

MEMORANDUM

DATE: March 27, 2019

TO: MEMBERS, State Board of Education

FROM: TONY THURMOND, State Superintendent of Public Instruction

SUBJECT: Special Education Local Plan Areas—History and Requirements

Summary of Key Issues

Special Education Local Plan Areas (SELPA) are the regional structure created in state law for the assurance of the provision of special education and related services to students with disabilities in California. This memo serves as a primer on the history and responsibilities of SELPAs.

Special Education Local Plan Areas: What They Are, Why They Exist, and How They Work

California is one of only a few states in the nation that utilizes intermediary agencies in the provision of special education, and is the only state in the nation that legally requires the formation and maintenance of SELPAs. By federal regulations, SELPAs are considered educational service agencies and serve as California's sub grantees under the Individuals with Disabilities Education Act (IDEA). These regionalized entities carry out a variety of mandated fiscal and educational responsibilities and develop systems and procedures for ensuring that eligible students with disabilities (SWD) receive the special education and related services to which they are entitled.

Section 1: History of Special Education Local Plan Areas

Master Plan for Special Education

In 1974, the California State Board of Education (SBE) adopted a Master Plan for Special Education based on the principle that "education is for all children, regardless of differences in abilities." The Master Plan was designed to correct identified weaknesses in California's special education system. The previous system of support did not adequately address the diversity of incidence, the total number of individuals with exceptional needs, problems associated with being a small local educational agency

(LEA), the need for program flexibility to meet local needs, and issues related to funding requirements. Additionally, it did not include a logical data collection and reporting system. As a result of the identified shortfalls, the Master Plan addressed (among other things), the need for:

- A cleaner delineation of responsibility for the provision of special education at the state, county, and local level.
- Coordinated improvements related to special class programs offered by LEAs, county superintendents of schools, state, and private schools.
- A system to collect information and properly evaluate special education programs.
- An equitable system of financial support for special education which promotes improved programs and fiscal accountability.

In short, there was an overall need to clearly delineate the responsibilities of LEAs for providing special education and ensuring full accountability. The Master Plan also established levels of responsibilities to eliminate duplication of duties and specify the responsibilities of the SBE and the State Superintendent of Public Instruction (SSPI) regarding local plans. It initiated the idea and creation of local accountability agencies.

Establishing Special Education Local Accountability

Under California's original system of special education categorical programs, large LEAs generally provided direct services for their SWD, whereas county offices of education (COEs) generally served students on behalf of smaller LEAs. This bifurcated system of responsibilities recognized a longstanding concern that smaller LEAs lacked the resources to provide a full array of services to SWD.

In 1974, Assembly Bill 4040 was signed into law, a measure to pilot the Master Plan for Special Education in no more than 10 Responsible Local Agencies (RLAs) during fiscal years 1975–76, 1976–77, and 1977–78.

In 1977, AB 1250 was enacted for the purpose of expanding the Master Plan for Special Education beyond the 10 pilot agencies, phasing in the new plan statewide. California's Master Plan for Special Education addressed previous concerns by requiring all LEAs to join RLAs, each of which was responsible for coordinating special education among its member LEAs. A large district could be its own RLA, whereas smaller LEAs were required to partner with neighboring LEAs and/or COEs to form a collaborative RLA. AB 1250 revised the role of RLAs to include receiving and distributing funds pursuant to comprehensive local plans, providing sufficient administrative support, and coordinating the administration of the plan. The role of the COE was also revised to include the added responsibility of receiving and approving or disapproving comprehensive local

plans based on the ability of the plan to assure special education services were provided to all SWD.

In 1982, Senate Bill 1870 repealed all prior categorical special education program provisions according to disability type and restructured the state's special education program as set forth in the Master Plan and provided a new funding model for special education. The Master Plan would no longer be funded on a per-child basis, as it had been. Instead, it was to be funded on a service-based model. RLAs were renamed to SELPAs. A SELPA was defined as the service area covered by a comprehensive local plan of sufficient size and scope, under standards adopted by the local board, in conjunction with one or more districts, who through joint powers agreements or other contractual agreements, includes a governance structure and necessary administrative support to implement a local plan. Approved SELPAs must have a system in place designed for determining the responsibility of participating agencies for the education of individuals with exceptional needs residing in the SELPA.

