

# ***Equitable Enrollment for Students With Disabilities: Understanding Recent Legal Challenges***

*Julie F. Mead*

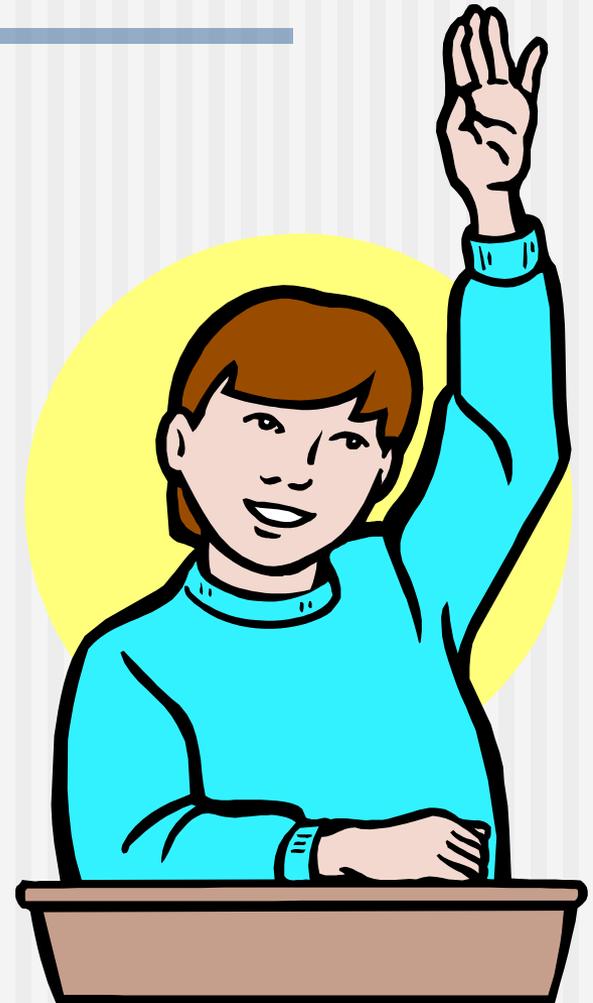
University of Wisconsin-Madison

*Renita Thukral*

National Alliance for Public Charter  
Schools

# What do you want to know?

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# Navigating the labyrinth of Special Education Law

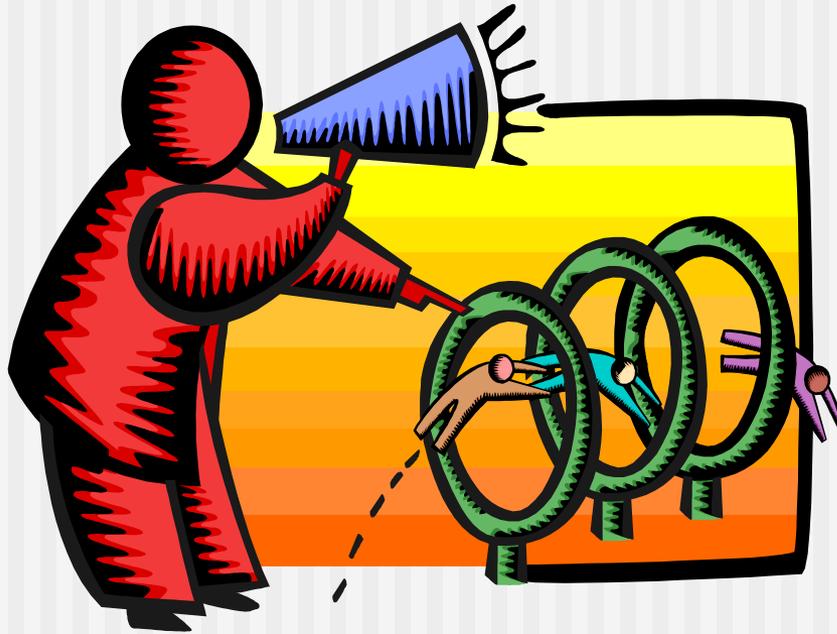
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- Special Education is complex.
- It is made more complex by parental choice.
- That complexity increases when:
  - the school is an independent charter school.
  - the school is designed specifically for children with disabilities.

