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# Chartering the Way to a Free and Appropriate Public Education (FAPE): The Challenges for Charter Schools to Provide FAPE

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## Abstract

*Charter schools are publicly funded schools that are an integral part of the school choice movement, following a market-model of education based on autonomy, competition, and choice. However, charter schools are also mandated to adhere to all laws and regulations in the Individuals with Disabilities Education Act (IDEA) when educating students with disabilities. The education of students with disabilities within the charter school environment can result in policy tensions. This paper will examine the salient issues surrounding special education as it pertains to the state, authorizer, and operator in the areas of transparency, processes, and outcomes.*

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Charter schools have become an integral part of the American educational landscape. Rhim and McLaughlin (2007) describe charter schools as publicly funded autonomous schools that operate under a contract that specifies the characteristics of the education program or “mission.” According to Ravitch (2010), there were approximately 4,600 charter schools serving 1.4 million students in 40 states and in the District of Columbia in 2010. Charter schools serve as the remedy to improve educational achievement through the deregulation of public education by affording charter schools with more flexibility pertaining to curriculum, class size, and pedagogy, along with a number of additional operational factors. Charter schools are part of the market-driven school choice movement where competition and choice will foster improved academic achievement (McLaughlin and Rhim 2007).

However, the idea and inception of charter schools did not stem from a market-driven approach to education. According to Ravitch (2010), the original concept of “charter schools” stems from a paper by Ray Budde entitled “Education by Charter: Restructuring School Districts” published in 1988. Budde proposed a school system that would involve teams of teachers applying for charters to run schools within a school district with a specific set of goals, a set term, and would be evaluated on those goals accordingly. According to Kahlenber (2008), in March of 1988 in an address to the National Press Club in Washington D.C., Albert Shanker, the President of the United Federation of Teachers, articulated his version of charter schools, which would be publicly funded institutions whereby teachers and parents would submit researched-based proposals to innovatively educate students who were struggling within the traditional educational environment (Ravitch 2010). However, Shanker withdrew his support for charter schools in 1993 because his idea of schools with more flexibility and autonomy was being adopted by businesses looking to expand into the “education industry,” an industry that was

becoming increasingly anti-union with charter operators wanting to fire teachers at will (Ravitch 2010).

According to Swanson (2004), the merits of charter schools' flexibility and independence are complicated by students with disabilities whose education is prescribed by the Individuals with Disabilities Education Act (IDEA), which is based on the premise that all students with disabilities have access to a Free and Appropriate Public Education (FAPE) within the Least Restrictive Environment (LRE). In order to illuminate this complication of charter school autonomy and independence in contrast to the prescriptive nature of IDEA, it is important to review the origins of IDEA.

### **An Unwavering IDEA**

In his review of the origins of IDEA, Harr (2006) elucidates why the legislation is prescriptive and unwavering. Prior to the passage of the Federal Education for All Handicapped Children Act of 1975 (EACHC)—which was renamed the Individual with Disabilities Education Act (IDEA) in 1990—public schools in the United States served only one in five children with disabilities. In addition, several states had laws excluding students with specific disabilities such as deafness, blindness, emotional disturbance, and mental retardation from public schools. During the 1950s and 1960s two distinct movements coalesced to address the segregation of students with disabilities. These movements involved the civil rights advocates inspired by the *Brown v. Board of Education* (1954) decision that if racial segregation was unconstitutional, then the segregation and or exclusion of students with disabilities was also unconstitutional. Palmaffy (2001) adds that the Education of All Handicapped Children Act of 1975 by Congress based the legislation as both an antidiscrimination measure and a long-term investment in the nation's economic health, whereby educating a child with disabilities to become self-sufficient would require less government social services.

### **Policy Tensions**

Rhim and McLaughlin (2007) describe how the flexibility of charter schools and the prescriptive nature of IDEA create a conflict that is embodied in two main policy tensions pertaining to charter schools and students with disabilities. The first policy tension is parental choice versus team decision-making. The second policy tension is compliance versus autonomy. In general, the policy tensions involve the market-driven model of charter schools based on autonomy, competition, and choice with that of IDEA, which is prescriptive, inflexible, and regulatory.

Rhim and McLaughlin (2007) describe the first policy tension as parental choice versus team decision-making. The Individual Education Plan (IEP) serves as the legal framework for special education services. The creation of this document is based on team decision-making by a variety of stakeholders including administrators, psychologists, special education teachers, general education teachers, specialists, and parents. The IEP defines FAPE and LRE. There are three policy conflicts inherent within this first policy tension that include: (1) the conflict between a parent's right to choose and the state imposed requirements in the areas of eligibility, evaluation, and assessment; (2) the conflict in the provision that charter schools must make accommodations for the student including curricula in adherence to the IEP; and (3) the conflict

that in abiding by IDEA, charter schools could be required to modify their mission in order to address IDEA requirements.

