

PRIMERS

on implementing special education in charter schools.

SPECIAL REPORT

CHARTER SCHOOLS DESIGNED FOR CHILDREN WITH DISABILITIES: AN INITIAL EXAMINATION OF ISSUES AND QUESTIONS RAISED

by
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INTRODUCTION

To date, the legislative bodies of forty states, the District of Columbia and Puerto Rico have enacted legislation authorizing charter schools. While the specifics of what constitutes a “charter school,” how charter schools can be created, and what state laws and regulations apply or are waived vary from state-to-state, one commonality among all charter schools is that legislatures are employing them as a means to spur school improvement in their states (Green & Mead, 2004). Legislatures express a variety of rationales for the creation of these schools, but one frequently espoused purpose is to provide educational options that increase both quality and opportunity for underserved populations of students. Commensurate with this goal, researchers have noted that some charter schools have been developed to specifically target the needs of children with disabilities (Lange, et al., 2005; Nelson, et al., 2000; Fiore, et al., 2000; Horn & Miron, 2000). However, other than identifying their existence, none of these studies provides further information regarding why or how these special charter schools operate.

Consequently, to fill that void this study was designed to provide an initial examination of the particular phenomenon of charter schools designed for children with disabilities. It addresses both why and how charter schools designed for students with disabilities operate their programs. First, the legal and policy context in which such schools develop and operate is described. This description ends with a fuller discussion of the questions associated with the operation of charter schools designed for children with disabilities. The study’s methodology is then briefly outlined. Finally, the findings of the study are presented in a series of questions and answers designed both to respond to the issues raised and to provide technical assistance to operators of such charter schools and others who may be contemplating similar charter schools. In so doing, implications for practice and questions for further study are also identified.

UNDERSTANDING THE CONTEXT

Delivery of special education to children with disabilities in any public school is complex due to the necessity to comply with stringent legal requirements. Federal disability laws have evolved since the mid 1970s in order to ensure that children with disabilities have available to them the benefit of public instruction provided for all children. As such, all public schools operate in a legal context formed by the Individuals with Disabilities Education Act (IDEA) and its companion civil rights statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA)(Huefner, 2005). Section 504 and the ADA require that educational programs be operated free from discrimination on the basis of disability. IDEA provides funds to assist states to accomplish this task and lays out a procedural framework by which schools must identify each child with a disability, determine the child’s unique needs, and provide whatever special education and related services are necessary to make available a free appropriate public education (FAPE) (Huefner, 2005). Charter schools, as public schools, share this obligation (Ahearn, et. al. 2004).

Other research on the implementation of IDEA in charter schools has demonstrated that simply understanding charter schools’ obligations to children with disabilities is often an involved task requiring the comprehension of federal law, state law, and contract law (Mead, 2002, Ahearn, et

al., 2001; Rhim & McLaughlin, 2000). Moving beyond understanding to implementation of the law also presents charter schools with various challenges (McKinney, 1996, 1998; Heubert, 1997; Fiore, et al., 2000; Rhim & McLaughlin, 2000; Ahearn, et al., 2001).

As one study made clear, much of the challenge of implementation of special education in charter schools stems from a central “policy tension” between special education and parental choice programs, e.g., how to reconcile parental choice with special education team decision making (Ahearn, et al., 2001). Other public parental choice programs such as magnet schools and statewide open enrollment also share the same policy tension (McKinney, 1992; Mead 1995). To fully understand this tension, it is necessary to understand the process by which special education law dictates that educational decisions be made for children with disabilities.

IDEA, Section 504 and the ADA all require that FAPE be available to each child with a disability. However, FAPE has no unitary meaning. Rather, these laws require that careful examination be given to how an individual child functions and how the disability manifests itself educationally. Whenever it is suspected that a child requires special education and related services to achieve FAPE, the IDEA dictates a specific process. This process requires first that the child be evaluated to shed light on what the child knows and what unique needs the child may have. Next, a team comprised of the parents and persons knowledgeable about the child and the effects of the child’s suspected disability meets to examine the evaluation results and determine whether the child does, in fact, have a disability as defined by IDEA. If the child is found to have a disability, then the team determines measurable annual goals for a child and documents them on an individualized education program (IEP). Once those goals are determined, the team is then to determine what special education services, related services, and curricular adaptations are necessary to allow the child to accomplish them. In addition, the law requires that the team consider where the services will be delivered and prescribes that the child’s needs be met in a setting that will allow the child to interact with children who are not disabled “to the maximum extent appropriate.” (20 U.S.C. §1412(a)(5)).

This principle, that a child with disabilities should learn with children who are not disabled, is termed the least restrictive environment (LRE). Like FAPE, the law does not define LRE in a unitary way; rather LRE is a determination that must be made with an individual child in mind. To accomplish the delivery of FAPE in the LRE, the law requires (1) that the placement be determined by the IEP; (2) that a local educational agency make available a “continuum of placement alternatives”; and (3) that a child with a disability receive instruction in a setting different from that of non-disabled peers “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily” (20 U.S.C. §1412(a)(5)). Moreover, what began as a preference for placement of children with disabilities in regular class settings (*Board of Education v. Rowley*, 1982) has evolved into a legal statutory presumption that children with disabilities will be educated in regular classrooms unless evidence exists to support a child-centered rationale for doing otherwise (Senate Committee Report on P.L. 105-17, p.26; Mead, 1998; Huefner, 2005).

Accordingly, the law contemplates that while most children will be educated in typical classrooms, some children will require something else to achieve FAPE. To ensure that an

appropriate education is considered over the setting in which it occurs, the law requires each local educational agency to make available a “continuum” of placement alternatives (34 C.F.R. §300.115). In addition to typical classrooms, that continuum specifically includes “public or private institutions or other care facilities,” “special classes, separate schooling, or other removal” (20 U.S.C. §1412(a)(5); 34 C.F.R. §300.115). Determining both the elements of an individual child’s appropriate education and the environment in which it will be delivered is an IEP Team function. Accordingly, parents must have input in any placement decision made (20 U.S.C. §1414(e)). As a practical matter then, the LRE becomes whatever setting school officials and parents agree should be used to implement the IEP designed for the child.

Of course, parents and school officials do not always agree. Over the lifetime of the IDEA, numerous parents have used the complaint procedures available under the Act to challenge the placement of their children. Some of these parents have argued before hearing officers and judges that their children should spend more time in traditional classrooms with non-disabled peers, while other parents have pursued more separated placements (Crockett & Kauffman, 1999). These procedural safeguards are designed to ensure that the child’s right is protected and essentially create both a parental “check” on school authority and a governmental “check” on parental authority to determine a child’s programming without the input of the other. Only school authorities are obligated to ensure that each aspect of the law is enforced (20 U.S.C. §1413).

