

STATE OFFICIALS PRIMER

CHARTER SCHOOL BASICS

Background

In the early 1990's, charter schools were a new concept being implemented by a few states and communities across the country. Today there are approximately 3,000 charter schools operating in 40 states and the District of Columbia. The growth of charter schools has compelled personnel in state education agencies to get "up to speed" in understanding what charter schools are and how they affect the responsibilities of state education agency (SEA) personnel. Understanding what charter schools are and how they impact SEA responsibilities is particularly important in the realm of special education, as special education needs and operations often cut across many different SEA departments.

This is one section of a Primer prepared for state officials on special education in charter schools. It is intended to give SEA personnel an overview of charter schools by answering some of the most basic questions about the history of charter schools and how they are defined, particularly for those with little or no knowledge of charter schools. As charter school law is specific to each state, there is great variability among the states. Consequently, SEA personnel should be knowledgeable about their own state law and understand how it defines or influences their professional responsibilities. Other sections of this primer delineate issues relevant for SEA personnel specific to charter schools and special education. This section focuses on providing general background on charter schools in order to provide a larger context for SEA personnel.

Why do SEA personnel need to know about charter schools?

Because charter schools are public schools, SEAs are responsible for these schools as they are for any other public schools. Because state-level special education needs cut across several departments, SEA personnel in transportation, finance, monitoring, accountability, special education and many other areas need to know what their responsibilities are in relation to charter schools. This section of the primer for state officials provides some basic information for those who are not familiar with the underlying charter school concept.

How are charter schools defined?

Section 5210(1) of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the No Child Left Behind Act of 2001 (NCLB) defines the term "charter school" to mean a public school that:

- *in accordance with specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible*

- operation and management of public schools, but not from any rules relating to the other requirements of the [paragraph that sets forth the Federal definition];*
- *is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;*
 - *operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;*
 - *provides a program of elementary or secondary education, or both;*
 - *is nonsectarian in its programs, administration policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;*
 - *does not charge tuition;*
 - *complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Part B of the Individuals with Disabilities Education Act;*
 - *is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;*
 - *agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;*
 - *meets all applicable Federal, State, and local health and safety requirements;*
and
 - *has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter school pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.*

What is the history of charter schools?

The charter school movement has roots in a number of other education reform ideas, including alternative schools, site-based management, magnet schools, public school choice, privatization and community parental empowerment. The term "charter" may have originated in the 1970's when New England educator Ray Budde suggested that small groups of teachers be given contracts or "charters" by their local school boards to explore new approaches. Albert Shanker, former president of the American Federation of Teachers, then publicized the idea, suggesting that local boards could charter an entire school with union and teacher approval. In the late 1980's, Philadelphia started a number of schools-within-schools and called them "charters." Some of them were schools of choice. The idea was further refined in Minnesota, where the concept of charter schools was expanded to include three basic values: opportunity, choice and responsibility for results. In 1991, Minnesota passed the first state charter school law, with California following suit in 1992. By 1995, 19 states had enacted laws allowing for the creation of charter schools, and by 2003 that number increased to 40 states plus the

District of Columbia. (This information is taken from the U.S. Department of Education website, <http://www.uscharterschools.org>)

What are some typical characteristics of charter schools?

Charter schools start after the passage of laws by individual state legislatures that specifically permit their existence as part of the public school system in that state. There is wide variability among the states in how charter schools are defined. One common feature of all charter school laws is that a charter school must be authorized by a specific entity or entities designated in the law. In most states, charter school law stipulates that a charter school must be authorized by an entity such as a local or county school board, state board of education, college or university, municipal body, special-purpose board, or (in two states in 2003) a nonprofit organization meeting certain criteria. The charter school is approved for a set period—most often three to five years—and the authorizer typically has oversight responsibility that is tied to a charter school's renewal of its charter for operation.

How are charter schools funded?

As public schools, charters are not allowed to charge tuition, and they are funded according to enrollment. In some states, such as Alaska, Colorado, Minnesota and New Jersey, they receive less than 100 percent of the funds allocated to their traditional counterparts for the operation of public schools. In other states, like California, additional funds or loans are made available to them. In most states, charters do not receive capital funds for facilities. They are entitled to federal categorical funding for which their students are eligible, such as Title I and special education monies. Federal legislation provides grants to help charters with start-up costs.

How many states have charter school laws and how many students are enrolled?

As of January 2004, 40 states plus the District of Columbia had passed charter school laws. Although only about one percent of America's public school students were enrolled in charter schools during the 2002-2003 school year, the charter school movement remains a high-profile component of the public education system in the United States.

Do all states have the same number of charter schools operating in their states?

