

NEW MEXICO PRIMER ON SPECIAL EDUCATION IN CHARTER SCHOOLS: AUTHORIZER SECTION

PRE-AUTHORIZATION/PLANNING

What is the pre-authorization phase?

The pre-authorization phase encompasses the planning activities preceding the submission of a charter application to an authorizer. In New Mexico, there are two authorizers: the local school board in the district in which the charter school will be located and the Public Education Commission (PEC). This stage generally starts out very informally and grows increasingly structured as potential charter school applicants work to turn their vision of a school into a concrete plan that can be implemented. It is a critical stage in the creation of a charter school. This is the stage when authorizers have a unique opportunity to assist developers in preparing their special education plans.

Charter applicants who apply to the PEC for a state charter school are required by law to notify the school district in which the proposed charter school is to be located and the PEC at least 180 days prior to initial application of their intent to establish a charter school [NMSA 1978 22-8B-6 A. (effective July 1, 2007)]. Failure to provide the required notification may result in an application not being accepted. July 1st is the deadline for submission of applications.

What is an authorizer's role during preauthorization related to special education in charter schools?

Authorizers may encounter charter applicants with limited knowledge of their responsibilities related to students with disabilities. Ideally, authorizers should ensure that charter school applicants are knowledgeable about federal and state laws related to educating students with disabilities and cognizant of their responsibilities related to special education. Authorizers that do not or cannot provide deeper technical assistance regarding special education themselves should refer applicants to qualified technical assistance providers who can give them the developmental guidance applicants need throughout the planning phase.

How can I introduce potential charter school applicants to the rationale behind special education laws?

Introducing charter developers to the reasons underlying special education may help lower barriers to implementing special education programs. In other words, authorizers should consider teaching potential operators why special education exists. Furthermore, it may be helpful to acknowledge that, while special education policies and procedures can admittedly be cumbersome, they have evolved over many years and they stem from documented exclusion of children with disabilities. Charter authorizers may require that charter applicants attend a brief introduction to the civil rights origins of the Individuals with Disabilities Education Act (IDEA).

Can an authorizer grant charter school applicants waivers from federal special education requirements as part of their charter?

No. The federal government has not permitted any waivers from federal special education requirements for charter schools. Charter schools are public schools and must be open to, and serve the needs of, any student with a disability wishing to attend. New Mexico law [NMSA 1978 22-8B-4 A] provides that "A charter school shall be subject to all federal and state laws and

constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services." In addition, state law provides that "A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal [IDEA] and its implementing state and federal rules [22-8B-4 T]."

Given that one of the tenets of the charter school movement is the goal of fostering innovation, authorizers should strive to provide charter school developers with the opportunity to develop special education programs in non-traditional ways as long as they operate within the parameters articulated in federal and state law. The New Mexico Charter Schools Act does not provide for the waiver of any state requirements relating to the provision of special education and related services.

What are my responsibilities as an authorizer related to the No Child Left Behind Act (NCLB)?

Authorizers' responsibilities related to NCLB are determined by state charter school law. To be specific, the non-regulatory guidance provided by the U.S. Department of Education states that:

"... Section 1111(b)(2)(K) of the amended ESEA requires accountability for charter schools to be overseen in accordance with State charter school law. Thus, a State's charter school law determines the entity within the State that bears responsibility for applying the Title I, Part A accountability provisions, including AYP, to charter schools. This generally means that the charter authorizer is primarily responsible for holding charter schools accountable under the Title I, Part A provisions unless State law specifically gives the State educational agency (SEA) direct responsibility for charter school accountability. We do not expect the local educational agency (LEA) in which the charter school is located to be this entity, unless it is also the charter authorizer.

From the perspective of special education, it is important for authorizers to know the basic requirements of the NCLB, e.g., that all students with disabilities must be included in the required state assessments and that the special education subgroup is a component of "adequate yearly progress." The complete Non-Regulatory Guidance on Title I Requirements in Charter Schools is (available online at www.ed.gov/policy/elsec/guid/charterguidance03.pdf).

The New Mexico Charter Schools Act, NMSA 22-8B-4 M, provides that "[a] charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [22-2C-1 NMSA 1978]".

What issues should I encourage charter applicants to consider during the planning phase to ensure that they will be able to provide special education appropriately?