# Determining Charter School Responsibilities for Children with Disabilities

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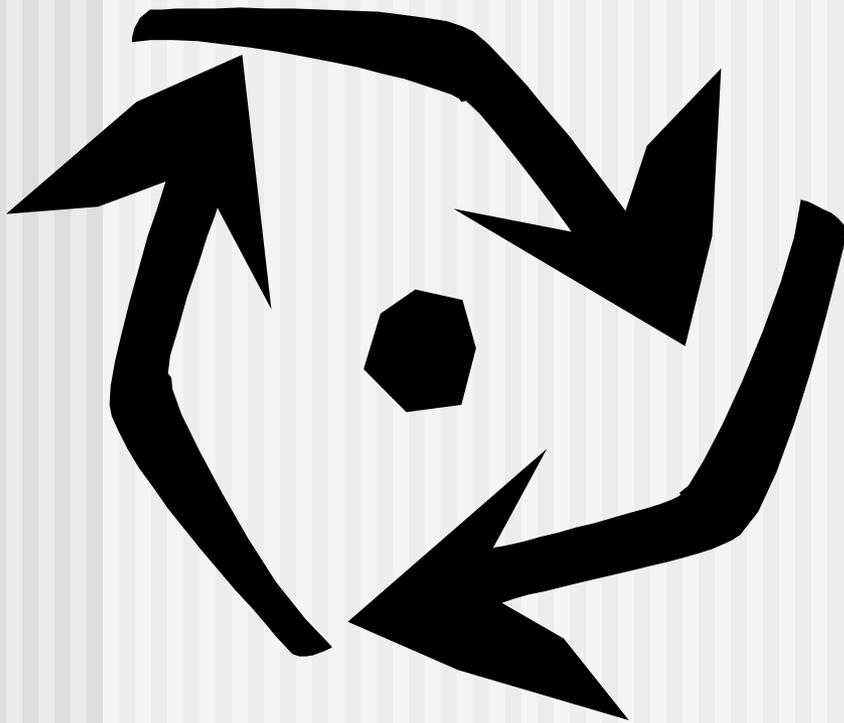


3 Sources are needed:

- Federal Law
- State Law
- Charter Contract

# Federal Law

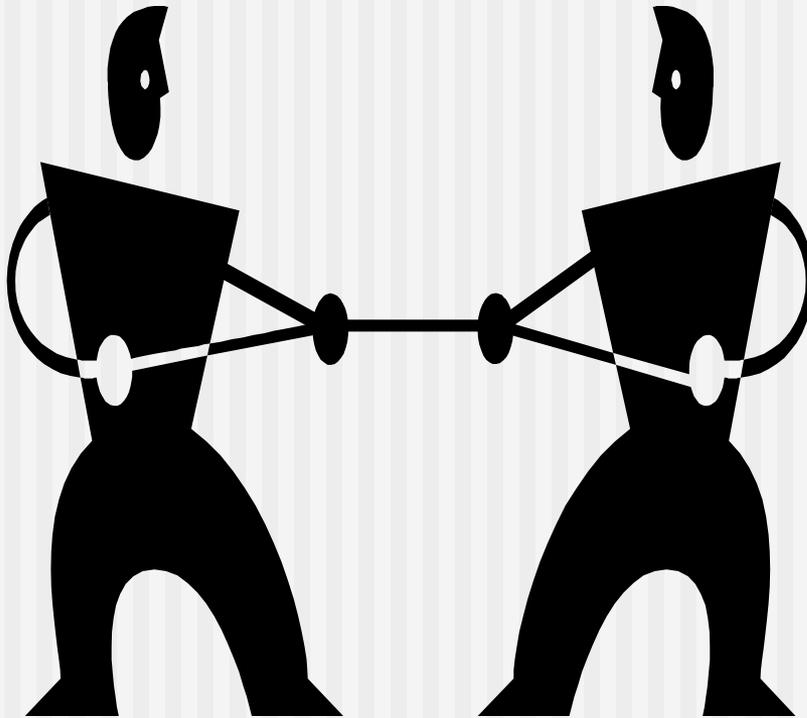
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- Individuals with Disabilities Education Act
- Section 504 /Americans with Disabilities Act
- Charter School Expansion Act

# Project Search: 2 Central Policy Tensions

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- Balancing Procedural Regulations and the Goal of Autonomy
- Negotiating Parental Choice and Special Education Team Decision Making

