

Charter Schools and Special Education

With Lauren Morando Rhim

Since the early 1990's, charter schools have sought to provide a public school choice option for parents and students in communities across the country. Although still a publically funded school, charter schools have distinct characteristics which differ from traditional public schools, namely exemption from certain state/local rules and regulations in exchange for increased accountability requirements.

Over the last two decades, 40 states and the District of Columbia have passed charter school laws. Charter schools are now serving two million students in 5,500 schools, nationwide.

As public schools, charter schools must comply with all federal education laws, including the Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act (ESEA). Despite this requirement, there have been reports that students with disabilities are underrepresented in charter schools. While the reasons for this under enrollment are debatable, some reports have indicated that charter schools do not have the capacity to identify, evaluate, and serve students with disabilities, particularly students with significant disabilities.

CEC believes that charter schools must reflect a commitment to free and universal public education, with equality and educational opportunity for all. As such, charter schools, the chartering agency and authorizer, and ultimately the highest governmental authority, must ensure that the rights of children and youth with exceptionalities are upheld.

Council for Exceptional Children, 2015

Public education in the United States was originally established as part of the Department of War in the early 19th century, when it became apparent that the United States could not sustain an effective military with large numbers of illiterate soldiers (p. ix, Cross, 2004). Over the years, public education grew in size and mission, reflecting the changes in the nation.

With the *Brown v. Board of Education* Supreme Court decision in 1954, public education entered a new era that prioritized equal access to public education for all students, especially those who had been marginalized in the system of racially segregated schools. Although the *Brown* decision dealt with segregation by race, it established an

important legal concept that separate education facilities are inherently unequal, thereby setting the stage for contemporary civil rights advocacy in public education.

The second half of the 20th century was a time of emerging ideas in the field of education. Research efforts advancing understanding of the demographic makeup and needs of the students whom public education was trying to serve (and not serve) began to gain more traction, along with emerging theories and ideas focused on restructuring and redesigning public education. In 1965, President Lyndon B. Johnson signed the Elementary and Secondary Education Act into law, sharing his belief that “full educational opportunity [should be] our first national goal” (Peters & Woolley, 2016). Educators from various walks of life were beginning to look at public education more critically, with intentions of improving the system as a whole. The Education for All Handicapped Children Act, in 1975, was the first law to stipulate that students should receive a free and appropriate public education, regardless of ability. The Council for Exceptional Children (CEC), a known voice in special education since its founding in 1922, provided crucial support in the passage of this groundbreaking legislation. But it was not until 1983, when the National Commission on Excellence in Education released *A Nation at Risk*, that educational reform became part of the mainstream dialogue.

Ray Budde, in *Education by Charter* (1988, although he first presented the concept a decade earlier to the Society for General Systems Research), recommended a restructuring of public school systems by allowing groups of teachers to start autonomous “charter schools” within existing districts, hence a decentralized model of public education. Since that time, charter schools and special education have each been both a driving force in public school reform efforts and a catalyst for advocacy of high-quality public educational experiences for students, teachers, and schools. Whereas fundamental special education laws have been passed establishing the civil rights of people with disabilities, the charter movement has focused on a form of governance designed to improve schools for students and teachers. Knowing some of the history of both provides both insight into the spirit and intent of each, and clues as to how to bring them together for a more promising future.

Key Actors in Education Reform

Elizabeth Farrell, Early Special Education Advocate

There is simply no way to discuss the evolution of special education without acknowledging Elizabeth Farrell. Farrell received a teaching degree from Oswego Normal and Training School (now the State University of New York at Oswego) in 1895; she went on to study teaching, specifically Johann Heinrich Pestalozzi’s philosophies of education, for 2 more years. Pestalozzi was an 18th century Swiss educational reformist whose methods and philosophies became known as the Pestalozzi method. His teachings advocated for educating the whole child, reforming school for the poor, and inclusion. Pestalozzi’s work would not only influence Elizabeth Farrell but it would also be foundational to her career.

In 1899, Farrell became the teacher of her first “ungraded” class in the New York City public school system. The class had 19 students, 12 of whom were deemed “retarded,” ranging in age from 8 to 16. By 1903, the New York City public schools had opened 10 ungraded classes modeled after Farrell’s. In 1906, she became Inspector of the Ungraded Class Department for the New York City Department of Education and under her leadership, the department navigated a significant level of growth. By 1911 there were more than 130 ungraded classrooms. In 1913 she opened a diagnostic clinic that included psychology, social services, education, and medical departments. A story about her in *The New York Times* (Editorial, 1913) focused on the cooperation necessary among schools, courts, hospitals, prisons, and immigration authorities to support the education of students with “mental defects.”

