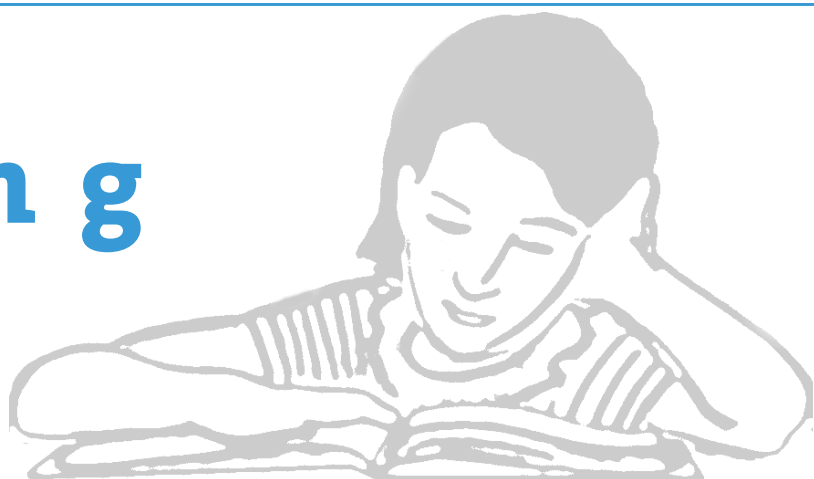




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Lauren Morando Rhim  
*Public Impact*  
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University of Washington Bothell

2101 North 34th Street, Suite 195, Seattle, WA 98103 206.685.2214 [www.ncsrp.org](http://www.ncsrp.org)

# Special Education Challenges and Opportunities in the Charter School Sector

LAUREN MORANDO RHIM

SENIOR CONSULTANT

*PUBLIC IMPACT*

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University of Washington Bothell

2101 North 34th Street, Suite 195, Seattle, WA 98103 206.685.2214 [www.ncsrp.org](http://www.ncsrp.org)

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# Introduction

As local communities, school districts, and state policy leaders nationwide seek to identify strategies to improve public education, autonomous charter schools are one of multiple possible strategies to introduce new schools into communities aiming to provide diverse educational options and improve student outcomes. Charter schools hold particular promise for educating students who have traditionally been left behind in conventional settings, because they can start from scratch and operate free from many of the constraints that make it difficult for public schools to change and meet diverse needs.

Children with disabilities are one such group. Despite decades of litigation and policy development, students receiving special education continue to lag significantly behind their non-disabled peers in student achievement, high school graduation, college attendance, and virtually any other important outcome. In theory, charter schools offer an opportunity to rethink how to educate children with disabilities, showing the way for the wider system to close this large and enduring achievement gap.

In practice, however, the experience of charter schools with special education has proven particularly challenging. Educating children with disabilities in public schools is guided by a complex collection of federal as well as state policies and regulations and district, and school-level, procedures designed to protect the civil rights of children with disabilities. In the charter school sector, educating children with disabilities is also governed by state charter school laws and authorizer policies. The crossroads of multiple avenues of policy and standard operating procedures, some developed prior to the advent of charter schools, can be extremely confusing territory for inexperienced charter school personnel. In addition, educating children with disabilities requires a high level of specialized pedagogical expertise. Typically operating with lower levels of per-pupil funding than district schools, charter school operators often find themselves struggling to meet the needs of children with disabilities effectively.

These challenges have serious implications for the future of charter schools as providers of special education – and more generally. First, charter schools’ well-known struggles with special education may limit the degree to which parents of students with disabilities view the charter sector as a viable option for their children. Second, the difficulties charter schools face related to special education may sometimes contribute to provision of less than adequate services to children with disabilities who do opt to enroll. Because of these two consequences, children with disabilities may miss out on opportunities that their non-disabled peers enjoy in charter schools.

The potential implications of these challenges, however, go beyond their effects on children with disabilities. Issues associated with special education, in conjunction with other notable challenges that charter schools face (e.g., facilities and lack of equitable funding), may inhibit otherwise qualified candidates from developing charter proposals and consequently, limit both the growth and quality of the charter school sector. While there is no evidence that special education difficulties alone have systematically deterred the start-up of charter schools or forced charter schools to close, it is clear that special education is one of several daunting aspects of starting a successful charter school. Making special education more manageable for charter

school operators – along with addressing other challenges – could make the sector more enticing for high-potential school launchers, benefiting both children with disabilities and students more generally.

This report explores the various difficulties charter schools face related to educating children with disabilities and examines potential opportunities to address the challenges to ensure that efforts to educate children with disabilities do not inhibit efforts to grow high quality charter schools.

This report begins with a background section on special education in general which serves as a platform to examine issues related to charter schools. Then, based on a review of the limited but growing literature on special education in the charter sector and interviews with key informants knowledgeable about the relevant issues, the report identifies the most pressing challenges charter schools are facing related to educating children with disabilities and outlines potential opportunities to address the challenges. Key informants represent select state charter school associations, charter school authorizers, education management organizations, private consultants, and resource centers as well as national advocacy organizations. The report synthesizes the **challenges** and perceived impact the challenges have on the charter school sector; and identifies potential policy, research, and investment **opportunities** that policy leaders should consider in the interest of 1) ensuring that charter schools are a viable option for children with disabilities and 2) capturing the lessons emerging from the charter sector for the benefit of charter and traditional public schools alike.

## Background: Special Education

Special education and related services represent a collection of programs and supports developed to help children with disabilities access and succeed in school. Public schools, including charter schools, are required to adhere to all federal civil rights laws, including the Individuals with Disabilities Education Act of 2004 (IDEA), Sec. 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, which were developed to protect the civil rights of individuals with disabilities. While Section 504 and ADA establish a basic foundation for *access* to public education, the IDEA establishes specific guidelines regarding *educating* children with disabilities and provides financial support to states to help them implement the law. Consequently, while Section 504 and ADA apply to public schools, most discussion regarding educating children with disabilities focuses on IDEA rules and regulations.

Congress passed the Education of All Handicapped Children Act, P.L. 94-142, the precursor to IDEA, in 1975. The law represented a major shift in the conceptualization of the notion of disability and specifically, the integration of children with disabilities in public schools and larger society. IDEA and related regulations emphasize that public schools, including charter schools, are responsible for educating students with disabilities and providing a free appropriate public education (FAPE) in the least restrictive environment (LRE). A written plan to provide special education services, the Individualized Education Program (IEP), is developed by a small team comprised of administrators, teachers, specialists, and the student's parents. The principles

of FAPE and LRE are core tenets of special education and the IEP is the tool used to outline a school's plan to meet FAPE and LRE for each child found eligible for special education.

The definitions of FAPE and LRE are complicated and have been the focus of extensive litigation, including multiple influential Supreme Court cases.<sup>1</sup> In its simplest form, the guarantee of FAPE aims to ensure that children with disabilities will receive, without cost, the services and programs selected by the IEP team to meet their individual needs. The notion of "appropriate" has been the subject of particularly contentious litigation aimed at defining the extent of services required to meet this standard. FAPE has generally been interpreted to include a very broad continuum of services and supports required to allow a child with a disability to access the general education curriculum.

The construct of LRE reflects a fundamental conviction that all children should be educated in the general education classroom alongside their peers without disabilities, with appropriate aids and supports, unless they cannot succeed in this environment. Based on the core civil rights principle that separate by definition cannot be equal, LRE reflects a commitment to educating children with disabilities alongside their peers without disabilities. In contrast to historic practice wherein children with disabilities were initially placed in separate schools or classrooms and thereafter had to demonstrate the ability to succeed in the general education classroom in order to be integrated or "mainstreamed," LRE dictates that all children are initially presumed to be able to be educated the general education classroom. They are only pulled out of the general education classroom as dictated by their individual needs articulated in their IEP. Furthermore, separate services and placements should include opportunities to interact with peers without disabilities to the maximum extent possible. Depending on a child's particular disability, and in accordance with their IEP, meeting the standard of providing FAPE in the LRE arranges along a continuum from being educated 100% of the school day in a general education classroom with minimal special aids and supports to 100% of the day in a private residential setting with extensive services.

Educating children with a wide array of disabilities and complying with sometimes onerous federal and state special education procedural requirements with finite resources can be a challenge for all public schools; traditional and chartered (President's Commission on Excellence in Special Education, 2002; U.S. Department of Education, 2005). The President's Commission on Excellence in Special Education (2002) documented multiple challenges associated with the IDEA. In line with how society has typically conceptualized individuals with disabilities, special education supports and services are generally conceived of as something distinctly separate as opposed to an integral part of the instructional program. Furthermore, efforts to monitor and control expenditure of special education dollars and adherence to due process have created a system that focuses more on process than performance. For instance, in large part due to limitations associated with funding streams, special education services have typically only been provided once academic failure has been documented as opposed to as a preventive strategy; loosely equivalent to waiting for someone to hit the ground before extending them a helping hand that could potentially prevent the fall. Compounding the challenges associated with an overly bureaucratic process is the practical reality that there is a relatively

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<sup>1</sup> For an extensive listing and analysis of special education case law, see Wrightslaw: <http://www.wrightslaw.com/caselaw.htm>.

limited research base on effective instructional strategies for children with a diverse range of abilities and a shortage of qualified special education teachers available to educate children with disabilities. In response to these documented challenges, The Commission (2002) outlined three broad recommendations to improve IDEA and consequently, the education of children with disabilities: (1) focus on results, not on process; (2) embrace a model of prevention rather than failure; and (3) consider children with disabilities as general education children first. These broad themes influenced the reauthorization of IDEA in 2004.

As a society we have witnessed improvements in the lives of individuals with disabilities during the last 30 years, but public schools and society at large have not progressed to the point that individuals with disabilities can enjoy a “fully normalized, fair life experience” (Andrews et al., 2000, p. 258). P.L. 94-142 required that students with disabilities have access to neighborhood schools and general education classrooms with appropriate supports and services (i.e., FAPE and LRE). Under the reauthorization of IDEA, coupled with the accountability requirements of No Child Left Behind (NCLB), requirements associated with access and due process are no longer the ceiling, but rather the floor, of expectations for students with disabilities. Public schools are now held accountable for demonstrating that the sub-group of children with disabilities is making adequate yearly progress (AYP) analogous to their peers without disabilities. While much controversy and consternation whirls around NCLB requirements related to AYP, and specifically the challenges of assessing children with a diverse range of disabilities, the law undoubtedly has forced states, districts, and schools to focus more attention on ensuring that their students with disabilities are provided access to the general education curriculum and prepared to take state assessments (National Council on Disability, 2008).