The complexity of special education rules and responsibilities warranted a need for skilled and knowledgeable SELPA administrators who understood special education laws and regulations and applied them fairly. This led to what we today hold SELPA Administrators responsible for assuring, specifically that:

- All individuals with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE).
- All regular (general) education resources are considered and, where appropriate, utilized on a local or regional basis to meet the needs of SWD.
- A system exists at the regional level for identification, assessment, and placement of SWD.
- A viable system for public education is functioning in the community, with broad participation and interaction involving parents and other agencies serving children and young adults.
- An annual compliance monitoring system is implemented, and continues to assure items found to be noncompliant through the California Department of Education (CDE) Quality Assurance process are promptly corrected in accordance with law.

Current Makeup of California Special Education Local Plan Areas

California currently has 134 SELPAs, configured in a variety of ways including single school LEAs, several LEAs, one or more counties, combination of LEAs and counties, composed solely of charter schools, a combination of LEAs and charter schools, and COEs. At their inception, SELPAs were approved based on criteria of meeting sufficient size and scope and the ability to provide the full array of instructional programs, related

services, and placement options necessary to meet the educational needs of their students with exceptional needs as specified in law. Such programs and services must be clearly identified in each SELPA's local plan.

The Local Plan

SELPA's are required to develop and implement a comprehensive local plan containing assurances that it has in effect policies, procedures, and programs governing access to special education and services for all SWD residing within the geographic areas served by each plan. Elements of the local plan include the provision of a FAPE in the LRE, child find and referral, procedural safeguards, participation in statewide assessments, staff development programs, local administration, coordination with other public and private agencies, and management of fiscal responsibilities. The requirement for SELPA's to implement elements of its local plan as codified in California *Education Code (EC)* Section 56195 states, "Each SELPA, as defined in subdivision (d) of *EC* Section 56195.1, shall administer local plans submitted pursuant to Chapter 3 (commencing with *EC* Section 56205) and shall administer the allocation of funds pursuant to Chapter 7.2 (commencing with *EC* Section 56836)."

Changes to a Local Plan

Under *EC* Section 56100(b), the SBE must adopt criteria and procedures for the review and approval of special education local plans. In 1983, the SBE approved a size and scope policy for single LEAs, multi-LEA, or LEA-county regions seeking to become SELPA's. In 2000, approval of SELPA local plans submitted by single LEAs, multi-LEAs, or LEA-county regions that satisfy the SBE's size and scope policy was delegated to the SSPI. This delegation is still in place, and the CDE Special Education Division reviews local plans on a yearly basis.

In order to restructure a SELPA, certain criteria must be met or waived. For an LEA seeking to become a SELPA under 56195.1(a), the LEA must satisfy the SBE's size and scope policy requirements. In addition to size and scope, LEAs must adhere to the local plan changes regarding notification timelines and requirements which are codified in *EC* Section 56195.3:

In developing a local plan under Section 56195.1, each LEA must do the following:

(a) Involve special and general education teachers selected by their peers and parents selected by their peers in an active role.

(b) Cooperate with the county office and other LEAs in the geographic areas in planning its option under Section 56195.1 and each fiscal year, notify the department, impacted special education local plan areas, and participating county offices of its intent to elect an alternative option from

those specified in Section 56195.1, at least one year before the proposed effective date of the implementation of the alternative plan.

(c) Cooperate with the county office to assure that the local plan is compatible with other local plans in the county, including the local control and accountability plans adopted for the district and the county board of education, and any county plan of a contiguous county.

(d) Submit to the county office for review any local plan developed under subdivision (a) or (b) of Section 56195.1.

Further, a COE's responsibility to approve or disapprove any proposed local plan submitted by an LEA or group of LEAs with the county or counties elect is codified in *EC* Section 56140. If disapproved, the COE is required to make comments and recommendations to the LEA submitting the proposed local plan. If the local plan is disapproved by the COE, the LEA may immediately appeal the decision to the SSPI to overrule the COE's disapproval. Approval is based on the capacity of the LEA to ensure special education programs and services are provided to all SWD, and whether the local plan adheres to the guidelines and required components established pursuant to *EC* sections 56122 and 56205.

