

Primer on Special Education in Charter Schools



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BACKGROUND

This section of the Idaho Primer on Special Education in Charter Schools 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 Primer on Special Education in Charter Schools 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

Introduction

Charter schools must abide by federal special education laws and regulations because they are part of the public education system. However, the way the laws and regulations are carried out differs widely depending on the charter school's *legal identity* and its *linkage* to a traditional LEA for purposes of special education. 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 American public education system are:

- the State Board of Education and State Department of Education;
- school districts and some charter schools legally referred to as local education agencies (LEAs); and
- schools that are part of an LEA.

In Idaho, the State Board of Education is the policy setting body and the State Department of Education is the implementation body.

Traditionally an LEA is 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 in the definition of an LEA: "a public charter school that is established as an LEA under State law" [34 CFR §300.18]. The place a charter school occupies in Idaho's public education system depends on the charter school's legal identity, usually referred to as a charter school's LEA status.

Idaho charter school law (Title 33, Chapter 52) recognizes two authorizing entities.

- The local board of trustees of a school district (LEA) may authorize a petition to form a new charter school within that district.
- The Idaho Public Charter School Commission may authorize a petition to form a new public virtual charter school that will serve students in more than one school district in the state and be recognized as a separate LEA. The Idaho Public Charter School Commission is an independent, appointed body created by Idaho law as an alternative authorizer for charter schools. The Commission also may authorize a charter petition if referred to them on appeal from the State Board of Education.

Why is a charter school's LEA status important for special education?

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 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 LEA status on charter school operations is the type of linkage that is mandated or voluntarily established between that charter school and another LEA. In Idaho, a charter school is either:

- **NO LINK:** the charter school is a separate LEA, has full responsibility for special education, and has no link to another LEA (although a charter could negotiate some working relationship with an LEA if the charter school and LEA agree to do so) OR
- **PARTIAL LINK:** the charter is considered a part of an LEA. The LEA is responsible for all students, including those with disabilities. The delivery of special education services is defined in a negotiated agreement between the charter school and the LEA. For example, the charter school may have responsibility for services, but the LEA carries out evaluation team tasks, or the charter school contracts with the LEA for all or some special education services.

Why is linkage important?

Linkage defines the way responsibilities for special education evaluation and services will be carried out. There is a high degree of variability in link situations. Idaho code is not completely clear on the details of linkage 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

Introduction

The following brief overview of federal education laws as they pertain to special education is intended to be an orientation for those who are unfamiliar 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 Improvement Act 2004 (IDEA 2004); 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:

- <http://idea.ed.gov/>
- NCLB: Links to the law, regulations and policy guidance are available online at <http://www.ed.gov/about/offices/list/oese/legislation.html#leg>
- 504: Regulations can be found online at <http://www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>
- ADA: Regulations and technical assistance are available online at <http://www.usdoj.gov/crt/ada/publicat.htm>
- FERPA: An explanation is available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/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. 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 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 regulations, including those for an evaluation to determine if a student is eligible for special education and the additional requirements for subsequent services and re-evaluation.

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 achieve 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 of students with disabilities in settings with students who are non-disabled to the maximum extent appropriate. Students with disabilities are entitled to be placed in the settings that will meet their individual needs while removing them as little as possible from the regular classroom. Therefore, a continuum of placements that ranges from full time in a regular classroom to full time in a special setting must be available to them.

The OSEP website at <http://www.ed.gov/policy/speced/guid/idea/omip.html> provides some 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. The law makes specific references to charter schools:

- 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 district authorized charter schools must be served in the same manner as that district serves children with disabilities in its other schools. The district must provide supplementary and related services on site at the charter school to the same extent to which the district has a policy or practice of providing such services on site in its other public schools. The district must also provide funds under this part to those charter schools on the same basis as that district provides funds to 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.
- If a charter school is part of a district that receives IDEA funding, the district is responsible for ensuring that the requirements are met.
- Charter schools that are LEAs cannot be required to join with other LEAs to establish joint eligibility for funds.
- The state Special Education Advisory Panel must include a representative of charter schools.
- Special education teachers in charter schools have to meet state certification requirements.

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 a copy of the Procedural Safeguards Notice at least once per 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. Idaho has a formal complaint system and provides 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:

34 CFR Sec. 300.7 Child with a disability

(A) In general - The term 'child with a disability' means a child --

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9 - The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child --

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

**SECTION 504 OF THE REHABILITATION ACT OF 1973—REGULATIONS:
34 CFR 104.3**

(j) Handicapped persons (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 genitourinary; 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 <http://www.ed.gov/about/offices/list/ocr/504faq.html?exp=0>

Are funds available under Section 504?

No, there are no funds available as part of Section 504. Furthermore, 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. Information is available from the Idaho Division of Building Safety at <http://dbs.idaho.gov/>. Federal regulations can be found online at <http://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 possible 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 <http://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 significant disabilities, was added to the NCLB regulations in December 2003. The U.S. Department of Education has issued a summary of that rule that is available at <http://www.usu.edu/mprrc/workgroups/ci/011404Material1.pdf>. In October 2005, Secretary of Education Margaret Spellings issued a memorandum allowing states to apply for an additional two percent "flexibility."

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 achievement 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.

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 follows:

IDEA HIGHLY QUALIFIED:

(A) IN GENERAL - For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also --

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS - When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means 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 educator, the term means that the teacher meets the requirements 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.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS - When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession,

may either --

(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS -

When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either --

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) 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 section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) 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 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 section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) RULE OF CONSTRUCTION - Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or 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 State educational agency or local educational agency employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA - A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

For additional information, refer to the Bureau of Certification website:

<http://www.sde.idaho.gov/TeacherCertification>

GUIDANCE FOR AUTHORIZERS

PRE-AUTHORIZATION AND PLANNING

What is the pre-authorization phase?

The pre-authorization phase encompasses the planning activities preceding the submission of a charter petition to an authorizer. In Idaho, the application for a charter is called a “petition” and those who apply for a charter are called “petitioners.” This stage generally starts out informally and grows increasingly structured as potential charter school petitioners work to turn their vision of a school into a concrete plan that can be implemented. This stage should not be abbreviated or rushed because it is a critical stage in the creation of a charter school. This is the stage when authorizers have a unique opportunity to urge petitioners to incorporate special education into their overall planning rather than attempting to add it later to existing policies and procedures.

Which entities does Idaho law recognize as charter school authorizers?

Idaho charter school law (Title 33, Chapter 52) recognizes two authorizing entities:

- the local board of trustees of a school district (LEA) may authorize a petition to form a new charter school in that district, and
- the Idaho Public Charter School Commission may authorize a petition to form a new public virtual charter school that will serve students in more than one school district in the state and be recognized as a separate LEA.

What is an authorizer's role during pre-authorization in special education in charter schools?

The authorizers' role in special education is to ensure that all special education policies and procedures are addressed appropriately by petitioners, including those planning virtual charter schools.

Authorizers should be knowledgeable about special education law and requirements and ensure that petitioners are cognizant of their responsibilities related to special education. Authorizers that do not, or cannot, provide deeper technical assistance regarding special education themselves should refer petitioners to qualified technical assistance providers, including the State Department of Education, Special Education, who can give them the developmental guidance they need throughout the planning phase.

Authorizers must also ensure that petitioners attend a public charter school workshop before submitting their petition and that they complete a sufficiency review as required in Idaho regulations. Authorizers should ensure that potential charter petitioners are informed about the forms and other resources available on the state website charter school section at <http://www.sde.idaho.gov/CharterSchools> .

As described in the Background section, charter schools' legal identity and contractual relationship to a local education agency define their special education responsibilities. Authorizers should require that charter petitioners demonstrate that they understand those legal issues, as well as their responsibilities, and will have the capacity to meet them. Demonstrating understanding could include adopting the Idaho Special Education Manual, attending special education training, having a detailed explanation of how the charter school will provide services according to Idaho policies, and providing an estimated budget to cover projected special education costs.

Authorizers can add requirements above what is delineated in Idaho code. One of their roles is to determine what, if any, should be added as a requirement in the area of special education.

How can potential charter school petitioners be introduced to the rationale behind special education laws?

Introducing charter petitioners to the reasons underlying special education may help lower barriers to implementing special education programs. In other words, authorizers should consider teaching potential operators why special education exists. Furthermore, it may be helpful to acknowledge that, while special education policies and procedures can admittedly be cumbersome, they have evolved over many years and they stem from documented exclusion of children with disabilities. Charter authorizers may require that charter petitioners attend a brief introduction to the civil rights origins of the Individuals with Disabilities Education Act (IDEA). An example of resources that an authorizer could make available to charter applicants is a publication from the *Future of Children* available at http://www.futureofchildren.org/usr_doc/vol6no1.pdf. The State Department of Education also has numerous resources on special education and these can be found at <http://www.sde.idaho.gov/SpecialEducation>.

What does an authorizer need to know about basic IDEA concepts?