No, the number of charter schools varies greatly by state. In fact, three of the 41 states with charter school laws did not have any operating charter schools in the 2003-2004 school year. As of January 2004, California has the highest number of operating charters with 500 schools in operation.¹

What are the major differences between charter schools and other public schools?

There are four major ways in which charter schools differ from other public schools.

- First, charter schools are schools of choice where parents choose to enroll their children rather than enrolling them by district assignment.
- Second, charter schools are typically exempt from some of the regulations required for other public schools, although the degree of freedom varies greatly from state to state.
- Third, charter schools are often allowed autonomy for many, if not all, areas related to operating a school.
- Fourth, an essential element of the charter concept is that charter schools will be held accountable for performance goals defined in their charter or their performance contract with their authorizing agency. If they fail to meet those goals and do not operate in compliance with relevant laws and regulations, they may be closed. These expectations may be quite specific to the charter school, or they may be more general and similar to, or the same as, the accountability requirements for other public schools in their district or state.

Do students with disabilities attend charter schools?

Yes. Students with disabilities may not be discriminated against or refused entry into any charter school on the basis of their disability status. Recent estimates suggest that approximately 12 percent of charter school students are served under the Individuals with Disabilities Education Act (IDEA), but this average masks the wide variation that exists between and within states. Some charter schools report that 100 percent of their students are served by special education (schools that target a special population) while others have very few, if any, students with disabilities enrolled.

What other resources provide information about charter schools?

The U.S. charter schools website provides extensive information about charter schools. <http://www.uscharterschools.org> Another valuable site is the National Association of Charter School Authorizers. <http://www.charterauthorizers.org>

CHARTER SCHOOLS AND SPECIAL EDUCATION BASICS

Background

Implementing special education in charter schools is often a daunting experience for charter school operators and staff. Personnel at the state education agency (SEA) often become central resources as charter schools build their capacity to address the needs of students with disabilities. While many may believe that only the state's special education division needs to understand charter schools and the issues relating to special education, in reality all SEA personnel who interface in any way with charter schools need to understand how charter schools and special education laws intersect. Special education touches many different divisions within an SEA including finance, transportation, licensing, curriculum and instruction, among others. This topic brief focuses on basic information about special education as it relates to charter schools.

Why is it important for SEA personnel to understand special education in charter schools?

Charter school operators have numerous tasks and responsibilities as they open their schools. They often must find facilities, choose or develop curriculum, hire staff and determine their educational delivery model, among other demands. They do this with limited personnel and resources and often limited experience in each of the areas. Consequently, SEA personnel are frequently called upon to assist both charter school operators and authorizers in understanding their responsibilities and the state's requirements. Just as important, SEA personnel need to understand how charter schools and special education relate because individuals starting charter schools often are unaware of their obligations in this area and SEA officials are often the first resource contacted by charter operators, authorizers and LEAs working with charter schools.

In addition, often SEA personnel understand special education as it relates to traditional public schools, but are less aware of how special education laws relate to their state's charter schools. Understanding the basic tenets of special education and how these apply to charter schools is critical to an SEA providing the needed resources and assistance to charter school operators and authorizers.

Can charter schools waive their responsibilities for special education?

Charter schools are public schools and, as such, cannot waive their responsibilities under federal laws. They must comply with all federal education laws including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Vocational Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act (ADA). A state may waive portions of its own state laws and regulations that go beyond federal requirements or the requirement to abide by school district regulations

concerning special education, but no waiver is possible from federal requirements pertaining to students with disabilities enrolled in charter schools.

It is very important that SEA officials involved with charter schools are aware of the federal laws that impact the implementation of special education in charter schools, and the important basic concepts of LEA identity and linkage between a charter school and an LEA that are covered in the Background section of this primer.

What are the major legal concepts that underlie special education statutes, regulations and case law?

There are six tenets generally considered the underlying concepts of special education law:

- **ZERO REJECT:**
Federal law requires that all children are afforded an equal education opportunity and states may not deny that on the basis of a disability.
- **INDIVIDUALIZED EDUCATION PROGRAM:**
IDEA requires that a written plan called an Individualized Education Program (IEP) be developed in accordance with IDEA regulations for all students identified as having a disability and in need of special education services. In general, the IEP includes the student's current educational level, annual goals, specific educational objectives, special education and related services to be provided (this may include transportation needs), dates for initiation of service, anticipated duration of service and evaluation criteria. Under certain circumstances, there are other requirements such as a plan for transition services for students ages 14 and older.
- **FREE APPROPRIATE PUBLIC EDUCATION (FAPE):**
What is deemed "appropriate" is not specifically defined in IDEA. Court decisions over the years have helped define the term in specific instances. What constitutes an appropriate program for an individual student is to be determined on a case-by-case basis depending upon the unique needs of that student.
- **LEAST RESTRICTIVE ENVIRONMENT (LRE):**
The IDEA provides that students with disabilities must be educated to the maximum extent appropriate with their non-disabled peers. The law expresses a preference, not a mandate, for educating students with disabilities in regular classes with appropriate supplementary aids and services.
- **DUE PROCESS AND PARENTAL INVOLVEMENT:**
Procedural safeguards are central to the implementation of IDEA. Parents must be notified of a school's intent to evaluate their child for services and they must consent to an initial evaluation before the process begins. They must also be involved in the IEP process and consent to the initial placement and provision of services. Parents also have a right to request a due process hearing if they disagree with the school's recommendations for their child.
- **NONDISCRIMINATORY EVALUATION:**
There are specific legal requirements concerning the evaluation of children for

