

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

PRE-AUTHORIZATION

As a charter school operator, what is my role related to special education as I work with our planning team during this phase?

The pre-authorization planning phase—the time before you submit your application for a charter—is the ideal time to begin planning for all children who may become students in your charter including students with disabilities. As the charter school operator, you are assuming the role of administrator and operator as well as the instructional leader for your future faculty, parents and students. Although you obviously cannot plan for each child before you begin to enroll students, you can give consideration to children with disabilities as you are developing the initial plans for your school. The vision you have for your school will be seen, heard and implemented by others involved in the planning. Therefore, as you plan for your school, it is critically important you consciously plan for including students with disabilities in every aspect of your charter school. Doing this now will not only avoid future problems, but will also result in more effective educational opportunities for all of your students.

Is it important to include students with disabilities as part of the discussion when we are developing the mission and vision of our school?

It is critically important to consider children with disabilities when you are developing the mission and vision of your charter school. Since your school will be a public school that must accept all students who apply, you should expect that you may enroll students with many different kinds of needs including students with all types of disabilities. If this possibility is carefully considered in the initial planning process, it is much more likely your mission and vision statements will be crafted so that you can accommodate a diverse array of students thus minimizing the likelihood of subsequent problems.

How can we plan for students with a wide variety of different disabilities?

During your initial planning, it is important to give some thought to how your school's purpose and mission can be relevant to a wide range of students. For example, how can it be made relevant to students with learning disabilities, physical disabilities, or students who present behavioral challenges?

The following six major legal principles contained in the Individuals with Disabilities Education Act (IDEA) should be considered in your planning to include students with disabilities:

- zero reject of children with disabilities;
- individualized education program (IEP);
- free appropriate public education (FAPE);
- least restrictive environment (LRE);
- due process and parental involvement; and
- nondiscriminatory evaluation.

As a charter operator in New Mexico, you will be responsible for providing special education, so it will be important that you, or at least someone on your planning team, has knowledge and expertise in the education of students with disabilities. Planning should also include an orientation about this responsibility for the full planning team and review of items on the special education section of the New Mexico Public Education Department (PED) website (<http://www.ped.state.nm.us/seo/index.htm>).

Do we have any responsibility regarding the recruitment of students in order to be in compliance with federal civil rights laws?

Yes. When announcing your charter school or conducting outreach, you may not discriminate against students with disabilities. You should recruit students from all segments of the community served by your school using strategies that will not exclude students with disabilities. (More details are available in the publication from the U.S. Department of Education Office for Civil Rights online at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf)

What steps should we take when providing outreach information to parents?

You must make sure that a parent who might have a disability and/or who does not understand English has a meaningful opportunity to understand the outreach information given about your charter school as effectively as other parents. Appropriate auxiliary aids and services must be made available whenever they are necessary to ensure effective communication with parents with disabilities. For example, if outreach materials are made available to parents, you could help to ensure appropriate access to the content of the materials by offering the materials in Braille or on a tape. If you conduct public informational meetings with parents or community groups, those meetings must be physically accessible to individuals with disabilities. Qualified interpreters, translations, or another effective means of communication must be provided if requested.

What is our obligation to make sure that student applicants with disabilities are treated in a nondiscriminatory manner in admissions?

Under Section 504 (of the Vocational Rehabilitation Act) and Title II (of the Americans with Disabilities Act), you may not categorically deny admission to students on the basis of disability. For example, you may not deny admission to a student with a disability solely because of that student's need for special education or related aids and services.

What issues need to be considered as we plan to provide effective special education services?

As you will soon learn, there are many issues to consider in developing and implementing your special education program. While they will vary from school to school, several are common to all schools, including funding, space and facilities, human resources, curriculum, service provision, professional development, administration, transportation and special considerations. The checklist at the end of this chapter poses questions designed to help you consider these important areas.

What should we consider in preparing our application?

A few critical areas for you to consider include:

- describing how you are aware of the responsibilities entailed in the assurances you u must include about compliance with federal and state education laws;
- articulating your plan regarding governance, service delivery and finance of special education;
- explaining how you will plan to:
 - identify, evaluate and serve children with disabilities;
 - develop, review and revise IEPs;
 - integrate special education into the general education program; and
 - deliver special education and related services, and
- projecting the cost of special education in your school including costs for:
 - child find, student identification, evaluation and planning; and
 - providing special education services.

Summary and Key Points

The pre-authorization phase provides you with a valuable opportunity to explore different aspects of your future charter school. You and your colleagues may not be aware at first of what compliance with special education law entails. In an effort to preempt potential problems associated with not complying with special education requirements, you should use the pre-authorization phase to, among other things, educate yourself and other critical players (e.g., board members) about special education. By educating yourself earlier rather than later, you will be able to include special education and children with disabilities into your school's vision rather than leaving it to become an add-on component. Once your charter school is authorized and operating, the pressures associated with start-up and day-to-day operations may limit your ability to "think outside the box." So, use the time you have available to design your school, making sure you include special education at every decision point.

