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Charter Schools: A New Barrier for Children with Disabilities

Arizona is a pioneer in the rush to charter schools. But the state, and others permitting charter schools, may be leaving children with disabilities behind.

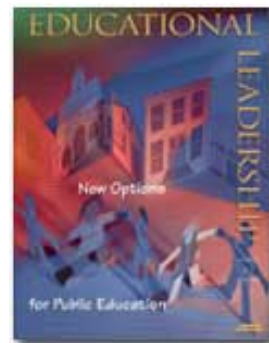
Joseph R. McKinney

Recently, the mother of a special needs kid pulled up to our school in a limousine," the principal and CEO of a publicly funded Arizona charter school told me. "She wanted our school to provide limo service for her kid. But we can't teach those children. We have something to sell, but we don't think it is for those kids." The principal of another Arizona charter school, this one with a Montessori theme, agreed: "We tell parents that the public schools provide the special education. We can't be set up for everything."

In the spring of 1996, as part of a comprehensive survey, I asked these and other Arizona charter school principals and staff how they respond to parents inquiring about or applying on behalf of students with disabilities. In conducting the survey, I visited several Arizona charter schools and also talked to numerous state officials associated with charter schools and special education. I also reviewed all of the approved Arizona charter school contracts.

The bottom line is that during the 1995-96 school year, only 262 children (4 percent) of the approximately 7,000 students enrolled in Arizona charter schools were being served as special education students. This figure is well below the national figure of somewhere between 10 and 12 percent of school-age children meeting the criteria for service under the Individuals with Disabilities Education Act (IDEA). Only 17 of the 46 charter schools currently operating in Arizona reported serving children with disabilities, as reported by the Arizona Department of Education.¹

I was surprised, because my reading of early reports on charter schools suggested special education students were being included in charter school programs. For example, a Hudson Institute report stated "as for disabled, handicapped, and special needs youngsters . . . a spring 1995 national survey by the Education Commission for the States found that about half the charter schools then operating said that they were designed to serve 'at risk' youngsters" (Finn et al. 1996). At first blush, such an interpretation of the study might seem reasonable, but not on closer analysis.



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The Education Commission for the States, along with Joe Nathan at the University of Minnesota's Center for School Change, surveyed 110 charter schools approved in seven states and asked them what student population their schools were designed to serve (Medler and Nathan 1995). Two-thirds of the respondents said they were designed to serve a cross section of students; 56 said at-risk students; 39, gifted and talented; yet only 38 said they were designed to serve the only special education category mentioned, learning disabled. The fact that two-thirds of the charter schools were not designed to serve children with learning disabilities becomes less surprising after reviewing a Southwest Regional Laboratory report stating that California's charter schools as a whole are teaching fewer special education students than are the surrounding public schools (Corwin and Flaherty 1995).

Obligations of Charter Schools

Charter schools are intended to provide additional academic choices for parents and students. Proponents of charter schools contend that they foster innovation through experimentation with a variety of educational approaches, such as interdisciplinary instruction, expanded use of technology, increased parental involvement, and performance assessments and portfolios. Charter schools, they say, incorporate market forces in public education and increase the range of options available to parents and children. To be sure, charter schools distinguish themselves from traditional public schools in a number of ways, all of which could be equally attractive to disabled and nondisabled students.

Charter schools cannot discriminate against students with disabilities. Whether a charter school is considered part of a regular school district, however, has profound implications for (1) the legal entity responsible for providing appropriate programming for students with disabilities, and (2) how and where such services will be provided.

Charter schools that are considered legally autonomous school districts are, for special education purposes, the local education agencies (LEAs), while charter schools that are treated as part of a traditional district are merely individual school sites participating in a traditional school district's special education process. IDEA imposes on both state and local educational agencies a legal duty to provide a free appropriate public education for all children with disabilities, but no such affirmative duty is imposed on individual schools. Few of the 25 states that have passed charter school legislation have addressed or resolved the issue of whether charter schools are separate school districts or part of a regular school district.

Regardless of whether charter schools are legally autonomous units, they are bound by Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA).² Section 504 prohibits discrimination on the basis of disability by any agency that receives federal financial assistance. Every state is a recipient of federal funds, and therefore all public school districts, including charter schools wholly funded by the state, are bound by the language of Section 504. Where charter schools are not considered separate school districts, but rather part of a program within a traditional school district, the antidiscrimination focus of Section 504 and the ADA intersect with IDEA to form a legal framework within which the charter school operates.

Charter school programs must be viewed as school choice plans. A school district does not assign a student to a charter school. Parents choose whether to enroll their child in a charter school. Of course, parents of children with disabilities may not unilaterally decide where their child attends school within a school district; an IEP team must first determine whether that school can provide appropriate programming for their child. But once a local school district sponsors a charter school, in essence, offering a choice plan, it must do so in a nondiscriminatory manner.³

School districts cannot exclude or enforce eligibility standards that categorically exclude "otherwise qualified" students or groups of students from charter schools. In order to comply with Section 504, districts cannot deny any eligible student with a disability participation in, or the benefit of, a charter school program. In this context, the benefit would be the opportunity to meaningfully participate and be educated in a school district's program of choice, including its charter schools. In addition, the state and/or the district would be required to make reasonable modifications or changes in its charter school programs to accommodate students with disabilities.

