

Charter Schools and Students with Disabilities

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Charter schools are public schools that operate under a specific “charter” or contract. They operate under a premise of flexibility and autonomy. That said, most states require charter schools to meet more rigorous school content standards “in exchange” for a waiver from particular state requirements. Despite the increased independence, charter schools do not escape oversight. State laws define the relationship between the charter school and the local education agency (LEA) or local school district and the extent to which the charter school is free from particular state statutes, regulations, and policies imposed on traditional public schools. [\[2\]](#)

Charter schools are also subject to federal law. Unlike some state laws, charter schools not released from federal laws, including accountability mandates and civil rights laws like Section 504 of the Rehabilitation Act [\[3\]](#) and the Individuals with Disabilities Education Act. [\[4\]](#)

These federally imposed obligations, especially a charter school’s duty to students with disabilities, cause many challenges for charter schools. This article discusses the three-layered legal structure imposed on charter schools, how that structure affects a charter school’s responsibility to students with disabilities, and ways in which charter schools can improve their delivery of services to students with disabilities. This article also discusses the recent initiative of charter schools designed specifically to serve students with disabilities and the unique issues such schools encounter.

Background

The charter school movement began in 1991 when Minnesota passed the first state law allowing charter schools as part of the public education system. In the following two decades, approximately 40 states and Washington D.C. have passed laws permitting charter schools. In most

cases, charter schools are initiated as a vehicle to provide an alternative to typical public schools.

Often the impetus behind the introduction of a charter school is to create educational options for one of two reasons (or both): (1) to respond to dissatisfaction with the delivery of educational services by the local school district; and/or (2) to offer a school with a particular focus. For example, some charter schools in Virginia and Illinois maintain a curriculum with an emphasis on environmental awareness and social responsibility. Another charter school in Virginia was established to create experiential learning opportunities for students who are at risk to leave school or graduate below their potential.[\[5\]](#)

Reports on the need for charter schools, their success, and their impact on the local school districts vary greatly. Proponents of charter schools tout their ability to provide superior educational services or meet a community's specific needs. Opponents of charter schools complain that they use up precious resources and are counter productive to the essence of a public system.

Regardless of one's perspective, it is clear from the research that the number of charter schools is on the rise and their education of students with special needs requires attention and improvement. The difficulties a charter school faces often are attributed to its small size, a too narrowly-focused mission, and misunderstandings with respect to the school's obligation to students with disabilities. The first two factors are usually inevitable and are likely considered fundamental to a charter school. On the other hand, the third is not. If charter school educators and those who support the educators gain a concrete understanding of the specific responsibilities that fall directly to the charter school in the education of students with disabilities, and plan accordingly, service delivery can be improved.

Federal Law

The Individuals with Disabilities Education Act (IDEA) provides that public schools must identify students with disabilities, identify their needs, and provide such students with a free and appropriate public education (FAPE). That right is "guaranteed" by procedural safeguards and complaint procedures.[\[6\]](#) The IDEA's implementing regulations specifically include charter schools and clearly provide that children with disabilities who attend public charter schools and their parents retain all rights as outlined above.[\[7\]](#) Additionally, Section 504 of the Rehabilitation Act of 1974 (Section 504) protects students with disabilities from discrimination by public educational institutions. Section 504's protection applies to all

programs that receive federal funding.[\[8\]](#) Accordingly, students with disabilities in public charter schools are protected equally to students with disabilities in traditional public schools.

While federal law makes it unequivocal that students with disabilities are afforded the same rights in a charter school as they would be in a traditional public school exactly which party is responsible is less clear. The scope of a charter school's responsibility to students with disabilities is dictated by the often unclear and complicated legal status of the charter school. Federal law supplies a broad outline. It provides that if the charter school is an LEA then the charter school retains the responsibility; if the charter school is *part of* an LEA then the LEA retains responsibility. State laws furnish significantly more meaning to this distinction.

State Laws

Most states maintain a three-tiered public educational system. The first tier is the state educational agency (SEA), then the LEAs, and finally the individual schools that fall under the LEAs.[\[9\]](#) States are ultimately responsible for the education of their students. In most cases, that responsibility is delegated down and in practice, LEAs are typically responsible for the education of all students that reside within specific boundaries. Likewise, LEAs retain the accountability for providing a FAPE to their students with disabilities.

State law dictates a charter school's status and that status determines the duty owed to students with special needs by a charter school. A charter school's status is best explained by its relationship to the LEA. Some states classify charter schools as within a particular LEA and others as their own LEA. Still other states leave the status up to the particular charter school as dictated by the charter.

