

**CHARTER
SCHOOLS**

**SPECIAL
EDUCATION
IN CHARTER
SCHOOLS:**

**A RESOURCE
PRIMER FOR THE
STATE OF
MARYLAND**

**MARYLAND STATE DEPARTMENT OF EDUCATION
Division of Special Education/Early Intervention Services**

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The following individuals and organizations have also been instrumental in the development of **Special Education in Charter Schools: A Resource Primer for the State of Maryland**:

Charter School Representatives of Local School Systems

Kathryn Carmello, Harford County Public Schools
Robert Jones, Harford County Schools
Kathleen Lane, Anne Arundel County Public Schools
David Stone, Baltimore City Public School System
Laura Weeldreyer, Baltimore City Public School System

Community Organizations/Charter School Operators

Joni Berman, Maryland Charter Schools Network
Patricia Halle, Maryland Disability Law Center
Bettejane Weiss, Monacy Valley Montessori Public Charter School

Maryland State Department of Education

David Arnett, Coordinator, Office of School Innovations
Carol Ann Baglin, Assistant State Superintendent, Division of Special Education/Early Intervention Services
Linda F. Bluth, Director, Office of Quality Assurance and Monitoring, Division of Special Education/Early Intervention Services
Jim Clark, Branch Chief, Division of Business Services
Dorothy M. Coleman, Education Program Specialist, Division of Special Education/Early Intervention Services
Patrick Crain, Director, Office of School Innovations
Cathy Jurist, Staff Specialist, Division of Special Education/Early Intervention Services
Donna Riley, Policy & Resource Specialist, Division of Special Education/Early Intervention Services
Richard Steinke, Deputy State Superintendent
Sharon West, Section Chief, Division of Special Education/Early Intervention Services
Ed Wulkan, Branch Chief, Division of Special Education/Early Intervention Services

Office of the Attorney General

Elliott Schoen, Office of the Attorney General

Special Education in Charter Schools: A Resource Primer for the State of Maryland

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Secretary-Treasurer of the Board and State Superintendent of Schools

A. Skipp Sanders

Deputy State Superintendent, School Improvement Services

Carol Ann Baglin

Assistant State Superintendent for Special Education/Early Intervention Services

Production

Dorothy M. Coleman, Consultant

Linda F. Bluth, Director

Office of Quality Assurance and Monitoring

Division of Special Education/Early Intervention Services

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I. INTRODUCTION

INTRODUCTION

In the early 1990's, charter schools were a new concept being implemented by a few states and communities across the country. Today there are over 3,000 charter schools operating in 40 states and the District of Columbia. The growth of charter schools has compelled that we understand what charter schools are and how they impact responsibilities for special education at the state, local school system and the charter school level. Even though charter schools may be waived from some state and local regulations, the federal government has not permitted any waivers from federal special education requirements for charter schools.

In the area of special education, research has documented that charter schools struggle on two fronts: 1) understanding their roles and responsibilities related to special education, and 2) amassing the capacity required to provide special education and related services to students with disabilities (Ahearn et. al., 2001). Personnel at the Maryland State Department of Education (MSDE) and local school system personnel are important resources as charter schools build their capacity to address the needs of students with disabilities. While many may believe that only MSDE's special education division needs to understand charter schools and the issues relating to special education, in reality all MSDE and local school system personnel who interface in any way with charter schools need to understand how charter schools and special education laws intersect. Special education touches many different divisions within each local school system and the MSDE, including certification, curriculum and instruction, finance, and transportation, among others.

One lesson that has been learned in the past decade of charter school implementation is the importance of providing clear guidance regarding special education for charter school operators, authorizers, local education agencies (LEAs)* and state education agencies (SEAs). Without policy guidance, personnel can be unduly burdened to create answers to each individual situation, resulting in ambiguity or inconsistency among charter schools.

This primer has been developed to provide guidance to Maryland's local school systems (charter school authorizers) and charter school developers (operators) as they confront the unique challenges in developing and implementing effective practices to ensure the access and success of students with disabilities in charter schools.

***Note: The term LEA as used in federal language, is synonymous with LSS (local school system) in Maryland.**

II. BACKGROUND

A. FEDERAL LAWS RELEVANT TO SPECIAL EDUCATION IN CHARTER SCHOOLS

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

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

For charter schools, the federal laws (and their regulations) that have most relevance for implementing special education are the Individuals with Disabilities Education Act (IDEA) of 2004; the Elementary and Secondary Education Act (ESEA), recently reauthorized as the No Child Left Behind Act (NCLB) of 2001; Section 504 of the Rehabilitation Act of 1973 (504); the Americans with Disabilities Act (ADA) and the Family Education Rights and Privacy Act (FERPA).

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

Yes. The links are as follows:

- IDEA: Revisions to the IDEA were enacted in December 2004. A copy of the law (P. L. 108-446) can be downloaded as a PDF here:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ446.108.pdf
- The regulations related to IDEA can be accessed in the Code of Federal Regulations online at
http://www.access.gpo.gov/nara/cfr/waisidx_99/34cfr300_99.html. **Note:** This link is for the 1999 version of the IDEA regulations that will be revised during 2005-6. They remain in effect except for any item that has been changed by the IDEA amendments of 2004. (State special education regulations are available on most state websites.)
- NCLB: Links to the law, regulations and policy guidance are available online at <http://www.ed.gov/about/offices/list/ose/legislation.html#leg>
- 504: Regulations can be found online at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#D>
- ADA: Regulations and technical assistance are available online at <http://www.usdoj.gov/crt/ada/publicat.htm>
- FERPA: An explanation is available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Which federal agency is responsible for overseeing these laws?

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

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

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

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

The IDEA provides federal financial assistance to state education agencies (SEAs) and local education agencies (LEAs) to guarantee special education and related services to eligible children with disabilities. Every state receives these funds and must follow all of IDEA's specific procedures, including those for an evaluation, to determine if students are eligible for special education and the additional requirements for subsequent services and re-evaluation. IDEA of 2004 was signed by the President on December 3, 2004. The changes are designed to improve academic achievement of students with disabilities and introduce strict accountability measures to hold schools, districts, and states responsible for the academic results of students with disabilities.

What are the basic requirements of IDEA?

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

- **IEP:** A team of professionals and parents arranges for the child's evaluation, determines eligibility, prepares an individualized education program (IEP), and decides on the individualized special education and related services for the child. An IEP, which must be reviewed annually, includes measurable annual goals, how the child will be included in state and district assessments and how the child will access the general education curriculum in order to meet State standards.
- **FAPE:** Students with disabilities are entitled to a free appropriate public education (FAPE) provided at no charge to parents.
- **LRE:** The least restrictive environment (LRE) refers to placement in a setting that is as close as possible to the regular education placement, if the student did not have a disability. Students with disabilities must have

available to them a continuum of placements that range from full time in a regular classroom to full time in a special setting. They are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the regular classroom.

The OSEP website at <http://www.ed.gov/policy/speced/guid/idea/omip.html> provides some information concerning specific requirements of the IDEA.

What does the IDEA say about charter schools that are public schools of the LEA?

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

- Children with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- Students with disabilities in charter schools that are part of an LEA must be served in the same manner as that LEA serves children with disabilities in its other schools including that the LEA must provide supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on site at its other public schools. The LEA must also provide funds under this part to those charter schools on the same basis as that LEA provides funds to the its other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the agency distributes other federal funds to the agency's other public schools, consistent with the state's charter school law.
- If a charter school is a school of an LEA that receives IDEA funding, the LEA is responsible for ensuring that IDEA requirements are met, unless state law assigns that responsibility to some other entity.
- The state special education advisory panel must include a representative of charter schools.
- Special education teachers in charter schools may not have to meet certification requirements in IDEA if their state's charter school law does not require that teachers in charter schools be certified.

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

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

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

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

How do Section 504 and the ADA differ from IDEA?

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

- **IDEA REGULATIONS:**

34 CFR Sec. 300.7 Child with a disability

(A) In general - The term 'child with a disability' means a child --

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9 - The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child --

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

- **SECTION 504 OF THE REHABILITATION ACT OF 1973—
REGULATIONS:** 34 CFR 104.3

(j) Handicapped persons (1) *Handicapped persons* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense

organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, and/or genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

What are some examples of disabilities that may be covered under Section 504 but not by the IDEA?

Children who have chronic illnesses such as diabetes, or a physical impairment, such as those connected with cerebral palsy, may require specific accommodations or services, but do not meet the criteria of the IDEA definitions or additional specifications applied through state law. The critical issue in making a decision regarding coverage under Section 504 and IDEA is whether the child is in need of special education and related services. Such children are entitled to an evaluation and to FAPE if they are found to meet the definition of "handicapped person" as specified in Section 504. A 504 plan is usually written in these cases. Further details are available in the document *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* available online at <http://www.ed.gov/about/offices/list/ocr/504faq.html?exp=0>

Are funds available under Section 504?

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

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

The state and federal requirements for accessibility of facilities are complex. It is important that authorizers and operators of charter schools have appropriate legal and technical assistance on this topic. Federal regulations can be found online at <http://www.usdoj.gov/crt/ada/adastd94.pdf>. The School Facilities Branch, Division of Business Services, Maryland State Department of Education, is responsible for providing leadership and technical assistance to Maryland's public school systems with regard to long-range planning, capital improvement, educational specifications, and the design, construction, and maintenance of school facilities. Resources on planning, developing and financing a charter school facility, property acquisition, and funding sources can be found on the MSDE website.

http://www.marylandpublicschools.org/MSDE/programs/charter_schools/overview. Click on Facilities in the side bar.

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

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

What NCLB assessment requirements pertain to students with disabilities?

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

- Students with disabilities must be included in state and district-wide assessment programs with appropriate accommodations if necessary.
- Alternate assessments must be provided for those children who cannot participate in state and districtwide assessment programs even with accommodations.
- The IEP for all students with disabilities will specify how they will participate in state assessments.

It is important to note that procedures for the inclusion of all students with disabilities in large scale assessments is a developing area of knowledge and practice. Extensive resources on this topic are available at the website of the National Center on Educational Outcomes at <http://www.education.umn.edu/nceo/>

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

Yes. As stated in NCLB, AYP applies the same high standards of academic achievement to all public elementary and secondary school students in the state. The law also requires selected subgroups, one of which is students with disabilities, to be considered separately under certain conditions in determining whether a school has met AYP targets. An important part of the NCLB regulations, known as "the one percent rule" that applies to students with significant disabilities, was added to the NCLB regulations in December 2003. The Department of Education has issued a summary of that rule that is available at <http://www.usu.edu/mprrc/workgroups/ci/011404Material1.pdf>

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

Students with disabilities is one of the subgroups for which NCLB requires

disaggregated reports of assessment results. However, NCLB provides that a state may not use disaggregated data for one or more subgroups to report achievement results if the number of students in those subgroups is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student.

Which NCLB teacher qualification requirements pertain to students with disabilities?

