



Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act

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**U.S. Department of Education, Office of Special Education and Rehabilitative Services,
*Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter
Schools under the Individuals with Disabilities Education Act (December 28, 2016)***

The Office of Special Education and Rehabilitative Services (OSERS) is issuing this guidance to provide charter schools, States, State educational agencies (SEAs), local educational agencies (LEAs), other public agencies, parents, and other stakeholders with information regarding the rights of children with disabilities attending charter schools and their parents under the Individuals with Disabilities Education Act (IDEA or Act). Specifically, the guidance emphasizes that children with disabilities who attend public charter schools and their parents retain all rights and protections under Part B of IDEA just as they would if the children were enrolled in other public schools. The Questions and Answers included in this document also address questions regarding IDEA requirements governing the provision of a free appropriate public education (FAPE) to IDEA-eligible students attending charter schools, child find and evaluations, placement procedures, procedural safeguards, IDEA funding and IDEA obligations related to charter school closures, and other topics. This guidance is being released jointly with guidance from the United States Department of Education's (ED's or Department's) Office for Civil Rights (OCR) addressing the rights of students with disabilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) available at: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>.

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Overview

1. Why have ED’s OSERS and OCR issued separate guidance documents about the rights of students with disabilities in charter schools?

In recent years, stakeholders have advised OSERS and OCR of a need for more information about the rights of students with disabilities who attend, or wish to attend, charter schools under the laws for which OSERS (IDEA) and OCR (Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, both as amended) are responsible. In considering how best to address this need, OSERS and OCR determined that the laws for which the respective offices are responsible are sufficiently different in terms of purposes, definitions of the populations of students covered, and requirements, that two coordinated, but separate, documents are necessary to outline with clarity the rights of students with disabilities in charter schools under the respective laws. For this reason, OSERS and OCR have, in coordination, issued separate guidance documents addressing the rights of students with disabilities in charter schools under these complementary, but different, laws.¹

2. What is the purpose of the IDEA?

IDEA is the Federal law that assists States, and through them, LEAs, in providing special education and related services to children with disabilities. The primary purpose of the IDEA Part B program² is for States and school districts to make FAPE, as defined in the IDEA, available to all eligible children with disabilities and to ensure that IDEA’s rights and protections are afforded to eligible children and their parents.³

3. How are charter schools defined under the IDEA Part B regulations?

While charter schools are established according to individual State charter school laws, the term “charter school,” as used in this document and as defined in the current IDEA Part B regulations, has the meaning of “charter school” in the Elementary and Secondary Education Act of 1965

¹ See OCR guidance document, Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973, December 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>.

² Part B of IDEA is a formula grant program, consisting of the Grants to States program authorized under section 611 of the Act and the Preschool Grants Program authorized under section 619 of the Act. States that meet specified grant eligibility conditions receive grants (financial assistance) under Part B from the Department, and the amount of each grant award is determined based on a statutory formula. Once a State receives its grant, it is able to retain a specified amount of funds for administration and other authorized State-level activities. States distribute most of their Part B grant awards by making subawards to eligible LEAs or school districts, including charter schools that operate as LEAs, for use in accordance with Part B of the Act. 34 CFR §§300.705 and 300.816. Hereafter, this document will include both programs (sections 611 and 619) when referring to Part B grants (to States) or Part B subawards or subgrants (to LEAs).

³ The term “parent” means a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or a surrogate parent who has been appointed in accordance with 34 CFR §300.519. 34 CFR §300.30.

(ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). 34 CFR §300.7. Because the NCLB definition of “charter school” was recently amended by the Every Student Succeeds Act of 2015 (ESSA), the ESSA definition of “charter school” applies for purposes of this document and IDEA Part B. Section 4310(2) of the ESEA, as amended by the ESSA, provides that:

The term “charter school” means a public school that:

- A In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph [the paragraph that sets forth the Federal definition];
- B Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
- C Operates in pursuit of a specific set of educational objectives determined by the school’s developer and agreed to by the authorized public chartering agency;
- D Provides a program of elementary or secondary education, or both;
- E Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- F Does not charge tuition;
- G Complies with the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], section 444 of the General Education Provisions Act [20 U.S.C. 1232g] (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”), and Part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.];
- H Is a school to which parents choose to send their children, and that—
 - i. Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or
 - ii. In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described above;
- I Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

- J Meets all applicable Federal, State, and local health and safety requirements;
- K Operates in accordance with State law;
- L Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and
- M May serve students in early childhood education programs or postsecondary students.

20 U.S.C. §7221i(2).

4. Who is a child with a disability under IDEA?

A child with a disability is a child evaluated in accordance with 34 CFR §§300.304 through 300.311, as having one or more specified disabilities⁴ and who, because of disability, needs special education and related services. Under IDEA, States provide special education and related services to eligible children with disabilities who reside in the State and who are within a State's mandatory age range for the provision of FAPE. Entitlement to FAPE begins at a child's third birthday, and could last until the child's 22nd birthday, depending on State law or practice, or the order of any court, respecting the provision of public education to children of those age ranges. 34 CFR §300.102(a)(1).

5. Do children with disabilities who attend charter schools and their parents retain all rights and protections under Part B of IDEA?

Yes, charter schools are public schools; therefore, children with disabilities who attend charter schools and their parents retain all rights and protections under Part B of IDEA just as they would if the children were enrolled in other public schools. 34 CFR §300.209(a). This is true regardless of whether the charter school operates as an LEA under State law, is a public school of an LEA, or is a nonprofit entity that is neither an LEA nor a public school of an LEA. 34 CFR §300.209. The specific rights and protections most relevant to charter school children with disabilities and their parents are described more fully in the following Q's & A's.

Treatment of Charter Schools under IDEA

6. How are charter schools treated under IDEA?

The answer to this question depends upon how a charter school operates or is designated under State law. As an initial matter, the State, through law, regulation, policies, and procedures, in carrying out its general supervisory responsibility for all educational programs for children with disabilities administered in the State, must address how a charter school fits into the State's process for administering IDEA subgrants and for ensuring that FAPE is made available to all eligible children with disabilities. 34 CFR §§300.100 and 300.149(a). As a practical matter, most

⁴ For a list of specific disability categories and their regulatory definitions, see 34 CFR §300.8.

States utilize a structure that allocates IDEA subgrants to eligible LEAs, which, in turn, have initial or primary responsibility for ensuring FAPE. Section 300.209 also addresses the possible assignment of initial FAPE responsibilities, and includes a requirement for equitable treatment of charter schools within an LEA. The regulation establishes three options: 1) charter schools can be public schools of the LEA; 2) charter schools can be LEAs themselves; or 3) charter schools can be nonprofit entities that are neither LEAs nor schools of an LEA.⁵ Notwithstanding these three categories, State law may designate another public entity, such as another LEA, as initially responsible for ensuring that IDEA requirements are met for children with disabilities attending a charter school. Whether or not a State or SEA assigns primary or initial FAPE responsibilities to another entity, OSERS expects that the responsible entity or agency will have the ability and capacity to either provide or ensure the provision of FAPE and meet applicable IDEA requirements. See, e.g., 34 CFR §§300.200-300.224. It is important to note that, regardless of any assignment of responsibility for ensuring that the requirements of Part B of IDEA are met, the SEA is not relieved of its IDEA Part B responsibilities and retains ultimate responsibility for ensuring the provision of FAPE under IDEA. See Q&A #9 below and 34 CFR §§300.149(a) and 300.600.

7. What are the responsibilities of an LEA when a charter school is a public school of an LEA?

For a charter school that is a public school of an LEA that receives an IDEA Part B subaward or subgrant, the LEA must serve children with disabilities attending that charter school “in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent that the LEA has a policy or practice of providing such services on the site to its other public schools.” 34 CFR §300.209(b)(1)(i). Where a charter school is a school of an LEA, that LEA is responsible for ensuring that children with disabilities in the charter school are provided FAPE consistent with the requirements of IDEA, unless State law assigns responsibility to some other entity. 34 CFR §300.209(b)(2)(i).

