



# 2011

## Voluntary Public School Choice

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## Special Needs and Choice Districts

**Authors: Robin Lake and Betheny Gross**

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## INTRODUCTION

Public school choice creates both new opportunities and new challenges for students with unique needs. Students with special or distinct needs have arguably never been adequately served in public education. In most school districts, the academic achievement and drop-out rates for students with an Individual Education Plan (IEP) are dismal. Recent studies show that 12th-grade special education students earned, on average, three credits fewer than regular education students (enough to thwart graduation) and data from 2007 indicates only 60 percent of special education students ages 18 to 21 graduated with a diploma.<sup>1</sup> Despite tremendous improvements to the legal rights of students with special needs (primarily via the formation of powerful Washington, DC, lobbying groups and resulting improvements to IDEA) over the last few decades, many families of students with unique needs remain dissatisfied with the public school options available to their students and feel the traditional school system does not meet their students' needs.<sup>2</sup>

When public schools of choice enter the mix, then, the opportunity to find a better way to serve these students' needs is profound. Schools of choice, such as public charter schools and other public schools given enhanced autonomy (e.g., magnets and alternative schools), offer districts a new way to meet these students' needs. Choice and autonomy can be:

- A tool to create new schools that are designed from the start to serve students who don't fit the traditional model of public schooling.
- A way for districts to experiment with innovative approaches to serving special needs.
- An avenue to create more options for families of students with special needs who struggle to find an appropriate fit for their students' particular learning needs.
- A way to better encourage district schools to move away from rule- and compliance-based approaches to serving special needs to an educational approach focused on outcomes and school-based accountability.

On the other hand, there are real challenges to achieving such opportunities, and some risk that students with special needs will actually be worse off under a broader system of choice than they were without it. Schools of choice, for example, have been criticized for informally excluding students with unique needs, or serving them poorly.

Districts that are moving to a broader school choice system need to minimize the risks to students with unique needs but use this opportunity to dramatically improve the options to

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<sup>1</sup> [http://nces.ed.gov/programs/digest/d09/tables/dt09\\_110.asp](http://nces.ed.gov/programs/digest/d09/tables/dt09_110.asp).

<sup>2</sup> See O'Brien, T., Hupfeld, K., and Teske, P., "Parent Choice and Charter Schools," in Lake, R.J. (ed.), *Unique Schools Serving Unique Students: Charter Schools and Children with Special Needs* (Seattle, WA: Center on Reinventing Public Education, 2010), 12.

and outcomes for the public school system's neediest students. The remainder of this paper will focus on the evidence to date on how students with special needs fair under choice, the typical challenges and tensions that emerge for special populations under district choice systems, the types of strategies districts are employing to make school choice work for unique students and promising new ideas that have yet to be tried.

## **WHAT DO WE KNOW ABOUT HOW SPECIAL NEEDS ARE MET IN CHOICE REGIMES?**

Just as with other outcomes associated with school choice, there is tremendous variation in how choice schools have served students with special needs. One can find charter schools for students on the autism spectrum or charter schools for blind students with nearly 100 percent of their students on an IEP, or with some other special status. Other charter schools have almost no students with identified special needs.

The same is true of traditional district schools. In most school districts, special needs populations vary widely across schools because districts tend to create specialized programs to serve different populations. In Seattle, WA, for example, the school district provides self-contained classrooms for students with emotional and behavioral problems at certain schools, autism programs at other schools, programs for profoundly disabled students at other schools, inclusion programs at still other schools, designated schools for ELL students and some schools offer no special needs programs whatsoever.

When all charter schools are averaged together, charter schools in most states tend to serve a fairly representative or slightly lower number of students with special learning needs. The reasons for the lower average rate are not clear. Though it likely occurs in some charter schools, there is no evidence that "counseling out," or exclusion of students with special needs, occurs more frequently in charter schools than it does in traditional district schools (Hupfeld, et al.). It may be that parents of students with special needs are simply less likely to choose to have their students attend a charter or other choice school.

There is also some evidence that charter schools are less likely than district schools to identify incoming students with special needs labels and are more likely to move students off of IEPs.<sup>3</sup> One notable charter school has a philosophical approach that there are no learning disabilities, only teaching disabilities. The school aggressively addresses learning deficits early on so that students can move off of IEPs. Other charter schools create individualized instruction plans for all students, so parents of special needs students are less inclined to require formalized IEPs. These varied approaches to categorizing students make basic statistical comparisons less meaningful.