special education services. It is important to understand these and follow necessary procedures.

What SEA functions interface with special education in charter schools?

Nearly all divisions within an SEA can interface with charter schools. For example, the finance division often fields questions related to the funding of special education in charter schools. The transportation division can be closely involved in the transportation of students with disabilities in charter schools. The licensing division is often consulted about staffing requirements for special education teachers and accountability divisions must be knowledgeable about testing and reporting requirements for students with disabilities in charter schools. In each of these examples, SEA personnel may be called upon to provide training to charter school operators and must know how their state's laws and policies concerning special education pertain to charter schools.

What is the role of the authorizer in providing special education?

SEA personnel in Tennessee need to know that only LEAs can authorize in the state. Because of the differences among the states with regard to the charter school laws and the role of the authorizer, SEA personnel should be aware of the expectations for authorizers in their state and the guidance they might need from the SEA.

What can SEA personnel do to assist charter school operators and authorizers as they consider successful implementation of special education?

There are several things SEA personnel in any division or unit (e.g., accountability, finance, transportation, special education) can do to assist charter school operators, authorizers and parents. Here are just a few:

- Know your charter school law and be prepared to answer questions about special education issues that pertain to your area of specialization in the SEA structure.
- Provide guidelines that outline for charter school operators their responsibilities as they pertain to your division. Since they are new schools, charters often need more rudimentary information than what is available for the state's existing school districts.
- Train division personnel on the charter school law and its intersection with charter schools and special education as it pertains to your division.
- Provide training for charter school operators and staff specific to your area (e.g., finance, transportation, accountability) as it relates to special education.
- Integrate charter schools into existing special education technical assistance efforts.
- Develop coordinated guidelines with the state special education division so that all are working in tandem to assist charter schools.

Is there more information that can assist SEA personnel in understanding charter schools and special education?

Additional topics important for SEA personnel to know and understand are summarized in the other parts of this primer. In addition, the following resources have useful information on this topic:

- A question and answer document entitled, Applying Federal Civil Rights Laws to Public Charter Schools, available at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf, may be helpful in answering questions regarding how federal civil rights laws apply to charter schools.
- An overview of charter schools with links to several pertinent websites is available at the U.S. Department of Education charter school website at <http://www.uscharterschools.org>

Key Policy and Procedural Issues on Charter Schools and Students with Disabilities

Background

One lesson that has been learned in the implementation of charter schools is the importance of providing clear guidance regarding special education for charter school operators, authorizers, local education agencies (LEAs) and state education agencies (SEAs). Without policy guidance, SEA personnel can be unduly burdened to create answers to each individual situation, resulting in ambiguity or inconsistency among charter schools. The information in this primer section is designed to assist SEA personnel in identifying needed policies and procedures that will provide all involved in the implementation of special education in charter schools a greater opportunity to succeed in educating all students who choose to enroll. By addressing the following issues in a proactive manner, you will be in a better position to help charter schools meet the needs of students with disabilities and avoid some of the redundancy of effort that might occur at the SEA level if policies and procedures are not in place.

The following is an action list of items for SEA personnel to consider.

- **KNOW YOUR STATE CHARTER SCHOOL LAW.**
Critical to addressing special education in charter schools is knowing the state's charter school law and its implications for special education. In some states, directors of special education had input into the charter law, while in other states special education was an afterthought that was not considered during the enactment of the law. In all cases, directors and other SEA personnel need to know the current law and its strengths and weaknesses regarding special education so that policies can be developed to assist in the implementation of special education in charter schools.
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- Knowing the charter school law only brings SEA personnel halfway to understanding the legal framework in which they are making decisions. The other element is understanding the legal identity of a charter school and the connection a charter school has to a local education agency for purposes of special education as defined by state statute. (See the [Background](#) section of the SEA primer.)
- **DETERMINE THE SPECIAL EDUCATION UNIT'S VISION FOR WORKING WITH CHARTER SCHOOLS.**
Once a charter school law has been passed, the state director of special education and other unit leaders need to consider their vision for implementing the law and working with charter schools. Research and technical assistance work with states and charter schools confirms that a proactive approach to

working with charter schools to provide clear guidelines for all involved is in everyone's best interests, especially the students with disabilities.

