

The Legal Obligations of Operating a State Charter School as a Local Educational Agency (LEA)



**State Charter Schools Commission
of Georgia**

Introduction

Georgia law, specifically O.C.G.A. § 20-2-2090, treats each state charter school as its own local educational agency (LEA). In other words, a state charter school must operate as its own school district or school system. (Georgia law also uses the terms school district and school system interchangeably.) This means that a state charter school does not only need to adhere to the requirements of operating a school, but it also means that the state charter school must comply with all the requirements and responsibilities of an LEA. Operating as an LEA can be a daunting and difficult proposition, particularly as most state charter schools do not have the size and economy of scale as most Georgia LEAs. Functioning both as a school and LEA, however, is not insurmountable. The first step to being a successful state charter school and LEA is to understand the obligations of an LEA. This guide is intended to assist state charter schools and prospective state charter schools in understanding and fulfilling the requirements of law when serving as a school and an LEA.

This guide is intended to serve as a brief overview of school laws relevant to state charter schools. This guide is not, and is not intended to be, exhaustive. There will be additional requirements of law that are not discussed herein. This guide should not be construed as providing legal advice. It is the responsibility of each state charter school to consult legal counsel for definitive requirements of law and advice. Nothing in this guide is intended to provide new law or obligations outside the requirements of existing law. This guide does not have the force and effect of law, and should not be cited as such.

A note on terminology:

This guide is intended for a broad audience and the terminology and phrases contained herein should be read with their generally accepted meanings and definitions. However, certain terms and phrases are specifically defined by a law or laws; therefore, this guide utilizes the term as defined by the respective law. For example, the term “disability” is utilized by both the Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA) but is defined differently by each law. When using “disability” while discussing ADA this guide intends the term to be interpreted as defined by ADA. Similarly, when using “disability” while discussing IDEA this guide intends the term to be interpreted as defined by IDEA. Additionally, unless otherwise noted, when used in this document the term “parent” is inclusive of legal guardians. Again, however, certain laws, such as, IDEA, utilize a specific definition of “parent.” As such, the term “parent” when discussing IDEA should be interpreted as defined by IDEA.

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Chapter One – Legal Overview

Broad Flexibility Overview

The charter of most state charter schools will provide the state charter school the maximum amount of flexibility from state education law and State Board of Education Rule that is allowed by law. However, the flexibility of law and rule is not absolute. The charter does not, **and cannot**, waive:

1. The requirement for the school to be public, nonsectarian, nonreligious, nonprofit, and not home based;
2. Supervision of the school by the State Board of Education and State Charter School Commission of Georgia as consistent with the Georgia Constitution;
3. Any federal, state, and local rules, regulations, court orders, and statutes relating to insurance;
4. Any federal, state, and local rules, regulations, court orders, and statutes relating to the protection of the physical health and safety of school students, employees, and visitors;
5. Any federal, state, and local rules, regulations, court orders, and statutes relating to conflicting interest transactions;
6. Any federal, state, and local rules, regulations, court orders, and statutes relating to the prevention of unlawful conduct, including unlawful conduct in or near a public school;
7. The requirement to be subject to an annual financial audit conducted by the state auditor or, if specified in the charter, by an independent certified public accountant licensed in this Georgia;
8. The requirement to be included in the Single Statewide Accountability System (SSAS) detailed in O.C.G.A. § 20-14-26 et. seq.;
9. Requirements for reporting data to the State Board of Education or Georgia Department of Education, including student data and financial reporting;
10. The prohibition of charging tuition or fees except as authorized for local boards under O.C.G.A. § 20-2-133;
11. The requirement to provide a brief period of quiet reflection under O.C.G.A. § 20-2-1050;
12. The requirement to conduct fingerprinting and criminal background checks of employees as specified in O.C.G.A. § 20-2-211.1;
13. Requirements related to the provision of individual graduation plans for students detailed in O.C.G.A. § 20-2-327(c);
14. The requirement for academic curriculum to align to the state-adopted curriculum;
15. Requirements related to the administration of state-adopted assessments;
16. The use of the teacher and leader evaluation system adopted by the State Board of Education;
17. Any federal law, rule, or regulation; and
18. Any state law, rule, or regulation not located in Title 20 of the Official Code of Georgia. (A law is in Title 20 if the citation begins O.C.G.A. § 20-.)

Accordingly, though state charter schools have wide latitude in their instructional methods operations, state charter schools must continue to adhere to many requirements of rule and

law. These requirements include provisions applicable to the state charter schools' functions as schools as well as their functions as LEAs.

Federal Laws in Education

While education and laws related to education is generally governed by each respective state, the federal government plays an important role in setting education policy and governing the operation of schools and LEAs. The most comprehensive federal law related to education is the Elementary and Secondary Education Act (ESEA), the current authorization of which is known as the No Child Left Behind Act (NLCB). Other federal laws are narrower in focus, though understanding of each is essential to school and LEA operations.

Most of the federal laws concerning education apply to schools directly as a result of the school being open to the public or receiving federal funding. (All state charter schools receive federal funding.) These laws apply directly to state charter schools without oversight at the state-level. Other federal education laws are related to specific funding offered by the federal government through the United States Department of Education. These laws, such as ESEA, are applied to the State Board of Education (as the State Educational Authority or SEA). The State Board of Education, through the Georgia Department of Education, then must ensure that all LEAs are meeting the requirements of the law. The table below lists federal laws that are applicable to schools and LEAs, including state charter schools. Each law is discussed in more detail in the following chapters.

Federal Laws Directly Applicable to Schools and LEAs	Federal Laws Applicable as a Result of Georgia Accepting Specific Grants
Civil Rights Act of 1964	ESEA, including Title I, Title II, Title III,
Americans with Disabilities Amendments Act and Section 504 of the Rehabilitation Act	Individuals with Disabilities Education Improvement Act (IDEA)
Title IX of the Educational Amendments Act of 1972	
Age Discrimination of 1975	
Family Educational Rights and Privacy Act (FERPA)	
Protection of Pupil Rights Amendment (PPRA)	

State Laws in Education

Generally, most state laws regarding education in Georgia are codified in Title 20 of the Official Code of Georgia. As noted above in discussing the flexibility provided to state charter schools, the charter for most state charter schools provides a broad waiver of most provisions in Title

20. There are a few provisions of Title 20 that remain applicable to state charter schools. Additionally, there are laws that apply to state charter schools that are not codified in Title 20. Neither the State Board of Education nor the State Charter School Commission of Georgia has the authority to waive provisions of law outside of Title 20. Accordingly, state laws codified outside of Title 20 are always applicable to state charter schools. The provisions of state law applicable to state charter schools are discussed in greater detail in Chapter Five.

Chapter Two – Federal Laws Directly Applicable to Schools and LEAs

The United States Constitution

State charter schools must remain cognizant of the principles imparted by the United States Constitution. This includes, but is not limited to, the ideals of freedom of speech, freedom of religion, protection from unreasonable searches, and equal protection of the laws. For example: a school cannot refuse to enroll a student based on the student's immigration status, *Plyler v. Doe*, 457 U.S. 292 (1982); a school must provide a student due process prior to a long-term suspension, *Goss v. Lopez*, 419 U.S. 565 (1975); and students are entitled to certain protections of free speech from school action, *Tinker v. Des Moines Ind. Sch. Dist.*, 393 U.S. 503 (1969). Case law regarding the operation of schools under the Constitution is constantly developing, particularly regarding students' freedom of speech. As such, state charter schools should be mindful of legal developments as they occur.

The Civil Rights Act of 1964

Statute: [42 U.S.C. § 2000d](#) *Regulations:* [34 C.F.R. Part 100](#)

Overview

The Civil Rights Act ensures that no person is excluded from participation in, denied the benefits of, or is otherwise subjected to discrimination on the ground of race, color, or national origin in all programs and activities conducted by schools receiving federal financial assistance, including state charter schools. The Office for Civil Rights in the United States Department of Education monitors and enforces the Civil Rights Act in elementary and secondary schools. A state charter school must ensure that all students are provided access the school's program and activities, including students who speak different languages. There is no "threshold" number of students a school needs before it must ensure accessibility of its programs. The state charter school must ensure accessibility of all students.

The Equal Educational Opportunities Act

Like the Civil Rights Act, the Equal Educational Opportunities Act (EEOA), [20 U.S.C. § 1703](#), also prohibits discrimination in the conduct of educational activities. EEOA explicitly provides that the failure to overcome language barriers that impede equal participation of students constitutes discrimination.

Language Assistance Programs

To comply with the Civil Rights Act and EEOA, all public elementary and secondary schools must identify language minority students and provide English-language assistance. Language minority students may be identified through the Home Language Survey or the state-adopted screening measure. The Home Language Survey is often administered as part of a student's

enrollment paperwork and will assist schools in determining which students should be administered a language proficiency screening assessment.

Once a student is identified as needing language assistance, the school must provide services to remove language barriers and assist the student in achieving English proficiency. These language assistance services may be different than language programs conducted under Title III of ESEA. In other words, a state charter school must provide language assistance programs regardless of its receipt of Title III funding.

While state charter schools are not required to adhere to the language delivery models identified by the State Board of Education, state charter schools must continue to provide language assistance as required by the Civil Rights Act and must follow the eligibility requirements and exit criteria that is identified by the State Board of Education. State charter schools may utilize the ESOL program weight when appropriate services are provided by the school. The United States Department of Education opines that using federal funding to conduct language screening activities violates the “supplement not supplant” requirement associated with most federal funding.

The Georgia Department of Education provides resources to assist schools in conducting language assistance programs that meet the requirements of the Civil Rights Act. The information from the Georgia Department of Education is available [here](#).

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act

Americans with Disabilities Act: [42 U.S.C. § 12131 et. seq.](#)

Regulations for Education-Related Provisions: [28 C.F.R. Part 35](#)

Section 504 of the Rehabilitation Act: [29 U.S.C. § 794 et. seq.](#)

Regulations for Education-Related Provisions: [34 C.F.R. Part 104](#)

Overview

Though the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) are separate and distinct laws, their applicability to state charter schools is very similar, particularly with respect to program accessibility. In short, ADA and Section 504 prohibit schools from discriminating against individuals with disabilities. A public school, including a state charter school, must ensure that individuals with disabilities are provided access to all programs and activities of the school. It may be necessary for the school to provide accommodations to its policies or additional services to ensure that individuals with disabilities have access to the school’s programs and activities. ADA also requires facilities utilized by public schools to meet certain accessibility requirements. The protections afforded by ADA and Section 504 apply to all individuals that may participate in school activities. In other words, state charter schools must adhere to the requirements of ADA for students, employees, parents, and other invitees. A school typically cannot utilize federal funding to meet the requirements of ADA and Section 504.

Definition of Disability

Both ADA and Section 504 define a disability as one who has a mental or physical impairment that substantially interferes with a major life activity, someone who has a record of such impairment, or someone regarded as having such impairment. “Major life activity” is interpreted very broadly and may include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The determination as to whether an individual has a disability must be made without considering mitigating effects of measures such as medication, equipment, or other assistive devices.

Facility Accessibility

ADA requires all programs and activities of state charter schools to be accessible to individuals with disabilities. This includes providing physical access to programs and activities. There are many ways a state charter school can make its programs and activities physically accessible. A state charter school may relocate its program or activities to an accessible area. For example, a state charter school may choose to utilize only the ground floor of a facility for certain classes. Additionally, a state charter school may choose to make structural changes to its facilities, but the state charter school must follow the ADA standards in design for doing so as well as the requirements of the Georgia Department of Education's Facilities Division. A state charter school does not have to make alterations to its facilities if doing so would result in a fundamental change in the nature of the program or activity or an undue financial and administrative burden.

Program Accessibility

State charter schools must make modifications or accommodations in its policies and procedures to ensure that individuals with disabilities may access its programs and activities. A state charter school does not need to make all requested modifications but only must provide “reasonable modifications” to ensure program accessibility. State charter schools must also ensure that it provides auxiliary aids and services to ensure effective communication to individuals with disabilities. This may include alternate versions of written documents (large-print) or interpreters. A state charter school must allow an individual with a disability to utilize a service animal for assistance. The ADA limits services animals to dogs (and in some cases miniature horses). A state charter school may not require the service animal to be a specific breed of dog or have special certification. A state charter school is not required to make modifications or accommodations if doing so would result in a fundamental change in the nature of the program or activity or an undue financial and administrative burden.

Free Appropriate Public Education

Section 504 requires schools to provide a free appropriate public education to students with disabilities. This means that the state charter school must, at no cost to the parent or student, provide accommodations and services to students with disabilities to meet the individual needs of a student with a disability as adequately as the needs of students without disabilities and in a manner that is consistent with the procedural requirements of Section 504, including education in the appropriate setting, proper evaluation and placements of students with disabilities, and providing procedural safeguards. A student eligible for accommodations and services under

Section 504 may not be eligible for services under the Individuals with Education Act (IDEA), though a student eligible for services under IDEA also meets the eligibility requirements for Section 504. In such case, complying with the requirements of IDEA will also meet the requirements of Section 504.

Evaluation, Eligibility, and Reevaluations

A state charter school must evaluate any student believed to have a disability that may qualify the student for accommodations or services under Section 504. The state charter school must receive parental consent prior to conducting an evaluation. The evaluation must include information from a variety of sources, including valid tests and other evaluation materials, recommendations, and available diagnoses. The extent and depth of the evaluation will vary depending on the needs and circumstances of each individual student.

The determination as to whether a student is eligible for accommodations and services under Section 504 must be made by a group of persons, including individuals knowledgeable about the student. The student's parents should be included in the group of persons making the eligibility determination, but the ultimate decision regarding the eligibility for services lies with the group as a whole. A medical diagnosis alone does not mean a student will be eligible for accommodations and services under Section 504. Instead, the group of persons determining eligibility must decide if the student has a physical or mental impairment that substantially limits a major life activity.

A student determined to be eligible for accommodations and services under Section 504 must be periodically reevaluated for continuing eligibility. There is no prescribed timeline for conducting reevaluations, though the reevaluation should consist of the same or similar processes as the initial evaluation. Meeting the evaluation requirements of the Individuals with Education Act (IDEA) will satisfy the reevaluation requirements of Section 504.

Placement

A state charter school must provide accommodations and services to students with disabilities that meet the individual needs of a student with a disability as adequately as the needs of students without disabilities. This may include, but is not limited to, additional time to complete assignments, additional breaks from instruction, assistive technology devices, and services from a specialized provider or paraprofessional. To the greatest extent appropriate, the placement of students with disabilities should be in a setting with students without disabilities. Additionally, students with disabilities must have the opportunity to participate in nonacademic programs, such as extracurricular activities, lunches, and recess, with students without disabilities as much as possible. A school typically cannot utilize federal funding to provide accommodations or services to students with disabilities under Section 504.

Procedural Safeguards

The United States Department of Education interprets Section 504 to require schools to notify students and parents of the rights afforded to students with disabilities. As such, each state charter school should create a written notification of the rights provided under Section 504. Additionally, Section 504 requires schools and state charter schools to provide a system of procedural safeguards that includes: an opportunity for the parents or guardian of the person

to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review process. The Georgia Department of Education developed model notifications of rights and procedural safeguards that are available [here](#).

Discipline

In accordance with the requirements of the Office for Civil Rights, a state charter school must determine if the behavior of a student eligible for accommodations and services under Section 504 is a manifestation of the student's disability prior to disciplining the student. The review of the student's behavior to determine if the behavior was a manifestation of the student's disability should be conducted by a group of persons knowledgeable about the student and his or her disability. If it is determined that the behavior is a manifestation of the student's disability, the student's placement should be reviewed and adjusted through the school's placement procedures under Section 504. If it is determined that the behavior of the student is not a manifestation of his or her disability, the state charter school may discipline the student as it would any student.

Monitoring

The United States Department of Education's Office for Civil Rights monitors and enforces Section 504 and ADA. Some school districts, including state charter schools, may be selected to complete a data survey conducted by the Office for Civil Rights. The Office for Civil Rights may conduct compliance reviews and will investigate individual complaints.

Additional Resources

The United States Department of Education's Office for Civil Rights has many publications related to ADA and Section 504 on its website [here](#), as well as a thorough Frequently Asked Question document available [here](#). The Office for Civil Rights will also provide technical assistance and training upon request.

The United States Department of Justice also maintains a comprehensive website regarding the ADA [here](#).

Title IX of the Educational Amendments Act of 1972

Statute: [20 U.S.C. § 1681 et. seq.](#) *Regulations:* [34 C.F.R. Part 106](#)

Overview

Title IX of the Educational Amendments Act of 1972 (Title IX) ensures that no person is excluded from participation in, denied the benefits of, or is otherwise subjected to discrimination on the basis of sex in all programs and activities conducted by schools receiving federal financial assistance, including state charter schools. A state charter school must ensure that all its programs and activities, including admissions, recruitment, curriculum, assignment, grading, and athletics, are conducted in a manner that discriminate on the basis of sex.

Sexual Harassment

Title IX prohibits sexual harassment in schools as the conduct has the effect of denying or limiting a student's ability to participate in or benefit from the school's educational program. Sexual harassment may occur when a teacher or other school employee conditions educational benefits on unwelcome sexual conduct or the school creates or fails to remedy a hostile environment that has the effect of denying a student an educational benefit. Sexual harassment may be perpetrated by school officials, volunteers, students, or other visitors to the school. The location of the harassment is immaterial to the jurisdiction of the school if the effect is denial of an educational benefit to the student. If a state charter school knows or reasonably should know about sexual harassment that creates a hostile environment, the state charter school must take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

Creating a safe environment free from sexual harassment is critical to school success. The United States Department of Education's Office for Civil Rights monitors and enforces Title IX in elementary and secondary schools. The Office for Civil Rights has comprehensive guidance and resources to assist schools in addressing and preventing sexual harassment that are available [here](#).

Single Sex Education

Title IX does allow schools to operate single-sex classes or schools. Single-sex classes may be provided in a coeducational school if the classes are related to the school's "important objective" to improve educational achievement of its students through the school's overall established policy to provide diverse educational opportunities or to meet the particular, identified educational needs of its students. Single-sex classes in coeducational schools must be implemented in an evenhanded manner; with voluntary enrollment and substantially equal coeducational opportunity. Schools conducting single-sex classes in a coeducational school must conduct a periodic evaluation at least every two years to ensure that the single-sex classes do not rely on overly broad generalizations of either sex and that the single-sex classes are substantially related to the school's important objective.

Single-sex schools are also permissible under Title IX in some circumstances. Traditional LEAs that operate a public nonvocational single-sex school must offer the excluded sex a substantially equal single-sex school or coeducational school. Title IX offers an exception to charter schools that operate as an LEA, such as state charter schools. In the case of state charter schools, the school may be operated as a single-sex school without offering a substantially similar opportunity to the excluded sex. Under Georgia's open enrollment provisions, however, a single-sex state-charter school would be required to allow a student of the opposite sex to enroll in and participate in the school program.

Schools wishing to utilize single-sex models or classrooms should carefully review the requirements and guidelines of Title IX prior to implementing the programs. The United States Department of Education's Office for Civil Rights monitors and enforces Title IX in elementary and secondary schools. The Office for Civil Rights has comprehensive guidance regarding single-sex education [here](#).

Athletic Programs

Title IX requires schools to conduct athletic programs in a nondiscriminatory manner, if conducted. A state charter school may separate students by sex within physical education classes during contact sports, such as football, wrestling, or basketball. Additionally, a state charter school may provide for separate teams for members of each sex where the selection for such teams is based upon competitive skill or if the activity involved is a contact sport. If, however, a state charter school operates a team in a sport for one sex but does not offer a team in that sport for the other sex and athletic opportunities for members of the excluded sex have previously been limited, members of the excluded sex must be afforded the opportunity to try-out for the single-sex team unless the sport is a contact sport.

If a state charter school conducts interscholastic athletics, the school must provide equal athletic opportunity for members of both sexes. Schools may evaluate their compliance with Title IX requirements in providing equal opportunity for participation in interscholastic athletics by using a three-part test. Though the three-part test was derived for intercollegiate athletics, the test is applied to interscholastic athletics at the elementary and secondary level as well. A school may meet any part of the three-part test to illustrate compliance with Title IX. To determine if a school is conducting interscholastic activities in a nondiscriminatory manner, the school must be able to show:

1. Whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the school can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among interscholastic athletes, and the school cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

Providing athletic opportunity to students can be an important component of a school's academic plan. The requirements of Title IX can be confusing and often misunderstood. Accordingly, state charter schools that offer athletic programs should undertake a thorough study of Title IX in devising and implementing an athletic program. The United States Department of Education's Office for Civil Rights monitors and enforces Title IX in elementary and secondary schools. The Office for Civil Rights has comprehensive guidance regarding single-sex education [here](#).

Age Discrimination Act of 1975

Statute: [42 U.S.C. § 6101 et. seq.](#) *Regulations:* [34 C.F.R. Part 110](#)

Overview

The Age Discrimination Act of 1975 ensures that no person is excluded from participation in, denied the benefits of, or is otherwise subjected to discrimination on the basis of age in all programs and activities conducted by schools receiving federal financial assistance, including state charter schools. A state charter school must ensure that all its programs and activities, including admissions, recruitment, curriculum, assignment, grading, and athletics, are conducted in a manner that discriminate on the basis of age.

Importantly, the Age Discrimination Act of 1975 does not apply to age restrictions that are adopted in statutes as criteria for certain programs. In other words, a state charter school may limit enrollment in the school only to those within the statutory eligibility for enrollment (ages 5 through 20 or 21 depending if the student dropped out of school for a quarter or more).

A state charter school may exclude or limit participation of individuals on the basis of age if such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of its program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

1. Age is used as a measure or approximation of one or more other characteristics;
2. The other characteristic or characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;
3. The other characteristic or characteristics can be reasonably measured or approximated by the use of age; and
4. The other characteristic or characteristics are impractical to measure directly on an individual basis.

Further, a state charter school may exclude or limit participation of individuals in a program or activity based on a factor other than age even though that action may disproportionately effect persons of a certain age. The other factor that is the basis of the action must bear a direct and substantial relationship to the normal operation of the program or activity or the achievement of a statutory objective. When taking any action that may exclude or limit the participation of individuals directly or indirectly on the basis of age, the state charter school will have the burden of proving that the age distinction or other action falls within an exception outlined in law.

A state charter school may take steps to overcome the effects of limited participation in a program or activity on the basis of age. Additionally, if the state charter school to children (or the elderly), the use of age distinctions is presumed to be necessary to the normal operation of the program or activity. Any age distinction set by the United States Department of Education is also presumed to be necessary to the normal operation of the program or activity.

Monitoring

The United States Department of Education's Office for Civil Rights monitors and enforces the Age Discrimination Act of 1975. The Office for Civil Rights may conduct compliance reviews and

will investigate individual complaints. More information regarding the Age Discrimination Act of 1975 is available from OCR [here](#).

Employment Practices Not Included

The Age Discrimination Act of 1975 is not applicable to a state charter school's employment practices. The Age Discrimination in Employment Act of 1967 does apply to a state charter school's employment practices and is very briefly discussed in Chapter Six.

Family Educational Rights and Privacy Act (FERPA)

Statute: [20 U.S.C. § 1232g](#) *Regulations:* [34 C.F.R. Part 99](#)

Overview

The Family Educational Rights and Privacy Act (FERPA) provides parents and eligible students certain rights relating to accessing education records. An eligible student is a student that is at least eighteen years, or attends a postsecondary school. FERPA also restricts a school's disclosure of education records. Except in limited circumstances, a school cannot disclose educational records without prior written consent from the parent or eligible student. Each educational agency or institution, including state charter schools, must provide an annual notification to parents and eligible students that contains the information identified in of 34 C.F.R. § 99.7.

Definition of Education Records and Directory Information

FERPA defines education records as records that are maintained by an educational agency or institution and are directly related to the student. Education records in the elementary and secondary setting do not include:

- Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- Records of the law enforcement unit of an educational agency or institution (subject to the provisions of 34 C.F.R. § 99.8);
- Most records of the school that relate to employees;
- Records created or received by the school after a student is no longer in attendance and that are not directly related to the student's attendance at the school; and
- Grades on peer-graded papers before they are collected and recorded by a teacher.

Additionally, schools may release "directory information" of students after providing notice to parents and eligible students that includes the types of information that the school designated as directory information, the right of a parent or eligible student to refuse to designate information related to the student as directory information, and the period of time within which a parent or eligible student must notify the school in writing that the school may not designate the information related to the student as directory information.

Right to Access and Amend Education Records

A parent or eligible student may request to review or inspect the educational records maintained by a school regarding the student. The school must respond to the parent or

eligible student in a reasonable time not to exceed 45 days. The school must provide explanations and interpretations in response to reasonable requests. A school is not required to provide copies of the requested records. A school may charge fees for copies of the requested records unless the cost of the copies and other relevant circumstances effectively prevent the parent or eligible student from reviewing the records. A school may not charge a parent or eligible student for searching for or retrieving educational records. If an educational record contains personally identifiable information about more than one student, a parent or eligible student may not review the portion of the record that relates to another student.

A parent or eligible student may request that the student's education records be amended if the parent or eligible student believes the records are inaccurate, misleading, or violation of the student's right to privacy. Within a reasonable amount of time after receiving the request to amend the education record, the school must decide whether to amend the record as requested. If the school decides not to amend the record as requested, the school must provide the parent or eligible student of its decision and the right to request a hearing. If the parent or eligible student proceeds to a hearing, the school must conduct a hearing consistent with the requirements of 34 C.F.R. § 99.22. If the hearing concludes that the education record is inaccurate, misleading, or violation of the student's right to privacy, the school must amend the record and inform the parent of the amendment in writing. If the hearing concludes that the educational record is not inaccurate, misleading, or violation of the student's right to privacy, the school must notify the parent or eligible student of the right to place a statement to accompany the education record stating the reasons why the parent or eligible student disagrees with the record or comments on the record.

Disclosure of Education Records

Generally, a parent or eligible student must provide written authorization prior to the release of personally identifiable information contained in education records. This written authorization must specify the records that may be disclosed, state the purpose of disclosure, and identify to whom the disclosure may be made. The written authorization must also be signed and dated, but such signature may be electronic if the authorization identifies and authenticates the particular person and indicates that person's approval of the authorization.

Personally identifiable information from education records may be disclosed without prior written authorization from the parent or eligible student in certain limited circumstances. An exhaustive list of the circumstances for which prior written authorization is not necessary may be found in 34 C.F.R. § 99.31(a). The most common instances a state charter school may disclose personally identifiable information from education records without prior written authorization are disclosures to:

- School officials, including teachers, of the school that have legitimate educational interests in the information. Contractors, consultants, volunteers, or other individuals may be considered school officials of the school if they perform an institutional function or service for which the school would otherwise use employees, are under the direct control of the school with respect to the records, and are subject by the school to the requirements for redisclosing the information as provided in 34 C.F.R. § 99.33(a). A

school must use reasonable methods to ensure that school officials only have access to education records for which they have legitimate educational interests.