It is important to note that the NCLB law does not specifically refer to the teachers who provide special education services - that issue is covered in IDEA. State laws and policies that cover certification for charter schools must be carefully reviewed by everyone involved with charter schools. As mentioned above, the 2004 amendments to IDEA make specific reference to special education teacher certification requirements. The IDEA special education teacher qualification requirements are complex and are quoted in full as follows:

HIGHLY QUALIFIED:

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

- **(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS** - When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that --
 - (i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school (emphasis added), the term means that the teacher meets the requirements set forth in the State's public charter school law;
 - (ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (iii) the teacher holds at least a bachelor's degree.

- **(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS** - When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either --
 - (i) meet the applicable requirements of section 9101 of such Act for any

elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

- **(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS** - When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either --
 - (i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;
 - (ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or
 - (iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

- **(E) RULE OF CONSTRUCTION** - Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

- **(F) DEFINITION FOR PURPOSES OF THE ESEA** - A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

B. MARYLAND

During the 2003 General Assembly session, the Maryland Public Charter School Act was passed and Governor Robert L. Ehrlich, Jr. signed the measure into law on May 22, 2003. The new law authorizes the establishment of public charter schools in Maryland. The *Maryland Public Charter Schools Model Policy and Resource Guide* was designed by the MSDE to guide local boards of education and school systems in Maryland in assisting individuals and organizations interested in establishing public charter schools. A copy of the guide can be accessed on the MSDE website.

http://www.marylandpublicschools.org/MSDE/programs/charter_schools/overview

Click on MSDE Model Policy Guide.

With the enactment of the new law, Maryland joins a growing number of states that allow the development and operation of public charter schools. The Maryland statute invites the creation of public charter schools to help introduce alternative means within the public school system to provide innovative learning opportunities and creative educational approaches to improve the education of all students.

Maryland's law defines a "public charter school" as a "public school" that is nonsectarian, is chosen by parents for their children, and is open to all students on a space available basis. A public charter school can be either a newly created school or a conversion of an already operating public school. A public charter school operates with the approval of a local board of education in accordance with a written Charter Agreement executed between the local board of education and the administrative entity operating the public charter school. Just as any other public school, a public charter school is subject to federal, state and local laws prohibiting discrimination and must comply with all applicable health and safety laws.

Regulations to implement Part of the Individuals with Disabilities Act (IDEA), 34 CFR 300, and the Education Article, Title 8, Subtitles 3 3 and 4, are written in the Code of Maryland Regulations (COMAR) 13A.05.01, 13A.05.02 and 13A.08.03.

Must a public charter school in Maryland comply with the laws governing other public schools?

A public charter school shall comply with the provisions of laws and regulations governing other public schools unless a waiver is granted by the State Board of Education. The State Board of Education may waive any provisions except laws or regulations relating to:

- Audit requirements;
- The measurement of student academic achievement, including all assessments required for other public schools and other assessments mutually agreed upon by the public chartering authority and the school; and

- The health, safety, or civil rights of a student or an employee of the public charter school.

The most flexibility and the areas of greatest promise are found in the opportunities within the following components of the public charter school initiative in Maryland:

- Leadership of the public charter school;
- Education program-curriculum and instructional approaches employed by the public charter school;
- Program emphasis that can focus on specific interests and needs of students attending the public charter school;
- Staffing innovations within the public charter school; and
- Budgeting priorities to support the programs.

If a public charter school has individual plans for all of its students, must it still develop and implement Individualized Education Programs (IEPs) for students with disabilities?

Yes. IEPs for students with disabilities must be implemented and all state and federal procedural safeguards must be followed, in accordance with the agreement established by the Charter.

Will a public charter school's application be approved whose operation is non-compliant with special education rules and regulations.

No. The local board of education may not grant a Charter to a public charter school whose operation would be inconsistent with any public policy initiative, court order, or federal improvement plan governing the provision of special education and related services.

Whose responsibility is it to ensure that a public charter school has addressed all of the issues regarding services to students with disabilities?

The local board of education shall ensure that, prior to approving the opening of a public charter school, the operators of the school are informed of the human, fiscal, and organizational capacity needed to fulfill the school's responsibilities related to children with disabilities. It is the responsibility of the operator to implement the Individualized Education Program (IEP) of any special needs student attending.

Who will provide technical assistance and support to the operators of public charter schools regarding federal and state law requirements?

The State Board of Education and local school systems shall provide technical assistance to the operators of a public charter school to help the school meet the requirements of federal and state laws, including 20 U.S.C. §1400, et seq (IDEA) and §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

Who shall ensure that the public charter school application and subsequent authorization address the roles and responsibilities of the charter school operator and the local school system?

Charter Schools are public schools, and as such are required to comply with federal and state special education laws and regulations. A local board of education shall ensure that the authorizing process for a public charter school and the application address the roles and responsibilities of the local school system and the operators of the public charter school consistent with the 2004 Individuals with Disabilities Education Act (IDEA) Amendments and its regulations, and the Code of Maryland Regulations (COMAR) 13A.05.01: Provision of a Free Appropriate Public Education and COMAR 13A.05.02: Administration of Services for Students with Disabilities.

How can experienced teachers in Maryland meet the NCLB requirements for “highly qualified” teachers?

In October 2003, to help veteran teachers meet this “highly qualified” requirement, the State Board of Education adopted Maryland’s **HOUSSE (High, Objective, Uniform State Standard of Evaluation)**, a pair of rubrics allowing teachers to demonstrate competence in their subject area(s) without taking additional tests. However, because the federal guidelines stipulated that teachers had to complete one rubric for each core academic subject they teach, the process became repetitive for multiple subject teachers, such as those teaching in special education and ESL programs. Therefore, the U.S. Department of Education allowed states to streamline their HOUSSEs to help experienced (teachers hired before the first day for the 2002-2003 school year) multi-subject teachers demonstrate competence more easily. Maryland has applied this multi-subject streamlining policy to special educators. In October 2004, the State Board adopted the Special Education HOUSSE, which allows experienced special education teachers to count their certification and some coursework activities, and honors multiple times—once for each subject they teach. The HOUSSE applies only to teachers providing direct instruction in core academic subjects. Special educators who do not directly instruct students in core academic subjects or who provide only consultation to highly qualified teachers in adapting curricula, using behavioral supports and interventions, or selecting appropriate accommodations do not need to demonstrate subject-matter competency in those subjects. These rubrics, along with instructions for filling them out, are in Using Maryland’s HOUSSE—on the web at www.marylandpublicschools.org (under Newsroom/Publications).

III. FREQUENTLY ASKED QUESTIONS

A. GENERAL QUESTIONS AND ANSWERS

Do students with disabilities attend charter schools?

Yes. Students with disabilities may not be discriminated against or refused entry into any charter school on the basis of their disability status. Recent estimates suggest that approximately 12 percent of charter school students are served under the Individuals with Disabilities Education Act (IDEA), but this average masks the wide variation that exists between and within states. Some charter schools report that 100 percent of their students are served by special education (schools that target a special population) while others have very few, if any, students with disabilities enrolled.

Can charter schools waive their responsibilities for special education?

No. Charter schools are public schools and, as such, cannot waive their responsibilities under federal laws. They must comply with all federal education laws including the Individuals with Disabilities Education Act (IDEA) of 2004, Section 504 of the Vocational Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act (ADA). MSDE may waive portions of its own state laws and regulations that go beyond federal requirements or the requirement to abide by school district regulations concerning special education, but no waiver is possible from federal requirements pertaining to students with disabilities enrolled in charter schools.

It is very important that all involved with charter schools, including MSDE officials, are aware of the federal laws that impact the implementation of special education in charter schools.

What are the major legal concepts that underlie special education statutes, regulations and case law?

There are six tenets generally considered the underlying concepts of special education law:

- **ZERO REJECT:**
Federal law requires that all children are afforded an equal education opportunity and states may not deny that on the basis of a disability.
- **INDIVIDUALIZED EDUCATION PROGRAM:**
IDEA requires that a written plan called an Individualized Education Program (IEP) be developed in accordance with IDEA regulations for all students identified as having a disability and in need of special education services. In general, the IEP includes the student's current educational level, annual goals, specific educational objectives, special education and related services to be

provided (this may include transportation needs), dates for initiation of service, anticipated duration of service and evaluation criteria. Under certain circumstances, there are other requirements such as a plan for transition services for students ages 14 and older.

- **FREE APPROPRIATE PUBLIC EDUCATION (FAPE):**

What is deemed "appropriate" is not specifically defined in IDEA. Court decisions over the years have helped define the term in specific instances. What constitutes an appropriate program for an individual student is to be determined on a case-by-case basis depending upon the unique needs of that student.

- **LEAST RESTRICTIVE ENVIRONMENT (LRE):**

The IDEA provides that students with disabilities must be educated to the maximum extent appropriate with their non-disabled peers. The law expresses a preference, not a mandate, for educating students with disabilities in regular classes with appropriate supplementary aids and services.

- **DUE PROCESS AND PARENTAL INVOLVEMENT:**

Procedural safeguards are central to the implementation of IDEA. Parents must be notified of a school's intent to evaluate their child for services and they must consent to an initial evaluation before the process begins. They must also be involved in the IEP process and consent to the initial placement and provision of services. Parents also have a right to request a due process hearing if they disagree with the school's recommendations for their child.

- **NONDISCRIMINATORY EVALUATION:**

There are specific legal requirements concerning the evaluation of children for special education services. It is important to understand these and follow necessary procedures.

What is the legal basis for requirements related to public school facilities' accessibility to students with disabilities?

Legal requirements regarding accessibility are extremely complex and stem from the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act. To read these laws and see documents regarding their implementation in public schools please see the following websites:

- Americans with Disabilities Act of 1990
<http://www.usdoj.gov/crt/ada/adahom1.htm>
- Section 504 of the Rehabilitation Act of 1973
<http://www.504idea.org/Select504.pdf>
- ADA and Section 504, Kids source
<http://www.kidsource.com/kidsource/content3/ada.idea.html>

Negotiating the parameters of the ADA and 504 is challenging and authorizers should strongly encourage the schools they authorize to seek legal counsel regarding their obligations associated with accessibility. Authorizers also should obtain counsel, to be familiar with the requirements themselves.

For a more detailed explanation regarding access to charter schools for students with disabilities, see the OCR document *Applying Federal Civil Rights Laws to Charter Schools*, at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

What roles do parental choice and special education team decision-making play in the implementation of special education in charter schools?

Tension is clearly visible in the implications of the charter school principle of parental choice, which creates a new dynamic for special education. The foundation of special education is the principle of team decision-making aimed at meeting the needs of an individual student. Decisions regarding what is appropriate for a student with a disability who is eligible for services under IDEA, including determining services needed and where those services will be delivered, rest with an IEP team made up of educational professionals and the child's parent. Charter schools, by definition, challenge that foundational decision-making principle of special education by asserting the primacy of parental choice.

What are the inherent tensions between public charter school law and special education law?

There is an inherent tension between the procedural regulation of special education and the principle of autonomy that is central to the charter school concept. Charter schools vary considerably in the degree of freedom they are provided by law and policy, but as part of the public educational system, they are not free from regulation and oversight in the area of special education. Thus, there is a natural tension between charter school law that approaches education from a non-regulatory stance and special education law that approaches education for students with disabilities in a regulatory manner. MSDE personnel must navigate these two approaches to the education of students with disabilities as they develop policies and procedures. They need to ensure that they provide assistance to charter school operators and that local school system personnel understand how to follow them.

