

NATIONAL CENTER FOR  
**SPECIAL EDUCATION**  
IN CHARTER SCHOOLS

*"Creating Opportunities for Excellence"*

A young boy with dark skin, wearing a yellow and white striped polo shirt, is shown from the chest up. He is looking down at a book with his right hand resting on the cover. The book is white with Braille characters visible on the cover. The background is a blurred indoor setting.

## Improving Access and Creating Exceptional Opportunities for Students with Disabilities in Public Charter Schools

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National Center for Special Education in Charter Schools

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# Improving Access and Creating Exceptional Opportunities for Students with Disabilities in Public Charter Schools

## EXECUTIVE SUMMARY

Roughly 13 percent of students enrolled in public schools have a disability that qualifies them to receive support services under the umbrella of special education and related services. The majority of these students can be expected to achieve on par with their peers who do not require additional supports. And the most recent CREDO report found that across the states analyzed, students with disabilities enrolled in charter schools outperformed their peers in mathematics. Provision of special education and related services in public charter schools has been an ongoing source of debate since the sector's inception: Where do these new, autonomous schools fit in the topography of public schools under federal special education requirements? And are public charter schools welcoming students with diverse learning needs? While much of the debate has been influenced by single-case anecdotes and hyperbole, where there is smoke there is often fire. The charter sector needs to proactively address concerns related to access and provision of quality services for students with disabilities.

This report explores the relevant legal framework that shapes special education in the charter sector; outlines both the challenges and opportunities presented by state public charter school laws that create autonomous schools that operate separate from or alongside traditional public school districts; and identifies key accountability structures. Efforts to change the dynamics must focus on (1) creating quality programs that attract a diverse array of students and (2) holding accountable charter schools that fall short, by design or default, of welcoming and supporting students with disabilities. Based on legal actions in New Orleans and Washington, D.C., and anecdotes from other cities where access and service provision are increasingly under a microscope, charter schools that fail to chart an intentional course related to students with disabilities may be subject to cumbersome regulatory burdens advanced by charter opponents. However, public charter schools do not need to wait until required to improve their approach to educating students with disabilities. The following actions can help operators and support organizations proactively ensure that their schools not only welcome but also create exceptional opportunities for all students, including students with disabilities.

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### *1. Advocate To Address Policy Barriers*

Public charter schools face barriers stemming from idiosyncratic state charter statutes, policies, and traditional district practices (e.g., inequitable funding, unclear delegation of responsibility and authority, and limited access to critical special education infrastructures). Rather than passively accept these barriers, charter operators and support organizations can form coalitions and mobilize parents to advocate for policy changes in the best interests of students with disabilities.

### *2. Adopt Key Instructional Strategies To Support All Students*

Best practices such as preschool; Universal Design for Learning; and robust Response to Intervention programs that have a laser sharp focus on early literacy, quality instruction, targeted interventions, and progress monitoring benefit all students, particularly students with disabilities with diverse learning needs.

### *3. Identify Strategic Partnerships and Coalitions*

Many public charter schools are small, have limited budgets, and lack key institutional routines and structures. While these conditions are challenging, they create an environment that is ripe for entrepreneurial innovation. Strategic partnerships with other public charter schools, existing community organizations (e.g., mental health providers), and even traditional public schools can build and extend charter schools' capacity related to special education.

### *4. Hire Intentionally and Well*

Due primarily to small school size, many public charter school employees need to be able to wear multiple hats. Consequently, the value of individual employees is amplified—public charter schools must hire exceedingly well. Hiring intentionally requires a clear understanding of how a particular position fits within the broader school puzzle. It also may require being creative about job descriptions to fully leverage individual teachers' and administrators' unique skills. Providing differentiated supports to students with diverse learning needs depends on hiring skilled employees who not only understand special education law, but also, more important, understand how to accommodate individual students' needs.

### *5. Track, Analyze, and Report Data*

Much of the dialogue regarding special education in the charter sector is driven by anecdotes and outliers, but data are essential to a reasoned conversation. Public charter school operators and support groups can pre-empt potentially cumbersome demands from opponents by proactively collecting and reporting data regarding special education.

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## 6. Own and Address Shortcomings

To date, enough public charter schools have fallen short in enrolling and effectively serving students with disabilities that acknowledging and addressing these shortcomings is important to change the dialogue about special education in the sector. In particular, public charter schools that have struggled to attract and retain students need to engage qualified personnel, parents, and local special education advocates to enhance their programs and improve their reputations in the special education community. Public charter schools need to own and address perceptions, and in some cases, real shortcomings, to attract students.

# EDUCATING STUDENTS WITH DISABILITIES IN PUBLIC CHARTER SCHOOLS

Approximately 6.4 million students—13.1 percent of the student population between the ages of six and 21—receive special education and related services in public schools every year.<sup>1</sup> Ninety-five percent of these students are enrolled in neighborhood schools, and the vast majority spend most of the day in a general education classroom.<sup>2</sup> While these students require a diverse array of services to help them fully access the general education curriculum, most of them can achieve the same academic outcomes as their peers without disabilities.<sup>3</sup>

As the charter sector enters its mid-20s, it ought to evaluate both its strengths and its weaknesses.<sup>4</sup> To meet the ambitious goals that drive the sector, stakeholders must double down on efforts to ensure not only that all students can access public charter schools, but also that charter school leaders are committed to creating and sustaining vibrant public schools that include a focused effort on integrating excellent opportunities for students both with and without disabilities.

*“It is time for the charter community itself to fix the failings in the sector, so that more children have the chance to attend a great school.”*

National Association of Charter School Authorizers (2013). *One Million Lives*.

Two decades into the evolution of the charter sector, we have witnessed exciting innovations and expanded opportunities for students in large urban districts, midsize suburban districts, and remote rural communities. Yet, to date, the sector has not

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effectively leveraged its autonomy to intentionally develop exemplary programs and services for a specific group of students who learn differently: students with disabilities.

This report outlines the key laws that shape how public schools educate students with disabilities; raises issues charter school authorizers, operators, and support organizations must consider when developing quality special education programs; and introduces promising practices that have helped stakeholders build capacity to ensure that students with disabilities can not only access but also thrive in public charter schools.

## RELEVANT LEGAL FRAMEWORK

Educating students with disabilities in public schools is shaped by an amalgam of federal, state, and local statutes, regulations, negotiated agreements, and established—if not always best—practices. Efforts to improve opportunities within the charter sector must consider these frameworks, as they all influence school-level practice.

### *Federal Special Education Statutes and Regulations*

The rules and regulations that guide how we approach educating students with diagnosed disabilities, ranging from mild learning disabilities to significant cognitive or physical impairments, grew out of the civil rights movement—including the equal protection standard established by the *Brown v. Board of Education* case (1954). Advocacy efforts focused on changing practices that largely relegated poor students and students with disabilities to segregated settings and limited their access to education led to four key federal laws that notably influence education practice in U.S. public schools today and specifically the education of students with disabilities.<sup>5</sup>

### **Elementary and Secondary Education Act of 1965 (ESEA)**

ESEA is a federal statute designed to provide states, districts, and schools with additional funding to benefit children living below or just above the federal poverty level.<sup>6</sup> Over the course of the last five decades, ESEA has evolved to contain multiple “titles” (i.e., specific funding streams) developed to help at-risk students. Title I, developed to help students at risk due to poverty, is the largest of the ESEA title programs. Examples of other titles in ESEA include aid for migrant children, English learners, and neglected children. Reauthorized by the No Child Left Behind Act in 2001, the statute prioritizes accountability for results, expanded choice for parents, greater local control and flexibility, and implementation of effective practices based on scientific research. ESEA largely defers to the Individuals with Disabilities Education Act and other laws in this list with regard to educating students with disabilities. However, the law does create a special education category for

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accountability purposes—one of several major categories of the at-risk subgroup for which districts must demonstrate academic progress.

### **Section 504 of the Rehabilitation Act of 1973 (Section 504)**

Section 504 is a civil rights statute that protects against discrimination by recipients of federal funds.<sup>7</sup> Broad in scope, it applies to individuals with a physical or mental impairment that substantially limits one or more major life activities (such as learning), have a record of such impairment, or are regarded as having such an impairment. Section 504 applies where exclusion is solely on the basis of a disability and the individual is otherwise qualified to participate in an activity. People covered by Section 504 are entitled to a free, appropriate public education and reasonable accommodations in the classroom and when taking assessments but not to fundamental alterations of a particular program.