- Officials to other schools or postsecondary institutions where the student seeks to enroll. (Subject to the requirements of 34 C.F.R. § 99.34.)
- Officials of: The Comptroller General of the United States, the Attorney General of the United States, the United States Department of Education, and state and local educational authorities (the State Board of Education or Georgia Department of Education). (Subject to the requirements of 34 C.F.R. § 99.35.)
- Organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. The organization must have a written agreement that contains certain provisions with the educational agency or institution.
- Accrediting agencies carrying out accrediting functions.
- Parents of a dependent student as defined by the Internal Revenue Service.
- Comply with a judicial order or lawfully issued subpoena.
- Prevent, respond, or mitigate a health and safety emergency. (Subject to the requirements of 34 C.F.R. § 99.36.)

State charter schools may also release records, data, and information if all personally identifiable information is removed from the record. In doing so, the state charter school must make a determination that a student's identity cannot be ascertained through the single release or multiple releases of records, data, or information, and taking into account other reasonably available information. In other words, a state charter school must be cognizant that though the personally identifiable information of students is redacted from a single release, the addition of other information may allow for the identification of students. This is particularly true for data that is linked longitudinally over multiple years. In such cases, the data must be further redacted or not released at all. Additionally, data that is published should suppress results if the number of students in that result is too few. It is common to suppress data values if the value is fewer than 10 students.

Recordkeeping

A state charter school must maintain a record of each request for access to and disclosure of personally identifiable information from the education records of each student. The record of access and disclosure must specific information required by 34 C.F.R. § 99.34. The record of access and disclosure must be maintained as long as the underlying education record is maintained.

Common FERPA Misunderstandings

FERPA's long history, broad applicability, and harsh penalty contribute to several common misunderstandings of its requirements. As discussed above, personally identifiable student information may be released to school contractors and volunteers in some circumstances. Additionally, FERPA only applies to the records that specifically fit the definition of education records – namely the record is directly related to the student. In other words, records are not subject to FERPA simply because a student's name appears in the record. Also, FERPA does not

apply to personal observations. Accordingly, FERPA does not prevent school officials from discussing what is observed in a classroom (though a code of ethics may).

Furthermore, education records are not subject to the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. Even if an education record is medical in nature (as may be the case with certain special education records) FERPA is the applicable privacy law rather than HIPAA as education records are expressly excluded from the definition of protected health information subject to HIPAA. Moreover, the HIPAA Privacy Rule only applies to “covered entities,” the definition of which will very rarely capture an elementary or secondary school.

Enforcement and Monitoring

The United States Department of Education’s Family Policy Compliance Office monitors and enforces FERPA. The Family Policy Compliance Office accepts complaints from individuals alleging a school’s failure to comply with FERPA. The penalty for violating FERPA is the school’s complete loss of federal funding, though the Family Policy Compliance Office will work with schools to ensure compliance prior to the loss of funding. There is no private right of action under FERPA. In other words, a parent or eligible student cannot sue a school for violating FERPA. More information regarding FERPA is available through the Family Policy and Compliance Office [here](#).

Protection of Pupil Rights Amendment (PPRA)

Statute: [20 U.S.C. § 1232h](#)

Regulations: [34 C.F.R. Part 98](#)

The Protection of Pupil Rights Amendment (PPRA) ensures that schools provide parents notification and information about certain activities occurring in the school setting. PPRA requires surveys, analyses, or evaluations, and all related instructional materials, that are administered or distributed through the school be made available to parents for inspection. PPRA also allows parents to detail their child’s participation surveys, analyses, or evaluations that could reveal information about one or more of the following topics:

- Political affiliation or beliefs of the student or parent;
- Mental or psychological problems of the student or his or her family;
- Sexual behavior or attitudes;
- Illegal, anti-social, self-incriminating, or demeaning behavior;
- Critical appraisals of others with whom the student has close familial relationships;
- Legally recognized privileged relationships (such as with lawyers, doctors, or clergy);
- Religious practices, affiliations, or beliefs of the student or parent;
- Income (except when required by law to determine program eligibility).

In cases in which the surveys, analyses, or evaluations could reveal the personal information identified above, even if anonymous, the school must obtain parental permission prior to the administration of the instrument to students. This may be done by obtaining affirmative permission from the parent for the student to participate, or it may be accomplished by providing the parent an opportunity to “opt out” of their child’s participation.

PPRA also requires state charter schools to establish policies and notify parents of the policies regarding:

- Parental review of surveys, including third party surveys, administered or distributed through the school and procedures for granting parental review;
- Arrangements to protect the privacy of students responding to surveys containing one or more of the topics listed above;
- Parental review of instructional material used as part of the educational curriculum and procedures for granting parental review;
- Physical examinations or screenings that the school may administer to a student; and
- The collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information, including arrangements to protect student privacy, including the right of a parent to inspect the instrument used to collect this information and procedures for granting parental review, unless this information is collected for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions.

Additionally, PPRA requires state charter schools to notify parents of the following activities prior to their occurrence:

- The collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information; and
- The administration of any survey containing one or more of the topics listed above;

The United States Department of Education's Family Policy Compliance Office monitors and enforces PPRA. The penalty for violating FERPA is the school's complete loss of federal funding, though the Family Policy Compliance Office will work with schools to ensure compliance prior to the loss of funding. More information regarding PPRA is available through the Family Policy and Compliance Office [here](#).

Grievance Procedures and Nondiscrimination Statements

Many of the laws discussed above require state charter schools to adopt grievance procedures and nondiscrimination statements, including the designation of an employee to coordinate compliance efforts. The specific requirements of each law vary, but many entities choose to address the requirements through a single grievance procedure and combined nondiscrimination statement.

The grievance procedure provides a method for schools to address the concerns of students, employees, and the public with respect to the school's compliance with civil rights requirements. Specific grievance procedures can vary, but each procedure should, at a minimum, provide an individual an opportunity to present a grievance or complaint, resolution by an impartial official, and a review procedure. State charter schools are encouraged to work with their legal counsel to develop a grievance procedure.

The nondiscrimination statement should contain the statement of nondiscrimination and the identification of the employee responsible for coordinating compliance efforts. More details

regarding nondiscrimination statements required in the school setting may be found through the United States Department of Education’s Office for Civil Rights [here](#).

Chapter Three – Elementary and Secondary Education Act

Overview

The Elementary and Secondary Education Act (ESEA) was initially passed by Congress in 1965 as one of the first comprehensive federal laws addressing education. ESEA provided federal funding for specific categorical educational programs to support federal social and economic policies. ESEA was reauthorized both in 1994 with the passage of the Improving America's Schools Act and again in 2001 with the passage of the No Child Left Behind Act (NCLB). The United States Department of Education recently exercised a wide-scale, nationwide effort to provide states waivers of certain portions of ESEA after many attempts to reauthorize ESEA failed to gain momentum. ESEA requires states to develop rigorous academic standards and assessments and to establish a single, statewide accountability system to measure schools and LEAs in educational improvement.

ESEA is divided into ten different parts or "Titles." The most far-reaching is Title I, which provides funding for the improvement of educational opportunities for disadvantaged students. Title II focuses on the preparation and professional development of teachers and school leaders. Title III provides funding for English learners and immigrants to the United States. ESEA also includes various laws with specific, narrow aims, such as the McKinney-Vento Homeless Assistance Act.

This guide does not address every aspect of ESEA. This guide is intended to summarize the provisions of ESEA in a manner to assist state charter schools in meeting the requirements that are most relevant to their operations as schools and LEAs. There are countless commercial and free resources available that may be of further assistance to state charter school practitioners. The Georgia Department of Education's handbook for Title I directors (available [here](#)) also provides insight to the requirements of ESEA and Georgia's efforts to implement and monitor its requirements.

Comprehensive LEA Implementation Plan

Statute: [20 U.S.C. § 6312](#) *Public Law Section:* [1112](#) *Regulations:* [EDGAR](#)

To receive funding under ESEA, an LEA, including a state charter school, must submit a comprehensive plan for the coordination and implementation of the requirements of ESEA and other federal programs. Often referred to as the "CLIP", this plan must include items required by federal and state law that must be addressed to receive state funding, a data profile of the LEA, the goals and strategies for implementing federal law, and general and specific program assurances to which the state charter school must agree.

The CLIP is submitted to the Georgia Department of Education electronically for approval through the Consolidated Application. A team will review each aspect of the application, including associated budgets, to ensure the plan meets the requirements of law. Once the CLIP and budgets are approved, funding is released for each LEA in the Georgia Department of

Education's electronic grant management system known as the Grants Accounting Online Reporting System (GAORS).

Title I, Part A- Improving the Academic Achievement of the Disadvantaged

Statute: [20 U.S.C. § 6311 et. seq.](#) *Public Law Section:* [1114-5](#) *Regulations:* [34 C.F.R. Part 200](#); [EDGAR](#)

Schoolwide Programs

A state charter school, as an LEA, may consolidate Title I, Part A funding with other federal and state funding to upgrade the entire educational program of a school if the school serves an eligible school attendance area in which at least 40% of the children are from low-income families or at least 40% of the children enrolled in the school are from low-income families. (Georgia's waiver of ESEA waives the 40% poverty requirement to conduct a schoolwide program for schools designated as Priority or Focus schools.) Under a schoolwide program, the school does not need to identify particular children as eligible for services. A schoolwide program must utilize the funding under Title I, Part A only to supplement the amount of funds that would otherwise be available from non-federal sources to provide services.

A schoolwide program must include a variety of comprehensive elements to encompass and meet the goals of ESEA, specifically to increase the performance and academic achievement of its students. The complete list of elements of a schoolwide program is available and discussed in greater detail [here](#). In general, to implement a schoolwide program, the state charter school would need to conduct a comprehensive needs assessment, create a plan to address all the required elements of a schoolwide program, and review the effectiveness of the plan at least annually and revise the plan if necessary.

Targeted Assistance Programs

State charter schools not eligible to conduct, or choose not to conduct, a schoolwide program must deliver services under Title I, Part A through a targeted assistance program. Under a targeted assistance program, a state charter school may use funds received under Title I, Part A only to eligible students of the eligible population. The eligible population includes children not older than 21 who are entitled to a free public education through grade 12 and children who are not a grade level at which the state charter school provides a free public education. Eligible children are children in the eligible population who are identified by the state charter school as failing, or most at-risk of failing, to meet Georgia's academic achievement standards. Certain additional students are eligible for services under Title I, Part A targeted assistance programs including:

- A child who participated in a Head Start, Even Start, Early Reading First program, or preschool services under Title I at any time in the two years preceding the year for which the determination is made;
- A child who received services under Title I, Part C (Education of Migratory Children) at any time in the two years preceding the year for which the determination is made;

- A child in a local institution for neglected or delinquent children and youth or a child attending a community day program for such children; and
- A child who is homeless.

Determining the children to be eligible for Title I, Part A services can be difficult, particularly as there may be insufficient funding to serve all children determined to be eligible. The Georgia Department of Education provides additional resources for developing selection criteria [here](#).

A targeted assistance program consists of several required components to assist eligible children in meeting Georgia's academic achievement standards. A state charter school must have a written plan that addresses each required component and coordinates the services provided under Title I, Part A with other resources available to the school. The state charter school must review and amend this plan on an ongoing basis.

Funding Allocations

Statute: [20 U.S.C. § 6333](#) *Public Law Section:* [1124](#) *Regulations:* [34 C.F.R. § 200.70-75](#); [EDGAR](#)

Funding under Title I, Part A based entirely on formula that is driven by the poverty rate of the attendance zones within the LEA. Traditional LEAs "rank order" their attendance zones to further allocate funding within the LEA. State charter schools, however, will only have one attendance zone. The Georgia Department of Education will determine poverty rates of a state charter school's attendance zone by examining data received through the school's participation in the National School Lunch Program or other data that indicates the poverty rates if a school does not participate in the National School Lunch Program.

A newly opening state charter school, or one that is significantly expanding, is entitled to receive the full amount of federal formula funding to which it is entitled within five months of the opening or significant expansion. To receive the federal funding within five months, the state charter school must:

1. Provide notice to the Georgia Department of Education of its enrollment or expansion at least 120 days prior to its opening or significant expansion;
2. Provide the Georgia Department of Education with any available data or information the Department may reasonably require for its assistance in estimating the amount of funds the state charter school may be eligible to receive;
3. Provide actual enrollment and eligibility data to the Georgia Department of Education after its opening or significant expansion; and
4. Otherwise comply with the eligibility and program requirements on the same basis as other LEAs.

Fiscal Requirements

The fiscal requirements of ESEA are extremely important to the successful implementation of its programs. The failure to properly adhere to the fiscal requirements can have drastic

damaging effects to the operation of a state charter school. Not only will failure to adhere to the fiscal requirements of ESEA violate a school's charter, but the school will be forced to utilize much-needed nonfederal funding to remedy any noncompliance. Encountering such unplanned budgetary expenses may seriously hinder a school's ability to operate. As such, a state charter school should keep meticulous records that will allow the state charter school to readily demonstrate that it is meeting the fiscal requirements of ESEA.

Maintenance of Effort

Statute: [20 U.S.C. § 6321, 7901](#)
[§ 299.5](#); [EDGAR](#)

Public Law Section: [1120A, 9521](#)

Regulations: [34 C.F.R.](#)

To receive funding under ESEA, the state charter school must maintain a level of funding of at least 90% of the preceding fiscal year of aggregate expenditures of state and local funding or the combined state and local funding per full-time equivalent student. The Georgia Department of Education will calculate the aggregate expenditures of the state charter school. If this calculation indicates that the state charter school did not meet its maintenance of effort, the state charter school may calculate combined state and local funding expenditures per full-time equivalent student using a worksheet provided by the Georgia Department of Education.

If a state charter school does not meet the maintenance of effort requirements, the Georgia Department of Education will reduce the funding allocation provided to the state charter school in the same proportion by which the state charter school did not meet its maintenance of effort.

The United States Department of Education may waive maintenance of effort requirements if it determines that exceptional or uncontrollable circumstances contributed to the state charter school's failure to meet its maintenance of effort.

Supplement not Supplant

Statute: [20 U.S.C. § 6321](#)
[200.79](#); [EDGAR](#)

Public Law Section: [1120A](#)

Regulations: [34 C.F.R. §](#)

With only very limited exception, federal funding under ESEA must be used only to supplement the funds that would be made available to a state charter school from nonfederal sources for the education of students participating in programs under ESEA. In other words, the federal funding cannot take the place of other funding the state charter school would have utilized.

In monitoring ESEA, a state charter school will be presumed to have supplanted nonfederal funding if federal funds are used to provide services that: are required to be made available under other federal, state, or local laws; were provided with nonfederal funds in previous years; or were provided to children eligible for services under Title I, Part A and were also provided to children not eligible for services under Title I, Part A. A state charter school may demonstrate that supplanting did not occur if it can show that the services would not have been provided had the federal funding not been available. The state charter school must have

documentary evidence that the services would not have been provided but for the federal funding, which may include fiscal documentation, budget history, or legislative action.

If a state charter school is found to have utilized federal funding to supplant nonfederal funding, the state charter school will be required to return the funding that was used to supplant. The funds the state charter school returns must come from nonfederal sources.

Comparability of Services

Statute: [20 U.S.C. § 6321](#) *Public Law Section:* [1120A](#) *Regulations:* [34 C.F.R. § 200.79](#)

Generally, LEAs must ensure that Title I, Part A funding is used to provide services that, taken as a whole, are substantially comparable in each school that receives Title I, Part A services or are comparable to schools in the LEA that do not receive Title I, Part A services. LEAs may meet these requirements on a grade-span or school-by-school basis. There are several methods to meeting the comparability requirements, though the Georgia Department of Education primarily examines the student to staff ratio of grade-spans or schools.

State charter schools will primarily consist of one school and is unlikely to have more than one building per grade-span. Accordingly, the comparability requirement will likely not apply to state charter schools. In the event a state charter school does have more than one building for each grade-span, the state charter school should carefully review how to establish comparability as provided in the Georgia Department of Education's handbook for Title I directors [here](#).

Budget Requirements and Reporting

Statute: [20 U.S.C. § 6312](#) *Public Law Section:* [1112](#) *Regulations:* [2 C.F.R. Part 225; EDGAR](#)

A state charter school must submit a budget for approval by the Georgia Department of Education as part of the state charter school's consolidated application for federal funding. The budget will detail how the state charter school intends to utilize its federal allocation to meet the requirements of law. A state charter school must utilize the chart of accounts adopted by the Georgia Department of Education to determine the correct fund codes and object classes. The budget will include certain "set-asides" required by portions of ESEA. The set-asides are certain percentages of funding that will be allocated for a specific purpose required under IDEA, such as professional development, equitable services to private schools, parental involvement, services to homeless youth, and services to neglected and delinquent students.

The budget process ensures that the state charter school will think critically and plan its activities to meet the requirements of law, though there is a process for submitting budget amendments. The budget process also requires the submission of a completion report at the conclusion of the grant period. This will assist the Georgia Department of Education in calculating the amount of funding, if any, that may be carried over to the next fiscal year. The federal fiscal year runs from October 1-September 30, and generally federal funds allocated for

one fiscal year must be obligated during that fiscal year. Certain programs, however, allow LEAs to carry over a certain amount of funding into the next fiscal year or to transfer carryover funding to another program under ESEA.

The budget requirements and reporting process can be tedious, but the purpose is to ensure all federal funding is spent efficiently and appropriately. More information regarding budget requirements and the reporting process is provided in the Georgia Department of Education's handbook for Title I directors [here](#).

Use of Funding

Statute: [20 U.S.C. § 6312](#) *Public Law Section:* [1112](#) *Regulations:* [2 C.F.R. Part 225: EDGAR](#)

Overview

One of the most difficult aspects of ESEA, including Title I, Part A, is determining the allowable uses of the associated federal funding. Federal funding provided under ESEA must be spent in accordance with federal regulations in the Education Department General Administrative Regulations (EDGAR) and applicable circulars of the Office of Management and Budget, such as A-21, A-87, A-110 and A-133. Additionally, Title I, Part A funding may only be used to meet the needs of eligible students in schools with targeted assistance programs. The use of federal funding is subject to the state charter school's annual audit and is an important component of program monitoring.

State charter schools must also utilize and maintain adequate internal controls for the purchase, control, and management of property and equipment purchased with federal funding. This will include maintaining an inventory and control numbers of equipment and property, including items that are "pilferable", such as small electronic equipment. A physical inventory of these items must be conducted at least annually, with the physical location of the item noted as well as the cost, date of purchase, vendor, serial number, and source of funds used to purchase the equipment. All equipment and property must be disposed in accordance with federal guidelines in OMB Circular A-87 and the requirements of EDGAR.

The misuse of federal funding has serious ramifications on the operations of state charter school. Accordingly, state charter schools are encouraged to thoroughly research the permissible uses of federal funding prior to their expenditure. In the event the use of federal funding is unallowable, the state charter school must repay the questioned costs with funding from nonfederal sources. Intentional misuse or misappropriation of federal funding is also a criminal offense.

Time and Effort Reporting

Regulations: [2 C.F.R. Part 225](#)

An employee paid with funding made available through ESEA (or any federal program) must demonstrate that his or her time and effort is devoted to the federal program. An employee must report his or her time and effort through a semi-annual certification or a personnel

activity report (PAR). An employee who works on a single cost objective may utilize a semi-annual certification to report time and effort. A cost objective is a function, organizational subdivision, contract, grant (including specific earmarks or set-asides) or other cost activity for which cost data are needed and for which costs are incurred. In other words, a cost objective is a specific grant award or other category of costs that requires the tracking of specific cost information. Some examples of federal cost objectives are:

- Title I, Part A
- Title I, Part A, School Improvement
- Homeless Education
- Migrant Education
- Charter School Program Grants
- School Improvement Grant 1003(g) or SIG 1003(g)
- IDEA
- School Nutrition
- Career and Technical Education or Perkins IV
- Title II, Part A

The semi-annual certification is an assurance statement signed by the employee or supervisor that states the employee spent 100% of his or her time on the appropriate cost objective. The semi-annual certification must be completed at least twice a year. The semi-annual certification must state the specific cost object (such as “Title I, Part A” not simply “Federal” or “ESEA”) and the time period for which it is reporting.

An employee who works on multiple cost objectives or is paid through a combination of federal and other funding must report his or her time and effort through a PAR. PARS document the actual activity of the employee (not simply the proposed distribution of work or salary) by cost objective and must reflect the total activity of each employee. PARS must be prepared at least every month, coincide with one or more pay periods, and be signed by the employee. At least every quarter, the state charter school must compare PARs to the budgets for the cost objectives and ensure that the costs charged to the cost objective reflects actual time and effort. As an example, an employee is projected to work 80% on Title II, Part A activities and 20% as a curriculum director paid through state funds but actually works 60% on Title II, Part A activities and 40% as the curriculum director. The employee must complete and sign a PAR each month reflecting the 60/40% distribution and the state charter school must adjust the allocated cost to the 60/40% distribution.

The time and effort reporting documentation must be kept and maintained in accordance with federal record retention requirements relating to the specific program, but is generally three years following the conclusion of the grant year. These documents are subject to review by state and federal program monitors. Failure to maintain the proper time and effort documentation may result in the state charter school being required to repay questioned costs with funding from nonfederal sources. Falsification of time and effort reporting can lead to criminal prosecution.

Single Statewide Accountability System

Statute: [20 U.S.C. § 6311](#), [O.C.G.A. § 20-14-33](#) *Public Law Section:* [1111](#)

Regulations: [34 C.F.R. §200.12-200.20](#); State Board of Education Rule [160-7-1-.01](#)

ESEA requires all schools and LEAs to participate in and be evaluated by a Single Statewide Accountability System. Beginning with its reauthorization under NCLB, each Single Statewide Accountability System measured each school and LEAs “adequate yearly progress” towards meeting the goal of having 100% of students meeting or exceeding performance standards by 2014. Adequate yearly progress was measured by student performance on state assessments and other indicators, such as graduation or attendance rates. A school or LEA’s failure to make adequate yearly progress led to escalation in its “Needs Improvement” status, which meant the school or LEA had to undertake additional school improvement activities and offer school choice and supplemental education services to students.

Georgia applied for, and was granted a waiver from, certain provisions of Title I of ESEA that changed the method the state measures school performance under the Single Statewide Accountability System.

Testing

The Single Statewide Accountability System relies on the results of assessments developed in accordance with ESEA. In Georgia, the assessments developed to measure student progress under ESEA are: the Georgia Milestones Assessment System (Georgia Milestones). Georgia Milestones is administered to students in grades three through eight and after certain courses in high school. Georgia Milestones will first be administered in the 2014-2015 school year and take the place of the previously administered Criterion-Referenced Competency Tests (CRCTs), End-of-Course Tests (EOCTs) and writing assessments. To maintain that validity and reliability, the assessments must be administered in accordance with the requirements of the assessment. Accordingly, a state charter school cannot waive any requirements related to the administration of these state assessments, and state charter schools must adhere to the testing requirements established by the Georgia Department of Education. This will be discussed in more detail in Chapter Five.

Student Performance Targets

Similar to annual measurable objectives under Adequate Yearly Progress calculations, schools must meet annual performance targets of student achievement under Georgia’s waiver of ESEA. Schools have multiple performance targets that will depend on the grades the schools serve. A school will also have performance targets for “all students” and each subgroup required by ESEA. The school’s ability to meet performance targets factors partially determines the school’s Priority, Focus, Alert, or Reward status and is one indicator in the College and Career Ready Performance Index (CCRPI).

Priority, Focus, Alert and Reward Schools

The Single Statewide Accountability System previously labeled schools in varying levels of “Needs Improvement.” The Needs Improvement status of a school could change on a yearly basis depending on the school’s ability to make Adequate Yearly Progress. Georgia’s Single

Statewide Accountability System under its waiver of ESEA removes the Needs Improvement status and instead identifies schools as Priority, Focus, Alert, or Reward schools. Designation of a school as a Priority, Focus, or Alert school will determine the level of school improvement support the school will receive from the Georgia Department of Education. Designation as a Reward School indicates that the school was one of the highest performing Title I schools or a Title I school that was making the highest progress.

Priority schools are Title I schools that receive a school improvement grant under section 1003(g), also known as a “SIG” school, a high school graduation rate of less than 60% over the past two years or have poor achievement in the “all students” category over the past three years. Priority schools comprise 5% of Title I schools. The Georgia Department of Education determines Priority schools every three years. Upon receiving a designation as a Priority school, the school must sign a contract with the State Board of Education that outlines the school improvement activities the Georgia Department of Education will provide over the three year term.

Focus schools are Title I schools that have a graduation rate less than 60% over the past two years that are not identified as a Priority school and have the largest within school gaps between its highest achieving subgroup and its lowest achieving subgroup. Focus schools comprise 10% of Title I schools. The Georgia Department of Education determines Focus schools every three years. Upon receiving a designation as a Focus school, the school must sign a contract with the State Board of Education that outlines the school improvement activities the Georgia Department of Education will provide over the three year term.

Alert schools are comprised of both Title I and non-Title I schools and are schools with a graduation rate, subgroup performance, or subject performance that is below three standard deviations from Georgia’s graduation or meet and exceeds rate. Unlike calculations for Priority and Focus schools, calculations for Alert schools are determined annually. The goal of the Alert school classification is to evaluate schools and provide school improvement services prior to the school’s designation as Priority or Focus.

Reward Schools are Title I schools that are high performing or are making the most progress. A high-performing Reward school is in the top 5% of Title I schools with the highest performance in the “all students group” or graduation rate over the past three years. A highest progress Reward school is a Title I school that has made the most progress in increasing graduation rates or performance in the “all students” subgroup over the past three years. A Reward school cannot be a Priority or Focus School. Reward schools are identified annually and are eligible for financial awards (if appropriated) and recognition.

Flexible Learning Programs

Priority and Focus schools must develop and implement Flexible Learning Programs (FLPs) to provide additional learning opportunities for its students. FLPs are the alternative to Supplemental Education Services (SES) as provided in Georgia’s waiver of ESEA. LEAs have wide discretion in formulating its FLP for its Priority and Focus schools. The FLP must be designed to meet the needs of its students, include student selection processes and its strategies for service delivery, and a method for evaluation. The LEA must notify parents of the availability of

services under a FLP. The FLP, if required, must be submitted to the Georgia Department of Education as part of the LEA's consolidated application, and the implementation of the FLP will be monitored by the Georgia Department of Education.

School Choice

Georgia's waiver of ESEA included a waiver of ESEA's requirement for LEAs to offer school choice for students in low-performing schools. Instead, all schools and LEAs must adhere to Georgia's intradistrict transfer law codified in O.C.G.A. § 20-2-2130. Because state charter schools are LEAs that have only one school per grade-span, the state charter school is not required (and cannot) provide intradistrict school choice.