When working with charter applicants, authorizers are wise to advise applicants of the value of the old adage, "an ounce of prevention is worth a pound of cure." When applied to developing a school that can educate students with disabilities, the "ounce of prevention" requires adequate planning during the charter development and start-up phase. The following checklist itemizes issues that authorizers should encourage applicants to consider related to special education. The list is not exhaustive, but rather a guide to key issues that potential charter applicants should take into account. The answers to these questions will depend upon a number of conditions including the charter negotiated between the authorizer and the operator and the characteristics of the individual charter school.

ISSUES FOR CHARTER APPLICANTS TO CONSIDER DURING THE PLANNING PHASE

HUMAN RESOURCES

- How many students with disabilities should we estimate that our school will enroll? (NMPED can provide applicants with historical school district specific averages of students with IEPs to assist applicants in making this projection.)
If we will be responsible for providing special education:
- How many special education teachers will we need to employ? (NMPED can provide applicants with the number of special education teachers employed to assist applicants in making this projection.)
- What kind of certification will the special education teachers need?
- Can we hire part-time or retired special education teachers?
- Will we need to hire staff for health-related issues?
- What are the implications for salaries and benefits if we hire full- versus part-time employees?
- Is the LEA responsible for all, or part of special education in our school?
- If our school needs to work with an LEA, how do we negotiate with the LEA to ensure our students will receive appropriate services? (Since, in New Mexico, the approved charter application becomes the charter, school districts and charter schools may want to utilize a "memorandum of understanding" [MOU] (if money is involved) or intergovernmental agreement [IGA] (if no money is involved) to memorialize their agreement with respect to how students in charter schools will receive services.)

CURRICULUM AND ASSESSMENT

- What curricula and instruction will our school offer?
- How will we modify the curriculum and instructional delivery to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum and instructional approach for children with disabilities in inclusive classrooms?
- How will our school include children with disabilities in required assessments or develop alternate assessment?
- How will curriculum and assessment decisions be considered and monitored by IEP teams and staff?

PROFESSIONAL DEVELOPMENT

- How will our school provide teachers with professional development?
- Will teachers need any specialized professional development related to educating and including children with disabilities?
- Does the district or the state operate a professional development program or network that we can utilize?

ADMINISTRATION

- Who will administer the special education program?
- Who will be responsible for collecting, managing and reporting data related to children with disabilities?
- Can we create our own system to administer special education or will we adopt the policies/procedures dictated by our authorizer, local district, or other administrative unit?
- How will our school handle student records and other school property appropriately in the event of closure of the charter school?
- What are the arrangements for transportation?

SPECIAL EDUCATION FUNDING

- How will federal, state and local special education dollars flow?
- What does our school need to budget for special education during the first year of operation?
- Do we need to prepare financially to enroll a student with significant special needs?

FACILITIES

If we will be responsible for special education evaluations and services:

- Where will we conduct student evaluations?
- Where will we conduct IEP meetings?
- Where can we store confidential student records?
- Where will we provide pullout services?
- Where can related services personnel meet with individual students?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals—including adults—with physical disabilities?

Are there any existing models of how to address special education during the planning phase?

A number of organizations (e.g., state education agencies (SEAs), local education agencies (LEAs), other authorizers, charter school support organizations) have developed documents and orientation series that include information regarding special education in charter schools. One resource is the special education section of the New Mexico Public Education Department (PED) website (www.ped.state.nm.us/seo/index.htm) The New Mexico organization that provides support for parents of children with disabilities including many relevant documents is *Parents Reaching Out*. They maintain a website at www.parentsreachingout.org. Their office which is located at 1920 B Columbia Drive SE in Albuquerque can be reached at 1-800-524-5176.

Summary and Key Points

The pre-authorization phase provides charter school authorizers the critical opportunity to inform potential applicants about their responsibilities related to special education. While many state charter school laws and subsequent charter applications require applicants only to provide a general assurance that they will not discriminate or more specifically, an assurance to abide by IDEA, many applicants are not aware of what these assurances entail. However, once charter schools are authorized and have evolved to the operating phase, the pressures associated with start-up and day-to-day operations frequently limit operators' ability and available options to create an effective and efficient special education program.

In an effort to pre-empt potential problems associated with not complying with IDEA requirements, charter authorizers can take advantage of applicants' planning phase to educate applicants about special education. By educating applicants earlier rather than later, authorizers can encourage applicants to build special education into their vision of a school rather than simply add special education after the school model is developed.