It is important that an authorizer have a clear understanding of at least the following basic special education concepts that are incorporated into the federal laws:

- A "free appropriate public education" (FAPE) refers to special education and, if required, related services delivered at public cost under the supervision of the state and that are designed to meet the individual needs of students with disabilities based on individualized education programs (IEPs).
- The "least restrictive environment" (LRE) is a requirement articulated in IDEA that stipulates that children with disabilities be educated in the general education classroom to the maximum extent appropriate and in the setting that they would be in if they did not have a disability unless the child's written plan (IEP) requires

otherwise. Students with disabilities are to be provided with supplemental aids and services to facilitate participation in regular education.

What issues should charter applicants be encouraged to consider during the planning phase to ensure that they will be able to provide special education appropriately?

The specific issues that charter operators should consider during the pre-authorization phase will vary by individual authorizers within a state and the legal identity of the charter school. However, the checklist at the end of this section is a list of issues authorizers should encourage applicants to consider related to special education. The list is not exhaustive, but rather a guide to key issues that potential charter applicants should take into account. The answers to these questions will depend upon: 1) legal status of the charter school; 2) the charter negotiated between the authorizer and the operator; and 3) the characteristics of the individual charter school.

Can an authorizer grant charter school applicants waivers from federal special education requirements as part of their charter?

No. The federal government has not permitted any waivers from federal special education requirements for charter schools. Charter schools are public schools and must be open to, and serve the needs of, any student with a disability wishing to attend. One of the tenets of the charter school movement is the goal of fostering innovation. Authorizers should strive to provide charter school developers with the opportunity to develop special education programs in non-traditional ways as long as they operate within the parameters articulated in federal law.

What are the responsibilities of an authorizer related to the No Child Left Behind Act (NCLB)?

Authorizers' responsibilities related to NCLB are determined by state charter school law. For general information about NCLB, see the U.S. Department of Education website at <http://www.ed.gov/nclb/landing.jhtml>. To be specific, the non-regulatory guidance provided by the U.S. Department of Education states that:

"...a State's charter school law determines the entity within the State that bears responsibility for ensuring that charter schools comply with the Title I, Part A accountability provisions, including AYP. The charter authorizer is responsible for holding charter schools accountable for Title I, Part A provisions unless State law specifically gives the SEA direct responsibility for charter school accountability" (2003, p. 5) (<http://www.ed.gov/policy/elsec/guid/charterguidance03.pdf>)

How can an authorizer learn about roles and responsibilities?

The National Association of Charter School Authorizers (NACSA) is a membership organization formed to assist charter authorizers. They have adopted *Principles and Standards for Charter School Authorizing* which outlines roles and responsibilities. A copy is available at <http://www.qualitycharters.org>.

Do any models exist of how to address special education during the planning phase?

A number of organizations (e.g., state education agencies (SEAs), local education agencies (LEAs), other authorizers, charter school support organizations) have developed documents and orientation series that include information regarding special education in charter schools. In addition, the following documents are examples of technical assistance materials related to special education for charter school developers. These documents might be informative to authorizers interested in developing similar materials:

- **Arizona Department of Education: Hot Topics in Special Education**
<http://www.ade.state.az.us/charterschools/info/spedhottopics.asp>
- **Colorado Department of Education, Charter Schools Guidebook**
http://www.cde.state.co.us/index_charter.htm
- **Building Blocks: Building a Foundation for Starting a Charter School in Florida** http://www.charterschools.usf.edu/pdf_files/BuildingBlocks7.15.pdf
- **(Florida) Special Education: Information Briefs:**
http://www.charterschools.usf.edu/pdf_files/esebrief.pdf

Summary and Key Points

The pre-authorization phase provides charter school authorizers the critical opportunity to inform potential petitioners about their responsibilities related to special education. Once charter schools are authorized and have evolved to the operating phase, the pressures associated with start-up and day-to-day operations frequently limit operators' ability and available options to create an effective and efficient special education program. In an effort to pre-empt potential problems associated with not complying with IDEA requirements, charter authorizers can take advantage of applicants' planning phase to educate applicants about special education. By educating petitioners earlier rather than later, authorizers can encourage petitioners to build special education into their vision of a school rather than simply add special education after the school model is developed.

ISSUES FOR CHARTER APPLICANTS TO CONSIDER DURING THE PLANNING PHASE

HUMAN RESOURCES

- How many students with disabilities should we estimate that our school will enroll?

If we will be responsible for providing special education:

- How many special education teachers will we need to employ?
- What kind of certification will the special education teachers need?
- How does our state define “highly qualified” teachers according to NCLB and “qualified personnel” under IDEA?
- Can our school hire dual-certified teachers?
- Can we hire part-time or retired special education teachers?
- Will we need to hire staff for health-related issues?
- What are the implications for salaries and benefits if we hire full-time versus part-time employees?

If a district will be responsible for all, or part of, special education in our school:

- Will the school be required to contract with the district for the purposes of special education?
- If our school needs to work with the district, how do we negotiate with the district to ensure our students will receive appropriate services?

CURRICULUM AND ASSESSMENT

- What curricula and instruction will our school offer?
- How will we modify the curriculum and instructional delivery to address

the unique needs of children with disabilities?

- How can we train general and special education teachers to modify/adapt the curriculum and instructional approach for children with disabilities in inclusive classrooms?
- How will our school include children with disabilities in required assessments or develop alternate assessments?
- How will curriculum and assessment decisions be considered and monitored by IEP teams and staff?

PROFESSIONAL DEVELOPMENT

- How will our school provide teachers with professional development?
- Will teachers need any specialized professional development related to educating and including children with disabilities?
- Does the district or the state operate a professional development program or network that we 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?
- Can we create our own system to administer special education or will we adopt the policies/procedures dictated by our authorizer, local district, or other administrative unit?
- How will our school handle student records and other school property appropriately in the event of closure of the charter school?

SPECIAL EDUCATION FUNDING

- How will federal, state and local special education dollars flow?
- What does our school need to budget for special education during the first year of operation?
- Do we need to prepare financially to enroll a student with significant special needs?

FACILITIES

If we will be responsible for special education evaluations and services:

- 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?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals—including adults—with physical disabilities?
- Does the facility have space for a nurse to store and administer medications or use medical equipment?

TRANSPORTATION

If we are responsible for special education services:

- How will our school meet transportation needs of students who receive transportation as a related service articulated on their IEP?
- Where will we access transportation for a student in a wheelchair?

AUTHORIZATION

What occurs during the authorization phase?

The authorization phase incorporates the stage in which the petitioner completes the required public charter school workshop, completes the formal written petition, submits the draft petition to the State Department of Education for a sufficiency review, and seeks approval of the charter petition. The petitioning process must conform to the requirements in Idaho charter school law, but it can be further developed by individual authorizers. Charter school applicants are required to articulate the school's mission, governance structure, educational program, budget, and assessment and accountability plans, among other specifics in Idaho code §33-5205.

When reviewing charter petitions, in what areas should authorizers require information regarding applicant plans for special education?

The following areas should be addressed with provisions for how special education services will be provided:

- a. Identification/Evaluation
- b. Programming
- c. Individual Education Plans (IEPs)
 - i) Development
 - ii) Review
 - iii) Revision
- d. Services
- e. Discipline Policy
- f. Budget
- g. Transportation for special needs students (the charter school must provide transportation unless a special needs student is capable of getting to school in the same manner as other students).

What should authorizers ask applicants about their plans to provide special education services to students with disabilities?

Authorizers should ask applicants, at a minimum, to articulate a rudimentary plan regarding governance, service delivery, and financing of special education. It is critical that applicants demonstrate to authorizers that they have well conceived, feasible plans to access the capacity they will need to meet their legal responsibilities. In addition, in accordance with the specific level of responsibility the charter school will have according

to its legal status as an LEA or part of an LEA, authorizers should ask petitioners to provide details during the application and authorization phase to address how they will:

- evaluate and identify children with disabilities;
- develop, review and revise IEPs;
- integrate special education into the general education program;
- deliver special education and related services (e.g., in-house or contract out?);
- meet projected costs of their special education program;
- access and account for special education funds;
- access legal guidance related to special education;
- ensure that the school facility meets the requirements of other related laws such as the Americans with Disabilities Act (ADA) and Section 504;
- handle enrollment and IEP transition procedures;
- discipline students;
- handle programming disputes involving parents;
- ensure confidentiality of special education records;
- secure technical assistance and training;
- serve students with high cost service needs.

What is an authorizer’s responsibility to ensure that charter schools serve children with disabilities?

As will be discussed later under oversight responsibilities, authorizers have responsibility to ensure that charter schools serve all students who enroll and to meet other special education requirements, although ultimately, it is the state's responsibility to ensure compliance with IDEA. At a minimum, authorizers have a responsibility to provide charter schools with information regarding their obligation to serve all children, including children with disabilities.

Is an authorizer or authorizer’s agency liable if charter schools authorized do not serve children with disabilities or otherwise do not implement special education properly?