Ahearn, E., Lange, C., Rhim, L., and McLaughlin M. (2001). "Project Search: Special Education as Requirements in Charter Schools, Final Report of a Research Study." National Association of State Directors of Special Education, Alexandria, VA. p. 43

# Choosing Equal Educational Opportunity

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- Statewide Open Enrollment
  - Letter to Nebraska (OSPEP 1990)
  - Letter to Evans (OSEP 1991)
  - Letter to Lugar (OSEP 1991)
  - Letter to Bina (OSEP 1991)
  - Fallbrook Union Elem. Sch. Dist. (OCR 1990)
- Magnet Schools
  - Chattanooga Public School District (OCR 1993)
  - San Francisco Unified School District (OCR 1990)
- Charter Schools
  - Letter to Bocketti (OCR 1999)
  - Letter to Gloeker (OSEP 2000)

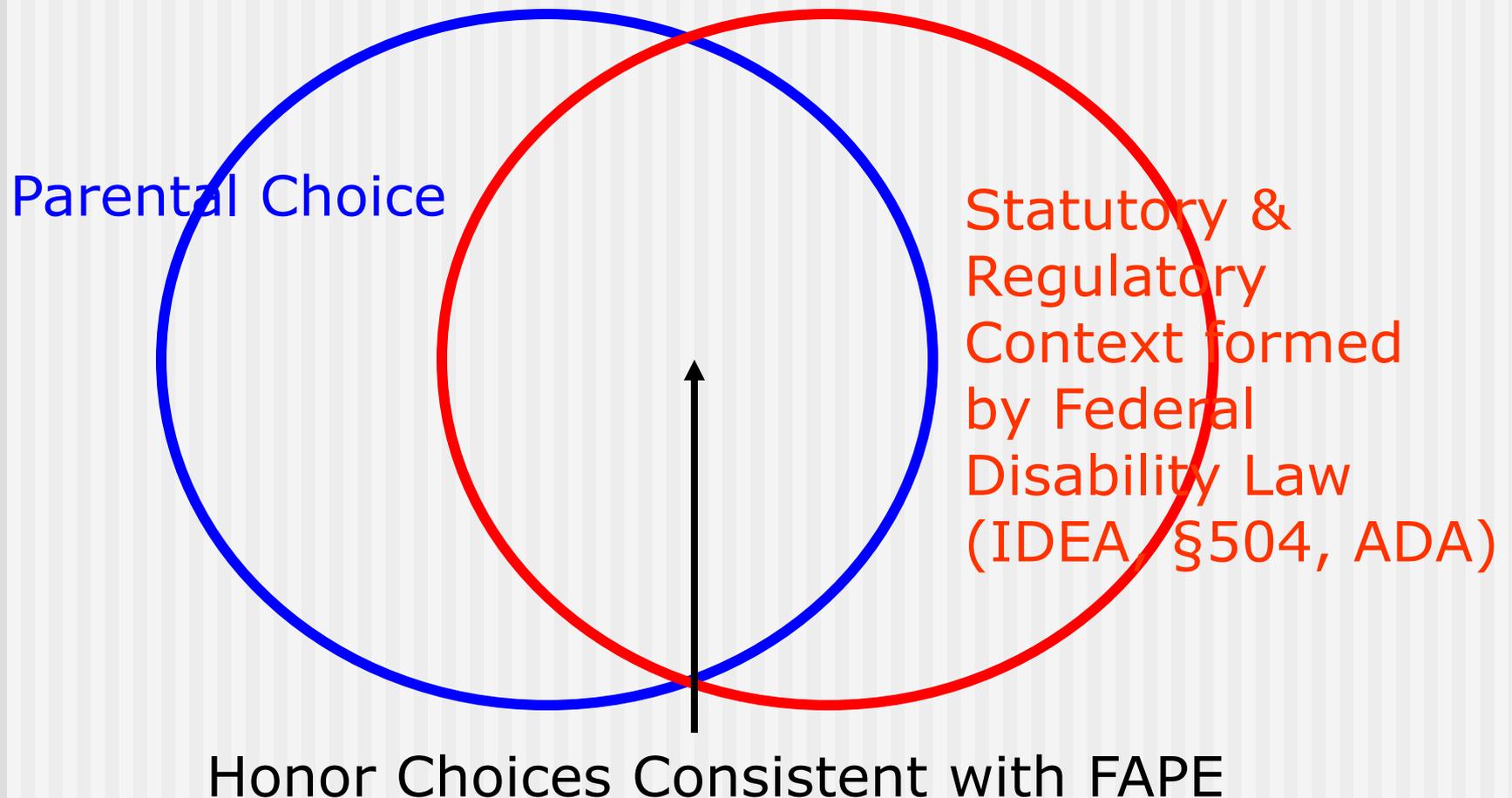
# Four reasonably clear directives

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- All publicly funded choice programs must be accessible to children with disabilities.
- Parents and children cannot be required to waive needed services in order to participate in the choice program.
- A student's right to "free appropriate public education" must be preserved in any choice program delivered in public schools.
- States need to determine which entity (the sending district, receiving school or district, a combination, or some other entity) will serve as the responsible "local education agency" for purposes of IDEA.

# Reconciling Choice and Equal Educational Opportunity

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# Two Domains of Concern

- Access



- Programming



# Two Domains of Concern

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- Access
