



Charter Schools and Students with Learning Disabilities

Today charter schools are being viewed as a critical piece of this nation's federal education reform agenda. Converting persistently low-performing traditional public schools into charter schools is a key component of the school improvement strategy. State policies that cap the number of charter schools are under attack and the start-up of new charter schools or expansion of high-performing charter schools already in operation are a high priority. Given this steadily increasing focus, an examination of how charter schools are serving students with disabilities — including learning disabilities (LD) — is important to the public policy landscape.

The charter school movement began in the late 1980s, initially as “schools-within-schools” then moving quickly to the current model of “stand-alone” schools. Charter schools are established according to individual state's charter school laws. Minnesota passed the first charter school law in 1991 and other states rapidly followed suit. By 1995, 19 states had enacted charter school laws, and by 2003 charter school laws existed in 40 states, Puerto Rico, and the District of Columbia.

According to the US Charter Schools Web site, “charter schools are one of the fastest growing innovations in education policy, enjoying broad bipartisan support from governors, state legislators, and past and present secretaries of education.” In 1994, the U.S. Department of Education began providing grants to support states' charter school efforts through the Public Charter Schools Program (PCSP), part of the Elementary and Secondary Education Act (ESEA), the nation's largest federal education law.

While state policies vary, the basic intent of the charter schools movement has been to enhance parent and student choices among public schools and give more students the opportunity to learn to state's challenging content standards. While charter schools may be waived from state or local requirements, they are part of the public education system and, as such, are subject to all federal laws and regulations related to students with disabilities, especially the Individuals with Disabilities Education Act (IDEA). However, according to Dr. Eileen M. Ahearn, an expert in special education in charter schools, most states have not developed technical assistance to help charter schools meet their special education responsibilities and there is a significant need for policy clarification and technical assistance to help

charter schools carry out their responsibilities in this area. (Testimony before the U.S. House of Representatives, Education and Labor Committee, February 24, 2010.)

According to data available from the U.S. Department of Education, from the 1999–2000 school year to the 2007–2008 school year the number of students enrolled in charter schools in the United States more than tripled, increasing from 340,000 to 1.3 million students. During that time, the number of charter schools increased from 1,500 to 4,400. While still small as a percentage of all public elementary and secondary schools in the U.S., which number nearly 100,000, this steady

Charter School Defined

The definition of a “charter school” under state law is a matter of state policy. However, in order to receive federal funds, a charter school must meet the definition in Section 5210(1) of ESEA, which is as follows:

“The term ‘charter school’ means a public school that:

- 1. In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph [the paragraph that sets forth the Federal definition];**
- 2. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;**
- 3. Operates in pursuit of a specific set of educational objectives determined by the school’s developer and agreed to by the authorized public chartering agency;**
- 4. Provides a program of elementary or secondary education, or both;**
- 5. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;**
- 6. Does not charge tuition;**
- 7. Complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Part B of the Individuals with Disabilities Education Act;**
- 8. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;**
- 9. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program [the PSCP];**
- 10. Meets all applicable Federal, State, and local health and safety requirements;**
- 11. Operates in accordance with State law; and**
- 12. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.”**

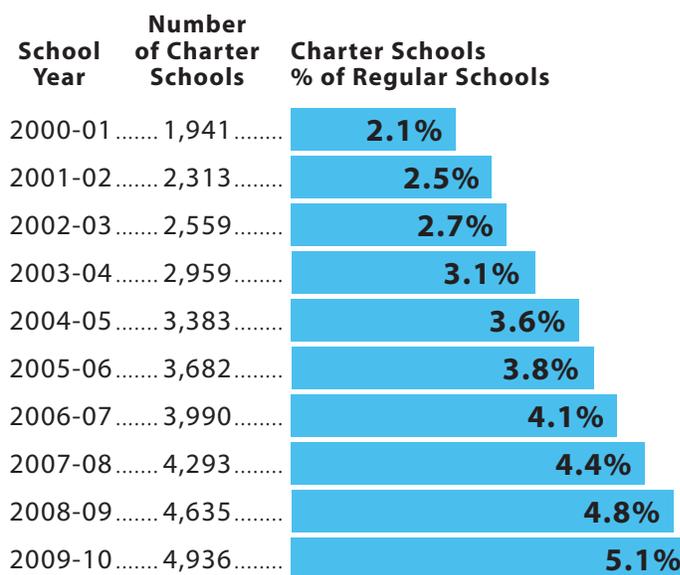
proliferation of charter schools should offer parents of students with disabilities the same degree of choice it provides for all other students.

