

# Colorado Charter Schools and the Education of Children with Disabilities

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# **Charter Schools Special Education Guidebook**

## **Section I**

### **Charter Schools and Special Education Background Information**

## Introduction

Charter schools are the most visible form of school choice in the United States. The first public charter school in the United States opened in Minnesota in 1992. Since then, 40 states, the District of Columbia and Puerto Rico<sup>1</sup> have passed charter school legislation and charter schools have increased to over 3,000 as of 2004.<sup>2</sup> In Colorado, a variety of charter school statutes have been enacted, resulting in an increasing number of charter schools that serve a substantial number of students. As of November 2007, there were 141 charter schools in Colorado serving over 56,000 students.<sup>3</sup> Charter schools are distinct and unique school choice options in that they allow interested individuals to open new public schools or convert an existing public school to a charter school.

Across the United States, charter school laws generally allow teachers, parents, community groups, business leaders, and others to open a new public school, or convert an existing public school, with some degree of independence from established school districts. However, charter schools are governed under state law which varies widely from state to state, and charter school operation requirements differ depending upon the state legislation under which the charter schools are approved.

The orientation of charter schools also varies greatly. Some schools are designed for specific student populations, some provide a unique or specific curriculum, and others are designed with governance and parent involvement components that are integral to their mission. Some charter school programs are delivered within the traditional “brick and mortar” environment, while other charter schools deliver programming online. It is beyond the scope of this handbook to provide a detailed explanation of the charter school movement. An excellent source for such information is *Charter Schools: Creating Hope and Opportunity for American Education* (1996) by Joe Nathan.

There are many challenges to starting and maintaining a new school without the traditional infrastructure available through an existing school district or private school organization. One challenge is the implementation of special education services.

Consider the following possibilities:

- *Personnel at a newly opened charter school believe that they can provide educational services to students with disabilities within the model that they have designed without providing special education. Can they?*
- *The director of a newly opened charter school has been told that the authorizing school district would provide special education services. What is the responsibility of the charter school in such a case?*

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<sup>1</sup> In depth state and school information can be found at the U.S. Charter Schools website at <http://www.uscharterschools.org> This website is sponsored by WestEd and the U.S. Department of Education.

<sup>2</sup> Institute of Education Sciences: U.S. Department of Education: National Center for Educational Statistics website available at [www.nces.ed.gov/fastfacts/display.asp?id=30](http://www.nces.ed.gov/fastfacts/display.asp?id=30).

<sup>3</sup> Charter School Enrollment available at [http://www.cde.state.co.us/cdechart/chart\\_enr\\_2007.pdf](http://www.cde.state.co.us/cdechart/chart_enr_2007.pdf)

- *Staff members of a charter school have followed procedures and have identified students in need of special education. How will the charter school receive funding for special education?*
- *A parent requests additional services from a charter school and tells the school administrator that she will request a due process hearing to obtain the services that she wants for her child. The charter school must obtain legal advice. Who is responsible for the legal fees? Are there other ways to resolve the issue?*

Each of these scenarios is a realistic possibility for a charter school. These situations can be difficult to manage and may result in legal non-compliance and financial risks, including compensatory educational services and attorney’s fees, as well as program disruptions caused by state and federal intervention as a result of complaints. These are only some of the potential consequences if charter school personnel are unaware of special education laws and procedures, or if they do not have the expertise for providing special education services. Knowing what to expect and the questions to ask in the area of special education is essential for all charter schools.

The purpose of this guidebook is to provide an overview of federal and Colorado special education laws and to be a resource for those needing information about special education issues within charter schools. This guidebook consists of policy interpretations of the Colorado Department of Education and does not constitute legal advice. Those seeking legal advice should contact their legal counsel. The guidebook’s intended audience includes charter school developers, administrators and staff; charter school authorizers and administrative units; as well as parents of students with disabilities who are or may be attending one of Colorado’s public charter schools. The guidebook is divided into three major sections, (I) Special Education History and Overview, (II) Charter School Special Education Program Considerations, and (III) Special Education for Students in Charter Schools. Frequently asked questions are integrated into discussion of special education topics. Legal citations appear in italics. When available, references to additional CDE resources that provide more in depth information are included.

## **Federal Charter School Law**

The key piece of federal legislation that governs the authorization and operation of charter schools is Charter School Programs in the Elementary and Secondary Education Act (ESEA).

The ESEA defines a charter school as a public school that:

- (1) in accordance with a specific state statute authorizing the granting of charters to schools, is exempted from significant state or local rules that inhibit the flexible operation and management of public schools;
- (2) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
- (3) operates in pursuit of a specific set of educational objectives determined by the school’s developer and agreed to by the authorized chartering agency;
- (4) provides a program of elementary or secondary education, or both;
- (5) is nonsectarian in its programs, admissions policies, employment practices and all other operations, and is not affiliated with a sectarian school or religious institution;

- (6) does not charge tuition;
- (7) complies with federal anti-discrimination laws including IDEA and Section 504;
- (8) is a school to which parents choose to send their children, and if receiving federal Charter School Program funds, admits students on the basis of a lottery if more students apply for admission than can be accommodated;
- (9) agrees to comply with the same federal and state audit requirements as do other state elementary and secondary schools, unless such requirements are specifically waived;
- (10) meets all applicable federal, state, and local health and safety requirements;
- (11) operates in accordance with state law; and
- (12) has a written performance contract with the authorized public chartering agency in its state that includes a description of how student performance will be measured by the charter school pursuant to state assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

20 U.S.C 7221i(1)

## Colorado Charter School Law & Framework: Authorizers

Before delving into the specific Colorado laws affecting charter schools and special education, it is necessary to clarify the term charter school “authorizer” which is frequently used in Colorado charter school and special education laws and regulations.

A charter school’s authorizer is the entity that grants the charter school its charter. Colorado law provides for two different charter school authorizers:



**School Districts:** In 1993, the legislature passed the Colorado Charter Schools Act (CCSA).<sup>4</sup> Under the CCSA, a charter school applicant submits its application to the school district in which the majority of the school’s students, other than online students will reside. The district approving the charter application is the charter school’s authorizer. Charter schools authorized by school districts are referred to as *district charter schools*. Under the CCSA, a charter school that is granted its charter through a school district is accountable to its district for the purposes of ensuring compliance with applicable laws, including federal and state special education laws.

**Charter School Institute:** In 2004, the legislature adopted Institute Charter Schools legislation<sup>5</sup> which provides an alternative mode for authorizing charter schools. A charter school applicant can submit an application to the Charter School Institute (CSI) only if the school district in which

<sup>4</sup> 22-30.5-101 *et seq.*

<sup>5</sup> 22-30.5-501 *et seq.*

the charter school is to be located has not retained exclusive authority to authorize charter schools or has adopted a resolution waiving their exclusive chartering authority rights. In approving the charter application, the CSI grants the school its charter and is the charter school’s authorizer. A charter school authorized by the CSI is known as an *institute charter school*, and is accountable to the CSI for the purposes of ensuring compliance with applicable laws, including federal and State special education laws.

<b>Colorado Charter School Definitions</b>	
<p><b>A district charter school is a public, nonsectarian, nonreligious, non-home-based school which is granted its charter through its school district. A district charter school:</b></p> <ul style="list-style-type: none"> <li>• is subject to all federal and State laws and Constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services;</li> <li>• must have a majority of its students other than online pupils, residing in the authorizing school district or in districts contiguous to the authorizing school district;</li> <li>• must open enrollment to any child who resides within the school district and must make enrollment decisions in a nondiscriminatory manner;</li> <li>• pursuant to contract and waiver, may operate free from specified school district policies and State law and regulations;</li> <li>• is administered and governed by a governing body in a manner agreed to by the charter school applicant and the local board of education;</li> <li>• may not charge tuition except as otherwise provided by Colorado law;</li> <li>• is responsible for its own operation, including the preparation of a budget, contracting for services, and personnel matters; and</li> <li>• is authorized to offer any educational program, including but not limited to an online program, that may be offered by its authorizing school district and that is research based and has been proven to be effective, unless expressly prohibited by State law.</li> </ul> <p><i>22-30.5-104 C.R.S.</i></p>	<p><b>An institute charter school is a public, nonsectarian, nonreligious, non-home-based school that exists as a public school within the state unaffiliated with a school district. An institute charter school:</b></p> <ul style="list-style-type: none"> <li>• is subject to all federal and State laws and Constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services;</li> <li>• is subject to the terms of the contract entered into with the CSI and is subject to accreditation by the State Board of Education;</li> <li>• has enrollment open to any child who resides within the <i>State</i> and makes enrollment decisions in a nondiscriminatory manner as specified in the charter application;</li> <li>• pursuant to contract and waiver, may operate free from specified statutes and state board rules;</li> <li>• is administered and governed by a governing body in a manner agreed to by the charter school applicant and the local board of education;</li> <li>• may not charge tuition except as otherwise provided by Colorado law;</li> <li>• is responsible for its own operation, including the preparation of a budget, contracting for services, and personnel matters; and</li> <li>• is authorized to offer any educational program, including but not limited to an online program, that may be offered by a school district, unless expressly prohibited by State law.</li> </ul> <p><i>22-30.5-507 C.R.S.</i></p>

One advantage of a charter school is the right to operate without the burden of certain school district policies and state laws and regulations. However, Colorado charter school laws expressly provide that a charter school is a public school that is subject to all federal and state laws prohibiting discrimination on the basis of disability or need for special education services. Colorado charter school laws also provide that a charter school is accountable to its authorizer for compliance with such laws. It is essential that everyone involved with Colorado charter schools understands that no exemption can be granted from any federal disability law or regulation, including Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education

Improvement Act (IDEA). Colorado charter schools must also comply fully with the State special education law, the Exceptional Children's Educational Act (ECEA).

As it is highly likely that charter schools will have children with disabilities in their student populations, it is critical that everyone involved in a charter school has knowledge about special education requirements. Understanding the history behind special education legislation will help individuals understand the rationale behind special education requirements.

## **A Brief History of Special Education**

Access to equal educational opportunity and due process was a hard fought battle for children with disabilities and their families. Educational opportunity for children with disabilities has changed dramatically in the last fifty years due to court decisions, legislative initiatives and administrative rulings. As charter schools implement programs and services for students with disabilities, it is important to understand why the protection afforded by special education laws is so valued and crucial to these children and their families.

For most of our nation's history, children with disabilities were not given the right to the same educational opportunities as was afforded their non-disabled peers. Children with disabilities could be excluded from public education, and it was not until the 1950s that long-standing educational practices were successfully challenged. In the late 1960s and early 1970s, several federal and state court decisions struck down state laws that denied an equal educational opportunity to students now covered by federal disability laws.

Section 504 from 1973, is widely regarded as the first civil rights statute for persons with disabilities. Section 504 requires preschool, elementary, secondary and adult education programs to take into account the needs of disabled students. In 1975, Congress enacted Public Law 94-142, the Education for All Handicapped Children Act. This law required states to adopt goals ensuring full educational opportunity for children with disabilities as a condition of receiving federal funds. This law was designed to make a free appropriate public education (FAPE) available for children with disabilities. It has been amended several times over the years. In 1990, this law was renamed the Individuals with Disabilities Education Act (IDEA). The IDEA was most recently reauthorized in 2004.

## **Overview of Disability Laws**

Federal and state laws govern special education and Colorado charter schools are subject to these laws. There are three federal laws and a Colorado law with implementing sets of regulations that govern the provision of special education for students with disabilities. The following is a brief summary of some of the major points of those laws.

### ***Section 504***

Section 504 prohibits discrimination on the basis of disability by recipients of federal funds. Section 504 regulations contain free appropriate public education and educational setting requirements that are similar to IDEA requirements. One requirement is that a student with a



disability receive appropriate regular or special education related aids and services to ensure that the educational needs of a disabled student are met as adequately as the needs of non-disabled students.

### ***Title II of Americans with Disabilities Act (ADA)***

The ADA extends Section 504's prohibition against discrimination on the basis of disability to all activities of state and local governments, regardless of whether those entities receive federal funds. This includes school districts that receive federal funds as well as entities such as public libraries that do not receive federal funds.

### ***Individuals with Disabilities Education Act (IDEA)***

The IDEA and its regulations provide the procedural road map for teachers, parents, administrators and state education agencies as they adopt policies and procedures for educating all students. Understanding the IDEA and the legal concepts that are its foundation is essential for all charter school developers and operators as they consider how to provide special education services.

The purposes of the IDEA are:

- (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and to prepare them for further education, employment, and independent living;
- (2) to ensure that the rights of children with disabilities and their parents are protected;
- (3) to assist states, localities, educational service agencies and federal agencies to provide for the education of all children with disabilities;
- (4) to assist states in the implementation of state-wide, comprehensive, coordinated, multidisciplinary, interagency systems of early intervention services for infants and toddlers with disabilities and their families;
- (5) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- (6) to assess and ensure the effectiveness of efforts to educate children with disabilities.

*20 USC 1400(d) (2004)*

Not all students who have a disabling condition are eligible for special education services under the IDEA. Nevertheless, a student who has a disabling condition, who is not eligible for services under the IDEA, may be entitled to the protections afforded by Section 504 and the ADA.

### ***Colorado's Exceptional Children Education Act (ECEA)***

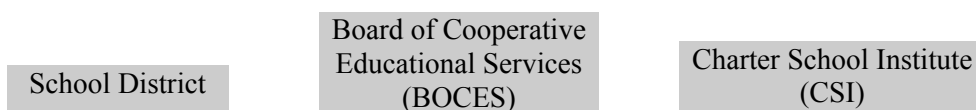
For the most part, the ECEA rules mirror IDEA regulations, but the ECEA rules contain additional and/or more specific requirements. Therefore, it is important that charter school personnel be familiar with the IDEA and the ECEA and their implementing regulations and rules.

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The IDEA and ECEA are enforced by CDE. However, Section 504 and the ADA are enforced by the U.S. Department of Education’s Office for Civil Rights (OCR). Meeting the requirements of Section 504 and the ADA is a condition of receiving any federal financial assistance, including IDEA funds.