It depends upon the legal status of the charter school. For charter schools that are authorized by the Idaho Public Charter Schools Commission and are considered their own LEAs, the charter school is ultimately responsible. For those charter schools authorized by an LEA, the authorizing LEA is responsible. However, to date, there is no case law establishing whether, or the degree to which, authorizers can be held responsible for special education in the schools they authorize, nor is there judicial precedent that explicitly releases authorizers from responsibility related to special education. Authorizers should seek legal counsel regarding local and state special education regulations and the degree to which charter schools or parents may hold the authorizers accountable for the implementation of special education in the charter schools that they authorize.

What procedures govern special education services and placement for a student enrolling in a charter school?

All placement decisions for students with disabilities should be made in the forum of IEP meetings and must be based on individual students' educational requirements. To change anything specified on an IEP requires a legally constituted team decision. All services remain as specified on an IEP until an amended IEP is put in place.

Determining whether a particular educational environment is the best placement is not discrimination if conducted in an appropriate manner (i.e., by an IEP team) and based on an individual child's needs. It is part of the process of ensuring that a child with a disability receives a free, appropriate public education in the least restrictive environment. There is a fine line between discrimination and determining that a particular program may not be an appropriate setting for a child with a particular disability. To ensure that decisions regarding enrollment are made based upon 1) each individual child, as opposed to groups of children with particular disabilities, and 2) the best interests of the child, as opposed to the convenience of the charter school, decisions regarding appropriate placement must be made by an IEP team rather than a single individual.

Can a charter school "counsel-out" a student with a disability?

No. Charter schools are public schools and, as such, are not allowed to discriminate against students with disabilities, and they are legally required to maintain open enrollment policies. Counseling-out is the process of subtly, or not-so subtly, "counseling" a child with a disability to influence an enrollment decision inappropriately based on the child's disability. Advising students with disabilities that they are not allowed to attend, or that the school cannot provide the modifications or accommodations necessary to enable them to attend, is discriminatory and illegal. The U. S. Department of Education Office for Civil Rights (OCR) is charged with investigating issues raised about discrimination against students with disabilities.

To what degree are charter schools required to modify their programs to accommodate a student with a disability?

The degree to which a charter school may be required to modify its program according to the educational requirements of a student with a disability depends upon whether the charter school is an LEA or part of an LEA. In general, charter schools that are their own LEAs are solely responsible for providing FAPE and LRE to all students who are enrolled. Charter schools that are part of an LEA may share this responsibility with their authorizing LEA based upon their service contract. For a more detailed explanation regarding access to charter schools for students with disabilities, see the OCR document *Applying Federal Civil Rights Laws to Charter Schools*, at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

What are examples of appropriate classroom adaptations, accommodations, and modifications for special needs students an authorizer should expect to see in the schools authorized?

Examples of appropriate classroom adaptations, accommodations, and modifications that enable a child to access the general education curriculum include, but are not limited to:

- changing the manner in which material is presented;
- creating personalized study guides;
- adapting textbooks;
- arranging the classroom environment to enhance student learning;
- altering task requirements;
- selecting an alternate task for a classroom assignment;
- managing classroom behavior;
- promoting social acceptance; and
- using assistive technology devices.

More information on classroom adaptations, accommodations, and modifications is available from the National Information Center for Children and Youth with Disabilities online at <http://www.nichcy.org/pubs/bibliog/bib15txt.htm>.

What is an authorizer’s role in ensuring that the charter school fulfills its mission while complying with its obligation related to adaptation, accommodations, and modifications required by IDEA?

Authorizers should require applicants to articulate their mission explicitly and ensure that the charter school is prepared to offer reasonable accommodations to children with disabilities who elect to attend the school. A key component of reasonable accommodations is a school culture that incorporates a commitment to offering accommodations to individuals with disabilities while guarding against substantively changing the nature of the school's mission.

Can a charter school's curriculum alone meet the needs of students with disabilities?

The core tenet of the IDEA is that children are treated as individuals with unique abilities and disabilities that need to be addressed by providing unique support services, which are explicitly articulated in an IEP. Even if the school plans to provide all children with individualized learning plans, similar to IEPs, that address each student's unique cognitive and physical abilities and disabilities, the learning plan for a student with a diagnosed disability must conform to all of the requirements of IDEA. To determine whether these learning plans or other curricula approaches meet IDEA procedural requirements, charter operators must follow Idaho special education law by adopting the Idaho Special Education Manual. In general, any policy that aims to treat all children with disabilities the same way should raise a red flag to authorizers assessing applications. When reviewing charter applications, authorizers can request additional

information regarding how the charter school plans to ensure that its particular curriculum or instructional approach can address the unique individual needs of students with disabilities.

What does it mean to have the capacity to provide special education services?

Special education capacity entails having the human, fiscal and legal resources required to fulfill the responsibilities articulated in IDEA. At a minimum, capacity includes the ability to implement existing IEPs, refer eligible students to special education, conduct evaluations, develop IEPs and provide special education and related services for all entitled students enrolled in the school. Authorizers need to be confident that petitioners either have established, or can access, the capacity they will need to meet their special education responsibilities. This could involve securing services from an outside source.

Authorizers should require a detailed plan to ensure services outlined on each IEP are delivered in a timely and appropriate manner. Capacity is particularly challenging for virtual schools because all services must be available, and students and practitioners are not situated in the same location. For example, for a child whose IEP specifies physical therapy, speech, etc., the virtual school must provide the service, which could be delivered by itinerant specialists in the student's home, or the student may be transported to the location where service is available.

Why is it important for authorizers to ensure that charter applicants have the capacity to provide special education services?

By ensuring that charter schools have the capacity to provide special education services, authorizers can help operators avoid potential liability and ensure that all students who enroll have the opportunity to obtain an appropriate education. Authorizers should note that students with disabilities are afforded these opportunities as a civil right as noted in IDEA and Section 504.

When does a charter school need to have the capacity to provide special education services and comply with federal and state laws?

Charter schools need to have the capacity to meet their legal responsibility for special education and comply with federal and state laws on *the first day they open* and thereafter for as long as they operate.

How do charter schools develop the capacity to deliver special education services in the school?

Building special education capacity may entail various arrangements depending upon whether a charter school is part of a local district or its own LEA and the degree to which it is linked to a local education agency for the purposes of special education. Examples of

approaches charter schools are using to increase their special education capacity include: 1) hiring appropriate professionals to work at the charter school; 2) contracting with a local education agency; 3) contracting with a cooperative; 4) contracting with individuals or organizations qualified to provide special education services; or 5) some combinations of these approaches. As long as charter schools can ensure that children with disabilities enrolled in their schools have access to a free appropriate public education, they may utilize a variety of strategies to amass the capacity.

Do charter schools have to hire or contract with certified special educators?

Yes. Special education teachers must have full certification and hold a license in the state to teach as a special education teacher in any Idaho public school. In addition, changes to IDEA in 2004 require that special education teachers meet the "highly qualified" standards of NCLB. It is essential that charter school operators who hire or contract for such personnel understand the requirements Idaho has established about certification.

Given the current shortage of special education teachers nationwide, what strategies can charter schools use to hire or contract with teachers and related services professionals?

Charter schools can employ creative strategies to access credentialed special education and related services professionals. Six strategies that charter schools commonly use are:

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

Where can charter schools learn more about Idaho's requirements regarding special education certification?

Idaho maintains a detailed website that includes teacher certification requirements, including alternative routes to certification, at <http://www.sde.idaho.gov/TeacherCertification> . Authorizers may want to make charter applicants familiar with the various teacher recruitment and induction programs offered in Idaho. These programs may be rich sources of qualified teachers, including special education personnel, for charter schools.

What are the major expenses associated with special education?

Expenses associated with special education fall into four general categories: personnel, equipment, facility modifications, and transportation. The amount a charter school will need to allocate to these categories and the degree to which these expenses may be shared with another entity depends upon the charter school's legal status and linkage to a local education agency.

How is special education funded?

There are two funding sources for special education:

- State support funds for special education go directly to the charter schools and are calculated according to a formula in Idaho law.
- Federal funds are calculated on a federal funding formula. The federal funds go to the charter school based upon their legal identity. If the charter school is its own LEA, the funds go directly to that charter school. If the charter school is a part of an LEA, the funds go through the school district. Depending upon the contractual agreement between the charter school and the LEA, the funds can flow through the LEA or can remain in the school district to provide the agreed upon services.

Historically, state and federal special education funding is less than what districts must spend to fulfill the requirements of law related to programs and services for students with disabilities. Authorizers should ensure that applicants know how to access all the federal, state and local resources that are available to their children with disabilities. Charter schools petitioners should be advised to consider developing a reserve in case their special education expenses exceed revenue.

How can charter schools that are authorized by an LEA plan for their expenses related to special education?

Charter schools that are authorized by an LEA should consult with district personnel to determine how special education dollars for students with disabilities who attend the charter school will flow and negotiate roles and responsibilities related to special education service delivery.

