



Hopes, Fears, & Reality

A BALANCED LOOK AT AMERICAN CHARTER SCHOOLS IN 2011

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Chapter 4

Making Choice Work for Students With Special Needs

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Many students with special needs have never been adequately served in public education. In most school districts, the academic achievement and dropout rates are dismal for students whose disabilities entitle them to an individual education plan (IEP). Recent studies show that 12th-grade students in special education earned, on average, three credits fewer than other students, enough to thwart graduation. Data from the National Center for Education Statistics (2007) show that only 60 percent of students in special education aged 18 to 21 graduated with a diploma. There have been tremendous improvements to the legal rights of students with special needs during the past few decades, primarily through the formation of powerful Washington lobbying groups and resulting improvements to the federal Individuals with Disabilities Education Act (IDEA). Still, many families of students with unique needs remain dissatisfied with the traditional public school options available to their children (Lake, 2010).

Adding public schools of choice to the mix offers a profound opportunity to find a better way to serve these students' needs. Public schools of choice with enhanced autonomy, such as charter schools, magnet schools, and alternative schools, offer districts a new way to meet these students' needs. Choice and autonomy can be:

- A tool to create new schools that are designed from the start to serve students who do not fit the traditional model of public schooling
- A way for districts to experiment with innovative approaches to serving students with special needs
- An avenue to create more options for families who struggle to find an appropriate fit for their children's special learning needs
- A way to better encourage district schools to move away from rule- and compliance-based approaches to serving special needs to an educational approach focused on outcomes and school-based accountability

But there are real challenges to achieving such opportunities and some risk that students with special needs will actually be worse off under a broader system of choice than they were without it. Schools of choice, for example, have been criticized for informally excluding students with unique needs or serving them poorly. Districts moving to a broader school choice system need to minimize the risks to students with unique needs, while using the opportunity to dramatically improve the options and outcomes for the public school system's students with the greatest needs.

SPECIAL NEEDS IN CHOICE REGIMES: A VARIED PICTURE

As with other outcomes associated with school choice, there is tremendous variation in how choice schools have served students with special needs. One can find charter schools for students on the autism spectrum, or charter schools for blind students, or charter schools with nearly 100 percent of their students on an IEP. Other charter schools have almost no students with identified special needs.

The same is true of traditional district schools. In most school systems, populations with special needs vary widely across schools because districts tend to create specialized programs to serve different populations. In Seattle, for example, the school district provides self-contained classrooms at certain schools for students with emotional and behavioral problems, autism programs at other schools, programs for students with profound disabilities at other schools, and inclusion programs at still other schools. There are designated schools for English language learners and some schools that offer no programs at all for students with special needs.

Averaged together, charter schools in most states tend to serve a fairly representative or slightly lower number of students with special learning needs. The reasons for the lower rate are not clear. Though some charter schools likely "counsel out" or exclude students with special needs, there is no evidence that they do so more frequently than traditional district schools (Lake, 2010). It may be that parents of students with special needs are simply less likely to send their children to a charter school or other choice school.

There is also some evidence that charter schools are less likely than district schools to identify incoming students with special-needs labels and are more likely to move students off of IEPs (Lake, 2010). One notable charter school has

a philosophical approach that there are no learning disabilities, only teaching disabilities. The school aggressively addresses learning deficits early on so that students no longer need IEPs. Other charter schools create individualized instruction plans for all students, so parents of students with special needs are less inclined to require formalized IEPs. These varied approaches to categorizing students, then, make basic statistical comparisons less meaningful.

More in-depth studies about how schools of choice meet the needs of students with special needs are hard to find. Those that exist tend to focus on specific locales or schools, making it difficult to generalize from these examples. A few broad findings do seem to emerge, however:

- Compared to traditional schools, charter schools appear to have special education populations weighted more heavily toward students on the autism spectrum and students with learning disabilities (Lake, 2010).
- Charter schools are less likely than traditional schools to serve students with low-incidence (profound) special needs.
- State and locales vary in how they select, fund, and oversee schools of choice. Such factors likely play a significant role in explaining variation in outcomes, including provision of special needs.
- Many charter schools can be considered models for innovative approaches to educating students with special needs.

