LINCOLN CHARTER PUBLIC SCHOOL, INC.	BEFORE THE
Appellants	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 05-18 REVISED

OPINION

This is an appeal by Lincoln Public Charter School, Inc. ("LPCS"), contesting the local board's decision to conditionally approve LPCS's application. LPCS maintains that the charter school law does not allow for conditional approvals and therefore the local board failed to act on LPCS's application in a timely manner. Additionally, LPCS maintains that the local board's funding proposal of $5,495 per pupil is not commensurate with the amount disbursed to other public schools in the jurisdiction. LPCS also challenges the local board's denial of its waiver request regarding the employment status of charter school employees.

The local board has submitted a motion to dismiss and/or for summary affirmance maintaining that it granted Appellant's application for a charter conditional approval and therefore the matter is not appealable under the charter school law. With regard to the funding amount, the local board maintains that it has proposed funding at an amount that is commensurate to the amount disbursed to other public schools in the jurisdiction. The local board further maintains that LPCS's request for a waiver regarding the employment status of LPCS employees should be denied.

LPCS has submitted an opposition to the motion reiterating its position.

FACTUAL BACKGROUND

On September 10, 2004, LPCS submitted an application to the local board to establish a public charter school in Prince George's County. LPCS requested a cash disbursement of $8,554 per pupil plus federal grant entitlement and special education funds. LPCS also requested that only full-time classroom teachers be required to be employees of the local board and that LCPS retain the exclusive right to recruit, hire, terminate, evaluate and pay the teachers. LCPS proposed that it would pay the teachers consistent with the bargaining agreement and that all teachers would be allowed to participate in the school system's pension plan.

The local board conditionally approved the application for LPCS by letter dated January 7, 2005 from Eugene Thornton, Director of Purchasing and Supply. The letter states in part:

The Board of Education of Prince George's County is pleased to

> advise you of the results of a comprehensive review of your application to establish and operate the Lincoln Charter School in response to the referenced RFA, including consideration of the merits of the application overall. Its review indicates that although components of your proposal require clarification and/or modification to support effective and efficient charter school operations, the Board of Education believes that the Lincoln Charter School has the capacity to establish and operate an effective alternative means within the existing public school system to provide innovative learning opportunities and creative educational approaches to improve the education of students in Prince George's County, subject to acceptable resolution of school system concerns.
>
> Accordingly, we would like to extend an invitation to meet with staff of the school system to review and discuss the areas of your application that are of concern to the school system, to negotiate mutually acceptable terms, and contingent upon reaching agreement on issues for negotiation and/or modification, execute appropriate contract documents to establish the operation of the Lincoln Charter School in Prince George's County. It is our hope that we can successfully conclude negotiations within the next 60 days. . . .

See 1/7/05 approval letter from Thornton to Roy.

Subsequently, LPCS representatives and representatives of the local board met to undertake the negotiations of outstanding issues. The local board identified three areas as significant potential obstacles to reaching an acceptable agreement: (1) amount of funding, (2) status of employees, and (3) ownership of facilities. Meetings between representatives on January 19, 2005 and conversations on January 24, 2005, failed to lead to the local board's removal of any of the conditions on the application.

By letter dated January 24, 2005, James W. Beall, Chief Negotiator for the local board, confirmed the local board's position on the three issues.

- The local board would provide funding to LCPS at $5,495 per pupil based on the FY-05 budget and would be adjusted for FY-06 based on the outcome of the FY-06 budget process. Additional amounts could be provided based on enrolled student specific requirements for special education, transportation, and/or other grants. The base funding level provides the resources that follow the student

and includes funds for school administration, instructional support, custodial and security services commensurate with amounts provided to other public schools in Prince George's County. Amounts above this level, with the exception of amounts for enrolled student specific requirements for special education, transportation, and/or other grants, are directly related to costs of operating a new facility, maintaining fixed/overhead costs for administrative, insurance, retiree, adult education and community services that are not distributed to other public schools in Prince George's County.

- Employees of the charter school remain public school employees without limitation of the school system's administrative options. LPCS would have to negotiate any changes to employee contracts directly with the union, subject to local board approval. LCPS may otherwise request a waiver from the State Board.

- All assets procured with public funds are the property of the school system. This includes facilities that are funded in whole or in part from mortgages or lease/purchases whose payments are funded from school system resources. This also includes items such as textbooks and computers.

