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Authorizing Matters

Navigating Special Education in Charter Schools Part I: Understanding Legal Roles and Responsibilities

Special education entails the provision of an array of specialized services and supports designed to help students with disabilities access the general education curriculum in a manner equivalent to their non-disabled peers.

Special education and related services are mandated by the federal Individuals with Disabilities Education Act (IDEA) and related state special education policies. Policies and procedures associated with implementing IDEA can be complex, cumbersome and time consuming. Furthermore, the program is frequently portrayed as an unfunded or, at a minimum, under-funded federal mandate that can be taxing on public schools – traditional and charter schools alike. Yet, the law was designed to protect the rights, meet the individual needs, and improve the results of students with disabilities and their families. IDEA is founded on the notion that a free appropriate public education is a civil right for students with disabilities, a group of students who have historically been denied a right to an education on par with that of their non-disabled peers. Complying with IDEA is a critical responsibility for public schools and, thus, a responsibility that authorizers and charter schools must embrace.

Adequately addressing the policy issues and practical challenges associated with educating students with disabilities in the charter sector requires thoughtful policy development and implementation on the part of both authorizers and charter school operators.¹ This Issue Brief is the first in a two-part series on navigating special education in charter schools. The first brief introduces the basic foundation of special education and research findings regarding the legal roles and responsibilities for the provision of special education in charter schools and describes strategies for building a charter school's capacity to provide quality special education programs. The second brief outlines the authorizer's role in ensuring the development and implementation of quality special education programs in charter schools.

The 101 of IDEA

IDEA requires that students who qualify for services due to having one of the 13 disabilities covered by the law are guaranteed a *free appropriate public education* (FAPE) in the *least restrictive environment* (LRE) regardless of the cost of services required. Furthermore, to the extent appropriate, students with disabilities should be educated with children who are not disabled. Specialized pull-out classrooms or separate schools for students with disabilities are only considered appropriate if the nature or severity of a student's disability precludes the child from benefiting from being educated in a general education classroom.

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The specific services to be provided to students with disabilities to ensure FAPE are articulated in an Individualized Education Program (IEP). IEPs are developed by a multidisciplinary team of professionals and parents responsible for determining the LRE that will enable that student to function and benefit from their educational program. While not all children with disabilities are educated in public schools, all public



schools – including charter schools – must assume responsibility for educating children with disabilities who are enrolled in the school or district.

DECIPHERING SPECIAL EDUCATION SPEAK

- FAPE Free and Appropriate Public Education
- IDEA Individuals with Disabilities Education Act
- IEP Individualized Education Program
- LRE Least Restrictive Environment
- LEA Local Education Agency
- SEA State Education Agency

IDEA assigns states with the responsibility for providing FAPE and LRE. States, in turn, assign this responsibility to *local education agencies* (LEAs, a.k.a. local school districts). Each state has established specific procedures to implement this requirement. There was some initial uncertainty regarding the degree to which charter schools, as new entrants into the public school arena, would be responsible for fulfilling the obligations associated with IDEA. Contributing to the confusion was charter schools' ambiguous LEA status: were charter schools part of the LEAs in which they were located, or LEAs unto themselves (Heubert, 1997)?

IDEA dictates that a charter school *is an LEA* for purposes related to special education if the school is established as such under its state charter law. Furthermore, the law dictates that if a charter school *is part of an LEA*, then the LEA is responsible for educating students with disabilities who enroll in the charter school in the same manner as students who enroll in that district' other schools, including provision of supplementary and related services and funding.

The legal status of a charter school, as well as the identity of the authorizer, has defining implications for how

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responsibility for special education is assigned, and thereafter managed and overseen. If a charter school is part of an LEA, responsibility is shared between the charter school and its district, which is often also its authorizer. However, if a charter school is a legally independent district unto itself, it is assigned the same responsibilities related to educating students with disabilities as any other district in the state. That is, the charter school must make available a full continuum of placements to students according to their needs.

