

# Authorizer Primer

Special Education in  
Public School Academies (PSA)

September 2013





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### **Michigan Department of Education Office of Special Education**

608 West Allegan  
P.O. Box 30008  
Lansing, MI 48909

(517) 373-0923

[www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis)

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## I. Introduction

The content of this document is intended to enhance the working knowledge of new or existing Public School Academy Boards of Directors, leadership teams, and teaching staff about the responsibilities associated with respect to federal and state special education laws, regulations, and rules. In order for the reader to fully understand the content within this document, it is necessary to first identify and define critically important offices, agencies, and terms:

### A. State Board of Education (SBE) Roles and Responsibilities Relative to Public School Academies (PSAs)

The Michigan SBE has leadership and general supervision over all public education, including a PSA, based on the Revised School Code Act MCL 380.501.

Sec. 501. (1) A public school academy is a public school under section 2 of article VIII of the state constitution of 1963, is a school district for the purposes of section 11 of article IX of the state constitution of 1963 and for the purposes of section 1225 and section 1351a, and is subject to the leadership and general supervision of the state board over all public education under section 3 of article VIII of the state constitution of 1963. A public school academy is a body corporate and is a governmental agency. The powers granted to a public school academy under this part constitute the performance of essential public purposes and governmental functions of this state.

### B. Michigan Department of Education (MDE)

The Department of Education, under the direction of the State Superintendent, carries out the policies of the State Board of Education. The Department implements federal and state legislative mandates in education.

### C. Office of Education Improvement and Innovation (OEII)

The OEII provides leadership for the development of a statewide system of support for high priority schools, the implementation of a comprehensive school improvement planning process, and the dissemination of innovative educational methods and practices. The legal basis for the federal programs consists of the following parts of the *Elementary and Secondary Education Act of 2001*, Public Law 107-110: Title I, Parts A, B Subpart 1, and C; Title II, Parts A, B, and D; Title III, Part A; and Title X, Part C. The Public School Academies unit of OEII serves to provide quality support to public school academies and their stakeholders through timely and accurate oversight and monitoring.

### D. Office of Special Education (OSE)

The function of the OSE is the general supervision, regulation, administration of due process, and funding of special education programs and services for children and youth with disabilities ages 3-21. A free appropriate public education (FAPE) is provided to eligible children according to federal law and regulations, state

statute, and administrative rules. In addition, it is important to understand that in Michigan special education services are available from birth to age 26.

#### E. The Intermediate School District (ISD)

An ISD (also known as an ESA, ESD, RESA, or RESD) is a corporate body established under Part 7 of The Revised School Code, Act 451 of 1976. An ISD in Michigan provides regional special education, career/technical education, and general education services to local constituent public school districts and PSAs. Each ISD submits an ISD Plan for special education to the Michigan Department of Education, Office of Special Education (MDE-OSE). The ISD Plan must be approved by the State Superintendent. The ISD Plan is the operational plan that sets forth the special education programs and related services to be delivered. Each PSA should contact its ISD to ensure that it is included in the ISD Plan and any changes made to an existing Plan. Specific information regarding the ISD Plan can be found in the *Michigan Administrative Rules for Special Education* (MARSE) at R 340.1831 through R 340.1837. The MARSE can be accessed through the Michigan Special Education Reference (MI-SER) ([www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis)). Specific plans for each ISD may be found at the individual ISD websites.

#### F. Local Educational Agency (LEA)

In Michigan, a local school district is referred to as a Local Educational Agency (LEA). An LEA is responsible for the provision of special education programs and services to eligible students with disabilities.

#### G. Authorization of a Public School Academy (PSA)

Michigan statute allows an educational entity with sufficient capacity to:

- issue a charter contract in Michigan;
- monitor legal and contract compliance for all public school academy contracts within its jurisdiction; and
- make rational decisions regarding the termination, suspension, or renewal of those same contracts.

In Michigan, that includes a state public university, community college, ISD, LEA, and other entities created through inter-local agreements between two or more of the other legal authorizers.