See 1/24/05 letter from Beall to Roy.

On appeal to the State Board, LPCS has raised two substantive issues: Funding amount and status of employees.

ANALYSIS

Appealability

In 2003, the Maryland General Assembly enacted legislation establishing the Maryland Public Charter School Program as "an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students." Md. Code Ann., Educ. § 9-101(b). The legislation provides that the local board of education is the "primary public chartering authority" for the granting of the charter. Md. Code Ann., Educ. § 9-103(a). Section 9-104(a) requires that an application to establish a public charter school be submitted to the local board and that the local board review

the application and render a decision within 120 days of receipt of the application.[1]

Under State law, the State Board is the secondary chartering authority for the granting of the charter, acting in its appeal review capacity or as the public chartering authority for a restructured school. Md. Code Ann., Educ. § 9-103(b). Section 9-104(b) provides as follows:

> (1) If the county board denies an application to establish a public charter school, the applicant may appeal the decision to the State Board, in accordance with § 4-205(c) of this article.
>
> (2) The State Board shall render a decision within 120 days of the filing of an appeal under this subsection.
>
> (3) If the county board denies an application to establish a public charter school and the State Board reverses the decision, the State Board may direct the county board to grant a charter and shall mediate with the county board and the applicant to implement the charter.

In its Motion to Dismiss, the City Board argues that the issues raised by LPCS are not appealable to the State Board because the charter school law permits only an appeal of the denial of an application and, in this case, the local board granted LPCS's charter school application, albeit conditionally.

LPCS maintains that because major issues relating to funding and status of employees remain unresolved, the conditional approval of its charter application is a *de facto* denial.

The regulations for appeals to the State Board of Education provide that a party may file a petition for declaratory ruling requesting the State Board to interpret a public school law that is material to an existing case or controversy. COMAR 13A.01.05.02D. *See also* Md. Code Ann., Educ. § 2-205(e); *Board of Educ. of Garrett County v. Lendo*, 295 Md. 55 (1982). In this case, the disputes regarding commensurate funding and status of employees both involve matters of interpretation of statutory law and regulation relating to public charter schools. Therefore, although LPCS has filed this case as an appeal of the denial of its application, we find that it is more properly handled by the State Board as a petition for declaratory ruling on the funding and employee status issues. *See* COMAR 13A.01.05.02D Petition for Declaratory Ruling.[2]

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[1]For restructured schools, the local board must review the application and render a decision within 30 days of receipt of the application.

[2]*City Neighbors Charter School v. Baltimore City Board of School Commissioners* and *Patterson Park Public Charter School v. Baltimore City Board of School Commissioners* also concern the same funding issue. *City Neighbors* was filed as a petition for declaratory ruling.

Standard of Review

Regarding interpretation of law, § 2-205(e) of the Education Article provides that the State Board, without charge and with the advice of the Attorney General, shall explain the true intent and meaning of the provisions of the Education Article that pertain to public schools and public school systems in Maryland and the rules and regulations adopted by the State Board. By regulation found at COMAR 13A.01.05.05E, the standard of review that the State Board applies when it is interpreting school laws and regulations is that:

> The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations.

Two-Step Application Process

In August 2003, MSDE issued the *Maryland Public Charter Schools Model Policy and Resource Guide ("Guide")* which envisions a two-step chartering system approach. The first step consists of the application development, submission, and review process. As noted in the *Guide*, the application process provides opportunities for the prospective public charter school organizing body and local school system officials to examine all aspects of the proposed educational program and the operation of the school to identify various administrative functions that will need to be fulfilled during the planning, opening, and day-to-day operation of the public charter school.

After the application has been approved, the second step is the completion of a charter agreement which is a legally binding contract that explains in detail the responsibilities of all parties involved in the operation of the public charter school. The thoroughness of the application process should pave the way for the incorporation of the approved application into the body of the charter school agreement with the need for minimal additional negotiation in completing the charter agreement. *See Guide* at p. 17 – 18.

