

Issue Brief

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Authorizing Matters

Navigating Special Education in Charter Schools Part II: The Authorizers' Role in Ensuring Quality Special Education Programs

What ought authorizers do to ensure that the charter schools they approve provide a quality education to students with disabilities who enroll in their school? That is the question many authorizers wrestle with as they strive to strike a balance between fulfilling their responsibilities under the Individuals with Disabilities Education Act (IDEA) while providing the autonomy that is central to the charter school ideal.

As the gatekeepers monitoring entrance to the charter sector and, thereafter, the groundskeepers responsible for ensuring the maintenance of quality programs, authorizers are charged with making certain that applicants demonstrate the capacity to operate a quality school and then holding them accountable for doing so. Consequently, authorizers are uniquely positioned to ensure that charter school operators can adequately address the challenges associated with providing quality special education programs.

This Issue Brief is the second in a two-part series on navigating special education in the charter sector. The first brief introduced the key constructs underlying the provision of special education in charter schools and identified strategies charter schools are using to build capacity to provide special education and related services. This installment, based on a decade of research on special education in the charter sector, outlines tangible steps authorizers can take to assess applicants' ability to meet special education obligations, support the development of special education capacity in charter schools and hold charter schools accountable for delivering quality special education programs.

Assessing Applicants Capacity to Provide Quality Special Education Programs

Assessing capacity up front is critical to ensuring that charter schools are prepared to provide quality special education programs and related services. As a key

component of the application process, authorizers should ensure that the applicant understands the extent of their responsibilities associated with educating students with disabilities and has the capacity to fulfill such responsibilities.

Most charter application processes require applicants to assure that they will fulfill the obligations associated with IDEA. However, research has documented that applicants frequently don't fully understand the extent of

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these responsibilities (Ahearn et al., 2001). Thus, it is the authorizer's responsibility to confirm that applicants not only assure that they will fulfill IDEA obligations, but that applicants fully understand that IDEA requires them to provide a full continuum of placements as specified by individual students' IEPs to students with a broad spectrum of cognitive and physical disabilities and that applicants have the capacity to do so.



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**CHARTER SCHOOL APPLICATION PROCESS: KEY SPECIAL EDUCATION QUESTIONS
(ADAPTED FROM THE NASDSE SPECIAL EDUCATION PRIMER FOR AUTHORIZERS, 2004)**

- Is the applicant knowledgeable about the Individuals with Disabilities Education Act (IDEA) and issues related to educating students with disabilities in charter schools?
- Does the applicant have a plan to identify children who require special education and related services that meets the requirements of applicable laws?
- Will a qualified individual/organization conduct special education evaluations?
- Does the applicant have a quality plan to recruit and hire qualified special education teachers and specialists?
- Is the proposed facility accessible to individuals with disabilities or does the applicant have a realistic plan to make the facility accessible?

Authorizers should use the application process, both through a written application and an applicant interview, to assess an applicant’s knowledge of and ability to provide quality special education services. The specific questions that authorizers need to ask regarding special education and the subsequent details that must be negotiated before the school opens may differ based upon the degree to which special education responsibility will be shared with the authorizer or another entity (see NACSA Issue Brief *Navigating Special Education in Charter Schools Part I: Understanding Legal Roles and Responsibilities*). Nevertheless, the core issues that need to be established are the same regardless of responsibility level: Does the applicant understand the scope of special education, and are they prepared to fulfill their responsibilities effectively? (See *Charter School Application Process: Key Special Education Questions*.)

A standard that should guide development of special education plans is this: What is in the best interest of the student with a disability and the overall goals of the

charter school? Given that the overall purpose of a charter school is to create new opportunities, authorizers should be cautious about requiring schools to adopt policies simply because they are standard operating procedures. They should adopt policies that will best enable the charter school to fulfill both its obligations related to IDEA and fulfill the goals of its charter.

Building Charter School Special Education Capacity

Charter schools are small and often independent and they generally cannot achieve economies of scale in the provision of special education services that districts can achieve. For example, they may not be able to afford to hire a full-time special education director or employ full-time personnel skilled in addressing certain disabilities. Yet, charter schools may enroll students with a wide range of disabilities and have to provide a diverse array of services within a specific school; a district, by contrast, can cluster students with similar needs together. A single student with disabilities requiring very high-cost services can overwhelm the small budget of a charter school. The challenges related to educating students with disabilities are amplified by the practical reality that charter schools are often founded by people with minimal experience navigating the legal and educational complexities of special education; they have to figure out special education amidst all of the other start-up tasks.