These central issues of FAPE and LRE were initially established in 1975 with the first iteration of the law and although some modifications have been made since then, these core principles have remained constant over time. As various forms of parental choice have evolved, naturally questions have arisen about how IDEA can be faithfully implemented in such contexts. One of the earliest inquiries concerning parental choice came from Indiana after the state legislature there enacted provisions allowing parents to enroll their children in any public school regardless of residence. The superintendent from the Indiana School for the Blind requested guidance from the Office of Special Education Programs (OSEP) regarding under what, if any conditions parents might exercise this option to place their child in the state school (*Letter to Bina*, 1991). OSEP cautioned that if a program “specifically provides that parent preference is the sole criterion for placement of children,” it would be inconsistent with the legal requirement that placements be determined by IEP teams in conformity with the law. Therefore, the letter concluded “parent preference cannot override the decision of the child’s [IEP] team.” (See also, *Letter to Lunar Letter*, 1991; *Letter to Evans*, 1991). In addition, early challenges brought by parents to the Office for Civil Rights (OCR) clearly established choice programs must ensure that children with disabilities are not subjected to discrimination by being excluded from choice programs or being required to waive services or rights in order to participate in them (*Fallbrook Union Elem. Sch. Dist.*, 1990; *San Francisco Unified School District*, 1990; *Chattanooga Public School District*, 1993). Early guidance on the application of federal disability law to charter schools not surprisingly provided the same response – that children with disabilities must be included and that responsible authorities must ensure that all provisions of federal disability law are respected (*Letter to Bocketti*, 1999; *Letter to Gloecker*, 2003).

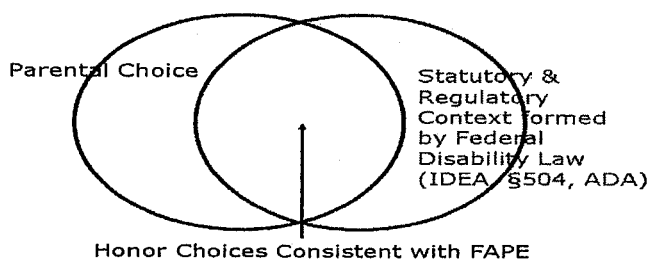
Most recently, commentary accompanying the issuance of the final regulations for the IDEA in August 2006 appears to reaffirm the relationship between parental choices and the IDEA,

particularly the LRE provisions. Proposed regulations had included, as part of the provision guiding placements, the phrase “unless parents agree otherwise.” In explaining why the phrase was deleted from the final regulations promulgated, federal officials explained:

Several commenters stated that including the phrase undermines the statutory requirement for children with disabilities to be placed in the LRE based on their IEPs and allows more restrictive placements based on parental choice. Many commenters interpreted this phrase to mean that placement is a matter of parental choice even in public school settings and stated that a child’s LRE rights should not be overridden by parental choice. . . A parent has always had this option [sending the child to a charter, magnet, or other specialized school option]; a parent who chooses this option for the child does not violate the LRE mandate as long as the child is educated with his or her peers without disabilities to the maximum extent appropriate. However, we agree that this phrase is unnecessary, confusing, and may be misunderstood to mean that parents have a right to veto the placement decision made by the group of individuals . . . We have removed the phrase ‘unless the parent agrees otherwise’ . . . (71 Fed. Reg. 46587-46588).

Taking all of these sources of guidance together, the consistent message from the U.S. Department of Education has been that those parental choices that are consistent with federal disability law can and should be honored and that conversely, a parental choice may not be implemented if it does not meet those requirements. Or stated another way, only those parental choices that meet the all the requirements of FAPE, including placement in the LRE, may be honored by school authorities. Figure 1 depicts this relationship.

Figure 1: The Intersection between Federal Disability Law and Parental Choice



In addition to these requirements, it is necessary to review another aspect of the IDEA related to placement and a child’s educational program—the requirement that even when a child is properly removed from the traditional classroom for all or part of the instructional day in order to receive FAPE, consideration must be given to how the child’s program links with the “general curriculum” adopted for all children (20 U.S.C. §1414(d)(a)(A)(i)(II)). Many of the changes made to the IDEA in 2004 were intended to incorporate requirements of the No Child Left Behind Act (NCLB) that mandates states have academic standards that apply to all children. The IDEA regulations defining “special education” clarify that:

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child's disability; and*
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children [34 C.F.R. 300.39(b)(3)].*

Therefore, IEP teams must consider first whether the child's needs can be met in a regular class where interaction with non-disabled peers is maximized and if not, how to deliver the general curriculum given the needs of a particular child in question. The curriculum in public schools in all states is now based on that state's academic standards. Therefore, if the IEP team determines that the unique needs of the child also require some alternative content, that content can be included among the child's goals, but some alignment must be evident between the goals on the child's IEP and the general education curriculum.

Not surprisingly, the national policy choices codified in the IDEA from its inception have furthered an academic initiative that argues that historically too many children have been instructionally separated from their peers. Termed "inclusion," this educational philosophy contends that children with disabilities can achieve in typical learning environments if provided with adequate support (See e.g.: Capper, Frattura, & Keyes, 2000; Burrello, Lashley & Beatty, 2001; Zepeda and Langenbach, 1999). As a result of this potent combination of a trend toward "inclusion" and the legal presumption of placement of children with disabilities in traditional learning environments, increasing numbers of children have been placed in regular education. As reported in the Twenty-third Annual Report to Congress on the Implementation of IDEA released in May 2002 explains (p. III-2):

The percentage of students ages 6 through 21 with disabilities served in both regular schools and in regular education classes within those schools has continually increased. During the 1984-85 school year, only one-quarter of students with disabilities were served outside the regular class less than 21 percent of the school day. By 1998-99, that percentage had increased to almost half (47.4 percent) (see table III-1 and table AB2).

The most recent report, the *Twenty-Sixth Annual Report to Congress on the Implementation of IDEA* released in April 2006, explains that this trend has remained constant and documents the latest statistics that reveal that "[a]lmost half of all students with disabilities (48.2 percent) were educated for most of their school day in the regular classroom; that is, they were outside the regular classroom for less than 21 percent of the school day" (p. 30). Those data also show that only four (4) percent of children are educated in educational environments completely separate from their non-disabled peers in "public and private residential facilities, public and private separate facilities and homebound/hospital environments."

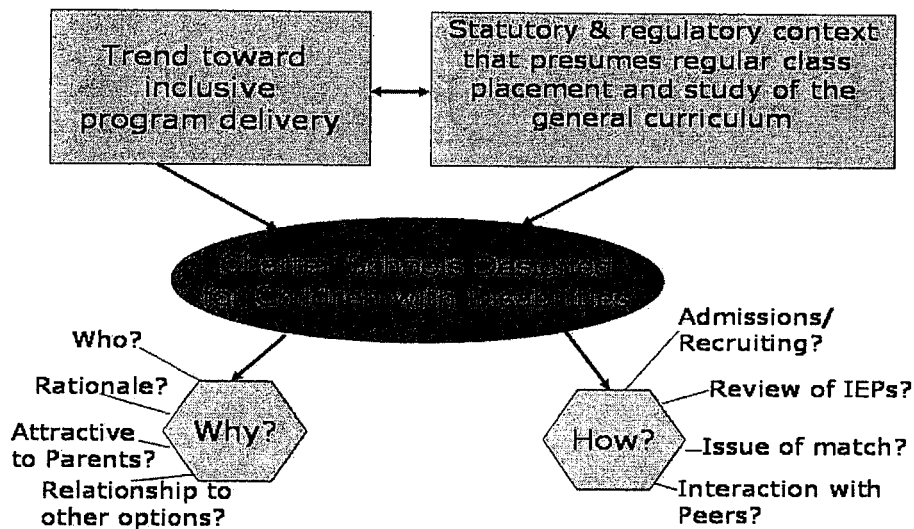
Thus, charter schools designed for children with disabilities have been created in an educational policy atmosphere defined by two features: (a) a statutory and regulatory context that presumes regular class placement and the study of the general curriculum; and (b) an identified trend showing a decrease in separate schooling and an increase in approaches that include children with disabilities in general education classrooms. The advent and operation of charter schools designed for children with disabilities, therefore, raise the question: Why and how do charter schools designed for children with disabilities operate their programs? (See Figure 2) With respect to why the charter schools operate, questions arise regarding:

- a) Who or what entities have begun such charter schools?
- b) Why were the schools created?
- c) Why are the schools attractive to the parents who select them for their children?
- d) What is the relationship of these charter schools to other educational placement options designed to support the educational needs of children with disabilities?