CHECKLIST OF SPECIAL EDUCATION CONSIDERATIONS FOR CHARTER SCHOOL OPERATORS

Funding for special education

Is there a formula for determining how much special education funding to include in our budget?

- What is the formula and how is it determined?
- What funds will we receive for special education services?
 - federal
 - state
 - local funds
 - fundraising

Space and facilities

- 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 in an appropriate way with individual students?
- Where will we store supplies and equipment used by students with disabilities (e.g., educational, medical, mobility, assistive technology)?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals, including adults, with physical disabilities?
- Who will make repairs to ensure school remains accessible to students with disabilities?

Human resources

- How many students will the school enroll?
- How many teachers will I need to hire?
- How many special education teachers will I need to hire?
- What kind of certification will the teachers need?
- Can I hire dual-certified teachers?
- Can I hire part-time or retired special education teachers?
- Can we use student teachers from area universities?
- What type of related services personnel will we need?
- How will we obtain these services and contract with these individuals?
- What other types of services will our school need?
 - legal counsel with special education expertise
 - accountants/bookkeepers/number crunchers

Curriculum

- What curriculum will my school offer?
- How does our curriculum align with the state's suggested curriculum or standards for student learning?
- How will we modify the curriculum to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum for children with disabilities in inclusive classrooms?
- How will our mission enhance special education service delivery?

- What types of assistive technology will be needed by our students?

Service Provision

- How will we provide special education related services (e.g., occupational and physical therapy, orientation and mobility, speech therapy)?
- How will student progress be monitored?
- How will we conduct student identification, evaluation and special education determination meetings?
- Who will participate in IEP development and implementation?
- What types of special staff or consultants will we need to implement our students' IEPs?
- How will we handle re-evaluations?
- How are we going to work with families?
 - How can we build partnerships?
 - What strategies can we use to be proactive in avoiding conflicts?

Professional development

- How will we provide my teachers with professional development?
- What type of specialized professional development will be needed by school staff (including teachers, paraprofessionals, administrators) to support children with disabilities?
- Does the LEA or the PED operate a professional development program or network that I 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?
- What equipment/supplies/programs will be needed to collect and store data and records? How will we obtain these? What training will be needed to use these efficiently and appropriately?
- Can we create our own system to administer special education or do we need to adopt the policies/procedures dictated by my authorizer, local district, other administrative unit (e.g., a Intermediate Unit or a Cooperative)?

Transportation

- Will we provide students with transportation?
- Can we access district or state transportation dollars to offset costs?
- How will we meet transportation needs of students who receive transportation as a related service that is required by their IEP?
- How will we arrange transportation for a student in a wheel chair?

PREPARING FOR START-UP

We have concerns about our ability to deliver instruction to students with disabilities that will be in keeping with our curriculum. What should we do?

Concerns about instruction should be discussed at the time of the child's IEP meeting and described in the child's individualized education program (IEP) so that all members of the team can contribute to, and understand, how the student will have access to the curriculum that is required by special education law. If your school's faculty needs help in accommodating the needs of a student who has a disability, you need to make provisions for professional development. One strategy that charter schools have found effective is incorporating into the IEP a provision for close tracking of the student's adjustment in the first 30 days at the charter school with a set date for the full IEP team to review progress and make any necessary revisions. There are many documents on the special education section of the PED website that can help in meeting these requirements (see the technical assistance publications at www.ped.state.nm.us/seo/library/manuals.htm).

We are responsible for hiring our staff and faculty. How much flexibility do we have in special education?

First, NM law requires that teachers in charter schools meet the same licensure requirements as teachers in any other public school. Therefore, teachers must meet the "highly qualified" requirements of NCLB and, in addition, changes to IDEA in 2004 and the IDEA Regulations in 2006 clarify that special education teachers must meet the "highly qualified" requirement as they are defined in IDEA. You must also abide by the decisions of the IEP Team that has identified the type of services the child will need and consider the staffing implications for delivering those services.

Do we have to hire full-time special educators in our charter school?

Not necessarily. You will have to be creative and flexible in designing staffing loads. A few of the options include hiring faculty with dual licensure (in special and general education), hiring consultants on an hourly basis, or contracting for special educators via a collaborative agreement with the local school district or other party.

Where can I obtain specific information on New Mexico's licensure requirements pertaining to special education in charter schools?

