

Model Charter School Policies:
*Increasing Equitable Access
and Quality Opportunities for
Students with Disabilities*

Model Policy Guide, Second Edition, 2024



The Center for
Learner Equity

History and Mission of the Center for Learner Equity and the Model Policy Guide

While approximately 14 percent of U.S. public school students have disabilities, systemic ableism has left them an afterthought for far too long. With their increased autonomy and flexibility, charter schools can be a promising educational option for students with disabilities. However, during the inception of the charter movement, very few people were focused on ensuring that charter school policies addressed the needs of students with disabilities.

In October 2013, the Center for Learner Equity (CLE)'s co-founders created the National Center for Special Education in Charter Schools (NCSECS) to ensure that charter schools and high-choice districts leveraged the autonomy granted by state charter school laws to benefit students with disabilities. In creating NCSECS, the goal was to advocate for students with diverse learning needs to ensure they could access and thrive in schools designed to enable all students to succeed.

Over the years, our work has expanded to involve charter schools, charter management organizations, authorizers, districts, cities, states, and funders committed to supporting educational equity. In the Spring of 2021, we became the CLE to better reflect the scope of our work and our commitment to building bridges between charter schools and traditional public schools. Today, we remain committed to ensuring that students with disabilities, particularly those in under-resourced communities, have the quality educational opportunities and choices they need to learn and thrive.

We issued the first edition of this Model Policy Guide in 2017 to provide policymakers, advocates, and education leaders with information and model language to support the development of robust policies for educating students with disabilities in charter schools. We have updated the content in this second edition. As in the original guide, we offer suggested policy language that stakeholders can adapt. We also added a section summarizing additional policy considerations that all public schools should prioritize.



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Introduction

Public schools are legally responsible for providing students with disabilities a free appropriate public education (FAPE) in the least restrictive environment (LRE) and protecting their legal rights. Under 45 state laws (plus the laws of the District of Columbia and Puerto Rico), charter schools, which receive increased autonomy in exchange for heightened accountability, exist as part of the public school system. Ideally, charter schools use this autonomy to create innovative educational opportunities for all students, including those with disabilities. Reflecting a commitment to inclusion and reform, many charter schools take on this challenge, seeking to provide focused programs and supports to meet the needs of diverse learners as a central aspect of their schools' missions. However, since the first charter school opened in Minnesota in 1991, concerns persist about students with disabilities not having equal access to charter schools and about many of these schools not being fully equipped to provide appropriate special education services and supports along the full continuum of placements.¹

Research shows that multiple factors influence the provision of special education and related services in charter schools.² Federal law establishes specific rights and responsibilities that shape how all public schools must educate students with disabilities. Under federal law, state education agencies (SEAs) must ensure that students with disabilities receive FAPE. However, SEAs typically pass this responsibility down to Local Education Agencies (LEAs), tasking them with implementing the federal (and any additional state) requirements. At the same time, state charter school laws include provisions that define the legal identity of charter schools within the broader public school system, indicating whether they are LEAs for specific purposes, including special education. This designation of LEA status is important because it shapes the extent to which a charter school is responsible for providing special education and related services.³ The specificity of these statutes and the methods authorizers use to operationalize them vary considerably from state to state.⁴ In addition, state special education policies add a layer of complexity, as they often contain only limited language that builds upon the requirements of federal law without providing a clear description of how obligations are assigned to the respective SEAs, local districts, charter schools, or entities that serve as the school's authorizer. With this complex policy landscape as a backdrop, many charter schools still struggle to effectively meet the needs of students with disabilities 30 years into the evolution of the charter sector.

¹ Research and case law provide evidence that such concerns are warranted. See Government Accountability Office. (2012) "Charter schools: Additional federal attention needed to help protect access for students with disabilities" (Washington, D.C.)(2012). <http://www.gao.gov/products/GAO-12-543> (hereinafter "GAO Report"); Harmony Public Schools Compliance Review Ca. No. 06-11-5004 (Oct. 30, 2013). <http://www2.ed.gov/documents/press-releases/harmony-public-schools-agreement.pdf>; and http://www.nola.com/education/index.ssf/2015/02/federal_judge_approves_landmar.html; Notice of Proposed Class Action Settlement: Berry, et al. v. White, et al.: Civil Action 2:10-cv-04049-JCZ-KWR (n.d.). https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/resource/pb_v_white_-_notice_of_proposed_class_action_settlement.pdf; Lawton, et. al. v. Success Academy of Fort Greene, et. al.: Civil Action 15-cv-07058-FB-SMG (March 11, 2021). <https://www.nylpi.org/wp-content/uploads/2021/03/ECF-168-JUDGMENT.pdf>.

² Rhim, L. M., Ahearn, E. M., Lange, C. M., & McLaughlin, M. J. (2003). Balancing disparate visions: An analysis of special education in charter schools. In K. Bulkley, & P. Wohlstetter (Eds.), *Taking account of charter schools: What's happened and what's next?* (pp. 142-157). New York: Teachers' College Press; Rhim, L. M., & McLaughlin, M. J. (2007). Students with disabilities in charter schools: What we now know. *Focus on Exceptional Children*, 39(5); Rhim, L. M., Ahearn, E., & Lange, C. (2007). Toward a more sophisticated analysis of the charter school sector: Considering legal identity as a critical variable of interest. *Journal of School Choice* 1(3).

³ Lancet, S., Rhim, L.M., & O'Neill, P. (2020). Enrollment of students with disabilities in charter schools and traditional public schools. Center for Learner Equity. <https://www.centerforlearnerequity.org/wp-content/uploads/Enrollment-of-Students-with-Disabilities-in-Charter-Schools-and-Traditional-Public-Schools.pdf>.

⁴ Charter school authorizers are the entities granted power in state charter statutes to create and oversee charter schools. They are discussed in more detail in Section C, *Authorizer Approval and Oversight*.

This challenge is an ongoing source of concern for disability advocates and families⁵ and is the reason we have created this guide. Based on a review of state charter school laws, interviews with key stakeholders, and input from a range of national disability advocacy and charter school experts participating in our Equity Coalition,⁶ this document outlines specific language to help states establish better policy environments for charter schools to successfully educate students with disabilities. Our vision is that states interested in strengthening their charter policies and supporting students with disabilities in charter schools will adopt one or more of these passages into their existing statutes or regulations. In developing this resource, our goal is to help states embrace their responsibilities by addressing the education of students with disabilities in a way that reflects best practices developed over the first 30 years of charter schooling.

Educating Students with Disabilities in a Public Health Crisis

As of the writing of this second edition, the world is three years into the pandemic that upended our lives in nearly every respect. The COVID-19 pandemic heavily impacted K-12 education, forcing most schools to close their doors and provide online or hybrid instruction for at least one full school year. This crisis was very challenging for families who struggled with issues such as a lack of available childcare during the school day, limited space in the home for schooling to take place, and poor access to sufficient technology. At the same time, the prospect of returning students to school buildings during a public health crisis was a legitimate concern for many families.

One of the most significant educational challenges caused by the COVID-19 pandemic was meeting the instructional needs of students with disabilities. These students rely on specific services and supports documented in Individualized Education Programs (IEPs) or Section 504 plans. School closures and significantly modified school operations made implementing IEPs and Section 504 plans challenging. Limited access to school buildings severely impeded the provision of diagnostic evaluations and certain in-person services and supports.

When faced with COVID-19 or any future global health crisis that impedes in-person instruction, charter schools must follow federal and state law and public health and authorizer directives. Federal COVID-19 guidance established how schools should approach educating students with disabilities during a national public health crisis and how schools should address any loss of services and any learning loss through compensatory services and other interventions.⁷ That guidance emphasized the importance of schools and districts working closely and collaboratively with students and their families during these challenging times. As schools have resumed in-person learning, it is critical that they pay close attention to the learning loss experienced by students with disabilities and that they implement interventions directed toward mitigating that loss.

⁵ See GAO Report; Council of Parent Attorneys and Advocates. (2012). *Charter schools and students with disabilities: Preliminary analysis of the legal issues and areas of concern*. <https://cdn.ymaws.com/sites/www.copaa.org/resource/collection/7D72B914-2EC7-4664-9124-A32598DA1ABE/Charter-Schools-and-Students-with-DisabilitiesFINAL.pdf>.

⁶ The Equity Coalition is a group of disability and charter school experts regularly convened by the CLE to consider issues of equity, access, and educational performance in the charter sector.

⁷ U.S. Dept. of Education, Office of Special Education and Rehabilitative Services. (September 20, 2021). *Return to school roadmap: Development and implementation of individualized education programs in the least restrictive environment under the Individuals with Disabilities Education Act*. <https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf>.

Educating Students with Disabilities: Federal Law and the Impact of Charter School Legal Status

All charter schools must follow federal education laws,⁸ including the Individuals with Disabilities Education Act⁹ (IDEA), the Every Student Succeeds Act¹⁰ (ESSA), the General Education Provisions Act¹¹ (GEPA), and the Family Educational Rights and Privacy Act¹² (FERPA). They must protect students from discrimination in compliance with Title VI¹³ of the Civil Rights Act of 1964 (race, color, national origin), Title IX¹⁴ of the Education Amendments of 1972 (gender), Section 504 of the Rehabilitation Act of 1973¹⁵ (Section 504) (disability), and Title II of the Americans with Disabilities Act (ADA) (disability).¹⁶ These statutes and their corresponding regulations form the federal legal landscape in which public schools, including charter schools, educate students with disabilities. This guide focuses on issues related to the IDEA, Section 504, and the ADA and analyzes those issues through the lens of charter school legal status, which we discuss below.