That association or lack thereof to the LEA is fundamental to determining the charter school's programmatic and financial responsibility to students with special needs. If the charter school retains no connection to the LEA then it acts as its own school district and retains all liability and responsibility for educating students with special needs. On the opposite end of the spectrum, if the charter school falls directly under the LEA then it acts like a school within the LEA. That clear line is muddy for the many charter schools that fall somewhere in the middle. In those situations, state law and the authorization process dictate the extent of autonomy enjoyed by the charter school. The two institutions' operational and financial responsibilities are usually outlined in the charter.

Illinois provides a prime example of the varied legal statuses of charter schools and the impact of the status. In Illinois, an LEA can be the authorizing body for a charter school. In those cases, a potential charter school submits its proposed contract to the LEA and the LEA authorizes the governing body of the charter school to operate the charter school on the terms specified in the contract. However, the proposed charter also must be submitted to the state board of education for certification. If the state board recommends modifications those modifications must be made prior to certification. [\[10\]](#)

A charter in Illinois can also be granted via a referendum. [\[11\]](#) In those situations, multiple requirements must be met. First, the group of citizens hoping to establish a charter school submits a proposed charter to the state board for certification. The charter is between the proposed charter school and the state board of education. Additionally, the group of citizens must acquire a petition containing signatures from at least five percent of the voters of the school district(s) where the proposed charter would be located in support of the proposed charter. Assuming the signatures are collected and the state board approves the charter, then the LEA must submit the question of whether the proposed new charter school will be established to the general voting population at the next regularly scheduled election. If a majority of the votes are in favor of the proposed charter school then the state board will approve the charter.

Consequently, some Illinois charter schools fall mostly under the LEA and are governed by the terms of the charter while the state retains some oversight. Others only are connected to the state board as their chartering entity and act more like an independent school district.

Charters

A particular charter school's charter is the third governing structure imposed on charter schools. The charter's founders usually draft the document and establish in it how the school will function. It is often the document reviewed by the authorizing body to determine whether the charter should be granted. While most charters are very detailed and cover a wide range of topics from the school's mission to the hours in a school day, the specific content varies greatly due to the vast differences among charter schools. For example, some charter schools teach from a particular viewpoint while others focus on a particular group such as at-risk students. Still other

charter schools are founded on the basis of delivery of services, for example, independent study versus virtual study. It is impossible to speak generally about the affects of charters on charter schools because each charter is specific to the particular charter school. Therefore, charter schools must understand their own charter and how it provides for the provision of special education services.

Practical Tips / Avoiding Common Pitfalls

Given the complex structure under which charter schools operate, many are unclear about their duties to students with special needs. Additionally, by virtue of their potential separation from the LEA and the individual schools within a school district, charter schools may lose access to the larger pool of special education resources including trained personnel. As a result, students with special needs often fall through the cracks. Through good planning and creative thinking, charter schools can uphold their duty to students with disabilities.

To do so, first, charter schools need to understand what they are responsible for with respect to students with disabilities. While the charter grant process is lengthy and detailed, how a charter school will deliver special education services is often a small part of the charter approval process or absent totally. Accordingly, a charter school must take the initiative to determine its connection to the LEA and what responsibilities fall within its purview.

Given that charters are voluminous, it is easy to allow them to collect dust on a shelf. However, it is important that those that carry out the day to day operations of the charter school remain familiar with the obligations of the charter school as defined by the charter. This is especially true for charter schools that are not completely separate from or included in the LEA as the charter may further define the charter school's responsibility to students with disabilities.

Second, ensuring a non-discriminatory admissions process is essential. Charter schools have been criticized for encouraging applicants with special needs to not apply or placing those that do apply on waiting lists.[\[12\]](#) Such actions are in violation of federal civil rights laws, as students with disabilities cannot be denied admissions from a charter school because of their disability.[\[13\]](#)

Third, charter schools need to employ or be connected to a special education expert. That person can assist the charter school with understanding its responsibilities and how best to navigate the complicated mandates.

Professional development can assist in training current staff on how best to serve students with special needs.

Fourth, charter schools also must obtain newly enrolled students' individual education plans (IEPs). Parents not providing them because of their dissatisfaction with previous special education services often complicate access to IEPs. Once a child is enrolled, IEPs must be reviewed at least annually. Charter schools cannot limit their delivery of services to students who have been identified as eligible for special education and related services at the time of enrollment. If a "regular" education student demonstrates signs of a disability, which has an impact on his or her ability to learn, the charter school must evaluate that child and plan accordingly, if the child is eligible. When planning for a student with special needs, it is important to remember that special education is not a particular placement, teacher, or curriculum. Rather, it is instruction designed to meet a student's needs and encourage progress.

Finally, with respect to the provision of related services and transportation, charter schools need to review their resource needs and plan accordingly. A school either can employ its own staff or pair with other agencies to provide the services. Some charter schools have begun cooperatives to pool their resources. Finally, building access also provides often-unexpected hurdles for charter schools. Charter schools need to be cognizant of building design when choosing a location in order that the school is accessible to the disabled students.

