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MODEL POLICY GUIDE

This resource is designed to provide policy makers, legislators, and educational leaders with information, context, and model language from which to draw in developing strong statutory and regulatory provisions relating to serving students with disabilities in charter schools.

Leveraging Policy to Increase Access and Quality Opportunities for Students With Disabilities in Charter Schools¹

This resource is designed to provide policy makers, legislators, and educational leaders with information, context, and model language from which to draw in developing strong statutory and regulatory provisions relating to serving students with disabilities in charter schools. We address a range of issues that significantly impact the ability of charter schools to provide effective and equitable special education offerings. Each section identifies a single issue, describes the challenges involved, and then offers relevant model language that can be modified by state leaders for use in their own charter school statutes or regulations. In each instance, the focus is on what is beneficial for students with disabilities who seek to attend or are already enrolled in charter schools. We then provide resources that may be valuable for a deeper understanding of the issues addressed here.

NCSECS Mission and Goals

To increase our collective understanding of the challenges, identify viable solutions, and ensure effective charter school practices that justify the trust of parents and students with disabilities, the charter sector needs a credible entity that will be a reliable resource for key stakeholders; both in the charter sector and the special education advocacy community. We created The National Center for Special Education in Charter Schools (NCSECS) to fill the current void and proactively seek to foster innovations that will benefit both charter and traditional public schools. In creating NCSECS, our goal is to advocate for students with diverse learning needs to ensure that if they are interested in attending charter schools, they are able to access and thrive in schools designed to enable all students to succeed.

¹This document is based on research conducted by NCSECS that was funded by the National Association of Charter School Authorizers (NACSA) and the Walton Family Foundation with substantive contributions from the NCSECS Equity Coalition . NCSECS maintains sole responsibility for its contents.

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I. Introduction

Public schools are legally responsible for providing students with disabilities a free appropriate public education in the least restrictive environment and for ensuring that legal rights established in federal statutes are protected. Under 45 state laws (including the District of Columbia), autonomy is extended to charter schools in return for increased accountability. Ideally, schools use this autonomy to create innovative educational opportunities for all students, including students with disabilities. Reflecting a commitment to both inclusion and reform, many charter schools do take on this challenge, seeking to provide programs and focused supports to meet the needs of diverse learners as a central aspect of their school’s mission. However, since the first charter school opened in Minnesota in 1991, there have been concerns that students with disabilities have not had equal access to charter schools or that the schools have not been fully equipped to provide appropriate supports and accommodations. Recent research and case law provide evidence that such concerns are warranted.²



Research on special education in the charter sector has documented that multiple factors influence the provision of special education and related services in charter schools.³ Federal statutes establish specific rights and responsibilities that shape how students with disabilities are educated in all public schools. Within these parameters, state charter school laws include provisions that define the legal identity of charter schools within the broader public school system and shape the extent of the responsibilities of both authorizers - the entities granted power by state charter statutes to create charter schools⁴ - and charter schools themselves for the provision of special education and related services. However, the specificity of these statutes varies considerably from state to state, as does the manner in which they are operationalized by individual authorizers.

Few state laws or regulations contain language that builds upon the requirements of federal law or contain a clear description of how special education obligations are assigned to the respective state education agencies (SEAs), the local district, the charter school or the entity that serves as the authorizer for a charter school. Even fewer state statutes include provisions that promote best, or ideally innovative, practices for serving students with disabilities in charter schools. Twenty plus years into the evolution of the charter sector, many charter schools continue to struggle to appropriately educate students with disabilities. In many schools this challenge is an ongoing source of concern for special education advocates and for families.⁵

Based on a review of state charter school laws and interviews with key stakeholders in those states, as well as input from a range of national special education and charter school experts participating in our Equity Coalition,⁶ this document outlines specific policy language that we propose will help states establish environments in which charter schools can successfully educate students with disabilities, and will ideally accelerate development and adoption of

²See Government Accountability Office, “Charter schools: Additional federal attention needed to help protect access for students with disabilities” (Washington, D.C.: 2012). Retrieved from <http://www.gao.gov/products/GAO-12-543> (hereinafter “GAO Report”); Harmony Public Schools Compliance Review Ca. No. 06-11-5004. Retrieved from <http://www2.ed.gov/documents/press-releases/harmony-public-schools-agreement.pdf>; and http://www.nola.com/education/index.ssf/2015/02/federal_judge_approves_landmar.html; Notice of Proposed Class Action Settlement: *Berry, et al. v. White, et al.*: Civil Action 2:10-cv-04049-JCZ-KWR. Retrieved from https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/resource/pb_v_white_-_notice_of_proposed_class_action_settlement.pdf

³Rhim, L. M., Ahearn, E. M., Lange, C. M., & McLaughlin, M. J. (2000). *Charter Schools and Special Education: Balancing disparate visions*. National Association of State Directors of Special Education; Bulkley, K. and Wohlstetter, P. (Eds.) (2003). *Taking Account of Charter Schools: What’s Happened and What’s Next?* New York: Teachers’ College Press; Rhim, L. M., & McLaughlin, M. J. (2007) Students with disabilities in charter schools: What we now know. *Focus on Exceptional Children*. 39 (5); Rhim, L. M., Ahearn, E., & Lange, C. (2007). Toward a more sophisticated analysis of the charter school sector: Considering legal identity as a critical variable of interest. *Journal of School Choice* 1(3).

⁴Depending on the respective state statute, authorizers may be state education agencies, local education agencies, specially appointed charter boards, institutions of higher education or independent non-profit boards.

⁵See GAO Report; Council of Parent Attorneys and Advocates, “Charter Schools and Students with Disabilities: Preliminary Analysis of the Legal Issues and Areas of Concern” (Boston: 2012). Retrieved from <http://c.ymcdn.com/sites/www.copaa.org/resource/collection/7D72B914-2EC7-4664-9124-A32598DA1ABE/Charter-Schools-and-Students-with-DisabilitiesFINAL.pdf>; Authorizing Data in Depth: Special Education, National Association of Charter School Authorizers (2016). Retrieved from <http://www.qualitycharters.org/research-policies/archive/authorizing-data-depth-special-education/>

⁶The NCSECS Equity Coalition is a group of special education and charter school experts regularly convened by NCSECS to consider issues of equity, access and educational performance in the charter sector. It is comprised of leaders from prominent organizations within both the charter and the special education communities. Please see the acknowledgments in Section VI for a listing of organizations that provided feedback on draft versions of this resource and their role in the development and content of this document.

innovative practices. This language is intended to inform state charter school policy development. Furthermore, we believe that the charter sector will gain significant ground when SEAs and charter school authorizers proactively implement and enforce existing laws and regulations. Establishing clear accountability for charter schools' failure to abide by relevant federal statutes,⁷ and ensuring that students with disabilities are extended the legal rights articulated under the law is critical. Failure to do so should trigger substantive action by authorizers, such as probation and limitations on the expansion or renewal of a school's charter.