A. The Individuals with Disabilities Education Act

The IDEA is the primary federal law addressing the education of students with disabilities. The central tenet of the IDEA is that all students with disabilities have the right to receive FAPE in the LRE.¹⁷ While the statute is primarily implemented by LEAs, the IDEA assigns ultimate responsibility for fulfilling its obligations to SEAs, who must supervise and monitor LEA implementation.¹⁸ Part of the core monitoring function of SEAs is to ensure that LEAs have the sufficient size and scope to implement the IDEA's components.¹⁹ LEAs have historically been traditional zoned school districts where a central office administers education for schools within its jurisdiction, creating the necessary size and scope to enable implementation of the IDEA's various components.

While not an exhaustive list of the full range of the IDEA's requirements, significant aspects include "Child Find" responsibilities to identify, locate, and evaluate students who may be eligible to receive special education and related services,²⁰ development of IEPs for qualified students,²¹ and the subsequent provision of FAPE in the LRE to all eligible students.²²

⁸ 20 U.S.C. § 7221(i)(2)(G), (I)(2015).

⁹ 20 U.S.C. § 1400 *et seq.* (2010).

¹⁰ *Every Student Succeeds Act of 2015*, 20 U.S.C. § 6301(2015).

¹¹ 20 U.S.C. § 1221 *et seq.* (2010).

¹² 20 U.S.C. § 1232(g) (2010).

¹³ Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.* (2010).

¹⁴ Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 (2010).

¹⁵ Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 *et seq.* (2015).

¹⁶ Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.* (2010).

¹⁷ 20 U.S.C. § 1412(a)(1)(A)(2010); 20 U.S.C. § 1412(a)(5)(A)(2010).

¹⁸ 20 U.S.C. § 1412 (a)(11) (2010).

¹⁹ 20 U.S.C. § 1413 (e)(1)(A)(2010).

²⁰ 20 U.S.C. § 1412 (a)(3)(2010).

²¹ 20 U.S.C. § 1414(d)(2010).

²² 20 U.S.C. § § 1400(d)(2010); 1412(a)(1)(A)(2010); 1412(a)(5)(A)(2010).

LEAs must provide a full continuum of educational placements to meet the individual needs of students, with placements ranging from the general education classroom to a home or hospital setting.²³ The IDEA also requires the provision of procedural safeguards to students with disabilities and their families, including but not limited to the following rights: to participate in all IEP team meetings; to receive prior written notice of proposed changes; to examine all educational records; to obtain an independent educational evaluation; to utilize processes for dispute resolution, including mediation and due process hearings; and to receive an annual copy of all the procedural safeguards mandated in the IDEA.²⁴

As public schools that receive federal funding, charter schools must meet the applicable requirements of the IDEA.²⁵ However, as discussed in more detail below, their designation as either an LEA or as a school within an LEA significantly impacts their specific legal obligations.

≡ B. Section 504 and the Americans with Disabilities Act

Title II of the ADA²⁶ and Section 504²⁷ are federal civil rights statutes that forbid any governmental entity and any entity that receives federal funding, respectively, from discriminating against individuals with disabilities. Like the IDEA, these civil rights laws apply equally and interchangeably to children with disabilities who attend any public school, including charter schools. Section 504 and the ADA define disability more broadly than the IDEA, extending non-discrimination protections to individuals who have physical or mental impairment(s) that substantially limit one or more major life activities, including learning.²⁸ This definition covers disabilities that do not fall under one of the specific categories listed in the IDEA, thus reaching a broader population of students than only those who receive IDEA services.

Section 504 and the ADA are applied almost identically in the public school context. They both enact a broad anti-discrimination mandate to ensure that no otherwise qualified individual with a disability shall, solely because of their disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.²⁹ However, there are subtle differences in their requirements worth noting. The ADA requires that programs be made accessible, including making reasonable modifications when necessary to avoid discrimination, as defined above. While commonly thought of as an issue of physical accessibility to school facilities, this accessibility requirement extends beyond physical access and reaches all aspects of a school's substantive programming, including curriculum, services, and supports.³⁰ A school's responsibilities to make modifications for students with disabilities are not limitless. The statute permits a school to decline a modification where it constitutes an "undue burden" or requires a "fundamental alteration" of a program.³¹

²³ 34 C.F.R. § 300.115 (2010); see also *Oberti v. Clementon School District*, 995 F.2d 1204 (3d Cir. 1993) (defining the continuum as "placements to meet the needs of [] children [with disabilities] as resource rooms, itinerant instruction, speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child's particular disabilities").

²⁴ 20 U.S.C. § 1415 (2010).

²⁵ 20 U.S.C. § 1413(a)(5) (2010).

²⁶ As defined above, this refers to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (2010).

²⁷ As defined above, this refers to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (2015).

²⁸ 34 C.F.R. § 104.3(j) (2010); 28 C.F.R. § 35.130 (2010).

²⁹ 29 U.S.C. § 794 (2015); 42 U.S.C. § 12132 (2010).

³⁰ 34 C.F.R. § 104.21 (2010); 28 C.F.R. §§ 35.130 (2010); 34 C.F.R. 104.31 (2010).

³¹ 28 C.F.R. §§ 35.130, 35.150 (2010).



... this accessibility requirement extends beyond physical access and reaches all aspects of a school’s substantive programming, including curriculum, services, and supports.

... a school’s mere inconvenience or financial impact alone is not sufficient grounds to exclude a student ...

34 C.F.R. § 104.21 (2010); 28 C.F.R. §35.130 (2010); 34 C.F.R. 104.31 (2010).

Exactly what meets this threshold is not easy to define. Courts have interpreted it in varying ways depending on the circumstances. However, it is clear from the totality of collective rulings that it is a high threshold and that a school’s mere inconvenience or financial impact alone is not sufficient grounds to exclude a student through failure to at least consider the modification.

Section 504’s regulations directly address public schools with requirements for Child Find, evaluation, FAPE, and LRE that are similar– but not identical in scope or detail– to those existing under the IDEA.³² Under Section 504, students with disabilities retain their rights to FAPE without a school’s ability to invoke “undue burden” or “fundamental alteration” defenses.

Section 504 and the ADA are anti-discrimination statutes at their core. Neither provides funding. Additionally, schools cannot use IDEA funds for students with disabilities who are eligible only under Section 504.³³

≡ C. Charter School Legal Status

While all public schools must comply with the IDEA, the entity designated as the LEA bears legal responsibility for implementing special education programs for students with disabilities; therefore, the legal status of a charter school, as either an LEA or as part of an LEA, is *the* defining characteristic that determines whether it is the entity responsible for providing an education that meets the requirements of the IDEA and Section 504. Because LEA status is central to determining responsibility for meeting the mandates of the IDEA and Section 504, state charter laws should be clear on the issue. They should also identify how related matters, including funding and the provision of a full continuum of placements, are operationalized.

³² 34 C.F.R. 104.31 et seq. (2010).

³³ See U.S. Department of Education. (2016). *Frequently asked questions about the rights of students with disabilities in public charter schools under Section 504 of the Rehabilitation Act of 1973.* <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf> (“FAQ about 504”).



... therefore, the legal status of a charter school, as either an LEA or as part of an LEA, is the defining characteristic that determines whether it is the entity responsible for providing an education that meets the requirements of the IDEA and Section 504.

... state charter laws should be clear on the issue. They should also identify how related matters, including funding and the provision of a full continuum of placements, are operationalized.

The IDEA was enacted in 1975, nearly 20 years before the first charter school law passed in Minnesota. Consequently, the statute did not anticipate or address the prospect of charter schools, many of which were established as single-school LEAs or semi-autonomous schools operating as part of larger district LEAs. While federal law trumps any conflicting state law, the development of charter schools has pushed federal, state, and local policymakers and practitioners to determine how these new schools and LEA-designated schools fit within the traditional legal paradigm for implementing and administering federal education programs. Despite some subsequent adjustments to the IDEA to account for charter schools, the fit between state charter law and federal disability law remains murky.

As outlined in the IDEA,³⁴ state charter school laws generally identify charter schools as either independent LEAs or part of existing LEAs. In a few states, such as New Hampshire and New York, the arrangement is more complex, and charter schools are the LEA for some purposes (e.g., ESSA Title I) and part of the LEA for others (e.g., special education under the IDEA). In some locations, such as California and Missouri, charter schools have some choice in their LEA status.³⁵ *Because most charter schools are either independent LEAs or part of other LEAs, this brief is limited to model language for these two arrangements.*

³⁴ 20 U.S.C. § 1413(a)(5) (2010); 34 C.F.R. §300.209 (2010).

³⁵ For state-by-state information on LEA status see National Alliance for Public Charter Schools (2022). *Charter law database*. <https://www.publiccharters.org/our-work/charter-law-database/>.

