

PRIMER

FOR CHARTER SCHOOL STATE OFFICIALS:

SPECIAL EDUCATION REQUIREMENTS AND INCLUDING STUDENTS WITH DISABILITIES IN CHARTER SCHOOLS

Revised January 2008



National Association of State Directors of Special Education, Inc.

PRIMER FOR CHARTER SCHOOL STATE OFFICIALS: SPECIAL EDUCATION REQUIREMENTS AND INCLUDING STUDENTS WITH DISABILITIES IN CHARTER SCHOOLS

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This document is one in a series of primers developed by the Special Education Technical Assistance for Charter Schools Project (SPEDTACS) and published in June 2004. The project was supported through funds awarded to the National Association of State Directors of Special Education (NASDSE) from the U.S. Department of Education Charter Schools Program. The project was directed by Eileen M. Ahearn at NASDSE and the project team also included, Elizabeth A. Giovannetti, Cheryl M. Lange, Lauren Morando Rhim and Sandra H. Warren. Each of the three primers was developed by a lead author who took major responsibility for the document. The lead author for this Primer for Charter School Operators was Cheryl M. Lange.

This report was supported by the U.S. Department of Education Grant No. S282F010033. However, the opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

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Citation for this document is as follows:
Lange, C. M., Ahearn, E. M., Giovannetti, E. A., Rhim, L. M. & Warren, S. H. (2004). Primer for Charter School Operators on Special Education Requirements and Including Students with Disabilities in Charter Schools. Alexandria, VA: National Association of State Directors of Special Education.

Design: Barbieri & Green, Inc.

ACKNOWLEDGEMENTS

This primer was developed under the Special Education Technical Assistance for Charter Schools Project (SPEDTACS), a federally funded project at the National Association of State Directors of Special Education (NASDSE) that was designed to meet the needs of charter school authorizers, operators, and state officials for resources, training and other technical assistance related to special education in charter schools. The project's ultimate goal is to provide tools that can help to prevent problems and more successfully include students with disabilities in charter schools.

Although the charter schools movement has grown rapidly since its beginning in the early 1990s, there is very little recorded information available on the challenges related to implementing special education in this new type of public school. The best source of information is direct input from those working in the field. To tap this source, SPEDTACS convened three regional state team meetings to gather the data that served as the basis of the project's print and electronic technical assistance tools. Each regional meeting brought together teams of professionals involved with charter schools and special education in four or five states. The teams spent two days collaborating with the project team in designing the structure and content of the project's technical assistance materials. They shared their experiences with special education in charter schools and identified successful practices to help charter schools develop their capacity to meet their special education responsibilities. The project team is sincerely grateful for the time and effort the state team members devoted to the design and final review of this work.

In addition, the NASDSE project team benefited significantly from the valuable assistance provided by its two major partners: the Charter Friends National Network (CFNN), and the National Association of Charter School Authorizers (NACSA).

The SPEDTACS team would also like to convey special thanks to Dean Kern, Director of the Charter School Program in the Office of Innovation and Improvement of the U.S. Department of Education for recognizing the importance of supporting charter schools in their service to students with disabilities.

While all errors and omissions are the responsibility of the authors, the primers would not have been possible without the thoughtful input of individuals and groups involved in many aspects of the charter school movement. We are deeply grateful to everyone who contributed to the process.

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PREFACE

I have always known that telling charter operators about the law alone would be insufficient. I try to talk about why they started the school and that all students should be able to derive benefit from this. They should think of it this way—as you are constructing the ship of education, you should see special education not as a little boat you are towing behind or along side, but as part of the beams and planks that structure the ship.

— Charter School Director of Special Education

The ship building metaphor is an apt description of the charter school development process. There are several elements that are necessary for the ship to sail and reach its final destination. The blueprints, materials, crew and course all need to be designed, purchased, and put in place to get the ship out of dry dock. If critical parts of the ship are not considered in its design and development, it may or may not reach its final port. Likewise, successfully implementing special education is key to a charter school reaching its desired destination—success with all the students who choose to attend that charter school.