More research is needed to cull lessons about how schools of choice address specialized needs of students, but the overall implication from research is that schools of choice, like other public schools, appear to unevenly serve students with IEPs, students with limited English proficiency, and other identifiers. Some broad trends point back to the idea that schools of choice offer both risk and great opportunity. The question is how the government agencies that oversee the schools can address weaknesses and risk.

THE CHALLENGES OF CHOICE

The central challenge for districts trying to promote school choice and ensure that the district's students with the greatest needs are served well is that the federal and state safeguards and funding mechanisms that are in place to establish rights and services for these students were designed with a traditional school system in mind. These safeguards and funding mechanisms assume a set of



rules and processes based on traditional district structures and capacities, and they establish a system of rights based more on compliance with established processes, such as following an IEP, than on achievement of outcomes.

A fundamental assumption in federal and state regulation is that the government body responsible for receiving funding and providing “free and appropriate public education” for students with special needs—the legal requirement in IDEA—is the school district, also called the local education agency (LEA) (Section 504 of the Rehabilitation Act, 29 U.S.C. §794, 1973). Within a district, in the case of students who qualify for special education services, an individual school does not have any obligation to meet every child’s needs; rather, the district is required to provide an appropriate education for that student somewhere. If the district cannot provide an appropriate option, the LEA is obligated to pay for the costs of private or even home-based schooling.

Schools of choice are often organized as their own LEAs, meaning that they are the equivalent of a district for the purpose of federal special education regulations. In that case, the charter school is legally responsible for meeting the need of every student who attends the school, regardless of disability. The school is also then responsible for federal and state reporting requirements, many of which can be quite complex. Acting as an LEA may bring legal clarity, but it creates financial and legal responsibilities that some charter school operators do not understand or are ill prepared to handle. Without multiple schools with which to share the costs for students with special needs, the enrollment of one student with profound disabilities could send a charter school into a financial tailspin.

In other cases, charter schools are considered part of the school district for the purpose of special education and are not their own LEAs. In those schools, the legal responsibility for providing an adequate education rests with the school district. Such charter schools typically receive special education services from their district, just like any other district school. The advantage for the charter schools is that they have more flexibility to work with the district to place students whom the school leaders feel they cannot serve well. Many charter schools make a strong case that they are, by design, oriented around a specific mission and approach that may not be appropriate for every student. However, charter schools in this “dependent” status often complain that they are not happy with the quality or amount of special education services they receive from the district. Non-LEA

status also can confuse accountability when a district believes a charter school should share some responsibility for the district's students with special needs, but the charter school views special education as a district concern.

School choice systems naturally create a barrier for vulnerable students and their families because the systems require an extra effort to select and apply for a school. Even when parents understand that they have a choice to make (which is by no means obvious to everyone), they must rely on the messages they receive from schools to inform their decision. Families of students with special needs may find themselves getting an intentional or unintentional message that their children are not welcome.

To further complicate access, student transportation is not always provided by charter schools or district alternative schools, and charter schools often do not have access to state or local transportation funds. This may be a particular concern for students with severely disabling conditions, as the lack of transportation may violate IDEA's equal access provisions. A similar issue arises with facilities: Not having access to state and local capital funds, charter schools tend to locate in nontraditional school buildings, some of which may not comply with the Americans with Disabilities Act.

Taken as a whole, these issues create a difficult set of incentives for schools of choice. Though charter schools typically have missions to serve at-risk students, the liability and costs associated with educating students with special needs and English language learners are high, while the financial incentives are low. Charter schools receive additional funding for students with special needs, but the amount is usually calculated at a statewide average rather than in a way that corresponds to differentiated levels of disability. So a charter school that serves a student with profound disabilities, requiring services that cost about \$250,000 per year, may receive only an additional \$20,000 of state funding. There are strong incentives, then, for charter schools to avoid serving special education students with high needs. When charter schools avoid serving these students, traditional schools may feel that they are carrying a disproportionate share of the responsibility for students with special needs.