How can LEA charter schools plan for their expenses related to special education?

As a general rule of thumb, charter schools should anticipate that approximately 13 percent of their student population will be students with disabilities. They should budget accordingly, since that percentage is the national average of the public school population

identified as eligible for special education services. Authorizers should verify that the charter schools are planning for these possible needs.

How can authorizers assist charter schools that enroll a child with significant disabilities and are struggling to provide the services the student requires due to the high costs?

Authorizers should ensure that charter operators understand how to seek additional resources that are available for students with disabilities. The manner in which the charter school may seek additional support to pay for the required services will depend upon the school's legal status within the state and the contractual relationship (linkage) with a local education agency.

- Charter schools authorized by LEAs address high costs in a variety of ways depending upon the negotiated contract with their authorizer. Schools may pay into a risk-pool in anticipation of enrolling a child with significant disabilities. By contributing to the risk-pool, the charter school is essentially purchasing a safety net from the district. When the time comes that the charter school needs to provide significant services for a particular child, it can access the resources of the larger pool of funds. Others may negotiate the process for serving a high cost student with their LEA.
- Charter schools that are LEAs are solely responsible for providing services to the students enrolled in the school, regardless of the costs associated with the services. LEA charter schools generally: 1) amass a pool of surplus money in anticipation of enrolling a child with a significant disability, or 2) create a cooperative to realize some special education economies of scale.

What is the legal basis for requirements related to accessibility for students with disabilities to public school facilities?

Legal requirements regarding accessibility are extremely complex and stem from the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act. To read these laws and see documents regarding their implementation in public schools please see the following websites:

- Americans with Disabilities Act of 1990
<http://www.usdoj.gov/crt/ada/adahom1.htm>
- Section 504 of the Rehabilitation Act of 1973
<http://www.504idea.org/Select504.pdf>
- ADA and Section 504, Kids source
<http://www.kidsource.com/kidsource/content3/ada.idea.html>

What responsibility do charter school authorizers have for monitoring the accessibility of charter school facilities?

Authorizers should review a copy of the facility inspection report on an annual basis.

What should authorizers advise charter schools about accessible facilities?

Negotiating the parameters of the ADA and 504 is challenging and authorizers should strongly encourage the schools they authorize to seek legal counsel regarding their obligations associated with accessibility. Authorizers also should obtain counsel, to be familiar with the requirements themselves and also advise charter schools to consult with a building inspector to review their potential facilities for compliance with ADA and Section 504.

If a charter school is required to make its facility accessible to an individual with a disability, whose responsibility is it to make the building accessible?

It depends upon the charter school's legal status. The LEA is responsible (either the LEA charter school or the school district). Responsibility to modify a facility, even in the event of unforeseen need, should be articulated in the lease between the charter school and the owner of the facility. Authorizers should strongly encourage charter operators to seek experienced legal counsel prior to signing any contracts to lease or purchase a facility for their school.

In the event that a charter school must make its facilities accessible to an individual with a disability, where should an authorizer direct its operator to obtain information about how to make facilities accessible?

The major sources of information about making facilities accessible are:

- The Idaho Division of Building Safety (<http://dbs.idaho.gov/>)
- Municipal Websites: most cities and counties post their municipal code, including regulations pertaining to implementing ADA, on their website. Authorizers should familiarize themselves with county building and municipal codes and advise charter petitioners to seek local contacts for further details.
- U. S. Department of Education, Office for Civil Rights:
<http://www.ed.gov/about/offices/list/ocr/index.html?src=mr>
- Americans With Disabilities Act: <http://www.usdoj.gov/crt/ada/adahom1.htm>

Do charter schools have to provide transportation to students with disabilities?

Yes, if transportation is listed as a related service on the student's IEP. If transportation is identified as a related service, the responsibility for transporting the child to the charter school is assigned on the basis of the charter school's legal status and linkage to an LEA. If the charter school is its own LEA, it will have to budget for special education

transportation. If the charter school is part of an LEA, then the responsibility for paying for special education transportation is decided as part of the contract between the charter school and the LEA.

Summary and Key Points

The authorization stage is critical to the development of successful charter schools. Building on the foundation established during the pre-authorization phase, the authorization process provides authorizers the opportunity to verify potential operators' knowledge about their responsibilities and to assess the degree to which an applicant is capable of fulfilling these responsibilities. Charter authorizers should be knowledgeable about special education even if this is not required by statute. This basic knowledge will enable authorizers to ensure that 1) charter petitioners fully understand and are prepared for their responsibility to educate students with disabilities, and 2) charter applicants integrate their plan to provide adequately for special education within their petition. By providing charter developers early guidance on how to anticipate and adequately address the application process, authorizers can help charter schools prevent a variety of challenging issues that will emerge once a child with a disability enrolls in the charter school.

OVERSIGHT AND ACCOUNTABILITY

What is my role as an authorizer to hold charter schools accountable in the area of special education?

Once the charter school doors open and the students arrive, charter authorizers' responsibility shifts from approving charters to overseeing the schools and holding them accountable for the goals and objectives outlined in the charters. The charter is a performance contract, and the authorizer is responsible for ensuring that charter operators fulfill their responsibilities articulated in the contract. Idaho charter school rules state that "the authorized chartering entity of a public charter school shall be responsible for ensuring that the public charter school operates in accordance with all of the terms and conditions of the charter approved by the authorized chartering entity, as reflected in the final approved petition filed with the Board" (08.02.04-301-01). It is important that each charter school's specific level of responsibility for special education be described in the charter school petition.

LEA authorizers are also required to approve their charter schools' annual budgets and are responsible for ensuring federal funds are spent on special education programs. The charter school is also included in the school district's annual fiscal audit.

Do authorizing agencies have any obligation to complete paperwork related to special education in the charter schools they authorize?

It depends upon the charter school's legal status. If a charter school is part of an LEA, the charter school and the district may share responsibility for special education paperwork. Specific paperwork is provided with the application for federal special education funds that must be completed by LEA authorizers. Authorizers unsure about their specific responsibilities should contact their state for guidance.

How is my role related to accountability for special education formally articulated to the charter schools I authorize?

Typically, the charter school and the authorizer informally agree upon the manner in which the charter school will be held accountable. Idaho code requires at least an annual programmatic and fiscal report from the charter school to the authorizer. Additionally, there are a variety of ways authorizers ensure accountability. Authorizers should consider making the agreement formal from the beginning so that both parties know what to expect. The agreement may include a site visit when the school first opens, quarterly submission of reports pertaining to enrollment, achievement and finance, annual site visits and, eventually, a comprehensive site visit conducted by an outside team.

Authorizers should advise petitioners to review the special education requirements contained in the Idaho Special Education Manual available online at: <http://www.sde.idaho.gov/SpecialEducation/manual.asp>.

Since data collection and documentation are important aspects of IDEA, what types of data and documentation regarding children with disabilities should authorizers recommend that charter schools collect and report?

Charter schools' responsibility to collect and report data regarding special education is dictated by the charter school's legal status and its linkage to an LEA. Data and documentation are two major accountability tasks. Charter schools are obligated to collect and report all of the same information that all public schools must report, such as statistical data on students, results of standardized tests, and financial information. Examples of special education data and documentation that a charter school must compile include student counts as well as more procedural documents that would be reviewed as part of special education monitoring. Authorizers should ensure that charter school petitioners understand the content and timeframe for all required reporting.

What should authorizers know about the federal and state special education monitoring processes?

Special education monitoring in Idaho is on a five-year cycle that includes a self-evaluation process, verification visits, and on-site monitoring visits. The State Department of Education annually monitors one-fifth of the state districts for compliance with IDEA. Charter schools authorized by a district are monitored when the district is monitored. Typically, the district informs and advises the charter school. LEA charter schools are scheduled into the five-year cycle with all other LEAs. All LEA charter schools will receive a technical assistance visit during their first year of operation.

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

Authorizers should ensure that charter schools understand the level at which they will be involved in special education monitoring and their responsibilities for the process. Further information about the Idaho special education monitoring process is available at: <http://www.sde.idaho.gov/SpecialEducation/monitoring.asp>.

Summary and Key Points

Accountability is a core tenet of the charter school concept and one of the critical responsibilities of all charter school authorizers. State charter school laws generally provide broad guidelines regarding how charter schools will be held accountable for

fulfilling the goals and objectives articulated in their charters while leaving authorizers the discretion and responsibility to develop a review process. Charter schools are also required to participate in federally required special education monitoring and accountability processes. As with most issues, the manner in which charter schools are held accountable for educating students with disabilities and participating in federal and state monitoring processes is dictated by individual states and specifically by the charter school's legal status and linkage to an LEA.

REVOCATION AND RELINQUISHMENT

The Idaho charter school law does not designate a term for a charter, making a charter good until revoked and eliminating any set time limit or periodic renewal of a charter that is common in other states. For this reason, Idaho authorizers must be especially vigilant in their responsibilities for overseeing the schools operationally and programmatically on an ongoing basis.