Several research studies have documented issues related to charter school development. A few have specifically addressed how charter schools are implementing special education. These studies have examined whether charter schools are integrating special education into the design of their “ship of education” or if special education is simply being towed behind. Findings from the studies suggest that for many charter schools, special education is following behind—often due to a lack of information and/or the technical assistance necessary to integrate it into the design of the school. In addition, for those associated with the development and operation of charter schools, there is a lack of information about the requirements that surround special education and what they mean for students with disabilities. This lack of information and understanding about how special education is integrated into the charter school design

can negatively impact learning for students with disabilities. It may also create legal liability for the charter school itself.

Ensuring that special education is one of the “beams and planks that structure the ship” requires the information and understanding of special education and the role it plays in the education of students with disabilities. Special education is not a choice for any public school in America—it is a right for any student with a disability. As such, there are requirements and procedures that all schools must understand and implement to ensure students with disabilities receive a free appropriate public education.

This series of primers is developed to provide background knowledge and resources for the “shipbuilders” of charter schools. The primers include resources to assist in developing special education programs, provide support for authorizers to better assist schools that they charter, and give policy and practice support for those at the state level. The authors trust that the primers will contribute to achieving the goal of including special education as a structural part of all the life stages of a charter school.

INTRODUCTION

The Status of Special Education in Charter Schools¹

Several research studies have examined the issues related to special education in charter schools. Findings from these studies suggest that, for many charter schools, special education is an afterthought, due to a lack of relevant information and the technical assistance necessary to integrate it into the overall design and implementation of the school. Additionally, studies show that there is a lack of information about what special education requirements mean for the school, for students, and their learning. This lack of information and understanding can result in negative outcomes for students with disabilities who attend charter schools, and fiscal and legal liabilities for those schools.

The Set of Technical Assistance Primers

A set of primers for charter school operators, charter school authorizers²; and state-level administrators has been developed to provide background information and resources for the “builders” of charter schools and policymakers to facilitate the successful inclusion of students with disabilities in charter schools. The primers are designed so that the reader can go to any specific section to find questions, answers, and resources that apply to that stage in charter school development. Although there are many complex aspects of developing and managing charter schools, the primers address only those areas most critical to implementing special education successfully in charter schools. Those new to the field, those needing an orientation to these areas and those who have some level of responsibility related to students with disabilities in charter schools are the intended beneficiaries of this primer series.

Introduction to the Primer for State Officials

The organization and format of this primer which is designed for state officials differs from the other two in this series based on the recommendations of the state officials who participated in the SPEDTACS Project state team meetings convened to assist in the development of the set of primers. In accordance with their recommendation, this primer was developed to provide short treatments of critical aspects of special education, to be used separately or in combination, to address specific areas most pertinent to the responsibility of all state officials concerned with special education in charter schools, especially the state director of special education and the state director for charter schools. State officials strongly advised us to produce a document composed of sections that could stand alone and be duplicated for use with new state staff and others who need a brief understanding of particular topics related to including students with disabilities in charter schools. This document is designed to meet this need.

1 Most states use the term “charter school,” although there are other terms in use for this type of school, such as “community schools” used in Ohio and “public school academies” in Michigan. For consistency, the term “charter school” is used throughout the primers.

2 Some states use different terms for the office or organization that accepts applications and approves charters. For consistency, the primers use the term “authorizer” throughout to refer to this function.

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

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**.⁴ 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 LEAs⁵; 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 and clearly provide that “children with dis-

abilities who attend public charter schools and their parents retain all rights under this part [CFR 34 Sec. 300.209].

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 addition, some states allow charter schools to have either status based on a choice by the charter school or the authorizer who sponsored the school.

⁴ It is important to note that this set of primers focuses on identity for purposes of special education, although a state may assign different legal identities to a charter school for different purposes.