College and Career Ready Performance Index (CCRPI)

Rather than calculating Adequate Yearly Progress, which was based on student performance on two assessments and second indicators, Georgia's waiver of ESEA allows schools to be assessed on a variety of indicators. Those indicators, taken as a whole, comprise the College and Career Ready Performance Index (CCRPI). The CCRPI includes student achievement on multiple state assessments, student progress, and the schools' ability to close achievement gaps within the school. Schools may also earn additional points on the CCRPI by implementing certain practices that promote student achievement. Additionally, the CCRPI includes ratings of a school's financial efficiency and school climate. The incorporation of performance flags in the CCRPI reporting system will indicate the school's achievement on performance targets, including the performance of student subgroups.

Graduation Rate Calculation

As required by ESEA regulation, specifically 34 C.F.R. § 200.19, Georgia uses the "adjusted cohort" method to calculate a school's graduation rate. In its simplest terms a four-year graduation cohort graduation rate, is the number of graduates in a given year divided by the number of students who began high school four years earlier with certain adjustments for student transfers, emigration, and death. Students that transfer into the school during the cohort are added to the number of students expected to graduate within four years (the denominator). Students that transfer to a different public, private, or home school, emigrate to another country, or are deceased are subtracted from the students expected to graduate within four years (the denominator).

Federal regulations require a state charter school to obtain official written documentation of a student's transfer before the school identifies the student as a transfer. Generally, this official written documentation must be documentation received from a third party rather than the state charter school. The documentation of transfer students is critical to the calculation of an accurate graduation rate. Accordingly, state charter schools should thoroughly review the requirements of documenting transfers in State Board of Education Rule 160-5-1-.28 *Student Enrollment and Withdrawal*.

Graduation Requirements and Statewide Passing Score

Because the Graduation Rate plays a critical role in Georgia's Single Statewide Accountability System, the minimum requirements for graduation must be consistent across the state. Accordingly, state charter schools may not waive minimum course or grade requirements to allow students a path to graduation not available to all students across the state. Graduation requirements, including specific course requirements, are provided in State Board of Education Rule [160-4-2-.48](#). State charter schools may utilize their flexibility to impose additional requirements that exceed state minimum graduation requirements. For example, while State Board of Education Rule 160-4-2-.48 requires three units of Social Studies for a student to be eligible to graduate high school, a state charter school may require students to receive four units of Social Studies to be eligible to graduate.

Additionally, pursuant to O.C.G.A. § 20-2-149.2, a state charter school may award a high school diploma to a student who:

- a. Completes coursework at a postsecondary institution that meets the requirements of O.C.G.A. § 20-3-519(7);
- b. Completed state-required ninth and tenth grade courses (two English courses, two mathematics courses, two science courses, two social studies course, and one health and physical education course) and state assessments associated with such courses;
- c. Receives a score of admission acceptable on the readiness assessment required by the postsecondary institution; **and**
- d. Completes:
 - i. an associate degree program;
 - ii. a technical college diploma program and all postsecondary academic education and technical education and training prerequisites for any state, national, or industry occupational certifications or licenses required to work in the field; **or**
 - iii. at least two technical college certificate of credit programs in one specific career pathway and all postsecondary academic education and technical education and training prerequisites for any state, national, or industry occupational certifications or licenses required to work in the field as determined by the Technical College System of Georgia.

While state charter schools may not waive specific course or grade requirements required for graduation, state charter schools may utilize flexibility in the manner in which it awards credit. For example, State Board of Education Rule 160-4-2-.48 requires students to receive credit for four units of English to be eligible to graduate high school. Accordingly, a state charter school cannot utilize its flexibility to allow a student to graduate with less than four units of English. However, a state charter school may award a student credit for an English course if that student received instruction utilizing appropriate course standards in another manner – such as participation in extracurricular drama studies that included English course standards.

Similarly, state charter schools may not waive grade score requirements of State Board of Education Rule [160-4-2-.13](#) to allow a student a path to graduation not available to all students across the state. As such, state charter schools may not award credit to a high school student for completing a course with a final grade of less than 70, and state charter schools must utilize

the Georgia Milestones EOC for the appropriate percentage of the student’s final grade in the course. The numeric score on the Georgia Milestones EOC must count for at least 15% of the student’s final numeric course grade if the student entered ninth grade before July 1, 2011 and at least 20% of the student’s final numeric course grade if the student entered ninth grade after July 1, 2011. A state charter school may utilize its flexibility to require a student’s final grade in a course to weight the student’s numeric score on the Georgia Milestones EOC assessment at a greater weight than is required. Additionally, state charter schools have complete autonomy in the grading and coursework of all courses aside from the minimum passing score and required EOC assessment weight.

Additional Information

The Georgia Department of Education and the Governor’s Office of Student Achievement implement the Single Statewide Accountability System. Information about Georgia’s waiver of ESEA, including Priority, Focus, Alert, and Reward schools is available [here](#). Information about the CCRPI is available [here](#). Information about the calculation of the graduation rate is available [here](#).

Highly Qualified Teachers and Paraprofessionals

Statute: [20 U.S.C. § 6319, 7801](#)
[§ 200.55-200.61](#); [EDGAR](#)

Public Law Section: [1119](#); [9101](#)

Regulations: [34 C.F.R.](#)

Overview

Waiving certification requirements for teachers and other personnel is flexibility enjoyed by many charter schools. Teaching certification status is related, but not equivalent to “highly qualified” status required under ESEA. All schools, including state charter schools, must continue to have personnel that meet the “highly qualified” requirements of ESEA. Under Title I, Part A, all teachers teaching core academic subjects must be highly qualified, and paraprofessionals working in a program supported by Title I funding must be highly qualified. There are different requirements for veteran teachers (one who is not new to the profession and who has been a teacher for three or more complete school years) and new teachers.

Highly Qualified Teachers in State Charter Schools

To meet the “highly qualified” standard, **core academic teachers** in state charter schools must meet all of the following:

1. Hold a bachelor’s degree from an accredited institution of higher education that is recognized by the Georgia Professional Standards Commission;
2. Have subject matter competence in the subjects they teach as evidenced by:
 - a. An academic major or the equivalent (at least 21 semester hours) for middle or high school grades (an academic major or the equivalent is not applicable to the elementary grades);
 - b. A passing score on the state-approved required content assessment of the area or subjects they teach; OR

- c. Meet the requirement of a “high objective uniform state standard of evaluation” (HOUSSE) as approved by the Georgia Professional Standards Commission, which are applicable to veteran teachers who are multi-subject special education teachers who are the teacher of record for multi-subjects, are retired teachers returning to service, or are life certified teachers.
3. Have a teaching assignment that is appropriate for the core academic area/subject in which the teacher serves as the teacher of record and in which the teacher has subject matter competence as evidenced by the criteria identified above.

For the purpose of Title I, Part A, core academic subjects are:

- Elementary (P-5): reading, language arts, mathematics, broad-field science, broad field social studies;
- Middle Grades (4-8): reading, language arts, mathematics, broad-field science, broad field social studies; and
- High School (6-12): English, reading, mathematics, broad-field science (such as Biology, Chemistry, Physics), history, political science, geography, and economics.

Additional broad-field sciences may be identified by the Georgia Professional Standards Commission. Further, please note that core academic subjects under Title I, Part A are different than core academic subjects under Title II, Part A, which is discussed in more detail below.

Highly Qualified Paraprofessionals in State Charter Schools

Like certification of teachers, most state charter schools will waive certification requirements of paraprofessionals though the broad flexibility granted in a charter. Again, this waiver applies to certification requirements, but does not waive the highly qualified requirement under ESEA. Pursuant to ESEA, Title I, all paraprofessionals with instructional duties must be highly qualified by meeting one of the following:

1. Completed at least 2 years of study (at least 60 semester hours) at an institution approved by the Georgia Professional Standards Commission,
2. Obtained an associate’s degree or higher; or
3. Demonstrated academic content knowledge in reading, writing, and mathematics through the Georgia state-approved paraprofessional assessment.

Paraprofessionals with instructional duties include, but are not limited to, those who provide classroom management, provide instructional support, provide one-on-one tutoring, or serving as a translator. Paraprofessionals that do not have instructional duties do not need to meet the highly qualified requirements. This includes paraprofessionals who provide personal care services, non-instructional computer assistance, or playground supervision.

Consequences of Not Having Highly Qualified Staff

In addition to any other compliance measures the Georgia Department of Education may take, a state charter school must provide parental notification in any instance in which a teacher of record who does not meet the highly qualified requirement provides instruction to students for four consecutive weeks or more in a core academic course. This notification must be sent to the parents of children for whom that teacher is the teacher of record. The notification must

be sent via U.S. Mail, and the notification must be in a uniform and understandable format, including alternative formats when requested. A state charter school does not need to provide written notification if paraprofessionals do not meet the highly qualified requirement.

Additionally, the state charter school must have a plan to ensure that all teachers are highly qualified by the end of the school year. The plan must include annual measurable objectives to increase the percentage of highly qualified teachers and the percentage of teachers who are receiving high-quality professional development. Progress on these annual measurable objectives must be reported through the consolidated application, which will be used for further reporting to the public.

Principal Attestations and Notification of Rights

Every school principal must also have on file at the school an attestation of the qualifications of teachers at the school. This attestation must be maintained at the office of the school (and LEA if different) and must be available to the public upon request.

Additionally, each school must annually notify parents of their right to request information regarding the qualification of teachers at the school. Parents have the right to request: certification details (grade level and areas) of teachers and certification status (emergency, provisional, waiver of certain requirements), the college major and degrees of teachers, and whether their student receives services provided by paraprofessionals and the qualifications of the paraprofessionals when applicable. This notification may be done annually through the student handbook or through the U.S. Mail.

Highly Qualified Staff under Title II, Part A

Title II, Part A, is a portion of ESEA that provides funding to increase academic achievement by improving teacher and principal quality. In Georgia, the Georgia Professional Standards Commission administers Title II, Part A. The overall aims of Title II, Part A are to increase the number of highly qualified teachers and principals, to provide high quality professional development, and to increase the percentage of teachers qualified to use technology for instruction. Under Title II, Part A, “highly qualified” staff includes the core academic areas of Title I, Part A, but there are also additional areas identified as core academic areas. “Core academic areas” under Title II, Part A includes foreign languages, visual arts, music, band, chorus, drama, health, and physical education. Like Title I, Part A, a state charter school must develop a plan and budget, implement the plan and budget in accordance with the program requirements and federal regulations, and adhere to all reporting obligations. More information regarding Title II, Part A may be found in the handbook developed by the Georgia Professional Standards Commission [here](#).

Education of Migratory Children

Statute: [20 U.S.C. § 6391 et. seq.](#) *Public Law Section:* [1301](#) *Regulations:* [34 C.F.R. § 200.81-89](#); [EDGAR](#)

Title I, Part C of IDEA provides funding to LEAs for supplemental educational services to identified migrant children ages 3-21 who do not have a high school diploma or GED. The

allocations are calculated by a formula that includes the number of migrant children, the needs of the migrant children, and the number of migrant children identified as having “priority of services.” If an LEA has a Title I, Part C allocation that is less than \$15,000, the allocation will be provided to a consortium to provide services to the districts for which it receives allocations. This allows the consortium to operate with economies of scale that would otherwise make the Migrant Education Program cost-prohibitive in small districts.

Use of Funds

Title I, Part C funds must be used to provide supplemental instructional and support services to eligible migrant children. A child is eligible for services if the student is:

1. A child who is, or whose parents, spouse, or guardian is a migratory agricultural worker, including a migratory dairy worker, or migratory fisher; and
2. who, in the preceding 36 months moved, for economic necessity across school district lines on his/her own or to accompany such parent, spouse, or guardian in order to obtain or seek temporary or seasonal employment in agricultural or fishing work;
3. who is younger than 22; and
4. has not graduated from high school or does not hold a high school equivalency certificate.

Services that may be provided to eligible students include, but are not limited to:

- Instruction for preschool aged students;
- Supplemental tutoring for at-risk students;
- Extended school year services;
- Post-secondary examinations;
- Assisting out-of-school children in pursuing a GED;
- Arranging for care for health problems that affect classroom performance;
- Providing training and assistance to parents that will encourage their active participation in their student’s education; and
- Assisting migrant students in post-secondary options.

As with all federal funding, Title I, Part C funding must be spent in accordance with its program requirements and federal regulations. More information regarding Title I, Part C is available [here](#).

Title I, Part D, Subpart 2 – LEA Programs for Neglected and Delinquent Children

Statute: [20 U.S.C. § 6421 et. seq.](#) *Public Law Section:* [1401](#) *Regulations:* [34 C.F.R. § 200.90-91](#); [EDGAR](#)

Title I, Part D provides funding to states to ensure that children who are neglected, delinquent, or at risk receive appropriate education and support services. Subpart 1 of Title I, Part D governs state-level activities for these students. Subpart 2 of Title I, Part D governs LEA-level activities for neglected, delinquent, and at-risk students. Each state charter school must submit

to the Georgia Department of Education through the consolidated application an annual neglected and delinquent survey. Additionally, LEAs may apply to the Georgia Department of Education to receive funding under Title I, Part D, Subpart 2, to provide high-quality education programs to assist neglected and delinquent students. More information regarding Title I, Part D is available [here](#).

Title III – Language Instruction for Limited English Proficient and Immigrant Students

Statute: [20 U.S.C. § 6811 et. seq.](#) *Public Law Section:* [3101](#) *Regulations:* [EDGAR](#)

Title III of ESEA provides funding to LEAs to provide supplemental educational services to English learners and immigrant students. Title III funding is provided through formula calculations that take into account the number of English learners the LEA identifies. Funding for LEAs whose allocations would be less than \$10,000 is provided to a Title III consortium that will assist the LEA in providing supplemental language services. This allows the consortium to operate with economies of scale that would otherwise make the supplemental language services cost-prohibitive in small districts.

Under the Civil Rights Act of 1964 (discussed in Chapter 2) requires schools to provide language assistance programs. Language assistance programs are different than supplemental services under Title III. All schools, regardless of funding received, must identify students with different language needs and provide language assistance programs under the Civil Rights Act. Conversely, only LEAs receiving Title III funding for eligible English learners must provide supplemental language services under Title III.

Services provided under Title III must adhere to the very specific student eligibility and program requirements. Guidance provided by the United States Department of Education and Georgia Department of Education outline such requirements as student eligibility, when a student is “exited” from language assistance programs, and how funds for language assistance programs may be used. In general, LEAs use identify eligible students through a standardized assessment, provide supplemental language services to eligible students, exit students from supplemental services when the student reaches English proficiency, and continue to monitor the student for a period of two years after service exit to ensure proficiency. Language assistance services may be provided in a variety of methods, including reduced class sizes, additional classes, or additional resources. Guidance in providing services under Title III is available from the Georgia Department of Education [here](#).

Additionally, LEAs receiving funding under Title III must meet annual measurable achievement objectives related to the implementation of the Title III program, which measure student progress, attainment of proficiency, and achievement of the subgroup in the Single Statewide Accountability System. Monitoring of Title III also includes an annual self-assessment that each LEA must complete annually, and onsite monitoring by the Georgia Department of Education that usually occurs once every three years.

Constitutionally Protected Prayer

Statute: [20 U.S.C. § 7904](#) *Public Law Section:* [9524](#)

ESEA requires each state charter school to certify in writing to the Georgia Department of Education that no policy of the state charter school prevents or otherwise denies participation in constitutionally protected prayer as detailed in guidance issued by the United States Department of Education. This certification must be completed by October 1 of each year and is included in the school's consolidated application. The guidance from the United States Department of Education regarding constitutionally protected prayer is available [here](#).

Armed Forces Recruiting

Statute: [20 U.S.C. § 7908](#) *Public Law Section:* [9528](#)

ESEA requires that each state charter school provide access to secondary school students' names, address, and telephone numbers when requested by military recruiters unless the secondary school student or parent requests that such contact information not be provided. A state charter school must notify secondary students and their parents of their option to request that the contact information not be provided. Additionally, a state charter school must provide military recruiters the same access to secondary students that the school provides to postsecondary institutions or prospective employers of those students.

Unsafe School Choice Option

Statute: [20 U.S.C. § 7912](#) *Public Law Section:* [9532](#)

ESEA requires each state to implement a statewide policy that allows students at persistently dangerous public schools and victims of a violent criminal offense at school the option to attend another school in the LEA. Because most state charter schools will only have one school in the LEA, the state charter school is not required to provide a school choice option. However, state charter schools must report discipline and school safety data to the Georgia Department of Education to allow the Department to determine if the state charter school is a "persistently dangerous school." Information regarding the collection of this data is available from the Georgia Department of Education [here](#). A persistently dangerous school is one that has:

1. For each of the last three years, at least one student on the property of the school or at an event within the jurisdiction of the school is found by official school action to have committed a violation of a school rule that is also a violent criminal offense; or
2. Two percent or more of the student population, or ten students, whichever is greater, are found by official school action to have committed an offense in violation of a school rules that included one or more of: felony drug offense; non-felony drug offense; felony weapons offense; or terroristic threats. The calculation of the two percent or ten students is based on each individual category of offenses rather than the group of offenses as a whole; or
3. Any combination of the two factors above during the past three years.

A state charter school that is identified as persistently dangerous must develop a plan to create a safer school environment and be removed from the list of persistently dangerous schools. This plan must include the requirements identified by the Georgia Department of Education for corrective action. More information regarding the requirements of persistently dangerous schools can be found [here](#).

McKinney-Vento Homeless Assistance Act

Statute: [42 U.S.C. § 11431 et. seq.](#) *Public Law Section:* [1031](#) *Regulations:* [EDGAR](#)

Overview

ESEA also reauthorized the McKinney-Vento Homeless Assistance Act (McKinney-Vento), which was originally codified in 1987. McKinney-Vento ensures that homeless children receive appropriate educational services and are not the subject of discrimination based on their homeless status. The United States Department of Education, through the Georgia Department of Education, provides grant funding to assist LEAs in conducting activities to serve their homeless population. The grants are awarded on a competitive basis, and prospective grantees must follow the application process and guidelines of the grant competition. State charter schools must serve all homeless youth in accordance with McKinney-Vento regardless of the receipt of grant funding.

Definition of Homeless Youth

McKinney-Vento utilizes a very broad definition of homeless youth. Under McKinney-Vento children are considered homeless if they “lack a fixed, regular, and adequate nighttime residence.” This expressly includes children and youth who are:

- Sharing the housing of other persons due to loss of housing, economic hardship, or other similar reason,
- Living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
- Living in emergency or transitional shelters;
- Abandoned in hospitals; or
- Awaiting permanent foster care placement.

Children and youth are also homeless if they have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, or are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

Prohibition against Segregation and Comparable Services

A state charter shall not segregate or otherwise separate homeless children in separate schools, programs, or classrooms. A state charter school may not provide services at their shelter or other off-site facility exclusive to homeless students. Homeless children and youth must be integrated into the school as much as non-homeless students. This also includes ensuring that homeless students receive services that are comparable to services provided to non-

homeless students, such as special education programs, school lunches, and compensatory programs.

Local Liaison

Each state charter school must designate a staff member to serve as a local liaison for homeless youth. The local liaison works as a contact between homeless families and school staff, community workers, and service providers. The local liaison is responsible for coordinating services for homeless youth and ensuring that the state charter school meets all requirements of McKinney-Vento. The local liaison also works as a point of contact for the Georgia Department of Education to receive information and other technical assistance.

Enrollment

Children and youth who are homeless are entitled to immediate enrollment in the school that is in their best interest. This school will either be the school of origin of the student or the school the student would otherwise be eligible to attend because of the student's current location. In other words, a homeless child may remain in the school the child attended prior to becoming homeless or the school the child would attend if the student was a permanent resident based on his or her current location. The determination of the school that is in the best interest of the student is a decision of the state charter school as the LEA. McKinney-Vento expresses a clear preference to keep the child in the school of origin to the greatest extent possible. If the state charter school determines that the school of origin or school requested by the parent is not in the best interest of the student, the school must provide a written explanation of the decision and notification of the right to appeal the decision.

If there is a dispute between the parent and state charter school regarding what school is in the best interest, the state charter school must enroll the student until dispute is resolved. Because state charter schools will likely only have one school, the second enrollment option in dispute with a parent will be located in another LEA. The Georgia Department of Education is responsible for resolving disputes regarding the enrollment of homeless children that involve more than one LEA.

McKinney-Vento does not address the requirements of a charter school to enroll a homeless student if the charter school is at capacity or not otherwise enrolling students. Should such a situation arise, the state charter school should contact its legal counsel for specific guidance.

Transportation

McKinney-Vento requires state charter schools to provide transportation to and from the school for its homeless students. This is required even if the state charter school does not otherwise conduct a transportation program. If the student moves out of the attendance zone of the state charter school but continues to be enrolled at the state charter school because it is the school that is in the best interest of the student, the state charter school may share the cost of the transportation with the LEA in which the student resides. Federal funding generally cannot be used to provide transportation for homeless children.

Additional Information

The United States Department of Education guidance for serving homeless children and youth under McKinney-Vento is available [here](#). The Georgia Department of Education provides additional resources available [here](#). State charter schools may also contact the Georgia Department of Education for technical assistance in meeting the requirements of McKinney-Vento.

Chapter Four – Individuals with Disabilities Education Act (IDEA)

Statute: [20 U.S.C. § 1400 et. seq.](#)

Regulations: [34 C.F.R. Part 300](#)

Overview

The Individuals with Disabilities Education Act (IDEA) is a comprehensive federal law aimed to ensure that all students with disabilities are provided educational services tailored to their specific needs to ensure that each child receives an appropriate education. Under IDEA, each child with a disability is entitled to receive a free appropriate public education (FAPE) through an Individualized Education Program (IEP). **State charter schools must provide each student with a disability FAPE without regard to the cost or if the services needed by the student are traditionally provided by the school. In other words, a state charter school may not turn away a student with a disability because the state charter school does not typically provide services needed by the student.**

IDEA, and the State Board of Education rules implementing IDEA, set forth specific student evaluation and eligibility requirements and procedures for developing a student's IEP. Additionally, IDEA affords students with disabilities certain rights and procedural safeguards as well as dispute resolution procedures. IDEA does provide LEAs federal funding for students with disabilities; however, such funding must be spent only on the excess cost of services for students with disabilities and cannot supplant other funding available for the students' education. As with all federal funding, IDEA funding must be spent in accordance with federal regulations. State charter schools must adhere to every aspect of IDEA, its regulations, and the rules of the State Board of Education implementing IDEA. The Georgia Department of Education administers and enforces IDEA in Georgia, and its manual to assist LEAs in implementing IDEA is available [here](#).

As a reminder, this guide is not a comprehensive summary of the law. This chapter presents the highlights and important aspects of IDEA, but it does not attempt to detail each requirement of the law. Accordingly, a state charter school must utilize additional resources to achieve full compliance with IDEA as required by its charter contract.

Free Appropriate Public Education

Statute: [20 U.S.C. § 1412](#) *Federal Regulations:* [34 C.F.R. § 300.17](#), [300.101-104](#)

State Board of Education Rule: [160-4-7-.02](#)

Definition

A free appropriate public education (FAPE) is a program of special education and related services designed to meet the individual needs of a student with a disability at no cost to the student or parent. All children ages three (3) through twenty-one (21) are entitled to receive FAPE except for some limited circumstances in cases where a student aged 18-21 is incarcerated at an adult correctional facility. FAPE does not guarantee that a student is entitled

to the best education program available. Instead, FAPE is an education program that complies with the procedural aspects of IDEA and is tailored to the unique needs of the student in a manner that is reasonably calculated to enable the student to receive educational benefits. A student's advancement from grade to grade is not, in itself, an indication of FAPE, nor is the student's failure to advance from grade to grade an indication that FAPE was not provided.

Extended School Year

A state charter school, like all LEAs, may need to determine if a student with a disability requires extended school year services to ensure the student receives FAPE. Extended school year services are services provided outside the typical school year. The specific services to be provided are to be determined by the IEP Team as required to ensure the student receives FAPE. A state charter school may not limit the provision of extended school year services to certain groups of students (e.g. only students with significant developmental delay) or to certain services (e.g. a three-week reading program during the summer break). The services provided must be based on the specific needs of the student as determined by the IEP team.

Medication

IDEA prohibits schools and districts from requiring a student to medication as a condition of receiving services. As an example, a state charter school cannot require a student with ADHD to take medication as part of his or her IEP or as a condition before coming to school.

Children Ages 3-5

Children with disabilities younger than age three (3) may receive services under IDEA Part C, which in Georgia is administered through Babies Can't Wait, a program of the Georgia Department of Community Health. When a child with a disability turns three (3), the student is entitled to receive special education and related services under IDEA Part B through the local school system.

LEAs are obligated to serve all students residing in their attendance zone, including children ages 3-5 needing special education services. Providing services to children ages 3-5 is similar, but slightly different than providing services to students in the school setting. Under some circumstances, a child ages 3-5 may be served through an Individualized Family Service Plan (IFSP) rather than an IEP. Additionally, the placements of students ages 3-5 differ from the placements available to school-aged children. Any distinctions between the requirements for serving children ages 3-5 and school age children are discussed below in their respective sections.

Child Find

Statutes: [20 U.S.C. § 1401](#), [1412](#) *Federal Regulation:* [34 C.F.R. § 300.111](#)

State Board of Education Rule: [160-4-7-.02](#)

All LEAs, including state charter schools, must conduct activities to identify, locate, and evaluate children who are suspected of having disabilities that may result in a need for special education and related services. A state charter school should have policies and procedures for conducting child find activities and should utilize a variety of measures to identify students with disabilities. These activities may include, but are not limited to, advertisements, dissemination of information, and screenings.

Response to Interventions

Implementing the *Georgia Student Achievement Pyramid of Interventions* is a statewide child find activity to identify children enrolled in public schools who may have disabilities. The *Pyramid of Interventions* is a method of constantly monitoring student performance followed by instructional interventions to engage student learning. State charter schools must implement the *Pyramid of Interventions* as part of its compliance with IDEA and child find activities. More information about the *Pyramid of Interventions* can be found [here](#).

Consent

Statute: [20 U.S.C. § 1414](#) *Federal Regulations:* [34 C.F.R. § 300.9](#), [300.300](#)

State Board of Education Rule: [160-4-7-.09](#)

A state charter school must obtain informed written parental consent prior to evaluating or reevaluating a child for a disability, providing special education and related services, accessing the parent or child's public health benefits, and sometimes disclosing personally identifiable student information. Consent for an evaluation or reevaluation does not imply consent for initial services. If a parent refuses to provide consent for an evaluation or reevaluation, a state charter school may, but is not required to, utilize IDEA's dispute resolution procedures to seek to evaluate a student. A parent must provide informed written consent prior to the child receiving special education and related services; however, a parent need not agree with the subsequent amendments to an IEP if the amendment is performed in accordance with IDEA. If a parent refuses to provide consent for special education services, a state charter school may utilize IDEA's dispute resolution procedures to provide those services.