8. What are a charter school LEA’s responsibilities under IDEA?

The second type of charter school mentioned in IDEA is a charter school that is its own LEA. To operate as a charter school LEA that receives a subgrant and is responsible for implementing the requirements of IDEA Part B, the charter school LEA must meet certain criteria. First, the charter school LEA must meet the IDEA Part B definition of “LEA” in 34 CFR §300.28, which means that it is legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district or other political subdivision of a State or a combination of districts or counties. The question of whether a charter school is its own LEA or a public school within an LEA generally is determined by State charter school law. Next, the charter school LEA must establish its eligibility, consistent with section 613 of IDEA and 34 CFR §§300.200-300.213 to receive a subgrant of IDEA Part B funds from the State. LEAs that receive these funds, including

⁵ This document primarily focuses on charter schools that operate as LEAs and charter schools that are public schools of an LEA. Unless otherwise noted, this document does not address charter schools that are neither LEAs nor schools of an LEA.

charter school LEAs, must use them in accordance with Part B of IDEA for the purposes of providing special education and related services to children with disabilities, and to ensure that the rights of eligible children and their parents are protected. 34 CFR §300.705(a).

The charter school LEA is responsible for ensuring that the requirements of Part B of IDEA are met, unless State law assigns responsibility to some other entity. 34 CFR §300.209(c). The charter school LEA's responsibilities are generally the same as any other LEA and include implementing child find and conducting periodic evaluations and reevaluations, developing, reviewing, and revising individualized education programs (IEPs), and providing or arranging for the provision of required special education and related services in the child's least restrictive environment (LRE), affording eligible children and their parents procedural safeguards and due process rights, and complying with the confidentiality of information requirements.⁶

Accordingly, the charter school LEA must ensure that a child with a disability and his or her parents are afforded all rights and protections specified in IDEA that they would have received if the child were enrolled in another public school program. In instances where the charter school LEA may not already have available the type of special education or related services necessary to provide FAPE as specified in a student's IEP, unless State law assigns responsibility to some other entity, the charter school LEA must arrange to provide the services directly or, consistent with the applicable State charter school law, may choose to contract with another service provider to ensure the provision of the required special education and related services at no cost to the parents.

9. What is the SEA's responsibility for general supervision of the education of children with disabilities attending charter schools under IDEA?

Each SEA has the statutory responsibility to exercise general supervision over all educational programs for children with disabilities administered within the State, including programs for children with disabilities in charter schools. The SEA is responsible for ensuring that all such programs meet the educational standards of the SEA, including IDEA Part B requirements. 34 CFR §300.149(a)(2). As described in other sections of this document, specific IDEA Part B responsibilities regarding charter schools depend upon how the State designates those schools under State law consistent with applicable IDEA Part B requirements. As explained in Q&A #6 above, charter schools can operate as public schools of the LEA, as LEAs themselves, or as nonprofit entities that are neither LEAs or schools of an LEA. Regardless of the charter school's

⁶ The IDEA Part B regulations governing confidentiality of information, at 34 CFR §§300.610–300.626, contain requirements which address inspection and review, amendment, and consent for disclosure of personally identifiable information from education records collected, maintained, or used by participating agencies under Part B. Students with disabilities attending charter schools and their parents are also protected by the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. 1232g and 34 CFR part 99. More information about FERPA is available at: www.ed.gov/fpco. Note that the Part B confidentiality of information provisions incorporate some of the FERPA requirements but also include several provisions that are specifically related to children with disabilities. For more information, see ED's additional guidance regarding IDEA and FERPA Confidentiality Provisions released in June 2014, available at: www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf.

status, the SEA retains the ultimate responsibility for ensuring that the requirements of Part B of IDEA are met, consistent with 34 CFR §300.149.⁷

10. Does a charter school authorizer have responsibilities under IDEA?

A charter school authorizer or “authorized public chartering agency,” as defined in the ESEA, means an SEA, LEA or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school. 20 U.S.C. § 7221(i)(1). While IDEA does not assign any specific IDEA responsibilities to the charter school authorizer, consistent with the definitions of authorizer and charter school in section 4310 of the ESSA, OSERS expects that a charter school authorizer will be able to ensure that any charter school that it authorizes complies with the terms of its charter as well as applicable Federal and State laws, including other civil rights laws such as Title II of the Americans with Disabilities Act. In most cases, the applicable State charter school law will specify the authorizer’s responsibilities. Therefore, it is essential for the authorizer to be knowledgeable about IDEA requirements in carrying out its State-imposed responsibilities. In some States, depending on State law, authorizers may be LEAs, SEAs, or other entities. If this is the case, both LEAs and SEAs have specific responsibilities assigned to them under IDEA, separate from their responsibilities as authorizers, with respect to children with disabilities attending charter schools and their parents. As noted in Q&A #9 above, IDEA requires each SEA to exercise general supervision over all educational programs for children with disabilities in the State to ensure that all such programs meet the educational standards of the SEA and IDEA Part B requirements. 34 CFR §300.149. As a practical matter and as determined by State law, charter school authorizers often play a critical role in educating charter schools about their responsibilities under IDEA and the regulations, policies, and procedures for implementing an IDEA structure or methods of administration. In addition, State charter school laws generally make authorizers responsible for ensuring that the charter schools they authorize demonstrate that they have the capacity to comply with applicable Federal and State laws, including IDEA requirements assigned to them as public schools of the State. Therefore, authorizers should be knowledgeable about the requirements of IDEA necessary to fulfill their responsibilities under State charter school laws to authorize, monitor, support, and if necessary, close charter schools.

FAPE and Provision of Services

11. What is FAPE?

Under IDEA, FAPE is a statutory term. It is defined to include special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including IDEA Part B requirements; (c) include an appropriate preschool, elementary school, or secondary school education in the State

⁷ If the charter school is not an LEA that receives IDEA Part B funds under 34 CFR §§300.705 and 300.816, or a school that is part of an LEA that receives an IDEA Part B subaward or subgrant, then the SEA is responsible for ensuring that children with disabilities are provided FAPE. There is nothing in IDEA that precludes the State from assigning to another entity responsibility for ensuring that the requirements of IDEA are met with respect to children with disabilities attending a particular charter school and their parents. However, the SEA must maintain ultimate responsibility for ensuring compliance with IDEA, consistent with 34 CFR §300.149.

involved; and (d) are provided in conformity with an IEP that meets the requirements of 34 CFR §§300.320 through 300.324. 34 CFR §300.17; see also 20 U.S.C. 1401(9). Further, each child with a disability is entitled to receive FAPE in the LRE. 34 CFR §300.114-300.118.

12. How do charter schools implement the requirement to provide FAPE?

Under IDEA, the vehicle for ensuring the provision of FAPE to all students with disabilities, including charter school students with disabilities, is a properly-developed IEP. 34 CFR §§300.101, 300.112, 300.201 and 300.17. Accordingly, all children with disabilities in charter schools must receive special education and related services and supplementary aids and services in accordance with the child's IEP. The IEP is the written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324. 34 CFR §300.320(a).

As previously discussed, under 34 CFR §300.209(c)(2), charter schools that are LEAs are responsible for ensuring the development and implementation of a child's IEP and that FAPE is provided in accordance with a child's IEP, unless State law assigns responsibility to some other entity. In the case of a charter school that is a public school of an LEA, that LEA is responsible for ensuring the development and implementation of a child's IEP and ensuring that FAPE is provided in accordance with a child's IEP, unless State law assigns responsibility to some other entity. 34 CFR §300.209(b)(2).

13. What are a charter school's responsibilities for serving a child with a disability once that child is enrolled?

Under 34 CFR §300.323(a), at the beginning of each school year, each responsible public agency must have in effect for each child with a disability in its jurisdiction an IEP that meets IDEA requirements. If a charter school LEA is the responsible entity, the charter school LEA must ensure that the child's IEP Team, a group that includes school officials and the child's parents and the child, whenever appropriate, reviews the child's IEP periodically, but not less than annually, to ensure that the annual goals are being achieved, and revises the IEP as appropriate. 34 CFR §300.324(b)(1); see also 34 CFR §300.321 (IEP Team). Each LEA also must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. Parents must be notified of the meeting early enough to ensure that they have an opportunity to attend, and the meeting must be scheduled at a mutually agreed on time and place. 34 CFR §300.322(a).⁸ In general, once a child with a disability is enrolled in the charter school, the responsible public agency, commonly the LEA, must convene a meeting of the IEP Team, to develop the child's IEP. If the charter school is its own LEA, that LEA would initiate and conduct the meeting. If the charter school is a public school of an LEA, the LEA that includes the charter school must initiate and conduct the meeting

⁸ Note that under 34 CFR §300.324(a)(4), in making changes to a child's IEP after the annual IEP Team meeting, the parent and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. Further, under 34 CFR §300.324(a)(6), changes to the IEP may be made by the entire IEP Team at an IEP Team meeting, or by amending the IEP rather than redrafting the entire IEP, as described in 34 CFR §300.324(a)(4). This regulation also provides that upon request, parents must be given a copy of the revised IEP with the amendments incorporated.

and ensure that the child's IEP Team is appropriately convened so that the relevant IDEA requirements are met. As a practical matter, IEP Team meetings are generally initiated at the school level, but the LEA is responsible for conducting the meeting and for developing, reviewing, and revising the child's IEP. 34 CFR §§300.323(a) and (c) and 300.324(a)-(b). Each child's IEP must include, among other things, a statement of the child's annual goals, including academic and functional goals, the special education, related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, and the program modifications or supports for school personnel. The program of services set out in the child's IEP must enable the child to advance appropriately toward attaining his or her annual goals and to be involved and make progress in the general education curriculum, i.e., the same curriculum as for nondisabled students. 34 CFR §300.324(a)(2) and (4).