It is our vision that states interested in strengthening their charter legislation and/or regulations and their support for students with disabilities in charter schools will adopt and adapt one or more of these passages into their existing statutes or regulations. In developing this resource, our goal is to help states embrace their responsibilities by addressing special education issues in a way that is both nuanced and reflective of best practices developed over the first 25 years of charter schooling.

II. Legal Backdrop

All public schools must follow federal education laws⁸ including the Individuals with Disabilities Education Act⁹ (IDEA), the Every Student Succeeds Act¹⁰ (ESSA), General Education Provisions Act,¹¹ (GEPA) and the Family Educational Rights and Privacy Act¹² (FERPA). They must be nondiscriminatory and comply with Title VI¹³ (race, color, national origin), Title IX¹⁴ (gender), Section 504 of the Rehabilitation Act of 1973¹⁵ (Section 504) and Title II of the Americans with Disabilities Act (ADA) (disability).¹⁶ All of these federal statutes and their corresponding regulations shape the education of students with disabilities in public schools, including charter schools. This guide focuses on issues related to IDEA, Section 504, and the ADA.



A. IDEA Considerations

IDEA is the primary federal law impacting students with disabilities who need specialized instruction, and as public schools that receive federal funding, charter schools are required to meet the applicable requirements. IDEA assigns responsibility for fulfilling the obligations outlined in the statute to SEAs that in turn delegate these responsibilities to local education agencies (LEAs). Ultimate responsibility for ensuring that all students with disabilities in the state receive FAPE, however, remains with the SEA, including implementation and enforcement of rights and protections. Historically, most LEAs have been school districts typically comprised of individual schools overseen by a central office. LEAs are responsible for providing “child find” to identify and evaluate students who may be eligible to receive special education and related services, or accommodations, services and supports. Once an LEA determines that a student is eligible for special education and related services under federal law, the LEA is responsible for upholding the legal rights of students with disabilities to be free from discrimination; to receive a free, appropriate public education (FAPE); and to have access to a full continuum of placements to meet the needs of all students with disabilities in the least restrictive environment (LRE). This continuum encompasses places and locations where supplementary aids and services are delivered, which can range from the general education classroom to a home or hospital setting, depending on the needs of the individual student.¹⁷

⁷See Section II, Legal Backdrop.

⁸20 U.S.C. § 7221(i)(G), (I).

⁹20 U.S.C. § 1400 *et seq.* (2010).

¹⁰S. 1177 — 114th Congress: Every Student Succeeds Act.

¹¹20 U.S.C. § 1221(2010).

¹²20 U.S.C. § 1232g (2010).

¹³Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

¹⁴Title IX of the Education Amendments of 1972, 20 U.S.C. §1681.

¹⁵29 U.S.C. §794.

¹⁶Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*

¹⁷34 C.F.R. § 300.115; see also *Oberti v. Clementon School District*, 995 F.2d 1204 (3d Cir. 1993), defining the continuum as “placements to meet the needs of [] children [with disabilities] as resource rooms, itinerant instruction, speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child’s particular disabilities.”

B. Section 504 & ADA

Section 504¹⁸ and the ADA.¹⁹ are federal civil rights statutes that provide protection against discrimination for individuals with disabilities and disabling conditions. Section 504 and the ADA function more broadly than IDEA to include any individual who has a physical or mental impairment that substantially limits one or more life activities, including learning. This language can cover disabilities that do not fall under one of the 13 specific categories listed in IDEA, such as a child suffering from a chronic illness or physical impairment resulting from cerebral palsy. These civil rights laws cover children who attend charter schools to the same extent as children in any other public school.

Section 504 and the ADA are applied almost identically in a public school context – ensuring that no otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. These statutes provide for reasonable accommodations to provide physical access to facilities, but stop short of requiring accommodations that would “fundamentally alter” a particular program. Section 504 has requirements for child find, evaluation, FAPE, and LRE similar to those found under IDEA, although Section 504 does not provide funding and no IDEA funds can be used for students eligible only under 504.²⁰ Additionally, the ADA reaches both public and private providers even where there are no federal funds.

C. Impact of LEA Status on Special Education in Charter Schools

While all public schools are required to comply with federal statutes, IDEA explicitly assigns primary responsibility for special education to LEAs. Therefore, the legal status of a charter school, as either its own LEA or as part of an LEA, as outlined in state charter school authorities is **the** defining characteristic that determines the entity responsible for ensuring provision of an education that meets the requirements of IDEA. It is crucial that state charter laws make the LEA status clear, and identify how related issues such as funding and responsibility for provision of a full continuum of placements are operationalized as well.

IDEA was enacted in 1975, nearly 20 years before the first charter school law passed in Minnesota. Consequently, the statute did not anticipate or address the prospect of charter schools, many of which were established as single-school LEAs or semi-autonomous schools operating as part of a larger district LEA. While federal law trumps any conflicting state law, the development of charter schools has pushed federal, state, and local policy makers and practitioners to figure out how these new schools and districts fit within the federal statutes and state public education systems, essentially requiring them to retrofit existing policies and procedures. Despite some subsequent amendments to IDEA to account for charter schools, the alignment between state charter laws and federal disability laws remains imperfect. Nonetheless, the law is clear: students with disabilities enrolled in public schools, whether traditional or charter, must be provided FAPE in the LRE.²¹

As outlined in IDEA, state charter school laws generally identify charter schools to be either independent LEAs or part of an existing LEA.²² In a few states, such as New Hampshire and New York, the arrangement is more complex and charter schools are the LEA for some purposes (e.g., ESSA Title I) and part of an LEA for other (e.g., special education under IDEA). In some locations, such as California, the District of Columbia and Missouri, charter schools have some choice in their LEA status. The following sections outline the implications of LEA status in more detail. Because the vast majority of charter schools are either independent LEA’s or part of an LEA, this brief is limited to model language pertaining to these two arrangements.

¹⁸29 U.S.C. § 794.

¹⁹42 U.S.C. § 12101 *et seq.*

²⁰See Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973 (U.S. Department of Education 2016). Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf> (“FAQ about 504”)

²¹See Boundy, K. B. (2012). *Charter Schools and Students with Disabilities: Preliminary Analysis of the Legal Issues and Areas of Concern*. Council of Parent Attorneys and Advocates.

²²20 U.S.C. § 1400 *et seq.* (2010).

§ 300.209 Treatment of charter schools and their students.

(b) Charter schools that are public schools of the LEA...

(c) Public charter schools that are LEAs....

(d) Public charter schools that are not an LEA or a school that is part of an LEA.