Authorizers can take multiple interrelated steps to help charter schools address these unique challenges and build capacity to provide quality special education programs and related services. Specifically, authorizers should define commensurate/proportionate funding and build school-level special education capacity.

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Define “Commensurate” or “Proportionate” Funding

In many states, the funding provided to charter schools is an ongoing point of contention between policymakers, authorizers, and charter operators. Charter schools frequently struggle to obtain adequate funding and when it comes to delivery of special education “funding” may actually be a combination of dollars and services over which schools have little control.

IDEA requires that charter schools receive commensurate levels of funds for students with disabilities. For many authorizers, the funding system for special education lies outside of the authorizer’s control. In that case, it is still important for authorizers to understand the system, communicate it to schools, and, if necessary, help ensure that charter schools are treated fairly.

For example, some students with disabilities require extraordinary services. IDEA as reauthorized in 2004 contains language regarding state-level risk pool set asides that are intended to assist districts and schools to cover the costs of students who require extraordinary services. A number of states are maintaining risk pools that were in place prior to IDEA’s recent reauthorization. Authorizers should inquire about state-level risk pools and, if applicable, ensure that the charters they oversee are aware of the existence of these risk pools *and* have equal access should the need arise.

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While authorizers may have little latitude related to the level of funding charter schools receive, in multiple states authorizers are provided discretion related to the definition of “commensurate” or “proportionate” funding. In particular, when authorizers and charter schools share responsibility for special education, the notion of proportionate may entail a combination of dollars and services. Regardless of the state policy context, authorizers must determine how charter schools will be provided with federal, state, and local funds to operate special education programs. Clearly articulating not only the amount but also the formulas used to determine the amount introduces a level of transparency between the authorizer and the charter school operator that can pre-empt, or at least diffuse, tensions related to funding.

For example, a key challenge for many new start-up charter schools is accessing special education dollars allocated based on the child count from the previous year. The contract should articulate how special education dollars

will flow to the charter school during the first year and thereafter. Furthermore, if the authorizer plans to provide services in lieu of dollars to the charter schools, the contract should articulate the specifics of these services. Specificity regarding financial arrangements and service provision are essential components of strong charter applications and contracts. For instance, the application should demonstrate knowledge of federal and state special education funds, and the contract should specify how such funds will flow to the charter school. Furthermore, the application should specify whether dollars will flow directly to the charter school or through the authorizer or a local district. And, if dollars flow through the authorizer or district, the contract should also set, if applicable, the percentage of the funds that will be retained in return for a specific special education services (e.g., administration, oversight, testing, data management, evaluation or specialized placements for students with severe disabilities.)

Develop School-Level Capacity to Deliver Quality Services to Students with Disabilities

Capacity to provide special education depends on classroom-level and organizational factors that enable a school to deliver an effective educational program. Charter schools are creating or affiliating with a variety of “special education infrastructures” to build their capacity in these areas (Rhim, Ahearn & Lange, 2006). In order to provide special education services, charter schools can build internal systems and structures (i.e., hire a special education administrator and instructional personnel) and/or create, or affiliate with, an external structure that provides the school with required capacity. Generally speaking, though, few charter schools are large enough to create adequate internal capacity to provide a full continuum of placements.

The most common types of infrastructures are local school systems (which often serve as the school’s authorizer as well) or intermediate school districts/agencies that provide a charter school with comprehensive special education services. Charter schools are also using individual consultants, local nonprofits, special education cooperatives, and education management organizations as special education infrastructures. For a more detailed explanation of the legal parameters that determine how charter schools educate students with disabilities and a description of existing special education infrastructures, see NACSA Issue Brief *Navigating Special Education in Charter Schools Part I: Understanding Legal Roles and Responsibilities*. Authorizers should be familiar with the various kinds of special education infrastructures available to charter schools and support schools in making sound decisions about the selection of infrastructures that best suits their unique context and needs.

