School Choice Series

Charter Schools—Implications for Students with Disabilities

National Council on Disability

November 15, 2018

National Council on Disability (NCD)
1331 F Street NW, Suite 850
Washington, DC 20004

School Choice Series: Charter Schools—Implications for Students with Disabilities

National Council on Disability, November 15, 2018
Celebrating 30 years as an independent federal agency

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National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Letter of Transmittal

November 15, 2018

The President
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I submit this report for your consideration entitled *Charter Schools—Implications for Students with* Disabilities. The National Council on Disability is an independent federal agency mandated with the responsibility of providing the President and Congress policy recommendations that promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into society for people with disabilities. This report is one of two independent analyses by NCD concerning school choice and its intersection with disability rights law. Considering the heightened interest of parents in charter school options and the current national dialogue regarding charter schools and school choice, we hope you find this report both pertinent and timely.

This report provides an in-depth overview of the current landscape of the education of students with disabilities in charter schools. The report highlights the widespread inconsistency that exists across the charter school sector. While some charter schools experience serious challenges with respect to the provision of special education programming and services to their students with disabilities, others have developed innovative educational approaches that can serve as models for all schools. The report recommends that policymakers and interested stakeholders build on the practices used by charter schools that have been successful in meeting the unique learning needs of students with disabilities, while also addressing areas of concern that have been highlighted in the research and have persisted over many years. Finally, this report makes multiple recommendations for federal and state agencies and Congress to address problems that may deprive students with disabilities and their families of an equitable education.

NCD stands ready to work with federal agencies, state governments, the disability community, and other stakeholders to improve federal protection of the rights of students with disabilities in a manner consistent with parents' right to choose the method and venue of education that best fits their children's needs.

Sincerely,

Neil Romano
Chairman

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

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Contents

Acknowledgements 9

Executive Summary 11

Summary of Key Findings 12

Enrollment 12

Provision of Special Education and Related Services 13

Special Types of Charter Schools 14

Outcomes and Accountability 14

Implications for Students with Disabilities Who Remain in TPS 15

Summary of Recommendations 15

Local Level 15

State Level 16

Federal Level 16

List of Acronyms 17

Introduction 21

Research Methods 25

Policies and Secondary Literature 25

Quantitative Data 25

Qualitative Data 25

Limitations 26

Chapter 1: Background and Overview of Charter Schools 27

Charter School State Statutes 27

Types of Charter Schools 28

Authorizing Entities 30

Funding of Charter Schools and Students with Disabilities 32

Foundation Funding 33

Funding for Special Education 34

Expansion of Charter School CMOs 35
Concentration of Charter Schools in Large Urban Cities 37

Chapter 2: Federal Legal Requirements Pertaining to Students with Disabilities in Charter Schools 41
ESEA as Amended by ESSA 41
Title IV-Part C 42
IDEA 44
Section 504 and the ADA 47

Chapter 3: Access to Charter Schools: Recruitment, Enrollment, and Retention of Students with Disabilities 49
Overall Enrollment of Students with Disabilities in Charter Schools 49
Enrollment of Students with More Significant Disabilities in Charter Schools 50
Factors Underlying the Special Education Enrollment Gap Between Charter Schools and Traditional Public Schools 52
Charter School Enrollment Policies with Implications for Students with Disabilities 56
Reasons Why Parents of Students with Disabilities Choose Charter Schools 61
Summary of Chapter 3 64

Chapter 4: Provision of Special Education and Related Services in Charter Schools 67
Relationship of the Charter School's Legal Status to the Provision of Services 67
Challenges That May Make It Difficult for Charter Schools to Provide Services to Students with Disabilities 69
Limited Knowledge and Understanding of Special Education Responsibilities 70
Limited Availability of Special Education Funds Distributed in Complex Ways 73
Potential Tension Between Charter School Focus and Special Education Requirements 76
Model Practices for Educating Students with Disabilities in Charter Schools 82

Case Studies of Two Students with Disabilities Who Have Attended Charter Schools 84
Summary of Chapter 4 89

Chapter 5: Special Types of Charter Schools 91
Disability-Specific Charter Schools 91
Virtual Charter Schools 95
Summary of Chapter 5 99

Chapter 6: Accountability for Students with Disabilities in Charter Schools 101
Outcomes of Students with Disabilities in Charter Schools 101
Charter School Monitoring, Oversight, and Accountability 103
Summary of Chapter 6 108

Chapter 7: Potential Implications of Charter Schools for Students with Disabilities in Traditional Public Schools 109
Potential Fiscal Impact on Students with Disabilities in TPS 109
Increased Segregation and Inequities for Students with Disabilities 114
Summary of Chapter 7 115

Chapter 8: Recommendations 117
Recommendations for Charter School Authorizers 117
Recommendations for Charter School Operators 120
Recommendations for SEAs 122
Recommendations for State Legislatures 124

Bibliography 127

Appendix: Ongoing Legal Challenges in the Area of Charter Schools 145
Can Taxpayer Funds Support Privately Managed Charter Schools? 145
A Second Look at the Doctrine of Nondelegation 145
Erosion of Separation of Church and State 146

Endnotes 149

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Executive Summary

Charter schools are publicly funded schools that are privately managed and operate under a contract (i.e., a "charter") that delineates the particulars regarding how the school will function and be governed. The school's charter typically grants charter administrators greater autonomy from constraining state and local requirements applicable to traditional public schools (TPS) in areas such as governance, budgetary decision making, and staffing. In exchange for this greater flexibility, the charter holder commits the school to a heightened level of accountability, usually tied to improved student academic outcomes. Since the first charter school law was enacted in 1991, 44 states (plus the District of Columbia and Puerto Rico) have enacted charter school statutes. From 2004 to 2014, the percentage of students enrolled in charter schools increased from 2 to 5 percent (0.9 million to 2.7 million).

In 2013 to 2014, students with disabilities made up nearly 11 percent of the population of students enrolled in charter schools. Because they are public schools, charter schools must comply with certain legal requirements under federal and state laws concerning the education of students with disabilities. These requirements include provisions pertaining to a high-quality education with respect to all students under Title I of the Elementary and Secondary Education Act (ESEA), reauthorized as the Every Student Succeeds Act (ESSA) of 2015, as well as obligations specifically relating to students with disabilities under the Individuals with Disabilities Education Act (IDEA) and state special education law. Moreover, charter schools must satisfy the requirements embedded in the disability civil rights statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA). The extent to which a charter school itself is responsible for ensuring compliance with specific legal obligations pertaining to students with disabilities depends on the school's legal status under state law and the school's charter. Some charter schools operate as their own school district—or local education agency (LEA)—while others function as a public school within an existing LEA.

This report provides an in-depth overview of the current landscape of the education of students with disabilities in charter schools. The report underscores the widespread variability that exists across the charter school sector. While some charter schools experience serious challenges with respect to the provision of special education programming and services to their students with disabilities, others have developed innovative educational approaches that can serve as models for all schools. The report recommends that policymakers and interested

stakeholders build on the practices used by charter schools that have been successful in meeting the unique learning needs of students with disabilities, while concomitantly addressing areas of concern that have been highlighted in the research and have persisted over many years. Moreover, the report advises stakeholders to keep in mind and address the needs of students with disabilities who do not attend charter schools and, instead, remain in TPS. These students may experience cuts in their programming as TPS struggle to reconcile a decline in enrollment and revenue without a reduction in fixed operating costs. The seemingly competing interests of charter schools and TPS are not mutually exclusive. Rather, this report proposes a strategy focusing on students with disabilities in charter schools, as well as those in TPS, as the most effective means by which to move the dialogue forward and improve educational opportunities for *all* students with disabilities.

To gain a better understanding of the experiences of students with disabilities with respect to charter schools, the present study utilizes a mixed-methods approach that includes analysis of existing policies and secondary literature, review of quantitative data, and examination of qualitative data. The policy and literature review consists of analyses of key federal and state statutes, regulations, and administrative guidance as well as relevant case law and administrative due process hearings. Experimental studies, articles, and other pieces appearing in the literature and on the Internet are also included. The second component of the study is an examination of descriptive, quantitative data pertaining to students with disabilities and charter schools available from the National Center on Education Statistics (NCES), the U.S. Department of Education's Civil Rights Data Collection (CRDC), and various state websites.

To gather the perspectives of interested stakeholders, the study's qualitative component consisted of a series of six focus groups with parents and parent advocates in different regions across the country. In addition, 18 semistructured interviews were conducted with a variety of stakeholders, including state department of education officials, charter school teachers and administrators, representatives of charter school organizations, representatives of disability organizations, parents of students with disabilities, and parent advocates. Moreover, two case studies were conducted, focusing on the contrasting experiences of two students with disabilities who have attended charter schools.

Summary of Key Findings

This report presents findings on the challenges and best practices associated with the education of students with disabilities in charter schools. Key findings include the following:

Enrollment

- While charter schools tend to enroll lower percentages of students with disabilities than TPS, the gap appears to be narrowing. Students with more significant disabilities (e.g., intellectual and developmental disabilities), however, have particularly low levels of enrollment. Charter schools also tend to provide instruction to higher percentages of students with disabilities in general education classrooms.
- Researchers have begun to examine factors underlying the enrollment gap between

charter schools and TPS. These factors include the following: (1) Parents of students with disabilities are less likely to apply to charter schools. Among possible reasons is the fact that students with disabilities may already be connected to specialized programs within TPS or that charter schools may be discouraging parents of students with disabilities from applying to the school. (2) Charter schools are more likely to declassify and less likely to classify students as needing special education services than TPS. (3) There have been qualitative, anecdotal reports of charter schools engaging in the practice of "counseling out" students with disabilities who are enrolled in these schools, including for discipline or behavior-related issues. The small numbers of studies that have examined this practice from a quantitative perspective, however, have found no evidence to support its occurrence.

- Certain aspects of the charter school enrollment process may pose challenges for parents of students with disabilities: The process can be confusing, parents do not always have access to enough information to make informed choices, and parents sometimes struggle to decide when to disclose the fact that their child has a disability.
- The primary motivations for parents of students with disabilities to choose charter schools appear to be dissatisfaction with their child's prior experience in TPS and attraction to certain positive elements of the charter school model such as smaller class size.

Provision of Special Education and Related Services

- When a charter school operates as an independent LEA, the school is responsible for complying with the full array of legal obligations incumbent on all LEAs under IDEA, including those concerning the availability of a continuum of alternative placements. When a charter school is a public school of an existing LEA, it is the LEA, rather than the charter school, that is responsible for ensuring the provision of a free appropriate public education (FAPE).
- Several challenges may make it more difficult for some charter schools to deliver appropriate educational services to their students with disabilities. These challenges include (1) limited knowledge and understanding of special education responsibilities and requirements on the part of some charter operators and charter authorizers, (2) limited availability of special education funds that are distributed in complex ways, and (3) potential tension between the charter school movement's underlying principles related to autonomy and flexibility and special education requirements. This tension manifests itself in a number of ways: for example, tension stemming from some charter schools' implementation of strict academic and behavioral expectations that clash with the rights of students with disabilities with respect to discipline under IDEA, as well as tension between the parental choice focus of the charter movement and the individualized education program (IEP) team-based decision-making process of IDEA.

- Some charter schools have adopted effective practices to address the diverse learning needs of their students. These practices pertain to a variety of areas, including vision and leadership (e.g., setting a positive tone for inclusion), staffing (e.g., instituting co-teaching between general education and special education teachers as well as providing frequent feedback to teachers), and innovative educational practices (e.g., those that can benefit all students, such as Universal Design for Learning [UDL] and restorative justice approaches to school discipline).

Special Types of Charter Schools

- Disability-specific charter schools, designed to serve students with disabilities (e.g., autism or emotional disturbance), can be appealing to parents of students with disabilities for a variety of reasons, including a low teacher-student ratio, a learning environment that includes peers who share a similar learning profile, focused and intensive instructional support, and frustration with lack of support in more traditional educational settings in TPS. A major concern, however, is that these schools run counter to the presumption in favor of education in the general education classroom.
- Virtual charter schools, which provide instruction online through the Internet, can be appealing for students with disabilities because they allow for flexible timing and scheduling of learning, presentation of materials in multiple formats, and increased opportunities for individualization and personalized learning. At the same time, there are concerns that the curricular materials and websites of virtual charter schools are not always fully accessible. In addition, students who struggle with executive functioning may find the self-paced nature of online learning challenging, and parents often find themselves taking on an active role that involves a large time commitment. Moreover, virtual charter schools may struggle to provide the range of services necessary to educate students with disabilities, including related services (e.g., speech/language therapy or occupational therapy) and positive behavioral interventions necessary to receive an appropriate education. Finally, questions have also been raised regarding the extent to which virtual charter schools are being monitored and held accountable for the performance of their students.

Outcomes and Accountability

- On average, there are limited known outcomes—"similar, not better" results based on test outcomes—for students with disabilities who are enrolled in charter schools compared to their TPS peers.
- There has been a lack of consistent standards of accountability (e.g., performance contracts, meaningful criteria/standards for renewal or revocation if schools perform below a minimum threshold) and careful oversight by charter authorizers as well as state and federal government agencies.
- Authorizers that oversee from 1 to 100 charter schools vary substantially in how rigorously and effectively they carry out their

multiple roles and responsibilities outlined in state charter school law.

- Even though many authorizers provide minimal oversight of charter schools, charter growth has, in many instances, been allowed without restriction or accountability.
- Research is limited with respect to how well charter authorizers are carrying out their monitoring and oversight responsibilities for ensuring the delivery of special education programming and services by charter operators and holding them accountable for the education of students with disabilities in these schools consistent with the requirements of state special education and charter school laws and IDEA.

Implications for Students with Disabilities Who Remain in TPS

- TPS struggle, often unsuccessfully, to adjust fixed costs (e.g., buildings and administration) while attempting to extend their already depleted resources to meet the needs of students, many of whom have more significant needs. As a result, TPS students with disabilities may experience increased class sizes, limited access to resources and specialists, and even school closure.
- Further complicating the charter/TPS funding dichotomy is a charter school's decision over whether to backfill spots for students who disenroll by reporting deadlines, typically October 1.
- To help alleviate the negative fiscal impact on TPS, some states have set a cap on the growth of charter schools. The Massachusetts Supreme Judicial Court recently recognized that the legislative cap on the number of charter schools and the amount of funds that could be transferred from TPS is an effort to allocate funds among all the Commonwealth's students.
- Data suggests that some charters proportionately enroll more white students with disabilities and fewer black students with disabilities than TPS, raising serious fiscal equity concerns. Additional research is needed to examine these issues more closely.

Summary of Recommendations

This report also includes a series of recommendations for policymakers and stakeholders at the local, state, and federal levels, regarding improvements in policies and practices that can enhance educational opportunities for students with disabilities. In particular, NCD recommends the following:

Local Level

- **Charter Authorizers:** Require that applications for the creation of new or converted charter schools articulate with a degree of specificity their plans regarding the education of students with disabilities, including with respect to enrollment, provision of special education services, evidence of a sufficient budget, and involvement with communities served; be proactive in ongoing monitoring of schools concerning the education of students with disabilities; and be willing to hold schools accountable for persistent violations and to take difficult action steps, including revocation, nonrenewal, and closure, as necessary, to address significant failures in the area of special education.

- **Charter Operators:** View the education of students with disabilities as an opportunity for the school to enhance its instructional approaches by making adaptations and changes that can benefit *all* students; revise policies and practices in areas such as enrollment, leadership and vision, staffing, and innovative and model practices.

State Level

- **State Education Agencies:** Increase monitoring of compliance under IDEA by charter schools; analyze charter school data more closely to identify schools in need of intervention; provide training and informational materials to parents about their rights with respect to charter schools; exercise leadership with regard to school improvement by supporting charter–TPS collaboration, including joint professional development; and exercise leadership in creating a rigorous authorizer accountability plan consistent with ESSA.
- **State Legislatures:** Explore amending the state charter school statute to address issues such as raising the level of selectivity of charter school applicants; raising eligibility requirements for authorizers to ensure they possess the necessary knowledge and capacity to serve in this role; requiring as a condition of receipt of a charter that the applicant demonstrate a plan for meeting approaching proportionate enrollment from the community of students being served; holding authorizers accountable and requiring them to review underperforming charter schools within their portfolios and take steps for intervention, revocation, and closure, as necessary; helping to ensure fiscal balance between TPS and charter expansion by establishing a cap on the amount of funding that can be taken from TPS as a result of students transferring to charter schools; requiring charter schools to maintain levels of reported enrollment and backfill when seats become available during the school year through a lottery; easing the fiscal impact on TPS students by providing a transitional per-pupil reimbursement to TPS after a student transfers to a charter school; and mitigating increased racial isolation by encouraging interdistrict charters that will be located across geographic borders in economically and racially mixed neighborhoods to draw from urban and suburban students.

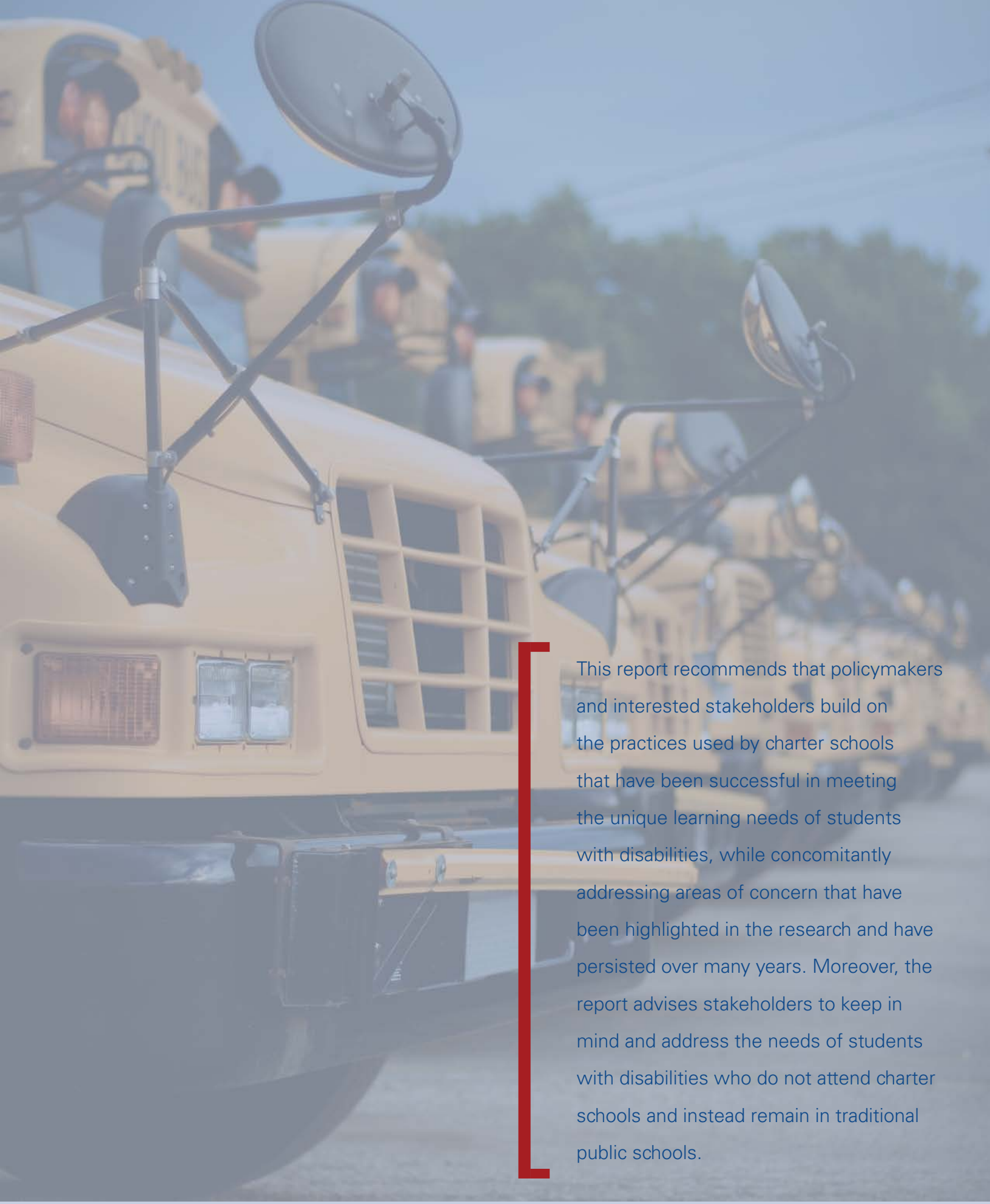
Federal Level

- **Congress and U.S. Department of Education:** Create incentives for authorizers to locate charter schools as originally conceptualized as laboratories for innovation and reform, strategically (including outside of urban districts and straddling districts) to minimize isolation based on race, disabling condition, and socioeconomic background; increase funding priority in the U.S. Department of Education's Charter School Program (CSP) for schools that are inclusive of all students and promote diversity across a variety of categories, including disability status; and amend ESEA that currently limits use of federal start-up funds only to charters that use a blind lottery to include schools that use a variety of methods (e.g., random zip code) to create purposefully diverse student bodies.

List of Acronyms

ABA	applied behavior analysis
ACLU	American Civil Liberties Union
ADA	Americans with Disabilities Act
ADHD	attention-deficit/hyperactivity disorder
AEI	American Enterprise Institute
CCD	Common Core of Data
CER	Center for Education Reform
CMO	charter management organization
CMS	content management system
COPAA	Council of Parent Attorneys and Advocates
CRDC	Civil Rights Data Collection
CREDO	Center for Research on Education Outcomes
CRPE	Center on Reinventing Public Education
CSP	Charter Schools Program
DC PCSB	District of Columbia Public Charter School Board
DCPS	District of Columbia Public Schools
DI	differentiated instruction
DPS	Denver Public Schools
DPSD	Durham Public School District
DSST	Denver School of Science and Technology
EL	English learner
EMO	education management organization
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
FAPE	free appropriate public education
FAQ	frequently asked questions
FERPA	Family Educational Rights and Privacy Act
GAO	United States Government Accountability Office
IB	International Baccalaureate
IDEA	Individuals with Disabilities Education Act
IEP	individualized education program
IES	Institute of Education Sciences
KIPP	Knowledge is Power Program
LEA	local education agency
LMS	learning management system

LRE	least restrictive environment
NACSA	National Association of Charter School Authorizers
NAPCS	National Alliance for Public Charter Schools
NCES	National Center for Education Statistics
NCLB	No Child Left Behind Act
NCSECS	National Center for Special Education in Charter Schools
NEA	National Education Association
OCR	U.S. Department of Education's Office for Civil Rights
OSERS	U.S. Department of Education's Office of Special Education and Rehabilitative Services
RTT	Race to the Top initiative
SASS	U.S. Department of Education's Schools and Staffing Survey
SEA	state education agency
Section 504	Section 504 of the Rehabilitation Act of 1973
SPED	special education
SUNY	State University of New York
TFS	U.S. Department of Education's Teacher Follow-Up Survey
Title I	Title I of the Elementary and Secondary Education Act
Title II	Title II of the Americans with Disabilities Act
Title VI	Title VI of the Civil Rights Act of 1964
TPS	traditional public school(s)
UCLA	University of California, Los Angeles
UDL	Universal Design for Learning
VCR	Virtual Control Record



This report recommends that policymakers and interested stakeholders build on the practices used by charter schools that have been successful in meeting the unique learning needs of students with disabilities, while concomitantly addressing areas of concern that have been highlighted in the research and have persisted over many years. Moreover, the report advises stakeholders to keep in mind and address the needs of students with disabilities who do not attend charter schools and instead remain in traditional public schools.

Introduction

Charter schools are publicly funded schools that are privately managed and operate under a contract (i.e., a "charter") that is awarded for a specified period by an authorizing entity established under state law. A school's charter delineates the particulars regarding how the school will function and be governed. It typically provides charter school administrators greater autonomy from constraining state and local requirements applicable to traditional public schools (TPS) in areas such as governance and oversight; budgetary decision making; teacher qualifications, hiring, layoffs, and tenure; textbook and curriculum selection; and provision of transportation. Consistent with the terms of the charter, in exchange for greater flexibility, the charter holder commits the school to a heightened level of accountability, usually tied to improved academic performance outcomes.

[I]n exchange for greater flexibility, the charter holder commits the school to a heightened level of accountability, usually tied to improved academic performance outcomes.

Since 1991, when Minnesota enacted the first charter school law, 44 states (plus the District of Columbia and Puerto Rico) have enacted statutes authorizing the creation of publicly funded charter schools.[1] While these authorization statutes vary considerably across states, many contain common elements.[2] For example, the statutes often require a charter contract to include a purpose statement, descriptions of expected student outcomes, and admission policies and procedures. Some also require a description of monitoring and evaluation processes.[3] In addition, the statutes usually delineate the type(s) of charter schools that are allowed, specify the kinds of entities that are authorized to award charters (i.e., charter authorizers), and contain language limiting the term of the charter (typically three to five years).[4] Some state charter school statutes also include provisions concerning nondiscrimination in recruitment, admission, and enrollment processes. To promote accountability, over half of the state authorizing statutes (26) require authorizers to ensure that charter schools submit annual reports regarding their performance in areas such as enrollment and attrition, governance, finances, innovative practices, and student performance.[5] All but one state statutes (Maryland) specify the conditions under which a charter may be terminated or revoked, including, for example, inadequate student performance.[6] Yet, despite states having

enacted such accountability provisions, in practice, authorizers rarely close charter schools because of poor student performance.[7] According to data collected by the National Alliance for Public Charter Schools (NAPCS), in 2016–2017, only 211 out of nearly 7,000 charter schools closed "for a variety of reasons, including low enrollment, financial concerns, and/or low academic performance."[8]

For more than 25 years, the U.S. Congress, through the Elementary and Secondary Education Act (ESEA),[9] reauthorized as the Every Student Succeeds Act (ESSA) of 2015, has channeled funding to states to encourage the creation of new charters and to promote innovation and reform through research, pilot programs, and competitive grants. The expansion in the number of charter schools, which focused on linking accountability to improved student achievement, paralleled the ESEA's evolution toward results-driven accountability based primarily on state assessments. These developments culminated in passage of the No Child Left Behind Act (NCLB) of 2001 and, subsequently, the Race to the Top (RTT) initiative in 2009.[10] The RTT conditioned receipt of one of the highly competitive RTT grants for innovation and education reform upon the state increasing its number of charter schools and lifting any state-imposed cap that might exist on the total number of charter schools.[11]

[T]he percentage of students enrolled in charter schools increased from 2 to 5 percent between 2004 and 2014 (0.9 million to 2.7 million). Today, this figure has risen to 3 million students enrolled in 7,000 charter schools.

In 2013 to 2014, students with disabilities made up nearly 11 percent of the population of students enrolled in charter schools.

Since the beginning of the charter school movement, charter schools have drawn bipartisan support and experienced rapid growth,[12] especially in urban districts with concentrated poverty and poorly performing TPS. The charter schools were initially envisioned as "laboratories of innovation" that could inspire replication by other public schools.[13] According to the market-based approach to education, parental choice would help make charter schools and TPS more accountable to parents by increasing competition between schools and creating incentives for developing and implementing innovations necessary to attract and retain students.[14] With some evidence that high-quality charter schools can produce innovative and successful instructional models, the percentage of students enrolled in charter schools increased from 2 to 5 percent between 2004 and 2014 (0.9 million to 2.7 million).[15] Today, this figure has risen to 3 million students enrolled in 7,000 charter schools.[16]

In 2013–2014, students with disabilities comprised nearly 11 percent of the total population of students enrolled in charter schools.[17] In order to educate students with disabilities, charter schools—as other public schools—must comply with certain legal requirements under federal and state laws. These requirements include provisions pertaining to a high-quality education with

respect to all students under Title I of the ESEA as well as obligations specifically relating to students with disabilities under the Individuals with Disabilities Education Act (IDEA) and state special education law. Moreover, charter schools must satisfy the requirements embedded in the civil rights statutes, including Title VI of the Civil Rights Act of 1964 (race, color, national origin), Section 504 of the Rehabilitation Act of 1973 (disability), and the Americans with Disabilities Act (ADA).[18] The extent to which a charter school itself is responsible for ensuring compliance with specific legal obligations pertaining to students with disabilities depends on the school's legal status under state law and the school's charter. Some charter schools operate as their own school district—or local education agency (LEA)—while others function as a public school within an existing LEA (see Chapter 4). In any case, all charter schools, as is true of all public schools, are subject to the requirements of IDEA.

Research has shown that some charter schools have struggled to meet their obligations with respect to the education of students with disabilities. For example, charter schools tend to enroll lower percentages of students with disabilities than TPS.[19] An additional area of concern is that charter schools may selectively enroll students with mild disabilities, who are less likely to require intensive (and possibly costlier) instruction and support services.[20] For charter schools, in particular those that operate as their own LEA, there may be disincentives to enroll students who have more significant disabilities. These charter schools do not have access to resources that typical LEAs can draw upon through economies of scale.[21] Consequently, they may lack the capacity to provide a free appropriate public education (FAPE), through a continuum of alternative placements, to students with the full range of disabilities.

Despite these challenges, charter schools have continued to hold promise for parents of students with disabilities, in particular those who may be dissatisfied with their children's prior TPS experience. With a smaller class size and strong emphasis on high expectations and college attainment, some charter schools may offer an attractive alternative to the watered-down curriculum that students with disabilities may have been receiving in TPS. Similarly, some charter schools offer a mission-driven focus and/or distinct curricula (e.g., Montessori or Expeditionary Learning). The fact that many charter schools emphasize inclusive educational practices may also be appealing to parents whose children have been placed in a segregated setting in a TPS. Additionally, many charter schools prioritize personalized learning and differentiation, concepts that are complementary to the notion of individualization under IDEA.[22] Some charter schools have also begun to utilize innovative approaches to education such as Universal

[C]harter schools tend to enroll lower percentages of students with disabilities than TPS. An additional area of concern is that charter schools may selectively enroll students with mild disabilities, who are less likely to require intensive (and possibly costlier) instruction and support services.

Design for Learning (UDL) and restorative justice (see Chapter 4).[23]

At the same time, although one of the arguments in favor of the expansion of charter schools has been that these schools foster competition that can result in improvements to all schools,[24] research has shown that the unregulated expansion of charter schools may lead to greater inequities for those students with disabilities who remain in TPS.[25] In particular, because charter schools tend to enroll larger numbers of students with milder disabilities,[26] TPS continue to serve a disproportionate number of students with more significant and costly needs. As a result, TPS districts bear the impact of higher levels of spending associated with educating these students while being unable to reduce fixed operating costs.[27]

This report provides an in-depth overview of the current landscape of the education of students with disabilities in charter schools. The report underscores the widespread variability and heterogeneity that exists across the charter school sector. While some charter schools experience serious challenges with respect to the provision of special education programming and services to their students with disabilities, others have developed innovative educational approaches that can serve as models for all schools. This report recommends that policymakers and interested stakeholders build on the practices used by charter schools that have been successful in meeting the unique learning needs of students with disabilities, while concomitantly addressing areas of concern that have been highlighted in the research and have persisted over many years. Moreover, the report advises stakeholders to keep in mind and address the needs of students with disabilities who do not attend charter schools and instead remain in TPS. These students may experience cuts in their programming as TPS struggle to reconcile a decline in enrollment and revenue without a reduction in fixed operating costs. The seemingly competing interests of charter schools and TPS are not mutually exclusive. Rather, this report proposes a strategy focusing on students with disabilities in charter schools as well as those in TPS as the most effective means by which to move the dialogue forward and to improve educational opportunities for *all* students with disabilities.

Chapter 1 of this report provides background information on charter schools, including an examination of state authorizing statutes, charter school funding, expansion of charter schools, and the concentration of charter schools in large urban cities. Chapter 2 presents an overview of federal legislation pertaining to students with disabilities and charter schools—namely, the ESEA, IDEA, Section 504, and ADA. Chapter 3 discusses issues concerning enrollment and the access of students with disabilities to charter schools. Chapter 4 addresses the provision of special education and related services in charter schools and includes a discussion of model practices as well as a presentation of two case studies of students with disabilities who have attended charter schools. Chapter 5 focuses on two specialized types of charter schools with implications for students with disabilities: disability-specific charter schools and virtual charter schools. Chapter 6 discusses issues pertaining to student outcomes and the accountability of charter schools for the education of students with

disabilities. Chapter 7 examines the potential implications of charter schools for students with disabilities who remain in TPS. Finally, Chapter 8 offers specific recommendations for the implementation of improved policies and practices that can enhance educational opportunities for students with disabilities.