Licensure information is available on the New Mexico PED website at: www.ped.state.nm.us/div/ais/lic/ that includes specific information about types of licenses and state regulations in this area. It is important to note that in August 2003, the New Mexico State Board of Education adopted a three-tiered licensure system to align its regulations with the NCLB "highly qualified" requirements. The basic components of this system are as follows:

- Level 1 is the entry-level license granted for three years based on completion of a bachelor's degree, an approved teacher education program, and passage of the required licensure examination. During the three-year period, the teacher must be placed on a Professional Development Plan (PDP) and be provided a structured support or mentoring system by the school district. Both the PDP and the structured support systems are designed, implemented, and funded at the local district level.

- **Level 2** licensure: the teacher must satisfactorily demonstrate the Public Education Commission's required competencies as verified by the local superintendent through the staff evaluation process. A level 2 license is issued for nine years and can be renewed every nine years based on the satisfactory demonstration of competencies. Again, a PDP must be in place continually.
- **Level 3** is an optional level of licensure and provides two tracks from which a teacher may choose for advanced licensure: Level 3A, the Instructional Leader License or Level 3B, the Administrator License. Both licenses require a master's degree and demonstration of specific sets of competencies. The Instructional Leader may serve as a department head, curriculum coordinator, supervisor and the like. The administrator serves in the traditional role of superintendent, building principal, director of instruction, and so forth. Again, a PDP must be in place continually.

What should we do when a child with a disability applies to our school?

Since charter schools may not discriminate on the basis of a disability in determining eligibility for admission, your considerations for students with disabilities are to be the same as for students without disabilities.

It is critical that your charter school receives the records for a child who applies for admission from the child's previous school to ensure the IEP requirements are implemented. If you do not automatically receive the records, initiate a request to the previous school. Contacting the special education office of the previous LEA may also be helpful in securing the records. The PED can also help if you are not able to obtain a response from the previous school or LEA.

If we have concerns about our ability to meet the needs of a specific student with a disability, can we recommend other programs or schools?

All issues about the appropriateness of the child's placement should be taken up with the child's IEP team. New Mexico charter schools are responsible for implementing special education for students with disabilities who enroll. Additional information and clarification on appropriate strategies for addressing this issue may be found in the U.S. Department of Education Office for Civil Rights (OCR) document, *Applying Civil Rights Laws to Public Charter Schools: Questions and Answers* (available online at www.uscharterschools.org/pdf/fr/civil_rights.pdf).

During the course of student recruitment, it is expected that your school staff and representatives will share information with prospective students and families on the school's curriculum and services. It would also be appropriate to discuss the services and supports currently provided to students with disabilities and to explore potential strategies for meeting the needs of a prospective student. The initial focus should be on understanding the needed supports and services and identifying strategies for delivering them within the context of your school's framework.

Are there requirements for physical access that apply when I select the facilities that will house our charter school?

Yes. An LEA may not deny persons with disabilities, including parents and students, the benefits of programs and activities offered at its schools because of inaccessible facilities. The selection of the facility for your charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity. New Mexico law Section 22-8B-4.2 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. (See “Adequacy Standards” rules at: http://www.ped.state.nm.us/div/fin/capital/dl/031606_updates/2002%20adequacy%20standards%2030806.pdf).

Are there different federal legal requirements that apply to charter schools located in existing facilities as compared to newer facilities?

Yes. Generally for existing facilities, a charter school's programs and activities, when viewed in their entirety, must be readily accessible to individuals with disabilities. Both the Section 504 and ADA Title II regulations permit considerable flexibility in meeting this legal standard. For example, structural changes are not required in existing facilities if nonstructural methods are effective in achieving program accessibility. For new construction and alterations (i.e., construction began since June 1977), Section 504 and ADA Title II require that a new or altered facility (or the part that is new or altered) must be readily accessible to, and usable by, individuals with disabilities.

We rent our school building. Whose responsibility is it to make our school accessible?

Responsibility to modify a facility should be articulated in the lease between your school and the owner of the facility. It is very important you seek legal counsel prior to signing any contracts to lease or purchase your facility to ensure that your facility meets educational occupancy standards.

What impact will these requirements have on our operations?

You must make sure that a child with a physical disability has access to every part of the new building or the parts that are newly altered. For example, if your charter school is in a new building, all parts of the building—including, for example, a third-floor chemistry lab—must be accessible for use by persons with disabilities. In contrast, if your charter school is in an existing facility, you might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location like the first floor. However, the specific federal, state and local requirements on this issue are very complicated and you should obtain legal counsel when acquiring a facility to house the charter school.