Once the IEP is developed, the group charged with determining the child's placement, which includes other qualified professionals and the child's parents, must then determine how to implement the child's IEP in accordance with IDEA's LRE requirements. 34 CFR §300.116(a)(1), (2), and (b)(2); 34 CFR §300.327; see Q&A #26 for a further explanation of IDEA's placement requirements.

14. Are there limits on the amount or type of special education or related services that can be provided to children with disabilities who attend charter schools?

No. Children with disabilities attending charter schools and their parents retain all rights under Part B of IDEA, as they would in other public schools. 34 CFR §300.209(a). Therefore, a charter school LEA or the LEA of which the charter school is a part may not unilaterally limit the services it will provide a particular child with a disability. The charter school LEA, or the LEA that includes the charter school, must provide a program of FAPE for the child in the LRE in which the child's IEP can be implemented, unless State law assigns responsibility to some other entity. 34 CFR §300.209(b)-(c). The IEP Team, is responsible for determining the special education and related services and supplementary aids and services necessary to make FAPE available to a child with a disability. The IEP Team must base this decision on the unique needs of the child, taking into account evaluation information as described at 34 CFR §§300.304 - 300.305. 34 CFR §300.324(a)(1). If a charter school is a public school of an LEA, the LEA of which the charter school is a part must first consider whether the special education and related services can be provided to the child at no cost to the parents in conformity with the child's IEP in the charter school, and if so, must implement the child's IEP in the charter school. If FAPE cannot be provided to the child in the charter school, the LEA of which the charter school is a part must place the child in another public school program. Additionally, the child's placement team may determine that it is necessary to place a child in a private school at public expense as a means of providing special education and related services to the child in accordance with 34 CFR §300.146. In this instance, the FAPE obligations to the child are the same as if the child were attending any other public school of the LEA.

When the charter school is an LEA and a child's IEP includes special education and related services that the charter school LEA does not currently offer, the charter school LEA has several options to address the child's needs, which may be specified in the State's charter school law. It does not, however, have the option of refusing to ensure that the child is provided all necessary special education and related services at public expense and at no cost to the parents in accordance with the child's IEP. To meet its FAPE responsibility to the child, which includes

meeting IDEA's LRE requirements, the charter school LEA could develop its own program of services or, for example, could contract with other public or private providers, including other LEAs, in order to provide required services, or otherwise arrange to provide the required services. A charter school LEA also could place a child with a disability in a private school at public expense in accordance with 34 CFR §300.146, as a means of meeting its FAPE responsibilities to the child. The charter school LEA, or LEA of which a charter school is a part, also could seek to use a State's LEA high cost fund described in 34 CFR §300.704(c) to help defray the cost of educating a particular high need child or high need children with disabilities, if the State has exercised its option to reserve 10 percent of the funds that the State reserves for other State-level activities for such a fund. OSERS also notes that these options are merely examples and do not constitute an exhaustive list of how a charter school LEA may choose to fulfill its responsibilities when it is the responsible public agency and the charter school LEA does not currently offer the educational program required for the child in accordance with a child's IEP. The State's charter school law generally will specify whether the charter school is its own LEA or a school within an LEA for purposes of IDEA, including the charter school's responsibilities or options regarding the provision of FAPE.

15. What are a charter school's obligations when a child who had an IEP in his or her previous school district enrolls in a charter school LEA or a new LEA that includes the charter school of enrollment?

Part B of IDEA contains requirements for IEPs when children with disabilities transfer into a new LEA in the same school year, and these requirements are fully applicable to children with IEPs who transfer from one LEA into a new charter school LEA or who transfer into a new charter school that is part of an LEA. If a child with a disability who received special education and related services pursuant to an IEP in a previous LEA transfers to a new LEA in the same State and enrolls in a new school within the same school year, the new LEA must provide FAPE to the child, even if the previous LEA failed to meet the annual review requirements because the child moved. 34 CFR §300.323(e). The determination of what constitutes FAPE must be done in consultation with the parents and includes services comparable to those described in the child's IEP from the previous LEA. These comparable services are provided until the new LEA either (1) adopts the child's IEP from the previous LEA; or (2) develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324. In addition, consistent with 34 CFR §300.323(e), the new LEA must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services.

Under 34 CFR §300.323(f), if a child with a disability who had an IEP that was in effect in a previous LEA in another State transfers to an LEA in a new State, and enrolls in a new school within the same school year, the new LEA (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous LEA), until the new LEA (1) conducts an evaluation pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by the new LEA); and, if appropriate, (2) develops and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324. Thus, if a child with a disability who had an IEP in a school district in one State transfers to an LEA in a different State and enrolls in a charter school LEA or a charter school that is a school of the LEA in the same school year, the new LEA must provide

FAPE to the child with a disability through the provision of comparable services, until the new LEA conducts its own evaluation and makes its own eligibility determination, if determined necessary, and, if appropriate, develops a new IEP for the child.

The new LEA must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services.

34 CFR §300.323(f). It is not permissible to require that a child who transfers from another State with a current IEP to remain at home without receiving special education and related services until a new IEP is developed by the new LEA.⁹

16. What options are available when a charter school does not receive the IEP of a child with a disability from the previous LEA?

The IDEA Part B regulations require that the new public agency in which the child with a disability enrolls take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled; and pursuant to 34 CFR §99.31(a)(2), the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency. 34 CFR §300.323(g).

After taking reasonable steps to obtain the child's records from the public agency in which the child was previously enrolled, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, if the new charter school LEA or LEA that includes the charter school is not able to obtain the IEP from the previous public agency or from the parent, the new public agency is not required to provide special education and related services to the child pursuant to 34 CFR §300.323(e) and (f).

Even if the parent is unable to provide the child's IEP from the previous public agency, if the new charter school LEA, or LEA that includes the charter school, decides that an evaluation is necessary because it has reason to suspect that the child has a disability, nothing in IDEA or its implementing regulations would prevent the charter school from providing special education services to the child while the evaluation is pending, subject to an agreement between the parent and the new public agency. However, if the child receives special education and related services while the evaluation is pending, the new charter school LEA, or LEA that includes the charter school, still must ensure that the child's evaluation, which would be considered an initial evaluation, is conducted within 60 days of receiving parental consent for the evaluation or within the State-established timeframe within which the evaluation must be conducted, in accordance with 34 CFR §300.301(c)(1). Further, under 34 CFR §300.306(c)(1)-(2), if the new charter school LEA, or LEA that includes the charter school, conducts an eligibility determination and concludes that the child has a disability under 34 CFR §300.8 and needs special education and related services, the new public agency still must develop and implement an IEP for the child in

⁹ See Question A-3 in the Department's Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C> See also 20 U.S.C. 1414(d)(2)(C)(i)(II) and (ii) and 34 CFR §300.323(f)-(g).

accordance with applicable requirements in 34 CFR §§300.320 through 300.324, even though the child is already receiving special education services from the new public agency.

If there is a dispute between the parent and the new public agency regarding whether an evaluation is necessary or what special education and related services are needed to provide FAPE to the child, the dispute could be resolved through the mediation procedures in 34 CFR §300.506 or, as appropriate, the due process procedures in 34 CFR §§300.507 through 300.516. If a due process complaint requesting a due process hearing is filed pursuant to 34 CFR §300.507, the public agency would treat the child as a general education student while the due process complaint is pending. 71 *Fed Reg* 46540, 46682 (Aug. 14, 2006).¹⁰

17. After implementing a child’s IEP, what actions must a charter school LEA, or an LEA that includes a charter school, take if the charter school wants to change the amount or type of services provided to the student?