## Colorado’s Special Education Framework: Administrative Units

The IDEA and its regulations refer to State Education Agencies (SEA) and Local Education Agencies (LEA). In Colorado, the SEA is the Colorado Department of Education (CDE). However, Colorado’s special education law, the ECEA, refers to LEAs as *Special Education Administrative Units*.<sup>6</sup> An administrative unit is responsible for assuring that the students with disabilities within their unit receive a free appropriate public education (FAPE), and administers the ECEA rules. An administrative unit for a charter school may be one of three entities:



**School District:** An authorizing school district with a student population of more than 4000 or with at least 400 students with disabilities may be its own administrative unit. The authorizing school district receives special education funding that is used to provide services in the school district and its special education programs are supervised by the Special Education Director. In this setting, the authorizer’s Special Education Director is an administrator within the school district.

**Board of Cooperative Educational Services (BOCES):** A BOCES is an administrative unit that provides special education services over a region that includes multiple small school districts. If a school district has a population that does not meet the size requirements to be an administrative unit, it must join a BOCES that does. The BOCES receives the special education funding that is used to provide services in the school districts in its region and a Special Education Director supervises the BOCES special education programs. A district charter school in this setting will have its school district as its authorizer and a BOCES as its special education administrative unit. The authorizer’s Special Education Director is an administrator within the BOCES.

**Charter School Institute (CSI):** The Institute Charter Schools legislation provides that the CSI is an administrative unit for the purposes of special education rules and regulations. The CSI receives the special education funding for institute charter schools and the CSI’s Special Education Director supervises special education programs for institute charter schools. An

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<sup>6</sup> Hereinafter Administrative Unit.

institute charter school will have the CSI as both its authorizer and administrative unit and the authorizer's Special Education Director is an administrator for the CSI.

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It is critical for charter school operators and developers to understand the relationship between their authorizer, who grants their charter, and the administrative unit that oversees special education programs. For developers, contacting the authorizer's Special Education Director is essential for planning a charter school's special education program. A charter school's authorizer can identify the Special Education Director of its administrative unit. Information on administrative units and Special Education Directors is available on the CDE website at [www.cde.state.co.us/cdesped/schodistprogs.asp](http://www.cde.state.co.us/cdesped/schodistprogs.asp).

## **Six Major Special Education Legal Concepts: Statutory & Case Law Requirements**

The following six concepts underlie special education statutes, regulations and case law<sup>7</sup> and form the basis for delivering special education in public schools, including charter schools.

### ***1) Zero Reject***

Federal law requires that all children are to be afforded an equal educational opportunity and states may not deny a child an education on the basis of disability. In Colorado, this principle applies to all children ages 3 to 21.<sup>8</sup>

*ECEA Rule 2.08<sup>9</sup>*

### ***2) Individualized Education Program (IEP)***

The IDEA requires that a written statement called an individualized education program (IEP) must be developed in accordance with IDEA regulations for all students identified as having a disability and in need of special education services.

*IDEA Regulations §§ 300.320-300.324<sup>10</sup>; ECEA 4.03(6)*

### ***3) Free Appropriate Public Education (FAPE)***

The purpose of the IDEA is to provide a free and appropriate public education to students with disabilities, however the term "appropriate" is not specifically defined in the IDEA or the ECEA. Court decisions over the years have determined what is "appropriate" on a case-by-case basis,

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<sup>7</sup> Fiedler, Craig R. & David P. Prasse, *Legal and Ethical Issues in the Educational Assessment and Programming of Youth with Emotional or Behavioral Disorders*, in *BEHAVIORAL APPROACH TO ASSESSMENT OF YOUTH WITH EMOTIONAL/BEHAVIORAL DISORDERS: A HANDBOOK FOR SCHOOL-BASED PRACTITIONERS* (Michael Breen & Craig R. Fiedler, eds.1996).

<sup>8</sup> This guidebook applies to children with disabilities under Part B of the IDEA and does not discuss infants and toddlers (ages birth to 3 years) covered under Part C of the Act.

<sup>9</sup> Hereinafter ECEA rules will be referred to by ECEA and the Rule number (e.g. ECEA 4.00)

<sup>10</sup> Hereinafter IDEA Regulations will be referred to by IDEA and the regulation number (e.g. IDEA §300.000)

depending on the unique needs of the student. In *Hendrick Hudson District Board of Education v. Rowley*,<sup>11</sup> the U.S. Supreme Court developed a two-part legal test for determining whether a child has received a FAPE.

- (1) Was there compliance with the procedural requirements of the IDEA?
- (2) If so, was the IEP developed through IDEA procedures calculated to confer meaningful educational benefit?

If these two tests are satisfied, then the obligations for providing FAPE under the IDEA have been fulfilled. In *Rowley*, the U.S. Supreme Court also held that the intent of the IDEA was to establish a basic floor of educational opportunity for the disabled child; it was not intended to maximize each disabled child's potential.<sup>12</sup> Colorado law is identical to federal law on this issue.<sup>13</sup>

#### **4) Least Restrictive Environment (LRE)**

The IDEA provides that students with disabilities must be educated to the maximum extent appropriate with their nondisabled peers and requires education agencies to ensure that children with disabilities are educated with nondisabled children to the maximum extent appropriate. The IDEA provides that removal of children from regular classes to special classes or separate schools should only occur if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aides and services, cannot be achieved satisfactorily.

#### *IDEA §300.114*

The IDEA expresses a preference, not a mandate, for educating students with disabilities in regular classes with appropriate supplementary aids and services. Court decisions provide guidance on considerations in determining the least restrictive environment. The 10<sup>th</sup> Circuit Court of Appeals, the federal appellate court whose decisions are binding in Colorado, adopted a legal test for LRE in the case *K.B. v. Nebo School District (2004)*.<sup>14</sup> The two part test used by the 10th Circuit asks two questions:

- Can the disabled child be satisfactorily educated in the regular classroom with the use of supplementary aids and services? Under the first part of this test, the court considers four factors:
  - (1) The steps that have been taken to accommodate the child in the regular education classroom, including the consideration of a continuum of placement and support services;
  - (2) A comparison of academic benefits the child will receive in the regular education classroom with those that he or she will receive in the special education classroom;

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<sup>11</sup> 458 U.S. 176 (1982)

<sup>12</sup> *Id.*

<sup>13</sup> In Colorado, administrative units are not required to maximize the potential of any student. All students, regardless of disability, are entitled to an equal educational opportunity.

<sup>14</sup> 379 F3d. 966 (10th Cr. 2004)

- (3) The child's overall educational experience in regular education, including non-academic benefits; and
  - (4) The effect of the presence of the disabled child on the regular education classroom.
- If not, has the administrative unit mainstreamed the child to the maximum extent possible?

### ***5) Due Process and Parent Involvement***

Due process considerations and parent involvement in the IEP process are vital to the implementation of the IDEA and the ECEA. Several provisions within the IDEA ensure that parents of students with disabilities receive prior written notice, and consent to evaluations and placement of their child in special education. Such provisions are meant to ensure parents of students with disabilities are given a meaningful opportunity to participate in the special education process. The IDEA and ECEA also provide procedural safeguards that include the dispute resolution mechanisms available when disagreement about the IEP arises among IEP team members.

*IDEA §§ 300.500-300.517; ECEA 6.02*

### ***6) Nondiscriminatory Evaluation***

Both the IDEA and ECEA have provisions requiring that a child receive a nondiscriminatory evaluation to determine whether the child has a disability and eligibility for placement in special education. Assessments used in such an evaluation must:

- be administered in the child's native language or other mode of communication to ensure accurate information on what the child knows and can do academically, developmentally, and functionally;
- be valid and reliable for the specific purpose for which they are used;
- be selected and administered so as not to be discriminatory on a racial or cultural basis;
- be administered by trained and knowledgeable personnel;
- be tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient; and
- be reflective of the child's aptitude or achievement and not reflective of the child's impaired sensory, manual or speaking skills.

*IDEA §300.304(c)(1); ECEA 4.02(4)*

## **Research on Special Education in Charter Schools**

Although the Colorado charter school law unequivocally bars discrimination based on disability or need for special education services, it contains no guidance on *how* students with disabilities should be served once a charter school is established. There are few research findings on the implementation of special education services in charter schools. However, one study, Project

SEARCH,<sup>15</sup> was conducted in 1999 - 2000 and examined special education policies and practices in a number of states, including Colorado. Some of the findings include:

- Of the eleven Colorado charter schools visited for the study, five reported that they operated a full-inclusion model, which largely appeared to consist of generic programs of “individualized learning” rather than being based on individualized education programs as required by the IDEA and the ECEA.<sup>16</sup> The remaining charter schools provided “pull-out” special education services where special education services are provided directly to a student outside of the general education classroom.
- State, district and school level personnel indicated that charter schools periodically “counsel-out” students with disabilities. “Counseling out” is the discriminatory and illegal practice of discouraging, however subtly, a student with disabilities from applying to enroll at a charter school.

Ultimately, Project SEARCH identified four key issues affecting the capacity of Colorado charter schools to deliver special education:

- The “negotiation” factor for determining how to deliver special education in charter schools creates inherent tensions derived from the school district’s legal obligations under the IDEA and the charter school’s desire for autonomy.
- The charter school authorization process is the prime opportunity for a charter school and its authorizing school district to address the many details of their relationship.
- Technical assistance is critical to charter schools in developing the capacity to deliver special education.
- Charter school finance, and specifically special education finance, is an ongoing challenge.

A summary of recent and on-going research efforts on the general topic of charter schools and special education is available on the U.S. Charter Schools website at [www.uscharterschools.org](http://www.uscharterschools.org).<sup>17</sup>

## **Charter School Special Education Resources**

Because of the limited research on the implementation of special education in charter schools, Colorado charter school developers and operators should obtain complete information about federal and Colorado laws and regulations that apply to the provision of special education, just as they do for all other applicable educational requirements.

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<sup>15</sup> Project SEARCH is a research study funded by the U.S. Department of Education, Office of Special Education Programs (Grant #H324C980032-99). This study, conducted by Lauren Morando Rhim on behalf of the National Association of State Directors of Special Education (NASDSE), examines what state level policies and practices in seven states (including Colorado) and the District of Columbia influence individual charter schools’ capacity to deliver special education services. The Colorado component was conducted between January 1999 and September 2000. Project SEARCH and all other documents pertaining to this study are available on NASDSE’s website at <http://www.nasdse.org/>

<sup>16</sup> The failure to develop and implement an individualized education program (IEP) for each student with a disability in accordance with IDEA and ECEA procedures is a violation of those laws.

<sup>17</sup> This website was initially developed with the support of the U.S. Department of Education and is currently supported by a consortium of organizations interested in providing information about charter schools.

- Information about IDEA 2004 is available on the U.S. Department of Education's website *Building the Legacy: IDEA 2004*, which is located at <http://idea.ed.gov>.
- Copies of the ECEA Rules and IDEA regulations are available on the CDE website at [www.cde.state.co.us/cdesped/lawsregs.asp](http://www.cde.state.co.us/cdesped/lawsregs.asp).
- Other materials are available on the CDE website, and through State and federal resource centers and support organizations. Such resources appear in an appendix at the end of this guidebook.

# **Charter Schools Special Education Guidebook**

## **Section II**

### **Special Education Program Considerations for Charter Schools**



## **Essential Special Education Program Components: A Starting Point for Charter Schools**

The following summary of special education components are starting points for serving students with disabilities in charter schools and may serve as framework for a charter school's special education program. Whether these elements are available within the charter school or through its administrative unit will depend on the school's charter with its authorizer.

***Identification/Child Find:*** the continuous and systematic effort to identify, locate and evaluate students ages 3 to 21 who are in need of special education services.

***Referral:*** a formal process for reviewing information related to students who are suspected of having disabilities and who show signs of needing special education and related services. Such a process involves reviewing a student's relevant educational information and making a decision about whether to refer the student to special education for an initial evaluation for special education eligibility.

***Evaluation:*** the process of formal and informal assessment to determine specific areas of a child's strengths, needs and eligibility for special education services.

***Service delivery:*** the system to ensure that a continuum of alternative placements is available to meet the needs of students with disabilities with special education and related services, and that LRE issues are considered in placement decisions.

***Staffing:*** the identification of required and qualified personnel to deliver special education and related services in accordance with a student's IEP.

***Facilities:*** the actual locations of schools and classrooms and the settings that allow students with disabilities to access programs and interactions with nondisabled students.

***Parental involvement and rights:*** A parent's rights and responsibilities in accordance with the IDEA, the ECEA and their regulations in all aspects of planning and implementing a FAPE for students with disabilities. Parental rights and responsibilities include any legal challenges to the evaluation, planning and implementation of an IEP or the provision of a FAPE.

***Professional development:*** the structure for personnel planning that focuses on in-service needs in order to plan a program that meets the needs of students with disabilities.

***Interagency relations:*** the collaboration and coordination of agencies to provide services to pupils with disabilities.

***Instructional resources:*** the specific supplies, equipment, and instructional materials appropriate to meet the needs of individual students with disabilities.

**Coordination with other educational programs:** the process that schools or administrative units use to provide special education within the context of all other educational programs.

**Fiscal resources:** the means for purchasing and/or obtaining the supplies, materials, equipment, services and personnel required to provide programs for students with disabilities.

**Reporting:** the data and financial accounting that must be submitted to state and federal agencies, and supporting documentation that provides the required information for an audit.

**Governance:** the administrative structure and long-range plans through which the special education system operates.

## **Key Special Education Considerations for Charter Schools**

Individuals involved in the development or monitoring of charter schools have several school level issues to consider as they think about special education programming for their charter schools.

### **Who is legally responsible for ensuring that students with disabilities enrolled in charter schools receive a free appropriate public education (FAPE)?**

The Colorado charter school laws provide that charter schools are subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability or the need for special education services. The charter school laws also provide that charter schools are *accountable* to their authorizer for purposes of ensuring compliance with the IDEA and the ECEA. Consequently, if a charter school fails to comply with the IDEA or the ECEA, its authorizer may revoke or not renew the school's charter. However, the charter school's administrative unit (authorizing school district, BOCES or CSI) is legally responsible for assuring that the charter school's students receive a FAPE. The Colorado Department of Education (CDE) is ultimately responsible to ensure that every eligible student with a disability in the state receives a FAPE.

