Special Education in Tennessee Public Charter Schools

A Primer prepared by the National Association of State Directors of Special Education (nasdse.org), with the assistance of Tennessee state and local education officials and public charter school leaders.

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BACKGROUND

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 special education laws and regulations.

Charter School Legal Status and Linkage to an LEA

Introduction

Charter schools must abide by 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* and its *linkage* to a traditional LEA 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);
- school districts (known in many states under different terms such as school district, parish, or LEAs; and
- schools that are part of an LEA.

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: "a public charter school that is established as an LEA under State law" [34 CFR Â§300.18].

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 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 Tennessee, the individual or group that wishes to open a public charter school must file an application with the local board of education. The only authorizer in Tennessee is an LEA and the resultant charter schools is part of that LEA. A public charter school may be formed by creating a new school or converting an eligible public school to charter status.

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.

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);

- **TOTAL LINK:** the charter is considered a part of an LEA and the LEA is responsible for the students with disabilities; 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 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.

In Tennessee, a charter school is part of an LEA, but the way special education is carried out in the school may be negotiated with the LEA.

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. The box below provides one way to determine the type of linkage a particular charter school has with a traditional LEA.

Indicators of a State's Linkage

Note: The term "LEA" in these items refers to a traditional school district and does not mean a charter school that is its own LEA

Yes	No	
☐	☐	Does the LEA retain responsibility for student evaluations for special education eligibility?
☐	☐	Does the LEA maintain or supervise the IEP team to develop, revise and implement a student's IEP and make placement decisions?
☐	☐	Is the LEA responsible for hiring (or delegating the responsibility for hiring) qualified special education personnel?
☐	☐	Is the LEA responsible for providing (or delegating responsibility for providing) a full continuum of placements?
☐	☐	Do all federal, state and local special education dollars designated for charter schools flow through the LEA?

If in describing your state you answered "yes" to most of these statements, your state is most likely a total-link state. Conversely, if you answered "no" to most of these statements, your state is most likely a no-link state. A mixture of "yes" and "no" responses indicates that your state is most likely a partial-link state.

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. The specifics have to be negotiated between the charter school and the authorizing 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.

Federal Laws Relevant to Special Education 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.

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:

- IDEA: Revisions to the IDEA were enacted in December 2004. A copy of the law (P. L. 108-446) can be downloaded as a PDF here: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ446.108.pdf
- The regulations related to IDEA can be accessed in the Code of Federal Regulations online at http://www.access.gpo.gov/nara/cfr/waisidx_99/34cfr300_99.html. **Note**: This is for the 1999 version of the IDEA regulations that will be revised during 2005-6. They remain in effect except for any item that has been changed by the IDEA amendments of 2004. (State special education regulations are available on most state websites.)

- NCLB: Links to the law, regulations and policy guidance are available online at http://www.ed.gov/about/offices/list/oese/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/fpco/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 and 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 team of professionals and parents arranges for the child's evaluation, determines eligibility, 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 OSEP website at http://www.ed.gov/policy/speced/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:

- Children with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- Charter schools are included in the definition of an LEA when they are established as LEAs by state law.
- Students with disabilities in charter schools that are part of an LEA 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 the 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.
- 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, unless state law assigns that responsibility to some other entity.
- Charter schools that are LEAs cannot be required to join with other LEAs to establish joint eligibility for funds. (States can 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.

- Special education teachers in charter schools may not have to meet certification requirements in IDEA if their state's charter school law does not require that teachers in charter schools be certified.
- 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.

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. The law put various procedures in place for resolving conflicts between parents and schools at least once a year and at the time they request a due process hearing. Every state must have a formal complaint system and must provide for mediation and due process hearings to settle conflicts.

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. 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 REGULATIONS**:
34 CFR Sec. 300.7 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 persons (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 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 Department of Education has issued a summary of that rule that is available at
http://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 the NCLB law does not specifically refer to the teachers who provide special education services - that issue is covered in IDEA. State laws and policies that cover certification for charter schools must 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 (emphasis added), 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.

STATE OFFICIALS PRIMER

CHARTER SCHOOL BASICS

Background

In the early 1990's, charter schools were a new concept being implemented by a few states and communities across the country. Today there are approximately 3,000 charter schools operating in 40 states and the District of Columbia. The growth of charter schools has compelled personnel in state education agencies to get "up to speed" in understanding what charter schools are and how they affect the responsibilities of state education agency (SEA) personnel. Understanding what charter schools are and how they impact SEA responsibilities is particularly important in the realm of special education, as special education needs and operations often cut across many different SEA departments.

This is one section of a Primer prepared for state officials on special education in charter schools. It is intended to give SEA personnel an overview of charter schools by answering some of the most basic questions about the history of charter schools and how they are defined, particularly for those with little or no knowledge of charter schools. As charter school law is specific to each state, there is great variability among the states. Consequently, SEA personnel should be knowledgeable about their own state law and understand how it defines or influences their professional responsibilities. Other sections of this primer delineate issues relevant for SEA personnel specific to charter schools and special education. This section focuses on providing general background on charter schools in order to provide a larger context for SEA personnel.

Why do SEA personnel need to know about charter schools?

Because charter schools are public schools, SEAs are responsible for these schools as they are for any other public schools. Because state-level special education needs cut across several departments, SEA personnel in transportation, finance, monitoring, accountability, special education and many other areas need to know what their responsibilities are in relation to charter schools. This section of the primer for state officials provides some basic information for those who are not familiar with the underlying charter school concept.

How are charter schools defined?

Section 5210(1) of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the No Child Left Behind Act of 2001 (NCLB) defines the term "charter school" to mean a public school that:

- *in accordance with specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible*

operation and management of pubic schools, but not from any rules relating to the other requirements of the [paragraph that sets forth the Federal definition];

- *is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;*
- *operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;*
- *provides a program of elementary or secondary education, or both;*
- *is nonsectarian in its programs, administration policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;*
- *does not charge tuition;*
- *complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Part B of the Individuals with Disabilities Education Act;*
- *is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;*
- *agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;*
- *meets all applicable Federal, State, and local health and safety requirements; and*
- *has a written performance contract with the authorized pubic chartering agency in the State that includes a description of how student performance will be measured in charter school pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.*

What is the history of charter schools?

The charter school movement has roots in a number of other education reform ideas, including alternative schools, site-based management, magnet schools, public school choice, privatization and community parental empowerment. The term "charter" may have originated in the 1970's when New England educator Ray Budde suggested that small groups of teachers be given contracts or "charters" by their local school boards to explore new approaches. Albert Shanker, former president of the American Federation of Teachers, then publicized the idea, suggesting that local boards could charter an entire school with union and teacher approval. In the late 1980's, Philadelphia started a number of schools-within-schools and called them "charters." Some of them were schools of choice. The idea was further refined in Minnesota, where the concept of charter schools was expanded to include three basic values: opportunity, choice and responsibility for results. In 1991, Minnesota passed the first state charter school law, with California following suit in 1992. By 1995, 19 states had enacted laws allowing for the creation of charter schools, and by 2003 that number increased to 40 states plus the

District of Columbia. (This information is taken from the U.S. Department of Education website, http://www.uscharterschools.org)

What are some typical characteristics of charter schools?

Charter schools start after the passage of laws by individual state legislatures that specifically permit their existence as part of the public school system in that state. There is wide variability among the states in how charter schools are defined. One common feature of all charter school laws is that a charter school must be authorized by a specific entity or entities designated in the law. In most states, charter school law stipulates that a charter school must be authorized by an entity such as a local or county school board, state board of education, college or university, municipal body, special-purpose board, or (in two states in 2003) a nonprofit organization meeting certain criteria. The charter school is approved for a set period—most often three to five years—and the authorizer typically has oversight responsibility that is tied to a charter school's renewal of its charter for operation.

How are charter schools funded?

As public schools, charters are not allowed to charge tuition, and they are funded according to enrollment. In some states, such as Alaska, Colorado, Minnesota and New Jersey, they receive less than 100 percent of the funds allocated to their traditional counterparts for the operation of public schools. In other states, like California, additional funds or loans are made available to them. In most states, charters do not receive capital funds for facilities. They are entitled to federal categorical funding for which their students are eligible, such as Title I and special education monies. Federal legislation provides grants to help charters with start-up costs.

How many states have charter school laws and how many students are enrolled?

As of January 2004, 40 states plus the District of Columbia had passed charter school laws. Although only about one percent of America's public school students were enrolled in charter schools during the 2002-2003 school year, the charter school movement remains a high-profile component of the public education system in the United States.

Do all states have the same number of charter schools operating in their states?

No, the number of charter schools varies greatly by state. In fact, three of the 41states with charter school laws did not have any operating charter schools in the 2003-2004 school year. As of January 2004, California has the highest number of operating charters with 500 schools in operation.1

What are the major differences between charter schools and other public schools?

There are four major ways in which charter schools differ from other public schools.

- First, charter schools are schools of choice where parents choose to enroll their children rather than enrolling them by district assignment.
- Second, charter schools are typically exempt from some of the regulations required for other public schools, although the degree of freedom varies greatly from state to state.
- Third, charter schools are often allowed autonomy for many, if not all, areas related to operating a school.
- Fourth, an essential element of the charter concept is that charter schools will be held accountable for performance goals defined in their charter or their performance contract with their authorizing agency. If they fail to meet those goals and do not operate in compliance with relevant laws and regulations, they may be closed. These expectations may be quite specific to the charter school, or they may be more general and similar to, or the same as, the accountability requirements for other public schools in their district or state.