The presence of these schools on the charter school landscape also generates a series of implementation questions including:

- a) How do the schools recruit and admit students?
- b) When in the process of admission are IEPs reviewed?
- c) What happens if the child's IEP, in terms of interaction with non-disabled peers, does not match the environment created by the charter school?
- d) How do the schools provide for interaction with non-disabled peers?

Figure 2: Questions Raised by Charter Schools Designed for Children with Disabilities



METHODOLOGY

To explore the questions identified with respect to charter schools designed for children with disabilities, data were collected from a number of sources. First, publicly available websites operated by charter school organizations and state educational agencies where charter schools are permitted were examined in order to identify charter schools designed specifically for the learning needs of children with disabilities. Once identified, the purpose of each charter school was verified with school operators and/or state officials. Second, state directors of special education in states that permit charter schools were surveyed regarding what, if any, issues charter schools with disabilities arise or have been raised in their states (See Appendix A). State officials were also asked about any guidance made available to these special focus charter

schools. Twenty-five of forty-one SEA officials responded to the survey. Finally, charter school operators from a sample of schools were interviewed by telephone in order to get a better understanding concerning how the schools came to be developed and how they operate their programs (See Appendix B). Schools selected for more in depth examination varied according to the disability population targeted, state location, authorizer type (e.g., district or other) and whether the school was its own local educational agency or part of another for the purposes of IDEA.¹

¹ Numerous researchers have noted the importance of considering the LEA status of the charter school when examining its responsibilities under the IDEA. For more explanation of this characteristic of charter schools, see Ahearn, et al.(2001) and Mead (2002).

CHARTER SCHOOLS DESIGNED FOR STUDENTS WITH DISABILITIES:
QUESTIONS AND ANSWERS

The following section reports information learned about charter schools specifically designed for children with disabilities through a series of questions and answers. As will be noted, data reveal a number of interesting practices that may provide guidance for others considering the development of this type of special charter school and the charter school authorizers responsible for their oversight. Other issues raised may prove beneficial for state officials in their roles as providers of technical assistance. In addition, a number of questions for further study are identified.²

How many charter schools are designed specifically for children with disabilities?

A total of 71 charter schools specifically designed to serve children with disabilities were located across the country. Table 1 lists the number of specially designed charter schools by state (See Appendix C for a list of schools by name).

Table 1: Identified Numbers of Charter Schools for Children with Disabilities by State

State	Number of Charter Schools Specifically Designed for Students with Disabilities
Arizona	1
California	2
Colorado	2
Florida	34
Michigan	1
Minnesota	2
New York	2
Ohio	16
Pennsylvania	1
Rhode Island	1
South Carolina	2
Texas	3
Wisconsin	1
District of Columbia	3
TOTAL	71

² This document is intended to provide supplementary information related to the subset of charter schools targeted to students with disabilities. It does not cover all aspects of the design, development, operation or oversight of a charter school. It is important for anyone involved with such activities or responsibilities to use the information and resources provided in the original set of *Primers on Special Education in Charter Schools* that are available on the Internet at www.uscharterschools.org/specialedprimers

The schools are located in 13 different states and the District of Columbia. The majority of the schools are located in Florida with nearly half (34) of all identified special charter schools operating there. Sixteen (16) charter schools designed for children with disabilities are located in Ohio. No other state has more than three (3) charter schools of this type.

These schools represent only about 2% of the 3,632 charter schools currently in operation nationally (U.S. Dept. of Ed., 2007). Accordingly, they represent a small segment of charter schools overall. However, it should be noted that their numbers appear to be growing. For example, only sixteen (16) of these schools were chartered between 1993 and 1999, while fifty-two (52) were started between 2000 and 2006. Thirty-three (34) of the schools were chartered between 2004 and 2006.

What populations are these schools designed to serve?

The identified schools fall into three general types:

- (1) schools explicitly designed to serve a particular disability population (e.g., children who are deaf, children who have autism, etc.);
- (2) schools explicitly designed to serve children with any disability; or
- (3) schools explicitly designed to serve children with disabilities by creating what may be called "model inclusion schools."

Table 2 lists the numbers of each type of school.

Table 2: Populations Served by Charter Schools Designed for Children with Disabilities

Disability Type		Number of Schools
Children with a Particular Disability		40
	Learning Disabilities/ADD/ADHD	4
	Autism	20
	Emotional/behavioral Disabilities	4
	Deaf and Hearing Impaired	7
	Severe Cognitive/Physical Disabilities	5
Children with Disabilities Generally		25
Model Inclusion Schools		6
Total		71

Forty (40) of the schools identified were designed for children with particular disabilities and the educational needs arising from them. Of these, one half (20) of the schools serve children with autism or autism spectrum disorders. Other schools serve children who are deaf and hearing impaired (7), have severe cognitive or physical disabilities (5), have learning disabilities (4) or have emotional or behavioral disabilities (4).

Twenty-five of the 71 schools have mission statements indicating that they serve “developmental” disabilities or disabilities generally.

The six (6) schools identified as “model inclusion” schools provide an interesting contrast to the other special charter schools identified. Each markets itself as a school that serves “all” learners, but names children with disabilities as a special focus of their efforts. In that way, these schools operate most like what may be termed a “typical” school, although they may enroll more children with disabilities than might be expected in a random distribution of children.

Are charter schools designed for children with disabilities permitted in all charter school states?

No, though little explicit statutory language exists to proscribe their development. Oklahoma’s charter school statute does include express language on the topic by providing that:

No charter school shall be chartered for the purpose of offering a curriculum for deaf or blind students that is the same or similar to the curriculum being provided by or for educating deaf or blind students that are being served by the Oklahoma School for the Blind or the Oklahoma School for the Deaf [70 Okla. Stat. Ann §3-136(A)(3)].

This language would seem to prohibit only some specially designed charter schools—those designed to serve children who are deaf or blind and only if the curricular approach replicated that used in the state schools already in operation.

Sixteen (16) other states have statutory language that appears to limit selective admission (See Appendix D). For example, Missouri’s statute reads:

A charter school shall not limit admission based on race, ethnicity, national origin, disability, gender, income level, proficiency in the English language or athletic ability, but may limit admission to pupils within a given age group or grade level [Mo. Rev. Stat. 160.410(3)].

Other states express the requirement in the positive. For example, California requires that “[a] charter school shall admit all pupils who wish to attend the school” (Cal. Educ. Code §47605). As explained below under the discussion of admissions, statutory language such as these examples can be interpreted in two ways, including an interpretation that charter schools designed for children with disabilities are precluded under such a provision.

Do any states have statutes explicitly authorizing charter schools designed for children with disabilities?

