



on implementing special education in charter schools.

Primer for Charter School Operators: Special Education Requirements and Including Students with Disabilities in Charter Schools

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- The full Primer set can be downloaded from www.edgateway.net/specialedprimers
- Further information is available by email from eileen.ahearn@nasdse.org
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- Pre-authorization
- Preparing for Start-up
- Operating a Charter School
- Accountability and Renewal
- Non-renewal, Revocation, & Relinquishment

Pre-authorization

As a charter school operator, what is my role during this phase?

- Plan for *all* children who may become students in your charter including students with disabilities.
- Create your school's vision to include all students.
- Consider how curriculum and instruction could be adapted to accommodate various students with disabilities.

Why is it important to include students with disabilities as we develop our school's mission and vision?

- As a public school, you must accept all students who apply.
- You will enroll students with many different kinds of needs including students with disabilities.
- If your mission and vision statements accommodate a diverse array of students, you will minimize future problems.

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

Consider 6 major legal principles of IDEA:

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

Keep in mind your state's requirements as to linkage to a local education agency (LEA) and your school's LEA status.

How do federal civil rights laws affect how we can recruit students?

- You may not discriminate against students with disabilities during advertising or recruiting.
- You should recruit students from all segments of the community served by your school using strategies that will not exclude students with disabilities.
- More details are available from the U.S. Department of Education Office for Civil Rights:

www.uscharterschools.org/pdf/fr/civil_rights.pdf

How can we provide outreach information to parents?

- Your charter school can help a parent who might have a disability and/or who does not understand English to understand your charter school as effectively as other parents.
- You can do this by:
 - holding meetings in barrier-free environments
 - offering materials in Braille or on a tape
 - providing qualified interpreters, translations, or another effective means of communication

What should we do to ensure student applicants with disabilities are treated in a nondiscriminatory manner?

- You may not categorically deny admission to students on the basis of disability.
- You may not deny admission to a student with a disability solely because of a need for special education or related aids and services.
- You must provide students with disabilities the opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the mission of your charter school and civil rights requirements.

What issues should we consider to provide effective special education services?

- Funding
- Space and facilities
- Human resources
- Curriculum
- Service provision
- Professional development
- Administration
- Transportation
- Special considerations

Issues to consider.....

- **Funding for special education**

- Is there a formula for determining how much special education funding to include in our budget?
- What is the formula and how is it determined?
- What funds will we receive for special education services?
 - federal
 - state
 - local funds
 - fundraising

Issues to consider....

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

Issues to consider...

- **Human resources:**

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

Issues to consider....

- **Curriculum**

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

Issues to consider....

- **Service Provision**

- How will we provide special education related services (e.g., occupational and physical therapy, orientation and mobility, speech therapy)?
- What should our Child Find activities look like?
- How will we conduct student identification, evaluation, and special education determination meetings?
- Who will participate in IEP development and implementation?
- What types of special staff or consultants will we need to implement our students' IEPs?

Issues to consider....

- **Professional development**

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

Issues to consider....

- **Administration**

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

Issues to consider....

- **Transportation**

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

Does my school have to go beyond our state's charter school law to include assurances to abide by federal statutes?

- Providing a blanket assurance may meet the letter of the law, but it can be subject to interpretation and will not help you work through the intricacies of including students with disabilities.
- Your planning activities and application will be stronger if you address areas about the education of students with disabilities that are connected to your legal responsibility for special education in accordance with your state charter school law.

What should we consider in preparing our application?

- clarify your your understanding of responsibilities;
- articulate your special education plan regarding:
 - governance, service delivery and finance;
- explain how you plan to:
 - identify, evaluate, and serve children with disabilities;
 - develop, review, and revise IEPs;
 - integrate special education into the general education program;
 - deliver special education and related services; and
- project special education costs in your school including:
 - child find, student identification and evaluation, planning; and
 - providing special education services.

Depending on your LEA status, your responsibilities in these areas will vary. Consider these in detail so you will be ready when a child with a disability applies to your school and you open your doors.

Pre-authorization Summary and Key Points

- This is a valuable time to plan for your school's future.
- You and your colleagues may not initially be aware of legal and civil rights assurances.
- Use this time educate yourself and other critical players (e.g., board members) about special education.
- This will help you to include special education and children with disabilities into your school's vision rather than leaving it to become an add-on component.
- Don't wait until you receive your charter or open your doors. Day-to-day operations may limit your ability to "think outside the box."

Preparing for Start-up

How can we provide students with disabilities with access to our curriculum?

- Consider this as you develop/refine your school's mission
- Consider accommodations you may need to provide to students with disabilities who may enroll in your school
- Discuss instructional issues during a child's IEP meeting
- Discuss how IEP team members can contribute to and understand how the student will have access to the curriculum
- Provide professional development to faculty who need help in accommodating student needs
- Track student adjustment during his/her first 30 days
- Convene a full IEP team to review progress and make any necessary revisions.

How much flexibility do we have in hiring special education faculty?

- You must abide by the decisions of the IEP Team that identified services for the child.
- Check with your SEA for specific information and guidance on relevant regulations in this area.
- Be sure to follow your state's charter school law and regulations regarding faculty licensure. (See next slide for definition of a highly qualified special education teacher.)

- **Highly Qualified Teacher:**
 - “A special education teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law” (IDEA 2004)

Do we have to hire full-time, licensed special educators?

- Probably not.
- Staffing decisions should be made on the needs of your students as identified in their IEPs.
- A few creative options include:
 - hiring faculty with dual licensure (in special and general education),
 - hiring consultants on an hourly basis, or
 - contracting for special educators via a collaborative agreement with the local school district or other (private or charter) schools.

Where can I obtain special education licensure information?

- State charter school office
- SEA licensure office

Don't assume you understand licensure requirements because you talked with a colleague in a neighboring state. There is extreme variability in licensure requirements across states.