(1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149;

1. Charter Schools Operating as Independent Local Educational Agencies

Some states provide charter schools with the highest possible degree of legal autonomy by according them status as an independent LEA, treating the school like a district and attributing to it both the independence and the obligations that go with that status. Charter schools serving as an independent LEA have the same responsibilities as do traditional districts serving in that role. This includes fulfilling the responsibilities outlined by IDEA, ADA, and Section 504; ranging from child find, initial referrals and evaluations; to the development of an Individualized Education Program (IEP) for each eligible student; to the provision of special education and related services, as well as transition plans for high school students.²³ In reality, although an LEA by law and obligations, single school LEAs often have limited resources and can struggle to create or maintain the economies of scale necessary to support the staff and services that are crucial to meeting the needs of all students. Charter schools that are their own LEA may provide special education and related services directly, or contract with outside providers such as charter management organizations and networks, for service delivery; however, they retain the obligation to ensure that specialized instruction and related services are provided by qualified personnel in a manner consistent with federal and state special education law. Charters who are their own LEAs typically retain federal and state funding attributable to the LEA but the extent to which they are provided access to local revenues (e.g., those dollars collected and allocated by local school boards with taxing authority) varies considerably.²⁴ States where charter schools are independent LEAs include but are not limited to Arizona, Ohio, and Pennsylvania.

2. Charter Schools Operating within Local Educational Agencies

In other states, the traditional district, frequently also serving as the school's authorizer, remains the LEA and retains primary responsibility for providing special education and related services to students with disabilities. This arrangement may limit the obligations of the charter school but also makes the school dependent on the traditional district for evaluations, service delivery and other measures. Charter schools that are part of an LEA share responsibility for providing the full continuum of placements with the larger district; the LEA has primary responsibility for special education and charters within it must collaborate with their LEA to ensure students are provided appropriate services. This is the case in places like Denver and Atlanta. The school is obligated to implement each student IEP or 504 plan and facilitate access to the educational program. Funding for special education and related services is allocated proportionally to charter and traditional schools within the same district based on service provision. The LEA retains special education funds corresponding to whatever services it provides. States should develop a separate mechanism for communicating with parents regarding who has ultimate responsibility for fulfilling IEP requirements.

In some instances, LEAs may elect to delegate primary responsibility and authority, as well as the corresponding funding, to charter schools located within the LEA. The LEA may delegate such tasks to charter schools, but retains ultimate responsibility under IDEA for LEA obligations. In such circumstances, a memorandum of understanding should set forth the respective roles of the LEA and charter school. LEA responsibility to provide services may also be delegated to an educational service provider or network that contracts with multiple charter schools within an LEA, but ultimate accountability for FAPE remains with the LEA.

²³For a more in-depth description of the relevant provisions outlined in IDEA and details regarding special education, see Rhim, L.M., O'Neill, P. (2013) *Improving Access and Creating Exceptional Opportunities for Students with Disabilities in Public Charter Schools*, National Center for Special Education in Charter Schools. Retrieved from <http://static.squarespace.com/static/52feb326e4b069fc72abb0c8/t/5399c1f8e4b0807b2cb79137/1402585592311/NAPCS-Disabilities-Report-03.pdf>.

²⁴Batdorff, M., Maloney, L., & May, J., (2010). Charter school funding: Inequity persists. Ball State University. Retrieved from <https://cms.bsue.edu/-/media/WWW/DepartmentalContent/Teachers/PDFs/charterschoolfunding051710.pdf>; Progress Analytics Institute and Public Impact. (2005). Charter School Funding: Inequity's Next Frontier. Thomas B. Fordham Institute. Retrieved from <https://edexcellence.net/publications/charterschoolfunding.html>

III. Key Issues and Model Policy Language

The following sections introduce basic background context and proposed bill language to address specific aspects of practice that will enhance access to and quality of special education programming and, ideally, foster innovation. A state interested in strengthening its law or regulations may opt to incorporate any or all of these provisions, either verbatim or in a form modified to align with existing state law and policy. Herein, the term “law” could refer to a statute, regulation or other authority, as appropriate.

NOTE – Because the LEA status of a charter school impacts many of the topics covered in this guide, the suggested language is divided into two columns “LEA” and “Non-LEA” for the remainder of this document wherever the language is dependent on the LEA status. Where the concept is consistent regardless of the LEA status, the language appears just once. Contextual information appears in regular text; model law language appears in italics.



A. Legal Context

Applicable Federal Laws

State charter laws should include language stating that IDEA, Section 504, and the ADA are applicable to charter schools.²⁵

MODEL LANGUAGE

Charter Schools shall comply with the requirements of the Individuals with Disabilities Education Act (IDEA), including its mandate that students covered by its protections receive a free, appropriate public education with access to the general curriculum in the least restrictive environment appropriate for their needs. Charter schools shall develop and implement an individualized education program for each such student.

Charter schools shall also comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA). In accordance with Section 504 and ADA, no otherwise qualified individual with a disability seeking to engage in a major life activity shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by a charter school. Charter schools shall create, maintain, and implement a service plan and provide accommodations for each student determined to be eligible for such services.

LEA Status

State charter laws should make the LEA status of their charter schools clear.

LEA	Non-LEA
<p><i>MODEL LANGUAGE</i></p> <p><i>Each charter school shall serve as the local education agency (“LEA”) for purposes of special education and related services.</i></p>	<p><i>MODEL LANGUAGE</i></p> <p><i>Each charter school shall serve as a school of location within its local education agency (“LEA”) for purposes of special education and related services.</i></p>

²⁵For more guidance regarding the application of these laws to charter schools, see Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act (U.S. Department of Education 2016). Retrieved from <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf> (“FAQ about IDEA”); FAQ about Section 504; and Office of Civil Rights, Dear Colleague Letter: Charter Schools (U.S. Department of Education 2014), www.ed.gov/ocr/letters/colleague-201405-charter.pdf. For more information about the application of ADA in charter schools, see Boundy, K. B. (2012).

B. Enrollment

Enrollment: General

Charter schools must enroll students without regard to disability status. The legal status of the school as either the LEA or as a school within a district LEA determines how this responsibility is operationalized.

LEA	Non-LEA
<p><i>MODEL LANGUAGE</i></p> <p><i>Each charter school shall enroll all students without regard to disability and be responsible for identifying and evaluating students with suspected disabilities; providing appropriate special education and related services, modifications and accommodations for students with disabilities; and for assuring that a full continuum of placements is available for any enrolled student.</i></p>	<p><i>MODEL LANGUAGE</i></p> <p><i>Each charter school shall enroll students without regard to disability status. Following selection via the lottery, the individualized education program (“IEP”) of any student with a disability shall be immediately reviewed. If the charter school has concerns that the student’s IEP requires a more restrictive environment than can be provided by the charter school, it shall ask the LEA to convene an IEP team meeting with representatives from the charter school in order to make any adjustments to the IEP or the school’s program that the IEP team deems necessary to ensure that the student is educated in the least restrictive environment (“LRE”). It is the LEA’s responsibility, via the IEP team, to determine an appropriate placement. In rare instances where an IEP team determines that the charter school is not the least restrictive environment appropriate, the LEA shall take responsibility for the student and determine his or her placement.</i></p>