Charter Schools Founded to Serve Students With Disabilities

Any discussion on charter schools and special education would be lacking if it did not address the small subset of charter schools designed specifically to serve students with special needs.[\[14\]](#) They start from the premise of segregation. For the most part the schools are founded by teachers who want to teach using a particular methodology,[\[15\]](#) parents hoping to expand their choices, or organizations already serving special needs populations. For example, the New York Center for Autism Charter School utilizes the applied behavior analysis (ABA) method of teaching. Around 70 such schools exist today.[\[16\]](#) Most of these charter schools are in Florida and Ohio. More than half serve students with autism.

States vary on their allowance of such schools. Some states outright prohibit or explicitly limit them.[\[17\]](#) Only one state, Ohio, explicitly allows charter schools to be created to separately serve students with special needs.[\[18\]](#) Many states remain neutral or specifically provide that a charter school must admit all students who want to attend.

What is most problematic about these schools is that they are counter to the essence of educational planning for students with disabilities. The cornerstone of educational planning for students with disabilities is the IEP. The IDEA demands that a multidisciplinary team draft a roadmap for the provision of services for students with disabilities. That roadmap is based on the child's specific needs and strengths. The amount of support required in order to carry out the goals and objectives of the IEP determines the student's placement. For students in these schools, however, their placement is determined first and their IEP, if any exists, is drafted to comply with the placement.

Such charter schools also appear to directly conflict with the generally accepted and legally mandated mission to educate students in the least restrictive environment (LRE) and, to the extent possible, provide students with disabilities access to their non-disabled peers. Rather than encouraging access to the general education curriculum, these schools siphon out students based on their status as a student with a disability.

Furthermore, the provision of related services and participation in extracurricular activities is complicated. By attending these schools, students may lose access to related services. For example, in *J.N. v. New York City Department of Education, Region 9*,[\[19\]](#) a student's IEP team met and determined that the child required a specialized class on a twelve-month basis with related services including occupational and physical therapy and speech and language services. Rather than attend his local school, the child was enrolled in a charter school for students with autism. The charter school used the ABA method and provided no related services. The parents attempted to hold the local school district responsible for providing the related services. The court found that the charter school curriculum alone is likely to produce progress and therefore the child was not entitled to the related services. With respect to extracurricular activities, the schools themselves usually do not have sports teams or clubs and access is often limited to joint agreements for participation in community clubs.

Conclusion

Charter schools are a fast growing segment of the public school system. Their impact on children, including children with disabilities, increases as their numbers grow. Children with special needs are guaranteed a FAPE and a charter school does not escape that responsibility. The multifaceted structure under which charter schools operate often leads to confusion regarding the specific duties to students with special needs. The set of responsibilities differs greatly by state and even within a state. The new influx of charter schools dedicated to specifically serving students with

special needs implicates its own challenges regarding LRE and access to non-disabled peers. Regardless of a charter school's focus, it is essential that charter schools understand their responsibilities and plan accordingly to ensure students with special needs receive a FAPE.

[1] Thanks to Vanessa V. Clohessy of Hodges Loizzi for editing this article.

[2] Many states exempt charter schools from length of school day or year requirements, curriculum expectations, staff hiring and firing policies, and staff certification requirements.

[3] 29 U.S.C. § 794.

[4] 20 U.S.C. § 1400 *et seq.*

[5] A mandate to serve at risk youth is a common requirement. Yet, despite the focus on at risk youth, many critics fault charter schools for not serving enough at risk and minority youth.

[6] 20 U.S.C. § 1400 *et seq.*

[7] 34 C.F.R. § 300.209.

[8] 29 U.S.C. § 794.

[9] There are some exceptions to this general rule. States sometimes take over financial oversight of schools with pervasive financial problems and/or failures to meet state standards.

[10] 105 Ill. Comp. Stat. 5/27A - 6.

[11] 105 Ill. Comp. Stat. 5/27A-6.5.

[12] The State University of New York Charter Schools Institute, an organization granted the power to authorize and monitor charter schools in New York, recommended Albany Preparatory Charter School be put on probation for wait listing students with learning disabilities in an effort to increase test scores. See Charter Schools Institute, State University of New York, Summary of Findings and Recommendations Alleged Discrimination in Admissions and Other Allegations at the Albany Charter School (Feb. 2010).

[13] 34 C.F.R. § 300.209.

[14] Two percent of the total charter schools are designed as special education charter schools. See Julie Mead, *Charter Schools Designed for Children with Disabilities: An Initial Examination of Issues and Questions Raised* (Jan. 2008).

[15] For example, a school that uses only ABA to teach children with autism.

[16] See Mead.

[17] See, e.g., Mo. Rev. Stat. § 160.410(3).

[18] Ohio Rev. Code Ann. § 3314.06.

[19] 700 F. Supp. 2d 356 (S.D.N.Y. 2010).