Do students with disabilities attend charter schools?

Yes. Students with disabilities may not be discriminated against or refused entry into any charter school on the basis of their disability status. Recent estimates suggest that approximately 12 percent of charter school students are served under the Individuals with Disabilities Education Act (IDEA), but this average masks the wide variation that exists between and within states. Some charter schools report that 100 percent of their students are served by special education (schools that target a special population) while others have very few, if any, students with disabilities enrolled.

What other resources provide information about charter schools?

The U.S. charter schools website provides extensive information about charter schools. http://www.uscharterschools.org Another valuable site is the National Association of Charter School Authorizers. http://www.charterauthorizers.org

CHARTER SCHOOLS AND SPECIAL EDUCATION BASICS

Background

Implementing special education in charter schools is often a daunting experience for charter school operators and staff. Personnel at the state education agency (SEA) often become central resources as charter schools build their capacity to address the needs of students with disabilities. While many may believe that only the state's special education division needs to understand charter schools and the issues relating to special education, in reality all SEA personnel who interface in any way with charter schools need to understand how charter schools and special education laws intersect. Special education touches many different divisions within an SEA including finance, transportation, licensing, curriculum and instruction, among others. This topic brief focuses on basic information about special education as it relates to charter schools.

Why is it important for SEA personnel to understand special education in charter schools?

Charter school operators have numerous tasks and responsibilities as they open their schools. They often must find facilities, choose or develop curriculum, hire staff and determine their educational delivery model, among other demands. They do this with limited personnel and resources and often limited experience in each of the areas. Consequently, SEA personnel are frequently called upon to assist both charter school operators and authorizers in understanding their responsibilities and the state's requirements. Just as important, SEA personnel need to understand how charter schools and special education relate because individuals starting charter schools often are unaware of their obligations in this area and SEA officials are often the first resource contacted by charter operators, authorizers and LEAs working with charter schools.

In addition, often SEA personnel understand special education as it relates to traditional public schools, but are less aware of how special education laws relate to their state's charter schools. Understanding the basic tenets of special education and how these apply to charter schools is critical to an SEA providing the needed resources and assistance to charter school operators and authorizers.

Can charter schools waive their responsibilities for special education?

Charter schools are public schools and, as such, cannot waive their responsibilities under federal laws. They must comply with all federal education laws including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Vocational Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act (ADA). A state may waive portions of its own state laws and regulations that go beyond federal requirements or the requirement to abide by school district regulations

concerning special education, but no waiver is possible from federal requirements pertaining to students with disabilities enrolled in charter schools.

It is very important that SEA officials involved with charter schools are aware of the federal laws that impact the implementation of special education in charter schools, and the important basic concepts of LEA identity and linkage between a charter school and an LEA that are covered in the Background section of this primer.

What are the major legal concepts that underlie special education statutes, regulations and case law?

There are six tenets generally considered the underlying concepts of special education law:

- ZERO REJECT:
  Federal law requires that all children are afforded an equal education opportunity and states may not deny that on the basis of a disability.
- INDIVIDUALIZED EDUCATION PROGRAM:
  IDEA requires that a written plan called an Individualized Education Program (IEP) be developed in accordance with IDEA regulations for all students identified as having a disability and in need of special education services. In general, the IEP includes the student's current educational level, annual goals, specific educational objectives, special education and related services to be provided (this may include transportation needs), dates for initiation of service, anticipated duration of service and evaluation criteria. Under certain circumstances, there are other requirements such as a plan for transition services for students ages 14 and older.
- FREE APPROPRIATE PUBLIC EDUCATION (FAPE):
  What is deemed "appropriate" is not specifically defined in IDEA. Court decisions over the years have helped define the term in specific instances. What constitutes an appropriate program for an individual student is to be determined on a case-by-case basis depending upon the unique needs of that student.
- LEAST RESTRICTIVE ENVIRONMENT (LRE):
  The IDEA provides that students with disabilities must be educated to the maximum extent appropriate with their non-disabled peers. The law expresses a preference, not a mandate, for educating students with disabilities in regular classes with appropriate supplementary aids and services.
- DUE PROCESS AND PARENTAL INVOLVEMENT:
  Procedural safeguards are central to the implementation of IDEA. Parents must be notified of a school's intent to evaluate their child for services and they must consent to an initial evaluation before the process begins. They must also be involved in the IEP process and consent to the initial placement and provision of services. Parents also have a right to request a due process hearing if they disagree with the school's recommendations for their child.
- NONDISCRIMINATORY EVALUATION:
  There are specific legal requirements concerning the evaluation of children for

special education services. It is important to understand these and follow necessary procedures.

What SEA functions interface with special education in charter schools?

Nearly all divisions within an SEA can interface with charter schools. For example, the finance division often fields questions related to the funding of special education in charter schools. The transportation division can be closely involved in the transportation of students with disabilities in charter schools. The licensing division is often consulted about staffing requirements for special education teachers and accountability divisions must be knowledgeable about testing and reporting requirements for students with disabilities in charter schools. In each of these examples, SEA personnel may be called upon to provide training to charter school operators and must know how their state's laws and policies concerning special education pertain to charter schools.

What is the role of the authorizer in providing special education?

SEA personnel in Tennessee need to know that only LEAs can authorize in the state. Because of the differences among the states with regard to the charter school laws and the role of the authorizer, SEA personnel should be aware of the expectations for authorizers in their state and the guidance they might need from the SEA.

What can SEA personnel do to assist charter school operators and authorizers as they consider successful implementation of special education?

There are several things SEA personnel in any division or unit (e.g., accountability, finance, transportation, special education) can do to assist charter school operators, authorizers and parents. Here are just a few:

- Know your charter school law and be prepared to answer questions about special education issues that pertain to your area of specialization in the SEA structure.
- Provide guidelines that outline for charter school operators their responsibilities as they pertain to your division. Since they are new schools, charters often need more rudimentary information than what is available for the state's existing school districts.
- Train division personnel on the charter school law and its intersection with charter schools and special education as it pertains to your division.
- Provide training for charter school operators and staff specific to your area (e.g., finance, transportation, accountability) as it relates to special education.
- Integrate charter schools into existing special education technical assistance efforts.
- Develop coordinated guidelines with the state special education division so that all are working in tandem to assist charter schools.

Is there more information that can assist SEA personnel in understanding charter schools and special education?

Additional topics important for SEA personnel to know and understand are summarized in the other parts of this primer. In addition, the following resources have useful information on this topic:

- A question and answer document entitled, Applying Federal Civil Rights Laws to Public Charter Schools, available at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf, may be helpful in answering questions regarding how federal civil rights laws apply to charter schools.
- An overview of charter schools with links to several pertinent websites is available at the U.S. Department of Education charter school website at http://www.uscharterschools.org

Key Policy and Procedural Issues on Charter Schools and Students with Disabilities

Background

One lesson that has been learned in the implementation of charter schools is the importance of providing clear guidance regarding special education for charter school operators, authorizers, local education agencies (LEAs) and state education agencies (SEAs). Without policy guidance, SEA personnel can be unduly burdened to create answers to each individual situation, resulting in ambiguity or inconsistency among charter schools. The information in this primer section is designed to assist SEA personnel in identifying needed policies and procedures that will provide all involved in the implementation of special education in charter schools a greater opportunity to succeed in educating all students who choose to enroll. By addressing the following issues in a proactive manner, you will be in a better position to help charter schools meet the needs of students with disabilities and avoid some of the redundancy of effort that might occur at the SEA level if policies and procedures are not in place.

The following is an action list of items for SEA personnel to consider.

- **KNOW YOUR STATE CHARTER SCHOOL LAW.**
  Critical to addressing special education in charter schools is knowing the state's charter school law and its implications for special education. In some states, directors of special education had input into the charter law, while in other states special education was an afterthought that was not considered during the enactment of the law. In all cases, directors and other SEA personnel need to know the current law and its strengths and weaknesses regarding special education so that policies can be developed to assist in the implementation of special education in charter schools.
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- Knowing the charter school law only brings SEA personnel halfway to understanding the legal framework in which they are making decisions. The other element is understanding the legal identity of a charter school and the connection a charter school has to a local education agency for purposes of special education as defined by state statute. (See the Background section of the SEA primer.)

- **DETERMINE THE SPECIAL EDUCATION UNIT'S VISION FOR WORKING WITH CHARTER SCHOOLS.**
  Once a charter school law has been passed, the state director of special education and other unit leaders need to consider their vision for implementing the law and working with charter schools. Research and technical assistance work with states and charter schools confirms that a proactive approach to

working with charter schools to provide clear guidelines for all involved is in everyone's best interests, especially the students with disabilities.

