

MIDDLETON, YOUNG & MINNEY, LLP

# **Special Education – The Laws and Important Relationships Between the Charter School, the District and the SELPA**

Presented by:

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# Presentation Goals

- Laws – *we need to start by familiarizing ourselves with the applicable law*
- Important Terms – *finally get a handle on some of these acronyms!*
- Relationships – *who is responsible for what?*
- Basics on Special Education Compliance – *let's avoid due process*
- Most Importantly – *Let's try to keep a potentially DRY topic from putting us all to sleep!*



# Major Laws Related to Students with Disabilities (So you can find them if you need em')

- Individuals with Disabilities in Education Improvement Act 2004 (IDEA or IDEIA) (20 USC 1400-1487; 34 CFR 300.303. and 304)
- Education Code Section 56000 et. seq.
- No Child Left Behind Act (NCLB)(20 USC Chapter 70; 34 CFR 200)
- Section 504, Rehabilitation Act of 1973 (29 USC 705, 794-794b; 34 CFR 104)
- Americans with Disabilities Act (ADA) (42 USC 12101-12213)
- Family Education Rights & Privacy Act (FERPA) (20 USC 1232g; 34 CFR 99)



**W.D.A.L.T.H.T.B.A.?**  
*(Why do all the terms have to be  
acronyms?)*

1. LEA - *Local Educational Agency*
2. SELPA- *Special Education Local Plan Area*
3. IDEIA or IDEA- *Individuals with Disabilities in Education Improvement Act*
4. FAPE - *Free Appropriate Public Education*
5. IEP - *Individualized Education Plan*
6. LRE – *Least Restrictive Environment*



# Special Education Law - Just the Basics

\*Each eligible student under the IDEIA is entitled to a free appropriate public education...

**FAPE is defined as special education and related services, provided at public expense, under public supervision, considering the unique needs of the individual student and provided in conformity with the IEP.**



## **\*FAPE Requires a Basic Floor of Opportunity**

- The “Chevy” not the “Cadillac”;
- IEP reasonably calculated to enable child to receive educational benefit; and
- Judged as to its appropriateness at the time that the IEP is written.



## **\*Provided in the Least Restrictive Environment**

- The least restrictive environment is the right to be educated in a manner that promotes interaction between disabled and non-disabled peers.
- Consider the following:
  - Academic benefit
  - Non-Academic benefit
  - Effect of student on staff and classmates
  - Cost of mainstreaming



# \*Non-Discrimination

- Charter Schools may not discriminate against any student on the basis of disability.



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# The Players

## The SELPA

- With approximately 120 across the State its easy to get mixed up
- Some are single school district
- It is responsible for the allocation of special education funds to its member LEAs pursuant to an allocation plan adopted by its members
- Holds back funds for its costs/expenses, and then passes through the remainder to its member LEA's pursuant to the allocation plan – typically either based upon ADA, or based upon the number of special education students or staff.
- Provide a single comprehensive plan for special education – Local Plan
- Some SELPA's provide services to member LEAs but most do not – just coordinate



# The Players

## The Charter Granting Authority

- An LEA and a member of SELPA
- Should be the charter school's ally in serving students with disabilities



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# The Players

## The Charter School (That's you!)

- Navigating the relationships to ensure that its students with disabilities are provided with a free appropriate public education



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# The Players – California Department of Education