The Revised School Code MCL 380.5 defines a PSA:

(7) "Public school academy" means a public school academy established under part 6a and, except as used in part 6a, also includes an urban high school academy established under part 6c, a school of excellence established under part 6e, and a strict discipline academy established under sections 1311b to 1311m.

As a public school in Michigan, a PSA must meet all of the requirements of federal and state special education laws, regulations, and rules. Additionally, Michigan law states that a PSA must be organized and administered under the

direction of a nonprofit board of directors. A parent may choose to enroll his or her child in any PSA. It is important that a PSA is free of charge and open to all students, pursuant to Michigan law. If the number of students seeking admission exceeds the number of available seats, the PSA must utilize a random selection process to determine which pupils may be enrolled. Enrollment priorities may be extended to returning students, siblings of admitted students, children of school employees, and board members. A PSA in Michigan is subject to the same legal requirements as all public schools. They must comply with state and federal requirements related to health and safety, staffing, management and accountability, and transparency (see Act 277 of 2011).

## II. The Role of Michigan Authorizers of Public School Academies

In the state of Michigan, a charter school is referred to as a public school academy (PSA). A PSA is considered a public school district under Michigan law and has the same responsibilities regarding special education as a local educational agency (LEA) in the state.

Michigan's public school academy law, Public Act (PA) 362 of 1993, delegates to the governing board of a state public university, community college, ISD, and local school district the responsibility for authorizing and overseeing a PSA. Section 380.502(4) of the Michigan Compiled Law (MCL) requires authorizing bodies to oversee the schools they charter and ensure their compliance with statute, rules, and the terms of their authorizing contract. As a public school, a PSA is subject to the general supervision and leadership of the State Board of Education (SBE). The authorizing agent mainly serves the following roles:

1. PSA application, PSA authorization (i.e., charter contract), and contract amendments.
2. Oversight, accountability, and reauthorization.
3. Non-Renewal, revocation, and reconstitution.

### **What is my responsibility as an authorizer to ensure that a PSA serves students with disabilities?**

Authorizers have a responsibility to ensure that a PSA serves all students who enroll, including all students with disabilities, and that a PSA is compliant with special education law. By ensuring that a PSA has the capacity to provide special education services, authorizers can help operators avoid potential problems and ensure that all students with disabilities who enroll have the opportunity to obtain a free appropriate public education.

### **What does an authorizer need to know about the *Individuals with Disabilities Education Act (IDEA)*?**

It is important that an authorizer have a clear understanding of some basic special education concepts that are incorporated into federal law. A *free appropriate public education (FAPE)* refers to special education (including programs and services) and related services designed to meet the unique individual needs of a student with a disability based on a full and individual evaluation and the development of an *individualized education program (IEP)*. The *least restrictive environment (LRE)* is a requirement in the IDEA that stipulates that students with disabilities be educated in the general education environment to the maximum extent appropriate and in the setting that they would be in if they did not have a disability.

Access relevant special education documents, including the IDEA, through the Michigan Special Education Reference (MI-SER). The MI-SER is an online database for special education directors, school administrators, teachers and other service providers, parents, and parent support groups who need policy and compliance information regarding special education quickly and in a searchable format. MI-SER

provides access to state and federal special education law and policy information and resources. MI-SER can be found at [www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis).

### **What are my responsibilities as an authorizer related to the Elementary and Secondary Education Act (ESEA)?**

Both the ESEA and state law hold authorizers accountable for ensuring that a PSA they authorize complies with federal and state special education laws, regulations, and administrative rules.

### **What issues should I encourage PSA applicants to consider during the planning phase to ensure that they will be able to provide special education programs and services?**

When working with PSA applicants, authorizers are wise to advise applicants of the value of the old adage, “an ounce of prevention is worth a pound of cure.” When applied to developing a school that can educate students with disabilities, the “ounce of prevention” requires adequate planning during the development and start-up phase. The specific issues that PSA applicants should consider during the pre-authorization phase can vary by individual authorizers within the state. However, the checklist at the end of this section is a list of issues authorizers should encourage applicants to consider related to special education. The list is not exhaustive, but rather a guide to key issues that potential PSA applicants should take into account. The answers to these questions will depend upon: 1) the charter agreement negotiated between the authorizer and the Academy Board of Directors and 2) the characteristics of the individual PSA.