Once approved by the COE (or upon appeal to the SSPI of a COE denial), the LEA must submit a local plan to the CDE for approval or denial. The CDE reviews local plans using the SBE approved criteria of size and scope, notification timelines, and completion of local plan components and approves or denies a local plan. If a local plan is denied by the CDE for size and scope or notification timelines, an LEA may request a waiver of these requirement from the SBE. When the CDE receives a waiver request from an LEA to waive the SBE size and scope requirements in order to become a SELPA, the CDE staff use the same SBE approved size and scope policy to analyze the request and make a recommendation for approval or denial to the SBE. Aside from the SBE size and scope policy, the CDE has no additional criteria outlined in SBE policy or statute to guide the evaluation of the waiver request and, ultimately, the CDE's recommendation of approval or denial. Because the SBE approved the size and scope policy in 1983, some stakeholders have suggested the policy be revisited to ensure it acknowledges and reflects the current structure of special education service delivery and accountability in the state.

Special Education Local Plan Area Options for Charter Schools

Under California law, charter schools have two options for the delivery of special education services:

- Operate as an "arm of the district" or "school of the district" for special education purposes
- Become an LEA for special education purposes

Option 1: School of the District Status

If a charter school determines that it will remain a “school of the district,” they will not become an LEA member of the SELPA. LEA status will remain in the hands of the district and all special education services will be provided by the district, unless agreed to otherwise.

District Responsibilities

The district is responsible for ensuring that all special education services are delivered to students of the charter school in the same manner as traditional district schools. In most cases, the district will assume full responsibility for providing services to students in the charter schools. In exchange, the district will retain the full amount of state (AB 602) and federal (IDEA) special education funding that it receives from the SELPA on behalf of each charter school.

In addition, the *EC* also requires each charter school operating under this model to contribute financially to district-wide special education costs. This contribution is typically referred to as a “fair share contribution.” (*EC* Section 47646)

Charter School Responsibilities

While the charter school relies primarily on the district to provide special education services, the school still carries certain responsibilities with regard to special education. The school must work with the district to ensure that students are appropriately identified for special education, support service delivery, and implement and monitor the individualized education program of each eligible student. In some cases, the charter school does not receive any funding to carry out these functions, nor will the charter school have the ability to make decisions about how or by whom services are provided.

Option 2: Local Educational Agency Status for Purposes of Special Education

If a charter school chooses to be its own LEA for special education purposes, it would either join as a member of its authorizer’s SELPA or another SELPA. By becoming an LEA for purposes of special education, a charter school has more autonomy in funding, oversight, and service delivery.

Charter Special Education Local Plan Areas

As charter schools began to enter the California landscape, they faced challenges in joining a traditional SELPA. SELPAs were either not allowing or could not allow charter school LEAs to become SELPA members. This was particularly true of the SBE authorized charter school LEAs because they were not affiliated with an authorizing

school district within the geographic SELPA. To address this challenge, the SBE requested the CDE review SELPA options to ensure students with disabilities receive FAPE if a charter school operates as an LEA member in a SELPA that is not within the authorizer's geographic SELPA. For this purpose, the SBE established a pilot project that included four charter SELPAs (Desert Mountain, El Dorado, Lodi Area Special Education Region, and Yuba County) to consider the viability of continuing out-of-geographic region charter school affiliation with these SELPAs.

Currently, there are five charter only SELPAs in California: El Dorado Charter SELPA, Fresno County Charter SELPA, Los Angeles County Charter SELPA, Desert Mountain Charter SELPA, and Sonoma County Charter SELPA.

Section 2: Special Education Local Plan Area Role in Special Education Funding

Due to changes in special education law that occurred after 1980, SELPAs began and continue to play a significant role in California's special education funding process. In 1995, a joint Legislative Task Force, including the CDE, the Legislative Analyst's Office, and the Department of Finance issued a final report that equalized funding to SELPAs and allowed the LEA to determine the distribution of funds. The new funding model was signed into law in 1997 through AB 602. A guiding principle of the new funding model is that allocations to SELPAs encourage and support an area wide approach to service delivery that incorporates collaborative administration and coordination of the special education services within an area. It allows for the tailoring of organizational structures to differing population densities and demographic attributes, and provides local flexibility for the planning and provision of special education services in an efficient and cost effective manner.