Enrollment Quotas

There is considerable data showing that, in many places, charter schools enroll a lower percentage of students with significant support needs (e.g., students with complex IEPs) than do non-charter schools in the districts in which they are located.²⁶ In response, education policy makers and legislators in some states have implemented an enrollment quota system – requiring charter schools to enroll a certain percentage of students with disabilities that tracks local or national norms (e.g., New York). This may be well-intentioned but is an ineffective reaction to a troubling situation. The problem is two-fold:

1. Only very limited research has been conducted examining what the enrollment discrepancies mean, and whether they reflect a uniform problem or a combination of potentially variable concerns.²⁷ For example, it may well be that in some instances charter schools improperly resist enrolling students with disabilities; in other cases traditional school districts may be over-identifying students as having disabilities; in still others, charter schools may be meeting the needs of students who learn differently absent a formal IEP and who might otherwise receive a special education label; and

²⁶See, e.g., GAO Report; and Rhim, L. M., Gumz, J., & Henderson, K., (2015). *Key Trends in Special Education in Charter Schools: A Secondary Analysis of the Civil Rights Data Collection 2011-2012*. New York, NY: National Center for Special Education in Charter Schools.

²⁷See, e.g., GAO Report; Winter, M. (2015). *Narrowing the Charter-Enrollment Gap: Denver’s Common Enrollment System*. Manhattan Institute Civic Report. Retrieved from <https://www.manhattan-institute.org/sites/default/files/R-MW-1215.pdf>; Winters, M. (2013). *Why the Gap? Special Education and New York City Charter Schools*. Center for Reinventing Public Education and Manhattan Institute for Policy Research. Retrieved from <http://www.crpe.org/sites/default/>

2. The problem of under-representation of students with disabilities in charter schools is a complex one, and imposing a quota to address it is overly simplistic. Students receiving special education services have a spectrum of needs that range from limited speech/language deficits to significant support needs. Simply stating that a fixed percentage of students who enroll in charter schools must be identified as having a disability in order to achieve equity ignores this reality. Moreover, under IDEA student needs, as reflected in their IEPs, dictate whether or not a particular student receives special education services. Charter schools can engage in robust recruitment efforts designed to attract students with disabilities, and may establish a preference for students with disabilities in states where such preferences are allowed. However, as schools of choice, charter schools cannot simply meet a quota – they must serve those students with identified needs who choose to enroll there or choose to enter the lottery if the school is over-subscribed.

Charter schools should be open in their admissions as well as equitable and welcoming in their recruitment practices. An IEP team cannot place students into a charter school as it might in a traditional public school. State charter school laws impose such admissions restrictions, and federal guidance reinforces these. Quotas are a poor fit with this specialized environment, and other means for ensuring access and equity should be explored. In fact, given the problems inherent with adoption of enrollment quotas, we decline to offer policy language designed to implement them. We do not believe that quotas reflect best practices. Instead, we recommend that states and charter school authorizers develop focused strategies to assist charter schools to recruit, retain, and support students with disabilities.

Enrollment Preferences

Nearly all (i.e., 40 out of 45, including the District of Columbia) states that allow charter schools have language in their charter school law that permits some sort of enrollment preferences²⁸ (e.g., allowing certain groups of students to be extended priority in admissions). In instances where state law allows for an admissions preference for students with disabilities, LEA charter schools may request applicants to provide information about disability status solely for that purpose (and not for the purpose of denying admission to students with disabilities). The most common preference is for siblings of current students. Other common preferences include those for applicants residing in the school's neighborhood or children of founding board members.²⁹ Policy language that allows (i.e., does not forbid) a school to give preference to underrepresented groups of students or to students "at risk" for academic failure, such as students with disabilities, would enable schools to more intentionally enroll these students as a general policy or as a remedial strategy for schools identified by authorizers as under-enrolling students with disabilities.

The federal government has offered detailed guidance regarding the use of enrollment preferences to foster the enrollment of students with disabilities in charter schools.³⁰ Guidance related to funding eligibility under the Charter Schools Program administered by the U.S. Department of Education as part of the Elementary and Secondary Education Act does not allow for the creation of a school to *exclusively* serve students with disabilities, but does allow schools to offer a specialized program that may be particularly attractive to students with disabilities (e.g., a dual language program that teaches American Sign Language). Guidance related to Section 504 affirms that schools cannot ask a prospective student if they have a disability. An exception is provided where the school intends to use that information solely to enhance the chances for a student with a disability to be admitted or enrolled where a school is chartered to serve the educational needs of students with a specific disability and the school asks prospective students if they have that disability.³¹

²⁸The terms enrollment preference and admissions preference are used interchangeably; herein the concept is referred to as enrollment preference.

²⁹For more information on state preference language, see *50 State Comparison: Charter Schools—Does the state specify the charter schools or the students that may be given preference?* Education Commission of the States. Retrieved from <http://ecs.force.com/mbdata/mbquestNB2?rep=CS1504>.

³⁰The Department has issued non-regulatory guidance regarding weighted lotteries <http://www2.ed.gov/programs/charter/nonregulatory-guidance.html>. This language is now codified in the Every Student Succeeds Act. We appreciate potential concerns about specialized charter schools, but we believe that seeking to benefit a particular category of at-risk students is not tantamount to discrimination and is working lawfully and effectively in many charter schools across the country. Such schools are required to respect legal mandates, such as the Least Restrictive Environment provisions of IDEA, that require public schools to educate students with disabilities together with their non-disabled peers to the maximum extent appropriate for their needs.

³¹See FAQ about IDEA.

LEA	Non-LEA
<p>In instances where state authorities allow for an admissions preference for students with disabilities, LEA charter schools may request applicants to provide information about disability status solely for that purpose (and not for the purpose of denying admission to students with disabilities).</p>	<p>Charter schools within an LEA may establish a program for students who require a more restrictive setting (e.g., less than 40% of their school day in the general education classroom) in places where state authorities allow for an admissions preference for students with disabilities. In order to serve such students and ensure compliance with the least restrictive environment (“LRE”) provisions of federal and state law, these charter schools may request applicants to provide information about educational placement solely for that purpose (and not for the purpose of denying admission to students with disabilities). Such programs may provide additional public options for parents of students with disabilities. They cannot, however, violate LRE restrictions against placing students with disabilities in settings that are more restrictive than their abilities and circumstances dictate.</p>