A parent may revoke consent at any time. The revocation of consent must be in writing. A revocation of consent for services applies to all services provided under IDEA. In other words, a parent cannot "pick and choose" the services to be provided. If a parent revokes consent for special education services, the school must cease to provide those services but provide the parent written notice (that meets the requirements of State Board of Education Rule [160-4-7-.09](#)) prior to ceasing those services. A school does not need to amend the records of a student whose parent revoked consent for services. Any subsequent evaluation of a student for whom consent was revoked is treated as an initial evaluation for special education services.

A state charter school does not need to obtain parental consent prior to reviewing existing data as part of evaluation or reevaluation or administering a test or other evaluation that is administered to all students (unless consent is required of the parents of all students).

Evaluations and Reevaluations

Statute: [20 U.S.C. § 1414](#) *Federal Regulations:* [34 C.F.R. § 300.301-306](#)

State Board of Education Rule: [160-4-7-.04](#)

Evaluation Overview

Every child attending a state charter school must have a complete evaluation prior to receiving special education services. A state charter school must obtain informed parental consent prior in writing prior to conducting an evaluation. A parent, teacher, or other school official may request that a child be evaluated for special education services.

Timeline

A state charter school must complete an initial evaluation within 60 calendar days of receiving parental consent for the evaluation. Periods in which children do not attend school for five or more consecutive school days are not included in the 60 calendar day timeline. Additionally, summer vacation periods in which a majority of the school's teachers are not under contract are not included in the 60 calendar day timeline unless the school received consent 30 days or more prior to the end of the school year. A student who turns three must have an eligibility decision and IEP, if appropriate, by his or her third birthday regardless of if it occurs during a holiday period or summer break.

Scope

An evaluation must use a variety of tools and strategies to gather relevant academic, functional and developmental information about the student and use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. An evaluation may not consist of a single procedure as the sole criterion for determining whether a child has a disability. An evaluation must assess the child in all areas of suspected disability and sufficiently comprehensive to determine all of the child's special education and related services needs.

Evaluation assessments must be valid and reliable, administered by trained and knowledgeable personnel in accordance with the assessment's design, and administered in a nondiscriminatory manner and in the child's native language or other mode of communication. In evaluating a student for a disability, the state charter school must review existing evaluation data on the child, including evaluations and information provided by the parent, the student's performance on local or state assessments, and observations of the child from the classroom or other teachers and related service providers. Upon review of this data, a state charter school may determine that additional data is required to determine the student's eligibility and conduct any other assessment or evaluation measure needed to obtain the required data.

Independent Educational Evaluation (IEE)

Statute: [20 U.S.C. § 1415](#) *Federal Regulation:* [34 C.F.R. § 300.502](#)

State Board of Education Rule: [160-4-7-.09](#)

A parent may always present an independent educational evaluation for the school's consideration during the evaluation and eligibility process. A parent is sometimes entitled to an independent educational evaluation paid for by the state charter school. A parent is entitled to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the state charter school. If the parent requests an independent educational evaluation at public expense, the state charter school must (without unnecessary delay) provide the independent educational evaluation or initiate due process proceedings against the parent to defend the evaluation conducted by the state charter school. If such proceedings occur, the parent is still entitled to an independent educational evaluation, but the parent is responsible for the cost of the evaluation.

If the parent receives an independent educational evaluation at the expense of the state charter school, the state charter school must provide the parent information about where the evaluation may be obtained and the school's criteria for the evaluation. The criteria for the evaluation must be the same criteria the state charter school utilizes when initiating evaluations. The state charter school cannot impose additional criteria or timelines on the independent educational evaluations. The parent is entitled to only one independent educational evaluation at the state charter school's expense each time the school conducts an evaluation with which the parent disagrees. The school must consider each independent educational evaluation regardless of whether the evaluation was at the expense of the parent or school.

Reevaluations

A child with a disability must be reevaluated at least every three years unless the state charter school and parent agree that a reevaluation is unnecessary. A reevaluation may be requested by the state charter school, a teacher, or parent. A child may not be reevaluated more than once a year unless the parent and state charter school agree otherwise. The state charter school must receive informed parental consent prior to conducting the reevaluation. There is no timeline by which a reevaluation must be completed. The scope, purpose, and determination requirements of evaluations also apply to reevaluations.

Eligibility

Statute: [20 U.S.C. § 1414](#) *Federal Regulation:* [34 C.F.R. § 300.306](#)

State Board of Education Rule: [160-4-7-.05](#)

Determination of Eligibility

At the conclusion of the administration of evaluation assessments and measures, a group of qualified persons and the child's parents (collectively known as the Eligibility Team) determine if the child is eligible for services under IDEA. The parent is entitled to receive a copy of the evaluation report(s) at no cost. A student must not be determined eligible for services under IDEA if the primary factor for that eligibility is the lack of appropriate instruction in reading or math, limited English proficiency, or does not otherwise meet the program area eligibility for a

child with a disability. To be eligible for services under IDEA, the Eligibility Team must determine that the child:

1. Has a disability;
2. The disability affects educational performance; **and**
3. The child needs special education and related services.

Eligibility Report

If the Eligibility Team determines that the child is eligible for services under IDEA, the state charter school must document the eligibility in an eligibility report. The eligibility report must document the area of disability and each component of the eligibility. The eligibility report must be comprehensive enough to serve as an evaluation report if necessary and the report must be placed in the student's special education file. A parent is entitled to a copy of the eligibility report at no cost.

An eligibility report must also be completed for students who are found not to be eligible for services under IDEA. For students not eligible for services under IDEA, the eligibility report must detail the Eligibility Team's determination and rationale for its decision.

Eligibility Categories

In Georgia there are twelve areas of disability for which a student may be eligible for services under IDEA. Each specific area has related definitions, evaluation, and eligibility criteria that is determined by IDEA, its federal regulations, and implementing state rules. The eligibility areas are:

- Autism spectrum disorder;
- Deaf/blind;
- Deaf/hard of hearing;
- Emotional and behavioral disorder (EBD);
- Intellectual disability (mild, moderate, severe, or profound);
- Orthopedic impairment;
- Other health impairment (OHI);
- Significant developmental delay;
- Specific learning disability (SLD);
- Speech-language impairment;
- Traumatic brain injury (TBI); and
- Visual impairment.

The specific definitions and evaluation and eligibility criteria for each of the above areas of disability are discussed in the appendices to [State Board of Education Rule 160-4-7-.05](#) and Part II of the Georgia Department of Education's Special Education Implementation Manual available [here](#).

Individualized Education Program (IEP)

Statute: [20 U.S.C. § 1412](#) *Federal Regulations:* [34 C.F.R. § 300.22](#), [300.112](#), [300.320-300.324](#)

State Board of Education Rule: [160-4-7-.06](#)

A state charter school must develop an Individualized Education Program (IEP) for each student eligible for special education and related services. The IEP is a written document that details the special education and related services the student requires to receive a free appropriate public education (FAPE). The IEP must provide the student's present level of academic achievement and performance, measurable annual goals, specific accommodations necessary for classroom activities and assessments, and the frequency, location, and duration of additional services. The IEP is developed by a group of individuals, including the parents, known as the IEP Team. The IEP must be reviewed and revised by the IEP Team at least annually.

IEP Team

The team developing and writing the IEP, the IEP Team, must consist of:

1. The child's parents;
2. At least one regulation education teacher;
3. At least one special education teacher;
4. A representative of the state charter school who qualified to provide or supervise instruction for children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources in the state charter school;
5. An individual who can interpret instructional implications of evaluation results (this person may be another member of the IEP Team);
6. Other individuals, at the discretion of the parent or state charter school, who have knowledge or special expertise regarding the child; and
7. The child with a disability (when appropriate).

Members of the IEP Team may be excused from attending a meeting if the state charter school and parents agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services will not be modified or discussed in the meeting or if the member submits input in writing into the development of the IEP prior to the meeting. The state charter school must provide notice to the parents prior to the meeting of the members that will be in attendance. The notice may identify team members by title or role rather than individual names.

The general education teacher should participate in the IEP Team meeting to the greatest extent appropriate, including the development of the IEP, behavioral interventions, and supplementary aids, services, modifications, accommodations, and support. While it is preferred and desirable that all teachers that participate as members of the IEP Team be teachers of the child, IDEA does not require that a child's teacher be a member of the IEP Team.

Parental Participation and Agreement

Parents play a critical role in the development of an IEP. State charter schools must afford parents the opportunity to participate in the development and any revision or amendment of an IEP. At the IEP meeting, parents should be given the opportunity to express concerns and views about the child's education generally as well as specific services or accommodations that

are part of the IEP. The parent will be able to provide the school important feedback as to the child's behavior and needs outside the school setting that will assist the school in meeting the child's complete educational needs. The IEP cannot be developed prior to the parent's participation in the process.

While the input and opinion of parents is important, a parent does not need to agree to the services or provisions of an IEP (after consent for the initial provision of services is provided). The services in and contents of the IEP are decisions that are made by the IEP Team as a whole rather than individual members. A parent who disagrees with the decisions of the IEP Team may utilize the dispute resolution methods of IDEA or revoke consent for special education services.

IEP meetings must be scheduled at a time and place mutually convenient to the school and parent, and can only take place without the parent in very limited circumstances. The invitation to the meeting must indicate the time and place of the meeting, the participants of the meeting, and the right of the parent to invite other individuals they believe have knowledge or special expertise regarding their child. If neither parent can attend the IEP Team meeting in person, the state charter school must use other methods of obtaining parental participation, including video or telephone conferencing. The state charter school must take actions to ensure the parents understand the proceedings of the IEP Team meeting, including arranging for interpreters if necessary.

IEP Contents

The IEP should be the document that details the complete educational needs and services for a child with a disability. IEPs can look very different from institution to institution and from child to child, but there are certain features of a child's education that every IEP must contain. Each IEP must include:

1. A statement of the child's present levels of academic achievement and functional performance (including how the child's disability affects the child's involvement and progress in the general education curriculum);
2. A statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the disability to enable the child to be included in and make progress in the general education curriculum and meet each of the child's educational needs that result from the child's disability;
3. For students taking an alternate assessment aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;
4. A description of how the child's progress towards meeting his or her annual goals will be measured and when periodic reports on the progress the child is making towards meeting those goals will be provided;
5. A statement of the special education and related services and supplementary aides and services will be provided to the child or on behalf of the child;
6. A statement of the program modifications or supports for school personnel that will be provided to enable the child to:
 - a. Advance appropriately toward attaining his or her annual goals;

- b. Be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
 - c. Be educated and participate with other children with disabilities and nondisabled children in these activities.
7. An explanation of the extent, if any, to which the child will not participate with nondisabled children in a general education class and other activities;
8. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and school assessments;
9. For children participating in alternate assessments, a statement why the child cannot participate in the regular assessment and why the particular alternate assessment is appropriate for the child; and
10. The projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of these services and modifications.

Transition Service Plan

If a child with a disability is entering ninth grade or turning 16, whichever occurs first, the IEP must include appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living skills and the transition services, including courses of study, needed to assist the student in reaching those goals. The IEP team may determine that transition services should be included in the IEP prior to the student's entry into ninth grade or turning 16. The student must be invited to any IEP meeting in which the postsecondary goals and transition services will be considered and discussed. If the student does not attend the meeting, the school must take additional steps to ensure the student's preferences and interests are considered. When appropriate and with consent of the parents (or adult student) the school must invite representatives of a participating agency that is likely to be responsible for providing or paying for transition services.

Transfer of Rights at Age of Majority

The IEP must also include, beginning at least one year prior to the student turning 18, that the school informed the student that the rights under IDEA Part B will transfer to the student upon reaching the age of 18.

IEP Considerations

In developing an IEP for a student, each IEP Team must consider:

1. The strengths of the child;
2. The concerns of the parents for enhancing the education of the child;
3. The results of the most recent evaluation of the child;
4. The results of state or school assessments;
5. The academic, developmental, and functional needs of the child;
6. For a child whose behavior impedes his or her learning or that of others, the use of positive behavioral interventions and supports to address the behavior in the IEP or behavioral intervention plan;

7. For a child with limited English proficiency, the language needs of the child as they relate to his or her IEP;
8. For a child who is blind or visually impaired, instruction in Braille and the use of Braille (unless, after appropriate evaluation, the IEP Team determines that the instruction and use of Braille is not appropriate for the child);
9. The communication needs of the child, including additional language and communication needs for a child who is deaf or hard of hearing;
10. The need for assistive technology devices or services; and
11. The need for Extended School Year (ESY) services, and the goals that are being extended or modified to deliver FAPE and specific services, time, provider, and location if ESY services are needed to deliver FAPE.

When the IEP Must be in Effect

Each student with a disability must have an IEP in effect during the entire school year, including at the beginning of the school year. Schools often develop IEPs for the following school year during the spring of the preceding school year. An IEP Team meeting may need to occur over summer holidays to ensure that all students have an IEP at the beginning of each school year. A state charter school must conduct an IEP Team meeting within thirty (30) days of a student's initial eligibility determination if the student is found to be eligible for services under IDEA.

For schools that are required to serve students ages 3-5, a student must have an IEP prior to his or her third birthday. A school may continue to serve a student aged 3-5 through an Individualized Family Service Plan (IFSP) if the IFSP meets the requirements of an IEP, the parents and LEA agree to the provision of services through the IFSP, and the LEA provided the parents a detailed explanation of the differences between an IFSP and an IEP and obtained written consent of the parent if he or she chose the IFSP. (For informational purposes only - An IFSP is developed under IDEA Part C and is based more on the family dynamic instead of the school and child relationship. The IFSP emphasizes "natural environments" rather than the least restrictive environment of the IEP.)

Students who Transfer with an IEP

If a student transfers to a state charter school from another LEA in Georgia, the state charter school must, in consultation with the parents, provide the student FAPE through services comparable to the student's IEP until the state charter school adopts the student's IEP from the previous LEA or develops, adopts, and implements a new IEP in accordance with IDEA.

If a student transfers to a state charter school from another state, the state charter school must, in consultation with the parents, provide the student FAPE through services comparable to the student's IEP until the state charter school conducts an evaluation if necessary and develops, adopts, and implements a new IEP (if the student remains eligible for special education and related services).

Availability of the IEP

The IEP must be provided and available to the child's parents. The IEP must also be accessible to each of the child's regular education teachers, special education teachers, related service providers, and any other service provider responsible for the implementation of the IEP. Each

teacher and provider must be informed of this or her specific responsibilities in implementing the IEP and the specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP.

Review and Revision and Amendment of IEPs

Each IEP must be reviewed at least annually to determine whether the annual goals for the child are being achieved. The IEP must be revised if there is any lack of expected progress of the child, subsequent evaluations are conducted, additional information about the child is provided to or by the parents, or there are changes in the child's anticipated needs or other matters. An IEP may only be revised or amended through an IEP Team meeting that takes place in accordance with the requirements of IDEA or by agreement of the parent and the state charter school. If amendments are made to an IEP, the state charter school must ensure that all teachers and service providers and the child's IEP Team are notified of the amendment as necessary. A parent must be provided a revised copy of the IEP with any amendments incorporated.

Placement

Statute: [20 U.S.C. § 1412](#) *Federal Regulations:* [34 C.F.R. § 300.114-300.117](#)

State Board of Education Rule: [160-4-7-.07](#)

Overview

Under IDEA, the term “placement” refers generally to the educational program for the student rather than a location. For example, a student's placement may be in a general education classroom with consultative services. State charter schools must provide each student with a disability an appropriate placement to provide FAPE without regard to the cost or if the services needed by the student are traditionally provided by the school. IDEA requires an LEA, including a state charter school, to make available a continuum of alternative placements for students with disabilities, but each student must be educated in the least restrictive environment to the maximum extent appropriate. Accordingly, in making a placement decision, the IEP Team should attempt to meet the goals and needs of the child in the general education classroom and should only consider more restrictive placements when the student would not be successful in a less-restrictive setting.

Continuum of Alternative Placements

A state charter school must ensure the availability of a continuum of alternative placements to meet the needs of children with disabilities. The continuum of placements includes both class placement (general education, special classes, etc.) and supplementary services and aids to be provided in the class setting. Possible placements for school-aged children with disabilities include:

- General education classroom with additional supportive services;
- General education classroom with direct services from a consultative, collaborative, or co-teaching model;

- Instruction outside the general classroom for individuals or small groups;
- Separate day school or program;
- Home-based instruction; and
- Residential placement.

Possible placements for preschool-aged children include:

- Regular early childhood setting (such as Georgia Pre-K, Head Start, child care facilities, private or church preschools, or any similar placement where over 50% of the children are non-disabled);
- Special education early placement setting (a placement where over 50% of the children are disabled);
- The child's home;
- A separate school for children with disabilities; and
- A residential setting (a school program with a residential component).

Least Restrictive Environment

A state charter school must educate all children with disabilities in the least restrictive environment to the maximum extent appropriate. Accordingly, students with disabilities should be educated with nondisabled peers as much as possible. Placements in special classes or schools should only be considered if the nature or severity of the student's disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Placement Decisions

Determining a student's placement is a decision made by the student's IEP Team at least annually taking into consideration the needs and goals of the student. As such, a student's placement decision is a very individualized decision. The placement must be consistent with the student's least restrictive environment, and if the state charter school has more than one location, the placement must be as close as possible to the student's home and the student must be educated in the location that he or she would attend if nondisabled unless his or her disability requires a different location. The student must not be removed from general education classrooms solely because of needed modifications in the general education curriculum.

Private Placement

A state charter school may be required to place a student in a private day or residential setting if such placement is necessary to provide a student FAPE. In such instance, the state charter school remains responsible for the education of the child even though services are provided through a private provider. The state charter school must continue to follow the requirements of IDEA and monitor the student's progress to ensure that the student receives an education that is consistent with state standards.

Private placement at public expense under IDEA is perhaps the most contentious issue between schools and parents. IDEA provides very specific processes and procedures for parents and schools when private placement at public expense may be appropriate. Due to the potential

cost, state charter schools are strongly encouraged to consult special education and legal experts when a student may need or a parent requests private placement at public expense.

Nonacademic Settings

Children with disabilities must participate with nondisabled children in nonacademic settings to the maximum extent appropriate for the child. Nonacademic settings includes, but is not limited to, extracurricular clubs or sports, transportation, health services, recreation activities, employment program opportunities, meals, and recess periods. If necessary, the state charter school must provide supplementary aides and services to allow children with disabilities an equitable opportunity to participate in nonacademic and extracurricular activities.

Related Services

Statute: [20 U.S.C. § 1401](#) *Federal Regulation:* [34 C.F.R. § 300.34](#)

Related services are those services that are required to assist a child with a disability in benefiting from special education. Related services include transportation and developmental, corrective and supportive services. State charter schools must provide the related services a student needs to benefit from special education at no cost to the parent or student. Specific related services include, but are not limited to:

- Audiological services;
- Psychological services;
- Speech-language pathology;
- Physical therapy;
- Occupational therapy;
- Social work services;
- Counseling services, including rehabilitation services;
- Orientation and mobility services;
- Interpreting services;
- School nurse services;
- Medical services for diagnostic or evaluation purposes;
- Recreation, including therapeutic recreation;
- Early identification and assessment;
- Parent training; and
- Transportation.

Related services must be determined by the IEP Team based on the individual needs of the student and the student's goals and objectives. Related services should be research-based and peer-reviewed. The related services the IEP Team determines are necessary must be documented in the student's IEP. A state charter school may provide related services directly or through a contracted provider. The state charter school should keep detailed records of the related services provided to each student.

Student Discipline

Statute: [20 U.S.C. § 1415](#) *Federal Regulations:* [34 C.F.R. § 300.530-300.537](#)

State Board of Education Rule: [160-4-7-.10](#)

Overview

Disciplining students with disabilities in accordance with the requirements of IDEA is student-centered process that includes certain safeguards to ensure students receive appropriate services throughout the disciplinary process. A student with a disability is subject to the same code of conduct as students who do not have disabilities. However, IDEA ensures that a student with a disability is not disciplined because of the disabilities alone and that the student continue to receive special education services even though he or she may be disciplined. As a result, IDEA requires schools to follow specific guidelines and procedures when disciplining students with disabilities. A student with disabilities may also be referred to law enforcement or judicial authorities if the student's behavior constitutes a crime.

Disciplining Students for Less than 10 School Days per Year

A student with a disability may be disciplined and removed from his or her placement for up to 10 school days per school year. The student may be suspended out-of-school or removed to another educational setting without providing special education services during this time. The 10 school days may be consecutive or an accumulation of discipline removals during the school year. In-school suspension, if the student continues to receive services in accordance with his or her IEP that allows the student to progress in the general education curriculum, is not included in the total of 10 school days. When disciplining a student for less than 10 days per school year, the state charter school is not required to conduct a manifestation determination, complete a functional behavioral assessment, or develop a behavior intervention plan.

Disciplining Students for 10 School Days or More per Year

A student with a disability may be disciplined and removed from his or her placement for 10 school days or more per school year if the school follows certain procedures and provides services as outlined under IDEA. If a student is removed from his or her placement for 10 or more school days per year, the school must provide special education services to the student that will allow the student to participate in the general education curriculum and progress toward meeting the goals in his or her IEP even though the services are provided in another setting. Additionally, the student's IEP Team must conduct a manifestation determination to decide if the conduct in question was caused or had a direct relationship to the student's disability or the school's failure to implement the student's IEP.

In conducting the manifestation determination, the IEP Team should review the student's IEP, any applicable behavior intervention plan, teacher observations, and any other information provided by the parents. The IEP team must consider if the student's conduct was caused or directly related to the student's disability or the conduct was directly related to the school's failure to implement the student's IEP. If the IEP Team determines that the conduct was caused or directly related to the student's disability or school's failure to implement the IEP, the school must conduct a functional behavioral assessment and implement a behavior intervention plan

to address the student's conduct. If the student already has a behavior intervention plan, the IEP team must review and revise the plan as necessary to address the behavior.

If the IEP Team determines that the student's conduct was not caused or directly related to the student's disability or school's failure to implement the IEP, the school may impose the same disciplinary actions on the student as would be imposed on a student without a disability. The school must follow the discipline procedures applicable to all students in its program, including convening a tribunal if required. The school must also continue to provide special education services to the student that will allow the student to participate in the general education curriculum and progress toward the goals in the IEP during the disciplinary action. The school must continue to provide these services even if a student is expelled from the school's program.

Discipline Exception for Serious Offenses

In certain circumstances, a student with a disability may be removed from his or her placement to an interim alternative educational setting for up to 45 school days without regard to whether the conduct was caused by the student's disability. These removals may take place without the convening of a tribunal or parental consent. If the student, at school, on school premises, or at a school function, carries or possesses a weapon, knowingly possesses, uses, solicits, or sells controlled substances, or inflicts serious bodily injury upon another person, the student may be removed to an interim alternative educational setting for up to 45 school days. The school must continue to provide services that will allow the student to participate in the general education curriculum and progress toward the goals in the IEP during this time.

If the school decides to place the student in an interim alternative educational setting in these circumstances, the school must notify the parent of the decision on the same date. The parent has a right to appeal that decision by requesting a due process hearing in accordance with IDEA's dispute resolution procedures. During the due process hearing, which may occur on an expedited basis, and administrative law judge will determine if the student's original placement or the interim alternative educational setting is more appropriate under the requirements of IDEA. During the appeal process, the student will remain in the interim alternative educational setting unless agreed to otherwise by the school.

Discipline of Children Not Yet Eligible for Special Education

A student not yet eligible for special education and related services may utilize the protections of disciplining a student with a disability if the school has knowledge that the child was a child with a disability prior to the conduct's occurrence. A school is deemed to have knowledge that a child is a child with a disability if the parent expressed in writing his or her concern that the child is in need of special education and related services to the student's teacher or school administrative personnel, the parent requested an evaluation for special education services in accordance with IDEA, or a teacher or other school personnel expressed specific concerns about the student's pattern of behavior to appropriate school administrative personnel. A school is not deemed to have knowledge that a child is a child with a disability if the parent refused to allow an evaluation or the provision of services.

If a parent requests an evaluation during the disciplinary process, the school may continue imposing the discipline as it would for any child without a discipline; however, the school must conduct an evaluation in an expedited manner. If the student is found to be a student with a disability, the school must provide special education and related services accordingly.

Procedural Safeguards

Parental Rights Notification

Statute: [20 U.S.C. § 1415](#) *Federal Regulation:* [34 C.F.R. § 300.504](#)

State Board of Education Rule: [160-4-7-.09](#)

IDEA provides a specific set of procedural safeguards for parents and students with disabilities. At least annually, a state charter school must provide parents of a child with a disability a written copy of a document that details the rights and safeguards available to students receiving special education and related services under IDEA. This is commonly referred to as “Parental Rights.” The document must contain a detailed explanation of the various rights and safeguards afforded to parents and students with disabilities. The Georgia Department of Education has model versions of Parental Rights available [here](#). The parent may request to receive this notice electronically. In addition to the annual notification, parental rights must be provided to the parent:

1. Upon request;
2. When the parent first requests a due process hearing in a school year;
3. When the parent initiates a formal complaint under IDEA for the first time in a school year;
4. When the student is initially referred for services or the parent requests an evaluation; and
5. When the school proposes to remove the child from his or her current placement and the removal constitutes a change of placement under the discipline provisions of IDEA and state rules because of a violation of the code of student conduct.

Prior Written Notice

Statute: [20 U.S.C. § 1415](#) *Federal Regulation:* [34 C.F.R. § 300.503](#)

State Board of Education Rule: [160-4-7-.09](#)

A state charter school must provide parents with a written notice in language understandable to the general public that details the school’s proposal to initiate or change the identification, evaluation, placement, or provision of FAPE to the child in a reasonable amount of time before taking the proposed action. In other words, the state charter school must provide prior written notice before evaluating, providing special education services or placement, changing services or placement, and stopping special education services. A state charter school must also provide written notice if the parent requests that the school evaluate or provide or change special education and the school chooses not to do so. If the student is over eighteen and the rights have transferred to the student, this notice must be provided to the student as well as the

parent. Additionally, graduation from high school constitutes a change of placement for which the state charter school must provide prior written notice.

The prior written notice must contain:

1. A full explanation of the procedural safeguards/parental rights available to the parent;
2. A description of the action proposed or refused by the state charter school;
3. An explanation as to why the state charter school proposes to take or refuse the action;
4. A description of any options the state charter school considered and the reasons why those options were rejected;
5. A description of each evaluation procedure, assessment, record, or report the state charter school used as a basis for its decision;
6. A description of any other relevant factors relevant to the state charter school's decision;
7. Statement that the parent of a child with a disability has protection under the procedural safeguards/parental rights and how a copy of those rights may be obtained; and
8. Information regarding sources to contact for assistance in understanding the procedural safeguards/parental rights.