SPECIAL EDUCATION IN THE CYBER/VIRTUAL CHARTER SCHOOL ENVIRONMENT

As of fall 2006, there were more than 150 cyber/virtual charter schools operating in 17 states (Center for Education Reform, 2007). These schools offer their instructional programs along a continuum ranging from 1) a brick and mortar school in which instruction is delivered via an online program, 2) a hybrid in which students attend a brick and mortar program part-time and attend school in their homes the rest of the time, and 3) a pure virtual environment in which students receive all of their instruction in their homes via an online program with the support of teachers and their parents.

Cyber/virtual charter schools have the same responsibility as their brick and mortar peers to provide a full continuum of placements to ensure that students with disabilities receive a free appropriate public education in the least restrictive environment. Yet, the notion of least restrictive is somewhat perplexing in a pure virtual environment in which students are educated in their homes (i.e., a setting typically categorized as relatively restrictive when compared to the general education classroom).

Authorizers that grant cyber/virtual schools need to be knowledgeable about how cyber/virtual schools operate and the potential benefits as well as challenges associated with providing special education in this unique environment. While authorizers will need to cater their questions to their particular policy context, there are some key special education-related issues authorizers should consider probing with cyber/virtual school applicants and operators:

- Does the curriculum establish guidelines regarding adaptations and modifications for students with disabilities?
- Where will IEP meetings be held?
- Will the IEP meetings require specialized technology to accommodate members in different locations?
- What role, if any, will the authorizer play in provision of services to students with disabilities?
- What role will parents play in delivering the content?
- How will the school train parents and students with disabilities to use required technology, including specialized technology used to help students with disabilities access the academic program?
- How does the school plan to recruit and retain qualified special education and related services professionals?
- How will the school provide students with access to related services such as speech, occupational, and physical therapy?
- How will charter operators monitor the provision of special education and related services to students with disabilities?

Research on cyber/virtual schools indicates that self-paced learning programs can provide students with a highly individualized program, a key goal of special education (Muller & Ahearn, 2004). To develop high quality programs, authorizers should strive to ensure that, similar to their brick and mortar counterparts, cyber/virtual school operators are aware of their responsibilities assigned under IDEA and fully prepared to provide required services and supports for students with a wide array of physical and cognitive disabilities.

For a more detailed discussion about authorizing virtual charter schools see August and September 2006 NACSA Issue Briefs.

Holding Charter Schools Accountable for Quality Special Education Programs

As the primary entity for monitoring the compliance and performance of charter schools, authorizers are uniquely positioned to hold charter schools accountable for providing quality special education programs to the students they serve. Authorizers should determine the information and data needed to ensure charter schools are fulfilling their special education obligations well (See *Ongoing Oversight and Evaluation: Key Special Education Questions*) and develop a comprehensive system for collecting and analyzing such information effectively and efficiently.

In practice, authorizers are utilizing multiple means to monitor schools generally including, but not limited to, site visits, quarterly and annual reports, parent satisfaction surveys, and regular meetings and electronic communications with key school personnel. Authorizers may use these kinds of tools to verify that schools are meeting their special education obligations. Furthermore, other entities or agencies (such as the special education office within an authorizing school district or the state education department) may have developed systems for monitoring special education in all schools, including charter schools, that authorizers can tap to hold the schools it oversees accountable for special education program compliance and performance.

Particularly in cases where the special education department (SEA) is not also the authorizer, it is critical that the SEA and authorizer coordinate their efforts in monitoring special education compliance in charter schools as the SEA has legal obligations under federal law to monitor special education programs in the schools in its jurisdiction. Even when the SEA is the authorizer, it is still vital to clarify the roles of the SEA's charter office and its special education oversight office. The goal should be to minimize the burden on schools and avoid duplicative oversight procedures. Likewise, the SEA and authorizer must share information and findings about a school's compliance so that appropriate actions can be taken and no one is caught "flat-footed" should issues arise.

In practice, the division of labor between authorizer and the SEA special education office runs along a continuum. On one end, the SEA special education oversight office maintains primary responsibility for monitoring special education in charter schools. In this case, the authorizer is essentially a consumer of monitoring information provided by the SEA special education office. The authorizer does not conduct its own independent oversight activity. If the SEA special education office produces troubling findings, the authorizer should use this information and respond appropriately in accordance with the contract it has entered into with the school in question, which may range from placing a charter school on probation to revoking a contract if the issue goes unresolved.