### **Americans with Disabilities Act (ADA)**

ADA is another federal civil rights statute.<sup>8</sup> For the purposes of public education, it is very similar to Section 504 (e.g., both programs are overseen by the Office for Civil Rights of the U.S. Department of Education using the same regulations). The reach of ADA is even broader than that of Section 504, since it is not limited to recipients of federal funds. Title II of ADA applies to public entities; Title III applies to private entities (referred to by ADA as public accommodations). Like Section 504, ADA ensures physical access to facilities. It protects against architectural barriers and ensures program accessibility.

### **The Individuals with Disabilities Education Act (IDEA)**

The Education of All Handicapped Children Act of 1975, renamed the Individuals with Disabilities Education Act in 1990<sup>9</sup>, codified due process protections and established a federal funding stream to help states provide services to students with disabilities.<sup>10</sup> IDEA identifies school districts as the entry point for students with disabilities, ages three to 21, to access essential supports and interventions. Services delivered under the auspices of IDEA, typically referred to as special education and related services, are provided to enable children with certain categories of disabilities to access public education to the same extent as their peers without disabilities. IDEA establishes specific guidelines regarding educating children with disabilities and provides financial support to states. The law assigns primary responsibility for implementation to state education agencies (SEAs), which in turn largely delegate the responsibility to individual school districts, generally referred to as local education agencies (LEAs).

IDEA establishes key structures and constructs that shape how we educate students with disabilities and outline a process to ensure that public schools comply:

**Child Find.** Under IDEA, states are required to develop policies and procedures to ensure that children from birth to age 21 who are eligible to receive special education supports and services are identified, located, and evaluated. The primary

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purpose of Child Find is to identify children who are eligible for services and provide them with early interventions. The mandate extends to all children, including children who do not enroll in public schools. Many entities, including pediatricians, daycare centers, preschools, and homeless shelters typically disseminate information related to Child Find.

**Individualized Education Program (IEP).** Under IDEA, LEAs must provide each child found to be eligible for special education with an IEP developed by a team of general and special educators, specialists, and the student’s parents. The IEP outlines a plan to meet the student’s educational needs, including goals for student progress and the specific services the LEA will provide.

**Free Appropriate Public Education (FAPE).** Public schools are responsible for providing students with disabilities a FAPE. The constructs of “free” and “appropriate” education mean that each child is to be provided services and programs identified by the IEP team as needed to meet the child’s individual needs, and these services and programs are to be provided by the public education system at no cost to the student’s family. The standard of what is “appropriate” education has been the subject of litigation. To date, Congress and the courts have defined FAPE as a continuum of services and supports necessary to provide a student with a disability access to the general education curriculum. The courts have not allowed LEAs to use cost to define what is “appropriate.” Section 504 and ADA ensure FAPE as well.

**Least Restrictive Environment (LRE).** The principle of LRE dictates that children with disabilities should, to the extent that it is possible and meets students’ educational needs, be educated in the general education classroom (i.e., included) alongside their peers without disabilities and provided with appropriate aids and supports to maximize their access to the general education curriculum. LRE builds on the civil rights principle that separate is, by definition, not equal.

*The maze of rules and regulations that guide practice shapes our understanding of special education. Yet, educating students with disabilities is more similar than dissimilar to educating all students: Effective instruction leads to student learning.*

Both FAPE and LRE have been the focus of extensive litigation, including numerous Supreme Court cases.<sup>11</sup> Depending on a child’s particular cognitive or physical disability, meeting the standard of FAPE and LRE can entail educating students in a range of settings, from 100 percent of the school day in a general education classroom with minimal special aids and supports, to 100 percent of the day in a private residential setting with extensive services. While students with disabilities were historically educated in segregated environments and then “mainstreamed” as

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determined appropriate by their IEP team, inclusive classrooms are now the default position. That is, students are educated in their neighborhood schools in general education classrooms alongside their peers and pulled out as deemed appropriate by their IEP team based on their individual needs. While states and districts have historically operated segregated schools for specific groups of students (e.g., schools for students who were deaf or blind or students with significant cognitive disabilities), inclusion in the general education classroom is the ideal, and during the last 20 years, there has been significant pressure by special education advocates to close or limit segregated settings.<sup>12</sup>

The maze of rules and regulations that guide practice shapes our understanding of special education. Yet, educating students with disabilities is more similar than dissimilar to educating all students: Effective instruction leads to student learning. That said, successfully educating students with disabilities requires (1) that practitioners have high expectations and a deep understanding of how to teach and support students with a diverse array of needs and (2) that administrators and policymakers understand how to navigate the complex web of rules and regulations crafted to protect students' rights to public education. Given their unique needs, educating students with disabilities can be challenging. Nevertheless, as public charter schools present themselves as an alternative to traditional public schools, charter school leaders' and support organizations' commitment to *all* students is an important measure of the sector's commitment to equality of opportunity.

*Charter school leaders and support organizations' commitment to all students is an important measure of the sector's commitment to equality of opportunity.*

### *State Special Education Statutes and Regulations*

IDEA outlines SEAs' responsibilities to educate students with disabilities, and in turn, SEAs are required to develop statutes and regulations to guide the implementation of IDEA.<sup>13</sup> Some states have aligned special education statutes very closely with IDEA, whereas other states have expanded on the scope of the federal law to prescribe local practice in detail. Although most state charter laws grant public charter schools waivers from state education requirements, these statutes still influence the contexts in which schools operate.

In states where public charter schools must follow all or significant aspects of state education code (e.g., teacher certification requirements), the schools need to comply with the code analogous to traditional public schools, including state special education code. In states where public charter schools are not required to follow

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the education code, they may still be influenced by it because the rest of the public education system operates in compliance with the code.

For instance, public charter schools in Massachusetts are their own LEA and are not required to abide by most state education statutes. Historically, a key aspect of the special education delivery model in Massachusetts has been a network of special education collaboratives formed by local districts that pool resources to administer key aspects of their special education programs. When public charter schools were first authorized in Massachusetts, the state education code regarding special education collaboratives was silent about charter schools. Because public charter schools were not explicitly permitted to join or form collaboratives, they were forbidden from forming a special education collaborative. Charter schools were allowed to join an existing collaborative “provided the collaborative agreement permits such an arrangement,” which most did not.<sup>14</sup> This minor technical issue, which arose because public charter schools did not exist when the legislation permitting collaboratives was drafted, prevented charter schools from creating and readily accessing collaboratives. In 2012, the legislature adopted amendments to the education code explicitly permitting public charter schools to create collaboratives—a key special education support structure.<sup>15</sup> This instance from Massachusetts is a prime example of how the intersection of charter laws and existing state laws can create unforeseen challenges for charter schools.

### *State Charter School Laws: Establishing Legal Identity*

State charter school laws have grown more nuanced, and the model law developed by the National Alliance serves as a blueprint for new laws (e.g., Maine and Washington) and major amendments to existing laws (e.g., Colorado and Louisiana).<sup>16</sup> While state charter school laws have many similarities (e.g., type of authorizers, specifics of what is required in charter applications, and renewal cycles and processes), the laws are highly idiosyncratic and reflect the outcomes of legislative processes that involve negotiations and compromises by various stakeholders.

With few exceptions, questions and concerns about the extent to which existing policy parameters influence public charter schools’ ability to provide quality special education services have not generated much state-level legislative action.<sup>17</sup> As was the case at the launch of the movement, for the purposes of special education, the key aspect of charter school law is the establishment of a charter school’s legal identity as an independent LEA or part of an existing LEA.<sup>18</sup>

IDEA assigns responsibility for educating students with disabilities to SEAs, which in turn, delegate the lion’s share of the responsibility to LEAs. Consequently, whether a public charter school is its own LEA or part of an existing traditional LEA determines the manner in which the school serves students with disabilities.

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Legal recognition as an LEA has notable programmatic and financial implications.<sup>19</sup> Public charter schools that operate as independent LEAs often have greater freedom—and responsibility—in designing curricula, hiring teachers and staff, and implementing programs. Also, with a few exceptions, charter LEAs receive state and federal moneys directly and have control over how they spend those funds. Public charter schools that operate as independent LEAs are wholly responsible for providing students with disabilities a full continuum of services analogous to a multi-school district.