Research Methods

To examine the challenges and best practices associated with the education of students with disabilities in charter schools, this study utilized a mixed-methods approach that included analysis of existing policies and secondary literature, review of quantitative data, and examination of qualitative data.

Policies and Secondary Literature

For the review of policies and secondary literature, we examined relevant statutes, regulations, and administrative guidance at the federal and state levels regarding the education of students with disabilities in charter schools. At the federal level, these materials included statutory and regulatory language of the ESEA, IDEA, Section 504, and the ADA as well as guidance and "Dear Colleague Letters" from the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) and the Office for Civil Rights (OCR). State-level analysis focused primarily on review of state charter school laws. We also examined case law and administrative due process hearings that pertain to students with disabilities and charter schools. In addition, we reviewed in detail experimental studies and articles published in peer-reviewed journals, book chapters, government documents, reports of various organizations, postings on the Internet, and articles appearing in the popular media.

Quantitative Data

We also examined descriptive data pertaining to students with disabilities and charter schools from the Common Core of Data (CCD) of the National Center for Education Statistics (NCES), which collects data on an annual basis from all public schools; the U.S. Civil Rights Data Collection (CRDC) of OCR at the U.S. Department of Education, which collects data every other year from all public schools on a variety of topics—for example, enrollment, educational placement, and discipline—and can be disaggregated by disability and race/ethnicity; and the websites of individual state education agencies (SEAs), which often include report cards of data on individual schools (including charter schools) and districts. In addition, we reviewed relevant data that has been cited in the secondary literature.

Qualitative Data

To gather the perspectives of stakeholders, we conducted six focus groups in different regions across the country—namely, Arizona (two focus groups), California (one focus group), the District of Columbia (one focus group), and Florida (two focus groups). Stakeholders participating in the focus groups consisted of parents of students with disabilities as well as parent advocates who had experience with charter schools. Participants were recruited through the member network of the Council of Parent Attorneys and Advocates (COPAA), as well as through local, state, and national partners.

We also conducted 18 interviews with a variety of stakeholders, including state

department of education officials, charter school teachers and administrators, representatives of disability organizations, representatives of charter school organizations, parents of students with disabilities, and parent advocates. Finally, we conducted two case studies, focusing on the contrasting experiences of two students with disabilities who have attended charter schools. The case studies consisted of in-depth interviews with the students' parents as well as review of available documents and data on the specific schools. The findings from the case studies are presented at the end of Chapter 4.

The focus groups and interviews were all guided by the use of semistructured protocols consisting of open-ended questions. In each instance, data was audio recorded and transcribed. A team of three researchers subsequently analyzed and coded the transcripts. Comments from participating stakeholders are included throughout the report to highlight their personal perspectives and experiences.

Limitations

The sample of participants for the focus groups and interviews was purposefully selected based on stakeholder location and position/role. The two students for the case studies were purposefully selected to illustrate their contrasting experiences. Given the small sample size and purposeful selection of students, the results of the qualitative component of the study provide insight by highlighting stakeholder first-hand knowledge of the issues discussed; they cannot be generalized to the entire population of students with disabilities or charter schools.

Chapter 1: Background and Overview of Charter Schools

Charter School State Statutes

With the addition of Kentucky in 2017, 44 states (plus the District of Columbia and Puerto Rico) have passed charter school laws that authorize the creation of publicly funded, privately governed charter schools. The six states that do not authorize charter schools are Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia.[28] State-authorizing statutes differ significantly, but typically they identify:

- A charter-authorizing entity or entities responsible for overseeing the application process, determining which applicants will be awarded charters, and monitoring and oversight of performance and consistency with the terms of the charter.
- Types of entities eligible to apply for a charter.
- Terms or conditions of the charter.
- Length of the charter (generally three to five years).
- Process for renewal and criteria for revocation or nonrenewal.
- Sources of financial support for charter schools, including relationship to TPS districts and how funds will be distributed.
- The requirement that charter schools must abide by specific federal laws, including those that pertain to students with disabilities.

With the addition of Kentucky in 2017, 44 states (plus the District of Columbia and Puerto Rico) have passed charter school laws that authorize the creation of publicly funded, privately governed charter schools.

Many state-authorizing statutes also specify which state rules and regulations will govern the charter schools or, alternatively, the nature of exemptions that are given to charter

States That Do Not Authorize Charter Schools (2018)

- Montana
- Nebraska
- North Dakota
- South Dakota
- Vermont
- West Virginia

schools, such as whether teachers must be certified or whether schools must follow a standard curriculum or provide transportation for students. The charter school movement has been motivated in large part by a desire for greater autonomy and freedom from existing rules that are perceived as constraining with respect to teachers and pedagogy.[29] State laws vary greatly, but all allow waiver of some state and/or local rules related to schools, with many of these waivers granted automatically.[30]

Types of Charter Schools

Many state-authorizing statutes also specify the various types of charter schools that may be authorized, including whether charter schools may operate only as new schools or may convert from an existing TPS. Charter schools can be independent standalone schools that typically are at a single site or they may operate as schools that are part of a network of charter schools, typically managed by a nonprofit charter management organization (CMO). Alternatively, as permitted by some states, charter schools may operate under contract with a for-profit education management organization (EMO) that provides whole school services (e.g., special education, business operations, personnel management).[31] Only about 15 percent of charter schools in the nation are managed by EMOs, and most are located in just a few states. There are about twice as many charters operated by CMOs, and a declining 59 percent are identified as independent charters. Twenty-one states explicitly allow for the creation of virtual charter schools; some bar them altogether, while other states limit their enrollment.[32] Some states (e.g., Michigan) place a statewide cap on the number (15) of virtual schools that may be chartered at any single time but do not place a cap on the number of virtual charter schools that may be authorized. Moreover, 23 state statutes impose a statewide cap on the number of charter schools.[33]

State charter laws further define how charter schools operate in each state. While some states authorize charter schools to be their own LEA, other states require them to be part of an LEA. Moreover, still other states provide for charter schools to operate as their own LEA under certain circumstances or allow them to choose their own legal status. Whether a charter school operates as its own LEA has far-reaching implications. It has the effect of holding the charter school to the same obligations and responsibilities as all other TPS districts. For those charter schools that are part of an LEA, however, the TPS district remains responsible for ensuring the delivery of specialized instruction and related services necessary to preserve the rights of the charter enrollees with disabilities to a free appropriate public education (FAPE) consistent with IDEA, Section 504, and ADA (see Chapter 4).

Closer examination of the individual state-authorizing statutes reveals that their respective latitudes and constraints have a direct impact on the type, expansion, and growth of charter schools in the state.

Closer examination of the individual state-authorizing statutes reveals that their respective latitudes and constraints have a direct impact on the type, expansion, and growth of charter schools in the state. For example, some state charter school statutes require that authorizers

give preference or consideration to applications designed to increase the educational opportunities of at-risk pupils,[34] target members of special population groups,[35] locate charter schools in districts in which overall student performance on the state assessment system is in the lowest 10 percent statewide,[36] or propose a school oriented to high-risk students and the reentry of dropouts.[37] Some state statutes focus on serving students from distressed areas or urban districts with underperforming TPS. Policies such as these are designed to encourage the development of schools focused on serving students who have not succeeded in TPS. They may also, however, because of their inflexibility, have the unintended effect of making it more difficult to create purposefully integrated charter schools.

State charter school laws vary in the extent to which they refer to students with disabilities. As noted earlier, some laws explicitly state that charter schools must abide by specific federal and state laws, including those pertaining to students with disabilities. The New York law also requires charter school authorizers (i.e., Board of Regents or Board of Trustees of the State University of New York) to develop enrollment and retention targets for students with disabilities, English Learners (ELs), and students eligible for free and reduced lunch that "are comparable to the enrollment figures of such categories of students attending the public schools within the school district."[38] A charter school must demonstrate that it will meet or exceed these targets in its initial application,[39] application for renewal,[40] and

annual report.[41] One of the grounds for charter termination in New York is a school's repeated failure to meet or exceed such targets.[42]

Because of the variability among state statutes, several organizations and individuals[43] have developed frameworks for evaluating or grading state charter school laws. These rankings include annual reviews of state charter school laws conducted by the Center for Education Reform (CER)[44] and NAPCS, which developed an updated model in 2016.[45] Against this model, NAPCS annually ranks the public charter school laws by using a score based on 21 essential metrics, including flexibility, accountability, and equity.[46] Under the NAPCS's rating system, states with greater flexibility (i.e., no cap, no required local district authorizer, multiple alternative authorizers, and higher numbers of charters) receive high rank scores compared to states with a local district authorizer, few authorizers, and a cap on the number of charter schools.[47] None of these grading systems explicitly consider the needs of students with disabilities; nor do they address providing specialized instruction and supportive services as necessary to receive FAPE under IDEA by the charter school. Similarly, the grading systems do not address the right of students to be free from discrimination and to receive comparable aids, benefits, or services to those provided to their peers without disabilities under Section 504 and ADA (see Chapter 2). The National Center for Special Education in Charter Schools (NCSECS) has, however, published a model policy guide, which represents a proactive initiative to help states with their varied chartering systems to identify issues and mitigate potential harm to students with disabilities who may be affected by policies and practices with unintended consequences.[48]

Authorizing Entities

Under state law, authorizing entities are delegated authority to act as gatekeepers to determine which charter schools should be allowed to open. Each state has its own process for authorization of charters.[49] Sixteen states grant this authority to a single entity, while the rest permit multiple authorizers to fill that role. California, for example, has 327 certified authorizers, specifically the California Department of Education Charter Schools Division, plus 326 LEAs.[50] Wisconsin has over 100 authorizers, which include two institutions of higher education (two branches of the University of Wisconsin), one noneducational government entity (Milwaukee Common Council), plus approximately 100 LEAs.[51]

Each state has its own process for authorization of charters.

In 21 states, the state education agency (SEA), for example, the Connecticut Department of Education, serves as the state-authorizing body. All authorizers are responsible for monitoring the charter schools that they authorize, in addition to overseeing the charter application process. When the authorizer is an SEA, these agencies also have independent legal responsibilities for ensuring fairness, equity, and quality of education programs for all eligible children and youth in the state under applicable state and federal laws, including ESSA and IDEA. The SEA is responsible under IDEA for the monitoring and oversight of special education to ensure that each educational program in the state meets the educational standards of the

state.[52] In addition, the SEA is responsible for providing special education and related services directly to children with disabilities if the LEA is unable or unwilling to provide FAPE or unable to be consolidated with another LEA to establish and maintain a program to provide FAPE.[53] In its dual role as authorizer and SEA, the SEA's duties to monitor and provide oversight of the state's charter school application must incorporate these concerns related to capacity to serve effectively students with disabilities.

LEAs comprise the majority of all authorizers. In 2014, of the 1,050 authorizers overseeing 6,716 charter schools, 950 were LEAs.[54] The majority of LEAs charged by state law with authorizing power oversee a limited number of charter schools.[55] Some states delegate authority to an independent charter board; others rely on institutions of higher education, which comprise about 4.5 percent of all authorizers; and still others authorize the mayor's office (e.g., Indianapolis, Indiana), city council, or a nonprofit organization. When charter school applicants are unsuccessful in obtaining a charter, most states provide some form of an appeals process.

In addition to choosing among charter applicants, the responsibilities of authorizing bodies may, depending on the state, include overseeing charter school performance and ensuring compliance with the goals and terms of a charter and with various federal and state laws. The way in which the authorizer carries out its responsibilities with respect to such monitoring and oversight may vary depending on whether the authorizer is an entity other than the SEA or LEA. For example, under the confidentiality provisions of the Family Educational Rights and Privacy Act (FERPA) and IDEA, authorizing entities that are not the SEA or LEA would likely not have access to students' educational records, including individualized education programs (IEPs).[56] Authorizing entities may also be responsible for ensuring the financial viability of the charter school; implementing a corrective action plan and, in some instances, ensuring that charter school boards are independent from charter schools' for-profit management; and ensuring that the local community has representation on the board of directors of the charter school. Approximately 50 percent of authorizers oversee a single school, while others oversee from 2 to 99 schools, and at least eight authorizers are responsible for more than 100 schools.[57]

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Despite the important gatekeeping role and range of responsibilities delegated to authorizers, 23 state charter-authorizing statutes do not include quality standards to help guide the school authorizing process.[58] Moreover, 18 states do not require transparency; the authorizer is not required to report on the performance of the schools under its umbrella.[59] Only 13 states have provisions for imposing sanctions on authorizers that fail to meet professional standards or that oversee (or fail to oversee) charter schools persistently unable to attain standards.[60] This is a matter of

import to students with disabilities, which, as a subgroup, is too often identified as unable to attain the performance standards set for all. According to a 2015 report by CER, 20 percent of all charter closures result from the school's failure to meet student performance standards, and about a quarter of all closures are the result of mismanagement.[61] Of the 272 charter schools that closed in 2015–2016, 53 percent were independent charter schools, 34 percent were managed by a CMO, and 13 percent were managed by an EMO.[62]

While there appears to be widespread consensus that high-quality charter authorizers lead to high-quality charter schools,[63] an understudied piece of the reform process is the authorizers' decision-making process for differentiating which, among charter school applicants, are allowed into the market.[64] One report by the National Association of Charter School Authorizers (NACSA) described how the large number of authorizers in some states had encouraged "authorizer shopping" by charter applicants hoping for less critical scrutiny of their application.[65] A recent study by NACSA relies on case studies in an attempt to differentiate practices by quality authorizers and to look at student outcomes in relationship to practices of authorizers of high-performing portfolios of schools.[66]

23 state charter-authorizing statutes do not include quality standards to help guide the school authorizing process. . . . 18 states do not require . . . the authorizer . . . to report on the performance of the schools under its umbrella. Only 13 states have provisions for imposing sanctions on authorizers that fail to meet professional standards or that oversee (or fail to oversee) charter schools persistently unable to attain standards.

Charter School Closures

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- Approximately 25% of all closures are the result of mismanagement.
- Of the 272 charter schools that closed in 2015–2016:
  - 53% were independent charter schools.
  - 34% were managed by a CMO.
  - 13% were managed by an EMO.

Funding of Charter Schools and Students with Disabilities

Charter schools, in a manner similar to TPS, are funded through a combination of federal, state, and local funds.[67] While these complex and often confusing finance schemes vary from state to state—and sometimes even within states—the state systems share common elements in how they fund charter schools based on the number and characteristics of students that charters enroll. The following section explores those commonalities and notable differences, as they

relate to foundation funding and funding for special education.

Foundation Funding

States typically provide charter schools with foundation funding, a baseline level of funding at a per-pupil rate derived in a variety of ways.[68] Charters in some states receive the same per-pupil rate as the state provides TPS. Other states provide charters with per-pupil funding allocations calculated from the statewide or district average for per-pupil base funding. Not all charters, however, are able to access local funds.[69] A few states determine per-pupil base funding from the revenue of the charter authorizer. Other variables may also factor into the amounts calculated.[70]

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The National Conference of State Legislatures identifies different types of state foundation funding formulas for charter schools based on one of the following three categories: (1) per-pupil revenue of the student's resident school district, (2) per-pupil revenue of the authorizer, or (3) statewide per-pupil allocation.[71]

The most common funding formula, which is used by 29 states, is derived from per-pupil revenue of the authorizer—typically, the local school district.

Eight states (Massachusetts, Delaware, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, and Rhode Island) fund their charter schools based on the per-pupil revenue of the districts in which the student enrollees reside.[72] These funds follow the student to the charter school and can vary significantly from pupil to pupil because the amount is based on state and local property taxes and is dependent on whether the student lives in a high- or low-property tax area.[73] The advantage to the student is that he or she has flexibility and can carry the same amount of public funds wherever he or she chooses to enroll. The trade-off in using this approach is that in states with open enrollment, the state policy creates an incentive for charter schools to encourage enrollment of students from high-revenue districts.[74]

The most common funding formula, which is used by 29 states, is derived from per-pupil revenue of the authorizer[75]—typically, the local school district. This formula is similar to the per-pupil revenue also of the district. As funding is based on the district's per-pupil revenue, this approach also creates an incentive for charter schools to seek authorization by a high-revenue district.[76]

The third formula—one that is used by the District of Columbia and five states—is based on statewide per-pupil expenditure. Under this approach, charter schools receive the same funding regardless of where they are located within the state or wherever the student resides.[77] The trade-off in using this statewide per-pupil approach is that it decreases incentives for charter schools to serve students in high-need urban districts and may result in insufficient funds to educate economically disadvantaged students.[78]

The nature of charter school foundation funding differs among states not only with respect to the type of funding formula used but also the source of distribution.[79] Charter schools receive funding from their local school districts in only 17 states and from both the local district and the state in 16 states. In six states, charter schools receive those funds directly from the state; and in one state, Michigan, the authorizing statute identifies the authorizing agency as the source for funding charter schools.[80]

Funding for Special Education

The manner in which special education dollars are accessed by charter schools depends primarily on whether the charter school functions as an independent LEA or as part of an LEA. If, on the one hand, the charter operates as its own LEA, then federal and state dollars allocated for students with disabilities who are enrolled in the charter school flow directly from the SEA to the charter school. On the other hand, if the charter school operates as part of or within a traditional LEA, the manner in which special education funds flow to the charter school varies by state and may further be determined based on a contract or other arrangement between the charter school and the LEA of which it is a part.[81] Although the LEA retains responsibility for overseeing the delivery of special education services to students with disabilities enrolled in the charter school, there are multiple ways to deliver these services. As a result, the special education funds may be retained by the LEA or may be provided directly or as reimbursement to the charter school for providing the special education services.[82]

The manner in which special education dollars are accessed by charter schools depends primarily on whether the charter school functions as an independent LEA or as part of an LEA.

With respect to state-level special education funding, most states use some type of funding formula. These formulas vary by state. Many states have adopted a weighted funding formula that increases the per-student with a disability allocation based on severity of disability, type of placement, or student need. Typically, these weighted formulas are based on a single factor such as diagnosis or multiple factors such as diagnosis and placement or services provided, with increased funding based on the corresponding level or tier assigned. Other states—for example, Massachusetts and New Jersey—use a census-based formula to set a fixed average per-pupil dollar amount of funding based on the state average rate of disabilities. Still other states rely on (1) a hybrid formula that combines the two approaches; (2) a percentage reimbursement of actual expenditures; or (3) allocation of funding based on resource levels, for example, number of teachers, paraprofessionals, student/staff ratios, and specialists, based on number of students and/or type of disability.[83]

Many states also allocate categorical funds based on certain characteristics of students enrolled in LEAs and individual schools (e.g., economically disadvantaged, children receiving special education, ELs, First Language Not English, Economically Disadvantaged/Free Lunch), elementary, middle, or high school.

Most states treat charter schools the same as TPS, with targeted dollars based on the student's classification following the student, while other states (e.g., California) provide funding to charter schools for some but not all the categories funded for TPS.[84]

Students with disabilities who have more significant needs can be expected to require more intensive services than their peers and at much greater costs. To help LEAs with extraordinary costs pay for the most expensive special education services, some states set up a risk pool or high-cost reserve that LEAs may apply for when required to provide special education services that meet state-determined criteria for "high need."[85] If a state chooses to establish a risk pool, it may use up to 10 percent of the funds it reserved for state-level activities under IDEA.[86] Funds distributed from the risk pool must only pay for "direct special education and related services" for high-need children with disabilities.[87] State legislatures may also choose to appropriate state funds to supplement or substitute for the federal funds. The demand for "high-risk/high-need" funds typically exceeds the state appropriation, which often changes with the economy and is not guaranteed. Charter schools that operate as LEAs may access these funds in a manner similar to TPS districts. Charter schools that operate as part of a district typically work with their LEA to secure these dollars if they serve students with needs that meet state requirements.

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Expansion of Charter School CMOs

According to the CCD of NCES, between 2000–2001 and 2015–2016[88] the number of public charter schools nationwide increased from 2,000 to 6,900.[89] During this time, the percentage of public schools identified as charter schools increased from 2 to 7 percent, while the percentage of those identified as TPS decreased from 98 to 93 percent.[90] The percentages of public charter schools serving 300 to 499, 500 to 999, and 1,000 or more students each also increased during these years.[91]

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Although the rate of charter school expansion slowed to about 2 percent annually by 2016,[92] the percentage of students enrolling in charter schools across the country continued to increase, though also at a reduced rate.[93] While freestanding LEA charters now serve a declining proportion of charter school students, that enrollment has noticeably shifted to CMOs and EMOs that manage multiple schools and networks of schools.[94] From 2010 to 2014, the percentage of solo freestanding charter schools declined from 83 to 61 percent, and the percentage of charter

schools that are part of a CMO or EMO network grew from 12 and 4 percent, respectively, to 24 and 15 percent, respectively,[95] with the EMOs' student share (20 percent of total charter school enrollment) notably greater than its school share.[96]

In a study of CMO replicability, researchers described this CMO growth as an "explosion"[97] and suggested that it might be responsive to a few educational policy trends. First, individual charters did not experience the large-scale impact initially anticipated by charter proponents. Second, the research on student academic achievement in individual charter schools was mixed,[98] and freestanding schools had not proven to be the models of innovation in instructional design and laboratories of reform promised in the state charter laws.[99] As Christopher Lubienski subsequently observed, the most significant evidence of innovation may have been the creation of the charter school itself.[100] In contrast, a study of the Knowledge Is Power Program (KIPP), CMO was of sufficient scale to reveal academic gains at a number of KIPP schools—with gains sufficient to begin to close the achievement gap based on race and income.[101]

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In an effort to replicate "what works," Farrell, Wohlstetter, and Smith sought to use data collected from a national study of 25 CMOs engaging in scale-up to identify factors restricting or facilitating expansion. Among other indicia restricting growth and replication, the researchers identified the inability of charter schools to provide weighted advantages for different applicants (i.e., they could not selectively target members of a desired population group(s) by according them more weight); limited access to grant monies being allocated to charter "start-ups" but not conversion schools; averse state charter laws, such as those with caps limiting the number of charters and low per-pupil funding based on state formula; limited access to suitable physical facilities; issues of autonomy between the CMO governing board that oversees the needs of the network versus the individual boards responsible for school-level decisions; and size, role, and responsibilities of the CMO's central management office. Many of the charter school networks that were examined represent sophisticated organizations responsible for managing more schools than the average-sized school district. For example, Success Academy in New York City has more than 40 schools.

Many of the charter school networks that were examined represent sophisticated organizations responsible for managing more schools than the average-sized school district.

KIPP, the nation's largest charter school network, has more than 150 schools in 21 states throughout the country.

The authors reported that a substantial infusion of philanthropic funding, estimated at more than a half billion dollars,[102] facilitated replication and contributed to the rapid growth and expansion of CMOs in the study.[103] While acknowledging trade-offs, such as the requirement in NCLB for employing "highly qualified teachers" that some CMOs found burdensome and impeding their autonomy, Farrell and colleagues identified the generally positive role of federal legislation in aiding in the expansion of CMOs. For example, the researchers identified other provisions of NCLB that aided in the growth of CMOs as those that required TPS to align the curriculum with the state's established standards; gave students in underperforming schools an option to transfer to higher performing schools; and provided new, targeted funds for charter school development and expansion. Similarly, Farrell and colleagues found that state law and policies made a difference in facilitating CMO growth (e.g., those relating to availability of facilities or facilities funding, allowing for multiple authorizers, and providing a right to appeal an application denied by a local school district).

Despite the increased number of CMOs, researchers determined that the growth of students who received special education in a CMO was only slightly stronger than TPS or non-CMO charter students. Research is still limited on the performance of students with disabilities who receive special education while enrolled in CMO charters.[104] These findings are consistent with a separate analysis by the Center for Research on Education Outcomes (CREDO) (2013) to determine if the effects of attending a CMO-affiliated school were different for students with disabilities. After first experiencing a decline in academic performance, students within the categorical populations who remained in a CMO for four years demonstrated growth. The analysis showed that "while on average attending a CMO affiliated charter is beneficial for SPED [special education] students, the effect is small relative to the SPED/non-SPED gap."[105]

Other researchers have raised concerns that in comparison to TPS, CMOs and EMOs spend a greater percentage on administrative costs than on instructional staff.[106] In addition, researchers have expressed concerns about poor monitoring and oversight by some CMO and EMO chains and about for-profits lacking incentives to meet the needs of students with more significant disabilities or ELs, including those who need special education.[107] Other researchers expressed concern that with the substantial growth of CMOs, in particular, their private boards risk becoming further removed from the school communities they serve.[108]

Concentration of Charter Schools in Large Urban Cities

Because charter schools target areas of high density and underperforming TPS, charter schools represent a higher percentage of urban schools than TPS (56 percent versus 25 percent, respectively), and a smaller percentage of public schools located in rural (11 percent versus 29 percent, respectively) or suburban (26 percent versus 32 percent, respectively) areas.[109] The disparity is not surprising given that the impetus for creation and replication of charter schools

was driven by concerns about the quality of underfunded TPS based on state assessments of disproportionately low-income urban students.

Charter saturation can be measured by the number of students and proportion of public school enrollment. By 2016–2017, four large urban school districts enrolled more than 60,000 charter school students: Los Angeles, New York City, Philadelphia, and Miami-Dade. More than 163,000 students attended charter schools in Los Angeles—the highest number for any district in the country. Between 2015–2016 and 2016–2017, the charter school enrollment of Los Angeles increased by more than 7,000 students—a growth rate of nearly 5 percent. According to data collected by NAPCS, in the 2016–2017 school year, 19 school districts had at least 30 percent of their public school students attending charter schools. The district with the largest *percentage* of students enrolled in charter schools was New Orleans (with 93 percent).[110] The top 10 districts with the largest numbers of charter school students served 22 percent of all charter school students nationwide.[111]

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Other research indicates that charters enroll proportionately fewer special needs students than TPS, which raises concerns about the accessibility of these schools to all students.[112] The extent to which urban charters are serving students with highest need (students with disabilities who receive special education, ELs, and low-income students) has been relatively underexamined. The CRDC provides limited insights. However, because state data provides composites of all students identified as having a disability under IDEA, the data masks whether charter schools enroll predominantly students with milder needs who typically receive specialized instruction in inclusive classrooms.

As suggested by a study of Detroit, further research and analysis is necessary to examine whether and to what extent charter operators seek to locate schools "to target students with less risky socioeconomic and demographic backgrounds."[113] The correlation between the effects of sustained exposure to poverty and children with disabilities is well established. Another study of charter school locations across New York State found that where charter schools were sited was influenced by specific financial factors: (1) Schools in more densely populated areas with high operating expenses per pupil received higher charter payments, (2) higher achieving children linked to a demographic of adults with higher levels of education and higher incomes, and (3) there were fewer high-need students with disabilities in charter schools than in nearby

traditional public schools.[114] Confirming families and advocates' descriptions, researchers Bifulco, Ladd, and Ross (2009) found that charter schools in Durham, North Carolina, were used by educated white parents to leave the TPS, which enrolled proportionately higher percentages of children from less educated black families.[115]

Additional research by Frankenberg and associates (2010) similarly found that instead of serving as tools for innovation through integration, charter schools are, to the contrary, educating students more stratified by race, socioeconomic status, and disability.[116] Gary Orfield of the Civil Rights Project at the University of California, Los Angeles (UCLA), described the charter movement as having "flourished in a period of retreat on civil rights."[117] He urged charter school policymakers and leaders to revive and embrace the vision of historically excluded groups of students being brought into the mainstream as a defining characteristic of charter schools: "Federal policy should make this a condition for charter assistance and support help for all charters to become what the best ones already are."[118]

Chapter 2: Federal Legal Requirements Pertaining to Students with Disabilities in Charter Schools

In terms of federal obligations, charter schools, as publicly funded schools, are indistinguishable from traditional public schools. These obligations include, for the most part, requirements under Title I-Part A and Title IV-Part C of ESEA, as amended by ESSA; IDEA; and the civil rights statutes, Section 504 and the ADA.

ESEA as Amended by ESSA

Title I-Part A of ESEA, amended and replaced by ESSA, focuses on improving academic achievement for disadvantaged students. Title I allocates for distribution to schools and districts about $16.5 billion based on the number of students meeting federal poverty standards.[119] Use of these funds is prescribed by law and regulations, subject to supplement, not supplant, requirements and state and local maintenance of effort requirements. Much of the allocation to the states for Title I funds is formulaic, but many charter schools, as TPS, receive these funds to improve educational achievement.

In terms of federal obligations, charter schools, as publicly funded schools, are indistinguishable from traditional public schools.

Title I-Part A mandates that all public school students shall be provided with a rigorous curriculum aligned to state-adopted standards for college and career readiness. It also mandates that the academic achievement standards include the same knowledge, skills, and levels of achievement expected of all public school students in the state, with the sole exception of those students who are identified with the most significant cognitive disabilities.[120] These academic standards apply to the vast majority of students with disabilities in charter schools. Title I also requires each state to establish an accountability system that includes ambitious state-designed long-term goals, with regular measurements of interim progress toward meeting such goals for all students and separately for students with IEPs and each subgroup of students in the state for improved academic achievement, as measured by proficiency on the annual assessments and high school graduation rates.[121]

Federal dollars under Title I-Part A provide leverage for improving charter schools because SEAs have significantly greater flexibility under the amended ESSA than the prior iteration of ESEA under NCLB. With this flexibility and heightened level of autonomy for the states and, hence, for LEAs and charter schools, come expectations for improved educational outcomes

for all publicly funded students, including students with disabilities being educated in charter schools. In accepting funds under ESEA, the SEA provided assurances that the public chartering agency, or authorizer, of any charter school that receives funds under the state program adequately monitors each charter school under the authority of such agency in recruiting, enrolling, retaining, and meeting the needs of all students, including children with disabilities and ELs.[122]

The state also assures that it will promote quality authorization and work to improve the authorized public chartering agency's ability to monitor charter schools authorized by the agency by (1) assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition; (2) reviewing the schools' independent, annual audits of financial statements and ensuring that any such audits are publicly reported; and (3) holding charter schools accountable to the academic, financial, and operational quality controls agreed to between the charter school and the authorized public chartering agency involved, such as through renewal, nonrenewal, or revocation of the school's charter. In addition, the SEA must assure that each charter school receiving Title I funds from the SEA will make its annual state report card publicly available, including on the website of the school, to help parents make informed decisions about the education options available to their children. This information should be transparent; it is of interest to all parents and especially to parents of students with disabilities because it includes information on the educational program; student support services; parent contract requirements, if any; financial obligations or fees; and annual performance and enrollment data for each subgroup of students.[123]

Federal dollars under [IDEA] Title I-Part A provide leverage for improving charter schools because SEAs have significantly greater flexibility under the amended ESSA than the prior iteration of ESEA under NCLB.

Title IV-Part C

Competitive federal grants under Part C of Title IV, the Charter Schools Program (CSP), are also available for SEAs, or charter developers, if the SEA declines to seek funds for new development and implementation of public charter schools. CSP also provides grants for designing, improving, and expanding charter schools on a systemic level. If the charter school grantee is not part of an LEA, authorizers bear the responsibility to ensure that the grantee provides a high-quality public education consistent with Title I and, as TPS, provides an annual report concerning student performance and growth.[124] Significantly, the Secretary of Education has authority to waive statutory and regulatory provisions when doing so will encourage support for the program.[125] For the last 25 years, the U.S. Department of Education has used this authority to earmark funds needed to support existing charter schools and to create new charter schools in areas seriously affected by natural disaster, including, for example, New Orleans, Florida, and Puerto Rico.