Special Education in the Charter Sector

Authorizers are responsible for ensuring a quality education for all children who attend charter schools, including those with disabilities. An obvious first step to fulfilling this responsibility is providing clarity around how responsibility for special education is assigned, and thereafter managed and overseen. And while legal responsibility for special education is dictated primarily by the LEA status of a given charter school, the devil, as they say, is in the details. Understanding the “details” and practical implications of such is critical to ensuring that special education responsibility is properly assigned and implemented within three general categories:

- Providing and/or administering special education services in charter schools;
- Providing special education technical assistance; and
- Conducting special education monitoring and accountability.

Providing and/or Administering Special Education Services

As previously stated, charter school's legal status (part of an existing district or independent of the district) determines, for the most part, the parameters of its – and its authorizer's – responsibilities associated with IDEA. Charter schools that operate as their own LEA are responsible for providing a full continuum of placements for students in disabilities. In contrast, charter schools that are part of a local district (which is typically also its authorizer) share responsibility for providing a full continuum with their district.

It is important to note that even when the authorizer (such as a local school district) holds responsibility for provision of special education in the schools it charters, it is in theory the same entity (the school district) performing both functions but in practice may involve very different offices and/or staff for fulfilling these responsibilities (e.g. the charter school office staff doing the “authorizing work” and the special education staff carrying out the special education related-duties). Those actually performing the tasks of authorizing and special education service delivery may or may not be accustomed to working together or fully under-

PROJECT INTERSECT SURVEY OF CHARTER SCHOOL AUTHORIZERS

A survey of authorizers (n=451) conducted under the auspices of Project Intersect documented that many authorizers take a very active role in special education and related services in the schools they charter.¹ From a generalizable sample authorizers, the survey documented that:

- 36% share legal responsibility for provision of special education with charter schools,
- 34% retain total legal responsibility; and
- 22% have no legal responsibility.

The remaining respondents did not answer, didn't know, or indicated some "other" level of responsibility. The finding that fully 70% of charter school authorizers have some degree of responsibility for providing special education and related services in the schools that they charter indicates a relatively high level of responsibility for a particular aspect of what are, presumably, autonomous public schools.

In addition to questions regarding legal responsibility, the Project Intersect survey queried authorizers about the degree to which they are "involved" with providing special education services:

- Only 12% of the respondents reported that they are not involved;
- 32% provide special education in the schools they authorize;
- 22% work with schools related to special education as requested;
- 15% supervise special education;
- 13% are involved when the school is authorized or renewed;
- 1% did not know; and
- 5% characterized their involvement as "other."

The survey also documented that approximately half of the authorizers identified themselves as the primary providers of special education services and just over a third identified themselves as the primary providers of special education technical assistance to charter schools.

When asked to identify the challenges that charter schools are facing, authorizers identified the following key challenges:

- Incorporating students with disabilities in NCLB requirements
- Finding qualified special education teachers
- Having adequate funds to provide services to special education students
- Finding qualified related service personnel
- Knowing special education laws and regulations
- Providing services for students in low incidence disability areas
- Understanding monitoring and compliance requirements
- Working with parents of children with disabilities
- Implementing the IDEA discipline procedures

Source: Rhim, Lange, Ahearn & McLaughlin, (2007). Project Intersect Research Report #6: Survey of Charter School Authorizers. College Park: University of Maryland.

stand the other's job duties and responsibilities. So, even though both functions are housed "under the same roof", functions will be conducted can be unclear for all parties involved, including the charter school.

Furthermore, some state charter statutes (e.g., California and Washington, DC) provide authorizers with discretion relating to their role related to special education in the charter schools they grant. Other states (e.g., Connecticut,

Massachusetts and New Jersey) explicitly dictate the role authorizers play related to special education. Authorizers need to be familiar with their state charter statute and understand its implications related to special education.