Yes, but only one state – Ohio. That state includes a provision such that:

(b) The governing authority may establish a school that simultaneously serves a group of students identified as autistic and a group of students who are not handicapped, as authorized in section 3314.061 of the Revised Code. However, unless the total capacity established for the school has been filled, no student with

any handicap shall be denied admission on the basis of that handicap (Ohio Rev. Code Ann. §3314.06).

Interestingly, this statute applies only to schools serving students with autism and no other category of disability. Added to the law in 2005, this provision clarified Ohio law given that a significant number of charter schools designed for children who are autistic had already been developed. Indeed Ohio currently operates thirteen (13) charter schools designed for this special population. What, if any, obligations charter schools created under the auspices of this section have to enroll children who may have disabilities other than autism is unclear.

Another state, Florida, appears to be moving in Ohio's direction. In 2006, the legislature created the Florida Schools of Excellence Commission (FSE), a state-level entity vested with the authority to charter schools. Among its named duties, the FSE is directed to:

Collaborate with municipalities, state universities, community colleges, and regional educational consortia as cosponsors for FSE charter schools for the purpose of providing the highest level of public education to low-income, low-performing, gifted, or underserved student populations. Such collaborations shall:

b. Be used to determine the feasibility of opening charter schools for students with disabilities, including, but not limited to, charter schools for children with autism that work with and utilize the specialized expertise of the Centers for Autism and Related Disabilities established and operated pursuant to s.1004.55.³ (Fla. Stat. §1002.335(4)(b)(13).

The FSE is just beginning operation and has not yet begun to authorize schools.

One other state, New Hampshire, while using language less explicit than Ohio's, seems to establish the authority to create charter schools to serve the particular needs of children with disabilities by providing that, "[c]harter schools may select pupils on the basis of aptitude, academic achievement, or need, provided that such selection is directly related to the academic goals of the school." No charter schools designed for children with disabilities were located in New Hampshire at the time of this study.

What entities are chartering schools designed for children with disabilities?

As with the majority of charter schools generally (Lange, et al., 2005), school districts served as the chartering authority for the majority of the schools identified for this study. Only 13 schools were authorized by other designated authorizers, such as state agencies and universities.

What motivated the development of these special charter schools?

While all of the schools studied were designed to serve the particular needs of children with disabilities, examining why they began reveals some interesting patterns. Some schools were begun by teachers who wanted to use a particular methodology. Others by parents who wanted to

³ Fla. Stat. §1004.55 established six regional Centers for Autism and Related Disabilities dispersed around the state. The Centers are designed as resources for parents, schools and others.

broaden the programming options available to their children. A significant number of schools grew out of existing non-school programs that served other purposes, often non-profit organizations that already served people with disabilities in some way. For example, one elementary-level model inclusion school grew as the brainchild of a director of a programming for adults with disabilities who believed that if a school could be developed that intervened earlier in the lives of children, fewer services would be necessary for them as adults. Other schools developed from existing daycare or therapeutic programs that sought charter school status to expand or more fully develop the educational component of their programs. Many of the schools identified maintain the connections with these larger organizations.

Interestingly, officials from only one respondent school described their school's program as a direct response to what they perceived to be an over-emphasis on inclusion. Officials detailed what they believed to be the negative consequences of serving children in traditional classes, including insufficiently trained teachers, inadequate attention to learning needs, lack of adequate structure for learning, subjecting children to teasing, and lowered self esteem. As such, this particular school, although designed for children with a relatively high prevalence rate who are typically educated in regular classrooms, specifically sought to concentrate these learners in an environment away from non-disabled learners on the theory that students would then be free to focus on their learning without worrying that disclosing difficulties would expose them to possible ridicule from either students or teachers.

How do the charter schools relate to other special education placement options?

Just as the majority of charter schools are authorized by school districts, local school districts also serve as the LEA for all but 28 of the identified schools. Accordingly, it raised the question of how these schools fit into school district's array of placement options. None of the selected schools examined for this study was initiated for the express purpose of broadening special education options available locally in order to fill an officially identified need. In fact, all of the schools in the study began by some individual or group petitioning the school district or other chartering authority to establish the school with the particular focus.⁴

May these charter schools admit only children with disabilities or must the schools accept children without disabilities?

To avoid legal vulnerability in most, if not all, jurisdictions charter schools must admit all interested students. As might be expected, this question proved the most concerning for both school operators and other officials. As noted above, a number of states have provisions that restrict charter schools from limiting enrollment on any basis (see Appendix D). Some read these provisions to foreclose completely the development of a charter school to serve children with disabilities. Others read these provisions as a limitation on enrollment and admissions only. That is, they view the law as allowing a school to develop its program to serve a particular learner as long as the schools permit any interested parent to enroll a child in the school. Either of these

⁴ One charter school for students with disabilities was initiated by school authorities. The school board in Washington, DC invited St. Coletta's, a private school serving students with cognitive and multiple disabilities to locate in the District. The school began operations as a charter school in September 2006.

views would mitigate legal vulnerability to some degree, because any limitation on enrollment raises question under a variety of federal sources of law.

As explained above in the discussion of the context, Section 504 and the ADA both prohibit discrimination on the basis of disability. The wording of each statute is similar, but not identical.

Section 504 reads:

No otherwise qualified individual with a disability shall, solely by reason of her or his disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination . . . (29 U.S.C. §794, emphasis added).

The ADA provides that:

No qualified individual with a disability shall, by reason of such disability be excluded from participation in or be denied the benefits of the services programs or activities of a public entity or be subjected to discrimination by said entity. (42 U.S.C. 12132, emphasis added).

A plain reading of these statutes might be used to support an argument that these federal provisions were intended to apply only to persons who have disabilities, not to those who do not. Therefore, it may be argued that these laws should not be interpreted to mandate access for individuals without disabilities to programs designed for special populations. Likewise, some may argue that any denial of a person without a disability would not be “solely by reason of” or even “by reason of” a “disability,” but rather due to curricular needs and the availability of services to provide them. In contrast, another likely interpretation would be that the laws were intended to ensure that disability status did not determine access to state-offered benefits and therefore apply whenever program participation is conditioned on the status of having a disability or not.

The Equal Protection Clause of the Fourteenth Amendment would also be implicated by any selective admissions process. To consider whether a governmental classification violates the mandate that all persons receive equal treatment by state actors, jurists examine the fit between the ends and the means rationalizing the categories selected. Typically, classifications on the basis of disability are subjected to a mid-level scrutiny which requires that they be substantially related to an important governmental interest. Successfully arguing that limiting access only to those with disabilities is substantially related to the important interest of exploring innovative ways to teach children with learning challenges may be difficult given the current policy context that relies on research suggesting inclusionary practices yield good results for children.

Even if one were able to persuade a judge that limiting pupil enrollment to students with disabilities did not constitute “discrimination” as intended under Section 504, the ADA, or the 14th Amendment, there would still be a potential conflict with the IDEA. As Lange and associates (2005) write, “[t]here are implications for the placement of students with disabilities in segregated charter school settings that go to the heart of the IDEA.” Recall that the IDEA requires that an IEP be developed to address the unique needs of each child and that service delivery must occur in environments where children can interact with non-disabled peers to the “maximum extent appropriate.” The IEP dictates placement, the placement does not dictate the IEP. Accordingly, to ensure compliance with the IDEA, school officials would need to ensure that each child admitted to a charter school serving only children with disabilities had needs such

that an appropriate education could not be satisfactorily obtained in a more typical environment. Moreover, even if properly admitted, if a child progressed such that FAPE could be achieved in a traditional classroom, the IDEA would require instructional placement in a class with non-disabled peers. In other words, if the nature and severity of the child's disability no longer required a setting other than a traditional classroom with typically developing peers, continued placement in the charter school exclusively serving children with disabilities would violate the IDEA's LRE provision.