Rhim and McLaughlin (2007) describe the second policy tension in the area of compliance versus autonomy. This involves the conflict between the procedural compliance emphasis in IDEA and the autonomy and regulatory flexibility granted to charter schools. First, charter schools are required to adhere to IDEA procedural and compliance mandates, as do all other schools. This conflicts with the idea of autonomy and less regulation where adherence to IDEA is not negotiable. These policy tensions are not relegated to the realm of theory alone. These policy tensions may impact the experiences of special education students within the charter environment as special education policies are generated through legislation and apply to both charter authorizers and operators.

### **State Legislation and Charter Schools**

According to Rhim, Ahearn, and Lange (2007), charter schools are under the auspices of the state that define their legal status and operating parameters through charter school legislation. Charter school legislation includes legislation specific to special education requirements, such as special education regulations, authorizers, legal status of the charter school, enrollment requirements, and accountability. Therefore, state legislation provides the regulatory framework for special education in charter schools.

Rim, Ahearn, and Lange (2007) found in reviewing state charter legislation in 41 states that existing charter school laws and regulations do not provide clarity on the education of special education students. This lack of clarity may contribute to confusion and ambiguity over roles and responsibilities. Similarly, Drame (2010) reviewed nine approved charter applications in Wisconsin regarding specific language on how charter schools would specifically address the needs of students with disabilities. She found that the only area explicitly addressed was the assurance of nondiscrimination against students enrolled in the school. In addition, she found that none of the applications made reference to special education in terms of facilities, professional development, administration, transportation, legal issues, or funding.

### **Authorizers**

State charter school legislation also determines the authorizers of charter schools. Ahearn, Rhim, Lange, and McLaughlin (2005) found that state-granted charter school authorizers include local education agencies (LEAs), state boards of education created for granting charter authorizations, institutions of higher education (IHE), counties, cities, and non-profit agencies. In addition, Ahearn, Rhim, Lange, and McLaughlin (2005) found that 29% of states have the LEA as the sole authorizing entity while 17% limit the authorization to the state.<sup>1</sup> However, 54% of the states have more than one entity to authorize charter schools.<sup>2</sup>

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<sup>1</sup> The above data comes from Ahearn, Rhim, and McLaughlin (2005, p. 10)

<sup>2</sup> The above data comes from Ahearn, Rhim, and McLaughlin (2005, p.10)

## Legal Status

According to Ahearn, Rhim, Lange, and McLaughlin (2005) the legal status of the charter school is determined by the charter legislation of the respective state as either part of an LEA or as its own LEA. Ahearn, Rhim, Lange, and McLaughlin (2005) found that 30% of states assign charter schools as their own LEAs, 44% of states assign charters to be part of an LEA, while 27% permit charters to be either their own LEAs or part of an LEA<sup>3</sup>. According to Ahearn, Lange, Rhim, and McLaughlin (2000), there is typology of linkage between the LEA and charter school that significantly influences the charter school's capacity to deliver special education services. This typology of linkage includes the following: (1) Total-Link is a formal linkage that links a charter school and an LEA in all areas of special education; (2) Partial-Link is when a charter school is legally independent but there is a legislated requirement for a negotiated relationship with the LEA; (3) No-Link is when a Charter school is legally independent and operates autonomously from LEA control.

## Funding

According to Parrish (2006), special education funding is generated from Part B in IDEA, which is the percentage of federal funds allocated to the states. The goal for "full funding" of IDEA is a 40% contribution from the federal government. In general, the federal government contributes 15-17%, which is less than the promised 40%.<sup>4</sup> After IDEA funds are sent to the states, specific state funding formulas are used to distribute special education funds to districts. Parrish and Wolman (2004) outline the state special education formulas that include the following:

- Pupil "Weights:" States apply a single weight to each student with a single disability and multiple weights to students with multiple disabilities.
- Census-based\flat-grant: States base special education funding on a count of all students in each district opposed to only special education students. A flat-grant system funding is based on a fixed amount per student.
- Resource-based: States allocate special education funds based on the resources required to educate students with disabilities including number of teachers, classroom units, placement, and disability category.
- Percentage Reimbursement: States allocate funds on the basis of districts' actual special education expenditures that are based on allowable amounts.
- Variable block grant: State funding is determined by yearly adjustments based on expenditures, enrollment, and revenues.
- Combination: States use a combination of these methods.

According Lange, Rhim, Ahearn, and McLaughlin (2005), the allocation of special education funds for charter schools is contingent upon whether the charter school is affiliated with an LEA or if the charter school is its own LEA. If the charter school is its own LEA, the charter school receives funds from the state directly allocated to the charter school as if it were a local district.