The state charter school must ensure that this notice is provided to the parent in language easily understandable to the general public and in the parent's native language or other mode of communication unless it is clearly not feasible to provide the notice in that language. The state charter school must also ensure that the parent understands the content of the notice and maintains written evidence that it has met the requirements of providing prior written notice.

Dispute Resolution

Overview

A student's IEP Team is a decision-making body comprised of several individuals knowledgeable about the student with varying backgrounds and expertise that develops the educational program and placement for the student required to provide FAPE. The parents, who are vital members of the IEP Team, may not always agree with the decisions of the IEP Team. The contents of the student's IEP, however, is decided upon by the IEP Team as a whole, and the decisions of the team do not need to be unanimous. Except for providing consent for the initial provision of special education services, parents do not need to agree to the contents of an IEP. While an environment of collaboration inevitably will yield better results for a student, IDEA provides processes for parents and LEAs to resolve disputes when they cannot reach agreement.

Formal Complaints

Federal Regulations: [34 C.F.R § 300.151-300.153](#) *State Board of Education Rule:* [160-4-7-.12](#)

Any organization or individual may file a formal complaint with the Georgia Department of Education alleging that the state charter school failed to comply with IDEA or its implementing rules and regulations. The complaint must include:

1. A statement that the LEA has violated requirements of the IDEA;
2. The facts on which the statement is based,
3. The signature and contact information for the complainant, and
4. If alleging violations with respect to a specific child:
 - The name and address of the residence of the child;
 - The name of the school the child is attending;
 - A description of the nature of the problem, including facts relating to the problem, and
 - A proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.

A formal complaint must be filed within one year of the alleged violation (or within one year of the complainant becoming aware of the violation). The individual making the complaint must provide a copy of the complaint to the state charter school when filing the complaint to the Georgia Department of Education. If the individual filing the complaint is the student's parent, the parent and state charter school may voluntarily utilize mediation to attempt to resolve the complaint.

Upon its receipt of the complaint, the Georgia Department of Education will notify the state charter school of the allegations and provide an opportunity for the state charter school to respond to the complaint. The state charter school must respond to the complaint and provide a copy of its response to the complainant. The complainant may also provide additional information for consideration of the complaint. In conducting its investigation, the Georgia Department of Education may review the records of the state charter school, conduct interviews of school personnel, providers, or parents, or and conduct additional on-site activities.

The Georgia Department of Education will issue a written decision within 60 calendar days of its receipt of the complaint (unless there are exceptional circumstances or the parties agree to extend the timeline for resolution). If the Georgia Department of Education finds that the state charter school was not in compliance with IDEA or its implementing rules and regulations, the decision will include corrective action steps for the state charter school to take to achieve compliance and specific remedies to be provided to students, when appropriate. Corrective action that a state charter school may need to take as a result of a formal complaint may include, but are not limited to, conducting or receiving staff trainings, the development of policies and procedures, or directed use of IDEA funding. Specific remedies that may be required to be provided to students may include, but are not limited to, compensatory education or services, extended school year services, or monetary reimbursement for services procured by the parent.

The decision by the Georgia Department of Education regarding the formal complaint is final. Neither party may appeal nor is there a reconsideration process.

Mediation

Statute: [20 U.S.C. § 1415](#) *Federal Regulation:* [34 C.F.R § 300.506](#)

State Board of Education Rule: [160-4-7-.12](#)

The Georgia Department of Education maintains a network of mediators to assist LEAs, including state charter schools, in resolving disputes with parents of children with disabilities. The mediation process may be used in conjunction with other dispute resolution procedures of IDEA or as a stand-alone method to reach agreement. Some LEAs also utilize additional mediators, such as the Atlanta Justice Center, as an alternative or supplement to the process used by the Georgia Department of Education. The mediation process through the Georgia Department of Education is available at no cost to state charter schools.

The Georgia Department of Education maintains a list of mediators knowledgeable about special education and will assign a mediator upon request from an LEA. The mediator will schedule a session at a mutually-agreed upon time and location and will assist the state charter school and parent in reaching an agreement. If the state charter school and the parent are able to reach an agreement, the mediator will assist the parties in executing an agreement that states that the discussions that occurred during the mediation process were confidential and may not be used as evidence in a court proceeding. The agreement must be signed by the parent and a representative of the state charter school that has the authority to bind the school. An agreement reached through mediation is a legally binding contract.

Due Process Hearings

Statute: [20 U.S.C. § 1415](#) *Federal Regulations:* [34 C.F.R § 300.507-300.518](#)

State Board of Education Rule: [160-4-7-.12](#)

Due process hearings under IDEA are quasi-judicial proceedings for resolving disputes between parents and LEAs relating to the identification, evaluation, placement, or provision of FAPE to students with disabilities. The due process hearing procedure promotes resolution throughout the process; however, a full-evidentiary hearing will occur before an administrative law judge if the parties are unable to resolve meritorious claims. Unlike formal complaints and mediations that attempt to foster collaboration, the due process hearing procedure is often adversarial. Additionally, the procedure follows strict timelines and progressions. Failure of a party to adhere the procedure or instruction of the administrative law judge may result in the hearing's dismissal. The due process hearing procedure must be utilized by a parent prior to taking a claim that a state charter school failed to comply with IDEA to court. When a due process hearing request is filed with the Georgia Department of Education, the Georgia Department of Education will transmit the case to the Georgia Office of Administrative Hearings for the assignment of an administrative law judge and further orders.

Both a state charter school and a parent may initiate a due process hearing. Typically, state charter schools would only initiate a hearing to override a parent's refusal to consent to an evaluation for services (though the school would not be required to do so) or to defend an evaluation the school conducted when a parent requests an independent educational evaluation (a state charter school must either provide an independent educational evaluation

or initiate a due process hearing to defend its own evaluation). A parent may initiate a due process hearing for any failure by the state charter school related to the identification, evaluation, placement, or provision of FAPE to the student. A parent may also utilize the due process hearing procedure to appeal the state charter school's decision to remove a student to an interim alternative educational setting if the student committed an offense that would allow for such removal. Due process hearings utilized to appeal removal of a student to an interim alternative educational setting may be done in an expedited manner.

While a due process hearing is pending, the student must remain in his or her current educational placement. This is often referred to as "stay put." Because a child's placement under IDEA refers to the individualized program of services rather than a specific location, "stay put" does not necessarily mean that a child will not advance from grade to grade (or to the new school associated with the grade advancement) if appropriate. If a parent files a due process hearing request to contest the removal of a student to an interim alternative educational setting if the student committed an offense that would allow for such removal, "stay put" does not apply. Instead, the student will remain placed at the interim alternative educational setting during the pendency of the due process hearing.

Generally, a parent's due process hearing request must allege that the state charter school violated IDEA or its implementing rules and regulations within the past two years. The time restriction does not apply if the parent was prevented from filing a due process hearing request due to specific misrepresentations by the state charter school that it resolved the problem that is the basis for the complaint. Additionally, the two-year time period does not apply if the state charter school withheld information from the parent that it was required to provide.

There is no cost for filing a due process hearing request. However, the parent and state charter school are responsible for their respective costs associated with hiring legal counsel or other experts for a due process hearing request. A state charter school cannot use IDEA funding for attorney's fees in defending a due process hearing request. The state charter school must provide the parent a list of low-cost or no cost legal services if requested by the parent or when the parent files a due process hearing request. While attorney's fees cannot be awarded as part of the administrative hearing in Georgia, a prevailing party in an administrative process may bring a civil action to recover attorney's fees.

When filing a due process hearing request, the party must provide the other party a copy of the request at the time it is filed. A due process hearing request is filed with the Georgia Department of Education. The hearing request must include:

1. The name of the child;
2. The address of the residence of the child;
3. The name of the school and the LEA the child is attending;
4. For a homeless child, the contact information for the child;
5. A description of the nature of the problem relating to the proposed or refused initiation or change in the identification, evaluation, placement or provision FAPE, including the facts relating to the problem; and
6. A proposed resolution to the problem to the extent known and available to the party at the time.

A due process hearing request will be deemed sufficient unless the receiving party (i.e. the state charter school if the request is filed by a parent) notifies the administrative law judge and other party within 15 days of its receipt that the request does not contain all necessary requirements. Within five days of receiving notification that the due process hearing request is believed to be insufficient, the administrative law judge will make a determination on the face of the due process request of whether it meets the requirements and will notify the parties in writing of his or her determination. Due process hearing requests may only be amended at the permission of the administrative law judge (no later than five days prior to the hearing) or by consent of the other party in writing (who is also given the opportunity to resolve the issues through mediation or a resolution session).

Within 10 days of receiving a due process hearing request filed by a parent, a state charter school must provide the parent prior written notice regarding the subject of the due process hearing request if it had not done so already. The prior written notice must include an explanation of why the state charter school proposed or refused to take action; a description of other options that the IEP Team considered and the reasons why these options were rejected; a description of each evaluation procedure, assessment, record, or report the state charter school used as the basis for the proposed or refused action; and a description of the other factors that are relevant to the state charter school's proposed or refused action. The state charter school may also allege that the due process hearing request is insufficient as outlined above. If the state charter school does not allege that the due process request is insufficient, the state charter school must provide a response to the due process request that specifically addresses the issues raised within the due process request. The response to the due process hearing request must be provided to the party within ten days.

The due process hearing procedure includes steps for the parties to attempt to reach an agreement prior to the administrative hearing. The filing of a due process hearing request begins a thirty day resolution period for the parties to utilize to reach an agreement prior to when the hearing may occur. Additionally, within 15 days of a parent filing a due process hearing request, a state charter school must convene a resolution meeting with the parent. The resolution meeting must include the parent, relevant members of the student's IEP Team, and a representative of the state charter school that has decision-making authority. An attorney for the state charter school may not attend the meeting unless the parent has an attorney that will be present at the meeting. The resolution meeting must occur unless the parent and school system agree to waive the meeting in writing or agree to utilize mediation to resolve the dispute. If a parent refuses to participate in the resolution meeting, the timelines for the resolution process will be delayed until the meeting is held or waived in writing, and if the parent refuses to participate in the resolution meeting entirely, the state charter school may, at the conclusion of the 30 day resolution period, request that the administrative law judge dismiss the hearing request. If the state charter school fails to hold the resolution meeting, the parent may request that the administrative law judge intervene to schedule the due process hearing.

If the parties reach an agreement during the resolution meeting, the parties must execute a legally binding agreement signed by the parent and state charter school representative. This agreement is enforceable in any court of competent jurisdiction. The agreement reached

through the resolution meeting may be voided by either party within three (3) business days of its execution. Parties to a due process hearing may reach a settlement at any time and may request the administrative law judge to issue an order dismissing the matter.

The timeline for holding a due process hearing begins the day after the 30 day resolution period unless the 30 day resolution period is adjusted. If the 30 day resolution period is adjusted, the timeline begins the day after the administrative law judge is notified that the adjusted period is concluded. The 30 day resolution period may be adjusted through: both parties agreed in writing to waive the resolution meeting; both parties agreed in writing, prior to the end of the 30 day resolution period, that no agreement is possible; or both parties agreed to continue the resolution process through mediation beyond the 30 days but at least one party later withdraws from the mediation.

A due process hearing must be conducted and decided in writing within 45 days after the conclusion of the resolution period. The administrative law judge will mail a copy of the decision to each party. The timeline for conducting the hearing and reaching a decision may be extended by the administrative law judge at the request of either party. When extending the timeline for conducting the hearing or reaching a decision, the administrative law judge must notify the parties in writing of the extension and the new date by which the decision will be provided.

The Georgia Department of Education, through the Georgia Office of Administrative Hearings, will appoint an impartial administrative law judge that meets the requirements of IDEA. The administrative law judge will conduct a hearing at a time and place reasonably convenient to the parents and the child and in accordance with the requirements of IDEA. In a due process hearing, each party has the right to be accompanied and advised by legal counsel or by individuals with special knowledge or training with respect to the problems of children with disabilities. Each party will have the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. IDEA requires that the parties disclose any evidence that will be used at the hearing and all witnesses to be called at the hearing to the other party at least five business days in advance of the hearing. Failure to disclose such evidence in advance may preclude the party from using the evidence at the hearing.

The hearing will be limited to the issues raised in the request for the due process hearing unless the other party agrees otherwise. The party that requested the due process hearing has the burden of persuasion at the hearing. In other words, the party that requested the hearing must convince the administrative law judge to rule in its favor. Due process hearings are closed to the public unless the parent of the child chooses to have the hearing open to the public. The parent may also choose to have the child present for the hearing.

In determining whether a child received FAPE, the administrative law judge will issue a decision based on substantive grounds rather than the state charter school's failure to adhere to the procedural requirements of IDEA. However, a state charter school's failure to adhere to the procedural requirements of IDEA may result in a substantive denial of FAPE. If the state charter school's failure to adhere to the procedural requirements of IDEA impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of an education

benefit, the administrative law judge may rule that the state charter school failed to provide FAPE through procedural violations of IDEA.

Within 45 days after the conclusion of the resolution period unless the timeline is appropriately extended, the administrative law judge will issue a ruling in writing to the parties. The parent has the right to request a record of the hearing and the findings and facts be provided to him or her at no cost. The decision of the administrative law judge is final except that the party to a due process hearing may bring a civil action in accordance with IDEA.

Civil Actions

Any party aggrieved by the findings and decision made by an administrative law judge in a due process hearing may file a civil action in any state court of competent jurisdiction or in a federal district court. The civil action must be filed within 90 days from the date of the decision of the administrative law judge in a due process hearing request. In a civil action, the court will receive the record of the due process hearing, receive additional evidence if it chooses to do so, and issue a decision that grants the relief it deems appropriate. A party bringing a civil action must prove its case by a preponderance of the evidence. In other words, the party bringing the case must prove that it is more likely than not that it is entitled to relief from the court. As part of a civil action, the court may award attorney's fees to the prevailing party in a due process hearing. The award of attorney's fees is contingent on a variety of factors and scenarios as outlined under IDEA and State Board of Education Rules.

Student Records and Confidentiality

Statute: [20 U.S.C. § 1417](#) *Federal Regulations:* [34 C.F.R § 300.610-300.627](#)

State Board of Education Rule: [160-4-7-.08](#)

IDEA, like FERPA, requires a state charter school to maintain the confidentiality of personally identifiable information in education records of students with disabilities. The broad principles of the confidentiality requirements of IDEA are very similar to the requirements of FERPA. Under IDEA and FERPA, the state charter school, except in limited circumstances, is prohibited from releasing personally identifiable information in education records without prior written parental consent. Likewise, under both statutes, the state charter school must provide notice of the right for the parent to access the records as well as amending education records. Both statutes transfer the rights from parents to students when the student reaches 18 years of age.

However, there are some distinctions between the confidentiality provisions of IDEA and FERPA. The IDEA definition of “personally identifiable” information is broader than the FERPA definition and includes information that would normally be identified as “directory information” under FERPA. As a result, some information that would be permissible to release under FERPA would not be permissible to release under IDEA. For example, IDEA includes names of the child's parents as “personally identifiable” information. Generally, FERPA would not restrict a school from disclosing the names of parents; however, if the disclosure of the parents' names identified a student as having a disability, then the disclosure would not be permissible under IDEA.

Unlike FERPA, IDEA provides that personally identifiable information in education records of a student receiving special education services must be destroyed at the request of the parents when that information is no longer needed to provide educational services to the child. The destruction of such information may be physical destruction or the removal of information until such point as it is no longer personally identifiable. The state charter school does not need to destroy the personally identifiable information in the education records if that information is still needed to provide services to the student. Additionally, the school may always maintain a permanent record for the student that includes: the student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and completion year.

Personnel and Caseloads

Statute: [20 U.S.C. § 1401](#) *Federal Regulations:* [34 C.F.R § 300.18](#)

State Board of Education Rule: [160-4-7-.14](#)

IDEA and its rules and regulations require special education personnel to have specific qualifications and manageable caseloads. All special education teachers, including those serving in state charter schools, must meet the highly-qualified standard required by ESEA. Highly-qualified requirements are discussed in Chapter Three and more information can be found through the Georgia Professional Standards Commission [here](#). Because Georgia law allows charter schools to waive certification requirements, a state charter school with a broad flexibility waiver may utilize noncertified teachers in special education classrooms. While the broad flexibility of state charter schools allows the state charter schools to depart from state requirements of maximum class size, the caseload requirements set forth in State Board of Education Rule [160-4-7-.14](#). Caseload refers to the number of IEPs for special education students for which a special education teacher or service provider is responsible for providing special education or related services. For example, in accordance with State Board of Education Rule [160-4-7-.14](#) a speech-language pathologist can serve a maximum of 55 students.

Required Annual Reports

Statute: [20 U.S.C. § 1413](#) *Federal Regulation:* [34 C.F.R § 300.211](#)

State Board of Education Rule: [160-4-7-.17](#)

The Georgia Department of Education, as the SEA, is required to report annually to the United States Department of Education and the general public the performance of each LEA on the targets of the state's performance plan. To do so, the Georgia Department of Education must collect data from each LEA, including state charter schools. The data the Georgia Department of Education collects from LEAs includes demographics, student indicators, test results, and administrative indicators. Generally, the Georgia Department of Education collects this information through the FTE-reporting process and Student Record data collection; however to collect data regarding the LEA's progress on specific targets, each LEA must complete and

submit data through the Consolidated Application or stand-alone data collections in the Georgia Department of Education's secure data portal. State charter schools must be sure to follow the specific instructions in submitting data to the Georgia Department of Education. Failure to provide complete and accurate data or failure to abide by the timelines and deadlines for doing so can drastically affect the reporting for a school and can result in the misappropriation, or lack thereof, of federal funding.

Using the data provided to it by the LEAs, the Georgia Department of Education will compile reports and make determinations as to each LEA's compliance with IDEA. In addition to a state charter school's progress towards meeting the targets in the state performance plan, GaDOE will also calculate and report the state charter school's compliance with IDEA's maintenance and effort requirement, disproportionality, student environments, postsecondary outcomes, and preschool transition. Each LEA will receive an annual determination from the Georgia Department of Education based upon the LEA's performance indicators. The annual determination a state charter school receives will guide the level of intervention and assistance that the Georgia Department of Education will provide the state charter school.

SEA Monitoring

Statute: [20 U.S.C. § 1416](#) *Federal Regulations:* [34 C.F.R § 300.600-300.609](#)

General Supervisory Authority

IDEA requires each SEA to be ultimately responsible to ensure that children with disabilities receive FAPE in accordance with IDEA. As a result, the Georgia Department of Education has general supervisory authority over all compliance matters regarding students with disabilities receiving special education and related services. This means that the Georgia Department of Education may take any steps authorized by law to ensure a state charter school complies with IDEA. The Georgia Department of Education may conduct onsite monitoring or a record review of a state charter school and require the state charter school to complete corrective action steps to achieve compliance with IDEA. The Georgia Department of Education may also withhold state or federal funding or direct the use of such funding for specific efforts to comply with IDEA. In extreme circumstances, the Georgia Department of Education can provide direct services to students with disabilities and withhold funding that would have been provided to the LEA of those students to offset the cost of providing direct services.

Georgia's Continuous Improvement Monitoring Process (GCIMP)

In addition to its general supervisory authority, the Georgia Department of Education must develop and utilize a process for monitoring and evaluating LEA compliance with IDEA. As a result, the Georgia Department of Education developed Georgia's Continuous Improvement Monitoring Process (GCIMP) to offer state-wide improvement and focused assistance to meet the needs of students with disabilities. GCIMP uses many different components, including the State Performance Plan and the LEA's performance, LEA fiscal management, and monitoring activities to identify state and LEA needs. Each LEA is monitored through a tiered approach ranging from data review to compliance agreements and focused monitoring. The Georgia

Department of Education provides targeted technical assistance, professional learning, as well as incentives and sanctions through GCIMP. State charter schools, as LEAs, will be treated by the Georgia Department of Education as any other LEA through GCIMP. The Georgia Department of Education's GCIMP manual is available [here](#).

Use of IDEA Funding and Budgets

Statute: [20 U.S.C. § 1413](#) *Federal Regulations:* [34 C.F.R § 300.202-300.210](#)

State Board of Education Rule: [160-4-7-.17](#)

Overview, Maintenance of Effort, and Supplement/Supplant

Like most federal funding, IDEA places restrictions on the use of and reporting for funding a state charter school receives under the program. All IDEA funding must comply with the administrative requirements of EDGAR and applicable OMB Circulars, including time and effort reporting of personnel. IDEA also requires state charter schools to adhere to maintenance of effort requirements and avoid supplanting nonfederal funding with federal funding. Maintenance of effort requirements may be satisfied through aggregate expenditures or through a per pupil amount. If the state charter school does not meet the maintenance of effort requirement under either calculation, there are some exceptions that are allowable under IDEA if there is adequate documentation, otherwise the state charter school must reimburse the difference to the state with nonfederal funds. Additionally, federal guidelines prevent LEAs from using IDEA funding to supplant rather than supplement nonfederal funding. Federal guidelines presume supplanting occurs when maintenance of effort is not met or federal funds are used to provide services previously provided through nonfederal funding. Supplanting presumptions can be rebutted in certain circumstances, but a state charter school must keep documentation to prove why the presumed expenditures were not supplanting nonfederal funding. Moreover, IDEA funds cannot be comingled with state funding.

Excess Cost

IDEA funds may only be used for the excess cost of providing special education services to students with disabilities. In other words, a state charter school must utilize at least the average annual per student expenditure to educate a child with a disability prior to using IDEA funding. As a result, it would be inappropriate for a state charter school to fund its entire special education program with IDEA funding. State charter schools must annually complete the excess cost calculation required by IDEA and found in Appendix A to 34 C.F.R. Part 300.

Budget

Each year a state charter school must complete a comprehensive plan for providing services under IDEA as part of the Consolidated Application. A portion of this plan includes a budget that will be reviewed and approved by the Georgia Department of Education. All expenditures of IDEA funds must be consistent with the budget approved by the Georgia Department of Education.

Other Expenditure Requirements

A state charter school **may** use up to 15% of its IDEA funds to develop a coordinated early intervening services (CEIS) program for regular education students who are not identified as needing special education or related services but who need additional academic and behavioral support to succeed in the general education environment. The CEIS should have an emphasis on Kindergarten through 3rd grade. A state charter school that received a determination of significant disproportionality based on race or ethnicity in its identification, placement, or discipline of students with disabilities **must** reserve the maximum 15% of IDEA funds for CEIS to serve students in those groups significantly disproportionate.

A state charter school **must** reserve a proportionate share of its IDEA funding for services to be provided to parentally-placed in private schools and home schools. No child that is parentally-placed in a private or home school is individually entitled to services through the state charter school, but the state charter school must provide special education services to such students as a whole. In other words, the state charter school may determine the nature and amount of services it will provide and may cease to provide those services once the proportionate share is exhausted. The calculation of the proportionate share is completed through the Consolidated Application and will vary depending on the number of children that are parentally-placed in private or home schools.

Special Education Discretionary Grants

Overview

In addition to formula allocations under IDEA, state charter schools may apply to the Georgia Department of Education for additional funding to serve special education students. These discretionary grants are designated for specific purposes, and often the state charter school will need to apply for the funding on an annual basis using the timeline and deadlines established by the Georgia Department of Education. Many of the discretionary grants are awarded on a reimbursement basis and require specific documentation to be submitted to the Georgia Department of Education before the state charter school will have access to the funds.

Federal Grant for High-Cost Students

Because state charter schools must provide each student with a disability FAPE without regard to the cost or if the services needed by the student are traditionally provided by the school, a state charter school may receive a student whose special needs present an economic burden for the school. To help offset the sometimes high cost of providing the special education and related services needed to provide a student FAPE, state charter schools, as an LEA, may apply for additional funding from the Georgia Department of Education. If the state charter school serves a special education student whose needs require the school to expend more than three times the state average per pupil expenditure, the state charter school may apply for the grant for high-cost students. The state average per pupil expenditure is calculated annually, but three times that expenditure is usually approximately \$27,000.

State charter schools that serve high-cost students must apply for the additional grant funding through an application process administered by the Georgia Department of Education. The state charter school should expect to provide documentation to verify the services the school provides, such as service contracts, invoices, payment records, payroll records, and the child's IEP. Funds received through the high-cost grant must only be used for providing the direct special education and related services as identified in that child's IEP. The funds that are received through the high-cost grant cannot be used for medical services that are reimbursable under a student's Medicaid plan.

The total amount of funding available under the high-cost grant is limited. As a result, specific grant awards will vary depending on the state's needs as a whole. Typically, an LEA, including a state charter school, will receive additional funding under the high-cost grant to cover only a portion of the cost to provide required services to high-cost students. As a result, a state charter school should not expect the high-cost grant funding to provide for all the services a high-cost student needs, and the state charter school must be prepared to provide required services using other supplemental funding.

More information regarding the federal grant for high-cost students is available [here](#).

State Grant for Residential and Reintegration Services

In situations in which a state charter school must place a student in a residential setting to ensure the student receives FAPE, the state charter school may apply for additional funding through the Georgia Department of Education to offset the cost of the residential placement. The student's placement in the residential facility must be made by the student's IEP Team in accordance with IDEA. Additionally, the residential facility must be a facility that is approved by the Georgia Department of Education as meeting certain criteria consistent with state standards. A list of approved residential facilities is available [here](#). The state charter school remains responsible for ensuring the implementation of the student's IEP even though the student is served through a residential facility.

State charter schools that serve a student in a residential placement must apply for the additional grant funding through an application process administered by the Georgia Department of Education. The state charter school should expect to provide documentation to verify the residential services, such as service contracts, invoices, payment records, and the child's IEP. Funds received through the residential and reintegration grant must only be used for providing the direct special education and related services as identified in that child's IEP. As part of the application process, the state charter school must have a plan to reintegrate and transition the student to a less-restrictive setting.

The total amount of funding available under the residential and reintegration is limited. As a result, specific grant awards will vary depending on the state's needs as a whole. Typically, an LEA, including a state charter school, will receive additional funding under the residential and reintegration grant to cover only a portion of the cost to provide required services to students in residential placements. As a result, a state charter school should not expect the residential and reintegration grant funding to provide for all the services a student in a residential

placement needs, and the state charter school must be prepared to provide required services using other supplemental funding.

More information regarding the state grant for residential and reintegration services is available [here](#).