1. Charter Schools Operating as Independent LEAs

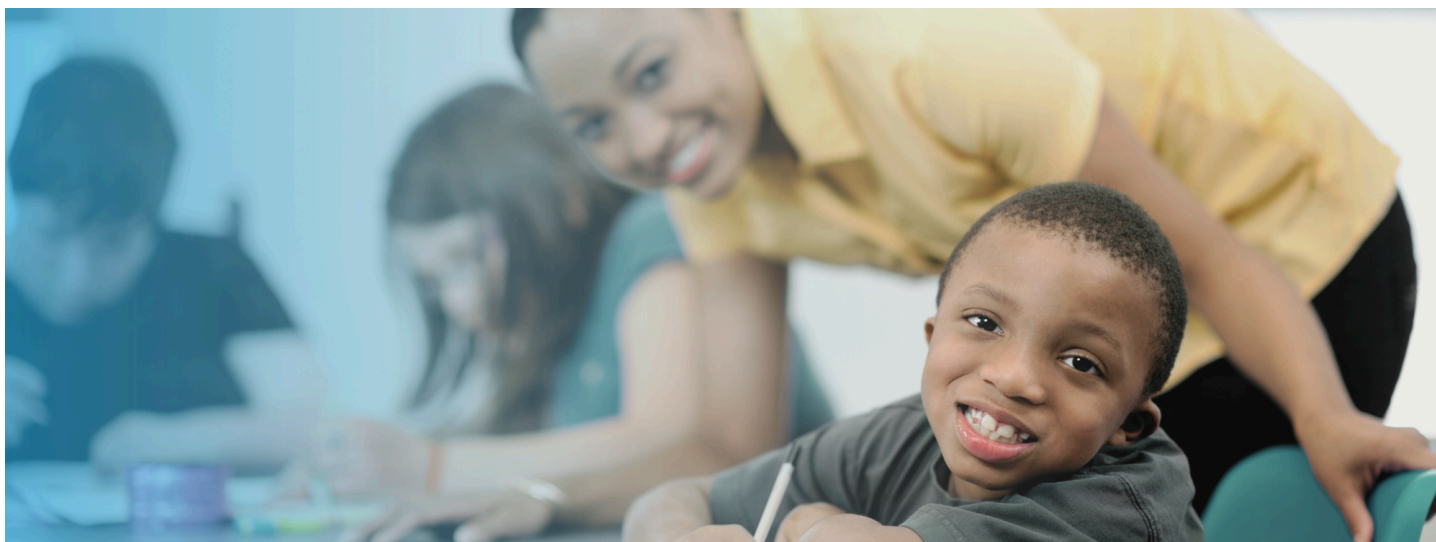
Some states give charter schools the highest degree of legal autonomy by granting them status as independent LEAs.³⁶ Charter schools serving as independent LEAs have the same responsibilities and authority as districts, which includes fulfilling all the requirements delineated in the IDEA, Section 504, and the ADA.

Charter schools that are LEAs may provide special education and related services directly or contract with outside providers, such as traditional districts or local nonprofit service providers. They typically retain federal and state funding attributable to LEAs, but the extent to which they are provided access to local revenues (e.g., those dollars collected and allocated by local school boards with taxing authority) varies considerably.³⁷

2. Charter Schools Operating within LEAs

In some states, the district remains the LEA and retains primary responsibility for providing special education and related services to students with disabilities. This arrangement may limit the obligations of charter schools; however, it often makes the schools dependent on the districts for evaluations, service delivery, and other measures. In a handful of states, the authorizer, rather than the district, may function as the LEA, and charter schools must collaborate with their authorizer to provide FAPE.

Charter schools that are part of LEAs share responsibility for providing the full continuum of placements with their designated LEAs. The LEAs have primary responsibility for special education, and the charters must collaborate with their LEAs to ensure students receive appropriate services. The schools must implement each student's IEP or Section 504 plan and facilitate access to the educational programs.³⁸ Sometimes, LEAs delegate primary responsibility and authority and the corresponding funding to charter schools located within the LEAs. Even when LEAs delegate such tasks to charter schools, the LEAs retain ultimate responsibility for these obligations under the IDEA.



³⁶ States in which charter schools are independent LEAs include Arizona, Ohio, and Pennsylvania.

³⁷ Batdorff, M., Maloney, L., & May, J., (2010). Charter school funding: Inequity persists. School Choice Demonstration Project. <https://scholarworks.uark.edu/scdp/10>. Progress Analytics Institute & Public Impact. "Charter School Funding: Inequity's Next Frontier" (2005). Thomas B. Fordham Institute. <https://fordhaminstitute.org/national/research/charter-school-funding-inequitys-next-frontier>.

³⁸ Examples of this type of arrangement include Colorado, Georgia, and Tennessee.

Model Policy Language

The following sections introduce background context and proposed policy language to address specific aspects of educating students with disabilities in charter schools. Because states differ significantly on whether these specifics exist in state law, regulations, or other policies, we use the term “policy” to indicate whichever type of policy addresses the specific topic in a given state.

NOTE: *Because the LEA status of a charter school impacts many of the topics covered in this guide, the suggested language is divided into two columns, “LEA” and “Non-LEA,” for the remainder of this document wherever the language is dependent on the LEA status. Where the concept is consistent regardless of the LEA status, the language appears just once. Contextual information appears in regular text, and model policy language appears in italics.*



≡ A. *Guaranteeing Legal Compliance and Equitable Access*

State policy should clearly establish that students with disabilities have access to charter schools (including facilities and programs) and that the schools must comply with all applicable laws. The applicability of federal disability laws, including IDEA, Section 504, and ADA, should be explicitly stated in state charter law. Moreover, because the legal status of charter schools is foundational to determining legal responsibility, state law should clearly articulate whether charter schools are independent LEAs or part of larger LEAs for purposes of special education. Finally, to ensure that students with disabilities have equitable access to charter schools, state charter laws should include enrollment provisions that prohibit discrimination and facilitate access for students with disabilities.

1. Clear Application of Federal Law

The IDEA, Section 504, and the ADA apply to all public schools, including charter schools, and state charter laws should include explicit language reflecting that fact.³⁹ The language should make it clear that charter schools are required to provide a free, appropriate public education to students with disabilities and that all students with disabilities have the right to access educational programming.

MODEL LANGUAGE:

Charter Schools shall comply with the requirements of the Individuals with Disabilities Education Act (IDEA), including its mandate that students covered by its protections receive a free, appropriate public education with access to the general curriculum in the least restrictive environment appropriate for their needs.

Charter schools shall also comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA). Per Section 504 and the ADA, no otherwise qualified individual with a disability seeking to engage in a major life activity shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by a charter school.

2. Facilities Access

As discussed above, charter schools are required under federal law (e.g., Section 504 and the ADA) to make programs fully accessible to all students.⁴⁰ This broad mandate includes physical accessibility, and state policy should explicitly state this requirement. Furthermore, charter school authorizers or an alternative designated monitoring agency (e.g., municipal health and safety agency) should ensure charter schools comply with these physical accessibility requirements.

MODEL LANGUAGE:

Each charter school must, consistent with the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, ensure that people with disabilities are not excluded from programs, activities, or services at the school, even if their facility is not fully accessible. Each charter school shall make its program accessible to students with disabilities, as well as to their parents and guardians, school personnel, and members of the public, in accordance with Section 504 of the Rehabilitation Act. If the school has obtained a waiver due to undue burden or fundamental alteration, the school should make such information publicly available.

³⁹ For more guidance regarding the application of these laws to charter schools, see U.S. Department of Education (2016). Frequently asked questions about the rights of students with disabilities in public charter schools under the Individuals with Disabilities Education Act. https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_faq-idea-charter-school.pdf ("FAQ about IDEA").

⁴⁰ See FAQ about 504.

3. Clarity of Legal Status

State charter laws should make the legal status of their charter schools (as either an independent LEA or part of a larger LEA) clear.

MODEL LANGUAGE	
LEA	NON-LEA
<i>Each charter school shall serve as the local education agency (LEA) for purposes of special education and related services.</i>	<i>Each charter school shall serve as a school of location within its local education agency (LEA) for purposes of special education and related services.</i>

4. Enrollment

a. Enrollment: General

Charter schools must enroll students without regard to disability status, and state policy should explicitly state this requirement. The legal status of a school as either the LEA or as part of a larger LEA may impact how and where students are educated. It is also critical to explicitly specify the entity responsible for providing FAPE and for ensuring that procedural safeguards are followed. We suggest including that language in the enrollment section alongside the anti-discrimination clause.

MODEL LANGUAGE	
LEA	NON-LEA
<i>Each charter school shall enroll students without regard to disability and shall be responsible for all obligations under the IDEA, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and state law, including but not limited to identifying and evaluating students with suspected disabilities; convening individualized education program (IEP) and Section 504 plan teams to develop IEPs and Section 504 plans; providing appropriate special education and related services and supports; maintaining a full continuum of placements for all enrolled students; and ensuring that all students with disabilities and their parents are provided with all of the procedural safeguards outlined in the IDEA and state law.</i>	<i>Each charter school shall enroll students without regard to disability status.</i> <i>Following selection via the lottery, the charter school shall review the individualized education programs (IEPs) and Section 504 Plans of all students with disabilities as soon as practicable so that the charter school can ensure immediate implementation of the IEPs and Section 504 plans. If the charter school has concerns that a student's IEP requires a more restrictive placement than that provided by the charter school, it shall ask the local education agency (LEA) to convene an IEP team meeting, including representatives from the charter school and the student's parents, to discuss the appropriateness of adjustments to the IEP or the school's program that the IEP team deems necessary to ensure that the student is provided a free, appropriate public education (FAPE) in the least restrictive environment (LRE).</i>

MODEL LANGUAGE	
LEA – Cont.	NON-LEA – Cont.
	<p><i>It is the IEP team’s responsibility, under the leadership of the LEA, to determine the appropriate placement and location of services. In rare instances where an IEP team determines that the charter school is not the appropriate placement for the student, the IEP team shall determine the appropriate placement and the LEA shall identify the school within its jurisdiction that can provide the agreed-upon placement.</i></p> <p><i>The LEA shall remain ultimately responsible for ensuring that all students with disabilities receive FAPE and that all students with disabilities and their parents are afforded all of the procedural safeguards delineated under the IDEA and state law. Where the LEA and the charter school agree that the charter school will be responsible for any of these requirements, such agreement shall be in writing and shall be made available to impacted students and families.</i></p>

b. Enrollment: Preferences

Nearly all states that allow charter schools have language in their charter school laws that permit enrollment preferences⁴¹ (e.g., allowing certain groups of students to be extended priority in admissions).⁴² The most common preference is for siblings of current students. Other common preferences include those for applicants in the school’s neighborhood or children of founding board members.