Mindful of the 120 day statutory deadline for a local board decision on a charter school application as set forth in § 9-104 followed by the prompt completion of the charter agreement, we find that based on the parameters we set forth below on commensurate funding, employee status, and waiver processes, the charter agreement must be completed within 30 calendar days from the date of the decision approving the charter application. However, because of the extensive amount of time that has elapsed since LPCS submitted its application on August 31, 2004, and the urgency with next steps to have the charter school operational for the beginning of the 2005-2006 school year, we are directing the parties to complete the charter agreement for LPCS within 15 business days of the date of issuance of this revised opinion.

Commensurate Funding

On funding, § 9-109(a) of the Education Article provides that a local board "shall disburse to a public charter school an amount of county, State, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction." As noted above, the parties have differing views on the meaning and intent of this statutory language. We begin with the plain meaning of two significant terms: "commensurate" having the definition "of the same size, extent, or duration; corresponding in size or degree; proportionate", and "disbursed" being defined as "paid out; expended, as from a fund." *See The American Heritage Dictionary,* 2nd Ed., at 297, 402. Thus, under the plain meaning rule, we believe the legislature intended that a public charter school receive federal, State, and local funding in an amount proportionate to the amount of funds expended for elementary, middle, and secondary level students in the other public schools in the same system. This includes funding for services for which students in the public charter schools are eligible such as free and reduced price meals, pre-kindergarten, special education, English-language learners, Perkins, Title I, and transportation.

In order to determine that precise amount and because there is no statewide formula or methodology that determines how local school systems fund their schools, we believe that a reasonable starting point is the total annual school system operating budget that includes all federal, State, and local funding with the approved appropriations for each of the major categories as specified in § 5-101(b)(2) of the Education Article, that each local board of education submits to MSDE within 30 days of approval by the respective local government.[3] The next step is to divide the total annual operating budget and each of the major category appropriations by the annual September 30 enrollment count of the school system for the previous year to calculate the average per pupil funding overall and per major category.[4]

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[3]For the charter school funding determination, the total annual school system operating budget amount shall exclude appropriations for debt service and for adult education, but shall include the appropriation for food services.

[4]In calculating the average per pupil amount, the charter school applicant and the school system shall use the approved school system annual operating budget for the school year in which the charter school application is filed. However, because the school system September 30 enrollment count is not finalized until late November, the school system enrollment count for the previous school year shall be used for the calculation. Nonetheless, in this appeal given the extensive delay since the application was filed and since the 2004 student enrollment count is known at this time, we direct the parties to this appeal to calculate the average per pupil amount using the 2004-2005 school system annual operating budget minus debt service and adult education, and the 2004 enrollment count. A template prepared by MSDE staff from the 2004-2005 approved system operating budget and the 2004 enrollment count is attached to this opinion as Exhibit 1.

Because there are certain support functions including data collection and reporting as well as the responsibilities set out in §9-110(a) of the Education Article that may only be performed by the central office of a local school system, the total average per pupil amount shall be adjusted by a 2% reduction as a reasonable cost to the charter school for these required central office functions. The total adjusted average per pupil amount is then multiplied by the student enrollment of the charter school to determine the total funding amount for the charter school.

We note that the total annual school system operating budget contains all funds - federal, State, and local including, *e.g.*, Title I and special education funds. Therefore, with the exception of a student with disabilities for whom the IEP designates a nonpublic school placement, we find that an average per pupil amount derived from the total annual school system operating budget is sufficient for the charter school to deliver the services for which the school's students are eligible. The charter school will have to make budgetary allocations knowing its student population eligibility requirements and in doing so must comply with all applicable federal and State requirements.

For the special services that must be provided to its eligible students, the charter school must choose whether it will provide those services directly or whether those services will be provided by the school system. If the latter, the charter school must reimburse the school system the proportionate cost of those services.[5] Further, the charter school must reimburse the school system for salary, local retirement, and other fringe benefit costs for the public school employees working in the charter school as well as for regular services and supplies that the charter school requests the local school system to provide.[6]

As further guidance on the implementation of the funding methodology set out above, the State Board adopts and incorporates by reference the guidance documents discussed at our public meeting on May 24, 2005. Those guidance documents are attached to this revised opinion as Exhibit 2 - Use of Average Per Pupil Funding and Central Support; Exhibit 3 - Steps to Include Title I Funding for Charter Schools; and Exhibit 4 - Charter Schools and Special Education.

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[5]For a student with disabilities enrolled in a charter school for whom the IEP designates a nonpublic school placement, the charter school shall reimburse the school system the annual average per pupil funding amount. The local school system shall pay the excess costs of the placement.