Thus, the role of the authorizer in providing special education services to students in charter schools can be characterized as "all over the map" (See *Project Intersect Survey of Charter School Authorizers*). To navigate through

the complexities and clearly define their role in the provision of special education in charter schools, authorizers will want to determine who is responsible for:

- Carrying out Child Find (i.e., identifying, locating and evaluating all children with disabilities, aged birth to 21, who are in need of early intervention or special education services);
- Recruiting and hiring special education teachers and related services personnel;
- Employing special education teachers and related services personnel;
- Determining whether a child enrolled in a charter school had an IEP at their previous school.
- Referring students to special education;
- Serving on the multi-disciplinary team that develops IEPs;
- Supervising and evaluating special education personnel;
- Deciding how federal, state, and local special education dollars will be provided (i.e., part of the school budget, in the form of services and professional development, or a combination of both);
- Reporting data regarding enrollment and special education service provision;
- Retaining legal counsel should the need arise;
- Covering the costs involved in any legal proceeding involving students with disabilities;
- Providing special education related professional development; and
- Paying the cost of transporting students with disabilities to the charter school.

There is no “right” or “correct” assignment of responsibility because it will vary according to the state charter policy and individual authorizer practices. Nevertheless, authorizers should use this deliberation to define their role, and thereafter, articulate this position to charter schools. While actually fulfilling the roles and responsibilities raises its own unique challenges, clearly and explicitly communicating responsibilities to schools will provide essential information that serves as the foundation upon which charter school special education programs can be built. If authorizers are not clear about their role, it is all the more difficult for the charter schools they authorize to comprehend their own role. Furthermore, ambiguity about roles and responsibilities can aggravate potentially delicate relationships between authorizers and charter school operators.

Special Education Technical Assistance

In tandem with defining authorizer roles and responsibilities in relation to special education delivery is the authorizer’s role in providing special education technical assistance to the schools it oversees. Some authorizers elect to provide significant technical assistance whereas others provide lit-

tle, if any. Regardless of the amount of technical assistance offered, it should be intentional as opposed to haphazard.

In contemplating their role related to technical assistance, authorizers should consider the resources required to provide technical assistance as well as the challenges associated with both providing technical assistance and then acting as the school’s evaluator (a similar dilemma authorizers face in providing any kind of technical assistance – from curriculum support to staff professional development – to the schools they oversee). In lieu of direct technical assistance, authorizers may consider identifying key local, regional, and national resources that schools can use to increase their knowledge of, ability to deliver, quality special education services. Proactively helping charter schools to identify high quality resources may diminish the chance of compliance issues down the road. These indirect strategies are discussed in detail below (see *Building Charter Schools’ Capacity to Deliver Quality Services to Students with Disabilities*).

Special Education Monitoring and Accountability

Assigning responsibility to monitor compliance and performance of charter school special education programs, and then conducting such activities, can be quite complex. Consider the following:

- If the authorizer is directly providing and/or administrating special education services for the charter school, how does it monitor itself?
- If another agency (such as the state department of education) is responsible for monitoring special education compliance in all schools, including charter schools, how do authorizers obtain relevant findings from these activities and, if applicable, ensure appropriate actions are taken to rectify any deficiencies?

And these questions can be even more complex than they seem on the surface. For example, a school district might serve as the charter school authorizer, which is managed and overseen by assigned staff, and the provision of special education in schools chartered by the district are administrated by a separate office (e.g. special education department) within the same central office. In this case, how should one arm of the district monitor the work of another?

In a similar, but different situation, a SEA may serve both as the charter school authorizer (managed through a charter schools office or division) and as the state’s special education compliance officer (overseen through the state’s special education office or division). In this case, how should the two offices work together to minimize duplication of efforts in terms of special education monitoring while ensuring charter schools are fully held accountable to their legal obligations to provide a quality education for all students, including students with disabilities?

Again, there are no “right” or “wrong” answer to these questions. But, arriving at solutions for how to address such complexities requires authorizers to be fully knowledgeable of the unique circumstances they face in providing oversight of the special education programs in the schools they charter and develop practical strategies for ensuring charter school special education programs are properly monitored. Strategies for developing and implementing sound special education monitoring systems will be addressed further in the next Issue Brief.