Policy language that allows (i.e., does not forbid) a school to give preference to underrepresented groups of students or students “at risk” of academic failure enables schools to enroll these students more intentionally. Such a preference can also serve as a strategy for authorizers to address the under-enrollment of students with disabilities in specific schools. When state law allows for an admissions preference for students with disabilities, LEA charter schools may ask applicants to provide information about disability status solely to qualify for an admissions preference and not for any discriminatory purpose.

⁴¹ The terms “enrollment preference” and “admissions preference” are used interchangeably. In this guide, we use “enrollment preference.”

⁴² For more information on state preference language, see Education Commission of States (2020). 50 state comparison: charter schools—Does the state specify the students who may be given enrollment preference? <https://reports.ecs.org/comparisons/charter-school-policies-04>.

The federal government is ambiguous regarding the use of enrollment preferences to assist with the creation of a charter school specifically designed to serve students with disabilities. Guidance related to funding eligibility under the U.S. Department of Education's Charter Schools Program does not allow its funds to support creating schools that exclusively serve disadvantaged students, including students with disabilities. The Department's guidance restricts the ability of charter schools to tailor admissions to students with disabilities, except where a state's law allows for such a preference.⁴³

However, guidance related to Section 504 indicates that schools can ask about disability status on an application to enhance the chances of a student with a disability being admitted, where the school serves the educational needs of students with a specific disability and the school asks prospective students if they have that particular disability.⁴⁴

c. Enrollment: Specialized Charter Schools

In some cases, charter school founders seek to establish a school that primarily or entirely focuses on students with specific disabilities. Charter schools that focus on educating students with particular disabilities, such as autism, hearing impairment, or learning disabilities exist in several states (e.g., Arizona, Florida, and Ohio). For such schools to be lawful, they must comply with the legal requirements of federal law and their state charter law. Charter schools that receive funds through the U.S. Department of Education's Charter School Program must also meet the requirements outlined in the Department's regulations and guidance (e.g., open enrollment policies and lotteries for oversubscribed schools). In line with broader efforts to facilitate inclusive practices and decrease the proportion of students educated in more restrictive settings, applications for specialized schools should trigger a review by the SEA and the LEA to assess the availability and delivery of specialized services in the school catchment area. Consistent with federal law, students should not be placed in such a school solely based on their disability category. Instead, placement should be based on an IEP team's determination of the student's needs, as reflected in their IEP and evaluation results.

MODEL LANGUAGE:

This section does not preclude the formation of a charter school with a mission of serving students at risk of academic failure, such as those with disabilities. Charter schools focused on meeting the needs of students with disabilities may target recruitment and admissions in a manner that permits them to enroll and serve students with a particular disability profile or who need similar special education services and supports. Any such preferences shall be consistent with an admissions and enrollment plan approved by the authorizer and consistent with the school's charter and applicable state and federal law. Consistent with federal law, students should not be placed in such schools solely based on their disability category. Rather, placement decisions shall be made by a student's Individualized Education Program (IEP) team, including the student's parents, as required under the Individuals with Disabilities Act (IDEA), and shall be based on the student's individual needs as reflected in their IEP and evaluation results.

⁴³ United State Department of Education Charter Schools Program, Title V, Part B of the ESEA, Nonregulatory Guidance, at E3 (2015).

⁴⁴ See FAQ about 504.

d. Enrollment: Quotas

Considerable data shows that charter schools in many places enroll a lower percentage of students who require significant or highly specialized supports and services than traditional district schools.⁴⁵ In response, education policymakers and legislators in some states (e.g., New York) have implemented an enrollment quota system, requiring charter schools to enroll a certain percentage of students with disabilities that tracks local or national norms. While the implementation of quota systems may be well-intentioned, it is an ineffective reaction to a troubling situation. The problem is two-fold.

First, only minimal research has been conducted examining the causes of the enrollment discrepancies and whether they reflect a uniform problem or a combination of variables.⁴⁶ For example, in some instances, enrollment discrepancies could be the result of charter schools improperly resisting the enrollment of students with disabilities. In other cases, the cause could be over-identification of students with disabilities by the traditional district. In other situations, traditional district LEAs may make placement decisions for students with disabilities that are outside the charter school's control. Without knowing the exact cause of the problem, it is difficult to believe that a quota would solve it.

Second, regardless of the reasons for enrollment discrepancies, imposing a quota to address such a complex problem is overly simplistic. Students receiving special education services have a spectrum of needs. Simply requiring a fixed percentage of students who enroll in charter schools to have disabilities ignores this reality. Moreover, as schools of choice, charter schools cannot simply meet a quota. They must educate those students with identified needs who choose to enroll. Tools such as focused recruitment and weighted lotteries are much better, more equitable solutions to enrollment disparities.

Because we do not believe quotas lead to equitable enrollment, we decline to offer policy language designed to implement them. Instead, we recommend that states and charter school authorizers develop focused strategies to assist charter schools in recruiting, retaining, and supporting students with disabilities. Such methods include exploring how enrollment rates of students with disabilities reflect or connect to other aspects of the school's special education practices, including robust Child Find activities to identify students with disabilities, and offering strong special education programs that attract students with IEPs.

B. Ensuring Quality

While legal compliance and equitable access are foundational requirements that charter schools should meet, the goal for all schools should be to provide students with quality education. Two critical components to ensuring quality are the delivery of appropriate services and supports for students with disabilities and the funding to facilitate that delivery. State laws are often unclear about who is responsible for delivering services to students with disabilities and how special education dollars flow to charter schools. We address policy recommendations to remedy the confusion on both topics here.

⁴⁵ See, e.g., GAO Report; Center for Learner Equity (2015). *A Secondary Analysis of the Civil Rights Data Collection to Inform Policy and Practice: Key Findings and Guiding Questions that Examine the Experiences of Students with Disabilities in Charter and Traditional Public Schools- Enrollment Characteristics of Students with Disabilities in Charter and Traditional Public Schools.* https://www.centerforlearnerequity.org/wp-content/uploads/CLE-CRDC_FINAL-Brief-2a.pdf.

⁴⁶ See, e.g., GAO Report; Winter, M. (2015). *Narrowing the Charter-Enrollment Gap: Denver's Common Enrollment System.* Manhattan Institute Civic Report. <https://www.manhattan-institute.org/sites/default/files/R-MW-1215.pdf>; Winters, M. (2013). *Why the Gap? Special Education and New York City Charter Schools.* Center for Reinventing Public Education and Manhattan Institute for Policy Research. <https://crpe.org/why-the-gap-special-education-and-new-york-city-charter-schools/>.

1. Service Provision

a. Service Provision: General⁴⁷

Charter schools serving as LEAs have the same responsibilities and authority as traditional districts serving in that role. They are required to identify and evaluate students suspected of having disabilities. They must convene IEP teams to develop IEPs and Section 504 plans and provide all the procedural safeguards set out in the law, including the provision of FAPE in the LRE to all eligible students. They may provide special education and related services directly or contract with outside providers for service delivery.

Where a charter school is a school within an LEA, the LEA ordinarily retains primary responsibility and authority for identifying and evaluating students suspected of having disabilities and for convening IEP teams⁴⁸ to develop IEPs and Section 504 plans. In these circumstances, the charter school is often tasked with IEP implementation. Charter operating agreements typically delineate which party is responsible for these and other tasks, such as transportation and legal fees.⁴⁹

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>The charter school shall be responsible for identifying and evaluating, in a timely manner, those students suspected of having disabilities who are enrolled at the charter school but not yet identified.</i></p> <p><i>For all identified students, the charter school shall be responsible for convening individualized education program (IEP) and Section 504 plan teams to develop IEPs and Section 504 plans, for overseeing the implementation of IEPs, and for all related costs. For students with disabilities who transfer to the charter school, the district or charter school in which each student was previously enrolled shall transfer to the receiving charter school the student’s current IEP within a reasonable time, and the receiving charter school shall follow the process for transfer IEPs as set out in 20 U.S.C. 1414(d)(2)(C).</i></p>	<p><i>The local education agency (LEA) shall be responsible for identifying and evaluating, in a timely manner, those students suspected of having disabilities who are enrolled at the charter school but not yet identified.</i></p> <p><i>For all identified students, the LEA shall be responsible for convening individualized education program (IEP) and Section 504 plan teams to develop IEPs and Section 504 plans and for overseeing the implementation of IEPs. For students with disabilities who transfer to the charter school, the district or charter school in which each student with a disability was previously enrolled shall transfer to the receiving charter school the student’s current IEP within a reasonable time, and the LEA and the receiving charter school shall follow the process for transfer IEPs as set out in 20 U.S.C. 1414(d)(2)(C).</i></p>

⁴⁷Regardless of any agreements related to which party is responsible for service provision, the ultimate responsibility for ensuring compliance with the law remains with the SEA and, under SEA supervision, the LEA.