B. QUESTIONS AND ANSWERS ABOUT MARYLAND STATE DEPARTMENT OF EDUCATION'S ROLE AND RESPONSIBILITIES RELATED TO SPECIAL EDUCATION IN CHARTER SCHOOLS

What is MSDE's role in assisting charter school operators and authorizers in the area of special education?

With the identification of local boards of education as the primary chartering authority, the Maryland law places important responsibilities on local boards of education to ensure an environment that assists applicants in developing strong and effective public charter schools. Individualized Education Programs (IEPs) for students with disabilities will be implemented and all state and federal procedural safeguards will be followed, in accordance with the agreement established by the charter. Maryland law defines charter schools as public schools, and as such MSDE, in collaboration with the LSS, can provide technical assistance to the operators of charter schools to help meet requirements of federal and state laws, including 20 U.S.C. §1400, et. seq. and §504 of the Rehabilitation Act of 1973, 29 U.S.C §794. MSDE will integrate charter schools into existing technical assistance efforts.

In June 2004, Maryland received federal funding through the U.S. Department of Education's Public Charter School Program (PCSP). The purpose of the PCSP is to increase and expand the number of high quality charter schools by providing financial assistance for the planning, program design and initial implementation of charter schools through a competitive grant process. In Maryland, this grant program is administered through the MSDE Charter Schools Office. Priority is given to projects whose designs incorporate one of more of the following priorities: low income or historically under-represented groups; students with disabilities; and English Language Learners. Scoring rubrics are provided to give potential applicants the opportunity to see the elements used to award the grants. Requests for Proposals and Review Criteria for each type of proposal are available on the MSDE website:

http://www.marylandpublicschools.org/MSDE/programs/charter_schools/

The **Maryland Public Charter Schools Model Policy and Resource Guide**, August 2003, provides specific guidance to charter schools regarding compliance with laws, policies, and regulations regarding services to students with disabilities. In addition, this primer (**Special Education in Charter Schools: A Resource Primer for the State of Maryland**) has been developed by the Division of Special Education/Early Intervention Services (DSE/EIS) to provide a framework for those needing more specific information about special education issues that impact charter schools.

How will MSDE ensure that there is an individualized education program (IEP) team in place if a charter school will be responsible for implementing that component of the special education law?

A charter school's agreement with the local school system will determine the extent to which the charter school will be responsible for addressing the IEP issue. The Division of Special Education/Early Intervention Services, MSDE, has the responsibility for monitoring the implementation of IDEA 2004 in all local school systems and reporting annually on performance. The Office of Quality Assurance and Monitoring (QAM), MSDE, has the primary responsibility for implementing these activities. Charter schools will be included as part of QAM's regular monitoring of a local school system.

What does the MSDE tell potential charter school operators and the state's charter authorizers about the costs of special education?

Charter school operators need to understand the complex issues involved in budgeting for special education. Prior to the opening of a charter school, the local board of education shall ensure that the charter school operators are informed of the human, fiscal, and organizational capacity needed to fulfill the school's responsibilities related to children with disabilities. The Maryland State Board of Education has rendered decisions on the allocation of funds for charter schools, including funds for special education and related services. These decisions can be accessed at www.marylandpublicschools.org/MSDE/stateboard/legalopinions.

C. QUESTIONS AND ANSWERS ABOUT AN AUTHORIZER'S (LOCAL SCHOOL SYSTEM) ROLES AND RESPONSIBILITIES RELATED TO SPECIAL EDUCATION IN CHARTER SCHOOLS

1. PRE-AUTHORIZATION/PLANNING

What is my role as authorizer during pre-planning related to providing services to students with disabilities in charter schools?

Authorizer roles and responsibilities related to services to students with disabilities are highly dependent upon Maryland's charter school law and local school system (LSS) practices and procedures. Ideally, you should ensure that charter school applicants are knowledgeable about federal and state laws related to educating students with disabilities and cognizant of their responsibilities under special education laws and regulations.

You need to be intentional about how you approach issues related to special education. Issues will vary in the way you balance providing technical assistance with your responsibility to judge the application during review. You may provide technical assistance directly to potential applicants or refer them to established sources of such information. At a minimum, application materials should inform the applicants that plans for services to students with disabilities are considered in evaluating applications. You should also inform applicants about how the special education component of the application will be reviewed. As articulated in the introduction, charter school legal identity and contractual relationship to a LSS define a charter school's responsibilities for services to students with disabilities. As an authorizer, you should require that charter applicants demonstrate that they understand those responsibilities and can amass the capacity to meet them. While there is little research about best practices for authorizers, valuable information is available on the website (www.charterauthorizers.org) of the National Association of Charter Schools Authorizers.

How can I introduce potential charter school applicants to the rationale behind special education laws?

Introducing charter school applicants to the reasons underlying special education may help lower barriers to implementing special education programs. In other words, you may consider teaching potential operators why special education exists. Furthermore, it may be helpful to acknowledge that, while special education policies and procedures can admittedly be cumbersome, they have evolved over many years and they stem from documented exclusion of children with disabilities. As a charter authorizer, you may require that charter applicants attend a brief introduction to the civil rights origins of the Individuals with Disabilities Education Act (IDEA) 2004. Examples of resources that you could make available to charter applicants are publications from the *Future of Children* available at http://www.futureofchildren.org/usr_doc/vol6no1.pdf, or Education Week's IDEA 25.

Can I grant charter school applicants waivers from federal special education requirements as part of their charter?

The federal government has not permitted any waivers from federal special education requirements for charter schools. Charter schools are public schools and must be open to, and serve the needs of, any student with a disability wishing to attend. They must comply with all federal education laws including the Individuals with Disabilities Education Act (IDEA) of 2004, Section 504 of the Vocational Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act (ADA). MSDE may waive portions of its own state laws and regulations that go beyond federal requirements or the requirement to abide by school district regulations concerning special education, but no waiver is possible from federal requirements pertaining to students with disabilities enrolled in charter schools.

What are my responsibilities as an authorizer related to the No Child Left Behind Act (NCLB)?

Your responsibilities related to NCLB are determined by Maryland's charter school law. To be specific, the non-regulatory guidance provided by the U.S. Department of Education states that:

"...a State's charter school law determines the entity within the State that bears responsibility for ensuring that charter schools comply with the Title I, Part A accountability provisions, including AYP. The charter authorizer is responsible for holding charter schools accountable for Title I, Part A provisions unless State law specifically gives the SEA direct responsibility for charter school accountability" (2003, p. 5) [<http://www.ed.gov/policy/elsec/guid/charterguidance03.pdf>].

For general information about NCLB, see the U.S. Department of Education website at: <http://www.ed.gov/nclb/landing.jhtml>

Are there any existing models of how to address special education during the planning phase?

A number of organizations (e.g., state education agencies (SEAs), local education agencies (LEAs), other authorizers, charter school support organizations) have developed documents and orientation series that include information regarding special education in charter schools. In addition to the publication, *Charter Schools and the Education of Students with Disabilities*, the materials developed by the Colorado Department of Education can be helpful in planning and implementing practices for students with disabilities in charter schools:

- **Colorado Department of Education, Charter Schools Guidebook**
http://www.cde.state.co.us/index_charter.htm

What issues should I encourage charter applicants to consider during the planning phase to ensure that they will be able to provide special education appropriately?

When applied to developing a school that can educate students with disabilities, comprehensive planning during the pre-planning, charter development and start-up phases is critical. Encourage applicants to consider issues related to special education such as the attached checklist at the end of this section entitled **Special Education Issues for Charter Applicants to Consider During the Planning Phase**. The list is not exhaustive, but rather a guide to key issues that potential charter applicants should take into account. The answers to these questions will depend upon: 1) legal status of the charter school (Maryland defines a “public charter school” as a public school); 2) the charter agreement negotiated between you and the operator; and 3) the characteristics of the individual charter school.

SPECIAL EDUCATION ISSUES THAT LOCAL
SCHOOL SYSTEMS SHOULD ENCOURAGE
APPLICANTS TO CONSIDER DURING THE
PLANNING PHASE

Special Education Issues That Local School Systems Should Encourage Charter Applicants to Consider During the Planning Phase*

HUMAN RESOURCES

- How many students with disabilities should we estimate that our school will enroll?

If we will be responsible for providing special education:

- How many special education teachers will we need to employ?
- What kind of certification will the special education teachers need?
- How does MSDE define “highly qualified” teachers according to NCLB and “qualified personnel” under IDEA?
- Can our school hire dual-certified teachers?
- Can we hire part-time or retired special education teachers?
- Will we need to hire staff for health-related issues?
- What are the implications for salaries and benefits if we hire full- versus part-time employees?

If a LSS will be responsible for all, or part of, special education in our school:

- Will the school be required to contract with a LSS for the purposes of special education?
- If our school needs to work with the LSS, how do we negotiate with the LSS to ensure our students will receive appropriate services?
- When special education services are contracted through a LSS whose responsibility is it to verify certification, perform background checks, and evaluate/rate staff performance?

CURRICULUM AND ASSESSMENT

- What curricula and instruction will our school offer?
- How will we modify the curriculum and instructional delivery to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum and instructional approach for children with disabilities in inclusive classrooms?
- How will our school include children with disabilities in required assessments or develop alternate assessment?
- How will curriculum and assessment decisions be considered and monitored by IEP teams and staff?

PROFESSIONAL DEVELOPMENT

- How will our school provide teachers with professional development?
- Will teachers need any specialized professional development related to educating and including children with disabilities?
- Does the LSS or MSDE operate a professional development program or network that we can utilize?

ADMINISTRATION

- Who will administer the special education program?
- Who will be responsible for collecting, managing and reporting data related to children with disabilities?
- Can we create our own system to administer special education or will we adopt the policies/procedures dictated by our authorizer?
- How will our school handle student records and other school property appropriately in the event of closure of the charter school?

SPECIAL EDUCATION FUNDING

- How will federal, state and local special education dollars flow?
- What will be our funding level under MD’s requirement for “commensurate funding”?

- What does our school need to budget for special education during the first year of operation?
- Do we need to prepare financially to enroll a student with significant special needs?

FACILITIES

If we will be responsible for special education evaluations and services:

- Where will we conduct student evaluations?
- Where will we conduct IEP meetings?
- Where can we store confidential student records?
- Where will we provide pullout services?
- Where can related services personnel meet with individual students?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals—including adults—with physical disabilities?
- Does the facility have space for a nurse to store and administer medications or use medical equipment?

TRANSPORTATION

If we are responsible for special education services:

- How will our school meet transportation needs of students who receive transportation as a related service articulated on their IEP?
- Where will we access transportation for a student in a wheelchair?

***Modifications of checklist from “Primers on Special Education and Charter Schools” by SPEDTACS, 2004**

2. AUTHORIZATION

When reviewing charter applications, in what areas should I anticipate or require information regarding an applicant's plan to incorporate students with disabilities?