The Arizona Experience

In 1994 Arizona passed a very expansive charter school law. The law permits virtually any individual or group to organize and operate a charter school. Thirteen of the 46 charter schools that opened their doors for business during the 1995-96 school year were operated by for-profit organizations. State certification is not required for teachers and other staff employed by charter schools, except for those who will provide educational services to children with disabilities. Three entities may sponsor charter schools: (1) the State Board for Charter Schools (a newly created state agency), (2) the State Board of Education, and (3) local school boards.

A charter school in Arizona is considered an independent legal entity. State law requires charter schools to ensure "compliance with all federal and state laws relating to the education of children with disabilities in the same manner as a school district."⁴

Within one year of the passage of the charter school legislation, the two state boards combined for the purpose of authorizing and overseeing charter schools. In March 1996, officials of these state boards couldn't say how many children with disabilities applied to charter schools or how many were actually admitted, enrolled, and being served. In examining the charter school contracts, I found that in almost all cases the state boards were approving charters without knowing how the school would provide special education. Few of the 46 charter schools budgeted for special education students or special education teachers (although state forms requested the information). The Exceptional Student Services division of the State Department of Education did not review, approve, or deny any charters. For the 1996-97 school year the state chartered another 50 schools, and once again, Exceptional Student Services was not involved.

Exceptional Student Services did learn in the fall of 1995, however, that charter schools were not serving children with disabilities. One high-ranking official put it this way:

Charter schools are totally out of it when it comes to special ed. We understand that special ed may be the lightning rod to draw down the charter school movement in Arizona, but our governor and Superintendent of Public Instruction fully support charter schools.

Indeed, Governor J. Fife Symington, a Republican, favors giving parents a full range of choices among both public and private schools, including vouchers (Tucker and Lauber 1995). In response to complaints by parents of students with disabilities who were told by charter principals to look elsewhere, Exceptional Student Services hosted a free workshop for charter school personnel. Ten people attended. One state official said that charter school representatives who did attend spoke in a single voice: "Do I really have to do this?"

No Accommodation for IEPs

During the first six months of charter school operation, parents of children with disabilities filed three separate complaints with Exceptional Student Services. Two of the complaints involved instances where the parent had provided a current IEP to a charter school after his or her child was admitted, yet the school provided no services. In one case, when the parent attempted to give the IEP to the charter school principal, he said, "We don't do IEPs." A fourth complaint, containing similar allegations, was filed by a parent with the Office of Civil Rights.

Approximately 1,000 students attended the charter schools that I visited. Each school received slightly more than \$4,000 per pupil from the state. Additional categorical funding for special education students is available for children with IEPs. None of the schools reported serving children with disabilities in accordance with IEPs. One school administrator of a charter school with close to 300 students said,

A parent expressed interest in her three children attending our school. We told her that her children wouldn't benefit from our program—you see, our Arizona law on special education says that children must benefit from special education—that makes a big difference.

He went on to say, "We haven't done any reevaluations, and we haven't done anything with anybody's IEP." Yet another principal stated that "none of our students have IEPs here, but I have a tutor for children with disabilities."

The interview data indicated that charter school personnel, especially principals, lack sufficient knowledge of federal and state special education laws and procedures. Principals also appeared to be completely overwhelmed by the complexity of IDEA's requirements.

All of the charter school principals and operators expressed great concern over the costs associated with educating children with disabilities. A comment by a principal of a school that had converted from a private school to a charter school was typical: "One severely disabled special ed kid would put me out of business." The marketplace concept that drives charter school legislation is stood on its head and proves to be a disincentive when it comes to serving children with disabilities.

What We Can Do

The evidence from Arizona and nationwide demonstrates that children with disabilities do not have equal access to charter schools. Charter school operators are avoiding potentially high-cost students rather than serving them, and charter school operators are unaware of and

unprepared to meet their responsibilities regarding children with disabilities. In order to bring charter schools—in Arizona and nationwide—into compliance with federal law and promote genuine equality of educational opportunity for students with disabilities, school personnel and policymakers should consider the following recommendations.

First, in states where charters are separate school districts, charter schools must strike cooperative arrangements with school districts that have in place special education delivery systems. This will involve having a fair funding system that will permit children with disabilities to take advantage of charter schools. In areas where several charter schools are located, the schools should be required to form consortiums in an effort to share resources and costs. Of course, states could pay charter schools the real costs of serving children with disabilities.

Second, states must monitor charter schools, and not just on paper, to ensure compliance with IDEA. Politics cannot be placed in front of the law.

Third, in states where charter schools are part of the traditional school district, the district must create special education services delivery systems so that students with disabilities will have meaningful access to charter schools.

In a real sense, then, we must break down the barriers and provide new means of access and support so that children with disabilities can be brought into the mainstream of school choice and charter schools.

Endnotes

¹ Interview with Exceptional Student Services official in April 1996.

² The three federal acts that directly affect the rights of children with disabilities are Individuals with Disabilities Education Act (29 U.S.C. 1401 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and Americans with Disabilities Act (42 U.S.C. 12131 et seq.).

³ For a legal analysis of parental choice programs and educating children with disabilities, see J. McKinney and J. Mead, (1996), "Law and Policy in Conflict: Including Students with Disabilities in Parental-Choice Programs," *Educational Administration Quarterly* 32, 1: 107-141.

⁴ A.R.S. 15-183 (E)(7).

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