

NEW MEXICO PRIMER ON SPECIAL EDUCATION IN CHARTER SCHOOLS: BACKGROUND SECTION

This section is divided into two parts:

- a discussion of the legal status of charter schools and their linkage to other local education agencies (LEAs) and
- a synopsis of federal laws that are most relevant to special education in charter schools.

The content of this section is intended for those readers who may not fully understand the critical importance of a charter school's legal status within a state's public education system, or may not have a working knowledge of, or need a brief update on, federal and state special education laws and regulations.

CHARTER SCHOOL LEGAL STATUS AND LINKAGE TO AN LEA

Introduction

Charter schools must abide by state and federal special education laws and regulations because they are part of the public education system. However, the way this gets carried out in practice differs widely due to many factors, the most important of which are a charter school's legal identity as a school within an LEA or an LEA in its own right and its linkage to a traditional LEA (school district) for purposes of special education. Familiarity with these concepts is critical to understanding a charter school's level of responsibility for special education.

How is the public education system structured and how do charter schools fit into it?

The elements of the public education system are:

- the state education agency (SEA). In New Mexico, the SEA is called the New Mexico Public Education Department (NMPED);
- school districts (LEAs);
- schools that are part of an LEA (including locally-chartered charter schools); and
- schools that are their own LEA (including state-chartered charter schools).¹

An LEA is usually defined as an entity that has responsibility for the education of all children who reside within a designated geographical area of a state. Charter schools do not completely fit into this definition since they are schools of choice and have responsibility only for students who are enrolled in the school. The Individuals with Disabilities Education Act (IDEA) and its regulations specifically include charter schools in the definition of an LEA: "Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law." [34 CFR §300.28(b)(2)].

The place a charter school occupies in the public education system depends on the charter school's legal identity, usually referred to as a charter school's LEA status. LEA status is assigned by the state charter school law or other state policy that is legally binding. However, status is not always clearly delineated and a charter school's legal status for special education

¹ Effective July 1, 2007

may be different from its legal status for all other matters. Depending on the state in which it is located, an individual charter school may be classified as:

- a separate LEA, or
- part of another LEA.

In New Mexico, a charter school is either:

- a) an LEA if chartered by the state under state law [NMSA 1978 22-8B-4 T. (Effective July 1, 2007)]² or
- b) a school within the LEA if chartered by an LEA.

Why is charter school legal identity for special education important?

The exact nature of a charter school's identity for purposes of special education is important because, under federal requirements, an LEA has many more programmatic and financial responsibilities than a school that is only a part of an LEA. While the state is ultimately responsible for the education of all its resident children, states delegate responsibility to LEAs, e.g., states typically assign the responsibility to their LEAs for providing a free appropriate public education (FAPE). In addition, LEA status determines how funds for special education will flow to the charter school.

In New Mexico, the law all charter schools are responsible for "identifying, evaluating and offering" a FAPE to "all eligible children who are accepted for enrollment" in their respective schools. [NMSA 1978 22-8B-4 T]. In New Mexico, the school district, which is the LEA of the locally chartered charter school, is responsible for identifying and evaluating eligible children accepted for enrollment and for providing them with FAPE. State-chartered charter schools, as their own LEAs, are charged with "assum[ing] responsibility for determining students' needs for special education and related services."

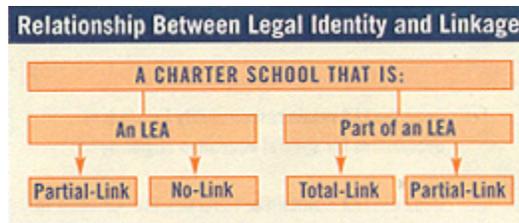
How does a charter school's LEA status impact its operations?

The major effect of a charter school's LEA status is the type of linkage that is mandated or voluntarily established between that charter school and a traditional LEA. In other words, a charter school's legal status is reflected in the way it relates to other LEAs. There are three types of linkage:

- **NO LINK**—a charter school that is its own LEA has full responsibility for special education and usually has No-Link to another LEA, although a charter could negotiate some working relationship with an LEA if it chooses to do so. For example, a New Mexico state-chartered charter school that chose not to negotiate a working relationship with an LEA would be No Link.
- **TOTAL LINK**—the charter is considered a part of an LEA and the LEA is responsible for the students with disabilities. All New Mexico locally chartered charter schools are Total Link - they are schools within LEAs; and
- **PARTIAL LINK**—the connection between a charter school and an LEA when there is a required or negotiated connection, e.g., the charter school has responsibility for services, but the child's home LEA carries out evaluation team tasks, or the charter school is

² Under a new law, effective July 1, 2007 the NM Public Education commission (PEC) receives applications for chartering and renewals of charter schools that want to be chartered by the state and the PEC may approve, deny, suspend or revoke a state-chartered charter school in accordance with the Charter Schools Act.

responsible for only those services that can be delivered in the school and the LEA resumes responsibility when the child needs more specialized day or residential placement. A New Mexico state-chartered charter school that negotiates a working relationship with an LEA is Partial Link.



What are the indicators of linkage?

Since there may be a considerable amount of variability in the way linkage is enacted in a specific charter school, the types of linkage can be said to fall along a continuum. Often, the specifics of how linkage will work is described in a contract between a charter school and an LEA.

Why is linkage important?

Linkage is important because it determines the way that responsibilities for special education evaluation and services will be carried out. While the widest degree of variability occurs in partial-link situations, assignment of responsibility can also vary in total-link and no-link states. Usually, state law is not completely clear about all the details of accountability for special education in charter schools, so the specifics have to be negotiated between the charter school and the LEA. Often, some responsibilities are assigned while other operational elements are not. It is critical for a charter school to arrange in advance and commit to writing as clearly as possible an understanding with the LEA(s) to avoid future problems.

As stated above, in New Mexico, all charter schools are responsible for "identifying, evaluating and offering" a FAPE to "all eligible children who are accepted for enrollment" in their respective schools. State-chartered charter schools, as their own LEAs, are also charged with "assum[ing] responsibility for determining students' needs for special education and related services." Both locally-chartered and state-chartered charter schools may contract with a school district or other party for the provision of special education and related services. However, the school district in which the charter school is located retains responsibility for providing special education and related services to eligible children who live within the geographical boundaries of the LEA and who are expelled³ from a charter school as well as child find responsibilities for eligible children before and after they are prior to enrollment enrolled in the state-chartered charter school.

A state-chartered charter school is responsible for child find for students currently enrolled in the charter school. The district is responsible for all other child find responsibilities for children within the district's educational jurisdiction. If the charter school expels a student from the charter school, the charter school will be the responsible party and must follow disciplinary procedures in accordance with 34 CFR §§300.530-538. In addition, if a dispute arises between the parents

³ New Mexico defines "expulsion" as "the removal of a student from school either permanently or for an indefinite time exceeding ten (10) school days or a locally established lesser period." [NMAC 6.11.2.7 G.]

of an eligible student and the charter school in which the child is enrolled, the NM Public Education Department (NMPED) provides a spectrum of alternative dispute resolution (ADR) options which includes, informal dispute resolution options between the public agency and the parents, third party assisted interventions, and formal dispute resolution options in the form of a formal state complaint or a due process hearing. (6.31.2.13 NMAC).

FEDERAL LAWS RELEVANT TO SPECIAL ED IN CHARTER SCHOOLS

Introduction

The following brief overview of federal education laws as they pertain to special education is intended to be an orientation for those who are not very familiar with this legislation. Links are included for locating the full text of these laws and/or their regulations where they are available.

Which federal laws are most relevant to special education in charter schools?

For charter schools, the federal laws (and their regulations) that have most relevance for implementing special education are the Individuals with Disabilities Education Act (IDEA); the Elementary and Secondary Education Act (ESEA), recently reauthorized as the No Child Left Behind Act (NCLB); Section 504 of the Rehabilitation Act of 1973 (504); the Americans with Disabilities Act (ADA) and the Family Education Rights and Privacy Act (FERPA).

Are copies of these laws or regulations available on the Internet?

Yes. The links are as follows:

- The IDEA Law revisions were enacted in December 2004. A copy of the law can be accessed at the following: <http://www.nichcy.org/idealaw.htm>
- The IDEA regulations were adopted in August 2006 and can be accessed at <http://www.nichcy.org/idearegs.htm>
- State special education regulations are available on most state websites. New Mexico special education regulations, NMAC 6.31.2 can be accessed at <http://www.nmcp.state.nm.us/nmac/title06/T06C031.htm>
- NCLB: Links to the law, regulations and policy guidance are available online at <http://www.ed.gov/about/offices/list/osee/legislation.html#leg>
- 504: Regulations can be found online at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#D>
- ADA: Regulations and technical assistance are available online at <http://www.usdoj.gov/crt/ada/publicat.htm>
- FERPA: An explanation is available online at <http://www.ed.gov/policy/gen/guid/fpc/ferpa/index.html>

Which federal agency is responsible for overseeing these laws?

In the U. S. Department of Education (ED), the Office of Special Education Programs (OSEP) is in charge of the IDEA, the Office for Civil Rights (OCR) is responsible for Section 504 and the ADA. The Office of Elementary and Secondary Education (OESE) manages the ESEA and NCLB. The Family Compliance Policy Office provides technical assistance for FERPA requirements.

Do students with disabilities have a federally protected right to attend charter schools?

Yes. Section 504 specifically prohibits discrimination solely on the basis of disability to public and private programs and activities that receive federal financial assistance. Children who attend charter schools are covered by these civil rights laws in the same way as children in any other public school.

What is the Individuals with Disabilities Education Act (IDEA)?

The IDEA provides federal financial assistance to state education agencies (SEAs) and local education agencies (LEAs) to guarantee special education and related services to eligible children with disabilities. Every state receives these funds and must follow all of IDEA's specific procedures, including those for an evaluation to determine if students are eligible for special education and the additional requirements for subsequent services and re-evaluation.

What are the basic requirements of IDEA?

The basic requirements, often discussed using a set of acronyms, are:

- **IEP:** A group of professionals and the child's parents constitute the team that determines the child's eligibility for special education based on evaluation procedures in accordance with IDEA [34 CFR §§300.301 through 300.309]. In New Mexico, the child must go through the Student Assistant Team (SAT) process which can lead to referral if the interventions do not meet the child's needs. The IEP team decides on the individualized special education and related services for the child and prepares an individualized education program (IEP) that contains specific content that must be reviewed at least annually. An IEP includes measurable annual goals, how the child will be included in state and district assessments and how the child will access the general education curriculum in order to meet state standards.
- **FAPE:** Students with disabilities are entitled to a free appropriate public education (FAPE) provided at no charge to parents.
- **LRE:** The least restrictive environment (LRE) refers to placement in a setting that is the closest to the regular classroom. Students with disabilities must have available to them a continuum of placements that range from full time in a regular classroom to full time in a special setting. They are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the regular classroom. The curriculum for all placements must be based on the NM State Standards with benchmarks.

The OSEP website at <http://www.ed.gov/policy/special/guid/idea/omip.html> provides some information concerning specific requirements of the IDEA.

What does the IDEA say about charter schools?

The 2004 amendments to IDEA continued to affirm that students who attend charter schools are covered under this law. The law makes specific references to charter schools including:

- Children with disabilities who attend public charter schools and their parents retain all rights under IDEA.

- Students with disabilities in charter schools that are part of an LEA (in New Mexico, locally-chartered charter schools) must be served in the same manner as that LEA serves children with disabilities in its other schools including that the LEA must provide supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools. The LEA must also provide funds under this part to those charter schools on the same basis as that LEA provides funds to its other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the agency distributes other federal funds to the agency's other public schools, consistent with the state's charter school law.
- A charter school that is its own LEA is responsible for ensuring that the requirements of IDEA are met unless state law assigns that responsibility to some other entity. In New Mexico, state-chartered charter schools, which are their own LEAs, are responsible for all IDEA requirements except child find for students not enrolled in the school, and special education and related services for students who have been expelled from the charter school.
- If a charter school is a school of an LEA that receives IDEA funding, the LEA is responsible for ensuring that the requirements are met. In New Mexico, the school district, which is the LEA of the locally chartered charter school, is responsible for identifying and evaluating eligible children accepted for enrollment and for providing them with FAPE.
- Certification for teachers in charter schools is subject to the provisions of the state charter school law. The New Mexico Charter Schools Act requires that teachers in charter schools be certified. [NMSA 1978 22-8B-10 A; 22-10A-3].⁴
- Charter schools that are their own LEAs are specifically included in eligibility to access the resources of an LEA risk pool for high need children with disabilities if the state establishes such a fund.
- Charter schools that are LEAs may not be required to join with other LEAs to establish joint eligibility for funds unless the charter school is explicitly permitted to do so under the State charter school statute. (States may require traditional LEAs to join together for funding purposes if they would not be able to establish and maintain programs of sufficient size and scope individually).
- The state special education advisory panel must include a representative of charter schools.

These specific requirements involve a charter school's *legal status* as an LEA or part of an LEA. See Section I of this Background for a discussion of that concept.

What happens if a parent disagrees with the school about special education?

The IDEA contains procedural safeguards and due process rights for parents in the identification, evaluation and placement of their child. Parents must be provided with prior written notice of these rights at least once a year and at the time they request a due process hearing. The law put various procedures in place for resolving conflicts between parents and schools. Every state must have a formal complaint system and must provide for mediation and due process hearings to settle conflicts.