### **What should authorizers ask applicants about their plans to provide special education programs and services to students with disabilities?**

The MDE recommends that authorizers request applicants articulate a rudimentary plan regarding governance, service delivery and financing of special education. It is critical that applicants demonstrate to authorizers that they have a well-conceived, feasible plan to access the capacity necessary to meet their legal responsibilities. Authorizers should ask applicants to provide some or all of the following “how to” plans during the application and authorization phase:

- Identify, locate, and evaluate students with disabilities.
- Develop, review, and revise an IEP.
- Integrate special education into the general education program.
- Deliver special education programs and related services (e.g., in-house or contract out).
- Project the cost of special education programs and services (e.g., percent of operating budget).
- Access and account for special education funds.
- Anticipate sources for ongoing legal guidance related to special education.
- Ensure that the school facility meets the requirements of other related laws such as the *Americans with Disabilities Act* (ADA) and Section 504 of the *Rehabilitative Services Act*.
- Conduct enrollment and transition procedures.

- Conduct Child Find public awareness activities.
- Address discipline for students with disabilities in alignment with the IDEA.
- Handle disputes involving parents.
- Ensure confidentiality of special education records.
- Purchase services from special education vendors.
- Secure technical assistance and training.
- Coordinate support with the ISD.

### **Can an authorizer grant PSA applicants waivers from federal special education requirements as part of their charter?**

No. The federal government does not permit waivers from federal special education requirements. A PSA is a public school and must be open to, and serve the needs of, any student with a disability wishing to attend.

The Michigan school code at 380.1281(3) allows school districts to apply for a limited time waiver from a Michigan administrative rule. The MDE processes all rule waiver applications and the state superintendent is responsible for approving any rule waiver requests. Applications for waiver requests can be found at [www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis).

### **Summary and Key Points**

The application and authorization phases provide PSA authorizers the critical opportunity to inform potential applicants about their responsibilities related to special education. In an effort to preempt potential problems associated with complying with the IDEA requirements, authorizers can take advantage of the planning phase to educate applicants about special education. It is imperative that authorizers understand the federal and state requirements for special education to ensure compliance of their authorized schools. By educating applicants earlier rather than later, applicants will build special education into their vision of a school rather than simply add special education after the school model is developed.

### III. Authorization

#### **What occurs during the authorization phase?**

During the authorization phase the applicant completes the formal written application and seeks a PSA contract. Michigan authorizers are required by statute to conduct a competitive process. This process is partially specified in law (and is further developed by individual authorizers):

- Authorizers shall administer a competitive PSA application process that meets statutory requirements and takes into consideration all of the following:
  - The educational goals to be achieved.
  - The population to be served.
  - The resources available for operation.
- Authorizers shall ensure that the PSA contracts are only issued to properly established Michigan nonprofit organizations, incorporated under the Michigan *Non-Profit Corporation Act*, PA 162 of 1982. Furthermore, authorizers shall oversee that PSA boards maintain nonprofit organization updates, as appropriate, and that any re-filed articles of incorporation are provided to the MDE.
- Within ten business days of issuing a charter contract, authorizers shall provide the State Superintendent with a copy of the charter contract. The MDE requests that authorizers also provide the completed contract checklist that lists the required statutory elements to be contained within the contract.
- Authorizers shall establish a process for amending the authorizing contracts. Authorizers shall provide a copy of a contract amendment to the MDE within ten business days of executing the contract amendment. Within ten business days of executing a contract amendment, authorizers shall provide the MDE with a copy of the amendment.
- Authorizers shall establish a process for reauthorization of authorizing contracts based upon:
  - The achievement of academic and educational goals for the PSA as stated in the authorizing contract.
  - The financial, organizational, and educational stability of the PSA.
  - The demonstrated compliance with the authorizing contract and applicable state and federal law.
  - If authorized by an LEA, the assurance that the collective bargaining agreements in place for the LEA will be honored for PSA employees.
  - The description of and address for the site where the PSA will be located.