To accommodate the unique needs of sparsely populated regions in the state, the state distributes additional funding to Necessarily Small SELPAs, defined as any countywide SELPA serving fewer than 15,000 students overall. SELPAs serving sparsely populated regions typically experience unusually high per-student special education costs for two reasons. First, LEAs in these regions have unusually high transportation costs because their staff might spend hours each week traveling between school sites or their students might be bussed long distances in order to receive services. Second, these LEAs often employ specialists with unusually small caseloads. Currently, California has 19 such SELPAs. These SELPAs receive add-on funding based upon a formula that provides the largest amount of additional funding to the smallest SELPAs, and SELPAs can use this funding for any special education expense.

As sometimes portrayed, SELPAs are not simply a pass-through entity for special education funds between the state to individual LEAs. Rather, each SELPA is responsible for administering all aspects of a local plan. *EC* Section 56836.01 states the administrator of a SELPA, in accordance with the board-approved local plan, has the following responsibilities:

- The fiscal administration of the annual budget plan pursuant to paragraph (1) of subdivision (b) of *EC* Section 56205 and annual allocation plan for multidistrict SELPAs pursuant to *EC* Section 56836.05 for special education programs of school districts and county superintendents of schools composing the SELPA.
- The dissemination of state and federal funds allocated to the SELPA for the provision of special education and related services by those entities.
- The reporting and accounting requirements prescribed by this part.

Further, *EC* Section 56836.23 requires funds for regionalized operations and services and the direct instructional support of program specialists be apportioned to the SELPA. As a condition of receiving these funds, the SELPA must ensure all functions listed below are performed in accordance with the description set forth in its local plan adopted pursuant to *EC* Section 56205:

- (a) Coordination of the special education local plan area and the implementation of the local plan.
- (b) Coordinated system of identification and assessment.
- (c) Coordinated system of procedural safeguards.
- (d) Coordinated system of staff development and parent and guardian education.
- (e) Coordinated system of curriculum development and alignment with the core curriculum.
- (f) Coordinated system of internal program review, evaluation of the effectiveness of the local plan, and implementation of a local plan accountability mechanism.
- (g) Coordinated system of data collection and management.
- (h) Coordination of interagency agreements.
- (i) Coordination of services to medical facilities.
- (j) Coordination of services to licensed children's institutions and foster family homes.
- (k) Preparation and transmission of required special education local plan area reports.
- (l) Fiscal and logistical support of the community advisory committee.

(m) Coordination of transportation services for individuals with exceptional needs.

(n) Coordination of career and vocational education and transition services.

(o) Assurance of full educational opportunity.

(p) Fiscal administration and the allocation of state and federal funds pursuant to Section 56836.01.

(q) Direct instructional program support that may be provided by program specialists in accordance with Section 56368.

Section 3: Special Education Local Plan Areas' Role in the Statewide System of Support

California's Accountability and Continuous Improvement System

In 2013, the Local Control Funding Formula (LCFF) significantly changed how California funds, evaluates, and supports public schools. The LCFF holds LEAs accountable for improving student performance and addressing opportunity and achievement gaps. The Local Control and Accountability Plan, an integral component of the LCFF, provides a way for LEAs to plan for continuous improvement by describing goals, actions, and services for all students and across student groups.

The LCFF required the SBE to adopt "evaluation rubrics" to assist LEAs in identifying strengths, weaknesses, and areas in need of improvement. The CDE developed the California School Dashboard to publicly report performance data on the indicators the SBE included in the evaluation rubrics. Results from the Dashboard are also used to identify LEAs that require additional assistance through the Statewide System of Support.

Support for LEAs is designed to build local capacity and assist LEAs in identifying and eliminating inequities, as part of the continuous improvement process. This support includes three levels: (1) support for all; (2) individually designed, or differentiated; and (3) intensive intervention. The new system is made up of numerous support providers, and all are expected to work collaboratively with one another to provide coordinated support to LEAs. COEs have a lead role in supporting this work by serving as facilitators and capacity builders.