What is the meaning of the terms “revocation” and “relinquishment” as used in this Primer?

- REVOCATION occurs when an authorizer proactively removes or terminates a school's charter and, consequently, its legal authority to operate as a public school because the charter school has failed to meet the obligations articulated in its charter or contract with the authorizer.
- RELINQUISHMENT is a voluntary termination of an authorized charter by the charter school's board of directors that may occur either prior to or after a school's opening.

Can a charter be revised after it has been approved?

Yes, the Idaho public charter schools law provides that “A public charter school or the authorized chartering entity may enter into negotiations to revise its charter. A public charter school may petition to revise its charter at any time. The authorized chartering entity's review of the revised petition shall be limited in scope solely to the proposed revisions” (§33-5209).

Can an authorizer revoke a charter for special education violations?

Yes. The Idaho public charter schools law (§33-5209) describes the process of revocation. Matters involving special education may be involved in all or part of the violation on which the charges are based. First, the authorizer must provide the public charter school with a written notice of the defect and provide a reasonable opportunity to cure the defect. The areas for which such a notice may be issued include:

- (a) Committed a material violation of any condition, standard, or procedure set forth in the approved charter;
- (b) Failed to substantially meet any of the student educational standards identified in the approved charter;
- (c) Failed to meet generally accepted accounting standards of fiscal management;
- (d) Failed to submit required reports to the authorized chartering entity governing the charter; or
- (e) Violated any provision of law.

Revocation may not occur until the public charter school has been afforded a public hearing unless the authorized chartering entity reasonably determines that the continued operation of the public charter school presents an imminent public safety issue, in which case the charter may be revoked immediately.

If a charter school ceases to exist, what has to be considered relative to students with disabilities?

The Idaho public charter schools law requires that a petitioner include in the charter petition a plan for termination of the board of directors that must include:

- identification of who is responsible for dissolution of the charter school;
- a description of how payment to creditors will be handled;
- a procedure for transferring all records of students with notice to parent of how to request a transfer of student records to a specific school; and
- a plan for the disposal of the public charter school's assets.

An authorizer may require other issues that must be addressed in that part of the charter petition such as a plan to ensure that all special education records are protected until transferred to a new school or district.

In the case of revocation or relinquishment, how should charter schools dispose of any special equipment that was purchased for students with disabilities?

Idaho charter school law dictates how a charter school's assets are to be distributed should the school close as follows: "When a charter is revoked pursuant to section 33-5209, Idaho Code, or the board of directors of the public charter school terminates the charter, the assets of the public charter school remaining after all debts of the public charter school have been satisfied must be returned to the authorized chartering entity for distribution in accordance with applicable law" (§33-5206). In addition, authorizers should check state and federal requirements for disposal or transfer of equipment purchased with state or federal special education money.

In the case of school closure, are there special procedures for handling special education files?

All students' educational records are protected by the Family Educational Rights Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) that stipulates how the records are to be handled appropriately. Charter school personnel are responsible for closing and preparing files for transfer to either the next school or the LEA or SEA special education office in accordance with these regulations. Information about FERPA is available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

Do charter schools have any legal obligation to their students with disabilities after the school closes?

As described above, Idaho code requires that charter schools transfer records. Charter school staff may be requested to participate in IEP staffing meetings at schools in which the students enroll after leaving the charter school.

Summary and Key Points

The revocation or relinquishment of a charter is, at best, an unpleasant experience and, at worst, highly contentious and politically charged. Regardless of how unlikely a school closure may appear, ensuring the proper transfer of student records and appropriate disposition of all assets in the event of closure, including those specifically for special education, is a responsibility for which authorizers must always be prepared. Regardless of the environment in which a school closes, authorizers are responsible for ensuring that the necessary steps are taken to protect students' rights to privacy and maintain the integrity of records. Establishing the procedures for closing a school, including special education considerations, should be incorporated into the initial charter contract to ensure that all parties are aware of their roles and responsibilities in the event of closure.

TECHNICAL ASSISTANCE AND RESOURCES

Providing special education in charter schools, as in traditional public schools, is challenging for a variety of reasons. Acquiring the capacity to deliver special education requires early and ongoing technical assistance related to the complex requirements stemming from IDEA. Although they vary in how they perceive their relationship to the schools they charter, authorizers can play a critical role in informing charter schools of their responsibilities related to special education and where they can obtain technical assistance. Charter schools can tap into a variety of networks to learn more about special education in general and special education in charter schools. Following is a partial list of resources that authorizers should be familiar with and to which they may direct potential charter applicants.

Local Education Agencies (LEAs)

States delegate their responsibility for providing a free, appropriate public education for students with disabilities to LEAs. 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. While not catering specifically to charter schools, district special education technical assistance can be invaluable to charter developers interested in learning more about special education.

State Department of Education (SDE)

The SDE is a rich source of information regarding special education and charter schools as well as all other aspects of public education in the state. The website is located at <http://www.sde.idaho.gov>.

Regional Special Education Consultants

Idaho operates regional special education offices designed to provide, among other services, special education technical assistance. They are located at the University of Idaho-Coeur d'Alene, the University of Idaho-Moscow, Boise State University, and Idaho State University. For information see <http://www.sde.idaho.gov/SpecialEducation/docs/Roster%20%208-1-07.doc>

State Charter School Support Organization

The Idaho Charter School Network (ICSN) is a non-profit association founded for the purpose of presenting a united voice for Idaho charter schools in the areas of policy and legislation. It also serves as a technical assistance center offering services on a fee-for-service basis. Authorizers should be familiar with the services available through the Network and encourage the schools they charter to take advantage of them. The Idaho Charter School Network can be reached at <http://csi.boisestate.edu/icsn.htm>.

U.S. Department of Education

Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. OSEP maintains a Technical Assistance and

Dissemination web page that provides links to a variety of resources related to special education at <http://www.ed.gov/about/offices/list/osers/osep/index.html?src=mr>. Another office that has more general resources for charter schools is the Office of Innovation and Improvement. <http://www.ed.gov/about/offices/list/oii/index.html?src=oc>

National Association of Charter School Authorizers (NACSA)

NACSA is a non-profit membership association of agencies across the country that authorize and oversee public charter schools. Created in 2000 by a diverse group of charter school authorizers nationwide, NACSA is dedicated to supporting and strengthening the capacities of authorizers to charter successful schools. It provides many resources of significant value to charter school authorizers through its website at <http://www.charterauthorizers.org>.

NATIONAL SPECIAL EDUCATION NETWORKS

National Association of State Directors of Special Education (NASDSE) provides a wide range of information regarding special education including research reports and technical assistance documents pertaining to special education in charter schools at <http://www.nasdse.org>

National Information Center for Children and Youth with Disabilities (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. <http://www.kidsource.com/NICHCY>

NATIONAL CHARTER SCHOOL NETWORKS

U.S. Charterschools website contains extensive information about charter schools, including research reports, state contacts, and upcoming events related to charter schools. <http://www.uscharterschools.org>

Center for Education Reform provides up-to-date information about state charter school laws. <http://www.edreform.com>

GUIDANCE FOR OPERATORS

PRE-AUTHORIZATION AND PLANNING

What is the role of a charter school operator related to special education in working with the planning team during this phase?

The pre-authorization planning phase—the time before submitting a petition for a charter—is the ideal time to begin planning for all children who may become students in the charter, including students with disabilities. The school’s level of responsibility for programs and services for students with disabilities will depend on its legal identity as a district or part of a district.

What are the implications for purposes of special education if the school will be its own district?

A charter school operating as its own school district, whether virtual or brick-and-mortar:

- Must accept and appropriately serve students with disabilities;
- Is solely responsible to ensure that the requirements of the IDEA 2004 are met with respect to students enrolled;
- Must comply with the IDEA 2004 Part B regardless of whether the public charter school receives any Part B funds; and,
- Must participate in all monitoring activities conducted by the State Department of Education (SDE).

In its first year of operation, a charter school that is also a district will receive a technical assistance visit by an SDE special education monitoring team to ensure that the essential components of a special education program are in place.

The Idaho Special Education Manual provides all required policies, procedures, and sample forms. They are also available on the Idaho special education website at <http://www.sde.idaho.gov/SpecialEducation/manual.asp>. If the school will be a separate district, it must adopt these policies and procedures or write its own and receive state approval.

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

It is critically important to consider children with disabilities when developing the mission and vision of the charter school. A mission and vision statement is required in all

charter school petitions, and careful thought should be given to how students with disabilities will fit into that vision. Since the school will be a public school that must accept all students who apply, the school should expect to enroll students with many different kinds of needs, including students with disabilities. The range of disabilities may vary from mild to severe in terms of impact on learning. If this possibility is carefully considered in the initial planning process, it is much more likely the mission and vision statements will be crafted to accommodate a diverse array of students, thus minimizing the likelihood of subsequent problems.

