

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Acting State Superintendent of Education, pursuant to the authority set forth in Section 3 (b) of the District of Columbia State Education Office Establishment Act of 2000, (D.C. Law 13-176; D.C. Official Code § 38-2602 (b) (11) (2008 Supp.); and pursuant to the District of Columbia School Reform Act of 1995, effective April 26, 1996 (110 Stat.1321; D.C. Official Code § 38-1802.02 (19))(2008 Supp.); hereby gives notice of her intent to adopt an amendment to Section 3019, in Chapter 30 of Title 5 of the *District of Columbia Municipal Regulations* (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. This proposal supersedes the proposed revision of Section 3019 seeking public comment, which was published as an emergency/ proposed rulemaking for Section 3019 on April 24, 2009. The emergency rule remains in effect until it expires on August 12, 2009, or is superseded by the adoption of a permanent final rule, whichever occurs first. *See 56 DC Register 3230* (April 24, 2009).

The purpose of this proposed rule is to revise Title 5, Chapter 30, Section 3019 of the DCMR with a clear enunciation of charter schools' special education responsibilities under the Individuals with Disabilities Education Act, 20 USC §1400 *et seq.* (IDEA), and the District of Columbia School Reform Act of 1995, effective April 26, 1996 (110 Stat.1321; D.C. Official Code § 38-1802.02 (19))(2008 Supp.). The proposed revision to section 3019 makes changes to reflect current law including references to the Office of the State Superintendent of Education (OSSE), as the District of Columbia state education agency (SEA).

Recent experience indicates that there is confusion among charter schools, parents, and the student hearing office with regard to a charter school's special education responsibilities based upon its election under D.C. Official Code § 38-1802.02(19) of whether or not to have the District of Columbia Public Schools (DCPS) serve as the charter school's Local Education Agency (LEA) for purposes of IDEA and providing services to children with disabilities enrolled in their school. As a first step to address this situation, the OSSE revised Section 3019 with an emergency rule to clarify immediately a school's legal responsibilities based upon its election to function as an LEA or a DCPS charter school for special education purposes. These revisions were also published as proposed regulations at that time. This proposal builds on that emergency action with a comprehensive revision of Section 3019.

Federal and local law require all LEAs in the District of Columbia eligible for IDEA Part B funding ensure that all children with disabilities, ages three (3) through twenty-one (21) years of age, who are residents or wards of the District of Columbia, have available to them a free appropriate public education (FAPE). Under IDEA, an LEA must perform child find activities to identify and evaluate children who may have a disability and require special education and related services, develop Individualized Education Programs (IEPs) for eligible children, and provide special education and related services in the least restrictive environment (LRE), regardless of the nature or severity of the disability. An LEA must ensure that a continuum of alternative placements as defined by IDEA, is available to meet the needs of children with disabilities for special education and related services. Federal and District of Columbia laws and

regulations prohibit discriminatory practices by LEAs against children with disabilities. Failure to conform to these legal requirements may subject LEAs to sanctions, including discontinuation of federal funding under IDEA Part B.

Section 3019 of Chapter 30 of Title 5 of the DCMR is amended to read as follows:

3019 CHARTER SCHOOLS

3019.1 Enrollment in a public charter school shall be open to all residents and wards of the District of Columbia regardless of disability or special needs. A public charter school in the District of Columbia may not deny enrollment or otherwise discriminate in its admissions policies or practices on the basis of a child's disability or status as a child with special needs, the child's need or potential need for special education services, supplementary aids or services, or any other accommodation.

3019.2 Pursuant to D.C. Code § 38-1802.02(19), each public charter school shall elect to have the District of Columbia Public Schools (DCPS) serve as its Local Education Agency (LEA) for purposes of the Individuals with Disabilities Education Act (IDEA), 20 USC §1400 *et seq.*, (a District Charter), or shall be an independent Local Education Agency (an LEA Charter).