⁴ Specific information about New Mexico certification is available from the Professional Licensure Bureau at <http://www.ped.state.nm.us/div/ais/lic/index.html>

Are there children with disabilities who may not be covered by IDEA?

Yes. To be eligible under IDEA, children must meet the criteria of one of the specific disability categories as defined in the law and, as a result of that disability, need special education and related services. However, children who are not eligible under IDEA may qualify as students with disabilities under Section 504.

How do Section 504 and the ADA differ from IDEA?

Section 504 and the ADA define disability much more broadly than the IDEA. They include any individual who has a physical or mental impairment that substantially limits one or more life activities, or who has a record of such an impairment, or who is regarded as having such an impairment. Reasonable accommodations are required by both of these laws and Section 504 goes further by specifically requiring the provision of educational and related aids and services that are designed to meet the individual educational needs of the child. The exact wording of the definitions in the regulations for IDEA and Section 504 are as follows:

- **IDEA LAW (as amended in 2004 but unchanged from prior law)**
CHILD WITH A DISABILITY-
(A) IN GENERAL- The term 'child with a disability' means a child--
(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
(ii) who, by reason thereof, needs special education and related services.
(B) CHILD AGED 3 THROUGH 9- The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child--
'(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and
'(ii) who, by reason thereof, needs special education and related services.
- **SECTION 504 OF THE REHABILITATION ACT OF 1973—REGULATIONS:**
34 CFR 104.3
(j) Handicapped person—(1) *Handicapped persons* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.
(2) As used in paragraph (j)(1) of this section, the phrase:
(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, and/or genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
(ii) *Major life activities* mean functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

What are some examples of disabilities that may be covered under Section 504 but not by the IDEA?

Children who have chronic illnesses such as diabetes, or a physical impairment, such as those connected with cerebral palsy, may require specific accommodations or services, but do not meet the criteria of the IDEA definitions or additional specifications applied through state law. Such children are entitled to an evaluation and to FAPE if they are found to meet the definition of "handicapped person" as specified in the law. A 504 plan is usually written in these cases. Further details are available in the document *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* available online at <http://www.ed.gov/about/offices/list/ocr/504faq.html?exp=0>

Are funds available under Section 504?

No, there are no funds available as part of Section 504 and IDEA funds may not be used to serve children who are eligible only under Section 504.

What requirements about accessibility of facilities do charter schools have to follow?

The state and federal requirements for accessibility of facilities are complex. It is important that authorizers and operators of charter schools have appropriate legal and technical assistance on this topic. Federal regulations can be found online at <http://www.usdoj.gov/crt/ada/adastd94.pdf>

What parts of NCLB are particularly relevant to students with disabilities?

There are many parts of NCLB that pertain to students with disabilities in charter schools, but the most relevant ones are the accountability requirements related to assessment and highly qualified teachers.

What NCLB assessment requirements pertain to students with disabilities?

Charter schools are subject to the same Title I accountability requirements as other public schools in a state and all state charter laws currently require charter schools to participate in their state's assessment system for public schools. Policy guidance for NCLB says a state's assessment system must be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students covered under Section 504. The participation of students with disabilities in such assessments is covered in the IDEA and requires the following:

- Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations if necessary.
- Alternate assessments must be provided for those children who cannot participate in state and districtwide assessment programs even with accommodations.
- The IEP for all students with disabilities will specify how they will participate in state assessments.

It is important to note that procedures for the inclusion of all students with disabilities in large scale assessments is a developing area of knowledge and practice. Extensive resources on this topic are available at the website of the National Center on Educational Outcomes at <http://www.education.umn.edu/nceo/>

Are students with disabilities included in their state's adequate yearly progress (AYP) requirements?

Yes. As stated in NCLB, AYP applies the same high standards of academic achievement to all public elementary and secondary school students in the state. The law also requires selected subgroups, one of which is students with disabilities, to be considered separately under certain conditions in determining whether a school has met AYP targets. An important part of the NCLB regulations, known as "the one percent rule" that applies to students with significant disabilities, was added to the NCLB regulations in December 2003. The U. S. Department of Education has issued a summary of that rule that is available online at www.usu.edu/mprrc/workgroups/ci/011404Material1.pdf

How must students with disabilities be included in NCLB accountability reports?

Students with disabilities is one of the subgroups for which NCLB requires disaggregated reports of assessment results. However, NCLB provides that a state may not use disaggregated data for one or more subgroups to report achievement results if the number of students in those subgroups is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student.

Which NCLB teacher qualification requirements pertain to students with disabilities?

It is important to note that NCLB does *not* specifically refer to the teachers who provide special education services—that issue is covered in IDEA. It is important that state laws and policies that cover certification for charter schools be carefully reviewed by everyone involved with charter schools. As mentioned above, the 2004 amendments to IDEA make specific reference to special education teacher certification requirements. The IDEA special education teacher qualification requirements are complex and are quoted in full as follows:

HIGHLY QUALIFIED-

`(A) IN GENERAL- For any special education teacher, the term `highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also--

`(i) includes the requirements described in subparagraph (B); and

`(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

`(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS- When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

`(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that **when used with respect to any teacher teaching in a public charter school**, the term means that the teacher meets the requirements set forth in the State's public charter school law;

`(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

`(iii) the teacher holds at least a bachelor's degree.

`(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS- When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement

standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

`(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

`(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

`(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS- When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

`(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

`(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

`(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

`(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

`(F) DEFINITION FOR PURPOSES OF THE ESEA- A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

NEW MEXICO PRIMER ON SPECIAL EDUCATION IN CHARTER SCHOOLS: AUTHORIZER SECTION

PRE-AUTHORIZATION/PLANNING

What is the pre-authorization phase?

The pre-authorization phase encompasses the planning activities preceding the submission of a charter application to an authorizer. In New Mexico, there are two authorizers: the local school board in the district in which the charter school will be located and the Public Education Commission (PEC). This stage generally starts out very informally and grows increasingly structured as potential charter school applicants work to turn their vision of a school into a concrete plan that can be implemented. It is a critical stage in the creation of a charter school. This is the stage when authorizers have a unique opportunity to assist developers in preparing their special education plans.

Charter applicants who apply to the PEC for a state charter school are required by law to notify the school district in which the proposed charter school is to be located and the PEC at least 180 days prior to initial application of their intent to establish a charter school [NMSA 1978 22-8B-6 A. (effective July 1, 2007)]. Failure to provide the required notification may result in an application not being accepted. July 1st is the deadline for submission of applications.

What is an authorizer's role during preauthorization related to special education in charter schools?

Authorizers may encounter charter applicants with limited knowledge of their responsibilities related to students with disabilities. Ideally, authorizers should ensure that charter school applicants are knowledgeable about federal and state laws related to educating students with disabilities and cognizant of their responsibilities related to special education. Authorizers that do not or cannot provide deeper technical assistance regarding special education themselves should refer applicants to qualified technical assistance providers who can give them the developmental guidance applicants need throughout the planning phase.

How can I introduce potential charter school applicants to the rationale behind special education laws?

Introducing charter developers to the reasons underlying special education may help lower barriers to implementing special education programs. In other words, authorizers should consider teaching potential operators why special education exists. Furthermore, it may be helpful to acknowledge that, while special education policies and procedures can admittedly be cumbersome, they have evolved over many years and they stem from documented exclusion of children with disabilities. Charter authorizers may require that charter applicants attend a brief introduction to the civil rights origins of the Individuals with Disabilities Education Act (IDEA).

Can an authorizer grant charter school applicants waivers from federal special education requirements as part of their charter?

No. The federal government has not permitted any waivers from federal special education requirements for charter schools. Charter schools are public schools and must be open to, and serve the needs of, any student with a disability wishing to attend. New Mexico law [NMSA 1978 22-8B-4 A] provides that "A charter school shall be subject to all federal and state laws and

constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services." In addition, state law provides that "A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal [IDEA] and its implementing state and federal rules [22-8B-4 T]."

Given that one of the tenets of the charter school movement is the goal of fostering innovation, authorizers should strive to provide charter school developers with the opportunity to develop special education programs in non-traditional ways as long as they operate within the parameters articulated in federal and state law. The New Mexico Charter Schools Act does not provide for the waiver of any state requirements relating to the provision of special education and related services.

What are my responsibilities as an authorizer related to the No Child Left Behind Act (NCLB)?

Authorizers' responsibilities related to NCLB are determined by state charter school law. To be specific, the non-regulatory guidance provided by the U.S. Department of Education states that:

"... Section 1111(b)(2)(K) of the amended ESEA requires accountability for charter schools to be overseen in accordance with State charter school law. Thus, a State's charter school law determines the entity within the State that bears responsibility for applying the Title I, Part A accountability provisions, including AYP, to charter schools. This generally means that the charter authorizer is primarily responsible for holding charter schools accountable under the Title I, Part A provisions unless State law specifically gives the State educational agency (SEA) direct responsibility for charter school accountability. We do not expect the local educational agency (LEA) in which the charter school is located to be this entity, unless it is also the charter authorizer.

From the perspective of special education, it is important for authorizers to know the basic requirements of the NCLB, e.g., that all students with disabilities must be included in the required state assessments and that the special education subgroup is a component of "adequate yearly progress." The complete Non-Regulatory Guidance on Title I Requirements in Charter Schools is (available online at www.ed.gov/policy/elsec/guid/charterguidance03.pdf).

The New Mexico Charter Schools Act, NMSA 22-8B-4 M, provides that "[a] charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [22-2C-1 NMSA 1978]".

What issues should I encourage charter applicants to consider during the planning phase to ensure that they will be able to provide special education appropriately?

When working with charter applicants, authorizers are wise to advise applicants of the value of the old adage, "an ounce of prevention is worth a pound of cure." When applied to developing a school that can educate students with disabilities, the "ounce of prevention" requires adequate planning during the charter development and start-up phase. The following checklist itemizes issues that authorizers should encourage applicants to consider related to special education. The list is not exhaustive, but rather a guide to key issues that potential charter applicants should take into account. The answers to these questions will depend upon a number of conditions including the charter negotiated between the authorizer and the operator and the characteristics of the individual charter school.

ISSUES FOR CHARTER APPLICANTS TO CONSIDER DURING THE PLANNING PHASE

HUMAN RESOURCES

- How many students with disabilities should we estimate that our school will enroll? (NMPED can provide applicants with historical school district specific averages of students with IEPs to assist applicants in making this projection.)
If we will be responsible for providing special education:
- How many special education teachers will we need to employ? (NMPED can provide applicants with the number of special education teachers employed to assist applicants in making this projection.)
- What kind of certification will the special education teachers need?
- Can we hire part-time or retired special education teachers?
- Will we need to hire staff for health-related issues?
- What are the implications for salaries and benefits if we hire full- versus part-time employees?
- Is the LEA responsible for all, or part of special education in our school?
- If our school needs to work with an LEA, how do we negotiate with the LEA to ensure our students will receive appropriate services? (Since, in New Mexico, the approved charter application becomes the charter, school districts and charter schools may want to utilize a "memorandum of understanding" [MOU] (if money is involved) or intergovernmental agreement [IGA] (if no money is involved) to memorialize their agreement with respect to how students in charter schools will receive services.)

CURRICULUM AND ASSESSMENT

- What curricula and instruction will our school offer?
- How will we modify the curriculum and instructional delivery to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum and instructional approach for children with disabilities in inclusive classrooms?
- How will our school include children with disabilities in required assessments or develop alternate assessment?
- How will curriculum and assessment decisions be considered and monitored by IEP teams and staff?

PROFESSIONAL DEVELOPMENT

- How will our school provide teachers with professional development?
- Will teachers need any specialized professional development related to educating and including children with disabilities?
- Does the district or the state operate a professional development program or network that we can utilize?

ADMINISTRATION

- Who will administer the special education program?
- Who will be responsible for collecting, managing and reporting data related to children with disabilities?
- Can we create our own system to administer special education or will we adopt the policies/procedures dictated by our authorizer, local district, or other administrative unit?
- How will our school handle student records and other school property appropriately in the event of closure of the charter school?
- What are the arrangements for transportation?

SPECIAL EDUCATION FUNDING

- How will federal, state and local special education dollars flow?
- What does our school need to budget for special education during the first year of operation?
- Do we need to prepare financially to enroll a student with significant special needs?

FACILITIES

If we will be responsible for special education evaluations and services:

- Where will we conduct student evaluations?
- Where will we conduct IEP meetings?
- Where can we store confidential student records?
- Where will we provide pullout services?
- Where can related services personnel meet with individual students?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals—including adults—with physical disabilities?

Are there any existing models of how to address special education during the planning phase?

A number of organizations (e.g., state education agencies (SEAs), local education agencies (LEAs), other authorizers, charter school support organizations) have developed documents and orientation series that include information regarding special education in charter schools. One resource is the special education section of the New Mexico Public Education Department (PED) website (www.ped.state.nm.us/seo/index.htm) The New Mexico organization that provides support for parents of children with disabilities including many relevant documents is *Parents Reaching Out*. They maintain a website at www.parentsreachingout.org. Their office which is located at 1920 B Columbia Drive SE in Albuquerque can be reached at 1-800-524-5176.