⁵ For consistency, school districts are referred to as LEAs throughout this primer and the others in the series.

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.

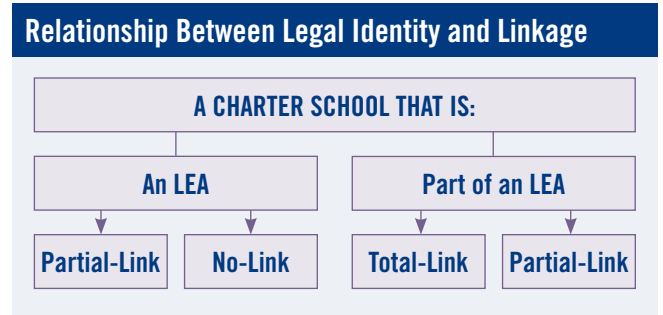
How does a charter school’s LEA status impact its operations?

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.

The figure below illustrates the relationship with other LEAs that a charter school can have based on its legal identity.



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	
<input type="checkbox"/>	<input type="checkbox"/>	Does the LEA retain responsibility for student evaluations for special education eligibility?
<input type="checkbox"/>	<input type="checkbox"/>	Does the LEA maintain or supervise the IEP team to develop, revise and implement a student’s IEP and make placement decisions?
<input type="checkbox"/>	<input type="checkbox"/>	Is the LEA responsible for hiring (or delegating the responsibility for hiring) qualified special education personnel?
<input type="checkbox"/>	<input type="checkbox"/>	Is the LEA responsible for providing (or delegating responsibility for providing) a full continuum of placements?
<input type="checkbox"/>	<input type="checkbox"/>	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.

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 on Indicators of Linkage provides one way to determine the type of linkage a particular charter school has with a traditional LEA.

Why is linkage important?

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

Federal Laws Relevant to Special Education in Charter Schools

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 as P.L. 108-446. The regulations related to IDEA 2004 were revised in August 2006. Copies of both the law and regulations and other technical assistance related to them are available on the OSEP website at <http://idea.ed.gov/explore/home> and at <http://nichp.org/idea.htm>
- **NCLB:** Links to the law, regulations and policy guidance are available online at www.ed.gov/about/offices/list/oese/legislation.html#leg
- **504:** Regulations can be found online at www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#D
- **ADA:** Regulations and technical assistance are available online at www.usdoj.gov/crt/ada/publicat.htm
- **FERPA:** An explanation is available online at www.ed.gov/policy/gen/guid/fpco/ferpa/index.html and brochures about FERPA for schools and parents are available at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/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.

Children who are not eligible under IDEA may qualify as students with disabilities under Section 504.

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://idea.ed.gov> provides 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.

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

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:

§300.8 Child with a disability.

(a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part 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.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), include a child--

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic

instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

■ SECTION 504 OF THE REHABILITATION ACT OF 1973—REGULATIONS⁶:

34 CFR 104.3

(j) Handicapped person—(1) *Handicapped persons* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, and/or genito-urinary; 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

Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations if necessary.

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 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 pos-

⁶ Note: Section 504 was originally adopted in 1973 when the term ‘handicapped’ was in common use. That term has been replaced in general usage with what is known as ‘people-first language’ such as ‘child with a disability’ such as now used in the current version of the IDEA.

sible 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 district-wide 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 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 the most 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 www.usu.edu/mprrc/workgroups/ci/011404Material1.pdf. In addition, another regulation known as the “two percent rule” was added to NCLB in 2007 – see <http://www.ed.gov/policy/speced/guid/modachieve-summary.html>.

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 achieve-

ment 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.

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.

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 from the IDEA Regulations as follows:

§300.18 Highly qualified special education teachers.