- **MANAGE THE PROCESS AROUND THE IMPLEMENTATION OF SPECIAL EDUCATION IN CHARTER SCHOOLS.**

Once the vision for working with charter schools in the area of special education has been determined, SEA personnel need to address how they are going to manage the process. There are several things to consider, including what level of support is needed from the SEA in order for charter schools to successfully provide special education and related services. This is particularly critical given that many new charter schools do not usually have the background or expertise sufficient to address all special education issues. Some of the questions SEA personnel should answer include:

- How will the SEA fund the additional resources needed to support charter schools? In states where charter schools are independent LEAs, monitoring and other SEA direct responsibilities increase considerably. How will these responsibilities be funded and are there any other partners the SEA can work with to carry them out more efficiently?
- How do SEA personnel facilitate discussions among the many state agency units that need to work on special education issues with charter schools? What types of structure can be put in place to ensure consistency among the units in addressing special education in charter schools? (These units include special education, transportation, finance and licensing, among others.)
- What do SEA personnel need to know about their state's charter school law in order to address charter school issues?
- Who is responsible for addressing specific special education issues within the SEA? Which unit takes responsibility and how will the responsible party be determined?
- What are some examples of how other states are providing special education-related guidance to charter schools? Can any of the resources they have developed be reproduced and amended for my state? (SEA personnel, in any stage of development of their policies should visit the websites of other states and see if they can learn from others, thus saving time and resources.)

- **UNDERSTAND THE INHERENT TENSIONS BETWEEN CHARTER SCHOOL LAW AND SPECIAL EDUCATION LAW.**

There is an inherent tension between the procedural regulation of special education and the principle of autonomy that is central to the charter school concept. Charter schools vary considerably in the degree of freedom they are provided by law and policy, but as part of the public educational system, they are not free from regulation and oversight in the area of special education. Thus, there is a natural tension between charter school law that approaches education from a non-regulatory stance and special education law that approaches education for students with disabilities in a regulatory manner. SEA personnel

must navigate these two approaches to the education of students with disabilities as they develop policies and procedures. They need to ensure that they provide assistance to charter school operators and that LEA personnel understand how to follow them.

- **UNDERSTAND THE ROLE PARENTAL CHOICE AND SPECIAL EDUCATION TEAM DECISIONMAKING PLAY IN THE IMPLEMENTATION OF SPECIAL EDUCATION IN CHARTER SCHOOLS.**

Tension is clearly visible in the implications of the charter school principle of parental choice, which creates a new dynamic for special education. The foundation of special education is the principle of team decision-making aimed at meeting the needs of an individual student. Decisions regarding what is appropriate for a student with a disability who is eligible for services under IDEA, including determining services needed and where those services will be delivered, rest with a team made up of educational professionals and the child's parent. Charter schools, by definition, challenge that foundational decision-making principle of special education by asserting the primacy of parental choice.

- **SEEK A BALANCE THAT MEETS THE NEEDS OF ALL STUDENTS.**

The challenge for SEA personnel is to seek a balance that is appropriate to each issue regarding charter schools and special education. Only a clear understanding of these issues will allow all who are involved to succeed in the climate in which public charter schools operate.

- **LOOK FOR INNOVATION OF PRACTICE AND POLICY.**

SEA personnel are in a unique position to observe through the monitoring process the special education practices being implemented in charter schools. Use the opportunity to document innovative practices and policies that might help both charter schools and their authorizers and also traditional public schools as they seek new and better ways to deliver special education.

KEY SPECIAL EDUCATION POLICIES FOR SEA PERSONNEL

Background

Consider the following scenarios.

- **SCENARIO A.** A student with an existing IEP (individualized education program) has applied for enrollment in a charter school. The IEP team has not met to consider the student's enrollment, but when they find out, they are concerned about whether the charter school will have the services to meet the student's needs. Does the student's enrollment in a charter school constitute a change of placement according to IDEA (the Individuals with Disabilities Education Act)?
- **SCENARIO B.** A student with a disability in one of the low-incidence disability categories enrolls in a charter school. The charter school does not have a staff person to serve the student, but the IEP stipulates a considerable level of services. Can the charter school send the student back to his resident school claiming they cannot serve the child and that services are available elsewhere? If not, who pays for the sometimes costly, services?
- **SCENARIO C.** A charter school uses an individualized learning plan approach for all of its students. It does not write an IEP for its students with disabilities claiming that its individualized learning plan (ILP) provides adequate information. Will the state accept the ILP as an IEP?
- **SCENARIO D.** A charter school has an inclusive special education model. It hires an itinerant special education teacher or consultant to visit the school two hours a week. Does this meet IDEA and state standards for qualified staff?

