

**HAWAI`I PRIMERS
ON
SPECIAL EDUCATION
AND
CHARTER SCHOOLS**

HAWAI`I STATE OFFICIALS PRIMER

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Note

The **Hawai`i Primers on Special Education and Charter Schools** may be subject to change to appropriately reflect changes as charter school legislation continues to evolve and impact the State of Hawai`i.

The HIDOE is not responsible for the content or the accessibility of the web pages and links cited throughout the primers that are external to the HIDOE.

HAWAI`I STATE OFFICIALS PRIMER

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HAWAI`I STATE OFFICIALS PRIMER

CHARTER SCHOOL BASICS

Background

The Hawai`i State Officials Primer provides information about special education in charter schools to Hawai`i state officials. It provides state officials an overview of charter schools, how they are defined, and the charter schools' responsibilities as they relate to special education. Understanding what charter schools are, their related responsibilities, and how they impact State agencies and departments is particularly important with respect to special education as special education needs and operations often cut across many different State agencies.

In the early 1990's, the Federal Government encouraged and funded the development of charter schools to bring about change and innovation in education. Since the introduction of charter schools more than a decade ago, there are now approximately 3,000 charter schools operating in 40 states and the District of Columbia.

Hawai`i's first charter schools began in 1995. Today, there are 27 charter schools statewide in Hawai`i, with schools located on the islands of O`ahu, Hawai`i, Maui, Moloka`i and Kaua`i. Currently, charter schools provide innovative alternatives and serve over 5,000 general and special education students in grades K to 12.

Why is it important for Hawai`i Department of Education (HIDOE) personnel to know about charter schools?

By law, the HIDOE is responsible for special education in all public schools including charter schools. State-level special education needs span throughout several departmental branches. HIDOE personnel in finance, monitoring, accountability, special education, and many other areas need to know what their responsibilities are in relation to charter schools.

How are charter schools defined?

In Act 87, Section 3, §302A-101

'New century charter schools' means public schools chartered by the board of education with the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management.

'Public schools' means all academic and non-college type schools established and maintained by the department and new century charter schools chartered by the board of education, in accordance with law.

Section 5210(1) of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the No Child Left Behind Act of 2001 (NCLB) defines the term "charter school" to mean a public school that:

- is nonsectarian in its programs, administration policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- does not charge tuition;
- complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Part B of the Individuals with Disabilities Education Act;
- has a written performance contract with the authorized public chartering agency; and
- must comply with NCLB.

What types of charter schools are in Hawai`i?

In Hawai`i, the three different types of charter schools, which are known as New Century Public Charter Schools, are:

- the start-up or new charter school;
- the conversion charter school, a HIDOE school that converts to charter status; and
- the partnership conversion charter school, a HIDOE school that allows a nonprofit organization to manage and operate the charter school and has a local school board that would consist of directors of the nonprofit organization. Eligible schools may receive financial support of \$1.00 from the nonprofit organization for every \$4.00 of State of Hawai`i charter school per pupil allocation.

Charter schools are public schools funded through the state per-pupil-funding formula and governed by a local school board. They are exempt from many state policies that apply to HIDOE schools, but they are not exempt from federal policies and statutes, health and safety requirements, state collective bargaining, and discriminatory practices as they relate to civil rights.

What are the major differences between charter schools and other public schools?

The four major differences between charter schools and other public schools are:

- First, charter schools are schools of choice. Parents choose to enroll their children in a charter school rather than to accept placement based on residential geographical area.
- Second, charter schools are typically exempt from some of the policies and regulations required of other public schools although the degree of freedom varies greatly from state to state.
- Third, charter schools are often allowed autonomy for many, if not all, areas related to operating a school.
- Fourth, an essential concept is that charter schools are held accountable for performance goals included in the performance contracts they entered into with their authorizing agency. Failure to meet those goals, together with non-compliance to all relevant laws and regulations, may result in school closure. These expectations may be quite specific to the charter school, or they may be more general and similar to, or the same as, the accountability requirements for other public schools in their district or state.

How are charter schools authorized to operate?

A charter school must be authorized by a specific entity or entities designated by law. In most states, charter school law stipulates that a charter school must be authorized by an entity such as a local or county school board, state board of education, college or university, municipal body, special-purpose board, or (in two states in 2003) a nonprofit organization meeting certain criteria. In Hawai'i, the sole authorizer is the Board of Education (BOE).

What are some typical characteristics of charter schools?

In Hawai'i, charter schools may have the following characteristics:

- maintain smaller learning environments,
- emphasize project based learning,
- enroll high percentage of native Hawaiian children,
- offer Hawaiian culture based curriculum,
- exist in rural areas,
- engage in public, private, and community partnerships,
- provide alternative curriculum and assessment, and/or
- incorporate active parent involvement.

How are charter schools funded?

In Hawai'i, charter schools are funded by a legal formula that allocates operating funds on a per pupil basis. Funding and distribution for special education and related services for all public schools, including charter schools, is provided by the HDOE.