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

- You CAN NOT discriminate on the basis of a disability in determining eligibility for admission.
- Your considerations for students with disabilities are to be the SAME as for students without disabilities.
- Receive and review records (*including the IEP*) for all children with disabilities who apply for admission from the previous school.
- If you do not automatically receive records, request from:
 - previous school,
 - previous LEA,
 - SEA special education office.

Can we recommend other schools if we have concerns about meeting a student's needs?

- It is typically not appropriate for you to suggest this.
- During student recruitment, share information with prospective students and families on the school's curriculum and services.
- Discuss the services and supports currently provided to students with disabilities.
- Explore strategies for meeting needs of the prospective student.
- Focus on understanding the needed supports and services.
- Identify strategies for delivering supports in *your* school.
- Discuss placement issues with the child's IEP team.
- Review U.S. Department of Education Office for Civil Rights (OCR) materials on this topic.

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

- Responsibility to modify a facility should be articulated in the lease between your school and the owner of the facility.
- Seek legal counsel prior to signing any contracts to lease or purchase your facility.

Are there different legal requirements that apply to existing versus newer facilities?

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

What impact will these requirements have on our operations?

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

Where can we obtain information and technical assistance to make our school accessible?

- Your state and/or local code dictate who is responsible for ensuring accessibility of public facilities.
- Check with this individual/entity for technical assistance in determining what modifications need to be made and the appropriate approach to accomplish your desired goal.
- Additional resources are available from:
 - Office of Civil Rights (US Department of Education)
 - your SEA

Preparing for Start-up Summary and Key Points

- Activities during the start-up period will provide the foundation for your school's day-to-day operation.
- Before you make a decision, ask if this decision will help *every* potential student?
- Cultivate your resources so you can draw on their expertise and experiences.
- Remember there are many sources of information and support available to you, including:
 - other charter and traditional schools,
 - your state department of education, and
 - charter school resource centers and/or associations.

Operating a Charter School

What do we need to consider when operating our charter school?

- curriculum implementation
- staff and faculty hiring
- student enrollment
- fiscal issues
- school accessibility

What special education services must we provide?

- This depends on your school's legal identity and your LEA linkage:
 - *total-link* or a *partial-link* - special education services will either be coordinated out of the district office as is done for other schools in the district, or delivered in another way as specified in a contract you have negotiated with the LEA.

Special Education Services (cont'd)

- *no link* - the charter school must ensure that each of its students with an IEP receives all special education supports identified in the student's IEP.

You don't have to hire staff specifically to provide the services. You can:

- contract with a local school district to provide specific services,
- hire a consultant or
- form a cooperative with other charter schools.

Our curriculum was selected specifically for students with disabilities. How can we include those without disabilities?

- Each student should be considered individually so that their needs can be met.
- General plans for a new charter school must include a grade-appropriate curriculum to be available for students without identified disabilities.
- If a population with disabilities is targeted, adequate delivery strategies, personnel, tools and materials must be added for the expected needs.

A student with a significant disability has enrolled in our school. Where do we start?

- The first step is for your charter school staff to review the child's special education records, especially the IEP, and analyze your existing capacity to deliver the instruction and related services as described.
- Your charter school must try to implement the child's IEP or, if that does not appear to be possible, must convene the IEP team immediately to discuss appropriate options.
- Track the student's adjustment in the first 30 days with you.
- Set a date for the full IEP team to review progress and make any necessary revisions.
- Check with your SEA and charter school organizations to determine if there is a cooperative that can provide support in this area. Many provide technical support and resources and others provide direct services for these children.

May we limit participation of students with disabilities to certain aspects of our program?

- No.
- Students with disabilities must be provided a range of choices in programs and activities that is comparable to that offered to students without disabilities, including an opportunity to participate in a range of nonacademic or extracurricular programs and activities offered at your charter school.

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

- Yes.
- All students receiving special education services must have an IEP developed by a multidisciplinary team under IDEA and state special education requirements.
- The IEP may complement the plans your school will develop for all students.
- The IEP is the legal document for a child eligible for special education.

How can we retain personnel to work with children with disabilities?

- Discuss individual roles in fulfilling the school's mission,
- Create a mentor system for new special educators,
- Implement a peer support program and
- Implement an open-door discussion practice.

What special education professional development should we offer?

- Strategies to link instruction, curriculum, and the school's mission to the individual needs of students are most useful.
- Involve staff members in the planning of their own professional development programs.

What areas of professional development should be provided to board members and other volunteers?

- Focused, ongoing training in the charter school's responsibilities for students with disabilities
- Educational management issues

What resources are available for professional development?

- Government offices:
 - Local Education Agencies
 - Regional Technical Assistance Networks
 - State Departments of Education
 - Regional Resource Centers
 - U.S. Office of Innovation and Improvement
 - U.S. Charter Schools Office
- National Networks:
 - Federally funded technical assistance projects

Resources (cont'd)

- National Special Education Networks:
 - Council for Exceptional Children (CEC)
 - National Information Dissemination Center (NICHCY)
 - Parent Advocacy Coalition for Educational Rights (PACER)
 - National Association of State Directors of Special Education (*NASDSE*)
- Legal Resources:
 - Special Education News
 - Special Education Law

Our special education program costs more than our funding. What do we do?

- Continue providing services in the IEPs!
- Review contract provisions with LEAs, state funding policy, and your school's LEA status and linkage to another LEA.
- Inquire about “risk pool” special funds to cover unexpected high costs for students with disabilities.
- Contact your authorizer or SEA regarding any other special funds.

Do we have to provide transportation to students in special education?

- Yes – if you provide transportation to and from school or financial support (e.g., tokens) for non-disabled students.
- If an IEP team identifies transportation as a *related service* on a child's IEP, then you need to arrange transportation services.
- IEP team members need to understand the difference between a student's need for transportation to get to school (common for all students) and a student's need as a result of a disability (which results in the need for a related service).
- If your charter school is responsible to provide this related service, you may contract for it or pay the family to transport the child to and from school or the location of the special services.

Do we have to conduct “Child Find” activities?

