

Navigating Student Placement Decisions in Charter Schools

SEPTEMBER 20, 2024

SONOMA COUNTY CHARTER SELPA

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Why Do Parents Choose Charter Schools for Their Children With Disabilities?

Traditional public school did not meet their child's needs.

Smaller school size – students get more individualized attention

Perceived higher academic standards and more accountability for student's learning.

Willingness to provide services to address disability

Responsiveness of staff – more willingness to make personal relationships with students and their families

Clear communication between school and home

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Charter Schools' Obligation to Provide FAPE

Although charter schools have been granted independence to develop unique educational models, the California Legislature did not intend that the charter school statutes override or conflict with special education law.

Education Code section 47646, subdivision (a), imposes on the chartering local educational agency the duty to ensure that "all children with disabilities enrolled in the charter school receive special education … in a manner that is consistent with their individualized education program" and is in compliance with the IDEA and its regulations.



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Charter Schools' Obligation to Provide FAPE

Students with disabilities and their families retain all rights under the IDEA when a student is attending a charter school, just as they would when attending traditional public schools.

34 C.F.R. § 300.209(a).

This also applies to online and virtual charter schools.

Dear Colleague Letter, 68 IDELR 108 (OSERS/OSEP 2016.)

Charter schools may not deny any student admission based upon a student's disability.

34 C.F.R. § 104.4(b)(1)(i); Ed. Code, § 47605.

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Charter Schools' Obligation to Provide FAPE

A charter school that is a local educational agency must serve children with disabilities in the same manner that a local educational agency serves children with disabilities in other public schools.

(34 C.F.R. 300.209(b)(1)(i); Ed. Code, § 47604.)

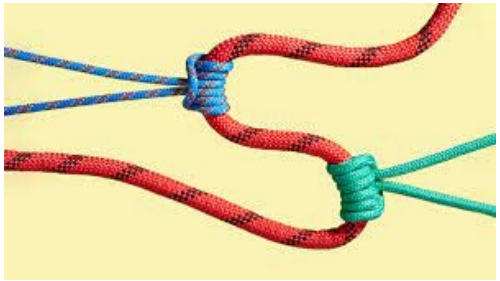
Placement decisions must be made on an individual basis.

If a charter school is its own local educational agency and retains responsibility under State law for ensuring that the requirements of Part B of the 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 C.F.R. §300.115; Ed. Code, §§ 56026.3 and 47604.)



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Tension Between Core Principles



Charter Schools	Special Education
Autonomy and independence	Independent charter LEAs have limited connection to network of other schools/alternative placements
Outcome accountability	Emphasizes procedural compliance
Choice – Not intended to be all things to all students	Zero-reject - LEA must enroll and provide FAPE to a child whether the student “fits” or not

What is an Appropriate Education?

Courts analyze the facts and answer 2 questions:

- Did the LEA follow the required procedures?
- Was the IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances?

Board of Hendrick Hudson v. Rowley, 458 U.S. 176 (1982), Endrew F. v. Douglas Cty. Sch. Dist., 137 S. Ct. 988 (2017)



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IDEA's Least Restrictive Environment Mandate

Each public agency must ensure that –

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

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

34 C.F.R. 300.114



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Holland Factors – 4 Factor Balancing Test

Sacramento City Sch. Dist. Bd. of Educ. v. Holland, 20 IDELR 812 (9th Cir. 1994)

To determine whether a child with a disability can be satisfactorily educated in in a regular education environment, the 9th Circuit has applied the following analysis:

1. The academic benefits of placement full-time in a general education classroom;
2. The non-academic benefits of such placement;
3. The effect the student would have on the teacher and other students in the general education classroom; and
4. The costs associated with the placement.
   - Courts have not found the cost factor to be a basis for rejecting a more inclusive placement.

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How is "Placement" Defined?

In California, a specific educational placement is defined as:

- That unique combination of facilities, personnel, location or equipment;
- Necessary to provide instructional services to a special education student;
- As specified in the student's IEP;
- In any one or a combination of public, private, home and hospital or residential settings.

5 C.C.R. § 3042(a).



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Continuum of Alternative Placements Requirement

Each LEA must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

34 CFR 300.115 (a).

The concept of “least restrictive environment” was created to address the continuum of placements requires by IDEA.

The obligation to ensure availability of a continuum of alternative placements applies to public charter schools.

Letter to Anonymous, 53 IDELR 127 (OSEP 2009).



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Continuum of Program Options

Regular education programs.

A resource specialist program.

Designated instruction and services

Special classes.

