

Charter Schools and Students With Disabilities: Legal and Practice Considerations

Michelle E. Dunn, EdS¹, Antonis Katsiyannis, EdD¹, and Joseph B. Ryan, PhD¹

Abstract

As of the 2013–2014 school year, about 2.5 million school-age students attended charter schools nationwide. Because charter schools are publicly funded entities, they are required to adhere to all federal nondiscriminatory laws as well as the Individuals With Disabilities Education Act. This legal brief provides an overview of charter schools, legal requirements associated with students with disabilities enrolled in charter schools, and recommendations for practice.

Keywords

charter schools, IDEA, special education

In an era of education reform and increased emphasis on improved outcomes, particularly in light of No Child Left Behind (including its most recent reauthorization, Every Student Succeeds Act [ESSA], 2015–2016), there has been an increased impetus for parents to seek education options beyond public schools, which are perceived as failing. An increasingly popular option for many parents has been to turn to charter schools. Indeed, over the past decade (2004–2014) students attending charter schools increased from 0.8 million to 2.5 million. This represents an increase from 1.6% to 5.15% of the total public school enrollment (National Center for Education Statistics, 2016; see also U.S. Government Accountability Office, 2012). ESSA's provisions regarding charter schools are likely to continue the expansion in the number of charter schools and associated enrollment of students. Specifically, the charter school program under ESSA (a) provides federal grants to support the creation of new charter schools as well as to support the replication and expansion of high-quality charter schools, (b) includes important changes to eliminate barriers to enrollment for some students, (c) aims to increase charter school financial transparency, and (d) includes charter schools in the state accountability.

Charter schools are publicly funded schools of choice that operate under either a local or state charter that defines the school's mission, program, goals, and methods to measure student success. In return for flexibility and autonomy, the charter school must meet the accountability standards

outlined in its charter. Charter schools are independent public schools designed and operated by educators, parents, and community leaders sponsored by local or state education organizations. These schools' charters establish specific outcomes to monitor their quality and effectiveness and enable them to operate outside the traditional system of the public schools (Estes, 2009). The purpose of this brief is to provide an overview of charter schools with an emphasis on legal requirements involving students with disabilities.

Charter School History

The charter school movement was precipitated by the report from the National Commission on Excellence in Education (1983) titled *A Nation at Risk: The Imperative for Educational Reform*. The report purported that based on academic outcomes at the time, students in the United States were not prepared to compete globally with students from other industrialized nations. As a result, government education leaders began emphasizing more standardized testing to measure achievement with a focus on education outcomes and accountability (Garda, 2012a; see also Müller, 2010, on

¹Clemson University, Clemson, SC, USA

Corresponding Author:

Michelle E. Dunn, EdS, 16 Wild Fern Court, Travelers Rest, SC 29690, USA.

Email: mdunn5@g.clemson.edu

virtual charter schools). Subsequently, charter schools were born following the school reform and education accountability movement of the 1990s. Minnesota passed the first charter school law in 1991, and as of 2013–2014, 42 states and the District of Columbia have passed charter school legislation. States in which charter school legislation had yet to be passed by 2013–2014 include Kentucky, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia (Center for Education Reform, 2016).

Charter Schools vs. Traditional Public Schools

Charter schools are similar to traditional public schools in that they are both publicly funded; however, charter schools differ in that they operate under a contract or charter rather than local and/or state regulations. State officials monitor the performance of the school and hold it accountable for academic outcomes that were agreed on when established (Garda, 2012a). Charter schools also differ from traditional public schools in that they operate in a more autonomous environment, and they determine their own budgets, class and school size, area of emphasis, curriculum, and length of the school day and year. Charter schools do not have students assigned to them based on attendance boundaries. Rather, as schools of choice, they provide families with education options as an alternative to traditional neighborhood schools. Since charter schools are not bound by specific state or locally mandated curriculum or pedagogy, they may have a particular area of emphasis or specialization (e.g., foreign language, STEM) (Garda, 2012a).

One disparity between traditional public schools and charter schools is the number of students with disabilities currently enrolled. The U.S. Government Accountability Office (2012) reported that only 8.2% of charter school students had disabilities, in comparison with 11.2% of students enrolled in traditional public schools during the 2009–2010 academic school year. The most recent estimates reported by Rhim, Gumz, and Henderson (2015) show that this enrollment gap continued to exist during the 2011–2012 school year, in which 10.42% of students with disabilities were enrolled in charter schools, whereas 12.55% were enrolled in traditional public schools.