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also--

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general. (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires 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, highly qualified means that the teacher meets the certification or licensing requirements, if any, 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.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which--

(i) The teacher--

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) Requirements for special education teachers teaching to alternate academic achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate academic achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--

(1) Meet the applicable requirements of section 9101 of

the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those alternate academic achievement standards, as determined by the State.

(d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) 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 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) 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, not later than two years after the date of employment, 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 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meet all the requirements for a HOUSSE for regular education teachers--

(1) A State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this 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 SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(g) Applicability of definition to ESEA; and clarification of new special education teacher. (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of §300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138.

(Authority: 20 U.S.C. 1401(10))

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 public 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 public 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 2007 that number increased to 40 states plus the District of Columbia with over 4,000 charter schools in operation. (For further information, see 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 authorized¹⁰ 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 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 the 2007-08 school year, 40 states plus the District of Columbia had passed charter school laws. Although only about two percent of America’s public school students were enrolled in charter schools during that school year, the charter school movement remains a high-profile component of the public education system in the United States.

¹⁰ The term used to denote the entity that is legally charged with “approving” a charter school varies from state to state (e.g., authorizer, sponsor, charterer, etc.). For consistency in this document, the term “authorizer” is used.

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

No, the number of charter schools varies greatly by state. As of the 2007-08 school year, there are over 4,000 charter schools with an enrollment of over 1.2 million students. California has the highest number of operating charters with over 700 schools in operation.¹¹

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 most comprehensive charter school website providing extensive information about charter schools is at www.uscharterschools.org. Another valuable site is the National Alliance of Public Charter Schools. www.publiccharters.org

¹¹ National statistics and other data on charter schools are maintained online by the Center for Education Reform at www.edreform.com/index.cfm?fuseAction=stateStats&pSectionID=15&cSectionID=44.

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.

SEA personnel are frequently called upon to assist both charter school operators and authorizers in understanding their responsibilities and the state’s requirements.

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?

The authorizer’s role in special education varies from state to state and may be determined by state law, policy and/or the charter contracting process. In some states and for some charter schools, the authorizer’s role in special education is limited to determining whether special education is being provided according to the charter school law. In other states,

the authorizer may be the actual provider of services. SEA personnel need to know who can authorize in their particular state and the knowledge the authorizer(s) can be expected to have in the area of special education. For example, states that allow non-profit organizations to authorize charter schools may have to provide more information to the authorizer in the area of special education than states where the SEA itself is the only charter school authorizer. 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 edu-

cation 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 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 national charter school website at www.uscharterschools.org

KEY POLICY AND PROCEDURAL ISSUES ON CHARTER SCHOOLS AND STUDENTS WITH DISABILITIES FOR STATE SPECIAL EDUCATION AGENCIES AND OTHER STATE AGENCY UNITS

Background

One lesson that has been learned in the past decade of charter school implementation 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.

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

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.

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

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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 DECISION-MAKING 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 CONSIDERATION BY STATE AGENCY SPECIAL EDUCATION 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

A few of the policy questions that should be considered and clarified at the SEA level are outlined below. 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 decision-making 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 preceding 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 SEA primer 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.

STATE EDUCATION AGENCY (SEA) ASSISTANCE DURING CHARTER SCHOOL DEVELOPMENT STAGES

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?

Depending upon who authorizes charter schools in your state, 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 charter schools have sole responsibility for special education, SEA personnel need

A charter school’s legal status 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.

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 legal status 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.

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.

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 non-compliance 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 SEA 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 appendix to this primer, 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.

CLOSING THOUGHTS

Policy Tension

The SPEDTACS Primers are offered to assist in the successful inclusion of students with disabilities in charter schools and avoid the problems that could arise as a result of inadequate awareness of the requirements in federal special education laws. There is also an overriding climate issue that must be taken into account to achieve these goals, i.e., the *policy tension* between charter schools and special education that can give rise to conflict. The charter school concept is driven in part by the desire to allow educators the freedom to be innovative about teaching and learning, but this can be difficult to do while remaining in compliance with a highly prescriptive federal statute such as IDEA. In the area of special education, charter schools must juggle autonomy and compliance that at times can feel like fitting a square peg into a round hole.