[6]The Fiscal Note accompanying SB 75, Acts 2003, that established Maryland's Public Charter School Program, relied on average per pupil expenditures to calculate the estimated fiscal impact of the legislation. *See* SB 75/2003, Fiscal Note at 4. While not controlling, we believe the General Assembly considered the average per pupil analysis provided in the Fiscal Note in enacting §9-109.

Status of Employees

LPCS requests that the State Board waive the requirement that school employees other than full-time classroom teachers be school system employees. In this regard we note § 9-108 of the Education Article provides that employees of a public charter school are public school employees of the public school employer in the county in which the public charter school is located and have the collective bargaining rights granted to other public school employees in Title 6, Subtitles 4 and 5 of the Education Article. The statute further provides that the respective union and the charter school may "mutually agree to negotiate amendments to the existing agreement to address the needs of the particular public charter school."

Therefore, on the status of its employees, LPCS may choose to negotiate certain changes in the applicable negotiated agreements, pursue the procedures set forth in the State Board's proposed regulations on waivers for charter schools, or a combination of both. *See* COMAR 13A.01.01.03.[7] Under the State Board charter school waiver process, LPCS must file a written waiver request with the State Superintendent of Schools, cite and describe the statutory or regulatory provision from which it seeks to be exempted, and describe the desired outcome with an explanation of why the waiver is necessary and justifiable under the circumstances including the impact, if any, on students or staff. COMAR 13A.01.01.03C(2).[8]

Local Board Policy and Procedure Waivers

Requests to modify local board policy and procedure shall be submitted to the extent practicable with the charter school application and resolved by the parties during the application review period.

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[7]The charter school waiver regulations were published in the Maryland Register on April 29, 2005. The State Board intends to amend the proposed regulations to allow waiver requests from charter school applicants to be submitted to the State Board concurrently with the submission of the charter school applications to the local board. Additional amendments may be made based on consideration of public comment, if any, received on the proposed regulations. In the interim and in order to have an orderly process for review of waiver requests, the State Board will follow the procedures set forth in the regulatory proposal for any waiver requests it receives from charter school applicants pending final adoption of the regulatory proposal.

[8]The waiver request must also be sent to the local superintendent or chief executive officer of the school system where the charter school is located. The local superintendent/CEO must then submit a memorandum to the State Superintendent that explains why the school system supports, opposes, or has no position on the waiver request. *See* COMAR 13A.01.01.03C.

CONCLUSION

The general purpose of Maryland's Public Charter School Program as enacted in 2003 is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students. *See* Educ. § 9-101(b). Under the law the charter school is a public school operating with agreed upon terms of flexibility within a public school system. The local school system must work collaboratively with the charter school as one of its schools and the charter school must work collaboratively with the school system as a public school within the local system.

We have issued this Revised Opinion as guidance and direction not only to the parties in this appeal but also to the other charter school applicants and local school systems in Maryland for the refinement of their working relationships on behalf of the public school children throughout this State.

Edward L. Root /rnc
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President

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Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

May 26, 2005

Total Students
As Of 9/30/04 - 136095

EXHIBIT-1

Per Pupil Funding for Prince George's County

State Category	Total Budgeted	Per Pupil	Funds Provided to Charter School (Note 1)	Funds Reimbursed to LSS for Service
Administrative Services	$20,417,332	$150		
Mid-Level Admin	$88,521,002	$650		
Total Instruction	$550,620,574	$4,046		
Special Education	$187,361,918	$1,377		
Student Personel Services	$4,231,464	$31		
Student Health Services	$11,193,254	$82		
Student Transportation	$67,389,817	$495		
Operation of Plant	$92,624,651	$681		
Maintanance of Plant	$22,226,766	$163		
Fixed Charges	$223,067,311	$1,639		
Food Service Transfer + Actual	$45,283,240	$333		
Community Services	$2,256,281	$17		
Capitol Outlay	$0	$0		
Undistributed Funds	$0	$0		
Total	$1,315,193,610	$9,664		

Per Pupil Funding Totals	Amount
Total Per Pupil Funding	$9,664
Total Funds Provided To Charter School	
Funds Reimbursed to LSS for Services	

Note 1: This figure equals the amount in Column C (Per Pupil) times the number of students in the Charter School.