  - Issues of access relate to the extent parents of students with disabilities enjoy the same choices as parents of students without disabilities.
- Programming
  - Issues related to appropriate programming involve what happens after access to the school of choice is achieved.

# Underlying Premises

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- Kids should be able to get FAPE at any public school.
- Parents cannot be asked to waive FAPE in order to get choice.
- Choices must be consistent with FAPE.

# Underlying Premise #1

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CHARTER  
SCHOOLS  
ARE  
PUBLIC  
SCHOOLS!!!!



# NCLB, Title V, Part B:

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“The term ‘charter school’ means a **public school** that -

- (G) complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, **section 504 of the Rehabilitation Act of 1973,** and **part B of the Individuals with Disabilities Education Act**”
- (20 U.S.C. 7221i)

# Underlying Premise #2: Kids can get FAPE at any Public School

*No one should have to trade FAPE to get “choice.” Nor can schools allow such a trade.*



Traditional Public School



District Charter School



Independent Charter School

# Access: Case in Point

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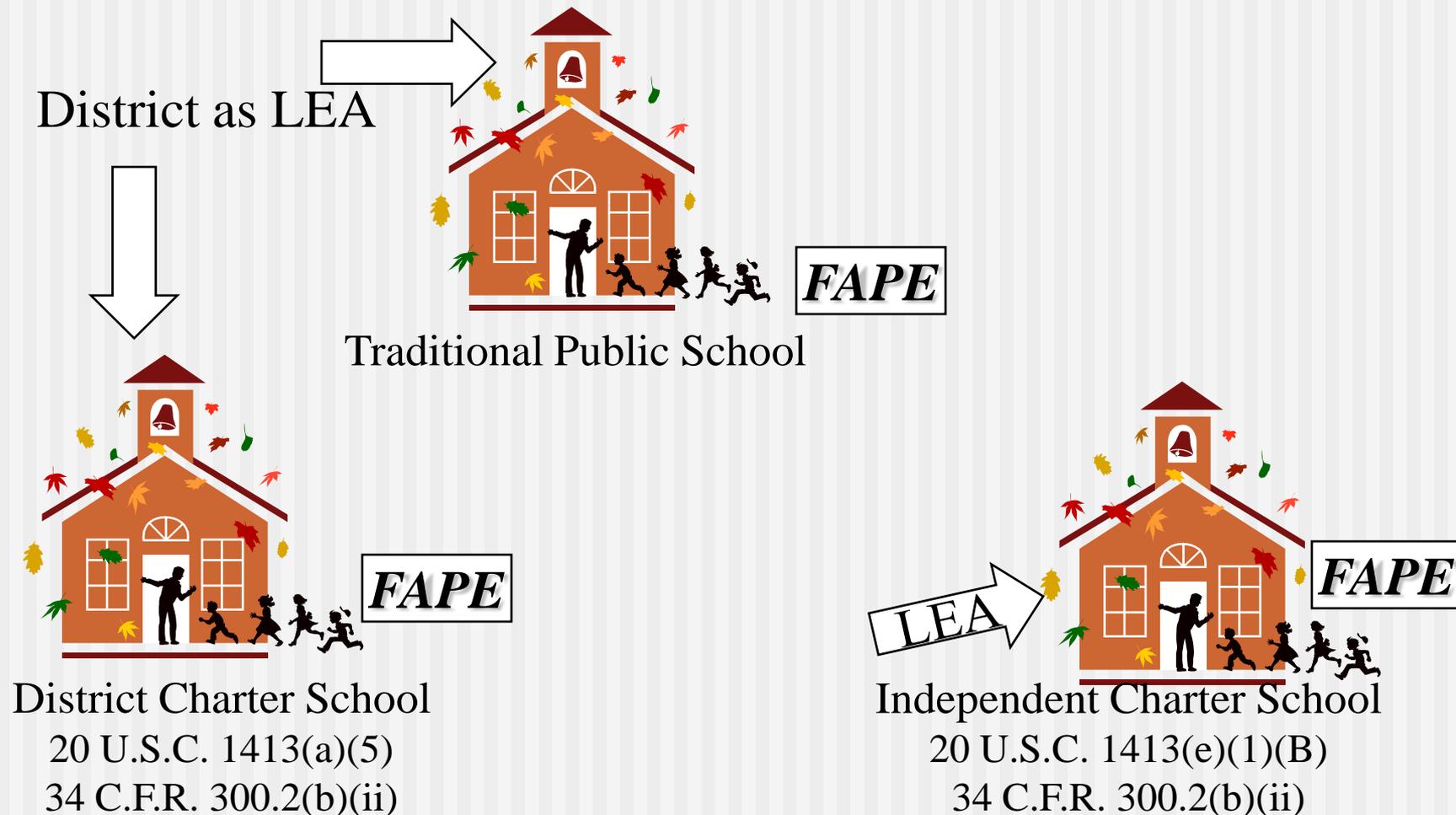
- *United States v. Nobel Learning Communities*, 676 F.Supp.2d 379 (E.D.Pa. 2009).
- Court allowed ADA suit to go forward concerning pattern and practice of failing to enroll or disenrolling children with disabilities.
- Though court would not let preschool examples of violations be imputed to other levels of schooling.