## Special Education Division

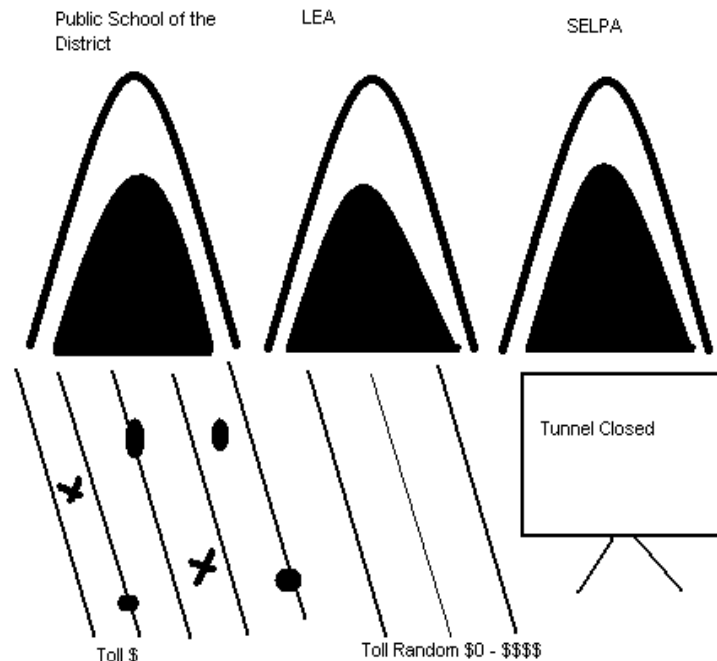
- Provides information and resources to serve the unique needs of individuals with disabilities, which includes technical assistance to LEAs and SELPA directors, compliance monitoring, and complaint investigation.

## Charter Schools Division

- Provides liaison with Special Education Division, charter schools, LEAs, and SELPA directors on a variety of issues related to special education in charter schools.



# Options Under the Law



1. A charter school may opt to operate as either a public school of the charter-authorizing LEA for purposes of special education; or
2. A charter school may operate as an LEA member of a Special Education Local Plan Area (SELPA); or
3. A third option – that of establishing a charter SELPA – is not currently utilized, but may be developed more in the future.

# Option 1

## Let the Negotiations Begin!

- Services
- Funds
- Excess Costs

OPTION 1



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## Services, Where Do You Get ‘Em?

- Charter Authorizer (District or County Office of Education); or
- Charter School contracts for services
- Typically done in the same manner as other school district school sites.

OPTION 1



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## Who Chooses?

- Strong argument that charter authorizer may choose, as they are ultimately responsible for ensuring compliance with IDEA.
- Decision often based upon availability of services and the geographic location of students.

OPTION 1



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## Funds, You Gotta Have ‘Em

- If the chartering agency provides services, generally the charter authorizer will retain the charter school’s state and federal funding.

OPTION 1



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## **Funds (*continued*)**

- If the charter school contracts for services, generally, the chartering agency will forward the federal funding to the charter school.
- Or, the chartering agency may retain funding and contract for services for the charter school directly.

OPTION 1



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## “Excess” Costs

- A common dispute between charter schools and authorizers is responsibility for costs in excess of dollars received specifically for special education purposes.
- Charter schools have no legal ability to limit enrollment to district boundaries, thus the District’s consider that charter school pose “new risk to the district.”

OPTION 1



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## Legal Obligations

### **“You Can’t Get Something for Nothing!”**

- In exchange for the charter authorizer assuming the risk, State law requires the charter school, as a public school of the District, to contribute an equitable share of its charter school block grant funding to support district-wide special education instruction and services (Education Code Section 47646(c)).



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OPTION 1

# Typical Arrangement

- **Charter school contributes to district-wide excess costs by paying a pro-rata share of those costs, including those of the charter school.**
- **LEA assumes the cost of all services.**
- **Meets the legal requirement for charter school contribution.**
- **Acts as an “insurance policy” against risk.**
- **No differentiation made between District and Non-District residents.**

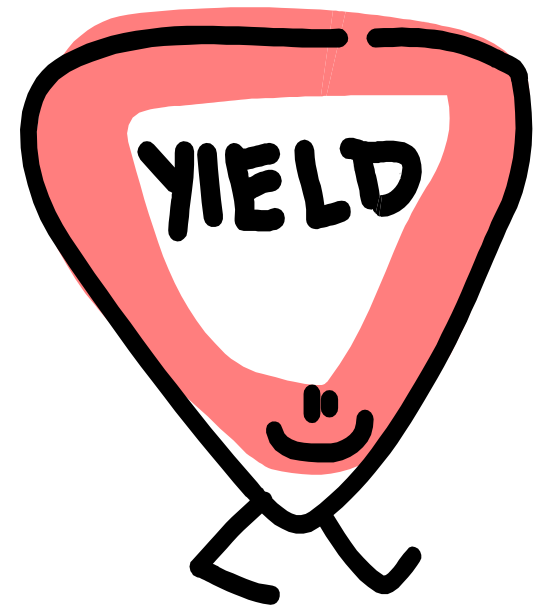
## OPTION 1



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## Alternative Arrangement: Charter School Pays All Excess Costs

- Unlimited risk to charter school.
- Potential for diversion of district students to charter school.
- All the risks of being an LEA without any of the benefits.
- If LEA provides services – no control over compliance.
- May sometimes have a benefit.
- Avoid double dipping agreements.