### **Can the charter school be held legally liable for providing special education?**

Although charter schools are accountable to their authorizer for complying with federal and state special education laws, charter school personnel need to understand the implications of the school's charter and negotiated agreements regarding special education. For example, if a parent initiates a due process hearing about a child's program, a charter school may be required to expend funds or make insurance claims for the legal defense. Charter schools that fail to admit and educate children with disabilities may be liable for compensatory educational services, damages claims, and attorneys' fees.

### **What is the school's philosophical orientation toward serving students with disabilities?**

By their very nature, charter schools have a particular orientation toward the delivery of educational services that may be manifested in a specific curriculum, student population, or parent focus. Before opening, charter school personnel must ask themselves how they intend to serve students with disabilities as it is critical for the school to comply with the IDEA and the ECEA. Special education laws protect the rights of children with disabilities, but such laws *do not* prescribe a particular educational delivery model or methodology. If a charter school complies with the IDEA and the ECEA, it can develop a model for special education delivery that is both legally sufficient and consistent with its mission.

Ideally, special education should be considered from the start of the school's design in order to align the school's mission for all children. Viewing special education within the context of the charter school's mission may move the whole school toward a more innovative model of educational delivery. Some questions that charter school operators should ask themselves are:

- Are unique opportunities available for students with disabilities to receive services within the school's innovative model?
- Can the charter school use its independent status to create innovative models of special education delivery consistent with the IDEA and the ECEA?

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

Charter school developers and administrators must develop nondiscriminatory recruitment and admission practices. Outreach and recruitment efforts should be targeted toward all segments of the community, including students with disabilities.

Under Section 504 and Title II, a charter school may not categorically deny admission to students on the basis of disability. For example, a charter school may not deny admission to a student with a disability solely because of that student's need for special education or related aids and services. Students with disabilities must have the opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the mission of the charter school and civil rights requirements.

A charter school may not "counsel out" a student with a disability. The practice of "counseling out" -- informally discouraging parents from applying to enroll their child with a disability in the charter school -- is illegal. Instead, the school must give students with disabilities the opportunity to meet minimum admission criteria, consistent with the school's mission and civil rights laws.

### **How will the charter school make nondiscriminatory enrollment decisions?**

Colorado charter school law provides that enrollment must be made available to any child who resides within the school district<sup>18</sup> and that a charter school shall be subject to all federal and state laws prohibiting discrimination on the basis of disability or need for special education

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<sup>18</sup> Institute charter schools enrollment is open to any child who resides within the state. 22-30.5-507(3) C.R.S.

services. Colorado charter school laws require that enrollment decisions be made in a nondiscriminatory manner as specified in a charter school's application to its authorizer. When a student with an IEP is selected for enrollment through a nondiscriminatory admissions process, special education program and placement decisions must be made through the IEP process.

*ECEA 4.03(8)(b)(iv)*

### **Can charter schools serve only students with disabilities?**

At this time, there is one Colorado charter school that serves solely students with disabilities. If charter school developers are considering a charter school that serves only students with disabilities, they should be mindful of the requirement that charter schools, as part of the education system, must follow non-discriminatory admission practices. Consideration must also be given to the least restrictive environment (LRE); the assurance that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. Because a charter school that serves only students with disabilities is a segregated environment, a student's IEP team must determine whether the segregated environment is the LRE for the student.

### **Can charter schools receive waivers for certain special education requirements?**

In Colorado, the answer is "no." States cannot waive federal special education laws, and Colorado charter school laws do not allow for the waiver of any part of the ECEA.

### **What if our charter school is not the appropriate placement for a child with a disability?**

If a parent seeks to enroll a child with a disability in a charter school, FAPE must be made available to that student through the student's special education placement. The terms "placement" or "educational placement" mean the provision of special education and related services and the educational setting where those services will be provided (e.g. regular classroom or special education resource room), and does not mean a specific place, such as a specific classroom or specific school. A student's placement is determined by the IEP team and should be considered in the context of the LRE requirements of IDEA.

If a charter school has negotiated service delivery under the insurance model, FAPE must be made available either at the charter school or another program within the continuum of alternative placements offered by the administrative unit. If a charter school has negotiated to provide special education services under the contract model, the charter school must make arrangements to provide the student with needed special education services. Because an administrative unit is ultimately responsible for assuring that a student receives a FAPE, a charter school using the contract model of service delivery should consider negotiating access to the administrative unit's continuum of alternative placements.

When a student with an IEP enrolls in a charter school, it is essential to promptly convene an IEP meeting to discuss the educational needs and placement of the student. An IEP review meeting scheduled immediately after enrollment assists parents, teachers, and students in meshing the child's needs with the charter school's services. Such a meeting is a strategy to better prepare

the school to meet the student's needs, but must not be designed to screen out a student with a disability.

*ECEA 4.03(8)(a), 4.03(8)(b)(iv)*

**What steps must charter schools take to ensure that appropriate services are provided to students with low-incidence disabilities?**

Some students with disabilities that are considered low incidence (deafness, blindness, autism, etc.) may enroll in the charter school; however an IEP meeting to determine if the charter school is the appropriate placement will be necessary. Providing services for these individuals in a small school or in a school with limited resources may be difficult. The charter school should obtain guidance from the authorizer's Special Education Director about providing services to students with low incidence disabilities.

The importance of a having an IEP team in place to consider placement and program questions for enrolling charter school students is apparent. Some charter schools may not have special education providers on staff. It is beneficial for a charter school to have a knowledgeable special educator available as part of a charter school's personnel team or consultative staff to readily respond to special education issues. Information on special education resources available within the administrative unit may be obtained through the authorizer's Special Education Director, and information on special education requirements is available through the CDE.

**What if a special education student who lives outside the district enrolls in our charter school?**

Within 15 calendar days after an out-of-district student has accepted an opening in a charter school, and the charter school knows the student is a special education student, the charter school must provide written notice of the student's enrollment to the Special Education Directors of the administrative unit of residence and attendance.<sup>19</sup> The notice must comport with the confidentiality policies of the administrative unit of attendance and must be signed by the charter school administrator. This notice must include the child's name, date of birth, state assigned student identifier (SASID) – if available, the date of the enrollment application, and anticipated date of admission. If there is a change in the district of residence, the same notification must be sent to the special education directors of the new and former administrative units of residence, and the administrative unit of attendance within the same timelines.

*ECEA 9.04(2)*

**What other federal laws are relevant to children with disabilities enrolled in a charter school?**

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<sup>19</sup> If the district of residence is not an administrative unit (i.e. small district served by a BOCES), the written notice must be sent to the superintendent of the district of residence, the special education director of the administrative unit of residence, and to the special education director of the administrative unit of attendance. *See* ECEA rule 9.04(2)(c). If the district of residence is an administrative unit, the written notice is sent to the special education directors of both the administrative unit of residence and the administrative unit of attendance.

In addition to the IDEA, Title II of the ADA and Section 504 are federal laws that are relevant to the education of children with disabilities. As discussed earlier, Section 504 and Title II specifically prohibit discrimination on the basis of disability. Section 504 has FAPE and LRE requirements and processes such as child find, evaluation, placement, discipline requirements, and procedural safeguards that are similar to the IDEA. However, Section 504 and Title II differ from the IDEA and State special education laws in significant ways.

Title II and Section 504 broadly define disability as a physical or mental impairment which substantially limits one or more major life activities. Protection under Section 504 and Title II extends to individuals who have, have record of, or are regarded as having such an impairment. Section 504 requires the provision of education and related services designed to meet the educational needs of the child. Under the IDEA and ECEA, a child with a disability means a child who has a condition which prevents him or her from receiving benefit from general education alone and requires specialized instruction based on the child's unique needs. It is important to remember a child who is not eligible for special education under IDEA, may still qualify as a child with a disability under Section 504. However, unlike the IDEA which is a funding statute, Section 504 is a civil rights statute that provides no funding for education and related services.

Under Title II and Section 504, a public agency is required to:

- Take steps to eliminate discrimination against individuals with disabilities.
- Operate each service, program, or activity, so when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.
- Appoint a 504/ADA coordinator to coordinate efforts to comply with these laws.

Some considerations for charter schools in implementing these laws include:

- Who will be the charter school's Section 504/ADA coordinator?
- Will the authorizer/authorizer's administrative unit provide technical assistance or professional development around Section 504?
- Who will perform evaluations? Which entity will be responsible for providing educational services?
- How will the charter school ensure accessibility to its programs, services and activities?
- How will the charter school handle grievances under Section 504?

Additional information on Section 504 is available on the CDE website at [www.cde.state.co.us/cdesped/504info.asp](http://www.cde.state.co.us/cdesped/504info.asp); and at the Office of Civil Rights website at [www.ed.gov/policy/rights/guid/ocr/disability.html](http://www.ed.gov/policy/rights/guid/ocr/disability.html).

## **Special Education Service Delivery**

Under the IDEA and the ECEA, a charter school's authorizer is required to provide special education services to students enrolled in its charter schools in the same manner as those services are provided to students enrolled in its other public schools. In Colorado, the administrative unit retains ultimate legal responsibility for ensuring students with disabilities within its unit, including students in charter schools, receive a FAPE. However, the manner in which special education services are delivered is one of many issues that are negotiated between a charter

school and its authorizer through the charter contract. A charter school's authorizer and administrative unit may not always be the same entity (e.g. school district as authorizer, BOCES as administrative unit), therefore it is critical for charter school developers and operators to involve the authorizer's Special Education Director in planning for a charter school's special education program and negotiating the special education service delivery model.

The Colorado charter school laws allow for different special education service delivery models for charter schools:

**Insurance Model**

**Contract(ed) Model**

**Combination Model/Modified Insurance Model**

### *Insurance model*

Under this model, the charter school pays the authorizer a fee and the administrative unit is the primary special education service provider. The fee may be calculated by multiplying the per pupil cost incurred by the authorizer in providing special education services by the total number of students enrolled in the charter school. The per pupil cost in providing special education services varies by authorizer. There are advantages and disadvantages to this model.

#### *Advantages*

- It provides a level of confidence that legal requirements are being met.
- The charter school derives benefit from the administrative unit's expertise as well as access to services and a continuum of placements for students with significant needs.
- It assures legal protection to the charter school if parents challenge the special education services provided.
- It provides predictability in budgeting for special education programming.
- The charter school does not have to hire its own special education staff.
- Special education programming is consistent with that of other public schools of the authorizer.
- It provides access to administrative unit-sponsored training and staff development related to special education.

#### *Concerns*

- Special education providers hired by the administrative unit that work at the charter school must answer to two supervisory entities.
- Special education providers assigned to charter schools may not always share the charter school's philosophy. However, this concern can be diminished through negotiations to allow the charter school's participation in the hiring or selection of special education providers to be assigned to the school.

- If special education services are provided on an itinerant basis, special education providers are not available all times to serve as a resource to teachers and students in the charter school.

Those interested in opening a charter school should determine how the IDEA is being interpreted by the charter school's authorizer regarding responsibility for serving students with disabilities. Although the CCSA allows this issue to be negotiated, some Colorado school districts interpret the IDEA as requiring school districts to provide the services, and mandate that all charter schools in their district use the insurance model. Although the administrative unit provides all service provision under this model, it is best practice for the charter school to have a detailed special education compliance plan and to include the authorizer's Special Education Director in special education planning for the school.

### *Contract model*

Under this model, the charter school hires its own special education staff and/or contracts with third parties and the administrative unit passes through the proportionate share of special education funds to the charter school. This approach, too, has advantages and concerns:

#### *Advantages*

- This approach supports increased autonomy from the charter school's authorizer.
- Charter school-based planning facilitates the close involvement of parents and implementation of a full inclusion model.
- Contracting with third parties on a needs-basis allows the charter school to buy services tailored to individual student needs.
- In inclusive settings, special education teachers are able to work with many students in the classrooms and not just those with IEPs.
- The contract model may be less expensive than paying the authorizer's "insurance premium" for special education services. However, it could also be more expensive depending on the nature of a student's disability.

#### *Concerns*

- The authorizer's administrative unit loses control over how charter school students with disabilities are being served, but remains legally liable for providing a FAPE to those students. An authorizer's administrative unit that agrees to this model will find it essential to negotiate for periodic audits throughout the school year to ensure that the charter school complies with special education requirements.
- Charter school boards and developers considering the contract model should be careful to contract only with third parties who are competent and qualified in special education.
- Because of the high degree of competition to recruit such personnel, the charter school may find it difficult to recruit and retain special education providers that meet CDE special education licensure and endorsement requirements.

Under this model, it is essential to clearly delineate the special education responsibilities of the administrative unit and the charter school in the school's charter.



### ***Combination model/Modified insurance model***

As its name suggests, under the combination model the charter school and the administrative unit negotiate who is financially and functionally responsible for special education services. Similarly, under the modified insurance model, the charter school contracts for some services, and pays the authorizer a per student fee for services provided by the administrative unit. The advantages and concerns listed above may apply to a greater or lesser degree. Additional advantages include:

- This model is quite flexible in that each party can identify the critical areas of importance to it (e.g., control, autonomy, risk exposure, etc.) and then negotiate for those values.
- This approach provides an opportunity for interaction and relationship building between the charter school and its administrative unit.
- The charter school's collaboration with the administrative unit brings a greater depth of expertise and a broader range of resources, which enhances the quality of special education services.
- Collaboration allows the charter school to balance its interest in autonomy with the benefits of centralized coordination of services to students.
- The charter school can hire special education providers who understand and support the school's unique program and philosophy and assign these providers based on student needs.
- This approach allows the charter school to offer integrated services to students with disabilities.

Like the contract service delivery model, clearly delineating the responsibilities of the administrative unit and the charter school in the school's charter is fundamental to implementing this model.

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Agreements regarding the provision of special education services should be specific and negotiated prior to the opening of the charter school in order to alleviate any confusion about responsibilities between the charter school and administrative unit. Charter school personnel should seek legal advice about special education requirements to determine responsibility for service delivery and develop a special education compliance plan for providing services. A resource on this topic is *Colorado Charter Schools Special Education Guidelines: Negotiating New and Renewal Charter Contracts for Colorado Charter Schools* available at [www.cde.state.co.us/cdechart/guidebook/sped/pdf/spednegotguidelines.pdf](http://www.cde.state.co.us/cdechart/guidebook/sped/pdf/spednegotguidelines.pdf).