MODEL LANGUAGE

- A. *The admissions process of a charter school shall be blind, except that the school may request that parents applying for enrollment disclose whether their child has an individualized education program if and only if the sole purpose of such disclosure is to apply an enrollment preference for such students, as permitted by all applicable laws and authorities. In this case, parents shall be provided information on the enrollment preference before being asked to disclose their child’s disability status. Any such disclosure shall be voluntary; parents shall not be required to provide information as to special education status when applying for admission, but will not be eligible for an enrollment preference tied to disability if disability status information is not provided. Any school utilizing an enrollment preference benefiting students with disabilities shall include information about such a preference as part of its annual reporting to its authorizer.*
- B. *Charter schools may give preference to educationally disadvantaged groups (e.g., students with disabilities, English Language Learners, and other students identified as at risk of academic failure). This preference is to be exercised through a blind weighted lottery to give slightly better chances for admission to all, or a subset of, educationally disadvantaged students if:*
 - (i) the use of weighted lotteries in favor of such students is not prohibited by State law, and such State law is consistent with laws described in section 4310(2)(G);³² and*
 - (ii) such weighted lotteries are not used for the purpose of creating schools exclusively to serve a particular subset of students.*
 - (iii) In instances where authorizers have documented a pattern of under-enrollment of certain populations of students, weighted lotteries may be required and schools will be asked to submit a recruitment plan to ensure under-represented groups are actively encouraged to apply to attend the school.*
 - (iv) This section does not preclude the formation of a charter school whose mission is focused on serving students with disabilities, students of the same gender, students who pose such severe disciplinary problems that they warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend such school, the charter school shall select students through a lottery.*

³²S. 1177 — 114th Congress: Every Student Succeeds Act. § 4303(b)(3).

Creation of Charter Schools Primarily or Entirely for Students with Disabilities

In some cases, charter school founders seek to establish a school that primarily or entirely focuses on students with a particular category or categories of disability. Charter schools that focus on serving students with specific disabilities such as autism, hearing impairment or learning disabilities exist in a number of states (e.g., Florida, Arizona, and Ohio). In order for such schools to be lawful, they must take account of applicable federal law, such as the LRE provisions of IDEA, limitations on enrollment under ESSA and Section 504,³³ mandates related to restraint and seclusion, as well as with state charter law. If the charter school receives funds through the U.S. Department of Education’s Charter School Program, it must also take account of requirements outlined in the Department’s regulations and guidance related to the definition of a charter school (e.g., open enrollment policies and lotteries for oversubscribed schools).³⁴ In line with broader efforts to facilitate inclusive practices and decrease the proportion of students being educated in more restrictive settings, applications to create specialized schools should trigger a review by the LEA to assess availability and delivery of special services in the school catchment area. Consistent with federal law, a student should not be placed in such a school solely on the basis of their disability category.

MODEL LANGUAGE

This section does not preclude the formation of a charter school whose mission is focused on serving students at risk of academic failure, such as those with disabilities. Charter schools focused on meeting the needs of students with disabilities may target recruitment and admissions in a manner that permits them to enroll and serve students with a particular disability profile, or who need similar special education services and supports. Any such preferences shall be consistent with an admissions and enrollment plan approved by the authorizer and consistent with the school’s charter and applicable state and federal law. Consistent with federal law, a student should not be placed in such a school solely on the basis of his or her disability category.

C. Funding

Funding: General

LEA	Non-LEA
<p>Charter schools serving as their own LEA typically retain federal and state funding attributable to the LEA but the extent to which they are provided access to local revenues (e.g., those dollars collected and allocated by local school boards with taxing authority) varies considerably.³⁵</p> <p>MODEL LANGUAGE</p> <p><i>The charter school shall receive all federal, state, and local (as applicable) categorical special education funds and be solely responsible for the cost of education of all students with disabilities who enroll at the school, including any cost of transportation and cost of any legal fees incurred.</i></p>	<p>When a charter school operates as part of an LEA, funding for special education and related services is allocated proportionally to other district schools and the charter school in accordance with service provision – the LEA retains special education funds corresponding to whatever services it provides; the charter school does the same.</p> <p>MODEL LANGUAGE</p> <p><i>The charter school shall receive an allocation of all federal, state, and local (as applicable) funds that is proportionate to the services provided by the charter school to students with disabilities enrolled there. The [ENTITY SERVING AS THE LEA] shall likewise retain all such funds corresponding to the services it provides to students with disabilities enrolled in the charter school.</i></p>

³³See preceding section regarding enrollment for more information.

³⁴See fn 30, above.

³⁵Batdorff, M., Maloney, et al (2010); Progress Analytics Institute and Public Impact (2005); Rhim, L.M., O’Neill, P. Ruck, A., Huber, K., Tuchman, S. (2015) *Getting Lost While Trying to Follow the Money: Special Education Finance in Charter Schools*, National Center for Special Education in Charter Schools.

Funding Transparency

Public schools utilize multiple revenue sources to support provision of special education and related services. When charter schools are part of an LEA, they are sometimes provided with services rather than direct revenue from federal, state, or local sources. Yet charter schools have limited means to assess the extent to which they are receiving equitable services relative to these revenue streams. Furthermore, unlike traditional public school districts, they do not have any means to increase local revenues should they require more resources to provide special education and related services. Additional transparency regarding funding sources will provide both traditional and chartered public schools with greater clarity regarding the relationship between revenue and services.

LEA	Non-LEA
<p><i>MODEL LANGUAGE</i></p> <p><i>State education agencies will provide charter schools with an annual accounting of federal, state, and local (as applicable) revenue, disaggregated by source, and by which method they were derived, allocated to support the provision of special education and related services to students enrolled in charter schools that operate as independent local education agencies.</i></p>	<p><i>MODEL LANGUAGE</i></p> <p><i>Local education agencies will provide charter schools with an annual accounting of federal, state, and local (as applicable) revenue, disaggregated by source, and by which method they were derived, allocated to support the provision of special education and related services to students enrolled in charter schools that operate as part of the local education agency.</i></p>

Extraordinary Cost Aid

One baseline fact of special education is that students with more intensive service needs can, as a result of their disabilities, require significantly more resources than do other students. Those who receive services and interventions for a majority of the school day, even when placed in an inclusive classroom, may require higher staffing levels, modifications, and accommodations that can be extraordinarily costly. Some states fund extraordinary aid reimbursement funds or “risk pools” explicitly for the purpose of assisting districts that enroll students with extraordinary needs. Charter schools, especially those that serve as independent LEAs, should have equal access to information about these funds and equal opportunity to apply to receive full or partial reimbursement should they enroll and serve a student whose services, accommodations, or modifications are above the normal cost per pupil.

MODEL LANGUAGE

A charter school shall have equal access to state supplemental reimbursement funds for students who require extraordinary special education and related services. A charter school shall receive extraordinary cost aid for special education and related services funded and delivered directly or indirectly by the school to pupils with significant disabilities in accordance with the level of service provided by the school. Where an LEA other than the charter school provides these services directly or indirectly, it shall retain such funds.

Self-Insurance/Risk Pools

Risk pools and self-insurance arrangements can help charter schools shoulder the obligation of funding expensive special education and related services.