<sup>3</sup> The above data comes from Ahearn, Rhim, and McLaughlin (2005, p. 16)

<sup>4</sup> The above data comes from Parrish and Wolman (2006, p. 61)

Charter schools that are affiliated with an LEA are provided funds in the same manner the LEA provide funds to other schools within the district. Guarino and Chau (2007) found that both public schools and charter schools receive approximately 65-75% of the necessary funds to cover special education programs.<sup>5</sup>

### **Accountability**

Although accountability is essential to charter schools given their independence and flexibility, Lange, Rhim, Ahearn, and McLaughlin (2005) found that very few states require special education accountability requirements beyond compliance with IDEA. States require charter schools to meet the requirements of NCLB by disaggregating performance data. 84% of states disaggregate data by subgroups, while the remaining 16% of the states reported that data was not disaggregated or they did not know.<sup>6</sup>

In addition, special education monitoring is another area of accountability to ensure all eligible students receive FAPE within the LRE. However, many states may delegate that regulatory role to the LEA. Lange, Rhim, Ahearn, and McLaughlin (2005) found that of the states that have charter schools, 16 states surveyed had developed procedures for special education monitoring in charter schools, while 22 states had not developed procedures specifically for special education monitoring in charter schools.

The charter school renewal process provides another measure of accountability for special education compliance and monitoring. Lange, Rhim, Ahearn, and McLaughlin (2005) found that according to a survey of state directors of special education, 22% of those surveyed affirmed that special education compliance is an integral factor in charter renewal, while eight states reported it was not a requirement, and seven states did not know. In addition, Rhim, Lange, Ahearn, and McLaughlin (2005) found that in a survey of state charter school officials, formal complaints pertaining to special education could be a factor in the renewal process. Also, the practice of “counseling out” students with disabilities could also thwart the charter renewal. This practice entails a charter school advising the parents/guardians of students with disabilities not to enroll in the school. When asked about “counseling out” as an issue, 78% of state charter school officials were aware of the issue; 36% found it to be a big or somewhat of an issue, while 42% considered it to be a small or non-issue.<sup>7</sup>

In order to address charter school special education issues at the state level, Rhim, Ahearn, and Lange (2007, p. 60) recommend the following:

- Articulate special education plans in the initial charter application that defines the roles and responsibilities regarding special education, including a funding plan and program elements, along with a mission-aligned special education delivery model.
- Provide a clear written explanation of funding streams and how they affect charter schools and authorizers by clarifying “proportionate funding” and the respective roles of the state, authorizer, and operator.

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<sup>5</sup> The above data comes from Guarino and Chau (2007, p. 170)

<sup>6</sup> The above data comes from Lange, Rhim, Ahearn, and McLaughlin (2005, p.17)

<sup>7</sup> The above data comes from Rhim, Lange, Ahearn, and McLaughlin (2005, p. 29)

- Require basic training for both operators and authorizers that is salient to their distinct roles in special education aligned with the state’s special education policy and charter schools.
- Provide technical assistance in negotiating special education funding and services within the context of the legal status of the charter school.
- Establish clearly defined criteria for holding charter schools accountable for both the academic outcomes of students with disabilities, program outcomes, and clarifying those parties responsible for oversight in these areas.
- Consider funding personnel within state resource centers who have expertise related to special education and charter schools in order to assist all stakeholders to navigate federal and state special education laws and charter laws.

The above recommendations provide a framework of clarity regarding state charter school legislation and policy. These recommendations not only elucidate the roles, responsibilities, funding, and training necessary to effectively address the academic and personal growth of students with disabilities, but also will provide the technical assistance and oversight that will ensure that students with disabilities are receiving FAPE within the LRE. As a result, these recommendations ensure that students with disabilities are not “counseled out.” The issue of state capacity to address the needs of students with disabilities is not germane considering they provide the funding formulas and have special education personnel such as state directors of special education and state charter school officials in place to address the requisite technical assistance on special education issues.

Although the state provides the legislation and policies by which charter schools must abide, it is the charter authorizer that makes the final decision whether a charter is granted. It is the authorizer that not only determines if the proposed charter will include how the needs of students with disabilities will be addressed within the charter environment, but also what entity will be responsible for the oversight of the special education for the charter school.

### **The Charter Authorizer**

There are a myriad of charter authorizers that include LEAs, IHEs, state education agencies, and non-profit organizations. Rhim, Lange, Ahearn, and McLaughlin (2007) found in their survey of charter authorizers that LEAs accounted for 87.7% of authorizers, IHEs accounted for 6.3%, state education agencies accounted for 3.7%, non- profit agencies accounted for 1.9%, special-purpose charter agencies accounted for 1.9%, and “other” accounted for .46% of charter authorizers.

Rhim, Lange, Ahearn, and McLaughlin (2005) found charter schools are heterogeneous in both scope and nature and include the following: (1) New start-ups are charter schools that are created, as opposed to being converted, from an existing organization or school and accounted for 88% of granted charters; (2) Public school conversions are charter schools that existed as a public school prior to becoming a charter school and accounted for 9% of granted authorizations; (3) Private school conversions are schools that operated as a private school prior to becoming a charter school and accounted for 3% of granted charters; (4) Cyber schools, often referred to as “virtual charter schools” are charter schools that serve students via distance learning, accounting

for 3% of granted charters; (5) Charter schools for students with disabilities are charter schools that primarily serve students with disabilities and account for 3% of granted charters.<sup>8</sup>

The legal responsibility for providing FAPE and LRE stems from IDEA to the states that in turn assign the responsibility to LEAs and to the public school site or charter school. The legal responsibility for addressing the needs of students with disabilities is embedded in the application requirements for charter school authorization. Rhim, Lange, Ahearn, and McLaughlin (2007) found that the requirements for special education varied among authorizers, where an assurance not to discriminate accounted for 79% of surveyed authorizers, 68% of authorizers required detailed information about plans for addressing special education responsibilities, and 21% required minimal detailed information.<sup>9</sup> In addition, Rhim, Lange, Ahearn, and McLaughlin (2007) found that technical assistance and training was not uniform among authorizers during the authorization phase in areas related to special education services, compliance, funding, and the Individual Education Plan (IEP) process.