More in-depth studies about how schools of choice meet the needs of students with special needs are hard to find and tend to focus on specific locales or schools, making it difficult to generalize from these examples. A few broad findings do seem to emerge, however.

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<sup>3</sup> In Lake, R.J. (ed.), *Unique Schools Serving Unique Students: Charter Schools and Children with Special Needs* (Seattle, WA: Center on Reinventing Public Education, 2010).

- Charter schools appear to attract higher numbers of students identified as being on the autism spectrum and students with learning disabilities.<sup>4</sup>
- Charter schools are less likely to serve students with low-incidence (profound) special needs.
- State and locales vary in how they select, fund and oversee schools of choice, and such factors likely play a significant role in explaining variation in outcomes, including provision of special needs.
- Many charter schools can be considered models for innovative approaches to educating students with special needs.

More research is needed to cull lessons about how schools of choice address specialized student needs, but the overall implication from research is that schools of choice, like other public schools, appear to serve students with IEPs, learning enrichment program status and other identifiers unevenly. Some broad trends point back to the central tenet of this paper: schools of choice offer both risk and great opportunity. The question is how the government agencies that oversee the schools can address weaknesses and risks. The next sections describe the common challenges that occur around special needs when districts offer broad public school choice and how those challenges can be addressed.

## **TYPICAL CHALLENGES WHEN CHOICE MEETS SPECIAL NEEDS**

The central challenge for districts that are trying to promote school choice and ensure that the district's neediest students are served well is that the federal and state safeguards and funding mechanisms that are in place to establish rights and services for these students were designed with a traditional school system in mind. They assume a set of rules and processes based on traditional district structures and capacities, and they establish a system of rights based more on compliance with established processes (following an IEP plan) than on achievement of outcomes.

**“Free and appropriate public education” at the LEA level.** A fundamental assumption in federal and state regulation is that the government body responsible for receiving funding and providing “free and appropriate public education” (FAPE)<sup>5</sup> — the legal requirement in IDEA — for special needs students is the local education agency (LEA): the school district. Within a district, an individual school does not have any obligation to meet every child's needs as long as there are (in the case of students who qualify for special education services) but the district is required to provide an appropriate education for that student elsewhere. If the district cannot provide an appropriate option, the LEA is obligated to pay for the costs of private or even home-based schooling.

**Choice schools as their own LEAs.** Schools of choice are often organized as their own LEAs, meaning that they are the equivalent of a district for the purpose of federal special education regulations. In that case, the charter school is legally responsible for meeting the

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<sup>4</sup> In Lake, R.J. (ed.), *Unique Schools Serving Unique Students: Charter Schools and Children with Special Needs* (Seattle, WA: Center on Reinventing Public Education, 2010).

<sup>5</sup> Section 504 of the Rehabilitation Act of 1973.

needs of every student who attends the school, regardless of disability. The school is also then responsible for federal and state reporting requirements, many of which can be quite complex. Acting as an LEA may simplify legal responsibility, but it creates financial and legal responsibilities that some charter school operators do not understand or are ill-prepared to handle. Without multiple schools with which to share the costs of special needs students, the enrollment of one low-incidence student could send a charter school into a financial tailspin.

**Choice schools as part of district LEA.** In other cases, charter schools are considered part of the school district for the purpose of special education and are not their own LEA. In those schools, the legal responsibility for FAPE rests with the school district. Such charter schools typically receive special education services from their school district, just like any other district school. The advantage for the charter schools is that they have more flexibility to work with the school districts to place students who the school leaders feel they cannot serve well. Many charter schools make a strong case that they are, by design, oriented around a specific mission and approach that may not be appropriate for every student. However, charter schools in this dependent status often complain that they are not happy with the quality or amount of special education services they receive from the district. Non-LEA status also can confuse accountability when districts believe charters should share some responsibility for the district's special needs students, but the charter school views special education as a district concern.

**Special needs and accessibility.** School choice systems naturally create a barrier for vulnerable students and their families because they require that families make an extra effort to select and apply for a school. Even when parents understand that they have a choice to make (which is by no means obvious to all parents), they must rely on the information and messages they receive from schools to make their choice. Families with special needs students may find themselves getting an intentional or unintentional message that their child is not welcome.

To further complicate student access, student transportation is not always provided by charter schools or district alternative schools, and charter schools often do not have access to state or local transportation funds. This may be a particular problem for students with severely disabling conditions and some have asked whether lack of transportation violates IDEA's equal access provisions. The same access issues arise with facilities — not having access to state and local capital funds, charter schools tend to locate in non-traditional school buildings, some of which may not be Americans with Disabilities compliant.