### ***Considerations for Selecting a Charter School Service Delivery Model***

If negotiation of the service delivery model is allowed by an authorizer, there are many special education considerations in selecting a service delivery model. The following are only some of the considerations for a charter school when selecting a service delivery model and negotiating special education services with its authorizer and administrative unit:

- Which entity will be responsible for the identification of children with disabilities at the charter school?
- Which entity will conduct initial evaluations and re-evaluations?
- Can a consultant be hired to conduct evaluations?
- Will the administrative unit provide a list of approved evaluation instruments?
- Will funds be available to conduct evaluations, including the cost of the evaluation instruments?
- Which entity will be responsible for delivering special education and related services? Whose staff will provide services? Can the delivery of services be shared with the administrative unit or does the school need to provide all services?
- If the charter school does not have a special educator on staff, are other options available to the school? How will the charter school provide these services without a licensed special educator on staff?
- Where will special education services be provided (e.g., at the charter school or another site)?
- Will special education services be delivered directly or on a consultative basis? What will happen if a child's IEP calls for more intensive services?
- Will the authorizer provide assistance in organizing the charter school's special education financial management system?
- How will special education professional development opportunities be made available to charter school staff?

What qualifications are required for a charter school's special education staff?

Although charter schools may obtain state and district waivers for the qualifications of regular education personnel, this is not the case for special education teachers and related services providers. The ECEA requires personnel conducting special education evaluations or providing special education services to students with disabilities to meet state licensure requirements. Special education teachers must hold a Colorado educator's license with relevant endorsement in special education. Additionally, both the IDEA and ECEA require that special education teachers who teach core academic subjects be "highly qualified" as defined by the ESEA. To be "highly qualified" a special education teacher who teaches core academic subjects must demonstrate subject matter competency in the areas taught. Charter schools that hire their own special education staff may want to consider a dual licensed staff member (licensed in special education with appropriate endorsement and also in a core content discipline) or outside contractors who have appropriate qualifications or licensure.

Related services personnel must hold Colorado special services licenses with appropriate endorsement. However, there may be certain professions approved by the CDE for which CDE licenses are not available, in which case appropriate professional licenses, registration or credentials are required, subject to CDE approval. Charter school administrators should contact the CDE to determine which professions are licensed or otherwise approved by the CDE.

For information on “highly qualified” special education teachers, see “*Colorado’s Definition of a ‘Highly Qualified’ Teacher as Required by NCLB*” available on the CDE website at [www.cde.state.co.us/fedprograms/nclb/index.asp](http://www.cde.state.co.us/fedprograms/nclb/index.asp). For questions on “Highly Qualified” special education teacher requirements, contact the CDE Federal Programs Unit. For more information on Colorado special education licensure and endorsement requirements, contact the CDE Professional Services and Licensing Unit.

*IDEA § 300.18; ECEA Rule 3.04(1); ESEA Regulation § 200.56)*

### Temporary Teacher Eligibility

It is important to understand that a special education teacher on temporary teacher eligibility (TTE) is not highly qualified, thus every effort must be made to find qualified special educators. However, if after making reasonable efforts, the charter school is unable to employ a qualified individual, the charter school may apply for a TTE for an individual who possesses a Colorado educator’s license or authorization.<sup>20</sup> Applications for a TTE are made through the special education director of a charter school’s administrative unit. A TTE is effective for three years and is non-renewable. During the three year period, the individual on a TTE must apply and make satisfactory progress in a program to obtain appropriate educational endorsements.

*ECEA Rule 3.04(2)*

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Related services personnel in the areas of speech/language and psychological services, and special education teachers, are often in high demand by many schools and school districts. Charter school developers and operators should be aware that they may need to develop relationships with a number of schools, school districts and/or consulting personnel in order to satisfy their need for specialized staff.

## **How are Special Education Services Funded?**

In order to address the question of how special education services are funded, charter school developers and operators need to have a general understanding of how education is financed in Colorado. A charter school and its authorizer must agree on funding and any services to be provided by authorizer as part of the charter school contract.<sup>21</sup> Special education funding involves school finance at the federal, state and local levels of government and is directly related to the special education service delivery model agreed to by the charter school and its authorizer. Understanding state policies and procedures on school finance is critical for charter school developers in order to understand how special education is funded and how that funding is applied at the school level.

### ***How are charter schools funded in Colorado?***

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<sup>20</sup> Excluding substitute authorizations

<sup>21</sup> See Colo. Rev. Stat. 22-30.5-112(2)(a) Colorado Charter School Act and 22-30.5-513(2)(a) Institute Charter Schools

Colorado’s public schools receive funding from various sources. Similarly, funding for charter schools comes from a variety of sources for a variety of purposes. Most revenues to Colorado’s 178 school districts are provided through the Colorado Public School Finance Act of 1994 (as amended).<sup>22</sup> This legislation provides moneys via local specific ownership (vehicle registration) taxes and local property taxes – “local share” and state moneys – “state share.”

This section is an overview of the elements involved in charter school and district funding. The process for funding charter school funding varies slightly between district charter schools and institute charter schools.

***District Charter Schools:*** The CCSA establishes the framework for district charter school funding. Charter school funding is based on the October 1 pupil count and charter schools receive 100% of the per pupil revenue for each pupil enrolled in the charter school from their authorizing school district less the actual amount of the per pupil share of central administrative overhead costs for services actually provided to the charter school that may be retained by the district.

***Institute Charter Schools:*** The Institute Charter Schools Act establishes the framework for institute charter school funding. Each institute charter school and the CSI must negotiate funding of the charter contract at a minimum of 95% of the adjusted per pupil revenues of the institute charter school’s *accounting district*, which is the school district where the institute charter school is geographically located.<sup>23</sup> The CSI may retain the actual amount of the per pupil share of the administrative overhead costs for services actually provided to the charter school.

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A school district’s funding is determined based on the following elements.

***Total Program Funding:*** The financial base of funding for school districts is based on a per-pupil formula that calculates the Total Program for each district. These components vary among school districts, as do the expenses of the districts, resulting in differences in the amount of Total Program funding provided. For each pupil funded in the October 1st pupil count, the Total Program Funding formula provides a base per-pupil amount of money and additional money to recognize district-by-district variances in cost of living, personnel costs and district size.

***Funded Pupil Count:*** Funding for school districts is based on an annual October pupil count. Each district counts pupils in membership as of the school day nearest October 1<sup>st</sup> (Districts are given an 11-day window in which to establish student enrollment in order to provide an opportunity to include students who may be absent on the official count day).<sup>24</sup> Generally, pupils

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<sup>22</sup> Colo. Rev. Stat. 22-54-101 *et seq.*

<sup>23</sup> An institute charter school’s certified pupil count is added to the *accounting district’s* pupil counts. The CDE then withholds an amount equal to 100% of the *accounting district’s* adjusted per pupil revenues for each pupil who is not an online pupil plus the per pupil online funding for each online pupil enrolled in an institute charter school from the state equalization payments of the *accounting district*. The CDE forwards these funds (less an amount not to exceed 2% that may be withheld as reimbursement for the reasonable and necessary costs to CDE to implement these provisions) to the CSI.

<sup>24</sup> For most districts, funding is based on the number of pupils counted in the current school year. For districts with enrollment that fluctuates from year to year, funding is based on an average of up to three prior years.

enrolled in grades 1 through 12 are counted either as full-time or part-time, depending upon the number of coursework hours of the student.<sup>25</sup> Kindergarten, preschool special education, and a limited number of at-risk preschool pupils are counted as part-time. Pupil enrollment also includes pupils enrolled and actively participating in an authorized online program.

**At Risk Funding:** Districts receive additional funding for at-risk pupils based upon a calculation of the number of students eligible for the federal free lunch program in the district. Each school district must allocate at least 75% of its at-risk funding to school or district-wide instructional programs for at-risk pupils or to staff development associated with teaching at-risk pupils in the district.

**Total Per Pupil Funding:** A school district's per pupil revenue (PPR) is determined by dividing the district's Total Program by the district's funded pupil count for the budget year.

**Online Funding:** Charter schools that are multi-district online programs receive per pupil online funding. The per pupil online funding varies each year based on the Public School Finance Act.

**Categorical Funding:** In addition to the Total Program funding, school districts may also receive state funding to pay for specific programs, often referred to as categorical programs, designed to serve particular groups of students or particular student needs. The main categorical programs are English language proficiency education; gifted and talented education; small attendance centers; special education; transportation; and vocational education.

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For more information on school finance, charter school finance and categorical funding, see *Understanding Colorado School Finance: Categorical Program Funding* available at [www.cde.state.co.us/cdefinance/generalinfo.htm](http://www.cde.state.co.us/cdefinance/generalinfo.htm).

### ***Special Education Funding Overview***

An administrative unit must provide federally required educational services, including special education, to students enrolled in its charter schools on the same basis as such services are provided to students enrolled in its other public schools. How an administrative unit distributes a charter school's proportionate share of special education funds depends on the special education service delivery model negotiated between the charter school and its authorizer. If a charter school has negotiated the contracted model of special education service delivery, the administrative unit must direct a proportionate share of state and federal resources generated by students with disabilities to the charter school.

Because who pays for the services associated with the education of students with disabilities is often an issue for charter schools, it is extremely important for charter school developers and operators to communicate with its authorizer's administrative unit when determining special education service delivery and funding. Per student federal, State and local funds do not cover the total costs of implementing a student's special education programming, and a charter school

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<sup>25</sup> According to Rule 5.06(3) for the Administration of the Public School Finance Act of 1994, a student is a part-time student if the student has a schedule that provides more than 90 hours, but less than 360 hours of teacher-pupil instruction or teacher-pupil contact at the time of the official count.

may be left with the responsibility of covering the excess costs. A charter school that has negotiated services and payment for services with its authorizer's administrative unit prior to operation and has planned for the management of the funds may avoid many potential problems.

If the charter school staff or designated consultants are not familiar with special education funding requirements and the linkages between other federal and state funding sources (e.g. Title I), they may lose a considerable amount of financial resources that are necessary to operate the school efficiently. The funding of special education is complex for those without experience in the area. It would be extremely helpful for charter schools to access assistance in this area from its authorizer's administrative unit, the CDE, or others knowledgeable about special education.

In Colorado, special education is funded by a combination of sources. Federal funds under the IDEA and State categorical special education funding under the ECEA are distributed directly to administrative units where, in most cases, the funds are shared across the administrative unit.

**IDEA funding.** Under the IDEA, a prescribed statutory formula is used to distribute funds. First, the formula sets a base amount that each administrative unit will receive. This base amount remains constant from year-to-year, and 85% of the dollars above the base amount are allocated according to the numbers of students in grades K – 12, in each administrative unit. The remaining 15% percent is allocated according to the numbers of children in poverty within each administrative unit and state-operated program.

Administrative units must submit an application for IDEA funds. The application must contain a narrative describing how the funds will be used, a list of all staff to be employed through the funds, and a budget. Administrative units must obtain prior approval from the CDE for use of IDEA funds, and IDEA funds must be used to supplement State and local funds.

**ECEA funding.** In the budget year 2008-2009, the total ECEA funding for special education programs is \$127.5 million dollars. ECEA funding is distributed to Colorado administrative units who serve an estimated 82,000 students with disabilities, or about 10.7% of the total pupil enrollment. Of the ECEA funding, amounts are made available for:

- The costs incurred for children with disabilities who live in eligible facilities within the boundaries of the administrative unit, and whose parents have had parental rights relinquished or terminated; whose parents are incarcerated or cannot be located; who have been placed within the boundaries of the administrative unit by the Department of Human Services when the parents reside out of state; or who are legally emancipated.
- Grants to administrative units for reimbursement of high costs incurred in providing special education services in the preceding school year. An administrative unit must submit an application for reimbursement of high costs to the Special Education Fiscal Advisory Committee which reviews and prioritizes the applications, and approves funding.

Administrative units receive \$1,250 for each child receiving special education reported by the administrative unit on December 1 of the previous year. Administrative units also receive *up to* an additional \$6,000 for each child identified with the following disabilities: vision disability, hearing disability, deaf-blind, significant identifiable emotional disability, autism, traumatic brain injury, multiple disabilities, and significant limited intellectual capacity.

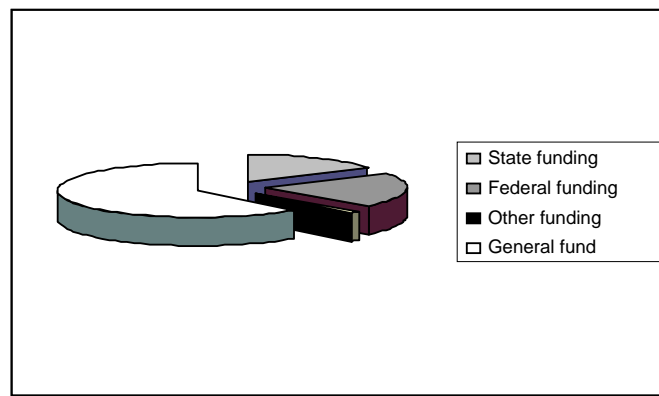
State ECEA funds distributed to administrative units may be used to pay for the salaries of special education instructional and support personnel, purchased services (including tuition payments to other administrative units and eligible facilities) equipment and supplies.

*Understanding Colorado School Finance: Categorical Program Funding; 22-20-114(1)(a), 22-20-114.15 C.R.S.*

**Other Funds.** Other sources of funds include state funds from the Division for Developmental Disabilities and payments from one administrative unit to another. Administrative units participating in the Medicaid program may use some of these funds for special education programs with certain limitations. There are also several other possible sources of federal funds, including Vocational Education, Vocational Rehabilitation, and Impact Aid.

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In budget year 2008-2009, it is anticipated that the total costs for special education in Colorado will be approximately \$700 million, or about 7% of total education expenditures. As shown in the illustration, State funding covers roughly 16% of special education costs; federal funding covers an additional 21% of these costs; other sources of funds cover about 1%. The remaining 62% of special education costs is funded through local sources of funding, usually the authorizing/accounting district's general fund. Consequently, charter schools should plan on subsidizing special education services out of their general fund by at approximately 60%-70%.