- This depends on your LEA status.
- All states develop procedures for LEAs to identify children with disabilities.
- Charter schools do not have jurisdiction over a geographical area as most traditional LEAs do, so the actual implementation of Child Find responsibilities by charter schools will differ.
- Charter schools are responsible for children only when they are actually enrolled in the charter school.
- Check with your SEA.

What should we do if we think a child has a disability?

- Talk with the child's family first.
- Provide pre-referral support to the student through your student assistance team.
- Provide information on procedures and rights of a child to an evaluation for special education.
- Review your school's procedures for steps to be taken when a child is not progressing or is presenting other problems.

What special education forms and reports do we complete?

- This depends on your contract, state law, and legal identity of your charter school.
- Depending on LEA linkage, staff may have to
 - participate in or lead the IEP process
 - provide child progress information
 - conduct special education identification, evaluation and IEP development and monitoring
 - manage complete financial/funding
 - arrange staffing
 - report your special education child count

Who should complete the forms?

- Individuals who have received training including
 - special educator with a modified teaching load or additional compensation
 - special education administrator to assist in management of complex responsibilities required by federal and state laws

Who is responsible for developing IEPs?

- This depends on specific arrangements as reflected in your contract, state law, and the linkage to an LEA.
 - Total-link - most IEP development will be coordinated by the school district
 - Partial-link - process will vary depending on state law and contract
 - No-link - most likely, the charter school has sole responsibility for developing IEPs

What does the IEP include?

- present levels of educational performance, including how the child's disability affects involvement and progress in the general curriculum;
- measurable annual goals
- special education and related services, supplementary aids and services
- extent, if any, to which the child will not participate with non-disabled children in the regular class;
- individual modifications in the administration of state or district-wide assessments of student achievement;
- projected date for the beginning of the services and modifications;
- anticipated frequency, location, and duration of those services and modifications;
- statement of how the child's progress toward the annual goals will be measured, how parents will be regularly informed of their child's progress toward the annual goals, and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
- for children age 16 and above, transition needs must be addressed in the IEP

IEP Content (cont'd)

- The IEP is not a curriculum for the child.
- It is to serve as a guide for how to “open the doors” to improve access to the general education curriculum.

What do we do when a child transfers to another school?

- You must ensure timely transfer of all records.
- At the point that the child is formally no longer enrolled in your charter school, your school no longer has a responsibility to provide services to the child.

Operating and Start-up Summary and Key Points

- Take time to revisit your mission and vision
- Have specific discussions on how *all* of your students and staff are doing
- Consult with resources available in your local school district, state education office, or charter authorizer
- Take time to address students with disabilities in a *proactive* and *positive* manner

Accountability and Renewal

Accountability Considerations

Charter schools may be released from some state reporting requirements (e.g., teacher qualifications).

You are still obligated to collect and report the same information that traditional public schools must report (e.g., statistical reports regarding students, standardized tests, and budgets).

A comprehensive (electronic) management information system and consistent, detail-oriented staff are two effective ways to handle this responsibility.

Consider special education when creating management information systems.

A secure filing system to store the paper documents is critical to ensure security and privacy of confidential and other critical data/reports.

What data should we collect to complete required reports?

- demographic information on students
- enrollment and attendance accounting
- program accounting
- IEPs (content and timelines)
- student performance and other academic data
- data on all of your students disaggregated by the subgroups outlined in NCLB, one of which is students with disabilities
- financial reporting

Is there added accountability for special education?

- Yes.
- The U.S. Department of Education carries out extensive special education monitoring of SEAs.
- SEAs must develop and carry out a formal monitoring process for each of its LEAs.
- Your charter school's involvement is dictated by your legal status as an LEA or part of an LEA.

How is special education monitoring conducted in a state?

- No-link
 - LEAs conduct a self-assessment to review implementation of all special education requirements
 - SEA reviews and validates data
 - Reviews conducted on a three-to-five year cycle
 - Report is written detailing the findings of the SEA
 - LEA develops a plan to address all non-compliance
- Partial-link or Total-link
 - Participate in the LEA's special education monitoring on the same basis as other schools of that LEA
 - LEA is responsible for correcting non-compliance findings
 - Your school might be randomly selected for visitation

What resources are available to prepare for special education monitoring?

- SEA
- other LEAs
- regional resource centers
- other charter schools
- national organizations
- monitoring mentors where an experienced special educator can assist your charter school prepare for monitoring

How do students with disabilities participate in NCLB accountability?

- All students receiving special education services - including those with significant disabilities - participate in assessments
- All scores “count” in the accountability formulas
- They can make a difference in your school’s ability to meet “adequate yearly progress”

How will special education be considered in charter renewals?

- Authorizers will most likely evaluate your special education practices in the areas of:
 - finance
 - academics
 - personnel
 - facilities
 - data systems

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

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

Accountability Summary and Key Points

- Accountability is a cornerstone of school improvement efforts and is a basic principle of the charter school movement.
- Charter schools are accountable for monitoring, files/data management, record keeping, procedural (special education) compliance, state charter law compliance, and charter school contract compliance.
- Your school must be able to demonstrate student progress, maintain qualified personnel, and document instructional and financial practices.
- Students with disabilities and their programs and staff will be involved in each aspect of this phase.

Non-renewal, Revocation, & Relinquishment

What do these terms mean?

- *Non-renewal*
 - charter school seeks renewal to operate after its approved period and the authorizer does not grant a new charter
 - school loses its authority to operate and exist as a public school
- *Revocation*
 - proactive decision by an authorizer to remove a charter and authority to operate occurs when contractual obligations are not met
- *Relinquishment*
 - voluntary release of a charter by charter board

If our school ceases to exist, what do we need to consider relative to special education?

- It is your responsibility to facilitate transfer of all:
 - funds,
 - records (including student and financial), and
 - equipment (instructional and adaptive).
- Check with your authorizer, LEA, and SEA to obtain specific guidelines and policies in your state.
- Federal guidelines also provide information on property disposal.

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

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

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

- Your responsibility is to send students' records to their new schools.
- If you don't know where to send them, you should return all records to the child's LEA of residence or last known LEA.
- If you aren't able to determine this information, contact your authorizer or the SEA for assistance.