These are just a few of the situations that SEA personnel may have to address concerning charter schools and special education. At the heart of these scenarios are policy decisions that the SEA must consider and make. The possibilities are endless and can be particularly daunting to SEA personnel if no policies are in place to guide them in their decision-making and technical assistance to charter schools.

The purpose of this brief is to outline some of the most common policy areas that an SEA special education unit must address in order to provide guidance to charter schools and to the SEA staff members. The need for consistent guidance for all charter schools within the state is important for the integrity of the agency, for clarity and fairness to charter schools and also to eliminate the redundancy of effort that is apparent when each case has to be considered independently from any agency-wide guidance. The following areas are highlighted as essential policy areas for consideration by the special education unit in order to provide the clarity and guidance needed by all those who work with charter schools.

Policy Questions for Consideration

The following outline includes a few of the policy questions that should be considered and clarified at the SEA level. This is not an exhaustive list, nor does every question

affect each state in the same manner. The list is provided to assist state directors of special education and the special education unit as they provide guidance to their staff and to charter school operators and authorizers.

RESPONSIBILITY FOR SERVICE

What is a charter school's legal responsibility for students with disabilities?

Which entity is responsible for providing a free appropriate public education (the charter school, the authorizer, the child's resident school district)?

Is there a shared responsibility? If so, for which areas is each entity responsible?

PARENT CHOICE AND TEAM DECISION MAKING

What is our state's policy regarding team decisionmaking if parents have the choice to enroll their child with a disability in a charter school?

What guidance will we provide to LEAs and charter schools to help them cope with the policy tension between the philosophies of charter schools and special education?

CHANGE OF PLACEMENT

Do we consider enrollment in a charter school a change of placement for special education purposes?

If so, what related information do we have to make available to charter schools?

STAFFING

What special education staff standards must charter schools meet?

What is the role of special education consultants and can they fulfill state and federal requirements for service delivery to students with disabilities?

INDIVIDUALIZED EDUCATION PROGRAM

Is it mandatory for LEAs to use a state form for IEPs?

May charter schools develop a different IEP form?

Are there other forms related to the IEP process that charter schools must use?

Who will make sure they are notified about them?

CAPACITY ISSUES

How is special education addressed in the charter application and review processes of charter school authorizers in our state?

Will special education personnel be involved in the review of charter applications?

What policies are in place to ensure charter schools have the capacity to provide special education services when they open their doors?

CURRICULUM AND ASSESSMENT

How can charter schools modify curriculum to address unique needs of students with disabilities?

Are any curriculum requirements waived for charter schools?

SPECIAL EDUCATION MONITORING

How will charter schools be monitored for special education and should they receive special consideration or assistance?

Who within the SEA is responsible for oversight of charter schools? Have they included special education considerations in their oversight procedures?

What is the oversight role of charter school authorizers in our state in oversight pertaining to special education?

How will the findings from special education monitoring be included in the charter renewal or revocation process of charter school authorizers in our state?

CHILD FIND

What is our state's policy on the responsibility of charter schools for Child Find?

DATA RESPONSIBILITIES

What parts of the SEA's policy regarding student files, IEPs and other records are binding on charter schools?

Where do the records for students with disabilities reside?

What is the procedure that will be followed concerning special education records when a charter school closes? Who in the SEA will ensure that this is followed?

What are a charter school's responsibilities for reporting data on students with disabilities? Who ensures that the data are reported appropriately?

LEAST RESTRICTIVE ENVIRONMENT

What is the state's policy toward charter schools that enroll or target only students with disabilities?

What is the state's policy for ensuring that charter school students with disabilities have access to the full continuum of placement options for meeting individual learning needs?

FACILITY ISSUES

Who ensures that charter school facilities are accessible?

TRANSPORTATION

What are our state's transportation policies regarding students with disabilities who attend charter schools? For example, can the charter school put transportation on the IEP and expect an LEA to provide the service?

CLOSURE ISSUES

Do we need to develop written policies on special education procedures for charter schools and authorizers of charter schools to follow when charter schools close?

Who is responsible for paying for any compensatory services owed to a student with a disability when a charter school closes?

DUE PROCESS

How will due process be handled in charter schools?

STATE ACCOUNTABILITY ISSUES

How does the SEA deal with academic accountability issues for special education students in charter schools? Do we need to develop policies to ensure that students with disabilities in charter schools are included in NCLB assessments and reporting?

STATE RESOURCE ISSUES

How will the state pay for the time and resources needed to address special education in charter schools (technical assistance, additional monitoring, additional questions and oversight, etc.)?

How can the SEA best use discretionary funding to address charter school issues?