### **Charter Schools and LEAs**

As previously discussed, the relationship between a charter school and LEA can be described through a typology of linkage. This linkage often dictates the legal responsibility of LEAs and Charter Schools. Rhim (2007) found that 36% of LEAs share legal responsibility for providing special education with charter schools, 34% retain total responsibility, and 22% have no responsibility. The degree to which the authorizers are directly involved in charter schools varies: 32% provide special education in the schools they authorize, 22% work with schools related to special education as requested, 15% supervise special education, and 13% are involved when the charter school is authorized or renewed.<sup>10</sup>

Therefore, 70% of charter authorizers share responsibility or are fully responsible for the special education students at the respective charter school. This raises the question about the other 30% of authorizers that have no responsibility, which translates into one-third of charter authorizers that are not involved in the education of special education students.

### **Funding**

According to Rhim (2007), funding is a significant issue in the relationship between the LEA and charter school pertaining to the issue of the vague definition of “commensurate” funding for special education. The concept of “commensurate funding” becomes complicated when according to Chambers, Shkolniks, and Perez (2003), each specific disability requires its own set of services and resources to effectively meet the needs of the student. Therefore, disabilities categories are not uniform in cost and are compounded when considering the number of secondary disabilities such as speech and language and occupational therapy.

Similarly, the issue of Medicaid funding also becomes pronounced with regard to charter schools. According to Ahearn (2001), in 1988 The Medicare Catastrophic Coverage Act provided that Medicaid could pay for medical services provided to children receiving Medicaid for special services indicated on their IEP. These funds will often offset the costs for service

<sup>8</sup> The above data comes from Rhim, Lange, Ahearn, and McLaughlin (2005, pp. 23-25)

<sup>9</sup> The above data comes from Rhim, Lange, Ahearn, and McLaughlin (2007, p. 17)

<sup>10</sup> The above data comes from Rhim (2007, p. 18)



providers such as speech therapists and occupational therapists. However, according to Ahearn (2001), this can often be a complex task, as many districts do not engage in this practice due to limited return and the amount of time and resources expended to gather and disseminate information. Sawyer (2003) outlines the Medicaid outreach services, which include: (a) facilitating applications to Medicaid; (b) planning and coordinating care for medical and mental health services; (c) early and periodic screening, diagnosis, and treatment training; (d) coordination with the state's Medicaid agency and medical providers; (e) health-related program planning, development, and monitoring; and (f) transportation or translation assistance to access Medicaid services.

### **Charter School Infrastructures and Capacity**

In order to address issues of responsibilities and capacity, charter schools require infrastructures that will enable them to have the capacity to address the needs of their special education populations. According to Drame (2010), special education infrastructures address issues such as caseloads, service delivery, supports for struggling students, scheduling, and referrals for special education evaluation. Rhim, Ahearn, Lange, and McLaughlin (2006) found that special education infrastructures could best be described as either internal or external. An internal infrastructure is exemplified by the director of special education in the affiliated LEA delivering guidance and expertise on special education issues to the charter school. An external infrastructure involves an outside or contracted agency providing special education guidance and expertise of which there are three models that include the insurance model, the combination model, and the contracted model.

Rhim, Ahearn, Lange, and McLaughlin (2006) describe the insurance model involving the charter school, which contracts for all special education services with their affiliated district. As a result, the school district is responsible for legal compliance and supervises all services. Essentially, the charter school pays for a special education insurance premium to the district to provide these services. The fee is calculated using a per pupil formula based upon the number of students with and without disabilities that are enrolled in the charter school, and it ranges between \$400-750 per student.<sup>11</sup>

Rhim, Ahearn, Lange, and McLaughlin (2006) explain that the advantages of the insurance model are that the charter school can predict the special education expenses each year, the charter school is less vulnerable to legal action resulting from noncompliance, and the task of the charter school building capacity rests with the school district. The disadvantages of the insurance model include that the insurance model is either negotiated at the beginning or end of the charter. Therefore, the model cannot be changed for a standard period of five years. In addition, charter operators articulated that the model could be very expensive, and they have no control on how funds are spent.

Rhim, Ahearn, Lange, and McLaughlin (2006) describe the combination model as a combination of the insurance model and autonomy, where the LEA and district negotiate a cost plan upon which both parties mutually agree over which entity will provide services and the costs of those services. Within this model the charter school receives special education infrastructure and training while the LEA remains involved in the process. For example, the charter may hire its own special education teachers, but contracts with the district for related

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<sup>11</sup> The above data comes from Rhim, Ahearn, Lange, and McLaughlin (2006, p. 10)

services. Under this model, the capacity of the charter school to address the needs of special education students is assessed and billing for these services is designated in the adopted contract.