OPTION 1

## Tips for Negotiation

- Understand difficult position of LEA.
- Understand potential benefit of your charter to the charter authorizer.
- Determine excess costs of District (and if possible, your program) prior to negotiations.
- Consider your program and its potential for risk.
- Don't agree to anything impossible – be realistic.
- Understand the law – educate chartering agency if necessary.
- Don't ever agree to pay all excess costs and a pro-rata share of encroachment

### OPTION 1



## Tips (continued)

- Obtain copy of SELPA local plan and allocation plan.
- Determine current practices of other charter schools within SELPA
- A charter school petition may not be denied based upon the actual or potential costs of serving individuals with exceptional needs.
- Be careful of MOU indemnification provisions.

### OPTION 1



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# Benefits of Option 1

- Less risk to charter school.
- Generally less expensive.
- Generally easier for charter schools to implement.
- Gives charter schools time to acquire a “learning curve” on special education law and practices before considering Option 2.

## OPTION 1



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## The Potential “Downsides” of Option 1

- Less Autonomy
- Less control – many charter schools complain about the services being delivered to their students
- More negotiations and interaction with charter authorizer – could lead to relationship issues
- No charter participation/representation in governance of SELPA

OPTION 1



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## **OPTION 2**

# **Operating as an “LEA” for Special Education Purposes**

- Must provide “verifiable written assurances” in charter petition or otherwise that the charter school will participate as an LEA member of a SELPA (Education Code Section 47641(u)).
- Does not take effect until *after* the SELPA governance council has voted to accept your school as a member; until that time, your charter will operate in the “default” position as a school of the charter authorizing LEA.



## “Basics” of Option 2

- Charter school operates as an LEA in receiving funds and paying for special education supports and services.
- Charter school retains risk.
- *Tip: Charter authorizer may not require the charter school to become an LEA for special education purposes.*

### OPTION 2



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# SELPA Membership Process

- Application process.
- Decided by SELPA governance council, typically consisting of district superintendents.
- SELPA cannot treat charter school request for membership differently than district request.
- Charter school may not have to be geographically located within the SELPA but CDE struggles with this.
- One year notice to granting district? The CDE has requested this.

OPTION 2



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## Membership Requirements Differ

- Size restrictions (e.g., minimum enrollment).
- Maintain operation for particular length of time.
- Utilize SELPA forms.
- Provide assurances of ability to provide full range of services.
- Agree to follow local plan policies and procedures.
- Indemnify SELPA members.
- Each SELPA policy has a deadline for membership application

OPTION 2



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## Benefits of Option 2

- Greater autonomy and control.
- Participation/representation in SELPA governance.
- Guaranteed access to SELPA programs, if any (e.g., risk pooling).
- Minimal, if any, negotiations with charter authorizer over special education issues.
- Level of special education funding a known quantity (in accordance with local allocation plan).

OPTION 2



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## The Potential “Downsides” of Option 2

- Unlimited unforeseeable risk.
- Must have the expertise available to successfully operate a compliant program.
- Must be able to provide full range of services (or stand ready to contract for them) in accordance with the policies and procedures identified in the local plan.

OPTION 2



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## **OPTION 3**

# **SELPA Creation**

- Authorized by statute, but has been difficult to pilot in the State, thus far.



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## Creative Alternatives

- Two or more schools, each with LEA status within a SELPA, join together to share funding, resources, and potential liabilities.
- Can be very cost-effective.
- Charter School special education consortiums are becoming more common and are being done at 4 pilot SELPA's within the State.
- Level of service and risk sharing can differ based upon agreement amongst consortium members.



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**QUESTIONS  
&  
ANSWERS**

**LINK:**

**[www.mymcharterlaw.com/docs/DOC030609.pdf](http://www.mymcharterlaw.com/docs/DOC030609.pdf)**



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