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In 1915, Farrell founded the scholarly journal *Ungraded*, which was published by the Ungraded Teachers Association of New York City until 1926. She taught coursework for future ungraded teachers at the University of Pennsylvania; the School of Pedagogy at New York University; and Teachers College, Columbia University. In 1922, Farrell continued her advocacy of students with exceptionalities by founding the International Council of Exceptional Children and serving as its president until 1926.

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Case Study: The Era of Educational Innovation

Los Angeles Unified School District
Los Angeles, California

Karen Caruso is a National Board Certified Teacher with master’s degrees in both psychology and education. She has been a teacher in the Los Angeles Unified School District (LAUSD) for 20 years. In her spare time away from her third-grade classroom, she teaches future teachers at the University of California, Los Angeles, Graduate School of Education. In 2010, Caruso and some of her colleagues were unwittingly thrust into the public eye when the *Los Angeles Times* ran a story, “Who’s Teaching L.A.’s Kids?” (Felch, Song, & Smith), scrutinizing their practice based on value-added measures, student test scores, and other predictive data. Caruso recalled feeling that she “was at Ground Zero in an assault on teachers. My name was in the public. Reporters were calling my students’ parents. I was completely blindsided.”

A couple of years later, Caruso was working with a student named Lola, who had been born premature and had a variety of challenges. “Lola was an amazing little girl, but if I gave her more than one direction at a time, she was completely lost. I tried Post-it Notes on her desk,

and her mom did the same thing at home, but they were difficult to revise, they got lost and crumpled.” Caruso herself has a hearing loss—“No matter how hard I try, I can’t make my ears work better”—and has benefited from technology. Could Lola’s executive function skills be improved with the help of technology? From this experience, Lola Software was born (<http://www.lolatechsystems.com>).

LAUSD is home to more than 270 charter schools, with a collective enrollment of more than 135,000 students. “The charters in LAUSD were so enthusiastic about using Lola,” Caruso said. “They were really open to trying new things and implementing new ideas. Education is supposed to evolve. Technology can scaffold instruction in a whole new way. Ed tech should start with teachers. Teachers have the ideas and innovation to take our profession back. I feel like we’ve lived through the dark ages and are moving into an era of innovation in education.”

How does a teacher with an innovative idea for helping students make the dream a reality? As Lola moves into beta testing, Caruso offered the following pieces of advice for other educators who believe they have a game-changing idea:

- There is no flight plan to go from teacher to tech start-up. You have to be willing to figure it out and make it happen.
- There are lots of layers and steps, including your school bureaucracy, tech development, investors, and a legal team.
- If your idea is driven by your students, keep them as your focus. Students should be your North Star.
- You have to make the conscious decision that failure is not an option. When you hit an obstacle, you have to keep moving forward. Don’t accept no as an answer; don’t give up if you think it will help more students.
- Collaborate, collaborate, collaborate, collaborate.
- Find partners who believe in you and your mission.

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Ray Budde and “Education by Charter”

As noted previously, Ray Budde is credited with developing the initial concept of charter schools. Budde served in the Navy during World War II; he earned his bachelor’s degree from St. Louis University, a master’s degree in business administration from the University of Illinois, and then a doctorate in education from the University of Michigan. His work as a seventh-grade English teacher and assistant principal in Lansing, Michigan, provided him with on-the-ground experiences in public education early in his career. He went on to accept a faculty position at the University of Massachusetts Amherst, where he became interested in organizational theory.

Budde's *Education by Charter: Restructuring School Districts* (1988) captured the attention of educators and policy makers. In later pieces Budde delved into policy aspects of restructuring education (1995) and also shared his perspective on many aspects of the charter movement (1996). In "The Evolution of the Charter Concept," he described the evolution of his idea from its conceptualization in 1974 through the 1988 publication:

Even though there was considerable dissatisfaction with the public schools, no one felt that things were so bad that the system itself needed to be changed. Innovation was the theme of the times, and innovation could take place within the present system. Find some new idea or program, and then all that was needed was some in-service training and presto: education in your school would be improved! With all the studies and reports of the 1980s, I decided to take another look at the concept and try again. (Budde, 1996, p. 72)

For the final 12 years of his professional life, Budde served as executive director for the Blackstone Valley Educational Collaborative, an organization supporting school districts in Massachusetts.