Building Charter Schools’ Capacity to Deliver Quality Services to Students with Disabilities

As described above, there are a number of scenarios in determining the legal roles and responsibilities of charter schools and authorizers in providing and monitoring special education programs. But among all the variations, one thing is clear: charter schools need to build the capacity to provide special education and this requires classroom-level and organizational approaches that enable the school to deliver an effective educational program.

Charter schools are creating or affiliating with a variety of “special education infrastructures” to build their capacity in these areas (Rhim, Ahearn & Lange, 2006). In order to provide special education services, charter schools can build internal systems and structures (i.e., hire a special education administrator and instructional personnel) and/or create, or affiliate with, an external structure that provides the school with required capacity. Generally speaking, though, few charter schools are large enough to create adequate internal capacity alone to provide a full continuum of placements given the wide array of cognitive and physical disabilities.

The most common types of infrastructures are local school systems (which often serve as the school’s authorizer as well) or intermediate school districts/agencies that provide a charter school with comprehensive special education services. Charter schools are also using individual consultants, local nonprofits, special education cooperatives, and education management organizations as special education infrastructures. The remainder of the brief introduces each of these models and provides recommendations about key issues that should be considered when charter schools create or affiliate with a special education infrastructure.

Authorizer: When a charter school obtains special education services and administrative support from its authorizing entity, the authorizer is serving as the school’s special education infrastructure. This model is generally only utilized when the authorizer is a local education agency (i.e., school district).

Some authorizers extend charter schools significant autonomy and enter into negotiations to determine what services, if any, will be purchased. Yet, in many instances, there is a notable power differential between the authorizer and the charter school. Consequently, the charter school has little control over the amount of money retained by the authorizer for the purposes of providing special education services or the quality of services provided. The benefit of the arrangement is that partnership with a local district authorizer can provide the charter school with access to central office staff and qualified instructional personnel with expertise in special education that may otherwise be difficult to obtain.

Intermediate education agency or unit: Charter schools may also have the opportunity to obtain special education and related services and administrative support from an intermediary agency that is part of the state system (e.g., an “intermediate school district” in Michigan, or an “education service center” in Texas). The role of the intermediate education agency may be pre-determined by practices that pre-dated the introduction of charter schools to the public education landscape.

Similar to the challenges associated with authorizers serving as special education infrastructures, charter schools may have little control over the cost or quality of services provided. Yet, given that the agency or unit may have a clear mandate from the state department of education to provide services, this type of infrastructure does provide a charter school with access to a diverse array of services. The arrangement may be particularly helpful when a charter school enrolls a student with a severe disability who may require highly specialized services.

State-level special education administrator for charter schools: Rather than requiring individual charter schools to hire a special education director, state departments of education can use IDEA funds to hire personnel to officially serve as the director of special education for all charter schools. In that role, the state-level employee is responsible for managing special education in charter schools and ensuring that all charter schools in the state are providing required services in compliance with the law.

For example, the Minnesota Department of Education provided seed money to support a statewide special education administrator for charter schools in that state. This administrator provides basic administrative services to all charter schools and these schools also have the option of purchasing additional services.

State-level charter school special education liaison: In response to the challenges associated with providing special education services in charter schools, multiple

state departments of education have allocated resources to hiring personnel who are specifically designated to assist charter schools with special education issues.

For instance, the Massachusetts Department of Education uses IDEA funds to fund a special education position within the state's charter school office rather than assigning the individual to the special education division. In this instance, the authorizer (the state) leverages specialized expertise and funds to benefit and provide special education support to charter schools. Yet, unlike creating a state director of special education for charter schools, the liaison assumes a technical assistance, support and monitoring role rather than a direct administrative role.

Individual consultants: In many cases, charter schools can hire special education consultants to help operate their entire special education program or distinct aspects or services of their program (i.e., legal counsel, administration or related services). Hiring a consultant ensures that a charter school can obtain precisely the services it requires. A challenge associated with hiring consultants is making certain that the consultant has the required expertise given that the charter operator may not be familiar enough with special education to be a critical consumer.