While acknowledging the gains achieved since 1975, the current system of educating students with disabilities in public schools arguably does not meet the goals underlying the federal statutes. In particular, schools struggle to hire and retain qualified special education personnel and more resources are required to provide adequate supports and develop new instructional approaches (National Council on Disability, 2008). The result of these inadequacies is that many students enrolled in special education programs have less than ideal school experiences, drop-out, or do not obtain the skills required to graduate and succeed (Andrews et al., 2000; National Council on Disability, 2008).

Most advocates agree that in order to address these persistent shortfalls, schools will need to carry out special education in new and different ways. What kind of “new and different” approaches hold most promise is a subject of great debate even within the disability advocacy community. In that context, there is a strong case for experimentation with different strategies for change, coupled with rigorous evaluation and accountability for results with students. Initiating change may be particularly difficult in large school systems with established standard operating procedures. Charter schools present an important opportunity to accelerate change, experiment, and advance the knowledge based related to education children with disabilities. However, to realize the potential opportunity, charter schools must first overcome specific challenges associated with their unique charter status.

## **Special Education in Charter Schools**



When the charter sector first started to evolve in the early 1990's there was both concern and hope expressed by analysts regarding the degree to which 1) charter schools would welcome children with disabilities, 2) special education would be too heavy a financial and procedural burden for fledgling charter schools, and 3) the charter sector could create new opportunities for all children, including children with disabilities (Ahearn, Lange, McLaughlin, & Rhim, 2001; Fiore & Cashman, 1998; Fiore, Warren, & Cashman, 1998; Heubert, 1997; Lange, 1997, McKinney, & Mead, 1996; McLaughlin & Henderson, 1998; Mead, 1995; Medler & Nathan, 1995; Szabo & Gerber, 1996). The charter sector has evolved out of infancy and into young adulthood but concerns about educating children with disabilities in the sector persist. Yet, we now have experience and a growing body of research to draw from to understand what exactly about educating children with disabilities is a challenge in the charter sector. Furthermore, the experiences and research reveal multiple opportunities to address the challenges to ensure that children with disabilities can access and succeed in the 4,000 plus charter schools currently operating.

A key defining legal characteristic of a charter school is whether it is a local education agency (LEA) or part of a larger LEA (Green & Mead, 2004; Heubert, 1997; Rhim, Ahearn, & Lange 2007). Existing charter school laws dictate one of two options related to legal identity; charter schools are (1) part of a local education agency or (2) an independent local education agency. Twelve states dictate that charter schools are independent LEAs and 18 states dictate that charters are schools within an existing LEA. The remaining 10 states and Washington, DC dictate that legal status is determined based on who authorizes the school (AZ, GA, ID, IL, MA, TX, and WI), or the type of charter school created (AK and, LA), or grant schools the option to elect to be either part of an LEA or their own LEA (CA and DC) (Ahearn, Rhim, Lange, & McLaughlin, 2005). Nationwide, approximately 60% of all charter schools are LEAs and the remaining 40% are part of an LEA (Rhim, Lange, Ahearn, & McLaughlin, 2007a).

Legal identity is a critical variable in relation to special education because responsibility for fulfilling legal requirements is mostly assigned to LEAs by states, not to individual schools of an LEA. If a charter school is part of an LEA, the major responsibility for special education remains with the LEA, although some sharing of that responsibility between the school and its LEA can be negotiated. If the charter school is its own LEA, however, it is responsible for all requirements in IDEA that are assigned to a traditional LEA. For example, LEAs are responsible for identifying children with disabilities and following all procedures and timelines associated with evaluations, as well as developing IEPs. They are also responsible for providing the full continuum of educational settings as defined in the LRE regulations. Further complicating the issue of legal identity is the fact that under some charter statutes, a charter school's LEA status for special education may be different from its LEA status for other purposes, such as receipt of federal Title I funds (Green & Mead, 2004). So, special education responsibilities are vast and the onus of fulfilling the responsibilities is particularly heavy for charter schools that are independent LEAs.

The following sections provide a profile of special education in the charter sector which collectively serves as background to the more extensive discussion of the challenges and opportunities.



## Enrollment

Nationwide, children with disabilities represent approximately 12.5% of the total enrollment in public schools nationwide (U.S. Department of Education, 2005). Recent data from the charter sector indicate that 10.6% of charter school students had an IEP during 2003-2004 school year (Rhim, et al., 2007a). Data from a national survey as well as state specific research documented that enrollment of children with disabilities in charter schools ranges from 0% in some schools to 100% in a small sub-group of charter schools developed primarily for students with disabilities (Guarino & Chau, 2003; Miron & Nelson, 2002; Rhim, Lange, Ahearn & McLaughlin, 2007a). Counseling out children with disabilities; whether due to lack of awareness of their responsibilities related to IDEA or an intentional desire to limit the number of children in special education; remains a concern in the charter sector (Rhim et al., 2007a). Conversely, there is evidence that some charter schools are reporting smaller proportions of children with disabilities because they are providing effective early interventions or offering an educational program that reduces the need to label children (Finn, Manno, & Bierlein, 1996; McLaughlin & Henderson, 1998; Sullins & Miron, 2005).

Children with disabilities are identified as having 1 of 13 categories of disabilities (i.e., specific learning disabilities, speech or language impairments, mental retardation, emotional disturbance, other health impairments, multiple disabilities, hearing impairments, orthopedic impairments, visual impairments, autism, deaf-blindness, traumatic brain injury, and developmental delay). Students are also more loosely categorized as having a “high-incidence” disability (e.g., a common type of disability such as specific learning or a speech/language disability) or a “low-incidence” disability (e.g., an uncommon disability such as traumatic brain injury, autism, or orthopedic impairment). The high-incidence group includes approximately 90% of all children with disabilities (President’s Commission on Excellence in Special Education, 2002). While national data are not available for charter schools, an analysis of enrollments in California charter schools documented that, according to type of disability, the proportions of students enrolling differ notably from state averages. Most notably, charter schools enrolled more students with specific learning disabilities (61% compared to 55%) and fewer students with mental retardation (2% compared to 6%) than traditional public schools (Rhim, Faulkner, & McLaughlin, 2006).

## Special Education Service Provision

Multiple qualitative analyses have documented that charter schools tend to serve more of their students with disabilities in general education classrooms (Fiore, Harwell, Blackorby, & Finnigan, 2000; Guarino & Chau, 2003; Ahearn et al., 2001; Rhim, Lange, Ahearn & McLaughlin, 2006). A recent survey of a random sample of charter schools nationwide documented that 73% of students with disabilities are in the general education classroom at least 80% of the day (Rhim, et al, 2007a). This is in contrast to all public schools nationwide that include 50% of students with disabilities in general education classrooms 80% of the day or more (U.S. Department of Education, 2005). While the survey data document that more children with disabilities are being educated in relatively less restrictive environments than typical in traditional public schools, multiple qualitative studies have raised questions about the degree to which charter schools have the financial or instructional capacity to provide adequate supports in general education classrooms (Ahearn et al., 2001; Arsen, Plank, & Sykes, 1999; Fiore, Harwell, Blackorby, & Finnigan, 2000; McKinney, 1996; Miron & Nelson, 2002). We know very little

about the degree to which the students with disabilities who are spending most of their day in general education classrooms are receiving the aids, supports, and services required for them to succeed.

## **Academic Accountability and Outcomes and for Students with Disabilities**

Charter schools are subject to the same accountability requirements as traditional public schools. They must administer annual assessments and track adequate yearly progress (AYP). In addition, they are subject to periodic compliance monitoring by their respective state department of education under IDEA. Aside from systemic accountability mechanisms dictated by NCLB and IDEA, charter schools are held accountable under state charter statutes that provide charter schools authority to operate under renewable charters or contracts. They are also held accountable by parents who choose the school. Parents of children with disabilities can file due process complaints if the school does not uphold the policies and procedures outlined in IDEA and related state special education statutes.

To date, very little research has been conducted on the academic outcomes of students with disabilities in charter schools. The lack of research is due in large part to the *small size* of most charter schools (i.e., 309 students, Rhim et al., 2007a) relative to traditional public schools (i.e., 552 students, U.S. Department of Education, 2007a) and the small number of students with disabilities in most charter schools. Under NCLB guidelines adopted in individual states, reporting on the subgroups is frequently omitted because of the minimum group size required to ensure statistical reliability and to protect students' privacy. Evidence from the previously mentioned analyses of California charter schools indicate that students with disabilities are performing as well as, if not slightly better than, their peers in traditional public schools. Specifically, while traditional public schools in California overall outperform charter schools (e.g., 60% of traditional public schools meet AYP v. 55% of charter schools) and scored higher on the California Academic Performance Index (API): (696 v. 648), children with disabilities in charter schools are performing at a higher level than their peers in traditional public schools. More students with disabilities in charter schools achieved "Proficient" and "Advanced" compared to their peers in traditional public schools in English language arts (13.73% compared to 9.96%) and mathematics (14.40% compared to 13.23%). The differences were present even when analyzed according to disability category across the two types of schools (Rhim, Faulkner, & McLaughlin, 2006). The study has notable limitations (e.g., point in time versus longitudinal analysis, limited student level data, and a substantial difference between enrollments in traditional versus charter schools). Nevertheless, while it does not provide conclusive findings that can be generalized, it does provide a basic descriptive foundation for future research and therefore it is notable.

## **METHODOLOGY**

Building on the existing literature related to special education in the charter sector, we sought to identify: (1) which special education-related **challenges** impact the growth and expansion of the charter school movement and (2) what are the policy, research, and investment **opportunities** that could best address the challenges? We conducted a comprehensive review of the literature pertaining to special education in charter schools. The literature review included examining national, and state-as well as school-specific research studies focused on issues related to special education in the charter sector. We also examined research on charter schools in general that included a discussion of special education. To augment the literature, we interviewed 16 key

informants identified because of their depth or breadth of knowledge of issues related to special education in charter schools. We used a brief interview protocol to guide the semi-structured interviews (See Appendix A). The key informants included state education agency officials, private consultants/service providers, and representatives of state and national associations, authorizers, education or charter management organization, and a university professor. All but one interview was conducted by telephone and the interviews lasted between 45 and 60 minutes.

In reviewing the literature and conducting interviews, we sought to pinpoint specific examples of special education challenges that charter schools are wrestling with, discern the impact of the challenges, and identify plausible opportunities to address the challenges. Based on the findings culled from the literature and our interviews, we categorized the challenges according to their root cause (i.e., procedural or operational) and coded examples of the challenges. In focusing on the cause of the challenge as opposed to simply the actual challenge, we were able to identify tangible opportunities for change. Guiding our analysis was our focus on ensuring that 1) charter schools are viable schools of choice for children with disabilities and 2) charter schools have access to the same special education capacity building structure as traditional public schools.