Rhim, Ahearn, Lange, and McLaughlin (2006) found the main advantage of the combination model is that it encourages collaboration between the charter school and the LEA. In addition, this model helps maintain the charter school's autonomy and allows the charter school to stay true to its mission, while the LEA ensures that its legal responsibilities are addressed. The disadvantages of this model are in the challenges of collaboration, which may translate into more time and resources than what the charter and district budgets allocated.

Rhim, Ahearn, Lange, and McLaughlin (2006) found the contracted model involves the school district allocating the charter's share of federal and state special education funds directly to the charter school. The charter school uses these funds to address personnel and special education services with a third party. The charter school is also responsible for hiring or contracting with a director of special education, while any ties to an infrastructure are established and maintained directly by the charter school. Furthermore, if the charter school is unable to provide adequate contracted services this could further complicate the legal and program obligations of the charter school as the charter school would be out of compliance.

### **Authorizer Accountability**

Charter schools like public schools are responsible for participating in accountability systems for both NCLB and IDEA. Rhim, Lange, Ahearn, and McLaughlin (2007) found that 76% of charter school authorizers coordinate oversight of special education while 15% do not coordinate oversight activities, and 9% did not know whether they coordinate oversight. The oversight of special education compliance did not differ by type of authorizer.

The inability of the charter school to meet the requirements of IDEA may or may not impact the renewal of the charter. Rhim, Lange, Ahearn, and McLaughlin (2007) found that 60% of authorizers do include special education in the renewal process, while 30% of authorizers do not consider special education compliance in the renewal process. This is largely based on the formal complaints filed against the charter school in areas such as special education instruction, due process, and qualifications of special education teachers, related services, and discipline. However, 93% of the authorizers reported that special education had not been a factor in any revocations of a school's charter.

In order to hold charter authorizers more accountable for special education services, Lake (2006, pp. 5-8) recommends the following policies that could be applied to the accountability of special education services. These recommendations include the following:

- **Information and Transparency:** This requires charter authorizers to adopt and publish formal policies on approval, oversight, financing, and revocations. In addition, authorizer ratings and "report cards" from both charter schools and state agencies would assist in greater information about authorizers regarding their special education programs.
- **Process or Management Reviews:** This would require an independent or third party to perform audits on charter authorizers based on "standards of care" that include objective minimum oversight requirements along with forming new professional practice standards for charter authorizers. These standards could include a review of special education requirements.

- **Outcomes:** This includes performance goals for authorizers that are based on legislative mandated performance outcomes for charter schools' special education programs, along with sanctions against charter school authorizers who fail to address the needs of students with disabilities.
- **Create competing markets via multiple authorizers:** This would require the elimination of the exclusive right of local school boards to act as charter authorizers. States could consider creating competing agencies that can charter nearby schools, placing them in competition with school boards based on special education knowledge and experience.

All of the above recommendations could apply to special education programs through greater information, transparency, and oversight. Although the authorizer grants the charter, it is ultimately the responsibility of the charter school operator to properly educate and meet the needs of students with disabilities.

### **Charter School Operators**

Charter school operators are an equally diverse group as charter school authorizers. Charter school operators include groups of teachers, charter school management companies, institutes of higher education, and a plethora of other entities that aspire to open a charter school with a specific mission to educate students. Irrespective of their particular "mission," charter school operators are required to educate enrolled students with disabilities according to IDEA. Rhim, Lange, Ahearn, and McLaughlin (2007) contend that having the capacity to implement special education programs can be particularly challenging for charter school operators due to issues that involve knowledge of special education laws, special education compliance, resources to provide services, and retaining qualified special education personnel.

### **Enrollment**

All charter schools are required to have open enrollment either through application or lottery, including students with disabilities. According to Hehir (2010), charter schools enroll far fewer students with disabilities compared to their public school counterparts as indicated in Massachusetts, where students with disabilities account for 19.9% of students in public schools while charter schools enrolled 10.8%.<sup>12</sup> In addition, Rhim and McLaughlin (2007) found that California charter schools enroll a larger number of students with less severe disabilities than their public education counterparts. For example, California charter schools educated more students with specific learning disabilities at 66% compared to 55% of public schools and fewer students with mental retardation at 2% compared to 6% for public schools.

However, this disparity in enrollment could be explained in a study that surveyed parents of students with disabilities in public schools. Johnson (2002) reported that 67% of parents of children with disabilities believe their current school is doing a good or excellent job addressing the needs of their children, 69% believe that their children's teachers are knowledgeable about their child's disability and know how to address academic needs that correspond to the disability. Therefore, according to this study there is a high satisfaction rate among parents of students with

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<sup>12</sup> The above data comes from Hehir (2010, p. 19)

disabilities in public schools that could explain the enrollment differences, as satisfied parents would be less likely to seek a change of placement to charter school.