AUTHORIZATION

What occurs during the authorization phase?

The authorization phase incorporates the stage in which the applicant completes the formal written application and seeks a charter. The application process typically conforms to broad requirements in state charter school laws and is further developed by individual authorizers. Charter school applicants are generally required to articulate in one form or another, the school's mission, governance structure, educational model, budget and assessment and accountability plan. Specific contents of the application are outlined in New Mexico law (Section 22-8B-6).

When reviewing charter applications, in what areas should I anticipate or require information regarding an applicant's plan to incorporate students with disabilities?

The New Mexico charter school law specifies what must be included in an application for a charter [Section 22-8B-8] These requirements are described and expanded in the specific New Mexico regulations (Title 6, Chapter 80, Part 4).

What should authorizers ask applicants about their plans to provide special education services to students with disabilities?

Authorizers should develop an application form that asks applicants, at a minimum, to address the elements required in New Mexico's regulations specifically governing charter application content [6.80.4.8]. Although one of those requirements is a "Specific Special Education Plan" [6.80.4.8(D)(2)], the regulations do not describe what that plan has to include.

What is my responsibility as an authorizer to ensure that charter schools serve children with disabilities?

The full extent of authorizer responsibilities related to special education has yet to be established. In New Mexico, the locally-chartered charter school is responsible for identifying, evaluating and offering a free appropriate public education to all enrolled eligible children with disabilities. The state-chartered charter school, as its own LEA, is responsible for determining the needs of enrolled students for special education and related services. The local school district remains responsible for child find for children not enrolled in charter schools within the district and for the provision of special education and related services for children expelled from charter schools. Both locally-chartered and state-chartered charter schools "may", but are not required, to contract with a school district or other party for the provision of special education and related services. Ultimately, it is the state's responsibility to ensure compliance with IDEA.

As an authorizer, am I, or is my agency, liable if charter schools I authorize do not serve children with disabilities or otherwise do not implement special education properly?

To date, there is no case law establishing whether, or the degree to which, authorizers can be held responsible for special education in the schools they authorize, nor is there judicial precedent that explicitly releases authorizers from responsibility related to special education. This does not mean that authorizers cannot or will not be held responsible at some point in the future. Consequently, authorizers should seek legal counsel regarding local and state special education regulations and the degree to which charter schools or parents may hold the

authorizers accountable for the implementation of special education in the charter schools that they authorize. However, if the authorizer is also the charter school's LEA for special education purposes, in its capacity as LEA, (even if not, in its capacity as authorizer) it is ultimately responsible for the provision of FAPE and related services to children attending schools in its geographic boundaries. In New Mexico, state-chartered charter schools are their own LEAs for special education purposes. Locally-chartered charter schools are schools within an LEA for special education purposes.

What are some issues authorizers should monitor related to discrimination against students with disabilities?

As public schools, charter schools are not allowed to discriminate against students with disabilities. An issue that arises in both charter schools and traditional public schools is “counseling-out” of students with disabilities. Counseling-out is the process of subtly or not-so subtly “counseling” a child with a disability to influence an enrollment decision inappropriately based on the child’s disability.

Can a charter school "counsel-out" a student with a disability?

Charter schools are public schools and as such, they are legally required to maintain open enrollment policies. Advising students with disabilities that they are not allowed to attend, or that the school cannot provide the modifications or accommodations necessary to enable them to attend, is discriminatory and illegal. All placement decisions for students with disabilities should be made in the forum of an IEP meeting and must be based on an individual student’s educational requirements.

What is my role in ensuring that charter schools fulfill their mission while complying with their obligation related to adaptation, accommodations and modifications required by IDEA?

Authorizers should require applicants to articulate their mission explicitly and ensure that the charter school is prepared to offer reasonable accommodations to children with disabilities who elect to attend the school. A key component of reasonable accommodations is a school culture that incorporates a commitment to offering accommodations to individuals with disabilities while guarding against substantively changing the nature of the school’s mission. In New Mexico, the PED and the LEA have shared responsibility through the accreditation process for ensuring that charter schools fulfill their mission and comply with all federal regulations and state rules.

Can a charter school’s curriculum alone meet the needs of students with disabilities without modifications and support?