The charter school operator assumes the role of administrator and operator as well as instructional leader for the future faculty, parents and students. Although the operator obviously cannot plan for each child before beginning to enroll students, consideration can be given to children with disabilities while developing the initial plans for the school. The vision for the school will be seen, heard and implemented by others involved in the planning. Therefore, regardless of the type of school (brick-and-mortar or virtual), it is critically important to consciously plan for including students with disabilities in every aspect. Doing this in the planning stage will help to ensure compliance with federal and state law and will result in more effective educational opportunities for all students.

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

During initial planning, it is important to plan for developing capacity to serve a wide range of students. For example, how can the school be relevant for students with learning disabilities, physical disabilities, or students who present behavioral challenges?

The following six major legal principles that underlie the Individuals with Disabilities Education Act (IDEA) should be considered in planning to include students with disabilities:

- students with disabilities must be admitted;
- 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 the charter school will help to develop a school that addresses the needs of all students. Throughout the review, the operator should keep in mind the linkage to a local education agency (LEA) and the school's status as described in the Background section of this primer.

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

Yes. When announcing the charter school or conducting outreach, the operator may not discriminate against students with disabilities. Students should be recruited from all segments of the community served by the 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 http://www.uscharterschools.org/pdf/fr/civil_rights.pdf.)

What steps should be taken when providing outreach information to parents?

The operator 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 the 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, the operator could help to ensure appropriate access to the content of the materials by offering the materials in Braille or on a tape. If public informational meetings are conducted 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 the operator's obligation to make sure that student petitioners 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), admission may not be categorically denied to students on the basis of disability. For example, admission may not be denied 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. The charter petition should contain a statement that the enrollment policy is not discriminatory. These criteria will be specifically reviewed during the legal sufficiency review process by the state. The Idaho Special Education Manual contains specific information related to Section 504 and ADA and is available on the internet at <http://www.sde.idaho.gov/SpecialEducation/manual.asp>.

What issues need to be considered in planning to provide effective special education services?

Many issues must be considered in developing and implementing the special education program. While they will vary from school to school, several are common to all schools, including funding, space and facilities, personnel, curriculum, service provisions, professional development, administration, transportation and special considerations. The *Checklist of Special Education Considerations for Charter School Operators* at the end of this section poses helpful questions when considering these important areas.

How can the operator document compliance with Idaho charter school law requiring a description of how school personnel will abide by federal and state statutes related to special education?

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

What should the operator consider in preparing the petition?

The following areas should be addressed with provisions for how special education services will be provided:

- a. Identification/Evaluation
- b. Curriculum Philosophy
- c. Individual Education Plans (IEP)
 - i) Development
 - ii) Review
 - iii) Revision
- d. Services
- e. Discipline Policy
- f. Budget
- g. Transportation for special needs students (the charter school must provide transportation unless a special needs student is capable of getting to school in the same manner as other students).

Other critical areas to address include:

- understanding of the overall responsibilities for special education entailed in the general assurance;
- articulating the plan regarding governance, service delivery and finance of special education; and
- projecting the cost of special education, including costs for transportation services.

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

Summary and Key Points

The pre-authorization phase provides a valuable opportunity to explore different aspects of the future charter school. In an effort to prevent potential problems associated with not complying with special education requirements, the operator should use the pre-authorization phase to educate all the critical players (e.g., board members) about special education. By becoming educated earlier rather than later, the operator will be able to include special education and children with disabilities into the school's vision rather than leaving it to become an add-on component. Once the charter school is authorized and operating, the pressures associated with start-up and day-to-day operations may limit the ability to "think outside the box." So, the operator should use the time available to design the school, making sure to include special education at every decision point.

CHECKLIST OF SPECIAL EDUCATION CONSIDERATIONS FOR CHARTER SCHOOL OPERATORS

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)?
- What is our budget plan related to special education?

SPACE AND FACILITIES

- Where will we conduct student evaluations and administer statewide assessments?
- 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 types of services will our school need?
 - Other legal counsel with special education expertise
 - Accountants/bookkeepers/number crunchers
- How does our staff meet the highly qualified requirements found in IDEA and NCLB?
- How can we collaborate with other schools and agencies to meet the needs of students with disabilities?

CURRICULUM

- How does our curriculum align with state 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?
- How does our curriculum incorporate the principles of universal design to

meet the needs of a wide array of students?

SERVICE PROVISION

- How will we ensure students will receive special education services by a highly qualified special educator?
- 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?
- How will we handle re-evaluations?
- How are we going to work with families?
- How can we build partnerships?
- What strategies can we use to be proactive in avoiding conflicts?
- How will we provide individual accommodations during statewide testing?
- How will we provide secondary transition services?
- What services will we not provide and how will we assure these services will be available to students?
- What agreements have been made with private or public providers to ensure provision of a continuum of services?

PROFESSIONAL DEVELOPMENT

- How will we provide 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 the authorizer, local district, other administrative unit (e.g., an Intermediate Unit or a Cooperative)?

TRANSPORTATION

- How 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 IEPs?
- How will we arrange transportation for a student with special transportation needs (e.g., wheelchair, requiring behavior support)?

PREPARING FOR START-UP

If the operator has concerns about the school's ability to deliver instruction to students with disabilities that will be in keeping with the curriculum, what should be done?

Hopefully, this was addressed during the pre-authorization activities as the school's mission was developed and potential accommodations considered that will include students with disabilities in the school. In preparing for students, concerns about instruction should be discussed at the time of the child's IEP meeting and described in the child's IEP so that all members of the team can understand, and contribute to, how the student will have access to the general education curriculum that is required by special education law. If the school's faculty needs help in accommodating the needs of a student who has a disability, the operator needs 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.

When the charter school is a separate LEA, the operator is responsible for hiring staff and faculty. How much flexibility is allowed in special education?

First, the charter school must follow Idaho's charter school law and regulations regarding faculty certification which states: "Employment of charter school teachers and administrators shall be on written contract in form as approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder." (§33-5206 Idaho Code). Changes to IDEA in 2004 require that special education teachers meet the "highly qualified" standards of the No Child Left Behind Act (NCLB) and that those requirements are also incorporated into Idaho certification procedures. In addition, the school 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 the State Department of Education for specific information and guidance on relevant regulations in this area. These requirements can be found at <http://www.sde.idaho.gov/TeacherCertification/default.asp>.

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

Yes. Being licensed/certified is only one part of the requirements in the No Child Left Behind Act (NCLB) and IDEA 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. State Department of Education staff can provide clarification for specific requirements.

Does the charter school have to hire full-time special educators?

Staffing is dependent upon the number and needs of students and the school's capacity to implement the IEPs as written. The administrator(s) 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.

What should be done when a child with a disability applies to the charter school?

Since charter schools may not discriminate on the basis of a disability in determining eligibility for admission, considerations for students with disabilities are to be the same as for students without disabilities. IEPs need to be written to meet the needs of the individual student, not limited by the program model or services currently available.

It is critical that the 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 the charter school does not automatically receive the records, the charter school should initiate a request to the previous school. Contacting the special education office of the previous LEA may also be helpful in securing the records. The State Department of Education can also help if the charter school is unable to obtain a response from the previous school or LEA.

If the operator has concerns about the charter school's ability to meet the needs of a specific student with a disability, can other programs or schools be recommended?

It is not appropriate 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 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 the school's framework. All issues about the appropriateness of the child's placement should be resolved through the child's IEP team. If the school is not able to provide all of the services identified in a student's IEP, the operator must make arrangements for these services, either directly, if the school is a separate LEA, or in collaboration with the authorizing school district.

The State Department of Education may be contacted for other resources available to meet the needs of students. Additional information and clarification on appropriate strategies for addressing this issue may be found in the U.S. Department of Education Office for Civil Rights (OCR) document, *Applying Civil Rights Laws to Public Charter*

Schools: Questions and Answers, available at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

Do requirements for physical access apply when selecting the facilities that will house the charter school?

Yes. An LEA (including the 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 the charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity.

When the school building is rented, whose responsibility is it to make the school accessible?

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

Do different legal requirements 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 operations?

The operator 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 the 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 the charter school is in an existing facility, it might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location, for example, the first floor. However, the specific federal, state, and local requirements on this issue are very complicated, and the operator should obtain legal counsel when acquiring a facility to house the charter school. To ensure maximum accessibility and fire safety, the operator should request an inspection by the local fire marshal prior to signing a lease or purchasing a facility.

Where can the operator obtain information and technical assistance in making the school accessible?

Idaho state and/or local code dictate that responsibility for access to public facilities. The operator should check with the individual/entity for technical assistance in determining what modifications need to be made and the appropriate approach to accomplish the desired goal. Additional resources are available from OCR at <http://www.ed.gov/about/offices/list/ocr/index.html> or from the State Department of Education.

Summary and Key Points

Activities during the start-up period will provide the foundation for the day-to-day operation of the school. In preparing for the opening, children with disabilities must be kept in mind. Every time the operator, board and staff get ready to make a decision, they should ask themselves if this decision will help every potential student. It is important to cultivate resources so the school can draw on their expertise and experiences. Many sources of information and support are available, including other charter and traditional schools, the State Department of Education, charter school resource centers, and/or associations that exist in many states to assist during the development and operation of a charter school.