## Special Education Challenges

“The dilemma is, how can charter schools be equitable to students with all types of needs, while remaining financially viable and true to their educational mission?” (Sullins & Miron, 2005)

Research has documented that charter schools face many of the same special education challenges as traditional public schools (Ahearn et al., 2001; Downing, Spencer, & Cavallaire 2004; Estes, 2000; Finn, Manno, & Vanourek, 2000; Fiore et al., 2000; McKinney, 1996; Miron, & Nelson, 2002; Rhim & McLaughlin, 2007a; 2007b; Sullins & Miron, 2005; Szabo, & Gerber, 1996). For instance, charter schools struggle to hire and retain qualified special education and related services personnel; understand the plethora of procedural requirements; and develop high quality programs with limited resources. However, due to their charter status, they face additional challenges associated with their unique status as generally small, independent, mission-driven schools of choice. Broadly yet succinctly, Sullins & Miron (2005, p. 113) characterized charter schools’ dilemma related to special education the following manner: “how can charter schools be equitable to students with all types of needs, while remaining financially viable and true to their educational mission?” This report focuses on challenges associated with educating children with disabilities that are unique to charter schools or alternatively, impact charter schools differently from traditional public schools. Based on the emerging literature on special education in the charter sector and the interviews with key informants, we categorize the challenges as (1) procedural and (2) operational. These procedural and operational issues may hinder the degree to which charter schools are viable options for children with disabilities and limit charter schools growth and quality.

### **PROCEDURAL CHALLENGES**

Special education is largely defined by procedures dictated by multiple laws, associated regulations, and standard operating practices. These procedures pose notable challenges for charter school operators who may be unfamiliar with public school administration. The

procedural challenges fall into two categories: lack of clarity about legal responsibility and limited access to standard service infrastructures.

## **Lack of Clarity about Legal Responsibilities**

Legal responsibility for educating children with disabilities is derived from an amalgam of federal, state, and district policies and practices. Due in large part to the multiple sources of policies and practices, there is variability in interpretation and implementation of the laws across and even within states. Beth Giovannetti, a clinical social worker with Educational Support Systems and consultant to charter schools explained: “It is not just IDEA, you have the state and local regulations, and the LEA and Non-LEA issue. There are responsibilities under each of these umbrellas. Understanding policy issues, helping schools understand all the relationships and what are they left with in terms of responsibility is critical. You have to get everyone to understand how that works, and in every unique situation. Schools need to understand these relationships as they build their program.” Nelson Smith of the National Alliance for Public Charter Schools also identified lack of knowledge of special education law as a key impediment and noted that: “Mastering the education law is hard even for districts with lots of resources.”

Confounding the variability are inherent tensions in the charter sector associated with the heavily regulated nature of special education and the goal of deregulation that is central to the charter school concept (Huebert, 1997; Ahearn et al., 2001). That is, not all charter operators understand their responsibilities associated with IDEA, specifically, the heavy reliance on process and inputs rather than outputs. For example, IDEA dictates very specific timelines and procedures that schools must abide by when referring a child for special education and subsequently, developing an IEP for the child (i.e., the inputs). In turn, special education monitoring tracks the degree to which schools abide by the timelines and procedures with arguably minimal attention to the academic outcomes (i.e., outputs). Multiple informants acknowledged that contributing to this lack of understanding is a less than universal commitment to educating children with disabilities. However, this is not unique to the charter sector.<sup>2</sup>

Anecdotal evidence from the field indicates that charter school operators have gained a better understanding of their responsibilities over time (See Textbox). State departments of education and charter authorizers have played a key role in raising charter applicants’ awareness of their responsibilities related to children with disabilities and communicating the importance of incorporating special education in their charter development plans. Nevertheless, in some states, charter schools must also contend with hostility on the part of traditional districts opposed to the creation of charter schools and consequently, less than enthusiastic interest in taking proactive steps that could help them succeed. Dan Quisenberry of the Michigan Charter Schools Association noted that “We have a traditional education system that does not know how to respond. How do we

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<sup>2</sup> For a discussion of the conceptualization of disability and varying levels of commitment to the notion that all children can learn, see: 1) Andrews, J. E., Carnine, D. W., M. J. Coutinho, Edgar, E. B., Forness, S. R., Fuchs, L. S., Jordan, D., Kauffman, J. M., Patton, J. M., Paul, J., Rosell, J., Rueda, R., Schiller, E., Skrtic, T. M., & Wong, J., (2000). Bridging the special education divide. *Remedial and Special Education*. 21(5). P. 258-260, 267, and 2) National Council on Disability (2008). *No Child Left Behind and the Individuals with Disabilities Education Act: A Progress Report*, available online at: <http://www.ncd.gov/>.

respond to these schools? What are schools responsible for doing? How do we allow schools to be creative and access services?”

*“In some ways, the field has evolved. When things first started, there was a battle about whether special education has to occur in charter schools. This is gone. I don’t hear those comments as much as I did years ago. Initially, people were pretty unabashed about saying that charter schools don’t have to offer special education. The congressional action in 1999 [IDEA regulations], made it crystal clear. From a federal definition, if you want federal funding, you have to provide special education. This real and symbolic message is influential. [Nevertheless], there is still quite a bit of uncertainty about how it applies. We are making gains in terms of considering special education as a design feature. We still run into applicants who have not thought about special education within the innovative charter school idea. I think this is getting better. States are getting better.”*

Julie Mead, University of Wisconsin

Authorizers, and specifically inexperienced authorizers, reportedly contribute to issues associated with lack of clarity. Nelson Smith noted: “Authorizers have to be a lot clearer about the responsibilities of charter schools. They have to write the legal responsibilities directly into their charters and it has to be written in the contract. The authorizer who writes a charter has to clarify who will hold [schools] responsible for what. When you have a school board that authorizes, they may put language about sped in a charter pro forma but the execution falls to the school district and the school district treats the charter school as a step child so execution is weak. With non-district authorizers, they often have to learn themselves, so they may try to be clearer about what the execution should look like as well.” Susie Miller Barker of the National Association of Charter School Authorizers noted that: “Where you have alternative authorizers who are not familiar with special education, they don’t have the systems to provide education services. Problems can arise when identifying a child, and constructing the local special education team...It is much more direct when it is an SEA or LEA authorizer. These folks know about special education. In a place where there are special purpose or university authorizers, the capacity is not as immediate.”

Amidst these general contextual issues are the specific questions regarding the legal identity of charter schools and the responsibility associated with this identity. If the state charter school law is unambiguous about the fact that charter schools are independent LEAs, legal responsibility may be relatively clear. However, all of the informants interviewed noted that when a charter school is part of an existing school district, there are at best questions and at worst, contentious debates, regarding how to assign specific roles and responsibilities such as special education referrals, formal student evaluations, IEP procedures, and special education teacher professional development.

Closely associated with legal responsibilities are problems arising due to lack of clarity regarding special education funding policies for charter schools. For instance, in the state of Maryland, local districts authorize charter schools and retain ultimate responsibility for ensuring compliance with IDEA. The state charter school law requires that districts provide charter schools with “commensurate funding,” including special education dollars. When the charter sector first started to



develop in Maryland, questions emerged related to the definition of “commensurate” funds and specifically, whether the commensurate standard could be met by districts providing special education and related services to children enrolled in charter schools. Contending that “commensurate” did not mean services, especially services for which charter schools could exercise little control, but rather, actual dollars, charter operators initiated litigation against their authorizing district to seek clarity about the definition of “commensurate.”

In the end, the courts ruled that commensurate includes funds generally allocated for a variety of central office services and entails actual dollars rather than services in lieu of dollars (*City Neighbors Charter School v. Baltimore City Board of Commissioners, August 31, 2006*). In practical terms, charter schools in Baltimore were initially allocated \$5,011 in cash and \$2,943 in services but after the ruling, an appeal and a final decision by the Court of Appeals, the per pupil allocation increased to \$10,956 (Tamber, 2007). The conflict demonstrates a challenge charter schools face when school districts interpret state charter school statutes in a manner that can limit the school’s ability to fulfill its entire mission.

Understanding charter schools’ legal responsibilities under IDEA requires an operational understanding of IDEA, and the related state special education and charter school laws (Green & Mead, 2004). Absent explicit discussions with, and guidance provided by, authorizers before, during, and after the charter application process, charter school operators are struggling to decipher the extent of their legal responsibilities and thereafter implement policies that comply with the law. Barry Barnett of the Massachusetts Department of Education noted that charter schools struggle to discern “Where is the line between charter and district responsibilities?” The procedural challenge of providing high quality special education and related services can be particularly acute for charter operators who may not even understand the core underpinnings of IDEA, much less the technical requirements.

Evidence from the charter sector reveals multiple consequences of uncertainty related to special education. First, uncertainty may lead to students with disabilities who attend charter schools not receiving the services they need. Their needs, in effect, may fall through the cracks opened up due to lack of knowledge about responsibility and funding. Elizabeth Giovannetti noted that due to the highly litigious nature of special education and the laws that govern service delivery, new charter operators are often “afraid of what they don’t know about special education.” Rather than drilling down to identify instructional solutions to meet students’ unique learning requirements, decisions may be influenced by fear. Giovannetti explained that “the fear of special education keeps new school leaders from believing that they can create an environment in which all students can learn – but they can. And if they do that, there is nothing to fear.”

Fear on the part of charter operators, can also lead to counseling out children with disabilities. Allegations of “counseling out” have been an area of concern since the early days of the charter movement (Ahearn et al., 2001; Fiore et al., 2000; McKinney, 1996; McLaughlin & Henderson, 1998; Miron & Nelson 2002; Wells et al., 1998). Counseling out refers to advising children with a disability, or their parents, that they cannot or should not attend a particular school. Recent survey data indicates that 3% of charter schools have openly told parents that they cannot enroll their child because of their disability and 44% admitted to advising parents that another school might offer more appropriate services (Rhim et al., 2007a). Lack of understanding of special education, and the consequent fear of what they do not know, that leads to counseling out can be

extremely problematic for charter schools. More importantly, unwillingness to serve children with disabilities is illegal and harmful to children.

Factors that can exacerbate lack of knowledge about special education are high stakes accountability measures, such as those embodied in NCLB that hold schools accountable for subgroups of students who have been marginalized in the past. NCLB shines a bright light on programs such as special education, and ideally push all schools to internalize a commitment to all students. Yet, for all of its laudable goals, the high stakes measures can also have the unintended consequence of serving as a disincentive to enroll children with disabilities; especially if charter operators lack confidence related to providing special education and related services. This disincentive may be particularly potent in charter schools due to the added accountability built into renewable charter contracts. For instance, new charter school operators may hesitate to enroll some children with disabilities or experiment with new instructional programs for children with disabilities out of fear of not making AYP and potentially losing their charter.