The challenge for charter school educators is to be creative about how they serve students with disabilities in a way that preserves the students' right to a free appropriate public education.

One example of the tension between the autonomy of a charter school and federal special education law can be seen in the opposing pull between *parental choice* and the *team decision making* requirement in federal and state special education law. A central tenet of IDEA is that a team made up of professionals and the parent determines what is in the best educational interest of the child. The nature and intensity of special education services and the setting in which they will be delivered rest with the Individualized Education Program (IEP) team.

Charter schools challenge that foundational decision-making

principle of special education by asserting the primacy of parental choice. Because they have been created to offer educational choices to parents, charter schools assume that parents should be able to freely make choices about where and how their child is educated.

Thus, the foundation of parental choice is in tension with the notion of shared decision making that operates within special education. This tension is part of the climate for charter schools and its challenges must be understood by all involved. Should parents be allowed to enroll their child in a charter school even if the IEP team suggests that this is not the setting in which the child would be best served? Which tenet takes precedence—the right of the parents to choose the educational setting for their child, or the right of the IEP team to determine how and where a student with a disability may be best served?

Charter school authorizers, operators and board members must understand and acknowledge these tensions and strive to identify operational solutions. The challenge is to attain a balance that is appropriate to the issue, i.e., to deliver special education services in an innovative way that complies with federal special education law and to work together with parents as important members of the IEP team to determine the best educational services and setting for their child. The challenge for charter school educators is to be creative about how they serve students with disabilities in a way that preserves the students' right to a free appropriate public education.

Remaining Current

It is important to note that federal laws such as the Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act (amended by the No Child Left Behind Act) are subject periodically to mandated “reauthorization,” that is, a Congressional review that usually brings changes. Sometimes the changes are extensive

and their effects evolve over time, as continues to be true of the implementation of the NCLB amendments adopted in 2002. So, it is imperative that all those involved with charter schools, especially state education agencies and authorizers, be prepared to provide the necessary technical assistance to charter school so they can access the most current legislative information and remain in compliance.

Keeping printed materials, such as these Primers, up-to-date and widely disseminated is a daunting challenge. Modern technology, however, offers a solution that the SPEDTACS team used in the final activity of its project. The content of these primers is available with an Internet-based set of training modules at www.uscharterschools.org/specialedprimers. The web content is regularly updated to reflect changes in laws and regulations related to special education in charter schools.

APPENDIX 1

Glossary

PART 1: ACRONYMS

ADA	Americans with Disabilities Act
AYP	Adequate Yearly Progress
ADHD	Attention Deficit Hyperactivity Disorder
CEC	Council for Exceptional Children
CSP	Charter Schools Program (of the U.S. Department of Education)
ED	U. S. Department of Education
EIS	Early Intervening Services (could also be Early Intervention Services - See Definitions)
EMO	Educational management organization
FAPE	Free appropriate public education
FERPA	Family Educational Rights and Privacy Act
FRC	Federal Resource Center
504	Section 504 of the Rehabilitation Act of 1974
IDEA	Individuals with Disabilities Education Act
IEP	Individualized education program
IFSP	Individualized Family Service Plan
LEA	Local education agency (school district)
LRE	Least restrictive environment
NACSA	National Association of Charter School Authorizers
NAEP	National Assessment of Education Progress
NAPCS	National Alliance for Public Charter Schools
NASDSE	National Association of State Directors of Special Education
NCLB	No Child Left Behind Act: the most recent reauthorization of the Elementary and Secondary Education Act (ESEA)
NICHCY	National Information Center for Children and Youth with Disabilities
NRT	Norm-referenced test
OCR	Office for Civil Rights
OSEP	Office of Special Education Programs
PACER	Parent Advocacy Coalition for Educational Rights
RRC	Regional Resource Center
RTI	Response to Intervention (See definitions)
SEA	State education agency

PART 2: DEFINITIONS

ACCOMMODATIONS

Changes in the administration of an assessment, such as setting, scheduling, timing, presentation format, response mode, or others, including any combination of these, that do not change the construct intended to be measured by the assessment or the meaning of the resulting scores. Accommodations are used for equity, not advantage, and serve to level the playing field for a student with a disability. 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, curriculum, instruction, and assessments in terms of knowledge and skill expectations.

