

**OHIO'S PRIMER
ON SPECIAL EDUCATION IN COMMUNITY SCHOOLS
OHIO COMMUNITY SCHOOLS BACKGROUND PRIMER**

Note: In the state of Ohio, charter schools are referred to as community schools. A community school is considered a school district under Ohio law and has the same responsibilities regarding special education as the Local Education Agencies (LEA) in the state. For the purpose of this document, the terms community school and charter school will be used interchangeably. Similarly, Ohio uses the term sponsor rather than authorizer and the term administrator instead of operator. These terms will be used interchangeably.

This section is divided into two parts:

- a discussion of the legal status of charter schools and their linkage to other local education agencies (LEAs), and
- a synopsis of federal laws that are most relevant to special education in charter schools.

The content of this section is intended for those readers who may not fully understand the critical importance of a charter school's legal status within a state's public education system, or may not have a working knowledge of, or need a brief update on, federal special education laws and regulations.

Community School Legal Status and Linkage to an LEA

Introduction

Community schools must abide by federal special education laws and regulations because they are part of the public education system. However, the way this gets carried out in practice differs widely due to many factors, the most important of which are a community school's *legal identity* and its *linkage* to a traditional LEA for purposes of special education. Familiarity with these concepts is critical to understanding a community school's level of responsibility for special education.

How is the public education system structured and how do community schools fit into it?

The elements of each state's public education system are:

- the state education agency (SEA);
- school districts (known in many states under different terms, most commonly LEAs); and
- schools that are part of an LEA.

An LEA is usually defined as an entity that has responsibility for the education of all children who reside within a designated geographical area of a state. Community schools do not completely fit into this definition since they are schools of choice and have responsibility only for students who are enrolled in the school. The Individuals with Disabilities Education Act (IDEA) and its regulations specifically include charter schools in the definition of an LEA: "a public charter school that is established as an LEA under State law" [34 CFR Â§300.7]

The place a charter school occupies in the public education system depends on the charter school's legal identity, usually referred to as a charter school's LEA status. LEA status is assigned by the state charter school law or other state policy that is legally binding. However, status is not always clearly delineated and a charter school's legal status for special education may be different from its legal status for all other matters. Depending on the state in which it is located, an individual charter school may be classified as:

- a separate LEA, or
- part of another LEA.

In Ohio, a community school is its own LEA, separate from any other school district. This fact is clearly established through the inclusion of a community school in the definition of a district in the Ohio Administrative Code [3301-3-01(B)(8)]. For copies of Ohio legislation pertaining to community schools and information about the requirements, go to the ODE website and enter Legislation for Community Schools.

Why is charter school legal identity for special education important?

The exact nature of a charter school's identity for purposes of special education is important because, under federal requirements, an LEA has many more programmatic and financial responsibilities than a school that is only a part of an LEA. Ohio law defines a community school and establishes its legal identity as follows:

A community school created under this chapter is a public school, independent of any school district, and is part of the state's program of education. A community school may sue and be sued, acquire facilities as needed, contract for any services necessary for the operation of the school, and enter into contracts with a sponsor pursuant to this chapter. The governing authority of a community school may carry out any act and ensure the performance of any function that is in compliance with the Ohio Constitution, this chapter, other statutes applicable to community schools, and the contract entered into under this chapter establishing the school [3314.01(B)].

How does a charter school's LEA status impact its operations?

The major effect of a charter school's LEA status is the type of linkage that is mandated or voluntarily established between that charter school and a traditional LEA. In other words, a charter school's legal status is reflected in the way it relates to other LEAs. There are three types of linkage:

- **NO LINK:** a charter school that is its own LEA has full responsibility for special education and usually has no link to another LEA(although a charter could negotiate some working relationship with an LEA if it chooses to do so);
- **TOTAL LINK:** the charter is considered a part of an LEA and the LEA is responsible for the students with disabilities; and
- **PARTIAL LINK:** the connection between a charter school and an LEA when there is a required or negotiated connection, e.g., the charter school has responsibility for services, but the child's home LEA carries out evaluation team tasks, or the charter school is responsible for only those services that can be delivered in the school and the LEA resumes responsibility when the child needs more specialized day or residential placement.