Chapter Five – State Laws Applicable to State Charter Schools

Overview

State charter schools are generally afforded a broad flexibility waiver, which allows the state charter school to operate free from many of the restrictions and requirements of state laws applicable to traditional public schools. The broad flexibility waiver, however, is not absolute. Georgia law does not allow state charter schools to waive:

1. The requirement for the school to be public, nonsectarian, nonreligious, nonprofit, and not home based;
2. Supervision of the school by the State Board of Education and State Charter School Commission of Georgia as consistent with the Georgia Constitution;
3. Any federal, state, and local rules, regulations, court orders, and statutes relating to insurance;
4. Any federal, state, and local rules, regulations, court orders, and statutes relating to the protection of the physical health and safety of school students, employees, and visitors;
5. Any federal, state, and local rules, regulations, court orders, and statutes relating to conflicting interest transactions;
6. Any federal, state, and local rules, regulations, court orders, and statutes relating to the prevention of unlawful conduct, including unlawful conduct in or near a public school;
7. The requirement to be subject to an annual financial audit conducted by the state auditor or, if specified in the charter, by an independent certified public accountant licensed in this Georgia;
8. The requirement to be included in the Single Statewide Accountability System (SSAS) detailed in O.C.G.A. § 20-14-26 et. seq.;
9. Requirements for reporting data to the State Board of Education or Georgia Department of Education, including student data and financial reporting;
10. The prohibition of charging tuition or fees except as authorized for local boards under O.C.G.A. § 20-2-133;
11. The requirement to provide a brief period of quiet reflection under O.C.G.A. § 20-2-1050;
12. The requirement to conduct fingerprinting and criminal background checks of employees as specified in O.C.G.A. § 20-2-211.1;
13. Requirements related to the provision of individual graduation plans for students detailed in O.C.G.A. § 20-2-327(c);
14. The requirement for academic curriculum to align to the state-adopted curriculum;
15. Requirements related to the administration of state-adopted assessments;
16. The use of the teacher and leader evaluation system adopted by the State Board of Education;
17. Any federal law, rule, or regulation; and
18. Any state law, rule, or regulation not located in Title 20 of the Official Code of Georgia. (A law is in Title 20 if the citation begins O.C.G.A. § 20-.)

The following sections provide detail regarding state education laws that are applicable to state charter schools. As noted previously, this guide is not exhaustive and should not be relied upon as the sole resource for the legal obligations of a state charter school. There will be additional laws and requirements that are applicable to state charter schools that are not discussed herein. Additionally, please note that the current application used by the State of Georgia to provide online access to the Official Code of Georgia does not allow one to link to specific code sections. Accordingly, the links below will take the reader to the general website, and specific code sections may be found by utilizing the search feature.

Open Enrollment

State Law: [O.C.G.A. § 20-2-133](#)

State Charter Commission Rule: 691-2-.05

A state charter school must allow attendance from all students residing within the attendance zone specified in the school's charter. A state charter school must accept all students and cannot restrict enrollment to a certain population. Even if the state charter school's instructional program is geared toward a student population, such as at-risk students, students with disabilities, or English learners, the school must accept students that are not within that population if such student chooses to attend and resides within the school's attendance zone. However, a single-gender state charter school may accept students only in that gender under certain circumstances allowable under Title IX of the Educational Amendments Act of 1972 (see Chapter Two).

A state charter school may utilize enrollment priorities established in law and outlined in the school's charter. The charter of a state charter school may provide enrollment preference to:

1. A sibling of a student currently enrolled in the state charter school;
2. A sibling of a student currently enrolled in another school designated in the charter of the state charter school;
3. A student whose parent or guardian is a member of the governing board of the charter school or is a full-time teacher, professional, or other employee at the state charter school;
4. A student matriculating from a school designated in the charter of the state charter school; and
5. A student matriculating from a pre-kindergarten program which is associated with the school, including, but not limited to, programs which share common facilities or campuses with the state charter school, or pre-kindergarten programs which have established a partnership or cooperative efforts with the state charter school.

Utilizing all enrollment preferences allowed by state law may disqualify a state charter school from being eligible for grant funding through the Federal Charter School Program. State charter schools that may seek grant funding through the Federal Charter School Program are encouraged to review the program's guidance prior to utilizing enrollment preferences.

When the number of applications exceeds the capacity of the program, class, grade level, or building of the state charter school, the state charter school must conduct an admission lottery

after granting any applicable enrollment preferences. The admission lottery must be a random selection process to ensure that all applicants that do not have an enrollment preference have an equal chance of being admitted. The state charter school must have a written policy detailing how the admission lottery is to be conducted and conduct such lottery in accordance with that policy.

A state charter school may not charge tuition or fees to a student residing within the attendance zone specified in the school's charter. Additionally, a state charter school may not require its students to provide materials or equipment to participate in the educational program of the school. All required textbooks and other reading materials for students enrolled in the school must be provided to the students free of charge.

QBE Funding and the FTE Process

State Law: [O.C.G.A. § 20-2-160 et. seq. .07, 160-5-1-.03](#)

State Board of Education Rules: [160-5-1-](#)

Overview

A state charter school must use the criteria and definitions of QBE (the Quality Basic Education funding formula) and FTE (Full-Time Equivalent) reporting process to calculate the amount of state funding to which the state charter school is entitled. In other words, state charter school must follow all aspects of FTE reporting and report students for appropriate funding weights and categories based on statutory or regulatory definitions. For example, a state charter school can only report students for gifted program funding if the student meets the definition of “gifted” and is served in a gifted program during the FTE count. While the state charter school does have flexibility in how it may deliver gifted program services, the state charter school must only report eligible students for funding purposes.

QBE funding and the FTE process are both extremely complicated and crucial to the success of all schools, especially state charter schools. The failure of a state charter school to follow the specific requirements of the FTE process is likely to result in the misappropriation of funding to the state charter school that will have a detrimental impact to the school's operations. Each fall, the Georgia Department of Education holds a conference to assist schools and districts in understanding QBE funding and the FTE process. All state charter schools should plan to attend this conference. The conference will provide detail in meeting the requirements of law and provide updates on state-level actions that impact the QBE funding and FTE process.

QBE Categories and Segments

The QBE formula is a per-pupil weighted allocation that is largely driven by student-teacher ratio. There are 19 statutory QBE categories that are weighted based on the estimated cost of providing education to students in that category. As an example, the high school program weight is 1.0000 and the Kindergarten program weight is 1.6587. Accordingly, a state charter school will receive more funding for a student in a Kindergarten program than it will in a high school program. This is because the estimated cost of providing education to a Kindergarten student is more than the estimated cost of providing education to a high school student, largely

because Kindergarten classes are expected (and sometimes required) to have smaller student to teacher ratios.

During the FTE reporting process, a state charter school will report each student in one of the 19 QBE programs for each segment of the school day of the FTE count. A school day is always divided into six segments regardless of how many periods or blocks the school may divide its school day. As an example, a second grade elementary school student that is served in the general education classroom but also receives services through an early intervention program and services through an ESOL program, should be reported in the primary grades program for the segments he is in the general education classroom (QBE weight of 1.2855), in the primary grades early intervention program for the segments he receives early intervention program services (QBE weight of 1.8029), and in the ESOL program for the segments he receives ESOL services (QBE weight of 2.5306).

FTE counts occur twice a year – once in October and once in March. These counts provide a “snapshot” of the educational services the school provides. On FTE count days, the state charter school must report the student’s specific assigned program for each of the six segments. The services reported must reflect the services provided only the day of the FTE count. For example, if a student receives gifted services for two segments on Wednesdays, but the FTE count is on a Tuesday, the school cannot report the student for receiving gifted services during that FTE count. A student cannot be reported for FTE if that student was not in attendance in any of the ten days prior to the FTE count day. Additionally, a student may only be reported during the FTE count for segments in which that student is enrolled in an instructional program. In other words, if a student is in a non-credit course, study hall, or other non-instructional setting, such as an office aide, the student cannot be reported for funding for those segments.

QBE Calculation

QBE allocations are based on the QBE program counts during the previous three FTE counts. As a result, QBE funding is “a year behind” the services provided. The QBE program counts are totaled and then multiplied by the respective QBE programs weights. That product is then multiplied by the base amount established in the General Appropriations Act. Additional funds for teacher training and experience as well as other QBE grants are added for the total amount of state funding provided for schools through QBE.

Non-FTE Data Collections

State Law: [O.C.G.A. § 20-2-320, 20-2-740](#) State Board of Education Rules: [160-5-1-.07](#), [160-5-1-.03](#), [160-5-2-.50](#)

Overview

State charter schools must comply with all data collection requirements of the Georgia Department of Education in addition to the FTE data collections. State charter schools must adhere to all deadlines established by the Georgia Department of Education in reporting data. All the data collections required by the Georgia Department of Education are based in the

requirements of law and can impact the operation of a state charter school. Failure by the state charter school to participate in all data collection efforts of the Georgia Department of Education may affect the funding provided to the state charter school or impact legal designations applicable to the state charter school.

Certified/Classified Personnel Information (CPI)

Every October the Georgia Department of Education uses the Certified/Classified Personnel Information (CPI) data collection to collect various data regarding the personnel employed by the school. This data is used to calculate the state teacher and experience funding (commonly referred to as T & E) provided for schools to meet the requirements of the state salary schedule for certified personnel. State charter schools are not required to adhere to the state salary schedule for certified personnel, but the state charter schools do receive the supplemental funding. Additionally, CPI data is used to determine an LEA's compliance with Highly Qualified requirements of ESEA and IDEA.

Pre-ID Labels

Through its data collection processes, the Georgia Department of Education requires LEAs to submit student-level data to be used to create identification labels for state assessments. There are multiple pre-id label cycles throughout the school year, with each cycle relating to specific assessments. The pre-id labels assist in accurate reporting of student demographics and alleviate the need for teachers and students to manually report program data on answer documents.

Student Record

The Student Record data collection is the most comprehensive data collection conducted by the Georgia Department of Education. The Student Record data collection usually begins in February and initial uploads must be completed by the end of April. The Student Record data collections consists of multiple levels of files, and **a state charter school must complete all files**. The file levels are:

- System Level File
- School Level File
- Student Level File
- Course Level File
- Student Safety File
- Enrollment Level File
- Student Address File
- Program Level File; and
- Special Education File.

The Student Record data collection is used to monitor, enforce, and report compliance with a variety of state and federal laws, including, but not limited to: ESEA, IDEA, Section 504, and QBE funding requirements.

Data Collection Restrictions

State Law: [O.C.G.A. § 20-2-665](#)

Overview

Unless required by other state or federal law or a health and safety emergency a state charter school shall not report data to the Georgia Department of Education related to juvenile delinquency records, criminal records, or medical and health records. Further, state charter schools cannot collect data on students or their families regarding their political affiliation, voting history, or religious affiliation or beliefs unless required by state or federal law or in the case of a health or safety emergency. State charter schools cannot collect data on students or their families' income, except as required by law or where a state charter school must utilize income information to apply for, administer, research, or evaluate programs to assist students from low-income families.

Criminal Record Checks of Personnel

State Law: [O.C.G.A. § 20-2-211.1](#)

A state charter school must ensure that all of its personnel are fingerprinted in a manner that will allow submission to the Georgia Crime Information Center (GCIC) or the Federal Bureau of Investigation. The state charter school may refer the personnel to a law enforcement agency in Georgia for such fingerprinting. The state charter school must conduct criminal record checks of all personnel. The results of the criminal record checks may be forwarded to the Georgia Professional Standards Commission when necessary for potential action as a violation of the educator code of conduct. The state charter school may require the employee or prospective employee to be responsible for the cost of the fingerprinting or criminal record check.

Access to and use of information received from the GCIC must be within regulations and guidelines established by the Georgia Crime Information Center Council. A state charter school utilizing the GCIC will be subject to a periodic audit to ensure that the GCIC is used appropriately. The official rules of the Georgia Crime Information Center Council are available [here](#).

There are no state requirements or guidelines in making employment decisions for individuals with a criminal records. Accordingly, it is the authority of the state charter school to develop a policy, practice, or procedure for making employment decisions for individuals with criminal records. A state charter school is strongly encouraged to consult its legal counsel and human resources experts in formulating such a policy, practice, and procedure. The state charter school should always act to protect the safety of its students.

Employee Evaluations

State Law: [O.C.G.A. § 20-2-210 et. seq.](#)

All employees of a state charter school must receive an annual performance evaluation. Beginning no later than the 2014-2015 school year, all teachers, assistant principals, and principals of state charter schools must receive annual evaluations utilizing the evaluation instruments adopted by the State Board of Education. The evaluation instruments adopted by the State Board of Education are the Teacher Keys Effectiveness System (“Teacher Keys”) and Leader Keys Effectiveness System (“Leader Keys”). These evaluation instruments provide four rating levels of “Exemplary,” “Proficient,” “Needs Development,” and “Ineffective.” The rating levels for Teacher Keys are based on a variety of elements including student growth and academic achievement, multiple classroom observations, and surveys of instructional practice. The rating levels for Leader Keys are also based on a variety of elements including student growth, achievement gap reduction, and climate surveys.

The specific requirements of Teacher and Leader Keys are outlined by the Georgia Department of Education prior to the implementation of the evaluation instruments. These requirements include:

- Providing written notice teachers, assistant principals, and principals of the components of the evaluation prior to conducting the evaluation;
- Holding a pre-evaluation conference, midyear evaluation conference, and summative evaluation conference with each employee being evaluated by the instrument;
- Providing access to the results of the annual summative evaluation and any formative observations conducted during the school year;
- Reporting the evaluation status to the Georgia Professional Standards Commission for any teacher, assistant principal or principal who receives an “Ineffective” or “Needs Development” rating;
- Basing decisions regarding the retention, promotion, compensation, dismissals, and other staffing decisions primarily on the results of the evaluation; and
- Providing mentoring, support, and professional development aligned to the needs of employees as identified in their respective evaluations.

The results of Teacher Keys and Leader Keys, and all records relating to the individual performance evaluations are confidential and not subject to public disclosure under the Georgia Open Records Act. The performance data must be reported to the Georgia Department of Education and may be released by the school to third parties if authorized by the individual teacher, assistant principal, or principal. State charter schools must report, in a manner to be determined by the Georgia Professional Standards Commission, the evaluation status to the Georgia Professional Standards Commission for any teacher, assistant principal or principal who receives an “Ineffective” or “Needs Development” rating. Any individual who receives a combination of “Ineffective” or “Needs Development” for any two years in a five-year certificate period will not receive a renewable certificate (but may receive a nonrenewable certificate) until he or she demonstrates that the performance deficiency has been satisfactorily addressed.

Single Statewide Accountability System

State Law: [O.C.G.A. § 20-14-30 et. seq.](#) *State Board of Education Rule:* [160-7-1-.01](#)

ESEA requires all schools and LEAs to participate in and be evaluated by a Single Statewide Accountability System. Georgia's Single Statewide Accountability System is implemented through a coordinated effort between the Governor's Office of Student Achievement and the Georgia Department of Education. Georgia applied for, and was granted a waiver from, certain provisions of Title I of ESEA that changed the method the state measures school performance under the Single Statewide Accountability System. Georgia's waiver of ESEA allows schools to be assessed on a variety of indicators, which, taken as a whole, comprise the College and Career Ready Performance Index (CCRPI). The CCRPI includes student achievement on multiple state assessments, student progress, and the schools' ability to close achievement gaps within the school. Schools may also earn additional points on the CCRPI by implementing certain practices that promote student achievement. Additionally, the CCRPI includes ratings of a school's financial efficiency and school climate. The incorporation of performance flags in the CCRPI reporting system will indicate the school's achievement on performance targets, including the performance of student subgroups.

The Single Statewide Accountability System is discussed in greater detail in Chapter Three.

Statewide Student Assessment Requirements

State Law: [O.C.G.A. § 20-2-281](#) *State Board of Education Rule:* [160-3-1-.07](#)

Overview

Georgia's student assessments form the foundation of the Single Statewide Accountability System. Because the Single Statewide Accountability system is federally mandated, state charter schools must adhere to all aspects of the statewide student assessment requirements. This includes administering the appropriate assessments in the specified grades and following the required procedures for assessment administration. The Georgia Department of Education outlines the requirements for the state assessment program in the *Student Assessment Handbook* available [here](#). State charter schools must adhere to all requirements in the *Student Assessment Handbook*. Additionally, each assessment will be accompanied by manuals for the assessment coordinator and examiners. State charter schools must adhere to all requirements and procedures in the *Examiner's Manuals*, *School Test Coordinator's Manual*, and *System Test Coordinator's Manual*, which will be distributed with the assessment prior to the assessment dates and posted on the Georgia Department of Education's website.

Required Assessments

Georgia's testing program consists of assessments for each grade level (budgetary restraints sometimes prevent administration of certain assessments). In Kindergarten, students are administered the Georgia Kindergarten Inventory of Developing Skills (GKIDS) to determine student readiness for the first grade. The Georgia Milestones Assessment System (Georgia Milestones) is administered to students in grades three through eight and after certain courses

in high school. Georgia Milestones will first be administered in the 2014-2015 school year and take the place of the previously administered Criterion-Referenced Competency Tests (CRCTs), End-of-Course Tests (EOCTs) and writing assessments. Graduation tests, such as the Basic Skills Test (BST) and Georgia High School Graduation Test (GHS GT), are no longer required graduation for the awarding of a high school diploma. The Georgia Alternative Assessment (GAA) is administered to students with disabilities in certain circumstances in lieu of other required assessments. State charter schools, like all LEAs, must participate in the National Assessment of Educational Progress (NAEP) assessment programs. Norm-referenced tests, such as the Iowa Test of Basic Skills (ITBS), are often administered, but are not required in Georgia.

Administration

A state charter school must adhere to all requirements established by the Georgia Department of Education related to the administration of student assessments including, but not limited to:

- Administering an assessment in the appropriate grade level (i.e., the sixth grade Georgia Milestones assessment is administered in grade six);
- Administration and supervision by certified personnel (though a state charter school has flexibility to hire non-certified staff, to ensure the validity and reliability of the assessment, the assessment must be administered and supervised by certified personnel – the examiner and test coordinator must be certified);
- Administration during a state-approved assessment window or approved special administration;
- All test administration procedures (counting all assessment materials, not allowing a student to leave the classroom, etc.);
- Reporting any testing irregularities to the Georgia Department of Education;
- Adhering to all test security protocols to protect assessment contents and student confidentiality; and
- Providing all required principal and superintendent certifications to the Georgia Department of Education by the appropriate deadline.

Failure of a state charter school to adhere to assessment administration requirements may result in the invalidation of student assessments and the inability of the Governor's Office of Student Achievement and the Georgia Department of Education to evaluate the school under the Single Statewide Accountability System. A state charter school that has student assessments invalidated or does not receive evaluation under the Single Statewide Accountability System will be unable to meet the requirements and goals in its charter.

Accommodations

Both ESEA and IDEA require all students to participate in all statewide assessments. In other words, a student with a disability must be afforded the opportunity and be required to participate in all state assessments. Likewise, English learners also must be afforded the opportunity and be required to participate in all state assessments. However, students with disabilities and English learners may receive certain accommodations to mitigate the effect of the disability or limited English proficiency. Accommodations reduce the effect of a disability and do not modify the learning expectation of the student.

All accommodations afforded to students with disabilities must be in accordance with the Georgia Department of Education's *Accommodations Manual* (available [here](#)). Accommodations for English learners are addressed in the *Student Assessment Handbook*. Students receiving accommodations on a state assessment must have an active IEP or Section 504 plan that documents the necessary accommodations or needs that are identified by a meeting of the school's EL Testing Participation Committee. Accommodations afforded to students on state assessments should be tailored to the individual needs of the student and reflect similar accommodations and services the student receives in the classroom for instruction. The *Accommodations Manual* outlines appropriate accommodations and provides guidance in the selection and use of accommodations.

Additional Requirements for End-of-Course Assessments

The Georgia Milestones end-of-course assessments are a key component of the accountability measure for federal and state accountability requirements under the Single Statewide Accountability System. The assessments also provide teachers and school leaders with valuable diagnostics to assist students, focus instruction, and refine curriculum. Courses with associated Georgia Milestones end-of-course assessments are:

- Analytic Geometry
- Coordinate Algebra
- United States History
- Economics/Business/Free Enterprise
- Biology
- Physical Science
- Ninth Grade Literature and Composition
- American Literature and Composition

All students enrolled in or receiving credit for a course with an associated Georgia Milestones end-of-course assessment must take the corresponding assessment regardless of the student's grade level or venue. As such, middle school students enrolled in a course with an associated Georgia Milestones end-of-course assessment and students participating in dual enrollment at a postsecondary institution must participate in the corresponding assessment. There is no state requirement that a student pass a Georgia Milestones end-of-course assessment to receive credit for the course.

Because Georgia Milestones end-of-course assessments are part of the state's accountability program, a state charter school must adhere to the state-established minimum weights for utilizing the assessment as a part of a student's final grade in the course. Except for the 2014-2015 school year, a state charter school must utilize the student's grade on the Georgia Milestones end-of-course assessment as at least 20% of the student's final grade in the course. A state charter school may increase, but not decrease, the weight of the Georgia Milestones end-of-course assessment in the student's final course grade. Further, a state charter school may require students pass a Georgia Milestones end-of-course assessment to receive credit for the course. State charter schools are encouraged to consult with their local counsel prior to

establishing graduation requirements that exceed state requirements to ensure students are afforded necessary due process.

Identifying Students for Alternate Assessments

A state charter school must ensure that all students, including those with disabilities, have access to the general education curriculum and participate in the state assessment program. Students with disabilities may be assessed through an alternative assessment in some circumstances. Georgia utilizes the Georgia Alternative Assessment (GAA) as an alternative assessment.

The GAA is a portfolio-based assessment designed to measure a student's progress on alternate achievement standards, which are aligned to state academic content standards but vary in complexity from the grade-level standard. Portfolios for the GAA are collected in Kindergarten, grades 3-8, and eleventh grade. The GAA is only appropriate for students with significant cognitive disabilities.

The decision as to whether a student should participate in the GAA is made by the student's IEP Team. In making the decision, the IEP Team must consider a variety of factors, including, but not limited to, the student's disability, prior instruction, progress on goals and objectives, as well as the effectiveness of accommodations and appropriate supports. The GAA is only appropriate for students with significant intellectual disabilities or a combination of intellectual disabilities with motor, sensory, or emotional behavior disabilities who are unable to meaningfully access the general statewide assessments, even with maximum appropriate accommodations. The IEP Team must document its decision-making process when identifying a student for participation in the GAA and include the documentation in the student's IEP. Generally, only 1% of the tested participation in a state charter school may be assessed through the GAA.

Graduation Assessments

As of March 30, 2015, students are no longer required to earn a passing score on the Georgia High School Graduation Test or its predecessor to earn a high school diploma. If a person who is no longer enrolled in a Georgia public school and who previously failed to receive a high school diploma in Georgia or was denied graduation solely for failing to achieve a passing score on one or more portions of the Georgia High School Graduation Test its predecessor or the Georgia High School Writing Test or its predecessor was last enrolled in a state charter school, that person may petition the state charter school to determine the student's eligibility to receive a high school diploma based on the graduation requirements in effect when the student first entered ninth grade.

If the state charter school confers a diploma upon a student meeting such requirements, the state charter school shall transmit to the Georgia Department of Education the number of diplomas awarded in a manner determined by the Department. The state charter school may date the high school diploma on the date the student graduated or the date the diploma was conferred. State charter schools shall not count students receiving diplomas in this manner as graduates in either retroactive or current graduation rate calculations.

State charter schools serving high school grades must annually advertise the ability of students to earn high school diplomas in accordance with O.C.G.A. § 20-2-281.1, including one time no later than January 15, 2016, one time no later than January 15, 2017, and one time no later than January 15, 2018. Such advertisement shall be made in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of the local board of education are advertised. At a minimum, such notice shall consist of two columns measuring at least ten inches in length and measuring at least four and one-half inches in combined width, and include:

- A headline printed in at least a 24 point boldface type;
- An explanation of who qualifies for the petitioning option;
- An explanation of the petition process;
- A contact name and phone number; and
- The deadline for submitting a petition.

Individualized Graduation Plans

State Law: [O.C.G.A. § 20-2-327](#)

State Board of Education Rule: [160-4-8-.09](#)

A state charter school that serves any grade 8 through 12 must ensure that each student has an Individualized Graduation Plan prior to the conclusion of the student's second semester of grade 8. The Individualized Graduation Plan must be revised annually in high school after providing the student guidance and advisement and consulting with the student's parent or guardian and may be changed at any time throughout high school upon approval by the student and his or her parent or guardian with guidance from the student's school counselor or advisor. The Individualized Graduation Plan must:

- Include rigorous academic core subjects and focused course work in mathematics and science or in humanities, fine arts, and foreign language or sequenced career pathway course work;
- Incorporate provisions of a student's Individualized Education Program (IEP), where applicable;
- Align educational and broad career goals and a student's course of study;
- Be based on the student's selected academic and career focus area as approved by the student's parent or guardian;
- Include experience based, career oriented learning experiences which may include, but not be limited to, internships, apprenticeships, mentoring, co-op education, and service learning;
- Include opportunities for postsecondary studies through articulation, dual enrollment, and joint enrollment;
- Be flexible to allow change in the course of study but be sufficiently structured to meet graduation requirements and qualify the student for admission to postsecondary education; and
- Be approved by the student and the student's parent or guardian with guidance from the student's school counselor or teacher adviser.

Gender Equity

State Law: [O.C.G.A. § 20-2-315](#)

State Board of Education Rule: [160-5-1-.20](#)

In addition to Title IX of the Educational Amendments Act of 1972, state law prevents the discrimination on the basis of gender in interscholastic or intramural athletics. Under state law, a state charter school may operate separate teams for members of each gender when the selection for such teams is based upon competitive skill or when the activity involved is a contact sport. However, where a local school system operates or sponsors a team in a particular sport for members of one gender but operates or sponsors no such team for members of the other gender, and athletic opportunities for members of that gender in that particular sport have previously been limited, members of the excluded gender must be allowed to try out for the team offered unless the sport involved is a contact sport. A "contact sport" includes boxing, wrestling, rugby, ice hockey, football, basketball, and any other sport the purpose or major activity of which involves bodily contact. Additionally, a state charter school may choose to operate a single team, including a single team for a contact sport, that includes members of both genders. A state charter school may provide separate toilet, locker room, and shower facilities on the basis of gender, but both facilities must be comparable for each gender. A state charter school may also group students in physical education classes by gender if done so in accordance with Title IX.

State charter schools that offer interscholastic or intramural athletics must make all reasonable efforts to ensure an equal athletic opportunity for members of both genders. In determining whether both genders have an equal athletic opportunity, the following factors are considered:

- Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both genders;
- The provision of equipment and supplies;
- Scheduling of games and practice time;
- Travel allowance;
- Opportunity to receive coaching and academic tutoring;
- Assignment and compensation of coaches and tutors;
- Provision of locker rooms and practice and competitive facilities;
- Provision of medical and training facilities and services; and
- Publicity.

Unequal aggregate expenditures or unequal expenditures for male or female teams do not alone constitute gender discrimination. However, the failure to provide essential funds for the basic operations of teams for one gender is a factor in assessing the equal athletic opportunity.

The state law, like Title IX, requires a state charter school to establish a grievance procedure and appoint an employee to coordinate compliance efforts. This may be the same grievance procedure and employee coordinator the state charter school adopted to comply with Title IX.