### ***When may our charter school charge tuition?***

The ECEA allows a charter school to assess tuition costs responsibility to the district of residence for excess costs of educating a student *who resides outside of the charter school's administrative unit and who has one of the following eligible disabilities:* (i) vision disability, (ii) hearing disability, (iii) concomitant hearing and visual impairment, (iv) significant identifiable emotional disability, (v) autism, (vi) traumatic brain injury, (vii) multiple disabilities, or (viii) significant limited intellectual capacity. A charter school may seek tuition costs from the district of residence for students with eligible disabilities who:

- have just enrolled in the charter school,
- already attend a charter school and are subsequently identified with an eligible disability, or
- already attend a charter school that has not previously billed for tuition cost responsibility, but has subsequently decided to seek a tuition cost contract.

Responsibility for tuition costs does not apply to charter contracts between a charter school and its authorizer, nor may a charter school seek tuition costs from its authorizer's administrative unit.

### What are Tuition Costs?

The ECEA defines tuition costs as expenditures *over and above* applicable revenues. Applicable revenues include:

- Per Pupil Revenue (PPR).<sup>26</sup>
- Monies available from federal sources.
- Monies received from the ECEA.
- Monies received from other state agencies.
- Monies received from other administrative units, not including tuition.
- Monies received from grants and donations.

*ECEA 9.01(1)(a), 9.01(8)*

### Requirements for Tuition Costs Billing

If a charter school is planning to bill for tuition costs, it must submit a tuition costs application to CDE documenting the proposed amount of tuition costs to be charged to the district of residence for special education services provided to a child with disabilities who is enrolled in the charter school. Multiple rates may be set for different programs within the charter school. Tuition costs rates are then approved by the State Board of Education. Sample forms for documenting excess costs for tuition responsibility are available on the CDE website at [www.cde.state.co.us/cdechart/guidebook/sped/index.htm](http://www.cde.state.co.us/cdechart/guidebook/sped/index.htm).

A charter school must also enter into a written contract for tuition cost responsibility with the district of residence<sup>27</sup> that meets the minimum requirements of ECEA Rule 9.05 and is in a form approved by the charter school's authorizer for each eligible child with a disability.<sup>28</sup>

The proposed tuition contract must be sent to the special education director of the administrative unit of residence within 15 calendar days of determining that the charter school is an appropriate placement for the child with a disability. The district of residence has 15 days to acknowledge in writing receipt of the proposed contract. The district of residence then has an additional 30 calendar days to negotiate, execute, and return the contract.

*ECEA 9.05(1)(e)*

### Other cost considerations for charter schools with out-of-district special education students

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<sup>26</sup> Authorizing district PPR for district charter schools; accounting district PPR for institute charter schools; minimum online PPR for online charter schools.

<sup>27</sup> If the student's district of residence is not an administrative unit, the contract must include both the administrative unit of residence and the district of residence.

<sup>28</sup> The contract for an online charter school must comport with ECEA rule 9.05(1)(b).



***Extended School Year:*** If a student's IEP specifies that the child is to receive extended school year services, the charter school and the district of residence must enter into a separate contract for those services.

*ECEA 9.05(1)(d)*

***Change in District of Residence:*** If there is a change in the child's district of residence the charter school must notify both the new and former district of residence in accordance with ECEA Rule 9.04(2). The charter school must then enter into a tuition contract with the new district of residence, consequently removing the tuition cost responsibility for that child from the former district of residence as of the date of the change in residency.

*ECEA 9.05(1)(c)*

**Charter Schools  
Special Education  
Guidebook**

**Section III**

**Special Education for Students  
in Charter Schools**

## Overview of IDEA

As stated in the initial section of this guidebook, the purposes of the IDEA are:

- to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and to prepare them for further education, employment and independent living;
- to ensure that the rights of children with disabilities and their parents are protected;
- to assist states, localities, educational service agencies and federal agencies to provide for the education of all children with disabilities;
- to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- to assess and ensure the effectiveness of efforts to educate children with disabilities.

*20 USC 1400(d) 2004*

The IDEA provides federal funds to assist states and localities in the education of children with disabilities. In order to be eligible to receive the funds, states must ensure that:

- All children with disabilities ages 3 to 21 have available to them a FAPE, including students who have been suspended or expelled;
- School systems will carry out a systematic search (referred to as Child Find) for every child with a disability in need of special education and related services and that special education identification will be based on a comprehensive, non-discriminatory individual evaluation;
- An individualized education program (IEP) will be provided for each child with a disability;
- Children will be educated in regular education classes with their nondisabled peers, with appropriate supplementary aids and services, to the maximum extent appropriate;
- Children and their parents are afforded procedural safeguards including:
  - Informed parental consent for an initial evaluation, initial placement and re-evaluation; parental notification of any change in placement that may occur in their child's educational program; and parental involvement, along with other required school personnel, in meetings to develop a child's IEP;
  - The right to initiate a state-level complaint, request a mediation, or initiate a due process hearing to challenge any decision regarding the identification, evaluation, or educational placement of a child.
- Parents have the right to examine their child's educational records. The IDEA contains confidentiality requirements inclusive of those set forth in the Family Educational Rights and Privacy Act of 1974 (FERPA); and
- Clear communication to parents that special education and related services are provided at no cost to them.

*20 U.S.C. 1413 (2004)*

The IDEA 2004 amendments specifically address the topic of charter schools. The IDEA regulations published in 2006 applicable to Colorado charter schools provide:

- Representatives of private schools and public charter schools must be included on the state special education advisory panel. The Colorado Special Education Advisory Committee (CSEAC) is the state advisory panel for Colorado. Information on the CSEAC can be found on the CDE website at [www.cde.state.co.us/cdesped/cseac.asp](http://www.cde.state.co.us/cdesped/cseac.asp).

Colorado also has a Charter School Special Education Advisory Committee which is a committee that considers special education issues specific to charter schools. Information on the Charter School Special Education Advisory Committee can be found at [www.cde.state.co.us/cdechart/guidebook/sped/index.htm](http://www.cde.state.co.us/cdechart/guidebook/sped/index.htm).

- States must ensure that local education agencies (Colorado's administrative units) serve students with disabilities enrolled in charter schools in the same way that they serve such students in their other schools, including the provision of supplementary and related services, and provide funds to their charter schools on the same basis and at the same time that they provide funds to their other schools.

*IDEA §§ 300.168(a)(8), 300.209(b)*

## **How is Disability Defined?**

The IDEA and its regulations establish 13 categories of disability.<sup>29</sup> It is important to be familiar with the federal categories of disability and to understand that Colorado's disability categories set forth in the ECEA are derived from and are consistent with the federal categories. Colorado public school and charter school administrators and staff, and parents of children with disabilities work most closely with Colorado disability categories. The Colorado disability categories are:

- physical disability;
- vision disability;
- hearing disability;
- significant limited intellectual capacity;
- significant identifiable emotional disability;
- specific learning disability;
- speech-language disability;
- multiple disabilities;
- preschool child with a disability; and
- infant/toddler with a disability.

*ECEA 2.08*

Not all students who have a disabling condition will be eligible for special education. Each disability category has specific criteria per the ECEA rules that must be satisfied for a child to be eligible for special education including the requirement that the child cannot receive reasonable

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<sup>29</sup> IDEA §300.8

benefit from general education alone. However, a child with a disabling condition who is not eligible for special education may still be eligible for educational and related aids and services under Section 504.<sup>30</sup>

## **Referral, Evaluation & Assessment: A Charter School's Process**

A charter school will likely enroll students that it will subsequently identify as having a disability. Therefore, it is essential for a charter school to know IDEA and ECEA requirements and to have a process in place for identification, referral and evaluation that identifies who is responsible at the school for identification and how students will be evaluated. The process should also identify the role of the administrative unit in the identification of students with disabilities and address how to deal with an IEP developed by another school or administrative unit. A charter school should determine whether an IEP team will be in place prior to the opening of a new charter school or the beginning of the school year to deal with special education evaluation questions and concerns.

### **Steps for Identification, Referral & Evaluation**

The following is a summary of the general steps for identification, referral, and evaluation that are prescribed by the IDEA and the ECEA. The CDE IEP Manual includes detailed information on the special education process including referral, evaluation and IEP development. The IEP Manual and State recommended special education forms are available on the CDE website at [www.cde.state.co.us/cdesped/IEPmain.asp](http://www.cde.state.co.us/cdesped/IEPmain.asp).

#### ***Step One: Child Find***

As is the case with traditional public schools, charter schools have an obligation to “locate and identify” children with disabilities under the Child Find requirements of the IDEA. Child Find is a process designed to identify children from 3 - 21 years of age who may be eligible to receive special education services. Child Find includes children who are suspected of having a disability even though they are advancing grade to grade or are highly mobile. In Colorado, each administrative unit designates one person as the Child Find coordinator who is responsible for the ongoing child identification process.

*IDEA § 300.111; ECEA 4.02(2)(a)(i), 4.02(2)(b)*

#### ***Step Two: Referral to Special Education***

A referral to special education is made for an initial evaluation when a child is suspected of having a disability. Charter school personnel and parents should understand that a special education referral is distinct from a referral for screening at the building level. A charter school's administrative unit establishes the procedures for referring a child for an initial evaluation to determine whether a child has a disability and needs special education and related services.

*ECEA 4.02(3)*

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<sup>30</sup> 34 C.F.R. 104.33(b).

## Referral Process

Special education referrals may be initiated only by a limited number of individuals. A referral may be initiated by the child's parent or the administrative unit as the result of a building level screening. If anyone else believes that a child is in need of an initial evaluation, (s)he must work with the parent or the administrative unit.

A special education referral is initiated when either the administrative unit informs the parent of the referral or the parent has requested an evaluation, and the parent provides written consent to conduct the evaluation. When a referral is initiated, the child's parent(s) must be informed of the referral, and provided with prior written notice and procedural safeguards notice. Once a special education referral has been initiated, the initial evaluation must be completed within 60 calendar days.

*ECEA 4.02(3)(c)*

### ***Step Three: Initial Evaluation Process***

As part of the child find process, an initial assessment or evaluation is conducted when a student is suspected of having a disability. Parental consent *must* be obtained before conducting assessments for an evaluation. An evaluation for special education is distinct from a screening that is conducted to determine appropriate educational strategies for a child. The evaluation conducted must be sufficiently comprehensive to appropriately identify all of the child's special education and related services needs, even if such needs are not commonly linked to the child's suspected disability category.

*IDEA §§ 300.301, 300.302; ECEA 4.02(4)*

### What does consent mean?

Consent means the parent:

- has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;
- understands and agrees in writing to the activity for which consent is sought and that such activity is described in the writing and lists any records that will be released and to whom; and
- understands that the granting of consent is voluntary and may be revoked at any time. If a parent revokes consent, revocation is not retroactive and does not negate any action that has taken place after consent was given, but before the consent was revoked.

*ECEA 2.10(3)*

### What does an evaluation look like?

Members of a multidisciplinary team conduct assessments in all areas related to the child's suspected disability. Individuals conducting the assessments must be appropriately licensed and endorsed or have appropriate professional licenses, registration or credentials.

Various assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. Informal and formal assessments are used in the evaluation which must be sufficiently comprehensive to identify all of the child's special education and related services needs. Assessments and other evaluation materials used must be selected so as not to be discriminatory on a racial or cultural basis and must be administered in a child's primary language or other mode of communication.

*IDEA § 300.304; ECEA 4.02(4)*

#### How are students with suspected specific learning disabilities evaluated?

Historically, a child with suspected learning disability was determined eligible for special education if the child had a significant discrepancy between estimated intellectual potential and actual level of performance; this method is the discrepancy model. Colorado is phasing out the discrepancy model, with the expectation that as of the 2009-2010 school year, all administrative units will use the Response to Intervention (RtI) model as an intervention methodology for all students. Data gathered through the RtI process will be used as part of the body of evidence used to determine eligibility for specific learning disabilities. Until that time, charter school personnel should consult with their administrative unit to identify how eligibility is determined by their administrative unit.

*IDEA §§ 300.307 - 300.309; ECEA 2.08( 6), 4.02(7)*

#### What is Response to Intervention (RtI)?

RtI is a school-wide initiative that allows for the utilization of resources for students in need of academic and/or behavioral support. RtI involves the use of a continuum of research-based, tiered interventions with increasing levels of intensity and duration. Core principles of RtI are:

- All children can learn and achieve high standards as a result of effective teaching.
- All students must have access to a rigorous, standards-based curriculum and research-based instruction.
- Intervening at the earliest indication of need is necessary for student success.
- A comprehensive system of tiered interventions is essential for addressing the full range of student needs.
- Student results improve when ongoing academic and behavioral performance data are used to inform instructional decisions.
- Collaboration among educators, families and community members is the foundation to effective problem-solving and instructional decision-making.
- Ongoing and meaningful involvement of families increases student success.
- All members of the school community must continue to gain knowledge and develop expertise in order to build capacity and sustainability.
- Effective leadership at all levels is crucial for the implementation of RtI.

Under the RtI process, educators use a tiered system of instruction and interventions for any student who is not making expected progress in the curriculum. Tier I instruction involves high

quality, research-based curricula and instructional strategies for all students. Tier II interventions involve supplemental instruction designed to meet the needs of students who are not progressing as expected. Tier III interventions involve explicit instruction that is focused on a student's specific skill need. The student's progress is monitored and the results inform the student's instruction. If the student does not progress as expected after progressive interventions have been implemented, then the progress data may be used as part of the body of evidence in determining if the student has a specific learning disability.

If a child is suspected of having a specific learning disability based on his or her response to progressive interventions, or if a parent believes that their child should be evaluated for special education eligibility, the special education referral process remains the same and the requirements for parental consent to evaluate the child and evaluation timelines apply.

For detailed information on Response to Intervention (RtI), see *Response to Intervention (RtI): A Practitioner's Guide to Implementation* available on the CDE website at [www.cde.state.co.us/cdegen/downloads/RtIguide.pdf](http://www.cde.state.co.us/cdegen/downloads/RtIguide.pdf). For additional information on specific learning disabilities, see the *Specific Learning Disabilities* webpage at [www.cde.state.co.us/cdesped/SD-PCD.asp](http://www.cde.state.co.us/cdesped/SD-PCD.asp).

#### Are students with disabilities reevaluated?

A reevaluation *must* take place at least every three years, unless the parent and the administrative unit or charter school (if the school has negotiated to be responsible for evaluations) agree that a reevaluation is unnecessary. A reevaluation may also occur if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless agreed to by the parent and the administrative unit or the charter school. Parental consent is required for a reevaluation.