# So You're a Charter School. Are You an LEA?

- Three types of charter schools with regard to special education responsibility:
  1. "charter schools that are public schools of the local educational agency [LEA]" 20 U.S.C. 1413(a)(5).
  2. charter schools that are designated as LEAs independent of any larger district. 20 U.S.C. 1413(e)(1)(B).
  3. A charter school that is neither an LEA nor part of another LEA. 34 C.F.R. 300.209 (d)(1).



# IDEA 97: 20 U.S.C. 1400 et seq.



# Project Search: Linkage

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- **Total-Link:** Formal linkage established in statute or regulation that links a charter school and an LEA in all areas of special education;
- **Partial-Link:** Charter school is legally independent, but there is a legislated requirement for a negotiated relationship with the traditional LEA (or an intermediate district entity), or there is legislated protection for special education responsibilities at the LEA level;
- **No-Link:** Charter school is legally independent and operates autonomously from LEA control. Any relationship with the LEA is entirely voluntary for both the charter school and the LEA.

Ahearn, E., Lange, C., Rhim, L., and McLaughlin M. (2001). "Project Search: Special Education as Requirements in Charter Schools, Final Report of a Research Study." National Association of State Directors of Special Education, Alexandria, VA. p. 13

# IDEA: 20 U.S.C. 1400 *et seq.*



The **State** is the ultimate guarantor of FAPE:

"A State is eligible for assistance ... if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that ... A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school" (20 U.S.C. 1412(a)).

# LEA Responsibilities

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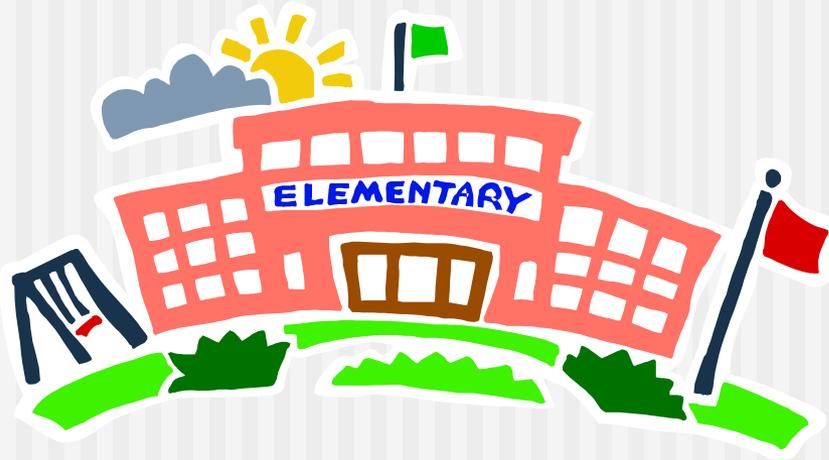
“A local educational agency is eligible for assistance ...if such agency submits a plan that provides assurances to the State educational agency that [it]...has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section [1412].”