In addition to the gender discrimination provisions of state law, the state law includes provisions relating to the sponsorship of athletics in the local schools system. As these provisions do not relate to civil rights, health and safety, or any other category of state law that

cannot be waived by a charter school, a state charter school may waive the provisions relating to offering of athletics. However, a state charter school is encouraged to participate in the gender equity survey conducted in accordance with O.C.G.A. § 20-2-315(f)(3) as it is a useful tool for the school to examine its compliance with gender discrimination requirements. The survey is conducted by the Georgia Department of Education each year.

Brief Period of Quiet Reflection

State Law: [O.C.G.A. § 20-2-1050 et seq.](#)

Each state charter school must, at the beginning of school each day, conduct a brief period of quiet reflection for no more than 60 seconds. The law states that the period of quiet reflection is not intended to be and shall not be used as a religious service or exercise. Instead, the period of quiet reflection should be considered as an opportunity for a moment of silent reflection on the anticipated activities of the day. No teacher, principal, or other representative of the state charter school may require or prescribe any particular method or manner in which a child participates in the period of quiet reflection. Each student in the state charter school must be free to participate or refuse to participate in the period of quiet as he or she desires in a manner consistent with his or her beliefs.

Vision, Hearing, Dental, and Nutrition Screening

State Law: [O.C.G.A. § 20-2-770](#) *Department of Public Health Rules:* Chapter 511-5-31

If the state charter school is the first school the student is attending in Georgia, the parent must provide the charter school a properly executed Certificate of Vision, Hearing, Dental, and Nutrition Screening (Department of Public Health Form 3300) prior to attending the state charter school or within three months of the student's admission. The vision, hearing, dental, and nutrition screening must have been completed no more than one year prior to the student's admission. If the student is transferring from another Georgia public school to the state charter school, the school from which the child is transferring must forward the Certificate of Vision, Hearing, Dental, and Nutrition Screening and any related follow-up information to the state charter school.

Vision, hearing, dental, and nutrition screenings may be conducted by a physician with an active Georgia license or a person working under the supervision of a physician with an active Georgia license, by a local health department, or by a school registered nurse. The vision portion of the screening may be conducted by an optometrist with an active Georgia license or by an employee of Prevent Blindness Georgia who is trained in vision screening. The hearing portion of the screening may be conducted by an audiologist or speech-language pathologist with an active Georgia license. The dental portion of the screening may be conducted by a dentist or dental hygienist with an active Georgia license. The nutrition portion of the screening may be conducted by a dietitian with an active Georgia license.

A child may be exempt from the screening or any portion thereof if the parent furnishes the state charter school a notarized statement that the required screening conflicts with the religious beliefs of the parent. The state charter school must keep the notarized statement on file at the school and forward the statement to any school the student may later attend.

The state charter school must keep and maintain each student's Certificate of Vision, Hearing, Dental, and Nutrition Screening or notarized document of religious objection. The Georgia Department of Public Health may conduct audits to ensure that the state charter school requires and maintains evidence that each child received the required vision, hearing, dental, and nutrition screening.

Immunization of Enrolled Students

State Law: [O.C.G.A. § 20-2-771](#) Department of Public Health Rules: [Chapter 290-5-4](#)

If the state charter school is the first school the student is attending in Georgia, the parent must provide the charter school a valid certificate of immunization (Department of Public Health Form 3231) prior to the student attending the state charter school. The state charter school may, for justified reasons, allow a child to attend school for up to 30 calendar days after first admittance with a valid certificate of immunization. A certificate of immunization may be issued for a child who has not received all required immunizations if the child is in the process of completing the required immunizations with the shortest intervals recommend in the current Official Immunization Schedules and the certificate of immunization has a date of expiration that relates to the date the next required immunization or due or the date on which a medical exemption must be reviewed. A new certificate of immunization must then be issued and provided to the school within 30 days of the expiration date. Children of parents who do not provide a certificate of immunization within 30 days of being admitted to the state charter school or fail to provide renew certificates within the time allotted after expiration must not be permitted to attend school unless child has a medical or religious exemption.

All vaccinations noted on the certificate of immunization must be issued in accordance with the Official Immunization Schedules adopted by the Georgia Department of Public Health or other schedule that includes all required vaccinations and equals or exceeds the requirements of such schedules. Vaccinations required to attend a public school in Georgia are:

- Diphtheria;
- Pertussis;
- Tetanus;
- Poliomyelitis;
- Measles;
- Rubella;
- Mumps;
- Haemophilus influenzae type B (not required on or after 5th birthday);
- Hepatitis B;
- Varicella (chickenpox);

- Pneumococcal (not required on or after 5th birthday); and
- Hepatitis A

For entrance into Kindergarten and for new entrants in a Georgia school, students must have a total of two (2) doses of measles vaccine, two (2) doses of mumps vaccine, one (1) dose of rubella vaccine and a total of two (2) doses of varicella vaccine. For entrance into grade six, students must have a total of two (2) doses of measles vaccine, two (2) doses of mumps vaccine, one (1) dose of rubella vaccine and two (2) doses of varicella vaccine. The requirements for hepatitis A, hepatitis B, measles, mumps, rubella, and varicella vaccines may be waived with serologic proof of immunity. The requirements for varicella vaccine may be waived also with a healthcare provider diagnosis of varicella disease or healthcare provider verification of history of varicella disease.

A child may obtain a medical exemption for immunization or specific immunization. A medical exemption may be issued at the discretion of a physician when a child has a physical disability that would cause immunization to be a danger to the child's health and there is no clear prospect of when said disability or disabilities can be removed. The certificate of immunization that includes a medical exemption is subject to review by the conditions of the certifying physician who may review and reissue the exemption from year to year until and unless there is cause to believe that immunization or a specific immunization may be accomplished without a danger to the child's health.

A child may be exempt from the required vaccinations if the parent furnishes the state charter school a notarized affidavit that the required screening conflicts with the religious beliefs of the parent. The state charter school must keep the notarized statement on file at the school and forward the statement to any school the student may later attend.

The state charter school must keep, maintain, and monitor for currency a certificate of immunization or evidence of appropriate exemption for each student attending the school. The certificate of immunization or evidence of appropriate exemption must be made available during normal business hours for inspection by authorized health authority officials. The state charter school must forward the certificate of immunization or evidence of appropriate exemption to any school the child later attends.

If the Department of Public Health or local Board of Health determines that an epidemic or threat of epidemic exists, the authority will notify all schools and facilities in the affected area and may require immunization for those who object on the grounds of religious beliefs or alternatively prohibit the attendance of unimmunized children at schools or facilities.

The Georgia Department of Public Health has more information and resources regarding immunizations and schools [here](#).

School Nursing Programs

State Law: [O.C.G.A. § 20-2-771.2](#)

State charter schools must have policies and procedures regarding a school health nurse program. The governing board of a state charter school has wide discretion to create a program that most appropriately meets the needs of its students. A state charter school may choose to employ staff to implement the program. A state charter school may also choose to contract with health care professionals to carry out a school nursing program. A school nursing program may not dispense contraceptives or abortifacients or perform or refer students for abortions. The QBE funding formula includes a specific allocation to assist LEAs with the implementation a school nursing program.

Disclosure of a Student's HIV status

State Law: [O.C.G.A. § 24-12-21](#)

A state charter school that has knowledge that a student is infected with HIV or has AIDS must not intentionally or knowingly disclose that information to another person or legal entity.

Infectious Diseases

State Board of Education Rule: [160-1-3-.03](#)

A state charter school must develop policies, regulations, and procedures related to the impact of infectious diseases on school management and operations. The state charter school must annually provide employees with information, education, or training related to infectious diseases, including transmission, risk, and standard precautions that are based on CDC guidelines or recommendations. Additionally, the state charter school must make personal protective equipment (face masks, gloves, or clothing that acts as a barrier between infectious materials and the skin, mouth, nose, or eyes) available when tasks contain the potential for exposure to infectious disease.

If a state charter school has a reasonable suspicion that a student has an infectious disease, the state charter school must notify the student's parent of the need to obtain a medical evaluation. The state charter school must also counsel employees believed to have an infectious disease to seek a medical evaluation. Operational decisions related to employees or students infected with communicable diseases must be made in conjunction with a school nurse, state or local public health officials, health care professionals, and the administrator of the state charter school.

Diabetes Medical Management Plans

State Law: [O.C.G.A. § 20-2-779](#)

State Board of Education Rule: [160-4-8-.18](#)

In addition to serving students with diabetes with appropriate services and accommodations under ADA and Section 504, state charter schools must also adhere to state law requirements to ensure the proper implementation of a diabetes medical management plan. If a state charter school has a student enrolled who has diabetes, the state charter school must ensure

that at least two school employees are trained in accordance with the Georgia Department of Education's *Guidelines for the Care Needed for Students with Diabetes* (available [here](#)). The state charter school must also provide information regarding the recognition of diabetes-related emergency situation to all persons responsible for the transportation of a student with diabetes.

A state charter school must implement a diabetes medical management plan provided by the parent of a student with diabetes who seeks diabetes care while at school. At least one employee of the state charter school trained in diabetes management must be on site and available during school hours to provide care to a student with a diabetes medical management plan being implemented by the school. The trained personnel must be capable of performing the functions outlined in the diabetes medical management plan, including, but not limited to:

- Responding to blood glucose levels that are outside of the student's target range;
- Administering glucagon;
- Administering insulin, or assisting a student in administering insulin through the insulin delivery system the student uses;
- Providing oral diabetes medications;
- Checking and recording blood glucose levels and ketone levels, or assisting a student with such checking and recording; and
- Following instructions regarding meals, snacks, and physical activity.

If requested by the parent in writing and if authorized by the diabetes medical management plan, the state charter school must allow a student with diabetes to perform blood glucose checks, administer insulin through the insulin delivery system the student uses, treat hypoglycemia and hyperglycemia, and otherwise attend to the monitoring and treatment of his or her diabetes in the classroom, in any area of the school or school grounds, and at any school related activity. Additionally, a student with diabetes must be permitted to possess on his or her person at all times all necessary supplies and equipment to perform monitoring and treatment functions.

Suicide Prevention and Awareness Training

State Law: [O.C.G.A. § 20-2-779.1](#) *State Board of Education Rule:* [160-4-8-.19](#)

All certificated employees in a state charter school must receive annual training in suicide awareness and prevention. Employees may fulfill the training requirement through trainings offered by the Georgia Department of Education or through state charter schools or local school systems utilizing the training materials approved by the Georgia Department of Education. Additionally, all state charter schools must adopt a policy on student suicide prevention that are developed in consultation with school and community stakeholders, school employed mental health professionals, and suicide prevention experts. At a minimum, state charter school suicide prevention policies must relate to suicide prevention, intervention, and postvention. The Georgia Department of Education developed a model policy to assist school systems in developing individual policies that is available [here](#).

Reports of Child Abuse or Neglect

State Law: [O.C.G.A. § 19-7-5](#) *State Board of Education Rule:* [160-4-8-.04](#)

Any employee or volunteer of a state charter school who has reasonable cause to believe that a child has or is being abused must notify the lead administrator of the state charter school, or his or her designee, of the suspected abuse. The suspected abuse may be physical injury or death, neglect or exploitation, sexual abuse, or sexual exploitation. A child is defined as any person under 18 years of age.

The school administrator must immediately (and within 24 hours) make an oral report to a child welfare agency providing protective services as designated by the Georgia Department of Human Services, or to the appropriate police authority or district attorney in the absence of a child welfare agency. The school administrator may be asked by the child welfare agency or police authority to follow his or her oral report with a written report, and the school administrator should promptly comply with the request for a written report. The school administrator cannot exercise any control, restraint, modification, or make any other change to the information provided by the person reporting the suspected abuse to him or her. The school administrator may consult the person reporting the suspected abuse for additional relevant and necessary information when making the report to the child welfare agency or police authority.

The state charter school must adopt and implement policies and procedures to effectuate the reporting of suspected child abuse as required by law. The state charter school must provide all school personnel who have contact with students annual training in the identification and reporting of suspected child abuse. The training may be in the form of memoranda, directives, or other written information. Additional information regarding recognizing and reporting suspected child abuse is available from the Georgia Department of Education [here](#).

Unlawful Conduct at or Near a Public School

Overview

A state charter school is expected to enforce provisions of law related to unlawful conduct at or near a public school. This includes provisions relating to restricting visitors, removing unauthorized individuals, contacting law enforcement when individuals disrupt the school environment, and restricting weapons on school property. The provisions outlined below are common provisions regarding unlawful conduct at a public school. There are additional provisions of law that protect students and staff of a public school. A state charter school should take any step appropriate to protect the health and safety of its students and staff.

Loitering at a Public School

State Law: [O.C.G.A. § 20-2-1180](#)

No individual may remain on the premises of a school when that person does not have a legitimate cause or need to be at the school. The school principal or his or her designee has the authority to exercise control over the buildings and grounds of the school to prohibit any

person who does not have legitimate cause or need to be present from remaining on the premises. If necessary, the school principal or designee must notify the appropriate law enforcement agency to prohibit the individual without legitimate cause or need from loitering on the premises.

Any person other than a student, employee of the state charter school, governing board member, approved volunteer, or other school invitee, must present themselves at the designated check in and provide a reason for his or her presence at the school. The state charter school should post signs at entrances to the school requiring visitors to check in at the designated location, and such signs are evidence that individuals entering the school are on notice of the check-in requirements. A school administrator or designee may ask any visitor at any time while school is in session to explain his or her presence.

Any person who willfully fails to remove himself or herself from the school premises after the principal or designee requests him or her to do so or fails to check in at the designated location is guilty of a misdemeanor of a high and aggravated nature.

Disrupting a Public School

State Law: [O.C.G.A. § 20-2-1181](#)

No individual may knowingly, intentionally, or recklessly disrupt or interfere with the operation of any public school, public school bus, or designated public school bus stop. Any individual that commits this violation is guilty of a misdemeanor of a high and aggravated nature.

Insulting or Abusing School Personnel in the Presence of Minors

State Law: [O.C.G.A. § 20-2-1182](#)

Any individual other than a student at the state charter school who has been advised that minors are present and who continues to upbraid, insult, or abuse any teacher, administrator, or bus driver in the presence of and hearing of a student while on the premises of the school may be ordered to leave the premises by the school personnel. Failure of that person to leave the school premises is a misdemeanor.

Reporting of Students Committing Certain Acts

State Law: [O.C.G.A. § 20-2-1184](#)

Any employee of a state charter school who has reasonable cause to believe that a student at the school committed any of the following acts on school property or at a school function must immediately report the act and the name of the student to the school principal or designee:

- Aggravated assault involving a firearm (in violation of O.C.G.A. § 16-5-21);
- Aggravated battery (in violation of O.C.G.A. § 16-5-24);
- Sexual offenses (in violation of O.C.G.A. § 16-6-1 et. seq.);
- Carrying a weapon or long gun in an unauthorized location (in violation of O.C.G.A. § 16-11-127);
- Carrying weapons on school property, at a school function, or within a school safety zone (in violation of O.C.G.A. § 16-11-127.1);

- Illegal possession of a handgun by a person under 18 years of age (in violation of O.C.G.A. § 16-11-132); and
- Possession and other activities regarding marijuana and controlled substances (in violation of O.C.G.A. § 16-13-30).

The principal or designee receiving this report who has reasonable cause to believe that the report is valid must make an oral report immediately to the appropriate police authority and district attorney.

Any person making a report under this law who is acting in good faith is immune from any civil or criminal liability. Any person required to make a report under this law that knowingly and willfully fails to do so is guilty of a misdemeanor.

Carrying Weapons in a School Safety Zone

State Law: [O.C.G.A. § 16-11-127.1](#)

No individual may carry, possess, or have under their control a weapon or explosive compound while within a school safety zone or at a school building, school function, school property, or school bus. A school safety zone is defined as any real property owned or leased to the state charter school. A weapon as defined by the law is a broad term that includes many instruments, including but not limited to: firearms, knives, bludgeoning and flailing equipment, projectiles, and stun guns. Weapons under the law do not include baseball bats or other sports equipment for legitimate athletic purposes or firearms when used for organized sport or training.

Certain law enforcement personnel are exempt from provisions of the law and may carry a weapon on school property. Additionally, individuals licensed to carry weapons that are on campus for a legitimate reason (such as picking up or dropping off a student or serving as a teacher). Individuals who are not licensed to carry weapons in accordance with applicable law may keep a weapon in his or her vehicle in a locked compartment within the vehicle when that vehicle is being used by someone 21 years of age or older and he or she is dropping off or picking up a student at the school or official school function. The provisions of the law apply at all times, even when school is not in session. Violation of the law by a licensed individual is a misdemeanor, and violation of the law by an unlicensed individual is a felony. Violation of the law by any individual with a dangerous weapon or machine gun is a felony.

School Safety Plans

State Law: [O.C.G.A. § 20-2-1185](#)

Each state charter school must complete a school safety plan. The school safety plan is designed to address and respond to violent incidents to promote a safe learning environment for students and healthy school climate for employees. The school safety plan must also address preparedness for natural disasters, hazardous materials or radiological accidents, acts of violence, and acts of terrorism. Additionally, the security of students in the school safety

zone and transportation to and from school and school functions must be included in the school safety plan.

The state charter school should seek the input from students, parents, teachers, other employees, community leaders, local law enforcement, fire service, and public safety and emergency management agencies in developing its school safety plan. The school safety plan must be reviewed and updated on an annual basis. The state charter school must submit the school safety plan to the local emergency management agency. The Georgia Emergency Management Agency provides training and technical assistance in the development of school safety plans.

More information on school safety planning is available from the Georgia Emergency Management Agency [here](#).

Alcoholic Beverages on School Property

State Law: [O.C.G.A. § 3-3-21.1](#)

Except when used by a teacher for educational purposes or as part of a religious ceremony or observance, no individual may possess any alcoholic beverage on the grounds of any public school.

Facilities Requirements Relating to Health and Safety

State Law: [O.C.G.A. § 20-2-260, 20-2-2065](#)
[.10, 160-5-4-.15, 160-5-4-.16](#)

State Board of Education Rules: [160-5-4-](#)

The State Board of Education, through the Georgia Department of Education, is charged with ensuring that all public school facilities are located, built, and maintained in a manner that protects the health and safety of students. To effectuate that duty, the Georgia Department of Education Facilities Services Division plays an active role in the development and maintenance of school facilities and will assist the state charter school in finding creative solutions to meet its needs while ensuring student safety.

Each state charter school with a facility must receive a site code, facility code, and school code from the Georgia Department of Education Facilities Services Division prior to housing students at a facility. Depending on the state charter school's proposed facility, this may require submitting plans and specifications, conducting a risk-hazard assessment, an environmental assessment, or other documentation needed to verify the school meets the safety requirements. The Facilities Services Division will review the site and building data to determine if the proposed facility can serve as a public school and will provide specific feedback regarding any necessary changes to the facility that are required prior to the facility's use as a public school.

No municipality, county, or local political subdivision may require a state charter school that has passed the Facilities Services Division review and that holds a valid certificate of occupancy to obtain any other licensure to operate the school, including, but not limited to, a business

license, professional license, or occupational tax certificate. However, any for-profit vendor of the charter school must comply with all applicable requirements for conducting business in the state. State Charter Schools must adhere to all applicable zoning, planning, and building permitting requirements when constructing or renovating a facility.

The Georgia Department of Education Facilities Services Division has specific guidance for charter schools in meeting facility safety requirements [here](#).

School Bus Operational and Safety Requirements

Overview

Laws relating the operation of school buses and the safety of students during transportation are contained in both Title 20 of the Official Code of Georgia Annotated and Title 40 of the Official Code of Georgia Annotated. Generally, transportation laws in Title 20 are included in the broad flexibility waiver utilized by state charter schools as such laws usually relate to the operation of buses in a manner not related to student safety. There are, however, a few laws in Title 20 that do relate to student safety in transportation, and as a result, all state charter schools must adhere to those requirements. Additionally, all state charter schools must adhere to all transportation laws in Title 40 as the broad flexibility waiver only waives laws included in Title 20.

Criminal Record Check

State Law: [O.C.G.A. § 20-2-211](#)

All bus drivers for a state charter school must be fingerprinted and be the subject of a criminal record check as required by O.C.G.A. § 20-2-211. These requirements are discussed on more detail above in the section entitled Criminal Record Checks of Personnel.

Student Safety on Buses Generally

State Board of Education Rule: [160-5-3-.13](#), [160-5-3-.14](#)

State charter schools that conduct a transportation program must provide annual instruction to students in safe riding practices and emergency evacuation. The state charter school must not exceed 120% of the manufacturer's rated seating capacity of the bus, and no audio speakers used for music or entertainment are located in the driver's compartment of the school bus. No explosives or combustible materials may be transported on a school bus at any time. No student may be on a school bus while it is being fueled.

Student Conduct on Buses to Promote Safety

State Law: [O.C.G.A. § 20-2-751.5](#)

State charter schools must enforce a student code of conduct that prohibits certain conduct and actions on school buses that may interfere with the orderly operation of the bus. Students must be prohibited from acts of physical violence, bullying, physical assault or battery, verbal assault, disrespectful conduct towards the school bus driver, and other unruly conduct. Additionally, students must be prohibited from using electronic devices during the operation of

a school bus, including, but not limited to: cell phones; pagers; radios, compact disc, or other music players without headphones; and any other electronic device in a manner that might interfere with the school bus communications equipment or the driver's operation of the school bus. Students must also be prohibited from using mirrors, lasers, flash cameras, and other lights or reflective devices in a manner that might interfere with the driver's operation of the school bus.

Transportation When Detrimental to a Student's Health

State Law: [O.C.G.A. § 20-2-1073](#)

A state charter school cannot transport any student to or from school if a physician licensed in Georgia has certified to the state charter school in writing that the transportation of that student would be detrimental to the health of the student. A state charter school may not use any public funds for the transportation of such students, and the transportation of students when detrimental to a student's health is a misdemeanor.

Insurance

State Law: [O.C.G.A. § 20-2-1090 et. seq.](#) *State Board of Education Rule:* [160-5-3-.04](#)

A state charter school must maintain insurance policies that insure the school children being transported against bodily injury or death resulting from an accident or collision. The amount of the insurance is in the discretion of the state charter school but must be consistent with the terms of the school's charter and State Board of Education Rule 160-5-3-.04, which requires a minimum of: \$100,000 per person and \$300,000 per accident of liability coverage, \$50,000 of property damage coverage, and \$5,000 in medical and death payment coverage. The insurance policy must be kept and maintained by the state charter school and be available for review by parents and the general public upon request.

Definition of a School Bus

State Law: [O.C.G.A. § 40-1-1\(55\)](#)

A school bus is defined as:

1. A motor vehicle operated for the transportation of school children to and from school or school activities or for the transportation of children to and from church or church activities. Such term shall not include a motor vehicle with a capacity of 15 persons or less operated for the transportation of school children to and from school activities or for the transportation of children to and from church or church activities if such motor vehicle is not being used for the transportation of school children to and from school; or
2. A motor vehicle operated by a local transit system which meets the equipment and identification requirements of Code Section 40-8-115; provided, however, that such vehicle shall be a school bus only while transporting school children and no other passengers to or from school.

Licenses for Bus Drivers

State Law: [O.C.G.A. § 40-5-147; 40-5-150](#)

All bus drivers for state charter schools must have and maintain appropriate licensure issued by the Georgia Department of Driver Services for operating a school bus. A Commercial Driver's License (CDL) with passenger and school bus endorsements is required for operating a school bus. Applicants for a CDL with passenger and school bus endorsements must pass a general knowledge test for the CDL and each endorsement. The applicant must also pass a driving skills test using the same vehicle group as the applicant will drive. More information regarding the licensure requirements of school bus drivers is available from the Georgia Department of Driver Services [here](#).

Uniform Rules of the Road

State Law: [O.C.G.A. § 40-6-1 et. seq.](#)

All school buses must be operated in accordance with the uniform rules of the road generally and requirements for school buses specifically. In addition to the generally applicable rules of the road, specific requirements for school buses include:

- Observing a speed limit of 40 mph except on an Interstate in which case the speed limit shall be 55 mph;
- Driving with the headlights illuminated at all times;
- Driving with a live communication device (two-way radio or cell phone) to allow the driver to communicate with school officials or public safety officials;
- Utilizing visual signals stopping to load or unload students;
- Ensuring all children have disembarked the school bus safely before proceeding;
- Checking all mirrors prior to moving to ensure it is safe to put the bus in motion;
- Engaging the parking brake of the bus while loading and unloading children;
- Utilizing the stop arm of the bus while loading and unloading children;
- Refraining from using a cell phone or two-way radio while loading and unloading children;
- Refraining from using a cell phone while the bus is in motion;
- Instructing passengers to exiting from the bus to cross the street in front of the bus only; and
- Utilizing red flasher lights on the bus until all passengers have boarded or exited and crossed the road safely.

School Bus Equipment

State Law: [O.C.G.A. § 40-8-110 et. seq.](#)

State Board of Education Rules: [160-5-3-.01](#), [160-5-3-.03](#)

All school buses operated by state charter schools must adhere to the school bus specifications adopted by the State Board of Education and must be kept in good working condition. The current school bus specifications adopted by the State Board of Education are available [here](#). All school buses must be National School Bus Chrome Yellow and identified with the words "School Bus" in letters at least eight inches high on the front and rear of the bus. Each school bus must be inspected annually by an employee of the Department of Public Safety. A state

charter school may not operate a school bus until it receives a certificate of safety inspection for the school bus.

Governing Board Composition and Training

State Law: [O.C.G.A. § 20-2-2084](#)

Composition

Each member of the governing board of a state charter school must be a United States citizen and a resident of Georgia. **Members of the governing board of a state charter school cannot be an employee of the same state charter school.**

Training

Each member of a governing board of a state charter school must participate in annual training conducted by the State Charter Schools Commission of Georgia. The training includes best practices on school governance, the constitutional and statutory requirements relating to public records and open meetings, and the statutes, rules, and regulations applicable to state charter schools.

Governing Board Conflicts of Interest

State Law: [O.C.G.A. § 20-2-2084](#)

A member of the governing board of a state charter school must not:

1. Act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment;
2. Solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her duties as a board member;
3. Use, or knowingly allow to be used, his or her position or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her position for the purpose of securing financial gain for himself or herself, his or her immediate family member, or any business organization with which he or she is associated; or
4. Be an officer or serve on the board of directors of any organization that sells goods or services to that state charter school.

The term “immediate family member” means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent.

Employment, Contracting, and Purchasing Preferences

State Law: [O.C.G.A. § 20-2-2084](#)

A state charter school must, if two individuals are equally qualified, give preference to hiring an individual who is a citizen or national of the United States over another individual who is not a citizen or national of the United States. Prior to hiring an individual other than a citizen or national of the United States or a protected individual as defined by 8 U.S.C. § 1324b, the state charter school must receive approval from the State Charter Schools Commission of Georgia and demonstrate that other qualified personnel were sought but not available. Foreign exchange teachers hired by a state charter school are not subject to these employment preference requirements.