If a charter school LEA or the LEA that includes the charter school believes that a child with a disability requires a significant change in the amount or type of services, it generally would be required to convene a meeting of the IEP team which includes one or both of the child’s parents, to revise the child’s IEP. See 34 CFR §§300.321 and 300.324(b). Each child’s IEP must be revised, as appropriate, to address any lack of expected progress toward the annual goals, and in the general education curriculum, if appropriate, the results of any reevaluation conducted under 34 CFR §300.303, information about the child provided to, or by, the child’s parents, as described in 34 CFR §300.305(a), the child’s anticipated needs, or other matters. 34 CFR §300.324(b)(1)(ii). If there are circumstances that prevent the IEP Team from meeting in person, as described in footnote 6, it may be possible for the IEP to be amended without conducting a meeting of the entire IEP Team. 34 CFR §300.324(a)(4)-(6).

The IDEA Part B regulations require that written notice be given to the parents of a child with a disability a reasonable time before the public agency (in this case, the responsible LEA) (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 34 CFR §300.503(a)(1)-(2). The notice, which must explain the reasons for the agency’s proposal or refusal, must 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, unless it is clearly not feasible to do so.¹¹ 34 CFR §300.503(b)-(c). The District must

¹⁰ See Question A-2 in the Department’s Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations available at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C> See also 20 U.S.C. 1414(d)(2)(C)(i)(II) and (ii) and 34 CFR §300.323(f)-(g).

¹¹ Some students are both IDEA-eligible and English Learners (ELs), and some of the parents of these students are limited English proficient (LEP). The IDEA and its regulations include requirements that apply to these populations, and charter school LEAs and LEAs that include charter schools must comply with these IDEA requirements as well as the applicable requirements in Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA). For more information about these requirements, see Sections F and J of the DOJ and OCR, *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents* (Jan. 7, 2015), available at <http://www.ed.gov/ocr/letters/colleague-el-201501.pdf>.

provide the written notice to parents with a reasonable time for them to fully consider a proposed change and respond to the action before the district implements the action.¹²

These same requirements apply if a child with a disability attends a charter school that is a public school of an LEA; however, the LEA of which the charter school is a part is responsible for convening the IEP Team meeting to revise the child's IEP, as appropriate, and for providing prior written notice to the parents if a change in services is recommended.

18. Must children with disabilities attending charter schools be included in general State and districtwide assessment programs?

Yes. As noted previously, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA. 34 CFR §300.209(a). Accordingly, the IDEA Part B requirements governing the participation of all children with disabilities in all general State and districtwide assessment programs, including assessments described in section 1111 of the Elementary and Secondary Education Act of 1965 (ESEA), apply to children with disabilities attending public charter schools. These include requirements for ensuring that these children receive appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs. 20 U.S.C. 1412(a)(16) and 34 CFR §300.160; 34 CFR §300.320(a)(6) and 300.201.¹³ Part B of IDEA requires States and LEAs to ensure that all children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), 20 U.S.C. 6311, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs.¹⁴ 34 CFR §300.160(a) and 300.201; see also 20 U.S.C. 1412(a)(16)(A) and 20 U.S.C. 1413(a)(1). IEP Teams must ensure that each child's IEP includes a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments. 34 CFR §300.320(a)(6).

19. What requirements apply to children with disabilities attending charter schools with respect to their participation in extracurricular and nonacademic activities?

States must ensure that their public agencies, including charter school LEAs and LEAs that include charter schools among their other public schools, take steps, including providing supplementary aids and services determined appropriate and necessary by the child's IEP Team, to afford children with disabilities an equal opportunity for participation in nonacademic and extracurricular services and activities. 34 CFR §300.107. If a charter school provides programs or activities such as counseling services, athletics, transportation, health services, recreational

¹² See Office of Special Education Programs (OSEP) Letter to Chandler (April 26, 2012), 59 IDELR 110, available at <https://www2.ed.gov/policy/speced/guid/idea/letters/2012-1/042612pwn1q2012.doc>

¹³ In 2015, the ESEA was reauthorized by the Every Student Succeeds Act of 2015 (ESSA), Pub.L. 114-95 (Dec. 10, 2015). ESSA also amended the IDEA assessment provisions in 20 U.S.C. 1412(a)(16)(C). These changes, which will apply to assessments conducted during the 2017-2018 school year, continue to require that all children with disabilities, including children with disabilities attending public charter schools, participate in all general State and district-wide assessment programs, including assessments described in section 1111 of the ESEA.

activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available, to nondisabled children, it also must provide these services and activities to children with disabilities. 34 CFR §300.107. Additionally, the child's IEP must include a statement of the supplementary aids and services that the child needs to participate in nonacademic and extracurricular services and activities offered at the charter school. 34 CFR §300.320(a)(4).

20. Must a charter school LEA, or the LEA that includes the charter school, provide a child with a disability the opportunity to participate in physical education classes?

Generally, yes. Physical education services must be made available to every child with a disability receiving FAPE, unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. 34 CFR §300.108. If necessary, charter school LEAs may consider partnering with nearby local school districts for access to accessible playgrounds and other appropriate equipment. In addition, the definition of "special education" in IDEA includes instruction in physical education. 34 CFR §300.39. Therefore, for some children with disabilities instruction in physical education may be a part of the special education included in their IEPs. For additional information, see "Creating Equal Opportunities for Children and Youth with Disabilities to Participate in Physical Education and Extracurricular Athletics" at <https://www2.ed.gov/policy/speced/guid/idea/equal-pe.pdf>.

21. If the IEP of a child with a disability includes transportation, is the charter school LEA or the LEA that includes the charter school responsible for providing that transportation?

Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16). It includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. If a child with a disability requires transportation as a related service, then the charter school LEA or the LEA that includes the charter school is responsible for providing that transportation, unless State law assigns responsibility to some other entity. For additional information regarding transportation services for children with disabilities, see "Questions and Answers on Serving Children with Disabilities Eligible for Transportation, November 2009" available at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C12%2C>.

22. Are children with disabilities who attend charter schools entitled to transition services?

Yes. The requirements for transition services for children with disabilities are found in the IDEA Part B regulations at 34 CFR §§300.320(b), 300.321(b), and 300.324(c). The definition of "transition services" is found at 34 CFR §300.43. Charter school LEAs and LEAs that include charter schools must comply with these requirements. The IEP for each child with a disability must, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, include: (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. 34 CFR §300.320(b). Additionally, the public agency must invite a child

with a disability to attend his/her IEP Team meeting if a purpose of the meeting will be the consideration of the child's postsecondary goals and the transition services needed to assist the child in reaching those goals. 34 CFR §300.321(b)(1). If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered. 34 CFR §300.321(b)(2). To the extent appropriate, with the consent of the parents or a child with a disability who has reached the age of majority under State law, the public agency also must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If a participating agency, other than the educational public agency, fails to provide the transition services described in the IEP, the public agency must reconvene the IEP Team to develop alternative strategies to meet the transition objectives. 34 CFR §300.324(c)(1). To assist in meeting these requirements, OSERS encourages charter schools, particularly charter school LEAs, to develop relationships with their counterparts in relevant participating agencies, such as the State vocational rehabilitation agency, to ensure that children with disabilities receive appropriate transition services to facilitate their movement from secondary school to postsecondary education and activities.

For additional information regarding charter schools' responsibilities regarding transition services, see "Questions and Answers on Secondary Transition, September 2011," and Section F of "Questions and Answers on IEPs, Evaluations and Reevaluations, September 2011" available at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C10%2C>, and the National Technical Assistance Center on Transition at <http://transitionta.org/>.

Child Find/Evaluation

23. What happens if a charter school suspects that one of its students may be a child with a disability?

The child find requirements in IDEA require SEAs and LEAs to have policies and procedures in effect to ensure that all children with disabilities residing in the State who need special education and related services are identified, located, and evaluated, regardless of the severity of the disability. This responsibility includes children who are suspected of having developmental delays, as defined in 34 CFR §300.8(b), and highly mobile and migrant children with disabilities. 34 CFR §300.111(b)-(c). The child find requirements apply to children enrolled in charter schools, regardless of whether the charter school operates as its own LEA or is a public school of an LEA. 34 CFR §§300.111(a)(1)(i) and 300.201. If a child is enrolled in a charter school that is part of an LEA, that LEA would be responsible for implementing child find requirements, unless State law assigns responsibility to some other entity. If the child is attending a charter school that operates as its own LEA, the charter school LEA would be responsible for implementing child find requirements, unless State law assigns responsibility to some other entity.