3019.3 *Responsibilities of LEA Charters.* Each LEA Charter is responsible for compliance with all requirements applicable to an LEA under the IDEA and its implementing regulations (34 C.F.R. §§ 300 *et seq.*), and local laws, regulations and state policies, including, without limitation, the following:

- (a) *Least Restrictive Environment.* An LEA Charter shall ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled. Special classes, separate schooling, or other practices involving removal of children with disabilities from the regular education environment shall 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.
- (b) *Evaluation and Reevaluation.* An LEA Charter shall evaluate and reevaluate enrolled children in accordance with the IDEA, local law and state policy.
- (c) *Special Education and Related Services.* An LEA Charter shall develop and implement an IEP for an eligible child within the timelines set by IDEA, local law and state policy, and shall provide special education and related services consistent with that IEP.
- (d) *State-wide Assessments.* Consistent with Title 5 DCMR Chapter A23, each LEA in the District of Columbia must ensure the participation of all

of its children, including children with IEPs, in District-wide student assessments referred to as state-wide assessments to conform terminology to federal law and regulations . In particular, an LEA Charter shall:

- (1) Ensure that each of its District of Columbia resident children and wards, including those located in a nonpublic school setting, participates in the annual District-wide assessments (currently the District of Columbia Comprehensive Assessment System (DCCAS)), according to the procedures and guidelines issued by the Office of the State Superintendent of Education (OSSE).
 - (2) Administer the SEA-sponsored District-wide alternative assessment (currently the DCCAS ALT) only in the limited circumstances allowed under state-level guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state-level guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP, the DCCAS Alt may not be substituted for the DCCAS.
 - (3) Ensure that District-wide assessments are administered according to the OSSE's test security guidelines.
 - (4) Ensure that in the event a child enrolled in its school is located in a nonpublic special education school under procedures set forth in this Chapter, the child shall continue to participate in the DCCAS. Consistent with 20 U.S.C. § 6311 and the District's accountability workbook, the score of each LEA Charter child located in a nonpublic school shall be included in the calculations used for the state-wide assessment of the LEA Charter and the determination of Adequate Yearly Progress for the LEA Charter. *See also*, subsection 3019.4 below.
- (e) *Policies and procedures.* An LEA Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under 34 CFR §300.101 through 300.163, and §§300.165 through 300.174.
- (f) *Annual Reporting Requirements.* An LEA Charter shall conform to the annual reporting requirements of the IDEA.
- (1) Pursuant to 34 CFR §300.640 through §300.644, any LEA, including an LEA Charter shall count the number of children with disabilities receiving special education and related services on December 1 of each year and shall report and certify to the SEA each year the information required by section 618 of the IDEA no later than the date required by the OSSE (currently January 5).

- (2) The LEA Charter shall certify to the SEA that the information provided under section 618 of the IDEA is an accurate and unduplicated count of children with disabilities receiving special education and related services.
- (g) *Special Education Data System (SEDS)*. An LEA Charter shall fully utilize, implement and enter accurate and complete data into the state-designated District-wide special education data system (currently SEDS) for all aspects of special education practice, and ensure that an accurate, complete and up to date record exists in the SEDS for every child with an IEP enrolled in the LEA, including those located in a nonpublic school.
- (h) *Due Process Complaints*. An LEA Charter shall be responsible for providing the due process rights afforded children and their families under the IDEA and its implementing regulations and for responding to any due process complaint made in respect of a child enrolled in the LEA Charter, including any child who attends a nonpublic school.
- (i) *Mediation*. Pursuant to 34 C.F.R. §300.506, an LEA Charter shall ensure that policies and procedures are established and implemented to resolve disputes through the mediation process. The mediation process shall be available to a parent of a child enrolled in the LEA Charter, including any child who attends a nonpublic school.

3019.4

Responsibilities of District Charters. In the event that a public charter school elects pursuant to D.C. Official Code §38-1802.02(19), to have DCPS serve as its LEA for purposes of the IDEA, DCPS shall be the LEA responsible for meeting the requirements applicable to an LEA under the IDEA, Part B and its implementing regulations (34 C.F.R. §§ 300 *et seq.*), as well as all local laws, regulations and policies, in regards to the children enrolled in the District Charter. Each District Charter shall follow the policies, procedures and guidelines established by DCPS for the referral of individual child needs and IEP matters to DCPS to be addressed consistent with the requirements of IDEA. Referrals shall include, without limitation, requests for evaluations, due process complaints, requests for mediation and implementation of Hearing Officer Determinations, for all children enrolled in the District Charter. In addition, a District Charter shall:

- (a) *State-wide Assessments*. Consistent with 5 DCMR Chapter A23, each LEA in the District of Columbia must ensure the participation of all of its children, including children with IEPs, in state-wide assessments. In particular, a District Charter shall:
 - (1) Ensure that each of its District of Columbia resident children, including those located in a nonpublic school setting, participates

in the annual District-wide assessments (currently the District of Columbia Comprehensive Assessment System (DCCAS)), according to the procedures and guidelines issued by the Office of the State Superintendent of Education (OSSE).