Summary and Key Points

The pre-authorization phase provides charter school authorizers the critical opportunity to inform potential applicants about their responsibilities related to special education. While many state charter school laws and subsequent charter applications require applicants only to provide a general assurance that they will not discriminate or more specifically, an assurance to abide by IDEA, many applicants are not aware of what these assurances entail. However, once charter schools are authorized and have evolved to the operating phase, the pressures associated with start-up and day-to-day operations frequently limit operators' ability and available options to create an effective and efficient special education program.

In an effort to pre-empt potential problems associated with not complying with IDEA requirements, charter authorizers can take advantage of applicants' planning phase to educate applicants about special education. By educating applicants earlier rather than later, authorizers can encourage applicants to build special education into their vision of a school rather than simply add special education after the school model is developed.

AUTHORIZATION

What occurs during the authorization phase?

The authorization phase incorporates the stage in which the applicant completes the formal written application and seeks a charter. The application process typically conforms to broad requirements in state charter school laws and is further developed by individual authorizers. Charter school applicants are generally required to articulate in one form or another, the school's mission, governance structure, educational model, budget and assessment and accountability plan. Specific contents of the application are outlined in New Mexico law (Section 22-8B-6).

When reviewing charter applications, in what areas should I anticipate or require information regarding an applicant's plan to incorporate students with disabilities?

The New Mexico charter school law specifies what must be included in an application for a charter [Section 22-8B-8] These requirements are described and expanded in the specific New Mexico regulations (Title 6, Chapter 80, Part 4).

What should authorizers ask applicants about their plans to provide special education services to students with disabilities?

Authorizers should develop an application form that asks applicants, at a minimum, to address the elements required in New Mexico's regulations specifically governing charter application content [6.80.4.8]. Although one of those requirements is a "Specific Special Education Plan" [6.80.4.8(D)(2)], the regulations do not describe what that plan has to include.

What is my responsibility as an authorizer to ensure that charter schools serve children with disabilities?

The full extent of authorizer responsibilities related to special education has yet to be established. In New Mexico, the locally-chartered charter school is responsible for identifying, evaluating and offering a free appropriate public education to all enrolled eligible children with disabilities. The state-chartered charter school, as its own LEA, is responsible for determining the needs of enrolled students for special education and related services. The local school district remains responsible for child find for children not enrolled in charter schools within the district and for the provision of special education and related services for children expelled from charter schools. Both locally-chartered and state-chartered charter schools "may", but are not required, to contract with a school district or other party for the provision of special education and related services. Ultimately, it is the state's responsibility to ensure compliance with IDEA.

As an authorizer, am I, or is my agency, liable if charter schools I authorize do not serve children with disabilities or otherwise do not implement special education properly?

To date, there is no case law establishing whether, or the degree to which, authorizers can be held responsible for special education in the schools they authorize, nor is there judicial precedent that explicitly releases authorizers from responsibility related to special education. This does not mean that authorizers cannot or will not be held responsible at some point in the future. Consequently, authorizers should seek legal counsel regarding local and state special education regulations and the degree to which charter schools or parents may hold the

authorizers accountable for the implementation of special education in the charter schools that they authorize. However, if the authorizer is also the charter school's LEA for special education purposes, in its capacity as LEA, (even if not, in its capacity as authorizer) it is ultimately responsible for the provision of FAPE and related services to children attending schools in its geographic boundaries. In New Mexico, state-chartered charter schools are their own LEAs for special education purposes. Locally-chartered charter schools are schools within an LEA for special education purposes.

What are some issues authorizers should monitor related to discrimination against students with disabilities?

As public schools, charter schools are not allowed to discriminate against students with disabilities. An issue that arises in both charter schools and traditional public schools is “counseling-out” of students with disabilities. Counseling-out is the process of subtly or not-so subtly “counseling” a child with a disability to influence an enrollment decision inappropriately based on the child’s disability.

Can a charter school "counsel-out" a student with a disability?

Charter schools are public schools and as such, they are legally required to maintain open enrollment policies. Advising students with disabilities that they are not allowed to attend, or that the school cannot provide the modifications or accommodations necessary to enable them to attend, is discriminatory and illegal. All placement decisions for students with disabilities should be made in the forum of an IEP meeting and must be based on an individual student’s educational requirements.

What is my role in ensuring that charter schools fulfill their mission while complying with their obligation related to adaptation, accommodations and modifications required by IDEA?

Authorizers should require applicants to articulate their mission explicitly and ensure that the charter school is prepared to offer reasonable accommodations to children with disabilities who elect to attend the school. A key component of reasonable accommodations is a school culture that incorporates a commitment to offering accommodations to individuals with disabilities while guarding against substantively changing the nature of the school’s mission. In New Mexico, the PED and the LEA have shared responsibility through the accreditation process for ensuring that charter schools fulfill their mission and comply with all federal regulations and state rules.

Can a charter school’s curriculum alone meet the needs of students with disabilities without modifications and support?

There should be only one curriculum for all students and IDEA stresses the importance of access to that curriculum for all students with disabilities to the extent possible. The core tenet of the IDEA is that children are treated as individuals with unique abilities and disabilities that need to be addressed by providing unique support services, which are explicitly articulated in an IEP. Even if the school plans to provide all children with individualized learning plans loosely analogous to IEPs that address each student’s unique cognitive and physical abilities and disabilities, the learning plan for a student with a diagnosed disability must conform to all of the requirements of IDEA. To determine whether these learning plans or other curricula approaches meet IDEA procedural requirements, charter operators must be aware of district and state

special education requirements. In general, any policy that aims to treat all children with disabilities the same way should raise a red flag to authorizers assessing applications. When reviewing charter applications, authorizers can request additional information regarding how the charter school plans to ensure that its particular curriculum or instructional approach can address the unique individual needs of students with disabilities.

Why is it important for authorizers to ensure that charter applicants have the capacity to provide special education services?

By ensuring that charter schools have the capacity to provide special education services, authorizers can help operators avoid potential liability and ensure that all students who enroll have the opportunity to obtain an appropriate education.

How can charter schools develop the capacity to deliver special education services in the school?

In New Mexico, the LEA school district sends special education funds to the locally-chartered charter school based on the enrollment of students with disabilities. The locally-chartered charter school is responsible for providing special education and related services to enrolled, eligible students, although the charter school can go to the LEA for assistance if their state and federal funds and their emergency reserves have been exhausted. As long as locally-chartered charter schools can ensure that children with disabilities enrolled in their schools have access to a free appropriate public education, they may utilize a variety of strategies to amass the capacity. Examples of approaches charter schools can use to increase their special education capacity include: 1) hiring appropriate professionals to work at the charter school; 2) contracting with a local education agency; 3) contracting with a regional education agency or cooperative; 4) contracting with individuals or organizations qualified to provide special education services; 5) attending state or district special education meetings or professional development activities; or 6) some combinations of these approaches.

State-chartered charter schools are their own LEAs for special education purposes. They receive their special education funds from the state and they are eligible to apply to the state for their own subgrants.

Do charter schools have to hire licensed special educators?

Yes. Charter schools are required to meet the same teacher licensing requirements as all other public schools in the state.

Where can an authorizer refer charter schools to learn more about their state's requirements regarding special education certification?

Like most states, New Mexico maintains a detailed website that describes teacher certification requirements, including routes for alternative certification and scholarship/incentive programs developed to encourage people to become teachers. This information for New Mexico can be found at www.teachnm.org and at the Professional Licensure Bureau section of the state website (www.ped.state.nm.us/div/ais/lic) that contains data on requirements by area of licensure. Because special education is one of the areas in which there is currently a shortage of teachers, many states sponsor programs designed to encourage individuals to obtain special education credentials. Authorizers may want to make charter applicants familiar with the various

teacher recruitment and induction programs offered in the state. These programs may be rich sources of qualified teachers, including special education personnel, for charter schools.

Given the current shortage of special education teachers nationwide, what strategies can an authorizer suggest that a charter schools use to hire teachers and related services professionals?

Charter schools can employ creative strategies to access credentialed special education and related services professionals. Six strategies that charter schools commonly use are:

- hiring faculty with dual licensure (e.g., elementary education and special education);
- hiring consultants to provide special education services;
- hiring retired teachers to work part-time;
- developing collaborative agreements with an LEA;
- developing collaborative agreements with other charter schools to share special education teachers; and
- forming partnerships with a local non-profit entity (e.g., a hospital) or a post-secondary institution that employs related professionals.

How do charter schools pay for the costs associated with providing special education services?

Charter schools must provide appropriate special education services as indicated in the IEP. Charter schools receive special education funds either directly if they are state chartered, or from their chartering school district LEA if they are locally-chartered.

How can authorizers assist charter schools that enroll a child with significant disabilities and are struggling to provide the services the student requires due to the excess costs?

On the special education section of the PED website, state policy related to the provision of special education in charter schools is described. The following points describe the roles of the charter school and its authorizing district:

- Charter schools in New Mexico are primarily responsible for serving their IDEA-eligible children and may provide services with their own staffs or through negotiated contracts with local districts, regional cooperatives or other qualified service providers.
- Because of this responsibility, as a condition of budget approval, the PED will require all charter schools to allocate adequate funds to meet their foreseeable needs for special education and related services.
- Since locally-chartered charter schools in New Mexico are part of the local district, the IDEA holds the district ultimately responsible for compliance. As a result, a locally-chartered charter school that has exhausted its state and federal special education funds and emergency reserves and is still unable to meet the identified needs of one or more IDEA-eligible students may ask—and expect—the district to provide additional services at district expense.
- Since a state-chartered charter school is its own LEA for special education services, it may ask, but should not expect, the district to provide additional services at district expense. Conceivably, a state-chartered charter school could ask for a special appropriation. However, more regularly a state-chartered charter school must simply live within its budget. In order to do this, the state-chartered charter school must incorporate an accurate accounting system to ensure IDEA flow through dollars are used to

supplement, not supplant, the educational program for students receiving special education services and supports. It is the authorizer's responsibility to ensure that the charter school has an accounting and budgeting system in place to ensure funds are appropriated as intended.

(www.ped.state.nm.us/seo/guide/guide.charter.memo.062501.pdf)

What is the legal basis for requirements related to facilities' accessibility for students with disabilities?

Charter schools, like all public schools, must comply with legal requirements regarding accessibility that are extremely complex and stem from the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act. To read these laws and see documents regarding their implementation in public schools, see the following websites:

- Americans with Disabilities Act of 1990
<http://www.usdoj.gov/crt/ada/adahom1.htm>
- Section 504 of the Rehabilitation Act of 1973
<http://www.504idea.org/Select504.pdf>
- ADA and Section 504, Kids source
<http://www.kidsource.com/kidsource/content3/ada.idea.html>

Negotiating the parameters of the ADA and 504 is challenging and authorizers should strongly encourage the schools they authorize to seek legal counsel regarding their obligations associated with accessibility. Authorizers also should obtain counsel, to be familiar with the requirements themselves.

If a charter school is required to make its facility accessible to an individual with a disability, whose responsibility is it to make the building accessible?

A state law (22-8B-4.2 NMSA) requires that all charter schools initially approved or renewed after July 1, 2005 must meet E Standards (educational occupancy standards) and state-adopted rules prior to opening. In addition, authorizers should strongly encourage charter operators to seek experienced legal counsel prior to signing any contracts to lease or purchase a facility for their school. Responsibility to modify a facility—even in the event of unforeseen needs—should be articulated in the lease between the charter school and the owner of the facility.

In the event that a charter school must make its facilities accessible to an individual with a disability, where should an authorizer direct its operator to obtain information about how to make facilities accessible?

- **NEW MEXICO WEBSITES:** most cities and counties post their municipal code, including regulations pertaining to implementing ADA, on their website. Authorizers should familiarize themselves with county building and municipal codes.
- **US DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS:**
<http://www.ed.gov/about/offices/list/ocr/index.html?src=mr>
- **AMERICANS WITH DISABILITIES ACT:**
<http://www.usdoj.gov/crt/ada/adahom1.htm>

Do charter schools have to provide transportation to students with disabilities?

Charter schools must contract with a local school district or other party to provide special transportation for students with disabilities if it is included as a related service on the student's IEP.

Summary and Key Points

The authorization stage is critical to the development of successful charter schools. Building on the foundation established during the pre-authorization phase, the authorization process provides authorizers the opportunity to verify potential operators' knowledge about their responsibilities and to assess the degree to which an applicant is capable of fulfilling these responsibilities. Charter authorizers should be knowledgeable about special education. This basic knowledge will enable authorizers to ensure that: 1) charter applicants fully understand and are prepared for their responsibility to educate students with disabilities and 2) charter applicants integrate their plan to provide adequately for special education within their application. By providing charter developers early guidance on how to anticipate and adequately address the application process, authorizers can help charter schools preempt a variety of challenging issues that will emerge once a child with a disability enrolls in the charter school.

OVERSIGHT, ACCOUNTABILITY AND RENEWAL

What is my role as an authorizer to hold charter schools accountable in the area of special education?

In New Mexico, the approved charter application becomes the contract or "charter" between the charter school and the authorizer. It is a performance contract and the authorizer is responsible for ensuring that charter operators fulfill their responsibilities articulated in the contract. Once the charter school doors open and the students arrive, charter authorizers' responsibility shifts from granting charters to overseeing the schools and holding them accountable for the goals and objectives outlined in the charters. It is important that each charter school's specific level of responsibility for special education be included in the charter and, if appropriate, be expounded upon in a memorandum of understanding (MOU) if money is involved or an intergovernmental agreement (IGA) if no money is involved or other document.