Although the Secretary of Education sought a significantly higher level of funds to support school choice in FY18 (fiscal year 2018), the U.S. Department of Education awarded $253 million in discretionary funds for expansion of charter schools in September 2017. These funds were distributed to nine state agencies ($145 million) and 17 nonprofit CMOs ($52.4 million) for replication and expansion of charter schools, and $52.25 million was distributed to six nonprofit organizations and two state agencies as grants to permit eligible entities to enhance the credit of charter schools so that the charter schools can access private-sector and other nonfederal capital in order to acquire, construct, and renovate facilities at a reasonable cost. The Administration's proposed budget for FY19 once again included significant increases for school choice. Although lawmakers boosted charter school funding, the increase up to $400 million[126] was substantially short of the request for $500 million.[127]

[T]he U.S. Department of Education awarded $253 million in discretionary funds for expansion of charter schools in September 2017.

As enacted, ESSA includes new avenues for states to explore school choice options, including specifically for students with IEPs, but *Education Week*, which has reviewed the state plans, reports that few states are taking advantage of them. As ESEA was reauthorized and amended by ESSA, the law includes a provision authorizing up to 50 districts to participate in a pilot program designed to facilitate operation of a school choice program. It lets them use a weighted-student-funding formula that is tied to individual students whose education costs are greater because they are ELs, have a disability and need special education, or live in poverty, and to combine federal, state, and local funds into a single stream that could follow them to charter or virtual schools. However, the districts that choose to participate in the pilot are not required to use the weighted funds to support school choice, and according to *Education Week*, few are.

As enacted, ESSA includes new avenues for states to explore school choice options, including specifically for students with IEPs, but Education Week*, which has reviewed the state plans, reports that few states are taking advantage of them.*

A number of states are continuing to rely on the strategy from the previous mandatory provision under NCLB to allow students enrolled in struggling schools (i.e., those that fall within the lowest 5 percent in the state based on state assessments combined with a low graduation rate) to transfer to better performing schools, with priority given to low-achieving economically disadvantaged students. According to *Education Week*, at least three states, Louisiana, New Mexico, and New York are requiring that students attending schools that consistently underperform from two to four years be provided the option to transfer.[128] A dozen states—Arizona, Florida, Georgia, Indiana, Louisiana, Minnesota, New Mexico, Nevada, Rhode Island, Tennessee,

Texas, and Utah—identify restarting a perennially low-performing school as a charter school as a permissible potential intervention. Some of these states provide it as one option of many, while others use it as a last resort.[129] Meanwhile, Texas has identified opening new charter schools as a school improvement strategy.[130]

IDEA

IDEA mandates that all eligible students with disabilities in need of special education and related services receive FAPE in the least restrictive environment (LRE). Each such student is entitled to receive such "specially designed instruction . . . [t]o address the unique needs of the child that result from the child's disability; and . . . [t]o ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children."[131] IDEA also has several provisions pertaining to IEPs that require that the child be involved and make progress in the general education curriculum—that is, the same curriculum as that provided to students without disabilities.[132]

IDEA, with an annual allocation of about $13 billion, is the second-largest source of federal dollars in education for states.

IDEA, with an annual allocation of about $13 billion, is the second-largest source of federal dollars in education for states. IDEA funds flow by formula to SEAs, which must provide assurances that charter schools provide equitable access to eligible children and youth with disabilities and their families; directly receive IDEA funds and/or appropriate support services, as required by IDEA and by the Charter School Expansion Act; and ensure that students with disabilities in charter schools have access to FAPE to the maximum extent appropriate, together with students without disabilities. *Charter school*, as used in IDEA, has the meaning of "charter school" in ESEA.[133] Consistent with this definition, IDEA regulations identify three options available to charter schools seeking IDEA funds: (1) Charter schools may be public schools of an existing LEA;[134] (2) charter schools may be autonomous LEAs;[135] or (3) charter schools may be nonprofit entities that are neither LEAs nor schools of an LEA.[136]

For charter schools that are part of an LEA, IDEA requires the LEA to submit a plan that provides an assurance to the SEA that the LEA will (1) serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, "including providing supplementary and related services on site at the charter school to the same extent that the LEA has a policy or practice of providing such services on the site to its other public schools" and (2) provide IDEA funds to those charter schools in the same manner as it provides IDEA funds to its other schools, "including proportional distribution based on relative enrollment of children with disabilities" and "at the same time that the LEA distributes other federal funds to its other public schools, consistent with the State's charter school law."[137] An LEA is not required to provide IDEA funds to a new or expanding charter school that is a public school within the LEA if the LEA does not provide IDEA funds to other public schools within the LEA.

For a charter school that is an LEA to be eligible to receive direct IDEA funding from its SEA, it must, among other requirements, have in effect policies, procedures, and programs that are consistent with the state's policies and procedures (e.g., related to child find, conducting individual evaluations, placement of children in LRE and availability of a continuum of alternative placements, development and implementation of IEPs, and provision of transportation as a related service).[138] Moreover, while IDEA specifies that SEAs may require an existing LEA to join with another LEA if it is determined that the LEA "will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities," an SEA may not require a charter school LEA to combine with another LEA unless it is "explicitly permitted to do so under the State's charter school law."[139]

The U.S. Department of Education's OSERS has explained that if the school does not currently offer the necessary special education or related services to provide FAPE to a particular student, the charter school has several options: It could develop a new program of services on its own in order to provide the services directly; it could, consistent with the state charter school law, contract with a public or private provider, including another LEA, to provide the special education and related services; or it could arrange for some other way to provide the services.[140] Alternatively, the charter school operating as an LEA could place the child in a private school at public expense in order to ensure the provision of FAPE.[141] An additional option would be for the charter school/LEA to "seek to use a state's LEA high cost fund described in 34 C.F.R. § 300.704(c) to help defray the cost of educating a particular high need child or high need children with disabilities, if the State has exercised its option to reserve 10 percent of the funds that the State reserves for other State-level activities for such a fund." The school may not, however, refuse to provide the necessary services to the student.[142]

For a charter school that is not an LEA that receives funding under 34 C.F.R. 300.705 or a school that is part of an LEA receiving funding under 34 C.F.R. 300.705, the SEA is responsible for ensuring that the rights of all students are met, though that does not preclude the SEA from assigning initial responsibility for such oversight to another entity.[143] The statute and regulations are clear, however, that "the SEA must maintain the ultimate responsibility for ensuring compliance with this part."[144]

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Consistent with U.S. Department of Education policy, for-profit charter schools cannot receive IDEA funds; only schools that are nonprofit entities are eligible to receive IDEA funding,[145] and this includes charter schools.[146] This policy does not preclude an independent nonprofit charter school from contracting for educational services, including special education instruction and supportive services and/or operational services from a for-profit or nonprofit CMO. Moreover, it is to be noted that in 2006, the Ninth Circuit held that for-profit charters in Arizona were ineligible for special education

funding under IDEA and ESEA because the two laws specify that the funding must go to nonprofit schools.[147] One commentator has explained that this decision could have additional implications because the definition of a "for-profit charter school" is subject to interpretation and complicated by the common practice of nonprofit owners contracting with for-profit management organizations.[148] No other circuit courts have addressed the question. However, as described earlier and perhaps in response to the legal developments, there are relatively few "for-profit" charter schools; many states prohibit them. Instead, "for-profit" entities typically operate as EMOs contracting, for a fee, the provision of whole school services (e.g., chartering, hiring personnel, budget management, special education, support services) with the private boards of independent charter schools, CMOs, or the private boards of charters within the portfolio of the CMO.

As TPS, charter schools may only use IDEA Part B funds to pay the excess costs of providing special education and related services to children with disabilities; and to supplement, and not supplant, state, local, and other federal funds. In addition, except as provided in 34 CFR §§ 300.204 and 300.205, funds awarded to LEAs (including charters acting as LEAs) under Part B of IDEA may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local, or state and local, funds below the level of those expenditures from the same source for the preceding fiscal year.[149] Moreover, children with disabilities attending charter schools and their parents retain all rights under IDEA. Because these are publicly funded schools and the SEA (as all states) has accepted funds under this grant-in-aid statute based on assurances that all eligible children and youth with disabilities in the state shall be provided FAPE, even if the charter school receives no IDEA Part B funds, children with disabilities enrolled in the charter school retain their right to FAPE consistent with IDEA.

Charter schools, as public schools, must similarly meet these mandates. Moreover, when charter schools serve as their own LEA, as is often the case, they assume the full, independent fiscal and logistical burden for providing FAPE in the LRE. This legal responsibility is noteworthy given the enormity and likely impossibility of the task for most freestanding, independent charter schools acting as an LEA and IDEA's so-called charter school exception. While IDEA expressly encourages an SEA to "require [an LEA] to establish its eligibility jointly with another [LEA] if the [SEA] determines that the [LEA] . . . will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities,"[150] the "charter school exception" excludes charter schools from this provision, saying that an SEA cannot require charter schools to combine with other LEAs unless "explicitly permitted to do so under the State's charter school law."[151] The SEA's duty and ultimate responsibility, however, remain unchanged as applied to students with disabilities enrolled in charter schools within the state. Regardless of

[E]ven if the charter school receives no IDEA Part B funds, children with disabilities enrolled in the charter school retain their right to FAPE consistent with IDEA.

the legal status of the charter school (LEA or non-LEA), the SEA maintains ultimate responsibility for overseeing the educational programs administered to students with disabilities within the state, including programs for students with disabilities in charter schools.[152] The SEA is responsible for ensuring that the requirements of IDEA are being met.[153] Moreover, if a charter school operating as an LEA is unable or unwilling to be consolidated with another LEA to establish and maintain a program to provide FAPE, the SEA is responsible for providing or having provided direct services to the affected children.[154]

Parents of students with disabilities who are attending charter schools have the same rights under the procedural safeguards section of IDEA—including the right to request a due process hearing for violation of FAPE—as other parents.[155] In addition, parents whose children attend charter schools can utilize the state complaint procedures, which states are required to establish under IDEA, for potential violations.[156]

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Section 504 and the ADA

Section 504 states that "no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[157] Title II of the ADA extends this antidiscrimination mandate to "all activities of State and local governments regardless of whether these entities receive Federal financial aid."[158] Public schools are considered state entities; therefore, charter schools cannot discriminate against students with disabilities, including by type of disability. The nondiscrimination provision encompasses all school policies and practices. Because Section 504 and Title II are civil rights statutes, their reach is broader than that of IDEA.

Students with disabilities who qualify under Section 504 and Title II are those [who (1) have a physical or intellectual disability that substantially limits one or more major life activities, (2) have a record of such a disability], or (3) are regarded as having such a disability.[159] All students who are served under IDEA are automatically protected under Section 504 and Title II.[160] At the same time, because the definition of disability under Section 504 and Title II is broader than that under IDEA, some students with disabilities may be protected under these disability civil rights statutes but may not qualify under IDEA. Section 504 also requires school districts to provide qualified students with FAPE.[161] FAPE under Section 504 is defined differently than FAPE under IDEA as the provision of regular or special education and related aids and services designed

Because Section 504 and Title II [of the ADA] are civil rights statutes, their reach is broader than that of IDEA.

to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities.[162]

Under the broad prohibition against discrimination, Section 504 and Title II prohibit schools from engaging in discriminatory actions that deny qualified students with disabilities comparable aids, benefits, and services.[163] For aids, benefits, and services to be "equally effective," they must provide individuals with disabilities with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as students without disabilities.[164] Section 504 and Title II also prohibit school districts from using discriminatory "criteria or methods of administration."[165] The term *criteria* refers to "written or formal policies," while the term *methods of administration* refers to "actual practices or procedures." These requirements apply to all aspects of the operation and functioning of charter schools.[166]

Under the broad prohibition against discrimination, Section 504 and Title II prohibit schools from engaging in discriminatory actions that deny qualified students with disabilities comparable aids, benefits, and services.

Parents whose children qualify under Section 504 and attend charter schools also have rights with respect to the procedural safeguards section of Section 504.[167] In addition, any individual may file a complaint of discrimination under Section 504 or the ADA with the U.S. Department of Education's OCR.[168] Guidance issued in 2016 by OCR and OSERS discussed in detail the rights of students with disabilities with respect to charter schools under federal civil rights laws and IDEA.[169]

Chapter 3: Access to Charter Schools: Recruitment, Enrollment, and Retention of Students with Disabilities

As noted, under Section 504 and Title II of the ADA, children with disabilities must be given an equal opportunity to access charter schools and may not be excluded on the basis of their disability.[170] Moreover, charter schools are precluded from utilizing criteria or methods of administration (i.e., policies and practices) that have the effect of discriminating against children with disabilities in areas of access, including recruitment, enrollment, and retention.[171] This chapter examines various issues pertaining to access of students with disabilities to charter schools. The chapter begins with a focus on the overall enrollment of students with disabilities in charter schools, followed by the enrollment of students with more significant disabilities. Next, the chapter reviews some of the factors underlying the special education enrollment gap between charter schools and TPS. The chapter then presents challenges experienced by parents as part of the charter school enrollment process and ends with a discussion of the reasons why parents of students with disabilities choose to enroll their children in charter schools.

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Overall Enrollment of Students with Disabilities in Charter Schools

From the early years of the charter school movement, research on data at the national level has shown that charter schools tend to enroll lower percentages of students with disabilities than TPS.[172] In 2012, the U.S. Government Accountability Office (GAO), using a custom data file from the U.S. Department of Education's Ed*Facts*/CCD data system, reported that the enrollment of students with disabilities in charter schools for the 2009–2010 school year was 8.2 percent, while that of students with disabilities in TPS was 11.2 percent.[173] In a subsequent study utilizing enrollment data from the CRDC of the U.S. Department of Education's OCR, the NCSECS found that for the 2011–2012 school year, students receiving special education and related services comprised 10.42 percent of the total enrollment in charter schools, compared to 12.55 percent of the total enrollment in TPS.[174] More recently, NCSECS examined the CRDC data for the 2013–2014 school year

and found that 10.62 percent of students in charter schools were receiving special education and related services, compared to 12.46 percent in TPS. NCSECS further found that the decrease in difference between the enrollments of students with disabilities in charter schools versus TPS was statistically significant. NCSECS concluded, therefore, that while charter schools continue to enroll smaller percentages of students with disabilities than TPS, the enrollment gap at the national level has decreased over time.[175]

Further examination of special education enrollment data for charter schools and TPS reveals some variability across states and districts. In its analysis of the 2013–2014 CRDC data, NCSECS found that while most states had a smaller proportion of special education enrollment in charter schools than in TPS, a handful had a larger proportion in charter schools than in TPS. These latter states (Iowa, Maine, New Hampshire, and Virginia), however, all contained a small number of charter schools with a disproportionate number of students with disabilities in these schools. Moreover, in four states (Delaware, Missouri, New Jersey, and Wyoming), the special education enrollment in TPS was at least 5 percent more than in charter schools. NCSECS further found that, within states, charter schools showed greater variance in special education enrollment than in TPS.[176]

Enrollment of Students with More Significant Disabilities in Charter Schools

In an early study examining data at the national level, Fiore and colleagues (2000) found that, with the exception of schools focused on serving students with specific disabilities, charter schools tended to enroll larger numbers of students with mild disabilities—such as learning disabilities, behavior disabilities, or mild intellectual disabilities—and smaller numbers of students with low-incidence or more significant disabilities.[177] Subsequent studies examining charter school enrollment data for disability categories by states or districts similarly found lower percentages of students with more significant disabilities (e.g., students with intellectual disabilities) in charter schools as compared to TPS.[178]

. . . [S]tudies examining charter school enrollment data for disability categories by states or districts similarly found lower percentages of students with more significant disabilities (e.g., students with intellectual disabilities) in charter schools as compared to TPS.

As part of the recent review of the 2013–2014 CRDC data, NCSECS found that, as compared to TPS, charter schools enrolled lower percentages of students with developmental disabilities (0.92 percent versus 2.07 percent) and lower percentages of students with intellectual disabilities (3.64 percent versus 5.89 percent). NCSECS further found that charter schools enrolled higher percentages than TPS of students with specific learning disabilities (49.49 percent versus 45.98 percent), autism (7.20 percent versus 6.53 percent), and emotional disabilities (5.06 percent versus 4.10 percent).[179] It is possible that the high

numbers of students with emotional disabilities and autism may be related to the fact that these two categories were the most commonly identified among specialized charter schools serving students with disabilities (14 percent and 10.95 percent, respectively) (see Chapter 5), and specialized charter schools were included in the original sample. Further research is warranted to understand these enrollment numbers.

Research has also shown that charter schools typically educate higher percentages of students in more inclusive general education classrooms. According to the CRDC data analyzed by NCSECS, for the 2013–2014 school year, a larger percentage of students with disabilities in charter schools than in TPS spent 80 percent or more of the day in the regular education class (84.27 percent versus 68.09 percent, respectively). In addition, a smaller percentage of students with disabilities in charter schools than in TPS spent 39 percent or less of the day in the regular education class (5.08 percent versus 11.78 percent, respectively).[180] This finding may indicate that charter schools tend to prioritize inclusive practices and are able to educate students with disabilities effectively in inclusive settings. Another possibility is that the higher percentages of placement in the general education class may reflect the tendency by charter schools to serve larger numbers of students with mild disabilities and smaller numbers of students with significant disabilities who may require smaller, more resource intensive educational settings. A third possibility is that some charter schools may be utilizing a one-size-fits all placement model, rather than considering the full range of placement options, perhaps due to limited resources (see Chapter 4).

In the present study, a number of stakeholders also commented on the fact that charter schools tend to enroll smaller numbers of students with more significant disabilities and that charter schools tend to prioritize the general education classroom. For example, one special education administrator for a charter school that serves middle school students noted, "I would say the more severe disabilities have always been about one to two students per year on average because a lot of those students are already in specialized programs, that . . . it's not the best thing for them to leave because they need consistency."[181] Similarly, a charter school general education teacher noted that while she had one student with autism in her class last year, this year the four students with IEPs in her class all have learning or behavioral disabilities (i.e., difficulty with self-regulation).[182] Other participants commented on the fact that, even though their charter school had only a few students with disabilities that are more significant, the school's small size and focus on individualization facilitated the creation of a positive learning environment for these students. For example, the student who was the focus of the first case study for this report was the only student with an intellectual disability at his charter school. His mother, however, was impressed that his teachers were able to build on and expand the differentiated instruction (DI) they were already

Research has also shown that charter schools typically educate higher percentages of students in more inclusive general education classrooms [than in TPS].

using with their other students to enable him to be educated in the general education classroom and to participate in a meaningful way in the general education curriculum (see Chapter 4).

Factors Underlying the Special Education Enrollment Gap Between Charter Schools and Traditional Public Schools

Research studies have begun to unpack the various factors underlying the special education enrollment gap between charter schools and TPS. For example, in studies examining charter schools in New York City (2013) and Denver (2014, 2015), Winters found that a significant factor contributing to the special education enrollment gap was that students with disabilities were less likely to apply to charter schools than students without disabilities.[183] Winters acknowledged that his research did not examine why students with disabilities do not apply to charter schools in the same proportions as students without disabilities, but he offered several possible explanations. For example, he suggested that students with disabilities may already be enrolled in specialized preschool programs connected to district elementary schools,[184] parents of students with disabilities may prefer the services offered in TPS, or "charter schools [may] discourage students with disabilities from applying or at least . . . not encourage them to apply in the same way that they encourage students without disabilities."[185] Winters also noted that preliminary interviews with parents seemed to suggest that families might not understand that charter schools are required to provide special education services and that students with disabilities have the same right to attend these schools as all other students.[186] Stakeholders participating in the present study made similar comments. For example, one parent advocate noted that an important "barrier is that [with] traditional public schools everyone knows I have the right to attend. They can't turn me away . . . If they don't

provide services, if they don't do things right, I have rights. All those things are true about charter schools but I'm not sure all families know it."[187]

The notion that charter schools are true avenues of choice assumes that all parents have an equal opportunity to select every option available. In reality, however, parents' choice of a school for their child is influenced by factors such as the parents' prior experiences, language skills, socioeconomic status, and social capital (i.e., access to social networks, connections, and information)[188] as well as by intentional and unintentional actions on the part of some charter schools to discourage enrollment. In a recent report analyzing the enrollment practices of charter schools in Arizona with respect to students with disabilities, the American Civil Liberties Union (ACLU) of Arizona (2018) identified several areas of concern. The report found, for example, that some charter schools tried to convince parents during the enrollment process that the school would not be a good fit for their child. The report also found that nearly 50 percent of the schools asked about disability or special education status during the enrollment process, with only a small number clarifying that the question was for the purpose of continuing services. Additionally, at least six schools placed a cap on enrollment numbers for students with disabilities, and some asked for students' discipline records as part of the enrollment process without clarifying that such information would not impact eligibility for enrollment. Moreover, only 26 percent of the charter schools offered enrollment documents in Spanish, even though Spanish is the second-most common language spoken in Arizona.[189]

A second factor that has been found to contribute to the special education enrollment gap between charter schools and TPS is that charter schools are more likely to declassify students as needing special education services. In his studies of charter schools in New York City and Denver referred to earlier, Winters found that the special education enrollment gap increased over time as students progressed from kindergarten through subsequent elementary grades and that this increase was due in large part to the fact that charter schools were less likely than district schools to classify students as needing special education services and were more likely to declassify students.[190] Other studies have reported similar findings. For example, in a recent report conducted for the Institute of Education Sciences (IES), Wolf and Lasserre-Cortez (2018) examined the special education enrollment gap in Louisiana and found that the likelihood of a student being declassified from requiring special education services was statistically higher in charter schools than in TPS, although declassification in both types of schools tended to be rare.[191] Moreover, in a study of charter schools in Boston, Setren (2016) found that elementary and middle school students receiving special education services in charter schools were 19.0 and 16.1 percentage

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points, respectively, more likely than students in TPS to be declassified from requiring special education services. At the middle school level, even students educated in substantially separate classrooms were 14.0 percentage points less likely to retain their special education classification.[192]

Declassification can be appropriate for a student who no longer requires specialized instruction or for whom the classification designation had been inappropriate (e.g., if the classification had been based on the student not having been taught to read). It is important, however, that declassification decisions be made with thoughtful consideration. Once students have exited special education, they are no longer entitled to receive specialized instruction and supports to help facilitate their participation and progress in the general education curriculum. Students and their families also lose procedural protections in a variety of areas, including with respect to discipline. All decisions regarding declassification or removal from special education status must therefore be made with careful review by the IEP team and with the full and informed consent of the parent, with information provided in other languages, as necessary.

Once students have exited special education, they are no longer entitled to receive specialized instruction and supports to help facilitate their participation and progress in the general education curriculum.

A third issue that has been raised since the early years of the charter school movement as possibly contributing to the special education enrollment gap between charter schools and TPS pertains to the extent to which students with disabilities may be directly or indirectly advised not to apply or to leave the school (i.e., are being "counseled out").[193] In the present study, a number of stakeholders commented on the occurrence of the practice of counseling out. For example, one parent advocate noted that charter admissions personnel might counsel out students by trying to convince parents that the school is not an appropriate fit, making statements such as "We're not sure we can meet your needs. You might want to look for a different school. Have you gotten into other schools off the lottery?"[194] Another advocate commented: "Sometimes it's very blatant and [charter schools] actually use those words, 'this isn't the right school for your kid, you know, maybe you would be happier somewhere else.'"[195] A state department of education official described the process of counseling out as follows:

> [I]n our state . . . we do stress that any new school that is approved must certify that they will accept any, that they will not deny students based on things such as if they have an IEP. . . . We tell [the charter schools] . . . they can't counsel out those students, but unfortunately we know it happens. Even if they don't use the exact words, they make it such that . . . [the school is] not as attractive to all students.[196]

While qualitative and anecdotal evidence have highlighted the existence of the practice of counseling out, a recent study examining this issue in two cities using quantitative methods did not find an association between this practice and

the special education enrollment gap between charter schools and TPS. As part of his research on charter schools in New York City and Denver, Winters reported that although students with disabilities in both charter schools and TPS were more likely to exit their school than students without disabilities, students with disabilities in TPS were more likely to change schools than students with disabilities in charter schools. He concluded, therefore, that counseling out was not a factor associated with the special education enrollment gap.[197] As noted earlier, however, Winters acknowledged that one of the reasons why students with disabilities may not be enrolling in charter schools in the same proportions as students without disabilities in the entry grades is that the school may be quietly discouraging these students from applying. Thus, while he discounts the practice of counseling out once students are enrolled in the school, he points out that this practice may be used when students are applying to enter the school.

A related factor that has been raised as a possible means by which to "push out" students with disabilities from charter schools and thereby contribute to the special education enrollment gap is the extent to which these students are being counseled out because of discipline or behavior-related incidents. As with other forms of counseling out, there is qualitative, anecdotal evidence suggesting that some students with disabilities may be leaving charter schools for this reason. For example, a number of stakeholders participating in the present study noted that some charter schools quietly advise parents that the school is not an appropriate fit for their child because of the child's behavior. In addition, several individuals, including the parent of the student who was the focus of the second case study for this report (see the end of Chapter 4), commented on the fact that parents may be called to the school to pick up their child for behavior-related incidents over and over again until the situation wears down the parents, who ultimately withdraw their child from the school. As one advocate explained, "What happens is [the parent] get[s] the call [again and again]. Come, come. Please, please come pick up your child."[198]

[A] number of stakeholders participating in the present study noted that some charter schools quietly advise parents that the school is not an appropriate fit for their child because of the child's behavior.

At the same time, the quantitative data that is available with respect to charter school discipline is less clear. In 2016, the Center for Civil Rights Remedies at UCLA's Civil Rights Project published a report in which it examined the use of suspensions by charter schools as part of the 2011–2012 CRDC. This report found that the suspension rate in charter schools was 7.8 percent, compared to 6.7 percent in noncharter schools.[199] In its subsequent analysis of the 2013–2014 CRDC, the NCSECS similarly found a higher overall rate of suspension for all students at charter schools as compared to TPS (6.61 percent versus 5.64 percent, respectively).[200] In contrast, in another study from the American Enterprise Institute (AEI), in which 2011–2012 CRDC data was merged with that from CCD to compare charter schools with the five nearest neighboring

TPS (as opposed to all TPS), it was found that "[m]any more charter schools had lower suspension rates (29 percent) compared to their neighboring TPSs than had higher suspension rates (17 percent)."[201] Moreover, as noted above, the small numbers of studies that have begun to examine the question of counseling out in the context of student exit patterns from charter schools (e.g., Winters) have found no quantitative evidence to support the occurrence of this practice.

The practice of counseling out may also be difficult to prove from a legal standpoint. In a recent special education administrative due process hearing in Washington, DC (2017), a parent alleged that the charter school had denied her child FAPE by illegally expelling him or by misleading the parent into unenrolling her child for behavioral issues. The hearing officer concluded that, although the fact that the school was not sorry to see the child unenrolled was "unsettling," there was not a preponderance of evidence to show that the parent had been misled into unenrolling the student.[202]

In summary, research has found that one of the factors contributing to the lower rates of enrollment of students with disabilities in charter schools than in TPS is that students with disabilities are less likely to apply to charter schools than students without disabilities. The reasons for the differing rates of application are likely multifaceted, notably: Students with disabilities may already be enrolled in specialized programs in the public schools, parents may prefer the programs in TPS for various reasons, parents may lack information about charter schools or their rights in relation to charter schools, or charter schools may be utilizing practices that discourage or counsel out parents of students with disabilities from applying. Additional research is needed in this area to understand more fully the reasons why students with disabilities may not be applying to charter schools at the same rate as students without disabilities. A second factor contributing to the lower rates of enrollment of students with disabilities in charter schools than in TPS is that charter schools are more likely to declassify and less likely to classify students as needing special education services. A third issue that has been raised qualitatively and anecdotally but has not been shown to be a significant factor from a quantitative standpoint is that students with disabilities who are already enrolled may be counseled out and quietly advised to withdraw from the school, including in the context of discipline or behavior-related issues.

Charter School Enrollment Policies with Implications for Students with Disabilities

As noted earlier, one of the factors contributing to the special education enrollment gap between charter schools and TPS is that parents of students with disabilities are less likely to "opt in" and apply to charter schools as "schools of choice" than parents of students without disabilities. The present section examines several charter school enrollment policies that may influence that decision and have an adverse effect on the number of students with disabilities who are enrolled in these schools: open enrollment, unified enrollment, and weighted lotteries. These policies are not mutually exclusive; a district may utilize more than one at the same time.

Open enrollment, adopted in some form by 46 states and the District of Columbia, is a form

of school choice that provides students, within certain parameters, the opportunity to select and transfer between schools of their choice.[203] Open enrollment stands in contrast to residency-based enrollment, which restricts students by limiting their enrollment options to schools within their respective districts of residence.[204] Open enrollment policies may be mandatory or voluntary, interdistrict or intradistrict.[205] Proponents of this practice praise it as increasing access to improved education for everyone, including by infusing the concept of competition into public education. Opponents, including those who do not necessarily participate in "school choice" programs, criticize open enrollment for the same reason. Their major concern is that as open enrollment policies introduce competition into public education, selection bias will follow, ultimately rendering any "choice" illusory. One fear is that "the most engaged parents of every background would be drawn off to the 'best' schools, leaving the remainder of educational systems without the social capital to make improvements."[206]

Those who argue against the policy raise additional equity concerns that adoption of open enrollment leaves already disadvantaged students behind.[207] For example, 28 states and the District of Columbia currently have weighted open enrollment policies, which allow schools and districts to prioritize transfers for students who belong to certain groups, including "[s]tudents living in the district or school residence zone, [p]reviously enrolled students, [s]iblings of currently enrolled students, [and] [c]hildren of district or school staff."[208] This prioritization of students and families already involved in a school in demand may further limit enrollment of prospective students with disabilities, a group that is currently underenrolled.[209]

Further complicating the process, several extraneous factors may work to render the "choice" illusory. Most states with open enrollment policies require parents to provide transportation, which may be a barrier for out-of-district families.[210] To the extent transportation is a limitation, open enrollment benefits only those parents with the time and ability or financial means to provide necessary transportation. These practical realities dictate that lower-income families and families of students with disabilities whose IEPs do not provide for transportation[211] will, without transportation, remain restricted to their districts of residence regardless of the "choice" open enrollment provides. Additionally, research shows that equity demands, at a minimum, that families are provided in advance clear, cogently prepared information in a parent's native language. This information should describe in lay language both the process to be navigated and the nature of different school programs, including, for example, availability of a continuum of alternative placements for students with disabilities. As discussed previously, the lack of this pertinent information in a readily available and comprehendible format inhibits a family's

Open enrollment, adopted in some form by 46 states and the District of Columbia, is a form of school choice that provides students, within certain parameters, the opportunity to select and transfer between schools of their choice.

ability to participate in a meaningful way in programs of choice.

Some larger school districts have implemented another enrollment practice called *unified enrollment*,[212] which sometimes overlaps with open enrollment. Unified enrollment, or universal enrollment, merges the enrollment processes for traditional public schools and charter schools within some school sectors or the entire district.[213] As a single common enrollment system, it is designed to simplify the application process for parents seeking to enroll their children in the city's public schools. Parents typically submit a single application form on which they identify their top choices among TPS, charter schools, or a mix of both. A computer algorithm then generates student-school matches based on family preferences and available seats. At least four major urban school districts—Denver, the District of Columbia, Newark, and New Orleans—have adopted unified enrollment. Some are limited to a single sector, whereas others partially or fully merge the enrollment processes for TPS and charter schools.[214]

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According to the Center on Reinventing Public Education (CRPE), a fully unified enrollment system must demonstrate four characteristics.[215] First, all TPS and charter schools in the system must operate on a "common timeline for procedures," such as "submitting applications, announcing acceptances, and registering for school."[216] Second, much like member colleges and universities accepting the Common Application, schools in a unified enrollment system must share "common application materials."[217] Third, schools must use "[c]entralized mechanisms to match students to schools."[218] Finally, families must have access to "[c]omprehensive information systems . . . that explain the enrollment process, list participating schools and what they offer and, sometimes, how they perform."[219]

Proponents of the unified or universal enrollment model claim that it simplifies the school enrollment process, makes it more accessible for parents of students with disabilities, and helps level the playing field for lower-income families.[220] A study by CRPE found that the unified enrollment in Denver may have "reduce[d] the chance for students," primarily those from better-connected, higher-income families, "to gain a school spot through family influence."[221] In New Orleans, after the Southern Poverty Law Center brought a class action suit in 2010 on behalf of students with disabilities, who were alleged to be shut out of the charter schools as compared to the district-run schools in violation of Section 504, the city's adoption of the unified model, known as "OneApp," was designed as a means to stop schools from denying admittance to students with disabilities. As described in *Education Week*, "It's much harder for individual schools to game the system when computer-generated algorithms make school assignments."[222]

The tool, however, is only as good as the availability of participating schools that are "open enrollment, economically diverse and

academically excellent." In New Orleans, for instance, many of these high-performing schools do not participate in unified enrollment through OneApp but retain their "selective admissions process."[223] If high-performing, economically diverse schools choose not to participate in unified enrollment, a tiered educational system emerges. Students with the highest needs, especially those with disabilities, face equity barriers typically accompanying selective admissions schemes and are relegated to the lower performing schools that participate in the unified enrollment system.