How does FERPA affect our transfer of student records?

- The Family Educational Rights and Privacy Act (FERPA) provides guidance on requirements in the transfer of educational records that contain personally identifiable information on your students.
- Pay careful attention to sections pertaining to disclosure of information without the “written consent” of the parent or eligible student.

How should we dispose of special equipment purchased for students with disabilities?

- If equipment was purchased for one specific student, it should be forwarded to the student's new school.
- If equipment was purchased for use in a special education program, it should be handled in the same manner as all other school equipment.
- Your state requirements for disposal/transferring of equipment purchased with federal or state funds will also provide guidance in this area.

Non-renewal, Revocation, & Relinquishment Summary & Key Points

- You and your Board of Directors have legal responsibilities to safeguard the rights of students, the privacy of records, and the security of equipment.
- Clarify your responsibilities with your authorizer to ensure everyone has a clear understanding of roles and responsibilities.



PRIMER

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OPERATORS:**

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AND INCLUDING STUDENTS WITH
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Revised January 2008



National Association of State Directors of Special Education, Inc.

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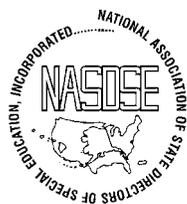
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Although the charter schools movement has grown rapidly since its beginning in the early 1990s, there is very little recorded information available on the challenges related to implementing special education in this new type of public school. The best 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.

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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.

The SPEDTACS Project Team:

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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. The critical basic issues that should be addressed by the user are presented followed by the stages of development and critical issues to consider. 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 Charter School Operators

The purpose of this document is to provide operators with implementation and operational technical assistance related to special education in charter schools. Special education is a very complicated component of public education and providing operators with technical assistance regarding special education is particularly challenging.

This primer opens with a general background on legal issues and responsibility for special education in charter schools. It is not intended to be a complete treatment of special education law or classroom practice. In fact, due to the legal foundation upon which special education is built; operators are strongly urged to consult an attorney and experienced special education professionals to assist in the development and implementation of the charter school. This primer includes the questions that should be asked about students with disabilities at each life stage of a charter school. The answers to these questions and suggestions for where to go for more information are intended to provide assistance that is critical to successfully designing and implementing the special education component of a charter school.

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.

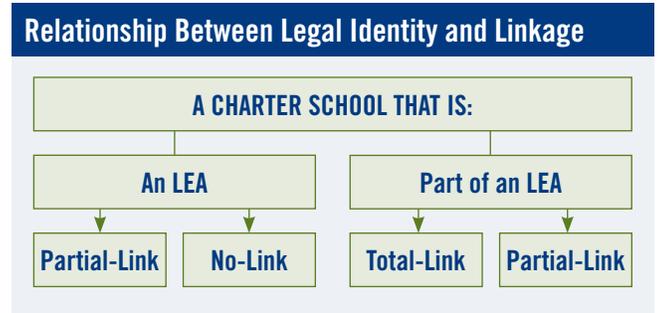
How does a charter school’s LEA status impact its operations?

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))

SECTION 1: PRE-AUTHORIZATION

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

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

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

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

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

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

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

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

Taking time to consider these principles and how they relate to charter schools in your state will help you to develop a school that addresses the needs of all your students.

Throughout your review, keep in mind your state's requirements as to linkage to a local education agency (LEA) and your school's LEA status as described in the background section of this primer.

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

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

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

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

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

Under Section 504 (of the Vocational Rehabilitation Act) and Title II (of the Americans with Disabilities Act), you may not categorically deny admission to students on the basis of disability. For example, you may not deny admission to a student with a disability solely because of that student's need for special education or related aids and services. Students with disabilities must have the opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the mission of the charter school and civil rights requirements.

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

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

Checklist of Special Education Considerations

FUNDING FOR SPECIAL EDUCATION

- Is there a formula for determining how much special education funding to include in our budget?
- What is the formula and how is it determined?
- What funds will we receive for special education services?
 - federal
 - state
 - local funds
 - fundraising

SPACE AND FACILITIES:

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

HUMAN RESOURCES

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

CURRICULUM

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

SERVICE PROVISION

- How will we provide special education related services (e.g., occupational and physical therapy, orientation and mobility, speech therapy)?
- What should our Child Find activities look like?
- How will we conduct student identification, evaluation and special education determination meetings?
- Who will participate in IEP development and implementation?
- What types of special staff or consultants will we need to implement our students' IEPs?

PROFESSIONAL DEVELOPMENT

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

ADMINISTRATION

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

TRANSPORTATION

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

If the charter school law in my state only requires charter school applications to include an assurance that school personnel will abide by federal statutes related to special education, is there any need for me to expand upon this assurance?

Providing a blanket assurance may meet the letter of the law, but it can be subject to interpretation and will not help you work through the intricacies of including students with disabilities. In the long run, your planning activities and application will be stronger if you address areas about the education of students with disabilities that are connected to your legal responsibility for special education in accordance with your state charter school law. (See the background section if you have not already thoroughly identified your legal status and your linkage to an LEA.)

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What should we consider in preparing our application?

A few critical areas for you to consider include:

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

Depending on your LEA status, your responsibilities in these areas will vary. Even if you are not required to address these in the content of your charter application, considering these in detail during the planning process will prepare you to be ready when a child with a disability applies to your school and you open your doors on the first day of school.

Summary and Key Points

The pre-authorization phase provides you with a valuable opportunity to explore different aspects of your future charter school. While many state charter school laws require you to provide only a general assurance that you won't discriminate or just an assurance to abide by IDEA, you and your colleagues may not be aware at first of what these assurances entail. In an effort to preempt potential problems associated with not complying with special education requirements, you should use the pre-authorization phase to, among other things, educate yourself and other critical players (e.g., board members) about special education.

By educating yourself earlier rather than later, you will be able to include special education and children with disabilities into your school's vision rather than leaving it to become an add-on component. Once your charter school is authorized and operating, the pressures associated with start-up and day-to-day operations may limit your ability to "think outside the box." So, use the time you have available to design your school, making sure you include special education at every decision point.

