

## THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

### NOTICE OF FINAL RULEMAKING

The 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, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §38-2602(b)(11) (2009 Supp.)) and section 2202 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (P.L. 104-134; 110 Stat.1321; D.C. Official Code §38-1802.02 (19) (2009 Supp.)), hereby gives notice of the adoption as final of section 3019, in Chapter 30 (Special Education Policy) of Title 5-E (Education, Original Title 5) of the District of Columbia Municipal Regulations (DCMR). The rule is being adopted in substantially the same form as proposed in October 2009 and shall be effective on the date of publication of this notice in the *District of Columbia Register* (*D.C. Register* or DCR).

Section 3019 was published in the *D.C. Register* for public comment on June 19, 2009 (56 DCR 4774); discussed at two public hearings in August 2009 (notice of the public hearings was published in the *D.C. Register* on July 31, 2009 (56 DCR 6002); revised and republished in the *D.C. Register* for comment on October 16, 2009 (56 DCR 8189). This rule supersedes emergency rule 3019 published at 56 DCR 6242 (Aug. 7, 2009).

The rule clarifies charter schools' special education responsibilities under the Individuals with Disabilities Education Act, approved November 29, 1975 (P.L. 94-142; 89 Stat. 773; 20 U.S.C. §1400 *et seq.*) (IDEA), and the District of Columbia School Reform Act of 1995, effective April 26, 1996 (P.L. 104-134; 110 Stat.1321; D.C. Official Code §38-1802.02 (19))(2009 Supp.).

Federal and District of Columbia laws require a local education agency (LEA) in the District of Columbia eligible for IDEA Part B funding to ensure that all children with disabilities, ages three (3) through twenty-one (21) years, who are residents or wards of the District of Columbia, have available to them a free appropriate public education. 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 for eligible children, and provide special education and related services in the least restrictive environment, 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.

**Chapter 30 (Special Education Policy) of Title 5-E (Education, Original Title 5) of the DCMR is amended by adding a new section E-3019 to read as follows:**

**E-3019 CHARTER SCHOOLS**

- E-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.
- E-3019.2 Pursuant to section 2202 of the District of Columbia School Reform Act of 1995, (School Reform Act) approved April 26, 1996 (P.L. 104-134; 110 Stat.1321;D.C. Code §38-1802.02(19) (2009 Supp.)), each public charter school shall elect to either:
- (a) Have the District of Columbia Public Schools serve as its local education agency (LEA) for purposes of the IDEA (a District Charter); or
  - (b) Be an independent local education agency (an LEA Charter).
- E-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. Part 300), and local laws, regulations, and 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, District of Columbia law and regulations, 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, District of Columbia law, regulations and state policy, and shall provide special education and related services consistent with that IEP.
  - (d) *Statewide Assessments.* Consistent with Title 5-A, chapter A-23 of the DCMR, each LEA in the District of Columbia must ensure the participation of all of its children, including children with IEPs, in the statewide student assessments. In particular, an LEA Charter shall:

- (1) Ensure that each of its District of Columbia resident children and wards, including those placed in a nonpublic school setting, participates in the annual state education agency (SEA)-approved statewide assessments, according to the procedures and guidelines issued by the OSSE.
  - (2) Administer the SEA-approved statewide alternative assessment only in the limited circumstances allowed under state guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP an alternative assessment may not be substituted for the standard statewide assessment.
  - (3) Ensure that the statewide assessments are administered according to the state test security guidelines.
  - (4) Ensure that in the event a child enrolled in its school is placed in a nonpublic special education school under procedures set forth in this chapter, the child shall continue to participate in the statewide assessment. Consistent with the ESEA (20 U.S.C. §6311) and the District of Columbia's accountability workbook, the score of each LEA Charter child placed in a nonpublic school shall be included in the calculations used for the statewide assessment of the LEA Charter and the determination of adequate yearly progress for the LEA Charter.
- (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 federal regulations, including 34 C.F.R. §§300.101 through 300.163 and 34 C.F.R. §§300.165 through 300.174.
- f) *Annual Reporting Requirements.* An LEA Charter shall conform to the following annual reporting requirements of the IDEA, including the following:
- (1) Pursuant to federal regulations, 34 C.F.R. §§300.640 through 300.644, an LEA Charter shall count the number of children with disabilities receiving special education and related services as of December 1 of each year and shall report and certify to the SEA each year the information required by the IDEA (20 U.S.C. §1418) no later than the first Tuesday in January.
  - (2) The LEA Charter shall certify to the SEA that the information provided under the IDEA (20 U.S.C. §1418) 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 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 placed in a nonpublic school.
- (h) *Due Process Complaints*. Pursuant to the IDEA (20 U.S.C. §1415(a)), an LEA Charter shall establish and implement policies and procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). An LEA Charter is responsible 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. The Student Hearing Office, located within the OSSE, will continue to adjudicate due process complaints.
- (i) *Mediation*. Pursuant to the IDEA (20 U.S.C. §1415(e)), an LEA Charter shall ensure that procedures are established and implemented to allow parties to dispute any matter, including matters arising prior to the filing of the due process complaint, to resolve such disputes through a 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. The OSSE shall maintain a list of qualified mediators and shall bear the cost of the mediation process.