- **MANAGE THE PROCESS AROUND THE IMPLEMENTATION OF SPECIAL EDUCATION IN CHARTER SCHOOLS.**
  Once the vision for working with charter schools in the area of special education has been determined, SEA personnel need to address how they are going to manage the process. There are several things to consider, including what level of support is needed from the SEA in order for charter schools to successfully provide special education and related services. This is particularly critical given that many new charter schools do not usually have the background or expertise sufficient to address all special education issues. Some of the questions SEA personnel should answer include:
  - How will the SEA fund the additional resources needed to support charter schools? In states where charter schools are independent LEAs, monitoring and other SEA direct responsibilities increase considerably. How will these responsibilities be funded and are there any other partners the SEA can work with to carry them out more efficiently?
  - How do SEA personnel facilitate discussions among the many state agency units that need to work on special education issues with charter schools? What types of structure can be put in place to ensure consistency among the units in addressing special education in charter schools? (These units include special education, transportation, finance and licensing, among others.)
  - What do SEA personnel need to know about their state's charter school law in order to address charter school issues?
  - Who is responsible for addressing specific special education issues within the SEA? Which unit takes responsibility and how will the responsible party be determined?
  - What are some examples of how other states are providing special education-related guidance to charter schools? Can any of the resources they have developed be reproduced and amended for my state? (SEA personnel, in any stage of development of their policies should visit the websites of other states and see if they can learn from others, thus saving time and resources.)

- **UNDERSTAND THE INHERENT TENSIONS BETWEEN CHARTER SCHOOL LAW AND SPECIAL EDUCATION LAW.**
  There is an inherent tension between the procedural regulation of special education and the principle of autonomy that is central to the charter school concept. Charter schools vary considerably in the degree of freedom they are provided by law and policy, but as part of the public educational system, they are not free from regulation and oversight in the area of special education. Thus, there is a natural tension between charter school law that approaches education from a non-regulatory stance and special education law that approaches education for students with disabilities in a regulatory manner. SEA personnel

must navigate these two approaches to the education of students with disabilities as they develop policies and procedures. They need to ensure that they provide assistance to charter school operators and that LEA personnel understand how to follow them.

- **UNDERSTAND THE ROLE PARENTAL CHOICE AND SPECIAL EDUCATION TEAM DECISIONMAKING PLAY IN THE IMPLEMENTATION OF SPECIAL EDUCATION IN CHARTER SCHOOLS.**
  Tension is clearly visible in the implications of the charter school principle of parental choice, which creates a new dynamic for special education. The foundation of special education is the principle of team decision-making aimed at meeting the needs of an individual student. Decisions regarding what is appropriate for a student with a disability who is eligible for services under IDEA, including determining services needed and where those services will be delivered, rest with a team made up of educational professionals and the child's parent. Charter schools, by definition, challenge that foundational decision-making principle of special education by asserting the primacy of parental choice.

- **SEEK A BALANCE THAT MEETS THE NEEDS OF ALL STUDENTS.**
  The challenge for SEA personnel is to seek a balance that is appropriate to each issue regarding charter schools and special education. Only a clear understanding of these issues will allow all who are involved to succeed in the climate in which public charter schools operate.

- **LOOK FOR INNOVATION OF PRACTICE AND POLICY.**
  SEA personnel are in a unique position to observe through the monitoring process the special education practices being implemented in charter schools. Use the opportunity to document innovative practices and policies that might help both charter schools and their authorizers and also traditional public schools as they seek new and better ways to deliver special education.

KEY SPECIAL EDUCATION POLICIES FOR SEA PERSONNEL

Background

Consider the following scenarios.

- **SCENARIO A**. A student with an existing IEP (individualized education program) has applied for enrollment in a charter school. The IEP team has not met to consider the student's enrollment, but when they find out, they are concerned about whether the charter school will have the services to meet the student's needs. Does the student's enrollment in a charter school constitute a change of placement according to IDEA (the Individuals with Disabilities Education Act)?
- **SCENARIO B**. A student with a disability in one of the low-incidence disability categories enrolls in a charter school. The charter school does not have a staff person to serve the student, but the IEP stipulates a considerable level of services. Can the charter school send the student back to his resident school claiming they cannot serve the child and that services are available elsewhere? If not, who pays for the sometimes costly, services?
- **SCENARIO C**. A charter school uses an individualized learning plan approach for all of its students. It does not write an IEP for its students with disabilities claiming that its individualized learning plan (ILP) provides adequate information. Will the state accept the ILP as an IEP?
- **SCENARIO D**. A charter school has an inclusive special education model. It hires an itinerant special education teacher or consultant to visit the school two hours a week. Does this meet IDEA and state standards for qualified staff?

These are just a few of the situations that SEA personnel may have to address concerning charter schools and special education. At the heart of these scenarios are policy decisions that the SEA must consider and make. The possibilities are endless and can be particularly daunting to SEA personnel if no policies are in place to guide them in their decision-making and technical assistance to charter schools.

The purpose of this brief is to outline some of the most common policy areas that an SEA special education unit must address in order to provide guidance to charter schools and to the SEA staff members. The need for consistent guidance for all charter schools within the state is important for the integrity of the agency, for clarity and fairness to charter schools and also to eliminate the redundancy of effort that is apparent when each case has to be considered independently from any agency-wide guidance. The following areas are highlighted as essential policy areas for consideration by the special education unit in order to provide the clarity and guidance needed by all those who work with charter schools.

Policy Questions for Consideration

The following outline includes a few of the policy questions that should be considered and clarified at the SEA level. This is not an exhaustive list, nor does every question

affect each state in the same manner. The list is provided to assist state directors of special education and the special education unit as they provide guidance to their staff and to charter school operators and authorizers.

RESPONSIBILITY FOR SERVICE

What is a charter school's legal responsibility for students with disabilities?

Which entity is responsible for providing a free appropriate public education (the charter school, the authorizer, the child's resident school district)?

Is there a shared responsibility? If so, for which areas is each entity responsible?

PARENT CHOICE AND TEAM DECISION MAKING

What is our state's policy regarding team decisionmaking if parents have the choice to enroll their child with a disability in a charter school?

What guidance will we provide to LEAs and charter schools to help them cope with the policy tension between the philosophies of charter schools and special education?

CHANGE OF PLACEMENT

Do we consider enrollment in a charter school a change of placement for special education purposes?

If so, what related information do we have to make available to charter schools?

STAFFING

What special education staff standards must charter schools meet?

What is the role of special education consultants and can they fulfill state and federal requirements for service delivery to students with disabilities?

INDIVIDUALIZED EDUCATION PROGRAM

Is it mandatory for LEAs to use a state form for IEPs?

May charter schools develop a different IEP form?

Are there other forms related to the IEP process that charter schools must use?

Who will make sure they are notified about them?

CAPACITY ISSUES

How is special education addressed in the charter application and review processes of charter school authorizers in our state?

Will special education personnel be involved in the review of charter applications?

What policies are in place to ensure charter schools have the capacity to provide special education services when they open their doors?

CURRICULUM AND ASSESSMENT

How can charter schools modify curriculum to address unique needs of students with disabilities?

Are any curriculum requirements waived for charter schools?

SPECIAL EDUCATION MONITORING

How will charter schools be monitored for special education and should they receive special consideration or assistance?

Who within the SEA is responsible for oversight of charter schools? Have they included special education considerations in their oversight procedures?

What is the oversight role of charter school authorizers in our state in oversight pertaining to special education?

How will the findings from special education monitoring be included in the charter renewal or revocation process of charter school authorizers in our state?

CHILD FIND

What is our state's policy on the responsibility of charter schools for Child Find?

DATA RESPONSIBILITIES

What parts of the SEA's policy regarding student files, IEPs and other records are binding on charter schools?

Where do the records for students with disabilities reside?

What is the procedure that will be followed concerning special education records when a charter school closes? Who in the SEA will ensure that this is followed?

What are a charter school's responsibilities for reporting data on students with disabilities? Who ensures that the data are reported appropriately?

LEAST RESTRICTIVE ENVIRONMENT

What is the state's policy toward charter schools that enroll or target only students with disabilities?

What is the state's policy for ensuring that charter school students with disabilities have access to the full continuum of placement options for meeting individual learning needs?

FACILITY ISSUES

Who ensures that charter school facilities are accessible?

TRANSPORTATION

What are our state's transportation policies regarding students with disabilities who attend charter schools? For example, can the charter school put transportation on the IEP and expect an LEA to provide the service?

CLOSURE ISSUES

Do we need to develop written policies on special education procedures for charter schools and authorizers of charter schools to follow when charter schools close?

Who is responsible for paying for any compensatory services owed to a student with a disability when a charter school closes?

DUE PROCESS

How will due process be handled in charter schools?

STATE ACCOUNTABILITY ISSUES

How does the SEA deal with academic accountability issues for special education students in charter schools? Do we need to develop policies to ensure that students with disabilities in charter schools are included in NCLB assessments and reporting?

STATE RESOURCE ISSUES

How will the state pay for the time and resources needed to address special education in charter schools (technical assistance, additional monitoring, additional questions and oversight, etc.)?

How can the SEA best use discretionary funding to address charter school issues?

The list addresses some of the most critical areas for state directors of special education to consider as they develop state policy. The list is meant to provide a set of

critical questions that each SEA will answer specific to their state laws and in so doing develop a framework that can be understood by SEA personnel, charter school operators and authorizers. Some states may choose to provide specific answers and guidelines and other states may choose to only highlight areas of concern depending upon their state's charter school law.