LEA	Non-LEA
<p><i>MODEL LANGUAGE</i></p> <p><i>The charter school shall create a restricted self-insurance reserve for special education costs or liabilities, in an amount agreed to with the authorizer. Such a reserve may be established over a period of years, as directed by the authorizer. The charter school may participate in any risk pool or similar cost-sharing arrangement otherwise permitted by applicable law.</i></p>	<p>There is no equivalent for non-LEA charter schools, but schools should be aware of other risk pools to which they may have access, such as ones held by their state or LEA. Reserve funds and risk pools are a common way that traditional schools manage extraordinary costs and charter schools may consider a similar arrangement.</p>

Preschool Funding

To effectively serve young children enrolled in preschool programs, charter schools need access to Section 619 of IDEA, which allocates federal funds for early childhood education.

MODEL LANGUAGE

Charter schools shall have equitable access to funding under Section 619 of the Individuals with Disabilities Education Act to support the provision of services to preschool students. Such access to funding shall be equal to that of other public schools providing preschool education in the state.

D. Service Provision/Operations

Service Provision: General

LEA	Non-LEA
<p>Charter schools serving as their own LEA have the same responsibilities and authority of traditional districts serving in that role. They may provide special education and related services directly or contract with outside providers, such as charter management organizations and networks, for service delivery.</p> <p>MODEL LANGUAGE</p> <p><i>Upon enrollment, students, including those with disabilities, are matriculated at the charter school. Immediately thereafter, the district or charter school in which each student with a disability was previously enrolled, shall transfer to the receiving charter school the student’s current individualized education program (“IEP”) as defined by the federal Individuals with Disabilities Education Act (“IDEA”). The receiving charter school will seek to implement the IEP. Where there are any indications of a potential misalignment between the IEP and the ability of the charter school to implement it as written, the IEP team³⁶ shall conduct an expedited review, assessing the new setting in light of identified student needs and the current IEP. The IEP team will make any necessary adjustments to the IEP or the school’s program in light of the student’s enrollment in the receiving school. As the LEA, the charter school will fully meet the identified needs of each student with a disability.</i></p> <p><i>The charter school shall be responsible for conducting Child Find as to all students enrolled in the public charter school. In order to implement a revised IEP, a charter school may, if needed, retain independent</i></p>	<p>Where a charter school is a school within an LEA, the LEA ordinarily retains primary responsibility and authority under state law for students with disabilities enrolled at the school. The school is obligated to implement the student’s IEP or 504 plan and facilitate access to the educational program.</p> <p>MODEL LANGUAGE</p> <p><i>The LEA shall be responsible for identifying and evaluating in a timely manner those students with disabilities who are enrolled at the charter school but not yet identified. For all students identified, the LEA shall be responsible for developing and overseeing an IEP. The LEA shall be responsible for the cost of any transportation required by the student’s IEP and for any cost of related legal fees. The charter school shall be responsible for assuring that its staff implements student IEPs. Should the LEA express concern regarding the conduct of any charter school employee or contractor in relation to a special education matter, the charter school shall respond to such concerns in good faith, taking corrective action if appropriate. Should the school fail to take effective corrective action following such notice, it shall indemnify the LEA for any cost of defense or remedy attributable to the conduct of its employees or contractors.</i></p> <p><i>(i) If the LEA provides all special education and related services to a charter school, it may retain all federal, state, and local (as applicable) categorical special education funding and may charge the charter school for additional special education costs. If the LEA provides less than all special education and related</i></p>

³⁶IDEA requires that an IEP team include: the parents of the child; a regular education teacher of the child if the child is participating in regular education; one special education teacher of the child, a representative of the public agency responsible for specialized instruction of the child, an individual who can interpret the instructional implications of evaluation results (may be one of the above); other individuals who have knowledge or expertise regarding the child; and, whenever appropriate, the child with a disability. 34 CFR § 300.321(a).

LEA (continued)

contractors or contract for placements at other schools, in addition to employing its own special education and related service providers. Regardless of how or where they receive instruction, such students shall continue to be enrolled at the charter school. In the event the charter school contracts for all or a substantial portion of its special education responsibilities to be carried out through an educational service provider, the contract with the educational service provider shall be reviewed and approved in writing, in advance, by the charter school’s authorizer.



Non-LEA (continued)

services, it may retain an amount of federal, state, and local (as applicable) funding proportionate with what it provides. A charter school may express any concerns it has with special education or related service staff of the LEA to the appropriate managers who shall respond to such concerns in good faith, taking corrective action or reassigning staff if appropriate.

(ii) If a charter school provides special education and related services, or contracts with other parties who provide such services, the school shall receive a share of federal, state, and local (as applicable) special education funding, if any, proportionate to the level of services it provides to students with disabilities.

(iii) If a charter school provides all special education and related services, or contracts with other parties to provide such services, for every student who enrolls in the school, the charter school shall be responsible for identifying, evaluating, and providing appropriate special education and related services and accommodations for students with disabilities and ensuring that a full continuum of placements is available. Such an arrangement shall be established only with the consent of the LEA and memorialized through a memorandum of understanding with the LEA clearly stipulating who is responsible under the contract for delivering a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”). The charter school may retain independent contractors or contract for placements at other schools, in addition to employing its own special education and related service providers. Such a charter school shall receive all federal, state, and local (as applicable) categorical special education funds, less a reasonable administrative fee charged by the LEA not to exceed two percent of such funds, and the charter school shall be responsible for the cost of educating all students with disabilities who enroll at the school including any cost of transportation and any cost of any legal fees incurred. The charter school shall indemnify the LEA for all costs of defense and all costs of remedies in special education matters attributable to any conduct of the charter school and may maintain a restricted self-insurance reserve in an amount negotiated by the school and the LEA as security for such indemnification. The charter school may participate in any risk pool or similar cost-sharing arrangement otherwise permitted by law.

Service Provision and Charter Autonomy

LEA	Non-LEA
<p>Charters that are their own LEA are autonomous.</p> 	<p>Charter schools that operate as part of an existing LEA are typically required to adopt the existing LEA’s special education policies, practices, and programs (e.g., a specific reading or behavioral support program). However, established approaches may not align with a charter schools’ unique instructional programs. Furthermore, adopting the district’s policies, practices, and programs may preclude charter school operators from creating a distinct and potentially innovative special education program that is more aligned with the school’s mission and vision, yet still in compliance with federal and state statutes related to FAPE and LRE. Policy language that permits an autonomous charter school operating within an existing LEA to develop and implement its own special education policies, practices, and programs in compliance with IDEA and based on clear evidence of capacity or, in the instance of a charter management organization, replicating an existing model’s record of compliance and academic success, will create better opportunities for special education innovation in charter schools. In an instance where the existing LEA is operating under a consent decree due to significant documentation of non-compliance with a federal statute (e.g., IDEA), this policy language would enable a charter school to create its own policies, practices, and programs that are in compliance, as opposed to being required to potentially replicate LEA policies and practices that are not in compliance.</p> <p>MODEL LANGUAGE</p> <p><i>Charter schools that are part of a local education agency may elect to receive federal, state, and local (as applicable) special education revenue and provide services themselves in lieu of receiving special education and related services from the LEA if:</i></p> <ul style="list-style-type: none"> <i>(i) the existing local education agency has been found to be out of compliance with IDEA (e.g., the local education agency is operating under a consent decree due to significant findings of non-compliance); or</i> <i>(ii) the charter school can demonstrate sufficient capacity to operate as a local education agency and provide a full continuum of services in compliance with relevant statutes.</i>

Role of Educational Service Provider³⁷

Many charter schools choose to partner with an educational service provider for key offerings. These can include special education and related services.