### **IEPs**

According to Rhim, Lange, Ahearn, and McLaughlin (2007), the IEP is the driving document that schools use to address the specific needs, services, and goals for students with disabilities. The most common way charter school personnel learn about students' IEPs is through enrollment forms (47%). The rest breaks down as follows: 35 % of charter schools learn about IEPs through student records, 10% through information from parents, 3% through teacher inquiries, 1% through student interviews, and 4% learn through other means.<sup>13</sup>

However, Rhim, Lange, Ahearn and McLaughlin (2007) report that the IEP document that serves as the basis of the academic goals, accommodations, and services required by the student is often used as the primary source to “counsel out” a student from a charter school. After reviewing the IEP, the charter school determines if the school is an appropriate placement for the student. They found that 57% of charters will schedule an IEP to determine appropriate placement, 44% will advise parents that another school may be more appropriate, 14% do nothing, 6% inform parents that their children cannot enroll, and 1% did not know. This ability to “counsel out” students based on their IEPs is unique to charter schools, considering their public counterparts must accept all students and provide required services irrespective of the severity of the disability.

### **Least Restrictive Environment**

Rhim, Lange, Ahearn, and McLaughlin (2007) found that 39% of students with disabilities were being educated 100% of the time in the general education environment, 34% were in the general education classroom 80-99% of the time, 17% were in the general education classroom 40-79% of the time, 10% were in the general education classroom 0-39% of the time, and less than 1% were educated outside of the charter school in a more restrictive environment.<sup>14</sup> Although it is evident that students with disabilities are in the general education environment for a majority of the day, this raises the question of the charter schools' definition and practice of inclusion.

### **Inclusion**

Howe and Welner (2002) contend that charter schools' interpretation of inclusion is actually closer to the concept of “non-exclusion.” Inclusion requires public schools and charter schools to adjust their curricula and instructional methods in order to accommodate students with disabilities. In contrast, “non-exclusion” merely requires permitting these students to enroll in and attend public schools. Therefore, inclusion merely translates to being in the educational environment.

Estes (2003) contends that although inclusion may address LRE as students with disabilities are being taught alongside their general education peers, it may violate FAPE in that

<sup>13</sup> The above data comes from Rhim, Ahearn, and McLaughlin (2007, p.13)

<sup>14</sup> The above data comes from Rhim, Lange, Ahearn, and McLaughlin (2007, pp. 12-13)

placement decisions can only be made when there is a variety of placement options. In relation, Estes (2006) found in a follow-up study of Texas charter schools, where all of the participating schools adhered to a strict “inclusion” model for special education during the 1999-2000 school year, that by 2005 these same schools offered pullout programs for special education students. Therefore, these schools amended their pedagogical practices in order to address student needs.

According to Tomlinson et al. (2003, pp. 131-133), differentiated instruction is the foundation for inclusion as it responds to student readiness, student interest, and the student’s learning profile. Differentiated instruction employs the following strategies:

- Effective differentiation of curriculum and instruction is proactive rather than reactive.
- Effective differentiation instruction employs flexible use of small teaching-learning groups in the classroom.
- Effective differentiation varies the materials used by individuals and small groups of students in the classroom.
- Effective differentiation uses variable pacing as a means of addressing student needs.
- Effective differentiated instruction is knowledge-centered.
- Effective differentiated instruction is student-centered.

Therefore, differentiated instruction is a complex enterprise in proactive knowledge- and student-centered instruction that is based on a differentiation of materials, instructional groups, and student pacing. According to Christensen and Rainey (2009, p.3), charter schools are implementing a number of differentiated instructional strategies that include:

- Instructional approaches: Instructional approaches in charter schools employed more student-centered instructional methods such as project-based, constructionist, and experiential learning. In addition, some of the charters created IEPs for all students in order to address their individual academic needs.
- Classroom Structure: Many of the charter schools utilize one or more alternative structures in their classrooms, such as grouping multiple ages or grades, looping classes of students with teachers over multiple years, block scheduling, and having teams of teachers work together.
- Structure: Charter schools were found to employ unique grade-span configurations that are alternatives to traditional school structures, such as small school size, off-site programs, extended school day or year, and flexible scheduling for students.

In addition, Christensen and Rainey (2009) found that charter schools package their services in order to address struggling learners through mandatory after school tutoring and by providing optional tutoring. Also, many of the schools offered personal support in the form of social emotional learning that also may address IEP goals depending on student needs.

### **Special Education Personnel**

Special education personnel are integral in addressing the needs of students with disabilities. According to Marion and Applegate (2007), teacher attrition for special education

teachers is above 40%. Gross and Armond (2010) compared attrition factors for general education teachers in charter schools and for general education teachers in public schools, which is indicated in Table 2.