Do authorizing agencies have any obligation to complete paperwork related to special education in the charter schools they authorize?

The current data collection system in New Mexico is the "Student Teacher Accountability Reporting System" (STARS) <http://www.ped.state.nm.us/stars> . This data collection warehouse requires LEAs to report data to the NMPED for all federal data reporting requirements including special education. The NMPED has published a user's guide for the STARS data collection warehouse. The user's guide includes a Volume I and II. Volume I provides information on all reporting templates required by the NMPED and Volume II provides reporting codes and course description information. The charter operator's knowledge of documentation requirements for special education should be part of the special education plan that is submitted with the charter application.

Where or when is my role related to accountability formally articulated to the charter schools I authorize?

The New Mexico charter school law specifies the procedures for renewal of a charter. The charter school must submit a renewal application and the specific areas of accountability to be included in that application are specified in section 22-8B-12. Accountability items are also specified in detail in the state regulations that prescribe the content of a charter application which must include a special education plan (6.80.4). Once locally-chartered charter schools are operating, they must also work collaboratively with the LEA on their IDEA Part B application.

Authorizers are encouraged not to wait until the renewal process to determine whether the charter schools they have authorized are complying with the terms of the charter as well as federal and state law. Authorizers are encouraged to enter into an MOU with the charter school, setting forth their mutual responsibilities for site visits, reports and other exchanges of information to ensure high quality charter schools and high quality authorization.

Since data collection and documentation are important aspects of IDEA, what types of data and documentation regarding children with disabilities should authorizers recommend that charter schools collect and report?

Data and documentation on special education are two major responsibilities under IDEA. New Mexico charter schools are obligated to collect and report the same information that all public schools must report, such as statistical data on students, results of standardized tests and financial information. Examples of special education data and documentation that a charter school must compile include student counts as well as more procedural documents that would be reviewed as part of special education general supervision. The data collection requirements for special education are described in detail in the New Mexico State Performance Plan (<http://www.ped.state.nm.us/seo/data/SPP.1.20.06.final.pdf>). The data collection Indicators identified in the New Mexico State Performance Plan are mandated by the U.S. Office of Special Education Programs (OSEP).

What should authorizers know about the federal and state special education monitoring processes as they relate to charter schools?

The federal Office of Special Education Programs (OSEP) provides general oversight to every state on its compliance with IDEA requirements and makes a Determination of how the state has implemented IDEA requirements. In turn, each state must make a similar Determination on LEA performance by considering each district's (LEA's) data on the 20 indicators described in the New Mexico State Performance Plan. Charter schools are held accountable for special education in the same manner as all public schools: they must demonstrate that they comply with all federal regulations and state rules.

Charter schools are included in the general supervision and monitoring activities carried out by the New Mexico Public Education Department for LEAs. Locally-chartered charter schools are included in the district's general supervision, monitoring, and technical assistance activities carried out by the NMPED. The NMPED Special Education Bureau (SEB) does not provide general supervision to locally-chartered charter schools on an individual basis. The NMPED SEB views the locally-chartered charter schools as a school within the authorizing district. The NMPED SEB is charged with monitoring LEAs, not individual public schools. Locally-chartered charter schools must report timely, accurate, and reliable data to the district, in the timeframe outline by the NMPED, for submission to the NMPED SEB for general supervision activities.

State-chartered charter schools are their own LEA and are included in New Mexico's general supervision and monitoring activities. State-chartered charter schools will be responsible for reporting timely, accurate and reliable data and accepting responsibility for providing the assurance of IDEA.

Authorizers should ensure that charter schools understand the level at which they will be involved in special education general supervision and monitoring system and their responsibilities for the process.

Should authorizing agencies consider special education part of the charter renewal process?

The New Mexico charter law, like most other state laws, does not specifically require authorizers to consider special education in the renewal process. Rather, the laws require that authorizers

assess the degree to which the charter school is meeting its goals and objectives and its compliance with federal and state laws. Special education and specifically the performance of students with disabilities should be considered explicitly as a regular part of the school's progress toward meeting its overall goals and not an afterthought. Failure to fulfill obligations related to special education could be a criterion contributing to non-renewal.

A key factor that authorizers may want to assess when contemplating renewal is whether charter schools have been the subject of any informal or formal complaints related to special education service delivery or procedures. While complaints can arise from a variety of issues separate from the quality of special education services provided, multiple complaints should raise a red flag at renewal time. Multiple or persistent complaints may be an indication of a substantive failure to provide a free appropriate public education to students with disabilities. Low enrollment of students with disabilities in a charter school may serve as a "yellow flag" that triggers further inquiry regarding enrollment practices and questions regarding "counseling-out."

Summary and Key Points

Accountability is a core tenet of the charter school concept and one of the critical responsibilities of all charter school authorizers. State charter school laws generally provide broad guidelines regarding how charter schools will be held accountable for fulfilling the goals and objectives articulated in their charters while leaving authorizers the discretion and responsibility to develop an adequate renewal decision-making process. Charter schools are also required to participate in federally required monitoring and accountability processes. As with most issues, the manner in which charter schools are held accountable for educating students with disabilities and participating in federal and state monitoring processes is dictated by individual states and specifically by the charter school's legal status and linkage to an LEA.

NON-RENEWAL, REVOCATION AND RELINQUISHMENT

What is the meaning of the terms non-renewal, revocation and relinquishment as used in this primer?

- NON-RENEWAL is what occurs when a charter school's initial term has expired and, although the school seeks renewal, the authorizer does not grant the charter school a new charter (or renew its current charter). As a result of not having its charter renewed, the charter school loses its authority to operate and can no longer exist as a public school.
- REVOCATIONS occur when an authorizer proactively (prior to a regular renewal process) removes or terminates a school's charter and consequently, its legal authority to operate as a public school because the charter school has failed to meet the obligations articulated in its charter or contract with the authorizer. In New Mexico, a charter may be revoked, if it : 1) committed a material violation of any of the conditions, standards or procedures set forth in the charter; 2) failed to meet or make substantial progress toward achievement of the NMPED minimum educational standards or student performance standards identified in the charter application; 3) failed to meet generally accepted standards of fiscal management; 4) violated any provision of law from which the charter school was not specifically exempted.
- RELINQUISHMENT is a voluntary release or surrender of an authorized charter by the charter school's governing board, in contrast to a revocation, which is initiated by an authorizer. Relinquishments may occur either prior to, or after, a school's opening.

If a charter school ceases to exist, what has to be considered relative to students with disabilities?

To ensure appropriate procedures will be followed in the event of a closure, authorizers should require that specific responsibilities for student records and the allocation of other school property are addressed in the application process and subsequently codified in the school's charter or contract with the authorizer. When a charter school is closed, the charter school board has an obligation to ensure that student records are sent to the school to which students will be transferred. In instances where the charter school is part of the local education agency, the responsibility to maintain student records may revert to the district in which the charter school was located. Authorizers should work with boards of closed charter schools to ensure that records are handled appropriately. If there is no known school of transfer for the child, the authorizer should seek counsel from the PED regarding the appropriate transfer of student records.

Authorizers will also need to ensure that there is a specific accounting for special education funds. Special education programs receive funding from federal, state and local sources. As such, dismantling a special education program requires careful accounting of how special education dollars were spent and the disposition of materials and equipment purchased with special education dollars.

When a charter school closes, the PED in New Mexico will work closely with the LEA to ensure proper transfer of students to an another school.

In the case of revocation or relinquishment, how should charter schools dispose of any special equipment that was purchased for students with disabilities?

In New Mexico, when a charter terminates, "all assets" of a locally-chartered charter school revert to the local school board. The assets of a state-chartered charter school, revert to the state. (NMSA 1978 22-8B-4 N. (effective July 1, 2007) . Disposing of equipment purchased with federal special education dollars is dictated by federal requirements that may be different from what is typically articulated in a charter contract.

In the case of school closure, are there special procedures for handling special education files?

All students' educational records are protected by the federal Family Educational Rights Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 CFR Part 99 that stipulates how the records are to be handled appropriately. Charter school personnel are responsible for closing and preparing files for transfer to either the next school or the LEA or SEA special education office in accord with these regulations. (Information about FERPA is available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>) The New Mexico PED will work with the LEA to ensure that records are handled in accordance with the law and forwarded to the student's new school in a safe and timely way.

Summary and Key Points

The non-renewal, revocation, or relinquishment of a charter is at best an unpleasant experience and at worst, highly contentious and politically charged. Regardless of how unlikely a school closure may appear, ensuring the proper transfer of student records and appropriate disposition of all assets in the event of closure, including those specifically for special education is a responsibility for which authorizers must always be prepared. Regardless of the environment in which a school closes, authorizers are responsible for ensuring that the necessary steps are taken to protect students' rights to privacy and maintain the integrity of records. Establishing the procedures for closing a school, including special education considerations, should be incorporated into the initial charter contract to ensure that all parties are aware of their roles and responsibilities in the event of closure.

TECHNICAL ASSISTANCE AND RESOURCES

Providing special education in charter schools, not unlike traditional public schools, is challenging for a variety of reasons, and amassing the capacity to deliver special education requires early and ongoing technical assistance related to the complex requirements stemming from IDEA. As the authorizers, LEAs can play a critical role in not only informing charter schools of their responsibilities related to special education, but also in serving as a source of information regarding where charter schools can obtain technical assistance. Charter schools can tap into a variety of networks to learn more about special education in general and issues related to special education in charter schools specifically. Following is a partial list of resources that authorizers should be familiar with and to which they may direct potential charter applicants.

New Mexico's Regional Educational Cooperatives (RECs)

New Mexico's Regional Education Cooperatives (RECs) were established by the Regional Cooperative Education Act-22-2B-1 to 22-2B-6, NMSA 1978. Since July 1, 2002, Regional Center Cooperatives (RCCs) have been converted to Regional Education Cooperatives (RECs). Services provided by these nine RECs vary. All RECs serve as administrators of federal special education flow-through funds and provide technical assistance to member districts on special education issues. Various other services are provided in each of the RECs. Membership in a REC is voluntary on the part of LEAs.

New Mexico Coalition of Charter Schools (NMCCS)

The mission of the New Mexico Coalition for Charter Schools is to ensure the success of New Mexico public charter schools by advancing public awareness and support of charter schools, facilitating a network and dialogue among charter communities, providing technical assistance to charter schools and communities interested in charter schools, and advocating for public policy initiatives that support charter schools. The NMCCS has regional offices in northern, southern and central New Mexico. The office is located at 1850 Old Pecos Trail, Santa Fe, NM 87501 and can be reached by phone at (505) 983-1775.

New Mexico Public Education Department (PED)

The New Mexico Public Education Department maintains a website that contains detailed information in its separate subsections on charter schools and on special education (<http://sde.state.nm.us/>).

U.S. Department of Education

Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. OSEP maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education

<http://www.ed.gov/about/offices/list/osers/osep/index.html?src=mr>

Another office that has more general resources for charter schools is the Office of Innovation and Improvement <http://www.ed.gov/about/offices/list/oii/index.html?src=oc>

National Charter School Authorizer Network

The National Association of Charter School Authorizers (NACSA) is a nonprofit membership association of educational agencies across the country that authorize and oversee public charter schools. Created in 2000 by a diverse group of charter school authorizers nationwide, NACSA is dedicated to supporting and strengthening the capacities of authorizers to charter

successful schools. It provides many resources of significant value to charter school authorizers through its website at <http://www.charterauthorizers.org>

National Special Education Networks

- National Association of State Directors of Special Education (NASDSE) provides a wide range of information regarding special education including research reports and technical assistance documents pertaining to special education in charter schools <http://www.nasdse.org>
- PRIMER WEBSITE: The website based on the national version of the special education Primers (www.uscharterschools.org/specialedprimers) provides extensive information and resources for technical assistance and training.
- NATIONAL DISSEMINATION CENTER FOR CHILDREN WITH DISABILITIES (NICHCY) is an information and referral center that provides free information on disabilities and disability-related issues. Children and youth with disabilities (birth to age 22) are NICHCY's special focus <http://www.kidsource.com/NICHCY>

National Charter School Networks

- US CHARTERSCHOOLS website contains extensive information about charter schools, including research reports, state contacts and upcoming events related to charter schools <http://www.uscharterschools.org>
- CENTER FOR EDUCATION REFORM provides up-to-date information about state charter school laws <http://www.edreform.com>

NEW MEXICO PRIMER ON SPECIAL EDUCATION IN CHARTER SCHOOLS: OPERATOR SECTION

PRE-AUTHORIZATION

As a charter school operator, what is my role related to special education as I work with our planning team during this phase?

The pre-authorization planning phase—the time before you submit your application for a charter—is the ideal time to begin planning for all children who may become students in your charter including students with disabilities. As the charter school operator, you are assuming the role of administrator and operator as well as the instructional leader for your future faculty, parents and students. Although you obviously cannot plan for each child before you begin to enroll students, you can give consideration to children with disabilities as you are developing the initial plans for your school. The vision you have for your school will be seen, heard and implemented by others involved in the planning. Therefore, as you plan for your school, it is critically important you consciously plan for including students with disabilities in every aspect of your charter school. Doing this now will not only avoid future problems, but will also result in more effective educational opportunities for all of your students.

Is it important to include students with disabilities as part of the discussion when we are developing the mission and vision of our school?