There should be only one curriculum for all students and IDEA stresses the importance of access to that curriculum for all students with disabilities to the extent possible. The core tenet of the IDEA is that children are treated as individuals with unique abilities and disabilities that need to be addressed by providing unique support services, which are explicitly articulated in an IEP. Even if the school plans to provide all children with individualized learning plans loosely analogous to IEPs that address each student’s unique cognitive and physical abilities and disabilities, the learning plan for a student with a diagnosed disability must conform to all of the requirements of IDEA. To determine whether these learning plans or other curricula approaches meet IDEA procedural requirements, charter operators must be aware of district and state

special education requirements. In general, any policy that aims to treat all children with disabilities the same way should raise a red flag to authorizers assessing applications. When reviewing charter applications, authorizers can request additional information regarding how the charter school plans to ensure that its particular curriculum or instructional approach can address the unique individual needs of students with disabilities.

Why is it important for authorizers to ensure that charter applicants have the capacity to provide special education services?

By ensuring that charter schools have the capacity to provide special education services, authorizers can help operators avoid potential liability and ensure that all students who enroll have the opportunity to obtain an appropriate education.

How can charter schools develop the capacity to deliver special education services in the school?

In New Mexico, the LEA school district sends special education funds to the locally-chartered charter school based on the enrollment of students with disabilities. The locally-chartered charter school is responsible for providing special education and related services to enrolled, eligible students, although the charter school can go to the LEA for assistance if their state and federal funds and their emergency reserves have been exhausted. As long as locally-chartered charter schools can ensure that children with disabilities enrolled in their schools have access to a free appropriate public education, they may utilize a variety of strategies to amass the capacity. Examples of approaches charter schools can use to increase their special education capacity include: 1) hiring appropriate professionals to work at the charter school; 2) contracting with a local education agency; 3) contracting with a regional education agency or cooperative; 4) contracting with individuals or organizations qualified to provide special education services; 5) attending state or district special education meetings or professional development activities; or 6) some combinations of these approaches.

State-chartered charter schools are their own LEAs for special education purposes. They receive their special education funds from the state and they are eligible to apply to the state for their own subgrants.

Do charter schools have to hire licensed special educators?

Yes. Charter schools are required to meet the same teacher licensing requirements as all other public schools in the state.

Where can an authorizer refer charter schools to learn more about their state's requirements regarding special education certification?

Like most states, New Mexico maintains a detailed website that describes teacher certification requirements, including routes for alternative certification and scholarship/incentive programs developed to encourage people to become teachers. This information for New Mexico can be found at www.teachnm.org and at the Professional Licensure Bureau section of the state website (www.ped.state.nm.us/div/ais/lic) that contains data on requirements by area of licensure. Because special education is one of the areas in which there is currently a shortage of teachers, many states sponsor programs designed to encourage individuals to obtain special education credentials. Authorizers may want to make charter applicants familiar with the various

teacher recruitment and induction programs offered in the state. These programs may be rich sources of qualified teachers, including special education personnel, for charter schools.

Given the current shortage of special education teachers nationwide, what strategies can an authorizer suggest that a charter schools use to hire teachers and related services professionals?

Charter schools can employ creative strategies to access credentialed special education and related services professionals. Six strategies that charter schools commonly use are:

- hiring faculty with dual licensure (e.g., elementary education and special education);
- hiring consultants to provide special education services;
- hiring retired teachers to work part-time;
- developing collaborative agreements with an LEA;
- developing collaborative agreements with other charter schools to share special education teachers; and
- forming partnerships with a local non-profit entity (e.g., a hospital) or a post-secondary institution that employs related professionals.

How do charter schools pay for the costs associated with providing special education services?

Charter schools must provide appropriate special education services as indicated in the IEP. Charter schools receive special education funds either directly if they are state chartered, or from their chartering school district LEA if they are locally-chartered.

How can authorizers assist charter schools that enroll a child with significant disabilities and are struggling to provide the services the student requires due to the excess costs?