SECTION 2: PREPARING FOR START-UP

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

Hopefully, this is an issue you addressed during your pre-authorization activities as you developed your school's mission and considered potential accommodations that will help you to include students with disabilities in your school.

As you prepare for students, remember that concerns about instruction should be discussed at the time of the child's IEP meeting and described in the child's individualized education program (IEP) so that all members of the team can contribute to, and understand, how the student will have access to the curriculum that is required by special education law. If your school's faculty needs help in accommodating the needs of a student who has a disability, you need to make provisions for professional development. One strategy that charter schools have found effective is incorporating into the IEP a provision for close tracking of the student's adjustment in the first 30 days at the charter school with a set date for the full IEP team to review progress and make any necessary revisions.

Due to my school's LEA status, we are responsible for hiring our staff and faculty. How much flexibility do we have in special education?

First, your charter school must follow your state's charter school law and regulations regarding faculty licensure. Changes to IDEA law in 2004 and regulations in 2006 require that special education teachers meet the "highly qualified" standards of NCLB. However, although special education teachers must have full certification and hold a license in the state to teach as a special education teacher, the law makes an exception: "the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a

special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law; (CFR 34 Sec. 300 18(b) (i). It is essential that charter school operators who hire such personnel to understand the requirements their state has established. You must abide by the decisions of the IEP team that has identified the type of services the child will need and consider the staffing implications for delivering those services. Check with your SEA for specific information and guidance on relevant regulations in this area.

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

Depending on the needs of your students and staffing identified in their IEPs, it is highly unlikely that your charter school will have sufficient need to warrant hiring a complete complement of special educators. However, you will have to be creative and flexible in designing staffing loads. A few of the options include hiring faculty with dual licensure (in special and general education), hiring consultants on an hourly basis, or contracting for special educators via a collaborative agreement with the local school district or other (private or charter) schools.

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

Yes. Being licensed/certified is only one part of the requirements in the No Child Left Behind Act (NCLB) designed to ensure that teachers of core academic subjects be highly qualified. The IDEA applies this NCLB requirement to special education teachers who teach core subjects. There is a partial exemption from the highly qualified requirements for teachers in charter schools where their state law exempts them from certification requirements. Your SEA can provide clarification for specific requirements in your state.

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

In addition to your state's charter school office, you should become very familiar with your SEA's licensure office. Staff in this office will be able to interpret federal and state licensure requirements as they pertain to charter schools. Particularly during the early days of your school, don't assume you understand licensure requirements because you talked with a colleague in a neighboring state. There is extreme variability in licensure requirements across states.

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

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

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

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

It is typically not appropriate for you to suggest that the needs of a student with a disability may be better met in another school. During the course of student recruitment, it is expected that your school staff and representatives will share information with prospective students and families on the school's curriculum and services. It would also be appropriate to discuss the services and supports currently provided to students with disabilities and to explore potential strategies for meeting the needs of the prospective student. The initial focus should be on understanding the needed supports and services and identifying strategies for delivering them within the context of your school's framework. All issues about the

appropriateness of the child's placement should be taken up with the child's IEP team.

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

Yes. An LEA (including your charter school if it is its own LEA) may not deny persons with disabilities, including parents and students, the benefits of programs and activities offered at its schools because of inaccessible facilities. The selection of the facility for your charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity.

All issues about the appropriateness of the child's placement should be taken up with the child's IEP team.

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

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

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

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

What impact will these requirements have on our operations?

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

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

Your state and/or local code dictate who is responsible for ensuring that public facilities are accessible. Check with this individual/entity for technical assistance in determining what modifications need to be made and the appropriate approach to accomplish your desired goal. Additional resources are available from OCR online at www.ed.gov/about/offices/list/ocr/index.html or from your SEA.

Summary and Key Points

Your activities during the start-up period will provide the foundation for the day-to-day operation of your school. As you prepare for the opening, keep children with disabilities in mind. Every time you, your board and your staff get ready to make a decision, ask yourselves if this decision will help every potential student? Cultivate your resources so you can draw on their expertise and experiences. Remember there are many sources of information and support available to you, including other charter and traditional schools, your state department of education, and charter school resource centers and/or associations that exist in many states to assist during the development and operation of a charter school.

SECTION 3: OPERATING A CHARTER SCHOOL

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

What special education services must a charter school provide?

The specific services that must be delivered by your charter school depend on the legal identity of your individual school and your linkage to an LEA. If your school is linked to an LEA (either a *total-link* or a *partial-link*), special education services will either be coordinated out of the district office as is done for other schools in the district, or delivered in another way as specified in a contract you have negotiated with the LEA.

The expectations for a charter school that is considered to be a separate LEA and has *no-link* with another LEA are quite different: the charter school must ensure that each of its students with an IEP receives all special education supports identified in the student's IEP. The range of services and equipment may include related services, e.g., occupational and physical therapy, orientation and mobility training, adapted physical education, transportation, or assistive technology. This is not to say that the school must hire staff specifically to provide the services. Many charter schools have crafted creative solutions to providing services. Some of these include: contracting with a local school district to provide specific services, hiring a consultant or forming a cooperative with other charter schools.⁷

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

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

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

Ideally, a charter school representative would have been involved in the IEP team meeting to design the content of the IEP for the child's enrollment in your charter school and plans will be in place when the child enters. If that did not occur, the first step is for your charter school staff to review the child's special education records, especially the IEP, and analyze your existing capacity to deliver the instruction and related services as described. Just as any other public school is expected to do if a child moves in with an existing IEP,

⁷ The term "cooperative" is a broad term that incorporates a variety of entities designed to enable small organizations to cooperate and pool their resources. Examples are Bureaus of Cooperative Education Services (BOCES) in Colorado, and the District of Columbia Public Charter School Cooperative in Washington, DC. While these cooperatives are similar in that they enable schools to pool resources, they are unique in their origins, role and responsibilities.

your charter school must try to implement the child's IEP or, if that does not appear to be possible, must convene the IEP team immediately to discuss appropriate options. As mentioned previously, one strategy that charter schools have found effective is incorporating into the IEP a provision for close tracking of the student's adjustment in the first 30 days at the charter school with a set date for the full IEP team to review progress and make any necessary revisions.