E-3019.4 *Responsibilities of District Charters*. If a public charter school elects, pursuant to the School Reform Act (D.C. Official Code §38-1802.02(19) (2009 Supp.)), 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. Part 300), as well as all local laws, regulations, and policies, with respect 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) *Statewide Assessments*. Consistent with Title 5-A, chapter A-23 of the DCMR, each LEA in the District of Columbia must ensure the

participation of all of its children, including children with IEPs, in statewide assessments. In particular, a District Charter shall:

- (1) Ensure that each of its District of Columbia resident children, including those placed in a nonpublic school setting, participates in the annual SEA-approved statewide assessments, according to the procedures and guidelines issued by the OSSE.
  - (2) Administer the SEA-approved statewide alternative assessment only in the limited circumstances allowed under state guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP, an alternative assessment may not be substituted for the standard statewide assessment.
  - (3) Ensure that SEA-approved statewide assessments are administered according to the OSSE's test security guidelines.
  - (4) Ensure that if a child enrolled in its school is placed in a nonpublic special education school under procedures set forth in this chapter, the child shall continue to participate in the SEA-approved statewide assessment. Consistent with the ESEA (20 U.S.C. §6311) and the District's accountability workbook, the score of each District Charter child placed in a nonpublic school shall be included in the calculations used for the statewide assessment of DCPS and the determination of adequate yearly progress for DCPS.
- (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 federal regulations, including 34 C.F.R. §§300.101 through 300.163 and 34 C.F.R. §§300.165 through 300.174.
- (c) *Annual Reporting Requirements.* A District Charter shall conform to the following annual reporting requirements of the IDEA, including the following:
- (1) Pursuant to federal regulations 34 C.F.R. §§300.640 through 300.644, a District Charter shall count the number of children with disabilities receiving special education and related services as of December 1 of each year and shall report and certify to DCPS each year the information required by the IDEA (20 U.S.C. §418) in sufficient time for DCPS to be able to report such data to the OSSE no later than the first Tuesday in January. Pursuant to 34 C.F.R. §§300.640 through 300.644, DCPS shall count the number of

children with disabilities enrolled in DCPS and District Charters who are receiving special education and related services as of December 1 of each year and shall report and certify to the SEA each year the information required by the IDEA (20 U.S.C. §1418) no later than the first Tuesday in January.

(2) The District Charter shall certify to DCPS that the information provided under the IDEA (20 U.S.C. §1418) 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 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 District Charter, including those placed in a nonpublic school.

E-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) If 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 ten (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) If 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 C.F.R. §300.323(e), if a child with an IEP in effect transfers between an LEA Charter, a District Charter, or DCPS, the receiving LEA shall be 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.

- E-3019.6 *Agreements Between LEA Charters.* Pursuant to 34 C.F.R. § 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.
- E-3019.7 *IEP Team Recommendation.* Pursuant to 34 C.F.R. § 300.323(c)(2), if an IEP team at an LEA Charter recommends special education and related services for an enrolled child with a disability that the LEA Charter does not immediately have available, the LEA Charter, as soon as possible following the development of the IEP, shall be responsible for making these services available in accordance with the child's IEP, which may be arranged through an agreement with another LEA or through other appropriate means.
- E-3019.8 *Maintaining Placement in the Least Restrictive Environment.* Pursuant to 34 C.F.R. §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 a free appropriate public education (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 a 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;
  - (2) As soon as any member of the IEP team has reason to suspect that the LEA Charter may be unable to meet its obligation to provide FAPE, the LEA Charter shall provide notice to the OSSE at least thirty (30) days prior to the IEP meeting at which a possible change in placement to a more restrictive environment will be discussed;
  - (3) The IEP team may request an expedited IEP meeting (i.e., within less than the thirty (30) day notice period) and the OSSE may grant the request upon a showing of good cause by the IEP team, as determined by the OSSE;

- (4) The OSSE shall make a recommendation regarding the ability of the LEA Charter to provide FAPE to the child within the LEA Charter;
- (5) Upon completion of the placement review process consistent with this subsection, if 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;
- (6) The OSSE shall provide an opportunity for input from the parent(s) with regard to the location assignment for the placement of the child; and
- (7) The OSSE shall be responsible for making the final decision regarding the location assignment.