In Boston, for similar reasons, families have registered their opposition to the city's proposed unified enrollment scheme.[224] The problem may be that the proposal, as designed, does not meet all the CPRE requirements for a unified system. First, the scheme, as proposed, does not actually provide a common procedure because charter schools have the option of whether to join the system, and doing so would subject the schools to new geographic restrictions.[225] Therefore, while some charters may join, others may choose not to participate in order to continue to draw students from across the city. Opponents contend that labeling the resulting patchwork system "unified" may further confuse families.[226] Additionally, the proposed Boston scheme does not meet the fourth CPRE requirement that a unified system provide parents with adequate comprehensive information about the various schools.[227] For example, a parent advocate asked how parents of a student with a disability would know which school would best be able to address his child's learning needs. He explained, "Parents who have the time and resources to tour multiple schools to find out the facts for themselves have a great advantage over the majority of the parents who just can't do that."[228]

A related concern raised by families of children with disabilities in cities that may use a unified enrollment model, is how, as part of their review of schools, they should decide whether to disclose the fact that their child has a disability. Under Section 504, parents of prospective students with disabilities cannot, in general, be asked to disclose information about their child's disability prior to enrollment.[229] An exception would be if the school "is using that information solely to enhance the chances for a student with a disability to be admitted or enrolled for required remedial action or permissible voluntary action, or where a school is chartered to serve the educational needs of students with a specific disability and the school asks prospective students if they have that specific disability."[230] In the present study, a parent advocate acknowledged that the "common application" no longer makes such a direct inquiry about a child's disability status. She further explained, however, that parents who visit the schools to which their child has been "accepted" but is not yet "enrolled" are, contrary to the requirements of Section 504, routinely questioned about whether the child has an IEP and the level and types of services required.[231] While school personnel may sometimes ask such questions in order to plan better for the coming year, parents in

If high-performing, economically diverse schools choose not to participate in unified enrollment, a tiered educational system emerges.

the present study indicated that they feel that such questions can adversely affect their child's enrollment at the school.

A third enrollment policy relies on use of weighted lotteries as a potential tool and promising solution to the special education enrollment gap. To date, however, weighted lotteries have been underutilized in helping to improve the enrollment of students with disabilities. Charter schools must "admit students on the basis of a lottery . . . if more students apply for admission than [the school] can accommodate."[232] A weighted lottery is one "that give[s] additional weight to individual students who are identified as part of a specified set of students, but [does] not reserve or set aside seats for individual students or sets of students."[233] In 2014, the Obama administration issued nonregulatory guidance that identified three circumstances in which a charter school could use a weighted lottery.[234] Most notably, the guidance stated that, "consistent with . . . ESEA, a charter school may weight its lottery to give slightly better chances for admission to all or a subset of educationally disadvantaged students if State law permits the use of weighted lotteries in favor of such students."[235] In 2015, ESEA, as amended by ESSA, codified relevant provisions from the 2014 nonregulatory guidance into law.[236] That guidance suggested that weighted lotteries could be used to increase charter school enrollment of students with disabilities who are educationally disadvantaged.[237] However, because many state laws are not clear, "only a handful of schools use weighted lotteries" to give disadvantaged students a better chance of getting into the school.[238] Where charter schools use weighted lotteries in other ways, or have multiple criteria, they should be careful to study how weighting the lottery affects student access, especially as that access pertains to the most vulnerable student populations.

More recent enrollment-related guidance from the U.S. Department of Education, however, could complicate and undermine the effectiveness of weighted lotteries. In 2017, the U.S. Department of Education's Office of Innovation and Improvement issued new informational guidance related to charter school lottery admissions practices, together with a letter to CSP Project Directors.[239] The letter states, in pertinent part, that states may now, as codified by ESSA, "permit charter schools receiving CSP funds to enroll students in the immediate prior grade level of an 'affiliated charter school' automatically without requiring the charter schools to admit such students through a lottery."[240] Assuming that students with disabilities are currently underenrolled in the affiliated charter schools, an automatic feeder school policy may limit use of a lottery and "unintentionally" serve to skew a charter school's enrollment demographics, further undermining the purpose of any open enrollment policies in effect. It is noteworthy, however, that "for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school," the school must admit students using a

[W]eighted lotteries have been underutilized in helping to improve the enrollment of students with disabilities.

lottery.[241] This latter provision seems to suggest that, with respect to another enrollment policy, namely, backfilling, the charter school has an obligation to backfill the seat(s) lost by attrition, and to fill any such seat(s) through use of a lottery.

In summary, several aspects of the enrollment process for seeking access to a charter school may create challenges for parents of students with disabilities. The process itself can be confusing; their child may or may not fall within an area of preference; and there may be unequal or inadequate information available about the schools, particularly information about the extent, if any, of the continuum of alternatives provided, making it more difficult for parents to choose the best school to meet their child's needs. Nevertheless, regardless of admissions scheme, parents should feel confident about their right not to disclose that their child has a disability prior to being enrolled in the charter school of choice.

[L]arge numbers of parents of students with disabilities continue to select charter schools as their schools of choice for their children.

Reasons Why Parents of Students with Disabilities Choose Charter Schools

Despite the various challenges pertaining to the enrollment of students with disabilities in charter schools, the fact remains that large numbers of parents of students with disabilities continue to select charter schools as their schools of choice for their children. Research has identified various reasons why these parents prefer charter schools for their children. In an early study, Lange and Lehr (2000) administered a survey to over 600 parents of students with and without disabilities and found that respondent parents of students with disabilities indicated reasons such as the special needs of their child as well as parental perceptions regarding the charter school's small class size; its curriculum, philosophy, or discipline rules; and the special education services it provides.[242]

In a subsequent study in which seven parents of students with disabilities were interviewed about their reasons for choosing charter schools, Finn, Caldwell, and Raub (2006) reported that a major consideration was the failure of their child's public school to address their child's needs. In particular, parents expressed frustration that the public school had not offered to evaluate their child for special education services, even after the parent had raised concerns and that when evaluations did take place, the school had been reluctant to find their child eligible. Parents also commented on the adversarial nature of their relationship with the public school because of the school's unwillingness to evaluate their child for eligibility for special education services.[243] An additional reason cited in the literature as to why parents may seek to enroll their child in a charter school is to avoid having their child identified for special education services and/or to help their child shed the stigma of special education.[244]

More recently, Waitoller and Super (2017) found that African American and Latino parents of students with disabilities in Chicago tended to select charter schools for their children in

the context of the "politics of desperation"—that is, "amid the historical disinvestment and destabilization of African American and Latino neighborhoods and neighborhood schools, coupled with the district's history of ableist practices, parents are enticed by the newness and promises of charter schools." The authors further found that the way parents invoked the politics of desperation varied depending on the area of the city in which they lived. For example, parents living in extreme areas of poverty identified safety concerns with respect to the public school and neighborhood as well as negative experiences with the special education services provided in the public school. These negative experiences included lack of support to address emotional and behavioral challenges as primary considerations for choosing charter schools. In contrast, African American and Latino parents of students with disabilities living in middle-class areas of the city noted the placement of their children in segregated educational environments in the public schools as a key consideration leading to their decision to enroll their child in a charter school. The authors of the study concluded by stating that any examination of the reasons African American and Latino parents of students with disabilities choose charter schools should necessarily "focus on how the restructuring of the urban space and the intersecting ideological work of whiteness, smartness, and goodness have created normative school spaces that push parents to engage with the politics of desperation rather than with school choice."[245]

African American and Latino parents of students with disabilities living in middle-class areas of the city noted the placement of their children in segregated educational environments in the public schools as a key consideration leading to their decision to enroll their child in a charter school.

In the present study, many stakeholders emphasized that parental dissatisfaction and frustration with their child's prior experience in the public schools was a major reason why they had chosen a charter school for their child. For example, one parent taking part in a focus group noted that her primary motivation for choosing a charter school had been that the family had run "into wall after wall [with the] public school." She explained that in the years leading up to the time at which her 12-year-old daughter had entered a charter school, her daughter had experienced "elementary and middle school with no help, and we got pushed against the wall every chance the teachers could. Ignored the signs

In the present study, many stakeholders emphasized that parental dissatisfaction and frustration with their child's prior experience in the public schools was a major reason why they had chosen a charter school for their child.

of dyslexia . . . and bypassed all of my pleading and crying." Moreover, she commented:

> [The school administrators] were so unhelpful and I felt backed into a corner and I had no idea what else to do. But in the meantime, my poor kid is in the between, because she's smart enough that she can go beyond their tests and be able to get above the scores that they need to say that she has a problem. But she's not smart enough, because of her dyslexia, to be able to actually understand the information she's looking at . . . And at that point, I was, like, I'm done. So I signed up for every charter that I could think of . . . And I just started . . . putting out applications.

This parent believed that a charter school was her only viable option because it was "a free public [school]" that felt as though it were a "free private school."[246]

Another parent similarly noted that she decided to send her son to a charter school because she was not happy with his educational placement in the public schools:

> When I was using the public school system, my son was being placed in classrooms where people had significantly difficult behaviors, and they weren't challenging him academically, and yet they were telling me that was the right fit. And it just was not good enough. My son was—he was learning worse behaviors and he was being bullied in the classroom. And I wasn't allowed to even make any decision on the situation. This was just what you get. Take it and don't say anything.[247]

Other parents indicated that they were attracted to certain positive features of the charter school such as the small size or services that would be available to their child. For example, one parent noted "I received a diagnosis with him right before kindergarten, and I just felt like he would get lost in a large classroom environment."[248] Another parent, who had two children with disabilities—one who had a health condition and the other who was autistic—pointed to certain features of her children's charter school that would not be available in a public school:

> [The charter has] a class size of nine kids. Helps to keep kids healthier. There was [also] more one-on-one focus. My para is able to actually be able to find out what's going on in the class, keep my child on task. And . . . we have [more] parent control where our kids go.[249]

Other parents indicated that they were attracted to certain positive features of the charter school such as the small size or services that would be available to their child.

A third parent noted that her son with a disability had been "very attracted to the really highly personalized academic program where he could go as quickly as he wanted and there was a clear structure for the academic learning pathways."[250]

Moreover, a number of stakeholders from large urban cities echoed some of the issues raised by Waitoller and Super with respect to "the politics of desperation." For example, one parent advocate noted that some parents of students with disabilities "in urban areas . . . are

worried about safety and are . . . in buildings that are over 100 years old without windows or locks or whatever." These parents may "have a child that has needs that can be met in [the charter] school [that doesn't] have safety issues. The facilities are new and bright and welcoming."[251] Another parent advocate explained:

> One very important thing that we see from parents is just this desire to have better options. In [our large urban district], the vast majority of students in charter schools, well over 90 percent, are black and Latino. And the vast majority of those students are also kids from low-income families. It is well over 80 percent. And parents often times see charters as . . . their only way out of failing districts and so they choose these schools even if their children have disabilities . . . because it is, if not the best, [the] only viable option that they have.

This individual went on to explain, "often times charters make promises, assertions that their children's disabilities can be met at those schools." While sometimes these assertions are "100 percent true and the student has a rich and fulfilling academic career and their services are met," other times "it is very much [not the case]."[252]

Summary of Chapter 3

This chapter has explored various issues associated with the enrollment of students with disabilities in charter schools. It has been shown that charter schools in general tend to enroll lower percentages of students with disabilities than TPS, although this gap appears to be narrowing. In addition, charter schools tend to enroll particularly low levels of students with more significant disabilities, including intellectual and developmental disabilities. Charter schools also tend to provide instruction to higher percentages of students with disabilities in general education classrooms than TPS.

With respect to factors that may be contributing to the gap in enrollment between charter schools and TPS, it has been shown that parents of students with disabilities are less likely to apply to charter schools than are parents of students without disabilities. There are a number of possible reasons for this low rate of application, including that students with disabilities may already be enrolled in or connected to specialized programs within TPS; parents may prefer programs in TPS; parents may lack information about charter schools or their rights in relation to these schools; or charter schools may be engaging in practices that, intentionally or unintentionally, serve to discourage parents of students with disabilities from applying to the school. Moreover, it has been shown that charter schools are more likely to declassify and less likely to classify students as needing special education services than are TPS. Finally, there are qualitative and anecdotal reports of charter schools counseling out students with disabilities who are already enrolled at these schools, including for discipline or behavior-related issues. The small numbers of studies that have examined this issue from a quantitative perspective, however, have not found evidence to support its occurrence.

This chapter has further shown that various charter school enrollment policies and processes may have an adverse effect on the ability of parents of students with disabilities to apply to or enroll their children in these schools. In particular, some parents find the charter school enrollment

process confusing; their child may or may not fall within an area of preference; and there may be unequal or inadequate information available about the schools, particularly information about the continuum of alternatives provided, making it more difficult for parents to choose the best school to meet their child's needs. Nevertheless, regardless of admissions scheme, parents should feel confident in their right not to disclose that their child has a disability prior to being enrolled in the charter school of choice.

Despite notable challenges, parents of students with disabilities continue to choose to enroll their children in charter schools in large numbers. This chapter has shown that the primary motivations for parents of students with disabilities to choose charter schools tend to be dissatisfaction with their child's experience in TPS and attraction to certain elements of the charter school model, such as smaller class sizes and more individualization. Moreover, low-income parents of color living in large urban areas may choose to enroll their child with a disability in a charter school based on what some researchers have referred to as the "politics of desperation."

[L]ow-income parents of color living in large urban areas may choose to enroll their child with a disability in a charter school based on what some researchers have referred to as the "politics of desperation."

Chapter 4: Provision of Special Education and Related Services in Charter Schools

This chapter presents several issues pertaining to the provision of special education and related services in charter schools. The discussion reflects the widespread variability that characterizes the charter school sector. While some charter schools are effective in meeting the needs of their students with disabilities, others struggle to carry out their legal obligations and to provide adequate programming. The chapter begins by examining the implications of the legal status of charter schools with respect to the provision of special education and related services. Next, several challenges are identified that may make it more difficult for some charter schools to deliver appropriate educational services to their students with disabilities. The chapter then highlights model practices that are emerging within the charter sector and concludes with an in-depth examination of two contrasting examples of families whose children with disabilities have attended charter schools.

Relationship of the Charter School's Legal Status to the Provision of Services

As noted earlier, a charter school may operate as its own LEA under the state's charter school law, it may be considered a public school of an existing LEA, or it may be neither its own LEA nor part of another LEA. In its analysis of the CRDC data for 2013–2014, NCSECS found that approximately 54 percent of charter schools operate as their own LEA, while 46 percent are considered part of an existing LEA.[253] Regardless of the charter school's legal status, students with disabilities attending charter schools and their parents are entitled to the same legal rights under IDEA that they would have if they were attending other public schools.[254] The extent to which a charter school itself, however, is responsible for ensuring compliance with specific legal obligations pertaining to students with disabilities, depends on the school's legal status under state law and the school's charter.

Regardless of the charter school's legal status, students with disabilities attending charter schools and their parents are entitled to the same legal rights under IDEA that they would have if they were attending other public schools.

Examination of state charter school statutes reveals that they differ in their identification of the legal status of charter schools regarding the education of students with disabilities. Some states explicitly specify that charter schools serve as an independent LEA. For example, Minnesota law states that each "charter school must comply with sections [of state law] and rules relating to the education of pupils with a disability *as though it were a district* [emphasis added]."[255] Other state charter school laws indicate that charter schools are considered public schools that are part of another LEA. South Carolina, for example, states that the charter school's sponsor (i.e., authorizer) "is the charter school's Local Education Agency (LEA) and a charter school *is a school within that LEA* [emphasis added]." Moreover, the sponsor "retains responsibility for special education and shall ensure that students enrolled in its charter schools are served in a manner consistent with LEA obligations under applicable federal, state, and local law."[256] Still other state statutes provide that charter schools operate as their own LEA only under certain circumstances, or that the charter school authorizer or school itself determines the school's legal status.[257] For example, Massachusetts and California permit charter applicants to select whether the school will function as a standalone LEA or as part of an LEA.[258] New Hampshire offers a hybrid model allowing the charter to operate as a freestanding independent LEA, except for purposes of providing special education, in which case it is considered part of the child's resident LEA.[259]

When a charter school operates as an independent LEA, the school is responsible for complying with the full array of legal obligations incumbent on all LEAs under IDEA, including the requirements concerning the availability of a continuum of alternative placements.[260] The U.S. Department of Education's OSERS has explained that if the child's placement team determines that the child requires a setting outside of a general education classroom, and the charter school LEA does not currently have this setting, the charter school LEA must provide the services directly or may contract with another LEA (consistent with the state charter school law), including another charter school LEA, to provide the placement free of cost to the parents.[261] Some states involve the LEA in which the child resides if the child requires a setting that the charter school LEA does not currently have available. For example, Massachusetts regulations specify that if a charter school LEA determines that a child requires an out-of-district placement, the LEA must notify the child's district of residence and invite its representatives to a placement meeting. At this meeting, the team first considers whether the child's district of residence has an in-district program that could provide the services needed. If an in-district program is not available, the district of residence resumes programmatic and fiscal responsibility for the out-of-district placement.[262]

When a charter school operates as an independent LEA, the school is responsible for complying with the full array of legal obligations incumbent on all LEAs under IDEA, including the requirements concerning the availability of a continuum of alternative placements.

Some judicial and administrative proceedings involving a charter school that serves as its own LEA have found the school to be in violation of its responsibilities under IDEA. For example, in a federal district court case in Pennsylvania, the court determined that a charter school operating as an LEA had violated the "stay put" provision of IDEA by unilaterally disenrolling a student for absenteeism, while the parent had been challenging the student's educational program. The court stated that the school's "attempt to evade its obligations under the IDEA by passing the buck—in this case, a special-needs student's education—to the District is troubling."[263] The court further noted:

> Under Pennsylvania's statutory scheme, charter schools are independent LEAs and "assume the duty to ensure that a FAPE is available to a 'child with a disability' . . . ." Under this scheme, [the charter school] bears full responsibility for providing special education services to students with disabilities.[264]

Similarly, in response to an administrative complaint filed by a parent under the state complaint procedures of IDEA, the Delaware Department of Education found that a charter school had violated its obligations with respect to child find. Because charter schools serve as independent LEAs in Delaware, the Department of Education found the school to be in violation of IDEA.[265]

On the other hand, when a charter school is considered to be a public school of an existing LEA, it is the LEA, rather than the charter school, that is responsible for ensuring the provision of FAPE to students with disabilities in the charter school (unless state law assigns this responsibility to another entity).[266] In jurisdictions in which charter schools are considered part of an existing LEA, the LEA may be found to be in violation of its responsibilities. For example, in a federal district court case in the District of Columbia, the court found that, because the District of Columbia Public Schools (DCPS) served as the LEA for the charter school, DCPS was in violation of its obligations with respect to child find under IDEA when it failed to conduct an evaluation of a student upon referral by the school.[267]

Regardless of whether the charter school serves as an independent LEA or is part of another LEA, the SEA remains ultimately responsible.[268] Moreover, IDEA regulations specify that if a charter school is neither an independent LEA nor part of another LEA, the SEA is responsible for ensuring that all the requirements of IDEA are met.[269] Thus, notwithstanding state charter school laws and the possible assignment by the SEA of initial responsibility for implementing the requirements of IDEA to another entity—when a charter school is neither a standalone LEA nor part of an LEA—the SEA remains ultimately responsible for ensuring that the requirements of IDEA are met by each publicly funded educational program in the state.[270]

Challenges That May Make It Difficult for Charter Schools to Provide Services to Students with Disabilities

Research has highlighted several challenge areas that may make it more difficult for charter schools, especially those that serve as independent LEAs, to provide special education and related services to their students with disabilities. These challenges include limited knowledge and understanding of special

education responsibilities, limited availability of special education funds that are distributed in complex ways, and potential tension between the charter school mission and special education requirements.

Limited Knowledge and Understanding of Special Education Responsibilities

From the early years of the charter school movement, research has found that charter school operators do not always possess the requisite knowledge and skills to provide appropriate special education and related services to their students with disabilities.[271] Moreover, research has pointed to the fact that state charter school statutes are often vague and contain minimal information regarding specific roles and responsibilities for the education of students with disabilities.[272] Although knowledge and expertise have certainly improved over time, charter school operators may still feel challenged in carrying out their obligations, in particular those working as standalone schools that operate as independent LEAs.

A number of stakeholders in the present study commented on the fact that general education administrators at charter schools are not always familiar with specific requirements concerning the education of students with disabilities. One parent participating in a focus group explained that at her son's charter school, the general education administrators do not "have any background in education." While these administrators hired someone to be in charge of the special education department, "they don't know what she's doing, they don't know what the law is, [and] they probably don't even know what IDEA stands for."[273] A parent advocate similarly noted that while "many charters . . . are really on the ball and really want to do what is right for children with disabilities," others "have no idea of what their obligations are . . . with regard for special education . . . have no idea how they got kids who are there, what they're supposed to be doing."[274] Another parent advocate commented that in some charter schools, she has seen a "lack of training of the teachers, lack of support, and . . . [lack of] the capacity and the skills to be able to handle students with differentiated learning and disabilities."[275]

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Charter school authorizers are in a unique position to help charter school personnel improve their capacity to serve students with disabilities. While some authorizers may not possess enough knowledge of special education or view special education as part of their responsibility and, as a result, not provide a great deal of direction and guidance in this area,[276] others have begun to take on a more proactive role. A recent report by NACSA highlights two positive examples of charter authorizers that have helped charter school personnel fulfill their obligations to their students with disabilities. Specifically, charter school authorizers from the District of Columbia and Denver relied on third parties to facilitate dialogue and collaboration with TPS representatives to

develop cooperative agreements designed to limit disciplinary push-outs (District of Columbia) and ensure equitable access to charters for students with severe disabilities, who require more resources and supports (Denver). To encourage change in systemic practices, the District of Columbia Public Charter School Board (DC PCSB), the city's only authorizer, openly shared data comparing the charter schools' rates of disciplinary exclusion for students with behavioral challenges to those of the TPS district. DC PCSB also provided training and consultation in best practices for keeping students in school and mitigating exclusion. In addition, DC PCSB, together with a nonprofit partner, encouraged the TPS district and DC charter schools to develop a common enrollment system to replace the decentralized system that required separate applications for each school. In Denver, the Denver Public Schools (DPS), which oversees the district's TPS and authorizes the city's charters, likewise sought to support its charter schools in building their capacity to serve students with disabilities. To incentivize charter schools to provide options that are more equitable for students with more significant disabilities, DPS authorized funding for this purpose and provided access to TPS facilities to help enable charter schools to accommodate students with more extensive needs.[277]

An additional issue associated with institutional knowledge pertains to the fact that charter schools often experience difficulty in retaining qualified teaching personnel, including special education teachers. While all public schools struggle with teacher attrition, charter schools experience particular challenges in this area.[278] According to data from the U.S. Department of Education's Schools and Staffing Survey (SASS) and Teacher Follow-Up Survey (TFS), the teacher attrition rate for charter schools in 2012–2013 was 18.5 percent compared to 15.6 percent for TPS teachers.[279] While specific attrition rates vary across states, districts, and charter networks, charter schools typically experience higher levels of teacher attrition than TPS. For example, the University of Florida's College of Education reported that in 2013 teacher attrition rates in Florida for charter school teachers and TPS teachers were 11.08 percent and 3.89 percent, respectively.[280] A 2012 report from the New York City Charter School Center found a teacher turnover rate in New York City of 26 to 33 percent among charter school teachers, compared to 13 to 16 percent among district school teachers.[281] Annual reports for the KIPP charter schools similarly revealed that for the 2012–2013 school year, nearly one-third of KIPP teachers did not return to school the following year.[282]

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Charter Schools' Teacher Attrition

The teacher attrition rate for charter schools in 2012–2013 was 18.5% compared to 15.6% for TPS teachers.

The reasons that charter school teachers, including special education teachers, may be changing schools or leaving the profession are multifaceted. Some reasons likely pertain to contextual factors; for example, charter schools tend to hire younger, less experienced teachers and to serve educationally and economically disadvantaged students. Other reasons may pertain more to working conditions; for example, charter schools tend to offer lower paying jobs, with longer working hours and fewer benefits.[283] Several stakeholders participating in the present study discussed some of the challenges associated with teacher attrition at charter schools. For example, one of the charter school teachers interviewed noted that while her school had a number of teachers who had been working at the school for many years, the school still had difficulty retaining some of the younger, less experienced teachers.[284]

The high teacher turnover rate among charter schools has led some schools to initiate new teacher incentive programs such as offering onsite childcare and instituting retirement benefits.[285] Research has also highlighted the effectiveness of strategies such as implementing charter school retention committees.[286] Moreover, the teachers in some charter schools have begun to seek efforts to unionize.[287] In 2016–2017, there were 781 charter schools across the country that engaged in collective bargaining with teachers' unions, the majority of which were affiliated with the National Education Association (NEA).[288] While some charter school proponents claim that unionization will limit much of the autonomy and flexibility that characterize charter schools, others argue that unionization can help reduce the high teacher turnover rate.[289]

To address the shortage of qualified teachers, the State University of New York (SUNY), authorizer of 167 charters, including 147 in New York City, recently approved new regulations that will enable the charter schools it oversees to apply to train and certify their own teachers. According to the new regulations, prospective teachers will be required to undertake the equivalent of one month of classroom instruction and practice teaching for less than 40 hours before becoming certified. They will not be required, as are teachers on a traditional certification path in New York, to take the series of exams to earn an initial certification, next earn a master's degree, and then teach for three years to become fully certified.[290] Proponents of this policy shift believe that the new authority will allow charter schools the kind of autonomy and flexibility they need to hire a range of diverse staff.[291] The effort has been championed by large charter school networks such as Success Academy, which has its own teacher-training program. Critics, however, argue that this approach will result in uneven standards and could hurt charter school students.[292]

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Despite the challenges associated with the recruitment and retention of qualified special education teachers, some participants in this study discussed what they perceive to be the *benefits* of working at a charter school as

compared to TPS. For example, one charter school special education administrator, who had previously taught in a TPS, commented:

> I would say that the student population [at TPS and charter schools] is relatively similar as far as demographics . . . the biggest differences for me, it was just accountability. Like for two [or] three years I taught the same class [at a TPS] and not once did an administrator or program specialist or anyone really walk in my room. Maybe once, maybe twice in three years. . . . At charter schools . . . accountability in my experience is a lot higher. You get coached. You're required to create professional development plans. You're required to create goals, take data on them, see how you're progressing . . . at a [TPS] unless you were self-motivated consistently, you could slide by with doing the bare minimum.

This individual added:

> At a [charter] school I feel like it's a choice to work here. . . . I think you know what you're getting into working at a [charter] school. You know you have a lot of responsibilities and opportunities to grow as a teacher. You get reviewed a lot. You get a lot of feedback. But you know one of the main things and as part of one of our goals . . . is to make sure that all our students—with disabilities or not—with different learning styles, get what they need.[293]

In summary, one of the challenges that may be impacting the ability of charter schools to provide effective special education services is a lack of knowledge and understanding of responsibilities and requirements on the part of charter operators. In particular, charter school general education administrators (e.g., principals) may lack awareness of special education requirements or best practices. While charter authorizers are in a position to help build the capacity of the operators whose schools they oversee, the authorizers themselves do not always possess sufficient knowledge and do not always view special education as part of their responsibility. Those authorizers who have begun to take on a more proactive role and provide technical assistance have been able to support their charter operators more in this area. An additional factor pertaining to institutional knowledge concerns the fact that charter schools often struggle to retain qualified teachers, including special education teachers. While teacher attrition is an area of concern, some teachers and administrators who work at charter schools report on the benefits they perceive to be associated with teaching at these schools as compared to TPS—for example, increased accountability for and greater feedback on their teaching and greater use of teacher coaching strategies.

Limited Availability of Special Education Funds Distributed in Complex Ways

An additional challenge that has the potential to make the provision of special education services in charter schools more difficult pertains to special education funding. As described earlier, the distribution of special education funds is a complicated process that involves federal, state, and sometimes local funding mechanisms.[294] Further obfuscating the matter is the fact that approaches to funding vary across states and

districts. As noted, different states use varying funding formulas for special education, and districts often use general funding streams such as local property taxes to fund special education programming.

The way a charter school receives special education funds also differs, depending on the school's legal status under the state's charter school law. Charter schools that are part of an existing LEA are typically able to have access to additional services through the district (e.g., transportation or related services) but may not have much autonomy over how funds are spent.[295] Conversely, charter schools operating as their own LEAs typically receive federal and state special education funding directly and for the most part are able to decide on their own how to spend the money they receive. These schools, however, are obligated to ensure that students with disabilities have available to them the range of services and supports that are required under IDEA, including a continuum of placement options. Whereas TPS can draw on existing infrastructure, resources, and personnel (i.e., take advantage of economies of scale), charter schools operating as their own LEAs are often establishing new programs.[296]

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The limited availability of resources is sometimes given as one reason why charter schools tend to have high percentages of students with disabilities who are educated in the general education classroom. As part of its 2012 report on charter schools, the GAO found that among 13 charter schools visited, almost all the schools educated students with disabilities in the regular classroom for most of the day, with the addition of "pull-out" or "push-in" services as needed. Moreover, approximately one-half of the charter schools identified as a major barrier the lack of availability of resources to serve students with more significant disabilities, including with respect to the provision of self-contained classrooms. One charter school official interviewed by the GAO stated that "when a student's IEP includes a service that the school does not offer, such as a self-contained classroom, the IEP committee has modified the IEP to accommodate facility limitations while still meeting the needs of the child." This individual went on to explain that in such a situation, the school may offer "more intensive services in the general classroom staffed by a general education teacher, a special education teacher and a teaching assistant, for students whose IEP specifies those services."[297]

Stakeholders participating in the present study expressed similar views. For example, a parent advocate taking part in a focus group described the situation in which a charter school is part of a broader LEA, as follows:

> The charter schools' belonging to the traditional school LEA actually was helpful because the traditional LEA had the most money. So they had all the speech therapists and the occupational therapists . . . and psychologists who could come in and do the evaluations where the charter schools didn't really have those

people. But when the charter school would screw up and not follow the IEP or not provide the services needed . . . you had to sue the public school district. And their lawyers would say, well, if you were in our schools, we could serve you so we haven't done anything wrong. And then we have this charter school and public school pointing their fingers at each other and the parent and the student just get screwed in the middle.[298]

Another parent advocate similarly commented on his experience in a state in which charter schools are part of the LEA. He noted that "doing things like scheduling IEP meetings and trying to get the district to actually pay for services that a student might need, can sometimes be a bit of a challenge. Sometimes the district pushes back; sometimes the district is just not responsive. But actually getting the district to work with the charter [can be] a challenge."[299]

An expert from a charter school organization described the situation as follows: "If a child with a more severe disability . . . walks through the door, charter schools . . . if they are dependent on their [district] for special ed, calls the [district] and says, 'Hey, I just got this child that has a special day class . . . on their IEP, what do you want to do with them?'" This individual went on to explain," The local [district] says, in most cases, 'I'm not going to send a teacher over for one student, the FAPE offer for that child will be back in the traditional school . . . where I already have a program set up.'" As a result, this individual noted that the student would wind up back in a TPS because "the child [would] not [be] permitted to stay in the charter school, or if they [do], we've seen cases where . . . the district will say, 'You have to sign your rights away because our FAPE offer to you is back at a traditional school.'"[300]

Stakeholders also commented on some of the funding challenges facing charter schools operating as their own LEA. For example, one of the state department of education officials who was interviewed for the study explained that "funding is the number one issue" and stated:

> If you have a student that needs a lot of additional resources, those resources can become very cost prohibitive. And very difficult for charter schools to be able to meet. Especially if you look at a smaller charter school and you have a student with severe disabilities, the needs of that student are going to be extremely expensive for that school to be able to offer, and they don't have the scale that a district would have in being able to spread the costs among multiple schools or to have different opportunities for that student.[301]

One of the charter school special education administrators who was interviewed commented that a charter school operating as its own LEA that is part of a broader charter network can experience benefits with respect to resource availability: "I think us being a network—a small network, but a network—has been really helpful in terms of pooling resources, and I collaborate with a ton of other . . . charters [in the area]." This individual further explained that dealing with therapeutic placements for students with mental health needs was her school's biggest challenge. She noted that, despite having a good number of school counselors and special education teachers, the school did not currently have the resources to

support more intensive therapeutic services or a separate therapeutic classroom.[302]

In summary, the availability of resources is another area that may make it more difficult for charter schools to provide educational programming to their students with disabilities. While on the one hand charter schools that are part of an existing LEA may be able to access services that are available through the district, these charter schools may experience challenges associated with scheduling and coordinating with the district. On the other hand, because charter schools that operate as their own LEA are typically not able to take advantage of economies of scale, they may find it difficult to provide the range of services and supports that are required under IDEA, including the continuum of alternative placement options. The limited availability of resources is sometimes given as one reason why charter schools tend to have high percentages of students with disabilities who are educated in the general education classroom.