On the special education section of the PED website, state policy related to the provision of special education in charter schools is described. The following points describe the roles of the charter school and its authorizing district:

- Charter schools in New Mexico are primarily responsible for serving their IDEA-eligible children and may provide services with their own staffs or through negotiated contracts with local districts, regional cooperatives or other qualified service providers.
- Because of this responsibility, as a condition of budget approval, the PED will require all charter schools to allocate adequate funds to meet their foreseeable needs for special education and related services.
- Since locally-chartered charter schools in New Mexico are part of the local district, the IDEA holds the district ultimately responsible for compliance. As a result, a locally-chartered charter school that has exhausted its state and federal special education funds and emergency reserves and is still unable to meet the identified needs of one or more IDEA-eligible students may ask—and expect—the district to provide additional services at district expense.
- Since a state-chartered charter school is its own LEA for special education services, it may ask, but should not expect, the district to provide additional services at district expense. Conceivably, a state-chartered charter school could ask for a special appropriation. However, more regularly a state-chartered charter school must simply live within its budget. In order to do this, the state-chartered charter school must incorporate an accurate accounting system to ensure IDEA flow through dollars are used to

supplement, not supplant, the educational program for students receiving special education services and supports. It is the authorizer's responsibility to ensure that the charter school has an accounting and budgeting system in place to ensure funds are appropriated as intended.

(www.ped.state.nm.us/seo/guide/guide.charter.memo.062501.pdf)

What is the legal basis for requirements related to facilities' accessibility for students with disabilities?

Charter schools, like all public schools, must comply with legal requirements regarding accessibility that are extremely complex and stem from the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act. To read these laws and see documents regarding their implementation in public schools, see the following websites:

- Americans with Disabilities Act of 1990
<http://www.usdoj.gov/crt/ada/adahom1.htm>
- Section 504 of the Rehabilitation Act of 1973
<http://www.504idea.org/Select504.pdf>
- ADA and Section 504, Kids source
<http://www.kidsource.com/kidsource/content3/ada.idea.html>

Negotiating the parameters of the ADA and 504 is challenging and authorizers should strongly encourage the schools they authorize to seek legal counsel regarding their obligations associated with accessibility. Authorizers also should obtain counsel, to be familiar with the requirements themselves.

If a charter school is required to make its facility accessible to an individual with a disability, whose responsibility is it to make the building accessible?

A state law (22-8B-4.2 NMSA) requires that all charter schools initially approved or renewed after July 1, 2005 must meet E Standards (educational occupancy standards) and state-adopted rules prior to opening. In addition, authorizers should strongly encourage charter operators to seek experienced legal counsel prior to signing any contracts to lease or purchase a facility for their school. Responsibility to modify a facility—even in the event of unforeseen needs—should be articulated in the lease between the charter school and the owner of the facility.

In the event that a charter school must make its facilities accessible to an individual with a disability, where should an authorizer direct its operator to obtain information about how to make facilities accessible?

- **NEW MEXICO WEBSITES:** most cities and counties post their municipal code, including regulations pertaining to implementing ADA, on their website. Authorizers should familiarize themselves with county building and municipal codes.
- **US DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS:**
<http://www.ed.gov/about/offices/list/ocr/index.html?src=mr>
- **AMERICANS WITH DISABILITIES ACT:**
<http://www.usdoj.gov/crt/ada/adahom1.htm>

Do charter schools have to provide transportation to students with disabilities?

Charter schools must contract with a local school district or other party to provide special transportation for students with disabilities if it is included as a related service on the student's IEP.

Summary and Key Points

The authorization stage is critical to the development of successful charter schools. Building on the foundation established during the pre-authorization phase, the authorization process provides authorizers the opportunity to verify potential operators' knowledge about their responsibilities and to assess the degree to which an applicant is capable of fulfilling these responsibilities. Charter authorizers should be knowledgeable about special education. This basic knowledge will enable authorizers to ensure that: 1) charter applicants fully understand and are prepared for their responsibility to educate students with disabilities and 2) charter applicants integrate their plan to provide adequately for special education within their application. By providing charter developers early guidance on how to anticipate and adequately address the application process, authorizers can help charter schools preempt a variety of challenging issues that will emerge once a child with a disability enrolls in the charter school.

OVERSIGHT, ACCOUNTABILITY AND RENEWAL

What is my role as an authorizer to hold charter schools accountable in the area of special education?