Some authorizers require applicants to submit the separate contracts they negotiate with education management companies.

Once a charter is granted, the authorizer and the PSA negotiate a contract that articulates in greater detail the bases on which the authorizer will hold the PSA accountable for performance as specified by the ESEA, the IDEA, and other

applicable laws, regulations, rules, and standards. The contract may outline how finances, including special education finances, will be managed.

**When reviewing applications, in what areas should I anticipate or require information regarding an applicant’s plan to educate students with disabilities?**

- Administration
- Curriculum, instruction, and assessment
- Enrollment
- Specialized personnel (e.g., certified special education teachers, administrators, related services personnel)
- Budget
- Facility
- Transportation

Some authorizers find it helpful for a special educator to be part of the application evaluation team.

**How does a PSA develop the capacity to deliver special education programs and services in the school?**

A PSA uses a variety of service delivery options for providing their student population with special education programs and services, such as: 1) hiring appropriate professionals to work at the school; 2) contracting with a local district; 3) contracting with an ISD; 4) contracting with individuals or organizations qualified to provide special education services; or 5) a combination of these approaches. As long as a PSA can ensure that students with disabilities who are enrolled in their schools have access to a FAPE, they may utilize a variety of strategies to deliver special education programs and services.

**Can a PSA “counsel-out” a student with a disability?**

No. Counseling-out is the process of subtly, or not-so-subtly, counseling a student with a disability to influence enrollment inappropriately based on the student’s disability. A PSA is a public school and, as such, is legally required to maintain open enrollment policies. Advising a student with a disability that attendance is not allowed or that the school cannot provide the modifications or accommodations necessary to enable attendance is discriminatory and illegal. The federal and state Office for Civil Rights (OCR) is charged with investigating issues raised about discrimination against students with disabilities.

**What are some issues authorizers should monitor related to discrimination against students with disabilities?**

As a public school, a PSA is not allowed to discriminate against students with disabilities. This may include, but not be limited to, issues such as:

- Disproportionate representation by disability, race, and ethnicity in special education.
- Non-admission of students because of unavailable programming.

### **Is a PSA required to provide the full continuum of programs and services on the school site?**

Both a traditional school and a PSA rely on the IDEA for decision making processes for determining placements. In order to ensure that decisions regarding placement are 1) made based upon individual student need, as opposed to groups of students with particular disabilities, and 2) made based upon the best interests of the student, as opposed to the convenience of the PSA. Decisions regarding appropriate placement must be made by an IEP team rather than a single individual. It is part of the process of ensuring that a student with a disability receives a FAPE in the LRE. This may or may not be on the PSA site. Once a student is enrolled in a PSA, the financial responsibility of providing programs and services belongs to the PSA within the context of the ISD Plan.

### **What is an authorizer’s role in ensuring that a PSA fulfills its mission while complying with their obligation related to adaptation, accommodations, and modifications required by the IDEA and Section 504?**

Authorizers should require applicants to articulate their mission explicitly and ensure that the PSA is prepared to offer accommodations and modifications for students with disabilities who elect to attend the school. A key component of reasonable accommodations and modifications is a school culture that incorporates a commitment to offering accommodations and modifications to individuals with disabilities while guarding against substantively changing the nature of the school’s mission. Authorizers should scrutinize PSA admission policies to ensure that the policies do not block enrollment for particular students or groups of students.

### **Can a PSA curriculum alone meet the needs of students with disabilities?**

No. The core tenet of the IDEA is that students are treated as individuals with unique needs that require unique support services (special education and related services), which are explicitly articulated in an IEP. Even if the school plans to provide all students with individualized learning plans that address each student’s unique cognitive and physical abilities and disabilities within the general education environment, an eligible student with a disability must also have an IEP that must conform to all of the requirements of the IDEA and the MARSE. Generally, learning plans focus on general education environments and academics and are not sufficient to meet the federal and state requirements of an IEP. Any policy that aims to treat all students with disabilities the same way should raise a red flag to authorizers assessing applications. When reviewing PSA applications, authorizers can request additional information regarding how the PSA plans to ensure that its particular curriculum or instructional approach can address the unique individual needs of students with disabilities.