Potential Tension Between Charter School Focus and Special Education Requirements

Further contributing to difficulties associated with the provision of special education services in charter schools is the tension that charter school operators sometimes feel exists between the emphasis on flexibility and freedom to innovate underlying the charter school movement and the prescriptive nature of IDEA's legal mandates. In some instances, complying with the statute's specific legal requirements may lead charter schools to carry out practices that appear to run counter to their mission. For example, a school that follows a specific approach calling for a large degree of self-directed learning (e.g., Montessori or Waldorf) may have to make significant changes in order to address the needs of a student who requires a learning environment that is based on more formalized direct instruction.[303] In other words, while charter schools are grounded in the notion that parents choose a school that is the best fit for their child (i.e., the child fits in with the focus of the school), IDEA requires schools to address the individualized learning needs of each eligible child with a disability (i.e., the school fits the needs of the child).

One area in which this tension may play out is in the context of the strict academic and behavioral requirements of some charter schools, which have come to be associated with the "no excuses" model. The term *no excuses* is generally used to describe a group of urban charter schools, serving large numbers of students from low-income backgrounds and students of color, including students with disabilities. These schools focus on increasing student achievement through a highly structured and rigorous approach to behavior and academics. Some of the key elements of this model include a longer school day and year, college-going expectations, data-driven instruction, tutoring, extensive teacher feedback, and a strict code of discipline.[304] While particular charter schools may adopt any combination or range of these strategies and practices, there are a number of charter networks that are often associated with this approach—for example, KIPP, Achievement First, Noble, Success Academy, and Uncommon Schools. There is no official list of "no excuses" charter schools, however, and some schools have rejected the label, emphasizing instead their focus on "high

expectations."[305] Research has shown that attending a "no excuses" charter school has positive effects on math and reading scores for all students[306] as well as for students with disabilities.[307]

Several issues have been raised with respect to the "no excuses" model in the context of students with disabilities. First, there is a question regarding the number of students with disabilities enrolled in these schools. Research has shown, for example, that KIPP schools, similar to other charter schools, tend to enroll smaller percentages of students with disabilities than TPS.[308] KIPP schools also experience high levels of student attrition. According to one study, between the sixth and eighth grade, enrollment at KIPP schools decreased by 30 percent.[309] Moreover, the group of students who enter KIPP in the sixth grade or later tends to include fewer students receiving special education services and more students with higher baseline assessment scores.[310] The phenomenon of high rates of student attrition in general coupled with the limited replacement of students with disabilities among KIPP students in grades six through eight may be an indication of the tension between the charter school mission and special education requirements in the "no excuses" model. Additionally, some have questioned whether "no excuses" practices, which teach students to be submissive and defer to authority, perhaps at the expense of higher-level thinking skills, may result in the perpetuation of harmful stereotypes and stigma.[311]

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The strict codes of conduct that are characteristic of the "no excuses" model may be particularly at odds with the extensive requirements pertaining to students with disabilities and discipline under IDEA.[312] A 2015 *New York Times* article reported that the principal at the Success Academy Charter School in Brooklyn, one of the networks associated with the "no excuses" model, had developed a list, entitled "Got to Go," of 16 students, 9 of whom subsequently withdrew from the school. Some of the students on this list had experienced frequent suspensions, with their parents repeatedly being called to the school to pick up their child or meet with school officials. Several of the students had either been previously diagnosed as having a disability (e.g., attention-deficit/hyperactivity disorder [ADHD] or behavioral disability) or were in the process of being evaluated to receive special education services. At least one parent was told by her son's special education committee that his disability necessitated placement in a separate special education class that was not offered for his grade at the school. A spokesperson for the Success Academy Network commented that

The strict codes of conduct that are characteristic of the "no excuses" model may be particularly at odds with the extensive requirements pertaining to students with disabilities and discipline under IDEA.

the list had been a mistake and that the principal had been reprimanded upon the network's learning of its existence.[313] While the "Got to Go" list may have been an aberration, questions remain regarding the extent to which certain "no excuses" discipline practices may have the inadvertent effect of punishing students for behavior related to their disabilities.

In the present study, several stakeholders expressed concern with the discipline policies and practices that are characteristic of a "no excuses" approach. For example, one parent advocate participating in a focus group commented that

> the biggest, biggest, biggest barrier has been college and career ready charter schools with very specific academic requirements that students with disabilities have a hard time keeping up with and disciplinary policies. Because a lot of our charter schools, the reason that families pick them is because they're these really structured point-based systems where you earn things. And . . . they're very, very punitive point-based systems. And I would have kids with ADHD who a month into the school year had lost enough points they got expelled from school. And they totally weren't accommodating their policy for the student's disability.[314]

Another advocate noted that some students with disabilities find it difficult to cope with "the structure and rigidity" of the "no excuses" model, including the longer school day; that is, some "kids can't cope that they . . . go into the classroom all day every day 7:30 to 4:30, like an eight-hour job."[315] An additional advocate noted that the strict codes of discipline tend to be "an issue for students with disabilities who may have disabilities that impact their ability to self-regulate, that impact their ability to interact well with others, that impact their ability to effectively pay attention and focus." This advocate provided the following example:

> If a student . . . has ADHD and the charter school has an existing policy that students who do not do things like track the teacher where they are following along with the teacher and, you know, their eyes are kept on the teacher the whole lesson, if that student has a disability that might prohibit them from being able to effectively be able to track the teacher, they are possibly going to be given demerits, given detentions, maybe even suspended for behavior that really is in many respects a manifestation of their disability.[316]

At the same time, some charter schools have begun to move away from a strict "no excuses" approach to discipline and adopt, instead, alternative and less punitive models. For example, a charter school special education administrator discussed the importance of addressing the potential behavioral challenges of students with disabilities in a proactive rather than reactive manner (i.e., "to plan just in case something happens and get in front of it right away"). Rather than waiting six months for the student's annual IEP meeting, this administrator noted that it was beneficial to convene the IEP team as soon as possible in order to write appropriate present levels and annual goals for social emotional needs into the student's IEP and to make sure that any

necessary accommodations and supports were in place. According to this administrator, "I think identifying those things in advance as we see them happening instead of just kind of waiting and reacting is helpful."[317]

Moreover, several participants in the present study highlighted efforts on the part of certain charter schools to embrace the principles of restorative justice. Restorative justice practices, which focus on relationship building and reconciliation, strive to repair the harm that has resulted from an alleged incident by engaging all those involved in the formulation of an appropriate resolution. Examples of restorative justice practices include peer mediation, community conferences, and restorative peace circles.[318] One special education teacher in the present study noted that the charter school had been struggling with "a lot of the things that a lot of the schools around us were struggling with," including a disproportionate number of suspensions of African American boys. This school decided that it would "specifically and intentionally address these [issues] in a more radical way" by making the shift toward more restorative justice practices. As a result, students at the school have been able to talk through incidents as they arise, "suspension numbers are at an all-time low [and] disproportionality has . . . pretty much gone away."[319]

Another charter school special education administrator whose school has made the decision to adopt more restorative justice practices commented on the positive effect on students:

> Students know what happens [now]—the word consequences [sic] doesn't necessarily mean the same thing as it did before. It means you need to actually reflect on your behavior and really talk about how it affects your community, meaning [the] class, teachers, staff . . . I've seen it be extremely powerful.[320]

Examination of the KIPP website similarly reveals op-eds and blog posts highlighting the shift that particular KIPP schools have made toward more restorative practices. For example, in an op-ed describing the experience at KIPP Summit Academy near Oakland, California, the principal described the school's prior approach to discipline as follows:

> At KIPP Summit Academy, punishment and suspension had resulted in obedient behavior. But those measures left a sizable proportion of students feeling that adults were adversaries, not partners, and separated them from the learning process. Rather than teaching lessons about how to do better, I saw us putting some of our most needy students on a path to alienation from school.

In contrast to the school's prior approach to discipline, the principal described an incident in which the school attempted to implement restorative justice in response to a student who had left graffiti with gang slogans on the school walls. Rather than suspending or expelling this student, the principal called the student in for a series of conferences, along with the student's parents, focusing on the following four questions: "What happened? What were you thinking at the time? Who was affected by your actions? And what do you need to do to make it right?" After reflecting on his anger and state of mind during

the incident, the student was able to apologize and come up with a mutually agreed upon resolution: to work with the facilities manager for two weeks to clean up the school. This student ultimately went on to become a senior at the high school on his way to college.[321]

The National Charter School Resource Center has similarly published a resource that highlights efforts by several charter schools and networks to modify their approaches to school climate and discipline. These schools and networks include Health Sciences High and Middle College (San Diego), KIPP Bay Area Schools (San Francisco Bay Area), New Orleans College Prep Network (New Orleans), and Rowe Elementary School (Chicago). The report discusses a number of lessons that can be learned from the experiences of these schools, including the importance of integrating the school's positive approach to discipline with its core values and mission; securing buy-in from and training for teachers and staff; understanding that restorative practices do not run counter to, but in fact, support high academic standards; collecting and analyzing data with respect to school discipline; adapting specific behavioral interventions to address students' unique needs; involving students and families in the process; and collaborating with community-based organizations on issues such as social emotional learning.[322] These are practices that all schools can try to follow.

In addition to discipline policies, another challenge area that has emerged in the context of charter schools pertains to the potential tension between the right of parents to choose the charter school they would like their child to attend and the decision-making process of the IEP team under IDEA. It is important to point out that IEP teams do not make decisions in a vacuum, with minimal input from the parent. Rather, parents are integral members of the IEP team and must be provided "*meaningful* participation in the IEP process" [emphasis added].[323] The procedural safeguards provisions of IDEA are designed to enable both parents and schools to contribute to decisions about the education of students with disabilities and to preclude unilateral decisions about appropriate programming for a particular child. Consequently, the LEA may not predetermine the child's educational program without providing the opportunity for meaningful input from the parent. In other words, district personnel must come to the IEP meeting and have an open mind in order to be "receptive and responsive" to the parents' position.[324]

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At the same time, OSERS has stated that, while parental preference may be one factor in determining an appropriate placement, it "cannot *override* the decision of the child's [IEP] team" [emphasis added].[325] Moreover, parents do not have the right to veto a particular placement[326] or "summarily determine a particular placement."[327] While parents are entitled to participate in any

decision pertaining to the educational placement of their child, they do not have a right under IDEA to select a particular school or location.[328] Thus, it appears that for a student in need of special education, a parent's choice of placement must be honored only to the extent that it complies with the decision of the student's IEP team to provide FAPE in the LRE to the maximum extent appropriate. What results is essentially a system of school choice for parents of students with disabilities that differs from the system of school choice for other parents.

While parents are entitled to participate in any decision pertaining to the educational placement of their child, they do not have a right under IDEA to select a particular school or location.

Several stakeholders in the present study noted that parents seeking to enroll their child in a charter school might feel that the IEP team is blocking them. For example, one parent participating in a focus group commented that although her child's school district, in which charter schools were considered part of that district, utilized an open enrollment policy, the district required the IEP team to determine that the charter school was an appropriate placement for the child:

> In our district. . . . [y]ou can choose where you want to go to school. However, . . . it's [now] mandatory in our charter school contract that your child [with a disability] has to go through an IEP meeting and the school and the district both have to believe that's the best placement for the child. . . . And so our enrollment process is anyone can come, but if you have an IEP, it's mandatory you have a meeting. So even though you've been accepted by the charter school, the district can pull you at their discretion.[329]

Another individual commented: "There is definitely a disconnect between the IEP process and the [charter school] enrollment process so you may have gone to an IEP meeting and you may have agreed upon certain types of placement—resource, inclusion, separate. But not every school has each offering."[330] As a result, the parents might not be able to enroll their child in their school of choice.

While charter schools are grounded in the notion that parents choose a school that is the best fit for their child (i.e., the child fits in with the focus of the school), IDEA requires schools to address the individualized learning needs of each eligible child with a disability (i.e., the school fits the needs of the child).

In summary, an inherent tension exists between the underlying foundation of the charter school movement, which is predicated on flexibility and freedom to innovate, and the prescriptive legal requirements of IDEA. While charter schools are grounded in the notion that parents choose a school that is the best fit for their child (i.e., the child fits in with the focus of the school), IDEA requires schools to address the individualized learning needs of each eligible child with a disability (i.e., the school fits the needs of

the child). One area in which this tension plays out is in the context of the strict academic and behavioral requirements of some charter schools, which have come to be associated with the "no excuses" model. There is a question regarding the extent to which "no excuses" discipline practices may have the inadvertent effect of punishing students for behavior related to their disabilities. Some charter schools, however, have begun to move away from a strict "no excuses" model and have adopted instead alternative and less punitive approaches to behavior such as restorative justice practices. Moreover, there is additional tension between the right of parents to choose the charter school they would like their child to attend and the decision-making process of the IEP team under IDEA. Here, again, what has essentially resulted is a system of school choice for parents of students with disabilities that differs from the system of school choice for other parents.

Model Practices for Educating Students with Disabilities in Charter Schools

Charter schools vary in the extent to which they provide quality educational programming and services for their students with disabilities. While some schools experience significant challenges in this area, others offer innovative approaches to the education of all students, including those with disabilities. With respect to the latter, NCSECS has recently developed a series of profiles of charter schools that have been identified as "Centers of Excellence"—that is, schools that have "leverage[d] their autonomy particularly well to benefit students with disabilities."[331] According to NCSECS, these charter schools, which are located in different regions of the country, have implemented educational practices that have the potential to serve as a model, not only for use by other charter schools, but by TPS as well.

For example, NCSECS has identified Cole High School in Denver as a charter school "Center of Excellence." Serving 343 students in grades 9 through 11, Cole is a member of the Denver School of Science and Technology (DSST) charter network and operates as a school within DPS. Since 2009, the DSST network has had a 100 percent acceptance rate to four-year colleges. The school also has a large population of students with disabilities. In 2016, 11.0 percent of its population received special education services, compared to 10.7 percent in DPS. Also in 2016, 57 percent of the graduating class had been the first in their families to go on to college. Although the DSST network has a predetermined curriculum that is rigid, Cole administrators have been able to institute some flexibility in order to address students' diverse learning needs in a more effective manner. Operating under the notion that curricular and instructional adaptations that support students with disabilities can benefit a much larger group of students as well, the school has added a new "Fundamental Math" course that utilizes the principles of UDL and offers real-world examples.[332] UDL is an educational framework grounded in the learning

Since 2009, the DSST network has had a 100 percent acceptance rate to four-year colleges. The school also has a large population of students with disabilities.

sciences, which focuses on providing multiple ways to present information to students, to allow students to express what they have learned, and to foster student engagement. Moreover, the school uses a flexible co-teaching model that offers a range of support levels for the general education teacher.[333] Like other schools in the DSST network, Cole also implements a coaching model for teachers, using a video coaching platform that allows coaches to embed their own notes and observations within the video.[334]

In addition, NCSECS has identified Paramount School of Excellence in Indianapolis as a charter school "Center of Excellence." Serving 700 students in grades K–8, this independent charter school operates as its own LEA and has a special education enrollment rate that is comparable to that of the Indianapolis School District (18.5 percent versus 18 percent, respectively). According to NCSECS, Paramount's high expectations for students are encompassed in a series of policy and instructional guidelines, referred to as the school's "Frameworks." These Frameworks articulate clear goals for all students and help ensure that students with disabilities are not provided a watered-down curriculum or taught to standards that are below grade level. The classrooms are structured in a flexible manner, and all students, regardless of whether they have an IEP, engage in similar classwork and can ask for additional help. With respect to staffing, the school utilizes a combination of a co-teaching and purposeful resource room support model. There are also ongoing communications and collaboration between special education and general education personnel as well as between administrators and teachers. Moreover, the teachers review student performance data on a regular basis to inform subsequent instruction and create data visualizations to share with their students.[335]

In a yearlong study of 10 high-performing charter schools in California, the California Charter Schools Association (2016) identified key aspects of quality special education programs in relation to (1) school values, philosophy, and culture; (2) particular school practices; and (3) policy context and structural elements. The specific educational strategies discussed under each of these broad categories align with many of the practices described earlier. For example, in the area of school values, philosophy, and culture, the schools included in the study demonstrated a commitment toward promoting inclusion, developing individualized supports that address students' unique learning needs, and fostering a positive learning environment (e.g., utilizing positive and restorative approaches to discipline). With respect to certain practices used by the various schools, the report highlighted the incorporation of multitiered systems of support, collaborative and team-based models, UDL, use of data to inform decision making, and family and community partnerships (e.g., instituting family trainings or home visits). Regarding policy and structural elements, the report noted that 9 of the 10 schools operated as independent LEAs with greater autonomy over decision making, recruitment, and staffing. An additional area of strength pertained to the fact that these charter schools were committed to reviewing and adapting their educational practices and processes, as appropriate, on an ongoing basis. While the schools involved in the study had quality special education programs, they also experienced several challenges, including those pertaining to special education funding,

recruitment and retention of qualified personnel, and lack of available economies of scale.[336]

Stakeholders participating in the present study also identified components of successful charter school programs. For example, one general education teacher who was in her second year of teaching at a charter school indicated that she valued the school's use of a co-teaching model, in which a special education teacher was assigned to each homeroom and traveled with the group to all subject matter classes (e.g., math, English). According to this teacher, the co-teaching model provided consistency and assistance to students and teachers. Moreover, the teacher appreciated that her school promoted the use of restorative practices, including peace circles, to address behavior issues. The inclusion of frequent professional development sessions also served to make this teacher feel more supported in her role.[337]

Parents participating in the study expressed similar views. For example, one parent, who was very pleased with her son's charter school experience, noted that even though her son had begun at the school with significant delays, he had received enough support to read "at grade level and access 90 percent of what everyone else accesses." This parent further appreciated that her son was able to be educated in an inclusive environment "with typical peers" and that the school utilized a "restorative justice program." With respect to the use of restorative justice practices, this parent elaborated, "If there are issues with behavior or discipline, there is not an emphasis on punishment—this results in less issues with behavior."[338] Moreover, another parent noted that she was pleased with the school culture at her son's charter school and the school's focus on social skills development and community building.[339] A third commented that she appreciated the "very welcoming" and "smaller school environment" that her son's charter school provided. As a result, her son was "given safe environments to take risks, and he flourished there."[340]

Case Studies of Two Students with Disabilities Who Have Attended Charter Schools

The present section provides an in-depth examination of the charter school experiences of two students with disabilities and their families. Student A has had a positive experience attending a charter school, while Student B has had a negative experience. Together, these contrasting descriptions reflect the variability that characterizes the provision of special education and related services to students with disabilities in charter schools.

Student A, an 11-year-old boy with Down syndrome, is currently in the fifth grade at a charter school that serves students in grades K–5. This charter school, which has a smaller percentage of students with disabilities than neighboring school districts, is located in a southwestern state and is a member of a charter network. Student A's mother decided to enroll him in the charter school after some prior negative school experiences. He had initially attended a private school for preschool, kindergarten, and first grade; however, it became clear that the private school was not well equipped to serve his needs in a general education classroom. As Student A was preparing to leave the private school, his mother approached the charter school that his sister was attending in order to ask if the school would be willing to enroll him. The charter school

responded that he would have to repeat the first grade. Because his mother did not want him held back in the first grade, she placed him in a TPS instead.

At the TPS, Student A's mother worked hard to help the administrators and teachers embrace a more inclusive program that would enable her son to participate in the general education curriculum in all subject areas. She noted that other students with intellectual disabilities in the same TPS were educated in a separate special education classroom and had a separate entrance to the school building. The district agreed to place Student A in a third grade general education class. The teacher for this class was effective in including Student A in classroom activities, and he interacted socially with many of the students. Student A's experience in this class was very positive. His fourth-grade class at the TPS, however, did not work out as well. His mother explained that the fourth-grade teachers and support staff were less willing to facilitate Student A's participation in general education subjects and were resistant to her suggestions. As a result, she decided it was time for her son to leave the TPS. She went back to her daughter's charter school, and this time the school agreed to enroll him in a general education class for the fifth grade. According to the mother, the charter school had reached a certain level of recognition for its academic excellence, and it was, therefore, willing to take on a new challenge. Student A became the first student at the charter school to have an intellectual disability.

Student A's experience at the charter school has been extremely positive, and his mother feels that he has thrived in the fifth grade general education classroom. She explained that at the charter school, the teachers were already using DI all the time to help students reach high levels of academic mastery. According to his mother, the teachers were "constantly helping [students] learn in different ways" and were therefore willing to try out new strategies that she suggested, including UDL. Although the teachers and staff did not have much knowledge about disabilities, the school tried to incorporate additional professional development to help build their capacity. Moreover, the school's principal helped to set a positive tone for inclusion and acceptance. The teachers were able to include Student A in all grade-level subjects, including pre-algebra and chemistry. According to the mother, his science teacher "believed in him so much" that "it's amazing to see what he is learning . . . he's learning about the periodic table." Consistent with the UDL principle of multiple means of student expression, teachers allow Student A to demonstrate what he has learned by drawing a picture or filling in some of the blanks. They have also revised their overall teaching practices to address his needs more effectively—for example, making a teacher presentation more interactive or incorporating more project-based learning to support engagement. In this way, Student A has helped the teachers to implement strategies that can benefit other students as well. His mother noted that the teachers have told her "Thank you for sharing [your son] with us. He's made us better teacher[s]."[341]

Although Student A has been enjoying and benefiting from his experience at the charter school, some areas have proven to be somewhat more challenging. The mother explained, for example, that while all fifth-grade students learn Latin, she did not know whether her son would be able to learn a foreign language. She

contacted the state Department of Education but was unable to obtain an answer. Ultimately, the IEP team decided that he would receive his speech therapy focused on pragmatics during this time. Moreover, while the charter school has been able to incorporate Student A's assistive technology device for communication into all of his classes, technology was not something that the school had used as a learning tool before. The teachers are therefore still trying to ascertain how best to support him in his use of the device.

Student A has developed more confidence and independence at the charter school. Although he has a paraprofessional aide who stays with him during the day, the aide does not hover over him all the time, as had been done in the TPS. Rather, the aide provides support during the times that he needs it and then allows him to interact independently in class. He has a resource room teacher who does a "push-in" model for English and math, but he is on his own for the rest of the subjects. He has also been able to make friends and interact socially with other students. Moreover, Student A is learning how to advocate for himself and has gone to Washington, DC, to advocate for inclusion on Capitol Hill. As the family is preparing for his move to middle school next year, his mother acknowledged her own anxiety concerning upcoming changes. She explained, "He will have a new team of teachers and a new environment altogether . . . so we've got to figure out how that works . . . and how best he can participate in the classroom."[342] Although his mother does not know where Student A will be in 10 years (she hopes, college), she feels that the solid education that he has been receiving at the charter school will help him carve out his future.

Student B, described by his mother as "a high-functioning autistic child," was admitted to a charter school for kindergarten at the age of five through a lottery admissions process. This independent charter school, which is not part of a network, serves students in grades K–12 on four campuses. The school is located in a state in the Northeast and has a similar percentage of students with disabilities as neighboring districts. Student B's mother explained that the family had been attracted to the school's rigorous curriculum, in particular the International Baccalaureate (IB) academic program because her son was very strong academically. Upon learning that he had been selected to attend the charter school, his mother wanted to make sure that she had an opportunity to meet with the charter school's special education director. At this meeting, during the spring prior to the beginning of her son's kindergarten year, the mother was "doing her due diligence" and brought her son's IEP to the meeting. She tried to learn more about "what kind of supports would be in place for him . . . if the IEP would be followed . . . kind of general questions, but also making sure that it was the right placement for [him]." She noted that the special education director had assured her that the school had been successful in serving autistic students in the past. The mother further explained that when she told the special education director that her son had been in a substantially separate classroom at his preschool, with opportunities for partial inclusion during the school day, the special education director told her to "make sure that, on the IEP, by the time he comes over, he will be full time inclusion." When the mother replied that she could not promise that her son's placement would be changed in his IEP in time for the start of the school year, the

special education director said, "Okay . . . we'll make it work. Bring him in. He'll be fine." The mother noted that she left the meeting feeling "positive and optimistic."[343]

Student B started kindergarten at the charter school in August. From the beginning, his mother noticed that there were problems. When she tried to contact the special education director on the second day of school to see how her son was doing, she was told that the principal wanted to meet with her at the end of the week because her son had not been complying with the school's behavior management system. According to this system, students receive cards of different colors to reflect the extent to which they are disregarding school rules. For example, after one warning, students receive a yellow card; after several infractions, students receive a red card, along with the loss of certain privileges such as recess. His mother explained that Student B had his own individual behavior management plan and that he would not respond well to this type of system. Student B's IEP did not include any academic goals but rather focused on behavior, self-regulation, executive functioning, and language. The school, however, did not seem to implement the student's IEP at all. No behavior support was provided in the classroom. The student also did not receive the speech services called for in his IEP. The only service that the school provided was occupational therapy (OT), which was not even included in the student's IEP.

As time progressed, the mother explained that she continued to receive phone calls from the school:

> I would get phone calls from the school every other day telling me, you know, "your son pushed someone or your son played roughly or your son colored on someone else's paper," and he would just get reprimand after reprimand after reprimand. So, he started not wanting to go to school. He was sitting out at recess a lot. He was being called in the principal's office a lot for really, really silly things that could have been used as teaching moments, and needed redirection from . . . an adult in the classroom.

Moreover, his mother noted that she felt awkward at the pick-up line every day because her son "would be the loud rowdy one . . . or, if he would come out and he had received a red card or yellow card, he would be crying already, worried about . . . 'I had a yellow card and so . . . I'm a bad child.'" When his mother asked an advocate to observe the classroom, she reported that "it was not the setting that [she] would want any [five-year-old] child, let alone . . . on the spectrum or not, to be [in] . . . it was very military style kind of teaching; very [strict] discipline, which [Student B] does not respond well to."[344]

The family ultimately decided to withdraw Student B from the charter school after nine weeks because his anxiety had reached such a high level that he was not eating or sleeping well. His mother subsequently filed a complaint with the state Department of Education under the state complaint procedures of IDEA, and the charter school was found to be in noncompliance. She explained that she felt as though her son had been "robbed from a really good education because the curriculum [at the charter] was on par. He was top of . . . the class with what they were learning, and they were learning . . . first grade level things . . . he could have done so well if he [had been] given the tools to be

successful."[345] The school struggled, however, with the social emotional component. Student B is currently back in a general education inclusion class in a TPS and is doing very well. He is receiving the support services that were included in his original IEP. He also has a shared paraprofessional who works with him for part of the day. His mother further explained that the fact that the school uses restorative justice practices has helped him to mend relationships. Now, when he disagrees with a friend, they are able to problem-solve together. Overall, Student B is a much happier, less anxious child since leaving the charter school.

As the above two case studies demonstrate, charter schools vary significantly in the manner in which they address the academic and behavioral needs of their students with disabilities. While the two students had very different experiences at their respective charter schools, a number of themes emerge across the two cases that underscore previously identified findings in this report. These themes pertain to the following areas: enrollment process, leadership and vision, and innovative school practices.

[C]harter schools vary significantly in the manner in which they address the academic and behavioral needs of their students with disabilities.

First, the cases highlight some of the challenges that parents of students with disabilities experience as part of the charter school enrollment process. For example, it appears that, prior to enrollment, Student B's mother did not have much information about the school's experience educating children with similar needs as her son. She relied on what the school's special education director told her. The experience of Student B's mother also reflects the struggle many parents of students with disabilities face with respect to the best time to disclose that their child has a disability. She indicated that she had done her "due diligence." Student A's mother, in contrast, had personal knowledge about the school because her daughter was already enrolled. It is noteworthy, however, that even though Student A had an overall, positive experience with the charter school, the school could be viewed as having initially engaged in a subtle form of counseling out by conveying to the mother, as she approached the school on several occasions about enrolling her son, that the school was not an appropriate fit for him.

A second theme relates to the leadership and vision at the two schools. Most notably, the principal at Student A's charter school seemed to set a tone for inclusion and acceptance, while the principal at Student B's school appeared to be less concerned with special education matters and more interested in school discipline. Student A's charter school also seems to have been more amenable to providing professional development to the teachers to help build their capacity to address Student A's needs. Moreover, Student A's school appears to have been more willing to work with his parents in a collaborative partnership. Student B's school, in contrast, created a more adversarial relationship with the parent, who ultimately ended up filing a complaint with the state Department of Education.

Finally, a third theme concerns the extent to which the two schools were willing to engage in innovative school practices to address the individualized needs of their students. In particular,

the teachers at Student A's charter school seemed more open to adapting their instructional approach, which was already somewhat flexible. Through an increased understanding of practices such as UDL, the teachers were able to build on the instruction they were already providing to other students to make adaptations that would benefit Student A. As a result, he helped them to become "better teachers" for all their students. In contrast, Student B's charter school did not address the student's social emotional needs. The teachers at the school did not deviate from their strict discipline practices, and Student B may have been punished for behavior related to his disability. The school was also unable to provide the basic services that were required under Student B's IEP. Because his mother was worn down to such an extent by frequently having to come into the school to pick up her son and by the emotional toll that the experience took on him, she ultimately withdrew him from the charter school. Once Student B was re-enrolled in a TPS, he received the services that he needed and was in a school that embraced a restorative justice approach to behavior. Consequently, he had a more successful experience in the TPS.

Summary of Chapter 4

This chapter discussed various issues pertaining to the provision of special education and related services in charter schools. First, it was pointed out that the extent to which a charter school is responsible for delivering special education services to its students with disabilities depends on whether the school is operating as its own LEA or whether it is a public school that is part of another LEA. In addition, several challenges were identified that may make it more difficult for some charter schools to deliver appropriate educational services to their students with disabilities. These include the fact that charter operators, and sometimes charter authorizers, do not possess sufficient knowledge of special education responsibilities and requirements and that charter schools experience a shortage of qualified teaching personnel, including qualified special education teachers. A second challenge pertains to the fact that charter schools sometimes struggle with the availability of resources—namely, schools that operate as their own LEA may not be able to take advantage of economies of scale, while those that function as part of an existing LEA may find it difficult to coordinate with the district. Furthermore, some charter school operators experience tension between their school's mission, including strict expectations for academics and behavior, and the extensive legal requirements of IDEA, particularly in respect to discipline. Additional tension exists between the emphasis of the charter school movement on parental choice and the emphasis of IDEA on the IEP team-based decision-making process. Chapter 4 further highlighted model practices that are emerging in some charter schools and discussed the contrasting experiences of two students with disabilities who have attended charter schools.