Why is linkage important?

Linkage is important because it determines the way that responsibilities for special education evaluation and services will be carried out. The specifics of that linkage and the designation of responsibilities are often described in a contract between the charter school and its sponsor. Ohio community schools can be described as having no link to other LEAs unless the community school voluntarily enters into an agreement with another LEA in the same manner as it could contract with any entity, e.g., to share personnel or other services related to special education.

Federal Laws Relevant to Special Education in Charter Schools

Introduction

The following brief overview of federal education laws as they pertain to special education is intended to be an orientation for those who are not very familiar with this legislation. Links are included for locating the full text of these laws and/or their regulations.

Which federal laws are most relevant to special education in charter schools?

For charter schools, the federal laws (and their regulations) that have most relevance for implementing special education are the Individuals with Disabilities Education Act (IDEA); the Elementary and Secondary Education Act (ESEA), recently reauthorized as the No Child Left Behind Act (NCLB); Section 504 of the Rehabilitation Act of 1973

(504); the Americans with Disabilities Act (ADA) and the Family Education Rights and Privacy Act (FERPA).

Are copies of these laws or regulations available on the Internet?

Yes.

- For information related to IDEA go to the USDoE Office of Special Education Programs (OSEP) - Home Page
- For information related to 504 Regulations go to the USDJ Section 504 Regulations website at <http://www.usdoj.gov/crt/cor/byagency/usda504.php> and go to Subpart D--Preschool, Elementary, Secondary, Adult, and Extension Education.
- For ADA: Regulations and technical assistance go to the Department of Justice ADA Regulations webpage at <http://www.ada.gov/publicat.htm> .
- For FERPA (Family Educational Rights and Privacy Act) Regulations and technical assistance go to the Family Educational Rights and Privacy Act webpage at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> .

Which federal agency is responsible for overseeing these laws?

In the U. S. Department of Education (ED), the Office of Special Education Programs (OSEP) is in charge of the IDEA, the Office for Civil Rights (OCR) is responsible for Section 504 and the ADA and the Office of Elementary and Secondary Education (OESE) manages the ESEA and NCLB. The Family Compliance Policy Office provides technical assistance for FERPA requirements.

Do students with disabilities have a federally protected right to attend charter schools?

Yes. Section 504 specifically prohibits discrimination solely on the basis of disability to public and private programs and activities that receive federal financial assistance. Children who attend charter schools are covered by these civil rights laws in the same way as children in any other public school.

What is the Individuals with Disabilities Education Act (IDEA)?

The IDEA provides federal financial assistance to state education agencies (SEAs) and local education agencies (LEAs) to guarantee special education and related services to eligible children with disabilities. Every state receives these funds and must follow all of IDEA's specific procedures, including those for an evaluation to determine if students are eligible for special education and the additional requirements for subsequent services and re-evaluation.

What are the basic requirements of IDEA?

The basic requirements, often discussed using a set of acronyms, are:

- **FAPE:** Students with disabilities are entitled to a free appropriate public education (FAPE) provided at no charge to parents.
- **IEP:** A team of professionals and parents arranges for the child's evaluation, determines eligibility, decides on the individualized special education and related services for the child and prepares an individualized education program (IEP) that contains specific content that must be reviewed at least annually. An IEP includes measurable annual goals, how the child will be included in state and district assessments and how the child will access the general education curriculum in order to meet state standards.
- **LRE:** The least restrictive environment (LRE) refers to placement in a setting that is the closest to the regular classroom. Students with disabilities must have available to them a continuum of placements that range from full time in a regular classroom to full time in a special setting. They are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the regular classroom.

For information related to IDEA go to the USDoE Office of Special Education Programs (OSEP) - Home Page

What does the IDEA say about charter schools?