One of the most important points for state directors and their staff to remember is that without guidance in these areas, special education requirements may be implemented inconsistently, with the possible outcome that some students with disabilities will not receive a free appropriate public education as required by law. Well-considered policies will provide clear, consistent guidance to charter schools and charter authorizers, while lightening the workload for the SEA personnel. For these reasons, it is strongly advised that SEA personnel discuss and set policies for the areas listed above and other related matters that arise in your state.

How can SEA special education personnel get help in developing policies and procedures?

Some states have already been down this road and have developed documents for their state. Most states have a link on their state's website that goes directly to the charter school office. One strategy that can provide relevant information for a state is to review the matrix that can be found in the appendix of the Primers on the internet at www.uscharterschools.org/specialedprimers on the legal identity of charter schools within the various states. The matrix can help state officials locate states that have similar laws and contact with those states can provide additional information.

SEA Assistance During Charter School Development

Background

Several years of research and numerous discussions with state directors of special education and other SEA personnel from around the country have made it clear that the state plays a key role in the successful implementation of special education in charter schools. However, SEA personnel are often unsure of how charter schools operate or what questions they should be considering as they review charter schools' needs. The purpose of this section is to outline the questions of particular relevance to SEA responsibilities that arise at each stage of a charter school's development with respect to special education.

Often, day-to-day operational questions are passed on to SEA personnel for which they have to make decisions. The intent of outlining these questions is to provide a framework for discussion at the SEA level as staff members decide which questions they are going to answer, how they are going to answer them, and who is going to provide the technical assistance needed to ensure the answers are implemented. The first two sections below consider questions under two broad stages of charter school development (authorization and day-to-day operation) to assist SEA personnel in working with charter schools. The third section focuses on questions concerning SEA technical assistance to charter schools at any stage of development.

Questions to Consider Concerning Charter School Authorization

The charter school authorization process is a critical period for providing technical assistance and guidance to potential charter schools. It is during this period that many prospective operators first learn about the state and federal laws that they must follow in the area of special education. Frequently, prospective charter school operators and planning teams do not include anyone with expertise in the area of special education, so all parts of the laws and responsibilities are new to them. In addition, in some states, it is during this period that negotiations take place between the charter school and its LEA or authorizer stipulating who and how special education services will be delivered. Some of the questions for consideration during this period are listed below.

What strategies can SEA administrators consider to assist charter school operators and authorizers in the area of special education?

SEA personnel need to work with others, both within and outside the SEA, who are involved in chartering schools to determine what charter school operators need to help them build the capacity to provide special education. Given the fact that many operators do not have a background in special education, the SEA should review their training and determine how best to meet the needs of charter school staff and authorizers.

What are the roles of authorizers and SEA special education personnel during the application process?

Authorizers may not be very familiar with special education and the federal and state requirements. It is possible for authorizers to have a large role in the implementation or oversight of special education in charter schools, but not have the needed background to fulfill their responsibilities. SEA personnel should be aware of the authorizer role during the application process and ensure that all necessary information is communicated.

How can the SEA ensure that there is an individualized education program (IEP) team in place if a charter school will be responsible for implementing that component of the special education law?

Setting up an IEP team process takes time and expertise, yet it is critical to providing students with a free appropriate public education. In states where charters schools have sole responsibility for special education, SEA personnel need to determine how they will ensure that charter schools in their state have an IEP development process in place that will meet the needs of students with disabilities. A charter school's charter agreement with its LEA will determine the extent to which it needs to address the IEP issue, but it is essential that SEA personnel understand the responsibility of individual charter schools in their state so they can address it with charter authorizers, operators, and SEA personnel in various departments.

What does the SEA tell potential charter school operators and the state's charter authorizers about the costs of special education?

The old saying, "better the devil we know than better the devil we don't" has relevance for this question. Charter school operators need to understand the complex issues involved in budgeting for special education. The SEA should assist operators with their planning or train the state's charter school authorizers to provide assistance, since the SEA is the "keeper of the records" and can provide the closest estimate of costs.

How should charter school enrollment policies and practices address or treat students with disabilities?

Make sure that charter operators know the applicable state and federal discrimination laws! The answer to this question may seem to be straightforward to personnel in the SEA's special education unit who are familiar with such legislation, but it may not be clear to new operators or even existing operators. The SEA needs to make clear the state's expectations around the enrollment of students with disabilities and the consequences for "counseling" students out of the school or not allowing them to enroll.

What technological expertise is necessary for charter school staff to access the needed special education databases (e.g., financial, accountability, child count)?

There is a vast array of data connected with providing funds and services for students with disabilities. Charter schools need to understand clearly their responsibilities with respect to data collection and the SEA must provide clear guidance to charter schools and exercise oversight in this area. Technical assistance will include the correct use of, and possibly entries into, state special education databases. In some states, the need for technical assistance may include both charter school authorizers and charter school operators. It is important that SEA personnel understand the relationship between charter schools and the authorizers of charter schools so that people are trained appropriately in their areas of responsibility.

Which state agency personnel can explain the information needed to implement various requirements of special education (e.g., financial, transportation, licensing, monitoring and compliance, etc.)?

Identifying resources for charter schools can save the SEA considerable time and money. Developing or providing an existing directory with explanations of relevant SEA departments and their role in special education can be valuable to charter school operators and authorizers. SEA personnel should remember that, contrary to existing school districts, charter schools are starting from scratch often with the responsibility for special education assigned to one staff person who is juggling many other responsibilities. Thus, identifying and referring schools to proper resources will be enormously helpful and important.

What type of training in special education do charter schools need during the authorization process, how much is needed, who provides it and should it be mandatory?

The SEA needs to devote careful thought to its policy on training for special education that is appropriate during the charter school's authorization process. Policy in this area should involve evaluating the type of training needed, the process for delivering that training, as well as the training that may be needed for charter school authorizers and other SEA officials.

What issues should charter schools consider when designing their enrollment forms?

Parents must apply to enroll their children in a charter school, unlike the customary registration process for schools of assignment. Application forms and practices should not be constructed in a manner that deters students with disabilities (or their parents) from applying. SEA personnel must consider who will monitor these forms and processes to ensure students with disabilities have equal opportunity to enroll in the charter school of their choice.

What role does the SEA have in negotiations between charter schools and special education providers?

Depending upon a state's linkage status and other special education planning conditions and decisions, charter schools may need to (or be permitted to) negotiate special education services with an outside vendor or the local school district. SEA personnel may be called on to assist in such negotiations or settle conflicts that arise, so it will be important for the SEA to determine its role in the process.

Questions to Consider Concerning Charter School Day-to-Day Operations

There are three main time periods in which charter school operators are most in need of information about special education. The first is the authorization period noted above; the second period can be termed the "start-up" phase; and the third period covers day-to-day operation after start-up, when the school has its regular routine, policies and practices established.

The SEA's involvement with charter schools does not end once they are up and running. In fact, more questions and assistance may be asked of SEA personnel once the school opens and students with disabilities enroll. Even if you are in a state that requires charter schools to have special education training and an extensive special education plan, many charter operators may underestimate the number or types of students with disabilities who will enroll in their school. Thus, they may still not be prepared to deal with the actual implementation of special education.

The following questions are designed to help SEA personnel understand some of the issues they may need to address as charter schools open, begin operation and continue to operate.

How can the SEA determine the special education issues that present the greatest challenges during the start-up period?

The types of issues that present the greatest challenges during start-up will depend on the state's charter school law and the entity that is legally responsible for ensuring special education service delivery. SEA personnel can pinpoint needed training and assistance for the entity that has legal responsibility for special education in the charter school and help all parties involved understand their roles and responsibilities.

How will the SEA address charter school enrollment issues pertaining to special education?

Anticipating potential problems is important to assisting charter schools in the implementation of special education. Accordingly, SEAs should develop policies to anticipate, minimize and address potential conflicts between charter school enrollment practices and special education requirements. For example, whatever a school's mission or educational approach, SEA personnel may be called upon to address the

issues that arise when a student with a disability enrolls or wishes to enroll in a school whose mission does not seem to be in keeping with the student's IEP. Providing guidance in this area so that charter schools are aware of the law and the consequences of noncompliance can help charter schools that establish policies to ensure that students with disabilities do not experience discrimination in enrollment. Providing examples of how other charter schools approach the issue will also be helpful to newer charter schools.

What are the responsibilities of charter schools for identifying students with disabilities?

Unlike school districts and the schools they operate, charter schools face unique challenges because they have to hit the ground running in many different areas, usually including the identification of students with disabilities. Often they do not have the records available to them or parents have not provided them with completely truthful answers about their child's disability status. Determining how the SEA can assist charter schools in identifying students with disabilities is important in helping charter schools comply with the law and establish a viable special education program. This is where early training is helpful for charter operators and their authorizers.

How do we provide guidance for conflict resolution and appeals to the SEA in the charter school context?

There are times when, for example, parents may need assistance in appealing an enrollment decision or a charter school may need assistance to resolve a conflict between the charter school and the provider of special education or related services. The SEA must ensure that charter school staff understand their obligation to make parents aware of their rights under law when there is a conflict or difference of opinion. SEAs must ensure that LEAs and charter schools that are their own LEAs understand the requirements for parental notification of due process rights.