⁴⁸The IDEA requires that an IEP team include: the parents of the child; a regular education teacher of the child if the child is participating in regular education; one special education teacher of the child, a representative of the public agency responsible for specialized instruction of the child, an individual who can interpret the instructional implications of evaluation results (may be one of the above); other individuals who have knowledge or expertise regarding the child; and, whenever appropriate, the child with a disability. 34 CFR § 300.321(a)(2010).

⁴⁹For consistency and transparency, we recommend that responsibilities be set out in state policy rather than in individual charter agreements. For charter schools that are part of LEAs that are not their authorizers, we recommend the use of a Memorandum of Understanding (MOU).

MODEL LANGUAGE
LEA – Cont.

As the local education agency (LEA), the charter school shall fully meet the identified needs of each student with a disability. To implement an IEP, a charter school may, if needed, retain independent contractors or contract for placements at other schools, in addition to employing its own special education and related service providers.

Regardless of how or where they receive instruction, such students shall continue to be enrolled at the charter school, and the charter school remains solely responsible for providing a free, appropriate public education (FAPE).

If the charter school contracts for all or a substantial portion of its special education responsibilities to be carried out through an educational service provider, the contract with the educational service provider shall be reviewed and approved in writing, in advance, by the charter school's authorizer.

NON-LEA – Cont.

For all enrolled students with disabilities, the LEA shall be responsible for the cost of any transportation required by students' IEPs and for any cost of related legal fees. The charter school shall be responsible for ensuring that its staff implements student IEPs. Should the LEA express concern regarding the conduct of any charter school employee or contractor concerning a special education matter, the charter school shall respond to such concerns in good faith, taking corrective action if appropriate.

Should the school fail to take effective corrective action following such notice, it shall indemnify the LEA for any cost of defense or remedy attributable to the conduct of its employees or contractors.

Funding Allocation:

(i) If the LEA provides all special education and related services to a charter school, it may retain all federal, state, and local (as applicable) categorical special education funding and may charge the charter school for additional special education costs. If the LEA provides less than all special education and related services, it may retain an amount of federal, state, and local (as applicable) funding proportionate to what it provides.

A charter school may express any concerns it has with special education or related service staff of the LEA to the appropriate managers, who shall respond to such concerns in good faith, taking corrective action or reassigning staff if appropriate.

(ii) If a charter school provides special education and related services or contracts with other parties who provide such services, the school shall receive a share of federal, state, and local (as applicable) special education funding, if any, proportionate to the level of services it provides to, or contracts to be provided to, students with disabilities.

MODEL LANGUAGE

LEA – Cont.

NON-LEA – Cont.

(iii) If a charter school provides all special education and related services or contracts with other parties to provide such services for every Such an arrangement shall be established only with the consent of the LEA and memorialized through the charter operating agreement, an amendment to that agreement, or a contract between the parties that is made an addendum to that agreement, with the LEA clearly stipulating who is responsible under the contract for delivering a free appropriate public education (FAPE) in the least restrictive environment (LRE).

The charter school may retain independent contractors or contract for placements at other schools in addition to employing its own special education and related service providers. Such a charter school shall receive all federal, state, and local (as applicable) categorical special education funds, less a reasonable administrative fee charged by the LEA, and the charter school shall be responsible for the cost of educating all students with disabilities who enroll at the school including any cost of transportation and any cost of any legal fees incurred.

The charter school shall indemnify the LEA for all costs of defense and all costs of remedies in special education matters attributable to any conduct of the charter school and may maintain a restricted self-insurance reserve in an amount negotiated by the school and the LEA as security for such indemnification. The charter school may participate in any risk pool or similar cost-sharing arrangement otherwise permitted by law.

b. Service Provision: Autonomy

Charter schools that are LEAs have autonomy similar to traditional school districts. They have much more freedom but must still answer to their SEA and comply with all relevant SEA policies. In contrast, charters that operate as part of existing LEAs may be required to adopt the existing LEA's special education policies, practices, and programs (e.g., a specific reading or behavioral support program). However, established approaches may not align with a charter school's unique instructional program, and adopting the district's policies, practices, and programs may preclude charter school operators from creating distinct and potentially innovative special education programs more aligned with the school's mission and vision. State policy should permit charter schools operating within existing LEAs to develop and implement their own special education policies, practices, and programs in compliance with the IDEA and based on clear evidence of capacity, as such policy will create better opportunities for special education innovation in charter schools. Furthermore, when existing LEAs are under corrective action due to non-compliance with the IDEA, this policy language enables charter schools to create compliant policies, practices, and programs rather than potentially requiring them to replicate non-compliant LEA policies and practices.

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>Charter schools are autonomous and shall be given the same autonomy as traditional districts; however, they must follow all state education agency (SEA) policies and all relevant federal and state laws from which they are not specifically exempted.</i></p>	<p><i>Charter schools that are part of a local education agency (LEA) may elect to receive federal, state, and local (as applicable) special education revenue in lieu of special education and related services if:</i></p> <p><i>(i) the existing LEA has been found to be out of compliance IDEA (e.g., the local education agency is under a corrective action plan due to significant findings of non-compliance); or</i></p> <p><i>(ii) the charter school demonstrates sufficient capacity to operate as an LEA and provide a full continuum of services in compliance with relevant statutes.</i></p>

c. Service Provision: Creative Collaboration

The IDEA provides considerable flexibility in how LEAs meet their obligations to enrolled students with disabilities. Many charter schools utilize this flexibility, partnering in a variety of ways to build the necessary size and scope to meet their IDEA obligations.⁵⁰ Examples of these partnerships include linking with an educational service provider (e.g., a local nonprofit), participating in a collaborative, joining an Educational Service Agency, or entering into a formal agreement to pool resources and share services with other charter schools.⁵¹ State policy should explicitly address these collaborative opportunities. While various methods exist to build necessary infrastructure through innovative approaches, our model language will present two such options.

⁵⁰ See O'Neil, Paul T., and Garda, Robert A. *Charter Schools and Special Education: Ensuring Legal Compliance Through Capacity Building*, 50 U. MEM. L.R. 947 (Summer 2020).

⁵¹ Some of these arrangements may result in a student enrolled in one school receiving services in another. It should be noted that if a school were to seek to limit access to its program solely on the basis of a student's disability, Section 504 and ADA could be barriers.

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>Charter schools may contract with educational service providers to carry out all or a substantial portion of their special education responsibilities. Charter schools may also collaborate with other charter schools to offer a continuum of placements to students. They may enter into a formal agreement memorializing the sharing of resources, coordination of efforts, and respective roles of the parties to the agreement. Ultimately, responsibility for meeting obligations outlined in the IDEA remains with the charter local education agency (LEA) that enrolled the student with a disability.</i></p>	<p><i>In the event a charter school seeks to contract with an educational service provider to carry out all or a substantial portion of its special education responsibilities, the contract with the educational service provider shall be reviewed and approved in writing, in advance, by the local education agency (LEA), which shall not unreasonably withhold its approval. The charter school may collaborate with other charter schools to share resources, coordinate efforts, and ensure that a continuum of placements is provided to students. Charter schools may enter into a formal agreement memorializing such arrangements. Ultimately, responsibility for meeting obligations outlined in the IDEA remains with the district LEA.</i></p>

d. Service Provision: Students with Significant Needs

State law should include the charter schools' responsibilities for providing FAPE, including for those students who require significant supports and may need a more specialized setting.

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>Charter schools are responsible for ensuring the provision of the full array of special education and related services and the availability of the full continuum of placements to all students with disabilities in their jurisdiction. For students with disabilities whose individualized education program (IEPs) include significant and/or highly specialized supports, charter schools may, subject to IEP team determination as to the appropriateness in any specific circumstance, develop their own program of services, contract with public or private providers, utilize a private placement at the charter school's expense, or otherwise arrange to provide the required services.</i></p>	<p><i>For every student with a disability who enrolls at a charter school that is part of a local education agency (LEA), the LEA remains responsible for convening an individualized education program (IEP) meeting, with charter school staff included as members of the IEP team. Should the IEP team determine that a free, appropriate public education (FAPE) for the student includes the provision of significant services or supports, the IEP team shall start with a presumption that the charter school will provide those services and supports on-site, with the charter school and LEA working together to coordinate and deliver those services and supports at the charter school.</i></p>

MODEL LANGUAGE	
LEA – Cont.	NON-LEA – Cont.
<p><i>Where available, the charter school may seek to use the local education agency (LEA) high-cost fund or access any available risk pool to defray the cost of a child with significant support needs. Regardless of the availability of such funds, ultimate responsibility for meeting the obligations outlined in federal law remains with the charter LEA that enrolled the student with a disability.</i></p>	<p><i>If the IEP team concludes that the charter school is not the appropriate setting for providing FAPE to the student, the IEP team may agree to change the student’s setting to another site within the LEA where FAPE can be provided. Such decisions are to be made only by the IEP team, inclusive of the student’s parent or guardian, and should be strictly individualized and based upon the student’s need, never categorical or predetermined by LEA or charter policy, and only made after a demonstrated effort to first consider how services and supports could be coordinated at the charter school.</i></p>

e. Service Provision: Virtual Schools

Charter schools that deliver content through a virtual or blended learning model may be an attractive option for students with disabilities because the nature of virtual learning allows students to access a highly individualized program. Nevertheless, it can be challenging to meet state and federal special education requirements (particularly FAPE and LRE) in the virtual environment. Related services, particularly occupational and physical therapy, may be complex for virtual charter schools to provide to students spread throughout the wide geographic area (i.e., statewide) that characterizes many virtual charter schools’ enrollment boundaries. Furthermore, virtual school websites must comply with Section 508 of the Rehabilitation Act, which requires Federal entities to make their electronic and information technology (EIT) accessible to people with disabilities.⁵² State policy should clearly address these requirements.