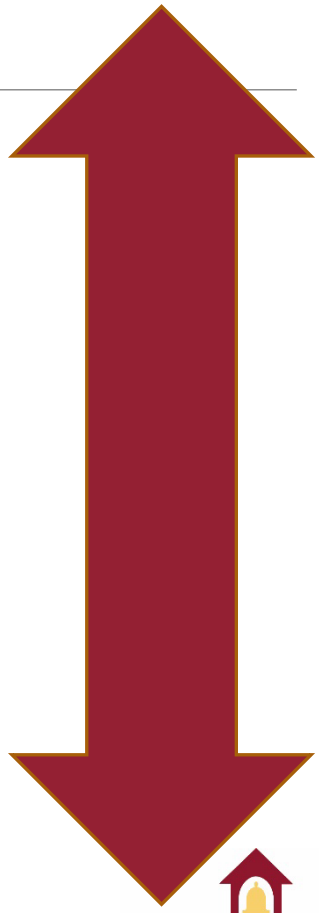
Nonpublic, nonsectarian school services.

State special schools.

Instruction in settings other than classrooms where specially designed instruction may occur.

Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.



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IEP Team's Role

IEP teams **must consider** a range of placement options for students, starting with the regular education program and explaining why each setting would be appropriate/inappropriate for the student.



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Documentation in a Child's IEP

An IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the special education and related services and supplementary aids and services.

34 C.F.R. 300.320(a)(5)



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Other Factors in Placement Decision-Making in Compliance with LRE Mandate

Consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs; and

A child with a disability may not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

34 C.F.R. 300.116(d), (e)

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Students Are Still Entitled to FAPE

The LRE mandate does not override the FAPE requirement.

If a child's placement does not confer a "meaningful benefit" to the student with the use of supplementary aids and services, and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive setting.

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Students Are Still Entitled to FAPE

The inquiry into what constitutes the LRE is necessarily individualized and fact-specific.

Courts must balance the tension between the preference for educating a disabled child in a regular classroom and the requirement to provide an individualized program tailored to the specific needs of the child.

J.W. ex rel. J.E.W. v. Fresno Unified School District, 626 F.3d 431, 448 (9th Cir. 2010); *see also, A.M. v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 781 (9th Cir. 2010)



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Use Caution Before Moving Child Along Continuum of Placements

There is no requirement in the IDEA that a student be placed and fail in a less restrictive setting before moving to a more restrictive one.

Poolaw v. Bishop, 23 IDELR 406 (9th Cir. 1995).

"The LRE continuum is not a progressive step-by-step process, wherein you must await failure to move into a more restrictive setting."

Danbury Bd. of Educ., 115 LRP 1631 (SEA CT 01/07/14)

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Use Caution Before Moving Child Along Continuum of Placements

However, the law does require that **first consideration** be given to a regular education placement with any necessary supplemental aids and services to make that placement successful before considering more restrictive placement options.

If the determination is made that the student with a disability cannot succeed in regular education, then regular education would not constitute the LRE for that student.

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Center JUSD, OAH No. 2024041090

8th grade general education student had not derived any benefit from 504 plan accommodations or school-wide behavior interventions.

Had been suspended 25 days, and was failing many classes.

District conducted an initial evaluation and proposed placing the student in a county program for students with emotional disturbance.

District filed due process seeking to implement the placement without parental consent.

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Center JUSD, OAH No. 2024041090

District needed to prove that it proposed to remove the student from general education only because the nature or severity of his disabilities were such that education such that education in general classes, with the use of supplementary aids and services, couldn't be achieved satisfactorily.

District did not prove Student required a restrictive placement without attempting special education supports in general education first.

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Can a charter school designate itself as an inclusion-only school and turn away special education students if they need a more restrictive placement?

No.

In California, charter schools are required to admit all students who wish to attend the charter school.

The only exception is if the number of pupils who wish to attend the charter school exceeds the charter school's capacity.

In that case, attendance shall be determined by a public random drawing.

A charter school may also establish admissions preferences provided that, among other things, **the preferences do not result in limiting enrollment access for students with disabilities**.

(Ed. Code 47604, 47605)

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Can a charter school designate itself as an inclusion-only school and turn away special education students if they need a more restrictive placement?

Furthermore, charter schools may not ask a prospective student whether they have a disability, or they have an IEP/504 plan as part of the application and admission process.

Only once the student is enrolled in a charter school can they ask whether a student has a disability to ensure that it provides the student with FAPE.

U.S. Department of Education, Office for Civil Rights, Frequently Asked Questions About the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973.

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Transfers of Students with IEPs Enrolling in Your Charter School



State and federal law include specific procedures to be utilized when students transfer local educational agencies ("LEAs") **during the school year**.