- (2) Administer the SEA-sponsored state-wide alternative assessment (currently the DCCAS ALT) only in the limited circumstances allowed under state-level guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state-level guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP, the DCCAS Alt may not be substituted for the DCCAS
 - (3) Ensure that state-wide assessments are administered according to the OSSE's test security guidelines.
 - (4) Ensure that in the event a child enrolled in its school is located in a nonpublic special education school under procedures set forth in this Chapter, the child shall continue to participate in the DCCAS. Consistent with 20 U.S.C. § 6311 and the District's accountability workbook, the score of each District Charter child located in a nonpublic school shall be included in the OSSE's calculation of results on the state-wide assessment for the District Charter and determination of Adequate Yearly Progress for the District Charter.
- (b) *Policies and procedures.* A District Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under 34 CFR §300.101 through 300.163, and §§300.165 through 300.174.
- (c) *Annual Reporting Requirements.* A District Charter shall conform to the annual reporting requirements of the IDEA.
- (1) Pursuant to 34 CFR §300.640 through §300.644, a District Charter shall count the number of children with disabilities receiving special education and related services on December 1 of each year and shall report and certify to DCPS each year the information required by section 618 of the IDEA in sufficient time for DCPS to be able to report such data to the OSSE no later than the date required by the OSSE (currently January 5).
 - (2) The District Charter shall certify to DCPS that the information provided under section 618 of the IDEA is an accurate and unduplicated count of children with disabilities receiving special

education and related services, such that DCPS can make the same certification to the OSSE as required by the IDEA.

- (d) *Special Education Data System (SEDS)*. A District Charter shall fully utilize, implement and enter accurate and complete data into the state-designated District-wide special education data system (currently SEDS) for all aspects of special education practice, and ensure that an accurate, complete and up to date record exists in the SEDS for every child with an IEP enrolled in the LEA, including those located in a nonpublic school.

3019.5

Changes in enrollment. Transfers between LEA Charters, District Charters and DCPS shall be conducted as follows, whether the change in enrollment is initiated by the parent or results from the procedures established by DCPS for District Charters:

- (a) In the event a child with a disability transfers from one LEA to another, the sending LEA shall provide a copy of the child's records to the receiving LEA, including any IEP for that child, within 10 days of receipt of notice of enrollment of the child in the receiving LEA.
- (b) The sending LEA and receiving LEA shall cooperate fully in the transfer of all child records.
- (c) In the event a child transfers between an LEA Charter, a District Charter or DCPS, after an evaluation or reevaluation process has begun, but prior to its conclusion, the receiving LEA shall be responsible for completing the evaluation process and fully implementing a resulting IEP in the event one is required. The sending LEA shall cooperate fully to ensure all relevant information follows a child to his or her new school.
- (d) Pursuant to 34 CFR 300.323(e), in the event a child with an IEP in effect transfers between an LEA Charter, a District Charter or DCPS, the receiving LEA is responsible upon enrollment for ensuring that the child receives special education and related services according to the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of IDEA. The receiving LEA must implement any plan for compensatory education put into place by the sending LEA, a Hearing Officer Determination or Settlement Agreement, unless and until the receiving LEA agrees in writing with the parent to waive or modify it.

3019.6

Agreements Between LEA Charters. Pursuant to 34 CFR 300.208, any LEA, including an LEA Charter, may use its IDEA Part B funding to establish and implement cost or risk sharing funds, consortia, or cooperatives working in a

consortium with other LEAs to pay for high cost special education and related services.

3019.7 *IEP Team Recommendation.* If an IEP team at an LEA Charter recommends services for an enrolled child with a disability that the LEA Charter does not immediately have available, the LEA Charter is responsible for delivery of these services which may be arranged through an agreement with another LEA or through other appropriate resources to provide such services required by an IEP.

3019.8 *Maintaining Placement in the Least Restrictive Environment.* Pursuant to 34 CFR 300.114, no child enrolled in a public charter school shall be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(a) *District Charters.* If a District Charter anticipates that it may be unable to meet its obligation to provide FAPE to a child with a disability currently enrolled in its program, it shall make an appeal to DCPS consistent with the policies, procedures and guidelines established by DCPS for District Charters.