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>Virtual or blended learning charter schools have the same obligations related to educating students with disabilities as brick-and-mortar public schools. Schools that deliver their content via virtual or blended learning shall be responsible for all obligations under the Individuals with Disabilities Act (IDEA), Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and state law.</i></p>	<p><i>For virtual or blended charter schools that are part of a local education agency (LEA), the LEA and charter school shall have the same obligations related to educating students with disabilities as brick and mortar public schools. For schools that deliver their content via virtual or blended learning, the LEA shall be responsible for ensuring that the charter school engages in Child Find, evaluation, and identification of students with disabilities in accordance with federal and state law.</i></p>

⁵² 29 U.S.C. § 794 (2014).

MODEL LANGUAGE	
LEA – Cont.	NON-LEA – Cont.
<p><i>The schools shall convene individualized education program (IEP) and 504 teams to develop appropriate IEPs and Section 504 plans for identified students.</i></p> <p><i>For students already identified, the IEP and 504 teams shall convene to review IEPs and Section 504 plans to make adjustments given changes in how the curriculum is delivered. Schools shall conduct these activities while ensuring that newly developed and/or amended IEPs and Section 504 plans do not limit admissions or diminish students' ability to receive a free appropriate public education in the least restrictive environment. Schools that deliver their content via virtual or blended learning shall ensure the curriculum is delivered in conformity with the student's IEP or Section 504 plan to ensure the student's ability to receive a free, appropriate public education.</i></p>	<p><i>The LEA shall convene individualized education program (IEP) and 504 teams to develop appropriate IEPs and Section 504 plans for identified students.</i></p> <p><i>For students already identified, the IEP and 504 teams shall convene to review IEPs and Section 504 plans to make adjustments given changes in how the curriculum is delivered. The LEA shall conduct these activities while ensuring that newly developed and/or amended IEPs and Section 504 plans do not limit admissions or diminish students' ability to receive a free appropriate public education in the least restrictive environment. LEAs shall ensure that schools that deliver their content via virtual or blended learning deliver the curriculum in conformity with the student's IEP or Section 504 plan to ensure the student's ability to receive a free appropriate public education.</i></p>

f. Service Provision: Special Education during Disciplinary Removals

There are special rules in place for educating students with disabilities who have been removed from their educational setting due to school discipline.⁵³ Fundamentally, these rules mandate that, after adhering to relevant procedural safeguards to make removal determinations, LEAs continue educating students with disabilities, including implementing their IEPs, throughout their disciplinary removal.⁵⁴ Under federal law, LEAs must provide interim Alternative Educational Settings (IAESs) in which to educate students with disabilities during periods of disciplinary removal exceeding 10 days.⁵⁵

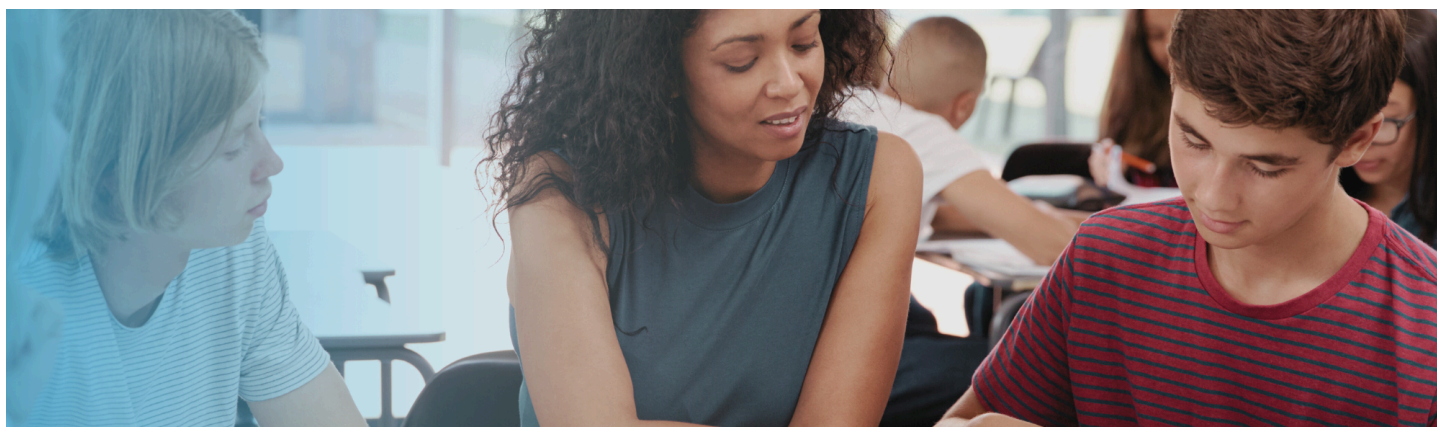
Charter schools must ensure they have planned for access and availability of this setting in the event (albeit rare) that they may need to place a student with a disability there. Planning for these disciplinary settings is essential to ensure the continuity of educational services for students with disabilities experiencing disciplinary removals, in line with federal law, as the failure to continue services (regardless of the disciplinary issues the student experienced) constitutes an outright denial of FAPE.

⁵³ 20 U.S.C. § 1415(k)(2015).

⁵⁴ *Id.* at § 1415(k)(1)(D).

⁵⁵ *Id.* at §§ 1415(k)(1)(B), (C), (G) and (k)(2).

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>Charter schools must identify the setting in which they will educate students with disabilities who have been otherwise appropriately removed from school due to a disciplinary incident. Charter schools may choose to partner with an educational service provider who provides alternative education or contract with the existing traditional local education agency (LEA) in which the charter school is geographically located to utilize its existing alternative setting for students suspended or expelled from its schools.</i></p>	<p><i>Local education agencies (LEAs) shall ensure that charter schools have access to the LEAs' existing alternative settings for educating students with disabilities who have been removed from school due to a disciplinary incident.</i></p>



2. Funding

a. Funding: General

Adequate funding for the education of students with disabilities is critical in all public schools; however, funding mechanisms and amounts differ across states. For charter schools, funding issues are even more complex. Charter schools serving as LEAs typically retain federal and state funding attributable to the LEA, but the extent to which they are provided access to local revenues (e.g., those dollars collected and allocated by local school boards with taxing authority) varies considerably.⁵⁶ When a charter school operates as part of an LEA, the funding process is even more complicated, with districts often given much discretion in distributing special education dollars. Ideally, funding for special education and related services should be allocated proportionally, with the LEA retaining special education funds corresponding to whatever services it provides and the charter school doing the same. State policy should explicitly spell out how funding will be allocated.

⁵⁶ Batdorff, M., & Maloney, et al (2010). *Progress Analytics Institute and Public Impact* (2005). Progress Analytics Institute & Public Impact. "Charter School Funding: Inequity's Next Frontier" (2005). Thomas B. Fordham Institute.

<https://fordhaminstitute.org/national/research/charter-school-funding-inequitys-next-frontier>. Rhim, L.M., O'Neill, P. Ruck, A., Huber, K., & Tuchman, S. (2015) *Getting Lost While Trying to Follow the Money: Special Education Finance in Charter Schools*, National Center for Special Education in Charter Schools. https://www.centerforlearnerequity.org/wp-content/uploads/sped_finance_web-1.pdf.

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>The charter school shall receive all federal, state, and local (as applicable) categorical special education funds, except funds lawfully retained by the state education agency (SEA) for administrative purposes when such funds are also held back from the other local education agencies (LEAs) under the supervision of the SEA. The charter school shall be solely responsible for the cost of educating all students with disabilities who enroll at the school, including transportation costs and legal fees.</i></p>	<p><i>The charter school shall receive an allocation of all federal, state, and local (as applicable) funds that are proportionate to the services provided by the charter school to students with disabilities enrolled there. The [ENTITY SERVING AS THE local education agency (LEA) shall likewise retain all such funds corresponding to the services it provides to students with disabilities enrolled in the charter school.</i></p>

b. Funding: Transparency

Public schools utilize multiple revenue sources to fund special education, and it is often difficult to ascertain the funding details. This is an even more significant challenge when charter schools are part of an LEA. They sometimes receive services rather than direct revenue from federal, state, or local sources. Yet, charter schools are often unable to determine whether they are receiving equitable services relative to these revenue streams. Furthermore, unlike traditional public school districts, they do not have any means to increase local revenues when they require more resources to provide special education and related services. Policy language dictating transparency around funding sources would provide both traditional district schools and charter schools with greater clarity regarding the relationship between revenue and services.

MODEL LANGUAGE:	
LEA	NON-LEA
<p><i>State education agencies (SEAs) will provide charter schools with an annual accounting of federal, state, and local (as applicable) revenue, disaggregated by source, and by which method they were derived, allocated to support the provision of special education and related services to students enrolled in charter schools that operate as independent local education agencies (LEAs). This accounting shall be disaggregated by funding source.</i></p>	<p><i>Local education agencies (LEAs) shall provide charter schools with an annual accounting of federal, state, and local (as applicable) revenue allocated to support the provision of special education and related services to students enrolled in charter schools that operate as part of the LEA. This accounting shall be disaggregated by funding source.</i></p>

c. Funding: Extraordinary Cost Aid

Students with more intensive needs can, due to their disabilities, require significantly more services and supports than other students. Those who receive services and interventions for most of the school day, even in inclusive classrooms, may require higher staffing levels, modifications, and accommodations that can be extraordinarily costly. Some states fund extraordinary aid reimbursement funds or “risk pools” explicitly to assist districts that enroll students with extraordinary needs.⁵⁷ State policy should establish that charter schools, especially those that serve as independent LEAs, have equal access to information about these funds and an equal opportunity to apply for them.