On the other end of the continuum, the authorizer may play the lead role in special education monitoring. In

essence, the SEA special education office delegates the responsibility to the authorizer, which then carries out a program of site visits, document review and the like to determine whether the school is meeting its obligations. In between these two extremes could be various forms of shared responsibility. While there is no "right" or "wrong" way to define monitoring responsibilities between an authorizer and the SEA, it is clear that such roles must be clearly articulated and implemented. The oversight of charter school special education programs should be conducted effectively and efficiently and in a manner that is least burdensome on the schools themselves.

A key factor for authorizers to consider when developing accountability systems for charter schools is the degree to which the systems provide robust and objective information about the quality of instructional program offered to all students, including students with disabilities, who enroll in the school. This kind of analysis goes above and beyond the adherence of special education programs to statutory and regulatory requirements and examines the quality of the program and outcomes produced.

While No Child Left Behind (NCLB) accountability requirements provide important insights, they typically don't capture information about students in small sub-groups such as special education and English language learners. Nor do they provide any information about why a school may be falling short with certain groups of students. Dedicating resources to more sensitive systems of accountability can ensure that children with disabilities can access the same opportunities as their non-disabled peers in charter schools.

ONGOING OVERSIGHT AND EVALUATION: KEY SPECIAL EDUCATION QUESTIONS

- What types of students with disabilities are enrolled in the charter schools (e.g., mild, moderate or severe) and what is the number of students with disabilities enrolled as a percentage of the school's total population?
- Is the mobility rate of the students with disabilities comparable to their peers without disabilities? If mobility rate is high relative to local district?
- Is there evidence of "counseling out" students with disabilities?
- Is the school carrying out the process of developing IEPs properly?
- Are the special education services provided by the school appropriate for the level of disabilities among its special education population?
- Are school personnel modifying the curriculum appropriately to accommodate students with disabilities?
- Does the school employ appropriate special education teachers or related services personnel for its special education population in terms of both numbers and qualifications?
- Are records for students with disabilities properly maintained and secured?
- Has the charter school met Adequate Yearly Progress (AYP) for the sub-group of students with disabilities in the required subjects?
- Have there been any due process complaints filed against the school? If yes, how have the complaints been resolved?

Charter School Special Education Oversight and Accountability: An Example from the Bay State

As the primary authorizer in the state, the Massachusetts Department of Education's Charter Schools Office (CSO) has taken a particularly proactive role in their approach to holding charter schools accountable for educating students with disabilities. In line with the broader goals of the charter school movement to shift from assessment of inputs to actual student outputs, the CSO has created a review process that examines the quality and related outcomes for students with disabilities in charter schools. Federal guidelines require regular compliance reviews that entail examining IEPs, timelines and other inputs reflecting the prescriptive practice dictated by IDEA. While this process fulfills requirements related to basic compliance, it does not provide substantial insight into tangible questions about quality and outcomes for students with disabilities. Given that many charter schools are relatively small and, consequently, the population of students with disabilities does not meet the minimum number required for public reporting by sub-group under NCLB, CSO established a system to make certain that schools are equally accountable for the outcomes of students with disabilities as their peers without disabilities.

In an effort to bridge the gap between basic compliance with IDEA and robust measures of outcomes reflecting the broader goals of the charter movement, the CSO developed a special education accountability review process. First, the CSO asks schools to conduct a self-analysis of their special education programs which includes an analysis of the success of their programs based on student's local and statewide assessment results, drop out rates and

graduation rates for special education students, leading to identification of their strengths and weaknesses. With the self-analysis as the foundation, CSO-led teams visit the charter school and spend the day observing instructional practices. The team sets out to observe a variety of instructional settings to document practices such as the role of the teacher and the instructional aide, accommodations/modifications offered and level of student engagement (See *Sample Observation Questions*). The end product of the site visit is a written report provided to the school. In contrast to a standard state special education compliance review, the focus of the CSO review is to assess the quality of services in order to assist the charter school to address any potential deficits. While the IDEA mandated review may lead to corrective action, the CSO review is a service provided to charter schools to help them identify areas for improvement. The information generated from the review is presented for the school to consider and correct prior to the official charter renewal cycle.