Prepared May 4, 2005

EXHIBIT-2

Panel on State Board's Decisions Regarding Charter School Appeals Use of Average Per Pupil Funding and Central Support May 24, 2005

Use of Average Per Pupil Funding

- There is no statewide formula or methodology that determines how school systems fund their schools.
- Various methods are used nationally to address Charter School funding
- In choosing average per pupil budgeted expenditures, the Board followed the example of the Thornton Commission in determining funding allocations.
    - Two of the Commission's guiding principles were Flexibility and Simplicity
    - Using Average Per Pupil Funding maximizes flexibility of the funding at the Charter School level similar to how the Bridge To Excellence funding was allocated to local jurisdictions without the requirement that the dollars follow the child.
    - It was left up to the LEAs to address the best use of the funding.
    - The Thornton Commission did not attempt to allocate each of the three special needs program funds for each school based on their specific student population.
    - The use of Average Per Pupil Funding also maximizes simplicity. In the start-up year of Maryland's Charter School endeavor, it is imperative that funding levels be clearly defined and easily understood.
- There is no enrollment history at these charter schools upon which to base a more refined enrollment-driven allocation of funds. Of course, as an enrollment history develops this issue could certainly be revisited and a more complex funding methodology be examined.

Panel on State Board's Decisions
Regarding Charter School Appeals
Use of Average Per Pupil Funding and Central Support
May 24, 2005

- It is understood that some funding restrictions in two very large federal programs (Title 1 and Special Education) will require the Charter School to adjust the total budget to be in compliance with programmatic laws and regulations.
- The calculation of average cost does not mean that the funding mix of each fund source to the LEA must be duplicated at the Charter School level.
    - There is reason neither to assume nor expect that the LEA would create a mirror image of itself within the Charter School.
    - The actual funding sources that would be provided to the school would be dependent upon the specific school's eligibility for those restricted funds.
    - Even the use of only State and Local funds to meet the commensurate funding level would still be consistent with the calculation put forth by the State Board in its opinion.
- Using average funding per pupil serves as a method of targeting a sufficient level of funding to a charter school student in recognition of what that school system's budget has for each public school student.
    - It is important to know that average is just that, it does not necessarily represent an amount that any specific pupil gets.
    - Some students will cost more to educate, some will cost less. However, use of the average costs ensures that the same level of funding per pupil will be available to the Charter School as is available district wide.
    - It will be up to the charter school to spend its funds effectively as it is the responsibility of each local school system to do the same.

Panel on State Board's Decisions
Regarding Charter School Appeals
Use of Average Per Pupil Funding and Central Support
May 24, 2005

Central Support Costs

- The State Board indicated that the charter school would need to determine for special services whether they would provide those services directly or whether they would be provided by the school system.
- The Board further noted that the charter school would be required to reimburse the LEA for, among other things, services and supplies that the charter school requests the local school system to provide.
- While part of the overall revenue to the charter school, it is important to note that there are some services that can only be provided by the school system and for which the charter school would need to reimburse a portion of the funding.
- There are central support services (data collection, assessment, etc) that can only be provided by the central school office since that is MSDE's point of contact with the LEA for any public school information.
- Annually MSDE calculates a restricted indirect cost rate for use by the LEAs on funding sources to recognize the costs associated with operating and controlling the program.
- The current Financial Reporting Manual for Maryland Public Schools in the section for Cost Principles for State-Funded Grants (Appendix I) allows the use of the restricted indirect cost rate not to exceed a maximum of 2 percent.
- Given the administrative services required to be provided by the school system, the State Board may consider it an appropriate use of the Charter School funding to establish 2% of their annual allocation as a reasonable cost to the school and a reimbursement to the LEA central offices. – approved by unanimous vote of the State Board of Education on May 25, 2005, that the total average per pupil amount shall be adjusted by a 2% reduction

EXHIBIT-3

MARYLAND STATE DEPARTMENT OF EDUCATION

Achievement Matters Most

May 24, 2005

STEPS TO INCLUDE TITLE I FUNDING FOR CHARTER SCHOOLS

1. **Compute the Charter School Per Pupil Allocation (CPPA)**

    a. Local $+State $+Federal $=Total $
    b. Total $/Sept. 30 Enrollment=CPPA
    c. CPPA x Charter School projected enrollment=Total Charter School Funding

2. **Compute the Title I Per Pupil Allocation (TPPA)**

    a. Local School System (LSS) uses standard federal directions to rank all schools, both public and charter, in order by % FARM (or free meals in the case of Baltimore City and Anne Arundel County)
    b. Charter schools must use an estimating procedure to determine the % FARM students
    c. This ranking is then used to determine the Title I Per Pupil Allocation just as the LSS does every year.