Authorizers may help schools retain appropriately skilled consultants by ensuring that operators understand enough about special education obligations to discern the quality of consultants' services. Providing charter operators with a list of reputable consultants will assist charter operators in identifying options but places authorizers in the potentially difficult position of endorsing providers. Rather than recommending specific consultants, authorizers may opt to identify professional associations that operators can contact when seeking to hire consultants (e.g., the American Physical Therapy Association, the Autism Society of America or the ARC of the United States).

Local nonprofit that provides special education services: Similar to hiring individual consultants, charter schools may contract with a local agency (e.g., hospital, university or Easter Seals) to obtain specific special education services. Given that the nonprofit does not have authority over the charter school, the school is well positioned to negotiate with the nonprofit and only purchase required services.

Special education cooperative for charter schools: A special education cooperative, alternatively referred to as a collaborative or a consortium, represents a group of charter schools that voluntarily form an entity into which they pool their resources and thereafter collectively buy special education administrative and

instructional expertise. There is no standard formula for a cooperative, but the underlying theory is that charter schools can build capacity more efficiently if they pool their resources and their needs into a single unit that has greater purchasing power. The foundation of a cooperative is a written contract that all members sign as condition of joining the cooperative in which they are equal partners. Services typically provided through a cooperative include: staff training, assessments, support related to effective pedagogy and direct services to students.

Examples of special education cooperatives currently exist in Shasta County, California; Austin, Texas; Washington, DC; and Indiana. Ball State University in Indiana operates a "virtual cooperative" that provides support and training statewide. In contrast to a traditional brick and mortar cooperative, substantial aspects of the virtual cooperative occur through e-mail, fax, phone, consultation and video conferencing.

Education and charter management organizations (EMO and CMO): EMOs and CMOs are private organizations developed for the explicit purpose of providing educational and/or management services to schools. Both EMOs and CMOs can provide charter schools with a special education infrastructure. In general, the governing board of a charter school enters into a contract with EMO and CMO voluntarily and is therefore able to negotiate the scope and cost of services to be purchased. A thoughtfully negotiated contract that outlines roles and responsibilities of both partners and the fees associated with services, including special education, are critical to developing a productive relationship with an EMO or a CMO.

Key Factors Influencing the Selection of Special Education Infrastructures

Efforts to build charter schools' capacity to provide special education need to carefully consider: 1) the state policy context, 2) the charter school's special education needs, 3) external resources available, 4) available leadership, 5) formal roles and responsibilities, and 6) mutual interests (Rhim, Ahearn, Lange & McLaughlin, 2006).

State Policy Context

The state policy context establishes the parameters in which charter schools must deliver special education and related services. Authorizers and charter operators need to consider the legal status of charter schools and the resultant responsibilities associated with IDEA before identifying the best potential infrastructure. If a charter school is a legally independent entity, a special education cooperative may be an appealing option because the school most likely

has a substantial amount of discretion regarding its budget. However, if a charter school is part of a local district, individual consultants or a mutually agreed upon special education contract with the local district may be the most practical option.

Mutual interests are the glue that binds the various entities that constitute a special education infrastructure.

Special Education Needs

Authorizers and charter operators need to understand not only the policy context, but also the special education needs at the school, district, and regional levels. In order to create or join a special education infrastructure, the key stakeholders must have a clear understanding of what they need from the infrastructure as well as how the infrastructure aligns with schools' operations and resources. As these needs evolve over time, the infrastructure used by the school may need to change as well.

External Resources

Some charter schools can build special education capacity internally, but most schools will need to access external support. In advising charter schools how to build capacity, authorizers should consider potential external resources. The authorizer is one obvious resource, but additional possibilities include other charter schools, state departments of education, colleges or universities, charter school associations, consultants, private service companies and community-based organizations. Access to external resources may vary significantly by geographic region and lack of external resources may limit the types of special education infrastructures that charter schools can consider. The growing sector of online instructional options may introduce new opportunities for schools located in remote areas.