Public charter schools that operate as part of an LEA generally have access to a variety of services through the district central office analogous to traditional public schools (e.g., human resources, transportation, and legal counsel). As part of a larger, multi-school LEA, they are generally able to take advantage of the economies of scale realized when purchasing a variety of goods and services. However, they are denied some of the programmatic and financial freedoms typically deemed crucial to the development of new and innovative schools. Public charter schools that operate as part of a district usually share responsibility for special education. In practice, this shared responsibility generally involves being required to adopt the district’s approach to educating students with disabilities, regardless of the extent to which it aligns with the charter school’s mission. The extreme example of this situation is public charter schools being required to adopt the established special education program provided by an LEA, even in instances when the district is operating under a court-imposed corrective action plan (i.e., a consent decree) due to failure to comply with IDEA, as was the case in Baltimore from 2003 to 2012.<sup>20</sup>

Fitting public charter schools into a policy framework that assigns responsibility according to legal status—an independent LEA or part of an LEA—has been a challenge since the very beginning of the charter sector.<sup>21</sup> First, many state laws lack clarity regarding legal status. Further, some assign status according to authorizing entity, leading to public charter schools within the same state having different legal identities. While this diversity is not necessarily problematic, it introduces another level of complexity when trying to place charter schools within the larger public education system (e.g., some charter schools are invited to participate in district professional development opportunities and others are not). Second, some states define public charter schools as independent LEAs, except for special education (e.g., New Hampshire and New York), thereby further complicating the legal landscape and the definition of an LEA. Existing structures (e.g., monitoring and reporting and funding distribution systems) are generally ill prepared to manage the introduction of new single-school LEAs or autonomous schools within existing LEAs. In practice, this confusion has hindered both policymakers’ and practitioners’ efforts to fully understand public charter schools’ responsibilities or build their capacity related to enrolling and educating student with disabilities.<sup>22</sup>

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### *Charter Agreements*

A public charter school's agreement with its authorizer is the formal document that outlines the mission of the school and the outcomes for which the authorizer will hold the school accountable. In addition to a description of the school, the agreement generally outlines specific roles and responsibilities of both the charter school and the authorizer. When a public charter school is an LEA, the agreement typically contains a brief statement of assurances to comply with IDEA and other related federal statutes. When a public charter school is part of an LEA, the charter agreement may simply state that the traditional LEA will be responsible for providing special education and related services. Ideally, the agreement outlines details regarding how the charter and the LEA will navigate what must be a collaborative approach and how each entity will be held accountable for specific aspects of service delivery. For instance, the agreement should articulate who will be responsible for conducting Child Find (i.e., identifying and evaluating children to determine if they have a disability that qualifies them to receive special education or related services) and how decisions regarding staffing and related services will be made. Regardless of the details articulated, the agreement is yet one more contextual piece that influences how a public charter school approaches educating students with disabilities and how it will be held consequently accountable—a potential point of focus when striving to improve the quality of services.

## KEY ISSUES ASSOCIATED WITH EDUCATING STUDENTS WITH DISABILITIES IN PUBLIC CHARTER SCHOOLS

Public charter schools' relative autonomy provides them an opportunity to innovate absent the ingrained systems and bureaucracies that can bind traditional public schools. Yet, more than 20 years of experience indicate that, in practice, many charter leaders have not fully leveraged this autonomy for the benefit of students with disabilities. Multiple challenges influence delivery of special education and

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related services in the charter sector. Efforts to ensure that (1) students with disabilities can access public charter schools and (2) these schools are positioned to offer strong academic programs for all students are predicated on understanding and, to the extent possible, mitigating challenges specific to public charter schools.

The remainder of this report summarizes the key issues and identifies specific steps that public charter school operators, network leaders, and support organizations can take to ensure not only that students with disabilities can access schools but also that, as a sector, charter schools successfully leverage their autonomy to develop exemplary programs for students with a diverse array of learning needs.

### *Equal Access*

Ensuring that a student's disability does not limit access to education is a core tenet of federal disability law. As public schools, charter schools are required to operate open enrollment policies; federal guidance related to the definition of a charter school explicitly identifies open enrollment—or if a school is oversubscribed, enrollment by lottery—as a key defining characteristic of a public charter school.

Questions about the extent to which public charter schools offer equal access to students with disabilities have been at the forefront of the charter school dialogue at the state and national levels since the early 1990s.<sup>23</sup> Questions about equitable access and quality services were the subject of a hearing by the U.S. House of Representatives in 2010<sup>24</sup> and the focus of a Government Accountability Office (GAO) report in 2012.<sup>25</sup> Using the most recent data available (i.e., 2008–09 to 2009–10), the GAO found that, on average, traditional public schools in states with charter schools identify 11 percent of their population as having a disability, while charter schools identify 8 percent. The report also identified potential explanations for the different enrollment trends (e.g., inadequate public charter school funding, limited capacity due to size and newness, transportation issues, and parental knowledge of charter schools) but noted a distinct lack of information about factors underlying the differences and how they affect enrollment levels.<sup>26</sup>

While the GAO report had notable limitations (e.g., small sample size and questions regarding comparability of individual public charter school enrollment data to district averages), it served to shine a brighter light on the issue and raise awareness of the fact that public charter schools are not enrolling as many students with disabilities as traditional public schools. However, we do not have reliable or generalizable data documenting the cause of this trend. Furthermore, historic concerns about over-identification of students as eligible for special education in public schools, raise notable questions about what proportion of students should be obtaining services under the umbrella of IDEA and Section 504.

Raising awareness is critical to developing coherent strategies to improve access to and the quality of programs for students with disabilities in public charter schools.

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The challenge is to discern the extent to which enrollment trends actually reflect discriminatory practices versus other factors, such as characteristics of parental choice or different referral and identification rates in public charter schools.

If trends do, in fact, reflect discriminatory practices, charter operators and support organizations must proactively develop solutions that address the issue and spur development of exemplary programs. Examples of solutions being implemented include:

- examining state, district, and charter schools' special education policies and practices;
- intentionally networking with local special education advocacy organizations;
- developing thoughtful recruitment strategies that purposefully seek to encourage students with disabilities to apply (see "Embracing Students with Disabilities" on page 14);
- explicitly including commitment to students with disabilities in recruitment materials;
- investing in development of collaborative relationships with external entities to develop innovative service delivery models; and
- tracking and celebrating success of students with disabilities who enroll in charter schools.

While these strategies are presented as potential remedies, they are even more potent as preventive measures that should arguably be part of exemplary authorizer and operator practice. Absent proactively addressing potential issues, public charter schools are vulnerable to policies that foster bureaucracy but do not actually improve access or services for students with disabilities.

### *Proactive Practice or Reactive Policy?*

As noted, the GAO report documented that, on average, charter schools enroll fewer students with disabilities than their traditional district peers. To fulfill their potential as exemplary alternatives to traditional public schools in a robust choice environment, public charter schools must address these enrollment gaps. While the factors contributing to the differences require more in-depth examination to quantify impact (i.e., how much does factor A influence practice versus factor B), case study and survey research indicate that multiple factors inside and outside of the charter sector contribute to this trend (e.g., parental choice, IEP team recommendations, facility and resource limitations, and lack of understanding of IDEA).<sup>27</sup> Nevertheless, the sector would benefit from proactive introspection regarding the extent to which authorizers, operators, and support organizations are prioritizing equal access for all students.

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## EMBRACING STUDENTS WITH DISABILITIES: INTEGRATING SPECIAL EDUCATION INTO THE CORE INSTRUCTIONAL PROGRAM

As a founding school leader, in 2011 Colin Smith of KIPP New Orleans Leadership Primary faced a fork in the road related to special education: He could either “walk around on eggshells” and wait until compliance pushed him to act, or he could learn as much as possible. He opted to learn and to meaningfully integrate students with different learning needs into the core of his instructional program and school culture. In the school’s second year of operation, 12.7 percent of his 220 students qualified to receive special education and related services.

From the beginning, Smith worked to ensure that his school welcomed all students and integrated supports, accommodations, and modifications into the core program. For instance, rather than viewing educating students with disabilities as a separate, minor, or specialized program, he made his special education coordinator part of the leadership team. This structure ensured that the specific needs of all students were considered when making critical decisions. He also decided to personally attend as many IEP meetings as his schedule allowed so that he was well versed on the process and substance of students’ educational plans. Part of what drove Smith’s decisions was recognition that some of the frustrations he had faced when working at other schools stemmed from the school leader not having a comprehensive understanding of special education. By building his knowledge about not just the compliance issues but also the educational issues, he was able to guide his decisions and create an authentically inclusive environment in his school.

The first step to building an inclusive program was to enroll students with disabilities. Smith took the following measures to intentionally recruit students with disabilities:

- explicitly mentioned students with disabilities and special education in recruitment brochures;
- encouraged parents of students with disabilities enrolled at the school to share their experiences with their networks of parents and disability advocacy groups;
- introduced the school’s special education philosophy during open house sessions;
- played videos of the school’s adaptive physical education during open house sessions; and
- visited homes of prospective students and shared his philosophy and enthusiasm regarding provision of special education and related services.