Finally, even if schools with selective admissions passed muster given the parameters of federal law, a question arises regarding whether operating a school in that manner would satisfy state law. As several authors have pointed out, states uniformly hold charter schools accountable for compliance with anti-discrimination standards enunciated by state constitutions and legislation (Green & Mead, 2004; Ahearn, et. al 2005). Often state provisions are more broadly written and require that no discrimination occur on the basis of a status characteristic without the limiting language found in federal law (i.e., "by reason of" or "solely by reason of"). Whether a state would consider exclusion from a school on the basis of the absence of a disability discriminatory would depend on the precise wording of the provisions in question.

In any case, whether relying on statutory or constitutional reasoning or federal or state law, a school with a restrictive admissions policy may be vulnerable to legal challenge. Therefore, it was somewhat surprising to encounter some charter schools with admission materials that expressly named disability status as an eligibility requirement. For example, one school's website declares, "[o]ur students are [an acronym signifying a state designation for special education] students only ... with behavioral and emotional issues." Another school's website informs prospective applicants that "[t]he child must have an active Family Support Plan if under the age of three or an Individual Education Plan [sic] if over the age of 3 listing eligibility for classroom services." The latter example, which requires an IEP documenting "eligibility for classroom services," may be an attempt to ensure that only those children who need the segregated environment to achieve FAPE are enrolled there. Whether doing so comports with anti-discrimination language, though, remains an open question and appears to illustrate a "catch 22" for specially designed charter schools. If they restrict admissions, they risk legal vulnerability under anti-discrimination provisions of state and federal law. If they do not ensure that each child needs the level of restrictiveness that characterizes the school, they risk violating the dictates of the IDEA.

If the specially designed charter school admits all students regardless of disability status, does that remove all legal vulnerability?

No. One state official articulated the legal concern that would remain by explaining:

The primary concern is that a charter school designed specifically for children with disabilities risks limiting admission based on disability, which is prohibited by [state law]. Even when the enrollment is not specifically limited, a charter school's focus on disability might inhibit the enrollment of students without disabilities, resulting in limited interaction of students with disabilities with their non-disabled peers not based on the requirements of Least Restrictive Environment. While IEP/placement teams could determine that the most appropriate placement for a child is in a setting

with more access to education and participation with non-disabled peers instead of the disability-focused charter schools, a potential exists for increased conflicts between parent choice decisions and placement decisions in accordance with Least Restrictive Environment.

Responses from charter school operators indicated they were well aware of this tension. Operators of schools serving a particular disability group noted that once parents of children without disabilities understood the focus and design of the school, they usually elected to enroll their children elsewhere. As such, even though the schools “accept” all students on paper, in practical terms, they only enroll students with disabilities, thereby raising the same LRE concerns as though the school restricted enrollment on that basis.

This practice, of course, highlights the question concerning how many students without disabilities must be present in an educational environment for it to be considered “inclusive” rather than segregative. At what proportion is a tipping point reached in one direction or the other? One school official suggested that as long as a classroom had one child without a disability identified under IDEA, that learning environment satisfied the mandate that children with and without disabilities be educated together. That view was particularly interesting since each child enrolled in this official’s school had an identified disability. The only distinction was that some students, a minority, had a disability identified under Section 504 but whose educational performance was not affected to the extent that they were eligible as a “child with a disability” under the IDEA. Even if one accepts for the sake of argument that this interpretation comports with of the letter of the law, it clearly contradicts the intent of the LRE provision.

How do schools designed for a particular disability provide for interaction with non-disabled peers?

In response to the policy tension noted above, charter school operators reported that they had considered a variety of creative ways to provide interaction with non-disabled peers. Some located their facilities in or near larger typical schools and shared playground and/or lunch room spaces. Others arranged for extra-curricular clubs and sports opportunities with typically developing children and still others talked about community outings as a means for students to practice communication and other skills with persons who do not have disabilities. Nonetheless, the students were instructionally separated from non-disabled peers and no official reported turning away a student on the basis that the school was a more restrictive instructional setting than the child required.

May schools designed to model inclusion weight their lotteries or hold separate lotteries to control the proportion of students with and without disabilities?

Ohio statutes expressly grant that discretion to any charter school “providing simultaneously special education and related services to a specified number of students identified as autistic and regular educational programs to a specified number of students who are not handicapped.” Schools operating under this provision may “establish[] a separate capacity for autistic students and non-handicapped students” and hold separate lotteries for each group (Ohio Rev. Code Ann. §3314.061). As noted above, if more students with autism apply and available seats remain after

admitting students without disabilities, the law requires additional children with autism to be admitted until the school's capacity is reached. No other state has similar authorizing language.

Non-regulatory guidance released by the U.S. Department of Education in 2004 addresses this issue. It cautions that weighted lotteries (where some students have increased opportunities for selection) are permitted only if necessary to comply with federal civil rights statutes. Although the guidance does not describe the issue further, presumably that necessity would come only if the school had been previously found in violation of those statutes by engaging in discriminatory activity. (See <http://www.ed.gov/policy/elsec/guid/cspguidance03.doc> for a copy of this document.)

Separate lotteries on the basis of disability raise the same issues as charter schools that exercise admission procedures to limit enrollment to children with disabilities—that using the status characteristic of disability to determine acceptance or denial of an application constitutes discrimination under Section 504, the ADA and the Fourteenth Amendment's Equal Protection Clause. One school in this study reported using a color coding system to ensure that no class had a concentration of children with disabilities that would undercut their mission to deliver instruction in inclusive settings. In this instance, however, it may be possible to defend the practice as a way to ensure that the school operates in a manner consistent with the intent of the IDEA. In other words, since the IDEA, Section 504 and the ADA all require that children be educated together whenever appropriate and the school was designed to demonstrate model inclusionary practices, a bifurcated or weighted lottery is necessary to ensure fidelity both the principles encoded in federal law and the instructional mission of the school. However, as with schools with limited admissions, charter schools may wish to avoid weighted or separate lotteries as a means to escape being the test case on the issue unless or until specific legislative or policy guidance is provided by either state or federal authorities.

May students be placed in these special charter schools by IEP teams unconnected to the school?

Yes, provided such placements are allowable under state law. One school which served a low-prevalence disability reported that students enrolled and were funded through two separate mechanisms. First, students who resided in the charter school's recruitment area enrolled as they would in any charter school. Second, students who resided outside the geographical boundaries served by the charter school were sometimes recommended to be placed there through the IEP process in their resident school district. The first group of students was funded according to the dictates of the charter school statute, while the second group was funded by the resident school district paying the charter school a form of tuition. It should be noted that traditional public schools in this region may accept non-resident students on the same cost recovery basis. This school reported that the vast majority of students (90%) enrolled through the IEP placement process rather than the charter school admissions process. The school official explained that enrollment remained voluntary on the part of the parent as required for charter school admission, even though an IEP team was the mechanism for placement. When neighboring school districts discussed placement options, they made charter school enrollment available, though no parent was required to enroll their child in that setting in order to receive FAPE as another placement with similar services, though using a different methodological approach, was available.

When in the admissions process are IEPs reviewed?