ALTERNATE ASSESSMENT

The term used for tests that gather 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. There are different types of alternate assessments

a state may adopt under the NCLB requirements. First, states must make available an alternate assessment based on grade level achievement standards. Then, there are two other alternates states may develop: the "alternate assessment based on alternate achievement standards" designed for students with the most significant cognitive disabilities and the "alternate assessment based on modified achievement standards" for students who cannot be expected to achieve grade level standards within one school year and who need a less complex assessment to demonstrate their knowledge of those standards.

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 DEVICE

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 the 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 [34 CFR §300.5].

ASSISTIVE TECHNOLOGY SERVICE

Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device [34 CFR §300.6]. It includes evaluation, purchasing, training and other services related to the acquisition and use of such devices.

ATTENTION DEFICIT HYPERACTIVE DISORDER (ADHD OR ADD)

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. Under IDEA, a child may be eligible for special education under the category of other

health impairment [34 CFR §300.9(i)].

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

According to the 2006 IDEA regulations 34 CFR §300.8(2) (c): (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (ii) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c) (1)(i) of this section are satisfied.

BIAS (TEST BIAS)

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

CHARTER SCHOOLS

Charter schools are independent public schools designed and operated by educators, parents, community leaders, educational entrepreneurs and others. They are authorized/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 academy” in Michigan.

CHILD WITH A DISABILITY

A child evaluated in accordance with IDEA regulations §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part 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 [34 CFR §300.8(a)(1)]. (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

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

DEAFNESS

A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance [34 CFR §300.8(c)(2)].

DEVELOPMENTAL DELAY

Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may include a child: (1) Who is experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or

more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) who, by reason thereof, needs special education and related services [34 CFR §300.8(b)].

In addition: A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five). A state may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction. If an LEA uses the term developmental delay for children described in §300.8(b), the LEA must conform to both the state's definition of that term and to the age range that has been adopted by the state. If a state does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part [34 CFR §300.111(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.

EARLY INTERVENING SERVICES

Early Intervening Services (EIS) is a new section of the 2004 reauthorization of the IDEA that provides that an LEA may use not more than 15 percent of the amount the LEA receives under Part B of the IDEA in combination with other amounts (which may include amounts other than education funds) to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment [34 CFR §300.226].

EARLY INTERVENTION SERVICES

The term ‘early intervention’ is used to describe the programs and services provided to infants and toddlers under Part C of

IDEA who are experiencing developmental delays or have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

EMOTIONAL DISTURBANCE

Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely 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. (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c) (4)(i) of this section [34 CFR §300.8(c)(4)].

ERRORS OF MEASUREMENT

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

EXTENDED STANDARDS

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

FREE APPROPRIATE PUBLIC EDUCATION

Special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA; (c) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of IDEA §§300.320 through 300.324 [34 CFR §300.17].

HEARING IMPAIRMENT

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

HIGH STAKES TESTING

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

INCLUSION

Under special education, an approach that stresses educating students with disabilities, regardless of the type of severity of that disability, in the regular classrooms of their neighborhood schools and delivering special education and related services within the classroom to the extent possible.

INDIVIDUALIZED EDUCATION PROGRAM

An 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

An 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

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. For further details on this concept, see the IDEA regulations at 34CFR §§ 114 through 120.