The list addresses some of the most critical areas for state directors of special education to consider as they develop state policy. The list is meant to provide a set of

critical questions that each SEA will answer specific to their state laws and in so doing develop a framework that can be understood by SEA personnel, charter school operators and authorizers. Some states may choose to provide specific answers and guidelines and other states may choose to only highlight areas of concern depending upon their state's charter school law.

One of the most important points for state directors and their staff to remember is that without guidance in these areas, special education requirements may be implemented inconsistently, with the possible outcome that some students with disabilities will not receive a free appropriate public education as required by law. Well-considered policies will provide clear, consistent guidance to charter schools and charter authorizers, while lightening the workload for the SEA personnel. For these reasons, it is strongly advised that SEA personnel discuss and set policies for the areas listed above and other related matters that arise in your state.

How can SEA special education personnel get help in developing policies and procedures?

Some states have already been down this road and have developed documents for their state. Most states have a link on their state's website that goes directly to the charter school office. One strategy that can provide relevant information for a state is to review the matrix that can be found in the appendix of the Primers on the internet at www.uscharterschools.org/specialedprimers on the legal identity of charter schools within the various states. The matrix can help state officials locate states that have similar laws and contact with those states can provide additional information.

SEA Assistance During Charter School Development

Background

Several years of research and numerous discussions with state directors of special education and other SEA personnel from around the country have made it clear that the state plays a key role in the successful implementation of special education in charter schools. However, SEA personnel are often unsure of how charter schools operate or what questions they should be considering as they review charter schools' needs. The purpose of this section is to outline the questions of particular relevance to SEA responsibilities that arise at each stage of a charter school's development with respect to special education.

Often, day-to-day operational questions are passed on to SEA personnel for which they have to make decisions. The intent of outlining these questions is to provide a framework for discussion at the SEA level as staff members decide which questions they are going to answer, how they are going to answer them, and who is going to provide the technical assistance needed to ensure the answers are implemented. The first two sections below consider questions under two broad stages of charter school development (authorization and day-to-day operation) to assist SEA personnel in working with charter schools. The third section focuses on questions concerning SEA technical assistance to charter schools at any stage of development.

Questions to Consider Concerning Charter School Authorization

The charter school authorization process is a critical period for providing technical assistance and guidance to potential charter schools. It is during this period that many prospective operators first learn about the state and federal laws that they must follow in the area of special education. Frequently, prospective charter school operators and planning teams do not include anyone with expertise in the area of special education, so all parts of the laws and responsibilities are new to them. In addition, in some states, it is during this period that negotiations take place between the charter school and its LEA or authorizer stipulating who and how special education services will be delivered. Some of the questions for consideration during this period are listed below.

What strategies can SEA administrators consider to assist charter school operators and authorizers in the area of special education?

SEA personnel need to work with others, both within and outside the SEA, who are involved in chartering schools to determine what charter school operators need to help them build the capacity to provide special education. Given the fact that many operators do not have a background in special education, the SEA should review their training and determine how best to meet the needs of charter school staff and authorizers.

What are the roles of authorizers and SEA special education personnel during the application process?

Authorizers may not be very familiar with special education and the federal and state requirements. It is possible for authorizers to have a large role in the implementation or oversight of special education in charter schools, but not have the needed background to fulfill their responsibilities. SEA personnel should be aware of the authorizer role during the application process and ensure that all necessary information is communicated.

How can the SEA ensure that there is an individualized education program (IEP) team in place if a charter school will be responsible for implementing that component of the special education law?

Setting up an IEP team process takes time and expertise, yet it is critical to providing students with a free appropriate public education. In states where charter schools have sole responsibility for special education, SEA personnel need to determine how they will ensure that charter schools in their state have an IEP development process in place that will meet the needs of students with disabilities. A charter school's charter agreement with its LEA will determine the extent to which it needs to address the IEP issue, but it is essential that SEA personnel understand the responsibility of individual charter schools in their state so they can address it with charter authorizers, operators, and SEA personnel in various departments.

What does the SEA tell potential charter school operators and the state's charter authorizers about the costs of special education?

The old saying, "better the devil we know than better the devil we don't" has relevance for this question. Charter school operators need to understand the complex issues involved in budgeting for special education. The SEA should assist operators with their planning or train the state's charter school authorizers to provide assistance, since the SEA is the "keeper of the records" and can provide the closest estimate of costs.

How should charter school enrollment policies and practices address or treat students with disabilities?

Make sure that charter operators know the applicable state and federal discrimination laws! The answer to this question may seem to be straightforward to personnel in the SEA's special education unit who are familiar with such legislation, but it may not be clear to new operators or even existing operators. The SEA needs to make clear the state's expectations around the enrollment of students with disabilities and the consequences for "counseling" students out of the school or not allowing them to enroll.

