



## CHARTER SCHOOL IS LIABLE FOR FAILING TO PROVIDE SPECIAL EDUCATION SERVICES

In a recent decision issued by the California Office of Administrative Hearings (OAH), an administrative law judge (ALJ) ruled that a charter school was liable for failing to provide a special education student with needed transition services. (*Student v. Horizon Instructional Systems Charter School* (2012) OAH Case No. 2011060763.) The case is noteworthy because the charter school, which provided an independent study program, was operating as its own local educational agency (LEA) for the purposes of special education, and therefore it was the school, and not the chartering agency, that was found to be responsible for providing special education students with a free appropriate public education (FAPE). The case highlights the complexities – for both charter schools and their chartering entities – of ensuring that charter school students receive a FAPE.

Charter schools are subject to all of the requirements of special education laws to the same extent as traditional public schools. Many charter petitions and agreements between districts and charter schools provide that the charter school will assume some responsibility for providing special education services; however, the ultimate responsibility for providing special education services to charter school pupils depends on whether the charter school is deemed a public school of the district that granted the charter, or in the alternative, is operating as its own LEA for special education purposes.

A charter school wishing to operate as its own LEA must apply for and be admitted to membership in a special education local plan area (SELPA). Once approved, the charter school participates in the SELPA to the same extent as all other member LEAs. Under this scenario, the charter school is solely responsible for the provision of special education and related services to all of its eligible students. Alternatively, in the case of a charter school operating as a public school of the LEA that granted the charter, the LEA retains responsibility for ensuring that the charter school's pupils receive a FAPE.

In this case, a student with autism enrolled in a homeschool/independent study program operated by Horizon Instructional Systems Charter School (Horizon) in 2006. Horizon is an independent charter school and operates as its own LEA for special education purposes. The student's mother provided instruction to the student in the home during the week, and a teacher from Horizon met with the student and his

# CLIENT NEWS BRIEF

January 2012

Number 03

mother periodically to review the student's progress in the general education curriculum.

When the student turned 16, his IEP team met to develop a new IEP that included a transition plan. Special education law requires a transition plan to include postsecondary goals based on assessments related to training, education, employment, and where appropriate, independent living skills. The IEP must also include transition services needed to assist the student in meeting those goals. In 2011, the student filed a complaint with OAH alleging that the transition plans and services in the IEPs developed for his junior and senior years failed to address his needs in the areas of independent living, mobility, vocational training, and community and work experiences.

Following a due process hearing, the judge issued a decision finding that the charter school had denied the student a FAPE on a number of grounds. The ALJ's findings included the following:

- Because the student did not drive and was dependent on his mother for transportation, his need for training in using public transportation was substantial. However, other than showing the student a copy of a local bus schedule, the charter school did not address his mobility needs. The ALJ rebuked the charter school, noting that the student should have received actual practice in taking public transportation.
- No Horizon special education staff had observed the student in the home or off-campus for the purpose of evaluating his daily living skills, including money handling, shopping, personal hygiene, and self-advocacy. As a result, the judge concluded that "Horizon's attempts to address those needs have been inadequate."
- Following the mother's request that the charter school secure employment for the student through a "workability" program, Horizon notified her that the charter school "does not have programs to connect into the community to provide jobs for students." The judge noted that the charter school's failure to expose the student to vocational and community experiences had caused him "significant educational loss."

By way of remedy, Horizon was ordered to hire an independent assessor to evaluate the student's functional skills, and to provide him with an adult guide trained to provide mobility training and a job coach to assist him in securing employment and to supervise his job performance after placement.

# CLIENT NEWS BRIEF

January 2012

Number 03

The responsibility for providing FAPE is one of the many challenges that face charter schools and their chartering authorities. Many charter schools that operate as online or independent study schools have faced the question of how to serve students with special needs outside of a classroom environment. Charter schools that assume responsibility for acting as their own LEAs trade greater autonomy in special education decisions for increased risk of liability, and those risks may be increased where the charter school does not have a daily classroom component. School districts and county offices of education that oversee non-LEA charter schools, including those that offer online or independent study, must evaluate carefully how best to ensure that students enrolled in such schools receive FAPE.

If you have any questions about charter schools and special education generally, please do not hesitate to contact one of our [eight](#) offices located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

*Written by:*

[Devon Lincoln](#)

Senior Counsel and Charter School Practice Group Co-Chair

Monterey Office

[dlincoln@lozanosmith.com](mailto:dlincoln@lozanosmith.com)

[Claudia Weaver](#)

Associate

Monterey Office

[cweaver@lozanosmith.com](mailto:cweaver@lozanosmith.com)



*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*