- Administration
- Budget
- Curriculum, instruction and assessment
- Discipline/ suspension
- Enrollment
- Facility
- Procedural safeguards
- Student records
- Reference to knowledge of IDEA 2004 and Section 504
- Specialized personnel (e.g., certified special education teachers, administrators, related services personnel)
- Transportation
- Student data reporting

What should I ask applicants about their plans to provide special education services to students with disabilities?

Ask applicants at a minimum to articulate a rudimentary plan regarding governance, service delivery and financing of special education. It is critical that applicants demonstrate to authorizers that they have a well conceived, feasible plan to access the capacity they will need to meet their legal responsibilities. In addition, in accordance with the specific level of responsibility the charter school will have according to its legal status as a school of the local school system, authorizers should ask applicants to provide some or all of the following plans during the application and authorization phase:

- plan to evaluate and identify children with disabilities;
- plan to develop, review and revise IEPs;
- plan to integrate special education into the general education program curriculum and instruction, including how students with disabilities will be integrated/included in the curriculum;
- plan to integrate students with disabilities into the general education environment;
- plan to deliver special education and related services (e.g., in-house or contract out);
- projected cost of special education program (e.g., percent of operating budget);
- plan to access and account for special education funds;
- anticipated sources for ongoing legal guidance related to special education;
- plan to ensure that the school facility meets the requirements of other related laws such as the Americans with Disabilities Act (ADA) and Section 504;
- plan for enrollment/IEP transition procedure;
- plan to address student discipline;
- plan to handle programming disputes involving parents;

- plan to ensure confidentiality of special education records;
- plan to purchase services from special education vendors;
- plan to secure technical assistance and training;
- how parents will be involved;
- commitment to abide by confidentiality requirement including the federal law, Family Educational Rights and Privacy Act (FERPA); and
- assurance not to discriminate.

See a sample statement from Colorado as an example of how a charter applicant might articulate its plan to provide special education. (Available at: www.edgateway.net/cs/spedp/print/uscs_rs/1960).

What is my responsibility as an authorizer to ensure that charter schools serve students with disabilities?

In Maryland, the authorizer is the LSS and, according to Maryland law, the LSS is responsible to ensure the provision of special education and related services in all its schools including its charter schools. The law specifically emphasizes the importance of the **charter agreement** that is put into place by the LSS and the charter school once the charter application is approved:

A public chartering authority shall ensure that the authorizing process for a public charter school and the charter application address the roles and responsibilities of the county board and the applicants and operators of the public charter school with respect to children with disabilities [§9-107(B)].

Thus, the LSS can delegate implementation to the charter, but the way this is to be carried out must be specified in the charter agreement.

What are some issues I should address to ensure that charter schools do not discriminate?

As public schools, charter schools are not allowed to discriminate against students with disabilities. Require charter school applicants to provide clear assurance that they will not discriminate. One example of such non-discriminatory practices is a blind lottery process to be used for the selection of students if applications exceed available spaces.

Can a charter school "counsel-out" a student with a disability?

Charter schools are public schools and as such, they are legally required to maintain open enrollment policies. Counseling-out is the process of subtly or not-so subtly "counseling" a child with a disability to influence an enrollment decision inappropriately based on the child's disability. Advising students with disabilities that they are not allowed to attend, or that the school cannot provide the modifications or accommodations necessary to enable them to attend, is discriminatory and illegal. All placement decisions for students with disabilities should be made in an IEP Team meeting and must be based on an individual student's educational requirements.

The federal Office for Civil Rights (OCR) is charged with investigating issues raised about discrimination against students with disabilities.

If, in the process of making placement decisions, charter schools "counsel" students regarding placement, is this counseling-out?

Determining whether a particular educational environment is the best placement is not discrimination if conducted in an appropriate manner (i.e., by an IEP team) and based on an individual child's needs. It is part of the process of ensuring that a child with a disability receives a free appropriate public education in the least restrictive environment. Given the unique nature of some charter schools' programs, not all charter schools are going to be appropriate for all children with disabilities (i.e., children with an official IEP or 504 plan) while meeting the goals and objectives outlined in their charter. To ensure that decisions regarding enrollment are 1) made based upon each individual child, as opposed to groups of children with particular disabilities, and 2) made based upon the best interests of the child as opposed to the convenience of the charter school, decisions regarding appropriate placement must be made by an IEP team rather than a single individual.

What is my role in ensuring that charter schools fulfill their mission while complying with their obligation related to adaptation, accommodations and modifications required by IDEA?

Require applicants to articulate their mission explicitly and ensure that the charter school is prepared to offer reasonable accommodations to children with disabilities who elect to attend the school. A key component of reasonable accommodations is a school culture that incorporates a commitment to offering accommodations to individuals with disabilities while guarding against substantively changing the nature of the school's mission. Scrutinize charter schools' admission policies to ensure that the policies don't block enrollment for particular students or groups of students.

Can a charter school's curriculum alone meet the needs of students with disabilities?

Even if the school plans to provide all children with individualized learning plans loosely analogous to IEPs that address each student's unique cognitive and physical abilities and disabilities, the learning plan for a student with a diagnosed disability must conform to all of the requirements of IDEA. A core tenet of the IDEA is that children are treated as individuals with unique abilities and disabilities that need to be addressed by providing unique support services which are explicitly articulated in an IEP. To determine whether these learning plans or other curricula approaches meet IDEA procedural requirements, charter operators must be aware of district and state special education requirements. In general, any policy that aims to treat all children with disabilities the same way should raise a red flag to authorizers assessing applications. When reviewing charter applications, authorizers can request additional information regarding how the charter school plans to ensure that its particular curriculum or instructional approach can address the unique individual needs of students with disabilities.

What does it mean to have the capacity to provide special education services?

The capacity of the charter school to provide services to students with disabilities must be included in the charter agreement between you and the charter school. You, as the authorizer, have a specific responsibility according to the Maryland charter school law:

The public chartering authority shall ensure that, prior to opening a public charter school, the operators of the school are informed of the human, fiscal, and organizational capacity needed to fulfill the school's responsibilities related to children with disabilities [[§9-107(C)].

Be confident that applicants either have established, or can access, the capacity they will need to meet their special education responsibilities.

Does federal law require charter schools to hire certified special educators?

Changes to IDEA in 2004 require that special education teachers meet the "highly qualified" standards of NCLB. However, although special education teachers must have full certification and hold a license in the state to teach as a special education teacher, the law makes an exception: "the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law" [P. L. 108-446 § 602(10)(B)(i)].

What does the Maryland charter schools law require concerning the certification of teachers?

The Maryland charter schools law states that "A member of the professional staff of a public charter school shall hold the appropriate Maryland certification [§9-105]. In addition, the law also provides that:

(A) Employees of a public charter school:

- (1) are public school employees, as defined in §§ 6-401(d) and 6-501(f) of this article;*
- (2) are employees of a public school employer, as defined in §§ 6-401(e) and 6-501(g) of this article, in the county in which the public charter school is located; and*
- (3) shall have the rights granted under title 6, subtitles 4 and 5 of this article.*

(B) If a collective bargaining agreement under title 6, subtitle 4 or 5 of this article is already in existence in the county where a public charter school is located, the employee organization and the public charter school may mutually agree to negotiate amendments to the existing agreement to address the needs of the particular public charter school [§9-108].

However, the law also contains provision for charter schools to request waivers governing other public schools except in the case of:

- (1) audit requirements;
- (2) the measurement of student academic achievement, including all assessments required for other public schools and other assessments mutually agreed upon by the public chartering authority and the school; or
- (3) the health, safety, or civil rights of a student or an employee of the charter school.

Where can I learn more about Maryland's requirements regarding special education certification?

Maryland maintains detailed information about certification on its website at <http://certification.msde.state.md.us/> Because special education is one of the areas in which there is currently a shortage of teachers, Maryland, like many other states, sponsors programs designed to encourage individuals to obtain special education credentials. Make charter applicants familiar with the various teacher recruitment and induction programs offered in Maryland. These programs may be rich sources of qualified teachers, including special education personnel, for charter schools.

How can charter schools in Maryland plan for expenses related to special education?

Charter school applicants must work closely with LSS personnel to determine how services to students with disabilities who attend the charter school will be financed and delivered. For example, will the charter school receive federal, state and local special education dollars directly? Will the LSS receive the funds and provide special education services using LSS staff to provide services to students with disabilities enrolled in the charter school? These and many other details must be specified in the charter agreement.

How can I, as an authorizer, assist charter schools that enroll a child with significant disabilities and are struggling to provide the services the student requires due to the excess costs?

Ensure that charter school operators understand how to seek additional resources that are available for students with disabilities by including clear details in the charter agreement. The LSS retains responsibility for any and all costs associated with special education, including costs associated with a child with significant disabilities.

Note: Revisions to IDEA passed in 2004 permit states to establish risk pools to assist LSSs in addressing the needs of "high need children with disabilities. Contact MSDE to see if such a resource exists in the state and advise schools you authorize about their eligibility for such funds.

If a charter school is required to make its facility accessible to an individual with a disability, whose responsibility is it to make the building accessible?

Responsibility to modify a facility, even in the event of unforeseen need, should be covered in the charter agreement between you and the charter school, and also articulated in the lease between the charter school and the owner of the facility. Strongly encourage charter operators to seek experienced legal counsel prior to signing any contracts to lease or purchase a facility for their school.

State or municipal codes generally dictate who is responsible for ensuring that public facilities are accessible to individuals with disabilities. However, given that you, as an authorizer, are ultimately responsible for ensuring that charter school operators fulfill their obligations outlined in their charter and comply with all applicable laws, it is well advised to take a proactive role in ensuring that facilities are accessible to individuals with disabilities in accordance with federal and State laws.

In the event that a charter school must make its facilities accessible to an individual with a disability, where should I direct its operator to obtain information about how to make facilities accessible?

- MUNICIPAL WEBSITES: most cities and counties post their municipal code, including regulations pertaining to implementing ADA, on their website. Familiarize yourself with county building and municipal codes.
- US DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS:
<http://www.ed.gov/about/offices/list/ocr/index.html?src=mr>
- AMERICANS WITH DISABILITIES ACT:
<http://www.usdoj.gov/crt/ada/adahom1.htm>

Who is responsible for providing transportation to students with disabilities who enroll in a charter school.

The Maryland charter schools law is silent on the issue of student transportation. However, non-discrimination requirements dictate that, if the LSS provides transportation to children without disabilities, then it must provide transportation on the same basis for those with disabilities. In addition, if a student's IEP has transportation as a related service, then the child is entitled to receive that service. Issues related to transportation should be covered in the charter agreement, e.g., accommodating a different starting time for the charter school.

3. OVERSIGHT, ACCOUNTABILITY AND RENEWAL

What is my role as an authorizer to hold charter schools accountable in the area of services to students with disabilities?

Once the charter school doors open and the students arrive, your responsibility shifts from granting charters to overseeing the schools and holding them accountable for the goals and objectives outlined in the charter agreement. The charter agreement is a performance contract. You are responsible for ensuring that

charter operators fulfill their responsibilities as articulated in that document. It is important that each charter school's specific level of responsibility for special education be included in the charter school accountability plan which should also be part of the charter agreement.