## **What does it mean to have the capacity to provide special education services?**

Special education capacity entails having the human, fiscal, and legal resources required to fulfill the responsibilities articulated in the IDEA. At a minimum, capacity includes the ability to implement an existing IEP, refer eligible students to special education, conduct evaluations, develop an IEP, and provide special education and related services for all entitled students enrolled in the school. Authorizers need to be confident that applicants either have established, or can access, the capacity they will need to meet their special education responsibilities. This could involve securing services from an outside source.

## **Does a PSA have to hire highly qualified special educators?**

Yes. The IDEA requires that special education teachers meet the highly qualified standards of the ESEA. This is a complex issue and additional information and clarification on this topic should be obtained from the Michigan Department of Education, Office of Professional Preparation Services (<http://michigan.gov/opps>).

## **Given the current shortage of special education teachers nationwide, what strategies can a PSA use to hire teachers and related services professionals?**

A PSA can employ creative strategies to access credentialed special education and related service professionals. Strategies that a PSA commonly uses are:

- Hiring consultants to provide special education services.
- Developing collaborative agreements with an LEA.
- Developing a collaborative agreement with another PSA to share special education personnel.
- Forming partnerships with a local nonprofit entity (e.g., a hospital).
- Working with the ISD to secure an approval for a general education certified teacher in the process of obtaining an appropriate special education endorsement within a three year period.
- Hiring qualified staff directly.

## **Where can a PSA learn more about Michigan's requirements regarding special education certification?**

Specific and detailed information on certification is available on the Michigan Department of Education, Office of Professional Preparation Services website at [www.michigan.gov/opps](http://www.michigan.gov/opps).

## **What are the fiscal responsibilities associated with special education?**

The fiscal responsibilities associated with special education fall into four general categories:

- Personnel
- Equipment and materials
- Facility modifications
- Transportation

### **How can a PSA plan for its fiscal responsibilities related to special education?**

In Michigan, approximately 12 percent of the public school population is identified as eligible for special education services. As a general rule, a PSA should anticipate that approximately 12 percent of the student population may be students with disabilities. PSA developers should be advised to consider developing a reserve in case the special education expenditures exceed revenue. Applicants should be encouraged to meet with the ISD financial officer.

### **How can authorizers assist a PSA that enrolls a student with significant disabilities and are struggling to provide the services the student requires due to the excess costs?**

Authorizers should ensure that PSA operators understand how to seek additional resources that are available for students with disabilities. Applicants should be encouraged to meet with the ISD special education director to discuss the ISD Plan.

### **What is the legal basis for requirements related to accessibility to public school facilities for students with disabilities?**

Legal requirements regarding accessibility are found in the *Americans with Disabilities Act* (ADA) and Section 504 of the Rehabilitative Services Act. These laws and documents regarding the implementation of these laws in public schools are available at the MI-SER ([www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis)).

### **What should authorizers advise a PSA about accessible facilities?**

Navigating the parameters of the ADA and Section 504 is challenging and authorizers should strongly encourage the schools they authorize to seek legal counsel regarding the obligations associated with accessibility.

### **If a PSA is required to make its facility accessible to an individual with a disability, whose responsibility is it to make the building accessible?**

Responsibility to modify a facility, even in the event of unforeseen need, should be articulated in the lease between the PSA and the owner of the facility. Authorizers should strongly encourage PSA operators to seek experienced legal counsel prior to signing any contracts to lease or purchase a facility for their school.

### **What responsibility do authorizers have for monitoring accessibility of a PSA facility?**

Authorizers are expected to ensure that a PSA occupies facilities with valid Certificates of Occupancy issued by the Michigan Department of Licensing and Regulatory Affairs (LARA), Bureau of Construction Codes. Given that PSA authorizers are ultimately responsible for ensuring that PSA operators fulfill their obligations outlined in their charter and comply with all applicable laws, authorizers would be well advised to take a proactive role in ensuring that facilities are accessible to individuals with disabilities in accordance with federal and state laws.