The child find requirements permit referrals from any source that suspects a child may be eligible for special education and related services. Child find activities typically involve a screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. Therefore, persons such as employees of the LEA, including a charter school LEA, or other LEAs responsible for the education of the child, may identify children who might need to be referred for an evaluation. However, consistent with the child find requirements and with the parental consent requirements,

either the child's parent or a public agency (in this case, the charter school LEA or the LEA that includes the charter school) may initiate a request for an initial evaluation to determine if the child is a child with a disability 34 CFR §300.301(b). The evaluation must be conducted within 60 days of receiving parental consent or within the State-established timeline for conducting the evaluation. 34 CFR §300.301(c)(1).¹⁵

24. How may a charter school implement a response to intervention (RTI) framework as part of its child find process?

If a charter school LEA or the LEA that includes the charter school implements a multi-tiered instructional framework, often referred to as RTI, prior to referring a child for an evaluation under IDEA, it is critical that the child find identification occurs in a timely manner and that no procedures or practices result in delaying or denying this identification. A parent may request an initial evaluation at any time to determine if his/her child is a child with a disability, regardless of whether the child has participated in an RTI framework. 34 CFR §300.301(b). An LEA, including a charter school LEA or an LEA that includes the charter school, may not reject a referral or delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework. 34 CFR §300.309(c). If the charter school does not suspect that the child has a disability, and denies the request for an initial evaluation, the responsible LEA must provide prior written notice to the parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision as well as a copy of the notice of procedural safeguards. 34 CFR §§300.503 and 300.504. The parent can challenge this decision by requesting mediation under 34 CFR §300.506, filing a due process complaint to request a due process hearing under 34 CFR §300.507, or filing a State complaint under 34 CFR §300.153, to resolve the dispute regarding the child's need for an evaluation.

25. When is a reevaluation required for an IDEA-eligible child with a disability who attends a charter school?

A reevaluation of each child with a disability attending a charter school must be conducted in accordance with 34 CFR §§300.304 through 300.311 if the LEA determines that the educational or related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation; or if the child's parent or teacher requests a reevaluation. A reevaluation conducted under IDEA may occur not more than once a year, unless the parent and the LEA agree otherwise; and must occur at least once every 3 years, unless the parent and the LEA agree that a reevaluation is unnecessary. 34 CFR §300.303. If the charter school operates as its own LEA, absent an assignment of responsibility to some other entity, the charter school LEA is responsible for ensuring that the reevaluation requirements in Part B of IDEA are met with

¹⁵ The timeframe described does not apply to a public agency if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or a child enrolls in a school of another public agency after the relevant timeframe has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR §300.8. This exception regarding a child enrolling in another public agency applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. 34 CFR §300.301(d).

respect to its children with disabilities. If the charter school is a public school of an LEA, absent an assignment of responsibility to some other entity, the LEA must ensure that the reevaluation requirements in Part B of IDEA are met with respect to the charter school's children with disabilities.

Placement and LRE Requirements

26. What is a charter school's obligation to educate eligible children with disabilities under IDEA with their peers without disabilities?

States must ensure that charter school LEAs and LEAs that include charter schools meet the LRE requirements in Part B of IDEA. 34 CFR §§300.114(a)(1) and 300.201. The LRE provisions require, to the maximum extent appropriate, that children with disabilities attending public schools, including public charter schools, be educated with children who are nondisabled. Further, special classes, separate schooling, or other removal of children with disabilities from the regular education environment can occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114(a)(2).

The requirements for determining the placement of a child with a disability are included in the IDEA Part B regulation at 34 CFR §300.116. Placement decisions must be made by a group of persons (the placement team), including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Each child's placement decision also must be made in conformity with IDEA's LRE provisions. This means that the placement decision must be determined at least annually and be based on the child's IEP. 34 CFR §300.116(a)-(b).

Under IDEA, the overriding rule is that placement decisions must be determined annually on an individual, case-by-case basis, depending on each child's unique needs and circumstances and based on the child's IEP. The recognition that no one single type of placement or service is appropriate for every child with a disability is reflected in the requirement that LEAs make available a range of placement options, known as a continuum of alternative placements, to meet the needs of children with disabilities for special education and related services.

34 CFR §300.115. The requirement for the continuum of alternative placements reinforces the importance of the individualized determination, not a one size fits all approach, in determining what placement is the LRE for each child with a disability. The options on this continuum include the alternative placements listed in the definition of special education at 34 CFR §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). 34 CFR §300.115(b)(1). The continuum also must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. 34 CFR §300.115(b)(2).

Before considering placement in a separate class or school, consistent with the LRE requirements described above, the placement team must first consider whether the child can be placed in regular classes with the use of supplementary aids and services. In all cases, however, placement decisions must not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery

system, availability of space, or administrative convenience. 71 *Fed. Reg.* 46539, 46588 (August 14, 2006).

27. How do charter schools implement the IDEA placement requirements?

Under 34 CFR §300.209(c), public charter schools that are LEAs are responsible for ensuring that the IEP and placement requirements of Part B of IDEA are met, unless State law assigns responsibility to some other entity. In the case of a charter school that is a public school of an LEA, under 34 CFR §300.209(b)(2), the LEA in which the charter school is located is responsible for implementing a child's IEP and placement, unless State law assigns responsibility to some other entity.

28. What procedures must be followed if the charter school's current program cannot provide FAPE based on the child's IEP?

Placement decisions must be made on an individual basis. If a charter school is its own LEA and retains responsibility under State law for ensuring that the requirements of Part B of IDEA are met, it is required to make available the range of placement options needed by the children with disabilities enrolled in the charter school. 34 CFR §300.115. However, that responsibility rests with the LEA if the charter school is a school of that LEA and State law has not assigned responsibility to some other entity. If a charter school is part of an LEA, the LEA must serve children with disabilities attending its charter school(s) in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent that the LEA provides such services on site to its other public schools. 34 CFR §300.209(b)(1)(i).

Consistent with 34 CFR §§300.114-300.116, the child's placement team must select the placement option on the continuum in which it determines that the child's IEP can be implemented in the LRE. Any alternative placement selected for the child outside of the regular educational environment must include appropriate opportunities for the child to interact with nondisabled peers, to the maximum extent appropriate to meet the needs of the particular child. In instances where the charter school LEA does not currently offer that setting (e.g., an out of general education setting), the charter school LEA or other responsible LEA must arrange to provide the services directly or, consistent with the applicable State charter school law, may choose to contract with another LEA, including another charter school LEA, to provide the necessary services and placement, at no cost to the parents.

Similarly, there could be a circumstance where a child with a disability requires supplementary aids and services or related services, which are not currently available, that would facilitate the child's placement in a regular classroom. If a child with a disability requires supplementary and related services in the regular classroom in order to be involved in and make progress in the general education curriculum, then the charter school LEA may not limit or refuse to provide the needed supports in an inclusive environment. This is because the charter school LEA is required to make available a continuum of alternative placements if necessary to implement the child's IEP, and placement in regular classes is one of the options on the continuum.

34 CFR §300.115(b)(1). Similarly, the LEA that includes the charter school, consistent with the LEA's IDEA responsibility to make available a continuum of alternative placements, is not relieved of its responsibility to meet the needs of its charter school children with disabilities.

In a situation where the IEP and placement teams determine that the charter school LEA or the LEA that includes the charter would not be able to implement the child's IEP within the charter school's current program, the child is not without recourse. In this situation, the charter school LEA, or the LEA that includes the charter school, must provide a program of FAPE for the child in the least restrictive environment in which the child's IEP can be implemented, unless State law assigns responsibility to some other entity. 34 CFR §300.209(b)-(c). As noted in Q&A #14, the charter school LEA, or the LEA that includes the charter school, has options as to how to fulfill its responsibilities in this circumstance. Additionally, if a child's parent disagrees with the program offered by the charter school LEA or the LEA that includes the charter, he or she may use any of the dispute resolution procedures discussed in Q&A #32.

29. How are LRE requirements met if a charter school's educational mission is to provide services to children with a specific disability?

Unless State law has assigned responsibility to some other entity, the charter school LEA or the LEA that includes the charter school must ensure that the LRE requirements at 34 CFR §§300.114 through 300.117 are met for each eligible child with a disability. Before a child with a disability is placed in a charter school established for a specific purpose related to the education of children with specific disabilities (i.e., to provide services for children in a specific disability category), the placement team must ensure that the child is able to receive a program of FAPE consistent with his or her IEP. The child's IEP must be designed to enable the child to be involved and make progress in the general education curriculum, and specify the extent, if any, that the child will not be able to participate in nonacademic and extracurricular activities with nondisabled children, even for a portion of the school day. Accordingly, the placement team must ensure that all elements of the child's IEP can be implemented in the proposed placement consistent with these requirements. 34 CFR §§300.114, 300.116 and 300.320(a)(4)-(5).