The CDE continues to work to make the various state and federal programs more coherent and streamlined to avoid redundancies. In addition, the California Collaborative for Educational Excellence (CCEE) provides customized support to LEAs, including charter schools. The goal of this broad system of support is to build local

capacity and to ensure LEAs are equipped to develop, implement, and evaluate strategies so that all students have the resources necessary to succeed in school.

Special Education Resource Leads in the Statewide System of Support

The 2017 Dashboard highlighted the challenge LEAs face in improving outcomes for students with disabilities. Policymakers responded to this challenge in part through an on-going budget allocation of \$10 million to develop special education resource leads. Pursuant to *EC* Section 52073.2, the CDE and the CCEE selected seven SELPAs to serve as special education resource leads (SELPA Leads). SELPA Leads will work with other lead agencies in the Statewide System of Support and with COEs to improve outcomes for students with disabilities. SELPA Leads will serve up to five years as either Systems Improvement Leads or Content Leads. A critical aspect of the SELPA Leads role is to facilitate learning, develop the capacity of SELPAs across the state to implement and support continuous improvement processes, and connect SELPAs to resources or expertise within the statewide system of support responsive to locally identified needs.

Systems Improvement Leads

The SELPA Systems Improvement Leads (El Dorado County SELPA, West San Gabriel Valley SELPA, and Riverside County SELPA) will work collaboratively with the California Statewide System of Support and one another to build the capacity of SELPAs statewide. They will accomplish this goal through training and supporting the use of data best practices as well as evidence-based practices in root cause analyses, systems alignment, and coherence. These foundational processes will ground SELPAs and the LEAs they serve to ultimately improve educational outcomes for students with disabilities.

Content Leads

SELPA Content Leads will further develop the capacity of SELPAs to support the LEAs they serve in developing and implementing evidence-based practices for students with disabilities in particular areas of need. The SELPA Content Leads are:

- Marin County SELPA—In partnership with the California Autism Professional Training and Information Network to scale up the use of Evidence Based Practices
- Placer County SELPA—Open Access Project (focus on Universal Design for Learning, Assistive Technology, and Augmentative Alternative Communication strategies)
- South County SELPA—Disproportionality

- Imperial County SELPA—Students with Disabilities and English Language Learners

SELPA Leads will become important members of the statewide system of support to provide more targeted support related to special education and the education of students with disabilities.

Section 4: Update on Recent Activity

Since the 2013–14 school year, three LEAs have submitted waivers to the SBE to waive the single-LEA SELPA size and scope parameters: ABC Unified, Norwalk-La Mirada Unified, and Ontario-Montclair Unified. The details of each are below.

ABC Unified and Norwalk-La Mirada

Requests to waive size and scope came before the SBE at the meeting in July of 2014 with the split of ABC Unified and Norwalk-La Mirada.

- July 2014, Item W-17: ABC Unified School District and Norwalk-La Mirada Unified School District submitted waivers of size and scope to dissolve their partnership and individually pursue Single-district SELPA status.

After review of their proposed local plans, the CDE denied their proposals based on their individual failure to meet the SBE-adopted size and scope standards. Further, their individual enrollments were averaging a decline over a ten year period. Due to these factors, the CDE also recommended denial by the SBE. In the analysis section of the waiver, the CDE stated the following:

The CDE relies heavily on each SELPA to monitor and hold accountable each of their member districts for compliance with all provisions of state and federal special education law. Small, single district SELPAs present unique challenges in this regard, as the intermediary administrative body and the intermediary level of accountability does not exist. Instead, the CDE deals directly with the district as its own SELPA. It has been the experience of the CDE staff that small SELPAs—particularly those that do not meet size and scope requirements—generally have more compliance violations and fiscal challenges than their counterparts. This is likely due to the limited resources, infrastructure, and personnel available to small SELPAs. Dividing of the finite amount of resources available to NLM/ABC SELPA between the two districts, per their request, threatens their ability to maintain an infrastructure capable of adequately carrying out the responsibilities of a SELPA and to appropriately serve all students in the region.

The SBE approved the waiver request with the condition the waiver be reviewed in one year and the CDE report back to the SBE if there are any compliance issues. No compliance issues were identified.