In addition to ongoing intentional recruitment efforts, Smith noted that part of his job is continually communicating his philosophy to staff and parents to ensure that they know that all students are welcome and expected to achieve. He noted that some see schools as either college preparatory *or* able to accommodate students who learn differently. Smith does not accept this dichotomy. He insists on having high expectations, preparing students for college, *and* accommodating students who have diverse learning needs.

Central to Smith’s approach is a robust curriculum delivered by effective teachers and regular progress monitoring that informs provision of targeted and fluid interventions based on assessment data. This very structured Response to Intervention model ensures that teams of general and special education teachers meet students’ needs as they arise, rather than waiting for students to fail. Moreover, students who are eligible for special education services remain the responsibility of the general, as opposed to the special, education teacher. This assignment of responsibility makes certain that the teachers with the greatest knowledge of the general education curriculum are accountable for all of their students.

Reflecting on his successes to date, Smith noted that his approach benefits the entire student population because “if you can develop expertise to move a pocket of learners, you will be able to leverage the lessons to reach all of your kids.”

*Sources: Louisiana School Finder, <http://laschoolfinder.com/schools/detail/65/KIPP-New-Orleans-Leadership-Primary>; personal communication with Colin Smith, founding school leader, KIPP New Orleans Leadership Primary (May 6, 2013).*

## ENROLLMENT AND RETENTION TARGETS IN NEW YORK: GOOD INTENTIONS BUT QUESTIONABLE POLICY

In 2010, concern regarding public charter school enrollment and retention trends led the New York legislature to adopt language related to enrollment targets. The statute requires public charter schools to “meet or exceed enrollment and retention targets” for students with disabilities, English language learners (ELL), and students who are eligible for the free and reduced-price lunch program prior to approval of charter renewal applications. The state required charter school authorizers in New York to develop a method to compare enrollment trends in public charter schools to trends in traditional district schools to assess whether there is a discernible difference. The authorizers developed an assessment method that entails comparing charter enrollment trends to proximate district enrollment trends for the specific groups of students (e.g., compare the percentage of students with disabilities in individual charter schools to the percentage enrolled in the district in which the charter schools are physically located).

The enrollment and retention targets are problematic for two key reasons. First, the notion of targets presupposes a correct representation of groups. While this may work for characteristics such as gender, identification as eligible to receive special education or receive English language support can be subjective. For instance, while special education enrollment hovers close to 11 percent nationally, when this figure is disaggregated by state and district, there is a great deal of variability. Additionally, the “target enrollment” data create an incentive to overidentify students and do not account for efforts to serve students outside of formal support programs. For example, the policy may penalize schools that are able to provide supports that enable a child to succeed and exit special education. Reducing the number of students identified to receive specialized services that separate them from their peers is a laudable goal for all specialized programs, which should be encouraged. If a school operates an exemplary ELL program, second language learners should, in theory, successfully exit the program because they can thrive absent the supports. Without a means to acknowledge intentional efforts to serve students before they fail—as through the establishment of a high-quality Response to Intervention model—the stakes attached to achieving the target enrollment numbers serve as an incentive to overidentify students for special education and potentially lower the expectations for these students’ progress. Worse, the policy is silent regarding actual quality of services or outcomes for students in the identified groups.

At this point, whether implementation of enrollment and retention targets can actually address underrepresentation is unclear. Addressing the issue of proportionate representation requires policy advocacy to address factors that hinder enrollment and retention and technical assistance designed to ensure that operators are equipped to provide services and, in turn, authorizers are equipped to hold initial applicants, operating schools, and renewal applicants accountable for enrollment policies.

*Source: New York State Education Department and SUNY Charter Schools Institute, Setting enrollment and retention target as required by the NYS Charter Schools Act, joint presentation (2012).*

The enrollment and retention policy in New York (see “Enrollment and Retention Targets in New York” on page 15) is a cautionary tale of what can happen when the key actors positioned to drive meaningful change elect not to initiate change. The 2010 New York State legislation mandating that public charter schools meet enrollment targets for specific groups of students, including students with disabilities, came on the heels of years of concerns and debates regarding enrollment trends. It is unclear to what extent individual charter schools in New York have proactively sought to increase the number of students from the targeted groups who enrolled and persisted in their schools. Strategies that some schools have implemented to

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increase enrollment include targeted recruitment efforts and focused outreach to special education advocacy groups and parent support networks.

A number of states have language in their charter school statutes that permits schools to give students from specific groups (e.g., students enrolled in low-performing schools, students from high-poverty communities, and students with disabilities) preference in enrollment lotteries. However, to date there has not been documentation of any states leveraging these preferences to address enrollment concerns. Absent an intentional effort to recruit and retain students from a variety of traditionally marginalized groups, including tracking and documenting their outcomes, charter schools may increasingly be subject to policymaking that hinders rather than helps their efforts to create quality schools for all students (see “Embracing Students with Disabilities” on page 14).

### *Special Education Service Provision*

“Special education” is an umbrella term for a wide variety of accommodations, supports, and services (e.g., individualized instruction, simplified or shorter assignments, or extended time to complete tests) provided by general and special education teachers that enable students to access the general education curriculum and grow both academically and socially. Related services are developmental, corrective, or support services provided by specialists that help students benefit from special education (e.g., speech or occupational therapy, audiology services, individual counseling, and transportation).

Decisions related to special education services are made by an IEP team. Team members typically include teachers, specialists, parents, and if needed, student advocates. Once a student is identified as eligible for special education services, the IEP team develops a program designed to provide the student with access to the general education curriculum and supports that will enable them to succeed given their learning needs. The default placement for students with disabilities is the general education classroom alongside their peers without disabilities. If the nature of a student’s disabilities limits that student’s ability to benefit from being educated in the general education classroom, the student may receive services outside of the classroom for part or all of the day, including potentially outside of the neighborhood school.

Multiple qualitative analyses have documented that public charter schools, on average, serve more of their students with disabilities in general education classrooms.<sup>28</sup> However, this trend has spurred competing interpretations and revealed an inherent tension associated with public charter schools striving to create successful and inclusive programs. While special education advocates have fought long and hard to have all students included, fully inclusive public charter school programs are frequently subject to skepticism regarding the extent to which charter schools may be counseling out students with more significant needs or perhaps

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failing to provide services. That is, while the general push is for classrooms to be inclusive, public charter school programs that emphasize inclusive practices are subject to criticism, which serves as a disincentive to these programs.

As noted previously, how a public charter school approaches provision of services is dictated by its legal identity. Public charter schools that are part of LEAs must work closely with their LEAs to determine how to share responsibility for evaluating students, developing IEPs, and thereafter providing services. Public charter schools that are their own LEAs can build capacity internally or through external partnerships (see “Leveraging Partners To Build Special Education Expertise” on page 22) with other organizations that allow them to access a broader array of experts and realize economies of scale.

### *Charter Schools Designed Primarily or Entirely for Students with Disabilities*

Charter schools designed primarily or entirely for students with identified disabilities represent a small niche of the charter sector. A study of special education charter schools conducted in 2007 documented 71 schools developed primarily or entirely to serve students with disabilities.<sup>29</sup> More recently, the GAO documented that in 11.7 percent of charter schools nationwide, more than 20 percent of the population has a disability that qualifies them to receive special education or related services.<sup>30</sup> For example, a number of charter schools are designed to serve students with specific learning disabilities, hearing impairments, and autism.

IDEA dictates that children with disabilities should be educated in the least restrictive environment (LRE). Based on the plans developed by their IEP teams, most students with disabilities spend the majority of their day in integrated classrooms with peers without disabilities. Charter schools that offer more segregated settings (i.e., primarily or entirely students with disabilities) are arguably contrary to the construct of inclusion and LRE. However, while placements in restrictive settings were historically dictated by school systems with limited options to serve students with more intensive needs in general education classrooms, special education-focused charter schools have generally been developed by teachers or parents interested in creating model special education programs. Moreover, parents are permitted to select these programs regardless of the recommendation of the IEP team.

The 2007 study of special education charter schools documented examples of teachers starting special education schools to pilot a specific methodology, parents starting schools to expand program options for their children, and existing special education service providers creating schools as extensions of existing programs for students with disabilities.<sup>31</sup>

Public schools are not permitted to select or reject students based on whether they have a disability. Therefore, while some charter schools are designed primarily or entirely for students with disabilities, they must operate open enrollment policies.

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The legal concerns associated with operating programs that target specific types of students based on a diagnosed disability, along with instructional concerns regarding the merits of segregated special education settings, have endured since the beginning of the charter sector. Nevertheless, charter schools developed specifically for students with disabilities continue to operate in a number of states, simultaneously generating enthusiasm and apprehension on the part of some parents and special education advocates.