[S]ome charter school operators experience tension between their school's mission, including strict expectations for academics and behavior, and the extensive legal requirements of IDEA, particularly in respect to discipline.

Chapter 5: Special Types of Charter Schools

The current discourse regarding the participation of students with disabilities in charter schools tends to make broad generalizations about these schools as a whole. The reality, however, is that the charter school sector comprises a heterogeneous group of schools. The present section focuses on two types of charter schools that warrant closer examination in relation to the education of students with disabilities: specialized charter schools for children with disabilities (also known as *disability-specific charter schools*) and virtual charter schools.

Disability-Specific Charter Schools

While charter schools, on average, tend to enroll lower percentages of students with disabilities than do TPS, a subset of charter schools has emerged that is specifically designed to serve children with disabilities. These disability-specific charter schools may focus on a particular disability category (e.g., autism, emotional disturbance, deaf-blindness) or on students with disabilities more generally. In a national study conducted in 2008, Mead found that, at the time, there were 71 charter schools across the country specifically designed to serve students with disabilities. These schools were located in 13 states plus the District of Columbia and represented approximately 2 percent of charter schools overall. Forty of the schools that were identified focused on serving a particular disability category, with one-half of these focusing on autism.[346]

. . . NCSECS found that there were 137 specialized disability charter schools across the country . . . 62 percent focused on serving two or more disability categories. Among those schools serving a particular disability category, emotional disabilities and autism were the most common categories . . .

As part of its analysis of the CRDC for 2013–2014, NCSECS found that there were 137 specialized disability charter schools across the country. These were "charter schools with 25 percent or more enrollment by students with disabilities that self-identify as 'special education schools' in CRDC reporting and/or schools that report that 50 percent or more of their students qualify for special education under IDEA and Section 504."[347] Among the 137 schools, 62 percent focused on serving two or more disability categories. Among those schools serving a particular disability category, emotional disabilities and autism were the most common

categories (14 percent and 10.95 percent, respectively). While the specialized charter schools were found to be located in 24 states plus the District of Columbia, more than half the schools were in Florida (34 schools), Ohio (32 schools), and Texas (18 schools). The populations served by the schools in these three states varied. In Florida, the largest number focused on serving students with disabilities in general (18 schools), followed by seven focusing on autism and another six focusing on developmental delay. In Ohio, 27 of the 32 schools were part of the Summit Academy network, which identifies autism and specific learning disabilities as priority areas.[348] It is also noteworthy that the charter school statute in Ohio explicitly authorizes the creation of schools focused on serving autistic students.[349] Finally, in Texas, 10 of the 18 specialized charter schools focused on serving students with emotional disturbance.[350]

Disability-specific charter schools can be appealing to parents of students with disabilities for a variety of reasons. Although research in this area is limited, Mead's 2008 study found that, according to administrators of specialized charter schools, parents were drawn to the supportive culture and low teacher-student ratio of these schools as well as "the fact that their children would have peers who could relate to their learning struggles and provide support."[351] Mead's study also reported that some parents appeared to be attracted to the segregated nature of the school, while others chose not to enroll their child because of the school's segregation. Their child's prior performance on statewide assessments was identified as an additional reason why some parents selected these specialized schools.[352]

As noted, many disability-specific charter schools focus on serving autistic students. These schools, sometimes referred to as "autism-centric schools," present educational opportunities for autistic children beyond what is typically available in TPS. In addition to a low teacher-student ratio and a learning environment that includes peers who share similar learning profiles, these schools often provide more focused and intensive instruction by qualified staff that is based on the principles of applied behavior analysis (ABA).[353] As a result, these schools often fill up quickly and have long waiting lists.[354]

[A]ccording to administrators of specialized charter schools, parents were drawn to the supportive culture and low teacher-student ratio of these schools as well as "the fact that their children would have peers who could relate to their learning struggles and provide support."

Stories of parents who have selected a disability-specific charter school have been highlighted in the media. For example, an article appearing in *Education Week* in 2014 described how a parent of an autistic child started the Arizona Autism Charter School because she could not find a school that could "help [her son] with his communication, ease his anxieties, help him move forward and make academic progress." This parent noted that her new school had "an expertise in autism rarely found in other schools unless they're private." She pointed out that the school filled up almost immediately when it opened and that some families had moved to Arizona specifically to enroll their child. Moreover,

she added: "It's a huge battle [for parents] to get some of those supports in place, so it's understandable that people would opt for a school that already has all of that built in."[355]

While charter schools focusing specifically on students with disabilities offer a valuable opportunity for some students, these schools run counter to the legal presumption in favor of education in the general education classroom.[356] Under IDEA, all students with disabilities must be educated, to the maximum extent appropriate, together with students without disabilities, and students are to be removed from the regular educational environment "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[357] It is therefore important that IEP teams make careful determinations on a case-by-case basis of each student's LRE with respect to disability-specific charter schools. While a charter school focused on serving students with disabilities might be an appropriate placement for some students, it is not automatically appropriate for all students with the same disability. Individualized placement determinations must be made based on the student's unique educational needs and circumstances as set forth in his or her IEP and not on "the configuration of the delivery system, the availability of educational or related services, availability of space, or administrative convenience."[358] Such placement decisions must ensure that the student is able to continue to be involved and make progress in the general education curriculum, consistent with his or her IEP, and must not be based on the student's specific category of disability[359] or needed modifications in the general education curriculum.[360]

Under IDEA, all students with disabilities must be educated, to the maximum extent appropriate, together with students without disabilities, and students are to be removed from the regular educational environment "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

The extent to which a disability-specific charter school is responsible for ensuring that the LRE requirements under IDEA are being met depends on whether the school is functioning as its own LEA or is part of another LEA, as determined under state law. When disability-specific charter schools serve as their own LEA, they must provide for the availability of a continuum of alternative educational placement options. When such schools are part of another LEA, however, the LEA bears this responsibility. Moreover, the charter school LEA, or the LEA that includes the charter school, must comply with the intrastate transfer requirements of IDEA. When a child with a disability transfers to a new school district within the same state and the child previously "had an IEP that was in effect," the new LEA must provide FAPE, "including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the [LEA] adopts the previously held IEP or

develops, adopts, and implements a new IEP that is consistent with Federal and State law."[361] OSERS has interpreted "comparable services [to] mean services that are 'similar' or 'equivalent' to those that were described in the child's transfer IEP from the previous public agency, as determined by the child's newly-designated IEP Team in the new public agency."[362] Although the statute and regulations are silent as to the timeframe within which the new LEA must adopt the previous IEP or develop and implement a new IEP, OSERS has stated that these actions must take place "within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services."[363]

Thus, when a student newly enrolls in a specialized disability charter school, the school must continue to provide the student with comparable services, including any supplementary aids and services, until a new IEP is developed. The IEP must also specify the extent, if any, to which the child will not be able to participate in nonacademic and extracurricular activities with children without disabilities, even for a portion of the school day. Many specialized charter schools offer different opportunities for their students with disabilities to interact with students without disabilities. Mead found that some such schools

> located their facilities in or near larger typical schools and shared playground and/or lunch room spaces . . . [while other schools] arranged for extra-curricular clubs and sports opportunities with typically developing children and still others talked about community outings as a means for students to practice communication and other skills with persons who do not have disabilities.[364]

[W]hen a student newly enrolls in a specialized disability charter school, the school must continue to provide the student with comparable services, including any supplementary aids and services, until a new IEP is developed.

Because specialized charter schools, depending on their student population, will likely fall along the more restrictive end of the continuum of alternative placement options, IEP teams must carefully review on an ongoing basis the appropriateness of such a placement for each child. In particular, the IEP team must ensure that the child could not receive an appropriate education in a less restrictive setting and that the student's educational placement will change if the specialized charter school setting no longer remains necessary.[365] It is also important for SEAs, as part of their monitoring and oversight responsibilities under IDEA, to ensure that placement determinations regarding specialized charter schools are being made appropriately.

Parents who choose to send their child to a disability-specific charter school should understand that their child will not interact as much with students without disabilities, but they may decide that the benefits of the specialized program outweigh the risks.[366] Ari Ne'eman, head of the Autistic Self Advocacy Network, described the situation as follows: "If we have an environment in which autistic people are

over there, in that other classroom, in that other environment, it really sends a very clear message that we are not a part of your society." At the same time, however, he also noted: "I would never ask families to make a political statement with their children's future. . . . I spent time in public schools where I was bullied and not challenged and underestimated. I know we have a really serious problem."[367]

Virtual Charter Schools

Another type of charter school that is important to consider in the context of students with disabilities is the online or virtual charter school. In contrast to a traditional brick-and-mortar school, a virtual charter school (sometimes referred to as a *cyber charter school*) does not have a physical site that students attend. Rather, a virtual charter school provides instruction through the Internet, with the teacher and student separated by time and/or distance.[368] Online instruction can occur synchronously (i.e., in real time) or asynchronously (i.e., with students and teachers interacting at different times).[369] Virtual charter schools have become increasingly more prevalent over the past two decades. While it was estimated that in 2003 there were approximately 60 virtual charter schools, serving 16,000 students,[370] a recent report by the National Education Policy Center (2018) found that for the 2016–2017 school year there were 203 such schools, enrolling 223,634 students, with an average school enrollment of 1,096.[371] In another large-scale examination of virtual charter schools, Mathematica Policy Research (Gill et al., 2015) found that, in contrast to the underenrollment of students with disabilities in charter schools overall, students with disabilities tend to be represented in virtual charter schools at approximately the same rate as in public schools as a whole.[372]

At least 20 states currently contain language in their charter school statutes regarding virtual charter schools.[373] Illinois law, for example, defines "virtual schooling" as "a cyber school where students engage in online curriculum and instruction via the Internet and electronic communication with their teachers at remote locations and with students participating at different times."[374] Some state charter school statutes also include additional requirements that virtual charter schools must meet beyond what is required of charter schools in general.[375] For example, Idaho law requires that, in order to be approved, a petition for a new virtual charter school must specify:

At least 20 states currently contain language in their charter school statutes regarding virtual charter schools.

(i) The learning management system by which courses will be delivered;

(ii) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;

(iii) A plan for the provision of professional development specific to the public virtual school environment;

(iv) The means by which public virtual school students will receive appropriate

teacher-to-student interaction, including timely and frequent feedback about student progress;

(v) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;

(vi) A plan for the provision of technical support relevant to the delivery of online courses;

(vii) The means by which the public virtual school will provide opportunity for student-to-student interaction; and

(viii) A plan for ensuring equal access for all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework.[376]

There are a number of reasons why parents of students with disabilities may choose to enroll their child in a virtual charter school. As with other charter schools, parents who select virtual charter schools are often seeking an alternative to their child's prior negative experience in a TPS.[377] In addition, virtual charter schools present several potential benefits that may be particularly appealing to parents of children with disabilities.[378] In contrast to traditional brick-and-mortar schools, virtual charter schools offer greater flexibility with respect to instructional timing and scheduling (i.e., learning can occur "anytime, anyplace"),[379] as well as the pace at which students are able to progress through the curriculum.[380] The use of online learning environments also facilitates the presentation of instructional materials in multiple formats that can serve a variety of learners—for example, the combination of online text to support visual learning and lecture recordings or web-conferencing to support auditory learning.[381] Moreover, because teachers and students in virtual charter schools have the ability to access online student performance data on a more regular basis,[382] there is greater opportunity to customize instruction to address students' unique learning needs and to foster increased individualization and personalized learning. Parents are also able to play a more active role in their child's education at a virtual charter school, at times serving as their child's "learning coach." Finally, virtual charter schools can be a viable option for students who are challenged in their physical ability to attend school,[383] including those who are at home for medical or disciplinary reasons, those who are incarcerated in juvenile justice facilities,[384] or those who have been bullied at their prior public school.[385]

In contrast to traditional brick-and-mortar schools, virtual charter schools offer greater flexibility with respect to instructional timing and scheduling . . . as well as the pace at which students are able to progress through the curriculum.

While virtual charter schools offer various potential benefits, these schools also present a number of challenges for the education of students with disabilities. First, many of these schools struggle with issues of accessibility.

Research from the OSERS-funded Center on Online Learning and Students with Disabilities found that the content management systems (CMS) and learning management systems (LMS) that are currently used for online learning in elementary and secondary education programs, including virtual charter schools, often present content that is not fully accessible to some students with disabilities.[386] Many virtual charter schools use prepackaged curricula,[387] which are difficult to modify or retrofit after the fact.[388]

Challenges with respect to accessibility can have implications under Section 504 and Title II of the ADA. Joint guidance issued in 2010 by the U.S. Department of Justice's Civil Rights Division and the U.S. Department of Education's OCR stated the following:

> Requiring use of an emerging technology in a classroom environment when the technology is inaccessible . . . is discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.[389]

In a subsequent frequently asked questions (FAQ) document, OCR provided "a functional definition of accessibility," according to which students with disabilities must be given the opportunity to "acquire the same information, engage in the same interactions, enjoy the same services as [students without disabilities] with substantially equivalent ease of use."[390] OCR has utilized this definition of *accessibility* while conducting compliance reviews of the websites and learning environments of virtual charter schools. For example, in 2014, OCR entered into a resolution agreement with the South Carolina Public Charter School District, which served as the LEA for seven online charter schools, regarding various problems associated with the schools' websites and online learning environments such as images that lacked alternative text attributes, videos that lacked synchronized captioning, and PDFs that were not accessible. As part of the resolution agreement, the district agreed to take several actions to ensure greater accessibility.[391]

[V]irtual charter schools can be a viable option for students who are challenged in their physical ability to attend school, including those who are at home for medical or disciplinary reasons, those who are incarcerated in juvenile justice facilities, or those who have been bullied at their prior public school.

Questions have also been raised regarding the specific roles and responsibilities of parents, students, and teachers in virtual charter schools. Virtual charter schools have extensive expectations of parents.[392] Because online instruction requires self-direction and consistent participation on the part of students as well as the ability to navigate between various assignments and media, parents often find themselves, particularly in the elementary and early middle school years,[393] taking on a more active role that involves greater time and emotional commitment.[394] Specifically,

parents find themselves engaging in tasks such as ensuring that their child is logging in on a regular basis, helping their child to stay organized and manage his or her time, monitoring and motivating their child to participate, and carrying out various curricular or instructional tasks, including making specific adaptions.[395] While some parents appreciate the opportunity to have greater control over their child's education,[396] others have reported feeling overwhelmed by it.[397] Moreover, not all parents have the ability to commit the amount of time and effort that is necessary. With respect to the role of students, because many students with disabilities struggle in the area of executive functioning and metacognition, they may experience particular difficulty in persisting and completing the demands of online learning and may, as a result, require more support from their parents in order to be successful.[398] Regarding the roles and responsibilities of teachers, many are required to engage in tasks beyond instruction—namely, managing online environments and, at times, troubleshooting technological problems.[399] Virtual charter schools are often understaffed in the area of special education,[400] and administrators and teachers frequently lack experience in this area.[401]

Because learning in a virtual charter school takes place online rather than in a physical classroom, compliance with IDEA mandates can be challenging.

A related concern pertains to the extent to which virtual charter schools can provide appropriate special education and related services. As is true for all charter schools, virtual charter schools may operate as their own LEA or part of another LEA as determined under state law.[402] In the case of the former, the virtual charter school is responsible for ensuring the provision of FAPE consistent with the requirements of IDEA, unless assigned to another entity by the state. Because learning in a virtual charter school takes place online rather than in a physical classroom, compliance with IDEA mandates can be challenging. One example is the difficulty associated with providing related services such as OT and speech/language therapy to students who span such a wide geographic area.[403] Moreover, virtual charter schools that serve as their own LEA may struggle to comply with the intrastate and interstate transfer requirements of IDEA—namely, to provide services comparable to those described in the IEP that was previously in effect, in consultation with the parents, until the LEA either (1) adopts the previously held IEP or develops, adopts, and implements a new IEP (in the case of an intrastate transfer) or (2) conducts an evaluation, if determined necessary by the new LEA, and develops, adopts, and implements a new IEP (in the case of an interstate transfer).[404]

In an administrative due process hearing from Pennsylvania in 2016, an independent hearing officer found that the Commonwealth Connections Academy Charter School had engaged in numerous substantive and procedural violations under IDEA associated with the intrastate transfer requirements. Although the virtual charter school, in its role as an LEA, had chosen to adopt the student's previously held IEP from the student's prior district, the virtual charter school failed to implement the live math instruction component that was required. In addition, the school/LEA failed to provide the

counseling services under the previous IEP or to train the parent, the child's "learning coach," in how to implement the child's positive behavior support plan. The hearing officer found that "the evidence here is overwhelming that the Student requires structure and consistency, including continual prompting, checks for attention and behavioral support that while included in the transfer IEP were not implemented." The hearing officer further concluded that the administrators' and educators' "lack of clarity . . . [and] basic working knowledge of how to analyze the transfer IEP . . . [and] implement and provide comparable services contributed to a series of . . . serious substantive and procedural violations." Moreover, the virtual charter school had waited nearly six months, an "unreasonable" amount of time, after the student had transferred to issue permission for an evaluation. Additionally, while the school used video conferencing for IEP meetings, the education staff had not always attended these meetings or had left the conferencing prematurely. The hearing officer ultimately concluded that, rather than being driven by the student's individualized learning needs, his educational program was determined based on the availability of online software programs.[405]

Finally, there are questions and concerns regarding the effectiveness, accountability, and funding of virtual charter schools.[406] A 2015 study by CREDO found that attending a full-time online charter school results in "lessened academic growth for the average student" (effect size of –0.10 in reading and –0.25 in math).[407] A subsequent 2017 CREDO study similarly found negative results associated with participation in online charter schools.[408] The extent to which virtual charter schools are being monitored and held accountable for the performance of their students, however, is an area of concern.[409] Questions have also been raised regarding the large number of virtual charter schools that are run by for-profit EMOs.[410] Moreover, there are possible issues associated with the funding structure of virtual charter schools—namely, unlike traditional brick-and-mortar schools, virtual charter schools tend to have greater start-up costs associated with the purchase of such items as software and online management systems but do not have some of the same ongoing operational costs such as those associated with physical plant maintenance, transportation, and food services.[411] Similarly, there is inconsistency across states regarding factors contributing to the funding proportions that these schools should receive—for example, how to calculate average daily attendance in a virtual school setting.[412] Given the large number of students with disabilities enrolled in virtual charter schools, these issues warrant further examination.

[T]here are questions and concerns regarding the effectiveness, accountability, and funding of virtual charter schools. A 2015 study by CREDO found that attending a full-time online charter school results in "lessened academic growth for the average student."

Summary of Chapter 5

This chapter has focused on two types of charter schools: specialized charter schools that are designed to serve students with disabilities and

virtual charter schools. With respect to specialized charter schools, it was shown that, while some schools focus on multiple disability categories, others (approximately 38 percent) focus on a particular disability category. Among the latter group, emotional disabilities and autism were the most common categories. Specialized charter schools can be appealing to parents of students with disabilities because they have a smaller teacher-student ratio, allow students to interact with peers who can relate to their learning challenges, and provide more intensive and focused instruction for specific disabilities. It was further shown, however, that a major concern with these schools is that they run counter to the presumption in favor of education in the general education classroom. Determinations must be made on a case-by-case basis regarding a student's lawful placement in a charter school consistent with LRE. If a student with a disability wishes to enroll in a disability-specific charter school, the IEP team must comply with the intrastate transfer requirements of IDEA, must consider opportunities for the student to interact with students without disabilities, and must monitor the placement decision on an ongoing basis to determine whether it is no longer necessary.

The chapter then addressed the experience of students with disabilities in virtual charter schools. These schools differ from traditional brick-and-mortar schools and provide instruction online through the Internet. Students with disabilities enroll in virtual charter schools in similar proportions to TPS. Virtual charter schools can be an appealing alternative to TPS for students with disabilities because virtual charter schools allow for flexible timing and scheduling of learning, presentation of materials in multiple formats, and increased opportunities for individualization and personalized learning. At the same time, there are potential areas of concern with respect to virtual charter schools and students with disabilities. There are questions regarding the extent to which their curricular materials and websites are fully accessible. In addition, students who struggle with executive functioning may find it difficult to complete the self-paced nature of online learning. Similarly, parents are often expected to play an active and time-consuming role in their child's education. Moreover, virtual charter schools may struggle to provide the range of services necessary to educate students with disabilities, including related services. Finally, questions have also been raised regarding effectiveness, accountability, and funding with respect to virtual charter schools. Because large numbers of students with disabilities enroll in virtual charter schools, these issues need to be explored further.

Chapter 6: Accountability for Students with Disabilities in Charter Schools

As polarizing as the debate over charter schools has become, it is clear that charter schools are not a monolithic group. Some charter schools are well managed, maintaining a focus on effectively educating all enrolled students and demonstrating academic growth and improved educational outcomes, while also remaining well-connected to their neighborhoods and communities. Others, however, are operated by distant corporations that are unconnected to the community of learners they serve and lack any meaningful state or federal oversight. The present chapter reviews research focusing on the outcomes of students with disabilities in charter schools and then discusses the monitoring and oversight of charter schools with respect to the education of students with disabilities.

As described by current research, "the average charter school performs about the same as nearby traditional public schools in boosting student achievement."

Outcomes of Students with Disabilities in Charter Schools

Research examining the effectiveness of charter schools for all students, as well as for students with disabilities, has shown varying results. Access to national longitudinal data on student test scores provides researchers a key tool for examining academic growth over time and has led to the publication of numerous studies. Despite the volume of research that has been generated, however, there is currently no agreement among researchers regarding the effect of charter schools on student achievement. This lack of consensus is due in part to questionable research designs, discrepancies in methodologies, failure to consider conflicting research, and concerns about generalizability. As described by current research, "the average charter school performs about the same as nearby traditional public schools in boosting student achievement."[413]

It is even more challenging to determine the effect of charter school attendance on the performance of students with disabilities. In part, this is a result of their limited enrollment by grade and, because test performance data is collected, disaggregated by subgroup, and reported only if not inconsistent with the *n* size that protects student confidentiality. CREDO conducted three large-scale, multistate studies of charter schools in 2009, 2013, and 2015. These studies are often cited as evidence that students enrolled in charter schools demonstrate increased academic growth over time and that they outperform their TPS

peers. Each study relied on a nonexperimental method that through a Virtual Control Record (VCR) matched each charter student to a "similar" TPS student based on observable characteristics. It is likely, however, that this methodology would introduce bias with respect to students with disabilities, particularly students with high-level needs. One of the characteristics used for matching is a baseline test score that the authors included. As a result, the studies might compare the achievement of charter and TPS students with similar levels of prior achievement.[414] The authors of the 2013 CREDO study acknowledged that they grouped all students with disabilities together regardless of disability-related needs:

> It is difficult to compare the outcomes of Special Education students, regardless of where they enroll. In the ideal, we would compare outcomes for each . . . IEP designation. That approach is infeasible due to the large number of categories and the relatively small number of students in each; matching with the VCR approach would result in only a handful of matches. Faced with this challenge, we aggregate across all categories of special education.[415]

Because the authors combined all students with disabilities, the result is unclear.

Numerous other studies of charter school effectiveness have relied on a lottery-based methodology, which allows researchers to study oversubscribed charter schools and follow a randomized admission design in which they compare achievement growth of students who were lottery "winners" to the lottery "losers" who stay enrolled at TPS. A number of these lottery-based studies have revealed some positive effects in academic achievement gains for the lottery "winners."[416] Additional research is needed, however, to consider alternative methodologies, given the difficulty in applying this methodology to students with disabilities with highly individualized learning needs, and given that any effects of this lottery-based methodology can be generalized only to the population of students who actually enter the lottery.[417]

Researchers who used experimental and quasi-experimental methods in their studies, including the CREDO studies, have shown positive, neutral, and negative effects.[418] A number of lottery-based studies have revealed some positive effects in academic achievement gains for the lottery "winners."[419] Compared to studies of a single charter school (e.g., the Harlem Children's Zone),[420] studies that followed a broader sample of schools with lottery-based randomized designs revealed more mixed effects on student achievement.[421] Moreover, in 2010, Gleason and colleagues (2010) undertook a major study of 36 charter schools in 15 states that resulted in a finding of no significant effects on either mathematics or reading.[422]

Taken together, the findings of these studies show that on average students in charter schools perform in a manner that is similar to, but not better than, TPS. In a meta-analysis by Betts and Tang (2014) of the lottery-based studies and subset of more rigorous quasi-experimental analyses, the researchers found that charter schools produce higher achievement gains in mathematics than do TPS, but found no discernible difference in reading achievement between the charter schools and TPS.[423] In a recent review of research examining charter school impacts, Cohodes (2018) concluded that,

although on average charter schools perform approximately the same as TPS, a group of urban charter schools serving low-income students of color, many of which follow a "no excuses" model, have shown large, statistically significant impacts on test scores.[424] For example, in a report examining charter schools in Boston, Setren (2016) found that students with disabilities attending these schools achieved large, positive effects on math and English test scores.[425]

Additional discussion is warranted to clarify reporting of "effect" sizes that are frequently described to indicate without context that students with disabilities experience "strong" or "large" academic gains in charter schools,[426] or significant gains for charter school students in reading, equivalent to six additional days of learning as compared to TPS.[427] Moreover, it is important to point out that all of these studies have focused on academic achievement typically measured only by test performance. More research is needed to consider evidence of benefits apart from academic achievement based on test scores such as educational attainment, postgraduation employment and education rates, civic involvement, social skills development, and school climate effects on individual behavior.

More research is needed to consider evidence of benefits apart from academic achievement based on test scores such as educational attainment, postgraduation employment and education rates, civic involvement, social skills development, and school climate effects on individual behavior.

Charter School Monitoring, Oversight, and Accountability

As charter schools have expanded over time, concern about a lack of accountability and rigorous oversight by charter authorizers as well as by all levels of government—local, state, and federal—has been a recurring theme. Moreover, in light of the various challenge areas discussed in earlier chapters of this text, questions have been raised regarding the nature and efficacy of specific monitoring and oversight activities pertaining to the provision of special education services in charter schools. The present section examines the extent to which entities responsible for monitoring and oversight hold charter schools accountable for the education of students with disabilities in these schools.

Chapter 1 described the varied types of charter authorizers established under state law as well as the critical role that authorizers can play with respect to monitoring and oversight. For example, authorizers are responsible initially for screening and managing the process for determining which applicants are awarded a charter. In addition, authorizers are responsible for overseeing financial and organizational matters as well as for monitoring whether charter schools attain academic performance standards and are in compliance with federal and state regulations and civil rights laws. Moreover, authorizers are responsible for holding charter schools accountable for meeting the terms and missions of their charters by making determinations regarding charter renewals and revocations as well as school closures. Authorizers oversee from 1 to more than 1,000 charter schools

and vary in their managerial leadership, skills, responsibility, and willingness to close down poor-performing or noncomplying charter schools. In 2015, CER reported that, of the approximately 6,700 charter schools that had opened across the nation since 1992, approximately 1,035, or 15 percent, had closed. Most closures (42 percent) were attributed to financial setbacks related to low enrollment or inadequate funding, while 24 percent were related to mismanagement, and fewer than 20 percent resulted from students not meeting expected performance standards.[428]

In 2016, the Education Trust-Midwest published a report that discussed the varying patterns of oversight and accountability on the part of charter school authorizers. For example, the report described Michigan's system of 40 authorizers—among the highest in the nation—including the state's three largest authorizers, two state universities, and a community college. These three authorizers had granted charters to schools educating approximately 85,000 students—more than half of the state's 145,000 charter school students—without any coherent criteria or system for accountability.[429] The report also highlighted the especially poor achievement and graduation rates of ELs and students with disabilities in these schools. The report contrasted Michigan's support for charter growth without restriction or accountability with the deliberate evolution of charter growth and oversight in Massachusetts. With the state Board of Education serving as its sole authorizer, Massachusetts was commended for its leadership and cautious, responsible oversight of the authorizing process. In addition, the state's authorizing statute was amended in 2010 to allow the Board of Education to grant a limited number of additional charters only to applicants which could demonstrate that they were a "proven provider," with a record of success serving students who are eligible for free or reduced lunch, require special education services, or have limited English proficiency.[430]

Limited research exists regarding the extent to which charter authorizers are carrying out their monitoring and oversight responsibilities in special education.

Limited research exists regarding the extent to which charter authorizers are carrying out their monitoring and oversight responsibilities in special education. In 2015, as part of its annual survey of charter school authorizers across the country, NACSA included a series of questions specifically asking about authorizer practices with respect to the oversight and accountability of charter schools in serving students with disabilities.[431] The questions focused on various phases of the oversight process, including the initial application phase, ongoing monitoring phase, and renewal/revocation phase. The reported responses reflect a range of perspectives across charter authorizers. In presenting the results, NACSA also included the reactions of four individuals identified as experts on the intersection of charter schools and special education.[432]

Responses to survey questions about authorizer practices related to the charter application phase reveal that authorizers could be doing more in this area. For example, in response to the question of whether authorizers require charter applications to have marketing/outreach plans for students with disabilities,

only 25.7 percent answered "yes," and only 36.8 percent indicated that they required applications to include specific student outcomes for this population.[433] Azure Angelov, Senior Director at Goodwill Education Initiatives, one of four reviewing experts, expressed serious concern about these results. She noted that "authorizers [are required to] collect written assurances that schools will follow federal and state laws specific to students with IEPs (including federal law that specifies academic improvement for most students with IEPs)." She was, therefore, surprised that "authorizers don't use more tools to understand applicant plans for recruiting students with IEPs or ensure applicants have a high bar for outcomes." She further observed:

> By requiring schools to provide comprehensive descriptions of special education services in their applications, authorizers lay the ground work for a school to be more informed and aware of the realities if offering high-quality special education programs and series that align with their mission and vision. A proactive, hearty application process is the best asset for ensuring all students in an authorizer's portfolio [receive a high-quality education].[434]

With respect to the ongoing monitoring of charter school performance in special education, including the provision of technical assistance, on the one hand, 80.6 percent of the authorizers responded that they do not require information about special education enrollment rates, and 63.9 percent indicated that they do not require special education student outcomes data. On the other hand, almost 85 percent indicated that they collect or receive special education enrollment data, 76.4 percent do the same for special education student outcome data, and 79.2 percent monitor the percentage of students with disabilities enrolled in each school. Moreover, 69.4 percent reported that they provide some form of direct technical assistance for special education.[435]

An issue of transparency also seems to be highlighted, as only 55.6 percent of responding authorizers indicated that they report the percentage of students with disabilities enrolled in authorized schools; only 28.5 percent report enrollment data disaggregated by race/ethnicity or identified disability; and 46.5 percent report student outcomes for students with disabilities.[436] Although some of these responses may be influenced by a concern based on disclosure of personally identifiable information because of the low cumulative enrollment number of students with disabilities or based on type of disability, the report contained no such caveat. At the same time, assuming the lack of transparency is not related to *n* size considerations, the failure to collect and report this information as part of the accountability system is unfortunate.

In response to questions about proportional enrollment, 76.4 percent of respondent authorizers agreed or strongly agreed with the principle of proportionality: Charter schools should enroll students with disabilities at rates similar to the local community in which the charter school is located.[437] Lauren Rhim, Executive Director and co-founder of NCSECS, another reviewing expert, noted the following regarding proportionality: "While imperfect—for instance, many districts over identify students with disabilities—proportionality is a readily available proxy for equity."[438] At the same time,

the authorizers were split on the degree to which they ought to be enforcing special education enrollment proportionality, with almost half of them (49.3 percent) agreeing or strongly agreeing that they have an enforcement role in this context. About 56 percent of the respondents disagreed or strongly disagreed that enforcing enrollment proportionality was a violation of charter school autonomy. Somewhat fewer—45.8 percent of authorizer respondents—felt that charter schools should not have full autonomy in recruitment and enrollment of students with disabilities.[439]

Finally, authorizers were also asked about a number of practices for addressing special education challenges that they had used during the last two years, that were currently in place, or that were practices the authorizer would consider using in the future. Respondents reported the following with respect to particular practices—namely, about 30 percent responded affirmatively with respect to staffing plans, school special education policies, and school enrollment practices; 39.6 percent indicated yes to changing a school's remediation or action plan; and 13.2 percent reported yes to revoking or not renewing a charter for persistent special education violations.[440]

Several experts reviewing the NACSA survey data commented on the fact that only 13 percent of authorizers reported that they would be willing to close charter schools for persistent special education violations. For example, Robin Lake, Director of the Center on Reinventing Public Education at the University of Washington, stated:

> So it seems that authorizers are generally unwilling to close a school that is failing to comply with federal or state law, but they are also unwilling to require the school to make changes to its special education program, presumably because the authorizers see this as infringement on charter autonomy.[441]

Similarly, Lauren Rhim noted:

> If many authorizers are not tracking these data or willing to meaningfully hold charter schools accountable (i.e., threaten to revoke or nonrenewal) for persistent violations related to special education, what in practice is the real consequence for schools failing students with disabilities?