However, many students change LEAs **during the summer** (between school years). The law does not outline specific procedures, but instead only requires that the LEA have an IEP in effect at the beginning of the school year that offer the student FAPE.

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Transferring Within the School Year - Within Same SELPA

The new LEA shall continue, without delay, to provide **services comparable** to those described in the existing approved IEP, unless the parent and LEA agree to develop, adopt and implement a new IEP.

(20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code § 56325(a)(2).)



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Transferring Within the School Year - From a Different SELPA but Within California

The new LEA must provide the student with FAPE, including **services comparable** to those described in the previously approved IEP, in consultation with the parents, **for a period not to exceed 30 days**, by which time the new LEA is required to adopt the previously approved IEP or develop, adopt, and implement a new IEP.

(Ed. Code § 56325(a)(1).)

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Transferring Within the School Year - From Outside of California

The new LEA must provide such child with FAPE, including **services comparable** to those described in the previously held IEP, in consultation with the parents until such time as the LEA conducts an evaluation, if determined to be necessary, and develops a new IEP, if appropriate, that is consistent with federal and state law.

20 USC 1414 (d)(2)(C)(i)(II); 34 CFR 300.323 (f); Ed. Code 56325(a)(3).



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What are Comparable Services?

The U.S Department of Education interprets "comparable" to have the plain meaning of the word, which is "similar" or "equivalent" to those services described in the child's IEP from the previous LEA.

71 Fed. Reg. 46,681 (2006).

Whether the services provided by the LEA are "comparable" to those provided by the former district depends on the facts of the case.

Letter to State Dirs. of Special Educ., 61 IDELR 202 (OSERS/OSEP 2013).

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"Comparable Services"

If an LEA strays too far from the student's existing program, however, it may violate its obligation to provide comparable services.

- See, e.g., Alvord Unified School District, 50 IDELR 209 (SEA CA 2008). In that case, the court found that an orthopedic impairment special day class was not comparable to a 6-year-old boy's prior placement, because it served students who functioned on a much lower level and did not provide opportunities to interact with typically developing peers.
- In Commonwealth Connections Academy Charter School, 116 LRP 43676 (SEA PA 09/17/16), a charter school was found to have deprived a transfer student of FAPE by offering a mix of live and recorded math instruction instead of his previous IEP's requirement of daily live instruction.

If the parent and the LEA cannot agree on what constitutes comparable services, they can use mediation or due process procedures to resolve the dispute.

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Transfers During The Summer (Between School Years)

These transfer provisions do not specifically address situations where a child with a disability transfers to a new LEA over the summer.

(See e.g., Student v. Desert Sands Unified School District (OAH No. 2010100854); Student v. Acalanes Union High School District (OAH No. 2007100455).)

Instead, IDEA requires a local educational agency to have an IEP in effect at the beginning of each school year for children who transferred between LEAs during the summer.

(71 Fed. Reg. 46682 (August 14, 2006).)

LEAs are not required that you implement the last agreed-upon IEP OR provide comparable services, but the new LEA has the option to do so.

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Steps to Take When Student with IEP Transfers During The Summer (Between School Years)

1. After the student is enrolled, immediately request IEP and related documents from prior LEA.

2. Review the IEP to determine if it can be implemented in its entirety.

3. Develop an interim placement to specify the placement and services that will be in effect pending an IEP meeting.

- Based interim placement on review of student's last agreed upon IEP, and all other available information including progress on prior IEP goals, prior assessment reports, input from previous LEA, and parent input.

4. Determine if a reevaluation is necessary. If so, follow procedures for sending proposed assessment plan.

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Summer Transfers – IEP Meeting?

An LEA has discretion to decide whether it is necessary under the circumstances to convene an IEP team meeting before the first day of school for a student who transferred LEAs during the summer.

If a parent requests that the new LEA convene an IEP meeting prior to the start of the school year and the new LEA refuses to do so, the new LEA is required to provide prior written notice to the parent of the refusal.

- Prior written notice must include, among other required content, an explanation of why the LEA determined that conducting the meeting is not necessary to ensure the provision of services to the student.

Letter to Siegel, 119 LRP 6129 (OSEP 2019)

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Common Scenario:
New Student Coming From More Restrictive Placement.

Newly enrolled student is coming with an IEP that includes a more restrictive placement (SDC, NPS, RTC), but parent really wants the student to be enrolled in the general education program of the charter school.



What Are Your Options?