LEA	Non-LEA
<p>MODEL LANGUAGE</p> <p><i>The charter school may collaborate with other charter schools to create a Network Local Education Agency (“Network LEA”) (e.g., multiple independent LEAs that enter into a formal agreement to collaborate and share resources). In offering a continuum of placements to students, the Network LEA may take any action that could be taken by another LEA, subject to any same conditions and limitations as are placed on actions of the member charter schools by IDEA, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”) or other applicable law; however, ultimate responsibility for meeting obligations outlined in IDEA remains with the charter LEA that enrolled the student with a disability.</i></p>	<p>MODEL LANGUAGE</p> <p><i>In the event a charter school seeks to contract with an educational service provider to carry out all or a substantial portion of its special education responsibilities to be carried out through the educational service provider, the contract with the educational service provider shall be reviewed and approved in writing, in advance, by the LEA, which shall not unreasonably withhold its approval. The charter school may collaborate with other charter schools to create a Network Local Education Agency (“Network LEA”). In offering a continuum of placements to students with disabilities across multiple charter schools, the Network LEA may take any action that could be taken by an LEA, subject to the same conditions as are placed on the LEA or the schools, by the Individuals with Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”) or other applicable law; however, ultimate responsibility for meeting obligations outlined in IDEA remain with the district LEA.</i></p>

Access to Centralized Resources

Schools should have access to centralized or regional resources available in order to benefit from support provided by designated entities (e.g., Board of Cooperative Education Services or Education Service Center) to create economies of scale, access service providers, and determine best practices.

LEA	Non-LEA
<p>Access to Educational Service Agencies and Resource Organizations</p> <p>MODEL LANGUAGE</p> <p><i>A charter school shall have access to centralized services and supports from the state’s intermediate school districts and resource organizations to the same extent as non-charter schools.</i></p>	<p>Access to Intermediate School Districts and Resource Organizations</p> <p>MODEL LANGUAGE</p> <p><i>A charter school shall have access to centralized services and supports from the state’s intermediate school districts and resource organizations to the same extent as non-charter public schools.</i></p>

³⁷IDEA provides considerable flexibility in how LEAs may meet their obligation to serve enrolled students. There are numerous instances of LEAs contracting with schools or other third parties for service provision. Where a cluster or network of geographically proximate schools choose to contract with the same service provider, they may collectively seek to have the provider provide services that impact all constituent schools. Such an arrangement could result in a student enrolled in a particular school receiving services in another school in the network. It should be noted that, if a school were to seek to limit access to its program solely on the basis of a student’s disability, other legal authorities, such as Section 504 and ADA, could be a barrier.

Students with Significant Support Needs

State law should include the charter schools’ responsibilities for providing FAPE, including for those students with significant support needs.

LEA	Non-LEA
<p>MODEL LANGUAGE</p> <p><i>Consistent with each student’s right to be educated with non-disabled peers to the maximum extent appropriate, charter schools are responsible for providing FAPE to all students, including all necessary special education and related services. Their options for doing so for students with significant support needs for which they do not already have a program include developing their own program of services, contracting with public or private providers, or otherwise arranging to provide the required services. The school could also place the child in a private school at the charter school’s expense. Where available, the charter school may seek to use the LEA high cost fund to defray the cost of a child with significant support needs [this assumes the state exercises its option to reserve 10 percent of the funds it reserves for other State-level activities for such a fund as described in 34 CFR §300.704(c)] or access any available risk pool.</i></p> 	<p>MODEL LANGUAGE</p> <p><i>Consistent with each student’s right to be educated with non-disabled peers to the maximum extent appropriate, a charter school may serve as a site for a center-based or model inclusion program for students with significant support needs. In that event, the LEA may refer students to the program and parents whose children are appropriately served by such a program may select it. The charter school shall be responsible for designing the program and shall submit its plan for LEA approval, which shall not be unreasonably withheld. The charter school shall receive all federal, state, and local (as applicable) categorical special education funds attributable to students with significant support needs and be responsible for the education of students placed in the program. The charter school and respective student’s LEA shall reach agreement on the extraordinary and indirect costs that the LEA will pay the school, in addition to other funding, to support such a program. Students residing within the LEA in which the charter school is physically located shall receive preference in admissions. Enrollment of non-LEA students in the program for students with significant support needs shall be contingent upon available space and requisite extraordinary and indirect costs being paid by the LEA-of-residence to support such enrollment. Where the LEA is the authorizer, should it determine that the charter school is not appropriately fulfilling its responsibilities under this section, it may revoke the charter school’s authority to operate the program for students with significant support needs, following the procedures for authorizer revocation of a charter school. Where the LEA is not the authorizer, it shall provide such information to the authorizer that shall enable the authorizer to revoke the school’s charter.</i></p>

Facilities Access

Charter schools are required under federal law (e.g., the ADA and Section 504) to make programs fully accessible to all students. Charter schools may be unaware of these responsibilities and it is important that they be explicitly addressed in state charter school law. The steps needed to comply with applicable rules will depend on the age and configuration of a particular facility; however, regardless of when a charter school’s facilities were constructed or altered, the charter school must ensure that individuals with disabilities are not discriminated against or excluded from participation in a program or activity because facilities are inaccessible to or unusable by persons with disabilities.³⁸ Additionally, a charter school is barred from selecting facilities for charter schools, including rentals, if it

³⁸See FAQ about 504.

would have the effect of excluding persons with disabilities from the program, deny the person benefits of the program, or otherwise discriminate against persons with disabilities; or have the effect of defeating or substantially impairing accomplishment of the objectives of the services, program, or activity for persons with disabilities.³⁹ Either charter school authorizers or an alternative designated monitoring agency (e.g., municipal health and safety agency) should be responsible for ensuring charter schools meet accessibility requirements.

These laws require that programs such as those of charter schools be made accessible except where they constitute an “undue burden” or require a “fundamental alteration” of a program. Exactly what constitutes this threshold is not easy to define – courts have interpreted it in varying ways, depending on the circumstances. But it is clear from their collective rulings that it is a high threshold, and that mere inconvenience or financial impact alone is not likely sufficient grounds for excluding a student.