Issues that surface are often unique to charter schools or are specific to the relationship between parents and the school, or between an LEA and the school. Consequently, well-thought-out policies and procedures in this area will help ensure that the process for a variety of appeals is fair and accepted by all parties.

How are due process hearings handled when they involve charter schools in my state?

Due process hearings may present unique questions for charter schools. The SEA should consider those unique issues, starting from a clear understanding of the charter school's legal responsibilities in such matters, and determine if there are any unique policies or changes to existing policies that should be considered to ensure that charter schools are appropriately included in state policy related to due process.

Who is programmatically and financially responsible for determining a new placement, if a charter school does not think it can serve a child with a disability?

A charter school may not have the capacity to provide services for all students with disabilities who seek to apply. Yet, parents may enroll their child in any charter school, if space is available, even if needed services are not available at that school. SEAs should establish a policy and provide clear information to charter schools and LEAs to minimize confusion over operations, such as who is responsible for a change of placement, the procedures to be followed, how this affects the child's rights to a free appropriate education, and who is responsible for funding a change of placement.

What about related services?

Charter schools and their authorizers are often not aware of what is meant by related services nor are they a part of a larger infrastructure that can provide related services. Delineating expectations for charter schools in this area and assisting them in locating services can go a long way toward compliance with the law and in building the charter school's capacity to serve students with disabilities.

What role does the SEA have with respect to special education in charter school renewal or revocation?

One of the unique characteristics of charter schools is their accountability for fulfilling to their charters or performance contracts. They operate under charter terms of varying lengths and a school's charter must be renewed at the end of its term in order for the school to continue to operate. SEA personnel should consider the role they might play in a charter school authorizer's renewal specific to special education and establish procedures with authorizers as to the role the special education division might play during the renewal process. Should the SEA initiate policies or guidance for charter authorizers to ensure they consider special education programs in their evaluation of charter school performance? In addition, what are the SEA policies regarding charter non-renewal, revocation, or relinquishment? What happens to students with disabilities if a charter school loses or relinquishes its charter and closes its doors?

What happens if the charter school makes a financial mistake due to lack of experience with the laws governing child identification and special education funding?

Local school districts have had more than 30 years to learn the federal and state disability laws and have expert staff that interpret and ensure that the district is following the laws and policies. For charter schools, this responsibility often falls on an overburdened teacher or director. The SEA should address the difference between the circumstances of charter schools and long-standing school districts. Are the policies the same, or will the SEA address any problems differently due to the unique nature of a new, start-up (and typically small) school?

Questions to Consider Concerning Technical Assistance (TA) to Charter Schools and Authorizers in the Area of Special Education

Charter schools need technical assistance at nearly every stage of development. SEA personnel should recognize the many ways in which they can help charter schools and their authorizers understand and implement special education. The questions below highlight some of the technical assistance areas that SEA personnel should consider as they review their policies toward charter schools in relation to special education.

- What knowledge do charter schools and authorizers need to successfully implement special education? Who will provide the information?
- How can the SEA assist in building the capacity of charter schools and authorizers to implement special education?
- How will the SEA find the resources to provide adequate technical assistance and monitoring?
- How will the SEA disseminate required information to charter schools and ensure that the information is effectively reviewed?
- How does an SEA provide guidance without turning it into regulations?
- How does the SEA address the training needs of small numbers of operators and authorizers whose needs are unique and different from the staff in traditional school districts?
- What is different about providing technical assistance to charter schools and authorizers as compared to providing training to traditional school districts?
- What types of technical assistance resources and tools concerning special education should SEA units provide for charter schools and authorizers (e.g., budget worksheets, technology training, transportation guidelines, etc.)?
- Is our statewide technical assistance system for special education and related services and processes adequate to meet the needs of charter school operators?
- When does our SEA provide special education technical assistance and who should be in charge of providing it to charter schools and authorizers?
- How should SEAs communicate special education expectations to charter school operators and authorizers in a way that is helpful and not viewed as punitive?
- What types of technical assistance do SEA personnel need to keep current with charter school development and changes in their state and around the country?
- How can the SEA select and distribute materials in a way that is manageable and useful, rather than overwhelming, for charter school operators and authorizers?

More Information

Many states have already grappled with these questions. By reviewing the matrix in the Primer versions on the internet (www.uscharterschools.org/specialedprimers), a state can identify other states with similar legal identity, linkage and funding procedures. A review of the websites of those states can provide valuable information and/or ways to contact individuals who may be able to share applicable solutions.

AUTHORIZER PRIMER

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. An orientation meeting may be offered for potential charter applicants that may include a discussion of their responsibility for special education and a brief introduction to the Individuals with Disabilities Education Act (IDEA), Section 504, ADA and other laws that relate to students with disabilities in charter schools. (See the Background Primer for details on these laws.) Charter developer groups often do not recognize the need to invest time in planning that includes special education issues and planning activities may be rushed due to application deadlines. Nevertheless, pre-authorization is a critical stage in the creation of a charter school. This is the stage when authorizers have a unique opportunity to urge developers to incorporate special education into their overall planning rather than add it later to existing policies and procedures.

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

Authorizer roles and responsibilities related to special education will vary with each LEA. Authorizers may encounter charter applicants with limited knowledge of their responsibilities related to students with disabilities. Authorizers should require that charter applicants demonstrate that they understand those responsibilities and can access the capacity to meet them.

What does an authorizer need to know about basic IDEA concepts?

It is important that an authorizer have a clear understanding of some basic special education concepts that are incorporated into federal laws. A "free appropriate public education" (FAPE) refers to special education and, if required, related services designed to meet the individual needs of students with disabilities based on a written individualized education program (IEP). The "least restrictive environment" (LRE) is a requirement articulated in IDEA that stipulates that children with disabilities be educated in the general education classroom to the maximum extent appropriate and in the setting that they would be in if they did not have a disability unless the child's IEP requires otherwise. Where possible, students with disabilities are to be provided with supplemental aids and services to facilitate participation in regular education.

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

No. The federal government does not permit 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 who attends the charter school.

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:

> *"...a State's charter school law determines the entity within the State that bears responsibility for ensuring that charter schools comply with the Title I, Part A accountability provisions, including AYP. The charter authorizer is responsible for holding charter schools accountable for Title I, Part A provisions unless State law specifically gives the SEA direct responsibility for charter school accountability" (2003, p. 5)*
> www.ed.gov/policy/elsec/guid/charterguidance03.pdf
>
> For general information about NCLB, see the U.S. Department of Education website at: http://www.ed.gov/nclb/landing.jhtml

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. The following documents are examples of technical assistance materials related to special education for charter school developers in states where the LEA is an authorizer. These documents might be informative to Tennessee LEA authorizers interested in developing similar materials:

- **Colorado Department of Education, Charter Schools Guidebook**
  http://www.cde.state.co.us/index_charter.htm
- **Building Blocks: Building a Foundation for Starting a Charter School in Florida**
  http://www.charterschools.usf.edu/pdf_files/ BuildingBlocks7.15.pdf
- **(Florida) Special Education: Information Briefs**:
- http://www.charterschools.usf.edu/pdf_files/esebrief.pdf

The checklist at the end of this section is a list of issues that applicants should 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.

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 preempt 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.

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?

If we will be responsible for providing special education:

- How many special education teachers will we need to employ?
- What kind of certification will the special education teachers need?
- How does our state define "highly qualified" teachers according to NCLB and "qualified personnel" under IDEA?
- Can our school hire dual-certified teachers?
- 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?

If an LEA will be responsible for all, or part of, special education in our school:

- Will the school be required to contract with an LEA for the purposes of special education?
- If our school needs to work with an LEA, how do we negotiate with the LEA to ensure our students will receive appropriate 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?

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?
- Does the facility have space for a nurse to store and administer medications or use medical equipment?

TRANSPORTATION

If we are responsible for special education services:

- How will our school meet transportation needs of students who receive transportation as a related service articulated on their IEP?

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 Tennessee application process is detailed in the state charter school law. (A copy of that law is available online. Click here and enter 49-6-107 in the search field.).

In addition to the topics related to all other aspects of the proposed charter school, an application must include the following:

- A plan for compliance with federal laws and regulations;
- A narrative description of how students with disabilities will benefit from the proposed teaching methods; and,
- Signed assurances including one that states the applicant "will provide special education," and another in which the applicant promises to "follow laws and court orders in the LEA."

Charter applicants should also contact their LEA for possible additional requirements related to the application process.

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

- Administration
- Curriculum, instruction and assessment
- Enrollment
- Specialized personnel (e.g., certified special education teachers, administrators, related services personnel)
- Budget
- Facility
- Transportation

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

Authorizers should ask applicants at a minimum to articulate a rudimentary plan regarding governance, service delivery and financing of special education. It is critical that applicants demonstrate to authorizers that they have a well conceived, feasible plan to access the capacity they will need to meet their legal responsibilities. In addition, in accordance with the specific level of responsibility the charter school will have according to its legal status as part of an LEA, authorizers should ask applicants to provide some or all of the following plans during the application and authorization phase:

- plan to evaluate and identify children with disabilities;
- plan to develop, review and revise IEPs;
- plan to integrate special education into the general education program;
- plan to deliver special education and related services (e.g., in-house or contract out?);
- projected cost of special education program (e.g., percent of operating budget);
- plan to access and account for special education funds;
- anticipated sources for ongoing legal guidance related to special education;
- plan to ensure that the school facility meets the requirements of other related laws such as the Americans with Disabilities Act (ADA) and Section 504;
- plan for enrollment/IEP transition procedure;
- plan for IEP development and review meetings;
- plan to address student discipline;
- plan to handle programming disputes involving parents;
- plan to ensure confidentiality of special education records;
- plan to purchase services from special education vendors; and
- plan to secure technical assistance and training.