Albert Shanker, the Tough Liberal

By all accounts, Albert Shanker had a truly amazing professional journey. He was very different from Budde in his experiences, approaches, and rationale for reforming public education via charter schools. Born to Jewish-Russian immigrant parents, Shanker did not speak English when he entered first grade in the New York City public schools. His public education experience—both as a student and, later, as a teacher in East Harlem—would become not only the foundation for his impressive oratory skills but also part of his professional motivation. From 1964 to 1986, Shanker served as president of the United Federation of Teachers union (later to become the American Federation of Teachers) in New York City. In this role he navigated strikes, mergers, and negotiations, gaining critics and supporters alike. He walked with Martin Luther King, Jr., in Selma, Alabama; secured the pensions and retirement funds of New York public school teachers; organized paraprofessionals in 1960; and created the first ever "career ladder" program for paraprofessional recruitment into teaching. He advised President Jimmy Carter; embraced the *Nation at Risk* report (National Commission on Excellence in Education, 1983); and posthumously received the Presidential Medal of Freedom in 1998. In presenting this medal, President Bill Clinton said

Albert Shanker illuminated our Nation's path toward educating our children with devastating honesty, sharp wit, and profound wisdom. He was one of the most important teachers of the 20th century. In 1983, when the *Nation At Risk* report challenged us to do far more to raise educational standards for all our children, Al Shanker was one of the very first to answer the call. (Clinton, 1998)

Shanker was an early supporter of charter schools. In 1988 he publicly supported Budde's charter school concept as a way to reform school districts systematically, encouraging teachers to open autonomous schools in existing school buildings:

Do not think of a school as a building, and you can see how it works. Consider six or seven or twelve teachers in a school who say, "We've got an idea. We've got a way of doing something very different. We've got a way of reaching the kids that are now not being reached by what the school is doing." That group of teachers could set up a school within that school which ultimately, if the procedure works and it's accepted, would be a totally autonomous school within that district. This would be a school of choice; that is, no teacher would be forced to be in this subunit, and neither would any parent be compelled to send a child to this school. It would be a way for parents and teachers to cooperate with each other, to build a new structure. (Shanker, 1988)

Shanker's public and vocal support marks a turning point in the history of charter schools. Unlike an academic approaching the concept from a theoretical perspective (i.e., Budde), Shanker was known as a "tough liberal" and fierce advocate of teachers' rights and public education from an on-the-ground perspective. His endorsement added legitimacy to the concept of charter schools.

Special Education Statutes and Concepts

Special education policy grew out of the Civil Rights movement—specifically, the equal protections established under *Brown v. Board of Education* (1954)—and parent advocacy efforts, which led to the passage of key federal laws that continue to define the parameters of special education practice in U.S. public schools today. In 1973 Congress passed the Rehabilitation Act, Section 504 which prohibits recipients of federal funds (including public schools) from discriminating against individuals with disabilities (29 U.S.C. § 794[a]). The Americans With Disabilities Act of 1990 (ADA) built on this idea, and as part of its reauthorization in 2008 (as the ADA Amendments Act), Section 504 was subsumed within ADA (see Baditoi & Brott, 2014, pp. 9–14, for a detailed review of federal legislation relating to special education).

The Education of All Handicapped Children Act of 1975 (today's Individuals With Disabilities Education Act, IDEA) established a federal funding stream to help states provide services to children with disabilities. According to IDEA, public schools are the primary gateway to essential supports and interventions for young children and students with disabilities between the ages of 3 and 21. The No Child Left Behind Act of 2001 (which was a reauthorization of the Elementary and Secondary Education Act, now known as the Every Student Succeeds Act), and the 2004 reauthorization of IDEA, built on this framework by requiring schools to report on—and by holding them accountable for—the performance of children with disabilities on state assessments. Under current

federal legislation and regulations, basic access and due process alone are no longer sufficient: Schools must also ensure that children with disabilities are making progress in achieving academic goals (34 CFR §300.347[a][1]; 34 C.F.R. §200.13[b]).

Key Special Education Structures and Constructs

Special education and related services such as speech or occupational therapy, are among services offered to students to meet their individual educational needs. Section 504 and IDEA establish key structures and constructs that shape how students with disabilities are educated, and outline a process to ensure that public schools comply with the law (see Table 1.1).