3. **If a charter school is Title I for the first time, it must be a Targeted Assistance School. If a charter school was a Title I—Schoolwide School the previous year and will continue to receive services after converting to a charter school, it can be a Schoolwide School. In both cases the computation of the funding is the following:**

    a. Each FARM student's CPPA will remain.
    b. The TPPA will be subtracted from the CPPA for the remaining students in the school
    c. (#FARM x CPPA) + [(# not FARM x (CPPA – TPPA)] = Total Charter School Funding

4. **If a charter school is Not to Receive Title I funding:**

    a. The TPPA should be subtracted from each student's CPPA.
    b. #students x (CPPA-TPPA) = Total Charter School Funding

5. **After each Charter School has completed this activity, the balance caused by the non-FARM students in Targeted Assistance and Schoolwide Schools and from all students in non-Title I schools will remain within the central Title I budget for allocation in accordance with an MSDE-approved budget.**

- **CPPA**—Charter School Per Pupil Allocation
- **TPPA**—Title I Per Pupil Allocation
- **FARM**—Free and Reduced Meals
- **Targeted Assistance School**—Schools that use Title I funds to serve only the students with the most severe academic needs
- **Schoolwide School**—Schools that use Title I funds to serve all students in the school

3a

Conceptual Process for Determining Title I Per Pupil Allocation (TPPA)

Student Numbers

1. Rank all schools (including charters) from the highest to lowest percent of poverty.
2. Determine cut-off for Title I services.
3. Schools above this cut-off will receive Title I services.
4. **Identify the total number of low-income children in Title I school attendance areas (public and private).**

Title I Dollars

1. Begin with the full amount of the LSS Title I Grant.
2. Subtract the system-wide set aside amounts for Parent Involvement, Professional Development, Administration, Homeless, etc.
3. **Identify the total amount of Title I dollars remaining after the subtraction of the set-asides.**

Final Per Pupil Allocation

1. **Divide the amount of Title I dollars remaining after set-asides (blue above) by the Total number of low-income children (green above).**
2. **The result is the Title I Per Pupil Allocation (TPPA)**

EXHIBIT-4

MARYLAND STATE DEPARTMENT OF EDUCATION
Achievement Matters Most

Technical Assistance Bulletin

May 24, 2005

Charter Schools and Special Education

Funding and Service Issues

1. What rights do children with disabilities have who attend public charter schools?

Students with disabilities retain all rights to receive a free appropriate public education (FAPE). LEA Charter schools are responsible for ensuring that the requirements of the IDEA are met. This includes conducting child find activities, completing evaluations, developing and implementing IEPS.

2. What are the specific requirements related to Charter Schools with the enactment of the Individuals with Disabilities Education Act (IDEA), 2004.

The local educational agency is required to serve children with disabilities attending 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 education agency has a policy or practice of providing such services on the site to its other public schools; and

The local educational agency is required to provide funds to charter schools 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 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. [613 (a)(5)] **Attachment**

3. Does nonsupplanting apply to special education in Charter Schools?

Yes, the provisions of 34 CFR 300.184, 34 CFR 300.230 apply to charter schools. The excess cost requirement prevents an LEA from using funds provided under Part B to pay for all of the costs directly attributable to the education of a child with a disability.