**In the event that a PSA must make its facilities accessible to an individual with a disability, where should an authorizer direct its operator to obtain information about how to make facilities accessible?**

Authorizers should familiarize themselves with state requirements for school buildings and the process for obtaining required Safety Inspections and Certificates of Occupancy. This information can be found at [www.michigan.gov/bcc](http://www.michigan.gov/bcc).

**Does a PSA have to provide transportation to students with disabilities?**

If transportation is identified as a related service on the IEP, then providing specialized transportation for the student is the responsibility of the PSA. If transportation is not identified as a related service on the IEP, the student must have access to the same mode of transportation as their non-disabled peers (e.g., parent transport, bus, carpool).

**Summary and Key Points**

The authorization stage is critical to the development of a successful PSA. Building on the foundation established during the pre-authorization phase, the authorization process provides authorizers the opportunity to verify a potential operator’s knowledge about their responsibilities and to assess the degree to which an applicant is capable of fulfilling these responsibilities. PSA authorizers should be knowledgeable about special education. This basic knowledge will enable authorizers to ensure that: 1) PSA applicants fully understand and are prepared for their responsibility to educate students with disabilities, and 2) PSA applicants integrate their plan to provide adequately for special education within their application. By providing PSA developers early guidance on how to anticipate and adequately address the application process, authorizers can help a PSA preempt a variety of challenging issues that will emerge when a student with a disability enrolls in the PSA or the PSA identifies an eligible student in its existing student population.

## IV. Oversight, Accountability, and Reauthorization

### **What is my role as an authorizer to hold a PSA accountable in the area of special education?**

The charter is a contract between the PSA Board (a Michigan, non-profit corporation) and the authorizer. All PSA contracts must contain statutory language that requires the PSA to comply with all state and federal law.

### **What types of data and documentation regarding students with disabilities should authorizers require that a PSA collect and report?**

A PSA is required to submit the same data and reports as traditional school districts. Examples include student enrollment and exit data, program accounting, student performance data, and financial reporting. At a minimum the PSA will need to be able to report data on all of its students so the data can be aggregated into subgroups outlined in the ESEA, one of which is students with disabilities.

### **What should authorizers know about the federal and state special education monitoring processes?**

The federal Office of Special Education Programs (OSEP) monitors every state on its compliance with the IDEA requirements. In turn, each state must monitor how its districts comply. A PSA is held accountable for special education and is required to demonstrate compliance with the IDEA in the same way as every other LEA.

A key component of special education monitoring in Michigan is the Continuous Improvement and Monitoring System (CIMS) electronic *Workbook*, which will be available when your school has generated enough special education data. Additional information on monitoring for compliance in special education can be found at [www.cims.cenmi.org](http://www.cims.cenmi.org).

### **Should authorizing agencies consider special education part of the charter renewal process?**

Michigan law requires authorizers to consider special education in the renewal process. The laws require that authorizers assess the degree to which the PSA is meeting its goals and objectives and its compliance with federal and state laws. Special education and specifically the performance of students with disabilities should be considered as a regular part of the school's progress toward meeting its overall goals and not an afterthought. Failure to fulfill obligations related to special education could be a criterion contributing to non-renewal.

A key factor that authorizers may want to assess when contemplating renewal is whether the PSA has been the subject of any informal or formal complaints related to special education service delivery or procedures. While complaints can arise from a variety of issues, separate from the quality of special education services provided, multiple complaints may indicate a systemic problem. Multiple or persistent complaints may be an indication of a substantive failure to provide a free appropriate public education to students with disabilities. Low enrollment of

students with disabilities in a charter school may serve as a yellow flag that triggers further inquiry regarding enrollment practices and questions about Child Find.