### *Navigating Discipline Policies*

Student discipline in public charter schools is emerging as a source of contention at the intersection of autonomy and public responsibility.<sup>32</sup> Charter proponents argue that control over discipline policies is central to establishing a school culture in alignment with a school's mission. Opponents counter that public charter schools are using these policies to remove difficult students, including students with disabilities.

Disciplining students with disabilities, or those suspected of having a disability, is governed by an overarching effort to ensure that disciplinary consequences do not infringe on a student's right to FAPE. A child with a disability may be suspended from school for up to 10 consecutive days. If either consecutive or accumulated suspensions exceed 10 days, the school is responsible for determining, via an IEP team meeting, whether the suspensions constitute a change of placement for disciplinary reasons. If the actions are a change of placement, the school must conduct a "manifestation determination" to assess (1) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or (2) if the conduct in question was the direct result of the LEA's failure to implement the IEP. If either is found to be true, the school is responsible for remedying the deficiencies and ensuring provision of special education and related services.<sup>33</sup>

Public charter schools are responsible for implementing a student discipline policy that is consistent with and carried out in accordance with the rights of students with disabilities. If the district is the LEA, the public charter school must bring such issues to the attention of the district and cooperate in the process. If the public charter school is its own LEA, it is solely responsible for tracking discipline and conducting manifestation determinations for individual students.

Recent research on charter school discipline policies found that, on average, public charter schools actually discipline their students less than traditional public schools.<sup>34</sup> However, in certain geographic regions, charter school discipline rates are notably higher, thereby drawing significant interest of authorizers and state policymakers concerned about the practice.<sup>35</sup> For instance, in response to these concerns, policy leaders in multiple cities (e.g., San Diego, Detroit, and the Recovery School District in Louisiana) have moved toward uniform discipline policies for all schools.<sup>36</sup> In these districts, public charter schools are required to adopt the discipline policies promulgated by the traditional district. In Newark, public charter schools that seek

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to lease district facilities are required to adopt the district’s expulsion and suspension policies. Washington, D.C., has taken a slightly different tact: The Public Charter School Board has opted to release data regarding each school’s expulsion and suspension rates to apply pressure and encourage schools to regulate their own policies and procedures.<sup>37</sup>

Public charter school operators must develop thoughtful and fair discipline policies that reflect their educational philosophy and best instructional practices, including their commitment to ensuring that their school is readily accessible to students with disabilities. The goal of discipline is to teach children how to behave and provide a safe environment in which all students can succeed absent distractions. If public charter school personnel use their discipline policy to remove or counsel out difficult students, the school will be subject to due process complaints and subject to consequences from its authorizer, the state, and the U.S. Department of Education’s Office for Civil Rights or the Department of Justice’s Division of Civil Rights.

To ensure that discipline policies are not being used by design or default to counsel students out of charter schools, at least one staff member must fully understand the specific requirements of IDEA and how to apply discipline to students with disabilities. In addition, charter schools should develop an intentional strategy to effectively articulate expectations and make certain that students are clear regarding behavior expectations and consequences and that all personnel are trained regarding the discipline policy.

### *Exceptional Educational Outcomes*

In the 40 years since Congress passed key statutes related to educating students with disabilities, our collective understanding about and expectations for students with disabilities identified to receive special education and related services have grown tremendously. While advocates initially fought for basic access to neighborhood schools, expectations for students with disabilities have evolved to not only ambitious goals focused on full and robust access to the general education curriculum but also the goal of providing high-quality educational opportunities that prepare students for productive and, ideally, independent lives. ESEA, in combination with IDEA, reinforced that basic access and procedural due process are no longer sufficient—these laws established that schools also must make certain that children with disabilities are making progress in achieving ambitious academic goals.<sup>38</sup>

Given public charter schools’ focus on autonomy in exchange for accountability, charter school operators interested in demonstrating their capacity to educate students with disabilities need to be able to document academic progress. This process can be challenging due to privacy issues and, for students with the most serious disabilities, due to alternate assessments that do not allow for easy comparisons between students or schools. Nevertheless, individual schools can proactively identify key metrics in addition to state assessments to demonstrate

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their success with students with disabilities (see “Washington, D.C., Public Charter School Board Special Education Audits” on page 28). For instance, public charter schools can more consistently track enrollment and retention trends; progress on IEP goals; number of students exiting their IEPs; and persistence, attendance, and participation in extracurricular activities. While some of these “softer” metrics should not be seen as end goals, they do have value as proxies that indicate progress, which foreshadows stronger academic gains. For instance, students who are succeeding generally miss less school and participate in more school activities than those who feel isolated or are at risk for dropping out.<sup>39</sup> Given the criticisms directed at public charter schools related to inclusion of students with disabilities, tracking academic outcomes serves as an internal means to assess capacity as well as a metric to demonstrate success.

### *Fiscal Equity and Inequity*

Public charter schools generally receive less funding than traditional public schools. A 2010 study found that, on average, charter schools received 19 percent less per pupil compared to traditional public schools. This disparity is even greater in larger urban districts where, on average, charter schools receive 28 percent less.<sup>40</sup>

Funding for special education is a virtually universal challenge for traditional as well as charter schools. Providing a full continuum of services to students with a wide variety of disabilities is expensive. Plus, there is no clear definition for sufficient; there are always opportunities to provide additional services, supports, and technologies. Students with disabilities represent, on average, 13 percent of the public school population, but research on a sample of districts documented that the cost of educating students with disabilities represents 21 percent of public school district budgets.<sup>41</sup> Moreover, while permitted by statute to support up to 40 percent of the cost of special education, to date the federal government has not met this limit and, in practice, provides approximately 12 percent of the overall cost of special education in K–12th grades.<sup>42</sup>

The fiscal challenges involved with providing quality special education and related services are exacerbated in public charter schools given the inequitable funding structures in many states. To address these issues, public charter schools can lobby to change state funding policies. For instance, when Maryland first adopted its state charter school law, local districts provided the public charter schools “commensurate” funding, a term that was relatively arbitrary and led to districts providing charter schools with far less than the districts themselves spent on a per-pupil basis. Public charter school advocates in Baltimore and Frederick lobbied for a more equitable funding formula and filed lawsuits against their local school boards. The public charter schools’ efforts led to more equitable funding and established case law regarding the definition of “commensurate” in Maryland.<sup>43</sup>

Absent policy changes, public charter schools need to be creative about how to leverage their limited dollars for optimal outcomes for students. Examples of strategies

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to stretch resources include hiring teachers with dual certification who can teach content classes as well as provide special education services or forming collaborative partnerships with other public charter schools or community organizations that enable member schools to realize economies of scale not feasible in small schools (See “Leveraging Partners to Build Special Education Expertise” on page 22 and “El Dorado County Charter School Special Education Local Plan Area” on page 24).

## BEST PRACTICES FOR EDUCATING STUDENTS WITH DISABILITIES

Individualization is the centerpiece of special education; educators draw from decades of research to match specific practices with students’ needs.<sup>44</sup> Yet, we know that three overarching practices can substantively improve outcomes for nearly all students with disabilities: early childhood interventions, Response to Intervention (RtI), and Universal Design for Learning (UDL).

### *Early Childhood Interventions*

Research dating back to the early 1960s demonstrates that investment in high-quality early childhood education and interventions can pay large dividends.<sup>45</sup> Early intervention is particularly valuable for students with disabilities or at risk of being identified as having a disability. Early intervention for children with disabilities includes targeted services and support for infants, toddlers, and preschool-aged children. Effective early intervention services can diminish the impact of the disability or delay and reduce long-term education costs by reducing the need for special education and related services for school-aged students.<sup>46</sup> Provision of high-quality early childhood services can enable students to enter kindergarten on grade level and decrease special education referral rates.<sup>47</sup> Over the past decade, states have made significant investments in expanding access to publicly funded prekindergarten programs. Evidence that high-quality prekindergarten reduces later special education placement and costs is a major part of the rationale for these investments.<sup>48</sup>

### *Response to Intervention (RtI)*

RtI is an instructional and monitoring approach designed to provide targeted supports; progress monitoring; and increasingly intense, evidence-based interventions for struggling students.<sup>49</sup> In contrast to historical approaches to intervention, wherein schools would wait for students to fail and be referred to special education before providing focused supports, schools use an RtI strategy to provide support as soon as students begin to struggle, in the hope that these

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## LEVERAGING PARTNERS TO BUILD SPECIAL EDUCATION EXPERTISE: SENECA FAMILY OF AGENCIES

In 2010, based on a growing and pressing need to build their capacity to educate students with disabilities, a cohort of public charter schools in California contracted with the nonprofit Seneca Family of Agencies to serve as a comprehensive provider for special education and related services. Seneca is an established provider of community- and family-based services for emotionally troubled children and their families in the San Francisco area. The schools use their federal and state special education funds to support the contract, and Seneca helps them access additional funds (e.g., California Medicaid and funds available for mental health services).

