Legal Rights of Children with Disabilities and Charter Schools

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National Disability Rights Rights Network (NDRN)
(Some) Relevant Federal Legal Authorities

- IDEA
- Section 504
- State Civil/Human Rights and Special Education Regulations
Due Process Protections

- Children cannot be removed from public school without due process – notice, hearing

How Does the IDEA Apply to Charters?

• 34 CFR 300.209(a)

“Treatment of charter schools and their students. (a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.”

See also 20 USC 1413(a); (e)
IDEA Basics

- Child Find
- Eligibility
- FAPE (Free Appropriate Public Education)
- LRE (Least Restrictive Environment)
- Discipline
May 2014

Dear Colleague Letter Re: Charter Schools

http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf
Eligibility IDEA

• Has a disability that meets one of several enumerated definitions—quite specific

• “By reason thereof” requires special education and related services

• If student does not require special education, he or she is not eligible
Free Appropriate Public Education (FAPE)

- Available to all students with disabilities aged 3 through 21 (or later if state law)

- 20 U.S.C. § 1414(c)(5)(i): The right to a FAPE ends when a student graduates with a regular high school diploma.

- Certificate/GED is not a diploma
• Is the standard by which sufficiency is determined.

• Must be provided at no cost to parents or student—may use Medicaid & private insurance with permission.
Child Find

- Locate, evaluate and identify students with disabilities.

- 2006 regulations - Applies even to children advancing from grade to grade. 34 C.F.R. §300.101(c).
Placement Decisions

• Made by group of knowledgeable persons and in conformity with LRE provisions

• Child’s Placement is determined annually, based on the IEP and close as possible to child’s home

• Should attend school would attend if not disabled

• LRE: Considers potential harmful effect on child or quality of services needed
Placement Decisions

• Cannot remove a child solely because of need to modify general curriculum

• Need parental consent before providing initial special education services in most cases.

• Schools must make attempts to involve parents in IEP/placement meetings. If they cannot obtain involvement school may make placement decision without parent.
Least Restrictive Environment

- Core concept referred to as inclusion, integration or mainstreaming

- Child with a disability must receive services in same environment as non-disabled peers to “maximum extent appropriate.”

- Must still consider child’s ability to progress and impact on classmates.
...Removed from the regular education environment only if the nature or severity of the disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

Supplementary aids and services: Assist children to remain in regular education environment and includes assistive technology.

LRE includes extracurricular activities.
Section 504 Basics

- Child Find
- Eligibility
- FAPE
- LRE
- Discipline
- Applies to Charter Schools that accept Federal Funds
Eligibility 504

- Mental or physical impairment
  - Which substantially limits a major life activity
  - Has a record of such impairment, or
  - Is regarded by others as having an impairment

- Needs regular or special education and related aids and services
- Therefore, needed accommodations to regular education program are sufficient.
Issues that may Arise

• Enrollment and Recruitment
  - Charter school or district staff who discourage parents from enrolling students with disabilities who need services and suggest to parents that the traditional public school can better meet their needs.
  - Verbal denials for children with disabilities
  - Charter schools that enroll students with disabilities at rates that are significantly lower than the local public schools. Esp. underrepresented in three categories of disability that can require more intensive resources: intellectual impairment, emotional impairment and autism.
Issues that may Arise

- Schools that require admissions tests and interviews that result in students with certain disabilities being excluded.
- Parent essay requirements
- Open enrollment "lottery" system: Are children with disabilities placed in the lottery?

• **Accessibility**
  - Charters may be granted to schools in inaccessible buildings.
Issues that may Arise

• **Discipline**
  - Threat to expel student if parents do not voluntarily remove him/her. Proper due process or IDEA procedures may not be followed.
  - Denial of services for behavioral health needs that are required by their IEPs or 504 plans, which could result in students being removed from school.
  - Including but not limited to: schools that fail to develop FBAs (Functional Behavior Assessments) and BIPs (Behavior Intervention Plans), as IDEA requires.
Issues that may Arise

- Cyber-charters: Behavioral issues cannot be addressed in a segregated environment, so students are not prepared to return to their home school environment.

  • General / Other
    - Schools that serve all students with disabilities through §504; IDEA eligibility not provided for any student.
    - Charters designed just for kids with disabilities: do these meet the LRE requirement?
    - Charter schools that don’t recognize all disabilities.
Issues that may Arise

- Charters that do not provide transportation for any students; a child with specialized transportation in his/her IEP cannot get to school because he/she cannot use the public bus system safely.

- Failure to provide transition services and related services such as speech tx.

- Charters that are their own LEA may run into issues accessing resources; service denials are based on lack of resources: continuum violations

- RTI “purgatory” -- 4 years?

- In general, child find/admission are still the biggest issues.
Issues that may Arise

- Training for staff at **new** charters in IDEA and 504 basics, such as ...
  - Writing measurable goals
  - Record release and retention
  - Continuum of services
  - Parent involvement, e.g. mutually agreeable meeting times; translation, IEP input
  - Obligation to provide related services on IEP
  - If the parent requests an IEP meeting, it must be a properly convened IEP meeting
Questions?