The myriad rules and regulations that guide how students with disabilities are identified and educated provide an overview of special education, but educating students with disabilities is more similar than dissimilar to educating all students. Effective instruction leads to student learning. However, successfully educating students with disabilities requires at least two things of practitioners. First, they must have high expectations and a deep understanding of how to teach and support students with a diverse array of needs. Second, administrators and policy makers must understand how to navigate the complex rules and regulations crafted to protect students' rights to public education.

State Special Education Statutes and Regulations

IDEA outlines state education agency (SEA) responsibilities to educate students with disabilities. In turn, SEAs are required to develop statutes and regulations to guide the implementation of IDEA. States are not permitted to waive federal laws, so IDEA requirements apply in all chartering states. In some states, special education statutes align very closely with IDEA, whereas other states have expanded upon the scope of the federal law to prescribe local practice in detail.

Special Education Enrollment Data

Students qualify as eligible to receive special education and related services based on their diagnoses with one or more of 11 disability categories identified in IDEA. The most prevalent disability is specific learning disabilities (SLD; e.g., dyslexia and dysgraphia), representing 40% of all students who receive special education services. According to the U.S. Department of Education (2014), in 2012 a total of 5.8 million students were eligible to receive special education.

Charter School Statutes and Concepts

A *charter* is essentially a contract between an authorizer and a nonprofit board seeking permission to operate a public school of choice. The contract outlines specific performance expectations and a timeline by which the school must meet them. The core tenet of the charter concept is that extending autonomy in exchange for accountability will

TABLE 1.1

Special Education: Key Structures and Constructs

STRUCTURE	EXPLANATION
Child Find	Under IDEA, school districts must identify, locate, and evaluate children with disabilities—a responsibility that resides with each state and which is typically relegated to local districts. Traditional school districts generally are assigned responsibility for a specific geographic area and are required to provide early intervention services to preschool-age children identified as having disabilities.
Individualized education program (IEP)	School districts (also known as local education agencies [LEAs]) must provide each child found to be eligible for special education with an <i>individualized education program</i> (IEP) developed by a team that includes general and special educators, specialists, and the student’s parents. The IEP outlines the plan to meet the student’s educational needs, including goals for student progress and the specific services the LEA will provide.
Free appropriate public education (FAPE)	Public schools are responsible for providing students with disabilities a <i>free appropriate public education</i> (FAPE). The constructs of “free” and “appropriate” education mean that children with disabilities are to be provided services and programs identified by their IEP team to meet their individual needs, and these are to be provided by the public education system, at no cost to the student’s family. To date, Congress and the courts have defined FAPE as a continuum of services and supports necessary to provide a student with a disability access to the general education curriculum. The courts have not allowed LEAs to use cost to define what is “appropriate.”
Least restrictive environment (LRE)	The principle of <i>least restrictive environment</i> (LRE) dictates that children with disabilities should, to the extent that it is possible and meets the student’s educational needs, be educated in the general education classroom alongside their typically developing peers and provided with appropriate aids and supports, to maximize their access to the general education curriculum. LRE builds on the civil rights principle that <i>separate</i> is, by definition, not equal.

foster development of high quality and innovative programs in order to attract students who enroll by choice. Charter schools are created under state charter school laws which outline who is authorized to grant a charter and the extent to which charter schools are subject to state and local education codes.

The core tenet of the charter concept is that extending autonomy in exchange for accountability will foster development of high quality and innovative programs in order to attract students who enroll by choice.

In 1991 Minnesota passed the first state charter school law. The Minnesota-based Citizens League's 1988 bipartisan report was influential to Minnesota passing the first charter school legislation in the United States. The law was enabling in nature; educators now had the opportunity to open a charter school, but no district was required to have one. The Center for School Change at the University of Minnesota's Humphrey Institute began assembling teachers and proposals for the first charter schools.

Recent presidents George W. Bush and Barack Obama supported charter schools as a necessary component of education reform and used charter schools as both a campaign talking point and legislative tool once elected to office (via the No Child Left Behind Act of 2001). Throughout the Obama Administration, Education Secretary Arne Duncan was a strong supporter, both in words and funding levels, of charter schools. As of 2016, all but seven states (Kentucky, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia) had charter school laws in a variety of forms.