Summary and Key Points

Your activities during the start-up period will provide the foundation for the day-to-day operation of your school. As you prepare for the opening, keep children with disabilities in mind. The special education plan you developed for your charter application should provide a clear guide for decisions in this area. Every time you, your board and your staff get ready to make a decision, ask yourselves if this decision will help every potential student? Cultivate your resources so you can draw on their expertise and experiences. Remember there are many sources of information and support available to you, including other charter and traditional schools and NMPED.

OPERATING A CHARTER SCHOOL

Introduction

This section provides an overview of critical issues and activities related to serving students with disabilities that you and your colleagues should address during day-to-day operation of your charter school. These may include curriculum implementation, staff and faculty hiring, student enrollment, fiscal issues and school accessibility. Ideally, you considered each of these issues during your pre-authorization and planning for startup phases. If not, don't despair—but do analyze your situation as soon as possible. You still have the opportunity to build on what you have in place so that your school can support all students including those with disabilities.

What special education services must a charter school provide?

Charter schools in New Mexico are responsible for implementing all services required for the students with disabilities who attend that school and must be prepared to serve students with a variety of service levels. The range of services and equipment that must be provided depends on the content of each student's IEP. In addition to specific instructional content and strategies, the IEP may include related services, e.g., occupational and physical therapy, orientation and mobility training, adapted physical education, transportation, or assistive technology. In addition, charter schools must provide homebound instruction for eligible enrolled students and also meet the requirements related to IDEA discipline provisions including an "interim alternative educational setting" if such a placement is made for the student.

Many charter schools have crafted creative solutions to providing services. Some of these include: contracting with a local school district to provide specific services, hiring a consultant or forming a cooperative with other charter schools.

It is important for charter school operators to remember that, according to New Mexico law, the charter school is responsible for providing special education services, although a locally-chartered charter school is legally part of the LEA and can go to the LEA for assistance if their state and federal funds and their emergency reserves have been exhausted.

Our curriculum was selected specifically for students with a particular disability (e.g., deafness). What should we do to make sure we can include students with other disabilities or those who do not have a disability?

If students who enroll have disabilities different from what your school expected, each one must be considered individually so that their needs can be met. In each case, the involvement of your charter school staff with the IEP team is critical. The need for prior planning to obtain special education capacity is obvious. Although it is impossible for a charter school to plan for every contingency prior to initial enrollment of students, general plans for a new charter school must include a grade-appropriate curriculum to be available for students without identified disabilities. Then, if a population with disabilities is targeted, adequate delivery strategies, personnel, tools and materials must be added for the expected needs.

A student with a significant disability has enrolled in our school. No one on our faculty has experience in this area. What should we do?

Ideally, a charter school representative would have been involved in the IEP team meeting to design the content of the IEP for the child's enrollment in your charter school and plans will be in place when the child enters. If that did not occur, the first step is for your charter school staff to review the child's special education records, especially the IEP. Just as any other public school is expected to do if a child moves in with an existing IEP, your charter school must implement the child's IEP. The new school could also provide interim services agreed to by both the family and the school until a full new IEP is developed. If the family and the school are unable to agree on an interim IEP and placement, the new school must implement the old IEP to the extent possible until a new IEP is developed and implemented. See the IDEA regulations at CFR 34 §§300.323(e) and (f). One strategy that charter schools have found effective is incorporating into the IEP a provision for close tracking of the student's adjustment in the first 30 days at the charter school with a set date for the full IEP team to review progress and make any necessary revisions.

There are many resources that members of the IEP team could access for assistance in planning for a new child with disabilities. The special education section of the PED website has copies of a number of downloadable technical assistance documents (www.ped.state.nm.us/se/library/manuals.htm) and a technical assistance manual, "Addressing Student Behavior" (www.ped.state.nm.us/se/discipline/guide.htm). Other useful websites for a child who has a history of behavior problems are:

National Center on Students Progress Monitoring - www.studentprogress.org/

National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS) - www.pbis.org/main.htm

Improving Services to Children and Youth with Emotional and Behavioral Problems – <http://cecp.air.org/fba/problembehavior/main.htm>

New Mexico's has a network of Regional Education Cooperatives (RECs) that provide education-related services to students of participating education entities. Their membership is voluntary and many school districts in New Mexico belong to one of the nine RECs. More information is contained in the evaluation of these structures available on the Special Education section of the PED website (www.ped.state.nm.us/se/index.htm).

May we limit the participation of students with disabilities to certain aspects of our school's program?

No. Consistent with civil rights laws, students with disabilities must be provided a range of choices in programs and activities that is comparable to that offered to students without disabilities. This includes an opportunity to participate in a range of nonacademic or extracurricular programs and activities offered at your charter school.

We plan to develop Individual Learning Plans for all of our students. Do we still have to develop IEPs for students with disabilities?