In New Mexico, the approved charter application becomes the contract or "charter" between the charter school and the authorizer. It is a performance contract and the authorizer is responsible for ensuring that charter operators fulfill their responsibilities articulated in the contract. Once the charter school doors open and the students arrive, charter authorizers' responsibility shifts from granting charters to overseeing the schools and holding them accountable for the goals and objectives outlined in the charters. It is important that each charter school's specific level of responsibility for special education be included in the charter and, if appropriate, be expounded upon in a memorandum of understanding (MOU) if money is involved or an intergovernmental agreement (IGA) if no money is involved or other document.

Do authorizing agencies have any obligation to complete paperwork related to special education in the charter schools they authorize?

The current data collection system in New Mexico is the "Student Teacher Accountability Reporting System" (STARS) <http://www.ped.state.nm.us/stars> . This data collection warehouse requires LEAs to report data to the NMPED for all federal data reporting requirements including special education. The NMPED has published a user's guide for the STARS data collection warehouse. The user's guide includes a Volume I and II. Volume I provides information on all reporting templates required by the NMPED and Volume II provides reporting codes and course description information. The charter operator's knowledge of documentation requirements for special education should be part of the special education plan that is submitted with the charter application.

Where or when is my role related to accountability formally articulated to the charter schools I authorize?

The New Mexico charter school law specifies the procedures for renewal of a charter. The charter school must submit a renewal application and the specific areas of accountability to be included in that application are specified in section 22-8B-12. Accountability items are also specified in detail in the state regulations that prescribe the content of a charter application which must include a special education plan (6.80.4). Once locally-chartered charter schools are operating, they must also work collaboratively with the LEA on their IDEA Part B application.

Authorizers are encouraged not to wait until the renewal process to determine whether the charter schools they have authorized are complying with the terms of the charter as well as federal and state law. Authorizers are encouraged to enter into an MOU with the charter school, setting forth their mutual responsibilities for site visits, reports and other exchanges of information to ensure high quality charter schools and high quality authorization.

Since data collection and documentation are important aspects of IDEA, what types of data and documentation regarding children with disabilities should authorizers recommend that charter schools collect and report?

Data and documentation on special education are two major responsibilities under IDEA. New Mexico charter schools are obligated to collect and report the same information that all public schools must report, such as statistical data on students, results of standardized tests and financial information. Examples of special education data and documentation that a charter school must compile include student counts as well as more procedural documents that would be reviewed as part of special education general supervision. The data collection requirements for special education are described in detail in the New Mexico State Performance Plan (<http://www.ped.state.nm.us/seo/data/SPP.1.20.06.final.pdf>). The data collection Indicators identified in the New Mexico State Performance Plan are mandated by the U.S. Office of Special Education Programs (OSEP).

What should authorizers know about the federal and state special education monitoring processes as they relate to charter schools?

The federal Office of Special Education Programs (OSEP) provides general oversight to every state on its compliance with IDEA requirements and makes a Determination of how the state has implemented IDEA requirements. In turn, each state must make a similar Determination on LEA performance by considering each district's (LEA's) data on the 20 indicators described in the New Mexico State Performance Plan. Charter schools are held accountable for special education in the same manner as all public schools: they must demonstrate that they comply with all federal regulations and state rules.

Charter schools are included in the general supervision and monitoring activities carried out by the New Mexico Public Education Department for LEAs. Locally-chartered charter schools are included in the district's general supervision, monitoring, and technical assistance activities carried out by the NMPED. The NMPED Special Education Bureau (SEB) does not provide general supervision to locally-chartered charter schools on an individual basis. The NMPED SEB views the locally-chartered charter schools as a school within the authorizing district. The NMPED SEB is charged with monitoring LEAs, not individual public schools. Locally-chartered charter schools must report timely, accurate, and reliable data to the district, in the timeframe outline by the NMPED, for submission to the NMPED SEB for general supervision activities.

State-chartered charter schools are their own LEA and are included in New Mexico's general supervision and monitoring activities. State-chartered charter schools will be responsible for reporting timely, accurate and reliable data and accepting responsibility for providing the assurance of IDEA.

Authorizers should ensure that charter schools understand the level at which they will be involved in special education general supervision and monitoring system and their responsibilities for the process.

Should authorizing agencies consider special education part of the charter renewal process?

The New Mexico charter law, like most other state laws, does not specifically require authorizers to consider special education in the renewal process. Rather, the laws require that authorizers

assess the degree to which the charter school is meeting its goals and objectives and its compliance with federal and state laws. Special education and specifically the performance of students with disabilities should be considered explicitly as a regular part of the school's progress toward meeting its overall goals and not an afterthought. Failure to fulfill obligations related to special education could be a criterion contributing to non-renewal.