**Disincentives, risk and liability for charter schools.** Taken in its entirety, all of the issues discussed above create a difficult set of incentives for schools of choice. Though charter schools typically have missions to serve at-risk students, the risk, liability and costs associated with special needs and ELL students are high while the financial incentives are low. Charter schools receive additional funding for special needs students, but the add-on funding is usually calculated at a statewide average rather than corresponding to differentiated levels of disability. So a low-incidence student requiring services costing, for example, \$250,000 per year may only come with an additional \$20,000 of state funding.

There are strong incentives for charter schools to avoid serving high-needs special education students because of liabilities and insufficient funding. When charter schools avoid serving high-needs students, traditional schools in districts can feel that they are carrying a disproportionate share of the responsibility for special needs students.

## WHAT CAN BE DONE TO MAKE CHOICE WORK FOR STUDENTS WITH UNIQUE NEEDS?

None of the barriers presented above is a reflection of mal-intent on the part of school districts or schools of choice. Rather, they are outcomes of a system of regulations and funding designed for a system that does not reflect reality in most districts where choice, diverse providers and outcome-based (as opposed to compliance-based) accountability is becoming the norm.

Still, there can be real implications for students if schools of choice act in an exclusionary manner. And there can be significant political fallout if schools of choice are perceived to be exclusionary. When such problems occur, the instinct of district is often to fall back on simple solutions like quotas or regulations to ensure schools of choice are serving a representative number of special needs students. Charter schools in some cities may soon be required to serve and retain percentages of special needs students that are comparable to the district as a whole. (This effort can be seen in New York City, Rochester, Nashville, Denver and Hartford.) For example, New Orleans' Recovery School District is considering requiring all of its charter schools to maintain an enrollment of students with special needs within 75 percent of a distribution.

### Students With Other Special Needs

New schools of choice with their targeted missions and, in many states, mandates to serve the lowest performing students, offer tremendous potential to provide focused programs to language minority students and other students requiring alternative education arrangements. But accommodating ELL students or students needing alternative programs presents choice districts many of the same challenges as serving special education students.

Not all schools will work for these students and resource allocation, accountability and the pressure to meet enrollment numbers create disincentives for new school operators to invest in programs that will meet these students' needs. Informing parents, especially language minority parents, about available choices, providing reasonable transportation and access to available schools pose familiar challenges. Ensuring that quality programs are provided within diverse schools is just as difficult for districts as is oversight of special education programs — perhaps even more so for alternative education programs, because there are fewer legal requirements to standardize oversight of these programs.

Many of the proposed strategies for improving the provision of special education services — creating an ombudsman to guide families through the selection process, rethinking the distribution of resources and rethinking who provides oversight and accountability for these programs — may also improve service to these other special populations.

But as Parker Baxter, formerly with the Denver Public Schools, remarked, “There is danger in using traditional ideas to solve non-traditional problems.”<sup>6</sup>

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<sup>6</sup> Personal conversation with authors. January 2011.

A much more productive policy approach is for districts to view charter schooling as an opportunity to craft better public school solutions for meeting the needs of students with special needs. But this is a new frontier for school districts and the charter school community and, as such, it requires innovative thinking. There are a number of such innovations underway in school districts around the country.

**Shared costs, services and risks.** A variety of support structures can provide charter schools with the same types of supports district schools receive and should be thought of as a range of options available to stand-alone charter schools. Entities currently providing special education infrastructure support to charter schools include local districts, intermediate administrative units (e.g., intermediate school districts, education services centers and boards of cooperative education services), cooperatives, local non-profits and management organizations.

In the District of Columbia, charter schools can join the DC Special Education Co-operative, which provides training and consulting services to schools as well as direct services, such as consulting teachers or special education teachers, advocacy and other supports.<sup>7</sup>

Similar in spirit to special education co-ops, special needs risk pools are another way charter schools can share the financial responsibility for special needs students. Operating like insurance, charter schools pay into the risk pool and draw out of the pool when a high-needs student enrolls in their school. Lauren Morando Rhim described in detail how risk pools work and noted that IDEA 2004 includes language and regulatory flexibility that encourages the creation of state special education risk pools.<sup>8</sup> Rhim also notes that a risk pool has the potential to prepare charter schools to manage the potential heavy financial costs of a child who requires intense services and may diminish the incentive to counsel out children with greater special education needs.