Yes. All students receiving special education services must have an IEP that is developed by a multidisciplinary team following the procedural requirements of IDEA and your state's special education law and regulations. The IEP may complement the plans your school will develop for all students. However, the IEP will be the legal, guiding document for all special education services provided to a child who has been found to be eligible for special education.

Are there special strategies we might use to attract and retain our personnel who work with children with disabilities?

In many parts of the country, demand for educators (particularly special educators) exceeds the supply. While there is no special “fix,” several strategies have proved effective in reducing turnover. These include creating a mentor system for new special educators, implementing a peer support program and implementing an open-door discussion practice. Increasingly, research shows that the primary reasons special educators leave their positions are paperwork responsibilities, feelings of isolation from colleagues, high caseloads and multiple responsibilities. Specific upfront discussions about their individual roles in fulfilling the school’s mission will help them to understand your school and their ability to help you meet your goals. It is extremely important that you are in frequent contact with your special educators to gauge satisfaction and/or frustration and explore strategies to minimize areas of difficulties. Additional resources to assist in recruitment, preparation and retention for special education personnel are available at www.personnelcenter.org/resources.cfm.

What types of special education professional development should we offer our staff?

Charter schools need to provide professional development opportunities to a variety of different types of individuals. Clearly your instructional staff (including paraprofessionals) need to have ongoing access to training specifically focused on linking instruction, curriculum, and the school’s mission to the individual needs of students. Successful practices in personnel retention also stress the importance of involving the staff members in the planning of their own professional development programs. The New Mexico PED offers various professional development opportunities for special education staff and charter schools should make this information available to their faculty.

If you are a locally-chartered charter school, you should also request a copy of the professional development calendar from the LEA so that you may take advantage of local training opportunities. Attendance at these events can also strengthen the relationship between your school and LEA staff and may help the charter schools identify additional resources and partnership opportunities.

What type of professional development would benefit our board members and other volunteers?

Your charter school board members and other volunteers should be appropriately included in professional development opportunities. They will benefit from very focused, ongoing training in the charter school’s responsibilities for students with disabilities as well as educational management issues. Given the strong charter school focus on parental involvement, it is important to reach out to parents and family members of students with disabilities to ensure they are part of the activities that involve all parents and meet their needs for information. Equally important, you, the operator, should take time to participate in ongoing professional development relevant to management and leadership of your charter school.

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 state and national resources that may be useful to you during the planning and operation of your charter school.

WEBSITE ON SPECIAL EDUCATION IN CHARTER SCHOOLS: The website based on the national version of the Primers (www.uscharterschools.org/specialedprimers) provides extended information and resources for technical assistance and training.

U.S. DEPARTMENT OF EDUCATION (ED): Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. The Office of Special Education Programs (OSEP) maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education at www.ed.gov/about/offices/list/osers/osep/index.html Another ED office that has more general resources for charter schools is the Office of Innovation and Improvement at www.ed.gov/about/offices/list/oii/index.html?src=mr Information about the No Child Left Behind Act (NCLB), a law that all charter schools must understand is available at www.ed.gov/nclb/landing.jhtml?src=pb

NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION: NASDSE's website provides a wide array of special education resources including a copy of the final report of Project SEARCH, a national study on special education in charter schools (www.nasdse.org/project_search_doc2.pdf) and documents on critical issues in special education produced by NASDSE's Project Forum (www.nasdse.org/forum_documents.htm)

COUNCIL FOR EXCEPTIONAL CHILDREN (CEC): CEC is the largest international professional organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities and/or the gifted. CEC sets professional standards, provides professional development and helps professionals obtain conditions and resources necessary for effective professional practice (www.cec.sped.org)

NATIONAL DISSEMINATION CENTER FOR CHILDREN WITH DISABILITIES (NICHCY): 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 (www.nichcy.org)

PARENT ADVOCACY COALITION FOR EDUCATIONAL RIGHTS (PACER) is a national parent advocacy organization dedicated to expanding opportunities and enhancing the quality of life of children and young adults with disabilities and their families, based on the concept of parents helping parents. PACER's website has a variety of resources developed to assist parents of children with disabilities and may be helpful in informing charter school operators regarding their obligations to parents of children with disabilities (www.pacer.org)

NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS (NACSA): This organization renders support and technical assistance to those who sponsor or authorize charter schools. <http://www.charterauthorizers.org>

U. S. CHARTER SCHOOLS WEBSITE: This is a rich resource supported by the U. S. Department of Education. <http://www.uscharterschools.org>

What should we do when our special education program costs more than the funding we receive from our state and the federal government?