A key factor that authorizers may want to assess when contemplating renewal is whether charter schools have been the subject of any informal or formal complaints related to special education service delivery or procedures. While complaints can arise from a variety of issues separate from the quality of special education services provided, multiple complaints should raise a red flag at renewal time. Multiple or persistent complaints may be an indication of a substantive failure to provide a free appropriate public education to students with disabilities. Low enrollment of students with disabilities in a charter school may serve as a "yellow flag" that triggers further inquiry regarding enrollment practices and questions regarding "counseling-out."

Summary and Key Points

Accountability is a core tenet of the charter school concept and one of the critical responsibilities of all charter school authorizers. State charter school laws generally provide broad guidelines regarding how charter schools will be held accountable for fulfilling the goals and objectives articulated in their charters while leaving authorizers the discretion and responsibility to develop an adequate renewal decision-making process. Charter schools are also required to participate in federally required monitoring and accountability processes. As with most issues, the manner in which charter schools are held accountable for educating students with disabilities and participating in federal and state monitoring processes is dictated by individual states and specifically by the charter school's legal status and linkage to an LEA.

NON-RENEWAL, REVOCATION AND RELINQUISHMENT

What is the meaning of the terms non-renewal, revocation and relinquishment as used in this primer?

- NON-RENEWAL is what occurs when a charter school's initial term has expired and, although the school seeks renewal, the authorizer does not grant the charter school a new charter (or renew its current charter). As a result of not having its charter renewed, the charter school loses its authority to operate and can no longer exist as a public school.
- REVOCATIONS occur when an authorizer proactively (prior to a regular renewal process) removes or terminates a school's charter and consequently, its legal authority to operate as a public school because the charter school has failed to meet the obligations articulated in its charter or contract with the authorizer. In New Mexico, a charter may be revoked, if it : 1) committed a material violation of any of the conditions, standards or procedures set forth in the charter; 2) failed to meet or make substantial progress toward achievement of the NMPED minimum educational standards or student performance standards identified in the charter application; 3) failed to meet generally accepted standards of fiscal management; 4) violated any provision of law from which the charter school was not specifically exempted.
- RELINQUISHMENT is a voluntary release or surrender of an authorized charter by the charter school's governing board, in contrast to a revocation, which is initiated by an authorizer. Relinquishments may occur either prior to, or after, a school's opening.

If a charter school ceases to exist, what has to be considered relative to students with disabilities?

To ensure appropriate procedures will be followed in the event of a closure, authorizers should require that specific responsibilities for student records and the allocation of other school property are addressed in the application process and subsequently codified in the school's charter or contract with the authorizer. When a charter school is closed, the charter school board has an obligation to ensure that student records are sent to the school to which students will be transferred. In instances where the charter school is part of the local education agency, the responsibility to maintain student records may revert to the district in which the charter school was located. Authorizers should work with boards of closed charter schools to ensure that records are handled appropriately. If there is no known school of transfer for the child, the authorizer should seek counsel from the PED regarding the appropriate transfer of student records.

Authorizers will also need to ensure that there is a specific accounting for special education funds. Special education programs receive funding from federal, state and local sources. As such, dismantling a special education program requires careful accounting of how special education dollars were spent and the disposition of materials and equipment purchased with special education dollars.

When a charter school closes, the PED in New Mexico will work closely with the LEA to ensure proper transfer of students to an another school.

In the case of revocation or relinquishment, how should charter schools dispose of any special equipment that was purchased for students with disabilities?

In New Mexico, when a charter terminates, "all assets" of a locally-chartered charter school revert to the local school board. The assets of a state-chartered charter school, revert to the state. (NMSA 1978 22-8B-4 N. (effective July 1, 2007) . Disposing of equipment purchased with federal special education dollars is dictated by federal requirements that may be different from what is typically articulated in a charter contract.

In the case of school closure, are there special procedures for handling special education files?

All students' educational records are protected by the federal Family Educational Rights Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 CFR Part 99 that stipulates how the records are to be handled appropriately. Charter school personnel are responsible for closing and preparing files for transfer to either the next school or the LEA or SEA special education office in accord with these regulations. (Information about FERPA is available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>) The New Mexico PED will work with the LEA to ensure that records are handled in accordance with the law and forwarded to the student's new school in a safe and timely way.