Attachment

4. How is the per-pupil funding for Students with Disabilities formulated?

Federal Funding for Special Education:

Funding that a local school system receives is designated as Passthrough Funding. This funding is distributed on a two tier system. The first tier is a flat level of funding that the local school system received in FY 1999. The second tier represents the remaining Passthrough Funding. The formula for distributing these funds is that 85% of the funds are distributed based on total school (public and private) population and 15% on poverty (free and reduced meals). Because the funding formula is not child driven, the amount of funding per pupil will vary between jurisdictions. [611 D]

State Funding for Special Education:

State Funding is provided through the Bridge to Excellence funding formula that is in effect from FY 2004 –2008. The formula is a two-tier formula. Tier I is the funding that local school systems received prior to the Bridge to Excellence. This Tier is decreased each between FY 2004- FY 2008 until it expires at the end of FY 2008. Tier II is based on a portion of the per pupil foundation formula for general education students which increases annually and is then distributed to local school systems based on the local per pupil special education enrollment and local wealth per pupil. This calculation is done in the Budget Branch of the Division of Business Services. [Title 5, Section 2]

Local Funding for Special Education:

Local funding is determined at the local school system level and will vary depending on the amount of students with disabilities that are being serviced and the amount of local funding the local school system designates for meeting the IEP needs of these students.

Overall questions to be answered by local school systems regarding how the system distributes federal funding within the jurisdiction:

- What is the methodology used to assign funding to each school within the system for its students with disabilities? Please elaborate on how this methodology applies. Examples of distribution may include: on a per pupil basis, individual staffing assignments, overall staffing plan, services required on specific IEPs within the school, other (describe).

- Does the described methodology used to distribute the federal funds also apply to how the local school system distributes the State and local funding for students with disabilities?

5. How can special education and related services be provided under LRE A, B, and LRE C?

Option I:

The Charter School can provide all of the special education and related services for students identified for placement in LRE A, B, and C.

The Least Restrictive Environment (LRE) section of the Special Services Information System (SSIS) Manual of Instruction states that students who receive special education and related services outside the general education setting for less than 21% of the school day are considered LRE A students. The manual indicates that students who receive special education and related services outside the general education setting for at least 21% but no more than 60% of the school day are considered LRE B students. The SSIS manual states that students who receive special education and related services outside the general education setting for more than 60% of the school day are considered LRE C students.

Option II:

Under the terms of a contract between the LSS and the Charter School, the LRE A students may be provided services by the Charter School. The LRE B students may be the shared responsibility of both the LSS and the Charter School. The Charter School would provide services for the LRE B students while they are in the general education classroom and the LSS would provide services for the students while they are in the self-contained classroom. LRE C students would be provided services by the LSS.

Any combination of the above options is appropriate consistent with the requirements of the IDEA to ensure FAPE. To the maximum extent possible, all details should be clarified prior to initiating services to students with disabilities.

The Charter school's payment for the students with disabilities that they serve would be included in the per pupil funding they receive for the overall contract to operate a Charter School.

6. Who is responsible for the cost of transportation?

As a part of the contract agreement between the LSS and Charter School, transportation should be addressed for all students including students with disabilities attending the charter schools. This may include the Charter School returning to the LSS the portion of funds provided for transportation or the Charter School providing the transportation service for the student. For students who do not have transportation on their IEP as a related service, the entitlement to transportation should be in accordance with the policy for all students not attending their home school. When an IEP team has approved transportation as a related service, a student with a disability is entitled to this service.

7. What about students who are identified within the Charter school and require a nonpublic school placement?

Students with IEPs within Charter Schools that require a nonpublic setting for implementation of their IEPs are eligible for nonpublic placement through the LSS. The State and LSS payments are to be handled in the same manner as prescribed through the Nonpublic Tuition Assistance Program (300% of the local basic cost; 25% LSS, 75% State towards the remaining tuition). The Charter School shall reimburse the LSS the annual average per pupil funding amount (Patterson Park Public Charter School, Inc. v Baltimore City Board of School Commissioners, p. 7, note #7).

8. How are billings for Medical Assistance handled?

The 1988 amendments to the Medicaid law require Medicaid to pay for medical services that are included in Medicaid eligible students with disabilities Individualized education programs (IEPs) when coverage of such services is included in the State plan for Medicaid. Local school systems may bill Medicaid for health-related services, service coordination, and transportation for services for students with disabilities and infants and toddlers with individualized family service plans (IFSPs). The Charter School shall use the same Tax ID number as the local school system. The local school system will bill Medicaid for services on behalf of students enrolled in the Charter School. The LSS will receive the revenue from Medicaid through MSDE and be responsible to distribute these funds to the Charter School. The Charter School will be responsible for compliance with the Medicaid requirements for students within the Charter School and billed by the LSS.