It is critically important to consider children with disabilities when you are developing the mission and vision of your charter school. Since your school will be a public school that must accept all students who apply, you should expect that you may enroll students with many different kinds of needs including students with all types of disabilities. If this possibility is carefully considered in the initial planning process, it is much more likely your mission and vision statements will be crafted so that you can accommodate a diverse array of students thus minimizing the likelihood of subsequent problems.

How can we plan for students with a wide variety of different disabilities?

During your initial planning, it is important to give some thought to how your school's purpose and mission can be relevant to a wide range of students. For example, how can it be made relevant to students with learning disabilities, physical disabilities, or students who present behavioral challenges?

The following six major legal principles contained in the Individuals with Disabilities Education Act (IDEA) should be considered in your planning to include students with disabilities:

- zero reject of children with disabilities;
- individualized education program (IEP);
- free appropriate public education (FAPE);
- least restrictive environment (LRE);
- due process and parental involvement; and
- nondiscriminatory evaluation.

As a charter operator in New Mexico, you will be responsible for providing special education, so it will be important that you, or at least someone on your planning team, has knowledge and expertise in the education of students with disabilities. Planning should also include an orientation about this responsibility for the full planning team and review of items on the special education section of the New Mexico Public Education Department (PED) website (<http://www.ped.state.nm.us/seo/index.htm>).

Do we have any responsibility regarding the recruitment of students in order to be in compliance with federal civil rights laws?

Yes. When announcing your charter school or conducting outreach, you may not discriminate against students with disabilities. You should recruit students from all segments of the community served by your school using strategies that will not exclude students with disabilities. (More details are available in the publication from the U.S. Department of Education Office for Civil Rights online at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf)

What steps should we take when providing outreach information to parents?

You must make sure that a parent who might have a disability and/or who does not understand English has a meaningful opportunity to understand the outreach information given about your charter school as effectively as other parents. Appropriate auxiliary aids and services must be made available whenever they are necessary to ensure effective communication with parents with disabilities. For example, if outreach materials are made available to parents, you could help to ensure appropriate access to the content of the materials by offering the materials in Braille or on a tape. If you conduct public informational meetings with parents or community groups, those meetings must be physically accessible to individuals with disabilities. Qualified interpreters, translations, or another effective means of communication must be provided if requested.

What is our obligation to make sure that student applicants with disabilities are treated in a nondiscriminatory manner in admissions?

Under Section 504 (of the Vocational Rehabilitation Act) and Title II (of the Americans with Disabilities Act), you may not categorically deny admission to students on the basis of disability. For example, you may not deny admission to a student with a disability solely because of that student's need for special education or related aids and services.

What issues need to be considered as we plan to provide effective special education services?

As you will soon learn, there are many issues to consider in developing and implementing your special education program. While they will vary from school to school, several are common to all schools, including funding, space and facilities, human resources, curriculum, service provision, professional development, administration, transportation and special considerations. The checklist at the end of this chapter poses questions designed to help you consider these important areas.

What should we consider in preparing our application?

A few critical areas for you to consider include:

- describing how you are aware of the responsibilities entailed in the assurances you must include about compliance with federal and state education laws;
- articulating your plan regarding governance, service delivery and finance of special education;
- explaining how you will plan to:
 - identify, evaluate and serve children with disabilities;
 - develop, review and revise IEPs;
 - integrate special education into the general education program; and
 - deliver special education and related services, and
- projecting the cost of special education in your school including costs for:
 - child find, student identification, evaluation and planning; and
 - providing special education services.

Summary and Key Points

The pre-authorization phase provides you with a valuable opportunity to explore different aspects of your future charter school. You and your colleagues may not be aware at first of what compliance with special education law entails. In an effort to preempt potential problems associated with not complying with special education requirements, you should use the pre-authorization phase to, among other things, educate yourself and other critical players (e.g., board members) about special education. By educating yourself earlier rather than later, you will be able to include special education and children with disabilities into your school's vision rather than leaving it to become an add-on component. Once your charter school is authorized and operating, the pressures associated with start-up and day-to-day operations may limit your ability to "think outside the box." So, use the time you have available to design your school, making sure you include special education at every decision point.

CHECKLIST OF SPECIAL EDUCATION CONSIDERATIONS FOR CHARTER SCHOOL OPERATORS

Funding for special education

Is there a formula for determining how much special education funding to include in our budget?

- What is the formula and how is it determined?
- What funds will we receive for special education services?
 - federal
 - state
 - local funds
 - fundraising

Space and facilities

- Where will we conduct student evaluations?
- Where will we conduct IEP meetings?
- Where can we store confidential student records?
- Where will we provide (pullout) services?
- Where can related services personnel meet in an appropriate way with individual students?
- Where will we store supplies and equipment used by students with disabilities (e.g., educational, medical, mobility, assistive technology)?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals, including adults, with physical disabilities?
- Who will make repairs to ensure school remains accessible to students with disabilities?

Human resources

- How many students will the school enroll?
- How many teachers will I need to hire?
- How many special education teachers will I need to hire?
- What kind of certification will the teachers need?
- Can I hire dual-certified teachers?
- Can I hire part-time or retired special education teachers?
- Can we use student teachers from area universities?
- What type of related services personnel will we need?
- How will we obtain these services and contract with these individuals?
- What other types of services will our school need?
 - legal counsel with special education expertise
 - accountants/bookkeepers/number crunchers

Curriculum

- What curriculum will my school offer?
- How does our curriculum align with the state's suggested curriculum or standards for student learning?
- How will we modify the curriculum to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum for children with disabilities in inclusive classrooms?
- How will our mission enhance special education service delivery?

- What types of assistive technology will be needed by our students?

Service Provision

- How will we provide special education related services (e.g., occupational and physical therapy, orientation and mobility, speech therapy)?
- How will student progress be monitored?
- How will we conduct student identification, evaluation and special education determination meetings?
- Who will participate in IEP development and implementation?
- What types of special staff or consultants will we need to implement our students' IEPs?
- How will we handle re-evaluations?
- How are we going to work with families?
 - How can we build partnerships?
 - What strategies can we use to be proactive in avoiding conflicts?

Professional development

- How will we provide my teachers with professional development?
- What type of specialized professional development will be needed by school staff (including teachers, paraprofessionals, administrators) to support children with disabilities?
- Does the LEA or the PED operate a professional development program or network that I can utilize?

Administration

- Who will administer the special education program?
- Who will be responsible for collecting, managing and reporting data related to children with disabilities?
- What equipment/supplies/programs will be needed to collect and store data and records? How will we obtain these? What training will be needed to use these efficiently and appropriately?
- Can we create our own system to administer special education or do we need to adopt the policies/procedures dictated by my authorizer, local district, other administrative unit (e.g., a Intermediate Unit or a Cooperative)?

Transportation

- Will we provide students with transportation?
- Can we access district or state transportation dollars to offset costs?
- How will we meet transportation needs of students who receive transportation as a related service that is required by their IEP?
- How will we arrange transportation for a student in a wheel chair?

PREPARING FOR START-UP

We have concerns about our ability to deliver instruction to students with disabilities that will be in keeping with our curriculum. What should we do?

Concerns about instruction should be discussed at the time of the child's IEP meeting and described in the child's individualized education program (IEP) so that all members of the team can contribute to, and understand, how the student will have access to the curriculum that is required by special education law. If your school's faculty needs help in accommodating the needs of a student who has a disability, you need to make provisions for professional development. One strategy that charter schools have found effective is incorporating into the IEP a provision for close tracking of the student's adjustment in the first 30 days at the charter school with a set date for the full IEP team to review progress and make any necessary revisions. There are many documents on the special education section of the PED website that can help in meeting these requirements (see the technical assistance publications at www.ped.state.nm.us/seo/library/manuals.htm).

We are responsible for hiring our staff and faculty. How much flexibility do we have in special education?

First, NM law requires that teachers in charter schools meet the same licensure requirements as teachers in any other public school. Therefore, teachers must meet the "highly qualified" requirements of NCLB and, in addition, changes to IDEA in 2004 and the IDEA Regulations in 2006 clarify that special education teachers must meet the "highly qualified" requirement as they are defined in IDEA. You must also abide by the decisions of the IEP Team that has identified the type of services the child will need and consider the staffing implications for delivering those services.

Do we have to hire full-time special educators in our charter school?

Not necessarily. You will have to be creative and flexible in designing staffing loads. A few of the options include hiring faculty with dual licensure (in special and general education), hiring consultants on an hourly basis, or contracting for special educators via a collaborative agreement with the local school district or other party.

Where can I obtain specific information on New Mexico's licensure requirements pertaining to special education in charter schools?

Licensure information is available on the New Mexico PED website at: www.ped.state.nm.us/div/ais/lic/ that includes specific information about types of licenses and state regulations in this area. It is important to note that in August 2003, the New Mexico State Board of Education adopted a three-tiered licensure system to align its regulations with the NCLB "highly qualified" requirements. The basic components of this system are as follows:

- Level 1 is the entry-level license granted for three years based on completion of a bachelor's degree, an approved teacher education program, and passage of the required licensure examination. During the three-year period, the teacher must be placed on a Professional Development Plan (PDP) and be provided a structured support or mentoring system by the school district. Both the PDP and the structured support systems are designed, implemented, and funded at the local district level.

- **Level 2** licensure: the teacher must satisfactorily demonstrate the Public Education Commission's required competencies as verified by the local superintendent through the staff evaluation process. A level 2 license is issued for nine years and can be renewed every nine years based on the satisfactory demonstration of competencies. Again, a PDP must be in place continually.
- **Level 3** is an optional level of licensure and provides two tracks from which a teacher may choose for advanced licensure: Level 3A, the Instructional Leader License or Level 3B, the Administrator License. Both licenses require a master's degree and demonstration of specific sets of competencies. The Instructional Leader may serve as a department head, curriculum coordinator, supervisor and the like. The administrator serves in the traditional role of superintendent, building principal, director of instruction, and so forth. Again, a PDP must be in place continually.

What should we do when a child with a disability applies to our school?

Since charter schools may not discriminate on the basis of a disability in determining eligibility for admission, your considerations for students with disabilities are to be the same as for students without disabilities.

It is critical that your charter school receives the records for a child who applies for admission from the child's previous school to ensure the IEP requirements are implemented. If you do not automatically receive the records, initiate a request to the previous school. Contacting the special education office of the previous LEA may also be helpful in securing the records. The PED can also help if you are not able to obtain a response from the previous school or LEA.

If we have concerns about our ability to meet the needs of a specific student with a disability, can we recommend other programs or schools?

All issues about the appropriateness of the child's placement should be taken up with the child's IEP team. New Mexico charter schools are responsible for implementing special education for students with disabilities who enroll. Additional information and clarification on appropriate strategies for addressing this issue may be found in the U.S. Department of Education Office for Civil Rights (OCR) document, *Applying Civil Rights Laws to Public Charter Schools: Questions and Answers* (available online at www.uscharterschools.org/pdf/fr/civil_rights.pdf).

During the course of student recruitment, it is expected that your school staff and representatives will share information with prospective students and families on the school's curriculum and services. It would also be appropriate to discuss the services and supports currently provided to students with disabilities and to explore potential strategies for meeting the needs of a prospective student. The initial focus should be on understanding the needed supports and services and identifying strategies for delivering them within the context of your school's framework.

Are there requirements for physical access that apply when I select the facilities that will house our charter school?

Yes. An LEA may not deny persons with disabilities, including parents and students, the benefits of programs and activities offered at its schools because of inaccessible facilities. The selection of the facility for your charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity. New Mexico law Section 22-8B-4.2 requires that all charter schools initially approved or renewed after July 1, 2005 must meet E Standards (educational

occupancy standards) and state-adopted rules prior to opening. (See “Adequacy Standards” rules at: http://www.ped.state.nm.us/div/fin/capital/dl/031606_updates/2002%20adequacy%20standards%2030806.pdf).

Are there different federal legal requirements that apply to charter schools located in existing facilities as compared to newer facilities?

Yes. Generally for existing facilities, a charter school's programs and activities, when viewed in their entirety, must be readily accessible to individuals with disabilities. Both the Section 504 and ADA Title II regulations permit considerable flexibility in meeting this legal standard. For example, structural changes are not required in existing facilities if nonstructural methods are effective in achieving program accessibility. For new construction and alterations (i.e., construction began since June 1977), Section 504 and ADA Title II require that a new or altered facility (or the part that is new or altered) must be readily accessible to, and usable by, individuals with disabilities.

We rent our school building. Whose responsibility is it to make our school accessible?

Responsibility to modify a facility should be articulated in the lease between your school and the owner of the facility. It is very important you seek legal counsel prior to signing any contracts to lease or purchase your facility to ensure that your facility meets educational occupancy standards.

What impact will these requirements have on our operations?

You must make sure that a child with a physical disability has access to every part of the new building or the parts that are newly altered. For example, if your charter school is in a new building, all parts of the building—including, for example, a third-floor chemistry lab—must be accessible for use by persons with disabilities. In contrast, if your charter school is in an existing facility, you might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location like the first floor. However, the specific federal, state and local requirements on this issue are very complicated and you should obtain legal counsel when acquiring a facility to house the charter school.

Summary and Key Points

Your activities during the start-up period will provide the foundation for the day-to-day operation of your school. As you prepare for the opening, keep children with disabilities in mind. The special education plan you developed for your charter application should provide a clear guide for decisions in this area. Every time you, your board and your staff get ready to make a decision, ask yourselves if this decision will help every potential student? Cultivate your resources so you can draw on their expertise and experiences. Remember there are many sources of information and support available to you, including other charter and traditional schools and NMPED.