Choice for Students With Other Special Needs

New schools of choice, with targeted missions and, in many states, mandates to serve the lowest performing students, offer tremendous potential to provide focused programs to language-minority students and others requiring alternative education arrangements. But for choice districts, accommodating those students presents many of the same challenges as serving special education students.

Not all schools will work for these students. As well, resource allocation, accountability, and the pressure to meet enrollment numbers create disincentives for new school operators to invest in programs that will meet these students' needs. Informing parents, especially language-minority parents, about available choices and providing reasonable transportation and access to available schools pose familiar challenges. For districts, ensuring that quality programs are provided within diverse schools for these students is just as difficult as it is to monitor special education programs—perhaps even more so because there are fewer legal requirements to standardize oversight of alternative education programs.

Many of the proposed strategies for improving the provision of special education services—creating an ombudsman to guide families through the selection process, rethinking the distribution of resources, and rethinking who provides oversight and accountability for these programs—may also improve services to these other special populations.

MAKING CHOICE WORK FOR STUDENTS WITH SPECIAL NEEDS

None of these barriers is a reflection of malicious intent on the part of school districts or schools of choice. Rather, the barriers are outcomes of a system of regulations and funding that does not reflect reality in most districts where choice, diverse providers, and outcome-based (as opposed to compliance-based) accountability is becoming the norm.

Still, there can be real implications for students if schools of choice act in an exclusionary manner. And there can be significant political fallout if schools of choice are perceived to be exclusionary. When such problems occur, the instinct of districts often is to fall back on simple solutions such as quotas or regulations to ensure that schools of choice are serving a representative number of students with special needs. Charter schools in some cities—including New York; Nashville, Tennessee; Denver; Hartford, Connecticut; and Rochester, New York—may soon be required to serve and retain percentages of students with special needs that are comparable to the district as a whole. New Orleans' Recovery School District is considering requiring all of its charter schools to maintain an enrollment of students with special needs within 75 percent of a distribution.

But as Parker Baxter (personal communication, January 2011), the former director of charter schools for Denver Public Schools, remarked on the topic, “There is danger in using traditional ideas to solve nontraditional problems.”

A much more productive policy approach is for districts to view charter schooling as an opportunity to craft better public school solutions for meeting students’ special needs. But this is a new frontier for school districts and the charter school community and requires innovative thinking. There are a number of such innovations underway in school districts around the country.

A variety of support structures can provide charter schools with the same types of supports district schools receive and should be thought of as a range of options available to stand-alone charter schools. Entities currently providing special education infrastructure support to charter schools include local districts, intermediate administrative units (such as intermediate school districts, education services centers, and boards of cooperative education services), cooperatives, local nonprofit organizations, and management organizations. In the District of Columbia, charter schools can join the DC Special Education Co-operative (2011), which provides training and consulting services to schools, consulting teachers and special education teachers, advocacy, and other supports.

Risk pools are another way charter schools can share the financial responsibility for students with special needs. As with an insurance policy, a charter school pays into the risk pool and draws out of it when a student with high needs enrolls in the school. Lauren Morando Rhim described in detail how risk pools work and noted that IDEA 2004 includes language and regulatory flexibility encouraging the creation of state special education risk pools (Lake, 2010). Rhim also noted that a risk pool has the potential to prepare a charter school to manage the potential heavy financial costs of a child who requires intense services and may diminish the incentive to counsel out children with greater special education needs.

Concerned that the Denver charter schools served lower rates of students with special needs, the city’s school district decided to house a program for students with special needs in a charter school. New Orleans and Nashville are considering similar approaches. Districts could also consider requests for proposals for charter schools with a specialized focus on the types of disabilities that are more underserved in the district.