Legal Requirements

According to the Individuals With Disabilities Education Act (IDEA) and the regulations implementing IDEA, children with disabilities who attend public charter schools and their parents retain all rights under the law [see IDEA Regulations, 1990, at § 300.209 (a)]. For example, charter schools are bound by IDEA requirements regarding location, evaluation, identification, placement (e.g., Individualized Education Program [IEP] development and

implementation), and the provision of free, appropriate public education (FAPE). Parents of qualified children with disabilities are also entitled to the full array of procedural safeguards under IDEA (e.g., access to records, prior written notice, and opportunity to present a complaint).

It is important to note that charter schools, as publicly funded entities, are required to adhere to all federal special education laws, including the Individuals With Disabilities Education Improvement Act (2004). Charter schools are also required to comply with multiple other federal laws that govern the education of students with disabilities in public schools including Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990 (Rhim, Ahearn, & Lange, 2007; Rhim & McLaughlin, 2007). In May 2014, the U.S. Department of Education's Office for Civil Rights sent a Dear Colleague letter to school districts regarding their obligations under federal civil rights laws (e.g., Section 504 of the Rehabilitation Act of 1973) and their applicability to charter schools (U.S. Department of Education, 2014), specifically, that charter schools may not discriminate in admissions on the basis of race, color, national origin, or disability and that eligibility criteria for entrance to charter schools must be nondiscriminatory. Excluding students based on having a disability is prohibited. These protections are also extended to extracurricular activities and disciplinary procedures (e.g., manifestation determination; see Council of Parent Attorneys and Advocates, 2012; *James Jones, et al. v. Government of the District of Columbia, et al.*, 2013; National Center for Special Education in Charter Schools, n.d.; *Seashore Charter Schools v. E. B.*, 2014).

As of 2012, charter schools function (a) as their own local education agency (LEA) in 12 states, (b) as part of the public school district's LEA in 18 states, and (c) as either their own LEA or part of the district LEA in 12 other states (Ahearn, 2012). When charter schools are part of an LEA, school districts are expected to serve children with disabilities attending charter schools in the same manner as the district serves children with disabilities in its other schools. They are also responsible to ensure funding in the same manner, including proportional distribution based on relative enrollment of children with disabilities [see IDEA Regulations, 1990, at § 300.209 (b)]. In short, when the charter school is part of the larger district, the district is responsible for identifying, evaluating, and providing services for students with disabilities (Rhim & McLaughlin, 2007).

In contrast, if the public charter school is an LEA, the charter school is responsible for ensuring that all IDEA-related requirements are met [see IDEA Regulations, 1990, at § 300.209 (c)]. Consequently, charter schools that operate as an LEA are solely responsible for locating, evaluating, identifying, and providing special education and related services, including a full continuum of placement options, for qualified students with disabilities (Boundy,

2012; Rhim & McLaughlin, 2007). Furthermore, the charter school is responsible for complying with federal and state law and for collecting and reporting student school data to the state (Boundy, 2012). Given that charter schools that function as their own LEA are not often able to use a school district's financial resources, special education programs, and the continuum of education placements (e.g., resource class, special day school), it makes it challenging for some charter schools to meet the individual needs of students with disabilities and ensure FAPE (Boundy, 2012; Rhim & McLaughlin, 2007).

An example of the challenges faced by charter schools functioning as a school district may be seen in the case of *P. B. et al. v. Paul Pastorek et al.* (2010). The Southern Poverty Law Center filed a class action suit against the Louisiana Department of Education on behalf of 13 students who were representative of approximately 4,500 New Orleans public school students with disabilities attending the Recovery School District, a charter school district including more than 100 low-performing schools. Alleged violations listed in the class action included failure by the charter school district to accommodate a blind student's disabilities by requiring his mother to attend school with him, and expelling a student with an emotional disability, claiming that her depression was disruptive to school operations. In March 2015, a settlement was approved that required the state to take several actions, including (a) developing a plan to ensure that all students suspected of having a disability are identified and evaluated, (b) requiring charter schools to describe plans for offering a full continuum of services to students with disabilities, (c) reviewing school discipline policies, and (d) providing professional development training on appropriate means of disciplining students with disabilities (see also *R. B. ex rel Parent v. Mastery Charter School*, 2010).