For students with existing IEPs, most schools contacted described a process of IEP review that occurred only after the student was enrolled. One school indicated that IEPs are often presented along with student applications, though this practice is not required. Schools also frequently encourage or even require school tours or visits prior to accepting an application. In that way, school officials can informally discuss the school's programming and its features in order for parents to determine whether or not to proceed with the application.

School officials also reported that they employ the transfer provisions of the IDEA when a student initially enrolls by implementing the goals and services, though perhaps in a different setting. That provision of the IDEA allows that:

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law [20 U.S.C. 1414(d)(2)(C)(i)(I)].

After getting to know how students function, IEPs may be adopted or revised using the prescribed IEP process. Students for whom staff believe additional evaluation is necessary will also be assessed. However, as noted above, if a previous IEP called for placement in a more typical classroom environment than was available at that school, schools did not turn the child away. They simply did not implement those provisions of the transfer IEP that called for placement in the typical classroom.

School officials also talked about the conundrum some faced with respect to student progress. If the child's progress indicated that they could receive FAPE in a more typical classroom than was available at the charter school, parents were advised of the fact during the IEP process. Some schools then worked with the child and the parents to transition the child to a more inclusive environment. One school, the one with a significant number of students placed in the school through an IEP process, even sent staff to the new placement to advise and consult with staff there. Whether or not a school would respect a parent's choice to have a child remain in the special charter school was less clear. One school suggested they would continue to work with parent to help them see the advantages of transitioning, while another suggested that they would honor the parent's choice in either case. Of course, when a school's enrollment is dependent on attracting and retaining students who elect to enroll there, convincing a parent to enroll elsewhere creates an obvious conflict.

In both these instances, it appears that the inherent "check" on placements contemplated by the IDEA may be compromised. As explained earlier, in traditional school settings the IEP process and the procedural protections contained in the IDEA are intended to work to ensure that the child's rights are central to the process. So, if the school district suggests a placement the parents

believe denies FAPE, the parents may challenge. Likewise, if the parents request a placement school officials believe violates the foundational principles of FAPE and LRE, officials may refuse. However, in this instance where “parental choice” is part of the process and schools have a vested interest in enrolling and retaining students, that “check” may not operate as intended. Even in traditional schools, it is true that as long as the parties to the IEP process agree, any placement is possible even if it does not give full expression to the principles of the law. In those instances, the procedural aspects of the law are elevated over the substantive requirements and are subject to discovery only if identified through a program audit or if parents change their minds and elect to challenge the placement. In the context of specially designed charter schools that serve students in a segregated environment, it may be that some independent oversight is necessary to ensure compliance with the IDEA’s requirement that that children with and without disabilities are educated together to the maximum extent appropriate.

How do schools designed for a particular disability define the “general curriculum”?

Not surprisingly, each school contacted described how the curriculum delivered related to the learning standards adopted in the state. So, even if the learning of the students served was being assessed with alternative measures, school officials articulated a connection between the learning goals of the school and the standards adopted and assessed by the state for children without disabilities. The requirements of the IDEA suggest that individuals considering the creation of a charter school designed for children with disabilities should become familiar with their state’s standards and assessments so that they can clearly describe the linkage.

Why do parents choose these special focus charter schools?

While no parents were interviewed for this project, school officials were asked to describe what about their schools attracted parents. Most responded that they believed parents were attracted to the supportive culture each school tried to maintain. Officials also reported parental feedback indicating parents also appreciated the small teacher-student ratio. Several schools mentioned that parents made comments to suggest they appreciated the fact that their children would have peers who could relate to their learning struggles and provide support. Two schools mentioned the segregated nature of their program, noting that some parents seem to be attracted to that aspect of the programming, while others decline enrollment for the same reason. Finally, officials noted that the results their students obtained on state testing appeared to attract some parents to explore admission for their children.

How do these special charter schools obtain special education leadership?

The manner in which charter schools obtained special education leadership or administrative support varied according to their LEA status. Schools for which the authorizing school district serves as the LEA depended on the school district’s leadership infrastructure. Schools that were their own LEAs either hired their own special education directors or relied on resources from the state agencies or charter school organizations.⁵ Even when schools did not hire a special

⁵ Refer to the Background section of the Primers at www.uscharterschools.org/specialedprimers for information on the legal status of charter schools as an LEA or part of an LEA.

education director, *per se*, they stressed the experience and knowledge of their teachers as providing sufficient leadership capacity in their view.

Do the schools' charter agreements or contracts contain any special language or provisions given the special focus of the charter school?

No schools reported having provisions in their authorizing contracts that deviated from that required for other charter schools. Other than the sections detailing their mission, curriculum, methodology, and admissions processes—information required for all charter schools—respondents noted that no other sections reflected the special focus of their charter school.

Do states with these charter schools provide special guidance for how to operate their programs consistent with special education law?

No state reported any particularized guidance written to guide prospective or current charter school operators interested in a school designed for children with disabilities. All state officials who responded listed the variety of resources available to all charter school operators with regard to special education, including training grants, workshops, and print materials. State officials reported that since existing programs are flexible and charter school personnel can request assistance on any issue they face, considerable information is already accessible in a variety of formats.

Likewise, study respondents in states in which charter schools designed for children with disabilities currently operate reported that their agencies approach their oversight obligations for these special charter schools in the same manner as they do for other schools. Most reported that the authorizer has primary responsibility for oversight and compliance monitoring.

What other concerns are raised by the operation of charter schools designed for children with disabilities?

State officials identified several other issues of concern with regard to charter schools for children with disabilities. One official worried that the testing and performance demands of the No Child Left Behind Act (NCLB) may create an incentive for the development of such schools as a means to separate children who might otherwise affect a traditional school's ability to demonstrate adequate yearly progress (AYP) as required under NCLB. As this official explained, "There are still many school personnel looking for opportunities to remove students with disabilities from the general school population, particularly since AYP subgroup performance under NCLB has made it high stakes." "High stakes" occur when a school fails to show AYP for any subgroup of its student population because, as a result, the school may be declared "in need of improvement" under NCLB and various sanctions may apply.⁶

Another official noted a link between charter schools and home instruction:

⁶ For further information about the involvement of subgroups in the determination of AYP, see <http://www.ed.gov/policy/elsec/guid/schoolimprovementguid.pdf>.

[T]here is a concern that some schools may utilize "home instruction," a very restrictive LRE, inappropriately. It appears that occasionally home instruction appeals to both schools and parents for a variety of reasons, but may not be the student's appropriate LRE. Wider use of home instruction has raised the question as to whether its implementation is "parental choice" instead of an LRE option for an IEP team to consider based upon the student's needs.

The same official reported concerns in that the state funding formula that provided additional funds to charter schools for children with disabilities may inadvertently provide an incentive for charter schools to over-identify children with disabilities.

Finally another state official expressed concern that allowing charter schools designed for children with disabilities, especially if they served populations of predominantly or exclusively children with disabilities, would tax limited state resources. This person reported that special focus charter schools "would significantly increase the burden on my staff to monitor the LRE aspects of placements there. I don't have sufficient staff to do this. It already takes a great deal of our time to address this now with our state schools for the deaf and blind."

IMPLICATIONS FOR FUTURE RESEARCH

While this study provides a glimpse into why and how these schools operate, more research is necessary in order to fully understand their development and operation. In addition to canvassing a broader representative sample of the schools identified as specifically designed for children with disabilities to see whether the findings reported here typify all of the schools identified with this focus, a number of other questions are raised by the study.