She also asked whether states and authorizers "are implicitly or explicitly deciding they do not need to hold charter schools accountable for equitable access and quality programs for students with disabilities."[442]

With respect to monitoring and oversight at the state level in its role as the SEA, in accepting funds under the ESEA, the SEA agrees to ensure that the public chartering agency, or authorizer, of any charter school that receives funds under the state program adequately monitors each charter school under the authority of such agency in recruiting, enrolling, retaining, and meeting the needs of all students, including children with disabilities and ELs.[443] States vary, however, in the extent to which they hold authorizers accountable for evaluating the performance of the schools within the authorizer's portfolio and for deciding the consequences, including in some cases, revoking the charter, and closing the school. In 2015, a report from two organizations, Integrity in Education and the Center for Popular Democracy, presented evidence of inadequate

oversight of the charter school industry. The authors studied 15 states and determined that $136 million was lost to fraud and abuse. The report found fraud and mismanagement on the part of charter operators with respect to the following six areas: using public funds illegally, using tax dollars to illegally support noneducational businesses, mismanaging the school in a manner that put children's health or safety in potential danger, illegally taking public dollars for services they did not provide, inflating their enrollment numbers to boost revenues, and carrying out general mismanagement of public funding. The report faulted "the rapid expansion of the charter sector in recent years [as] a particularly important factor in the fraud epidemic." It concluded that "local and state entities charged with oversight of charter schools are quickly becoming overwhelmed."[444]

Of the 33 charter schools reviewed [by the ED Inspector General], 22 presented numerous examples of internal control weaknesses related to the schools' relationships with their CMOs.

Finally, with respect to oversight and accountability at the federal level, an audit by the U.S. Department of Education's Inspector General's Office found that the U.S. Department of Education failed to exercise adequate oversight of the federal CSP through which it provides multimillion-dollar grants to SEAs and CMOs for the creation and expansion of charters. The audit found that "charter school relationships with CMOs posed a significant risk to Department program objectives." Of the 33 charter schools reviewed, 22 presented numerous examples of internal control weaknesses related to the schools' relationships with their CMOs. From the examples of internal control weaknesses, the Inspector General identified three "significant risks to Department program objectives": financial risk, lack of accountability over federal funds, and performance risk.[445]

One of the extreme examples of the lack of federal and state oversight pertains to the experience of charter schools in Ohio. According to an article published by Progressive, in 2015, following a rapid expansion of charter schools, Ohio applied for and was given a $71 million grant—the largest grant awarded by the federal CSP program that year. After serious improprieties and misrepresentations by the state school choice director and author of the CSP application were discovered, the Department of Education placed a hold on the grant. A year later, however, despite characterizing the grant as "high risk" and requiring certain steps by the state to ensure compliance with federal law, the Department released the $71 million to Ohio.[446]

The federal ESSA is now primed to assist and prod states that do not have plans for ensuring authorizer accountability, including monitoring performance, reporting, and revoking charters, as warranted. As a condition of SEAs obtaining CSP grants for start-up and implementation of charter schools, the state must describe how it will provide oversight with respect to authorizing—for example, "by establishing authorizing standards that may include approving, monitoring, and *re-approving or revoking the authority of an authorized public chartering agency based on the performance of the charter schools authorized*" (emphasis added).

Summary of Chapter 6

This chapter has described the limited known outcomes—"similar, not better" results based on test outcomes—for students with disabilities who are enrolled in charter schools on average compared to their TPS peers. It examined some of the challenges and difficulties faced by researchers attempting to isolate those outcomes, and the different methodologies relied upon in their multiple studies, including the VCR match used by CREDO, lottery-based methodology comparing "winners" and "losers," lottery-based randomized designs, and large-scale and single-focused studies. It identified the need to clarify "effect" size, because without context or clarity concerning sample size, the way it is being used in the research can be misleading.

This chapter also focused on the lack of accountability and oversight by charter authorizers as well as all levels of local, state, and federal government. Despite authorizers having state statutorily granted duties and responsibilities, there is too little evidence that charter authorizers are fulfilling their oversight responsibilities to hold charter schools accountable for ensuring open and fair enrollment of students with disabilities, providing specialized instruction and related services through a continuum of alternate placements, or helping to ensure improved academic performance outcomes of students with disabilities through effective intervention, renewal, or revocation of the charter. Reports by CER and Education Trust-Midwest include bleak examples of charter authorizers' limited sense of responsibility to the schools within their portfolio. Much of this information is confirmed by the self-reported responses to the 2018 NACSA survey of authorizers about their perceived roles and responsibilities for overseeing charter schools in their delivery of special education, as well as what the authorizer is willing to do in response to persistent failure—for example, whether to require the applicant to submit an outreach and recruitment plan that might help increase enrollment of students with disabilities; whether to establish performance outcomes expected for students with disabilities; and whether to require collection and public reporting of data regarding enrollment, academic performance, suspension, and attendance disaggregated by disability. The chapter concluded with two disturbing accounts involving federal and state oversight or lack thereof, which resulted in a report by the Inspector General.

Despite authorizers having state statutorily granted duties and responsibilities, there is too little evidence that charter authorizers are fulfilling their oversight responsibilities to hold charter schools accountable . . .

Chapter 7: Potential Implications of Charter Schools for Students with Disabilities in Traditional Public Schools

Chapter 7 briefly describes how the growth and expansion of charter schools can have a negative effect on the education of students with disabilities who remain in TPS—in particular, those with more significant disabilities and greater educational needs. This chapter first discusses the fact that, because TPS have to address the loss of revenue resulting from the decline in student enrollment but not necessarily their more fixed operating costs, their students, in particular those with more significant disabilities, may experience a range of undesirable outcomes, including increased class sizes and student-to-teacher ratios, limited access to resource specialists, and possible school closures. Moreover, because the majority of charter schools are geographically located in urban, less affluent areas, they disproportionately educate students of color. At the school level, individual charters tend to be more racially homogeneous, reflecting higher rates of segregation by race, ethnicity, and income than neighboring TPS.

Potential Fiscal Impact on Students with Disabilities in TPS

As described in Chapter 1, support for public education in most states relies on a combination of federal and state categorical funds, state per-pupil formula-based foundation funding, and, to a lesser extent, local funds based, in part, on property taxes. When special education funds, especially those that are census based, are directed away from TPS and channeled to charter schools, TPS school districts can experience a negative fiscal impact. More specifically, as charter schools expand, TPS experience a decline in their enrollment and revenue but not necessarily their more fixed operating costs.[447] The size of this fiscal impact varies, depending on a variety of factors, including "the share of students lost to charters, the flexibility that districts have to adjust various components of their education budgets, as well as the types of students who enroll in charter schools."[448] Although TPS districts may experience some savings as they educate fewer students, these districts must still find ways to meet their fixed operating costs. To

When special education funds, especially those that are census based, are directed away from TPS and channeled to charter schools, TPS school districts can experience a negative fiscal impact.

address potential financial shortages, districts might engage in a number of practices, such as reducing staff and resources or closing schools.[449] The result is a decline in programs and services to students who remain in TPS. Of particular concern are students with more significant disabilities who are already underrepresented in charter schools compared to their sending districts.[450] The needs of these students are not typically as easily met in full inclusion classrooms and are generally associated with higher staffing costs. Studies have found that "charter schools serve fewer students with costly special needs, leaving proportionately more of these children in district schools. Perhaps most important, the assumption that revenue reductions and enrollment shifts cause districts no measurable harm . . . ignores the structure of operating costs and dynamics of cost and expenditure reduction."[451]

Likely adopted out of concern for overidentification of students with disabilities, a fixed census-based figure (e.g., 11.12 percent without adjustment) creates two potential problems with respect to charter schools. First, charter schools have no financial incentive to enroll special education students, especially those students with more significant needs who may require greater resources because charters receive a flat percentage of funding (as determined by the census data) regardless of the characteristics of the students enrolled. In this instance, charter schools receive funds for special education costs of students who are not enrolled. Second, the funding that flows to a charter school that is not serving its census-based allocation of students with disabilities drains the local district of funds intended for the additional education costs of students with disabilities, who remain in the local district.

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Further complicating the charter/TPS funding dichotomy is a charter school's decision as to whether to backfill spots for students who disenroll for various reasons after state and federal funding reporting deadlines, typically October 1. A charter school that does not backfill an empty seat after October 1 will be "unjustly enriched," having received federal and state allocations in excess of its actual current student enrollment. In this situation, a school district is "doubly burdened" with providing educational services to a returning student for whom the district has not received a proportionate allocation of funds. The compounded loss of funding ultimately borne by the district can have a particularly harsh effect on students with disabilities who may be disenrolled from charter schools and then return to or remain in TPS with educational needs that are potentially costlier.

In order to help alleviate the negative fiscal impact on TPS, 23 states have set a cap on the growth of charter schools.

In order to help alleviate the negative fiscal impact on TPS, 23 states have set a cap on the growth of charter schools.[452] Statutorily imposed

caps have been the subject of serious debate; in Massachusetts, for example, voters in 2015 overwhelmingly rejected a ballot initiative to lift the cap.[453] Proponents of lifting the cap argued that it would enable larger numbers of disadvantaged students to attend charter schools with strong records of academic performance.[454] Moreover, proponents argued that charter schools do not create a negative financial impact on TPS; they pointed to a provision of Massachusetts law that authorizes the legislature to appropriate transition funding to reimburse districts for an amount up to the per-pupil funding that the district would have received had the student not left to go to a charter school.[455]

Opponents of lifting the cap on charter schools in Massachusetts argued that doing so would exacerbate existing educational disparities in large urban districts, where budget shortfalls were already causing cuts to services for certain groups of students, including students with disabilities and ELs. Furthermore, opponents argued that, because charter schools fail to recruit and retain the full range of students with disabilities in a proportionate manner to their sending districts, eliminating the cap would contract, rather than expand, the number of quality educational offerings from which these particular students could choose.[456] In April 2018, the state Supreme Judicial Court of Massachusetts rejected a challenge to the constitutionality of the state-imposed cap[457] that was brought on behalf of waitlisted students who were unsuccessful in gaining admittance to certain charter schools in Boston. The court found that the student plaintiffs seeking to lift the cap had no individual right to attend a charter school and that the cap did not interfere with their right to receive an adequate education in the Commonwealth's public schools. In upholding the rational basis of the state statute imposing the cap, the court explained:

> The charter school cap reflects the education interests of students in the Commonwealth who do not attend charter schools. . . . [F]unding for charter schools necessarily affects the funding for traditional public schools. The cap is an effort to allocate education funding among all the Commonwealth's students attending these two types of publicly funded schools. Because of the statutory funding mechanism that mandates payment of charter school tuition from resources that would otherwise go to traditional public schools, the expansion of charter schools has detrimental effects on traditional public schools and the students who rely on those schools and their services.[458]

The court specifically identified one of two[459] other possible legitimate bases for the legislature placing limits on charter schools, namely, "a limit on charter school growth permits education administrators to assess, manage, and develop for replication any innovative educational practices that develop in charter schools for the students enrolled in traditional public schools."[460]

One of the few studies examining the fiscal impacts of charter schools on TPS was undertaken by Bifulco and Reback (2014), who reported that in a single academic year the Albany school district lost $23.6 to $26.1 million and the Buffalo school district lost $57.3 to $76.8 million to charter schools. The charter schools in each district enrolled smaller percentages of ELs than did TPS, and charter schools in Albany enrolled significantly fewer students with disabilities. Because TPS in the school districts continued to

serve a disproportionate percentage of students from these subgroups, the districts bore the impact of higher levels of spending associated with educating these students in need of more intensive language development services and special education and related services while they were unable to reduce sufficiently fixed operating costs.[461]

Subsequent research by Ladd and Singleton (2018) of fiscal externalities (i.e., the additional burden that charter schools place on the budgets of TPS) focused on a single urban school district and five nonurban districts in North Carolina. The study found that, as a cap on the number of charters allowed was lifted, the rapid increase in charters imposed serious negative fiscal impacts on TPS in the six North Carolina school districts.[462] Ladd and Singleton collected financial data on local school district expenditures, categorizing them as variable costs that were dependent on student enrollment and easier to adjust, in comparison to fixed costs such as with respect to facilities and administration. Similar to Bifulco and Reback, the researchers determined that, compared to TPS, the charter schools served smaller proportions of students with disabilities, in general, as well as smaller proportions of students with more serious needs associated with more costly services. In part, because North Carolina relies on a census-based formula (i.e., one that is fixed and makes no distinction based on the severity of needs of a child with a disability), the adverse fiscal impact is exacerbated on the TPS that serve those children with more significant needs. Moreover, Ladd and Singleton found that, because of fixed costs, the districts were unable to reduce their spending in line with the loss of students who were spread across schools and grades. Based on the excess cost per student enrolled in a charter school, the researchers calculated a financial burden of approximately $3,500 per charter school enrollee in Durham, a county district with an enrollment of 33,000 students and 15 percent of students enrolled in charter schools. They reached a similar conclusion with respect to the financial burdens for two of the five nonurban districts with increasing shares of charter school enrollments.

[T]he researchers noted that even if the growth of charter school enrollments ultimately abates, implicit in the existence of two sectors is duplication of functions and services that adversely affect the TPS district.

Ladd and Singleton recommended that the state respond with some urgency to their findings of negative externalities to "ease the adverse fiscal impact" of charter schools on TPS. Based on their findings, the authors also suggested that the state (in North Carolina, the SEA is the sole authorizer of charter schools) consider providing short-term financial assistance to local districts in transition in order to help compensate for loss of revenue, perhaps following the example of Massachusetts that, as noted, provides transition help through reduced reimbursement over a six-year period, subject to state appropriation.[463] As a matter of public policy, the researchers noted that even if the growth of charter school enrollments ultimately abates, implicit in the existence of two sectors is duplication of functions and services that adversely affect the TPS district. The authors

further note that the variable charter landscape, with schools opening and closing for different reasons, can create uncertainty in long-term planning and efficiencies for the TPS district.

A recent study of three large urban school districts in California—Oakland Unified, San Diego Unified, and East Side Union—conducted by economist Gordon Lafer (2018), examines this latter point in more depth. Lafer estimates annual "unavoidable" costs to the districts because of charter school expansion at about $142 million. Because the TPS districts "cannot turn students away," Lafer explains, "they must maintain a large enough school system to accommodate both long-term population growth and sudden influxes of unexpected students—as has happened when charter schools suddenly close down."[464] Following Ladd and Singleton's logic with respect to fixed costs that cannot be reduced when a student leaves a neighborhood school, Lafer states: "In every case [of charter school expansion], the revenue that school districts have lost is greater than the expenses saved by students transferring to charter schools." With California experiencing unparalleled charter school expansion of 900 percent in the last decade, the report explains that the high cost of supporting a separate charter school system makes it difficult for the district to fund key goals such as smaller class sizes and support services for low-income students. According to the report, none of the districts were in fiscal crisis because of problems "unique to their districts." Yet, each, because of serious shortfalls resulting in significant part from unregulated expansion of charter schools, was required to make deep cuts that have serious implications for their students, including those with IEPs and greater educational needs. San Diego Unified officials outlined up to $53.45 million in cuts in 2018, with the largest possible cuts based on a survey sent to parents being proposed from health services, preschool programs, custodial services, special education, mental health services, and professional development.[465]

The report underscores the difficulty of TPS educating those "students with the highest-need . . . but without the resources to serve them."[466] As described in Chapter 1, the way in which states fund special education is relevant. In California, special education funding is apportioned in equal shares on a per-pupil basis according to each school's average daily attendance, "irrespective of the number of enrolled students with disabilities."[467] For example, in 2015–2016, charter schools enrolled 28 percent of all Oakland area students, and based on the state special education funding model, charter schools received 28 percent of all special education funding for Oakland area students. This was true even though the charters enrolled only 19 percent of the total number of students with disabilities. Moreover, the 19 percent special education population was comprised primarily of students with IEPs who had less need for specialized instruction and related services, including transportation.[468] Oakland area charters served only 8 percent of autistic students, 6 percent of students with intellectual disabilities, and 2 percent of students with multiple disabilities.[469] Due at least in part to a state funding formula that did not anticipate the existence of autonomous schools of choice that could serve a different proportion of students with disabilities, charter schools are being funded for more students with disabilities than they actually enroll. Consequently, Oakland Unified School District had to divert funds from general

education to cover shortfalls in special education funding of $51.5 million.[470]

Similar to Ladd and Singleton, the study further found that measured as per-pupil cost, the "net impact of each student who transfers from a [TPS] to a charter school to be [sic] approximately $5000 in San Diego, $5700 in Oakland, and $6600 in the East Side district." The report acknowledges that while charter schools are not the sole cause of inadequate school funding, they "greatly exacerbate this problem." Acknowledging the impact to students in TPS, particularly those with significant disabilities requiring more intense services, the report makes two recommendations. First, each school district should produce an annual economic impact report assessing the cost of expansion that must be considered in evaluating any new charter application. Second, the state's charter authorization law should be amended to balance the value of charter schools against the needs of TPS students.[471]

Increased Segregation and Inequities for Students with Disabilities

Rejecting arguments that the expansion of charter schools has resulted in increased segregation and racially homogeneous schools, some contend that competition through charter schools leads to less stratification because it removes the link between residence and educational opportunity. NAPCS and others point to national data that indicate in the aggregate that charter schools actually serve higher percentages of low-income students and higher proportions of African American and Latino students than do TPS.[472] Yet, researchers studying data at the school and school district levels have found that the difference in aggregate data virtually disappears when charters are compared to their home districts and nearby schools.[473]

Ladd found that the expansion of charter schools has increased inequities between charters and TPS because students are increasingly isolated by race, language, and economic status because of public policy that does not encourage diversity and parental choice that reflects racial and ethnic preference.[474] She noted that charter schools located in urban areas disproportionately enroll high concentrations of students of color consistent with states that prioritize charter school funding for "at-risk," low-income students from diverse cultures (e.g., Arkansas, California, Connecticut, Illinois, New York, North Carolina, Rhode Island, Tennessee, Virginia, and Wisconsin).[475] In her research examining urban Durham, North Carolina, and five nonurban districts in North Carolina, Ladd identified two complementary trends: "the closure of charter schools with relatively small proportions of white students and the opening of charter schools with high proportions." Once populated by schools with heavy proportions of students from diverse cultures, her research shows that over time, the charter school sector in this state shifted and now includes "many more schools with relatively high percentages of white students." She found that individual charter schools have become

[C]harter schools actually serve higher percentages of low-income students and higher proportions of African American and Latino students than do TPS.

increasingly racially imbalanced, with some enrolling primarily students from diverse cultures and others serving primarily white students. Her findings were consistent with prior research (also applicable to TPS) that "in choosing schools, parents care not only about the quality of the education being offered but also about the mix of students in a school."[476]

Building on Ladd's findings, the present study did a preliminary analysis of enrollment characteristics of students enrolled in the Durham Public School District (DPSD) and in 14 charter schools located in Durham, North Carolina, to examine the relationship between TPS and charter enrollment through a lens of race and disability. The analysis, based on the most recently available CRDC student enrollment data from the 2015 reporting year, found that in the aggregate the 14 charter schools in Durham proportionately enrolled more white students (18.2 percent of DPSD but 40.1 percent of charter enrollment), fewer students with disabilities (12.0 percent of DPSD but 9.6 percent of charter enrollment), and more white students with disabilities (1.8 percent of DPSD but 4.1 percent of charter enrollment) than did DPSD. In a striking racial dichotomy, DPSD enrolled black students with disabilities at almost twice the rate of charters (6.8 percent of DPSD but 3.9 percent of charter enrollment). Given the reasons articulated by Ladd and Singleton (2018), the fact that black students with disabilities are disproportionately represented in DPSD raises serious equity concerns, including whether DPSD receives enough funding to provide these students with appropriate education amidst increased charter expansion. Additional research is warranted to examine these issues more closely.

Summary of Chapter 7

This chapter discussed the potential implications of charter school growth and expansion for TPS districts that struggle, often unsuccessfully, to adjust fixed costs while attempting to extend their already depleted resources to meet the needs of students, who disproportionately have more intensive needs. These districts may be further burdened by a charter school's decision not to backfill spots for students who disenroll after funding reporting deadlines. To help alleviate the negative fiscal impact on TPS, some states have set a cap on the growth of charter schools. A recent ruling by the Massachusetts Supreme Judicial Court, which explained that such a cap helps protect the interests of students who remain in TPS and do not attend charter schools, provided insight into policy considerations about school choice and the rights of individuals versus the community.

Moreover, this chapter discussed emerging research that has begun to examine the fiscal impact of charter school growth on TPS. One study focusing on two urban school districts in New York State concluded that, because of charters enrolling disproportionately fewer students with disabilities and the loss of funds from TPS to charter schools, TPS bore the impact of higher levels of spending associated with educating these students while being unable to reduce sufficiently fixed operating costs. A second study, focused on Durham, North Carolina, also found evidence that charter schools bring with them additional costs to TPS budgets. Finally, a third study, examining annual costs to TPS of students leaving TPS and enrolling in charters in three urban districts in California, found that charter school expansion

created "unavoidable" losses for the districts. Collectively, these studies make clear that additional costs imposed by charters have serious implications for large districts that must be of sufficient scale to be able to respond to the needs of fluctuating student population groups—in particular, students with disabilities and ELs (including those with disabilities)—that have more intensive need of specialized instruction and support services.

The chapter concluded by presenting evidence of another serious cost of charter expansion: increased isolation based on race, language, economic status, and disability. A study, again focused on North Carolina, found that charter school enrollees are increasingly isolated by race, language, and economic status because of public policy that does not encourage diversity and parental choice, but rather reflects racial and ethnic preference. Our own preliminary analysis of enrollment characteristics in Durham, North Carolina, revealed that taken together, charters in Durham proportionately enroll more white students, fewer students with disabilities, more white students with disabilities, and fewer black students with disabilities than do TPS. The fact that black students with disabilities are disproportionately represented in TPS raises serious fiscal equity concerns. Further research in this area is needed.

Chapter 8: Recommendations

This text has explored various issues pertaining to the education of students with disabilities in charter schools. It has been shown that, although the charter school debate is often presented in polarizing terms, extensive variability exists across the charter school sector. Some schools are effective in meeting the needs of their students with disabilities, adopting best practices that can be modeled by other charter schools and TPS. This report has highlighted some of these practices. Other charter schools, however, struggle to provide appropriate educational programming and services. There is also variability with respect to additional factors. For example, state statutes vary significantly, a charter school may operate as its own LEA or part of an existing LEA, and a charter school may be an independent school or a member of a not-for-profit or for-profit charter network.

With this contextual backdrop in mind, we propose several recommendations to move the debate forward in constructive ways. In particular, we recognize the value of continuing to highlight innovative and effective charter school practices that may improve the educational experiences of students with disabilities. At the same time, we underscore the importance of addressing significant areas of concern that have precluded students with disabilities from benefiting from the opportunities presented by the full range of charter schools. Moreover, we advise policymakers and key stakeholders to consider the needs of students with disabilities who remain in TPS. To this end, we recommend increased collaboration and the creation of communities of practice between charter schools and TPS as well as further examination of issues of fiscal impact and racial isolation. We feel that this overall strategy will be most effective in working toward the common goal of improving educational opportunities for *all* students with disabilities.

Recommendations for Charter School Authorizers

Charter authorizers, as key policymakers, have a critical role to play in improving the education provided to students with disabilities in charter schools. They are responsible for monitoring the extent to which charter operators comply with their legal obligations, including providing high-quality learning opportunities for all students with disabilities whom they serve. Authorizers can be more effective by requiring that applications for the creation of new or converted charter schools articulate with a degree of specificity their plans for educating the full spectrum of students with disabilities; by being proactive in their ongoing monitoring of the schools they oversee; and by holding their charter school grantees accountable, correcting persistent violations, and taking difficult action steps, including revocation, nonrenewal, and closure, as necessary.

NCD proposes recommendations for charter school authorizers in the following areas:

Application Process for the Creation of New Charter Schools

- **Enrollment:** Require applications to include a plan accompanied by an associated budget for enrolling approximate proportions of students with disabilities that are similar to neighboring school districts—for example, through marketing and outreach strategies, development of user-friendly informational materials for parents in multiple languages regarding availability of services, and assurances that school personnel will not inquire about IEP status prior to making decisions about enrollment and will not counsel out students with disabilities.
- **Provision of Services:** Require applications to include a detailed plan regarding how the charter school will provide appropriate and high-quality services to its students with disabilities in the following areas: child find, comprehensive evaluations, IEP development, participation in the general education curriculum, continuum of alternative placements, discipline, transportation and other related services, procedural safeguards, and family engagement.[477]
- **Innovative or Model Practices:** Prioritize applications that propose to implement innovative or model practices with respect to the education of students with disabilities in the areas of academics, transition planning and services, and behavior, including, for example, UDL, high-quality career and technical education, and restorative justice.
- **Evidence of Involvement with Communities Served:** Among applicants that are CMOs, prioritize those that demonstrate a connection to the school communities, which are part of their network but may be geographically distant.

Ongoing Monitoring and Oversight of Charter Schools

- **Review of Data:** Engage in active monitoring and oversight of the extent to which charter schools are complying with the terms of the charter and ensure that the charter includes specific requirements for the collection and ongoing review of enrollment, student performance according to multiple measures, attrition, and discipline data with respect to students with disabilities, disaggregated by subgroup, as well as more general data regarding the provision of special education and related services.
- **Technical Assistance and Support to Charter Operators:** Provide technical assistance and support to help build the capacity of charter operators to serve students with disabilities; collaborate with TPS in areas such as joint opportunities for professional

(continued)

NCD proposes recommendations for charter school authorizers in the following areas: *continued*

development, sharing of resources and data, and mutual learning from one another regarding best practice; implement interventions; and take corrective actions to address any problems or shortcomings.

- **Public Reporting:** To promote transparency and identify schools in need of intervention and support, report publicly on nonpersonally identifiable charter school data pertaining to enrollment, student performance based on multiple measures, attrition, and discipline, disaggregated by subgroup, as well as issues of management and operations, including finances.

Charter Renewal Process

- **Review:** Conduct careful review of charter renewal materials to evaluate and act upon, as necessary, the extent to which charter operators are complying with special education requirements and providing high-quality programming and services to their students with disabilities. Ensure an avenue for families of students with disabilities to voice issues and concerns and to be included in the review process.
- **Response:** Be prepared to respond, as necessary, considering a range of possible consequences, from intervention and support to nonrenewal, revocation, and school closure.

Disability-Specific Charter Schools and Virtual Charter Schools

- **Disability-Specific Charter Schools:** Require that charter applications include a plan to ensure that IEP placement decisions are made in a careful manner and are not based on the student's disability category alone, enrolled students are given opportunities to interact with students without disabilities, and the individualized needs of enrolled students are reviewed on an ongoing basis to determine whether a less restrictive placement might be more appropriate.
- **Virtual Charter Schools:** Require that charter applications include a plan to ensure that curricular and instructional materials as well as websites are fully accessible; students who may have executive functioning challenges receive necessary supports; parents receive information about expectations for parental involvement; and nonpersonally identifiable data regarding enrollment, student performance, and issues of management and operations, including finances, is publicly and timely reported.

Recommendations for Charter School Operators

Charter operators are on the front lines, providing educational services to students with disabilities in charter schools. They are in a unique position to take advantage of the autonomy they are given under state law and the school's charter to implement model practices that can transform their schools into "laboratories of innovation," as originally intended. Rather than feeling constrained by the requirements concerning the education of students with disabilities, charter school operators should view these students as creating an opportunity for their school to enhance its instructional approaches by making adaptations and changes that can benefit all students.

NCD proposes recommendations for charter school operators in the following areas:

Enrollment Process

- Implement strategies to enroll approximate proportions of students with disabilities that are similar to neighboring school districts—for example, through marketing and outreach strategies, development of user-friendly informational materials for parents in multiple languages regarding availability of services, and implementation of a clear policy that school personnel will not ask about students' IEP status prior to enrollment and will not counsel out students with disabilities.

Vision and Leadership

- Set a vision and tone for the charter school that is inclusive of diverse learning needs and ensure that staff at all levels embrace this vision and understand their obligations with respect to supporting all students.
- Create an environment that is welcoming to parents of students with disabilities and work to form collaborative partnerships with parents to improve the education provided to their children.
- Publicly report, including by posting to the charter school website, nonpersonally identifiable information related to student enrollment, performance based on multiple measures, attrition, and discipline to help families make informed choices.
- For charter schools that function as their own LEA, seek out opportunities to collaborate with other charter schools/LEAs or TPS and explore efforts to share information, pool resources, and form communities of practice. Communicate on issues such as best practice for the education of students with more significant disabilities who may benefit

(continued)

NCD proposes recommendations for charter school operators in the following areas: *continued*

from placement outside the general education classroom. Explore efforts to form additional partnerships with other providers in the community through contracts or alternative arrangements.[478]

- For charter schools that are part of an existing LEA, seek out opportunities to collaborate with other TPS that are part of the LEA to share information, pool resources, and form communities of practice. Promote and nurture open lines of communication with the LEA special education department.

Staffing

- Seek out and create opportunities for professional development to help fill knowledge gaps and build the capacity of administrators and teachers to serve the needs of students with disabilities, including those with more significant learning needs.
- Provide frequent opportunities for collaboration between general education and special education staff through, for example, co-teaching and regular meetings.
- Provide frequent opportunities for teachers to receive feedback on their teaching, support, selection of intervention strategies, and coaching to help improve their capacity to serve students with disabilities.
- Consider introducing various strategies such as retention committees to support the retention of qualified teachers, including special education teachers.

Innovative and Model Practices

- Explore ways to move away from strict codes of discipline toward less punitive models such as restorative justice; seek out opportunities to learn from other charter schools that have already moved in this direction.
- Implement existing models of best practice and innovative approaches such as UDL to help foster a flexible learning environment that is adaptable to the diverse learning needs of students.
- Encourage teachers and IEP teams to explore different curricula models and methods of instruction, for example, co-teaching, blended learning, and personalized instruction that encourage students with disabilities to engage in learning inside and outside the classroom including in partnership with community agencies.

(continued)

NCD proposes recommendations for charter school operators in the following areas: *continued*

Disability-Specific Charter Schools and Virtual Charter Schools

- For disability-specific charter schools, develop a plan to ensure that IEP placement decisions are made by the IEP team and are not based on a student's disability category alone, enrolled students are given opportunities to interact with students without disabilities, and the individualized needs of enrolled students are reviewed on an ongoing basis to determine whether a less restrictive placement might be more appropriate.
- For virtual charter schools, develop a plan to ensure that curricular and instructional materials as well as websites are fully accessible; students who may have executive functioning challenges receive necessary supports; parents receive information about expectations for parental involvement; and nonpersonally identifiable data regarding enrollment, student performance, and issues of management and operations, including finances, is publicly and timely reported.