**Table 2:**  
**Issues related to teacher attrition in public schools and charter schools**

<b>Attrition Issue</b>	<b>Charter School</b>	<b>Public School</b>
Lack of administrator support	65%	45%
Current workplace conditions	58%	37%
Better teaching assignment elsewhere	52%	47%
Higher job security elsewhere	46%	N/A
Better salary/benefits elsewhere	40%	22%
Another career elsewhere	33%	20%
Family or personal reasons	32%	23%
Pregnancy/child rearing	22%	16%
Change of residence	N/A	27%
Retirement	N/A	29%

Source: Gross and Armond (2010, P. 13)

In order to address teacher attrition in charter schools, Mirion and Applegate (2007) recommend that (1) discrepancies between teacher's expectations and charter school realities should be identified along with strategies that will close the expectation and reality gap; (2) efforts should be made to enhance teachers' sense of security; and (3) efforts should be made to increase teachers' satisfaction with working conditions, such as administration, salary, and benefits.

### **Charter School Special Education Cooperatives and Capacity**

In order to address issues of the capacity to provide special education services, many charter schools have developed special education cooperatives. Rhim (2008) contends these cooperatives pool resources in order to effectively address special education issues within the charter sector. The majority of the member schools are small charter schools that join voluntarily and pay an annual fee to access services from the cooperative. According to Gandhi, Therault, Jackson, and Lunden (2011), there are five factors that are essential to effective special education cooperatives that include: (1) "bottom-up" commitment from members upon start-up of the cooperatives; (2) skilled, knowledgeable, and committed leadership; (3) strong sense of trust among cooperative members; (4) geographic proximity among cooperative members; and (5) adequate and sustainable funding.

The typology of cooperatives is contingent upon the intensity through which charter schools become members of the cooperatives. It includes the following:

- 1 Low-intensity cooperatives: In these cooperatives, fees are low, and there are no significant barriers to membership. In addition, cooperative membership places minimal requirements on the participating charter school. Furthermore, the joining charter school can be selective on what aspects of the cooperative meet its respective needs. The benefit of this cooperative is in training members and providing resources to understand and address special education compliance issues.
- 2 Medium-intensity cooperatives: In these cooperatives membership intensity is moderate, and each participating charter school must sign a memorandum of understanding to join the cooperative. There is no participation requirement to be in this type of cooperative. Although this cooperative does not directly provide services to students, they build the capacity of their members to address the needs of students with disabilities by providing professional development on selected special education issues.
- 3 High-intensity cooperative: The process of becoming a member in this type of cooperative requires significant obligation to the cooperative, both in finances and in participation. This type of cooperative provides the most significant services to members, including staff development and direct student services.

The purpose of these cooperatives is to build the necessary capacity through infrastructure for charter schools to address the needs of students with disabilities under their charge along with training charter schools' staffs on special education issues and requirements.

### **Accountability**

According to McLaughlin and Rhim (2007), there are two types of accountability models when addressing accountability issues in charter schools for students with disabilities. The first model is the standards based model that is defined by federal involvement in standards driven accountability as indicated in NCLB, and it is based on Adequate Yearly Progress (AYP) of all students in order to close the achievement gap between disadvantaged students and their peers, including students with disabilities. The second accountability model is the market-driven model. This model is based on the notion that market driven forces such as competition and choice will foster academic achievement. As a result, this would foster competition in the school system, thereby improving academic performance as schools compete for student/parent consumers.

According to Ahearn (2008), students with disabilities have five options when participating in state tests that include the following: (1) participating on the grade-level test the same way as general education students; (2) participating on the grade-level assessment with accommodations; (3) participating on an alternate assessment based on grade-level academic achievement standards; (4) participating on an alternate assessment based on modified academic achievement standards that are available to a maximum of 2% of the special education population; and (5) participating on an alternate assessment based on alternate academic achievement standards, where the maximum participation rate is 1%.

Although students with disabilities are afforded various options for participation on state tests, it is their scores that are interpreted as a measure of their academic growth along with their general education peers. The Center for Research on Education Outcomes (CREDO) (2009)

found that only 17% of charter schools reported academic gains in math that were significantly better than their traditional public schools, while 37% of charter schools showed gains that were worse than traditional public schools, and 46% of charter schools demonstrated no difference. Therefore, 83% of charter schools performed similarly or worse than their traditional public school counterparts.<sup>15</sup> In addition, CREDO found that there was no difference in the academic gains between students with disabilities in charter schools and students with disabilities in public schools. However, Rhim, Faulkner, and McLaughlin (2006) found that students with disabilities performed better than their public school counterparts on standardized tests in the area of math and language arts. Yet in her comparative analysis of test scores between students with disabilities in charter schools compared to students with disabilities in public schools in Wisconsin, Drame (2010) found no statistical difference. Therefore, the academic success as demonstrated on standardized tests between students with disabilities attending charter schools and their public school counterparts is inconclusive at this time.

Drame (2010) contends high stakes tests do not reflect the progress students with disabilities have made over the year in reading and math. For example, a student may have increased his or her reading and math performance levels by over a year's growth, but they may still score far below basic on the state tests. Similarly, Cavallaro, Downing, and Spencer (2004) note that students with disabilities have goals in other areas such as social skills and independence, where inclusive environments in charter schools have proven successful in addressing these goals and benchmarks, but these goals are not measured on state tests. Therefore, state test scores are not an accurate indicator of academic growth or growth in other areas identified in the IEP.