Overcoming the fear of failure that stems from a lack of philosophical conviction or practical understanding of how to educate children with disabilities and the laws designed to foster their access to education is a significant challenge for charter schools. Paul O'Neill of Edison schools summarized the angst many charter school operators experience related to special education in the following manner "There is a lack of clarity about what is required to serve students with disabilities in charter schools...Charter schools are worried, it is expensive and difficult to orchestrate. There is a danger of counseling out. You never quite know... do I have to create a special class? Do I have to take all kids? And, by the way, it all costs money. Charter schools don't know. They are trying to fulfill a mission with the school and they say, 'we can't serve that kid and create this mission with the law and the goodwill of the community and parents.'" While struggling to understand legal responsibilities associated with special education is not necessarily unique to the charter sector, informants reported that they see this challenge as *more prominent*

*"There is a lack of clarity about what is required to serve students with disabilities in charter schools. It may be clear at the administrative level but it does not necessarily trickle down. ...Charter schools are worried, it is expensive and difficult to orchestrate. There is a danger of counseling out. You never quite know, do I have to create a special class? Do I have to take all kids? And, by the way, it all costs money. Charter schools don't know. They are trying to fulfill a mission with the school and they say, 'we can't serve that kid and create this mission with the law and the goodwill of the community and parents.'"*

Paul O'Neill, Edison Schools

in charter schools due to the newness of the sector, the mission-driven nature of charter schools, and the lack experience of many charter school leaders.

## **Limited Access to State Special Education Service and Support Structures**

State education systems are comprised of multiple levels of systems and supports that have evolved over time to support districts and schools. Intermediate agencies, such as intermediate school districts in Michigan or boards of cooperative education services in Colorado and New York. These publicly-funded entities are typically charged with providing a host of services to multiple districts; including special education. Due in some cases to the fact that statutory



language pertaining to the intermediate agencies was drafted prior to development of charter schools, or simply resistance on the part of personnel in these agencies, in many states charter schools are not able to access these intermediate agencies in the same manner as traditional public schools. The lack of access may impact multiple areas of charter school operations but the impact on special education programs is particularly notable given the complexity and costs associated with developing programs. Our research revealed multiple examples of barriers due to (1) charter schools not being afforded the same access in laws and regulations related to state special education service support systems and (2) intermediate districts limiting charter schools' access to resources and services. State specific examples of these barriers illustrate the challenges that arise due to these barriers.

### **Charter Schools Not Afforded Same Access in Laws and Regulations**

The literature and interviews revealed multiple examples of charter schools having inadequate access to state service and support structures due to statutory limitations. For instance, special education specific cooperatives are a popular strategy in multiple states (e.g., California, Colorado, Illinois, Kansas, Massachusetts, Minnesota, and New York) for school districts to pool their resources, distribute risk, and maximize their special education expertise and resources. While the specifics vary notably by state and even individual cooperative, in general, members join voluntarily and pay an annual fee in order to access the services available through the cooperative. In some states, districts provide most special education services themselves but rely on cooperatives for technical assistance, professional development, and related services personnel and services for children with low-incidence disabilities.

In Massachusetts, special education cooperatives, also referred to as collaboratives, are a common strategy adopted by traditional districts to pool resources to buy a range of services including but not limited to: direct services to students, management support, cooperative purchasing, transportation, research, technology development, the implementation of health and safety programs, and professional development (Massachusetts Department of Education, 2006). Special education collaboratives in Massachusetts are authorized under a law passed in the early 1970's, many years before the state first passed the state charter school law in 1993. Due to the development of state policy guidance related to collaboratives predating the arrival of charter schools, the Massachusetts state law does not list charter schools as one of the entities permitted to form a special education collaborative. The law does not explicitly disallow charter schools, but the omission is interpreted to mean that charter schools are not allowed to form or join collaboratives. As a result of this policy barrier, charter schools are currently not permitted to take advantage of one key mechanism that traditional public schools use to extend their financial and technical expertise for children with disabilities. Barry Barnett of the Massachusetts Department of Education described the consequence of the exclusion in the following way: "Charter schools, [are] forbidden from forming collaborative. They are prohibited by default because the language just does not include charter schools, prohibited because they are not included in the list of allowed. [Consequently] all costs savings accrued through a collaborative, charter schools are on the outside looking in. They cannot join a coop, cannot form a collaborative, and cannot share cost. The policy solution is to change the coop law." Until they are able to successfully lobby to change the state special education collaborative law, charter schools in Massachusetts will not be able to capitalize on the benefits of pooling their resources to purchase special

education services and supports that traditional district realize and consequently, their costs may be higher and/or their services may be limited.

Similar to Massachusetts, New York state has an established system of intermediate agencies (Boards of Cooperative Educational Services or BOCES) that play a central role in the provision of special education across the state. According to Jennifer Sneed of the State University of New York, Charter Schools Institute: “BOCES have a myriad of programs and staff for special education...occupational therapy, lots of services and programs but the state law does not allow charter schools to access the services. They are excluded from the services of this intermediate education agency.” The state law does not explicitly allow charter schools to contract with BOCES for special education services; even though charter schools are considered part of the local district for purposes of special education in New York. As a result of the exclusion, if the child has an IEP and requires services that a district would typically obtain from their BOCES, the charter school would have to purchase the services at market rate outside of the public system or the student would have to leave the charter school in order to obtain those services through the district. In June of 2007, the State Education Department recommended that the state statute be amended to provide BOCES, “with the authority to provide the same services to charter schools, at cost, as they do for public school districts” to address this state specific policy barrier that limits charter schools’ access to the special education services that districts enjoy (See textbox). Until the statute is amended, charter schools are forced to pay more for services and in some instances, children with disabilities are not able to access the charter schools due to the service limitations.

Charter School Operations Recommendations to New York State Board of Regents  
“§2853(4)(c) and §1950(4)(h) of the Education Law should be amended to provide Boards of Cooperative Educational Services (BOCES) with the authority to provide the same services to charter schools, at cost, as they do for public school districts and to explicitly authorize school districts to similarly contract with a charter school to provide services at cost.”

Source: Johanna Duncan-Poitier (June 2007). 2005-06 Annual Report on the Status of Charter Schools in New York State

### Intermediate Service Agencies Limiting Access to Resources and Services

Not all barriers to intermediate service agencies are driven by statute or simply impede access to services. Our research noted multiple examples of barriers caused by resistance to charters schools on the part of the traditional public schools systems and the intermediate service agencies developed to support them.

In California, state and federal special education funds are directed to local school districts via a system of Special Education Local Plan Areas (SELPA). All school districts are required to belong to a SELPA and charter schools that wish to operate as independent districts must first apply to a SELPA. And, SELPAs are allowed to reject applications to join the SELPA. The complex regulations governing SELPAs were developed prior to the introduction of charter schools and consequently, the regulations do not anticipate creation of multiple new school districts or non-geographically proximate member districts. Amendments to state statute since

the introduction of charter schools affirm that when considering applications for membership from charter schools, SELPA's "may not treat the charter school differently from the manner in which it treats a similar request made by a district school" (California Education Code, Section §47645). While some SELPA's have been willing to accept charter schools as members, many have not, thereby ostensibly creating a barrier for charter schools to becoming independent districts as permitted in the state charter school statute. According to Eileen Ahearn of the National Association of State Directors of Special Education, charter advocates and the California Department of Education are in the process of creating an all charter school SELPA, or alternatively, a traditional SELPA that serves multiple charter schools across the state. Questions remain about the practical and financial feasibility of such an arrangement (California Department of Education, 2007). Absent successful creation of a SELPA that readily accepts charter schools, charter schools that want to operate as independent school districts may be stymied by their inability to join a SELPA.

In Michigan, charter schools reportedly have intermittent access to regional service providers due to lack of understanding about charter schools and their instructional approaches and resistance on the part of some intermediate units to working with charter schools. Intermediate school districts (ISDs) in Michigan are required to provide schools in their geographic catchment area with special education programs, professional development, and technical assistance. However, Teri Pettit of the Michigan Association of Public School Academies explained that "some ISD were providing ancillary services, (e.g., speech and occupational therapy) to all schools in the district but denying it to their charter schools." Furthermore, Dan Quisenberry and Teri Pettit noted that the relationship between charter schools and their ISDs can be strained in part because the charter schools may be attempting to approach special education differently. In addition to programmatic issues, the relationship between ISDs and charter schools can be tense due to disagreements about allocation of special education dollars and specifically, whether ISDs retain funds and provide services or flow special education dollars to charter schools to develop their own programs; not unlike the aforementioned conflict in Maryland. Quisenberry also noted that problems have arisen associated with access to Medicaid dollars because charter schools can only seek Medicaid reimbursement for special education services if their ISD signs off and not all ISDs opt to seek this reimbursement. Consequently, while charter schools may be providing children with disabilities services that are legitimately covered by Medicaid, they may not be able to seek reimbursement. At best, ISDs resistance to working with charter schools can cause a bottleneck for charter schools and at worst, it simply denies them access to resources and services that traditional districts and schools can receive.

Charter schools in multiple states experience barriers to accessing and working with regional service agencies that have variable levels of awareness and commitment to helping charter schools succeed. While the limitations may simply make charter school operators work more difficult, they can also have tangible negative impacts on charter schools. For example, lack of access to intermediate units may preclude charter schools from becoming independent, increase cost of special education services and decrease access to professional development and technical assistance. We found evidence that the limits may be caused by statutory language, or lack thereof, that provides charter schools with access to the intermediate agencies or simply resistance on the part of the existing system to the newest kid on the block. Regardless of the

root cause, ensuring that charter schools can access the same special education supports structures as traditional public schools is necessary to ensure that charter schools are a viable option for children with disabilities.

## **OPERATIONAL CHALLENGES**

Providing special education and related services to individual students with disabilities requires not only a clear understanding of legal responsibilities and procedures and access to state intermediate systems, it also requires *adequate funding* and *instructional capacity* to provide the specialized services. Charter schools face unique operational challenges associated with their governance structure, size, mission, and newness. All of these factors potentially hinder charter schools' ability to provide FAPE (Ahearn et al., 2001). A national survey of charter school operators regarding special education documented the following top five special education related issues that respondents identified as "ongoing challenges:" having adequate funds to provide special education services, NCLB requirements related to students with disabilities, obtaining IEP files from sending schools, finding qualified special education teachers, and finding qualified related services personnel (Rhim, et al., 2007a) (See textbox). These operational challenges may potentially influence every aspect of providing special education and related services to children with disabilities. Based on the survey findings and discussions with key informants, we categorized the primary operational challenges as: (1) amassing special education capacity, (2) managing limited special education dollars, (3) navigating shared service delivery, and (4) balancing autonomy and accountability.