Summary and Key Points

The non-renewal, revocation, or relinquishment of a charter is at best an unpleasant experience and at worst, highly contentious and politically charged. Regardless of how unlikely a school closure may appear, ensuring the proper transfer of student records and appropriate disposition of all assets in the event of closure, including those specifically for special education is a responsibility for which authorizers must always be prepared. Regardless of the environment in which a school closes, authorizers are responsible for ensuring that the necessary steps are taken to protect students' rights to privacy and maintain the integrity of records. Establishing the procedures for closing a school, including special education considerations, should be incorporated into the initial charter contract to ensure that all parties are aware of their roles and responsibilities in the event of closure.

TECHNICAL ASSISTANCE AND RESOURCES

Providing special education in charter schools, not unlike traditional public schools, is challenging for a variety of reasons, and amassing the capacity to deliver special education requires early and ongoing technical assistance related to the complex requirements stemming from IDEA. As the authorizers, LEAs can play a critical role in not only informing charter schools of their responsibilities related to special education, but also in serving as a source of information regarding where charter schools can obtain technical assistance. Charter schools can tap into a variety of networks to learn more about special education in general and issues related to special education in charter schools specifically. Following is a partial list of resources that authorizers should be familiar with and to which they may direct potential charter applicants.

New Mexico's Regional Educational Cooperatives (RECs)

New Mexico's Regional Education Cooperatives (RECs) were established by the Regional Cooperative Education Act-22-2B-1 to 22-2B-6, NMSA 1978. Since July 1, 2002, Regional Center Cooperatives (RCCs) have been converted to Regional Education Cooperatives (RECs). Services provided by these nine RECs vary. All RECs serve as administrators of federal special education flow-through funds and provide technical assistance to member districts on special education issues. Various other services are provided in each of the RECs. Membership in a REC is voluntary on the part of LEAs.

New Mexico Coalition of Charter Schools (NMCCS)

The mission of the New Mexico Coalition for Charter Schools is to ensure the success of New Mexico public charter schools by advancing public awareness and support of charter schools, facilitating a network and dialogue among charter communities, providing technical assistance to charter schools and communities interested in charter schools, and advocating for public policy initiatives that support charter schools. The NMCCS has regional offices in northern, southern and central New Mexico. The office is located at 1850 Old Pecos Trail, Santa Fe, NM 87501 and can be reached by phone at (505) 983-1775.

New Mexico Public Education Department (PED)

The New Mexico Public Education Department maintains a website that contains detailed information in its separate subsections on charter schools and on special education (<http://sde.state.nm.us/>).

U.S. Department of Education

Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. OSEP maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education

<http://www.ed.gov/about/offices/list/osers/osep/index.html?src=mr>

Another office that has more general resources for charter schools is the Office of Innovation and Improvement <http://www.ed.gov/about/offices/list/oii/index.html?src=oc>

National Charter School Authorizer Network

The National Association of Charter School Authorizers (NACSA) is a nonprofit membership association of educational agencies across the country that authorize and oversee public charter schools. Created in 2000 by a diverse group of charter school authorizers nationwide, NACSA is dedicated to supporting and strengthening the capacities of authorizers to charter

successful schools. It provides many resources of significant value to charter school authorizers through its website at <http://www.charterauthorizers.org>

National Special Education Networks

- National Association of State Directors of Special Education (NASDSE) provides a wide range of information regarding special education including research reports and technical assistance documents pertaining to special education in charter schools <http://www.nasdse.org>
- PRIMER WEBSITE: The website based on the national version of the special education Primers (www.uscharterschools.org/specialedprimers) provides extensive information and resources for technical assistance and training.
- NATIONAL DISSEMINATION CENTER FOR CHILDREN WITH DISABILITIES (NICHCY) is an information and referral center that provides free information on disabilities and disability-related issues. Children and youth with disabilities (birth to age 22) are NICHCY's special focus <http://www.kidsource.com/NICHCY>

National Charter School Networks

- US CHARTERSCHOOLS website contains extensive information about charter schools, including research reports, state contacts and upcoming events related to charter schools <http://www.uscharterschools.org>
- CENTER FOR EDUCATION REFORM provides up-to-date information about state charter school laws <http://www.edreform.com>