What technological expertise is necessary for charter school staff to access the needed special education databases (e.g., financial, accountability, child count)?

There is a vast array of data connected with providing funds and services for students with disabilities. Charter schools need to understand clearly their responsibilities with respect to data collection and the SEA must provide clear guidance to charter schools and exercise oversight in this area. Technical assistance will include the correct use of, and possibly entries into, state special education databases. In some states, the need for technical assistance may include both charter school authorizers and charter school operators. It is important that SEA personnel understand the relationship between charter schools and the authorizers of charter schools so that people are trained appropriately in their areas of responsibility.

Which state agency personnel can explain the information needed to implement various requirements of special education (e.g., financial, transportation, licensing, monitoring and compliance, etc.)?

Identifying resources for charter schools can save the SEA considerable time and money. Developing or providing an existing directory with explanations of relevant SEA departments and their role in special education can be valuable to charter school operators and authorizers. SEA personnel should remember that, contrary to existing school districts, charter schools are starting from scratch often with the responsibility for special education assigned to one staff person who is juggling many other responsibilities. Thus, identifying and referring schools to proper resources will be enormously helpful and important.

What type of training in special education do charter schools need during the authorization process, how much is needed, who provides it and should it be mandatory?

The SEA needs to devote careful thought to its policy on training for special education that is appropriate during the charter school's authorization process. Policy in this area should involve evaluating the type of training needed, the process for delivering that training, as well as the training that may be needed for charter school authorizers and other SEA officials.

What issues should charter schools consider when designing their enrollment forms?

Parents must apply to enroll their children in a charter school, unlike the customary registration process for schools of assignment. Application forms and practices should not be constructed in a manner that deters students with disabilities (or their parents) from applying. SEA personnel must consider who will monitor these forms and processes to ensure students with disabilities have equal opportunity to enroll in the charter school of their choice.

What role does the SEA have in negotiations between charter schools and special education providers?

Depending upon a state's linkage status and other special education planning conditions and decisions, charter schools may need to (or be permitted to) negotiate special education services with an outside vendor or the local school district. SEA personnel may be called on to assist in such negotiations or settle conflicts that arise, so it will be important for the SEA to determine its role in the process.

Questions to Consider Concerning Charter School Day-to-Day Operations

There are three main time periods in which charter school operators are most in need of information about special education. The first is the authorization period noted above; the second period can be termed the "start-up" phase; and the third period covers day-to-day operation after start-up, when the school has its regular routine, policies and practices established.

The SEA's involvement with charter schools does not end once they are up and running. In fact, more questions and assistance may be asked of SEA personnel once the school opens and students with disabilities enroll. Even if you are in a state that requires charter schools to have special education training and an extensive special education plan, many charter operators may underestimate the number or types of students with disabilities who will enroll in their school. Thus, they may still not be prepared to deal with the actual implementation of special education.

The following questions are designed to help SEA personnel understand some of the issues they may need to address as charter schools open, begin operation and continue to operate.

How can the SEA determine the special education issues that present the greatest challenges during the start-up period?

The types of issues that present the greatest challenges during start-up will depend on the state's charter school law and the entity that is legally responsible for ensuring special education service delivery. SEA personnel can pinpoint needed training and assistance for the entity that has legal responsibility for special education in the charter school and help all parties involved understand their roles and responsibilities.

How will the SEA address charter school enrollment issues pertaining to special education?

Anticipating potential problems is important to assisting charter schools in the implementation of special education. Accordingly, SEAs should develop policies to anticipate, minimize and address potential conflicts between charter school enrollment practices and special education requirements. For example, whatever a school's mission or educational approach, SEA personnel may be called upon to address the

issues that arise when a student with a disability enrolls or wishes to enroll in a school whose mission does not seem to be in keeping with the student's IEP. Providing guidance in this area so that charter schools are aware of the law and the consequences of noncompliance can help charter schools that establish policies to ensure that students with disabilities do not experience discrimination in enrollment. Providing examples of how other charter schools approach the issue will also be helpful to newer charter schools.

What are the responsibilities of charter schools for identifying students with disabilities?

Unlike school districts and the schools they operate, charter schools face unique challenges because they have to hit the ground running in many different areas, usually including the identification of students with disabilities. Often they do not have the records available to them or parents have not provided them with completely truthful answers about their child's disability status. Determining how the SEA can assist charter schools in identifying students with disabilities is important in helping charter schools comply with the law and establish a viable special education program. This is where early training is helpful for charter operators and their authorizers.

How do we provide guidance for conflict resolution and appeals to the SEA in the charter school context?