Over time, state charter school laws have grown more nuanced; the model law developed by the National Alliance for Public Charter Schools (NAPCS, 2009) has served as a blueprint for new laws (e.g., in Maine and Washington) and major amendments to existing laws (e.g., in Colorado and Louisiana). Although there are many similarities among state charter school laws (e.g., type of authorizers, requirements in charter applications, renewal cycles, and processes), state laws are highly idiosyncratic and reflect the outcomes of legislative processes that involve negotiations and compromises by various stakeholders, both for and against the creation of charter schools.

With few exceptions, questions and concerns about the extent to which existing policy parameters influence charter schools' ability to provide quality special education services has not generated much state-level legislation (Rhim & O'Neill, 2013). Since the launch of the movement, the key aspect of charter school law for the purposes of special education is the establishment of a charter school's legal identity as a school district, otherwise known as an LEA, or as part of an existing LEA (Heubert, 1997). Because IDEA assigns responsibility for educating students with disabilities to SEAs that, in turn, delegate most responsibility to LEAs, whether a charter school is its own LEA or part of an existing traditional LEA determines the manner in which the school serves students with disabilities.

Case Study: A New Day in NOLA

The Louisiana Special Education Cooperative
New Orleans, Louisiana

In 2008, Educational Support System (ESS) consultants Beth Giovannetti and Nancy Opalack received a U.S. Department of Education Charter School Program grant through the National Alliance for Public Charter Schools to determine the special education needs of the charter schools within the Recovery School District (RSD) and the students they served post-Hurricane Katrina. Giovannetti and Opalack first delved into the special education services being provided in the 23 charter schools in RSD and published a report, *The Special Education Project: A Study of 23 Charter Schools in the Recovery School District* (Giovannetti & Opalack, 2008), which outlined recommendations for next steps in increasing the RSD schools' capacity to serve a wide range of student needs. The Louisiana Special Education Cooperative (LA COOP), developed as part of the recommendations, now provides technical and service support, specifically focused on special education, for more than 40 charter schools in Louisiana.

"With the damage to other city-level systems after the storm, everything landed in the schools," Giovannetti said. "The needs in New Orleans post-Katrina were some of the greatest needs I have ever seen. A year after the storm, the mental health needs were unbelievably high and all of the supports had been washed away. Everyone had needs and everyone was trying to rebuild, all at the same time." According to Opalack, one of the biggest challenges and opportunities was authentically implementing a high-quality, fully developed continuum of services. "This community needed so much, and inclusion is not for everyone all the time." Being on the ground during such a transitional time provided an abundance of lessons learned:

- No one teaches you how to design and run a special education program, so it can be hard to build a program from the ground up.
- You have to actually go into the schools if you are going to help them build high-quality special education programming.
- If you don't know the culture of a school and a community, your recommendations will not match the needs of the school.
- It's important for schools to implement self-assessment and continuous quality improvement measures on a regular basis.
- It's important to build the special education capacity and confidence of the building-level teachers and administration.

According to a recent report (Hawf, 2015), from 2008 to 2013, the academic achievement of students with disabilities in New Orleans skyrocketed from an 18% proficiency rate to a 44% proficiency rate. Consequently, the 2013 graduation rate of students with disabilities in New Orleans rose to 48%, which is impressive when compared to Louisiana's overall graduation rate of 37%.

Legal status as an LEA or part of an LEA has notable programmatic and financial implications (Green & Mead, 2004; Heubert, 1997; Rhim, Ahearn, & Lange, 2007). Charter schools that operate as independent LEAs typically have greater freedom—and responsibility—in designing curricula, hiring teachers and staff, and implementing programs. Also, with a few exceptions, charter LEAs receive state and federal funds directly and have control over how they spend those funds to meet the needs of their students and programs. Charter schools that operate as independent LEAs are wholly responsible for providing students with disabilities a full array of services, potentially including a full continuum of alternative placements, analogous to a multi-school district. IDEA describes a *continuum of alternative placements* as

Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

The continuum . . . must—

Include the alternative placements listed in the definition of special education under Sec. 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (34 C.F.R. §300.15)

Charter schools that operate as part of an LEA generally have access to a variety of services through the district (e.g., human resources, transportation, and legal counsel), on par with traditional public schools. As part of a larger, multi-school LEA, these types of charter schools are able to take advantage of the economies of scale realized when purchasing a variety of goods and services. Conversely, they may not be extended the same degree of autonomy as charter schools that operate as their own LEA; charter schools that operate as part of a district usually share responsibility for special education. In practice, this generally involves being required to adopt the district's approach to educating students with disabilities regardless of the extent to which it aligns with the charter school's mission. In some cases, this may include charter schools being required to adopt the established special education program provided by an LEA even if the district is operating under a court-imposed consent decree. For example, from 1985 until 2012, the Baltimore City Public Schools operated under a consent decree imposed by the U.S. District Court as a result of a class-action lawsuit filed by the Maryland Disability Law Center on behalf of students with disabilities in Baltimore City (*Vaughn G. et al. v. the Mayor and City Council of Baltimore*, 2004). The plaintiffs successfully documented that the school system had failed to conduct assessments of thousands of students and failed to develop adequate individualized education programs (IEPs) for the students (see Baltimore City Public Schools, 2012).

