



on implementing special education in charter schools.

# Charter School Authorizers:

## Special Education Requirements and Including Students with Disabilities in Charter Schools

# Acknowledgements

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- The full Primer set can be downloaded from [www.edgateway.net/specialedprimers](http://www.edgateway.net/specialedprimers)
- Further information is available by email from [eileen.ahearn@nasdse.org](mailto:eileen.ahearn@nasdse.org)
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# Special Education in Charter Schools

- Charter schools are public schools and thereby required to abide by federal special education rules and regulations.
- Authorizers play a critical role in educating charter applicants and operators of their responsibilities related to special education.
- Addressing special education early rather than later is a critical component of risk management for charter schools.

# Federal Laws that Influence Special Education Policies and Procedures

- Americans with Disabilities Act (ADA)
- Individuals with Disabilities Education Act (IDEA)
- Section 504
- No Child Left Behind (NCLB) (Current reauthorization of Elementary and Secondary Education Act)

*Note: See Background section of Primers for more details on this topic.*

## Basic IDEA concepts

- **IEP** – “individualized education program” is a written plan that articulates special education and related services to be offered a child with a disability.
- **FAPE** – “free appropriate public education” refers to special education and, if required, related services designed to meet the individual needs of students with disabilities based on an individualized education program (IEP).
- **LRE** – The “least restrictive environment” 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 written plan or IEP requires otherwise. Where possible, students with disabilities are to be provided with supplemental aids and services to facilitate participation in regular education.

## Relevant NCLB Requirements

Authorizer responsibilities related to NCLB are determined by state charter school law. Non-regulatory guidance provided by the US Department of Education states that:

- *“...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](http://www.ed.gov/policy/elsec/guid/charterguidance03.pdf))*

## Authorizer Liability

- There is no case law as yet establishing whether, or the degree to which, authorizers can be held responsible for special education in the schools they authorize, nor is there judicial precedent that explicitly releases authorizers from responsibility related to special education.
- Authorizers should seek legal counsel regarding local and state special education regulations and the degree to which charter schools or parents may hold the authorizers accountable for the implementation of special education in the charter schools that they authorize.

## Building Special Education Capacity

Special education capacity entails having the human, fiscal and legal resources required to fulfill the responsibilities articulated in IDEA.

## Issues to Consider During Planning Phase

- Human resources
- Curriculum and assessment
- Professional development
- Administration
- Special education funding
- Facilities
- Transportation

# Authorization Process: Information to Request

- 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

## Authorization Process: Information to Request cont.

- 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

## Authorization Process: Information to Request cont.

- 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
- Plan to secure technical assistance and training

## Issues to Monitor

- Compliance with IDEA
- Counseling out students with disabilities
- Change of placement procedures
- Charter school program adaptation and modification

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.

## Strategies to Build Capacity

- Hire appropriate professionals to work at the charter school (check on how highly qualified teacher requirements apply in the state).
- Contract with a local education agency.
- Contract with a regional education agency or cooperative.
- Contract with individuals or organizations qualified to provide special education services.

## Strategies to address staff shortages

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

# Special Education Expenses

- Personnel
- Equipment
- Facility Modifications
- Transportation
- Legal Counsel

## Total-Link Charter School Budget Issues

Charter schools that are part of an LEA should work closely with district personnel to determine how services to students with disabilities who attend the charter school will be financed and delivered.

## No-Link Charter School Budget Issues

- No-Link charter schools should get clear information about the special education funds available to them and how to access those funds.
- About 13% of the public school population is identified as eligible for special education services.
- As a general rule of thumb, charter schools should anticipate that approximately 13% of their student population will be students with disabilities and budget accordingly.

## Partial-Link Charter School Budget Issues

Partial-link charter schools should consult with district personnel to determine how special education dollars for students with disabilities who attend the charter school will flow and negotiate roles and responsibilities related to special education service delivery.

## Excess Costs

- Excess costs are incurred as a result of providing special education services that are not covered by state or federal special education funding sources.
- Authorizer responsibility for excess costs depends upon the authorizer's legal status (i.e., LEA, SEA, appointed board, etc.) and the legal identity of the charter school. Check about the availability of risk pool funding for high cost students with disabilities.

## Managing Risk

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

## Transportation Issues

- If transportation is identified as a related service in an IEP, the responsibility for transporting the child to the charter school is assigned on the basis of the charter school's legal status and linkage to an LEA.
- If the charter school is its own LEA, it will have to budget for special education transportation.
- If the charter school is part of an LEA, then the responsibility for paying for special education transportation should be covered as part of the contract between the charter school and the LEA.

## Oversight, Accountability, and Renewal

- Charter authorizers are responsible for granting charters and thereafter overseeing the schools and holding them accountable for the goals and objectives outlined in the charter.
- A charter school accountability plan should contain specific means by which the authorizer will assess the degree to which the charter school is fulfilling its goals.

# Special Education Monitoring and Compliance

- The federal Office of Special Education Programs (OSEP) monitors every state on its compliance with IDEA requirements.
- States monitor how districts comply.
- Charter schools are held accountable for special education in the same manner as all public schools: they must demonstrate that they comply with IDEA.

## Monitoring and Compliance cont.

- Charter schools that are part of an LEA are monitored when their LEA is monitored. Monitoring visits include a sample of schools that may or may not include the charter school.
- When charter schools are part of the LEA, the LEA authorizers must be prepared for the responsibility of collecting data on the implementation of special education in charter schools they oversee
- Charter schools that are their own LEA for special education will be monitored by the state in much the same manner any other LEA is monitored.

# Non-Renewal, Revocation, Relinquishment Issues

- Ensure the proper transfer of student records.
- Ensure that the necessary steps are taken to protect students' rights to privacy and maintain the integrity of records.
- Arrange appropriate disposition of all assets in the event of closure, including those specifically for special education.
- Establish procedures for closing a school -- including special education considerations -- into the initial charter contract to ensure that all parties are aware of their roles and responsibilities in the event of closure.

## Final Thoughts

- Authorizers are the gatekeepers to the charter school sector.
- Addressing special education issues during the planning and application phase and providing subsequent technical assistance can enable a charter school to educate students with disabilities and pre-empt potentially costly academic and legal problems.