The impact of these challenges is somewhat dependent on a charter school's legal identity. Charter schools that are independent LEAs generally are required to have greater capacity than charter schools that can rely on their local district for assistance. Depending on their total enrollment, LEA charter schools may or may not be able to realize economies of scale. In turn, charter schools that are part of a district have to navigate shared responsibilities with local districts that may or may not be particularly open to collaborating with the new semi-

<b><i>Special Education Challenge</i></b>	<b><i>% Charter School Operators Reported</i></b>
Having adequate funds to provide special education services	58.3%
NCLB requirements related to students with disabilities	54.8%
Obtaining IEP files from sending schools	51.8%
Finding qualified special education teachers	51.7%
Finding qualified related services personnel	46.5%
<i>Source: Rhim, Lange, Ahearn, &amp; McLaughlin, (2007a).</i>	

autonomous schools. Nevertheless, the challenges are not unique to each type of school. Charter statutes assign legal identity but, in practice, charter schools of both types are granted varying levels of autonomy and are negotiating relationships for purposes of sharing resources and developing special education programs with local districts and other external entities, even if not required by statute.

## **Amassing Capacity**

Capacity to provide special education entails having the human resources required to administer and develop a special education program that can provide a wide array of services and supports.

As described by Eileen Ahearn, “Special education hangs heavily over charter schools. The movement has to acknowledge that this specialized knowledge is needed” Furthermore, Ahearn noted....”I don’t think this is something that can be tackled and eliminated.” The challenge of building and maintaining special education capacity is not unique to charter schools but charter schools face unique challenges when attempting to amass capacity because they are new, have limited external supports, are trying to fulfill a specific mission, and are generally small and consequently, have a small instructional staff. They frequently simply do not have the critical mass to support the required special education administrative structure much less access to high quality special education personnel. Furthermore, lack of technical knowledge of IDEA contributes to a situation characterized by multiple informants as charter schools “don’t know what they don’t know.”

In addition to administrative capacity, providing appropriate special education and related services requires specialized instructional personnel and materials. Most special education programs employ not only a qualified special education teacher and/or aides but related services personnel to provide specialized therapies (e.g., occupational, speech, or psychological therapy). Special education materials may include specialized curricula and assistive technology devices (e.g., Braille embosser and text to Braille conversion or alternative key boards) that can be expensive. Commenting on the challenges of finding qualified personnel, Jennifer Sneed of New York noted, “it is hard to find enough teachers. [Furthermore] you need someone with greater breadth and background to support the teachers. This is a serious issue for charter schools.” Patty Dong and Debra Farmer of the Hawaii Department of Education echoed these sentiments when they remarked that “HQT is a challenge...teacher turnover is a concern, staffing in general.” The struggle to build capacity can be exacerbated by the practical reality that even if they find an administrator or special education teacher who is willing to work part-time, they may not be able to retain the qualified professional due to lack of resources relative to traditional public schools that enjoy the economies of scale. Giovannetti reflected on the challenge of building capacity in the following manner: “At the school level, for general and special education teachers, does the staff have all the tools they need? If they have the knowledge, do they have the materials? If I don’t have tools- materials, books, computer programs, and manipulative, assistive technology- or simple things like tables that are small enough to break out in small groups, how do I have capacity?”

The issue is intensified due to the small size of charter schools. Paul O’Neill of Edison Schools emphasized that “size of the school really matters” in that larger schools simply have a greater opportunity to take advantage of more resources and realize economies of scale. Along these lines, Julie Mead of the University of Wisconsin noted that: “charter school may not have the capacity to weather the shortage of special education staff. This may be harder in the charter setting by virtue of the size.” O’Neill also noted that many of the issues that plagued what he referred to as early or first generation schools have been addressed in “second generation” schools that benefit from the experience of authorizers and better developed state, regional, and national networks.



Numerous informants noted that capacity can be particularly difficult for charter schools that operate as their own LEAs. Nelson Smith explained: “If they don’t do it right, they are particularly vulnerable if they are an LEA due to liability that could destroy the school.” And, Paul O’Neill of Edison Schools reflected: “If the school is their own LEA, the challenges are going to be significant. Responsibility is unmitigated for LEAs. It can have a dampening effect for potential developers.” Jennifer Sneed noted that lack of affiliation with a partner such as a charter or education management organization also contributes to the capacity issue: “if you are a mom and pop [i.e., independent new star-up], it is hard to have a realistic understanding...to understand what kind of impact special education can have on your school. I have seen it repeatedly.”

Research has documented that capacity is not being expected or built during the authorization stage or systematically assessed when charter schools seek renewal. Consequently, charter schools are essentially attempting to build capacity to deliver special education and related services as they go (Lange, et al., in press). This has been equated to “building a race car while it is traveling around the track.” This is in contrast to a more integrated approach where, in close collaboration with their authorizer or an external partner, charter schools integrate special education into the core structure of their school to ensure that children with disabilities are first and foremost general education children with meaningful access to the general education curriculum.

Lack of capacity can cause changes in behavior that lead to charter schools violating special education law. For instance, if a charter school cannot afford to hire qualified speech therapists, they may not adequately deliver this service as prescribed on a student’s IEP. Lack of capacity may also lead to inclusion in the general education classroom absent adequate aids and supports. Charter operators have reported that the inability to realize “economies of scale” can limit their ability to provide adequate special education services (Ahearn et al., 2001; Lange, et al., in press).

Associated with a lack of knowledge of procedural issues, lack of capacity or a perception of a lack of capacity to deliver special education and related services can also lead to charter schools’ advising parents of and students with disabilities against enrolling in the charter school. If a charter school is part of a local district, this advice is arguably permissible if it is discussed within the confines of an IEP meeting attended by multiple professionals knowledgeable about a specific child’s individual needs. However, if this advice is offered by charter schools that function as independent districts that are wholly responsible for providing a full continuum of placements, this advice is an example of counseling out that represents non-compliance with IDEA.

## **Managing Limited Special Education Dollars**

Managing limited special education dollars can be a challenge for traditional and chartered public schools. Julie Mead of Wisconsin noted: “cost and financial issues are more challenging than what developers think they are going to be. This exasperates costs and delivery.” However, the issue can be particularly problematic for small charter schools that consequently, have small budgets. The challenge manifests itself in multiple ways. First, charter schools are generally too small to realize economies of scale when it comes to special education staff or

programs. For instance, a charter school with a child with autism is required to provide the same services and supports as a district with a large number of children with autism. Furthermore, the district can place the students with autism in a single school and concentrate specialized staff, materials, and equipment, thereby distributing the overall program cost across multiple children. A charter school with only one or two children with autism cannot distribute the cost of the services across multiple students. Nelson Smith of the Alliance explained: “They have the problem of losing economies of scale and cannot get back to scale with quality. How do you do it on your own? If you are independent, single charter and don’t have a coop, you are cut off from the district. If they send you any staff or resources, it is their most expendable. They don’t regard you as part of their business.” Mary Street with the Massachusetts Department of Education and a former principal of a charter school noted: “resources are a huge issue... having enough money. My school had a kid on a [Section 504 plan] and for a little school supporting technology can be a huge expense. Resource issues are huge.” In their case study of a charter school in Ohio, Sullins & Miron (2005, p. 117) included the following quotation from a charter school operator related to the cost of special education “We need greater financial resources to hire more staff--aides, full-time speech, more OT, and additional special ed. teachers to provide Title 1 services, pull-out children on IEPs. We have a disproportionately high number of students who would benefit from receiving special education services and not enough manpower to provide these services.”

Already limited resources can be stretched thin by parents who don’t inform charter school operators that their child has an IEP in the hopes that a child can drop the label of special education when they enroll in the charter school (Ahearn et al., 2001). A charter school operator from Ohio explains: “Accessing funds can be complicated by parents who want to avoid having their child labeled: Some parents wouldn’t sign papers permitting their children to be evaluated for special services because they didn’t want them categorized. This was problematic because schools must provide necessary services, but they won’t get paid unless parents sign the permission forms” (Sullins & Miron, 2005 pg. 120). While some states will provide funds on a pro-rated basis, in most states, schools receive special education dollars based the number of children with disabilities receiving special education services reported in mid-October of each school year. While large district may be able to easily absorb the cost of one or two students identified after the reporting deadline, small charter schools may feel a disproportionate impact of additional children to their budget if their October count is incorrect.

The second notable financial issue is simply access to revenue. The litigation in Maryland related to the definition of commensurate illustrates this issue as does the example from Michigan regarding access to Medicaid dollars. Limited access to revenue can be further compounded if charter school operators do not have a clear understanding of how federal and state special education dollars flow to schools. They may not be aware of what dollars they should be requesting or what funding pools they may be eligible to apply to receive.

Finally, there is the specter of the very-high-cost-special-needs-child. While this is not unique to charter schools, and in fact it is an ongoing challenge for most districts, the proportionate effect of a single child could be greater for a small charter school than a district with multiple schools and consequently, a larger budget. Specialized services that can run upwards of \$50,000 to \$100,000 annually represent a greater percentage of a charter school’s budget than most



traditional public schools. The previously mentioned challenges associated with accessing standard state special education service infrastructures that could increase charter school's financial position compounds charter schools' special education financial limitations.

## **Navigating Shared Responsibilities for Special Education Service Provision**

Shared responsibility for special education occurs when a charter school and another entity, or possibly entities, split responsibility for fulfilling the obligations outlined in IDEA. This occurs when the charter statute requires charter schools to be part of a local district or, when charter schools that are designated in statute as independent opt to partner with another entity for specific or comprehensive services (e.g., contract with a local district or external consulting firm for special education and related services). Shared responsibility can pose notable operational challenges associated with first discerning roles and responsibilities and thereafter, ensuring adequate quantity and quality of services.

When required to share responsibility, the charter school and the other entity, most often the local authorizing district, must first determine who is responsible for specific aspects of special education. For instance, if a charter is part of a local district who is responsible for paying for evaluations, who leads the IEP team, and who is responsible for ensuring that all procedural timelines are followed? If the local district assigns special education personnel to the charter school, does the school have the opportunity to assess whether the teacher understands and supports the school's mission? Tensions related to shared responsibilities may also emerge during the referral process should the charter school and the authorizer disagree about the need for a referral, extent, or type of support required. Negotiating these shared responsibilities is frequently complicated by basic animosity between the charter school and the authorizer, especially local district authorizers, that may not understand or buy into the charter concept to begin with. Animosity can reportedly manifests itself in somewhat unrealistic expectations and overzealous monitoring of special education in charter schools.