### **Summary and Key Points**

Accountability is a core tenet of the PSA concept and one of the critical responsibilities of all charter school authorizers. Michigan charter school law provides guidelines regarding how a PSA will be held accountable for fulfilling the goals and objectives articulated in the PSA contract, while providing authorizers the discretion and responsibility to develop an adequate renewal decision-making process. A PSA must participate in federally required monitoring and accountability processes.

## V. Non-Renewal, Revocation, and Termination

### **What is the meaning of the terms non-renewal, revocation, and termination as used in this Primer?**

- *Non-renewal* occurs when a PSA seeks renewal and the authorizer does not grant the PSA a new contract. As a result of not having the PSA contract renewed, the PSA loses its authority to operate and exist as a PSA.
- *Revocation* of a PSA involves a proactive decision by an authorizer to remove a PSA's contract and its legal authority to operate as a public school. In general, revocations occur when a PSA does not meet the obligations articulated in the application or subsequent contracts with the authorizer.
- *Termination* may be a voluntary or involuntary end to the PSA contract, according to the terms of the authorizing contract. Termination may be based upon the decision and action of the authorizer, the PSA, or both.

### **In the case of revocation or termination, how should the PSA dispose of any special equipment that was purchased for students with disabilities?**

The handling of equipment purchased for a student with a disability will be dependent on what funds were used to purchase the equipment.

If equipment was purchased for one specific student, it should be forwarded to the student's new school. If this information is not known, or if the equipment was purchased for use in a special education program, it should be handled in the same manner as all other school equipment. To determine whether these learning plans or other curricular approaches meet the IDEA requirements, PSA operators must be aware of federal and state special education requirements. Any unit of equipment purchased with IDEA grant funds that aggregate to be worth \$5,000 or more (either opened or any unopened) must be disposed of according to the following standards:

- The PSA should first offer the equipment, at no cost, to another public school or federally funded grant recipient.
- If no public school accepts the offer, then the PSA shall put the equipment out for bid.
- If there are no bidders then the equipment shall be put up for sale.
- If the equipment is still unsold, the PSA may deem the unit as salvage property.

It is important that the PSA retain accurate records of the disposal. If the PSA is closing and there are proceeds after all outstanding bills have been paid, then the funds must be returned to the federal funding source. The MDE is the federal funding source for IDEA funds.

If the equipment was purchased with state funds, Section 18b of the State School Aid Act (MCL 388.1618b) requires that property acquired with state school aid funds be transferred to the State Treasurer for deposit in the state school aid fund in the event that a PSA is closed. In general, special equipment purchased for a student with a disability should follow the student to his or her next public school placement or alternatively, be returned to the local district

that is the student's district of residence.

### **How should the PSA handle student records when they don't know where the student is going?**

Specifically, the State School Aid Act of 1979 indicates the following regarding the storage of student records from closed schools:

MCL 388.1014a: Records of grades attained by students at former educational institutions; central depository; availability to public of records and other writings; custody of records; transcripts.

(1) The trustees or officers of a college or other institution of learning, whether incorporated or not, upon going out of existence or ceasing to function as an educational institution, shall turn over the records of all grades attained by its students to the state board of education. The office of the State Superintendent shall be the central depository for these records.

(2) The records and any other writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Law.

(3) The State Superintendent shall have the supervision, care, custody, and control of these records, and shall, when requested, prepare transcripts necessary for a former student. The transcripts shall be certified by the State Superintendent and shall be considered and accepted as evidence for all purposes, the same as the original record.

### **In the case of school closure, are there special procedures for handling special education records?**

Perhaps the most important consideration in records transfer is ensuring the privacy of student information. The *Family Educational Rights and Privacy Act* (FERPA) (20 U.S.C. 1232g) provides guidance on requirements in the transfer of educational records that contain personally identifiable information on students. For a guide to privacy issues, see <http://nces.ed.gov/pubs2006/2006805.pdf> and for details about the law, see [www.ed.gov/policy/gen/guid/fpco/ferpa/index.html](http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html). (Careful attention to sections pertaining to disclosure of information without the written consent of the parent or eligible student will help alleviate future problems.)