*IDEA § 300.303; ECEA 4.02(5)*

#### What if a parent disagrees with the special education evaluation results?

A parent has the right to obtain an independent educational evaluation (IEE) at public expense. A parent is entitled to only one IEE at public expense each time a special education evaluation is conducted with which a parent disagrees. Although the school may ask why a parent objects to the evaluation, the school cannot require such an explanation. When a parent requests an IEE, the parent must be provided information about where an IEE may be obtained and the criteria for evaluation which is available through the administrative unit.

*IDEA §300.502*

#### ***Step Four: Eligibility Determination***

After the child with a suspected disability is assessed, an eligibility meeting is held to discuss the evaluation results and to determine whether the child is eligible for special education. If the child is found eligible for special education, then parental consent for initial provision of special education and related services must be obtained. It is important for charter school staff and parents to understand that parental consent for initial provision of special education and related



services is distinct from the consent for initial evaluation. After consent for initial provision of special education and related services is provided, an IEP is developed.

An eligibility determination meeting must be held within a reasonable amount of time after the initial evaluation has been completed. Participants in the eligibility meeting must include the parents, at least one teacher or other specialist with knowledge in the area of the suspected disability, and other qualified professionals if necessary.

*IDEA §§ 300.300(3)(b), 300.306; ECEA 4.02(6)(a - b)*

#### What if parents do not want their child to receive special education services?

A parent may refuse to consent to an initial evaluation of their child or refuse to consent to initial provision of special education and related services. If parents refuse to consent to an initial evaluation, a charter school's administrative unit can pursue such an evaluation through a due process hearing or other dispute resolution methods such as mediation.

However, if a parent refuses to consent to the initial provision of special education and related services, an administrative unit may not use dispute resolution methods to obtain agreement or a ruling that special education services may be provided to the child. Additionally, the administrative unit will not be considered to be in violation of the requirement to make FAPE available to the child and is not required to convene an IEP meeting.

*IDEA §300.300*

#### What if the child is not eligible for special education?

A child may have a disabling condition, yet may not qualify for special education. For example, a child with a chronic illness such as diabetes or a physical impairment such as cerebral palsy, may require specific accommodations or services, but may not be eligible for special education because he or she can still receive benefit from general education alone. If a child is not eligible for special education, he or she may still qualify for protections as a child with a disability under Section 504 or Title II of the ADA which define disability more broadly than the IDEA. Section 504 and Title II extend the definition of disability to any individual who has a mental or physical impairment that substantially limits one or more life activities. This includes an individual who has a record of, or is regarded as, having such impairment.

Under Section 504, an evaluation must be conducted to determine if a child is a qualified student with a disability due to an impairment that substantially limits one or more life activities. The evaluation process for Section 504 is similar to that of the IDEA in that the evaluation must draw upon information from a variety of sources which must be documented and carefully considered. The same process initially used to evaluate the needs of a child under IDEA may be used for Section 504 and data from a special education evaluation may be used to determine if a student qualifies as a student with a disability under Section 504. If a child is believed to need education or related services under Section 504, a charter school, the child's parents and, if appropriate, the child should work together to develop a plan that documents necessary accommodations and related aids and services to meet the child's individual educational needs under Section 504. Like the IDEA, Section 504 requires periodic review of accommodations and related aids and

services, and reevaluation to determine if a child continues to be a qualified student with a disability.

It is important for charter schools to understand that the implementation of Section 504 falls under the management responsibility of the *general* education program. It is essential that general education and special education staff to work together to ensure that the requirements of Section 504 are satisfied. Information on Section 504 for parents and charter school administrators is available on the CDE website at [www.cde.state.co.us/cdesped/504info.asp](http://www.cde.state.co.us/cdesped/504info.asp), and on the Office of Civil Rights website at [www.ed.gov/policy/rights/guid/ocr/disability.html](http://www.ed.gov/policy/rights/guid/ocr/disability.html).

## **The Individualized Education Program (IEP) Process**

A student with a disability that is determined to be eligible for special education services receives an IEP. The IEP process ensures that the student receives a FAPE to the maximum extent appropriate in the LRE.

### ***What is an IEP?***

The IDEA defines the term “individualized education program” as “a written statement for a child with a disability that is developed, reviewed, and revised” in an IEP team meeting. The term “IEP” is used in many ways: the IEP team, the IEP team meeting, the IEP process, and the IEP document. The overall IEP requirements have a number of purposes and functions:

The ***IEP meeting*** is a communication vehicle between parents and school personnel and is particularly important to ensure that the student’s needs are discussed, so that informed decisions can be made about the child’s instruction and special education services. As equal members of the IEP team, parents and school personnel jointly identify the child’s needs based on evaluations; the services that will be provided to meet those needs; and goals for the child’s progress. Meetings to review and revise a child’s IEP, and to determine the child’s placement are initiated and conducted at least once every 365 days.

*IDEA §§ 300.20, 300.324(b); ECEA 4.03(3)*

The ***IEP team*** is a group of participants including:

- the child (when appropriate),
- the parents,
- a regular education teacher of the child,
- a special education teacher or service provider for the child,
- the special education director or designee,
- an individual who can interpret instructional implications of evaluation results, and
- at the discretion of the parents or school, other individuals who have knowledge or special expertise regarding the child.

The IEP team may include members from the multidisciplinary team that performs an initial evaluation. The composition of the IEP team may vary depending on the purpose of the meeting.

However, a school must take steps to ensure that one or both parents are present or given the opportunity to participate in all IEP meetings.

The IDEA allows a school staff member of the IEP team to be excused from an IEP meeting if the parent of the student and the administrative unit agree in writing that the member's attendance is not necessary. However, given the importance of the IEP meeting as a communication vehicle, IEP team members should make every effort to attend.

*IDEA § 300.321; ECEA 4.03(5)*

The **IEP process** provides an opportunity for resolving any differences between the parents and the school concerning the special education needs of the child — first, through the IEP meeting, and second, if necessary, through the procedural safeguards that are available to the parents and the school.

The **IEP document** sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services. The IEP is used for a variety of purposes. It is a management tool used to ensure that each child with a disability is provided special education and related services appropriate to the child's unique needs. The IEP is also a compliance monitoring document used by authorized personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the IEP team. Finally, the IEP is an evaluation device used to determine the extent of the child's progress toward meeting projected outcomes.

The IEP has many required elements such as measurable goals and related content standards, a statement of specific special education and related services, an explanation of the extent the child will not participate in the regular education classroom, and accommodations and modifications. These elements are only a few of the requirements for a student's IEP. For detailed information on IEP requirements, see the IEP Manual and suggested State IEP forms available at [www.cde.state.co.us/cdesped/IEPmain.asp](http://www.cde.state.co.us/cdesped/IEPmain.asp).

*IDEA §300.320; ECEA 4.03(6)*

***If a charter school has individualized learning plans for all students, does the school still need to develop an IEP for each student with a disability?***

A school must comply with the IEP requirements outlined in the IDEA and ECEA and their implementing rules and regulations. It is possible that those requirements may be met by incorporating them into an individualized learning program for a child with a disability. The specifics of complying with this aspect of the IDEA and the ECEA are topics that should be addressed by charter school developers and operators in consultation with their authorizer's administrative units.

***What are related services?***

Related services are supportive services to assist a child with a disability to benefit from special education and are determined at the IEP meeting and documented on the IEP. If related services or assistive technology are required, the school must provide them at no cost to the parent.

<b>Examples of Assistive Technology Devices and Services and Related Services</b>	
<b>Assistive Technology</b>	<b>Related Services</b>
<p>-Assistive technology device: An item, piece of equipment, or product used to increase, maintain, or improve the functional capabilities of a child with a disability. Assistive technology devices can range from pencil grips for writing, foam wedge for positioning, or enlarged text; to tape recorders, computer hardware, or specialized software.</p> <p>-Assistive technology service: any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device.</p> <p style="text-align: right;"><i>IDEA §§300.5, 300.6, 300.105</i></p>	<p>-audiology services                      -physical and occupational therapy                      -recreation, including therapeutic recreation                      -counseling services, including rehabilitation counseling                      -orientation and mobility services                      -social work services                      -parent counseling and training</p> <p style="text-align: right;"><i>IDEA § 300.34</i></p>

***What are transition services and how are they implemented?***

The IEP for a student, beginning at age 15, but no later than the end of the 9th grade, must include appropriate and measurable post secondary goals and the transition services needed to assist the child in reaching those goals. The IEP team may address transition goals and services earlier at an earlier age, if the IEP team feels it is appropriate.

*Transition services* are defined as a coordinated set of activities for a student with a disability that are designed within an outcome oriented process that promotes movement from school to post-school activities such as post-secondary and vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation. Transition services should be based on the individual needs of the child and take into account the child’s strengths, preferences, and interests. Transition services may include:

- Instruction;
- Related Services;
- Community experiences;
- The development of employment and other post-school adult living objectives; and
- If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

A charter school should contact its authorizer’s Special Education Director for information on transition services in its administrative unit. Links to transition resources are available on the CDE website at [www.cde.state.co.us/cdesped/transresources.asp](http://www.cde.state.co.us/cdesped/transresources.asp).

*ECEA 2.51(1), 4.03(6)(d)*

## Placement in the Least Restrictive Environment (LRE)

The terms “placement” and “educational placement” are used interchangeably and means the provision of special education and related services. Placement also refers to the least restrictive “educational setting” or “educational environment” in which a child receives such services. The IDEA expresses a preference for educating children with disabilities with their nondisabled peers; however each administrative unit must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities. The continuum of alternative placements includes special education instruction in regular classes, special classes, special schools, homebound instruction, as well as instruction in hospitals and institutions. Children with disabilities are entitled to placement in a setting that will meet their individual needs while removing them as little as possible from the regular classroom. Placement decisions must be made by the IEP team and conform to least restrictive environment (LRE) provisions in IDEA.

*IDEA §§ 300.114 -300.116; ECEA 4.03(8)(a)*

It is important for parents and charter school personnel to understand that placement does not necessarily mean a specific place such as a particular school or classroom. When a child with a disability is moved from one building or location to another, it may not necessarily constitute a change in placement. For charter schools operating under the “insurance model,” decisions regarding the location where a child’s IEP will be implemented are made by the Special Education Director of the administrative unit or their designee. For a charter school that has negotiated to provide special education services, evaluations, and conduct IEP meetings, the IEP team is responsible for such a decision. However, the administrative unit of such a charter school remains responsible for ensuring a child with a disability receives a FAPE.

*ECEA 4.03(8)(a), 4.03(8)(b)(iv)*

### ***What if a child’s special education needs change after enrollment in a charter school?***

A child’s needs may decrease or increase over time requiring adjustment to the child’s special education and related services. A change in placement occurs when there is a change in a student’s special education or related services, or the educational setting where those services are provided. There are different types of changes in placement; nonsignificant, significant, and disciplinary (discussed in the discipline section of this guidebook).

Sometimes a change in placement is *nonsignificant*. An example of a nonsignificant change in placement:

*A child with a disability had been receiving 60 minutes of speech therapy per week and has made so much progress that the IEP team decides it would be appropriate to decrease speech therapy from 60 to 30 minutes a week.*

A nonsignificant change in placement is usually made by the IEP team, but can be done after the annual IEP meeting in a school year without convening another IEP meeting if the parent and the administrative unit mutually agree to the change. A parent must be provided with prior written

notice of the change. State recommended IEP Amendment forms are available at [www.cde.state.co.us/cdesped/IEPmain.asp](http://www.cde.state.co.us/cdesped/IEPmain.asp).

*IDEA § 300.324(a)(4); ECEA Rule 4.03(8)(b)(i)*

Sometimes a change in placement is *significant* such as when an administrative unit places or refers a child to a private school or eligible facility. A significant change in placement occurs when there is an addition or termination of an instructional or related service that results in:

- the child having different opportunities to participate in nonacademic or extracurricular services, or
- the new placement option is a change in the educational environment reporting categories.

A significant change in placement is made upon consideration of a reevaluation of the child and by an IEP team with the addition of the persons conducting such reevaluation. However, a significant change in placement may occur after the annual IEP meeting in a school year with the mutual agreement of the parent and the administrative through an IEP amendment.

*ECEA 4.03(8)(b)(ii)*

***Is it a change in placement when a child with a disability transfers to an online charter school?***

Yes. When a child with a disability transfers to an online charter school, or if the child transfers from an online charter school back to a brick and mortar school, it is considered a significant change in placement under the ECEA. The administrative unit for the entity sponsoring the online program the child is transferring to is responsible for conducting a reevaluation of the child and convening the IEP team to determine whether the online program is an appropriate placement.

*ECEA 4.03(8)(b)(ii)(A)(III)*

## **Student Discipline**

The ECEA rules on student discipline are aligned with the IDEA regulations. IDEA regulations addressing the discipline of students with disabilities can be complex, but were designed to ensure that a child is not disciplined for behavior that is a manifestation of his or her disability.

***Can I suspend a student with a disability?***

Yes. School personnel may suspend or remove a student with a disability from school for up to ten consecutive school days for violations of the school code of conduct, to the same extent that nondisabled students are disciplined. A student may be removed for additional periods of not more than ten consecutive school days each in the same school year for separate incidents of misconduct as long as those removals, when viewed as a whole, do not constitute a change of placement.

*IDEA § 300.530(b)(1)*

### ***What constitutes a disciplinary change in placement?***

A disciplinary removal including a suspension or expulsion that is longer than ten consecutive school days in a school year constitutes a change of placement. A change of placement may also occur when the child is subjected to a series of removals that constitute a pattern because:

- the series of removals total more than ten school days in a school year;
- the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

*IDEA § 300.536*

### ***What happens after removals of more than 10 days?***

When a child with a disability has been removed from school for more than 10 school days, two events should occur.

- (1). Beginning on the 11<sup>th</sup> day of removal and for any other removals in the same school year, a child with a disability must be provided with special education services to the extent necessary to enable the child to appropriately progress in the general curriculum and advance toward achieving the child's IEP goals.
- (2). If school officials are considering a disciplinary change in placement a manifestation determination must be held to determine whether the child's behavior in question is a manifestation of his or her disability.