OPERATING A CHARTER SCHOOL

Introduction

This section provides an overview of critical issues and activities related to serving students with disabilities that the administrators and staff should address during day-to-day operation of a charter school. These may include curriculum implementation, staff and faculty hiring, student enrollment, fiscal issues and school accessibility. Ideally, each of these issues was considered during the pre-authorization and planning for start-up phases. If this is not the case, it is not a cause for despair, but the situation should be analyzed as soon as possible. The opportunity still exists to build on what is in place so that the 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 a charter school depend on the legal identity of the individual school and its linkage to an LEA.

- If the school is linked to a district, 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 the charter school has negotiated with the LEA.
- The expectations for a charter school (whether brick-and-mortar or virtual) 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. 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.

All IEPs for students transferring to the charter school must be implemented as written until an IEP Team meets to rewrite or amend it. The range of services and equipment may include related services, for example, occupational and physical therapy, orientation and mobility training, adapted physical education, transportation, or assistive technology.

Curriculum was selected specifically for students with a particular disability (e.g., autism, deafness, etc.). What should be done to make sure the school can include students with other disabilities or those who do not have a disability?

If students who enroll have disabilities different from what the school expected, each one must be considered individually so that their needs can be met. In each case, the involvement of 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 the school. No one on the faculty has experience in this area. What should be done?

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 the charter school, and plans would be in place when the child enters. If that did not occur, the first step is for charter school staff to review the child's special education records, especially the IEP, and analyze the school's existing capacity to deliver the instruction and related services as described. Staff who will work with this student must be appropriately prepared and certified or receive professional development addressing the student's specific needs. If no one on the school staff has experience working with students with these needs, the school will need to access this technical support from outside sources (consultants, State Department of Education). Just as any other public school is expected to do if a child moves in with an existing IEP, the charter school must 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.

The State Department of Education and charter school organizations can determine if there is a cooperative or other regional resource that can provide support in this area.

May the charter school limit the participation of students with disabilities to certain aspects of the 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 the charter school.

The charter school plans to develop Individual Learning Plans for all students. Do IEPs still have to be developed for students with disabilities?

Yes. Every student receiving special education services must have an IEP that is developed by an IEP team following the procedural requirements of IDEA and the Idaho special education law. The IEP may complement the plans the 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.

If the charter school has accepted some students with Service Plans from private schools or home schools, will these meet the requirements for IEPs?

No. If students qualify for special education services, they are entitled to IEPs, and the charter school is required to develop and implement these plans in accordance with Idaho special education law and Idaho rule, as written in the Idaho Special Education Manual.

Can students be dually-enrolled in a charter school and another public school?

Dual enrollment is allowed by law but may be restricted by a district's open enrollment policy. A student may not be dually enrolled for just special education services. For example, a student with a reading disability may be dually enrolled for English or an academic subject requiring reading. A student may not receive special education simply for social interaction or academic support without enrolling for a specific subject or class.

Are there special strategies to attract and retain 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 resulted in reducing attrition. 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 responsibilities. Specific, upfront discussions about their individual roles in fulfilling the school's mission will help them to understand the school and their ability to help meet the goals. It is extremely important for the operator to be in frequent contact with the school's special educators to gauge satisfaction and/or frustration and explore strategies to minimize areas of difficulties.

What types of special education professional development should the charter school offer?

Charter schools need to provide professional development opportunities to a variety of different types of individuals. Clearly, 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. Charter school personnel must meet the same requirements as personnel in traditional public schools. The State Department of Education provides a wide range of professional development opportunities for teachers and paraprofessionals. The Idaho Training Clearinghouse

offers a calendar of statewide training, links to other state and national resources, training modules, and learning communities at <http://www.idahotc.com>.

The charter board of directors is the responsible entity for the charter school. Therefore, board members and other key volunteers will benefit from very focused, ongoing training in the charter school's responsibilities for students with disabilities as well as educational management issues.

What other resources are available to charter schools?

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

Idaho Agencies and Offices

- **Idaho Parents Unlimited, Inc. (IPUL):** This is Idaho's Parent Training and Information Center funded by the U.S. Department of Education Office of Special Education Programs. They offer training and answer questions about involvement of parents of children with special needs.
(<http://www.ipulidaho.org/>)
- **Idaho Charter School Network (ICSN):** ICSN serves as a technical assistance center in a variety of areas relevant to the development and implementation of charter schools. It is housed at Boise State University.
(<http://csi.boisestate.edu/icsn.htm>)
- **Local Education Agencies (LEAs):** LEAs offer 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.
- **Idaho Special Education Regional Consultants:** Each LEA may access a special education regional consultant who is available to provide technical assistance on any number of special education issues for free.
<http://www.sde.idaho.gov/SpecialEducation/docs/Roster%20%208-1-07.doc>
- **State Department of Education:** The State Department of Education is a rich source of general information regarding special education and specific information regarding special education in charter schools.
<http://www.sde.idaho.gov/>

- **U.S. Department of Education (ED):** Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school petitioners. 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. (<http://www.ed.gov/about/offices/list/osers/osep/index.html>)

Another ED office that has more general resources for charter schools is the Office of Innovation and Improvement.

(<http://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 also available.

(<http://www.ed.gov/nclb/landing.jhtml?src=pb>)

National Special Education Networks

Following is a list of networks to learn more about special education in general and issues specifically related to special education in charter schools.

- **National Association of State Directors of Special Education (NASDSE):** The 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. (<http://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. (<http://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. (<http://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.

(<http://www.pacer.org>)

- **Special Education News:** This private newsletter provides in-depth, up-to-date news related to educating students with disabilities.
(<http://www.specialednews.com>)
- **Special Education Law:** This resource provides up-to-date information on judicial and legislative decisions concerning special education.
(<http://www.specialedlaw.net>)

National Charter School Networks

National Association of Charter School Authorizers (NACSA): This organization renders support and technical assistance to those who sponsor or authorize charter schools.

(<http://www.charterauthorizers.org>)

U.S. Charter Schools Website: This is a rich resource supported by the U. S. Department of Education.

(<http://www.uscharterschools.org>)

When the charter school's special education program costs more than the funding received from the state and the federal government, what should be done?

Lack of funds is not a legal reason for denying services to a child who is eligible for special education. The manner in which the charter school may seek additional support to pay for required special education services depends on a number of factors, such as the provisions of the charter and any contracts with an LEA, state funding policy and the charter school's LEA status and linkage to another LEA. If you have questions in this area, contact your Regional Special Education Consultant or a Special Education Coordinator at the State Department of Education (208-332-6910).

If the charter school does not provide transportation to students, must transportation be provided for students in special education?

If the school provides transportation to and from school or financial support for non-disabled students, then it needs to do the same for students with disabilities. If the school does not provide this support in general, then typically it does 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 the school will need to arrange for transportation services or see that the responsible entity does so. As the 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 the charter school is responsible to provide this related service, it 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 charter school responsibilities to conduct "Child Find" activities?

A charter school is responsible for Child Find activities among its enrolled students. A charter school is required to conduct Child Find activities, including evaluations, even if it does not receive any federal special education Part B funds.

What should a charter school do if a teacher or parent suspects a child might be eligible 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. Prior to a formal special education evaluation, parents and teachers should consider a wide range of general education interventions. However, when a disability is obvious, this procedure should not delay referral to special education. 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. Refer to the Idaho Special Education Manual for specific requirements related to procedural safeguards.

How many special education forms and reports does a charter school have to complete?

It is very important that the charter operator understand the nature of the school's responsibilities and ensure the 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. 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. Specific information may be obtained from the Special Education Regional Consultants, from the Idaho Special Education Manual <http://www.sde.idaho.gov/SpecialEducation/manual.asp> or directly from the State Department of Education.

Who is responsible for developing student IEPs?

Responsibility for IEP development depends largely on the specific arrangements for the charter school as reflected in Idaho special education law and the charter. The procedures to be followed in the charter school should be clearly written in school policies.

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

The IEP team must include, at a minimum, the following members:

- Parent (or adult student, if rights have transferred);
- District representative (building principal) or designee who is knowledgeable about the general education curriculum and about the availability of resources in the LEA (designee must have the authority to commit resources to ensure that services in the IEP will be provided);
- Special education teacher or service provider (for example, speech language pathologist);
- General education teacher of the student (at least one);
- An individual who can interpret the instructional implications of evaluation results (who may be already be a member of the team);
- Other individuals (at the discretion of the parent or the LEA) who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and,
- the child with a disability whenever appropriate.

Under changes from the IDEA 2004 amendments, the LEA and the parent may agree in writing that the attendance of a member of the IEP team is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

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, only if the student takes the Idaho Alternate Assessment (IAA), benchmarks 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 accommodations or adaptations 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 or adaptations in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment;

- the projected date for the beginning of the services and accommodations and adaptations and the anticipated frequency, location and duration of those services and accommodations and adaptations; 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 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?