Implications for Practice

The purpose of this legal brief was to examine the legal requirements that charter schools must meet when educating students with disabilities. We next offer suggestions for officials in charter schools to meet these challenges. First, charter schools are more likely than traditional schools to deny enrollment to students with disabilities, thus limiting access (Lake, 2014). As articulated by the Council for Exceptional Children (2011), charter schools must abide by the same rules as public schools in general regarding access, clearly articulate responsibility for providing and paying for the education of children with disabilities, and be held accountable for providing special education services, including participation in assessment and accountability systems and adherence to personnel qualification requirements.

Second, when students with disabilities are enrolled in charter schools, FAPE-related challenges exist. Specifically, whereas public schools provide FAPE across a continuum of settings, charter schools often rely on full inclusion due

to limited budgets, staff, and space. This "inherent" limitation potentially prevents students from accessing individualized services tailored to their unique needs as well as access for students with moderate to severe disabilities (Garda, 2012b). Charter schools, however, may address these challenges through innovative collaborations "by linking up with other programs, aligning with an established special education program or department, or sharing resources with other charters" (LD Online, 2015, p. 1).

Third, when charter schools function as an LEA, they are solely responsible for compliance with IDEA and Section 504 requirements. In such instances, many charter school districts lack the capacity and resources to provide specialized instruction, fully implement IEPs, and address behavioral problems that interfere with learning (Garda, 2012b). As indicated in *P. B. et al. v. Paul Pastorek et al.* (2010), multiple violations of IDEA rights of qualified students with disabilities led to a settlement that included the need to ensure that child find activities were properly applied and that students with disabilities had access to the full continuum of services to meet FAPE requirements in the least restrictive environment and included targeted professional development (i.e., disciplinary procedures).

Fourth, charter schools must be proactive in ensuring accessibility and service delivery. Key elements of successful integration of students with disabilities include the following: (a) curriculum is accessible to all students, (b) students are not denied access because of learning needs, (c) plans are in place to accommodate students with disabilities before the charter school opens, and (d) responsibilities of the charter school, local education agency, state education agency, and other related agencies are clearly articulated (LD Online, 2015; see also Rhim et al., 2007; Rhim & McLaughlin, 2007).

In conclusion, if public school choice continues on the same trajectory, the number of charter schools and the number of students attending charter schools will continue to rise. It is clear, however, that for charter schools to be viable options for students with disabilities, there must be explicit clarification of the responsibilities of charter schools regarding access and service delivery to students with disabilities, particularly among those operating as their own LEA. Nonetheless, based on IDEA/Section 504 requirements, students with disabilities must enjoy the same access as same-age peers to charter schools but also receive a free, appropriate public education.

Declaration of Conflicting Interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: Data collection and manuscript preparation were supported in part by

Grant No. H325D140044 from the U.S. Department of Education, Office of Special Education Programs. However, the contents of this article do not necessarily represent the policy of the U.S. Department of Education, and one should not assume endorsement by the federal government.