Charter schools in New Mexico must provide special education and related services from the operational funds received as part of the State Equalization Guarantee. Additional federal funds for students with disabilities are also provided to the charter school. All locally-chartered charter school funds for special education are awarded to the authorizing LEA which then provides the charter school with its proportionate share either through a direct appropriation or through the provision of services. A New Mexico charter school is responsible for special education costs until state and federal special

education funds and emergency reserves are exhausted at which point the locally-chartered charter school can request assistance from the LEA. It is important to note that the LEA (which includes the state-chartered charter school) under 2004 revisions to IDEA, may be able to access additional funds from a special “risk pool” (see http://www.ped.state.nm.us/seo/applications/Risk_Pool_final_9.07.pdf for further information on the New Mexico High Cost Fund.) Lack of funds is not a legal reason for denying services to a child who is eligible for special education.

We don't provide transportation to students. Must we provide it for students in special education?

If you are a locally-chartered charter school, your LEA (school district) must negotiate with you regarding transportation services, but is not required to provide them. If the IEPs of students with disabilities require transportation as a related service, the charter school must contract with the school district or another party for that transportation. It is critical that your IEP team understand the difference between a student's need for transportation to get to and from school (common for all students) and a student's need that results from a disability which is reflected in transportation as a related service on the IEP. Transportation guidance is provided on the New Mexico website at <http://www.ped.state.nm.us/div/fin/trans/index.html>.

What are our responsibilities to conduct “Child Find” activities?

Charter schools are responsible for children only when they are actually enrolled in the charter school. All charter schools must conduct Child Find activities for their full student population so that children who may need special education are appropriately identified and, if necessary, referred for evaluation.

What should we do if a teacher or parent suspects a child might need special education services?

Parents and teachers must be given clear information about the procedures that will be followed in your charter school concerning the rights of a child to an evaluation for special education. Parents and teachers must also be fully aware of other services your school provides (e.g., a student assistance team or SAT to provide help) prior to a formal special education evaluation referral. Federal and state law and regulations contain numerous specific requirements related to procedural safeguards and your teachers, parents and board members should be made familiar with them.

Every charter school should have clear procedures in place for attending to the needs of a child who is not progressing or is presenting other kinds of problems. Putting such procedures in place should be a part of planning before start-up so that they do not have to be developed in a crisis situation.

How many special education forms and reports do we have to complete? Don/Sam/Albert - I would appreciate it if you would help with this part.

New Mexico special education forms and guidance for their use are available on the PED website (<http://www.ped.state.nm.us/seo/sitemap.htm>). **Is this correct? Yes**, Your paperwork responsibilities may include financial/funding, staffing, child count, identification and evaluation, IEP development and monitoring, and student progress. Deciding who on your staff will be responsible for what paperwork (followed by training to do this) will help to ensure completion of all requirements by competent, qualified individuals. Since student-focused paperwork can be very time consuming, it is very important that you, as the charter operator, understand the nature of your school's responsibilities and ensure your entire charter school staff has a clear understanding of the reporting responsibilities to avoid violations that might make the school vulnerable to non-compliance charges.

Who is responsible for developing our students' IEPs?

New Mexico charter schools are responsible for developing IEPs as part of their responsibility for special education. The procedures to be followed in your charter school should be clearly written in school policies.

Who should be involved in the development of a student IEP?

Current IDEA requirements provide that IEPs are to be developed by a team whose membership includes a parent of the child with a disability, one regular education teacher of the child, one special education teacher of the child, an administrative representative of the LEA, individuals who can interpret the instructional implications of evaluation results, other individuals with knowledge and expertise regarding the child and (as appropriate) the child. The 2004 revisions to IDEA allow that a member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree in writing that the attendance of such member is not necessary.

What does the IEP need to include?

According to the IDEA, an IEP for each child with a disability must include:

- a statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum;
- a statement of measurable annual goals, including benchmarks or short-term objectives;
- a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child;
- an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class;
- a statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment and, if the IEP team determines that the child will not participate in a particular state or district-wide assessment, a statement of why that assessment is not appropriate for the child and how the child will be assessed;
- the projected date for the beginning of the services and modifications and the anticipated frequency, location and duration of those services and modifications; and
- a statement of how the child's progress toward the annual goals will be measured; how the child's parents will be regularly informed of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

In addition, for children age 14 and above, there are requirements for addressing transition needs that must be addressed in the IEP process.

The PED website contains documents that will provide valuable guidance on the specific state requirements for the IEP process and document (www.ped.state.nm.us/seoiiep/index.htm). The IEP is not to be a curriculum for the child. Rather it is to serve as a guide for how to "open the doors" to improve access to the general education curriculum and the necessary special education and related services that will allow the child to progress.

Is there a specific form that must be used for IEPs?