In many cases, charter schools are highly desirable for parents of students with disabilities. A study conducted by the U.S. Dept. of Education (U.S.ED) in 2000 identified several reasons why parents of students with disabilities chose a charter school. Among them are:

- attractiveness of a special curriculum or instructional approach;
- individualized instruction for all students, reducing or eliminating the stigma often associated with special education in tradition public schools;
- “inclusion model” of delivering instruction to students with disabilities.

However, several recent studies have identified an under-representation of students with disabilities among charter school enrollees. This disparity exists despite precise language in the Individuals with Disabilities Education Act (IDEA) and its implementing federal regulations as well as clarifying policy letters (see box), regarding the responsibilities of charter schools to serve students with disabilities in the same manner as children with disabilities are served in other public schools.

Growth in Charter Schools 2000-2010



Source: www.PublicCharters.org

Continuum of placements requirement applies to public charter schools

U.S. Department of Education, Letter to Anonymous, 53 IDELR 127 (OSEP 2009)

The Office of Special Education Programs (OSEP) informed a concerned individual that the IDEA implementing regulation at 34 CFR 300.115 requiring districts to ensure the availability of a continuum of alternative placements applies to public charter schools. Children with disabilities who attend public charter schools are entitled to the same protections under the IDEA as children who attend other public schools, OSEP explained. This is the case regardless of whether the charter school is a school of the Local Educational Agency (LEA), is itself an LEA, or is operated by the state. Similarly, a public charter school or the LEA or State Educational Agency (SEA) that operates it must ensure that children with disabilities are placed in the LRE as required by the IDEA implementing regulation at 34 CFR 300.114(a)(2). OSEP noted that there is no requirement that each placement on the continuum be used. The IDEA merely requires that each placement, including instruction in regular classes, special classes and home instruction, and instruction in hospitals and institutions, is available to meet the needs of children with disabilities.

What it means: Whether public charter schools qualify as LEAs themselves or are run by a district or the state, they must comply with the IDEA to the same extent as any other public school. Thus, they must comply with the IDEA’s mandate that a continuum of alternative placements be available and that children with disabilities are educated to the maximum extent appropriate with nondisabled students.

It should be noted that, in many cases, students with learning disabilities are found to be over-represented in charter schools. For example, in California, which has the largest number of charter schools in the nation, students with learning disabilities make up 61% of students with disabilities in charter schools but represent 55% of students with disabilities in traditional public schools, indicating a lack of equity for students with other disabilities such as mental retardation and autism. This over-enrollment of students with “high-incidence disabilities” such as learning disabilities serves to further mask the under-representation of students with other types of disabilities. Conversely, some charters claim to have fewer students with disabilities in attendance because they are providing effective early interventions or offering individualized instructional programs that reduce the need to label children as needing special education.

The under-representation of students with disabilities is well-documented. Recently Dr. Thomas Hehir, Harvard professor and leader of investigations into several charter school systems in large urban district, provided these findings to the U.S. House of Representatives’ Education and Labor Committee:

“In San Diego, close to 10% of all students now attend charter schools. Though the enrollment of students with disabilities in traditional public schools overall approaches 12%, the average enrollment of students with disabilities in non-conversion (from scratch) charter schools during the 2005-2006 school year was 5.8% (Hehir & Mosqueda, 2008). With respect to students requiring extensive special education services, the imbalance is even more dismal. For example, during the 2005-2006 school year, there were only three children with mental retardation in all San Diego non-conversion charter schools *combined*; traditional schools across the district, meanwhile, educated almost one thousand students with mental retardation. That same year, non-conversion charter schools in San Diego educated just two students with autism.

The picture is quite similar in Los Angeles. The enrollment of students in charter schools throughout the city is large (approximately 8%). The enrollment of students with disabilities across the district averages over 11%, while the enrollment of students with disabilities in independent charter schools averages fewer than 7% (Independent Monitors Office, 2009). As in San Diego, the distribution of disability types within independent Los Angeles charter schools is skewed; for students with disabilities requiring extensive special education services, the likelihood they will be enrolled in independent charter schools is one-fourth that of traditional public schools.

Similar data emerges for charters serving urban areas in Massachusetts. For the 2006-2007 school year, the percentage of enrolled students with disabilities in traditional urban schools was 19.9%, while the percentage of enrolled students with disabilities enrolled in urban charter schools was significantly lower, 10.8%. As is the case in Los Angeles and San Diego, significantly fewer students were enrolled in all urban charter schools who had more substantial needs such as mental retardation, emotional disturbance, and autism. Several cities’ charter schools enrolled none of these students.”