Many charter school authorizers, including school districts, have dramatically improved their processes for assessing an applicant's plans for serving students with special needs before a charter school is approved. Authorizers also have learned, sometimes the hard way, the importance of monitoring and auditing charter schools to ensure they are taking proper procedural steps when students are identified as eligible for special education. Nashville and New Orleans, for instance, are working to create more transparent and publicly accessible data on exceptional students.

Some districts, such as Denver, are working on ways to provide charter school staff access, at cost, to the same special education training available to personnel at district-run schools. Denver also is working to allow charter schools more say about the assignment, supervision, and evaluation of district employees who work in or provide special education services to charter schools.

New Orleans' Recovery School District has committed to advocate for local and state funding policies that provide requisite resources for serving students with special needs. Los Angeles Unified School District has committed to work with charter schools to jointly develop and bring forward for district and state approval a plan that reorganizes current special education structures, allowing for "autonomy, flexibility, and accountability."

Other ideas, yet untried, also may hold promise for school districts that are seeking a new path for charter schools and special education. As more districts engage in problem solving about this issue, there are a number of questions district staff can begin asking of themselves and the charter schools in their midst to develop solutions that fit their community.

WHO IS THE ADVOCATE FOR STUDENTS WITH SPECIAL NEEDS?

Should all schools serve all students, or should there be specialization? Is the district responsible for ensuring all students have viable options? When some local specialization of services is needed, someone must help families navigate these options. A districtwide ombudsman, whose job is to counsel parents of students with special needs about the available options and the rights they have within the schools they choose, can fill this role.



IS THE DISTRICT A REGULATOR, A PROVIDER, OR BOTH?

In most choice districts, the district serves as both the provider of special education and the regulator who ensures that services are being provided. It is fair to ask whether this is an optimal arrangement. Should the agency responsible for ensuring that students are being appropriately served in district and charter schools be the same agency responsible for providing the majority of services to students with special needs? Is there a way to separate these functions so that service providers, be they district or charter schools, are being overseen by the same independent agency?

SHOULD THERE BE COMMON DISCIPLINE POLICIES?

Though relevant to all students, discipline policies are of particular concern when it comes to students with IEPs related to behavioral issues. Charter schools have been criticized for exercising particularly strict discipline policies that result in high numbers of student expulsions—an outcome that could disproportionately impact some students with special needs. This criticism has led some districts to wonder whether there should be a common discipline policy across district and charter schools.

DO FINANCIAL INCENTIVES NEED TO BE ADDRESSED?

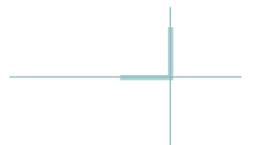
Co-ops and risk pools can address some of the disincentives for charter schools to provide special-needs services, but it is worth exploring whether the policies governing the distribution of special education funding should be adjusted. Should states consider creating a statewide fund for serving students with low-incidence, exceptionally high needs, in essence assuming responsibility for these expenses instead of the LEAs? Should states consider adjusting facilities funding to account for building-accessibility costs for students with special needs?

WHO HAS LEGAL RESPONSIBILITY?

What legal status do charter schools in this community have (as LEAs or as a part of the district), and what are the implications for the school's responsibility to meet federal and state special education requirements?



Special education is a big vulnerability for schools of choice and an issue that districts have to get right, especially when they are rolling out new school choice initiatives. One lawsuit or scathing newspaper story about a student's special needs not being met can create serious political difficulties and can even carry financial penalties. There is also a moral imperative. Even if districts have charter schools in their geographic region that operate as independent LEAs, a collection of district and charter public schools in a city or a region probably has some communitywide responsibility to ensure the welfare of the most vulnerable students. As the research demonstrates, there is no obvious culprit for the problems that arise when special needs meet school choice, and there are no simple solutions. Finding ways to ensure choice schools effectively serve students' unique needs will require creativity and persistent problem solving. But those labors will surely be worth the effort if choice can fulfill its promise to better serve students who typically face limited options today.



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