**Programs within schools or specialized schools to target special education students.** Concerned that the Denver charter schools served lower rates of students with special needs, the Denver school district decided to house a program for students with special needs in a charter school. New Orleans and Nashville are considering similar approaches. Districts could also consider RFPs for charter schools with a specialized focus on the types of disabilities that are more underserved in the district.

**Improved authorizing, oversight.** Many charter school authorizers, including school districts, have dramatically improved their processes for assessing a charter school applicant's plans for serving students with special needs before a charter is approved. Authorizers have also learned, sometimes the hard way, the importance of monitoring and auditing charter schools to ensure they are taking proper procedural steps when students are identified as eligible for special education. Nashville and New Orleans, for instance, are

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<sup>7</sup> <http://specialedcoop.org/coop/>

<sup>8</sup> In Lake, R.J. (ed.), *Unique Schools Serving Unique Students: Charter Schools and Children with Special Needs* (Seattle, WA: Center on Reinventing Public Education, 2010).

both working to create more transparent and publicly accessible data on exceptional students.

**Improved access to equitable resources.** Some districts (e.g., Denver) are working on ways to provide charter school staff access, at cost, to the same special education training available to district-run schools. Denver is also working to allow charter schools more say over the assigning, supervising and evaluating of district employees who work in or provide special education services to charter schools.

New Orleans' Recovery School District has committed to advocate for local and state funding policies that provide requisite resources for serving special needs students. Los Angeles Unified has committed to work with charter schools to jointly develop and bring forward for district and state approval a plan that reorganizes current special education structures, and allows for "autonomy, flexibility and accountability."

Other ideas, yet untried, may also hold promise for school districts seeking a "third way" on charter schools and special education. As more districts engage in problem-solving on this issue, there are a number of questions district staff can begin asking of themselves and the charter schools in their midst to develop solutions that fit their community.

**Who is the advocate for students with special needs?** Should all schools serve all kids or should there be specialization and is the district responsible for ensuring all kids have viable options? If the answer is that there should be some local specialization of services, someone will need to help families navigate these options. A district-wide ombudsman, whose job is to counsel parents with special needs students in the available options and the rights they have within the schools they choose, can fill this role.

**Is the district a regulator, or a provider, or both?** Right now, in most choice districts, the district serves as both the provider of special education and the regulator who ensures that services are being provided. It is a fair question to ask whether this is an optimal arrangement. Should the agency that is responsible for ensuring that students are being appropriately served in district and charter schools be the same agency responsible for providing the majority of services to special needs students? Is there a way to separate these functions so that service providers, be they district or charter schools, are being overseen by the same but independent agency?

**Should there be common discipline policies?** Though relevant to all students, discipline policies are of particular concern when it comes to students with IEPs related to behavioral issues. Charter schools have been criticized for exercising particularly strict discipline policies that end in high numbers of student expulsions — an outcome that could disproportionately impact some special needs students. This criticism has led some districts to wonder whether there should be a common discipline policy across district and charter schools.

**Do financial incentives need to be addressed?** Co-ops and risk pools can address some of the disincentives for charter school to provide special needs services, but it is worth exploring whether the policies governing the distribution of special education funding



should be adjusted. Should states consider creating a statewide fund for low-incidence, exceptionally high-needs students, in essence assuming state responsibility for these expenses instead of LEA responsibility? Should they consider adjusting facilities funding to account for building accessibility costs for special needs students?

**Who has legal responsibility?** What legal status do charter schools in this community have (LEA or part of the district) and what are the implications for the school's responsibility to meet federal and state special education requirements?

## **CONCLUSION**

Special education is an issue of particular vulnerability for schools of choice and an one that districts have to get right, especially when they are rolling out new school choice initiatives. One lawsuit or scathing newspaper story about a student's special needs not being met can create serious political difficulties and can even carry financial penalties. There is also a moral imperative. Even if districts have charter schools in their geographic region that operate as independent LEAs, a collection of district and charter public schools in a city or a region probably has some community-wide responsibility to ensure the welfare of the most vulnerable population of students. As the research demonstrates, there is no obvious culprit for the problems that arise when special needs meet choice district, and there are no simple solutions. Finding ways to ensure choice schools effectively serve students' unique needs will take creativity and a persistent problem-solving approach. But those attempts will surely be worth the effort if choice can fulfill its promise to better serve students who typically face limited choices today.