- Since these schools involve a situation that arguably illustrates in the starkest terms the policy tension between parental choice and group decision-making, more information is needed to understand parents' interest in them. While this study asked school officials for their perceptions of parents' interests, research that obtains the parental perspective directly from parents is needed to fully understand the need being satisfied by their operation. In better understanding what motivated parents to seek out these alternatives, it might also provide insight into ways special education delivery in traditional schools could be improved.
- No information was gathered regarding how these schools operate from a financial perspective. Given that fiscal concerns often challenge any charter school, how these schools—designed to serve students whose educational needs require more, not less, resources—obtain the necessary funding is worthy of study. One school, for example, mentioned a heavy reliance on fundraising and philanthropic support in order to afford the special services its students require. Further research is needed to understand special charter schools' operation from this perspective.
- More research is needed in order to determine the prevalence of the practice of having IEP teams place students in charter schools. While only one school reported the

phenomenon, it would seem a logical outgrowth of their establishment. Whether or not these schools serve some kind of regional, rather than local need may only be captured by examining the extent to which school districts seek out such special charter schools as a means to satisfy their own obligations to make FAPE available to all of their students.

- The effect of these schools on the identification of children with disabilities is another issue for further study. Officials in the model inclusion schools discussed ways in which their schools attempted to transform the way traditional “regular” classrooms operate, in effect making them function more like “special” learning environments with a focus on individualized learning. Officials expressed a belief that this approach actually reduced the number of children identified as disabled because teachers intervened to support student learning as soon as any difficulty was noted. It would be interesting to empirically explore whether their observations are true.

While further research would shed light on why and how these charter schools operate, the results of this study do not indicate any simple resolution to the policy tension between the principle of LRE and parental choice. While the numbers of such schools are decidedly small when compared to all charter schools and even smaller when viewed as part of all public educational options, if their numbers continue to expand, policymakers, particularly those at the federal level, may need to address directly whether and how such schools can achieve their aims while genuinely espousing the principles of that have characterized our national policy on the education of children with disabilities since the mid 1970s.

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Appendix A: Survey of State Directors of Special Education
CHARTER SCHOOLS DESIGNED FOR STUDENTS WITH DISABILITIES
State Directors of Special Education Questions

Name: _____ State: _____

1. What, if any, special considerations or concerns does your agency have with respect to charters schools designed specifically for children with disabilities?

2. What, if any, special guidance is provided or made available to charter school authorizers that may be considering a charter school designed for children with disabilities?

3. What, if any, special provisions are required in a charter school contract for a charter school designed specifically for children with disabilities?

4. What, if any, difference would there be in oversight from your agency of a charter school designed for children with disabilities as compared to the oversight of any other charter school?

5. Is there anything else you believe important for us to know in order to understand the phenomenon of charter schools designed for children with disabilities?

Appendix B: Interview Protocol
 Draft Interview Protocol for Charter School Personnel

Thank you for agreeing to participate in this study of charter schools designed for special needs populations. Data is being collected from and about 13 special charter schools in order to better understand how these schools operate. I will be asking a series of questions to that end and expect it to take approximately 30 minutes. If you are uncomfortable with any question, please let me know. You have the right to end the interview at any time. Although there should be no risks of any kind associated with this research, no school or individual will be identified by name, city, or state. Schools will be described and identified by pseudonym. Administrators will be identified by title and a pseudonym for the school or the agency for which they work. Do you have any questions?

Would you like to receive a transcript of our conversation?

Would you like to receive a copy of the study at its completion?

School Name: _____

Contact Person _____

Date: _____ Time: _____

Please tell me about your school:

chartered since: _____

chartering authority: _____

Contact at chartering authority: _____

of students: _____

of students with IEPs: _____

Disability Targeted: (check all that apply)

<input type="checkbox"/> Children with disabilities (generally) <input type="checkbox"/> mental retardation (cognitive disabilities) <input type="checkbox"/> hearing impairments (including deafness) <input type="checkbox"/> speech or language impairments <input type="checkbox"/> visual impairments (including blindness) <input type="checkbox"/> serious emotional disturbance	<input type="checkbox"/> orthopedic impairments <input type="checkbox"/> autism <input type="checkbox"/> traumatic brain injury <input type="checkbox"/> other health impairments <input type="checkbox"/> specific learning disabilities
--	---

Disability Served: (check all that apply)

<input type="checkbox"/> Children with disabilities (generally)	_____
---	-------

<ul style="list-style-type: none"> € mental retardation (cognitive disabilities) € hearing impairments (including deafness) € speech or language impairments € visual impairments (including blindness) € serious emotional disturbance 	<ul style="list-style-type: none"> € orthopedic impairments € autism € traumatic brain injury € other health impairments € specific learning disabilities
--	--

Age of Students served (grade levels): _____

of staff: _____

Governing Board: _____

Local Ed. Agency for purposes of Special Education:

- € charter school
- € **local school district - Brevard County**
- € resident school district
- € other (explain) _____

What is your school's mission?

Please tell me how your school came to be.

So far in the study, I have found 3 general types of charter schools designed for children with disabilities: (1) schools explicitly designed to serve a particular disability population (e.g., children who are deaf, children who have autism, etc.); (2) schools explicitly designed to serve children with any disability; or (3) schools explicitly designed to serve children with disabilities by creating what may be called "model inclusion schools." I have your school listed as _____ . Would you agree with that characterization?

Why do you think parents choose your school?

Do you admit children who are not disabled?

How does the charter school designed for children with disabilities relate to other special education programs in the recruitment area? (continuum of placement alternatives)

Please explain your admissions process (If I had a child that I wanted to enroll what process would I go through?)

What process do you use if you have more applicants than seats available?

Do you control for the percentage children with and without disabilities?

Do you accept children who are placed there from IEP teams (as opposed to strictly parental enrollment)?

At what point in the process is the IEP reviewed?

What happens if the child's IEP calls for an included placement?

What opportunities do students have for interaction with nondisabled peers?

Would a child ever be turned away because his/her IEP called for more interaction with nondisabled peers than is possible in your setting?

How do you link to the "general curriculum"?

What special problems, if any, does the LRE mandate pose for you as the administrator of your school?

If a child's needs change would s/he be counseled out of the charter school if they no longer require its specialized setting?

Does your charter contract contain any provisions related to the special education delivery?

Are there any special requirements or accountability measures that you have given your mission? (from the chartering authority? from the state?)

Do you have a director of special education or do you obtain special education leadership another way?

Who or what agency do you go to for technical assistance?

Is there anything else I need to know to how and why do charter schools designed for children with disabilities operate their programs?