(Testimony before the U.S. House of Representatives, Education and Labor Committee, February 24, 2010.)

The under-representation of students with disabilities can be attributed to several factors that have been found to exist in varying degrees among charter schools across the U.S. Among them are:

- **Counseling Out.** This practice can occur informally during initial meetings with the parents and students, or, in some cases, schools have more formal or direct approaches for discouraging

certain students from enrolling. According to the 2000 U.S.ED study, administrators “asserted various reasons for discouraging a student’s enrollment, mostly based on a lack of fit between the curriculum or instruction and a student’s needs” and most “saw ‘counseling out’ as a process that is in the student’s best interest.”

- **Legal Requirements.** The complex legal requirements associated with the implementation of special education services, including paperwork, appear to be a barrier to enrollment. In fact, the U.S.ED study reported that “staff expressed antagonism toward special education but encouraged enrollment of students with disabilities” suggesting that it is not the students who are being turned away, but rather the responsibilities associated with special education compliance.
- **Accessibility.** One-third of the schools visited for the U.S.ED study were not accessible, leaving the study to conclude that “the lack of accessibility is a clear obstacle to enrollment by students with physical disabilities.”

According to Hehir, under-representation of students with disabilities in charter schools poses several critical issues. Among these are:

- **Civil Rights Violations.** Students with disabilities, as well as English-language learners and homeless students, have rights as American citizens afforded to them by both the Constitution and various federal education laws. Under-representation may be a clear indication that the rights of these groups are being violated in some cases.
- **Evidence of Success.** Since charter schools are looked to as “experiments” within public education — particularly as a vehicle for improved academic achievement for disadvantaged students — to exclude a large portion of any student group, such as students with disabilities, compromises the validity of results achieved by charter schools.
- **Financial Impact.** Charter schools’ lack of enrollment of students with disabilities — particularly students with significant disabilities — results in a disproportionate financial impact on the traditional public schools. These schools are left to educate the most costly students with disabilities while students with mild disabilities leave for charter schools.

The National Center for Learning Disabilities (NCLD) believes education reform efforts are important and useful for all students, including students with LD. While charter schools have become an

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Dr. Thomas Hehir

important part of current reform efforts, the expansion of charter schools should not be the only route to improving results for America’s students. The charter school movement began in large part as an opportunity for experimentation — a chance to see what could be accomplished if schools were given flexibility in staffing, scheduling, curriculum and other key ingredients of education. Successes could then be transplanted back to the traditional public schools in order to benefit significantly more numbers of students. Using charter schools as laboratories to discover successful policies and practices that can be scaled up to traditional public schools is the appropriate approach. Expansion of charters as a remedy for the failure of public schools defeats the original intent and will likely result in charters with many of the same problems experienced in traditional public schools.

NCLD does not favor the concept of charter schools designed to serve strictly students with disabilities, such as learning disabilities. This approach undermines the “least restrictive

environment” principle of educating students with disabilities by isolating students from their typical peers. Rather, charter schools that are achieving success in educating students with disabilities — as well as those that have minimized the need to identify students as “learning disabled” or “emotionally disturbed” through early and effective interventions — should be viewed as resources for practices that can be replicated to thousands of traditional public schools nationwide.

Policy Recommendations

To ensure that charter schools continue to offer choice and opportunity for all students, the federal government should:

- **Assume a stronger, more proactive role in charter schools that receive federal funds.** As a condition of receiving federal funds, states must be required to submit their authorizing regulations to their Departments of Education for approval. States must be required to investigate charters that enroll significantly fewer students with disabilities than their surrounding area contains.
- **Establish a virtual technical assistance center** to provide charter schools, charter school service groups and charter authorizers with a central point of information on the complex issues of special education delivery.
- **Provide funding for research into the academic achievement of students with disabilities in charter schools** and the identification of practices that contribute to positive results, to facilitate both replication in charter schools and traditional schools. Because charter schools are typically small, many escape the need to report academic achievement on state assessments due to the minimum subgroup size reporting provisions of ESEA. Consequently, little is known about the academic achievement of students with disabilities attending charter schools.

Find out what’s happening in your state regarding charter schools by visiting the U.S. Charters Schools website at www.USCharterSchools.org

**For additional information, please contact
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The National Center for Learning Disabilities works to ensure that the nation’s 15 million children, adolescents and adults with learning disabilities have every opportunity to succeed in school, work and life. NCLD provides essential information to parents, professionals and individuals with learning disabilities, promotes research and programs to foster effective learning and advocates for policies to protect and strengthen educational rights and opportunities.

For more information, please visit us on the Web at www.LD.org.