References

- Ahearn, E. M. (2012). *Special education in charter schools: Nuances in implementation*. Paper presented at the Building the Capacity of Charter Schools: Effectively Serving Students With Disabilities conference, Minneapolis, MN. Retrieved from https://www.charterschoolcenter.org/sites/default/files/files/field_webinar_attachments/Handout%203%20-%20Nuances%20in%20Implementation_0.pdf
- Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (1990).
- Boundy, K. (2012). *Charter schools and students with disabilities*. Retrieved from <http://c.yomcdn.com/sites/www.copaa.org/resource/collection/7D72B914-2EC7-4664-9124-A32598DA1ABE/Charter-Schools-and-Students-with-DisabilitiesFINAL.pdf>
- Center for Education Reform. (2016). *Choice and charter schools: Charter school law*. Retrieved from <https://www.edreform.com/issues/choice-charter-schools/laws-legislation/>
- Council for Exceptional Children. (2011). *CEC's policy on children with exceptionalities in charter schools*. Retrieved from <https://www.cec.sped.org/~media/Files/Policy/CEC%20Professional%20Policies%20and%20Positions/CECcharter-schoolspolicy.pdf>
- Council of Parent Attorneys and Advocates. (2012). *Charter schools and students with disabilities*. Retrieved from <http://www.cleweb.org/sites/cleweb.org/files/assets/Administrative/Charter%20Schools%20and%20Students%20with%20DisabilitiesFinalDraft.pdf>
- Estes, M. B. (2009). Charter schools and students with disabilities: How far have we come? *Remedial and Special Education, 30*, 216–224.
- Every Student Succeeds Act, S.1177—114th Congress (2015–2016). Retrieved from <https://www.congress.gov/bill/114th-congress/senate-bill/1177/text>
- Garda, R. A. (2012a). Culture class: Special education in charter schools. *North Carolina Law Review, 90*, 656–717.
- Garda, R. A. (2012b). Disabled students' rights of access to charter schools under the IDEA, Section 504, and ADA. *Journal of the National Association of Administrative Law Judiciary, 32*, 517–542.
- Individuals With Disabilities Education Act Regulations, 34 C.F.R. § 300.300 *et seq.* (1990).
- Individuals With Disabilities Education Improvement Act of 2004, 20 U.S.C. § 614 & 615 (2004) (reauthorization of the Individuals With Disabilities Education Act of 1990).
- James Jones, et al. v. Government of the District of Columbia, et al., No. 97-2402 (2013).
- Lake, R. J. (2014). The key is innovation, not regulation. *Education Next, 14*(4), 54–61. Retrieved from <http://educationnext.org/key-innovation-regulation/>
- LD Online. (2015). *Students with disabilities in charter schools*. Retrieved from <http://www.ldonline.org/article/43436/>
- Müller, E. (2010). *Virtual K–12 public school programs and students with disabilities: Issues and recommendations: A policy forum proceedings document*. Alexandria, VA: National Association of State Directors of Special Education. Retrieved from http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/79_25d0f31a-4e2c-4f65-b6ce-92cf6a8c7ad9.pdf
- National Center for Education Statistics. (2016). *Charter school enrollment*. Retrieved from http://nces.ed.gov/programs/coe/indicator_cgb.asp
- National Center for Special Education in Charter Schools. (n.d.). *The National Center for Special Education in Charter Schools Equity Coalition statement on discipline*. Retrieved from <http://www.ncsecs.org/blog/2016/6/9/equity-coalition-statement-on-discipline>
- National Commission on Excellence in Education. (1983). *A nation at risk: The imperative for educational reform*. Retrieved from <http://www2.ed.gov/pubs/NatAtRisk/index.html>
- P. B. et al. v. Paul Pastorek et al., 2:10-cv-04049 (E.D. of La. 2010). Retrieved from http://www.splcenter.org/sites/default/files/downloads/case/pb_v_pastorek.pdf
- R. B. ex rel Parent v. Mastery Charter School, 762 F. Supp. 2d 745, 752-53 (E.D. Pa. 2010).
- Rhim, L. M., Ahearn, E. M., & Lange, C. M. (2007). Charter school statutes and special education: Policy answers or policy ambiguity? *Journal of Special Education, 41*, 50–63.
- Rhim, L. M., Gumz, J., & Henderson, K. (2015). *Key trends in special education in charter schools: A secondary analysis of the civil rights data collection 2011–2012*. New York, NY: National Center for Special Education in Charter Schools. Retrieved from http://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/564109d3e4b027fb791d1964/1447102931798/crdc_full.pdf
- Rhim, L. M., & McLaughlin, M. (2007). Students with disabilities in charter schools: What we now know. *Focus on Exceptional Children, 39*(5), 1–12.
- Seashore Charter Schools v. E. B., 345 F. Supp. 14 (S.D. TX 2014). Section 504 of the Rehabilitation Act of 1973 Regulations, 34 C.F.R. § 104.1 *et seq.*
- U.S. Department of Education, Office for Civil Rights. (2014). *Dear Colleague letter: Charter schools*. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>
- U.S. Government Accountability Office. (2012). *Charter schools: Additional federal attention needed to help protect access for students with disabilities* (GAO-12-543). Retrieved from <http://www.gao.gov/assets/600/591435.pdf>