Appendix C:
Identified Charter Schools for Children with Disabilities by State

State	Charter Schools for Children with Disabilities
Arizona	1. Sequoia School for the Deaf and Hard of Hearing
California	1. CHIME Charter Elementary School 2. CHIME Charter Middle School
Colorado	1. Rocky Mountain Deaf School 2. Vanguard Classical Charter School
Florida	1. A.C.E. Charter School 2. Achievement Academy - Bartow Campus (formerly Child Development Center) 3. Achievement Academy - Lakeland Campus (formerly Child Development Center) 4. Achievement Academy - Winter Haven (formerly Child Development Center) 5. ARC of St. John's, The 6. Believers Academy 7. Capstone Academy 8. Chatuaga Learn & Serve Charter School 9. Early Beginnings Academy - Civic Center 10. Early Beginnings Academy - North Shore 11. Early Beginnings West 12. Easter Seals Charter School - Daytona Beach 13. Easter Seals Charter School - DeLand 14. Ed Venture Charter School 15. Einstein Elementary and Middle School 16. Hope Center, The 17. HOPE Charter School 18. National Deaf Academy 19. Our Children's Academy 20. Palm Beach Academy for Learning 21. Potentials Charter School 22. Potentials South Charter School 23. Princeton House Charter School 24. Quest Middle School 25. Renaissance Learning Center 26. Tampa Bay Academy 27. Tampa Transitional School of Excellence 28. UCP Transitional Learning Academy 29. UCP - Pine Hills Charter School 30. UCP Child Development Center - Osceola 31. UCP of Central Florida - Holloway 32. UCP Transitional Learning Academy 33. Westminster Academy 34. UCP Early Beginnings Charter School
Michigan	1. McComb Academy
Minnesota	1. Metro Deaf School 2. Minnesota North Star Academy
New York	1. Child Development Center of the Hamptons Charter School 2. New York Center for Autism

Charter Schools Designed for Children with Disabilities

State	Charter Schools for Children with Disabilities
Ohio	<ol style="list-style-type: none"> 1. Autism Academy of Learning 2. New City School 3. Oakstone Academy 4. Outreach Academy 5. Summit Academy Community School - Canton Elementary & Secondary 6. Summit Academy Community School - Columbus 7. Summit Academy Community School - Lorain Elementary & Secondary 8. Summit Academy Community School - Middletown 9. Summit Academy Community School - Parma Elementary & Secondary 10. Summit Academy Community School - Toledo 11. Summit Academy Community School - Warren 12. Summit Academy Community School - Xenia 13. Summit Academy Community School - Youngstown Elementary & Secondary 14. Summit Academy Community School for Alternative Learners - Akron 15. Summit Academy Community School - Cincinnati 16. Summit Academy of Dayton
Pennsylvania	<ol style="list-style-type: none"> 1. Spectrum Charter School, Inc.
Rhode Island	<ol style="list-style-type: none"> 1. Kingston Hill Academy
South Carolina	<ol style="list-style-type: none"> 1. Meyer Center for Special Children 2. Youth Academy Charter School
Texas	<ol style="list-style-type: none"> 1. Trinity Charter School - Krause Campus 2. Trinity Charter School - Nelson Campus 3. Trinity Charter School - New Life Campus
Wisconsin	<ol style="list-style-type: none"> 1. School for Early Development & Achievement (SEDA)
District of Columbia	<ol style="list-style-type: none"> 1. Bridges Public Charter School 2. City Lights PCS 3. St. Coletta Special Education Public Charter School
TOTAL	71

Appendix D

Statutory Language that May Limit Charter Schools
Designed for Children With Disabilities

State	Statutory Language
Arkansas	<p>A.C.A. § 6-23-306</p> <p>An open-enrollment public charter granted under this subchapter shall:</p> <p>...</p> <p>(6) Prohibit discrimination in admissions policy on the basis of sex, national origin, race, ethnicity, religion, disability, or academic or athletic eligibility, except as follows:</p>
California	<p>Cal.Educ.Code § 47605</p> <p>(2)(A) A charter school shall admit all pupils who wish to attend the school.</p>
Delaware	<p>14 Del.C. § 506</p> <p>(a) A charter school shall not:</p> <p>(3) Restrict student admissions except:</p> <p>a. By age and grade;</p> <p>b. By lottery in the case of over-enrollment;</p>
Hawaii	<p>HRS § 302A-1182</p> <p>(3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;</p>
Iowa	<p>I.C.A. § 256F.4</p> <p>3. A charter school shall not discriminate in its student admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, or status as a person with a disability. However, a charter school may limit admission to students who are within a particular range of ages or grade levels or on any other basis that would be legal if initiated by a school district.</p>
Indiana	<p>IC 20-24-5-4</p> <p>Sec. 4. Except as provided in this chapter, a charter school may not establish admission policies or limit student admissions in any manner in which a public school is not permitted to establish admission policies or limit student admissions.</p>

Charter Schools Designed for Children with Disabilities

State	Statutory Language
Louisiana	<p>LSA-R.S. 17:3991</p> <p>(3) Admission requirements, if any, that are consistent with the school's role, scope, and mission may be established. Such admission requirements shall be specific and shall include a system for admission decisions which precludes exclusion of pupils based on race, religion, gender, ethnicity, national origin, intelligence level as ascertained by an intelligence quotient examination, or identification as a child with an exceptionality as defined in R.S. 17:1943(4). Such admission requirements may include, however, specific requirements related to a school's mission such as auditions for schools with a performing arts mission or achievement of a certain academic record for schools with a college preparatory mission. No local board shall assign any pupil to attend a charter school.</p>
Massachusetts	<p>M.G.L.A. 71 § 89</p> <p>(1) Charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language or a foreign language, and academic achievement. Charter schools may limit enrollment to specific grade levels and may structure curriculum around particular areas of focus such as mathematics, science, or the arts.</p>
Michigan	<p>M.C.L.A. 380.504</p> <p>(2) A public school academy shall not . . . discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district. However, a public school academy may limit admission to pupils who are within a particular range of age or grade level or on any other basis that would be legal if used by a school district.</p>
Minnesota	<p>M.S.A. § 124D.10</p> <p>Subd. 9.: A charter school may not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability.</p>
Missouri	<p>V.A.M.S. 160.410</p> <p>3. A charter school shall not limit admission based on race, ethnicity, national origin, disability, gender, income level, proficiency in the English language or athletic ability, but may limit admission to pupils within a given age group or grade level.</p>
New Jersey	<p>N.J.S.A. 18A:36A-7</p> <p>A charter school shall be open to all students on a space available basis and shall not discriminate in its admission policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, proficiency in the English language, or any other basis that would be illegal if used by a school district; however, a charter school may limit admission to a particular grade level or to areas of concentration of the school, such as mathematics, science, or the arts.</p>

Charter Schools Designed for Children with Disabilities

State	Statutory Language
New York	<p>McKinney's Education Law § 2854</p> <p>2. (a) . . . A charter school shall not discriminate against any student, employee or any other person on the basis of ethnicity, national origin, gender, or disability or any other ground that would be unlawful if done by a school. Admission of students shall not be limited on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry; provided, however, that nothing in this article shall be construed to prevent the establishment of a single-sex charter school or a charter school designed to provide expanded learning opportunities for students at-risk of academic failure; and provided, further, that the charter school shall demonstrate good faith efforts to attract and retain a comparable or greater enrollment of students with disabilities and limited English proficient students when compared to the enrollment figures for such students in the school district in which the charter school is located.</p>
North Carolina	<p>N.C.G.S.A. § 115C-238.29F</p> <p>(g) Admission Requirements.— (5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry.</p>
Oregon	<p>O.R.S. § 338.125</p> <p>(3) A public charter school may not limit student admission based on ethnicity, national origin, race, religion, disability, gender, income level, proficiency in the English language or athletic ability, but may limit admission to students within a given age group or grade level.</p>
South Carolina	<p>S.C. Code Ann. § 59-40-50 [a charter school must] . . .</p> <p>(8) not limit or deny admission or show preference in admission decisions to any individual or group of individuals;</p>