Embedding charter schools into a policy framework that assigns responsibility according to legal status—as an LEA or as part of an LEA—has been a challenge since the very beginning of the charter sector (Ahearn, 1999; Fiore & Cashman, 1998; Heubert, 1997). First, many state laws lack clarity regarding legal status. Some assign status according to who authorizes the school, leading to charter schools within the same state having different legal identities (Rhim & O’Neill, 2013). Although this diversity is not necessarily problematic, it introduces practical challenges when trying to integrate charter schools within the larger public education system. For example, some charter schools are invited to participate in district or intermediate district professional development opportunities and others are not.

Second, some states (e.g., New Hampshire and New York) define charter schools as independent LEAs *except for special education*, thereby further complicating the legal landscape and the definition of what it means to be an LEA. In general, existing structures (e.g., monitoring, reporting, and funding distribution systems) are ill prepared to manage the introduction of new single-school LEAs or autonomous schools within existing LEAs. In practice, this confusion has hindered policy makers’ and practitioners’ efforts to fully understand charter schools’ responsibilities—as well as efforts to build charter school capacity related to enrolling and educating students with disabilities (Lange, Rhim, & Ahearn, 2008; Rhim, Ahearn, Lange, & McLaughlin, 2003; Rhim & Brinson, 2010).

The Current Landscape

The charter school movement is having a notable impact on the national education landscape. According to the NAPCS’s 2015 report (2015b), the 2013–2014 school year saw the opening of 453 new charter schools and the closure of 210 failing charter schools nationally. This means that there are currently more than 6,400 regulated public charter schools across the United States, serving more than 2.5 million students (Rhim, Gumz, & Henderson, 2015). These numbers are stark when compared to the more than 89,000 public non-charter schools serving 46.6 million students in the United States. There is significant variability across the country both in terms of number of schools in individual states and the policy context in which they operate. That is, whereas some charter schools are extended significant operational autonomy (e.g., in Arizona and Ohio), in other states charter schools are extended relatively limited autonomy, operate as part of traditional districts, and, for all intents and purposes, are more similar than dissimilar to traditional public schools (e.g., in Maryland and Texas).

The number of charter schools in operation in 2013–2014 represented 7.3% growth in the charter sector (NAPCS, 2015). More than 50% of charter schools are in areas designated as cities or urban communities. Over 67% of existing charter schools are freestanding or independent charters, more than 20% are run by nonprofit organizations or charter management organizations, and 12% are run by for-profit organizations or education management organizations. Currently, over 89% of all charter schools are start-up

organizations, whereas only 10% are conversion schools. Conversion schools are charter schools that started as traditional public schools or private schools and which have opted to turn into charter schools. More than 87% of all charter schools are nonunionized and only 4.5% are virtual schools. Almost 80% of all charter schools have been open for more than 5 years, with 35% of those having been open for more than 10 years.

Charter schools serve a variety of students: 35% of students attending a charter school self-identify as White or European American, 28% self-identify as Black or African American, and another 28% self-identify as Brown or Latino American. Almost 50% of students attending a charter school are eligible for free or reduced-price meals. Roughly 16% qualify as multilingual or limited-English proficient and 10.42% of all students in a charter school have an IEP (Rhim et al., 2015).

Students With Disabilities in Charter Schools

The extent to which charter schools are enrolling and serving students with disabilities has been an ongoing focus of criticism of the charter sector. A recent secondary analysis of the Civil Rights Data Collection

(CRDC) confirmed that although there is a smaller proportion of students with IEPs attending charter schools than attending traditional public schools, the gap appears to be decreasing over time (Rhim et al., 2015). This type of data, however, does not provide insight into causation between type of school and the specific variables analyzed.

There also is an element of subjectivity involved with eligibility diagnosis and service provision. For instance, from the CRDC data set it was not discernible whether differences between enrollment overall or by specific disability type result from different enrollment policies and practices or differences in the manner in which individual schools identify students as eligible to receive special education and related services.