Do local school systems have any obligation to complete paperwork related to special education in the charter schools they authorize?

It is especially important that the charter agreement detail the role of the charter school and the LSS as it pertains to responsibility for all aspects of services to students with disabilities. The completion of paperwork is one example of such responsibilities. Others include service delivery, reporting requirements, procedures for evaluation, IEP development and maintenance including specific forms to be used, etc.

The LSS is responsible for oversight and ensuring compliance with the completion of paperwork. While holding the charter school accountable, the LSS should be available for technical assistance to ensure compliance.

Where or when is my role related to accountability formally articulated to the charter schools I authorize?

The charter agreement should include an accountability plan developed by the charter school that contains specific means by which you will assess the degree to which the charter school is fulfilling its goals related to students with disabilities. The plan may include or suggest a site visit when the school first opens; quarterly or annual submission of reports pertaining to enrollment, achievement and finance; annual site visits; and, eventually, a comprehensive site visit associated with the charter renewal process.

Since data collection and documentation are important aspects of IDEA along with NCLB, what types of data and documentation regarding children with disabilities should I recommend that charter schools collect and report?

Charter schools' responsibility to collect and report data regarding special education is dictated by the charter school's legal status and its agreement with the LSS. Data and documentation are two major accountability tasks. While state charter laws may release charter schools from some requirements, these schools are generally obligated to collect and report much of the same information that all public schools must report, such as statistical data on students, results of standardized tests and financial information. Examples of special education data and documentation that a charter school must compile include student counts as well as more procedural documents that would be reviewed as part of special education monitoring. Develop a clear procedure for including charter schools in your communication strategies with all other schools in your system. As already mentioned, these details should be specified in the charter agreement.

What type of diploma do students enrolled in charters receive and what do charter schools need to know about participating in district/state assessment requirements, Maryland state diploma requirements and certificates of completion?

Students who attend charter schools will be entitled to receive a diploma from the local school system. It is important that system requirements for graduation be delineated in the charter agreement in order to ensure that students in the charter school will be appropriately prepared. This includes assessments as well as alternate requirements.

What should I inform charter schools about the federal and state special education monitoring processes?

The federal Office of Special Education Programs (OSEP) monitors every state on its compliance with IDEA requirements. Maryland must monitor how its LSSs comply. Charter schools are held accountable for special education in the same manner as all public schools: they must demonstrate that they comply with IDEA.

Ensure that charter schools understand the level at which they will be involved in special education monitoring and their responsibilities for the process. Monitoring visits do not include all schools within a LSS every time, but rather a sample of schools. As a result, charter schools may or may not be visited as a part of the state monitoring of the LSS. However, the LSS will be held accountable for the policies and processes implemented at the charter school as demonstrated by the data the district maintains. Therefore, authorizers must be prepared for collecting data on the implementation of special education in the charter schools they oversee.

Should I consider special education part of the charter renewal process?

Special education and, specifically the performance of students with disabilities, should be considered as a regular part of the school's progress toward meeting its overall goals and not an afterthought. Failure to fulfill obligations related to special education could be a criterion contributing to non-renewal. Guidelines for renewal should be explicitly articulated in the charter contract. A key factor that you may want to assess when reviewing a renewal is whether charter schools have been the subject of any informal or formal complaints related to special education service delivery or procedures. While complaints can arise from a variety of issues separate from the quality of special education services provided, multiple complaints should raise a red flag at renewal time. Multiple or persistent complaints may be an indication of a substantive failure to provide a free appropriate public education to students with disabilities. Low enrollment of students with disabilities in a charter school may serve as an indicator that triggers further inquiry regarding enrollment practices and questions regarding "counseling-out."

4. NON-RENEWAL, REVOCATION AND RELINQUISHMENT

What is the meaning of the terms non-renewal, revocation and relinquishment as used in this Primer?

- NON-RENEWAL is what occurs when a charter school seeks renewal and the authorizer does not grant the charter school a new charter (or renew its current charter). As a result of not having its charter renewed, the charter school loses its authority to operate and can no longer exist as a public school.
- REVOCATIONS occur when an authorizer proactively (prior to a regular renewal process) removes or terminates a school's charter and consequently, its legal authority to operate as a public school because the charter school has failed to meet the obligations articulated in its charter or contract with the authorizer.
- RELINQUISHMENT is a voluntary release or surrender of an authorized charter by the charter school's governing board, in contrast to a revocation, which is initiated by an authorizer. Relinquishments may occur either prior to, or after, a school's opening.

If a charter school ceases to exist, what has to be considered relative to students with disabilities?

To ensure appropriate procedures will be followed in the event of a closure, require that specific responsibilities for student records and the allocation of other school property are addressed in the application process and subsequently codified in the school's charter or contract. When a charter school is closed, the charter school board has an obligation to ensure that student records are sent to the school to which students will be transferred. In instances where the charter school is part of the LSS, the responsibility to maintain student records may revert to the district in which the charter school was located. Authorizers should work with boards of closed charter schools to ensure that records are handled appropriately. If there is no known school of transfer for the child, seek counsel from the MSDE regarding the appropriate transfer of student records.

You will also need to ensure that there is a specific accounting for special education funds. Special education programs receive funding from federal, state and local sources. As such, dismantling a special education program requires careful accounting of how special education dollars were spent and the disposition of materials and equipment purchased with special education dollars.

In the case of revocation or relinquishment, how should charter schools dispose of any special equipment that was purchased for students with disabilities?

In general, special equipment purchased for a student with a disability should follow the child to his or her next public school placement or alternatively, be returned to the LSS that is the student's district of residence. Disposing of equipment purchased with federal special education dollars is dictated by federal requirements that may be

different from what is typically articulated in a charter contract. Check state and federal requirements for disposal or transfer of equipment purchased with state or federal special education money. Consider explicitly spelling this out in the charter agreement

In the case of school closure, are there special procedures for handling special education files?

All students' educational records are protected by the Family Educational Rights Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 CFR Part 99 that stipulates how the records are to be handled appropriately. Charter school personnel are responsible for closing and preparing files for transfer to either the next school or the LSS or the Division of Special Education/Early Intervention Services in accord with these regulations. Information about FERPA is available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
Contact the LSS for specific information on how files should be handled for students leaving the charter school.

D. QUESTIONS AND ANSWERS ABOUT THE ROLES AND RESPONSIBILITIES OF PUBLIC CHARTER SCHOOL OPERATORS RELATED TO SPECIAL EDUCATION IN CHARTER SCHOOLS

1. PRE-AUTHORIZATION

Is it important to include students with disabilities as part of the discussion when we are developing the mission and vision of our school?

It is critically important to consider children with disabilities when you are developing the mission and vision of your charter school. Since your school will be a public school that must accept all students who apply, you should expect that you will enroll students with many different kinds of needs including students with disabilities. If this possibility is carefully considered in the initial planning process, it is much more likely your mission and vision statements will be crafted so that you can accommodate a diverse array of students thus minimizing the likelihood of subsequent problems.

Do we have any responsibility regarding the recruitment of students in order to be in compliance with federal civil rights laws?

Yes. When announcing your charter school or conducting outreach, you may not discriminate against students with disabilities. You should recruit students from all segments of the community served by your school using strategies that will not exclude students with disabilities. (More details are available in the publication from the U.S. Department of Education Office for Civil Rights online at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf)

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

Under Section 504 (of the Vocational Rehabilitation Act) and Title II (of the Americans with Disabilities Act), you may not categorically deny admission to students on the basis of religion, gender, race, sexual orientation, and disability. For example, you 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.

What is my role in the provision of special education services, including identification, policy and procedure as well as service delivery?

The pre-authorization planning phase – the time before you submit your application for a charter – is the ideal time to begin planning for all children who may become students in your charter including students with disabilities. As the charter school

operator, you are assuming the role of administrator and operator as well as the instructional leader for your future faculty, parents and students. Although you obviously cannot plan for each child before you begin to enroll students, you can give consideration to children with disabilities as you are developing the initial plans for your school including:

- instructional and behavioral strategies for struggling students,
- identification,
- policies, and procedures,
- service delivery options, and
- fiscal and human resources required to meet the needs of students with disabilities.

The vision you have for your school will be seen, heard and implemented by others involved in the planning. Therefore, as you plan for your school, it is critically important you consciously plan for including students with disabilities in every aspect of your charter school. Doing this now will not only avoid future problems, but will also result in more effective educational opportunities for all of your students.

How can we plan for students with a wide variety of different instructional and physical needs?

During your initial planning, it is important to give some thought to how your school's purpose and mission can be relevant to a wide range of students. For example, how can it be made relevant to students with learning disabilities, physical disabilities, or students who present behavioral challenges?

The Individuals with Disabilities Education Act (IDEA) 2004 is based on six major legal principles that should be considered in your planning to include students with disabilities:

- zero reject of children with disabilities;
- individualized education program (IEP);
- free appropriate public education (FAPE);
- least restrictive environment (LRE);
- due process and parental involvement; and
- non-discriminatory evaluation.

Taking time to consider these principles and how they relate to charter schools in your state will help you to develop a school that addresses the needs of all your students. Throughout your review, keep in mind that in Maryland charter schools are schools of their district.

What steps should we take when providing outreach information to parents?

You must make sure that a parent who might have a disability and/or who does not understand English has a meaningful opportunity to understand the outreach

information given about your charter school as effectively as other parents. Appropriate auxiliary aids and services must be made available whenever they are necessary to ensure effective communication with parents with disabilities. For example, if outreach materials are made available to parents, you could help to ensure appropriate access to the content of the materials by offering the materials in alternate formats such as Braille or on tape. If you conduct public informational meetings with parents or community groups, those meetings must be physically accessible to individuals with disabilities. Qualified interpreters, translations, or another effective means of communication must be provided if requested.

As we create a plan for our school, what are the components that we need to consider to effectively deliver special education services?

As you will soon learn, there are many components to consider in developing and implementing your special education services. While they will vary from school to school, several are common to all schools, including funding, space and facilities, human resources, curriculum, service provision, professional development, administration, transportation and special considerations. Most of these components need to be addressed in the charter agreement that you will negotiate with your authorizer after your charter application is approved, so it is essential that you prepare in advance for that critically important document. The checklist at the end of this section poses questions designed to help you consider how you will implement these important areas.

If the authorizer's application procedure only requires charter school applications to include an assurance that school personnel will abide by federal statutes related to special education, is there any need for me to expand upon this assurance?

Providing a blanket assurance may meet the letter of the school system policy about charter applications, but it can be subject to interpretation and will not help you work through the intricacies of including students with disabilities that will eventually be included in the negotiated charter agreement that you and the system negotiate after your application is approved. In the long run, your planning activities and application will be stronger if you address areas about the education of students with disabilities that are connected to your legal responsibility for special education in accordance with the Maryland charter school law.

What areas related to special education should we consider in preparing our application?

The following are a few critical areas for you to consider:

- Describe how you are aware of the responsibilities entailed in the general assurance;
- Articulate your plan regarding governance, service delivery, finance, and relationship to your local school system for special education matters;
- Explain how you plan to:

- implement instructional supports for all students
- identify, evaluate and serve children with disabilities;
- develop, review and revise IEPs;
- integrate special education into the general education program; and
- deliver special education and related services, and
- Project the cost of special education in your school including costs for:
 - child find, student identification, evaluation and planning; and
 - providing special education services.