There is a specific form recommended by the New Mexico Special Education Bureau that is available on the web (www.ped.state.nm.us/seoiiep/iep_form_english.doc). It is important that each charter school clarify with its LEA the forms and procedures that the charter school will use for the IEP process.

Do we have to develop an IEP for every child with a disability?

An IEP must be developed for every child found eligible for special education services. Your staff must participate in IEP meetings to provide the necessary information about the child's school progress. It is also important that you develop appropriate procedures for the required progress reporting to parents and all necessary input from the charter school for other special education reporting.

What is our school's responsibility when a child with a disability transfers to another school?

As with any other child, when a student with a disability transfers to another school, you must ensure timely transfer of all records. At the point that the child is formally no longer enrolled in your charter school, your school no longer has a responsibility to provide services to the child. However, the charter school does have a responsibility to assist in a student's transfer and the transfer of records for that student.

What do we do if we do not get a student's IEP from a transferring LEA?

If a student has a pre-existing IEP and it is not made available to your charter school within 30 days of the child's enrollment, you must then hold an IEP meeting to review the needs of that child and decide on further steps concerning an evaluation and a new IEP. There are a few options that should be exercised prior to the end of that 30 day period. You can seek help from the student's parents to provide their copy or ask them to obtain a copy from the sending LEA and you can contact the PED for assistance.

Summary and Key Points

As you move through the day-to-day operation of your school, you will find that often you have to focus on a "challenge of the moment" related to students with disabilities. If you have planned carefully to put strategies in place for handling special education issues, they will not reach the crisis stage. Occasionally, you should take the time to revisit your mission and vision and have specific discussions on how all of your students and staff are doing. Remember to consult with resources available in your local school district, state education office, or charter authorizer. Taking time to address students with disabilities in a proactive and positive manner will have significant payoffs for your students, school and the community.

ACCOUNTABILITY AND RENEWAL

Introduction

Accountability refers to the policies and procedures that charter schools must abide by as required by federal and state special education and state charter school rules and regulations.. Charter schools are obligated to collect and report the same information that public schools must report such as statistical reports regarding students, standardized tests, data for the State Performance Plan (SPP) Indicators, and budgets. This includes data regarding special education as part of the general statistical reports that is often used to generate state and federal categorical funds for special education. Examples include student headcount reports as well as more procedural documents such as IEPs.

The best way to prepare to be accountable is to be thinking about it before the charter school opens its doors on the first day. It will be essential to get oriented to the data requirements related to special education that you are expected to collect and any required means of collecting and storing such data. A comprehensive (electronic) management information system is strongly recommended and you may want to investigate the possibility of collaborating with other charter schools or your LEA.. Hiring consistent, detail-oriented staff is another effective way to handle this responsibility. The type of data you will need to compile includes demographic information on students, academics, IEPs (content and timelines), attendance records, enrollment data and assessment information among many others. A secure filing system to store the paper documents is also critical to ensure security and privacy of confidential and other critical data/reports.

What type of special education accountability provisions do we need to consider?

First and foremost, you need to address your authorizer's requirements and the state charter school law. Stay in close contact with the PED to learn of updates in IDEA and NCLB implementation and implications for your charter school. At a minimum, you will also need to be able to document specific outcomes of students with disabilities, fiscal practices related to special education, timelines related to development and implementation of special education services, qualifications of faculty and staff and resolution of parent complaints.

What types of data should we collect so we are able to complete required reports?

The Student Teacher Accountability Reporting System (STARS) is a collaborative project of the New Mexico Public Schools and the Public Education Department. STARS is a comprehensive student and staff information system that provides a standard data set for each student served by the New Mexico's 3year old to12th grade public education system. STARS replaces the NMPED Accountability Data System (ADS) for school year. A charter school's data in STARS must align with the student's IEP. Since accuracy and timelines can affect funding for the charter school, it is essential that the staff include a person trained in data entry to submit data to the authorizing district or directly to STARS if the charter is a state-charter charter school. Pursuant to Section 22-8B-4 S. (Effective July 1, 2007), NMPED will maintain an accountability data system to enable state-chartered charter schools to submit required data to it.

Is there added accountability specifically for special education?

Yes. Operators must understand that charter schools have an added level of formal accountability related to special education. The U.S. Department of Education carries out an extensive monitoring of SEAs, and then SEAs must develop and carry out a formal monitoring process for each of its LEAs.

The locally chartered charter schools are schools within a district and will participate in the district's general supervision and monitoring activities by reporting required accurate, timely, and reliable data to the district. State-chartered charter schools will be their own LEA and will be responsible for reporting required accurate, timely, and reliable data to the STARS system.

How is special education monitoring carried out in New Mexico?

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 outlined 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.

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.

What resources are available to prepare my charter school to be successful in special education monitoring?