In the 2011–2012 academic year, students who qualified for special education made up 10.42% of total enrollment in charter schools, in comparison to total enrollment in traditional public schools, where 12.55% represented students who qualified for special education and related services; the national average is 12.47%. Students who qualified for services under Section 504 made up 1.53% of all students at traditional public schools and 1.52% of all students enrolled in charter schools (Rhim et al., 2015). According to the most recent U.S. Department of Education (2014) data, of students with IEPs enrolled in charter schools, 85% were placed in a general education setting compared to 67% in traditional public schools, and 13.45% of charter school students with IEPs have been suspended compared to 13.40% in traditional public schools. Charter schools reported

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expelling .55% of their students with disabilities compared to .46% in traditional public schools (Rhim et al., 2015). At the 2013 NAPCS Conference, Education Secretary Duncan stated, “I want to see charter schools [doing] a better job of educating students with disabilities” (Duncan, 2013).

State charter school laws have facilitated the creation of new schools devoted wholly or primarily to educating students with disabilities. Rhim and colleagues (2015) defined these schools as “charter schools with 25% or more enrollment by students with disabilities that self-identify as ‘special education schools’ and/or schools that report that 50% or more of their students qualify for special education” (p. 7). The National Center for Special Education in Charter Schools (NCSECS) verified the existence of 115 charter schools that focus primarily or entirely on students with disabilities. Just over half of these specialized charter schools have a general focus on disabilities (as opposed to a single disability type or a specific focus on two or more disabilities; Rhim et al., 2015). There are 49 schools that specialize in a single disability category (e.g., autism spectrum disorder, deaf-blindness). The greatest concentrations of these schools are in Florida (36 schools), Ohio (34 schools), and Texas (11 schools). Historically, these types of specialized schools have been called *segregated* or *alternative settings* and have been a topic of hot debate within the field of special education (Boundy, 2012).

The ideals driving policy and practice related to educating students with disabilities occupy common ground with the ideals of the charter sector: providing an education that fits students’ individual needs and preferences. Nevertheless, the intersection of special education and the charter construct has been at times an uneasy union. Charter schools’ autonomy provides a unique opportunity to innovate absent the ingrained systems and bureaucracies that can bind traditional public schools. Yet, 25 years of experience indicates that, in practice, many charter leaders have not fully leveraged this autonomy for the benefit of students with disabilities (Rhim & O’Neill, 2013). Multiple unique challenges influence delivery of special education and related services in the charter sector. Efforts to ensure that students with disabilities can access charter schools, and that these schools are positioned to offer strong academic programs for all students, are predicated on understanding and, to the extent possible, mitigating challenges unique to charter schools.

Equal Access

Ensuring that a student’s disability does not limit access to education is a core tenet of federal disability law. The first step in the special education process is “Child Find,” the IDEA mandate for school districts to identify, locate, and evaluate children with disabilities (20 USC § 1412[a][3]; see also Wright & Wright, 2007a; Wright & Wright, 2007b, pp. 206–207). States are responsible for developing a practical method to identify which students require special education and related services, and they typically delegate this responsibility to local districts. Charter schools that operate as LEAs are responsible for identifying students with disabilities who have enrolled in their schools. Moreover, traditional districts generally are assigned responsibility for a specific geographic area,

which includes preschool-age students and students who do not necessarily attend the district schools, such as students who attend private schools, independent schools, parochial schools, or are homeschooled. The district is required to provide early intervention services to preschool-age students identified as having disabilities.

Enrollment Practices

As public schools, charter schools are required to operate open enrollment policies. Federal guidance related to the definition of a charter school explicitly identifies open enrollment or enrollment by lottery if a school is oversubscribed, as key defining characteristics of a public charter school (Heubert, 1997). Questions about the extent to which charter schools offer equal access to students with disabilities have been at the forefront of the charter school dialogue at the state and national levels since the early 1990s (see, e.g., Fiore, Warren, & Cashman, 1998; Garda, 2012; McKinney, 1996).