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

An LEA authorizer is responsible for ensuring that charter schools serve students with disabilities in the same manner as any other school of that district. Tenn. Code Ann. 49-13-111(a)(4) requires charter schools to "provide special education services for students as provided in chapter 10 of this title." In other words, charter schools should be treated exactly like any other school within the LEA for purposes of special education monitoring, service provision, funding, etc. Issues related to special education should be included in the written charter agreement that is developed when the charter is approved. The Tennessee charter school law describes this document as follows: "The approval by the chartering authority of a public charter school application shall be in the form of a written agreement signed by the sponsor and the chartering authority, which shall be binding upon the governing body of the public charter school. The charter agreement for a public charter school shall be in writing and contain all components of the application" [Tenn. Code Ann. § 49-13-110(a)].

What are some issues the LEA as authorizer should monitor related to discrimination against students with disabilities?

As public schools, charter schools are not allowed to discriminate against students with disabilities. All placement decisions for students with disabilities must be made in the forum of an IEP meeting and must be based on an individual student's educational needs.

What is the best process for making placement decisions in charter schools?

To ensure that decisions regarding enrollment are 1) made based upon each individual child, as opposed to groups of children with particular disabilities and 2) made based upon the best interests of the child as opposed to the convenience of the charter school, decisions regarding appropriate placement must be made by an IEP team rather than a single individual. Given the unique nature of some charter schools' programs, not all charter schools are going to be appropriate for all children with disabilities (i.e., children with an official IEP or 504 plan) while meeting the goals and objectives outlined in their charter. However, there is a fine line between discrimination and determining that a particular program may not be an appropriate setting for a child with a particular disability. Determining whether a particular educational environment is the best placement is not discrimination if conducted in an appropriate manner (i.e., by an IEP team) and based on the individual child's needs. It is part of the process of ensuring that a child with a disability receives a free appropriate public education in the least restrictive environment.

Are charter schools required to modify their programs to accommodate a student with a disability?

Yes, charter schools are responsible for implementing a student's IEP including modifications and accommodations. However, Tennessee charter schools are part of an LEA. If an IEP team determines that the student cannot be appropriately served at the charter school, the IEP team will determine an appropriate placement.

For a more detailed explanation regarding access to charter schools for students with disabilities, see the OCR document *Applying Federal Civil Rights Laws to Charter Schools*, at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

What are examples of appropriate classroom adaptations, accommodations and modifications offered to children with disabilities?

Examples of appropriate classroom adaptations, accommodations and modifications that enable a child to access the curriculum include:

- changing the manner in which material is presented;
- research-based academic interventions
- creating personalized study guides;
- adapting textbooks;
- arranging the classroom environment to enhance student learning;
- altering task requirements;
- selecting an alternate task for a classroom assignment;
- managing classroom behavior;
- promoting social acceptance; and
- using assistive technology devices.

Assessment accommodations may also be needed for students with disabilities. The state assessment program and the use of accommodations are described in a document available on the state website at http://www.state.tn.us/education/speced/pdfs/seiepaci05-06.pdf

More information related to classroom adaptations, accommodations and modifications is available from the National Dissemination Center for Children with Disabilities online at http://www.nichcy.org/pubs/bibliog/bib15txt.htm

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. Authorizers should scrutinize charter schools' admission policies to ensure that the policies don't block enrollment for particular students or groups of students.

Can a charter school's curriculum alone meet the needs of students with disabilities?

No. The core tenet of the IDEA is that children eligible under the law are treated as individuals with unique abilities and disabilities that need to be addressed by providing specially designed instruction and 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 who is eligible for special education services must be an IEP and 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.

What does it mean to have the capacity to provide special education services?

Special education capacity entails having the human, fiscal and legal resources required to fulfill the responsibilities articulated in IDEA. At a minimum, capacity includes the ability to implement existing IEPs, refer eligible students to special education,

conduct evaluations, develop IEPs and provide special education and related services for all entitled students enrolled in the school. Authorizers need to be confident that applicants either have established, or can access, the capacity they will need to meet their special education responsibilities. This could involve securing services from an outside source.

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.

When does a charter school need to have the capacity to provide special education services and comply with federal and state laws?

Charter schools need to have the capacity to meet their legal responsibility for special education and comply with federal and state laws on the first day they open and thereafter for as long as they operate.

How are charter schools developing the capacity to deliver special education services in the school?

Examples of approaches charter schools are using to increase their special education capacity include: 1) hiring qualified professionals to work at the charter school; 2) contracting with a local education agency; 4) contracting with qualified individuals or organizations qualified to provide special education services; or 5) some combinations of these approaches. As long as 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 they need.

Do charter schools have to hire licensed special educators?

Yes. Authorizers should refer charter applicants to the information available on the Tennessee Office of Teacher Licensing website at http://.state.tn.us/education/lic

Given the current shortage of special education teachers nationwide, what strategies can 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.

What are the major expenses associated with special education?

Expenses associated with special education fall into four general categories: personnel, equipment, facility modifications and transportation. The amount a charter school will need to allocate to these categories and the degree to which these expenses may be shared with another entity depends on the policy of the LEA authorizer and the arrangements between the charter school and the LEA.

What is excess cost as it relates to special education?

Excess costs are the costs a school or district incurs as a result of providing special education services that are not covered by state or federal special education funding sources. Tennessee provides special funding for high cost children. The criteria for providing such extra funds to LEAs include a formula that determines what constitutes high cost. For details, see the information provided on this topic on the state website at http://www.state.tn.us/education/speced/pdfs/seaddfunds.pdf

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

Legal requirements regarding accessibility 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 please 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

What should authorizers advise charter schools about accessible facilities?

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?

In Tennessee, charter schools are responsible for ensuring that their building is accessible. The way a charter school carries out this responsibility may depend on a number of factors including whether the charter school owns or rents the building and what is contained in their agreement with their authorizing LEA.

What responsibility do charter school authorizers have for monitoring accessibility of charter school facilities?

In the process of monitoring their schools, LEAs must ensure that their charter schools have appropriate certificates of occupancy and an LEA may check on other aspects of accessibility. Charter schools are obligated to make their building accessible in accordance with federal and state requirements.

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

As to transportation to and from school, the Tennessee charter school law provides the following: "If a public charter school elects to provide transportation for its pupils, the transportation shall be provided by the school or by agreement with the local education agency within the district in which the school is located in the same manner it would be provided if the students were enrolled in any other school within the local education agency. If a public charter school elects not to provide transportation for its pupils, the school shall not receive the funds that would otherwise have been spent to do so [Chap. 850, Section 15(a)].

However, if transportation is identified as a related service in the child's IEP, the responsibility for transporting the child is assigned on the basis of the contract or a negotiated agreement between the charter school and the LEA.

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. 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.

Oversight, Accountability and Renewal

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

The LEA authorizer is responsible for the charter school's compliance with all requirements including special education requirements. 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. The charter is a performance contract and the authorizer is responsible for ensuring that charter operators fulfill their responsibilities articulated in the contract. It is important that each charter school's specific level of responsibility for special education be included in the charter school accountability plan.

Who is responsible for statistical reporting on students with disabilities in charter schools?

In Tennessee, a charter school is part of an LEA and the charter school must provide to its LEA the special education data needed for reporting to the state.

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

An LEA may require that its charter schools submit an accountability plan. It may also be developed by both parties jointly.

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 are two major accountability tasks. Charter schools are obligated to collect and report much of 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 monitoring.

How are charter schools involved in special education monitoring?

As part of an LEA, charter schools participate in the state's monitoring of their LEA in the same manner as other schools of that LEA. Special education monitoring is a formal process in which the federal Office of Special Education Programs (OSEP) monitors every state on its compliance with IDEA requirements and each state must monitor how its districts comply. LEAs are responsible for ensuring that all their schools, including their charter schools, are in compliance with special education requirements.

Authorizing LEAs should ensure that charter schools understand the level at which they will be involved in special education monitoring and their responsibilities for the process. Monitoring visits do not include all schools within an LEA every time, but rather a sample of schools. As a result, charter schools may or may not be visited as a part of the state monitoring of the district. However, the district will be held accountable for the policies and processes implemented at the charter school as demonstrated by the data the district maintains. Therefore, LEA authorizers must be prepared for the responsibility of collecting data on the implementation of special education in the charter schools they authorize.

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

Yes. 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.

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 seeks renewal and 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.
- 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?

