

Special Education in Charter Schools: Nuances in Implementation

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Introduction

Implementing special education in a charter school is a daunting task for which almost no developer or operator is adequately prepared. It is not just knowledge of the law (although that can be a huge hurdle), but rather the endless variation in how and to what degree the charter school will hold responsibility for compliance with federal and state (and sometimes local) requirements. The devil is truly in the details, and it is crucial that an attorney involved with a charter school around special education issues understand the nuances of the situation.

LEA Status

At the core of most of the problems that charter developers, operators and boards face is a lack of understanding of the implications of their legal status within the public education system. This is such an important issue that I am going to start by describing the basics and then addressing some of the challenges that each status brings.

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 the generic term, local education agencies (LEAs); and
- schools that are part of an LEA

An LEA is usually defined as an entity that has responsibility for the education of all children who reside within a designated geographical area of a state and it establishes one or more schools to educate those children.

In each of the 40 states plus DC where they exist, charter schools are identified by state charter law or policy as either an LEA or a school of an LEA or some hybrid combination of these two types of structure. There has been no literature produced on the impact of charter school legal identity in

any area other than special education. The following table from a research study completed at the University of Maryland illustrates the complex nature of LEA status as it pertains to this one area of school operations.

Charter School Legal Identity for Special Education

Legal Status	# of States	% of States
All charter schools are LEAs <i>(Delaware, Indiana, Iowa, Michigan, Minnesota, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Utah)</i>	12	30%
All charter schools are Part of an LEA <i>(Alaska, Colorado, Connecticut, Florida, Hawaii, Kansas, Maryland, Mississippi, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, South Carolina, Tennessee, Virginia, Wyoming)</i>	18	44%
Status depends on Authorizer <i>(Arizona, Georgia, Idaho, Illinois, Massachusetts, Texas, Wisconsin, Maine)</i>	8	17%
Status depends on Type of School <i>(Arkansas, Louisiana)</i>	2	5%
Status Chosen by the Charter School <i>(California, District of Columbia)</i>	2	5%
Total	N=42	

Updated from: Ahearn, E. M., Rhim, L. M., Lange, C. M. &McLaughlin, M. J. (March 2005). *State Legislative Review: Research Report #1*. Project Intersect: Studying Special Education in Charter Schools. Available at: www.education.umd.edu/EDSP/Projectionintersect

LEA Charter Schools

A charter school that is its own LEA owns responsibility for delivering special education to the children enrolled in that school (specific exceptions to this are part in NJ, MA and DC requirements). The charter school has independence in designing curriculum and instruction for all students and the opportunity to integrate planning for its students with disabilities to ensure coordination between general education and special education in every child's program.

Federal and state special education funds in LEA charter schools will flow to the charter school, but anticipating costs is difficult and the bureaucracy

involved is often overwhelming. A charter school must admit any child who applies to the school or, if applications exceed available places, use a lottery to select students. A district is usually a much larger entity than a charter school and it can pool, and subsequently distribute, costs from/across multiple schools and enjoy economies of scale. The level of funding provided may not be adequate to cover the costs for programs and services required by an LEA charter school's students with disabilities, but the charter school usually has no access to local tax revenues.

Charter Schools that are Schools of an LEA

If a charter school is a *school* within another LEA, the LEA retains responsibility for special education for district students who attend the charter school, although it does not have a role in the education of the other students in the charter school. There is always some division of responsibility between the LEA and the charter school as to the specifics of special education and this varies greatly from state to state and even within states because the specific complex components of special education are almost never clearly assigned even if there is a written document that is supposed to govern the tasks assigned to each party. The charter school may not have to budget for special education, although some states (e.g., New York) assign at least some responsibility for delivering special education services to the charter school.

The LEA will usually send its staff into the charter school that is part of its district to deliver services for its students with disabilities, although in some cases, a charter school may negotiate an arrangement to provide special education and be reimbursed by its LEA. In a number of states (e.g., Connecticut), charter schools enroll children from more than one LEA, so the charter school must work out a delivery plan with the child's resident district. Charter school staff usually have little power in such negotiations and the arrangements may have effects on the charter school's schedule and its instructional program.

LEA staff are responsible for evaluating and prescribing plans and assessing progress for students with disabilities in the charter schools that are part of their district, although LEA personnel often have no information about the curriculum and instruction that is followed in the charter school and they do not supervise the charter school staff.

Problems Associated with LEA Status

It is necessary to take a broader view of the ramifications of the legal aspects in any attempt to assist charter schools in coping with special

education. Legal requirements are often affected by the way charter schools, states and districts implement special education arrangements. There is an appalling lack of direction on the issue of legal status by states through their charter school legislation or policy and the effects on charter schools related to special education. Some state charter laws require a written agreement about the implementation of special education when a charter schools is part of an LEA. But, rarely do these agreements clearly delineate the responsibilities of both parties and the operational process for ensuring that there is full compliance with the federal and state laws and regulations for students with disabilities.

Although special education is the most obvious example of the consequences that accrue to a charter school from its legal status, other aspects of school operations, such as funding or obligations under Title I and other federal programs, are also affected.

Policy Tension

There is an overriding climate issue that must be taken into account, i.e., the *policy tension* between charter schools and special education that can give rise to conflict. The charter school concept, based on an exchange of greater autonomy for increased accountability, 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.

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.