There are times when, for example, parents may need assistance in appealing an enrollment decision or a charter school may need assistance to resolve a conflict between the charter school and the provider of special education or related services. The SEA must ensure that charter school staff understand their obligation to make parents aware of their rights under law when there is a conflict or difference of opinion. SEAs must ensure that LEAs and charter schools that are their own LEAs understand the requirements for parental notification of due process rights.

Issues that surface are often unique to charter schools or are specific to the relationship between parents and the school, or between an LEA and the school. Consequently, well-thought-out policies and procedures in this area will help ensure that the process for a variety of appeals is fair and accepted by all parties.

How are due process hearings handled when they involve charter schools in my state?

Due process hearings may present unique questions for charter schools. The SEA should consider those unique issues, starting from a clear understanding of the charter school's legal responsibilities in such matters, and determine if there are any unique policies or changes to existing policies that should be considered to ensure that charter schools are appropriately included in state policy related to due process.

Who is programmatically and financially responsible for determining a new placement, if a charter school does not think it can serve a child with a disability?

A charter school may not have the capacity to provide services for all students with disabilities who seek to apply. Yet, parents may enroll their child in any charter school, if space is available, even if needed services are not available at that school. SEAs should establish a policy and provide clear information to charter schools and LEAs to minimize confusion over operations, such as who is responsible for a change of placement, the procedures to be followed, how this affects the child's rights to a free appropriate education, and who is responsible for funding a change of placement.

What about related services?

Charter schools and their authorizers are often not aware of what is meant by related services nor are they a part of a larger infrastructure that can provide related services. Delineating expectations for charter schools in this area and assisting them in locating services can go a long way toward compliance with the law and in building the charter school's capacity to serve students with disabilities.

What role does the SEA have with respect to special education in charter school renewal or revocation?

One of the unique characteristics of charter schools is their accountability for fulfilling to their charters or performance contracts. They operate under charter terms of varying lengths and a school's charter must be renewed at the end of its term in order for the school to continue to operate. SEA personnel should consider the role they might play in a charter school authorizer's renewal specific to special education and establish procedures with authorizers as to the role the special education division might play during the renewal process. Should the SEA initiate policies or guidance for charter authorizers to ensure they consider special education programs in their evaluation of charter school performance? In addition, what are the SEA policies regarding charter non-renewal, revocation, or relinquishment? What happens to students with disabilities if a charter school loses or relinquishes its charter and closes its doors?

What happens if the charter school makes a financial mistake due to lack of experience with the laws governing child identification and special education funding?

Local school districts have had more than 30 years to learn the federal and state disability laws and have expert staff that interpret and ensure that the district is following the laws and policies. For charter schools, this responsibility often falls on an overburdened teacher or director. The SEA should address the difference between the circumstances of charter schools and long-standing school districts. Are the policies the same, or will the SEA address any problems differently due to the unique nature of a new, start-up (and typically small) school?

Questions to Consider Concerning Technical Assistance (TA) to Charter Schools and Authorizers in the Area of Special Education

Charter schools need technical assistance at nearly every stage of development. SEA personnel should recognize the many ways in which they can help charter schools and their authorizers understand and implement special education. The questions below highlight some of the technical assistance areas that SEA personnel should consider as they review their policies toward charter schools in relation to special education.

- What knowledge do charter schools and authorizers need to successfully implement special education? Who will provide the information?
- How can the SEA assist in building the capacity of charter schools and authorizers to implement special education?
- How will the SEA find the resources to provide adequate technical assistance and monitoring?
- How will the SEA disseminate required information to charter schools and ensure that the information is effectively reviewed?
- How does an SEA provide guidance without turning it into regulations?
- How does the SEA address the training needs of small numbers of operators and authorizers whose needs are unique and different from the staff in traditional school districts?
- What is different about providing technical assistance to charter schools and authorizers as compared to providing training to traditional school districts?
- What types of technical assistance resources and tools concerning special education should SEA units provide for charter schools and authorizers (e.g., budget worksheets, technology training, transportation guidelines, etc.)?
- Is our statewide technical assistance system for special education and related services and processes adequate to meet the needs of charter school operators?
- When does our SEA provide special education technical assistance and who should be in charge of providing it to charter schools and authorizers?
- How should SEAs communicate special education expectations to charter school operators and authorizers in a way that is helpful and not viewed as punitive?
- What types of technical assistance do SEA personnel need to keep current with charter school development and changes in their state and around the country?
- How can the SEA select and distribute materials in a way that is manageable and useful, rather than overwhelming, for charter school operators and authorizers?

More Information

Many states have already grappled with these questions. By reviewing the matrix in the Primer versions on the internet (www.uscharterschools.org/specialedprimers), a state can identify other states with similar legal identity, linkage and funding procedures. A review of the websites of those states can provide valuable information and/or ways to contact individuals who may be able to share applicable solutions.