LINKAGE

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

LOCAL EDUCATION AGENCY (LEA)

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. 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

Mental retardation means 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 §300.8(c)(6)].

MINIMUM N

There are two ways in which the term "minimum n" is used under NCLB requirements:

- 1) the smallest number of students a state has determined can produce statistically reliable results for a subgroup, or
- 2) the smallest number of students to be included in public reporting that will not violate the requirements of confidentiality for the students involved.

MODIFICATION

A change to the testing conditions, procedures, and/or formatting so that measurement of the intended construct is no longer valid and the score cannot be aggregated with scores from tests administered under standard conditions.

MULTIPLE DISABILITIES

Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated

in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness [34 CFR §300.8(c)(7)]

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>).

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

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

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

OTHER HEALTH IMPAIRMENT (OHI)

Other health impairment means 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, sickle cell anemia, and Tourette syndrome; and (ii) Adversely affects a child's educational performance [34 CFR §300.8(c)(9)].

OUT-OF-LEVEL TESTING

Out of level testing is a term applied to the administration of a test designed for 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. This type of test is not allowed under NCLB requirements.

PORTFOLIO ASSESSMENT

An organized collection or documentation of student-generated or student-focused work typically depicting the range of individual student skills that is evaluated and graded according to an established set of criteria.

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, interpreting 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. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training [34 CFR §300.34(a)].

RESPONSE TO INTERVENTION (RTI)

RTI is a practice of providing high-quality instruction and intervention matched to student needs using data on the child's learning rate and level of performance to make important educational decisions about the necessity for more intense interventions or as part of evaluating eligibility for special education.

RELIABILITY

The consistency of the test instrument, i.e., 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, provided at no cost to the parents, to meet the unique needs of a child with a disability, including-- (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education. (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a) (1) of this section: (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education [34CFR §300.39(a)].

SPECIFIC LEARNING DISABILITY (SLD)

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

SPEECH OR LANGUAGE IMPAIRMENT

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

STANDARDIZED TEST

A standardized test is a test 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

The term standards is used in many different ways in education. As used under the NCLB law and regulations, there are two types of standards:

1. academic content standards - the basis of the general education curriculum covering what all students are expected to know and be able to do. These standards apply to all types of assessment for NCLB including alternate assessments.
2. academic achievement standards - the degree of proficiency students demonstrate about what they know and are able to do in each of the content areas.

There are three subtypes of academic achievement standards:

- a) grade level achievement standards;
- b) alternate achievement standards for students with the most significant cognitive disabilities (performance criteria for a small percent of students that must be aligned with the regular academic achievement standards); and
- c) modified achievement standards (performance criteria aligned with regular academic achievement standards for an additional group of students who can make progress toward grade-level achievement standards but may not reach them in the same timeframe as other students).

STANDARDS-BASED ASSESSMENTS

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

STANDARDS-BASED IEP

A process and a document that is framed by state standards and that contains goals aligned with, and chosen to facilitate the student's achievement of, state grade-level academic standards.

STATE EDUCATION AGENCY

An SEA is the component of state government that is primarily responsible for the state supervision of public elementary and secondary schools.

STUDENT (CHILD) WITH A DISABILITY

In the Individuals with Disabilities Act, a child with a disability is defined as “a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part 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

A coordinated set of activities for a child with a disability that:

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes:
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special educa-

tion [34CFR §300.43].

Under the section on the IEP, the IDEA law also provides that:

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include:

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals [34CFR §300.320(a)(7)(b)].

TRAUMATIC BRAIN INJURY

Traumatic brain injury means 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. Traumatic brain injury 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. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma [34 CFR §300.8(c)(12)].

VALIDITY

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

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

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

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

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

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

VISUAL IMPAIRMENT INCLUDING BLINDNESS

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

Acknowledgements:

The Primer definitions were compiled by the authors from many sources. Some of the assessment terms were quoted with permission from a publication of the Council of Chief State School Officers' ASES SCASS Project.



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