That is, charter school LEAs and LEAs that include charter schools must ensure the availability of options on the continuum of placements discussed above, as necessary to implement the child's IEP.¹⁶ In order to ensure a child's appropriate inclusion in a regular class placement, the continuum requirement also includes the provision of supplementary aids and services, including resource room and itinerant instruction, in conjunction with regular class placement. 34 CFR §300.115(b). For example, if a child attending a charter school with an educational mission related to providing services for children in a specific disability category requires an inclusive setting for some portion of the day or more directed instruction for another portion of the day, the responsible charter school LEA or LEA that includes the charter school must ensure that the child receives the additional supported instruction, but also spends the required amount of time determined by the IEP Team with nondisabled peers. If the charter school itself does not maintain such a program, in order to do so, a charter school LEA, or LEA that includes the charter school, may consider establishing a partnership with a nearby school where children with disabilities can participate in activities and classes with nondisabled peers, in settings where they can interact, model, and learn from students without disabilities in their age group, as appropriate.

¹⁶ See [OSEP Letter to Autin, 58 IDLR 51, \(March 7, 2011\)](#).

30. What are the responsibilities of a virtual (online) charter school to ensure the provision of FAPE to children with disabilities?

If a virtual charter school is its own LEA and State law does not reassign IDEA responsibilities to another entity, the virtual charter school LEA has the same IDEA responsibilities as any other charter school LEA or LEA that includes a charter school. For example, virtual charter school LEAs must: (1) ensure that each eligible child with a disability has FAPE available to him or her in accordance with 34 CFR §§300.101 and 300.17; (2) implement the evaluation and eligibility requirements in 34 CFR §§300.300-300.311; (3) carry out the IEP requirements in 34 CFR §§300.320 through 300.324, including those governing IEP content, IEP Team participants, parent participation, when IEPs must be in effect, consideration of special factors, the development, review, and revision of IEPs, secondary transition services and participation in State and districtwide assessment programs; and (4) implement the requirements in 34 CFR §§300.114 through 300.117, regarding education in the least restrictive environment, including ensuring the availability of a continuum of alternative placements to provide special education and related services. In addition, if the virtual charter school is a public school of an LEA that receives funds under 34 CFR §300.705, the LEA must serve children with disabilities attending that virtual charter school in the same manner as the LEA serves children with disabilities in its other schools and provide IDEA Part B funds on the same basis as it provides them to its other schools. 34 CFR §300.209(b). For additional information, see OSERS' Dear Colleague Letter Regarding Education of Children with Disabilities Attending Public Virtual Schools, released on August 5, 2016, available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/dcl--virtual-schools--08-05-2016.pdf>.

31. Can a charter school dis-enroll a child to prevent a child with disabilities from returning to the school if the child fails to meet certain school requirements?

Outside of a disciplinary action, which is subject to the procedures in 34 CFR §§300.530-300.536, an action by a charter school that would require a child with disabilities to leave the current school and attend another school generally would be subject to the placement procedures described at 34 CFR §300.116.¹⁷ In all instances, the placement of a child with a disability must be determined annually and must be based on the child's IEP, and the placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data and placement options. 34 CFR §300.116(a)(1). Thus, any decision regarding a potential change in placement must be made by the placement team as required under Part B of IDEA, and the charter school is generally precluded from making a unilateral change of placement without complying with these placement requirements.

The IDEA Part B regulations also require that written notice be given to the parents of a child with a disability within a reasonable time before the LEA, including a charter school LEA, (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 34 CFR §300.503(a)(1)-(2). If a charter school seeks to dis-enroll a child with a disability due to failure to meet a school-

¹⁷ For a discussion of how the closure of a charter school impacts the provision of FAPE to children with disabilities, see Q&A #49.

established policy or requirement that the school believes is essential to the student's enrollment, this would generally be considered a change in placement. Therefore, the responsible LEA generally would be required to convene the IEP and placement teams to discuss the proposed change. 34 CFR §300.324(b). The responsible LEA also must provide the parent with prior written notice in the native language of the parent or other mode of communication used by the parent, unless clearly not feasible to do so, explaining the reason for its proposed action. 34 CFR §300.503(b)-(c). It is important to note that under Section 504 there are also requirements that apply to a proposed disenrollment of a child with a disability from a charter school. See Question #15 in OCR guidance document, Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973, December 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>.

As addressed in Q&A #32 below, IDEA affords parents of children with disabilities the procedural safeguards and due process rights set out in 34 CFR §§300.500 through 300.536. OSERS notes that during the pendency of any administrative or judicial proceedings regarding a due process complaint notice requesting a due process hearing under 34 CFR §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. 34 CFR §300.518. Because the charter school program would generally be considered the child's current educational placement, during the pendency of any administrative or judicial proceedings, the child generally would have to remain in the charter school placement. For a discussion regarding removals from and changes to a child's placement based on disciplinary actions. See Q&A #34.

Procedural Safeguards

32. What procedural safeguards must be provided to children with disabilities attending charter schools and their parents under IDEA?

Each SEA must ensure that children with disabilities attending charter schools and their parents retain all rights under Part B of IDEA that are applicable to children with disabilities who attend other public schools and their parents. 34 CFR §§300.209(a) and 300.149. IDEA accords parents of children with disabilities the procedural safeguards and due process rights set out in 34 CFR §§300.500 through 300.536. If a parent of a child with a disability disagrees with a decision of a public agency, whether a responsible charter school LEA or the responsible LEA that includes the charter school, on any matter regarding the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, the parent may seek to use the mediation process in 34 CFR §300.506 or may file a due process complaint to request a due process hearing pursuant to 34 CFR §§300.507 through 300.518. In addition, States must have procedures for resolving any signed written complaint filed by an organization or individual, including a complaint filed by an organization or individual from another State, alleging that a public agency has violated a requirement of Part B of IDEA or the IDEA Part B regulations. 34 CFR §§300.151 through 300.153. These IDEA Part B State complaint procedures can be used to address allegations that a public agency, including a charter school that operates as an LEA, an LEA that includes charter schools, or an SEA, has violated a requirement of Part B of IDEA or the IDEA Part B regulations. In addition, many States offer alternative dispute resolution procedures, such as IEP facilitation and parent engagement/early assistance.

For more information on procedural safeguards and dispute resolution, see the Questions and Answers on the IDEA Part B Dispute Resolution Procedures available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>. See also The National Center on Dispute Resolution in Special Education at: <http://www.directionservice.org/cadre/> and The Center for Parent Information and Resources at: <http://www.parentcenterhub.org/>.

33. How does an IEP Team address the needs of a child with a disability attending a charter school if the child's behavior impedes the child's learning or that of others?

In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider – and, when necessary to provide FAPE, include in the IEP – the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

34 CFR §§300.324(a)(2)(i) and (b)(2); and 300.320(a)(4). In a Dear Colleague Letter issued on August 1, 2016, addressing positive behavioral interventions and supports in IEPs, OSERS clarified that the failure to consider and provide for needed behavioral supports through the IEP process is likely to result in a child not receiving a meaningful educational benefit or FAPE. In addition, a failure to make behavioral supports available throughout a continuum of placements, including in a regular education setting, could result in an inappropriately restrictive placement and constitute a denial of placement in the LRE. It is important for charter school LEAs and LEAs that include charter schools among their other public schools to ensure that needed behavioral supports are provided through the IEP process as a way to prevent or reduce the types of behavior that give rise to IDEA's discipline procedures described in Q&A #34 below. For more information see: OSEP Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities (August 1, 2016) available at: <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

34. What disciplinary procedures apply to children with disabilities attending charter schools?

Children with disabilities who attend charter schools and their parents retain all IDEA rights and protections. 34 CFR §300.209(a). These IDEA rights and protections include the discipline procedures in 34 CFR §§300.530 through 300.536.¹⁸ In brief, school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for up to 10 consecutive school days in a school year (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, so long as those removals do not constitute a change of placement. 34 CFR §300.530(b)(1). Under 34 CFR §300.536, a disciplinary change of placement is a disciplinary removal of more than 10 consecutive school days or a series of removals that total more than 10 school days in a school year that constitute a

¹⁸ Section 504 includes nondiscrimination requirements, including FAPE requirements, applicable in the context of the administration of discipline. For additional information on those protections see Q&A #25 in the OCR guidance document, Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973, December 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>.