(20 U.S.C. 413(a)).

- Identify, locate and evaluate all eligible children (Child Find).
- Make FAPE available through special education and related services.
- Include children with disabilities in large scale assessments.
- Establish written policies and procedures for implementing law.

# Translation:

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- Each LEA has an affirmative obligation to identify and serve appropriately all eligible children with disabilities within its jurisdiction and have written policies and procedures in place to effect that result.

# Case in Point: *B.R. v. District of Columbia* (D.D.C. 2011)

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- Parent filed suit alleging a charter school and DCPS failed to identify her child as a child with a disability.
- Court held that since charter school elected to be its own LEA, it was solely responsible for any child find violation.

# Other State Statute Issues

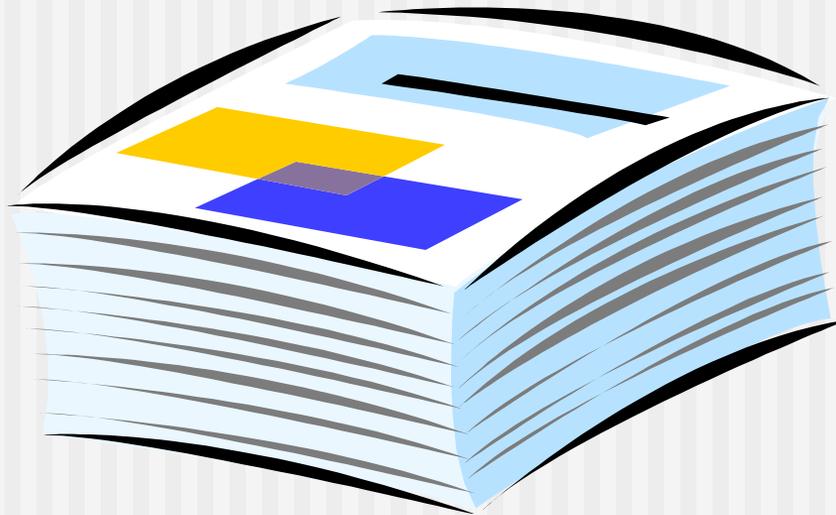
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- From what, if any, state requirements are relieved?
- What certification requirements have been set by your state?
- What documentation does your state require?

# Charter Contract

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- A charter contract may contain provisions that add to or describe how obligations will be met.
- So the question is: Are there provisions specific to special ed. responsibilities?
- Charter contract provisions may not violate either state or federal law.

# Charter Contract Provisions

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- Remember that contract provisions dictate the relationship between the school & CSA.
- Questions to consider:
  - Hiring?
  - Supervision?
  - Funding?



# CSA Responsibilities



- Ensure compliance of charter contract.
- Failure to serve children with disabilities could become an issue of revocation and/or nonrenewal of the charter.
  - Revocation for cause.
  - Nonrenewal for any or no reason.
- Failure to take reasonable steps to insure compliance may create legal vulnerability for the CSA.

# Issues with Respect to Charter Schools Designed for Children with Disabilities

- All LRE standards apply
- Maximize interaction with non-disabled children
- How do you insure that each child necessitates the level of separation (if there is any) characterized by the school?
- What happens if the child is successful?



# Programming Issues

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- Case in Point:**
- Conversion charter school
  - *R.B. v. Mastery Charter School*, 762 F.Supp.2d 745 (E.D.Pa. 2010).
  - Dispute between parent and school caused parent to keep child home.
  - School “disenrolled” her.
  - Court considered school’s action a change of placement under IDEA – all procedural safeguards kick in.

# Parting Lessons

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- Learn
- Plan
- Develop
- Implement