OPERATING A CHARTER SCHOOL

Introduction

This section provides an overview of critical issues and activities related to serving students with disabilities that you and your colleagues should address during day-to-day operation of your charter school. These may include curriculum implementation, staff and faculty hiring, student enrollment, fiscal issues and school accessibility. Ideally, you considered each of these issues during your pre-authorization and planning for startup phases. If not, don't despair—but do analyze your situation as soon as possible. You still have the opportunity to build on what you have in place so that your school can support all students including those with disabilities.

What special education services must a charter school provide?

Charter schools in New Mexico are responsible for implementing all services required for the students with disabilities who attend that school and must be prepared to serve students with a variety of service levels. The range of services and equipment that must be provided depends on the content of each student's IEP. In addition to specific instructional content and strategies, the IEP may include related services, e.g., occupational and physical therapy, orientation and mobility training, adapted physical education, transportation, or assistive technology. In addition, charter schools must provide homebound instruction for eligible enrolled students and also meet the requirements related to IDEA discipline provisions including an "interim alternative educational setting" if such a placement is made for the student.

Many charter schools have crafted creative solutions to providing services. Some of these include: contracting with a local school district to provide specific services, hiring a consultant or forming a cooperative with other charter schools.

It is important for charter school operators to remember that, according to New Mexico law, the charter school is responsible for providing special education services, although a locally-chartered charter school is legally part of the LEA and can go to the LEA for assistance if their state and federal funds and their emergency reserves have been exhausted.

Our curriculum was selected specifically for students with a particular disability (e.g., deafness). What should we do to make sure we can include students with other disabilities or those who do not have a disability?

If students who enroll have disabilities different from what your school expected, each one must be considered individually so that their needs can be met. In each case, the involvement of your charter school staff with the IEP team is critical. The need for prior planning to obtain special education capacity is obvious. Although it is impossible for a charter school to plan for every contingency prior to initial enrollment of students, general plans for a new charter school must include a grade-appropriate curriculum to be available for students without identified disabilities. Then, if a population with disabilities is targeted, adequate delivery strategies, personnel, tools and materials must be added for the expected needs.

A student with a significant disability has enrolled in our school. No one on our faculty has experience in this area. What should we do?

Ideally, a charter school representative would have been involved in the IEP team meeting to design the content of the IEP for the child's enrollment in your charter school and plans will be in place when the child enters. If that did not occur, the first step is for your charter school staff to review the child's special education records, especially the IEP. Just as any other public school is expected to do if a child moves in with an existing IEP, your charter school must implement the child's IEP. The new school could also provide interim services agreed to by both the family and the school until a full new IEP is developed. If the family and the school are unable to agree on an interim IEP and placement, the new school must implement the old IEP to the extent possible until a new IEP is developed and implemented. See the IDEA regulations at CFR 34 §§300.323(e) and (f). One strategy that charter schools have found effective is incorporating into the IEP a provision for close tracking of the student's adjustment in the first 30 days at the charter school with a set date for the full IEP team to review progress and make any necessary revisions.

There are many resources that members of the IEP team could access for assistance in planning for a new child with disabilities. The special education section of the PED website has copies of a number of downloadable technical assistance documents (www.ped.state.nm.us/seo/library/manuals.htm) and a technical assistance manual, "Addressing Student Behavior" (www.ped.state.nm.us/seo/discipline/guide.htm). Other useful websites for a child who has a history of behavior problems are:

National Center on Students Progress Monitoring - www.studentprogress.org/

National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS) - www.pbis.org/main.htm

Improving Services to Children and Youth with Emotional and Behavioral Problems – <http://cecp.air.org/fba/problembehavior/main.htm>

New Mexico's has a network of Regional Education Cooperatives (RECs) that provide education-related services to students of participating education entities. Their membership is voluntary and many school districts in New Mexico belong to one of the nine RECs. More information is contained in the evaluation of these structures available on the Special Education section of the PED website (www.ped.state.nm.us/seo/index.htm).

May we limit the participation of students with disabilities to certain aspects of our school's program?

No. Consistent with civil rights laws, students with disabilities must be provided a range of choices in programs and activities that is comparable to that offered to students without disabilities. This includes an opportunity to participate in a range of nonacademic or extracurricular programs and activities offered at your charter school.

We plan to develop Individual Learning Plans for all of our students. Do we still have to develop IEPs for students with disabilities?

Yes. All students receiving special education services must have an IEP that is developed by a multidisciplinary team following the procedural requirements of IDEA and your state's special education law and regulations. The IEP may complement the plans your school will develop for all students. However, the IEP will be the legal, guiding document for all special education services provided to a child who has been found to be eligible for special education.

Are there special strategies we might use to attract and retain our personnel who work with children with disabilities?

In many parts of the country, demand for educators (particularly special educators) exceeds the supply. While there is no special “fix,” several strategies have proved effective in reducing turnover. These include creating a mentor system for new special educators, implementing a peer support program and implementing an open-door discussion practice. Increasingly, research shows that the primary reasons special educators leave their positions are paperwork responsibilities, feelings of isolation from colleagues, high caseloads and multiple responsibilities. Specific upfront discussions about their individual roles in fulfilling the school’s mission will help them to understand your school and their ability to help you meet your goals. It is extremely important that you are in frequent contact with your special educators to gauge satisfaction and/or frustration and explore strategies to minimize areas of difficulties. Additional resources to assist in recruitment, preparation and retention for special education personnel are available at www.personnelcenter.org/resources.cfm.

What types of special education professional development should we offer our staff?

Charter schools need to provide professional development opportunities to a variety of different types of individuals. Clearly your instructional staff (including paraprofessionals) need to have ongoing access to training specifically focused on linking instruction, curriculum, and the school’s mission to the individual needs of students. Successful practices in personnel retention also stress the importance of involving the staff members in the planning of their own professional development programs. The New Mexico PED offers various professional development opportunities for special education staff and charter schools should make this information available to their faculty.

If you are a locally-chartered charter school, you should also request a copy of the professional development calendar from the LEA so that you may take advantage of local training opportunities. Attendance at these events can also strengthen the relationship between your school and LEA staff and may help the charter schools identify additional resources and partnership opportunities.

What type of professional development would benefit our board members and other volunteers?

Your charter school board members and other volunteers should be appropriately included in professional development opportunities. They will benefit from very focused, ongoing training in the charter school’s responsibilities for students with disabilities as well as educational management issues. Given the strong charter school focus on parental involvement, it is important to reach out to parents and family members of students with disabilities to ensure they are part of the activities that involve all parents and meet their needs for information. Equally important, you, the operator, should take time to participate in ongoing professional development relevant to management and leadership of your charter school.

Charter schools can tap into a variety of networks to learn more about special education in general and issues related to special education in charter schools specifically. Following is a partial list of state and national resources that may be useful to you during the planning and operation of your charter school.

WEBSITE ON SPECIAL EDUCATION IN CHARTER SCHOOLS: The website based on the national version of the Primers (www.uscharterschools.org/specialedprimers) provides extended information and resources for technical assistance and training.

U.S. DEPARTMENT OF EDUCATION (ED): Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. The Office of Special Education Programs (OSEP) maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education at www.ed.gov/about/offices/list/osers/osep/index.html Another ED office that has more general resources for charter schools is the Office of Innovation and Improvement at www.ed.gov/about/offices/list/oii/index.html?src=mr Information about the No Child Left Behind Act (NCLB), a law that all charter schools must understand is available at www.ed.gov/nclb/landing.jhtml?src=pb

NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION: NASDSE's website provides a wide array of special education resources including a copy of the final report of Project SEARCH, a national study on special education in charter schools (www.nasdse.org/project_search_doc2.pdf) and documents on critical issues in special education produced by NASDSE's Project Forum (www.nasdse.org/forum_documents.htm)

COUNCIL FOR EXCEPTIONAL CHILDREN (CEC): CEC is the largest international professional organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities and/or the gifted. CEC sets professional standards, provides professional development and helps professionals obtain conditions and resources necessary for effective professional practice (www.cec.sped.org)

NATIONAL DISSEMINATION CENTER FOR CHILDREN WITH DISABILITIES (NICHCY): NICHCY is an information and referral center that provides free information on disabilities and disability-related issues. Children and youth with disabilities (birth to age 22) are NICHCY's special focus (www.nichcy.org)

PARENT ADVOCACY COALITION FOR EDUCATIONAL RIGHTS (PACER) is a national parent advocacy organization dedicated to expanding opportunities and enhancing the quality of life of children and young adults with disabilities and their families, based on the concept of parents helping parents. PACER's website has a variety of resources developed to assist parents of children with disabilities and may be helpful in informing charter school operators regarding their obligations to parents of children with disabilities (www.pacer.org)

NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS (NACSA): This organization renders support and technical assistance to those who sponsor or authorize charter schools. <http://www.charterauthorizers.org>

U. S. CHARTER SCHOOLS WEBSITE: This is a rich resource supported by the U. S. Department of Education. <http://www.uscharterschools.org>

What should we do when our special education program costs more than the funding we receive from our state and the federal government?

Charter schools in New Mexico must provide special education and related services from the operational funds received as part of the State Equalization Guarantee. Additional federal funds for students with disabilities are also provided to the charter school. All locally-chartered charter school funds for special education are awarded to the authorizing LEA which then provides the charter school with its proportionate share either through a direct appropriation or through the provision of services. A New Mexico charter school is responsible for special education costs until state and federal special

education funds and emergency reserves are exhausted at which point the locally-chartered charter school can request assistance from the LEA. It is important to note that the LEA (which includes the state-chartered charter school) under 2004 revisions to IDEA, may be able to access additional funds from a special “risk pool” (see http://www.ped.state.nm.us/seo/applications/Risk_Pool_final_9.07.pdf for further information on the New Mexico High Cost Fund.) Lack of funds is not a legal reason for denying services to a child who is eligible for special education.

We don't provide transportation to students. Must we provide it for students in special education?

If you are a locally-chartered charter school, your LEA (school district) must negotiate with you regarding transportation services, but is not required to provide them. If the IEPs of students with disabilities require transportation as a related service, the charter school must contract with the school district or another party for that transportation. It is critical that your IEP team understand the difference between a student's need for transportation to get to and from school (common for all students) and a student's need that results from a disability which is reflected in transportation as a related service on the IEP. Transportation guidance is provided on the New Mexico website at <http://www.ped.state.nm.us/div/fin/trans/index.html>.

What are our responsibilities to conduct “Child Find” activities?

Charter schools are responsible for children only when they are actually enrolled in the charter school. All charter schools must conduct Child Find activities for their full student population so that children who may need special education are appropriately identified and, if necessary, referred for evaluation.

What should we do if a teacher or parent suspects a child might need special education services?

Parents and teachers must be given clear information about the procedures that will be followed in your charter school concerning the rights of a child to an evaluation for special education. Parents and teachers must also be fully aware of other services your school provides (e.g., a student assistance team or SAT to provide help) prior to a formal special education evaluation referral. Federal and state law and regulations contain numerous specific requirements related to procedural safeguards and your teachers, parents and board members should be made familiar with them.

Every charter school should have clear procedures in place for attending to the needs of a child who is not progressing or is presenting other kinds of problems. Putting such procedures in place should be a part of planning before start-up so that they do not have to be developed in a crisis situation.

How many special education forms and reports do we have to complete? Don/Sam/Albert - I would appreciate it if you would help with this part.

New Mexico special education forms and guidance for their use are available on the PED website (<http://www.ped.state.nm.us/seo/sitemap.htm>). **Is this correct? Yes,** Your paperwork responsibilities may include financial/funding, staffing, child count, identification and evaluation, IEP development and monitoring, and student progress. Deciding who on your staff will be responsible for what paperwork (followed by training to do this) will help to ensure completion of all requirements by competent, qualified individuals. Since student-focused paperwork can be very time consuming, it is very important that you, as the charter operator, understand the nature of your school's responsibilities and ensure your entire charter school staff has a clear understanding of the reporting responsibilities to avoid violations that might make the school vulnerable to non-compliance charges.

Who is responsible for developing our students' IEPs?

New Mexico charter schools are responsible for developing IEPs as part of their responsibility for special education. The procedures to be followed in your charter school should be clearly written in school policies.

Who should be involved in the development of a student IEP?

Current IDEA requirements provide that IEPs are to be developed by a team whose membership includes a parent of the child with a disability, one regular education teacher of the child, one special education teacher of the child, an administrative representative of the LEA, individuals who can interpret the instructional implications of evaluation results, other individuals with knowledge and expertise regarding the child and (as appropriate) the child. The 2004 revisions to IDEA allow that a member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree in writing that the attendance of such member is not necessary.

What does the IEP need to include?

According to the IDEA, an IEP for each child with a disability must include:

- a statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum;
- a statement of measurable annual goals, including benchmarks or short-term objectives;
- a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child;
- an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class;
- a statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment and, if the IEP team determines that the child will not participate in a particular state or district-wide assessment, a statement of why that assessment is not appropriate for the child and how the child will be assessed;
- the projected date for the beginning of the services and modifications and the anticipated frequency, location and duration of those services and modifications; and
- a statement of how the child's progress toward the annual goals will be measured; how the child's parents will be regularly informed of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

In addition, for children age 14 and above, there are requirements for addressing transition needs that must be addressed in the IEP process.