Remember to check with your SEA and charter school organizations in your area to determine if there is a cooperative that can provide support in this area. Many cooperatives have formed to provide technical support and resources to charter schools with children with significant or low-incidence disabilities. Some also provide direct services for these children.

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

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

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

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

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

In many parts of the country, demand for educators (particularly special educators) exceeds the supply. While there is no special "fix," several strategies have proved effective in reduc-

ing turnover. These include creating a mentor system for new special educators, implementing a peer support program and implementing an open-door discussion practice. Increasingly, research shows that the primary reasons special educators leave their positions are paperwork responsibilities, feelings of isolation from colleagues, high caseloads and multiple

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

responsibilities. Specific upfront discussions about their individual roles in fulfilling the school's mission will help them to understand your school and their ability to help you meet your goals. It is extremely important that you are in frequent contact with your special educators to gauge satisfaction and/or frustration and explore strategies to minimize areas of difficulties.

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

Charter schools need to provide professional development opportunities to a variety of different types of individuals. Clearly your instructional staff (including paraprofessionals) need to have ongoing access to training specifically focused on linking instruction, curriculum, and the school's mission to the individual needs of students. Successful practices in personnel retention also stress the importance of involving the staff members in the planning of their own professional development programs.

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

Your charter school board members and other volunteers should be appropriately included in professional development opportunities. They will benefit from very focused,

ongoing training in the charter school's responsibilities for students with disabilities as well as educational management issues. Given the strong charter school focus on parental involvement, it is important to reach out to parents and family members of students with disabilities to ensure they are part of the activities that involve all parents and meet their needs for information. Equally important, you, the operator, should take time to participate in ongoing professional development.

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

Governmental Agencies and Offices:

- **LOCAL EDUCATION AGENCIES:** States delegate their responsibility for providing a free appropriate public education to local education agencies. As part of this responsibility, LEAs generally offer district schools technical assistance in the form of documents and training. Many districts maintain websites with abundant resources related to special education. District special education technical assistance can be invaluable to charter developers interested in learning more about special education.
- **REGIONAL TECHNICAL ASSISTANCE NETWORKS:** Many states operate regional technical assistance networks designed to provide, among other services, special education technical assistance. Examples of these networks are the Education Service Centers in Texas, Intermediate School Districts in Michigan, and Boards of Cooperative Education Services (BOCES) in Colorado. As public schools, charter schools should have access to these networks.
- **STATE DEPARTMENTS OF EDUCATION:** State departments of education can be a rich source of general information regarding special education and in some cases, specific information regarding special education in charter schools. Most states with charter school laws maintain a designated web page for charter schools. Most states also maintain a web page for special education. If you aren't sure how to access your state's website, you can access it from the National Association of State Directors of Special Education

website at www.nasdse.org/directors.cfm

- **REGIONAL RESOURCE CENTERS:** The Regional Resource Centers and the Federal Resource Center provide consultation, technical assistance and training to state educational agencies and through them to local educational and other appropriate agencies. You can access links to the Federal Resource Center and to each Regional Resource Center at www.rrfcenter.org.
- **U.S. DEPARTMENT OF EDUCATION (ED):** Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. The Office of Special Education Programs (OSEP) maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education at www.ed.gov/about/offices/list/osep/index.html

Another ED office that has more general resources for charter schools is the Office of Innovation and Improvement at www.ed.gov/about/offices/list/oii/index.html?src=mr Information about the No Child Left Behind Act (NCLB), a law that all charter schools must understand is available at www.ed.gov/nclb/landing.jhtml?src=pb

If your school provides transportation to and from school or financial support (e.g., tokens) for non-disabled students for that kind of transportation, then you need to do the same for students with disabilities.

National Special Education Networks:

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

- **COUNCIL FOR EXCEPTIONAL CHILDREN (CEC):** CEC is the largest international professional organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities and/or the gifted. CEC sets professional standards, provides professional development and helps professionals obtain conditions and resources necessary for effective professional practice. www.cec.sped.org
- **NATIONAL INFORMATION CENTER FOR CHILDREN AND YOUTH WITH DISABILITIES (NICHCY):** NICHCY is an information and referral center that provides free information on disabilities and disability-related issues. Children and youth with disabilities (birth to age 22) are NICHCY's special focus. www.nichcy.org
- **PARENT ADVOCACY COALITION FOR EDUCATIONAL RIGHTS (PACER):** PACER is a parent advocacy organization dedicated to expanding opportunities and enhancing the quality of life of children and young adults with disabilities and their families, based on the concept of parents helping parents. PACER's website has a variety of resources developed to assist parents of children with disabilities and may be helpful in informing charter school operators regarding their obligations to parents of children with disabilities. www.pacer.org
- **SPECIAL EDUCATION NEWS:** This private newsletter provides in-depth, up-to-date news related to educating students with disabilities. www.specialednews.com
- **SPECIAL EDUCATION LAW:** This resource provides up-to-date information on judicial and legislative decisions concerning special education. www.specialedlaw.net

National Charter School Networks:

- **NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS:** This organization renders support and technical assistance to those who sponsor or authorize charter schools. www.qualitycharters.org
- **U.S. CHARTER SCHOOLS WEBSITE:** This is a rich resource supported by the U. S. Department of Education. www.uscharterschools.org

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

Lack of funds is not a legal reason for denying services to a child who is eligible for special education. The manner in which your charter school may seek additional support to pay for required special education services depends on a number of factors, such as the provisions of your charter and any contracts you have with an LEA, state funding policy and your school's LEA status and linkage to another LEA. Revisions to IDEA passed in 2004 permit states to establish risk pools to assist LEAs in addressing the needs of "high need children with disabilities." The law specifically includes charter schools that are LEAs as eligible to participate. Operators should know if such a resource exists in their state and obtain specific details about how the program works.