As public schools, charter schools are not allowed to charge tuition; they are funded according to enrollment. As in most states, Hawaii's charter schools do not receive capital funds for facilities. They are entitled to federal categorical funding for which their students are eligible.

Do students with disabilities attend charter schools?

Yes. Students with disabilities may not be discriminated against or refused entry into any charter school on the basis of their disability status.

What other resources provide information about charter schools?

The **U.S. Charter Schools** website provides extensive information.
http://www.uscharterschools.org/pub/uscs_docs/index.htm

Another valuable site is the **National Association of Charter School Authorizers**.
<http://www.charterauthorizers.org/site/nacsa/>

SPECIAL EDUCATION AND HAWAII CHARTER SCHOOLS

On May 5, 2005, the BOE designated the Superintendent of the HIDOE as its agent to oversee the implementation of, and compliance with, all federal and state laws regarding the provision of special education services to exceptional children in all public schools including public charter schools.

The Superintendent has authorized the Special Education Section (SES) the responsibility to oversee matters of implementation, compliance, and monitoring of special education students, related services, to provide technical assistance to all schools, and to serve as a liaison between the public Charter School Administrative Office and the local public charter school boards. For more information, refer to Appendix 2, *Authority for Special Education in Hawai'i Public Schools*.

<http://doe.k12.hi.us/specialeducation/AuthorityForSpEd.htm>

The SES has developed guidelines and procedures in a document entitled, *Required Internal Management and Operational Guidelines for the 2005-2006 Implementation of the Individuals with Disabilities Education Improvement Act (IDEIA) 2004 and Section 504 in the Public Charter Schools* (See Appendix 2 for the guidelines.) These guidelines were developed collaboratively with representatives from the public charter schools and the HIDOE and will be reviewed annually.

http://doe.k12.hi.us/specialeducation/sped_in_charterschools.pdf

Can charter schools waive their responsibilities for special education?

No. Charter schools are public schools and, as such, cannot waive their responsibilities under federal laws. They must comply with all federal education laws including the IDEIA 2004, Section 504 of the Vocational Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA).

What are the major legal concepts that underlie special education statutes, regulations and case law?

There are six tenets generally considered the underlying concepts of special education law:

- *“Zero reject” of children with disabilities* — Federal law requires that all children are afforded an equal education opportunity, and states may not deny that on the basis of a disability.
- *Individualized Education Program (IEP)* — IDEIA 2004 requires that a written plan, an IEP, be developed in accordance with IDEIA 2004 regulations for all students identified as having a disability and in need of special education services. In general, the IEP includes the student's current educational level, annual goals, specific educational objectives, special education and related

services to be provided (this may include transportation needs), dates for initiation of service, anticipated duration of service, and evaluation criteria. Under certain circumstances, there are other requirements such as a plan for transition services for students ages 14 and older.

- *Free Appropriate Public Education (FAPE)* — What is deemed "appropriate" is not specifically defined in IDEIA 2004. Court decisions over the years have helped define the term in specific instances. What constitutes an appropriate program for an individual student is to be determined on a case-by-case basis depending upon the unique needs of that student.
- *Least Restrictive Environment (LRE)* — The IDEIA 2004 provides that students with disabilities must be educated to the maximum extent appropriate with their non-disabled peers. The law expresses a preference, not a mandate, for educating students with disabilities in regular classes using appropriate supplementary aids and services.
- *Parental involvement and due process* — Procedural safeguards are central to the implementation of IDEIA 2004. Parents must be notified of a school's intent to evaluate their child for services, and they must consent to an initial evaluation before the process begins. They must also be involved in the IEP process and consent to the initial placement and provision of services. Parents also have a right to request a due process hearing if they disagree with the school's recommendations for their child.
- *Nondiscriminatory evaluation* — There are specific legal requirements concerning the evaluation of children for special education services. It is important to understand these and follow necessary procedures.

What HIDOE functions interface with special education in charter schools?

Nearly all divisions within the HIDOE may interface with charter schools. For example, the Office of Business Services may field questions related to the funding of special education in charter schools. The Student Transportation Services Branch may be closely involved in the transportation of students with disabilities in charter schools. In each of these examples, HIDOE personnel may be called upon to provide training and technical assistance to charter school operators and need to know how Hawaii's laws and policies concerning special education pertain to charter schools.

What can HIDOE personnel do to assist charter school operators and authorizers as they consider successful implementation of special education?

There are several things HIDOE personnel in any division or unit (e.g., accountability, finance, transportation, special education) can do to assist charter school operators, authorizers and parents. A few are:

- Know charter school law and be prepared to answer questions about special education issues that pertain to your area of specialization in the HIDOE structure.
- Provide guidelines for charter school operators of their responsibilities as they pertain to your division. Since they are new schools, charter schools often need more rudimentary information than what is available for the state's existing school districts.
- Train division personnel on the charter school law and its intersection with charter schools and special education as it pertains to your division.
- Provide training for charter school operators and staff specific to your respective area (e.g., finance, transportation, accountability) as it relates to special education.
- Integrate charter schools into existing special education technical assistance efforts.
- Develop coordinated guidelines with the State Special Education Section so that all are working in tandem to assist charter schools.