pattern of removals because of factors such as the length of each removal, the total amount of time that a child has been removed, and the proximity of the removals to one another. Within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the responsible LEA (either the charter school LEA or the LEA that includes the charter school), the parent, and relevant members of the child's IEP Team must first conduct a manifestation determination. This occurs through a review of all relevant information in the student's file, including the IEP, any teacher observations, and any relevant information provided by the parents. The group must determine if the child's behavior was caused by, or had a direct and substantial relationship to, the child's disability, or if the behavior was the direct result of the LEA's failure to implement the IEP. 34 CFR §300.530(e). If the behavior is determined to be a manifestation of the child's disability, the IEP Team either must conduct a functional behavioral assessment unless one had already been conducted prior to the behavior that resulted in a change in placement, and implement a behavioral intervention plan for the child or review an existing behavioral intervention plan and modify it, if necessary, to address the behavior. Also, unless the parent and the LEA agree to a change in placement, the child must be returned to the placement from which he or she was removed. 34 CFR §300.530(f). An exception to this requirement is that school personnel may remove a child with a disability from his or her current placement to an appropriate interim alternative educational setting for up to 45 school days without first determining whether the behavior is a manifestation of the child's disability, if the child commits specified weapons or drugs offenses or inflicts serious bodily injury¹⁹ on another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA. 34 CFR §300.530(g). Beginning with the 11th day of a child's removal from the current placement in a school year for behavior determined not to be a manifestation of the child's disability or for behavior resulting from specified drugs or weapons offenses or serious bodily injury described above, the IDEA requirements governing services are applicable. 34 CFR §300.530(d). Consistent with each disabled child's right to FAPE, the child must (i) continue to receive educational services, to the extent required in 34 CFR §300.101(a) so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(d)(1). See the remainder of 34 CFR §300.530(d) for a further explanation of the requirements for services during disciplinary removals. Under 34 CFR §300.532(a), the parent of a child with a disability who disagrees with any decision regarding placement under §300.530, or with the manifestation determination under §300.530(e), or an LEA that believes that maintaining the child's current placement is substantially likely to result in injury to the child or others, may appeal the decision by requesting an expedited due process hearing.

The Department's guidance on discipline of children with disabilities (Questions and Answers on Discipline Procedures, Revised June 2009) is available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>; on dispute

¹⁹ As defined at 18 U.S.C. 1365(h)(3), the term serious bodily injury means bodily injury that involves—
1. A substantial risk of death; 2. Extreme physical pain; 3. Protracted and obvious disfigurement; or 4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

resolution (Questions and Answers on IDEA Part B Dispute Resolution Procedures, Revised July 2013) is available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html>.

IDEA Funding

As described in footnote #1 of this document, funds are made available to States under the Grants to States program authorized by section 611 of IDEA and the Preschool Grants program authorized by section 619 of IDEA. These IDEA Part B funds are provided to assist States, and through them, LEAs, including eligible charter school LEAs, in providing special education and related services to children with disabilities. States are required to distribute any section 611 and section 619 funds that the State does not reserve for State-level activities to eligible LEAs for use in accordance with IDEA. Questions regarding a State's IDEA allocations to LEAs, including eligible charter school LEAs, should be directed to the SEA. Additional information regarding LEA allocations, including how to calculate base payments and base payment adjustments under IDEA, is available at <https://osep.grads360.org/#program/fiscal>

35. Are charter school LEAs eligible to receive subgrants under Part B of IDEA?

Yes. LEAs that meet the IDEA Part B definition at 34 CFR §300.28, including charter schools that operate as LEAs under State law, and have established their eligibility under section 613 of IDEA are eligible to receive a subgrant under section 611 and section 619 of IDEA. 34 CFR §§76.787, 300.705, and 300.815.

36. What eligibility requirements must a charter school LEA meet in order to receive funds under Part B of IDEA?

In order to be eligible for assistance from its SEA, a charter school LEA must meet the eligibility requirements in section 613 of IDEA. Among other requirements, the charter school LEA must have in effect policies, procedures, and programs that are consistent with the State's policies and procedures in order to establish its eligibility for IDEA Part B subgrants. For example, the charter school LEA must establish policies and procedures related to child find and conducting individual evaluations, placement of children in the least restrictive environment, and development and implementation of IEPs. 34 CFR §§76.788(c) and 300.201.

Other conditions relate to the use of IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities; and to supplement, and not supplant, State, local, and other Federal funds. In addition, except as provided in 34 CFR §§ 300.204 and 300.205, funds awarded to LEAs under Part B of IDEA may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local, or State and local, funds below the level of those expenditures from the same source for the preceding fiscal year. 34 CFR §§300.202-200.205; Appendix A and Appendix E to 34 CFR Part 300.

37. Do children with disabilities who attend a charter school that does not receive Part B of IDEA funds from the SEA retain their rights under Part B of IDEA?

Yes. Children with disabilities attending charter schools and their parents retain all rights under Part B of IDEA. 34 CFR §300.209(a). Even if the charter school receives no IDEA Part B funds, children with disabilities attending the charter school retain their right to FAPE under Part B of

IDEA. This is consistent with each SEA's overarching responsibility to exercise general supervision over all educational programs for children with disabilities in the State, and to ensure the availability of FAPE for all disabled children residing in the State in mandatory age ranges. These requirements apply regardless of the status of the charter school under State law. See Q&A #6.

38. Does Part B of IDEA contain any provisions to ensure that newly-created charter school LEAs receive the funds for which they are eligible?

Yes. Because the Department was aware that charter schools not in existence during the base year might otherwise be prevented from receiving a base payment under the statutory formula, the Department promulgated regulations for both the Grants to States and Preschool Grants programs that require States to make base payment adjustments and provide part of the base payment to new or reconfigured LEAs, including charter school LEAs. Requiring base payment adjustments also ensures that available funds are distributed equitably among all LEAs in the State. 34 CFR §§300.705(b)(2) and 300.816(b). The requirements for base payment adjustments also apply to charter school LEAs that experience a significant expansion in enrollment, as defined at 34 CFR §76.787. See also 20 U.S.C. 7221(e) (requiring SEAs to ensure that new and expanding charter schools receive the Federal formula funds for which they are eligible within five months), its implementing regulations at 34 CFR Part 76, Subpart H, and the Responses to Questions 78-80 in the Department's December 2000 guidance titled "How Does a State or Local Educational Agency Allocate Funds to Charter Schools that are Opening for the First Time or Significantly Expanding their Enrollment?"²⁰

39. How are base payments calculated for charter school LEAs under IDEA?

In making subgrants to LEAs each fiscal year, States must use a formula that includes a base payment and any applicable base payment adjustments. The base payment is the amount the eligible charter school LEA would have received under section 611 if the State had distributed 75 percent of its FFY 1999 section 611 subgrant and the amount the eligible charter school LEA would have received under section 619 if the State had distributed 75 percent of its FFY 1997 section 619 subgrant. See 34 CFR §§300.705(b)(1) and 300.816(a).

40. How are base payment adjustments made for new or expanding charter school LEAs?

When calculating base payments for new or expanding charter school LEAs, States must use the method described in 34 CFR §§300.705(b)(2)(i) and 300.816(b)(1). This requires adjusting base allocations of affected LEAs based on the relative numbers of children with disabilities ages 3 through 21 for the Grants to States program, or ages 3 through 5 for the Preschool Grants program, who are currently provided special education by each affected LEA. Thus, if a charter school LEA opens for the first time or significantly expands its enrollment in a subsequent year, the State must divide the base allocation for LEAs that would have been responsible for serving

²⁰ Although the regulatory citations have not been updated to reflect the IDEA Part B regulations issued on August, 14, 2006 and December 1, 2008, the substance of the December 2000 Guidance remains applicable and is posted on the Department's Web site. (See: <http://www2.ed.gov/policy/elsec/guid/cschoos/cguidedec2000.pdf>)

children with disabilities now being served by the charter school LEA, among the charter school LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the affected LEAs. For a charter school LEA that received a base payment of zero in its first year of operation, the State must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities.

41. How does an SEA calculate the population payment for a new or expanded charter school LEA under the formulas?

The population payment (85 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction. The population payment should be allocated to new or expanded charter school LEAs based on the number of elementary and secondary school children enrolled in the charter school. The State may not rely on enrollment data from a prior year in calculating the new or expanded charter school's population payment, even if population payments to other LEAs are based on a prior year's enrollment data. 34 CFR §76.791.

