETWORK	DMESC
4/3/2019 8:30 AM - 3:30 PM	NONVIOLENT CRISIS INTERVENTION TRAINING (CPI)	DMESC
4/3/2019 1:00 PM - 4:00 PM	WEBIEP AFTERNOON SESSION	DMESC
4/3/2019 8:30 AM - 11:30 A	WEBIEP MORNING SESSION	DMESC
4/4/2019 2:00 PM - 4:00 PM	PBIS CREATING A RESPONSIVE CLASSROOM	DMESC
4/5/2019 9:00 AM - 11:00 A	SPECIAL CIRCUMSTANCE INSTRUCTIONAL ASSISTANCE (SCIA) REVIEW	DMESC
4/11/2019 8:30 AM - 3:30 PM	AUTISM FOR PARAPROFESSIONALS: BEHAVIOR, COMMUNICATION, AND SOCIAL UNDERSTANDING	DMESC
4/12/2019 12:30 PM - 3:30 PM	EARLY CHILDHOOD CLASSROOM STRATEGIES FOR EFFECTIVE LARGE GROUP (CIRCLE-TIME) INSTRUCTION	DMESC
4/12/2019 8:30 AM - 3:30 PM	STEERING AND SPECIAL EDUCATION DIRECTORS' TRAINING	DMESC
4/15/2019 8:30 AM - 4:00 PM	IMSE ComPrehensive Orton-Gillingham	DMESC

Upcoming Trainings

Date/Time	Event	Location
4/17/2019 1:00 PM - 4:00 PM	WEBIEP AFTERNOON SESSION	DMESC
4/17/2019 8:30 AM - 11:30 A	WEBIEP MORNING SESSION	DMESC
4/18/2019 8:30 AM - 3:30 PM	WHY TRY? LEVEL 2	DCESC
4/23/2019 5:30 PM - 7:30 PM	11TH ANNUAL TRANSITION RESOURCE FAIR	DMESC
4/25/2019 8:30 AM - 3:30 PM	PBIS TEAM WORKGROUP	DMESC
4/25/2019 1:30 PM - 3:30 PM	PROMOTE PROCESS AFTERNOON SESSION	DMESC
4/25/2019 9:00 AM - 11:00 A	PROMOTE PROCESS COURSE MORNING SESSION	DMESC
4/30/2019 8:30 AM - 2:00 PM	IMPLEMENTING CULTURALLY RESPONSIVE SYSTEMS AND PRACTICES	DMESC
4/30/2019 12:30 PM - 3:30 PM	SCHOOL PYSCHOLOGISTS COMMITTEE MEETING	DMESC
5/1/2019 8:30 AM - 3:30 PM	NONVIOLENT CRISIS INTERVENTION TRAINING (CPI)	DMESC

Upcoming Trainings

Date/Time	Event	Location
5/1/2019 1:00 PM - 4:00 PM	WEBIEP AFTERNOON SESSION	DMESC
5/1/2019 8:30 AM - 11:30 A	WEBIEP MORNING SESSION	DMESC
5/3/2019 1:30 PM - 3:30 PM	EARLY CHILDHOOD PROFESSIONAL LEARNING COLLABORATIVE GROUP	DMESC
5/3/2019 9:00 AM - 3:00 PM	MANAGEMENT INFORMATION SYSTEM (MIS) USERS' MEETING	DMESC
5/9/2019 5:00 PM - 7:00 PM	COMMUNITY ADVISORY COMMITTEE	DMESC
5/15/2019 1:00 PM - 4:00 PM	WEBIEP AFTERNOON SESSION	DMESC
5/15/2019 8:30 AM - 11:30 A	WEBIEP MORNING SESSION	DMESC
5/24/2019 12:30 PM - 3:30 PM	MANAGING BURNOUT, COMPASSION FATIGUE, VICARIOUS TRAUMA, AND RESILIENCE	DMESC
5/31/2019 2:30 PM - 4:00 PM	WEBIEP SPANISH TRANSLATORS' WORKGROUP	DMESC

Subject: FW: California MTSS: Know My Name, Face & Story - 2019 CA MTSS PLI

From: bounce-1603893-5157110@mlist.cde.ca.gov <bounce-1603893-5157110@mlist.cde.ca.gov> **On Behalf Of** SPECEDINFOSHARE
Sent: Monday, March 4, 2019 10:58 AM
To: Jenae Holtz <Jenae.Holtz@cahelp.org>
Subject: California MTSS: Know My Name, Face & Story - 2019 CA MTSS PLI

Date: March 4, 2019

Subject: Information Sharing from the State Director of Special Education

The Orange County Department of Education, Butte County Office of Education, and the UCLA Center for the Transformation of Schools are hosting the 3rd Annual California Multi-Tiered System of Support (MTSS) Professional Learning Institute (PLI) on July 29–31, 2019 at the Long Beach Convention Center. This year's theme is "All Means All - Know My Name, Face, and Story."

The annual institute is a major educational event for educators and community members committed to creating inclusive and equitable school conditions for students and families. Stakeholders are invited to share promising practices that support the academic, behavioral, and social-emotional success of all students.

The 2019 California MTSS PLI theme "All Means All - Know My Name, Face, and Story" will focus on promoting excellence, equity, and access for all learners. The planning committee is excited to offer our participants the opportunity to engage deeply with the California MTSS Framework and the California Department of Education's School Conditions and Climate Work Group Recommendation Framework (CCWG).

Visit https://camtsspli.ocde.us for information regarding event registration and hotel accommodations.

We are looking forward to seeing you at this year's event.

Joseph Bishop, Ph.D.
Director for the Center for the Transformation of Schools, University of California, Los Angeles

Rindy DeVoll
MTSS Director for Rural California, Butte County Office of Education

Christine Olmstead, Ed.D.
Associate Superintendent, Orange County Department of Education

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