1. Continue to implement the last agreed upon and implemented IEP (provide "comparable services").

2. Offer a new IEP to accommodate the student in a less restrictive environment of the charter school.

3. Consider offering a diagnostic placement while you conduct further evaluation, collect data.

4. Consider Alternative Dispute Resolution opportunities.

Option #1 - Continue to implement the last agreed upon and implemented IEP (provide "comparable services")

Make arrangements to contract with another LEA or NPS if necessary to provide Student a FAPE

Communicate with LEA or NPS

Offer NPS?

Transportation?

Tone your initial communications carefully to parent to avoid a claim of disability discrimination.

Agree to hold an IEP/ assess ASAP to consider parent's request for a less restrictive environment.

COMMUNITY ROOTS ACADEMY CHARTER SCHOOL OAH CASE NO. 2020100158

Student was delayed in writing.

Student displayed disability related behavior in English Language Arts– eloping and non-compliance

School allegedly offered placement in a therapeutic special day class in the Capistrano Unified School District and allegedly told student he was required to disenroll from the Charter School to access the special day class

School argued it was necessary to placed the student in the District's special day class because it could not replicate a therapeutic program that student required.

OAH held that a charter school cannot require a student to disenroll, butmust contract with another LEA or NPA/NPS to provide an appropriate setting or service to provide a student FAPE

OAH held that the Charter School did not have a contract with the District and therefore could not offer the placement nor require student to disenroll

OAH ordered Charter School to provide significant compensatory service hours and additionally required 24 hours of training to School employees

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Option #2 - Offer a new IEP to accommodate the student in a less restrictive environment of the charter school.

Think outside the box when considering accommodations/services to provide comparable services to the prior placement but in the less restrictive environment.

Document school concerns in notes and strategies for addressing the concerns.

Don’t wait a whole year to reconvene IEP to review progress.

Be prepared to offer a more restrictive placement and to file for due process to implement over parent’s objection.

Risk – potential denial of FAPE if Student does not make adequate progress.

Dehesa School District and Community Montessori Charter School (OAH Case No. 2016090241/2016080384, January 4, 2017)

13 –year-old student had ADHD, SLD, anxiety, and depression attended a Montessori charter school, which emphasized student self-direction.

Student was placed in a general education class for the majority of the school day. The student had challenging behaviors including disruptiveness, inattentiveness, and eloping.

Concerned about the student's behavioral problems and lack of progress, the parents placed student in a private school in September 2016 and filed a due process complaint against the charter school and district.

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Dehesa School District and Community Montessori Charter School (OAH Case No. 2016090241/2016080384, January 4, 2017)

School staff believed that, because Montessori Charter was a parent-choice school, it wasn't appropriate to consider other placement options," the ALJ in the case remarked.

There were only two possible educational placements considered by the IEP team: a Montessori instruction learning center, like Montessori Charter, or home instruction.

- Home instruction was reserved for children who had serious behavior challenges and not ready for school-based instruction.
- Special day classes were not considered appropriate for any student because they were incongruent with Montessori instruction.

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Dehesa School District and Community Montessori Charter School (OAH Case No. 2016090241/2016080384, January 4, 2017)

School testified that positive behavior interventions would change the school environment and diminish the school's ability to deliver Montessori instruction.

Instead, Student's teachers imposed ad hoc and punitive measures in an attempt to control his behavior (taking away preferred devices and activities, including Student's sensory processing tools, assistive technology, and recess.)

If Student's behavior grew worse, it was school procedure to unilaterally expel him from the classroom to home instruction.

Because the school and its district failed to address the child's behavioral difficulties and predetermined his placement, an ALJ ordered them to reimburse the child's parents $20,709 in private school costs.



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Option #3 – Consider Diagnostic Placement

An LEA may place an IDEA-eligible student in a particular program or placement as part of the evaluation process in order to gather information needed to determine an appropriate placement.

Generally, if a student's placement or program was for diagnostic purposes and/or otherwise intended to be a temporary placement, that would not provide the basis for a student's "stay put" placement.



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Option #3 – Consider Diagnostic Placement

The U.S. Department of Education previously provided the following guidance in the 1999 regulations for the use of diagnostic placements:

- Develop an interim IEP for the child that sets out the specific conditions and timelines for the trial placement.
- Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.
- Set a specific timeline for completing any necessary evaluations, finalizing the IEP, and determining the appropriate placement for the child.
- Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

(Appendix A to the IDEA-Part B regulations, Question 14 (1999 regulations).)

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Option #4 – Consider Alternative Dispute Resolution

Parties may desire to enter into a confidential settlement agreement to resolve a placement dispute.

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Focus on Student's Needs, Not Parental Preference

Providing FAPE takes precedence over parental preference.

Don't get caught up in the fact that a parent "chose" the charter school.

Failing to consider all appropriate placement options could lead to a denial of FAPE.

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Q&A

THANK YOU!

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