E-3019.9 *Placements from LEA Charters into Nonpublic Schools.* If a child's placement is changed to a nonpublic school (whether by reason of a Hearing Officer Determination, Settlement Agreement, or a placement decision by the IEP Team at the LEA Charter), a child enrolled in an LEA Charter shall remain enrolled in and is the responsibility of the LEA Charter, unless and until his or her parent re-enrolls the child into another LEA (whether another LEA Charter, a District Charter, or DCPS).

- (a) When a child enrolled in an LEA Charter is placed 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 as soon as practicable;
  - (2) At all times while the child is placed at the nonpublic school, maintain the capacity to serve the child at the LEA Charter (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 academic and social-emotional 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) If an LEA Charter enrolled child with special needs attending a nonpublic school has not transitioned out of a nonpublic school within one hundred twenty (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) Provide such notification at least ninety (90) days before the end of a school year.
- (d) Pursuant to 34 C.F.R. §300.114 and 34 C.F.R. §300.325(c), responsibility for compliance with Part B of IDEA and local law and regulations for a child placed 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, monitoring progress, assessments, and accountability as required under ESEA, and developing a plan for the child's return from the nonpublic school to the LEA Charter.
- (e) Pursuant to section 108 of the Charter Schools and Tax Conformity Clarification Amendment Act of 1998, effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code §38-2907) tuition payments for District of Columbia children with disabilities placed in nonpublic schools are state level costs and are not the responsibility of the LEA Charter

E-3019.10 *Hearing Officer Determinations and Settlement Agreements.* A final Hearing Officer Determination (HOD) or Settlement Agreement (SA) resulting from the filing of a due process complaint and an SA resulting from mediation shall be binding upon the parties to the due process complaint and/or SA.

- (a) If a child with a disability who is the subject of a HOD or SA transfers to a new LEA Charter in the District of Columbia during the term of the HOD or SA, the new LEA Charter shall comply with section E-3019.5(d) and shall cooperate with the LEA bound by the HOD or SA in the implementation of the HOD or SA. The responsibility for implementation of the HOD or SA shall remain at all times with the LEA that was a party to the HOD or SA. In no event shall implementation of the HOD or SA interfere with the new LEA Charter's ability to provide a free appropriate public education (FAPE) to the child.

- (b) If a child with a disability who is the subject of a HOD or SA transfers to a new District Charter during the term of the HOD or SA, DCPS shall comply with section E-3019.5(d). DCPS and the District Charter shall cooperate with the LEA bound by the HOD or SA in the implementation of the HOD or SA. The responsibility for implementation of the HOD or SA shall remain at all times with the LEA that was a party to the HOD or SA. In no event shall implementation of the HOD or SA interfere with the new District Charter's ability to provide FAPE to the child.

E-3019.11 *Charter School Closures.* If a District Charter or LEA Charter closes and ceases to operate, in full or in part, for any reason, including without limitation voluntary or involuntary revocation of the school's charter, pursuant to District of Columbia compulsory school attendance law, (D.C. Official Code §38-202), the parent of a child who previously was enrolled in the closed District Charter or LEA Charter shall be responsible for enrolling the child in another LEA.

E-3019.12 *Definitions.* For the purposes of this section, 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 IDEA (20 U.S.C. §1401 *et seq.*), and implementing regulations (34 C.F.R. Part 300).

Adequate yearly progress - a statewide educational accountability determination required by the ESEA to measure objectives established in the approved state accountability plan with regard to student proficiency in English and math.

Compulsory school attendance law – Article II of an Act to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 ( 43 Stat 806; D.C. Official Code §§ 38-202 *et seq.* (2001 and 2009 Supp.).

ESEA - the Elementary and Secondary Education Act of 1965, approved January 8, 2002 (P.L. 107-110; 115 Stat. 1425; 20 U.S.C. §6301 *et seq.*)

IDEA - the Individuals with Disabilities Education Act, approved November 29, 1975 (P.L. 94-142; 89 Stat. 773; 20 U.S.C. §1400 *et seq.*).

Location assignment - the actual school site or facility at which the child will receive his/her instruction.

OSSE - the Office of the State Superintendent of Education for the District of Columbia.

Placement - a student placement consistent with 34 C.F.R. Part 300. The term "placement" refers to, without limitation, the learning environment classified by level of restrictiveness (*e.g.*, general education classroom, special education/resource classroom, or private facility).

State - the District of Columbia.