In close collaboration with the El Dorado County Special Education Local Plan Area (SELPA), California's intermediate agency that provides special education supports to districts, Seneca provides the 11 public charter schools a comprehensive suite of services focused on prevention, progress monitoring, and early intervention that enable the charter schools to meet students' needs. They provide an additional 16 public charter schools with limited services. The partnership aligns with Seneca's long-term mission of supporting all students based on their academic needs and decreasing the number of students requiring intensive or segregated special education placements. Leveraging expertise developed during more than 25 years of operation and an extensive professional network of more than 1,000 service providers, Seneca staff members working with the partnership are committed to an ambitious goal: Leverage federal, state, and county resources targeting both special education and mental health services to develop exemplary services for students in public charter schools.

The foundation of Seneca's approach to educating students with disabilities is a finely honed, tiered Response to Intervention (RtI) model focused on providing increasingly targeted interventions to students in their general education classrooms. Seneca works closely with partner charter schools to identify students' needs and match them with staff expertise as well as optimize resources. The process includes supporting quality instruction, regular progress monitoring, and focused intervention strategies designed to serve students before they encounter problems. Lihi Rosenthal, the division director from the Seneca Center, explained that she strives to "help schools to implement their own multitiered Response to Intervention approach. If we can help them build a great [early intervention program (i.e., Tier 1)], they can reduce their overall costs because an ounce of prevention is worth a pound of cure." From a slightly different perspective, Rosenthal noted that when striving to educate students who learn differently, you have to "invest in general education to reduce special education."

Recognizing that public charter schools have limited resources, Seneca staff members continually search for what they refer to as "two-fers." For instance, when a student with a disability requires a one-on-one aide, they hire a special education aide who is able to support the student *and* train the general education teacher. The student receives the supports required, and at the end of the year, the general education teacher has expanded his or her skill set and is better prepared to support other students in an inclusive environment. In one school, Seneca assisted the school leader in filling a dean of students vacancy with a certified social worker, thereby providing the school with access to a critical skillset not typically characteristic of this position.

Personnel from Seneca cite reduced referrals to special education, robust RtI programs, quality special education services, and optimal use of special education resources by partner schools as indicators of their value add to the schools. A carefully selected staff is crucial to their Seneca's success. Rosenthal reflected that Seneca's approach and programs serve as a catalyst for their recruitment efforts: They have access to a diverse array of highly skilled professionals selected because of Seneca's commitment to driving change and improving services for students with disabilities.

*Source: Personal communication with Lihi Rosenthal, Seneca Center (April 29, 2013); Seneca Center, [www.senecacenter.org/home](http://www.senecacenter.org/home).*

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interventions will enable students to catch up to their peers. Schools develop distinct approaches to RtI, but in general, the approach entails:

- instructing all students using high-quality, scientifically based pedagogy;
- screening all students in the natural classroom context to document their progress;
- monitoring student progress continuously;
- implementing research-based interventions in tiered levels depending on need; and
- providing professional development to make certain teachers are using interventions appropriately and consistently.<sup>50</sup>

Students who continue to struggle after receiving consistent and high-quality individualized instruction are referred for formal special education evaluation.<sup>51</sup> RtI builds on decades of research about the value of early interventions and structured progress monitoring. Use of RtI strategies has spread since the 2004 IDEA reauthorization, which allowed states and school districts to spend up to 15 percent of their IDEA funds to support focused intervention efforts before students are referred for special education.<sup>52</sup> The approach is credited with reducing the number of students identified with specific learning disabilities.<sup>53</sup>

### *Universal Design for Learning (UDL)*

Special education and related services have been seen historically as extra or separate from general education. Rather than retrofitting or adding to the general education curriculum to accommodate students with disabilities, UDL represents a set of principles that guide curriculum development and related classroom practice based on establishing equal access for everyone as a central component of design, not a postscript.<sup>54</sup> Educators do not have to eliminate barriers that might inhibit learning if they avoid them from inception.

Drawing from neuroscience regarding learning and cognition and using a UDL approach, curriculum creators incorporate multiple methods of presentation, options for engagement, and means for action and expression.<sup>55</sup> This approach is in contrast to a traditional version in which teachers present content in a one-dimensional fashion (e.g., teacher lecture) followed by student demonstration of knowledge via written assessments. A single instructional strategy may work for some students with specific processing skills, but those lacking the skills have limited options to learn the content. Using multiple means of presentation ensures that content is easily accessible for students with a variety of learning styles. This approach benefits students with and without disabilities. Content developed using the principles of UDL is readily accessible to all students as part of the development process, as opposed to being adapted for specific outliers or exceptions.<sup>56</sup>

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## EL DORADO COUNTY CHARTER SCHOOL SPECIAL EDUCATION LOCAL PLAN AREA: LEVERAGING POLICY AND PARTNERSHIPS TO BUILD CAPACITY

Under California state education code, the Special Education Local Planning Area (SELPA) is the intermediary responsible for distributing federal and state special education funds and providing a range of special education professional development and services to both traditional district LEAs and charter LEAs. Currently, 124 SELPAs operate in California; some serve a single large LEA, while others serve all of the LEAs in a defined region. All LEAs are required to be members of a SELPA, which is governed by a board comprised of representatives of the member LEAs as well as parents and service providers. Public charter schools can elect which SELPA they would like to join.

When public charter schools first opened, ready access to SELPAs was a barrier to schools operating as autonomous LEAs. While in some instances there was reportedly hostility toward public charter schools, in others the resistance stemmed from concerns about how to fit single-school charter LEAs, along with much larger districts, into a SELPA governance structure that prioritizes equal representation. In 2007, in response to increasing frustration about the SELPA requirement, the State Board approved the creation of a pilot public charter school SELPA within the existing El Dorado County SELPA. The advocacy on the part of key stakeholders and the subsequent partnerships created are a promising example of creative problem-solving that leads to public charter schools growing their capacity to provide high-quality special education programs.

The El Dorado County SELPA volunteered to create the public charter school SELPA for the purpose of “optimizing the economy of scale for services and eliminating unnecessary redundancy. By joining together and utilizing technological communication strategies, even with a wide geographic distribution ... the charter SELPA can achieve efficiency and maximize the utilization of limited resources.”<sup>57</sup> SELPA personnel assign every member school a key contact in the SELPA and employ program specialists responsible for multiple charter schools.

The SELPA provides its members professional development, legal support, a partner/provider network, fiscal and programmatic compliance support, and a data management system to track a variety of special education metrics. Using the SELPA umbrella to purchase specialized programs and services, the members are able to access an array of services and realize economies of scale not feasible for individual schools. In 2012–13, the El Dorado County Charter SELPA served 171 individual public charter school members across the state. To address the geographic challenges involved with serving geographically dispersed schools, SELPA personnel traveled to schools and leveraged technology to communicate and provide training.

The SELPA charges each school an administrative fee representing a percentage of its federal and state special education revenue: 6 percent in year one, 5 percent in year two, and 4 percent in year three and thereafter, once the school has demonstrated capacity. The fee structure evolved during the pilot phase as the initial SELPA leadership team realized that public charter schools’ needs change over time as they build their internal capacity related to educating students with disabilities. The SELPA is governed by member schools that can opt out if they are not satisfied with the services. Conversely, the SELPA governing board can also terminate membership if members do not meet their responsibilities to appropriately enroll and serve students with disabilities. Employees do not serve on the governance board, which instills a layer of accountability in the governance structure.

In 2012–13, on average, students with disabilities represented 8.6 percent of the population of the member public charter schools. While the state average is 12 percent, this average includes students in preschool programs, which enroll a disproportionate number of students with disabilities reflecting districts’ Child Find requirements. SELPA personnel track enrollment data, and if they discern that a charter school is enrolling too few students with disabilities, they offer support to develop its capacity related to recruiting and retaining students with disabilities more intentionally.

Based on the success of the pilot, in 2010 the state approved the continuance of the El Dorado County Charter SELPA, leading to the creation of two additional charter SELPAs. While SELPAs are unique to California, the basic structure of the arrangement echoes the cooperative models developed in other states and serves as a promising example for charter schools interested in creating strategic partnerships to accelerate and expand their special education capacity.