Idaho has a sample IEP form that may be found in the Special Education Manual. The charter school may adopt these forms or develop its own as long as they include all of the required components.

Does the charter school 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. Whether or not the school has full or partial responsibility for developing IEPs for students who attend, the staff must participate in IEP meetings to provide the necessary information about the child's school progress. It is also important to 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 the 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, the charter school must ensure prompt transfer of all records. If the charter school is a separate LEA, it is required to maintain a copy of the most recent eligibility and IEP for five years after the child leaves the LEA. If the charter school is part of a district, it is expected to follow the district records procedures. At the point that the child is formally no longer enrolled in the charter school, the school no longer has a responsibility to provide services to the child.

Summary and Key Points

When moving through the day-to-day operation of the charter school, the staff will find that they often have to focus on a "challenge of the moment" related to students with disabilities. If strategies have been planned carefully and are in place for handling special education issues, they will not reach the crisis stage. Occasionally, administrators and staff should take the time to revisit the mission and vision and have specific discussions on how all students and staff are doing. Numerous resources are available in your local school district, State Department of Education, or State Board Charter School Commission. Depending on the school's LEA linkage, state law and charter contract, the administrator(s) 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 the students, school and community.

GLOSSARY

ACRONYMS

- **ADA** Americans with Disabilities Act
- **AYP** Adequate Yearly Progress
- **ADHD** Attention Deficit Hyperactivity Disorder
- **CEC** Council for Exceptional Children
- **CSLC** Charter Schools Leadership Council
- **CSP** Charter Schools Program (of the U.S. Department of Education)
- **ED** U. S. Department of Education
- **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
- **HOUSSE** High, Objective, Uniform State Standard of Evaluation
- **HQT** Highly qualified teacher
- **IAA** Idaho Alternate Assessment
- **IDEA** Individuals with Disabilities Education Act
- **IEP** Individualized education program
- **IFSP** Individualized Family Service Plan
- **ISAT** Idaho Student Achievement Test
- **LEA** Local education agency (school district)
- **LRE** Least restrictive environment
- **NACSA** National Association of Charter School Authorizers
- **NAEP** National Assessment of Education Progress
- **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)
- **NICHY** National Information Center for Children and Youth with Disabilities
- **OCR** Office for Civil Rights
- **OSEP** Office of Special Education Programs
- **PACER** Parent Advocacy Coalition for Educational Rights
- **RRC** Regional Resource Center
- **SEA** State education agency

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. 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 (AYP)

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, performance standards, curriculum, instruction, and assessments in terms of knowledge and skill expectations.

ALTERNATE ASSESSMENT

An instrument used in gathering 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 with significant cognitive impairments, who are unable to participate in the general assessment system, with or without accommodations as determined by the IEP Team.

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 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.

ASSISTIVE TECHNOLOGY SERVICE

Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. It includes evaluation of the child's needs, purchase of the device, training and other aspects of the use of the device. [IDEA 2004 §602(1) & (2)].

ATTENTION DEFICIT HYPERACTIVE DISORDER (ADHD)

Also called Attention Deficit Disorder 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.

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

A developmental disability significantly affecting verbal or nonverbal communication and social interaction, generally evident before age 3, 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.

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

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, which 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 academies" in Michigan.

CHILD WITH A DISABILITY

A child evaluated in accordance with IDEA as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious 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. (See also STUDENT WITH A DISABILITY)

COGNITIVE IMPAIRMENT (MENTAL RETARDATION)

Significantly sub average 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 §300.7(c)(6)]

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

A disability characterized by 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 §300.7(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 §300.7(c)(3)].

DEVELOPMENTAL DELAY

An IDEA disability category used only for students ages 3 through 9 for whom a significant delay exists in one or more of the following skill areas: receptive/expressive language; cognitive abilities; gross/fine motor functioning; social/emotional development; or self-help/adaptive functioning. The student's condition adversely affects educational performance. The student needs special education. The use of this category is optional for districts.

DISAGGREGATE

To separate a whole into its parts. Under NCLB, this term means that test results are sorted into groups of students. The subgroups include economically disadvantaged, racial minorities, ethnic minorities, students with disabilities, and English language learners.

EMOTIONAL DISTURBANCE

A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that 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. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance. [34 CFR §300.7(c)(1)]

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

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

FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state; include preschool, elementary school, or secondary school education and are provided in conformity with an individualized education program (IEP).

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 §300.7(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.

HIGHLY QUALIFIED TEACHER [IDEA 2004 §602(10)]

(A) IN GENERAL- For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also--

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS- When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means 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, the term means that the teacher meets the requirements 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.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS- When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS- When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) 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 section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) 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 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 section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or 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 State educational agency or local educational agency employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA- A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

HOUSSE

The NCLB law providing an alternative method for experienced teachers to demonstrate subject matter competency. Each state develops its own provision to determine whether veteran educators meet the law's "highly qualified" teacher standard.

INCLUSION

A special education approach that stresses educating students with disabilities, regardless of the type of severity of that disability, in the regular classrooms of their neighborhood schools.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

A written document which outlines the special education program for a child with a disability. This document is developed, reviewed and revised in an IEP meeting at least annually in accordance with IDEA regulations.

INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

A written plan for providing early intervention services to infants and toddlers eligible under Part C of IDEA.

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEA)

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.

LEARNING DISABILITY (LD)

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 §300.7(c)(10)]

LEAST RESTRICTIVE ENVIRONMENT (LRE)

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.

LINKAGE

The type of connection that is mandated 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, and the term includes a public charter school that is established as an LEA under state law.

MENTAL RETARDATION (COGNITIVE IMPAIRMENT)

Significantly sub average 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 §300.7(c)(6)]

MINIMUM *n*

The smallest number of students a state has determined can produce statistically reliable results for a group while protecting the confidentiality of the student within the group.

MODIFICATION

A change to the testing conditions, procedures, and/or formatting so that measurement of the intended construct is no longer valid.

MULTIPLE DISABILITIES

Concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. [34 CFR §300.7(c)(7)]

NATIONAL ASSESSMENT OF EDUCATION PROGRESS

The 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/about/criteria.asp>).

NORM-REFERENCED TEST (NRT)

A standardized test designed, validated, and implemented to rank a student's performance by comparing that performance to the performance of that student's peers.

OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP)

The 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

A severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). [34 CFR §300.7(c)(8)]

OTHER HEALTH IMPAIRMENT (OHI)

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, and sickle cell anemia; and (ii) Adversely affects a child's educational performance. [34 CFR 300.7(c)(9)] Some states include special mention of eligibility criteria for children with ADHD under this category.

OUT-OF-LEVEL TESTING

Administration of a test at 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.

PORTFOLIO ASSESSMENT

An organized collection or documentation of student-generated or student-focused work typically depicting the range of individual student skills.

QUALIFIED PERSONNEL

Under IDEA, 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, 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. The term also includes school health services, social work services in schools and parent counseling and training.

RELIABILITY

The consistency of the test instrument; 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

Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals, in institutions and in other settings; related services; travel training; vocational education and instruction in physical education.

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 §300.7(c)(11)]

STANDARDIZED TEST

An established procedure that assures that a test is 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

There are two types of standards, *content* and *performance*. *Content standards* are statements of the subject-specific knowledge and skills that schools are expected to teach students, indicating what students should know and be able to do. *Achievement standards* are indices of qualities that specify how adept or competent a student demonstration must be and that consist of the following four components: 1. levels that provide descriptive labels or narratives for student performance (i.e., advanced, proficient, etc); 2. descriptions of what students at each particular level must demonstrate relative to the task; 3. examples of student work at each level illustrating the range of performance within each level; and 4. cut scores clearly separating each performance level.

STANDARDS-BASED ASSESSMENTS

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

STATE EDUCATION AGENCY (SEA)

The component of state government primarily responsible for the state supervision of public elementary and secondary schools.

STUDENT WITH A DISABILITY

In the Individuals with Disabilities Act, a student with a disability is defined as "a child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to 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

Services that promote movement for special education students from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. For each student with a disability, beginning at age 16 (or younger, if determined appropriate by the IEP team), and updated annually, the IEP must contain a statement of the transition services needed by the student that focuses on the student's courses of study, including, if appropriate, a statement of the interagency responsibilities or any needed linkages. (See also CHILD WITH A DISABILITY)

TRAUMATIC BRAIN INJURY (TBI)

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. The term 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. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. [34 CFR §300.7(c)(12)].

VALIDITY

The extent to which a test measures what it was designed to measure.

VISUAL IMPAIRMENT INCLUDING BLINDNESS

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 §300.7(c)(12)]

Acknowledgements

The Primer definitions were compiled by the authors from many sources. Details about the disability categories under IDEA are available in the document *Disability Categories: State Terminology, Definitions & Eligibility Criteria (2004)*.

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