McLaughlin and Rhim (2007) contend that the market-driven accountability model as utilized in charter schools has not proven effective in improving academic achievement for students with disabilities. The reasons for this include: (a) charter schools do not understand their responsibilities related to students with disabilities; (b) charter schools struggle with capacity issues to fulfill their special education responsibilities; and (c) charter schools struggle to resolve the balance between charter school autonomy and the IDEA mandate.

In order to hold operators more accountable for special education services, the recommendations for authorizers by Lake (2006) can also be applied to operators. These recommendations include the following:

- Information and Transparency requires charter operators to be transparent through written policies pertaining to their special education programs, the qualifications and number of special education personnel, and documentation of students with disabilities who left ("counseled out") from the charter. In addition, sanctions would be tied to violations of IDEA, including revoking the charter.
- Process or Management Reviews requires independent or third party reviews based on performance audits of charter operators based on standards of special education compliance and standards of inclusion. This would include compliance of IEPs, timelines, services, accommodations, and a review of the "inclusive practices" based on the creation of uniform "inclusive" standards for charter schools.

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<sup>15</sup> The above data comes from CREDO (2010, p. 3)



- Outcomes involve the monitoring of the educational benefit of students with disabilities as demonstrated through meeting their annual goals, their improvement on annual and triennial assessments, and their performance on state assessments.
- Expansion and monitoring of special education cooperatives involves further investment and expansion of special education cooperatives in order to address issues of capacity. In addition, these cooperatives would be able to provide special education information, services, and training within the cultural milieu of the charter school culture. Also, these cooperatives should be monitored by a third party agency in order to ensure that the mandates of IDEA are being addressed and implemented by the cooperative.

### Conclusion

Charter schools are based on the concepts of autonomy, choice, and competition. These concepts are contrary to the prescriptive mandate of IDEA. This potential philosophical conflict can influence the access and experience of students with disabilities within the charter environment. However, this potential conflict can be mitigated through the state, authorizer, and operator regarding clarification of special education responsibilities, funding, capacity, and accountability.

The vague legislative language and lack of specific requirements for state legislation can adversely influence the experience of students with disabilities within the charter environment. As previously discussed, the language is primarily based on the promise not to discriminate. Similarly, the same vagueness in language and requirements for special education are also evident in the application process, where charter school authorizers do not require detailed descriptions of how the needs of students with disabilities will be addressed. Therefore, legislative language and detailed requirements to IDEA should be included in both state charter language and authorizer requirements. This would translate into clarity of both expectations and responsibilities pertaining to students with disabilities within the charter environment.

The issue of funding and charter schools remains a challenge. Funding is allocated to charter schools based on the legal status of the charter school as part of an LEA or its own LEA. If a charter school is its own LEA, funding streams directly from the state to the charter. However, if the charter is part of an LEA and depending on its “linkage” to the LEA, funding streams may become compromised by the definition of “commensurate” funding. This issue of commensurate funding is problematic in that the requisite funds required to educate students with disabilities are based on the type of disability. Therefore, allocated funds should be allocated based on the cost of the particular disability. This could also provide incentives for charter schools to enroll more students with significant disabilities with the assurance that there is the necessary funding to address their needs.

The capacity of charter schools to address the needs of students with disabilities is influenced by issues surrounding economies of scale, as charters are generally smaller than their public school counterparts. Similarly, charter schools often lack the infrastructure to retain special education personnel and provide additional services. Therefore, special education infrastructures should be part of the charter application and a legislative requirement. In addition, charter school cooperatives should be expanded and overseen. These cooperatives provide the necessary resources to charter schools within a similar academic and operational cultural context.

Therefore, these cooperatives tend to be very aware of the challenges and needs of charter schools regarding special education.

Accountability as it pertains to students with disabilities transcends mere scores on standardized tests. It includes compliance with IDEA in terms of placement, services, and the production of a compliant IEP. In addition, charter schools should be encouraged to address special education accountability through their afforded autonomy and flexibility using annual and triennial data along with standardized test scores to measure academic progress for their special education populations. Furthermore, charter schools should be encouraged to use portfolios that correspond to the goals and benchmarks in the IEP to ensure that educational benefit are being addressed. Finally, there should be sanctions against any charter school that does not fulfill its special education obligations, including revoking the charter.

Charter schools are based on the concepts of autonomy, choice, and competition. States, authorizers, and operators should be mindful that autonomy does not equate to convenience for students with disabilities, as these students are to be included, not “non-excluded.” Similarly, these entities must remember that with students with disabilities, there is no “choice.” These students must be educated in adherence to IDEA, including FAPE, within the LRE. Finally, charter schools’ practices of “counseling out” students and not serving more students with more severe disabilities demonstrate their inability or lack of resolve to be competitive within the special education marketplace. Charter schools should take advantage of their autonomy and flexibility to innovatively address the needs of their special education populations. It is both their responsibility and “choice.”

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