*For more information about the El Dorado County Charter SELPA and a detailed description of the resource allocation plan, see [www.edcoe.org/charterselpa/finances/allocation-plan](http://www.edcoe.org/charterselpa/finances/allocation-plan).*

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## ACCOUNTABILITY FOR IMPLEMENTATION

Accountability is central to the public charter school bargain. As schools of choice, parents can hold charter schools accountable for performance by enrolling in or exiting the school. In addition, authorizers are charged with holding public charter schools accountable for fulfilling the responsibilities and performance measures outlined in their charter contracts. Ensuring that public charter schools are open to and provide quality educational opportunities for all students is a core part of charter school authorizers' responsibilities.

In addition, public charter schools are subject to the same accountability requirements as traditional public schools. They must administer annual assessments and track academic progress. Moreover, they are subject to periodic compliance monitoring by their respective SEAs under IDEA. Aside from systemic accountability mechanisms dictated by the No Child Left Behind Act of 2001 and IDEA, public charter schools are held accountable under state charter statutes that provide the schools authority to operate under renewable charters or contracts. They are also held accountable by parents who choose the school. Parents of children with disabilities can file due process complaints if the school does not uphold the policies and procedures outlined in IDEA and related state special education statutes.

Yet, to date, neither charter authorizers nor SEAs, when they are not the authorizers, have fully leveraged the accountability tools in their toolbox to track and hold public charter schools accountable for special education. Absent an intentional effort to self-regulate, the sector overall is vulnerable to potentially heavy-handed monitoring. Looking forward, public charter school operators, authorizers, and support organizations would be well served by more intentional self-monitoring regarding special education (see "Washington, D.C., Public Charter School Board Special Education Audits" on page 28).

### *Legal Challenges Related to Educating Students with Disabilities in Public Charter Schools*

Concerns about equal access and provision of services to students with disabilities in public charter schools have generated legal actions that serve as an early warning to charter operators, network leaders, and support organizations regarding the potential legal consequences associated with actual or perceived noncompliance. These complaints range from individual due process hearings associated with specific allegations of IDEA violations by individual schools to a federal court class-action suit and a civil rights complaint filed with the U.S. Department of Justice. The cases in Louisiana and Washington, D.C.—the two districts with the largest public charter school sectors in the country—are noteworthy in part, because they may serve as early indicators of problems that may arise when charters' market share reaches a tipping point.<sup>58</sup>

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## *New Orleans, LA.*

In 2010, The Southern Poverty Law Center, representing a coalition of parents of students with disabilities and advocacy groups, filed a federal class-action lawsuit, *P.B. v. Pastorek*, on behalf of students in Orleans Parish against the state superintendent of education and the state school board. The class has yet to be certified by the courts, but the lawsuit alleges violations of students' rights under the federal Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act by 30 different schools operating under the Recovery School District (RSD),<sup>59</sup> including charter and traditional public schools. The core allegation of the lawsuit is that the schools in the RSD discriminated against students with disabilities by forbidding them to enroll, neglecting to provide proper support services, and exiting them from the schools. The complaint documents gaps in enrollment (i.e., while 12.6 percent of the total student population in noncharter public schools in New Orleans is eligible for special education, these students represent only 7.8 percent of the population in public charter schools). The plaintiffs are litigating against the state superintendent and the state board because they are the entities legally responsible for the schools operated by the RSD. While citing specific infractions, the federal class-action lawsuit alleges a general lack of oversight, monitoring, and supervision.<sup>60</sup>

The case is noteworthy due to the large number of students represented and the focus on holding the state, as opposed to the individual schools, accountable as the authorizer for compliance with federal disability and civil rights statutes. The case is ongoing at this time.

## *Washington, D.C.*

In 2011, the Bazelon Center for Mental Health Law filed a complaint with the U.S. Department of Justice's Civil Rights Division against the District of Columbia alleging enrollment discrimination by public charter schools.<sup>61</sup> During the 2010–11 academic year, 10 percent of the nearly 30,000 students enrolled in D.C. public charter schools were identified as having a disability, whereas the proportion in traditional public schools was 13 percent.<sup>62</sup> Of particular note in the complaint was the finding that a relatively small percentage of students with more significant disabilities were enrolled in public charter schools. The Bazelon Center documented that charter schools enrolled one-third as many students with more significant emotional and physical needs as traditional public schools in the district. Furthermore, 75 percent of these students enrolled in three public charter schools specifically designed for students with disabilities.<sup>63</sup> The complaint alleges multiple specific examples of students being denied admission or expelled for issues related to their individual disabilities and alleges, "charter schools routinely ignore guidance issued by District oversight agencies ... on inclusive admissions practices and the integration of students with disabilities."<sup>64</sup> A central aspect of the complaint is admission practices identified as being discriminatory (e.g., asking parents to disclose whether their child

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has a disability during the application process and using this information to screen students). The complaint is significant because there are 53 charter schools in D.C. and they collectively enroll more than 40 percent of the students attending public schools in the District.<sup>65</sup> As the percentage of students rises, and in particular when the charter school market reaches a tipping point, enrollment trends become more apparent, and public charter schools will most likely face greater scrutiny if they are perceived as avoiding enrolling or retaining students with more significant needs. The Department of Justice’s investigation is ongoing at this time.

## RECOMMENDATIONS

In line with their commitment to creating exceptional public schools, charter school operators and the organizations that support them must ensure that schools are not only accessible, but also attractive to and successful in meeting the needs of student with disabilities. While some students require more intensive supports, the vast majority of students with disabilities can be successful in general education classrooms with differentiated instruction and supports. To date, the charter sector has not effectively leveraged its autonomy to create opportunities for students who learn differently.

Efforts to change the dynamics must focus on creating quality programs that attract a diverse array of students and holding charter schools that fall short, by design or default, of welcoming and supporting students with disabilities accountable. Based on legal actions in New Orleans and Washington, D.C., and anecdotes from other cities where access and service provision in public charter schools are increasingly under a microscope, charter schools that fail to chart an intentional course related to students with disabilities may be subject to cumbersome regulatory burdens advanced by opponents. However, public charter schools do not need to wait until required to adopt adversative policy (e.g., enrollment targets and burdensome monitoring and audits) to improve their approach to educating students with disabilities.

The following actions can help operators and support organizations proactively ensure that their schools not only welcome but also create exceptional opportunities for all students, including student with disabilities.

### *1. Advocate To Address Policy Barriers*

Public charter schools face barriers stemming from idiosyncratic state charter statutes, policies, and traditional district practices (e.g., inequitable funding, unclear delegation of responsibility and authority, and limited access to critical special education infrastructures). Rather than passively accept these barriers, charter operators and support organizations can form coalitions and mobilize parents to advocate for policy changes in the best interests of students with disabilities.

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## DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD SPECIAL EDUCATION AUDITS

In response to pressure related to access and quality service provision, the Washington, D.C., Public Charter School Board (PCSB) recently took a step forward to track and address concerns related to enrollment, special education and related services, and outcomes. In March 2013, the PCSB adopted a new policy that identifies and tracks multiple measures of special education, which could trigger a more in-depth audit of a school's approach to serving students with disabilities. Potentially a model for other authorizers or SEAs, the process is designed to serve as an early warning system so the authorizer can proactively identify and address issues related to access and quality of services. The policy does not outline a specific consequence associated with audit findings. Rather, the result of a problematic audit would be greater scrutiny by the PCSB. Underlying the policy is a reliable data system that allows the PCSB and the Office of the State Superintendent of Education (OSSE), the SEA in Washington, D.C., to readily monitor key metrics related to special education enrollment and services.

The DC Charter School Law requires the authorizer to monitor school progress. As outlined in the new PCSB policy, the following factors may trigger a more in-depth special education audit:

- students with disabilities represent 7 percent or less of school population;
- students with disabilities' expulsion or out-of-school suspension rates are higher than peers without IEPs;
- disproportionate enrollment of a single disability classification (e.g., specific learning disability, emotional disturbance, etc.), or underrepresentation of students who require more significant supports;
- transfer by students with disabilities is higher than transfers by their nondisabled peers;
- students with disabilities' rate of mid-year withdrawals is higher than the withdrawal rate of their nondisabled peers; or
- documentation submitted to OSSE does not comply with the law.

If monthly reviews of data by the PCSB, which are part of the charter data reporting system, reveal concerns related to any of the above factors, the authorizer will conduct a more in-depth review, potentially including but not limited to:

- comparison of accuracy of special education data between a school's student information system and data in ProActive (OSSE's data management system);
- communication between PCSB and OSSE to determine whether the identified trigger has resulted in OSSE resolving the concern;
- interviews with a school's special education data manager or other persons responsible for student data;
- special education Desk Audits (i.e., reviews of relevant documents to evaluate compliance with IDEA procedures) completed by PCSB staff;
- request of the school team to complete a Special Education Quality Assurance
- Review (part of Special Education Performance Management Tool); or
- special education site visits and/or observations.