In contrast to typical special education compliance reviews, Barry Barnett of the CSO described the state's role in the special education audits as a "*critical friend*." Findings from the self-evaluation, and specifically efforts to address identified issues, are considered as part of the charter school renewal process (See *Accountability Renewal Site Visit Protocol*). Charter schools in Massachusetts reportedly appreciate having objective and credible information that enables them to address their deficits and build capacity rather than react to punitive proceedings.

SPECIAL EDUCATION SAMPLE OBSERVATION QUESTIONS

- Are special education students engaged in their work, and appear to be comprehending the material presented?
- How does the regular education classroom environment support the inclusion of students with disabilities? Is instruction for all students differentiated to accommodate the needs of diverse learners?
- Are special education students receiving accommodations and modifications as described on their IEPs?
- Are aides or other staff present in the classroom? How do they support learning?
- Are the instructional techniques employed in the regular education class rooms and special education resource rooms effective?
- What classroom management techniques are employed in the classrooms?
- Are the facilities used adequate to meet the needs of special education students?

MASSACHUSETTS ACCOUNTABILITY RENEWAL SITE VISIT PROTOCOL SPECIAL EDUCATION QUESTIONS

- What kinds of instructional supports and services are made available to special education students at this school?
- What types of accommodations and modifications are being made in the regular education classroom for students with diverse learning needs?
- What ancillary academic supports and services are available to all students?
- What have been the outcomes for students with disabilities in terms of promotion, graduation, and state standardized assessment passing rates?
- What is their progress on internal assessments?

Source: Massachusetts Department of Education. Site Visit Protocol: www.doe.mass.edu/charter/guides/svguide.pdf

Describe Due Process Procedures

IDEA guarantees children with disabilities the right to a free appropriate public education (FAPE) in the least restrictive environment (LRE). If parents or school officials do not agree with the process or the outcome of the identification, evaluation, IEP planning, educational placement or services provided to a child with a disability, the law requires that the state make dispute resolution procedures available. A due process complaint is the formal written complaint filed by the parent or a school district official. Prior to a formal due process hearing, parties are provided with the opportunity to participate in a resolution session with school officials and to mediate the dispute. If mediation is not successful or either party declines mediation, there is a formal due process hearing where the parties involved present their concerns and evidence to an impartial hearing officer.

Failure to follow due process, either by violating procedural or administrative processes or more substantive issues related to failure to provide guaranteed services, can lead to costly legal action. Depending upon the legal relationship between the charter authorizer and the charter school, authorizers may be a party to due process complaints.

Prior to negotiating a charter contract, authorizers should establish systems for due process complaints (e.g., develop appropriate administrative systems to verify procedural compliance with IDEA and ensure that charter school operators have developed a plan to provide FAPE and

LRE). Authorizers should explicitly require charter operators to inform them of any due process concerns, pursue mediation, and keep them abreast of developments related to parental complaints.

Authorizers should also consider how they will handle schools not in compliance with their special education obligations. For instance, would special education non-compliance be considered grounds for charter probation, or in extreme cases, revocation? While chances are that a school with special education infractions will also struggle in other areas, given the litigious nature of special education, authorizers should consider how they will handle non-compliance issues and inform charter operators of these consequences.

Conclusion

Authorizers are uniquely positioned to ensure that charter schools are not only aware of their responsibilities related to educating students with disabilities but well positioned to acquire the capacity required fulfilling these responsibilities. By asking key questions upfront and thereafter monitoring implementation and outcomes, authorizers can help ensure that charter schools are delivering on their promise to provide quality opportunities to all children including students with disabilities.

ADDITIONAL RESOURCES

Massachusetts Department of Education Accountability: Site Visit Protocols: www.doe.mass.edu/charter/acct.html

National Association of State Directors of Special Education (2004). Authorizer Primer on Special Education in Charter Schools: www.uscharterschools.org/specialedprimers

University of Maryland, Project Intersect: Studying Special Education in the Charter School Sector: www.education.umd.edu/EDSP/ProjectIntersect/index.html

US Department of Education, Office of Special Education Programs: www.ed.gov/about/offices/list/osers/osep/index.html?src=mr

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