MODEL LANGUAGE:

A charter school shall have equal access to state supplemental reimbursement funds for students who require extraordinary special education and related services. Where a local education agency (LEA) other than the charter school provides these services directly or indirectly, it shall retain such funds.

d. Funding: Self-Insurance/Risk Pools

Risk pools and self-insurance arrangements can help charter schools that serve as their own LEAs shoulder the obligation of funding special education and related services. There is no equivalent for non-LEA charter schools, but schools should be aware of other risk pools to which they may have access, such as ones held by their state or LEA.

MODEL LANGUAGE:

LEA	NON-LEA
<p><i>The charter school shall create a restricted self-insurance reserve for special education costs or liabilities, in an amount agreed to with the authorizer. Such a reserve may be established over a period of years, as directed by the authorizer. The charter school may participate in any risk pool or similar cost-sharing arrangement otherwise permitted by applicable law.</i></p>	<p>N/A</p>

⁵⁷ In practice, most states underfund their exceptional aid funds. As a result, districts typically receive a pro-rated amount for qualified services. For more information, see Center for Learner Equity (2019). “Charter School Special Education Finance Project.” <https://www.centerforlearnerequity.org/map/state-data/>.

e. Funding: Preschool

Not all state charter school laws allow chartering at the preschool level. However, for those that do, effectively educating young children with disabilities enrolled in preschool programs requires that charter schools have access to IDEA Section 619 funds, which are allocated for the education of children aged 3-5. Policy in states where preschool charters are permitted should explicitly state that those schools are entitled to equitable access to these IDEA funds.

MODEL LANGUAGE:

Charter schools shall have equitable access to funding under Section 619 of the Individuals with Disabilities Education Act to support the provision of services to preschool students. Such access to funding shall equal that of other public schools providing preschool education in the state.

C. Authorizer Approval and Oversight

Charter school authorizers are the entities that approve charter schools, set expectations for them, oversee their performance, and decide whether they remain open at the end of the term of their charter. Depending on state law, authorizers can take a variety of forms. Authorizer types include districts, universities, non-profit organizations, independent chartering boards, and state education departments. State law also determines whether an authorizer, whatever its form, is the LEA.

Given their approval, oversight, and renewal roles, authorizers have powerful levers to ensure charter schools equitably enroll and appropriately educate students with disabilities. However, the specifics of authorizing vary significantly across states, and authorizers take multiple approaches to their oversight responsibilities. Some authorizers keep close tabs on their schools, while others take a more “hands-off” approach.

The Special Education Toolkit⁵⁸ created by CLE (when the organization was NCSECS) and the National Association of Charter School Authorizers (NACSA) provides tools and resources for authorizers to use throughout the lifecycle of their charter schools: the creation of application requirements, application review and approval, oversight, and renewal and revocation. The toolkit includes rubrics to support authorizers of charter schools that are part of the district LEA⁵⁹ and those that are their own LEA⁶⁰ and provides an in-depth look at how authorizers can ensure that their charter schools are equitably enrolling and educating students with disabilities. We encourage authorizers to utilize this toolkit to ensure their schools are equipped to equitably enroll and appropriately educate students with disabilities. In addition, we offer policy language below that incorporates aspects of the toolkit.

⁵⁸ National Center for Special Education in Charter Schools. (2018). *Special Education Toolkit: Guidance for Charter School Authorizers*. National Association of Charter School Authorizers. <https://www.centerforlearnerequity.org/wp-content/uploads/SpecialEducationToolkit2018.pdf>.

⁵⁹ National Center for Special Education in Charter Schools. (2018). *Rubric for Assessing Special Education in Charter Schools*. <https://www.centerforlearnerequity.org/wp-content/uploads/RubricPartofLEA.pdf>.

⁶⁰ National Center for Special Education in Charter Schools. (2018). *Rubric for Assessing Special Education in Charter Schools*. <https://www.centerforlearnerequity.org/wp-content/uploads/LEARubric.pdf>.

1. Authorizers: The Approval Process

The charter school application process should be rigorous. Denying a poorly planned charter school is much easier than closing one that has failed students. The application phase is therefore the authorizer's best opportunity to ensure that all charter applicants have a strong plan for educating students with disabilities before they ever open their doors. To guarantee this, policy should require that all charter applications include detailed plans for educating students with disabilities and that those plans include assurances that proposed school websites and promotional materials include language that establishes a welcoming environment.

MODEL LANGUAGE:

An application to establish a charter school shall include information about educating all learners, including students with disabilities. Each applicant shall provide:

- a. The applicant's plan to provide the full spectrum of placements for students with disabilities.*
- b. The applicant's plan to ensure that Child Find responsibilities are being met. This shall include a description of policies and practices to identify and assess the needs of students who may be eligible to receive special education and related services and to identify and appropriately evaluate at-risk students.*
- c. The applicant's admissions plans, which must be discrimination-free and aligned with all applicable laws. Admissions materials for students seeking enrollment must include a nondiscrimination statement indicating that all applicants, including those with disabilities, are eligible to attend.*
- d. Assurances that the applicant is prepared to enroll a comparable proportion of students with disabilities as are enrolled in local neighborhood schools.*
- e. The applicant's plan to ensure the retention of students with disabilities.*
- f. A description of the number and nature of specialized staff to be hired to administer programs and provide special education and related services.*
- g. Assurances that the proposed school will effectively and lawfully evaluate students in need of Section 504 plans and provide appropriate services.*
- h. A viable plan for the proposed school's Individualized Education Program (IEP) and Section 504 plan development. This may include elements such as bringing in external experts or developing a strong internal team of specialists.*
- i. An assurance that the applicant will, before school opening, have a system in place for documenting the provision of all IEP service minutes.*
- j. A statement of the applicant's vision for an inclusive school culture that avoids disparate and excessive discipline of vulnerable students, including those with disabilities.*
- k. A curriculum and instruction plan detailing the core content to be delivered in the school and the method(s) by which it will be delivered that will be accessible to and meet the needs of diverse learners.*
- l. A plan for academic assessments that is inclusive of progress metrics that may be valuable in assessing the progress of students with disabilities.*
- m. A sufficient funding plan and budget that reflect assumptions about the anticipated special education population, derived from the underlying district's demographic profile, as well as an understanding of how special education and related services are funded.*

MODEL LANGUAGE - Cont.:

- n. *The allocation of responsibilities for special education services to any charter management or partnering organization that will work with the school.*
- o. *A description of whether and how the school will interact with the local district(s) about meeting the needs of students with disabilities.*
- p. *The applicant's plan for transportation as a related service for students with disabilities.*
- q. *Assurances that the applicant's website and promotional materials will include language clearly establishing a welcoming environment for all students, including students with disabilities.*
- r. *A physical space plan indicating how the needs of students with disabilities will be met, including classrooms, administrative space, and external spaces used by students.*



2. Authorizers: Oversight

Once charter schools are approved, authorizers, in cooperation with the SEA, have an important oversight role related to the special education practices implemented in the schools. Authorizers should establish review procedures⁶¹ and regular reporting requirements regarding special education data to identify any concerns or deficiencies and address them before they become larger problems. Where circumstances merit intervention, authorizers should have the clear authority to place charter schools on corrective action plans to provide structure and a timeline to address identified concerns. Policy should also specify that authorizers have the power, in extreme cases, to revoke charters due to non-compliance with the IDEA.

⁶¹ An example of an effective review procedure is the DC Public Charter School Board's practice of conducting special education audits when schools exhibit certain indicia of non-compliance related to special education.

Depending on the LEA status of the school, the authorizer may have primary responsibility for addressing special education deficiencies, or that obligation may fall to the district or the state. Policy should identify which entity bears this responsibility and specify the authorizer's role in addressing deficiencies.

MODEL LANGUAGE:

The authorizer of each charter school shall have the authority and responsibility to engage in oversight of charter school special education practices and to coordinate with the state education agency (SEA) to ensure equitable access to these schools and compliance with applicable law.

Charter authorizers shall, during the application process and throughout each school year, secure an assurance from charter applicants that they know and understand their legal obligations under the Individuals with Disabilities Education Act (IDEA) and Section 504.

Authorizers shall have access to and receive all special education data reported for federal accountability requirements, including data related to enrollment, service provision, participation rates on statewide testing, student academic performance and growth, mobility, extracurricular activity participation, and discipline to assess the extent to which students with disabilities have equal access to schools and, once enrolled, are provided appropriate services. If the authorizer determines that a charter school is not ensuring that students with disabilities are receiving the benefits provided by the IDEA, the authorizer shall work with the charter school to create a publicly available corrective action plan that will modify practices and expand access and services in a specific timeframe.

The creation and implementation of the corrective action plan may inform expansion, replication, or renewal decisions and is independent of any state education agency (SEA) review and oversight that may exist. Failure to make progress toward goals articulated in a corrective action plan could result in charter revocation.

OPTIONS FOR CLARIFYING CLAUSE (depending on LEA status):

Where the authorizer is the LEA:

The authorizer shall be primarily responsible for requiring and overseeing such corrective steps.

Where the charter school is the LEA:

The authorizer shall provide such information to the state education agency (SEA) that will allow the SEA to take appropriate oversight action.