Recommendations for SEAs

The SEA may serve two roles with respect to the education of students with disabilities in charter schools: (1) all SEAs are responsible for the monitoring and oversight of education programs under applicable state and federal laws, including IDEA and ESSA and (2) some SEAs also serve in the role of charter authorizer, in some instances as the sole authorizer. With respect to the second role, the recommendations for charter authorizers, outlined earlier, would apply to SEAs that function in this role. With respect to overall monitoring and oversight under IDEA and ESSA, all SEAs are responsible for ensuring that each LEA in the state meets the requirements of the statute.[479]

NCD proposes recommendations for SEAs in the following areas:

Monitoring Under IDEA

- Monitor compliance under IDEA to ensure that statutory requirements are being met in charter schools—for example, ensure that students with disabilities are provided opportunities to participate in the general education curriculum; with respect to discipline, ensure that manifestation determination reviews and functional behavioral assessments are conducted and that students with disabilities continue to receive FAPE during periods of disciplinary exclusion. Publicly report findings, to the extent appropriate, on the SEA website to make them accessible to all stakeholders.

(continued)

NCD proposes recommendations for SEAs in the following areas: *continued*

- Analyze more closely charter school data pertaining to enrollment (disaggregated by disability category), student performance based on multiple measures, attrition, and discipline collected under IDEA and the CRDC; use this data to identify charter schools in need of targeted assistance or interventions. Publicly report findings, to the extent appropriate, on the SEA website to promote accessibility of the data to all stakeholders.
- Provide training and informational materials in multiple languages and multiple modes of communication to parents of students with disabilities regarding their rights under state and federal special education laws with respect to charter schools; make clear that parents and students are entitled to the same rights in charter schools as in TPS.
- Ensure that existing support structures (e.g., intermediate districts) extend special education services to charter schools.
- Provide professional development, technical assistance, and resources to school and district personnel from both the charter and TPS sectors to help them adopt innovative and model practices for the education of students with disabilities that have been developed by pioneering charter schools and TPS.
- Exercise leadership on school improvement and equity by supporting charter-district collaboration. Provide opportunities for collaboration, including joint professional development sessions, between TPS and charter schools, to support the formation of communities of practice among teachers and administrators across both sectors.

Monitoring Under ESSA

- Exercise leadership in creating a strong exemplary authorizer accountability plan consistent with ESSA that will consider "establishing authorizing standards that may include approving, monitoring, and re-approving or revoking the authority of an authorized public chartering agency based on the performance of the charter schools authorized."[480]
- Incentivize existing authorizers to participate in and embrace a plan that is effective in raising the standards for the charter holders. Commit to undertaking a review of the state's capacity to enforce charter accountability (e.g., close schools that are not meeting performance goals outlined in their charter).

Recommendations for State Legislatures

It is generally recognized based on years of charter school research that "state laws governing charter school operation have an important impact on student academic growth."[481] The state legislative body is in the optimal position to learn from the research and evidence of the challenges confronting these largely underresourced schools with mixed academic performance to help ensure that they implement nondiscriminatory, equitable admissions; approximate proportionate representation of students with the full range of disabilities; a breadth of effective specialized instruction programs and services to meet the needs of students with a full range of disabilities through a continuum of alternatives; experienced, qualified teachers; strong academic performance outcomes based on multiple measures; and a fair system of discipline with procedural safeguards. The legislature has the authority to consider whether legislative change is warranted and necessary to eliminate inequities in charter school enrollments; to mandate a streamlined process for review, revocation, and closure of underperforming schools by authorizers; and to take steps to mitigate fiscal burdens of unregulated charter expansion on TPS.

NCD proposes recommendations for state legislatures in the following areas:

- Explore amending the state charter school statute for the purpose of raising the level of selectivity among charter school applicants for a new or converted charter school to ensure that any recipient is prepared to meet high-level governance and performance standards established by the SEA with guidance and direction from other stakeholders, including people representative of the community in which the charter school is located.
- Explore amending the state statute to require more explicitly that a charter school shall enroll all students who apply if there are available seats, and may not discriminate based on race, ethnicity, national origin, religion, gender, sexual preference, gender identity, economic disadvantage, disabling condition, or English-language proficiency. Discrimination in admission shall be a basis for revocation of the charter.[482]

(continued)

NCD proposes recommendations for state legislatures in the following areas: *continued*

- Consistent with federal civil rights laws, amend the state statute to prohibit charter schools from inquiring about a student's disability status prior to enrollment. The admissions process must be blind to disabling status; applicants shall not be pressured to disclose any information about a student's disability, including the provisions of the student's IEP.[483]
- Explore amending the state statute to require as a condition of receipt of a charter that the applicant demonstrate a plan for meeting approximate proportionate enrollment from the community of students being served.
- Explore amending the state statute to require steps to be taken by authorizers to review underperforming charter schools within their portfolios, take steps for intervention, revocation, and closure.
- Explore amending the state charter statute to hold the authorizer of charter schools accountable for the performance of those schools within its portfolio, including failure to take timely steps to intervene prior to consideration of renewal, revocation, or closure.
- Explore amending the state statute to help ensure fiscal balance between TPS and charter growth and expansion by establishing a cap on the amount of funding that can be drawn from TPS because of students transferring to charter schools.[484]
- Explore amending the state statute to require charter schools to maintain levels of reported enrollment and to backfill through a lottery when seats become available during the school year.
- Explore amending the state charter statute to provide transitional per-pupil reimbursement to TPS during at least the first three years after a student transfers from a TPS to a charter school.
- Explore amending the state charter statute to help mitigate increased racial isolation by encouraging the creation of interdistrict charters in economically and racially mixed neighborhoods that draw from urban and suburban students.
- Explore amending the state charter statute to authorize charter schools to use weighted lotteries on family income, zip code, parents' educational status, or the racial makeup of a neighborhood, as a means to create a purposefully diverse student body.[485]

NCD proposes recommendations for Congress and the U.S. Department of Education in the following areas:

- Because disability is related to poverty and race, create incentives for authorizers to locate charter schools, as originally conceptualized as laboratories for innovation and reform, strategically (including outside of urban districts and straddling districts) to minimize isolation based on race, disability, and socioeconomic background.
- Increase funding priority in the U.S. Department of Education's CSP for schools that are inclusive of all students and promote diversity across a variety of categories, including disability status.
- Amend the ESEA to authorize use of federal startup funds currently available only to charters that use a blind lottery, to schools that use a variety of methods (e.g., random zip code) to be purposeful in the creation of intentionally diverse student bodies.
- Pilot a project that would have the SEA collect and review data related to student enrollment characteristics by disability type for students who were accepted by a charter school but did not enroll.

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Appendix: Ongoing Legal Challenges in the Area of Charter Schools

Can Taxpayer Funds Support Privately Managed Charter Schools?

A number of state court cases have challenged the legitimacy of using public, taxpayer funds to support privately managed charter schools under state laws and constitutions. For example, in 2015, the Washington Supreme Court declared the state's charter school act unconstitutional.[486] The Washington constitution provides that

> the public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.[487]

The state's charter school act labeled charter schools as "common schools" and funded the charter schools through funding sources specific to TPS or common schools.[488] The court found that charter schools could not be common schools because the state constitution requires that a common school be "subject to and under the control of the qualified voters of the school district."[489] Because charter schools are not subject to local voter control, the court held that they are not common schools, and therefore funding the schools with public funds was unconstitutional.[490] Following the decision, the state legislature changed the source of funding for charter schools, thus allowing them to remain open.[491] Another lawsuit is pending that alleges that the charter schools divert public dollars away from traditional district schools—schools that the Washington Supreme Court previously determined were being inadequately funded.[492]

In another state challenge by groups and organizations objecting to use of taxpayer funds to support charter schools, charter school proponents scored a major victory when the Louisiana Supreme Court reversed the lower court's ruling that the state funding statute was unconstitutional.[493] The high court upheld the use of lottery proceeds to fund charter schools in this case that asked whether schools granted charters by the state board, rather than a local school district or parish, were eligible to receive funding allocated by law for local school systems.

A Second Look at the Doctrine of Nondelegation

In 2018, the Washington State Supreme Court will hear yet another challenge to the charter school act by the same coalition that brought the first suit.[494] The plaintiffs argue that the charter school act "violates the state constitution because it allows public funding to go to charter schools run by private groups that aren't accountable to voters."[495]

The newest Washington State challenge speaks to an area in the charter school movement ripe for national litigation: the doctrine of nondelegation, which limits the ability of a legislature to delegate its authority to other governmental entities or private parties.[496] Courts are more stringent in the application of the doctrine when the state has delegated its power to a private party.[497] Generally, a state legislature must provide standards and safeguards to guide the recipient's exercise of delegated power.[498] In considering the sufficiency of standards or safeguards, courts consider, among other factors, whether the private party is subject to meaningful review by a state agency and whether the private party has a pecuniary or other personal interest that may conflict with the public function.[499] Under this framework, the creation of for-profit charter schools may violate the nondelegation doctrine, particularly where charter school enabling acts set low standards for charter schools, enable the certification of authorizers beyond from the state educational agency, and/or otherwise provide limited state control over the charter schools.

A number of lawsuits challenged charter school laws in the late 1990s and early 2000s as improper delegation, or related grounds, and the charter school laws were all upheld as constitutional.[500] The courts reasoned that the states maintained sufficient control over the charter schools.[501] However, the charter school movement has grown significantly since these early lawsuits, and new facts may strengthen the nondelegation argument. For example, the number of authorizers has increased dramatically,[502] as have the number of charter schools and the number of children attending those schools.[503] As the numbers grow, the states may exercise less control. In 1999, the Michigan Supreme Court was the first state supreme court in the country to uphold a charter school law, partially on the grounds that the authorizers were public institutions and therefore the state exercised control through the application-approval process.[504] However, in 2016, a report from the Education Trust-Midwest found that "no one, including the governor and state superintendent, has the authority to *revoke* a chronically low-performing authorizer's ability to open and expand public schools in Michigan."[505] The report continues, "Michigan lacks a clear regulatory framework or law that outlines performance standards for authorizers and the consequences for not meeting them."[506] In fact, Michigan public universities, which the report describes as "the most powerful authorizers in the state," claim that they are "constitutionally autonomous from state oversight and accountability" under the state constitution.[507] These new facts, viewed in light of the nondelegation doctrine, may call charter school acts into question nationwide, where states like Michigan are less able to exercise sufficient control over charter schools and the entities authorizing them.

Erosion of Separation of Church and State

The recent U.S. Supreme Court decision[508] invalidating a state rule barring a religious school from participating in a public program has perhaps opened the door to charter school expansion and new turf. As is the case for TPS, charter schools cannot advocate or promote a specific religion or religious ideology. Nor can their admissions policies discriminate based on religion. However, faith-based organizations that are separately governed by a nonprofit organization are permitted to open charter schools and to receive public funding provided they maintain a secular educational purpose. Given the

very low accountability bar set by many states and the minimal oversight of charter schools by many state authorizers, it would not be surprising to find that church-to-charter conversions were already in place. During the past few years, charter schools in Texas, Arizona, Arkansas, and Minnesota have been at the center of serious lawsuits based on violations of the Establishment Clause and their failure to maintain the constitutionally mandated separation between church and state.

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*,[509] the Supreme Court ruled that a state could not deny a church a grant that allows public and private schools, and other nonprofit entities, to purchase recycled playground surfaces based on the church's religious status.[510] School choice advocates and critics have examined the case from the perspective of school vouchers,[511] but less attention has been given to analyzing the implications concerning charter schools. A 2017 *Atlantic* article asked the question, "Will Churches Ever Be Allowed to Run Charter Schools?"[512] Applying *Trinity Church* to charter schools would mark "a significant change," the article posited in the 10 states and Washington, DC, that explicitly bar charters run by a religious entity.[513] It is unclear whether the case could have any effect beyond expanding the pool of possible charter owners, operators, and authorizers.[514] Because all states require that charter schools are secular, even religiously affiliated charter schools could not explicitly teach religion.[515] There is also a debate over whether *Trinity Church* could apply to charter schools at all. A footnote in *Trinity Church* explicitly limited the holding to the facts of that case.[516] The article also discusses the belief of some lawyers and legal scholars that the Supreme Court would be more concerned about church and state issues in the realm of public education.[517]

The potential effects of religiously affiliated charter schools on students with disabilities have not yet been studied. Provision of special education services in nonchartered religious schools is already complicated by questions of the establishment clause and the IDEA's requirement for a FAPE.[518,519] It is unclear whether the IDEA framework would be simplified or further complicated by making religiously affiliated schools "public schools" through the charter laws. Furthermore, where the ADA protects students with disabilities, that law's specific exemption for religiously affiliated schools may result in an exemption for religiously affiliated public charter schools.[520]

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8 National Alliance for Public Charter Schools. *Estimated Charter Public School Enrollment, 2016-2017* (Washington, DC: Author, 2017), 4, http://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2017/01/EER_Report_V5.pdf.

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138 34 C.F.R. § 76.788(c) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922); 34 C.F.R. § 300.201 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

139 20 U.S.C. §1413(e)(1) (West, Westlaw through P.L. 115-171).
140 U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, December 28, 2016), 17–18, https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_faq-idea-charter-school.pdf.
141 34 C.F.R. § 300.146 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
142 U.S. Department of Education, *Frequently Asked Questions about the Rights*, 8.
143 34 C.F.R. § 300.209(d)(2) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
144 Ibid.
145 34 C.F.R § 300.33 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
146 *Arizona State Bd. v. U.S. Dep't of Educ.*, 464 F.3d 1003, 1008, 1010 (9th Cir. 2006).
147 *Arizona State Bd.*, 464 F.3d at 1008, 1010; see also 3 Americans with Disab.: Pract. & Compliance Manual § 11:12 (citing *Arizona State Bd.* for statement that "[f]or-profit charter schools are ineligible for federal funding under the IDEA").
148 Mark D. Evans, "An End to Federal Funding of for-Profit Charter Schools?" *University of Colorado Law Review* 79, (2008): 617, 641; see also Matthew D. Bernstein, "Whose Choice Are We Talking About? The Exclusion of Students with Disabilities from for-Profit Online Charter Schools," *Richmond Journal of Law and the Public Interest* 16 (2013): 487, 507 (explaining how in Massachusetts, for-profit companies can create "for-profit nonprofits" to apply for IDEA and ESEA money).
149 34 C.F.R. § 300.203 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
150 20 U.S.C. § 1413(e)(1) (West, Westlaw through P.L. 115-171).
151 20 U.S.C. § 1413(e)(1)(B) (West, Westlaw through P.L. 115-171).
152 United States Department of Education, *Frequently Asked Questions about the Rights*, 24, 27.
153 34 C.F.R. § 300.149(a)(2) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
154 20 U.S.C. § 1413(g) (West, Westlaw through P.L. 115-171); 34 C.F.R. § 300.227 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
155 34 C.F.R. §§ 300.507-518 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
156 34 C.F.R. §§ 300.151-153 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922). See also U.S. Department of Education, "OCR Complaint Process," About ED, accessed June 22, 2018, https://www2.ed.gov/about/offices/list/ocr/complaintprocess.html.
157 29 U.S.C. § 794 (West, Westlaw through P.L. 115-171).
158 42 U.S.C. §12132 (West, Westlaw through P.L. 115-171).
159 29 U.S.C. § 705(20)(B) (West, Westlaw through P.L. 115-171); 34 C.F.R. § 104.3(j)(1) (West, Westlaw through May 24, 2018); 42 U.S.C. § 12102(1) (West, Westlaw through P.L. 115-171); 28 C.F.R. § 35.104 (West, Westlaw through May 24, 2018).
160 34 C.F.R. § 104.3(l)(2)(iii) (West, Westlaw through May 24, 2018).
161 34 C.F.R. § 104.33(a) (West, Westlaw through May 24, 2018).
162 34 C.F.R. § 104.33(b)(1) (West, Westlaw through May 24, 2018).
163 See 34 C.F.R. § 104.4(b)(1) (West, Westlaw through May 24, 2018).
164 34 C.F.R. § 104.4(b)(2) (West, Westlaw through May 24, 2018).
165 34 C.F.R § 104.4(b)(4) (West, Westlaw through May 24, 2018).
166 See *Illinois State Bd. of Educ.*, 20 IDELR 68 (OCR IL 1993).
167 34 C.F.R. § 104.36 (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).
168 U.S. Department of Education, "OCR Complaint Process."
169 U.S. Department of Education, Office for Civil Rights, *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973* (Washington, DC: U.S. Department of Education, December 28, 2016), https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf; U.S. Department of Education, Office of Special Education and

Rehabilitative Services, *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, December 28, 2016), https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_faq-idea-charter-school.pdf.

170 29 U.S.C. § 794(a) (West, Westlaw through P.L. 115-171); 34 C.F.R. §§ 104.4(a), (b)(2) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922); 42 U.S.C. §12132 (West, Westlaw through P.L. 115-171).

171 34 C.F.R. § 104.4(b)(4) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922); 28 C.F.R § 35.130(b)(8) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

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185 Winters, "Understanding the Gap in Special Education Enrollments," 230.

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192 Elizabeth Setren, *Special Education and English Language Learner Students in Boston Charter Schools: Impact and Classification* (Cambridge, MA: MIT Department of Economics, 2016), 9–10, https://seii.mit.edu/wp-content/uploads/2016/10/SEII-Discussion-Paper-2016.04-Setren-1.pdf.

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199 Daniel J. Losen, Michael A. Keith II, Cheri L. Hodson, and Tia E. Martinez, *Charter Schools, Civil Rights and School Discipline: A Comprehensive Review* (Los Angeles: The Civil Rights Project, The Center for Civil Rights Remedies, 2016), 6–8, https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/charter-schools-civil-rights-and-school-discipline-a-comprehensive-review/losen-et-al-charter-school-discipline-review-2016.pdf. This report also found that charter schools had a higher suspension rate for students with disabilities than did noncharter schools (15.5 percent versus 13.7 percent, respectively). Losen et al., *A Comprehensive Review*, 8.

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201 Malkus, *Differences on Balance*, 12–13.

202 *In re: Student with a Disability*, 69 IDELR 688 (DC SEA, 2017).

203 Education Commission of the States, *Open Enrollment Quick Guide* (Denver, CO: Author, 2018), https://www.ecs.org/wp-content/uploads/Open-Enrollment-Quick-Guide.pdf.

204 Open enrollment can be either intradistrict (selection and transfer within the resident school district), interdistrict (selection and transfer outside the resident school district), voluntary (schools and districts maintain autonomy to accept and implement open-enrollment policies), or mandatory (schools and districts must accept and implement open-enrollment policies), leading to high variability between, and sometimes within, state models. For instance, interdistrict open enrollment is mandatory in four cities in Connecticut but voluntary throughout the rest of the state. Arkansas has mandatory interdistrict open enrollment, but state policy limits the number of school choice transfers a sending school may approve. In Mississippi, interdistrict open enrollment is voluntary statewide; students living more than 30 miles from their assigned school must be allowed to attend a school in another district. School districts in Texas approve intradistrict

transfer requests on an individual basis and Vermont's open-enrollment policies apply only to high schools. Education Commission of the States, *Open Enrollment: Overview and 2016 Legislative Update* (Denver, CO: Author, updated January 2017), 2, https://www.ecs.org/wp-content/uploads/Open-Enrollment-Overview-and-2016-legislative-update.pdf. Of the 46 states and the District of Columbia that implement some form of an open-enrollment policy, 35 states have intradistrict policies, 42 states have interdistrict policies, 28 states have mandatory policies, and 34 states have voluntary policies. Education Commission of the States, *Open Enrollment Quick Guide*.

205 Intradistrict open enrollment generally presents with fewer issues because funds do not follow the child outside the district.

206 Adam M. Herrmann, Nathan Burroughs, and Jonathan A. Plucker, "Open Enrollment in K–12 Public Education," *Education Policy Brief* 7, no. 3 (2009): 3, http://files.eric.ed.gov/fulltext/ED507075.pdf.

207 See Herrmann et al., "Open Enrollment in K–12 Public Education," 2–3.

208 Education Commission of the States, *Open Enrollment Legislative Update*, 2–3 ("For example, Delaware requires districts to give priority to returning students, students living in a school's designated feeder zone and siblings of currently enrolled students. After addressing these priorities, districts may further prioritize students who designate the school as one of their top three choices, students who live in the district and children of school employees. In Louisiana, school districts must give priority to students who transfer out of low-performing schools and schools identified as persistently dangerous. Oregon allows districts to make open-enrollment transfer decisions and does not mandate which student groups must be given priority. However, the state requires school districts to hold a lottery if transfer requests exceed school or district capacity and state policy suggests three priority groups. Utah's open-enrollment policies do not set specific enrollment priorities but do specify that districts may give priority to intradistrict transfers.").

209 While it is too early to assess, it seems likely that the U.S. Department of Education's guidance withdrawing the limited exceptions to use of a blind lottery and allowing students enrolled in feeder schools to enroll in the level charter schools without participating in the lottery will further exacerbate the exclusion of certain children.

210 Education Commission of the States, *Open Enrollment Legislative Update*, 3. But see same ("However, a number of states specifically allow school districts to enter into agreements with other school districts to provide transportation for open-enrollment students. For example, receiving districts in Ohio may provide transportation to open-enrollment students to and from stops along a regular bussing route. In cases where students transfer out of low-performing schools—in Arkansas, for example—or transfer to address racial imbalances—such as in Massachusetts—states may require the sending districts to provide transportation or pay transportation costs. A small number of states also require districts to provide transportation to income-eligible students.").

211 See *Letter to Lutjeharms*, 16 IDELR 554 (OSERS, 1990) (in the context of an interdistrict choice program, the district which is responsible to provide FAPE is also obligated to provide transportation when it is a related service under IDEA and Section 504).

212 See Betheny Gross and Christine Campbell, *A Guide to Unifying Enrollment: The What, Why, and How for Those Considering It* (n.p.: Center on Reinventing Public Education, May 2017), 1, https://www.crpe.org/sites/default/files/crpe-guide-unifying-enrollment.pdf.

213 See ibid.

214 Ibid.

215 Gross and Campbell, *Guide to Unifying Enrollment*, 1.

216 Ibid.

217 Ibid.

218 Ibid., 1; see also same ("Recently, cities have been adopting a 'single best offer' lottery procedure: students list their schools in order of preference and the lottery provides a single match to each student that accounts for their preferences and their random lottery number.").

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220 Ibid., 1, 3.
221 Ibid., 4.
222 Arianna Prothero, "When Choice Doesn't Feel Like a Choice: Parents Struggle to Navigate the City's School-Choice Process," *Education Week*, August 19, 2015, https://neworleans.edweek.org/parents-struggle-with-school-choice-system.
223 Marta Jewson, "How Meaningful Is School Choice in New Orleans?" *The Hechinger Report*, May 12, 2015, http://hechingerreport.org/how-meaningful-is-school-choice-in-new-orleans-the-city-of-charters/.
224 See Parent Imperfect, "What Could Be Wrong with Unified School Enrollment?" *The Parent Imperfect* (blog), last updated October 26, 2015, https://parentimperfectct.wordpress.com/2015/10/26/what-could-be-wrong-with-unified-school-enrollment.
225 Parent Imperfect, "What Could Be Wrong."
226 Ibid.
227 Ibid.
228 Ibid.
229 U.S. Department of Education, Office for Civil Rights, *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools*, 13-20, Q. 15A, B, C., Q.16.
230 Ibid., 20. Q 16.
231 Participant, Regional Focus Group, 2017.
232 20 U.S.C. § 7221i(2)(H)(i) (West, Westlaw through P.L. 115-90, P.L. 115-92 to 115-122; Title 26 through 115-122).
233 U.S. Department of Education, *Charter Schools Program Nonregulatory Guidance* (Washington, DC: Author, 2014), 18, https://www2.ed.gov/programs/charter/nonregulatory-guidance.html.
234 Ibid., 18.
235 Ibid., 18–19. The guidance stated that charter schools could also choose to employ a weighted lottery (1) if the school's use of a weighted lottery was necessary to comply with the civil rights laws, the equal protection clause of the U.S. Constitution, or applicable state law. U.S. Department of Education, *Charter Schools Program Nonregulatory Guidance*, 18.
236 See 20 U.S.C. § 7221b(c)(3)(A) (West, Westlaw through P.L. 115-90, P.L. 115-92 to 115-122; Title 26 through 115-122). It must be noted that the nonregulatory guidance specifically prohibited charter schools from using weighted lotteries "for the purpose of creating schools exclusively to serve a particular subset of students." U.S. Department of Education, *Charter Schools Program Nonregulatory Guidance*, 19. However, the statute as enacted under ESSA added that "nothing in this paragraph shall be construed to prohibit schools from specializing in providing specific services for students with a demonstrated need for such services, such as students who need specialized instruction in reading, spelling, or writing." 20 U.S.C. § 7221b(c)(3)(B) (West, Westlaw through P.L. 115-90, P.L. 115-92 to 115-122; Title 26 through 115-122).
237 Cf. U.S. Department of Justice and U.S. Department of Education, *Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools* (Washington, DC: Author, 2013), 12, https://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf (now-archived guidance suggesting that school districts "could give greater weight to the applications of students based on their socioeconomic status, whether they attend underperforming feeder schools, their parents' level of education, or the average income level of the neighborhood from which the student comes, if the use of one or more of these additional factors would help to achieve racial diversity or avoid racial inclusion").
238 Arianna Prothero, "In Charters, Using Weighted Lotteries for Diversity Hits Barriers," *Education Week*, March 8, 2016, https://www.edweek.org/ew/articles/2016/03/09/in-charters-using-weighted-lotteries-for-diversity.html.
239 See U.S. Department of Education, Office of Innovation and Improvement, *Letter for CSP Project Director* (Washington, DC: United States Department of Education, 2017), https://innovation.ed.gov/files/2017/12/CSP-DCL.pdf.

240 U.S. Department of Education, *Letter for CSP Project Director*, 1. See also 20 U.S.C. § 7211i(1)(H)(ii) (West, Westlaw through P.L. 115-90, P.L. 115-92 to 115-122; Title 26 through 115-122). ("In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i).").

241 20 U.S.C. § 7221i((2)(H)(ii) (West, Westlaw through P.L. 115-90, P.L. 115-92 to 115-122; Title 26 through 115-122).

242 Cheryl M. Lange and Camilla A. Lehr, "Charter Schools and Students with Disabilities: Parent Perceptions of Reasons for Transfer and Satisfaction with Services," *Remedial and Special Education* 21, no. 3 (May 2000): 145, https://doi.org/10.1177/074193250002100303.

243 Jane Finn, Katherine Caldwell, and Tara Raub, "Why Parents Choose Charter Schools for the Children with Disabilities," *Journal of Educational Research and Policy Studies* 6, no. 2 (Fall 2006): 97–98, https://files.eric.ed.gov/fulltext/EJ844654.pdf.

244 Rhim and McLaughlin, "Students with Disabilities and Charter Schools," 6.

245 Federico R. Waitoller and Gia Super, "School Choice or the Politics of Desperation? Black and Latinx Parents of Students with Disabilities Selecting Charter Schools in Chicago," *Education Policy Analysis Archives* 25, no. 55 (2017): 34–37, https://epaa.asu.edu/ojs/article/view/2636.

246 Participant, Regional Focus Group, 2017. Other stakeholders also commented on the fact that parents sometimes view a charter school as being "the next best thing" to a private school. Participant, Regional Focus Group, 2017 ("I think with some parents, there's a perception that they're getting like a private school education because, you know, you'll see kids wearing uniforms and so they perceive it as 'I'm going to a smaller environment and be more like a private school, but I don't have to pay for a private school'").

247 Participant, Regional Focus Group, 2017.

248 Participant, Regional Focus Group, 2017.

249 Participant, Regional Focus Group, 2017.

250 Interview with Parent, 2018.

251 Interview with Parent Advocate, 2018.

252 Interview with Parent Advocate, 2018.

253 Rhim and Kothari, *Secondary Analysis of Civil Rights Data*, 12–13.

254 34 C.F.R. § 300.209(a) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

255 Minn. Stat. Ann. § 124E.03(3) (West, Westlaw through laws of the 2018 Reg. Sess. effective May 15, 2018) (emphasis added).

256 S.C. Code Ann. § 59-40-40(4) (West, Westlaw through 2018 Act No. 151). According to the statute, sponsors include the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is located, or a public or independent institution of higher learning that is registered with the South Carolina Department of Education. S.C. Code Ann. § 59-40-40(4) (West, Westlaw through 2018 Act No. 151). The statute further specifies that charter schools must "adhere to the same . . . disability rights requirements as are applied to public schools operating in the same school district or, in the case of the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor, the local school district in which the charter school is located." S.C. Code Ann. § 59-40-50(B)(1) (West, Westlaw through 2018 Act No. 151).

257 National Association of Charter School Authorizers, *Special Education Toolkit: Guidance for Charter School Authorizers*. Prepared by the National Center for Special Education in Charter Schools (Chicago: National Association of Charter School Authorizers, 2018), 31, App. A, https://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/5a5fcc778165f56df6fb3e8f/1516227782450/Special+Education+Toolkit+2018.

258 Mass. Gen. Laws c. 71 § 89 (West, Westlaw through Chapter 63 of the 2018 2nd Annual Sess.); Cal. Educ. Code § 47641 (West, Westlaw through Ch. 9 of 2018 Reg. Sess.). In Massachusetts, most charter schools operate as their own LEA, whereas in California, most charter schools operate as part of an existing LEA. Rhim and Kothari, *Key Trends in Special Education in Charter Schools*, 12.

259 N.H. Rev. Stat. Ann. § 194-B:3 (West, Westlaw through Chapter 16 of the 2018 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services).

260 34 C.F.R. § 300.115(a) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

261 Office of Special Education and Rehabilitative Services, *Frequently Asked Questions about the Rights of Students with Disabilities*, 17–18.

262 603 Mass. Code Regs. § 28.10(6) (West, Westlaw through Register No. 1364, dated May 4, 2018).

263 *R.B. ex rel Parent v. Mastery Charter Sch.*, 762 F. Supp. 2d 745, 752-53 (E.D. Pa. 2010), Aff'd., 532 Fed. Appx. 136 (3rd Cir. 2013), cert. denied, 134 S. Ct. 1280 (2014).

264 *R.B. ex rel Parent*, 762 F. Supp. 2d. at 761.

265 *Family Founds. Acad. Charter Sch.*, 54 IDELR 207 (DE SEA 2010).

266 34 C.F.R. § 300.209(b) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

267 *Long v. D.C.*, 56 IDELR 122 (D.D.C. 2011).

268 34 C.F.R. § 300.149(a)(2) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

269 34 C.F.R. § 300.209(d)(1) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

270 34 C.F.R. § 300.149(a)(2) (West, Westlaw through May 24, 2018; 83 Fed. Reg. 7922).

271 See, for example, Drame, "An Analysis of the Capacity of Charter Schools"; Fiore et al., *Charter Schools and Students with Disabilities*.

272 Lauren Morando Rhim, *Special Education Challenges and Opportunities in the Charter Sector*, National Charter School Research Project Working Paper 2008–12 (Seattle, WA: Center on Reinventing Public Education, 2008), 11–12; Rhim and McLaughlin, "Students with Disabilities and Charter Schools," 6.

273 Participant, Regional Focus Group, 2017.

274 Interview with Parent Advocate, 2018.

275 Participant, Regional Focus Group, 2017.

276 Rhim, *Special Education Challenges and Opportunities in the Charter Sector*, 12.

277 Daniela Doyle, Juli Kim, and M. Karega Rausch, *Beyond the Fringe: Charter Authorizing as Enrollment Grows* (Chicago: National Association of Charter School Authorizers, 2017), 17–18, http://www.qualitycharters.org/wp-content/uploads/2017/11/Beyond-the-Fringe_HMS-Report.pdf.

278 Jake Jacobs, "What's Behind New York's Charter School End Run Around Teacher Certification?" *The Progressive*, March 1, 2018, http://progressive.org/public-school-shakedown/new-yorks-charter-school-end-run-of-teacher-certification-180301.

279 U.S. Department of Education, *Teacher Attrition and Mobility: Results from the 2012–13 Teacher Follow-up Survey – First Look* (Washington, DC: Author, September 2014), Table 2, https://nces.ed.gov/pubs2014/2014077.pdf. The gap, however, appears to have narrowed. In 2004–2005, the rate was 24.2 percent for charter schools and 11.9 percent for TPS.

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