Ontario-Montclair Unified School District

A request to waive size and scope came before the SBE at the meeting in January of 2017 for Ontario-Montclair Unified School District's separation from West End SELPA.

- January 2017, Item W-13: Ontario-Montclair Unified School District submitted a waiver of size and scope to split from the West End SELPA and pursue Single-district SELPA status.

The specifics of this particular case were unique in that West End SELPA voted to terminate Ontario-Montclair Unified from their governance structure, effective June 30, 2017. As opposed to seeking membership in an alternate SELPA, Ontario-Montclair Unified chose to pursue Single-district SELPA status. They did not meet size and scope standards, both in enrollment and in grade range, and their proposed local plan was denied by the CDE based on these factors. However, based on prior size and scope waiver decisions, the CDE recommended approval with conditions by the SBE. Specifically, the CDE staff recommended the following conditions:

- Timely and complete submissions of annual budget plans and annual service plans. Drafts of the first annual budget plan and annual service plan, are due to the California Department of Education (CDE) by March 30, 2017, to provide the CDE staff with time to review the plans and provide feedback to OMSD, if necessary. The finalized annual budget plan and annual service plan are due to the CDE by June 30, 2017, prior to the proposed effective date of July 1, 2017.
- Submission of an interagency agreement with OMSD's local regional center to meet the shared requirements of Part C of the Individuals with Disabilities Education Act (IDEA), Early Intervening Services, under Title 17 of the *California Code of Regulations (CCR)* sections 52000–52175; Title 14 of the *Government Code (GC)* Section 95000 et seq.; *EC* Section 56429; and *EC* Section 56205 (b)(3). The interagency agreement is due by June 30, 2017, prior to the proposed effective date of July 1, 2017.
- Demonstration of the capacity to provide the full continuum of services to all students with exceptional needs served by the OMSD SELPA. Evaluation of this capacity will include:
 - An annual review of OMSD's performance on State Performance Plan Indicator (SPPI) 12, Part C to Part B Transition

- An annual review of OMSD's timely completion of initial, annual, and triennial Individualized Education Programs (IEPs)
 - An annual audit of complaints filed against OMSD with the CDE Procedural Safeguards Referral Service (PSRS)
 - An annual review of Office of Administrative Hearings (OAH) findings regarding OMSD
- Demonstration of the ability to ensure the health and safety of all students with exceptional needs served by the OMSD SELPA. Evaluation of this ability will include:
 - An annual audit of complaints filed against OMSD with the CDE Procedural Safeguards Referral Service (PSRS)
 - An annual review Office of Administrative Hearings (OAH) findings regarding OMSD
 - Demonstration of the capacity to fulfill the administrative functions of a SELPA and a LEA. Evaluation of this capacity will include:
 - An annual review of OMSD's submission of required data to the CDE to ensure that it is timely, complete, and accurate
 - An annual review of OMSD's timely completion of initial, annual, and triennial IEPs

The SBE approved a two-year approval of the waiver with conditions. All conditions of the waiver were met by Ontario-Montclair.

Attachment(s)

- Attachment 1: Size and Scope of Special Education Local Plan Areas on the CDE Size and Scope web page at <https://www.cde.ca.gov/sp/se/lr/szscpselpa.asp>.
- Attachment 2: To review the Special Education Local Plan Area Regionalization Models, please see the California State Board of Education, January 2010 Agenda, Item 32, at <https://www.cde.ca.gov/be/ag/ag/yr10/documents/jan10item32.doc>. (6 pages)
- Attachment 3: To review the Special Education Local Plan Area Regionalization Plan flow chart, please see the California State Board of Education, January 2010 Agenda, Item 32, Attachment 1, at <https://www.cde.ca.gov/be/ag/ag/yr10/documents/jan10item32a1.doc>. (1 page)
- Attachment 4: To review the California State Board of Education Special Education Local Plan Area Size and Scope Requirements, please see the California State Board of Education, January 2010 Agenda, Item 32, Special Education Local Plan Area Size and Scope Requirements, Attachment 2, at <https://www.cde.ca.gov/be/ag/ag/yr10/documents/jan10item32a2.doc>. (2 pages)