42. How does an SEA calculate the poverty payment for a new or expanded charter school LEA under the formulas?

The poverty payment (15 percent of the remaining flow through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children living in poverty, as determined by the SEA. The poverty factor chosen must be applied uniformly to all eligible LEAs. For example, if the State uses aggregate data on children who are eligible for free or reduced-price meals under the United States Department of Agriculture's National School Lunch Program, these data must be applied to the new or expanded charter school LEA to determine its poverty payment. The State may not rely on enrollment or eligibility data from a prior year in calculating the number of children living in poverty in a new or expanded charter school LEA, even if poverty payments to other LEAs are based on data from a prior year. 34 CFR §76.791.

43. May an eligible charter school LEA receive an IDEA subgrant even if the charter school LEA is not serving any children with disabilities?

Yes. All LEAs, including charter school LEAs, have a responsibility to identify and serve all children with disabilities who need special education and related services. As stated above, charter school LEAs must meet eligibility requirements in section 613 of IDEA in order to receive IDEA Part B funds. There is no IDEA requirement that an LEA, including a charter school LEA, must be serving children with disabilities to be eligible for a subgrant. 34 CFR §§300.705(a) and 300.815. If an eligible LEA, including a charter school LEA, is not entitled to a base payment, that LEA's subgrant would be based on population and poverty. Requiring States to make subgrants to all eligible LEAs, including charter school LEAs, that have no children with disabilities currently enrolled helps ensure that the LEAs have IDEA Part B funds available if they are needed to conduct child find activities or to serve children with disabilities who subsequently enroll or are identified during the school year.

44. Are there funding requirements in Part B of IDEA that apply to LEAs that have charter schools that are public schools within the LEA?

Yes. For charter schools that are public schools within an LEA, Part B of IDEA and its implementing regulations require the LEA to submit a plan that provides an assurance to the SEA that the LEA will: (a) serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools; and (b) provide IDEA Part B funds to those charter schools in the same manner as it provides IDEA Part B funds to its other schools. 20 U.S.C. §1413(a)(5); 34 CFR §§300.200 and 300.209(b).

45. Are LEAs required to allocate Part B funds to eligible new or expanding charter schools that are public schools within an LEA? What if the LEA provides Part B funds to its other public schools?

An LEA is not required to provide IDEA Part B funds to a new or expanding charter school that is a public school within the LEA if the LEA does not provide IDEA Part B funds to other public schools within the LEA. However, if an LEA provides IDEA Part B funds or services to public schools within the LEA, the LEA must provide those funds or services in the same manner to charter schools that are public schools within the LEA. 34 CFR §76.799; 34 CFR §300.209(b).

Charter School Closures

46. When a charter school LEA that has received an IDEA Part B subgrant closes, what happens to those funds?

If a charter school LEA closes and leaves IDEA Part B funds unobligated, the SEA may reallocate any funds not obligated by the closed charter school LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent that the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities. 34 CFR §§300.705(c) (Grants to States) and 300.817(Preschool Grants). It is important for the SEA to have procedures that include communication regarding the status of charter school LEAs to help ensure that grant closeout, when required, is handled in a timely and appropriate manner.

47. If a charter school closes, or if a closing is imminent, what responsibilities does the charter school have with regard to equipment purchased with IDEA funds for children with disabilities?

If the charter school is a school of an LEA, then that LEA maintains responsibility for equipment purchased with IDEA funds for children with disabilities. If the charter school is its own LEA and has received an IDEA Part B subgrant, then the charter school LEA is responsible for following the grant closeout procedures at 2 CFR §200.343²¹ and the equipment requirements for

²¹ IDEA Part B funds are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified at 2 CFR part 200 and commonly referred to as the “Uniform Guidance.” The Uniform Guidance provisions at 2 CFR part 200 replace provisions previously found in the Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 74 and 80, and prior Office

subgrantees, including disposition, at 2 CFR §200.313(c) through (e). Questions regarding equipment requirements should be directed to the SEA.

48. If a charter school closes or if a closing is imminent, what responsibilities does the charter school have with regard to its records for children with disabilities?

If the charter school's records include personally identifiable information about a child with a disability, those records continue to be subject to the protections in FERPA and IDEA's confidentiality of information provisions, the parents must continue to be afforded their right to access the child's education records in accordance with those laws. 34 CFR Part 99 (FERPA) and 34 CFR §§300.611 through 300.626 (IDEA). Ultimately though, each SEA is responsible for ensuring compliance with IDEA, including responsibility to continue to make FAPE available to eligible children with disabilities who attended a closed charter school. 34 CFR §300.149. Nothing in IDEA precludes the State from assigning responsibilities related to the education of children with disabilities and closing or closed charter schools to another entity, such as another LEA.

49. If a charter school closes, how does an LEA or SEA ensure that children with disabilities who attended the closed charter school continue to receive FAPE?

The SEA and its LEAs, including charter school LEAs, must make FAPE available to eligible children with disabilities. If a charter school that is a school of an LEA closes, then the LEA that included the closed charter school maintains responsibility for ensuring the provision of FAPE to that school's children with disabilities, unless State law assigns responsibility to some other entity. 34 CFR §300.201. If a charter school that is an LEA closes, the SEA maintains responsibility for ensuring the provision of FAPE to that school's children with disabilities, unless State law assigns responsibility to some other entity. 34 CFR §300.149. As stated in Q&A #4, any other entity assigned responsibility must have the capacity to provide FAPE, and such assignment does not diminish the SEA's own responsibility.

A child with a disability does not relinquish his or her right to FAPE because a charter school closes. The responsible LEA or SEA must ensure that an appropriate placement is proposed for the child. Whether new placements proposed for children with disabilities as a result of a charter school closure would constitute a change in educational placement would have to be determined on a case-by-case basis. In determining whether a change in educational placement has occurred, the responsible public agency must determine whether the proposed change would substantially or materially alter the child's educational program. If such a change occurs, the public agency must provide prior written notice. 34 CFR §300.503. If the proposed placement offers the same educational program and opportunities for interaction with the child's nondisabled peers as he or she had during the placement at the charter school, the change in location alone would not

constitute a change in educational placement, and IDEA Part B's written prior notice requirements would not be triggered.²² See OSEP Letter to Fisher, 21 IDELR 992 (July 6, 1994).

Part B of IDEA provides that, unless the dispute involves placement during a disciplinary appeal pursuant to 34 CFR §300.533, during the pendency of administrative or judicial proceedings brought under section 615 of the Act, the child involved in the complaint must remain in his or her current educational placement until the completion of such proceedings, unless the State or LEA and the parents agree otherwise. This requirement is triggered when a due process complaint notice requesting a due process hearing under 34 CFR §300.507 is filed. 34 CFR §300.518(a).

Normally, under this provision, an LEA or, in the case of a charter school LEA that closes, the SEA, must maintain the child in his or her current educational placement, the charter school, unless the parent and LEA agree otherwise. Since the charter school is closed, however, the LEA or SEA would not be required to maintain a child with a disability at the charter school during the pendency of any administrative or judicial proceedings. If the parents and LEA or SEA are unable to agree on an interim placement or on a change of placement, the LEA or SEA may satisfy the pendency requirement at 34 CFR §300.518, by maintaining the child in an educational program that is substantially and materially the same as the student's placement at the charter school, i.e., a placement that can properly implement the student's IEP. See OSEP Letter to Fisher, 21 IDELR 992 (July 6, 1994).

Other Topics

50. What responsibilities do charter schools have with regard to the transfer of records of children with disabilities when such children leave a charter school?

To facilitate the child's transition to a new school in a new LEA, different public agencies have related responsibilities. The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR §99.31(a)(2). 34 CFR §300.323(g)(1). Likewise, the charter school that operates as an LEA or the LEA that includes the charter school must take reasonable steps to promptly respond to a new public agency's request to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child. 34 CFR §300.323(g)(2).

²² In the case of a charter school LEA closure during the school year, the child's new placement will involve a different LEA. Therefore, the in-State IEP transfer provisions in 34 CFR §300.323(e) would apply. The new LEA would be required to provide FAPE to the child (including services comparable to those described in the child's IEP from the previous LEA) until the new public agency either—(1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

51. Are representatives of charter schools required members of the State advisory panel under 34 CFR §300.168?

Yes. The membership of the advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make these appointments, that are representative of the State population and are composed of individuals representative of a broad range of constituencies involved in, or concerned with, the education of children with disabilities. Among the representatives identified in IDEA and its regulations are representatives of charter schools.