Assuming that charter schools and their authorizers can agree on specific roles and responsibilities, there is frequently tension regarding the quality and quantity of the services provided. In most cases, the charter school is at notable disadvantage when attempting to hold their authorizer accountable for special education services provided (Ahearn et al., 2001). Nelson

*"They are caught in a bind of using the same services that caused families to flee from the district or must go on their own in an uncertain market...What I worry is that you have charter schools that have control over their personnel and get incredible people to work for them and then some left over person from the district to provide special education services."*

Nelson Smith, National Alliance for Public Charter Schools

Smith of the Alliance explained the dilemma in the following way: "They are caught in a bind of using the same services that caused families to flee from the district or must go on their own in an uncertain market...What I worry is that you have charter schools that have control over their personnel and get incredible people to work for them and then some left over person from the district to provide special education services." An area where this can be particularly apparent is provision of related services such as occupational and speech therapy where there is a notable shortage in the market and districts may already be facing a backlog of requests.

State officials and authorizers are uniquely positioned to attempt to clarify roles and responsibilities, but research indicates that these entities are frequently not aware of how much or how little charter schools know about educating children with disabilities under IDEA and consequently, don't necessarily know what issues need to be outlined in detail. (Ahearn et al., 2001; Lange, Ahearn, Giovannetti, Rhim, & Warren, 2004). The written charter application and subsequent contract, also commonly referred to as a Memorandum of Understanding, should define in great detail how the IDEA is implemented in the charter school (Green & Mead, 2004) and specific roles and responsibilities; including explicit guidance regarding actual provision of special education and related services.

Regardless of legal identity or other formal relationships, multiple informants identified the ability of charter school personnel to build professional relationships as critical to charter schools' successfully navigating shared responsibilities. As noted by Barry Barnett from Massachusetts, absent solid relationships, "animosity between charter schools and districts can overshadow what is best for the child." Jennifer Sneed of the State University of New York Charter Schools Institute reflected that "In [one district], there was such contentiousness with the school district that we facilitated a meeting between the authorizer, SEA, and the school district to work through and understand roles and responsibilities related to special education and that was over a period of months working with state education folks. The school district was not going to be cooperative. Now that has changed. Now we have four or five other charter schools in [the district] and they don't have the problems now. The charter schools are nurturing the relationship." Shared responsibility potentially provides charter schools with access to broad and deep special education support systems. However, successfully managing the day to day details of shared service provision requires development of functional relationships between the charter school and its authorizer.

*"Animosity between charter schools and districts can overshadow what is best for the child."*  
Barry Barnett, Massachusetts Department of Education

## **Balancing Autonomy and Accountability**

The final operational challenge identified relates to developing innovative charter school programs and specifically, special education programs within a high-stakes accountability environment. Some states are reportedly holding charter schools to a higher standard or viewing charter schools as easy targets due to their being new and different. Barry Barnett from Massachusetts explained: "Charter schools suffer from elevated expectations, and are often judged according to a higher standard. Compliance auditors go into these schools expecting them to be perfect simply because they operate on a charter issued by the Department, ignoring the fact that every non-charter public school district in the state is also out of compliance, to some extent." On a similar note, Paul O'Neill of Edison Schools and formerly an authorizer in New York noted: "An issue is mis-

*"Innovative practices are sometimes erroneously cited as non-compliance simply because they do not look similar to programs that the auditor has ever seen before-and therefore, the auditor reckons, there must be something wrong. Yet innovation is essential to the mandate of charter schools, and to penalize them in this manner is a perverse **disincentive** to improving services to students with disabilities"*  
Barry Barnett, Massachusetts Department of Education

*“An issue is mis-regulation and overregulation by state and district authorities who take the approach that they are going to come down hard and regulate charters even when the traditional public schools are not getting regulated. This is the ‘neck small enough to get your hands around.’ Regulators will focus on charter schools because it is easier to deal with the charter school. Their neck is small enough. Special education is one of those things that if you look hard enough you will find an infraction.”*

Paul O’Neill, Edison Schools

regulation and overregulation by state and district authorities who take the approach that they are going to come down hard and regulate charters even when the traditional public schools are not getting regulated. This is the ‘neck small enough to get your hands around.’ Regulators will focus on charter schools because it is easier to deal with the charter school. Their neck is small enough. Special education is one of those things that if you look hard enough you will find an infraction.”

Specifically related to special education programming, Barnett of Massachusetts noted that “Innovative practices are sometimes erroneously cited as non-compliance simply because they do not look similar to programs that the auditor has ever seen before-and therefore, the auditor reckons, there must be something wrong. Yet innovation is essential to the mandate of charter schools, and to penalize them in this manner is a perverse disincentive to improving services to students with disabilities.” As noted by informants in Michigan, many traditional systems simply do not know how to respond to new and in many case, different schools that require the existing system to rethink standard operating procedures; including those procedures associated with accountability.

## **Summary: Procedural and Operational Challenges**

Charter schools face multiple procedural and operational challenges that can impede their development of quality special education programs and consequently the degree to which they are viable options for children with disabilities. A basic lack of understanding of complex special education rules and regulations is compounded by lack of clarity of how legal responsibilities are assigned to charter schools that can operate as independent school districts or part of existing traditional districts. Charter schools’ lack of knowledge and clarity about their responsibilities is exacerbated by their lack of access to state special education service and support structures that play a central role in building traditional district special education capacity. The lack of access is due to education statutes developed prior to the advent of charter schools and resistance on the part of existing public school systems to work with new charter schools; especially charter schools that operate differently from district schools. These procedural challenges contribute to and intensify operational challenges charter schools face associated with 1) building adequate capacity to provide special education and related services, 2) managing limited special education dollars, 3) navigating shared service delivery, and 4) balancing autonomy and accountability. Cumulatively, these operational challenges can distinctly hinder charter schools’ efforts to create high quality special education programs for the children with disabilities who opt to enroll or limit the degree to which the schools are seen as viable options for children with disabilities. The challenges may also serve as a notable disincentive for developers considering entering the charter school sector and consequently, the development and expansion of the sector.

## Special Education Opportunities

Charter schools are frequently referred to as a homogeneous type of school, yet a charter is simply an opportunity to create a school. The types of schools that are created depend on the state policy content, the authorizer, and the group seeking to develop the school. By extension, a charter is an opportunity to think differently about how to educate students with disabilities. To fully realize this opportunity, the key stakeholders (e.g., state policy leaders, authorizers, charter school developers, and parents) need to operate in a policy environment that is conducive to new outlooks, and they need to be equipped with technical knowledge of IDEA and related state statutes to contemplate what is permissible within the confines of the laws. The emerging literature and discussions with key informants reveal multiple opportunities to address or at least minimize the challenges associated with educating students with disabilities in the charter school sector. We categorize these as policy, research, or investment opportunities.

### ***POLICY OPPORTUNITIES***

As noted previously, educating children with disabilities in charter schools is shaped by multiple, layers of policies and practices. The following policy opportunities could improve the environment in which charter schools educate children with disabilities:

- Provide guidance regarding policy issues that are unclear in charter statutes
- Equalize special education funding
- Increase access to state special education service and support structures (e.g., exclusion from participating in cooperatives)
- Create incentives for authorizers and operators to collaborate to develop high quality special education programs in charter schools

## Clarify Legal Status and Responsibilities

Legal responsibilities are not necessarily clear and, even when clear, new charter school operators frequently don't understand the scope of their responsibilities. While a potential solution could be a federal mandate related to the legal identity of charter schools, individual states and authorizers have successfully navigated special education law in both types of charter schools (i.e., part of an LEA and independent LEA), and there is no evidence establishing which legal status is substantively better than the other. Rather, the merits of legal status for purposes of special education are heavily dependent on the individual school, the entity that authorizes the school, and the broader resources available to the charter school in the state. Rather than pressing for a federal definition of the legal status of a charter schools, advocates working in individual states should identify statutory language or related practices that are contributing to the confusion regarding legal identity. For instance, clearly defining the delegation of roles and responsibilities for charter schools that are part of an LEA and outlining the operational meaning of "proportionate" or "commensurate" funding are examples of obvious policy opportunities, as is specific guidance related to what special education roles and responsibilities authorizers and charter developers should articulate prior to the charter being awarded. The issue is not that certain entities should assume a specific role. Rather, the issue is that the assignment of roles should be made in an intentional, thoughtful, and neutral manner.

## Equalize Charter School Special Education Funding

Special education funding and specifically, lack of funding is a persistent point of contention in public education and research has documented that charter schools do not receive commensurate amounts of the already inadequate dollars (Thomas B. Fordham Institute, 2005). At a minimum, policy advocates need to lobby to ensure that the constructs of commensurate or proportionate are clearly defined and equitable to traditional and charter schools alike. Furthermore, for charter schools that operate as part of a district, there needs to be clarity regarding the services provided using funds pooled at the district central office; especially if the funds are distributed in the form of professional development of services that may have limited relevance to charter schools.

## Increase Access to Service Infrastructures

A third policy opportunity is to address state specific policy barriers that are clearly impeding charter schools' provision of special education and related services (e.g., exclusion from participating in cooperatives). As noted in the earlier sections, in multiple states (e.g., Maryland, Massachusetts, and Michigan) idiosyncratic aspects of state laws have impeded or continue to impede charter schools' efforts to build their capacity to provide special education and related services. Targeted advocacy focused on changing or reinterpreting state laws that unnecessarily limit charter schools in the area of special education is required.

## Create Incentives to Develop High Quality Special Education Programs

A more radical policy opportunity would be to provide incentives to states or authorizers to encourage these entities to work with charter schools in a manner that would accelerate shared knowledge of special education and potentially create opportunities to develop new approaches to providing special education. For instance, state departments of education could establish a competitive grant program that encourages authorizers and charter school operators to collaborate to reconsider special education delivery models or accelerate implementation of early intervention services aimed at reducing the number of children referred to special education because they do not know how to read or use basic computation skills. As noted by Barry Barnett of Massachusetts, a key aspect of innovation should be a focus on outcomes for children with disabilities rather than process. Barnett explained: "The fact is, we will be forever locked into this hopeless cycle of compliance-oriented, bureaucratic tail-chasing until we evolve a system of special education program evaluation that is based on outcomes rather than paperwork. We can argue about compliance and applicability of regulations forever, but results speak for themselves."