The Tennessee Charter School Law provides as follows:

> (1) Upon dissolution of a charter school for any reason or if a charter is not renewed, any unencumbered public funds from the charter school shall revert to the local education agency. In the event that a charter school is dissolved or otherwise terminated, all LEA property and improvements, furnishings and equipment purchased with public funds shall automatically revert to full ownership by the LEA, subject to complete satisfaction of any lawful liens or encumbrances.
> (2) If a charter school is dissolved for any reason or a charter is not renewed, the charter school is responsible for all debts of the charter school. The LEA may not assume the debt from any contract for services made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the LEA and the governing body of the school and that may not reasonably be assumed to have been satisfied by the LEA [Tenn. Code Ann. § 49-13-110(a)].

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 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, The responsibility to maintain student records reverts to the LEA authorizer. Authorizers should work with boards of closed charter schools to ensure that records are handled appropriately.

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.

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

In general, special equipment purchased for a student with a disability should follow the child to his or her next public school placement or alternatively, be returned to the local district that is the student's district of residence. 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. Authorizers should check state and federal requirements for disposal or transfer of equipment purchased with state or federal special education money.

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

All students' educational records are protected by the 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

Do charter schools have any legal obligation to their students with disabilities after the school closes?

At a minimum, charter schools are obligated to transfer records. Charter schools' staff may be requested to participate in IEP staffing meetings at schools in which the students enroll after leaving the charter school.

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

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. Although they vary in how they perceive their relationship to the schools they charter, authorizers 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.

Tennessee Department of Education
Extensive resources about public education are contained in the education section of the state website at http://tennessee.gov/education

Regional Resource Centers
The Special Education Division of the Tennessee Department of Education maintains regional centers and other assistance sources. For contact information, see http://state.tn.us/education/speced/secontacts.shtml#regional

Local Education Agencies
States delegate their responsibility for providing a free appropriate public education for students with disabilities to local education agencies. As part of this responsibility, LEAs generally offer district schools technical assistance in the form of documents and training. Many districts maintain websites with abundant resources related to special education. While not catering specifically to charter schools, district special education technical assistance can be invaluable to charter developers interested in learning more about special education.

Regional Technical Assistance Networks
Many states operate regional technical assistance networks designed to provide, among other services, special education technical assistance. Examples of these networks are the Education Service Centers in Texas, Intermediate School Districts in Michigan and Boards of Cooperative Education Services (BOCES) in Colorado. As public schools, charter schools should have access to these networks. Contact the Tennessee special education division for information regarding regional technical assistance structures.

Tennessee Resource Center
The Tennessee Resource Center has been re-established and will be developing a website in the near future.

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

- The 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

- The National Information Center For Children And Youth 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

- The US Charter Schools website contains extensive information about charter schools, including research reports, state contacts and upcoming events related to charter schools http://www.uscharterschools.org
- The Center For Education Reform provides up-to-date information about state charter school laws http://www.edreform.com

TENNESSEE CHARTER OPERATOR PRIMER

PRE-AUTHORIZATION STAGE

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 time to prepare for all children who may become students in your charter including students with disabilities. As the charter school operator, you assume 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 must plan for enrolling and identifying 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. 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?

Yes. It is critically important to include children with disabilities when you are developing the mission and vision of your charter school. Your school will be a public school that must implement programs for all students with disabilities who attend You should expect that you will enroll students with many different kinds of needs including students with disabilities.

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

It is imperative to determine how your school's purpose and mission is relevant to a wide range of students. For example, is it relevant to students with learning disabilities, physical disabilities, or students who present behavioral challenges?

The following major legal principles contained in the Individuals with Disabilities Education Act (IDEA) must be considered in your planning:

- 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
- non-discriminatory evaluation
- child find

Understanding how these principles relate to charter schools in Tennessee will help you to develop a school that addresses the needs of all your students**.**

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 recruiting students, 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 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 deny admission to students on the basis of disability. 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 steps should we take when providing information to parents with disabilities or limited English proficiency?

Parents with disabilities or limited English proficiency must have access to information about your charter school. Appropriate auxiliary aids and services must be made available upon request to ensure effective communication for parents with disabilities or limited English proficiency. For example:

- provide materials in Braille or on a tape
- hold all public meetings in a location physically accessible to individuals with disabilities
- provide qualified interpreters, translations, or another effective means of communication

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

Several issues are common to all schools, including funding, space and facilities, human resources, curriculum, service provision, professional development, administration, transportation and special considerations.

Since Tennessee's law requires charter school applications to include an assurance that school personnel will abide by federal statutes related to special education, is there any need for me to expand upon this assurance?

Yes. You must also define how your school will educate students with special needs and provide details about how limited English proficient learners and students with disabilities will benefit from your proposed teaching and classroom instruction methods.

The required content for the narrative of your charter application includes 20 sections as listed in the Tennessee Charter School law and described in the application available on the state website. (http://tennessee.gov/education/fedprog/doc/fpcharterschapp.doc) Applicants should also contact the local education agency to which they are submitting their application to receive any additional local submission requirements.

What critical areas should be included when preparing our application?

The checklist at the end of this section poses questions designed to help you consider these important areas.

Conclusion

Tennessee state charter school law requires charter schools to sign a list of 24 assurances including. Those that impact specifically on special education state that the charter school will:

- provide special education services for students as provided in Title 49, Chapter 10;
- follow all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, national origin, religion, ancestry, or need for special education services; and
- follow any federal and state court orders in place in the local school district.

You should use the preauthorization phase to develop a thorough understanding of your responsibility to provide services to students with disabilities.

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 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?
- 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)?
- What should our Child Find activities look like?
- 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 SEA 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 allow access to our curriculum. What should we do?

Concerns about instruction should be discussed at the time of the child's Individualized Education Program (IEP) meeting and addressed in the child's IEP. All members of the team can contribute to how the student will have access to the curriculum that is required by special education law. Teacher effectiveness should be addressed through professional development.

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

It depends. Special education staffing should meet the needs of your students as outlined in their IEPs. As a charter school, you may be creative and flexible in staffing your school. 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 (private or charter) schools.

How much flexibility in licensing and certification do we have in hiring special education staff?

In Tennessee, you have very little flexibility in hiring. As required in the charter school law, all teachers in a public charter school must have a current valid Tennessee teaching license, or meet the minimum requirements for licensure as defined by the state board of education. In addition, you must abide by the decisions of the IEP Team that has identified the type of services the child attending your school will need and consider the staffing implications for delivering those services.

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

Licensing requirements are available on the state department of education's website at: http://tennessee.gov/education/lic

Is there a difference between licensed educators and highly qualified educators?

Yes. Being licensed/certified is only one part of the requirements in the *No Child Left Behind Act (NCLB)* designed to ensure that teachers of core academic subjects be highly qualified. The IDEA applies this NCLB requirement to special education teachers who teach core subjects. For more information, see http://www.k12.tn.us/base-tn/ and http://state.tn.us/education/nclb/doc/NCLB_ImpPlan_08_18_05.pdf

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 immediately requests the records for children who enroll in your school according to district policy.

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?

No. It is not appropriate for you to suggest that the needs of a student with a disability may be better met in another school. 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. More information 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 http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

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

Yes. Pursuant to the Americans with Disabilities Act (ADA), a charter school may not deny persons with disabilities, including parents, students, and general public 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.

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 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.

Where can we obtain information and technical assistance in making our school accessible?

Your state and/or local code dictate who is responsible for ensuring that public facilities are accessible. Check with this individual/entity for technical assistance in determining

what modifications need to be made and the appropriate approach to accomplish your desired goal. Check the available information in the Section 504 Manual for Tennessee Educators at http://tennessee.gov/education/speced/sesection504man.pdf Additional resources are available from OCR online at www.ed.gov/about/offices/list/ocr/index.html

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

Responsibility to modify a facility must 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.

Conclusion

Issues in this section are very complex. Remember there are many sources of information and support available to you, including other charter and traditional schools, your state department of education and charter school resource centers and/or associations that exist in many states to assist during the development and operation of a charter school.

OPERATING A CHARTER SCHOOL

What special education services must a charter school provide?

The charter school must ensure that each of its students with an IEP receives all special education supports identified in the student's IEP. Each charter school must negotiate an agreement with the LEA to determine what services that the charter school will provide and what services or supports that its LEA will provide. Agreements may vary among schools and districts.

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, and analyze your existing capacity to deliver the instruction and related services as described. Just as any other public school is expected to do if a child moves in with an existing IEP, your charter school must try to implement the child's IEP or, if that does not appear to be possible, must convene the IEP team immediately to discuss appropriate options with the LEA.

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 all nonacademic or extracurricular programs and activities offered at your charter school for which they are otherwise qualified.

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?

Yes. 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. Charters in other states have also created partnerships with local universities to provide student teaching opportunities.

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

Charter schools need to tailor professional development opportunities to the needs of your staff. Instructional staff (including paraprofessionals) need to have ongoing access to training specifically focused on classroom management, differentiated instruction, communication, compliance, 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.

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. Board members should receive training on their role and responsibilities related to special education activity. Volunteers should be aware of and trained in policies and procedures related to special education.

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

Lack of funds is not a legal reason for denying services to a child who is eligible for special education. A charter school should notify their staff and their Board of Directors for support. The school should also consult their LEA for assistance.