A charter school does not have jurisdiction over a geographical area as most traditional LEAs do, so the actual implementation of Child Find responsibilities by charter schools will differ. Charter schools are responsible for children only when they are actually enrolled in the charter school.

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

If your school provides transportation to and from school or financial support (e.g., tokens) for non-disabled students for that kind of transportation, then you need to do the same for students with disabilities. If you do not provide this support in general, then you typically do not need to provide it to students with disabilities. However, if an IEP team identifies transportation as a *related service* on a child's IEP, then your school will need to arrange for transportation services or see that the responsible entity does so. As your IEP team considers a student's need for transportation, it is critical that team members understand the difference between a student's need

for transportation to get to school (common for all students) and a student's need as a result of a disability (which results in the need for a related service).

If your charter school is responsible to provide this related service, you may contract for it or pay the family to transport the child to and from school or the location of the special services.

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

Your charter school's responsibilities for Child Find depend on its LEA status. IDEA requires each state to have in effect policies and procedures “to ensure that all children with disabilities residing in the State, including the children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated” (CFR §300.111(a)1(i)). States develop procedures that their LEAs must follow to carry out these responsibilities. If your charter school is its own LEA for special education, you must follow state procedures just like any other LEA. However, a charter school does not have jurisdiction over a geographical area as most traditional LEAs do, so the actual implementation of Child Find responsibilities by charter schools will differ. Charter schools are responsible for children only when they are actually enrolled in the charter school. It is clear that all charter schools must conduct Child Find activities for their full student population so that children who may need special education are appropriately identified and, if necessary, referred for evaluation. A state may have developed specific instructions for charter schools with regard to Child Find that you as the school operator must learn, understand and follow.

What should we do if a teacher or parent suspects a child might benefit from special education?

Parents and teachers must be given clear information about the procedures that will be followed in your charter school concerning the rights of a child to an evaluation for special education. Parents and teachers must also be fully aware of other services your school provides (e.g., a student assistance team to provide help) prior to a formal special education evaluation referral. Federal and state law and regulations

contain numerous specific requirements related to procedural safeguards and your teachers, parents and board members should be made familiar with them.

Parents and teachers must be given clear information about the procedures that will be followed in your charter school concerning the rights of a child to an evaluation for special education.

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

How many special education forms and reports do we have to complete?

Your school's responsibility in this area will vary based on your contract, state law and the state-determined legal identity of your charter school and its linkage to an LEA. If your charter school is required to have its own IEP team and carry out all the responsibilities for evaluation, the paperwork is the same as required for other LEAs. If your charter school does not have to carry out the IEP team process, your staff will, at a minimum, have to participate in the IEP process to represent the charter school and provide progress information to the child's LEA.

Regardless of your specific requirements, it is very important that you, as the charter operator, understand the nature of your school's responsibilities and ensure your entire charter school staff has a clear understanding of the reporting responsibilities to avoid violations that might make the school vulnerable to non-compliance charges. Depending on your contract, state law, or linkage, your paperwork responsibilities may include financial/funding, staffing, child count, identification and evaluation, IEP development and monitoring, and student progress. Deciding who will be responsible for what paperwork (followed by training to do this) will

help to ensure completion of all requirements by competent, qualified individuals. Since student-focused paperwork can be very time consuming, many charter schools alter a special educator's teaching load or provide additional compensation.

Some states have recognized the need for charter schools to have access to the services provided by a special education administrator to assist in the management of the complex responsibilities required by federal and state law. For example, Minnesota and Florida have made funds available to support such services for their charter schools.

Who is responsible for developing our students' IEPs?

Responsibility for IEP development depends largely on the specific arrangements for your school as reflected in your contract, state law, and the linkage to an LEA. The proce-

Responsibility for IEP development depends largely on the specific arrangements for your school as reflected in your contract, state law and the linkage to an LEA.

dures to be followed in your charter school should be clearly written in school policies. Generally, if your school has a total-link, most IEP development will be coordinated by the school district while, in partial-link charter schools, the process will vary depending on state law and contract. No-link charter schools will, most likely, have sole responsibility for developing IEPs for their students with disabilities.

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

Current IDEA requirements provide that IEPs are to be developed by a team whose membership includes a parent of the child with a disability, one regular education teacher of the child, one special education teacher of the child, an administrative representative of the LEA, individuals who can interpret the instructional implications of evaluation results, other individuals with knowledge and expertise regarding the child and (as appropriate) the child. The IDEA does

allow that a member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree in writing that the attendance of such member is not necessary. The law also allows for participation in a meeting by conference call or other electronic means.

What does the IEP need to include?

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

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

In addition, for children age 16 and above, there are requirements for addressing transition needs that must be addressed in the IEP process.

The IEP is not to be a curriculum for the child. Rather it is to serve as a guide for how to “open the doors” to improve access to the general education curriculum and the necessary special education and related services that will allow the child to progress.

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

While some states have developed IEP templates that all LEAs are to use, other states have granted LEAs the autonomy to develop their own IEP format as long as it meets federal and state requirements. Developing an IEP form that meets legal requirements and is user-friendly is an extremely complicated task. If your state does not have a mandated form, take advantage of existing resources, such as the forms developed by LEAs or resource centers in your state instead of reinventing the wheel.

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

An IEP must be developed for every child found eligible for special education services under IDEA. Whether or not you have full or partial responsibility for developing IEPs for students who attend your charter school, your staff must participate in IEP meetings to provide the necessary information about the child’s school progress. It is also important that you develop appropriate procedures for the required progress reporting to parents and all necessary input from the charter school for other special education reporting.

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

As with any other child, when a student with a disability transfers to another school, you must ensure timely transfer of all records. At the point that the child is formally no longer enrolled in your charter school, your school no longer has a responsibility to provide services to the child.⁸

Summary and Key Points

As you move through the day-to-day operation of your school, you will find that often you have to focus on a “challenge of the moment” related to students with disabilities. If you have planned carefully to put strategies in place for handling special education issues, they will not reach the crisis stage.