See the attached checklist for more specific areas to be considered.

CHECKLIST OF SPECIAL EDUCATION
CONSIDERATIONS
FOR CHARTER SCHOOL OPERATORS

CHECKLIST OF SPECIAL EDUCATION CONSIDERATIONS FOR CHARTER SCHOOL OPERATORS*

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FUNDING FOR SPECIAL EDUCATION

Is there a formula for determining how much special education funding to include in our budget?

- What is the formula and how is it determined?
- What funds will we receive for special education services?
 - federal
 - state
 - local funds
 - fundraising

SPACE AND FACILITIES

- Where will we conduct student evaluations?
- Where will we conduct IEP meetings?
- Where can we store confidential student records?
- Where will we provide services?
- Where can related services personnel meet with individual students?
- Where will we store supplies and equipment used by students with disabilities (e.g., educational, medical, mobility, assistive technology)?
- Are entrances, classrooms, common areas and bathrooms accessible to individuals, including adults, with physical disabilities?
- Who will make repairs to ensure school remains accessible to students with disabilities?

HUMAN RESOURCES

- How many students will the school enroll?
- How many teachers will we need to hire?
- How many special education teachers will we need to hire?
- What kind of certification will the teachers need?
- Can we hire dual-certified teachers?
- Can we hire part-time or retired special education teachers?
- Can we use student teachers from area universities?
- What type of related services personnel will we need?
- How will we obtain these services and contract with these individuals?
- What other types of services will our school need?
 - legal counsel with special education expertise
 - accountants/bookkeepers/number crunchers

CURRICULUM

- What curriculum will my school offer?
- How does our curriculum align with the state's suggested curriculum or standards for student learning?
- How will we modify the curriculum to address the unique needs of children with disabilities?
- How can we train general and special education teachers to modify/adapt the curriculum for children with disabilities in inclusive classrooms?
- What types of assistive technology will be needed by our students?
- How will we provide special education related services (e.g., occupational and physical therapy, orientation and mobility, speech therapy)?
- What should our Child Find activities look like?

- How will we conduct student identification, evaluation and IEP team meetings?
- Who will participate in IEP development and implementation?
- What types of special staff or consultants will we need to implement our students' IEPs?
- How will we handle re-evaluations?
- How are we going to work with families?
 - How can we build partnerships?
 - What strategies can we use to be proactive in avoiding conflicts?

PROFESSIONAL DEVELOPMENT

- How will we provide my teachers with professional development?
- What type of specialized professional development will be needed by school staff (including teachers, paraprofessionals, administrators) to support children with disabilities?
- Does the LSS or the MSDE operate a professional development program or network that I can utilize?

ADMINISTRATION

- Who will administer the special education program?
- Who will be responsible for collecting, managing and reporting data related to children with disabilities?
- What equipment/supplies/programs will be needed to collect and store data and records? How will we obtain these? What training will be needed to use these efficiently and appropriately?
- Can we create our own system to administer special education or do we need to adopt the policies/procedures dictated by my authorizer, local district, other administrative unit (e.g., a Intermediate Unit or a Cooperative)?

TRANSPORTATION

- Will we provide students with transportation?
- Can we access district or state transportation dollars to offset costs?
- How will we meet transportation needs of students who receive transportation as a related service that is required by their IEP?
- How will we arrange transportation for a student in a wheel chair?

*Modification of checklist from "Primers on Special Education and Charter Schools", Developed by SPEDTAC, 2004
Service Provision

2. PREPARING FOR START-UP

We have concerns about our ability to deliver instruction to students with disabilities that will be in keeping with our curriculum. What should we do?

Hopefully, this is an issue you addressed during your pre-authorization activities as you developed your school's mission and considered potential accommodations that will help you to include students with disabilities in your school.

As you prepare for students, remember that concerns about instruction should be discussed at the time of the child's IEP team meeting and described in the child's individualized education program (IEP) so that all members of the team can contribute to, and understand, how the student will have access to the curriculum that is required by special education law. If your school's faculty needs help in accommodating the needs of a student who has a disability, you need to make provisions for professional development. One strategy that charter schools have found effective is incorporating into the IEP a provision for close monitoring of the student's adjustment in the first 30 school days at the charter school with a set date for the IEP team to review progress and make any necessary revisions.

Based upon our charter agreement with the local school system, and related collective bargaining agreements, we may be responsible for recruiting staff. How much flexibility do we have in special education?

First, your charter school must follow the MSDE charter school law and regulations regarding teacher certification. Section 9-105 of the Maryland charter school law states that : "A member of the professional staff of a public charter school shall hold the appropriate Maryland certification." Changes to IDEA in 2004 require that special education teachers meet the "highly qualified" standards of NCLB. It is essential that charter school operators who hire such personnel understand the requirements the MSDE has established. You must abide by the decisions of the IEP Team that has identified the type of services the child will need and consider the staffing implications for delivering those services. Check with the MSDE for specific information and guidance on relevant regulations in this area.

Does the state of Maryland allow for any exceptions for charter schools under this provision?

Maryland's state charter school legislation allows for charter schools to appeal to the state board of education for waivers to any state law or regulation, including special education teacher certification. Charter schools will not be granted waivers from any federal law related to the provision of special education. Each request for waiver of state law is reviewed and a decision for approval or denial is made on a case-by-case basis. Waivers provided at the local level should be contained in the charter agreement with the local school system.

Do we have to hire full-time special educators in our charter school?

The number of staff needed to implement services for students with disabilities is dependent on the number and needs of these students as reflected in their IEPs. Hiring of any staff must comply with the negotiated agreement with the local school system and the charter school. However, you will have to be creative and flexible in designing staffing loads. A few of the options include hiring faculty with dual certification (in special and general education), hiring consultants on an hourly basis, or contracting for special educators via a collaborative agreement with the local school system or other (private or charter) schools.

Is there a difference between certified educators and highly qualified educators?

Yes. Being licensed/certified is only one part of the requirements in the No Child Left Behind Act (NCLB) designed to ensure that teachers of core academic subjects be highly qualified. The IDEA applies this NCLB requirement to special education teachers who teach core subjects. Operators should consult the human resources division within their local school system or the designated contact.

Where can I obtain specific information on my state's certification requirements pertaining to special education in charter schools?

Basic information is available about Maryland certification requirements on the internet at www.marylandpublicschools.org/MSDE/divisions/certification/ . Particularly during the early days of your school, don't assume you understand certification requirements because you talked with a colleague in a neighboring state. There is extreme variability in certification requirements across states. Maryland, like many other states sponsors programs designed to assist individuals in obtaining special education certification. Become familiar with the various teacher recruitment and induction programs offered in Maryland. These programs may be rich sources of qualified teachers, including special education staff, for charter schools.

What should we do when a child with a disability applies to our school?

Since charter schools may not discriminate on the basis of a disability in determining eligibility for admission, your considerations for students with disabilities are to be the same as for students without disabilities.

It is critical that your charter school receives the records for a child who applies for admission from the child's previous school to ensure the IEP requirements are implemented. If you do not automatically receive the records, initiate a request to the previous school. Contacting the special education office of the previous LSS may also be helpful in securing the records. The special education office at MSDE can also help if you are not able to obtain a response from the previous school or LSS.

If we have concerns about our ability to meet the needs of a specific student with a disability, can we recommend other programs or schools?

It is typically not appropriate for you to suggest that the needs of a student with a disability may be better met in another school. During the course of student recruitment, it is expected that your school staff and representatives will share information with prospective students and families on the school's curriculum and services. It would also be appropriate to discuss the services and supports currently provided to students with disabilities and to explore potential strategies for meeting the needs of the prospective student. The initial focus should be on understanding the needed supports and services and identifying strategies for delivering them within the context of your school's framework. All issues about the appropriateness of the child's placement should be taken up with the child's IEP team. Additional information and clarification on appropriate strategies for addressing this issue may be found in the U.S. Department of Education Office for Civil Rights (OCR) document, *Applying Civil Rights Laws to Public Charter Schools: Questions and Answers*, available online at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

Are there requirements for physical access that apply when I select the facilities that will house our charter school?

Yes. Charter schools in Maryland may not deny persons with disabilities, including parents and students, the benefits of programs and activities offered at its schools because of inaccessible facilities. The selection of the facility for your charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity.

We rent our school building. Whose responsibility is it to make our school accessible?

Responsibility to modify a facility should be articulated in the lease between your school and the owner of the facility. It is very important that you seek legal counsel and consult with your local school system prior to signing any contracts to lease or purchase your facility.

Are there different legal requirements that apply to charter schools located in existing facilities as compared to newer facilities?

Yes. Generally for existing facilities, a charter school's programs and activities, when viewed in their entirety, must be readily accessible to individuals with disabilities. Both the Section 504 and ADA Title II regulations permit considerable flexibility in meeting this legal standard. For example, structural changes are not required in existing facilities if nonstructural methods are effective in achieving program accessibility. For new construction and alterations (i.e., construction began since June 1977), Section 504 and ADA Title II require that a new or altered facility (or the part that is new or altered) must be readily accessible to, and usable by, individuals with disabilities.

What impact will accessibility requirements have on our operations?

You must make sure that a child with a physical disability has access to every part of the new building or the parts that are newly altered. For example, if your charter school is in a new building, all parts of the building including a third-floor chemistry lab must be accessible for use by persons with disabilities. In contrast, if your charter school is in an existing facility, you might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location like the first floor. However, the specific federal, state and local requirements on this issue are very complicated and you should obtain legal counsel and consult with your local school system when acquiring a facility to house the charter school. All charter school facilities must meet all federal, state, and local health, and safety requirements.

Where can we obtain information and technical assistance in making our school accessible?

- MUNICIPAL WEBSITES: most cities and counties post their municipal code, including regulations pertaining to implementing ADA, on their website. Familiarize yourself with county building and municipal codes.
- US DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS:
<http://www.ed.gov/about/offices/list/ocr/index.html?src=mr>
- AMERICANS WITH DISABILITIES ACT:
<http://www.usdoj.gov/crt/ada/adahom1.htm>

Check with these individuals/entities for technical assistance in determining what modifications need to be made and the appropriate approach to accomplish your desired goal

3. OPERATING A CHARTER SCHOOL

What special education services must a charter school provide?

The deliver of special education and related services should be outlined in the charter school agreement with their local school system. A strong collaborative relationship between the charter school and the local school system will support service delivery. The range of services and equipment may include related services, e.g., occupational and physical therapy, orientation and mobility training, adapted physical education, transportation, or assistive technology. Many charter schools have crafted creative solutions to providing services.

Our curriculum was selected specifically for students with a particular disability (e.g., deafness). What should we do to ensure we can include students with other disabilities or those who do not have a disability?

If students who enroll have disabilities different from what your school expected, each one must be considered individually so that their needs can be met. In each case, the involvement of your charter school staff with the IEP team is critical. The

need for prior planning to obtain special education capacity is obvious. Although it is impossible for a charter school to plan for every contingency prior to initial enrollment of students, general plans for a new charter school must include a grade-appropriate curriculum to be available for all students. Then, if a population with disabilities is targeted, adequate delivery strategies, personnel, tools and materials must be added for the expected needs.