Technical assistance in this area may be obtained from the PED, school districts, other charter schools and national organizations. One strategy could include the use of monitoring mentors where an experienced special educator can assist your charter school prepare for monitoring.

How do students with disabilities participate in the NCLB accountability system?

NCLB makes a point of including students with disabilities and special education programs in school assessment and accountability systems. Students receiving special education services—including those with the most significant disabilities who participate in an alternate assessment system—will “count” in the accountability formulas. Not only do they count—they can make a difference in your school's ability to meet criteria for “adequate yearly progress” (AYP) and state-specific performance measures under the NCLB law since special education is one of the subgroups of students who must meet the state's AYP requirements.

How will special education be included in the renewal of our school's charter?

Throughout your renewal process, your authorizer will include an evaluation of your special education practices in the areas such as special education service delivery, student identification and compliance with IDEA requirements. Having your special education infrastructure in place and operating smoothly will prepare you well for your renewal activities.

Could failure to meet special education requirements be cause for not renewing our charter?

Yes. Lack of compliance with federal statutes (including special education) can result in revocation or non-renewal of a charter.

How do we know if our authorizer has specific renewal policies and processes that address special education?

If you're not sure.....ask! Hopefully this is an area you discussed with your authorizer during your planning, start-up and operational phases. However, if you're not sure, find out what requirements your authorizer will expect you to meet as a condition for renewal. Other charter schools that are authorized by the same entity may also be an invaluable source of information regarding renewal.

Summary and Key Points

Accountability has become a cornerstone of school improvement efforts and it is a basic principle of the charter school movement. At a minimum, these include monitoring, files/data management, record keeping, procedural (special education) compliance, state charter law compliance and charter school contract compliance. At the heart of this is a school's ability to demonstrate student progress, maintain qualified personnel and document instructional and financial practices. As valued members of your school, students with disabilities and their programs and staff will be involved in each aspect of this phase. Explicitly preparing for their involvement in all aspects of your school will avoid problems and enhance the quality of your accountability plan.

NON-RENEWAL, REVOCATION AND RELINQUISHMENT

Introduction

Hopefully your school will never be faced with non-renewal, revocation, or relinquishment of your charter. However, it is important to have a plan in place to be activated if your school closes so that you and your board members understand their responsibilities for the students with disabilities who are enrolled in your school at that time.

What do these terms mean?

- *Non-renewal* occurs when a charter school seeks renewal to operate after its approved period and the authorizer does not grant a new charter. As a result of not having its charter renewed, the school loses its authority to operate and exist as a public school.
- *Revocation* of a charter involves a proactive decision by a charter authorizer to remove a school's charter and its legal authority to operate as a public school. 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.
- *Charter Relinquishment* is a voluntary release of an authorized charter by a charter school board.

If our school ceases to exist, what do we need to consider relative to our students with disabilities?

Ideally your school will be in a situation to facilitate the transfer of all funds, records (including student and financial) and equipment (instructional and adaptive) for all students, including those with disabilities. Check with your authorizer, LEA and PED to obtain specific guidelines and policies in your state. 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) .

What is our legal obligation after our charter school has closed?

After the school closes, there will be requirements to conduct a final accounting of all funds spent by your school. Your state law, charter contract and authorizer will determine the specific nature of these activities and the ultimate destination of reports. Be sure to be in touch with the appropriate authorities to avoid the possibility of legal ramifications.

We don't know where specific children are going. What do we do with their records?

In New Mexico, the authorizer is ultimately responsible for all special education matters. Therefore, your responsibility is to send students' records to the school to which the student has transferred or to your authorizer.

What requirements exist about the confidentiality of student records?

Perhaps the most important consideration in student records is ensuring the privacy of student information. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) provides guidance on requirements in transferal aspects of educational records that contain personally identifiable information on your students. (See www.ed.gov/policy/gen/guid/fpco/ferpa/index.html for details.) Careful attention to sections pertaining to disclosure of information without the “written consent” of the parent or eligible student will help alleviate future problems.

How should we dispose of any special equipment that was purchased for our students with disabilities?

If equipment was purchased for one specific student, it should be forwarded to the student’s new school. If this information is not known, or if the equipment was purchased for use in a special education program, it should be handled in the same manner as all other school equipment. Your state requirements for disposal/transferring of equipment purchased with federal or state funds will also provide guidance in this area.

Summary and Key Points

Activities during this phase may be charged with emotion and politics. Those aside, you and your Board of Directors have legal responsibilities to safeguard the rights of students, the privacy of records and the security of equipment. Hopefully, you clarified your responsibilities with your authorizer during your initial authorization activities. If not, do so now to ensure that everyone involved has a clear understanding of roles and responsibilities.