### **Does a PSA have any legal obligation to their students with disabilities after the school closes?**

At a minimum, a PSA is obligated to transfer records. PSA staff may be requested to participate in IEP team meetings at schools in which the students enroll after leaving the PSA.

### **Summary and Key Points**

The non-renewal, revocation, or termination of a PSA is at best an unpleasant experience. Regardless, ensuring the proper transfer of student records and

appropriate disposition of all assets in the event of closure, including those specifically for special education, is a responsibility for which authorizers must always be prepared. Regardless of the environment in which a school closes, authorizers are responsible for ensuring that the necessary steps are taken to protect student rights to privacy and maintain the integrity of records. Establishing the procedures for closing a school, including special education considerations, should be incorporated into the initial PSA contract to ensure that all parties are aware of their roles and responsibilities in the event of closure.

## VI. Assistance and Resources

Providing special education is challenging for a variety of reasons, and amassing the capacity to deliver special education requires early and ongoing technical assistance related to the complex requirements stemming from the IDEA. PSA authorizers can tap into a variety of networks to learn more about special education in general and issues related to special education in the PSA specifically. Following is a partial list of resources that authorizers should be familiar with and to which they may direct potential charter applicants.

- **Local Educational Agencies (LEA):** An LEA generally offers district schools technical assistance in the form of documents and training. Many districts maintain websites with abundant resources related to special education.
- **Intermediate School Districts (ISD):** The ISD role is to coordinate, develop, establish, and continually evaluate a Plan for the Delivery of Special Education Programs and Services Plan for its constituent local school districts and public school academies. The Plan is submitted to the Office of Special Education (OSE) and approved by Michigan’s State Superintendent. For details, see the MI-SER at [www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis).
- **Michigan Department of Education (MDE):** The MDE website is a rich source of information regarding a variety of education topics. The MDE website for the entire department is at [www.michigan.gov/mde](http://www.michigan.gov/mde). The Office of Special Education (OSE) website is at [www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis). The Office of Education Improvement and Innovation (OEII) is at [www.michigan.gov/oeii](http://www.michigan.gov/oeii).
- **U.S. Department of Education (ED):** Several offices in the ED maintain websites that may be helpful to PSA applicants. The Office of Special Education Programs (OSEP) maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education. [www.ed.gov/about/offices/list/osers/osep/index.html](http://www.ed.gov/about/offices/list/osers/osep/index.html)
- **Center for Educational Networking (CEN):** CEN supports the statewide communication and dissemination efforts of the OSE and other initiatives supporting the work of the OSE. CEN is a central resource for print and digital communication products and services. CEN is a Mandated Activities Project (MAP) funded by the IDEA through the OSE. [www.cenmi.org](http://www.cenmi.org)
- **Technical Assistance and Dissemination Network (TA&D Network):** The TA&D Network is funded by the U.S. Office of Special Education Programs (OSEP). These projects provide information and technical assistance to states, schools, educational professionals, and families on topics such as autism, deafness, disproportional representation, dispute resolution, learning disabilities, parenting students with special needs, positive behavior support, and transition. [www.tadnet.org](http://www.tadnet.org)

- **National Special Education Networks:** The National Charter School Resource Center (Resource Center) serves as a national center to provide on-demand resources, information, and technical assistance to support successful planning, authorizing, implementation, and sustainability of high-quality charter schools; to share evaluations on the effects of charter schools; and to disseminate information about successful practices in charter schools.  
[www.charterschoolcenter.org](http://www.charterschoolcenter.org)
- **Michigan Association of Public School Academies (MAPSA):** The MAPSA is a support organization that provides a variety of services for a PSA.  
[www.charterschools.org](http://www.charterschools.org)
- **Michigan Association of Administrators of Special Education (MAASE):** The MAASE is the membership organization for those who are administrators of special education in the state. It is an official subdivision in the Michigan Council of Administrators of Special Education (CASE) and a component of the Council for Exceptional Children (CEC), a national organization of special education professionals. [www.maase.org](http://www.maase.org).