A student with a significant cognitive disability has enrolled in our school. No one on our faculty has experience in this area. What should we do?

Just as any other public school is expected to do if a child moves in with an existing IEP, your charter school must either implement the child's IEP or convene the IEP team immediately to discuss appropriate options. As mentioned previously, one strategy that charter schools have found effective is incorporating into the IEP a provision to monitor the student's progress during the first 30 school days at the charter school with a set date for the full IEP team to meet, review the IEP, and make any necessary revisions. Ideally, charter schools should have someone on staff with knowledge of special education. Charter schools should also consult with the local school system for any needed technical assistance for school staff on IEP decision making.

Local school systems may choose to create other kinds of resources to support the charter schools within that system. One kind of support is special education cooperative which have formed in some states to provide technical support and resources to charter schools with children with significant or low-incidence disabilities. Some also provide direct services for these children.

May we limit the participation of students with disabilities to certain aspects of our school's program?

No. Consistent with civil rights laws, students with disabilities must be provided a range of choices in programs and activities that is comparable to that offered to students without disabilities. This includes an opportunity to participate in a range of nonacademic or extracurricular programs and activities offered at your charter school.

We plan to develop Individual Learning Plans for all of our students. Do we still have to develop IEPs for students with disabilities?

Yes. All students receiving special education services must have an IEP that is developed by an IEP team following the procedural requirements of IDEA and your state's special education law and regulations. The IEP may complement the plans your school will develop for all students. However, the IEP will be the legal, guiding document for all special education services provided to a student who has been determined to be a student with a disability under IDEA.

Are there special strategies we might use to attract and retain our personnel who work with children with disabilities?

While there is no special "fix," several strategies have proved effective in reducing turnover. These include creating a mentor system for new special educators, implementing a peer support program and implementing an open-door discussion practice. Increasingly, research shows that the primary reasons special educators leave their positions are paperwork responsibilities, feelings of isolation from colleagues, high caseloads and multiple responsibilities. Specific upfront discussions about their individual roles in fulfilling the school's mission will help them to understand your school and their ability to help you meet your goals. It is extremely important that you are in frequent contact with your special educators to gauge satisfaction and/or frustration and explore strategies to minimize areas of difficulties.

What types of professional development should we offer our staff regarding delivery of special education services?

In Maryland, the charter school legislation states that the State Board of Education will provide technical assistance to charter schools in the area of special education. Professional development in the area of special education may also be a collaborative effort between Maryland State Department of Education, local school systems, and the charter schools themselves. Funding to support these efforts from the local school system may be negotiated in the charter agreement with the local school system.

What type of professional development would benefit our board members and other volunteers?

Your charter school board members and other volunteers should be appropriately included in professional development opportunities. They will benefit from very focused, ongoing training in the charter school's responsibilities for students with disabilities as well as educational management issues. Given the strong charter school focus on parental involvement, it is important to reach out to parents and family members of students with disabilities to ensure they are part of the activities that involve all parents and meet their needs for information. Equally important, you, the operator, should take time to participate in ongoing professional development.

What should we do when our special education program costs more than the funding we receive from the local school system?

Lack of funds is not a legal reason for denying services to a child who is eligible for special education. The manner in which your charter school may seek additional support to pay for required special education services should be detailed in the provisions of your charter agreement.

Must charter schools provide transportation for students with disabilities?

The Maryland charter schools law is silent on the issue of student transportation.

However, non-discrimination requirements dictate that, if the LSS provides transportation to children without disabilities, then it must provide transportation on the same basis for those with disabilities. In addition, if a student's IEP has transportation as a related service, then the child is entitled to receive that service. It is important to note that there may be issues related to transportation that must be covered in the charter agreement, e.g., accommodating different starting time for the charter school.

What are our responsibilities to conduct "Child Find" activities?

IDEA requires each state to "have in effect policies and procedures to ensure that all children with disabilities residing in the State who are in need of special education and related services are identified, located, and evaluated" [CFR §300.125(a)1(i)]. States develop procedures that their local school systems must follow to carry out these responsibilities. However, a charter school does not have jurisdiction over a geographical area. Charter schools are responsible for children only when they are actually enrolled in the charter school. It is clear that all charter schools must conduct Child Find activities for their full student population so that children who may need special education are appropriately identified and, if necessary, referred for evaluation.

What should we do if a teacher or parent suspects a child might benefit from special education?

Parents and teachers must be given clear information about the procedures that will be followed in your charter school concerning the rights of a child to an evaluation for special education. Parents and teachers must also be fully aware of other services your school provides (e.g., a student assistance team to provide help) prior to a formal special education evaluation referral. Federal and state law and regulations contain numerous specific requirements related to procedural safeguards and your teachers, parents and board members should be made familiar with them.

Every charter school should have clear procedures in place for attending to the needs of a child who is not progressing or is presenting other kinds of problems. Putting such procedures in place should be a part of planning before start-up so that they do not have to be developed in a crisis situation.

How many special education forms and reports do we have to complete?

Your school's responsibility in this area will depend upon the provisions in your charter agreement with your authorizing system. Charter school staff will, at a minimum, participate in the IEP process to represent the charter school and provide progress information relative to the child's progress..

Regardless of your specific requirements, it is very important that you, as the charter operator, understand the nature of your school's responsibilities and ensure your entire charter school staff has a clear understanding of the reporting responsibilities

to avoid violations that might make the school vulnerable to non-compliance charges. Depending on your contract, state law, or linkage, your responsibilities may include identification evaluation, IEP development, monitoring, and student progress.

Who is responsible for the development of student IEPs?

In Maryland, local school systems are responsible for the implementation of special education services. Local school systems should work collaboratively with charter schools and define/articulate/specify in the charter agreement the roles and responsibilities of each entity for ensuring the appropriate delivery of special education and related services to students with disabilities.

Current IDEA 2004 requirements provide that IEPs are to be developed by a team whose membership includes a parent of the child with a disability, one regular education teacher of the child, one special education teacher of the child, an administrative representative of the LEA, individuals who can interpret the instructional implications of evaluation results, other individuals with knowledge and expertise regarding the child and (as appropriate) the child. The IDEA 2004 does allow that a member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree in writing that the attendance of such member is not necessary. The law also allows for participation in a meeting by conference call or other electronic means.

What does the IEP need to include?

The IEP is not to be a curriculum for the child. Rather it is to serve as a guide for how to "open the doors" to improve access to the general education curriculum and the necessary special education and related services that will allow the child to progress.

According to the IDEA 2004, an IEP for each child with a disability must include:

- a statement of the child's present levels of academic achievement, including how the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for non-disabled children) or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- a statement of measurable annual goals, including academic and functional goals designed to (a) meet the child's needs that results from the child's disability to enable the child to be involved in and make progress in the general education curriculum; (b) and meet each of the child's other educational needs that results from the child's disability; and (c) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

- a description of (a) how the child's progress toward the annual goals will be measured; and (b) when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other reports, concurrent with the issuance of report cards) will be provided.
- a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child (a) to advance appropriately toward attaining the annual goals; (b) to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and (c) to be educated and participate with other children with disabilities and non-disabled children in activities described in this section.
- an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular education environment and in the activities described in the paragraph above.
- a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments; and if the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of (a) why the child cannot participate in the regular assessment; and (b) the particular alternate assessment selected is appropriate for the child;
- the projected date for the beginning of the services and modifications and the anticipated frequency, location and duration of those services and modifications.

In addition, for children age 16 and above, there are requirements for addressing transition needs that must be addressed in the IEP process. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include: (a) appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (b) the transition services (including courses of study) needed to assist the child in reaching those goals.

Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of IDEA 2004, if any, that will transfer to the child on reaching the age of majority under §300.520.

Is there a specific form that must be used for IEPs?

Consult with your local school system to determine the specific plan for developing and handling IEP documents for students with disabilities who attend the charter school. This information should be included in the charter agreement.

Must an IEP be developed for every child with a disability?

Yes. An IEP must be developed for every student found eligible for special education services under IDEA 2004.

What is our school's responsibility when a student with a disability enrolls in another school?

As with any other child, when a student with a disability transfers to another school, you must ensure timely transfer of all records. At the point that the child is formally no longer enrolled in your charter school, your school no longer has a responsibility to provide services to the child.

4. ACCOUNTABILITY AND RENEWAL

What type of special education accountability provisions do we need to consider?

First and foremost, you need to address the requirements of your charter agreement with your local school system and the state charter school law. Stay in close contact with the Charter School Office and the Division of Special Education within the MSDE to learn of updates in IDEA and NCLB implementation and implications for your charter school. At a minimum, you will also need to be able to document specific outcomes of students with disabilities, fiscal practices related to special education, timelines related to development and implementation of special education services, qualifications of faculty and staff and resolution of parent complaints.

What types of data should we collect so we are able to complete required reports?

Your specific data reporting requirements should be included in your charter agreement. Most charter schools are required to submit essentially the same data and statistical reports as traditional school districts. Examples include enrollment accounting, program accounting, student performance data and financial reporting. Depending on state policies, there may be variability in the degree to which your school will be required to report data regarding special education. However, at a minimum you will need to be able to report data on all of your students disaggregated by the subgroups outlined in NCLB, one of which is students with disabilities. Keep these subgroups in mind as you are setting up your data collection and storage system, especially those related to assessments.

Even if your charter school has not begun enrolling students with disabilities, it is important to include provisions for special education in the development of data

collection and management information systems. This will strengthen your infrastructure and prepare you to provide effective special education services that meet the mandates of the laws.

Is there added accountability specifically for special education?

Yes. Operators must understand that charter schools have an added level of formal accountability related to special education. The U.S. Department of Education carries out an extensive monitoring of state department of education, and the MSDE carries out a formal monitoring process for each of its local school systems. Charter schools should contact their local school system for additional accountability requirements.

How is special education monitoring carried out in Maryland?

Special education monitoring involves a variety of procedures. For local school systems, the process starts with a self-assessment in which the local school system reviews its implementation of every special education requirement. The MSDE reviews the data, followed by a validation process. A report is written detailing the findings of the MSDE. The charter school may be required to work with their local school system to develop an improvement plan to address any noncompliant areas identified.

The local school system is responsible for seeing to it that any non-compliance found in the charter school is corrected. Also, when the U.S. Department of Education monitors the state, your school might be one of the schools randomly selected for visitation.

What resources are available to prepare my charter school to be successful in special education monitoring?

Technical assistance in this area may be obtained from the Quality Assurance and Monitoring (QAM) Office, Division of Special Education/Early Intervention Services, MSDE, other local school systems, other charter schools and national organizations. One strategy could include the use of monitoring mentors where an experienced special educator can assist your charter school in preparing for monitoring.

How do students with disabilities participate in the NCLB accountability system?