MODEL LANGUAGE

Each charter school must, consistent with the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), ensure that people with disabilities are not excluded from programs, activities or services at the school, even if their facility is not fully accessible. Each charter school shall make its program accessible to students with disabilities, as well as to their parents and guardians, to school personnel and to members of the public in accordance with Section 504. If the school has obtained a waiver due to undue burden or fundamental alteration, this information should be publically available.

Virtual Schools

Charter schools that deliver content through a virtual or blended learning model may be an attractive option for students with disabilities because the nature of virtual learning allows students to access a highly individualized program. Nevertheless, it can be challenging to meet state and federal special education requirements in the virtual environment. Virtual school administrators may have little experience with special education programs and may be unaware of the services to which students with disabilities are entitled. Related services, particularly occupational and physical therapy, may be especially difficult for virtual charter schools to provide to students spread throughout the wide geographic area that characterizes many virtual charter schools. Furthermore, virtual school websites must be Section 508 compliant.⁴⁰

MODEL LANGUAGE

- A. *Virtual or blended learning charter schools have the same obligations related to educating students with disabilities as do brick and mortar public schools. Schools that deliver their content via virtual or blended learning shall engage in Child Find, evaluation and identification of disabilities in accordance with state law, and shall review students’ individual education programs to make adjustments given changes in how the curriculum is delivered to students while ensuring that such changes do not diminish students’ ability to receive a free appropriate public education or limit admissions. Schools that deliver their content via virtual or blended learning shall ensure curriculum is delivered in conformity with the student’s IEP to ensure the student’s ability to receive a free appropriate public education.*
- B. *Authorizers that grant charters to virtual or blended learning schools shall ensure the online program is accessible and allows for use of accommodation and modifications as indicated on the students’ IEP, implement a means to track how special education and related services outlined in the IEP are delivered to students with disabilities, and ensure procedural guards are followed.*

³⁹Ibid.

⁴⁰Amendments to the Rehabilitation Act of 1973 require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. 29 U.S.C. § 794. More information available at <https://ed.gov/notices/accessibility/index.html>.

E. Oversight

Authorizer Oversight

The authorizer, in cooperation with the state education agency, has an important role in overseeing how special education practices are implemented in the charter schools under their purview. Effective authorizers ensure that charter schools are structured from their inception to carry out lawful and sufficient practices regarding enrolling and educating students with disabilities. Authorizers should integrate questions related to educating students with disabilities into their charter application materials, and secure assurances from the charter applicant that they understand and will uphold the legal requirements. By establishing review procedures and regular reporting requirements regarding special education data, authorizers can identify any concerns or deficiencies and address them before they become larger or longer-term problems. For instance, the DC Public Charter School Board has adopted procedures to conduct special education audits in the event that a school exhibits certain indicia of non-compliance related to special education. Examples of criteria include enrollment and discipline trends, and student outcome data.

Where circumstances merit intervention, the authorizer may place a charter school on a corrective action plan to provide a structure and timeline to address identified concerns. In extreme cases, authorizers may revoke a charter due to non-compliance with IDEA. Depending on the LEA status of the school, the authorizer may have primary responsibility for addressing special education deficiencies or that obligation may fall to the district or the state.

MODEL LANGUAGE

The authorizer of each charter school shall have the authority and responsibility to engage in oversight of charter school special education practices and to coordinate with the state education agency in order to ensure equitable access to these schools and compliance with applicable law.

Charter authorizers shall, during the application process and throughout each school year, secure an assurance from charter applicants that they know and understand their legal obligations under IDEA during the initial consideration of the charter application and subsequent renewal process. In line with federal accountability requirements, authorizers shall collect special education data related to: enrollment, service provision, participation rates on statewide testing, student academic performance and growth, mobility, extracurricular activity participation, and discipline to assess the extent to which students with disabilities have equal access to schools and, once enrolled, are provided appropriate services. If the authorizer determines that a charter school is not ensuring that students with disabilities are receiving the benefits provided by IDEA, such as a free appropriate public education in the least restrictive environment, the authorizer shall work with the charter school to create a publicly available corrective action plan that will modify practices and expand access and services on a specific timeframe. Creation and implementation of the corrective action plan may inform expansion, replication, or renewal decisions. Failure to make progress toward goals articulated in corrective action plan could result in charter revocation.

OPTIONS

Authorizers can take a variety of forms, depending on state law, such as districts, universities, non-profit organizations, independent chartering boards or the state education department. State law also determines whether an authorizer, whatever its form, is the LEA. The options below provide language about the special education obligations and authority in several differing scenarios:

Where the authorizer is the LEA:

The authorizer shall be primarily responsible for requiring and overseeing such corrective steps.

Where the charter school is the LEA:

The authorizer shall provide such information to the state education agency (SEA) that will allow the SEA to take appropriate oversight action.

Where the district is the LEA and the authorizer is not affiliated with the district:

The LEA shall provide the authorizer with such information that will allow the authorizer to take appropriate oversight action.

Data on Students with Disabilities

In order to ensure that the needs of students with disabilities in charter schools are identified and met, authorizers must, on an ongoing basis, gather and utilize a wide range of data pertaining to such students. Such data should allow the authorizer to identify and address any areas of concern, as well as generate publically accessible information about enrollment and student performance patterns that can contribute to a greater understanding of the extent to which students with disabilities are accessing and being served by charter schools.

MODEL LANGUAGE

Consistent with the requirements of federal law, including the Elementary and Secondary Education Act, as well as applicable state law, authorizers shall collect, maintain, annually assess, disseminate and make publically available data pertaining to students with disabilities in the charter schools for which they have oversight authority. Such data shall include but not be limited to, information pertaining to enrollment and identification of students with disabilities, categories of special needs served, placement (e.g., least restrictive environment data), student academic performance on statewide assessments, student academic growth, mobility rate, student participation in extracurricular activities, disciplinary actions, and funding.

IV. Closing Comments

Every state charter school law addresses special education, but currently none of them says very much. This lack of specificity is a problem. General provisions lack clarity and fail to identify the sorts of key issues this resource is designed to provide. When rights and obligations are not articulated, they can be ignored, misunderstood and misapplied. The purpose of this document is to highlight the key considerations, to explain the circumstances behind them, and to offer model language that can serve as a template for state efforts to strengthen laws and regulations defining how students with disabilities are served in charter schools. Policymakers seeking to draw on this resource should begin by familiarizing themselves with their state's relevant charter school authorities and modify our template language so that it works within their own statutory and regulatory scheme.



V. Key Resources

- National Center for Special Education in Charter Schools
www.ncsecs.org
- National Association of Charter School Authorizers
www.qualitycharters.org
- National Alliance for Public Charter Schools: A New Model Law for Supporting High-Quality Charter Public Schools: Second Edition
<http://www.publiccharters.org/wp-content/uploads/2016/10/2016ModelCharterSchoolLaw.pdf>
- Getting Lost While Trying to Follow the Money: Special Education Finance in Charter Schools
https://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/56391fb2e4b06ea3a17aabce/1446584242886/sped_finance_web.pdf

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