The 2004 amendments to IDEA continued to affirm that students who attend charter schools are covered under this law. The law makes specific references to charter schools:

- Children with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- Charter schools are included in the definition of an LEA when they are established as LEAs by state law.
- A charter school that is its own LEA is responsible for ensuring that the requirements of IDEA are met unless state law assigns that responsibility to some other entity.
- If a charter school is a school of an LEA that receives IDEA funding, the LEA is responsible for ensuring that the requirements are met, unless state law assigns that responsibility to some other entity.
- Charter schools that are LEAs cannot be required to join with other LEAs to

establish joint eligibility for funds. (States can require traditional LEAs to join together for funding purposes if they would not be able to establish and maintain programs of sufficient size and scope individually).

- The state special education advisory panel must include a representative of charter schools.
- Special education teachers in charter schools may not have to meet certification requirements in IDEA if their state's charter school law does not require that teachers in charter schools be certified.
 - Ohio law provides two tracks for teachers of core academic subjects to comply with NCLB and IDEA HQT requirements, one for traditional schools and one for community school teachers.
 - Teachers who teach in traditional public schools are required to meet full licensure requirements in the subjects they teach to meet HQT, which includes intervention specialists.
 - Teachers who teach in community schools are not required to meet full licensure requirements in the subjects they teach to meet HQT, which includes intervention specialists. However, this requirement is in transition in Ohio. By the 2010-11 school year, all *newly hired* intervention specialists/special education teachers must possess appropriate licensure. By the 2012-13 school year, *all* intervention specialists/special education teachers must possess appropriate licensure. Please refer to other Primers for more in-depth discussion of this transition.
- Charter schools that are their own LEAs are specifically included in eligibility to access the resources of an LEA risk pool for high need children with disabilities if the state establishes such a fund.

These specific requirements involve a charter school's *legal status* as an LEA. See Section I of this document for a discussion of that concept.

What happens if a parent disagrees with the school about special education?

The IDEA contains procedural safeguards and due process rights for parents in the identification, evaluation and placement of their child. Parents must be provided with prior written notice of these rights. The law put various procedures in place for resolving conflicts between parents and schools and parents must receive a copy of their procedural rights at least once a year and at the time they request a due process hearing. Every state must have a formal complaint system and must provide for mediation and due process hearings to settle conflicts.

Are there children with disabilities who may not be covered by IDEA?

Yes. To be eligible under IDEA, children must meet the criteria of one of the specific disability categories as defined in the law. However, children who are not eligible under IDEA may qualify as students with disabilities under Section 504.

How do Section 504 and the ADA differ from IDEA?

Section 504 and the ADA define disability much more broadly than the IDEA. They include any individual who has a physical or mental impairment that substantially limits one or more life activities, or who has a record of such an impairment, or who is regarded as having such an impairment. Reasonable accommodations are required by both of these laws and Section 504 goes further by specifically requiring the provision of educational and related aids and services that are designed to meet the individual educational needs of the child. The exact wording of the definitions in the regulations for IDEA and Section 504 are as follows:

- **IDEA REGULATIONS:** 34 CFR Sec. 300.8 Child with a disability
(A) In general - The term 'child with a disability' means a child --
(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
(ii) who, by reason thereof, needs special education and related services.
(B) Child aged 3 through 9 - The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child --
(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and
(ii) who, by reason thereof, needs special education and related services.
- **SECTION 504 OF THE REHABILITATION ACT OF 1973 - REGULATIONS:**
34 CFR 104.3
(j) Handicapped persons (1) *Handicapped persons* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.
(2) As used in paragraph (j)(1) of this section, the phrase:
(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, and/or genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any

mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) *Major life activities* mean functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Further details are available in the document *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* available at the at <http://www.usdoj.gov/crt/cor/byagency/usda504.php> and go to Subpart D--Preschool, Elementary, Secondary, Adult, and Extension Education.

Are funds available under Section 504?

No, there are no funds available as part of Section 504 and IDEA funds may not be used to serve children who are eligible only under Section 504.

What requirements about accessibility of facilities do charter schools have to follow?

The state and federal requirements for accessibility of facilities are complex. It is important that sponsors and administrators of charter schools have appropriate legal and technical assistance on this topic. For ADA: Regulations and technical assistance go to the Department of Justice ADA Regulations webpage.

What parts of NCLB are particularly relevant to students with disabilities?