Effective Leadership

Infrastructure models such as developing a cooperative and appointing a state director of charter school special education are highly dependent upon effective leadership. Whether the leadership is part of a state department of education, the authorizer's office, or a charter school leader, that individual has to dedicate the time and have the wherewithal to develop the infrastructure in a quality way. If a school leader(s) cannot take the lead on developing an infrastructure, there may be the need to cultivate an external leader or consider a special education infrastructure that does not require effective leadership to be sustainable (e.g., contract with a local district or hire a consultant).

Explicit Roles and Responsibilities

Collaborative relationships that entail pooling resources or

sharing services generally require a formal, legally binding document that articulates individual members' roles and responsibilities. Whether the details of the relationship are outlined in a charter contract or a separate legal document (e.g., a memorandum of understanding), it is critical that all relevant parties understand the ground rules for the relationship and that the agreement outlines the procedures that protect the interests of all parties should problems arise.

Mutual Interests

Mutual interests are the glue that binds the various entities that constitute a special education infrastructure. Whether charter schools opt to create a special education cooperative or retain a private provider on a consultancy basis, all parties involved have an interest in the relationship working well. For instance, in a cooperative, the members are bound by an interest to pool their resources in order to increase efficiency. If a state department of education allocates resources to support a charter school special education position, the state is interested in ensuring that charter schools are educating students with disabilities while charter schools are interested in ensuring that they fulfill their obligations related to IDEA and are in compliance. If the relationship is not mutually beneficial – for instance when there is an adversarial relationship between the authorizing district and charter schools – the infrastructure will most likely not operate as effectively or be as sustainable as would a voluntary association based on mutual interests.

Conclusion

Special education policies and procedures are frequently characterized as one example of the bureaucracy that charter schools strive to shed. Yet, these procedures are grounded on a commitment to protecting the civil rights of students who historically were marginalized in public schools. Ensuring that students with disabilities receive a quality education in the charter schools they attend requires thoughtful policy development and implementation on the part of authorizers and charter school operators alike.

Many authorizers are partially, if not fully, responsible for the delivery of special education services in the schools they charter. In fulfilling these responsibilities, authorizers have an obligation to ensure that they are providing quality services and oversight to schools while respecting the autonomy these schools are afforded. Well-articulated roles and responsibilities, both for authorizers and charter schools, related to special education and related services can pre-empt problems associated with non-compliance and support the delivery of quality services to students. Nationwide, charter schools are creating or affiliating with a variety of special education infrastructures to build their

capacity to educate students with disabilities. Authorizers can help charter schools build their special education programs by informing the schools they authorize about the multiple models schools can use to build their capacity. Authorizers can also work with their charter schools to assist them to discern what options may work best for them given their state's specific policy context. Proactive steps to help charter schools create or affiliate with a special education infrastructure will help authorizers and charter schools provide quality education to all students,

including students with disabilities.

This brief provided a foundation for authorizers to understand the critical issues related to special education in charter schools and identified the key sources of supports to which charter schools are availing themselves. A companion brief outlines specific steps authorizers can take to ensure that charter schools are aware of their responsibilities related to special education and are held accountable to providing quality special education programs.

RESOURCES

Ball State University Office of Virtual Special Education Cooperative: www.bsu.edu/teachers/ovsec/

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

The Finance Project (2006). Choosing an Education Contractor: A Guide to Assessing Financial and Organizational Capacity, Washington, DC: American Institutes for Research and The Finance Project: www.financeproject.org/publications/CSRQconsumerguide.pdf

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

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

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ENDNOTES

¹ This brief draws from previously published research reports and technical assistance documents of which the author was a co-author and that were produced by Project Intersect at the University of Maryland, College Park: www.education.umd.edu/EDSP/ProjectIntersect/index.html, and the SPEDTACS Project at the National Association of State Directors of Special Education: www.uscharterschools.org/cs/spedp/print/uscs_docs/spedp/home.htm



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