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BILL RICHARDSON  
Governor

February 7, 2007

MEMORANDUM

**TO:** Special Education Directors, REC Directors, and Charter Schools

**FROM:** Patricia Parkinson, Ed.D., (Signature on file)  
Assistant Secretary, Instructional Support and Vocational Education

Dr. Don Duran, (Signature on file)  
Assistant Secretary, Charter Schools Bureau

**RE: LOCAL EDUCATION AGENCIES (LEA) RESPONSIBILITIES TO CHARTER SCHOOLS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)**

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Recently, several questions were sent to the Charter School Division and Special Education Bureau regarding the Local Education Agency (LEA) responsibilities regarding students with Individualized Education Programs (IEPs) enrolled in charter schools within the LEA's educational jurisdiction.

**Is the LEA required to make existing behavioral supports that are available to all schools of the LEA also available to the charter schools that it has authorized?**

20 U.S.C. § 1413(a)((5)(A) of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) provides that the LEA "serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools." See also 34 C.F.R. § 300.209(b)(i) and 6.31.2.11(I)(1) NMAC. It is clear from these citations that the LEA must provide services to its charter schools on the same basis as it does to other schools within the District. Therefore, if it provides behavioral supports to its other schools within the District, it must provide those same behavioral supports to the charter school.

**Must a charter school offer a continuum of services to students with IEPs enrolled in the charter school and must a representative of the LEA attend the student's IEP meeting?**

Pursuant to 6.31.2.11(I)(2) NMAC, each charter school is responsible for serving children with disabilities in the same manner as in other schools within the LEA. Therefore, the charter would have to provide services to their special education students in the same manner as those services are provided at schools that are not

charters. However, based on the statute and regulations cited in the above paragraph, the LEA would have to provide the charter school with the same level of support that is provided in its other schools.

**Does a representative of the LEA have to attend an IEP meeting for a student enrolled in a charter school?**

With regarding to the LEA attending an IEP meeting, the IEP team members are listed in 34 C.F.R. § 300.321(a). One of the team members is a representative of the public agency who is qualified to supervise the provision of special education services, and is knowledgeable about the general curriculum and the availability of resources of the public agency. 34 C.F.R. § 300.321(a)(4). That description does not necessarily describe someone from the LEA administration, although it could. In comments to the IDEA regulations, the following was said about

§ 300.321(a)(4):

Section 300.321(a)(4) incorporates the language in section 614(d)(1)(B)(iv) of the Act and requires the IEP Team to include a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of LEA resources. A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided.

71 Fed. Reg. 156, p. 46670 (2006). If no one within the charter school has the authority to commit agency resources, it may be assumed that someone from the LEA administration with that authority would have to attend the IEP meeting. The LEA could designate who they want as the agency representative, just so long as that person has authority to commit agency resources. Moreover, if the principal or special education coordinator of the charter school involved has the requisite authority to commit school resources to the services described in the IEP, no one from the LEA need attend.

The question of who has the authority to commit agency resources with respect to charters would be answered by both IDEA and state law. IDEA requires an LEA to provide Part B funds to its charter schools on the same basis and at the same time it provides such funds to its other public schools, consistent with the State's charter school law. 20 U.S.C. § 1413(a)(5)(B). Section 22-8-6.1, NMSA 1978 provides that a charter school submits its budget to the LEA board who approves it or rejects it in its entirety.<sup>1</sup> Once approved by the LEA and the Public Education Department, the charter school has the authority to spend its own budget and a charter school representative would have authority to commit resources out of the charter school budget to the services required by an IEP. Under those circumstances, a representative of the LEA need not attend the IEP meeting. However, if the services required by an IEP exceed the budget of the charter school, a representative of the LEA would have to join in as an IEP team member since the commitment of the LEA resources would have to be considered to comply with an IEP for a charter school student.

PP/DD/dk

cc: Catherine Cross Maple, Ph.D., Deputy Secretary, Learning and Accountability  
Denise Koscielniak, State Director of Special Education  
Willie Brown, General Counsel, New Mexico Public Education Department  
Albert Gonzales, Assistant General Counsel, New Mexico Public Education Department  
Adolfo Vasquez, Data Fiscal Manager, Special Education Bureau

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<sup>1</sup> This will change with respect to state authorized charter schools when the amendments to Section 22-8-6.1 go into effect on July 1, 2007.