The PED website contains documents that will provide valuable guidance on the specific state requirements for the IEP process and document (www.ped.state.nm.us/seoiiep/index.htm). The IEP is not to be a curriculum for the child. Rather it is to serve as a guide for how to "open the doors" to improve access to the general education curriculum and the necessary special education and related services that will allow the child to progress.

Is there a specific form that must be used for IEPs?

There is a specific form recommended by the New Mexico Special Education Bureau that is available on the web (www.ped.state.nm.us/seoiiep/iep_form_english.doc). It is important that each charter school clarify with its LEA the forms and procedures that the charter school will use for the IEP process.

Do we have to develop an IEP for every child with a disability?

An IEP must be developed for every child found eligible for special education services. Your staff must participate in IEP meetings to provide the necessary information about the child's school progress. It is also important that you develop appropriate procedures for the required progress reporting to parents and all necessary input from the charter school for other special education reporting.

What is our school's responsibility when a child with a disability transfers to another school?

As with any other child, when a student with a disability transfers to another school, you must ensure timely transfer of all records. At the point that the child is formally no longer enrolled in your charter school, your school no longer has a responsibility to provide services to the child. However, the charter school does have a responsibility to assist in a student's transfer and the transfer of records for that student.

What do we do if we do not get a student's IEP from a transferring LEA?

If a student has a pre-existing IEP and it is not made available to your charter school within 30 days of the child's enrollment, you must then hold an IEP meeting to review the needs of that child and decide on further steps concerning an evaluation and a new IEP. There are a few options that should be exercised prior to the end of that 30 day period. You can seek help from the student's parents to provide their copy or ask them to obtain a copy from the sending LEA and you can contact the PED for assistance.

Summary and Key Points

As you move through the day-to-day operation of your school, you will find that often you have to focus on a "challenge of the moment" related to students with disabilities. If you have planned carefully to put strategies in place for handling special education issues, they will not reach the crisis stage. Occasionally, you should take the time to revisit your mission and vision and have specific discussions on how all of your students and staff are doing. Remember to consult with resources available in your local school district, state education office, or charter authorizer. Taking time to address students with disabilities in a proactive and positive manner will have significant payoffs for your students, school and the community.

ACCOUNTABILITY AND RENEWAL

Introduction

Accountability refers to the policies and procedures that charter schools must abide by as required by federal and state special education and state charter school rules and regulations.. Charter schools are obligated to collect and report the same information that public schools must report such as statistical reports regarding students, standardized tests, data for the State Performance Plan (SPP) Indicators, and budgets. This includes data regarding special education as part of the general statistical reports that is often used to generate state and federal categorical funds for special education. Examples include student headcount reports as well as more procedural documents such as IEPs.

The best way to prepare to be accountable is to be thinking about it before the charter school opens its doors on the first day. It will be essential to get oriented to the data requirements related to special education that you are expected to collect and any required means of collecting and storing such data. A comprehensive (electronic) management information system is strongly recommended and you may want to investigate the possibility of collaborating with other charter schools or your LEA.. Hiring consistent, detail-oriented staff is another effective way to handle this responsibility. The type of data you will need to compile includes demographic information on students, academics, IEPs (content and timelines), attendance records, enrollment data and assessment information among many others. A secure filing system to store the paper documents is also critical to ensure security and privacy of confidential and other critical data/reports.

What type of special education accountability provisions do we need to consider?

First and foremost, you need to address your authorizer's requirements and the state charter school law. Stay in close contact with the PED to learn of updates in IDEA and NCLB implementation and implications for your charter school. At a minimum, you will also need to be able to document specific outcomes of students with disabilities, fiscal practices related to special education, timelines related to development and implementation of special education services, qualifications of faculty and staff and resolution of parent complaints.

What types of data should we collect so we are able to complete required reports?

The Student Teacher Accountability Reporting System (STARS) is a collaborative project of the New Mexico Public Schools and the Public Education Department. STARS is a comprehensive student and staff information system that provides a standard data set for each student served by the New Mexico's 3year old to12th grade public education system. STARS replaces the NMPED Accountability Data System (ADS) for school year. A charter school's data in STARS must align with the student's IEP. Since accuracy and timelines can affect funding for the charter school, it is essential that the staff include a person trained in data entry to submit data to the authorizing district or directly to STARS if the charter is a state-charter charter school. Pursuant to Section 22-8B-4 S. (Effective July 1, 2007), NMPED will maintain an accountability data system to enable state-chartered charter schools to submit required data to it.

Is there added accountability specifically for special education?

Yes. Operators must understand that charter schools have an added level of formal accountability related to special education. The U.S. Department of Education carries out an extensive monitoring of SEAs, and then SEAs must develop and carry out a formal monitoring process for each of its LEAs.

The locally chartered charter schools are schools within a district and will participate in the district's general supervision and monitoring activities by reporting required accurate, timely, and reliable data to the district. State-chartered charter schools will be their own LEA and will be responsible for reporting required accurate, timely, and reliable data to the STARS system.

How is special education monitoring carried out in New Mexico?

Charter schools are included in the general supervision and monitoring activities carried out by the New Mexico Public Education Department for LEAs. Locally-chartered charter schools are included in the district's general supervision, monitoring, and technical assistance activities carried out by the NMPED. The NMPED Special Education Bureau (SEB) does not provide general supervision to locally-chartered charter schools on an individual basis. The NMPED SEB views the locally-chartered charter schools as a school within the authorizing district. The NMPED SEB is charged with monitoring LEAs, not individual public schools. Locally-chartered charter schools must report timely, accurate, and reliable data to the district, in the timeframe outlined by the NMPED, for submission to the NMPED SEB for general supervision activities.

State-chartered charter schools are their own LEA and are included in New Mexico's general supervision and monitoring activities. State-chartered charter schools will be responsible for reporting timely, accurate and reliable data and accepting responsibility for providing the assurance of IDEA.

The federal Office of Special Education Programs (OSEP) provides general oversight to every state on its compliance with IDEA requirements and makes a Determination of how the state has implemented IDEA requirements. In turn, each state must make a similar Determination on LEA performance by considering each district's (LEA's) data on the 20 indicators described in the New Mexico State Performance Plan. Charter schools are held accountable for special education in the same manner as all public schools: they must demonstrate that they comply with all federal regulations and state rules.

What resources are available to prepare my charter school to be successful in special education monitoring?

Technical assistance in this area may be obtained from the PED, school districts, other charter schools and national organizations. One strategy could include the use of monitoring mentors where an experienced special educator can assist your charter school prepare for monitoring.

How do students with disabilities participate in the NCLB accountability system?

NCLB makes a point of including students with disabilities and special education programs in school assessment and accountability systems. Students receiving special education services—including those with the most significant disabilities who participate in an alternate assessment system—will “count” in the accountability formulas. Not only do they count—they can make a difference in your school's ability to meet criteria for “adequate yearly progress” (AYP) and state-specific performance measures under the NCLB law since special education is one of the subgroups of students who must meet the state's AYP requirements.

How will special education be included in the renewal of our school's charter?

Throughout your renewal process, your authorizer will include an evaluation of your special education practices in the areas such as special education service delivery, student identification and compliance with IDEA requirements. Having your special education infrastructure in place and operating smoothly will prepare you well for your renewal activities.

Could failure to meet special education requirements be cause for not renewing our charter?

Yes. Lack of compliance with federal statutes (including special education) can result in revocation or non-renewal of a charter.

How do we know if our authorizer has specific renewal policies and processes that address special education?

If you're not sure.....ask! Hopefully this is an area you discussed with your authorizer during your planning, start-up and operational phases. However, if you're not sure, find out what requirements your authorizer will expect you to meet as a condition for renewal. Other charter schools that are authorized by the same entity may also be an invaluable source of information regarding renewal.

Summary and Key Points

Accountability has become a cornerstone of school improvement efforts and it is a basic principle of the charter school movement. At a minimum, these include monitoring, files/data management, record keeping, procedural (special education) compliance, state charter law compliance and charter school contract compliance. At the heart of this is a school's ability to demonstrate student progress, maintain qualified personnel and document instructional and financial practices. As valued members of your school, students with disabilities and their programs and staff will be involved in each aspect of this phase. Explicitly preparing for their involvement in all aspects of your school will avoid problems and enhance the quality of your accountability plan.

NON-RENEWAL, REVOCATION AND RELINQUISHMENT

Introduction

Hopefully your school will never be faced with non-renewal, revocation, or relinquishment of your charter. However, it is important to have a plan in place to be activated if your school closes so that you and your board members understand their responsibilities for the students with disabilities who are enrolled in your school at that time.

What do these terms mean?

- *Non-renewal* occurs when a charter school seeks renewal to operate after its approved period and the authorizer does not grant a new charter. As a result of not having its charter renewed, the school loses its authority to operate and exist as a public school.
- *Revocation* of a charter involves a proactive decision by a charter authorizer to remove a school's charter and its legal authority to operate as a public school. In New Mexico, a charter may be revoked, if it : 1) committed a material violation of any of the conditions, standards or procedures set forth in the charter; 2) failed to meet or make substantial progress toward achievement of the NMPED minimum educational standards or student performance standards identified in the charter application; 3) failed to meet generally accepted standards of fiscal management; 4) violated any provision of law from which the charter school was not specifically exempted.
- *Charter Relinquishment* is a voluntary release of an authorized charter by a charter school board.

If our school ceases to exist, what do we need to consider relative to our students with disabilities?

Ideally your school will be in a situation to facilitate the transfer of all funds, records (including student and financial) and equipment (instructional and adaptive) for all students, including those with disabilities. Check with your authorizer, LEA and PED to obtain specific guidelines and policies in your state. In New Mexico, when a charter terminates, "all assets" of a locally-chartered charter school revert to the local school board. The assets of a state-chartered charter school, revert to the state. (NMSA 1978 22-8B-4 N. (effective July 1, 2007) .

What is our legal obligation after our charter school has closed?

After the school closes, there will be requirements to conduct a final accounting of all funds spent by your school. Your state law, charter contract and authorizer will determine the specific nature of these activities and the ultimate destination of reports. Be sure to be in touch with the appropriate authorities to avoid the possibility of legal ramifications.

We don't know where specific children are going. What do we do with their records?

In New Mexico, the authorizer is ultimately responsible for all special education matters. Therefore, your responsibility is to send students' records to the school to which the student has transferred or to your authorizer.

What requirements exist about the confidentiality of student records?

Perhaps the most important consideration in student records is ensuring the privacy of student information. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) provides guidance on requirements in transferal aspects of educational records that contain personally identifiable information on your students. (See www.ed.gov/policy/gen/guid/fpco/ferpa/index.html for details.) Careful attention to sections pertaining to disclosure of information without the “written consent” of the parent or eligible student will help alleviate future problems.

How should we dispose of any special equipment that was purchased for our students with disabilities?

If equipment was purchased for one specific student, it should be forwarded to the student’s new school. If this information is not known, or if the equipment was purchased for use in a special education program, it should be handled in the same manner as all other school equipment. Your state requirements for disposal/transferring of equipment purchased with federal or state funds will also provide guidance in this area.

Summary and Key Points

Activities during this phase may be charged with emotion and politics. Those aside, you and your Board of Directors have legal responsibilities to safeguard the rights of students, the privacy of records and the security of equipment. Hopefully, you clarified your responsibilities with your authorizer during your initial authorization activities. If not, do so now to ensure that everyone involved has a clear understanding of roles and responsibilities.

NEW MEXICO SPECIAL EDUCATION PRIMER GLOSSARY

Part 1: Acronyms

- **ADA** Americans with Disabilities Act
- **AYP** Adequate Yearly Progress
- **ADHD** Attention Deficit Hyperactivity Disorder
- **CEC** Council for Exceptional Children
- **CSLC** Charter Schools Leadership Council
- **CSP** Charter Schools Program (of the U.S. Department of Education)
- **ED** U. S. Department of Education
- **EMO** Educational management organization
- **FAPE** Free Appropriate Public Education
- **FERPA** Family Educational Rights and Privacy Act
- **FRC** Federal Resource Center
- **504** Section 504 of the Rehabilitation Act of 1974
- **IDEA** Individuals with Disabilities Education Act
- **IEP** Individualized Education Program
- **IFSP** Individualized Family Service Plan
- **LEA** Local Education Agency (school district)
- **LRE** Least restrictive environment
- **NACSA** National Association of Charter School Authorizers
- **NAEP** National Assessment of Education Progress
- **NASDSE** National Association of State Directors of Special Education
- **NCLB** No Child Left Behind Act - the most recent reauthorization of the Elementary and Secondary Education Act (ESEA)
- **NICHCY** National Information Center for Children and Youth with Disabilities
- **NMAC** New Mexico Administrative Code
- **NMCCC** New Mexico Coalition for Charter Schools
- **NMPED** New Mexico Public Education Department
- **OCR** Office for Civil Rights
- **OSEP** Office of Special Education Programs
- **PACER** Parent Advocacy Coalition for Educational Rights
- **PED** Public Education Department
- **PEC** New Mexico Public Education Commission
- **RRC** Regional Resource Center
- **SAT** Student Assistance Team
- **SEA** State Education Agency

Part 2: Definitions

ACCOMMODATIONS Changes in the administration of an assessment, such as setting, scheduling, timing, presentation format, response mode, or others, including any combination of these, that do not change the construct intended to be measured by the assessment or the meaning of the resulting scores. Accommodations are used for equity, not advantage, and serve to level the playing field. To be appropriate, assessment accommodations must be identified in the student's Individualized Education Program (IEP) or Section 504 plan and used regularly during instruction and classroom assessment.