Where the district is the LEA and the authorizer is not affiliated with the district: *The local education agency (LEA) shall provide the authorizer with such information that will allow the authorizer to take appropriate oversight action.*

3. Authorizers: Virtual Schools Oversight

As discussed above, virtual schools present significant challenges for students with disabilities. Oversight by authorizers is therefore critical.

MODEL LANGUAGE:

Authorizers that grant charters to virtual or blended learning schools shall ensure the online programs are accessible to students with disabilities and that such programs allow for the use of accommodations and modifications as indicated on the students' individualized education programs (IEPs) and Section 504 plans. Such authorizers shall implement a process to track how the schools deliver the special education and related services outlined in IEPs and ensure that the schools follow all procedural safeguards. Such authorizers shall also implement a process to track how accommodations, modifications, and services outlined in Section 504 plans are implemented and delivered.

4. Authorizers: Data Collection

To ensure that the needs of students with disabilities in charter schools are identified and met, authorizers should gather and utilize a wide range of data about such students. This data allows authorizers to identify and address any areas of concern. It also generates publicly accessible information about enrollment and student performance patterns that can contribute to a greater understanding of the experiences students with disabilities are having in charter schools.

MODEL LANGUAGE:

Consistent with the requirements of state and federal law, authorizers shall have access to and receive all special education data articulated below, including data reported for federal accountability requirements, and shall disseminate and make publicly available data about students with disabilities in the charter schools for which they have oversight authority. Such data shall include but not be limited to the following: information about enrollment and identification of students with disabilities, including disability categories, placement of students with disabilities (e.g., Least Restrictive Environment (LRE) data), academic performance of students with disabilities on statewide assessments, academic growth of students with disabilities, mobility rates of students with disabilities, participation in extracurricular activities for students with disabilities, disciplinary actions related to students with disabilities, and funding for the education of students with disabilities.

Additional Policy Considerations

The model policies explored above are specific to the education of students with disabilities in charter schools. Other critical policy considerations impact the education of students with disabilities in all public schools. Below are three policy areas central to the success of students in all public schools. While going into detail on these issues or suggesting model policy is beyond the scope of this guide, we hope readers will review the additional resources and take steps to address these in their states, districts, and schools.

≡ A. Diversity, Equity, Accessibility, and Inclusion

Federal and state law forbid discrimination based on race, disability, or ethnicity.

To foster a truly equitable, anti-racist, anti-ableist culture, states and schools should consider including more robust requirements in their policies, directing school boards, including charter school boards, to explore, identify, and communicate their schools' commitment to Diversity, Equity, Accessibility, and Inclusion (DEAI) in their day-to-day operations.⁶²

≡ B. Disproportionate Discipline

Students with disabilities are disproportionately subjected to harsh disciplinary practices, including suspensions and expulsions, restraint and seclusion, and the involvement of law enforcement personnel in both traditional district and charter schools. Because policies can vary significantly between states, districts, and schools, addressing this crisis is complex. We aim to raise the issue, summarize the situation, and direct readers to additional resources.

1. Suspension and Expulsion

The IDEA provides students with disabilities across all types of public schools, including charter schools, with guaranteed procedural safeguards related to school discipline.⁶³ One of the specific protections is a requirement that schools provide manifestation determination reviews to students with disabilities who have been removed from their special education placements for more than 10 days.⁶⁴ Despite these extra safeguards, students with disabilities are subjected to out-of-school suspensions and expulsions at rates far exceeding those of their nondisabled peers. Historically, the rate of out-of-school suspensions for students with disabilities is more than twice the rate of the general education population. While this disproportionality exists in all public schools, charter schools suspend more students with disabilities than their traditional district counterparts. This disproportionality grows larger when we remove virtual charter schools from the analysis.⁶⁵

⁶² For a more in-depth discussion of DEAI, see Armstrong, K. (2019). What Exactly is Diversity, Equity, and Inclusion? National Association of Colleges and Employers. <https://community.naceweb.org/blogs/karen-armstrong1/2019/06/25/what-exactly-is-diversity-equity-and-inclusion/>; Falk, S. (n.d.). What is Your Responsibility to Ensure Diversity, Equity, and Inclusion on Charter School Boards? Board on Track., <https://boardontrack.com/blog/diversity-on-charter-school-boards/>.

⁶³ 20 U.S.C. § 1415(2015).

⁶⁴ 20 U.S.C. § 1415(k)(1)(E)(2015).

⁶⁵ See Center for Learner Equity (2020). New CRDC Data Show Increasingly Disproportionate Discipline of Students With Disabilities. <https://www.centerforlearnerequity.org/statement/new-crdc-data-shows-increasingly-disproportionate-discipline-of-students-with-disabilities/>; United States Department of Education, Office for Civil Rights (2020). Civil Rights Data Collection. <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>.

Receiving instruction, services, and supports at school is paramount to students with disabilities. Yet, because of these high suspension rates, students with disabilities lose significant instructional time and access to the individualized services and supports in their IEPs and Section 504 plans. Policies that build upon the protections in federal law and implement evidence-based alternatives to punitive removals can address these challenges and reverse the pattern of disproportionate suspensions and expulsions that has plagued students with disabilities for decades. Even absent explicit state policy on the issue, charter schools can leverage their autonomy to implement holistic practices that reduce suspensions and expulsions of their students with disabilities.⁶⁶

2. Restraint and Seclusion

Restraint and seclusion are dangerous responses to student behavior in schools. Restraints may be physical, mechanical, or chemical. In a physical restraint, an adult forcibly holds a student down in either a “prone” (face-down) or “supine” (face-up) position. Mechanical restraint involves using devices, such as belts, straps, or cuffs, to restrict a student’s movement. Chemical restraint occurs when medication is used to control a student’s behavior and restrict their physical movement. Seclusion involves removing students from the classroom environment, placing them in an isolated area, and preventing them from leaving, often by locking the door or blocking the exit. Both restraint and seclusion have caused death, injury, and trauma to students.

The permissible use of restraint and seclusion is governed by state law, as no federal law currently regulates these practices. State laws vary in how they define and approach restraint and seclusion.⁶⁷ In some states, there are explicit prohibitions coupled with strong reporting requirements. In other states, there are no laws on the issue. As with suspensions and expulsions, even absent state law, charter schools should utilize their autonomy to eliminate or reduce restraint and seclusion.

3. Law Enforcement in Schools

Students with disabilities are disproportionately referred to school resource officers and outside law enforcement to address school discipline issues. When police are present in schools, they arrest students with disabilities at a rate three times higher than when law enforcement is not present.⁶⁸ We encourage states, districts, and schools to develop and implement policies that ensure safe and positive learning environments without the use of law enforcement in schools.

⁶⁶ For a more detailed description of policies to address suspension and expulsion, see Education Commission of the States (2018). *School Discipline: Are there non-punitive approaches outlined as alternatives to suspension or expulsion?* <http://ecs.force.com/mbdata/MBQuest2RTanw?rep=SD1804>; Center for American Progress (2018). *Suspensions Are Not Support: The Disciplining of Preschoolers With Disabilities*. <https://www.americanprogress.org/issues/early-childhood/reports/2018/01/17/445041/suspensions-not-support/>.

⁶⁷ For an in-depth policy discussion of this issue, see Butler, J. (2019). *How Safe is the Schoolhouse: An Analysis of State Seclusion and Restraint Laws and Policies*. <https://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

⁶⁸ American Civil Liberties Union (ACLU). (2019). *Cops and No Counselors*. <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors>; Center for Learner Equity (2020). *The Center’s Statement on Law Enforcement in Schools*. <https://www.centerforlearnerequity.org/statement/the-centers-statement-on-law-enforcement-in-schools/>.

C. Transition Planning for High School Students

The IDEA requires all schools to develop and implement transition plans for students with disabilities.⁶⁹ The purpose of transition planning is to ensure that students with disabilities can successfully move from school to post-secondary education, the workforce, and independent living, depending on the individual strengths and needs of each student.⁷⁰ The IDEA requires that these plans be in place when the student turns 16, although some state laws require earlier implementation. Students who are eligible for services under Section 504 must also receive transition planning as deemed appropriate under their plan.

The intent of this mandate is to focus IEP and 504 teams on what each student needs to transition out of high school successfully. However, in too many situations, transition planning has focused on compliance around creating a plan rather than on the development of robust student-specific plans that will help them succeed. In addition, state law should clarify that all public schools, including charter schools, must meaningfully address transition planning for students with disabilities. Legal status considerations may make the respective roles of the charter school and district unclear, so those roles should be delineated in policy. Furthermore, policies and procedures should be developed to ensure that transition planning is robust, student-specific, and directed towards ensuring that each student has a plan in place that will allow them to successfully transition into life after high school. Even without a robust policy, charter schools should use their autonomy to develop creative, effective transition processes.⁷¹



⁶⁹ 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(2015).

⁷⁰ 20 U.S.C. § 1401(34)(2015).

⁷¹ For more information on transition services, see National Technical Assistance Center on Transition: The Collaborative (<https://transitionta.org/>); Institute on Community Integration (<https://ici.umn.edu/>); National Parent Center on Transition and Employment (<https://www.pacer.org/transition/>).

Closing Comments

While state charter school laws address the education of students with disabilities, many lack specificity and clarity and thus fail to address the critical issues highlighted in this guide. Rights and obligations can be addressed, understood, and applied with clear articulation. This document aims to provide that clarity by highlighting the key considerations and offering model language that can serve as a template for efforts to address them. We hope policymakers will use this tool as a starting point to improve their policies to adequately address the needs of students with disabilities in charter schools.

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