ADDITIONAL ATTACHMENTS

ATTACHMENT	**Federal Register, Section 300.184, Excess Cost Requirement**
ATTACHMENT	**IDEA Side by Side, NASDSE**

Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in § 300.589 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) *Subsequent years.* If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 1412(a)(19))

§ 300.155 Policies and procedures for use of Part B funds.

The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B.

(Authority: 20 U.S.C. 1412(a)(18)(A))

§ 300.156 Annual description of use of Part B funds.

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained for State-level activities under § 300.602 will be used to meet the requirements of this part;

(2) How those amounts will be allocated among the activities described in §§ 300.621 and 300.370 to meet State priorities based on input from LEAs; and

(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.

(b) If a State's plans for use of its funds under §§ 300.370 and 300.620 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(f)(5))

LEA and State Agency Eeligibility—General

§ 300.180 Condition of assistance.

An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§ 300.220–300.250.

(Authority: 20 U.S.C. 1413(a))

§ 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.

If an LEA or a State agency described in § 300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act.

(Authority: 20 U.S.C. 1413(b)(1))

§ 300.182 Amendments to LEA policies and procedures.

(a) *Modification made by an LEA or a State agency.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.

(2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures.

(b) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of the Act by Federal or State courts; or

(3) There is an official finding of noncompliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b))

§ 300.183 [Reserved]

§ 300.184 Excess cost requirement.

(a) *General.* Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.

(b) *Definition.* As used in this part, the term *excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary or secondary school student, as may be appropriate. Excess costs must be computed after deducting—

(1) Amounts received—

(i) Under Part B of the Act;

(ii) Under Part A of title I of the Elementary and Secondary Education Act of 1965; or

(iii) Under Part A of title VII of that Act; and

(2) Any State or local funds expended for programs that would qualify for assistance under any of those parts.

(c) *LLimitation on use of Part B funds.* (1) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (c)(2) of this section.

(2) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(Authority: 20 U.S.C. 1401(7), 1413(a)(2)(A))

§ 300.185 Meeting the excess cost requirement.

(a)(1) *General.* An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in paragraph (a)(1) of this section is determined using the formula in § 300.184(b). This amount may not include capital outlay or debt service.

(b) *Joint establishment of eligibility.* If two or more LEAs jointly establish eligibility in accordance with § 300.190, the minimum average amount is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§§ 300.186–300.189 [Reserved]

§ 300.190 Joint establishment of eligibility.

(a) *General.* An SEA may require an LEA to establish its eligibility jointly

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with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §§ 300.711–300.714 if the agencies were eligible for these payments.

(Authority: 20 U.S.C. 1413(e)(1), and (2))

§ 300.191 [Reserved]

§ 300.192 Requirements for establishing eligibility.

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.121–300.156; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.* Notwithstanding any other provision of §§ 300.190–300.192, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by § 300.130.

(Authority: 20 U.S.C. 1413(e)(3), and (4))

§ 300.193 [Reserved]

§ 300.194 State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under §§ 300.711–300.714 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(i))

§ 300.195 [Reserved]

§ 300.196 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, the SEA shall—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.197 LEA and State agency compliance.

(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§ 300.220–300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.507–300.528 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(d))

LEA and State Agency Eligibility—Specific Conditions

§ 300.220 Consistency with State policies.

(a) *General.* The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.121–300.156.

(b) *Policies on file with SEA.* The LEA must have on file with the SEA the policies and procedures described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.221 Implementation of CSPD.

The LEA must have on file with the SEA information to demonstrate that—

(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §§ 300.380–300.382; and

(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under § 300.135.

(Authority: 20 U.S.C. 1413(a)(3))

§§ 300.222–300.229 [Reserved]

§ 300.230 Use of amounts.

The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act—

(a) Will be expended in accordance with the applicable provisions of this part;

(b) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with §§ 300.184–300.185; and

(c) Will be used to supplement State, local, and other Federal funds and not to supplant those funds.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§ 300.231 Maintenance of effort.

(a) *General.* Except as provided in §§ 300.232 and 300.233, funds provided to an LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Information.* The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.

(c) *Standard.* (1) Except as provided in paragraph (c)(2) of this section, the SEA determines that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (c)(1)(i) of this section for any fiscal year

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(5) 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 schools in the same manner as it serves children with disabilities in its other schools; and (B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.	(5) 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.

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