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Barry Barnett, Massachusetts Department of Education



## **RESEARCH OPPORTUNITIES**

Recent national studies have advanced the discussion surrounding special education in the charter sector. Yet, additional research is required to examine special education practice in charter schools and explore new instructional approaches. Based on our examination of the issues, we recommend four specific research opportunities that would substantially advance the discussion of special education in the charter sector:

- Examine special education service provision and outcomes in charter sector
- Explore definition of least restrictive environment in school choice context
- Assess academic growth of children with disabilities in charter schools
- Identify new approaches to special education

### **Examine Special Education Referral, Service Provision, and Outcomes in Charter Sector**

Charter school operators and advocates claim that charter schools are creating programs that enable students with disabilities (1) to be educated *successfully* in less restrictive environments and (2) to avoid being labeled as special education in order to receive adequate services. Yet, to date, there are very limited data to back up these claims. In fact, there is arguably an incentive for charter schools to ensure that the percentage of their population identified as qualified to receive services under IDEA matches the percentage in traditional public schools to avoid criticisms regarding counseling children with disabilities against enrolling in the school. While research has documented that some charter schools do in fact counsel children with more severe disabilities not to enroll (Rhim, et al., 2007a), there is also evidence that charter schools are serving students in less restrictive environments (i.e., a greater percentage of their day in general education classrooms) (Downing et al., 2004; Fiore, et al., 2000; Guarino & Chau, 2003; Rhim, Faulkner, & McLaughlin, 2006).

Overall, we know little about the degree to which the special education referral process and service provision in charter schools is driven by what is appropriate for the child with a disability or conversely, what services the charter school has resources and building space to provide. A study that examines how charter schools manage the pre-referral and referral process to discern whether fewer children are being formally identified and parallel analyses of these students' academic progress would provide valuable insight into practices that may in the long run decrease the number of students referred into special education—arguably, a laudable goal for public schools nationwide. Given the time and resources required simply to follow special education due process procedures, administrative and instructional practices that support all children in order to help them succeed in school and decrease the numbers of children referred to special education are worth investigation and potential replication in both the charter and traditional public school sectors. The most recent Annual Report to Congress on the Implementation of IDEA (2007) examines the “declassification” of elementary school students. An analogous examination of a random sample of charter schools could document or debunk the anecdotal evidence regarding the degree to which charter schools are serving children with disabilities outside of special education. A companion mixed-methodology study examining how children with identified disabilities are educated, and specifically the degree to which their IEPs change when they enter charter schools, coupled with an analysis of academic outcomes over time, would provide additional insight into the degree to which charter schools are effectively educating children in less restrictive environments.

## Explore Definition of Least Restrictive Environment in School Choice Context

An emerging theme that multiple informants raised but for which there is not a research base is the issue of LRE in charter schools designed primarily or entirely for children with disabilities. Under state law, charter schools are required to operate open enrollment policies and the federal Public Charter Program explicitly requires charter schools receiving federal charter school funding to conduct lotteries if they are over-enrolled. Nevertheless, a small but growing niche in the charter sector is special education schools. There are currently just over 70 charter schools with an explicit mission to serve primarily students with disabilities (Mead, 2007). Such schools cannot discriminate in enrollment decisions against children who do not have disabilities. However, the schools explicitly promote themselves as specializing in an instructional approach that will be particularly appealing to a relatively small minority of students (e.g., schools for children with autism or schools for the deaf).

Advocates of these specialized schools argue that they allow for a highly individualized learning environment. A recent study of the schools found that schools were created by (1) teachers who wanted to use a particular instructional approach, (2) parents who wanted to expand the options available to their children, and (3) existing programs that served individuals with disabilities (Mead, 2007). Special education advocates question the degree to which a school that in practice only enrolls students with one particular disability can offer adequate exposure to peers without disabilities (i.e., meet the LRE standard). Yet, in contrast to historical practices, parents who are electing to send their children to a program that specializes in a particular disability are making a highly personal choice, presumably based on their knowledge of their child.

Charter schools that specialize in programs for children with specific disabilities are controversial and provoke extensive discussions regarding least restrictive environment. Due to their controversial nature, they may face judicial interpretation in the future. In particular, special education legal scholar Julie Mead from the University of Wisconsin questioned the degree to which special education charter schools represent the least restrictive environment and extend to which they may develop a “vested interest in retaining the population and putting their stamp of approval on parents’ choice.” She noted that when children enroll in charter schools primarily or entirely for children with disabilities, they may lose the “checks and balances” that ideally characterize IEP meetings. An important contextual factor that is relevant to the LRE question is that decisions regarding the definition of LRE are made individually for each child with a disability. Consequently, specialized schools are not necessarily restrictive if an IEP team decides that a special day class or a special school for students with disabilities is an appropriate placement for a specific child.

The overarching question related to LRE is ‘what kind of environment is best for individual children, academically, socially, and emotionally?’ Rigorous empirical research that examines the potential merits of developing special education focused charter schools and specifically, how the students fare holistically in these schools versus other settings is required. By allowing for the development of these different models, coupled with parental choice, the charter sector has opened up the possibility to new research issues; issues that may benefit the charter as well as the traditional public school sector.



## **Assess Academic Growth of Children with Disabilities in Charter Schools**

Another area that requires examination is the academic outcomes in charter schools in general and specifically for children with disabilities. Prior research has documented that students in charter schools in California scored the same as or below their peers in traditional public schools (Zimmer et al., 2003), but the higher levels of proficiency documented by Rhim, Faulkner, and McLaughlin (2006) raise additional questions worth further investigation. For instance, are charter schools simply attracting higher performing students with disabilities or, alternatively, are charter schools providing students with disabilities better opportunities and consequently, students are achieving greater levels of proficiency? To determine the relative effects of charter schools on the academic performance of students with disabilities, one must examine individual student growth or change in achievement over time. The use of growth models that measure change in performance within schools should allow states to track more precisely the achievement levels of students with disabilities who enroll in charter schools, as well as examine the performance of charter schools compared to traditional public schools. In line with recommendations regarding rigorous examination of charter school student achievement in general, research efforts will need to navigate the pitfalls of this kind of analysis and should follow the guidance of the National Charter School Research Project's consensus panel on the topic.<sup>3</sup>

## **Identify New Approaches to Special Education**

The opportunity to create a new school includes the potential to rethink how to deliver special education absent standard operating practices. For children with disabilities receiving specialized services in a highly regulated environment, these practices may be based more on routine than rigorous research. Research has documented that charter developers have used their charter to create highly successful and even innovative public schools (U.S. Department of Education, 2007b).

Research aimed at identifying and examining break-the-mold special education practices in charter schools is required. The practices need to be documented, evaluated, and if justified, disseminated. For instance, multiple informants noted that charter schools and specifically, charter school leaders that have developed successful programs, including programs for children with disabilities, embrace a fundamental commitment to serve all students. Elizabeth Giovannetti noted that: "The charter schools making AYP embrace a philosophy that all students can learn. That is their belief and that is what they exude in their building. Kids feel that energy and truly believe that they can succeed." This philosophical belief is reportedly infused into the school culture so that special education is not a separate stand alone program but rather, an integrated component of a successful instructional program (Downing et al., 2004). Multiple informants noted that good instruction is good for all children; including children with disabilities. The programs that embody this core commitment to educating children with disabilities and develop successful programs to reflect their commitment, need to be examined to determine what lessons may be culled for the broader educational community.

## **INVESTMENT OPPORTUNITIES**

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<sup>3</sup> For a more extensive discussion of the consensus panel, see: <http://www.ncsrp.org/cs/csr/view/initiatives/2>

The key informants consulted during the course of developing this report identified multiple opportunities to invest in systems or support structures that could help charter schools address the multiple challenges associated with providing special education programs. Five potentially fruitful investment opportunities are:

- Incubate national, state, and regional technical assistance networks
- Cultivate special education infrastructures (e.g., special education cooperatives) and research tracking effectiveness and financial sustainability.
- Seed special education financial risk pools
- Fund efforts to maximize special education revenue streams
- Develop legal advocacy funds for charter schools

## **Incubate State and Regional Technical Assistance Networks**

Multiple research studies have identified the critical need for extensive technical assistance to build the capacity of state agencies, authorizers, and charter school operators related to education children with disabilities in the charter sector. The lack of knowledge and experience, particularly among state department of education personnel, inexperienced authorizers, and new charter operators, is a crucial underlying factor fueling the multiple identified special education challenges. The National Association of State Directors of Special Education has devoted considerable attention to educating state directors of special education and authorizers about charter schools but more work is required to ensure that state-level personnel, (e.g., curriculum specialists, financial analysts, or auditors), understand where charter schools fit within the broad state education landscape. Similarly, novice charter school authorizers need training to fully understand the scope of responsibilities related to IDEA and to ensure that new charter applicants consider the multiple issues.

Efforts to mandate training or specific levels of knowledge are typically resisted by charter operators who tend to oppose regulation. State education agencies, authorizers, and state charter organizations are uniquely positioned to provide substantive “up-front” training and technical assistance during the application phase and after charters are granted (Rhim et al., 2007a; 2007b). The emerging network of technical assistance providers (e.g., charter school associations, charter school resources centers, local nonprofits, charter management organizations, and education management organizations) in cooperation with existing traditional special education service infrastructures are logical investments opportunities.

Multiple states have developed charter school specific special education technical assistance networks. For instance, Minnesota developed the Minnesota Charter School Special Education Project and Michigan recently launched the Vision for a New Way with support for the state Department of Education (See textbox). Other states and charter school authorizers allocate dollars to support special education professionals to provide special education specific technical assistance to charter schools (e.g., Colorado Charter Schools Institute and the Massachusetts Department of Education).

### ***Michigan's Vision for a New Way***

Based on a concept paper developed by the former state director of special education in collaboration with Michigan charter advocates, Michigan's *Vision for New Way* was created to help charter schools build their capacity to deliver special education and related services. According to its website, *Vision for a New Way* is a web-based resource developed to "facilitate improved services to students with disabilities, or those at risk of learning failure, by providing a clearinghouse and point of reference for an array of individuals and organizations working in special education communities." The site posts information about "best and promising practices, funding resources, professional development, correspondence, parent resources, technical assistance, policy, and more." In addition to providing web-based support, representatives of the organization provide specialized training at the annual Michigan charter school meeting.

The project is supported using federal and state funds provided by the Michigan Department of Education through a competitive bid process

*Source: <http://visionforanewway.org/pages/index.cfm>*

### ***Minnesota Charter Schools Special Education Project***

In response to emerging needs in the new charter sector, the Minnesota Charter Schools Special Education Project was created in 1997. Free of charge, the Project provides charter schools, parents and other interested parties with general special education policy guidance and support. The Project also provides more technical specialized services (e.g., due process procedure training, a special education handbook, securing contracted services, and information on state and federal special education funding) on a fee basis.