ACHIEVEMENT TEST

An instrument designed to efficiently measure the amount of academic knowledge and/or skill a student has acquired from instruction. Such tests provide information that can be compared to either a norm group or a measure of performance.

ADEQUATE YEARLY PROGRESS

Adequate Yearly Progress (AYP) is the minimum level of improvement that states, school districts and schools must achieve each year. It is an individual state's measure of yearly progress toward achieving state academic standards required by NCLB.

AGGREGATION

The total or combined performance of all students for reporting purposes.

ALIGNMENT

The similarity or match between or among content standards, performance standards, curriculum, instruction, and assessments in terms of knowledge and skill expectations.

ALTERNATE ASSESSMENT

An instrument used in gathering information on the standards-based performance and progress of students whose disabilities preclude their valid and reliable participation in general assessments. Alternate assessments measure the performance of a relatively small population of students—children with the most significant cognitive disabilities—who are unable to participate in the general assessment system, with or without accommodations as determined by the IEP Team. Students participating in alternate assessment must meet specific criteria outlined on the “Alternate Assessment Addendum.” The IEP team must provide documentation to support the decision to have the student participate in the Alternate Assessment.

ASSESSMENT

The process of collecting information about individuals, groups, or systems that relies upon a number of instruments, one of which may be a test. Therefore, assessment is a more comprehensive term than *test*.

ASSISTIVE TECHNOLOGY

A device or service that is used to increase, maintain, or improve the functional capabilities of a student with a disability. (See IDEA Regulations at 34 CFR §§ 300.5 and 300.6).

ATTENTION DEFICIT HYPERACTIVE DISORDER (ADHD)

Attention Deficit Hyperactivity Disorder (also called Attention Deficit Disorder or ADD) is a condition with the principal characteristics of inattention, hyperactivity, and impulsivity. It becomes apparent in some children in the preschool and early school years and can continue into adulthood. These symptoms appear early in a child's life. Because many normal children may have these symptoms, but at a low level, or the symptoms may be caused by another disorder, it is important that the child receive a thorough examination and appropriate diagnosis by a well-qualified professional. A student with ADD or ADHD must meet the criteria outlined for “Other Health Impaired” to be eligible for services under IDEA. If the student with ADD or ADHD is not eligible under the IDEA, they may require a 504 plan to address their educational needs.

AUTHORIZER

The office or organization that accepts applications, approves, exercises oversight and, after the period of approval, decides on renewal or revocation of a charter school. Some states use different terms for this role, e.g., sponsor. In New Mexico, the two chartering authorities who may authorize charter schools are the local school board of the school district within which the proposed charter school will be located and the Public Education Commission. (Effective July 1, 2007)

AUTISM

A developmental disability significantly affecting verbal or nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in 34 CFR § 300.8(c)(4). A child who manifests the characteristics of 'autism' after age three could be diagnosed as having autism if the criteria in §300.8(c)(1) are satisfied.

BIAS (test bias)

In a statistical context, bias is a systematic error in a test score. In discussing test fairness, bias is created by not allowing certain groups into the sample, not designing the test to allow all groups to participate equitably, selecting discriminatory material, testing content that has not been taught, etc. Bias usually favors one group of test takers over another, resulting in discrimination.

CHARTER SCHOOLS

Charter schools are independent public schools designed and operated by educators, parents, community leaders, educational entrepreneurs and others. They are authorized by designated local or state educational organizations, who monitor their quality and effectiveness but allow them to operate outside of the traditional system of public schools. Most states use the term "charter school," although there are other terms in use for this type of school, such as "community school" used in Ohio and "public school academies" in Michigan. New Mexico uses the term "charter school."

CHILD WITH A DISABILITY

A child with a disability means a child evaluated in accordance with IDEA as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (See also STUDENT WITH A DISABILITY)

CRITERION-REFERENCED TESTS (CRT)

A test that measures specific skill development as compared to a predefined absolute level of mastery of that skill.

CURRICULUM-BASED ASSESSMENTS

Assessments that mirror instructional materials and procedures related to the curriculum resulting in an ongoing process of monitoring progress in the curriculum and guiding adjustments in instruction, remediation, accommodations, or modifications provided to the student.

DEAF-BLINDNESS

A disability characterized by concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. [34 CFR §300.8(c)(2)].

DEAFNESS

A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance. [34 CFR § 300.8(c)(3)].

DEVELOPMENTAL DELAY

The term child with a disability for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with 34 CFR §300.111(b), include a child: (1) who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) who, by reason thereof, needs special education and related services. [34 CFR §300.8(b)].

DISAGGREGATED

"Disaggregate" means to separate a whole into its parts. Under NCLB, this term means that test results are sorted into groups of students who are economically disadvantaged, from racial and ethnic minority groups, have disabilities, or have limited English fluency.

EMOTIONAL DISTURBANCE

The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance. [34 CFR §300.8(c)(4)].

ERRORS OF MEASUREMENT

The differences between observed scores and the theoretical true score; the amount of uncertainty in reporting scores; the degree of inherent imprecision based on test content, administration, scoring, or examinee conditions within the measurement process that produce errors in the interpretation of student achievement.

EXTENDED STANDARDS

A content standard that has been expanded while maintaining the essence of that standard, thereby ensuring that all students with significant cognitive disabilities have access to, and make progress in, the general curriculum.

FREE APPROPRIATE PUBLIC EDUCATION

Free appropriate public education (FAPE) means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state; include preschool, elementary school, or secondary school education and are provided in conformity with an individualized education program (IEP).

HEARING IMPAIRMENT

An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. [34 CFR 300.8(c)(5)].

HIGH STAKES TESTING

A test for which important consequences are attached to the results for students, teachers, schools, districts, and/or states. Consequences may include promotion, graduation, rewards, or sanctions.

INCLUSION

Inclusion is a special education approach that stresses educating students with disabilities, regardless of the type of severity of that disability, in the regular classrooms of their neighborhood schools.

INDIVIDUALIZED EDUCATION PROGRAM

An individualized education program (IEP) is a written statement for a child with a disability that is developed, reviewed and revised in a meeting in accordance with IDEA regulations.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act (IDEA) is the major federal law related to special education that provides funding to states and sets specific procedural requirements for the identification and education of students with disabilities.

LEAST RESTRICTIVE ENVIRONMENT

The IDEA requires that, to the maximum extent appropriate, school districts must educate students with disabilities in the least restrictive environment (LRE), i.e., in the regular classroom with appropriate aids and supports (referred to as "supplementary aids and services") along with their non-disabled peers in the school they would attend if not disabled, unless a student's individualized education program (IEP) requires some other arrangement.

LINKAGE

The type of connection that is mandated or voluntarily established between a charter school and a traditional LEA.

LOCAL EDUCATION AGENCY (LEA)

A local education agency (LEA) is a public institution (often referred to as a school district) that has administrative control and direction of one or more public elementary or secondary schools, and the term includes a public charter school that is established as an LEA under state law.

MATRIX SAMPLING

A measurement technique organizing a large set of test items into a number of relatively short item subsets, each of which then is administered to a subsample of test takers, thereby avoiding the need to administer all items to all examinees.

MENTAL RETARDATION

Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. [34 CFR §300.8(c)(6)].

MINIMUM *n*

The smallest number of students a state has determined can produce statistically reliable results for a group while protecting the confidentiality of the student within the group.

MODIFICATION

A change to the testing conditions, procedures, and/or formatting so that measurement of the intended construct is no longer valid.

MULTIPLE DISABILITIES

Concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the

combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. [34 CFR §300.8(c)(7)].

NATIONAL ASSESSMENT OF EDUCATION PROGRESS

The National Assessment of Education Progress (NAEP), conducted since 1969, is the only nationally representative and continuing assessment of what American students know and can do in various subject areas. Students with disabilities participate according to NAEP criteria. (For a copy of the criteria, see <http://nces.ed.gov/nationsreportcard/about/criteria.asp>).

NORM-REFERENCED TESTS (NRT)

A standardized test designed, validated, and implemented to rank a students' performance by comparing that performance to the performance of that student's peers.

OFFICE OF SPECIAL EDUCATION PROGRAMS

The Office of Special Education Programs (OSEP) is that section of the U. S. Department of Education that is responsible for the implementation of the IDEA. It carries out activities related to state eligibility for IDEA funds and monitoring state compliance with IDEA requirements.

ORTHOPEDIC IMPAIRMENT

A severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). [34 CFR §300.8(c)(8)].

OTHER HEALTH IMPAIRMENT (OHI)

Having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that – (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and (ii) Adversely affects a child's educational performance. [34 CFR 300.8(c)(9)]. Some states include special mention of eligibility criteria for children with ADHD under this category.

OUT-OF-LEVEL TESTING

Administration of a test at a level above or below a student's present grade level to enable the student to be assessed at the level of instruction rather than the level of enrollment.

PORTFOLIO ASSESSMENT

An organized collection or documentation of student-generated or student-focused work typically depicting the range of individual student skills.

QUALIFIED PERSONNEL

Under IDEA, qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

RELATED SERVICES

Related services means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools and parent counseling and training.

RELIABILITY

The consistency of the test instrument; the extent to which it is possible to generalize a specific behavior observed at a specific time by a specific person to observations of similar behavior at different times or by different behaviors.

SPECIAL EDUCATION

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals, in institutions and in other settings; related services; travel training; vocational education and instruction in physical education. Special education is a service, not a placement. Students receiving special education and related services must be afforded

the same educational learning opportunities as all children as appropriate.

SPECIFIC LEARNING DISABILITY (SLD)

The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. [34 CFR §300.8(c)(10)].

SPEECH OR LANGUAGE IMPAIRMENT

A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. [34 CFR §300.8(c)11].

STANDARDIZED TEST

An established procedure that assures that a test is administered with the same directions and under the same conditions (time limits, etc.) and is scored in the same manner for all students to ensure the comparability of scores. Standardization allows reliable and valid comparison to be made among students taking the test. The two major types of standardized tests are norm-referenced and criterion-referenced.

STANDARDS

There are two types of standards, *content* and *performance*. *Content standards* are statements of the subject-specific knowledge and skills that schools are expected to teach students, indicating what students should know and be able to do. *Performance standards* are indices of qualities that specify how adept or competent a student demonstration must be and that consist of the following four components: 1. levels that provide descriptive labels or narratives for student performance (i.e., advanced, proficient, etc); 2. descriptions of what students at each particular level must demonstrate relative to the task; 3. examples of student work at each level illustrating the range of performance within each level; and 4. cut scores clearly separating each performance level. In New Mexico, Content Standards with Benchmarks and Performance Standards are set forth in NMAC 6.30.2.

STANDARDS-BASED ASSESSMENTS

Assessments constructed to measure how well students have mastered specific content standards or skills.

STATE EDUCATION AGENCY (SEA)

A state education agency (SEA) is the component of state government that is primarily responsible for the state supervision of public elementary and secondary schools. In New Mexico, the SEA is the New Mexico Public Education Department.

STUDENT WITH A DISABILITY

In the *Individuals with Disabilities Education Act*, a student with disabilities is defined as "a child evaluated in accordance with §§300.304-300.311 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services."

Section 504 of the Rehabilitation Act of 1973 defines a "handicapped person" (outdated terminology) as "any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."

TRANSITION SERVICES

Transition services means a coordinated set of activities, for a student with a disability, that provide positive post school outcomes, is focused on academic and functional achievement, and promotes the students movement from school to post-school activities, including post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living or community participation. Transition planning must be based on the unique needs of the student and including the student's strengths, preferences, interest, transition assessments, and needs. Transition services include instruction, related services, community experiences, the development of post-school adult living objectives and, if appropriate, daily living skills and the provision of a functional vocational assessment (34 CFR 300.43).

TRAUMATIC BRAIN INJURY

An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. [34 CFR §300.8(c)(12)].

VALIDITY

The extent to which a test measures what it was designed to measure. Multiple types of validity exist. Common types of validity include the following:

Construct validity: The extent to which the characteristic to be measured relates to test scores measuring the behavior in situations in which the construct is thought to be an important variable.

Content validity: The extent to which the stimulus materials or situations composing the test call for a range of responses that represent the entire domain of skills, understandings, or behaviors that the test is intended to measure.

Convergent validity: The extent to which the assessment results positively correlate with the results of other measures designed to assess the same or similar constructs.

Criterion-related validity: The extent to which test scores of a group or subgroup are compared to other criterion measures (ratings, classifications, other tests) assigned to the examinees.

Face validity: Concept based on a judgment concerning how relevant the test items appear to be, it relates more to what a test appears to measure than to what the test actually measures.

VISUAL IMPAIRMENT INCLUDING BLINDNESS

An impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. [34 CFR §300.8(c)(13)].

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The Primer definitions were compiled by the authors from many sources. Details about the disability categories under IDEA are available in the document [Disability Categories: State Terminology, Definitions & Eligibility Criteria \(2004\)](#).

Some of the assessment terms were quoted with permission from a publication of the Council of Chief State School Officers' [ASES SCASS Project](#).