Is there more information that can assist Hawai'i State Officials in understanding charter schools and special education?

Additional information of relevance and importance is summarized in the other parts of this primer. Nevertheless, the resources that follow have useful information on this topic.

An online question-and-answer document, entitled *Applying Federal Civil Rights Laws to Public Charter Schools*, may be helpful in answering questions regarding how federal civil rights laws apply to charter schools.

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

The **U.S. Charter Schools** website with an overview of charter schools and links to several pertinent websites is also available.

http://www.uscharterschools.org/pub/uscs_docs/index.htm

STATE OF HAWAII

MATRIX: Selected Special Education Characteristics in Charter Schools

As part of the public education system, a charter school must follow federal special education laws and regulations. A charter school fulfills the requirements of these laws and regulations, by two key factors: **legal identity** and **linkage**.

This matrix provides a brief snapshot of critical issues related to special education in charter schools for the State of Hawai'i. Each state that had a charter school law as of January 2004 is described in terms of the legal status of its charter schools, the type of linkage required between charter schools and traditional LEAs, the way special education funds flow to charter schools and other relevant comments.

<http://www.uscharterschools.org/cs/spedp/query/q/2057>

Legal Status

A charter school is either a Local Education Agency (*LEA*) or *Part of an LEA*. As part of the public education system of a state, a charter school has a specific legal identity that is established by law or state policy. As its own LEA for special education, a charter school has a higher level of responsibility for students with disabilities than a charter school that is part of a traditional LEA that retains some or all of the special education responsibilities for students with disabilities who go to charter schools. Some states have both types by either choice of the charter school or as a function of the type of authorizer.

Linkage

The linkage between a charter school and a traditional LEA is the way the charter's LEA status is implemented. It can be described along a *continuum*. A charter school that is its LEA has full responsibility for special education and usually has *No-Link* to another LEA (although a charter could negotiate some working relationship with an LEA, if it chooses to do so). At the other end of the continuum, if the charter is considered part of an LEA and the LEA is responsible for the students with disabilities, the charter school usually has a *Total-Link* to that LEA (although it may be a *Partial-Link* if different arrangements are negotiated between the parties). A *Partial-Link* between a charter and another LEA exists when there is required or negotiated connection, e.g. the charter school has responsibilities for services but the child's home LEA carries out evaluation team tasks, or the charter school is responsible for only those services that can be delivered in the school and the LEA resumes responsibility when the child needs more specialized day or residential placement.

Special Education Funding Flow

As part of the public school system, charter schools are supported through federal, state and sometimes local education funds. The funding for students with disabilities is allocated depending on the state law and differs from state-to-state. The IDEIA 2004 provides that charter schools are entitled to federal funding for special education on the same basis as other schools in the state. Thus, the way the charter school receives its [IDEIA 2004] funds depends on the charter school's legal status and the public education system of the state. Refer to the chart below for Hawai'i's funding flow.

Other Information/Comments

Additional comments in the following columns are offered to clarify the preceding information or to make a point about charter schools that may have impact on special education implementation.

<http://www.uscharterschools.org/cs/spedp/query/q/2057>

Legal status and linkages for Hawai'i public charter schools

Today, the HIDOE is both the State Education Agency (SEA) and the LEA. The charter schools legal status is that of being *Part of the LEA*, and maintains a *Total-Link* to the HIDOE. The chart below gives a description of some of the special education issues that are relevant to charter schools in the State of Hawai'i.

LEGAL STATUS	TYPE OF SPED LINK	SPECIAL EDUCATION FUNDING FLOW	OTHER INFORMATION/COMMENTS
Part of an LEA	Total-Link	HI is a unitary district. Charter schools get per-pupil allotment from the district (state) for each enrolled pupil. Then, the State Special Education Director allocates teacher and aide positions to each charter school based on the same staffing method used for all public schools. Each island also provides related services personnel to charter schools out of its allocation.	Charter schools are required to attend all trainings and meetings and follow all directives involving special education including those related to the Felix case (a court consent decree to improve special education in the whole state).

Summary and Key Points

There is no substitute for an appropriate understanding of what a public charter school is, its legal status and how they are linked to the LEA, in this case, for Hawai'i, the HIDOE. A clear understanding of how the public charter schools function and interface with regard to special education and to the HIDOE is crucial in order to provide a free appropriate public education in the least restrictive environment and to meet the IEP needs of special education students.

The information in the chart on the previous page was reprinted from the **Primers on Special Education and Charter Schools: Compilation of Full Primer Set**, by E.M. Ahearn, E.A. Giovannetti, C.M. Lange, L.M. Rhim, and S.H. Warren of the National Association of State Directors of Special Education.

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