Occasionally, you should take the time to revisit your mission and vision and have specific discussions on how all of your students and staff are doing. Remember to consult with resources available in your local school district, state education office, or charter authorizer. Depending on your school’s LEA linkage and your state law and charter contract, you can expect to receive advice and/or regulatory guidance from these offices. Taking time to address students with disabilities in a proactive and positive manner will have significant payoffs for your students, school and the community.

⁸ The only exception to this statement would result from due process or litigation in which non-compliance was found and the charter school was required to provide compensatory services.

SECTION 4: ACCOUNTABILITY AND RENEWAL

Accountability refers to the policies and procedures that charter schools must abide by as required by federal and state special education and state charter school rules and regulations. While state charter laws may release charter schools from some state reporting requirements (e.g., teacher certification), charter schools are generally obligated to collect and report the same information that public schools must report such as statistical reports regarding students, standardized tests, and budgets. This includes data regarding special education as part of the general statistical reports that is often used to generate state and federal categorical funds for special education. Examples include student headcount reports as well as more procedural documents such as IEPs that would be reviewed as part of a state special education audit.

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

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

First and foremost, you need to address your authorizer's requirements and the state charter school law. Stay in close contact with your SEA to learn of updates in IDEA and NCLB implementation and implications for your charter school. At a minimum, you will also need to be able to document specific outcomes of students with disabilities,

fiscal practices related to special education, timelines related to development and implementation of special education services, qualifications of faculty and staff and resolution of parent complaints.

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

Most charter schools are required to submit essentially the same data and statistical reports as traditional school districts. Examples include enrollment accounting, program accounting, student performance data and financial reporting. Depending on state policies, there may be variability in the degree to which your school will be required to report data regarding special education. However, at a minimum you will need to be able to report data on all of your students disaggregated by the subgroups outlined in NCLB, one of which is students with disabilities. Keep these subgroups in mind as you are setting up your data collection and storage system, especially those related to assessments.

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

Is there added accountability specifically for special education?

Yes. Operators must understand that charter schools have an added level of formal accountability related to special education. The U.S. Department of Education carries out an extensive monitoring of SEAs, and then SEAs must develop and carry out a formal monitoring process for each of its LEAs. Your charter school's involvement in the process of monitoring is dictated by your legal status as an LEA or part of an LEA.

How is special education monitoring carried out in a state?

Special education monitoring involves a variety of procedures. For LEAs, the process often starts with a self-assessment in which the LEA reviews its implementation of every special education requirement. The SEA reviews the data, followed by some type of validation process. This is usually done on a three- to five-year cycle and a report is written detailing the findings of the SEA. The charter LEA must then develop an improvement plan to address any non-areas of compliance areas identified.

Students receiving special education services—including those with the most significant disabilities who participate in an alternate assessment system—will “count” in the accountability formulas.

If your charter school is part of another LEA, you will be involved in the district’s special education monitoring on the same basis as other schools of that LEA, and the LEA is responsible for seeing to it that any non-compliance found in the charter school is corrected. Also, when the U.S. Department of Education monitors the state, your school might be one of the schools randomly selected for visitation.

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

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

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

NCLB makes a point of including students with disabilities and special education programs in school assessment and

accountability systems. Students receiving special education services—including those with the most significant disabilities who participate in an alternate assessment system—will “count” in the accountability formulas. Not only do they count—they can make a difference in your school’s ability to meet criteria for “adequate yearly progress” and state-specific performance measures under the NCLB law. Talk with your colleagues, your authorizer and your SEA to identify effective strategies in helping students with disabilities to demonstrate progress.

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

Throughout your renewal process, most authorizers will include some evaluation of your special education practices. These will most likely focus on financial, academic, personnel, facilities and data systems. Having your special education infrastructure in place and operating smoothly will prepare you well for your renewal activities.

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

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

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

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

Summary and Key Points

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

SECTION 5: NON-RENEWAL, REVOCATION AND RELINQUISHMENT

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

What do these terms mean?

- *Non-renewal* occurs when a charter school seeks renewal to operate after its approved period and the authorizer does not grant a new charter. As a result of not having its charter renewed, the school loses its authority to operate and exist as a public school.
- *Revocation* of a charter involves a proactive decision by a charter authorizer to remove a school's charter and its legal authority to operate as a public school. In general, revocations occur when a charter school does not meet the obligations articulated in the application or subsequent contracts with the authorizer.
- *Charter Relinquishment* is a voluntary release of an authorized charter by a charter school board.

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

Ideally your school will be in a situation to facilitate the transfer of all funds, records (including student and financial) and equipment (instructional and adaptive) for all students, including those with disabilities. Check with your authorizer, LEA and SEA to obtain specific guidelines and policies in your state. Federal guidelines⁹ also provide information on property disposal.

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

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

It is important to have a plan in place to be activated if your school closes so that you and your board members understand their responsibilities for the students with disabilities who are enrolled in your school at that time.

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

Your responsibility is to send students' records to their new schools. After you have done everything you can to determine where a child is going and you still have no success, you should return all records to the child's LEA of residence or last known LEA. If you aren't able to determine this information, contact your authorizer or the SEA for assistance.

How should we transfer student records?

Perhaps the most important consideration in records transfer is ensuring the privacy of student information, The Family

⁹ Federal requirements for property disposal can be found in the Education Department General Administrative Regulations (EDGAR) available online at www.ed.gov/policy/fund/reg/edgarReg/edlite-table.html

Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) provides guidance on requirements in the transfer of educational records that contain personally identifiable information on your students. For details about the law, see www.ed.gov/policy/gen/guid/fpco/ferpa/index.html. Careful attention to sections pertaining to disclosure of information without the “written consent” of the parent or eligible student will help alleviate future problems.

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

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

Summary and Key Points

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

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 usu-

ally 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.charterschools.org/specialedprimers. The web content is regularly updated to reflect changes in the 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)].

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