(b) *LEA Charters.* If an LEA Charter anticipates that it may be unable to meet its obligation to provide FAPE to a child with a disability currently enrolled in its school:

(1) The LEA Charter shall contact the OSSE for technical assistance regarding the provision of FAPE to the child within the LEA Charter. The LEA Charter shall not initiate discussions regarding or otherwise participate in the placement or location of the child outside the LEA Charter prior to providing notice to the OSSE, and allowing the OSSE to make a recommendation regarding the ability of the LEA Charter to provide FAPE to the child within the LEA Charter.

(2) In the event that the IEP team for a child enrolled in the LEA Charter makes a placement decision that cannot be implemented within the LEA Charter, the OSSE shall make a location assignment for the placement of the child within 10 business days of the IEP Team's placement decision.

3019.9 *Placements from LEA Charters into Nonpublic Schools.* A child enrolled in an LEA Charter shall remain enrolled in the LEA Charter in the event that the child's location of services is changed to a nonpublic school (whether by reason of a Hearing Officer Determination, Settlement Agreement, or a location assignment by the OSSE), unless and until his or her parent re-enrolls him/her into another LEA (be it another LEA Charter, a District Charter or DCPS).

- (a) When a child enrolled in an LEA Charter is located in a nonpublic school in order to ensure the provision of FAPE, the LEA Charter shall:
 - (1) Transition the child back to the less restrictive and more integrated environment at the LEA Charter as soon as practicable;
 - (2) At all times while the child is located at the nonpublic school, maintain the capacity to serve the child at the LEA Charter immediately (i.e., hold an open seat for the child) unless and until the child's parent enrolls the child in another LEA; and
 - (3) Continue to monitor each child's progress at the nonpublic school.
- (b) To facilitate the return of the child, as soon as appropriate, to the charter school environment, the LEA charter may apply in writing to the Public Charter School Board for an increase in enrollment capacity above the limit set by the school's charter for each child enrolled in the LEA charter and receiving services at a nonpublic school.
- (c) In the event that an LEA Charter enrolled child with special needs attending a nonpublic school has not transitioned out of a nonpublic school within 120 days of the end of the school year in which the child will exceed the maximum age range for children served by the LEA Charter as specified in its charter, the LEA Charter shall:
 - (1) Provide written notification to the child's parent(s) or guardian(s) of their responsibility to enroll the child at another public charter school or into DCPS; and
 - (2) Shall provide such notification at least 90 days prior to the end of a school year.
- (d) Pursuant to 34 CFR 300.114 and 34 CFR 300.325(c), responsibility for compliance with Part B of IDEA and local law and regulations for a child located into a nonpublic school remains with the LEA in which the child was most recently enrolled (the sending LEA) – either an LEA Charter or, in the case of a District Charter, DCPS – unless and until the child's parent or guardian voluntarily re-enrolls the child into another LEA. Such responsibility includes, but is not limited to evaluating the child; attending IEP meetings, progress monitoring, assessments and accountability as required under the Elementary and Secondary Education Act, and developing a plan for the child's return from the nonpublic school to the LEA Charter.

3019.10

Hearing Officer Determinations and Settlement Agreements. An LEA Charter shall be responsible for implementation of every Hearing Officer Determination

and Settlement Agreement for any child enrolled in that LEA Charter (and for any child placed out of that LEA Charter to attend a nonpublic school), whether or not the LEA Charter was named and/or involved in the due process proceeding resulting in the Hearing Officer Determination or Settlement Agreement or a mediation resulting in a Settlement Agreement, unless and until the LEA Charter and parent or guardian agree in writing to waive or modify the requirements of the Hearing Officer Determination or Settlement Agreement.

3019.11 *DCPS Implementation Responsibility.* DCPS shall be responsible for implementation of every Hearing Officer Determination and Settlement Agreement for any child enrolled in DCPS or a District Charter, whether or not DCPS was named and/or involved in the due process proceeding resulting in the Hearing Officer Determination or Settlement Agreement or a mediation resulting in a Settlement Agreement, unless and until DCPS and the parent or guardian agree in writing to waive or modify the requirements of the Hearing Officer Determination or Settlement Agreement.

3019.12 *Definitions.* Except as otherwise stated herein, all terms used in this Section have the meanings assigned by DC Official Code § 38-2561 *et seq.* and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300.

Persons wishing to comment on this rule should submit their comments in writing to Kerri L. Briggs, PhD., Acting State Superintendent of Education, 441 4th Street, NW, Room 350N, Washington, D.C. 20001, Attn: Tamera Lewis. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may be obtained from the OSSE website at www.osse.dc.gov or upon request at the above referenced location.