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HIGHLIGHTS OF IDEA 2004 AS APPLIED TO CHARTER SCHOOLS

On December 3, 2004, President Bush signed into law the reauthorization of the Individuals with Disabilities in Education Act (“IDEA 2004”). The reauthorization brings many revisions to the IDEA. Amongst these revisions, the treatment of charter schools, student discipline, the definition of a highly qualified special education teacher, paperwork reduction, and quarterly progress reporting appear to be the most relevant to charter schools. With the exception of the provisions related to the definition of a “highly qualified” special education teacher, the IDEA reauthorization will not take effect until July 1, 2005. In the interim, federal regulations will be developed to implement the provisions of the IDEA 2004, and State law may be amended to reflect the changes to the IDEA as well. The following are detailed summaries of the highlights of the IDEA 2004 that may specifically impact California charter schools.

1) Treatment of Charter Schools

The IDEA 2004 added language, which very clearly requires a charter granting local educational agency (“LEA”) to provide special education instruction and related services and funding for charter school students in the same manner as other public schools of the LEA.

Specifically, the IDEA 2004 provides:

“TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS. --In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

(A) 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; and

(B) provides funds under this part to those charter schools—

(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law."

The prior provision did not include any requirement as to "on site" supplementary and related services nor did it include a requirement for a proportional distribution of funds or for the timing of the distribution.

The additional language may assist charter schools in obtaining equitable services and funding for their students.

2) **Discipline of Special Education Students**

- Revised Criteria for Manifestation Determination

The IDEA 2004 allows a LEA a broader ability to change the placement of a student with a disability for a violation of the school's code of conduct. The new law also revised the criteria for determining whether misconduct is a manifestation determination, making it more difficult for a student to avoid a change of placement by claiming that the misconduct is a manifestation of a disability.

Specifically, if an LEA is seeking to remove a student for a violation of the school's code of conduct for more than ten school days, the parent, the LEA and relevant members of the IEP team, as determined by the parent and the LEA (note, no longer the entire IEP team), must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine whether the conduct was *caused by or had a direct and substantial relationship to, the child's disability*; or *if the conduct was the direct result of the LEA's failure to implement the IEP*. If the parent, the LEA and relevant members of the IEP determine that either of those are true, the conduct is determined to be a manifestation of the child's disability.

- Burden of Proof

The IDEA 2004 continues to allow a parent to request a hearing if the parent disagrees with any decision regarding placement or the manifestation determination or a LEA to request a hearing if the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. However, the IDEA 2004 eliminates the burden of proof of the LEA to prove that behavior was not a manifestation of the child's disability.

- 45 Day removals

Further, the IDEA 2004 expands the ability of a School to impose a 45- day removal to an interim alternative educational setting for a student inflicting serious bodily injury; the prior provision limited the 45 day removal for controlled substance or weapon offenses. Serious bodily injury as defined by the IDEA 204 means “bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member organ, or mental faculty.

- Stricter Standard for Defending a Disciplinary Removal by Claiming that the School Should Have Known That the Student was a Special Education Student

The IDEA 2004 limits the ability of a parent to defend a disciplinary removal by claiming that the School should have known that the student was special education eligible, thus limiting the “11th hour” referral for special education assessment. The IDEA 2004 extends its protections to those students to whom the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action.

Under the IDEA 2004, a LEA is deemed to have knowledge that a child is a child with a disability if before the behavior occurred:

- 1) the parent has expressed concern in writing that the child is in need of special education and related services;
- 2) the parent has requested a special education evaluation; or
- 3) the teacher of the child or other personnel for the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director special education of the LEA or to other supervisory personnel of the LEA...

unless the parent refused evaluation of the child, refused services, or an evaluation has already been completed and it was determined that the child was not a child with a disability.

The new language eliminated a subjective provision that deemed the LEA to have knowledge of a student’s disability based solely upon the behavior or performance of the child.

3) **Highly Qualified Special Education Teachers**

The IDEA 2004 defines a highly qualified special education teacher as one that:

- 1) has not had special education certification or licensure requirements waived for any reason;

- 2) holds at least a bachelor's degree; and
- 3) has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, *except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law.*

As California law requires that teachers in charter schools hold a certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold, except for the flexibility given to noncore, noncollege teachers, it is likely that the definition noted above applies equally to a special education teacher in a charter school unless an argument can be made that the special education teacher is serving in a noncore, noncollege capacity.

The timeline for meeting the highly qualified requirements aligns with the other timelines for highly qualified teachers under the No Child Left Behind Act. Accordingly, the highly qualified requirement must be met by June 30, 2006, unless the Charter School receives Title I funds *and* the teacher is a new teacher, as of July 1, 2002 to the State of California, in which case the requirement must be met immediately.

4) **Quarterly Reports on Progress Toward Annual Goals**

The IDEA 2004 requires quarterly reporting to Parents on progress toward annual IEP annual goals.

5) **Reduces Paperwork**

The IDEA 2004 requires the Secretary of Education to develop model forms for the IEP, prior written notice, and procedural safeguards notice. Additionally, 15 States will be chosen for a "pilot program" to implement novel approaches to reducing paperwork requirements as long as full civil rights protections for students are maintained.

Also, the IDEA 2004 reduces the number of times that a copy of the procedural safeguards must be given to parents to 1) at least once per year; 2) upon initial referral or request for evaluation 3) when a parent files a complaint; or 4) upon request by a parent.

WHAT SHOULD A CHARTER SCHOOL BE DOING IN RESPONSE TO THE CHANGES TO THE IDEA?

As the bulk of the changes to the IDEA will not take effect until July 1, 2005, it is most important for a Charter School to do the following:

- update its written materials;

- seek training for its staff on the new provisions;
- evaluate current practices on site; and
- keep abreast on adopted federal regulations and any changes to State law that occur as a result of the changes to the IDEA. Our office will be sending additional legal alerts updating you on any regulatory or statutory changes as they occur.
- Further, as the majority of California charter school operate as “public schools of the District” for special education purposes, and as you can see from the detailed summary, the IDEA is written to the attention of LEAs and not individual schools, it is an appropriate time to review and consider revisions to the arrangement between the District and the Charter School (often written into an “MOU” or special education agreement) to ensure the rights of charter school students are being met and that both the District and the Charter School are compliant with legal requirements.

If you should have any questions regarding this update, please contact Lisa Corr (lcorr@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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