If the behavior is not found to be a manifestation of the child's disability, then the school may discipline the child in the same manner as it disciplines nondisabled students, but the child must be provided with special education and related services. Such services may be provided to the child in another setting.

If the behavior is found to be a manifestation of the child's disability, the school may not discipline the child and the child must be returned to the placement from which he or she was removed. The child's IEP team must also conduct a functional behavior assessment and implement a behavioral intervention plan or review and revise the child's existing behavior intervention plan.

On the date a school makes a decision for a removal that constitutes a change of placement, the child's parents must be notified of that decision and provided with the procedural safeguards notice. If a parent disagrees with a disciplinary change in placement or the manifestation determination, the parent may file a due process complaint that results in an expedited due process hearing.

IDEA §§ 300.530(b)(2), 300.530(e)(1), 300.530(f)

### ***What is a functional behavior assessment (FBA)?***

A functional behavioral assessment (FBA) is a process for gathering broad and specific information about a child's behavior in order to identify the behavior's function or purpose. It is the first step in developing a behavior intervention plan. A behavior intervention plan identifies specific strategies to teach the child new and more appropriate behaviors. A behavior intervention plan should be considered and developed as part of the IEP process when a student's behavior impedes his/her learning or that of other students.

CDE has resources available that contained detailed information on functional behavior assessments and behavior intervention plans. Guidelines for Functional Behavior Assessment are available on the CDE website at [www.cde.state.co.us/cdesped/fbaguidelines.asp](http://www.cde.state.co.us/cdesped/fbaguidelines.asp). Information on positive behavior supports and behavior intervention plans are in the Colorado Behavior Resource Manual available at [www.cde.state.co.us/cdesped/BehaviorResourceManual.asp](http://www.cde.state.co.us/cdesped/BehaviorResourceManual.asp).

### ***Are there exceptions to the IDEA discipline process and how are they handled?***

The IDEA makes exceptions to the student discipline process for certain types of misconduct regardless of whether the behavior is determined to be a manifestation of the child's disability. School personnel can remove a child with a disability to an appropriate Interim Alternative Educational Setting (IAES) for up to 45 calendar days for misconduct involving (i) dangerous weapons, (ii) illegal drugs or controlled substances, or (iii) for inflicting serious bodily injury upon another person. The services provided in the IAES must enable the child to continue to progress in the general education curriculum and to receive services and modifications that will enable the child to meet his or her IEP goals.

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School personnel can report crimes committed by a student with a disability to appropriate law enforcement and judicial authorities. However, the school must ensure that copies of a student's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. The records may only be transmitted to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

IDEA §§ 300.530(g), 300.530(h), 300.535

## **Parent Involvement & Procedural Safeguards**

Parent involvement in the IEP process is an integral component of IDEA and the ECEA. From the referral and evaluation process to IEP reviews, the IDEA has provisions to ensure parents are involved in the IEP process.

### ***Who qualifies as a parent?***

The ECEA rules defining "parent" are aligned with the IDEA. Under the ECEA, a parent means:



- a biological or adoptive parent of a child;
- a foster parent;<sup>31</sup>
- a guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child;<sup>32</sup>
- an individual acting in the place of a biological or adoptive parent (e.g. a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare;
- A person(s) identified by judicial decree or order as the parent of the child or to make educational decisions on behalf of the child; or
- An educational surrogate parent appointed by the administrative unit to represent the child in all educational decisions pertaining to identification, evaluation, educational placement and provision of FAPE. An educational surrogate parent is appointed to ensure the rights of the child are protected when:
  - No parent can be identified;
  - A parent cannot be located by the administrative unit of attendance;
  - The child is a ward of the state, or is homeless as defined by Colorado law.

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When there is more than one party qualified to act as a parent under the rules, the biological or adoptive parent is presumed to be the parent, unless he or she does not have legal authority to make educational decisions for the child.

*ECEA 2.33, 2.13*

***Provisions Ensuring Parental Involvement: Procedural Safeguards***

There are many provisions to ensure parent involvement under the IDEA and ECEA from the evaluation to the IEP development process. If a charter school negotiates to provide special education services under the contract or combination special education delivery models, the school’s charter contract should identify the entity responsible, the charter school or administrative unit, for satisfying these provisions. However, the administrative unit is ultimately responsible for ensuring the compliance with the provisions. The following provisions in the ECEA and IDEA are meant to ensure parent involvement in a child’s IEP.

*ECEA 4.03(8)(b), 8.04(1)(d), 8.05(1)(d), 8.06(1)(d), 8.07(1)(b)*

***Parent Involvement in Referral and Evaluation:*** A child’s parents may initiate or must be informed of a special education referral. A parent must also be provided with prior written notice, the procedural safeguards notice, and must consent to the evaluation and/or reevaluation of his or her child. If a child is found eligible for special education, the parents must also consent to the initial provision of special education and related services. If a parent disagrees with the

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<sup>31</sup> unless prohibited by State law, regulations or other obligations with a State or local entity;

<sup>32</sup> However, a guardian cannot be the State if the child is a ward of the State (e.g. a social worker from the department of human services cannot be the “parent” of a student who is a ward of the state under this provision).

special education evaluation, he or she may request an independent educational evaluation (IEE) at public expense.

*IDEA §300.502; ECEA 4.02(3)(a)(ii), 4.02(3)(b), 4.02(3)(c), 4.02(4)(a), 4.01, 6.02(2)*

***Parent Involvement in the IEP Process:*** A charter school or administrative unit must take steps to ensure that one or both of the parents of a child with a disability are present at, or are afforded the opportunity to participate in each IEP team meeting. The parent of a child with a disability must be a member of any group that makes decisions on the educational placement of the child. Steps that ensure parental involvement in the IEP process include providing timely notice of meetings and scheduling meetings at a mutually agreed on time and place. If parents cannot attend an IEP team meeting, other methods must be used to ensure parent participation, including individual or conference telephone calls. However, an IEP meeting can be conducted without a parent in attendance if the parent cannot be convinced to attend, in which case a charter school must have records of the attempts to arrange a mutually agreed on time and place.

*IDEA §300.322*

### ***Access to Educational Records***

A parent must be provided with a copy of the child's IEP at no cost. The administrative unit must also provide parents with the opportunity to inspect and review all educational records with respect to identification, evaluation, educational placement, and the provision of FAPE to their child with a disability. A parent who believes that information in his or her child's education records is inaccurate may request that the administrative unit amend such information.

*IDEA §§300.322(a), 300.322(c), 300.327, 300.328, 300.501)*

### ***What are the ground rules for confidentiality under the IDEA and the ECEA?***

In Colorado, ECEA rules parallel IDEA regulations regarding records and confidentiality requirements. The IDEA contains confidentiality requirements that include those contained in the Family Educational Rights and Privacy Act of 1974 (FERPA). Although FERPA does not protect the confidentiality of educational information in general, it does prohibit the improper disclosure of information from education records and generally protects student and family privacy regarding information contained in those records. Personally identifiable information contained in education records may not be disclosed to third parties without obtaining the prior written consent of the parent or eligible student over 18 years of age.

*IDEA §§ 300.611- 300.627; ECEA 6.01*

### ***Notice***

***Notice of Meeting:*** Parents must be provided with notice of an IEP meeting that indicates the purpose, time, and location of the meeting, as well as who may be in attendance. For transition IEP meetings for students 15 or older, the notice must indicate that the purpose of the meeting will be the consideration of postsecondary goals and transition services; that the student will be

invited; and other representatives of agencies that will be involved in providing transition services to the student will be invited. Parental consent must be obtained to invite such agencies to the transition IEP meeting.

*Prior Written Notice:* Parents must be provided with written notice a reasonable time before a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or provision of FAPE to the child. The prior written notice must include a description of the proposed or refused action; an explanation of why the action is being proposed or refused; the basis for the proposed or refused action; a statement that the parents have protection under the procedural safeguards; sources for parents to contact to obtain assistance in understanding the procedural safeguards; a description of other options that were considered and why they were rejected; a description of other factors that are relevant to the agency's proposal or refusal. Prior Written Notice must not be confused with Notice of an IEP meeting.

*Procedural Safeguards Notice:* The procedural safeguards notice must be given to parents at least once a school year and upon initial referral or parent request for evaluation; upon a disciplinary change in placement and upon request by a parent. CDE procedural safeguards notice available at [www.cde.state.co.us/spedlaw/download/proceduralsafeguards2007.pdf](http://www.cde.state.co.us/spedlaw/download/proceduralsafeguards2007.pdf)

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Notice to parents must be provided in understandable language including in the parent's native language or other mode of communication.

*IDEA §§ 300.322(a)(1), 300.503, 300.504(a); ECEA 4.03(7)(b)*

## **Dispute Resolution**

Parents have several methods of dispute resolution available to them if they disagree with the child's IEP team or special education services. These dispute resolution methods vary from informal to formal processes. Most informally, a parent may request an IEP review if he or she disagrees with an element of the child's IEP. More formally, a parent may request mediation, file a state complaint, or file a due process complaint through CDE. A charter school should understand these dispute resolution processes as it may affect their staff and require their efforts to resolve the dispute.

### ***Mediation***

Mediation is available through CDE by a qualified and impartial mediator at no cost for special education disputes. Mediation must be voluntary on the part of both parties. If the dispute is resolved through the mediation process, a legally binding agreement setting forth the resolution which is enforceable in any State court is created. Additional information on mediation is available at [www.cde.state.co.us/spedlaw/download/Mediation2007.pdf](http://www.cde.state.co.us/spedlaw/download/Mediation2007.pdf).

*IDEA § 300.506*

### ***State Complaint***

A state complaint may be filed with CDE if an individual believes that Part B of the IDEA or its implementing regulations has been violated. A state complaint must be filed within *one year* of the alleged violation and must include:

- a statement that the public agency has violated a requirement the IDEA;
- the background information and facts that serve as the basis for the complaint;
- the name and residential address of the child, and the school the child is attending;
- a proposed resolution of the problem if any; and
- the signature and contact information of the individual filing the complaint.

A copy of the complaint must be filed both with CDE and the administrative unit responsible for ensuring FAPE. Once the complaint is received, CDE has 60 days to investigate the complaint. If CDE finds a violation, the complaints officer may order corrective action. Information on state complaints is available at [www.cde.state.co.us/spedlaw/download/StateComplaints2007.pdf](http://www.cde.state.co.us/spedlaw/download/StateComplaints2007.pdf).

*IDEA §§300.151-300.153*

### ***Due Process Complaint***

A parent or administrative unit may file a due process complaint with CDE on any matter relating to the identification, evaluation, or educational placement of a child with a disability including disciplinary changes in placement. A due process complaint is the most formal method to resolve a dispute and may result in a due process hearing replete with the legal formalities of presentation of evidence, pre-hearing conferences, and subpoenas.

The administrative unit must convene a *resolution meeting* with relevant IEP team member(s) who have specific knowledge of the facts identified in the due process complaint within 15 days to discuss the complaint and to attempt to resolve the dispute. A resolution meeting may be waived by written agreement of the parent and the administrative unit or if the parties choose to use mediation.

If the issue is not resolved in the resolution meeting, the due process hearing may proceed and the 45 day timeline for a decision begins. The due process complaint is assigned to an impartial hearing officer who oversees all aspects of the case. Once a decision is reached, either party may appeal. An appeal could reach the level of civil action in a State or district court. In any action, a court in its discretion may award attorney's fees to the prevailing party.

*IDEA §§ 300.507 – 300.517; ECEA 6.02(d-f)*

### **What if the dispute is about a disciplinary change in placement or manifestation determination?**

A parent or an administrative unit may file for an *expedited due process* hearing in matters involving disciplinary changes in placement. During an expedited due process hearing, the child remains in the IAES pending the hearing officer's decision. In an expedited due process hearing the timelines are shortened and the resolution meeting must occur within *seven* days. If there is

no resolution, the due process hearing may proceed within *fifteen* days of the receipt of the due process complaint and the hearing must occur within *twenty* school days of the complaint.

*IDEA §§ 300.532, 300.533, ECEA 6.02(7)(i)*

# **Charter Schools Special Education Guidebook**

## **Section IV**

### **Conclusions & Recommendations**

A long history of exclusion of children with disabilities from public schools has resulted in federal and state legislation intended to ensure that students with disabilities receive a free appropriate public education, including due process and procedural protections. Federal and state special education laws are designed to protect children with disabilities and their parents, and also provide a blueprint for ensuring that each child's educational program is individually designed and appropriate to the unique needs of the child.

As a result, educators must be aware of federal and state special education laws and their many requirements. For many charter school personnel, this is new territory. They must establish a system for educating all students, regardless of disability status, in their school, often without the assistance of a larger, experienced special education department.

The following recommendations and suggestions are offered for charter school developers and authorizers:

### **Recommendations for Charter School Personnel:**

- Consider special education and the charter school's philosophical orientation and mission in relation to staffing, service delivery, inclusion practices, etc., when writing the charter application or planning the school's goals and objectives. Contact the authorizer's Special Education Director in early in the process to learn how special education funding and the delivery of special education services operate in your administrative unit.
- Develop a special education compliance plan that addresses service provision, funding, and special education policies and responsibilities for the charter school prior to opening. Utilize the expertise of the administrative unit's special education department in developing such a plan, especially when addressing special education funding and service delivery. Include the special education compliance plan in the school's charter.
- Consider using a qualified consultant or hiring a qualified staff member to assist in setting up procedures for evaluation teams and financial reimbursements.
- If the charter school will provide the special education services, determine which individual staff members or third parties will provide these services before opening the school. For a charter school already in operation, prompt investigation of this issue is essential.
- Utilize the resources of the U.S. Department of Education and the CDE to learn about special education and charter school laws, including the CCSA, the IDEA, the ECEA, and their implementing rules and regulations. Keep current on changes to these laws.
- Foster positive and constructive relationships with administrative unit personnel, including the authorizer's Special Education Director and maintain ongoing communication with parents of children with disabilities.
- Be consistent in the delivery of educational services for all students and be innovative in special education as well. The laws do not prescribe specific service delivery strategies, nor do they preclude new ways of service delivery.