*Source: D.C. Public Charter School Board, Special education audit policy. (Washington, D.C.: 2013); March 18, 2013 Board Meeting Minutes. Downloaded April 25, 2013, from [www.dcpubliccharter.com/agenda/?id=135](http://www.dcpubliccharter.com/agenda/?id=135).*

## *2. Adopt Key Instructional Strategies To Support All Students*

Best practices such as preschool; Universal Design for Learning; and robust RtI programs that have a laser sharp focus on early literacy, quality instruction, targeted interventions, and progress monitoring benefit all students, particularly students with disabilities with diverse learning needs.

## *3. Identify Strategic Partnerships and Coalitions*

Many public charter schools are small, have limited budgets, and lack key institutional routines and structures. While these conditions are challenging, they create an environment that is ripe for entrepreneurial innovation. Strategic partnerships with other public charter schools, existing community organizations (e.g., mental health providers), and even traditional public schools can build and extend charter schools' capacity related to special education.

## *4. Hire Intentionally and Well*

Due primarily to small school size, many public charter school employees need to be able to wear multiple hats. Consequently, the value of individual employees is amplified—public charter schools must hire exceedingly well. Ideally, charter schools can hire personnel who are “two-fers”<sup>66</sup> in that they can fill multiple roles. Hiring intentionally requires a clear understanding of how a particular position fits within the broader school puzzle. It also may require being creative about job descriptions to fully leverage individual teachers' and administrators' unique skills. For instance, although a special educator who has taught successfully in a traditional public school may have broad and deep knowledge, that same teacher may be ill suited to facilitate development of an innovative approach to special education if he or she is not open to a unique governance structure or mission. Providing differentiated supports to students with diverse learning needs pivots on hiring skilled employees who not only understand special education law, but also, more important, understand how to accommodate individual students' needs.

## *5. Track, Analyze, and Report Data*

Much of the dialogue regarding special education in the charter sector is driven by anecdotes and outliers. Data are essential to a reasoned conversation regarding the status of students with disabilities in the sector. In particular, more data are required regarding enrollment, service provision, retention, discipline trends, funding, transitions, and academic outcomes. IDEA requires extensive data collection, but research indicates that neither states nor authorizers are analyzing or reporting these data. Public charter school operators and support groups can preempt potentially cumbersome demands from opponents by proactively collecting and reporting data regarding special education.

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## 6. Own and Address Shortcomings

To date, enough public charter schools have fallen short in enrolling and effectively serving students with disabilities that acknowledging and addressing these shortcomings is important to change the dialogue about special education in the sector. In particular, public charter schools that have struggled to attract and retain students need to engage qualified personnel, parents, and local special education advocates to enhance their programs and improve their reputations in the special education community. In communities where charter schools are new, the schools may struggle to instill confidence in parents of students with disabilities, which can be a barrier to parents even considering a public charter school as a viable option for their children. Public charter schools need to own and address these perceptions, and in some cases, real shortcomings, to attract students.

## CONCLUSIONS

Policies and procedures governing educating students with disabilities are frequently characterized as a prime example of the bureaucracy that binds traditional public schools, and in many ways, this perception is accurate. Public charter schools, on the other hand, have the opportunity to rethink special education and leverage their autonomy to develop innovative and successful programs. A clear understanding of the requirements of IDEA and liberty from district standard operating procedures are two critical conditions for effective innovation in special education. Given the growing scrutiny of special education in public charter schools, operators, networks, and support organizations must invest in developing an intentional strategy related to special education, as opposed to operating a reactive program that mirrors traditional public schools. Special education is grounded in a commitment to protecting the civil rights of students who historically have been marginalized in public schools. Ensuring that students with disabilities are able to enjoy the autonomy that has fostered the creation of exemplary schools could be the sector's next notable accomplishment.

## RESOURCES

**Center for Applied Special Technology (CAST)** is a national research and development organization devoted to expanding learning opportunities for all through promotion of Universal Design for Learning principles. [www.cast.org](http://www.cast.org)

**National Alliance for Public Charter Schools (The National Alliance)** is the leading national nonprofit organization committed to advancing the charter school movement. Its mission is to lead public education to unprecedented levels of academic achievement for all students by fostering a strong charter sector. The National Alliance provides assistance to state charter school associations and resource centers, develops and advocates for improved public policies, and serves as the united voice for this large and diverse movement. [www.publiccharters.org](http://www.publiccharters.org)

**National Association of Charter School Authorizers' (NACSA)** mission is to achieve the establishment and operation of quality charter schools through responsible oversight in the public interest. In 2012, NACSA launched the One Millions Lives campaign dedicated to providing 1 million more children the chance to attend a great school that will set them up for success throughout their lives. A central priority of the campaign is urging the charter community itself to fix the failings in the sector so that more children have a chance to attend a great school. [www.qualitycharters.org](http://www.qualitycharters.org)

**National Association of State Directors of Special Education (NASDSE)** offers strategies and tools to foster implementation of best practices through communities of practice; training on current issues; technical assistance; policy analysis; research; national initiatives; and partnerships to enhance problem solving at the local, state, and national levels. [www.nasdse.org](http://www.nasdse.org)

**National Center on Learning Disabilities (NCLD)** advocates for students with a diverse range of learning disabilities through a deep commitment to improving the lives of people with learning difficulties and disability by empowering parents, enabling young adults, transforming schools, and creating policy and advocacy impact. [www.NCLD.org](http://www.NCLD.org)

**National Center on Response to Intervention (NCRI)** provides technical assistance to states and districts to build the capacity of states to assist districts in implementing proven models for Response to Intervention and Early Intervening Services (EIS). [www.rti4succees.org](http://www.rti4succees.org)

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**National Center for Special Education in Charter Schools (NCSECS)** is committed to ensuring equal access and exceptional opportunities for all students in charter schools. NCSECS is a nonprofit devoted to advocating 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 excel. [www.ncsecs.org](http://www.ncsecs.org)

**The National Charter School Resource Center (NCSRC)** serves as a national center to (a) provide on-demand resources, information, and technical assistance to support the successful planning, authorizing, implementation, and sustainability of high-quality charter schools; (b) share evaluations on the effects of charter schools; and (c) disseminate information about successful practices in charter schools. [www.charterschoolcenter.org](http://www.charterschoolcenter.org)

## ABOUT THE AUTHORS

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**Paul T. O'Neill, J.D., Ed.M., senior fellow and co-founder of the National Center for Special Education in Charter Schools**, is an education attorney, adviser, professor, and author with extensive experience in guiding education organizations through challenges and growth. As founder and president of Tugboat Education Services and as the head of the Education Law Practice Group of Cohen Schneider & O'Neill LLP in New York, he advises schools, charter school authorizers, networks, nonprofits, government agencies, and philanthropies on the rules and complexities that apply to educational organizations. A substantial portion of his work is devoted to the intersection of special education and charter schools. He also serves on the adjunct faculty of Teachers College, Columbia University where he teaches courses on education policy and law, including Designing Charter Schools and Special Education Law and Policy.

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## ENDNOTES

- 1 Children with disabilities are identified as having one of 13 categories of disabilities (i.e., specific learning disabilities, speech or language impairments, mental retardation, emotional disturbance, other health impairments, multiple disabilities, hearing impairments, orthopedic impairments, visual impairments, autism, deaf-blindness, traumatic brain injury, and developmental delay). Students are also more loosely categorized as having a “high-incidence” disability (e.g., a common type of disability, such as specific learning or a speech/language disability) or a “low-incidence” disability (e.g., an uncommon disability, such as traumatic brain injury, autism, or orthopedic impairment). The high-incidence group includes approximately 90 percent of all children with disabilities. U.S. Department of Education National Center for Education Statistics, *Digest of Education Statistics*, 2011 (NCES 2012-001) Chapter 2 (2012). Accessed April 15, 2013, from <http://nces.ed.gov/fastfacts/display.asp?id=64>.
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The U.S. Department of Education document *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* is available at [www.ed.gov/about/offices/list/ocr/504faq.html?exp=0](http://www.ed.gov/about/offices/list/ocr/504faq.html?exp=0).
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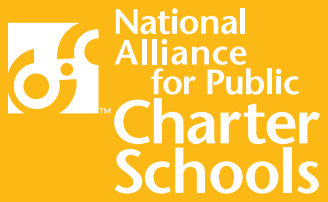
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*"Creating Opportunities for Excellence"*

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