A state charter school must also give preference in the contracting and purchasing of goods and services to business incorporated or authorized to operate in Georgia that has a regularly maintained and established place in Georgia. This contracting and purchasing preference only applies when out-of-state competitors are similarly qualified as the in-state business.

Open Meetings Act

State Law: [O.C.G.A. § 50-14-1 et. seq.](#)

Overview

Provisions of law that require meetings of public entities to be open to the public are designed to ensure that governmental entities operate in a manner that is transparent to its stakeholders. Ensuring compliance with open meeting requirements can be difficult and complicated at times, particularly as decisions as to when a meeting can be closed to the public are highly factually specific. Accordingly, the basic requirements of open meetings are discussed below, but state charter schools are strongly encouraged to consult their legal counsel for more individualized advice based on specific circumstances.

Applicability

All meetings of the governing board of a state charter school or a committee thereof must be open to the public. The meetings of the governing board of a state charter school are subject to the notice and all other requirements for open meetings outlined in law. Meetings that do not include the governing board are not open to the public. Accordingly, meetings between school employees, including school leadership, need not be open to the public.

Definition of a Meeting

A meeting is defined as:

1. The gathering of a quorum of the members of the governing board of a state charter school at which any official business, policy, or public matter of the state charter school is formulated, presented, discussed, or voted upon; **or**
2. The gathering of a quorum of any **committee** of the governing board of a state charter school at which any official business, policy, or public matter of the state charter school is formulated, presented, discussed, or voted upon.

Meetings **do not** include the gathering of a quorum of the members of a governing body of the state charter school or committee thereof for the purpose of:

1. Making inspections of physical facilities or property of the state charter school at which no other official business of the agency is to be discussed or official action is to be taken;
2. Attending statewide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the state charter school or to receive or discuss information on matters related to the state charter school at which no official action is to be taken by the members;
3. Meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;
4. Traveling to a meeting or gathering as otherwise authorized by law so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or
5. Social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

Requirements of an Open Meeting – Notice

A state charter school must determine and publish the time, place, and dates of its regular meetings. This information must be available to the general public, and a notice of this information must be posted and maintained at least one week in advance of the meeting at the regular place of the meeting and on the school's website (if the school maintains a website).

If a state charter school must conduct a meeting other than a regularly scheduled meeting ("special called meeting"), the state charter school must give written or oral notice at least 24 hours in advance of the special called meeting. The written or oral notice of the special called meeting must be provided to the legal organ of the county in which the board holds its regular meetings or a newspaper having a general circulation in that county equal to or greater than the legal organ. The list of legal organs for each county in Georgia is available [here](#). If the legal organ is published less than four times each week, the state charter school may provide sufficient notice of the special called meeting by posting written notice of the special called meeting at the regular meeting place and providing notice at least 24 hours in advance of the special called meeting to any local broadcast or print media outlet doing business or located in the county upon request. The state charter school must provide any local broadcast or print media outlet a copy of the agenda for the special called meeting upon request.

When special circumstances occur, a state charter school may conduct a special called meeting with less than 24 hours' notice. In such circumstances, the state charter school must give notice of the meeting and the subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the legal organ or newspaper having a circulation that is equal to or greater than the legal organ. Reasonable notice also includes providing notice to any local broadcast or print media outlet that, within the prior calendar year, requested notice of meetings from the state charter school.

Requirements of an Open Meeting – Agenda

The agenda of any meeting of the governing board of a state charter school or committee thereof must be made available to the public upon request and posted at the meeting site as far in advance as possible but must be posted at some time during the two-week period immediately prior to the meeting. The agenda is not required to be available more than two weeks prior to the meeting. Failure to include an item on the agenda which becomes necessary to address at the meeting does not preclude the state charter school from acting on that item.

Requirements of an Open Meeting – Conducting the Meeting

Members of the public must be afforded access to meetings of the governing board of the state charter school or committee thereof unless the meeting is lawfully closed to discuss matters that are privileged or exempt from open meeting requirements. The public must be able to conduct visual and sound recordings of the meeting. All votes during the meeting must be taken in public.

Requirements of an Open Meeting – Minutes

Within two business days of a meeting of the governing board of the state charter school or committee thereof a summary of the subjects acted on and the members present must be made available to the public. Additionally, the minutes of the meeting must be recorded and prepared for approval by the governing board or committee no later than the next regular meeting. The minutes must include the names of the members present, a description of each motion or proposal made, the identity of the persons making and seconding the motion or proposal, and the record of all votes, including the name of each person voting for or against a proposal. Unless the minutes reflect the name of persons voting against the proposal or abstaining, it is presumed that the action taken was approved by each person in attendance.

Executive Session – When Authorized

The governing board of the state charter school or committee thereof may meet in executive session for any portion of a meeting that may be lawfully closed to the public. The governing board of the state charter school or committee thereof may meet in executive session and exclude members of the public to:

- Consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claim, administrative proceedings, or other judicial actions involving the state charter school, except that a meeting may not be closed for advice as to whether to close the meeting;

- Hold staff meetings for investigative purposes under duties or responsibilities imposed by law;
- Mediate a dispute between the state charter school and any other party; however, any decision or resolution agreed to by the state charter school during such mediation shall not become effective until ratified in a public meeting and the terms of such decision and resolution are disclosed to the public;
- Authorize the negotiations to purchase, dispose of, or lease property
- Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
- Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote;
- Enter into an option to purchase, dispose of, or lease real estate subject to approval in a subsequent vote;
- Discuss records that are exempt from public inspection under the Georgia Open Records Act when there are no reasonable means by which the state charter school can consider the record without disclosing the exempt portions if the meeting were not closed; and
- Discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of state charter school, except that any receipt of evidence or hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency must be open to the public.

Additionally, open meeting provisions do not repeal privileges recognized by law, such as tax matters that are made confidential by law.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, is binding on the state charter school until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote. Further, the vote on any matter related to the appointment, employment, compensation, hiring, disciplinary action or dismissal of a public officer or employee must be taken in public and minutes of the meeting as required by law must be made available. Meetings of the governing board of a state charter school to discuss or take action on the filling of a vacancy in the membership of the agency itself must be open to the public.

Executive Session – Procedure

When closing a meeting for executive session, the governing board of the state charter school or committee thereof must vote to enter into executive session and the minutes of the public meeting must reflect the reasons for entering executive session, the names of the members present and the names of those voting to enter executive session. The person presiding over the meeting (or each member of the governing board if consistent with board policy) must execute a notarized affidavit stating under oath that the subject matter of the executive session

was devoted to matters within the exceptions provided by law and identifying the specific exception. The affidavit must be filed and maintained with the official minutes of the meeting.

If one or more persons in an executive session initiates a discussion of a matter that is not authorized by law to be discussed in executive session, the presiding officer at the meeting must immediately rule the discussion out of order, and all must cease the questioned conversation. If the discussion continues after being ruled out of order, the presiding officer must immediately adjourn the executive session.

Minutes must be taken in executive session to reflect each issue discussed, and in the case of matters subject to the attorney-client privilege, the notation that an attorney-client discussion occurred with its subject is sufficient and the substance of the attorney-client discussion should not be reflected in the minutes. Minutes of executive session are not open to the public but must be kept and maintained for inspection by an appropriate court should a dispute arise as to the propriety of the executive session.

Consequences of Violations

Any resolution, rule, regulation, or other official action of the governing board of the state charter school or committee thereof that is adopted, taken, or made at a meeting which is not open to the public as required by law is not binding. Further, any person knowingly and willfully conducting or participating in a meeting that violates open meeting requirements is guilty of a misdemeanor. (Acting in good faith in his or her actions is a defense to criminal actions for violating open meeting provisions.) Moreover, a civil penalty may be imposed by the court against any person who negligently violates open meeting requirements in any civil action brought in accordance with the law to contest improperly closed meetings. The civil or criminal penalty may be up to \$1,000.00 for the first violation and up to \$2,500.00 per violation for each additional violation committed within a calendar year from the date of the penalty for the first violation.

Open Records Act

State Law: [O.C.G.A. § 50-18-70 et. seq.](#)

Overview

Provisions of law that allow public access to the records and communications of public entities help ensure that governmental entities are transparent and accountable to constituents. Ensuring compliance with open records requirements may be complicated at times, particularly as the interplay between confidentiality statutes (such as FERPA) and open records provisions can be complex. For example, it is important to treat a parent requesting records of their child under FERPA rather than state open records provisions. Additionally, determining when records may be exempt from public review is highly factually specific and can be difficult. Accordingly, the basic requirements of open records provisions are discussed below, but state charter schools are strongly encouraged to consult their legal counsel for more individualized advice based on specific circumstances.

Definition of Public Record

“Public records” of a state charter school are all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by the state charter school or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use. In other words, a public record of a state charter school is any tangible or intangible document created, received, or maintained by the school or any entity on behalf of the school. A public record of a state charter school remains a public record of the state charter school even if it is transferred to another party for storage or maintenance. Some public records will be exempt from public review.

Requirements

All public records, except for those specifically exempt from disclosure by law or court order, must be available for public review and copying. An individual must be allowed to make photographic copies or other electronic reproductions of the records being reviewed by bringing a portable device to the place of inspection. Alternatively, the state charter school may provide copies of the requested records, particularly if certain aspects of the records must be redacted because the record contains information that is exempt from public review.

A state charter school does not need to create or produce records in response to a request for inspection if the records did not exist at the time of the request. A state charter school must produce public records for inspection within three business days from receiving a request to review the records (“open records request”). The day the open records request is received is not included in the three business days allotted for response. If not all of the records requested are available for review within three business days, the state charter school must provide the records that are available within that time. If some or all of the records that were requested are not available, the state charter school must issue a response to the request within three business days that details what records are available and when the records will be available.

Open records request may be made orally or in writing. Written open records requests may be received through email and facsimile. A state charter school may not require that open records requests be in writing, but the state charter school may encourage individuals to place requests in writing to promote clarity and eliminate confusion as to what documents the individual is seeking. The enforcement mechanisms in law for ensuring public agencies comply with open record provisions are not available if the individual only makes the open records request orally.

A state charter school may, but is not required to, designate an individual to receive all written open records requests. The state charter school must make such designation in writing, immediately provide notice to individuals making open records requests of that designation, publish the designation in the legal organ of the principal offices of the state charter school, and publish the designation on the state charter school’s website. If the state charter school designates an individual to receive all written open records requests, the three-day time period allotted for response to a written request does not begin until the open records request is made to the designated individual.

Individuals may request records that are electronic in nature. In such cases, the state charter school must produce electronic copies of the requested records or, if the requester prefers, printouts of the electronic records. A state charter school cannot refuse to produce electronic records or data because exporting the records or data (or redaction thereof) will require the inputting range, search, filter, report parameters, or similar commands if such commands can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. The requester may request electronic records or data be produced in any format kept by the state charter school or in a standard format (such as ASCII) if the state charter school's programs are capable of producing that file. Open records requests for electronic messages (such as emails or text messages) should contain information about the messages that is reasonably calculated to allow the state charter school to locate the specific messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific databases to be searched for such messages.

A state charter school may provide access to requested records through a website; however, if an individual requests records in a different format that is maintained by the state charter school, the state charter school must provide the records in that format in which the records are maintained as requested. Additionally, if records of the state charter school are maintained by a third party, the state charter school must ensure that such records are still available for public review as required by law.

The procedures for responding to open records requests (and ability to assess costs) do not apply when records are requested by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. In such cases, the state charter school must provide copies of requested records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law.

Assessing Costs

A state charter school may charge a fee for the search, retrieval, redaction, production, and copying costs for producing records in response to an open records request. The state charter school must utilize the most economical means to respond to an open records request. The cost assessed must not exceed the prorated hourly salary of the lowest-paid full-time employee who the state charter school determines has the necessary skill and training to produce the requested records, except that the state charter school may not charge for the first fifteen minutes of the employee's time to produce the records. Additionally, the state charter school may charge up to \$.10 per page for letter or legal size copies and the actual cost for other size copies when requested. The state charter school may charge the actual cost of the media on which electronic records or data are produced. When an individual makes an open records request that has an associated cost, the state charter school estimated the costs in accordance with the law, the individual agreed to be responsible for the cost, and the state charter school incurred the cost, the state charter school may collect the charges in any manner authorized by law that is available to the state charter school.

When the state charter school will assess costs in excess of \$25.00 for responding to a request, the state charter school must notify the requester within the three-day period allotted for response to an open records request and inform the requester of the estimate of the costs. In such a case, the state charter school may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. When the state charter school will assess costs in excess of \$500.00 for responding to a request, the state charter school may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records.

If any individual who made an open records request and has not paid the costs associated with that request when assessed in accordance with the law, the state charter school may require prepayment for compliance with all future open records request from that person until the costs for the prior open records requests have been paid or the dispute regarding payment is resolved.

Exemptions

Certain public records are exempt from public review. If a state charter school is required or decides to withhold all or part of a requested record, the state charter school must notify the individual making the open records request of the specific legal authority exempting the requested record from public review within the three-day time period allotted for response to an open records request. Specific exemptions allowing nondisclosure of public records are contained in various laws throughout the Official Code of Georgia Annotated as well as federal laws and regulations. Many specific exemptions are listed in O.C.G.A. § 50-18-72, but several important exemptions applicable to state charter schools are found within Title 20 of the Official Code of Georgia Annotated as well. Whenever there is any question as to whether a public record is exempt from disclosure, the state charter school is strongly encouraged to consult with its legal counsel. Common exemptions applicable to public records of state charter schools are:

- Education records containing personally identifiable student information (20 U.S.C § 1232g; O.C.G.A. § 50-18-72(a)(1); O.C.G.A. § 50-18-72(a)(37);
- Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state charter school relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned (O.C.G.A. § 50-18-72(a)(9));
- Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the state charter school in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first (O.C.G.A. § 50-18-72(a)(10));
- Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number,

password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents (O.C.G.A. § 50-18-72(a)(21);

- Records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration by the state charter school if reasonable measures are taken by the owner of the test to protect security and confidentiality (O.C.G.A. § 50-18-72(a)(38); O.C.G.A. § 20-2-281(l));
- Records containing communications subject to the attorney-client privilege recognized by state law (O.C.G.A. § 50-18-72(a)(41);
- Confidential attorney work product (O.C.G.A. § 50-18-72(a)(42);
- Records containing tax matters or tax information that is confidential under state or federal law (O.C.G.A. § 50-18-72(a)(43);
- All records, including surveys and evaluation instruments, associated with individual performance evaluations of teachers, assistant principals, and principals (O.C.G.A. § 20-2-210(e)(1); and
- Records detailing individual student eligibility for free or reduced price lunches ([7 C.F.R. § 245.6](#)).

Consequences of Violations

Any entity may bring a civil action against a state charter school to enforce laws requiring public records to be available for review and inspection. Additionally, the Georgia Attorney General may bring actions in his or her discretion to enforce compliance and seek civil or criminal penalties. The state charter school may be required to pay the attorney fees of the other parties in such actions. Additionally, any individual knowingly and willfully violating open records requirements by failing or refusing to provide access to records not subject to exemption, by knowingly and willingly failing or refusing to provide access to such records within the required time limits, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought to enforce open records requirements against any person who negligently violates open records provisions in an amount not to exceed \$1,000.00 for the first violation. Further, a civil penalty or criminal fine up to \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. Individuals that destroy records for the purposes of preventing disclosure as required by law may be subject to prosecution under O.C.G.A. § 45-11-1.

It is a defense to any criminal action to enforce open records requirements that the person acted in good faith in his or her actions. In addition, no person who provides access to records in good faith reliance on the requirements of the open records law will not be liable in any action.

Chapter Six – Listing of Laws Related to Personnel

Overview

This chapter will very briefly list and describe statutes that relate to the management of state charter school staff. This chapter will **not** provide the level of detail found in previous chapters as employment law is extremely intricate and case-specific – particularly as applied to charter schools. This guide is not exhaustive. There will be laws that apply to charter schools that are not discussed herein. Instead, the following listing is intended to serve as a starting point for further study and inquiry. Further, this guide will not address employees' rights of Freedom of Speech, academic freedom of teachers, sovereign immunity, vicarious liability, *in loco parentis*, and other employer-employee legal principles that affect school operations. It is the responsibility of each state charter school to consult legal counsel for definitive requirements of law and advice.

The Fair Labor Standards Act

Statute: [29 U.S.C. § 201 et. seq.](#) *Regulations:* [29 C.F.R. Chapter V](#)

The Fair Labor Standards Act (FLSA) is a comprehensive labor law that establishes requirements related to minimum wages, overtime pay, recordkeeping, and child labor. The federal minimum wage established by the FLSA is \$7.25 per hour. Generally, employers covered by the FLSA must provide overtime pay to employees who work over 40 hours in a workweek. Certain employees in executive, administrative, and professional roles are exempt from FLSA overtime provisions. The FLSA requires employers to display a poster outlining the requirements of the FLSA and maintain employee time and payment records.

More information regarding the FLSA is available from the United States Department of Labor [here](#).

The Family Medical Leave Act

Statute: [29 U.S.C. 2601, et seq.](#) *Regulations:* [29 C.F.R. Part 825](#)

The Family Medical Leave Act (FMLA) provides eligible employees unpaid and job-protected leave for certain family and medical reasons. Generally, eligible employees are those that worked for the employer for at least 12 months, worked at least 1,250 hours in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. Eligible employees are entitled to 12 workweeks of unpaid leave in a 12-month period for:

- The birth of a child and to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- Caring for the employee's spouse, child, or parent who has a serious health condition;

- A serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

Also, eligible employee may utilize 26 workweeks of unpaid leave in a 12-month period to care for a covered servicemember with a serious injury or illness if that eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin.

More information regarding the FMLA is available from the United States Department of Labor [here](#).

The Civil Rights Act of 1964

Statute: [42 U.S.C. § 2000e et. seq.](#) *Regulations:* [29 C.F.R. Chapter XIV](#)

Title VII of the Civil Rights Act prohibits employment discrimination based on race, color, religion, sex, and national origin. Discrimination includes directly treating someone unfavorably because of their protected status and enforcing policies that have a greater impact on persons because of their protected status. Discrimination also includes harassment by supervisors and coworkers. All aspects of employment must be free from discrimination, including: hiring, separation, compensation, job assignments, promotions, training, and benefits.

More information regarding the Civil Rights Act is available from the United States Equal Employment Opportunity Commission [here](#).

The Age Discrimination in Employment Act

Statute: [29 U.S.C. § 621 et. seq.](#) *Regulations:* [29 C.F.R. Part 1625](#), [1626](#), and [1627](#)

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination based on the age of employees who are over the age of 40. Discrimination includes directly treating someone unfavorably because he or she is over 40 and enforcing policies that have a greater impact on persons who are over the age of 40. Discrimination also includes harassment by supervisors and coworkers. The ADEA does not prevent employers from treating older individuals more favorably than younger individuals. All aspects of employment must be free from discrimination, including: hiring, separation, compensation, job assignments, promotions, training, and benefits.

More information regarding the ADEA is available from the United States Equal Employment Opportunity Commission [here](#).

The Americans with Disabilities Act

Statute: [42 U.S.C. § 12111 et. seq.](#) *Regulations (related to employees):* [29 C.F.R. Part 1630](#)

The Americans with Disabilities Act (and Section 504 of the Rehabilitation Act) prohibits employment discrimination on the basis of an individual's disability or history of a disability. Discrimination includes directly treating someone unfavorably because of their disability and enforcing policies that have a greater impact on persons because of their disabilities. Discrimination also includes harassment by supervisors and coworkers. All aspects of employment must be free from discrimination, including: hiring, separation, compensation, job assignments, promotions, training, and benefits. Employers must provide reasonable accommodations to an employee or job applicant with a disability, unless the accommodation would cause an undue hardship for the employer. The Americans with Disabilities Act defines an individual with a disability as one who has a physical or mental impairment that substantially limits a major life activity. A person may also be protected from discrimination if they have a history of a disability or are regarded as an individual with a disability.

More information regarding the ADA is available from the United States Department of Justice [here](#).

The Pregnancy Discrimination Act

Statute: [42 U.S.C. § 2000e et. seq.](#) *Regulations:* [29 C.F.R. Part 1604](#)

The Pregnancy Discrimination Act (PDA) is an amendment to the Civil Rights Act that prohibits employment discrimination on the basis of pregnancy. Discrimination includes directly treating an employee unfavorably because she is pregnant and harassment by supervisors and coworkers of an employee who is pregnant. All aspects of employment must be free from discrimination, including: hiring, separation, compensation, job assignments, promotions, training, and benefits. An employer must ensure that employees who are pregnant are subject to the same policies and procedures as those who are not. In other words, an employer cannot require pregnant employees to provide additional documentation or submit to special procedures that are not required of other workers.

More information regarding the PDA is available from the United States Equal Employment Opportunity Commission [here](#).

The Genetic Information Nondiscrimination Act

Statute: [42 U.S.C. § 2000ff et. seq.](#) *Regulations:* [29 C.F.R. Part 1635](#)

Title II of the Genetic Information Nondiscrimination Act (GINA) prohibits employers from discriminating against employees or applicants because of genetic information. Genetic information includes information about a person's genetic tests, manifestation of a disease or disorder in an individual's family (such as a family medical history), and genetic tests of an individual's family. Except in very limited circumstances, an employer may not inquire as to an employee's family medical history. In the event an employer does have access to an employee's genetic information, the employer must ensure that the information is kept

confidential. All aspects of employment must be free from discrimination, including: hiring, separation, compensation, job assignments, promotions, training, and benefits.

More information regarding GINA is available from the United States Equal Employment Opportunity Commission [here](#).

The Equal Pay Act

Statute: [29 U.S.C. § 206\(d\)](#) *Regulations:* [29 C.F.R. Part 1620](#)

The equal pay act requires employers to compensate employees without regard to gender. In other words, male and female employees must receive the same compensation for substantially equal work. All aspects of compensation are covered by the Equal Pay Act, including salary, bonuses, benefits, allowances, and reimbursements.

More information regarding the Equal Pay Act available from the United States Equal Employment Opportunity Commission [here](#).

The Uniformed Services Employment and Reemployment Rights Act

Statute: [38 U.S.C. § 4301 et. seq.](#) *Regulations:* [20 C.F.R. Part 1002](#)

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the employment and reemployment rights of members of the uniformed services. An employer may not discriminate on the basis of an applicant or employee's past, present, or future membership in the uniformed services. Additionally, an employee is entitled to reemployment after a leave of absence for service in the uniformed service if the employee provided advance notice of the military service, served in the uniformed service for less than five years (the service may be longer in some cases), reported back to work within certain time limits, and the employee was not separated from service with a disqualifying discharge. If the employee is entitled to reemployment, he or she must be restored to the job and benefits he or she would have attained had the leave of absence not occurred. The uniformed services include active and reserve members of the: Army, Navy, Marine Corps, Air Force, Coast Guard, Army National Guard, Air National Guard, and the Commissioned Corps of the Public Health Service.

More information regarding USERRA is available from the United States Department of Labor [here](#).

The Affordable Care Act

Act: [H.R. 3590](#)

The Affordable Care Act (ACA) is a comprehensive health care reform law being phased in over the next few years. The ACA requires most individuals to obtain health insurance and establishes guidelines for health insurance plans. As the law takes effect, individuals and businesses will be assessed fees for failing to obtain health insurance or offering plans to

employees that do not meet the guidelines required by law. Due to the varying effective dates of portions of the law, the specific requirements of the ACA change regularly. State charter schools are strongly encouraged to keep abreast of health care requirements through legal counsel.

More information regarding the Civil Rights Act is available from the United States Department of Health and Human Services [here](#).

Criminal Record Checks of Personnel

State Law: [O.C.G.A. § 20-2-211.1](#)

Please see the description of requirements relating to criminal record checks of Personnel in [Chapter Five](#).

Employee Evaluations

State Law: [O.C.G.A. § 20-2-210 et. seq.](#)

Please see the description of requirements relating to employee evaluations in [Chapter Five](#).

Math and Science Teacher Supplement

Statute: [O.C.G.A. § 20-2-212.5](#)

State charter schools that employ teachers who are certified in mathematics or science by the Georgia Professional Standards Commission and teach in those areas receive additional funding for the salary of those teachers. State charter schools receive additional funding to compensate a certified math or science teachers in grades 6-12 at a level equal to the six years of creditable service and one additional year of creditable service on the salary schedule each year for five years. After five years, such teachers may continue to be attributed one additional year of creditable service on the salary schedule if he or she meets or exceeds student achievement criteria established by the Governor's Office of Student Achievement.

Additionally, for certified math or science teachers in grades K-5, state charter schools will receive an additional \$1,000.00 per endorsement for those teachers for each year those endorsements are in effect up to a maximum of five years. Certified math and science teachers in grades K-5 may continue to earn a stipend after five years if he or she meets or exceeds student achievement criteria established by the Governor's Office of Student Achievement.

While state charter schools have the flexibility to set compensation for individual teachers without regard to the state salary schedule, additional funding received by a school pursuant to the Math and Science Teacher Supplement must be provided to the teachers who earned that funding. Georgia law provides that math and science supplements are paid by the Georgia Department of Education through the LEA that employs the teacher, but O.C.G.A. § 20-2-212.5 clearly identifies that the funding is a property right of the teacher. As the funding is property of the teacher, a state charter school must not utilize that funding for any other purpose. A

state charter school that does not provide the Math and Science Supplement to teachers that earned that compensation is violating the rights of the teachers in violation of O.C.G.A. § 20-2-2065(b)(5).

Each state charter school that receives additional funding through the Math and Science Teacher Supplement will receive a report from the Georgia Department of Education that identifies the teachers who earned the additional compensation and the amount of compensation each individual earned. It is the responsibility of the state charter school to ensure that each teacher receives the additional compensation to which he or she is entitled. As the Math and Science Teacher Supplement is made available to schools in the fiscal year after it is earned by employees, it is possible that a state charter school may receive funding for a teacher that is no longer employed by the school. In such cases, the state charter school must locate the former employee to provide him or her the additional compensation he or she earned.

The Teachers Retirement System of Georgia

Statute: [O.C.G.A. § 47-3-1 et. seq.](#)

All state charter schools have certain responsibilities related to employees covered by the Teachers Retirement System of Georgia (TRS). These responsibilities include remitting the required monthly employee and employer contributions to TRS and maintaining employment records and member information. All teachers in a state charter school are required to participate in TRS as a condition of their employment. Laws relating to TRS define “teacher” very broadly. As a result, most employees of a state charter school are required to participate in TRS.

More information regarding TRS is available at its website [here](#).

Verification of Lawful Residence

Statute: [O.C.G.A. § 13-10-90 et. seq.](#)

Every public employer, including state charter schools, must register and participate in E-Verify to verify employment eligibility of all newly hired employees. E-Verify is an electronic service provided by the United States Homeland Security that allows employers to determine the eligibility of employees to work in the United States.

More information regarding E-Verify is available at the United States Department of Homeland Security [here](#).