## **Recommendations for Authorizers and especially their Special Education Directors:**

- Be prepared and willing to answer questions from charter school developers and administrators regarding special education services and funding.
- Have resources available for charter schools personnel that can help them understand the complex topic of special education and funding in your district and/or administrative unit.
- Include charter school personnel in special education training that the district makes available to its staff.
- Include charter schools when you share new information and updated materials with your principals and special education staff.
- Foster positive and constructive relationships with charter school administrators and special education staff. This may include assigning a knowledgeable staff person to serve as a liaison with the charter schools in your district.

This guidebook has summarized some aspects of the charter school movement and the development of, and rationale behind special education laws and is a resource that addresses the many issues that arise in planning and implementing special education in a charter school. There are many challenges in starting a new school, including the areas of curriculum, finance, enrollment and staffing. The provision of special education is another challenge faced by charter developers and operators as they open and operate a charter school.

The information presented here is intended to assist charter school authorizers; charter school developers, operators and staff; and parents of students with disabilities understand the issues that face Colorado charter schools in the provision of special education. By knowing more about the laws and the challenges, all stakeholders will be better able to meet the unique needs of students with disabilities attending charter schools.



# **Charter Schools Special Education Guidebook**

## **Appendix A**

### **Charter School Special Education Resources**

**Colorado Charter School Institute**

1580 Logan St. Suite 760  
Denver CO 80203  
Phone: (303)866-3299  
Toll-free Phone: (877)280-0006  
Fax: (303)866-2530  
[www.csi.state.co.us](http://www.csi.state.co.us)

**Colorado Department of Education**

201 East Colfax Ave  
Denver CO 80203-1799  
Phone: (303)866-6600  
Fax: (303)830-0793  
[www.cde.state.co.us](http://www.cde.state.co.us)

Charter Schools

[www.cde.state.co.us/index\\_charter.htm](http://www.cde.state.co.us/index_charter.htm)

Charter School Special Education Resources

[www.cde.state.co.us/cdechart/guidebook/sped/index.htm](http://www.cde.state.co.us/cdechart/guidebook/sped/index.htm)

Exceptional Student Leadership Unit

[www.cde.state.co.us/index\\_special.htm](http://www.cde.state.co.us/index_special.htm)

Behavior Resource Manual

[www.cde.state.co.us/cdesped/BehaviorResourceManual.asp](http://www.cde.state.co.us/cdesped/BehaviorResourceManual.asp)

IEP Manual and Suggested Forms

[www.cde.state.co.us/cdesped/IEPmain.asp](http://www.cde.state.co.us/cdesped/IEPmain.asp)

Laws & Procedural Safeguards

[www.cde.state.co.us/spedlaw/index.htm](http://www.cde.state.co.us/spedlaw/index.htm)

Response to Intervention (RTI)

[www.cde.state.co.us/cdegen/RTI.htm](http://www.cde.state.co.us/cdegen/RTI.htm)

Specific Learning Disabilities (SLD)

[www.cde.state.co.us/cdesped/SD-PCD.asp](http://www.cde.state.co.us/cdesped/SD-PCD.asp)

Transition Resources

[www.cde.state.co.us/cdesped/transresources.asp](http://www.cde.state.co.us/cdesped/transresources.asp)

Finance Unit

[www.cde.state.co.us/index\\_finance.htm](http://www.cde.state.co.us/index_finance.htm)

**Colorado League of Charter Schools**

725 South Broadway, Suite 7  
Denver CO 80209  
Phone: (303)989-5356  
Fax: (303)984-9345  
[www.coloradoleague.org](http://www.coloradoleague.org)

**Mountain Plains Regional Resource Center**

1780 North Research Parkway, Suite 112  
Logan UT 84341  
Phone: (435)752-0238  
TDD & Fax: (435)753-9750  
[www.rrfcnnetwork.org](http://www.rrfcnnetwork.org)

**National Alliance for Public Charter Schools**

1101 14th Street N.W., Suite 801  
Washington DC 20005  
Phone: (202)289-2700  
Fax: (202)289-4009  
[www.publiccharters.org](http://www.publiccharters.org)

**National Association of State Directors of Special Education**

1800 Diagonal Road, Suite 320  
Alexandria VA 22314  
Phone: (703)519-3800  
TDD: (703)519-7008  
Fax: (703)519-3808  
[www.nasdse.org](http://www.nasdse.org)

**United States Department of Education**

[www.ed.gov](http://www.ed.gov)

Building the Legacy: IDEA 2004  
[idea.ed.gov](http://idea.ed.gov)

Office for Civil Rights/Denver Office  
Phone: (303)844-5695  
Fax: (303)844-4303  
TDD: 1-(877)521-2172  
email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

Office of Special Education and Rehabilitative Services (OSERS)  
[www.ed.gov/about/offices/list/osers/index.html](http://www.ed.gov/about/offices/list/osers/index.html)

Office of Special Education Programs  
[www.ed.gov/about/offices/list/osers/osep/new.html](http://www.ed.gov/about/offices/list/osers/osep/new.html)

**U.S. Charter Schools**

[uscharterschools.org](http://uscharterschools.org)

# **Charter Schools Special Education Guidebook**

## **Appendix B**

### **Glossary**

<b>Term</b>	<b>Definition</b>
<b>Accounting district</b>	The school district where an institute charter school is located used to calculate per pupil revenues.
<b>ADA</b>	Title II of the Americans with Disabilities Act.
<b>Administrative Unit</b>	A Colorado local education agency (LEA) that is responsible for the local administration of special education. An administrative unit may be a school district, BOCES, or the CSI.
<b>Authorizer</b>	The entity that authorizes or grants a charter school its charter such as a school district or the Charter School Institute (CSI)
<b>BOCES</b>	Board of Cooperative Educational Services. An administrative unit that provides special education services over a region that includes multiple small school districts.
<b>CDE</b>	Colorado Department of Education.
<b>Change in placement</b>	When there is a change in a student's special education or related services, or a change in the child's special educational setting. A change in placement may be nonsignificant or significant.
<b>Charter School Institute (CSI)</b>	The entity that authorizes a charter school under the Institute Charter Schools legislation.
<b>Child Find</b>	The continuous and systematic effort to identify, locate and evaluate students ages 3 to 21 who are in need of special education services
<b>Colorado Charter Schools Act (CCSA)</b>	The Colorado statute that provides for the authorization of charter schools by school districts.
<b>Combination Model</b>	A model of special education service delivery negotiated by a charter school and its authorizer. Under the combination model the charter school and the administrative unit negotiate who is financially and functionally responsible for special education services.
<b>Consent</b>	Consent means the parent has been fully informed of all information relevant to the activity for which consent is sought; and the parent understands and agrees in writing to the activity. The parent also understands that his or her consent may be revoked.
<b>Contracted Model</b>	A model of special education service delivery negotiated by a charter school and its authorizer. Under the contracted model, the charter school hires its own special education staff and/or contracts with third parties and the administrative unit passes the proportionate share of special education funds to the charter school.
<b>Counsel Out</b>	A discriminatory and illegal practice of discouraging students with disabilities from applying to enroll in a charter school.
<b>CSEAC</b>	Colorado Special Education Advisory Committee
<b>Disciplinary change in placement</b>	Disciplinary removals including suspension or expulsion that are longer than 10 consecutive days or when a student with a disability is subjected to a series of removals that constitute a pattern.
<b>Dispute Resolution</b>	Methods to resolve special education disputes between parents and school personnel. These methods range from informal (calling an IEP meeting) to formal (due process hearing).
<b>District charter school</b>	A charter school that is authorized by its school district under the CCSA.

<b>Term</b>	<b>Definition</b>
<b>Due Process Hearing</b>	The most formal process of dispute resolution under the IDEA which includes presentation of evidence, subpoenas of witnesses, and other legal processes.
<b>ECEA</b>	Exceptional Children's Education Act. The Colorado special education statute.
<b>Educational Surrogate</b>	An individual that represents the child in special education decisions when no parent can be identified, a parent cannot be located by the administrative unit of attendance, or the child is a ward of the state or homeless.
<b>Elementary and Secondary Education Act (ESEA)</b>	The federal statute that includes Charter School Programs and No Child Left Behind.
<b>Eligibility determination</b>	A meeting that is held after a child is evaluated for special education to discuss assessment results and to determine whether the child has a disability and is eligible for special education.
<b>Evaluation</b>	The process of utilizing formal and informal assessments to determine specific areas of a child's strengths, needs and eligibility for special education services.
<b>Extended School Year (ESY)</b>	Special education and related services provided as necessary and as determined by the IEP team in order to provide FAPE to a student with a disability.
<b>FAPE</b>	Free appropriate public education
<b>Functional behavior assessment (FBA)</b>	A process for gathering broad and specific information about a child's behavior in order to identify the behavior's function or purpose and is used to develop a behavior intervention plan.
<b>Highly qualified</b>	The special education requirement that special education teachers that teach core academic subjects must be highly qualified as defined by the ESEA.
<b>IDEA</b>	Individuals with Disabilities Education Act. The federal special education statute.
<b>Inclusion</b>	An approach that stresses education of students with disabilities, regardless of the type or severity of the disability, in the regular classroom and delivering special education and related services within the classroom to the maximum extent possible.
<b>Individualized Education Program (IEP)</b>	A written statement developed in accordance with IDEA regulations for students identified as having a disability and in need of special education services. The IEP delineates a student's individualized goals and the special education programming necessary to attain those goals.
<b>Institute Charter Schools</b>	The State statute that provides a charter school to be authorized by the Charter School Institute; and charter schools authorized by the Charter School Institute under that statute.
<b>Insurance Model</b>	A model of special education service delivery negotiated by a charter school and its authorizer. Under the insurance model, the charter school pays its authorizer a per student fee and the authorizer's administrative unit is the primary special education service provider for the charter school.
<b>Interagency relations</b>	The collaboration and coordination of agencies to provide services to pupils with disabilities.

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Interim Alternative Educational Setting (IAES)</b>	An alternative educational setting to which a student with a disability may be removed for up to 45 days for engaging in misconduct involving dangerous weapons, illegal drugs or controlled substances, or serious bodily injury.
<b>LEA</b>	Local Education Agency. In Colorado, a LEA is called an Administrative Unit which may be a school district, BOCES, or the CSI
<b>Least Restrictive Environment (LRE)</b>	The IDEA provision that children with disabilities must be educated to the maximum extent appropriate with their nondisabled peers.
<b>Manifestation determination</b>	A meeting that is convened when a disciplinary change in placement is being considered to determine whether the child's conduct or behavior is a manifestation of his or her disability.
<b>Mediation</b>	A method of dispute resolution that may be requested through CDE at no cost to the parties. If a dispute is resolved through mediation, a legally binding agreement is executed that sets forth the resolution.
<b>Modified Insurance Model</b>	A model of special education service delivery negotiated by a charter school and its authorizer. Under the modified insurance model, the charter school contracts for some services, and pays the administrative unit a per student fee for services the charter school does not provide.
<b>Multidisciplinary Team</b>	A group of qualified professionals that is knowledgeable about the child and the meaning of evaluation data and the parent(s) of the child that determines whether the child has a disability and is eligible for special education services after the child has been evaluated for special education.
<b>Office for Civil Rights</b>	The federal agency under the U.S. Department of Education that enforces Section 504 and ADA provisions.
<b>Parental involvement and rights</b>	A parent's rights and responsibilities in accordance with the IDEA, the ECEA and their regulations in all aspects of planning and implementing a FAPE for students with disabilities. Parental rights and responsibilities include any legal challenges to the evaluation, planning and implementation of an IEP or the provision of a FAPE.
<b>Placement</b>	The provision of special education and related services, and the educational setting in which a child with a disability receives those services as determined by the child's IEP team.
<b>Prior Written Notice</b>	A form used to inform parents of their rights when a special education action is proposed or refused such as referral for evaluation, change in placement, or disciplinary change in placement.
<b>Procedural Safeguards Notice</b>	A notice that informs parents of special education students of their rights. This notice must be provided at least once a school year.
<b>Professional development</b>	The structure for personnel planning that focuses on in-service needs in order to plan a program that meets the needs of students with disabilities.
<b>Pull-out</b>	An approach where special education services are provided directly to a student outside of the general education classroom (e.g. in a resource room).

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Referral</b>	A formal process for reviewing information related to students who are suspected of having disabilities and who show signs of needing special education and related services.
<b>Related services</b>	Supportive services to assist a child with a disability to benefit from special education.
<b>Reporting</b>	The data and financial accounting that must be submitted to state and federal agencies, and supporting documentation that provides the required information for an audit.
<b>Resolution meeting</b>	A meeting convened within 15 days of a filing for a Due Process Hearing to provide an opportunity to discuss the basis of the complaint and for the administrative unit to have an opportunity to resolve the dispute.
<b>Response to Intervention (RtI)</b>	A school-wide initiative that allows for the utilization of resources for students in need of academic and/or behavioral support; and uses a continuum of research-based, tiered interventions with increasing levels of intensity and duration.
<b>SASID</b>	State assigned student identifier.
<b>SEA</b>	State Education Agency. In Colorado, the SEA is the Colorado Department of Education.
<b>Section 504</b>	Section 504 of the Rehabilitation Act. A federal civil rights statute that prohibits discrimination on the basis of disability and has free and appropriate public education and educational setting requirements similar to those of the IDEA.
<b>Service delivery</b>	The system to ensure that a continuum of alternative placements is available to meet the needs of students with disabilities with special education and related services and that LRE issues are considered in placement decisions.
<b>Service Delivery Model</b>	The method of special education service delivery negotiated between a charter school and its authorizer such as the Insurance model, Contracted model, or Combination/Modified Insurance model.
<b>Staffing</b>	The identification of required and qualified personnel to deliver special education and related services in accordance with a student's IEP.
<b>State Complaint</b>	A written complaint that may be filed with CDE when an individual believes a child with a disability has not been provided with a FAPE or the IDEA procedural safeguards have not been followed.
<b>Supplementary Aids and Services</b>	Aids, services and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.
<b>Temporary Teacher Eligibility (TTE)</b>	May be provided to an individual who already has a Colorado teaching license or emergency authorization if after making reasonable efforts, a charter school is unable to employ a qualified special educator. Must be applied for through the charter school's administrative unit.
<b>Transition services</b>	A coordinated set of activities that are designed to promote movement from school to post school activities, and are documented on a student's IEP beginning at age 15, but no later than the end of the 9th grade.



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