The issue of equitable access and quality services was the subject of a hearing by a Congressional committee (H.R. 4330, 2010) and the focus of a Government Accountability Office (GAO) report (2012). Using the most recent data available at the time (2008–2009 to 2009–2010), the GAO found that on average, traditional public schools in states with charter schools identify 11% of their population as having a disability, whereas charter schools identify 8%. The report identified potential explanations for the different enrollment trends (e.g., inadequate charter school funding, limited capacity due to size and newness, transportation issues, lack of parental knowledge of charter schools, preschool-age students with disabilities who receive services in the traditional district may not consider charter schools, and so on). The report also noted a distinct lack of information about factors underlying the differences and how they affect enrollment levels (GAO, 2012, p. 21).

Do enrollment trends in fact reflect discriminatory practices? To safeguard against this possibility, charter operators and support organizations must proactively develop solutions that address the source of the trends and spur development of exemplary programs. Examples of solutions being implemented include

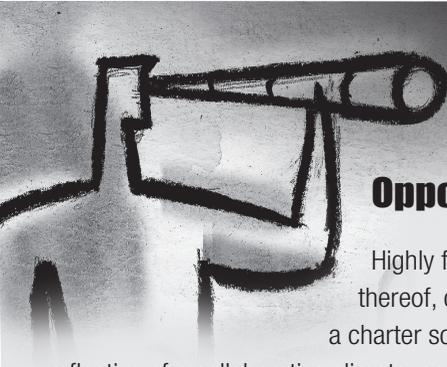
- Examining special education policies and practices and implementing necessary revisions.
- Publicizing Child Find services offered by charter schools.
- Intentionally networking with local special education advocacy organizations.
- Developing thoughtful recruitment strategies that purposefully seek to encourage students with disabilities to apply.
- Explicitly including commitment to students with disabilities in recruitment materials.
- Investing in development of collaborative relationships with external entities to develop innovative service delivery models.
- Tracking and celebrating success of students with disabilities.

Although these strategies are presented as possible remedies, they are even more potent as preventive measures that should be part of exemplary authorizer and operator practice. Absent proactively addressing potential issues, charter schools are vulnerable to policies that foster bureaucracy but do not actually improve access or services to students with disabilities.

Proactive Practice or Reactive Policy?

Although the factors contributing to the differences require more in-depth examination to quantify impact, research and experience in the field indicates that multiple factors inside and outside the charter sector contribute to the differing enrollment trends (e.g., parental choice, IEP team recommendations, facility and resource limitations, lack of understanding of IDEA). Nevertheless, the charter sector would benefit from proactive introspection regarding the extent to which authorizers, operators, and support organizations are prioritizing equal access for all students.

Strategies that some schools have implemented to increase enrollment of students with disabilities include targeted recruitment efforts and focused outreach to special education advocacy groups and parent support networks. A number of states' charter school statutes permit schools to give students from specific groups (e.g., students enrolled in low-performing schools, students from high-poverty communities, students with disabilities) preference in enrollment lotteries. However, research to date has not documented states' leveraging these preferences to address enrollment concerns. Absent an intentional effort to recruit and retain students from a variety of traditionally marginalized groups, including tracking and documenting their outcomes, charter schools may increasingly be subject to policy making that hinders rather than helps their efforts to create quality schools for all students.



CHAPTER CAPSTONE

Opportunities for the Future

Highly functioning special education services, or lack thereof, can be a strong indication of the overall health of a charter school. Effective special education systems are reflective of a collaborative climate, accessibility, highly qualified staff, family satisfaction with the school, adherence to state and federal regulations, and functional data systems in place. Incorporating policies relating to the education of students with disabilities from the charter school's preauthorization stage (see Chapter 5), within an overall framework that protects both student rights and public interest and which ensures continuous monitoring of programming and services, can set the stage for effective education of all students in the charter school.

Historically, special education services across the United States have looked very similar because they have been provided within a context that has changed very little. Recent national reform efforts like the charter school movement and school choice initiatives have changed the educational landscape in ways unimaginable just 10 years ago. Many of the manifestations of reform efforts are offering the field of special education an opportunity to study the way services are provided, in a variety of new settings. Charter schools are on the important front lines of this effort, figuring out what special education "looks like" in a variety of new pedagogical environments and within different service delivery models.

Many of these changes have led to a variety of new hot topics for both special education and charter schools, including ensuring to make parallel charter schools comply with federal and state laws governing students with disabilities, addressing the use of exclusionary discipline of students with disabilities, offering a full spectrum of educational opportunities for all students, and ensuring all students have access to the best research-based new programs and pedagogies. These topics have plagued many educational settings and schools since the implementation of special education legislation. Both special education and charter schools must support research and development in authentic ways to ensure that students with disabilities are reaping the full benefits of educational innovation.