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

Transportation must be provided for charter school students if your school provides transportation to and from school for non-disabled students or if transportation is required as a related service on the IEP. As your IEP team considers a student's need for transportation, it is critical that team members understand the difference between a student's need for transportation to get to school (common for all students) and a student's need as a result of a disability (which results in the need for a related service). If your charter school is responsible to provide this related service, you may contract for it or pay the family to transport the child to and from school or the location of the special services.

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. It is clear that 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 benefit from special education?

Identification of students with disabilities begins in the general education setting. If a teacher or parent suspects a child has a disability:

- A referrals for a special education evaluation is made;
- An IEP team convenes to discuss the child and review the data;
- If the child is found eligible, the team develops an IEP with strategies and interventions to address the concerns;
- the team reviews the success of these interventions and determines next steps

It is important that a charter school operator be familiar with the state special education procedures as contained in the Special Education Manual available at http://state.tn.us/education/speced/doc/semanual.pdf

Who is responsible for implementation of student IEPs?

In Tennessee, the LEA is ultimately responsible for FAPE and ensuring the appropriate implementation of each IEP. It is the charter school's role to oversee this implementation for students who attend the charter school.

Who is involved in developing our students' IEPs?

The IEP team at the charter school develops the IEP. This team consists of both charter school staff and representatives from the LEA. For details, see the Special Education Manual at http://state.tn.us/education/speced/doc/semanual.pdf

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 and, only if the student takes an alternate assessment, benchmarks or short-term objectives;
- a statement of the special education and related services and supplementary aids ad 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 16 and above, there are requirements for addressing transition needs that must be addressed in the IEP process.

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?

The Tennessee IEP form is included with instructions in the EP Manual available at http://www.k-12.state.tn.us/pdf/speced/iepprocman.pdf

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 in accordance with your charter agreement.

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.

What resources are available to charter schools for training and continuing education related to special education?
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 will be useful to you during the planning and operation of your charter school.

Governmental Agencies and Offices

- **LOCAL EDUCATION AGENCIES**: States delegate their responsibility for providing a free appropriate public education to local education agencies. As part of this responsibility, LEAs generally offer district schools technical assistance in the form of documents and training. Many districts maintain websites with abundant resources related to special education. District special education technical assistance can be invaluable to charter developers interested in learning more about special education.

- **TENNESSEE CHARTER SCHOOL ASSOCIATION**: *The Tennessee Charter School Association, formerly the Charter School Resource Center in Tennessee, is a resource for charter school information, support, and charter school start-up assistance, and their website can be accessed at http://www.tncharterschools.org.*

- **REGIONAL TECHNICAL ASSISTANCE NETWORKS**: Many states operate regional technical assistance networks designed to provide, among other services, special education technical assistance. Examples of these networks are the Education Service Centers in Texas, Intermediate School Districts in Michigan, and Boards of Cooperative Education Services (BOCES) in Colorado. As public schools, charter schools should have access to these networks.

- **STATE DEPARTMENTS OF EDUCATION**: State departments of education can be a rich source of general information regarding special education and in some cases, specific information regarding special education in charter schools. Most states with charter school laws maintain a designated web page for charter schools. Most states also maintain a web page for special education. If you aren't sure how to access your state's website, you can access it from the National Association of State Directors of Special Education website at http://www.nasdse.org/state_departments_of_education.htm

- **REGIONAL RESOURCE CENTERS**: The Regional Resource Centers and the Federal Resource Center provide consultation, technical assistance and training to state educational agencies and through them to local educational and other appropriate agencies. You can access links to the Federal Resource Center and to each Regional Resource Center at http://www.federalresourcecenter.org/frc/rrfc.htm

- **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 http://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 http://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 http://www.ed.gov/nclb/landing.jhtml?src=pb

National Special Education Networks

The following is a list of networks to learn more about special education in general and issues related to special education in charter schools specifically.

- **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 and documents on critical issues in special education produced by NASDSE's Project Forum. http://www.nasdse.org

- **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. http://www.cec.sped.org

- **NATIONAL INFORMATION CENTER FOR CHILDREN AND YOUTH 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. http://www.nichcy.org

- **PARENT ADVOCACY COALITION FOR EDUCATIONAL RIGHTS (PACER):** PACER is a 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. http://www.pacer.org

- **SPECIAL EDUCATION NEWS:** This private newsletter provides in-depth, up-to-date news related to educating students with disabilities. http://www.specialednews.com

- **SPECIAL EDUCATION LAW:** This resource provides up-to-date information on judicial and legislative decisions concerning special education. http://www.specialedlaw.net

National Charter School Networks

- **NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS**: 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 about all aspects of charter schools: http://www.uscharterschools.org

Conclusion

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. Depending on your school's LEA linkage and your state law and charter contract, you can expect to receive advice and/or regulatory guidance from these offices. 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. While state charter laws may release charter schools from some state reporting requirements (e.g., teacher qualifications), charter schools are generally obligated to collect and report the same information that public schools must report such as statistical reports regarding students, standardized tests, 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 that would be reviewed as part of a state special education audit.

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 and consistent, detail-oriented staff are two effective ways 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. 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 Tennessee Department of Education 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?

Most charter schools are required to submit essentially the same data and statistical reports as traditional school districts. Examples include enrollment accounting, program accounting, student performance data and financial reporting. Depending on state

policies, there may be variability in the degree to which your school will be required to report data regarding special education. However, at a minimum you will need to be able to report data on all of your students disaggregated by the subgroups outlined in NCLB, one of which is students with disabilities. Keep these subgroups in mind as you are setting up your data collection and storage system, especially those related to assessments.

Even if your charter school has not begun enrolling students with disabilities, it is important to include provisions for special education in the development of data collection and management information systems. This will strengthen your infrastructure and prepare you to provide effective special education services that meet the mandates of the laws.

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. Your charter school is part of an LEA, so involvement in special education monitoring will be as part of that LEA. The LEA is responsible for seeing to it that any non-compliance found in the charter school is corrected. Also, when the U.S. Department of Education monitors the state, your school might be one of the schools randomly selected for visitation.

How is special education monitoring carried out in a state?

Special education monitoring involves a variety of procedures. For information about how special education monitoring is carried out in Tennessee, see http://www.state.tn.us/education/speced/semonitor.shtml

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" and state-specific performance measures under the NCLB law. Talk with your colleagues, your authorizer and your SEA to identify effective strategies in helping students with disabilities to demonstrate progress.

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

Throughout your renewal process, most authorizers will include some evaluation of your special education practices. These will most likely focus on financial, academic,

personnel, facilities and data systems. 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 and state 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.

Conclusion

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. You will work directly with your LEA throughout this phase. 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. Make sure you are familiar with the contents of state law concerning these matters (Click here and enter 49-6-107 in the search field).

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 general, revocations occur when a charter school does not meet the obligations articulated in the application or subsequent contracts with the authorizer.
- *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 SEA to obtain specific guidelines and policies in your state. Federal guidelines9 also provide information on property disposal.

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?

Adhere to the LEA policy regarding transferring of records. If you aren't able to obtain this information, contact your authorizer or the SEA for assistance.

How should we transfer student records?

Perhaps the most important consideration in records transfer 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 the transfer of educational records that contain personally identifiable information on your students. For details about the law, see http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html 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.

Conclusion

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.

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
- **EOC** End-of-course high school tests
- **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)
- **NICHY** National Information Center for Children and Youth with Disabilities
- **OCR** Office for Civil Rights
- **OSEP** Office of Special Education Programs
- **PACER** Parent Advocacy Coalition for Educational Rights
- **RRC** Regional Resource Center
- **SEA** State education agency
- **TCAP** Tennessee Comprehensive Assessment Program

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 who are unable to participate in the general assessment system, with or without accommodations as determined by the IEP Team.

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
The term `assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. The term `assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. It includes evaluation of the child's needs, purchase of the device, training and other aspects of the use of the device. [IDEA 2004 §602(1)& (2)].

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.

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.

AUTISM
A developmental disability significantly affecting verbal or nonverbal communication and social interaction, generally evident before age 3, 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 paragraph (b) (4) of this section. (ii) A child who manifests the characteristics of 'autism' after age 3 could be diagnosed as having 'autism' if the criteria in paragraph (c)(1)(i) of this section are satisfied. [34 CFR §300.7(c)(1)]

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/sponsored 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.

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 §300.7(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 §300.7(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 §300.313, 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 §300.7(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 §300.7(c)(1)]

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 §300.7(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.

HIGHLY QUALIFIED TEACHER [IDEA 2004 §602(10)]
(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.

INCLUSION
Inclusion is a special education approach that stresses education 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.

INDIVIDUALIZED FAMILY SERVICE PLAN
The Individualized Family Service Plan (IFSP) is a written plan for providing early intervention services to infants and toddlers eligible under Part C of IDEA.

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 subaverage 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 §300.7(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 §300.7(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 §300.7(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 300.7(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, interpreter services, and school nursing services.

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.

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 §300.7(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 §300.7(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.

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.

STUDENT WITH A DISABILITY
In the Individuals with Disabilities Act, a student with disabilities is defined as "a child evaluated in accordance with §§300.530-300.536 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
For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, the IEP must contain a statement of the transition service needs of the student that focuses on the student's courses of study and, beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages. IDEA describes the components as services that promote movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. (See also (See also CHILD WITH A DISABILITY)

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 §300.7(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 §300.7(c)(12)]

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

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