There are many parts of NCLB that pertain to students with disabilities in charter schools, but the most relevant ones are the accountability requirements related to assessment and highly qualified teachers.

What NCLB assessment requirements pertain to students with disabilities?

Community schools are subject to the same Title I accountability requirements as other public schools in a state and all state charter laws currently require charter schools to participate in their state's assessment system for public schools. Policy guidance for NCLB says a state's assessment system must be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students covered under Section 504. The participation of students with disabilities in such assessments is covered in the IDEA and requires the following:

- Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations if necessary.
- Alternate assessments must be provided for those children who cannot participate in state and district-wide assessment programs even with accommodations.

- The IEP for all students with disabilities will specify how they will participate in state assessments.

It is important to note that procedures for the inclusion of all students with disabilities in large scale assessments is a developing area of knowledge and practice. Extensive resources on this topic are available at the website of the National Center on Educational Outcomes at their website.

Are students with disabilities included in their state's adequate yearly progress (AYP) requirements?

Yes. As stated in NCLB, AYP applies the same high standards of academic achievement to all public elementary and secondary school students in the state. The law also requires selected subgroups, one of which is students with disabilities, to be considered separately under certain conditions in determining whether a school has met AYP targets. An important part of the NCLB regulations, known as "the one percent rule" that applies to students with significant disabilities, was added to the NCLB regulations in December 2003. The Department of Education has issued a summary of that rule that is available at ODE's website

How must students with disabilities be included in NCLB accountability reports?

Students with disabilities are one of the subgroups for which NCLB requires disaggregated reports of assessment results. However, NCLB provides that a state may not use disaggregated data for one or more subgroups to report achievement results if the number of students in those subgroups is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student (group size is referred to as the "minimum n").

Which NCLB teacher qualification requirements pertain to students with disabilities?

It is important to note that the NCLB law does not specifically refer to the teachers who provide special education services—that issue is covered in IDEA. State laws and policies that cover certification for charter schools must be carefully reviewed by everyone involved with charter schools. The Office of Special Education Programs (OSEP) in the U.S. Department of Education has created a website with specific information and guidance on all aspects of IDEA 2004. The section on highly qualified teachers (HQT) is at their website.

As mentioned above, the 2004 amendments to IDEA make specific reference to special education teacher certification requirements. The IDEA special education teacher qualification requirements in IDEA 2004 are complex and are quoted in full as follows:

HIGHLY QUALIFIED:

- (A) IN GENERAL - For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also --
 - (i) includes the requirements described in subparagraph (B); and
 - (ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

- (B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS - When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that --
the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school (emphasis added), the term means that the teacher meets the requirements set forth in the State's public charter school law. In Ohio, teachers in community schools must have, at minimum, a long term substitute license. However, this requirement is changing such that by the 2010-11 school year, all newly hired special education teachers must possess appropriate licensure and by the 2012-13 all special education teachers must possess appropriate licensure.

- (C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS - When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either --
 - (i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

- (D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS -
When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either --
 - (i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment. All special education teachers must meet all HQT requirements for the grades and subjects they teach. Check HOUSSE options... no longer available.

- (E) RULE OF CONSTRUCTION - Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.
- (F) DEFINITION FOR PURPOSES OF THE ESEA - A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

Other applicable State Laws relating to Community Schools and services to students with disabilities.

- 3314.06 (D) (2) mandates that community schools comply with all federal and state laws for education of students with disabilities.
- 3314.19 (B) Community Schools must submit a plan for providing special education and related services to students with disabilities and demonstrate the capacity to provide those services in accordance with Chapter 3323 of the Revised Code and federal law.
- 3323.11 Each school district shall employ, as necessary, the personnel to meet the needs of the children with disabilities enrolled in its schools. Personnel shall possess appropriate qualifications and certificates or licenses as prescribed in rules of the state board of education.
- ORC 3323.02 mandates the establishment of Operating Standards for Ohio's Schools Serving Children With Disabilities which includes requirements regarding qualifications for special education and related service personnel.

- 3301-51-01 (B) (27) (b) (i) (a) states that any teacher teaching in a community school, “highly qualified” means that the teacher meets the certification or licensing requirements, if any set forth in the state’s community school law.