The project is supported by grant dollars provided by the Minnesota Department of Education and membership fees from charter schools. According to the Project website, the majority of charter schools in Minnesota are members.

*Source: <http://www.mcssep.org/>*

A relatively low-tech solution suggested by Massachusetts Department of Education officials is a charter school special education "hot-line" operated by a qualified special education administrator. The administrator would be available to help charter schools with day-to-day operational issues. With the proliferation of internet-based communication and collaboration tools, higher-tech solutions that use the internet to connect schools with human technical assistance providers are increasingly feasible. In addition, web platforms are ideal for developing and sharing knowledge bases so that practitioners do not have to reinvent the wheel. Investments in these kinds of virtual support for charter school special education could yield new models for helping special educators in all settings perform.

### **Cultivate Charter-Specific Special Education Service and Support Structures**

Early research on special education in the charter sector identified the

need for charter schools to access or develop a special education service support systems, or

*"When [charter schools] are hooked into an infrastructure, they are better prepared to hit the ground running. They can tap into economics of scale and they have a network to tap into when they have questions."*

Julie Mead, University of Wisconsin

infrastructure, to address myriad administrative and programmatic responsibilities. These support structures are typically internal or external structures that provide schools with human, fiscal, legal, and organization capacity to meet FAPE (Ahearn et al., 2001). Julie Mead of the University of Wisconsin described the value of special education infrastructures in the following way: “When [charter schools] are hooked into an infrastructure, they are better prepared to hit the ground running. They can tap into economics of scale and they have a network to tap into when they have questions.”

While support structures may provide some technical assistance, in contrast to specific technical assistance content, a service structure engages in *ongoing provision* of direct special education and related service. Entities that are currently serving as special education infrastructures to charter schools include but are not limited to local districts, intermediate administrative units (e.g., intermediate school districts, education services centers, or boards of cooperative education services), cooperatives, local non-profits, and management organizations (Rhim, et al., 2006). However, Dan Quisenberry of Michigan stressed that “cooperatives are a more attractive option than intermediate districts. Intermediate districts are highly regulated and responsibilities are dictated by the legislature. Charter schools started because of a desire to do things differently. Cooperatives give charter schools these options to do things differently.”

Investments in charter specific special education support structures could take the form of competitive grant programs managed out of state departments of education for organizations interested in creating such entities. Charter school could also engage philanthropic organizations to provide seed money to existing charter support organizations (e.g., associations or resource centers) to facilitate the creation of charter school special education cooperatives. Special education cooperatives in which multiple schools voluntarily join together to pool their special education dollars were identified by nearly all of the key informants as promising strategies to build charter schools’ special education capacity. However, to date, while there are charter schools in 40 states and Washington, DC, few states or cities have charter school special education cooperatives. Informants speculated that, besides practical issues such as the need for members of a cooperative to be geographically proximate, successful cooperatives require careful organization and management to ensure that all members have a voice and see the value of pooling their resources. Given the widespread success of cooperatives in the traditional public school sector, these entities hold promise in the charter sector but thoughtful investment is required.

A potentially fruitful investment strategy would be to identify existing successful special education service infrastructures and encourage them to consider scaling up their operations to cover other cities and states. Organizations with strong leadership, a proven track record, and existing systems could form a firm basis for reaching more charter schools, rather than starting from scratch. Because of variations in state and local policy, of course, a scale-up operation would need to adapt the initial model to any new setting as it expanded. Where scale-up is not possible, investors

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Dan Quisenberry,  
Michigan Association of Public School Academies.

could consider backing the start-up of new cooperatives.

Another possible approach to increasing special education service infrastructures would be to invest in existing human resource pipelines that would expand the number of qualified special education administrators and teachers available to work in charter schools. For instance, investors could support a specialized charter school administrator training program through New Leaders for New Schools or a teacher training program through The New Teacher Project.

### **Seed Special Education Financial Risk Pools**

Though special education risk pools are a type of special education infrastructure, this particular strategy is worth additional attention as a distinct investment opportunity. Existing infrastructures such as intermediate and local districts and cooperatives are primarily driven by efforts to pool resources to purchase and provide a collection of services to members (i.e., technical assistance, professional development, and related services). However, unlike infrastructures that provide human and organizational services, a financial risk pool focuses solely on pooling special education dollars to be drawn upon as needed when contributing schools or districts are faced with purchasing high-cost special education services. IDEA 2004 includes language encouraging the creation of state special education risk pools by authorizing states to reserve up to 10% of their state-level activities funds to “to establish and make disbursements from the high cost fund to LEAs” and to “support innovative and effective ways of cost sharing by the state, by an LEA or among a consortium of LEAs, as determined by the state in coordination with representatives from LEAs” IDEA [611(e)(3)(A)].

An initial infusion of funds, which could be in the form of a loan or “program related investment,” could capitalize a risk pool. Thereafter, member charter schools would pay annual insurance-like premiums into the pool and, in return, could make claims on the pool if they enrolled students who require particular high-cost services. Like any insurance pool, charter school special education risk pools would require thoughtful design work to ensure that they do not create perverse incentives, are financially sustainable, and are sustainable past involvement of the original founders. The state of Colorado has operated a special education insurance model for a number of years and research has documented positive aspects of the model (Ahearn et al., 2001). However, the model was not voluntary and charter schools had limited control of the conditions of the model. A risk pool created and managed by equal charter school partners has the potential to prepare charter school to manage the potential heavy financial costs of a child who requires intense services. Such a risk pool would also diminish the incentive to counsel out children with greater special education needs.

### **Fund Efforts to Maximize Access to Revenue Streams**

Special education dollars fall short of individual school’s needs and charter schools are not necessarily accessing all of their potential sources of revenue. Funds allocated to helping a group of charter schools maximize their revenue stream could boost schools’ ability to build special education capacity. For instance, a valuable task tackled by the original founders of the Washington, DC special education cooperative was navigating Medicaid rules and regulations to identify funds charter schools were eligible to receive based on who they were educating. A secondary benefit would be identifying students enrolled in charter schools who are eligible to receive Medicaid funds. Navigating cumbersome Medicaid policies and procedures would have

been overwhelming for any single school administrator. A centralized group supported by multiple charter schools can pool resources for the benefit of all member schools. Medicaid is just one example of potentially multiple funding streams. There may be other special education dollars or more general health and youth funding streams that an enterprising focused effort could tap for charters; funds that traditional districts may already access.

### **Create Charter School Special Education Legal Advocacy Funds**

Due in part to lack of clarity associated with interpreting multiple layers of policy and resistance on the part of traditional public school systems, charter school advocates, operators, and parents have had to engage the legal system for clarity on charter school issues in general and specifically, issues pertaining to special education in charter schools (O'Neill, Wenning, & Giovannetti, 2001). Litigation is expensive and ideally only used as a last resort. Nevertheless, a tangible investment in addressing special education challenges is a legal defense fund. To date, four states have created formal, multiple purpose charter school legal funds (i.e., California, Colorado, Florida, and New Mexico). The funds have helped support charter schools and/or parents fight to alter the interpretation of state charter laws. Examples of issues that states have litigated to date relate to providing transportation to a child with a disability who chooses to attend a charter school and the definition of commensurate or proportionate funding for children in charter schools, including children with disabilities.

A fund set aside for charter school legal advocacy could provide both charter schools and parents of children in charter schools with a centralized means to push the existing system. Discussions with charter advocates revealed that, since most charter school issues pertain to local interpretation of state rules and regulations and the entities most invested in changing policies are local, legal advocacy funds for the most part are best located in states. For example, in Colorado, the legal fund is based at the Colorado League of Charter Schools. Yet, given that most special education policy originates from the federal statute, there may be a place for a national charter school legal fund should a case emerge that raises constitutional issues such as issues related to the due process and equal protection.



## Special Education Opportunities

### **Policy Opportunities**

- *Examine special education service provision and outcomes in charter sector*
- *Explore definition of least restrictive environment in school choice context*
- *Assess academic growth of children with disabilities in charter schools*
- *Identify new approaches to special education*

### **Research Opportunities**

- *Examine special education service provision and outcomes in charter sector*
- *Explore definition of least restrictive environment in school choice context*
- *Assess academic growth of children with disabilities in charter schools*
- *Identify new approaches to special education*

### **Investment Opportunities**

- *Incubate national, state, and regional technical assistance networks*
- *Cultivate special education infrastructures (e.g., special education cooperatives) and research tracking effectiveness and financial sustainability.*
- *Seed special education financial risk pools*
- *Fund efforts to maximize special education revenue streams*
- *Develop legal advocacy funds for charter schools*

## Conclusions and Implications

A charter represents a chance to create a new school, ideally absent the shackles of past practice and presumptions about how children can and should be educated. In particular, charter schools present an important opportunity to accelerate change, experiment, and advance the knowledge base related to educating children with disabilities. Ensuring the growth of first-rate charter schools requires special attention to a variety of challenges associated with providing high quality specialized services to children with disabilities.

Work is required to clarify existing laws and change laws that hinder charter schools efforts to develop appropriate special education programs. Furthermore, research is necessary to document how charter school operators are using their autonomy to craft potentially unique new instructional programs; especially programs that explicitly aim to intervene early and decrease the need to identify children for special education. Public and private investment in research may open new doors for further programmatic investments. Finally, investments in building high quality technical assistance networks and charter school infrastructures are essential. Overall, the multiple policy, research, and investment opportunities outlined can help pave the way for growing high quality charter schools.



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## Appendix A: Special Education Challenge/Opportunity Interview Protocol

- What experience have you had related to special education in the charter sector?
- From your perspective, what are the greatest challenges associated with educating students with disabilities in the charter sector
  - Probe:** *Enrollment?*
    - Accessible facilities?*
    - Expertise related to IDEA?*
    - Recruit/retain qualified personnel?*
    - Compliance with NCLB/AYP?*
    - Costs associated with special education?*
    - Lack of understanding of IDEA and special education?*
    - Other?*
- Do you think any of these challenges limit the growth/expansion of the charter sector?
- If yes, can you provide me with a tangible example?
- Can you think of any examples of charter schools that have overcome challenges associated with educating students with disabilities?
- Do you have any suggestions regarding policies, research or investment opportunities that could potentially address the challenges?
- Are there any states or authorizers that have been particularly creative helping charter school operators address the challenges associated with educating students with disabilities?
- Can you recommend anyone else that I can talk to about these issues?
- As the second phase of our research, we are going to visit charter schools identified as being innovative or successful with students with disabilities. Based on your experience, are there any charter schools that you would like to suggest that we visit?