NCLB makes a point of including students with disabilities and special education programs in school assessment and accountability systems. Students receiving special education services including those with the most significant disabilities who participate in an alternate assessment system will "count" in the accountability formulas. Not only do they count - they can make a difference in your school's ability to meet criteria for "adequate yearly progress" and state-specific performance measures under the NCLB law. Talk with your colleagues, your authorizer and the

MSDE to identify effective strategies in helping students with disabilities to demonstrate progress.

How will special education be included in the renewal of our school's charter?

Throughout your renewal process, most authorizers will include some evaluation of your special education practices. These will most likely focus on financial, academic, personnel, facilities and data systems. Having your special education infrastructure in place and operating smoothly will prepare you well for your renewal activities.

Could failure to meet special education requirements be cause for not renewing our charter?

Yes. Lack of compliance with federal statutes (including special education) can result in revocation or non-renewal of a charter.

How do we know if our authorizer has specific renewal policies and processes that address special education?

If you're not sure.....ask! Hopefully this is an area you discussed with your authorizer during your planning, start-up and operational phases and is included in your charter agreement. However, if you're not sure, find out what requirements your authorizer will expect you to meet as a condition for renewal. Other charter schools that are authorized by the same entity may also be an invaluable source of information regarding renewal.

IV. CLOSING THOUGHTS

CLOSING THOUGHTS

Policy Tension

There is an overriding climate issue involving charter schools that must be taken into account, i.e., the policy tension between charter schools and special education that can give rise to conflict. The charter school concept is driven in part by the desire to allow educators the freedom to be innovative about teaching and learning, but this can be difficult to do while remaining in compliance with a highly prescriptive federal statute such as IDEA. In the area of special education, charter schools must juggle autonomy and compliance that at times can feel like fitting a square peg into a round hole.

One example of the tension between the autonomy of a charter school and federal special education law can be seen in the opposing pull between parental choice and the team decision making requirement in federal and state special education law. A central tenet of the IDEA is that a team made up of professionals and the parent determines what is in the best educational interest of the child. The nature and intensity of special education services and the setting in which they will be delivered rest with the Individualized Education Program (IEP) team.

Charter schools challenge that foundational decision-making principle of special education by asserting the primacy of parental choice. Because they have been created to offer educational choices to parents, charter schools assume that parents should be able to freely make choices about where and how their child is educated.

Thus, the foundation of parental choice is in tension with the notion of shared decision making that operates within special education. This tension is part of the climate for charter schools and its challenges must be understood by all involved. Should parents be allowed to enroll their child in a charter school even if the IEP team suggests that this is not the setting in which the child would be best served? Which tenet takes precedence—the right of the parents to choose the educational setting for their child, or the right of the IEP team to determine how and where a student with a disability may be best served?

Charter school authorizers, operators and board members must understand and acknowledge these tensions and strive to identify operational solutions. The challenge is to attain a balance that is appropriate to the issue, i.e., to deliver special education services in an innovative way that complies with federal special education law and to work together with parents as important members of the IEP team to determine the best educational services and setting for their child. The challenge for charter school educators is to be creative about how they serve students with disabilities in a way that preserves the students' right to a free appropriate public education.

Remaining Current

It is important to note that federal laws such as the Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act (amended by the No Child Left Behind Act) are subject periodically to mandated "reauthorization," that is, a Congressional review that usually brings changes. In addition, Maryland laws and regulations related to charter schools and special education may also be revised based on changes in federal regulations, or as the need dictates. Sometimes the changes are extensive and their effects evolve over time, as continues to be true of the implementation of the NCLB amendments adopted in 2002. So, it is imperative that all those involved with charter schools, especially MSDE personnel and local school system personnel, be prepared to provide the necessary technical assistance to charter school so they can access the most current legislative information and remain in compliance.

Keeping printed materials up-to-date and widely disseminated is a challenge. Modern technology, however, offers a solution that has been widely adopted—placing documents on the internet that will allow relatively easy revising/updating. It is critical that a MSDE maintains documents such as this primer to provide current and accurate information to those who need it. Using the internet as the major strategy for dissemination is the most efficient and effective means to accomplish this goal.

V. APPENDICES

- A. Charter School Resources
- B. Glossary (Acronyms and Definitions)
- C. Special Education Talking Points: New and Renewal Contracts for Charter Schools

A. CHARTER SCHOOL RESOURCES

CHARTER SCHOOLS RESOURCES

Charter school applicants should start by familiarizing themselves with the resources available on the MD Department of Education website (www.marylandpublicschools.org/MSDE/programs/charter_schools/overview).

The U.S. Department of Education charter school website provides extensive information about charter schools. <http://www.uscharterschools.org> . An overview of charter schools is provided, with links to several pertinent websites.

Another valuable site is the National Association of Charter School Authorizers (NACSA). www.charterauthorizers.org

A question and answer document entitled, Applying Federal Civil Rights Laws to Public Charter Schools (http://www.uscharterschools.org/pdf/fr/civil_rights.pdf) may be helpful in answering questions regarding how federal civil rights laws apply to charter schools.

One strategy that can provide relevant information for a state is to review the matrix on the legal identity of charter schools within the various states (see <http://www.edgateway.net/cs/spedp/query/q/2057>). The matrix can help state officials locate states that have similar laws. A review of the websites of those states can provide valuable information and/or ways to contact individuals who may be able to share applicable solutions.

While there is little research about best practices for authorizers, valuable information is available on the website (www.charterauthorizers.org) of the National Association of Charter Schools Authorizers.

Charter authorizers may require that charter applicants attend a brief introduction to the civil rights origins of the Individuals with Disabilities Education Act (IDEA). Examples of resources that an authorizer could make available to charter applicants are publications from the *Future of Children* available at http://www.futureofchildren.org/usr_doc/vol6no1.pdf, or Education Week's IDEA 25: Progress and Problems at http://www.edweek.com/sreports/special_reports_article.cfm?slug=idea.htm

For general information about NCLB, see the U.S. Department of Education website at: <http://www.ed.gov/nclb/landing.jhtml>

The following document is an example of technical assistance materials related to special education for charter school developers. This document might be informative to authorizers interested in developing similar materials: **Colorado Department of Education, Charter Schools Guidebook**
http://www.cde.state.co.us/index_charter.htm

See a sample statement from Colorado as an example of how a charter applicant might articulate its plan to provide special education. (Available at: www.edgateway.net/cs/spedp/print/uscs_rs/1960).

Information on classroom adaptations, accommodations and modifications is available from the National Information Center for Children and Youth with Disabilities online at <http://www.nichcy.org/pubs/bibliog/bib15txt.htm>

Maryland maintains detailed information about certification on its website at <http://certification.msde.state.md.us/>

Legal requirements regarding accessibility are extremely complex and stem from the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act. To read these laws and see documents regarding their implementation in public schools please see the following websites:

- Americans with Disabilities Act of 1990
<http://www.usdoj.gov/crt/ada/adahom1.htm>
- Section 504 of the Rehabilitation Act of 1973
<http://www.504idea.org/Select504.pdf>
- ADA and Section 504, Kids source
<http://www.kidsource.com/kidsource/content3/ada.idea.html>

For a more detailed explanation regarding access to charter schools for students with disabilities, see the OCR document *Applying Federal Civil Rights Laws to Charter Schools*, at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

- US DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS:
<http://www.ed.gov/about/offices/list/ocr/index.html?src=mr>
- AMERICANS WITH DISABILITIES ACT:
<http://www.usdoj.gov/crt/ada/adahom1.htm>

Information about FERPA is available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Details regarding strategies for ensuring that students with disabilities are not excluded are available in the publication from the U.S. Department of Education Office for Civil Rights online at http://www.uscharterschools.org/pdf/fr/civil_rights.pdf

Technical Assistance and Resources

Providing special education in charter schools, not unlike traditional public schools, is challenging for a variety of reasons, and amassing the capacity to deliver special education requires early and ongoing technical assistance related to the complex requirements stemming from IDEA. Charter schools can tap into a variety of networks to learn more about special education in general and issues related to special education in charter schools specifically. Following is a partial list of resources that authorizers should be familiar with and to which they may direct potential charter applicants.

Governmental Agencies and Offices

- **LOCAL SCHOOL SYSTEM (LSS):** States delegate their responsibility for providing a free appropriate public education to local education agencies. As part of this responsibility, a LSS generally offers district schools technical assistance in the form of documents and training. Many districts maintain websites with abundant resources related to special education. Each local school system maintains a Special Education Citizen Advisory Committee (SEAC). The SECAC provides guidance to the local systems regarding service delivery and unmet community needs. District special education technical assistance can be invaluable to charter developers interested in learning more about special education.
- **MARYLAND STATE DEPARTMENT OF EDUCATION (MSDE):** The MSDE is a rich source of general information regarding special education and in some cases, specific information regarding special education in charter schools. Maryland maintains a designated web page for charter schools (www.marylandpublicschools.org/MSDE/programs/charter_schools/overview) and a web page for special education. (www.marylandpublicschools.org/MSDE/divisions/earlyinterv/).
- **MID-SOUTH REGIONAL RESOURCE CENTER:** The Mid-Source Regional Resource Center and the Federal Resource Center are federally funded projects that provide consultation, technical assistance and training to state educational agencies and through them to local educational and other appropriate agencies. You can access links to the Federal Resource Center and to each Regional Resource Center at <http://www.federalresourcecenter.org/frc/rffc.htm>
- **U.S. DEPARTMENT OF EDUCATION (ED):** Several offices in the U.S. Department of Education maintain websites that may be helpful to charter school applicants. The Office of Special Education Programs (OSEP) maintains a Technical Assistance and Dissemination web page that provides links to a variety of resources related to special education at <http://www.ed.gov/about/offices/list/osers/osep/index.html> Another ED office that has more general resources for charter schools is the Office of Innovation and Improvement at <http://www.ed.gov/about/offices/list/oii/index.html?src=mr>

Information about the No Child Left Behind Act (NCLB), a law that all charter schools must understand is available at <http://www.ed.gov/nclb/landing.jhtml?src=pb>

National Special Education Networks

The following is a list of resources to learn more about special education in general and issues related to special education in charter schools specifically.

- **NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION:** NASDSE's website provides a wide array of special education resources including a copy of the final report of Project SEARCH, a national study on special education in charter schools and documents on critical issues in special education produced by NASDSE's Project Forum. <http://www.nasdse.org>
- **COUNCIL FOR EXCEPTIONAL CHILDREN (CEC):** CEC is the largest international professional organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities and/or the gifted. CEC sets professional standards, provides professional development and helps professionals obtain conditions and resources necessary for effective professional practice. <http://www.cec.sped.org>
- **NATIONAL INFORMATION CENTER FOR CHILDREN AND YOUTH WITH DISABILITIES (NICHCY):** NICHCY is an information and referral center that provides free information on disabilities and disability-related issues. Children and youth with disabilities (birth to age 22) are NICHCY's special focus. <http://www.nichcy.org>
- **PARENTS' PLACE OF MARYLAND, INC.:** This agency is one of the network of Parent Training and Information Centers and Community Parent Resource Centers work with families of children and young adults from birth to age 22 with all disabilities. They provide training, information, and assistance to families to advocate for their students. <http://www.dssc.org/frc/TAGuide/pti/md.htm>
- **FAMILIES INVOLVED TOGETHER (FIT):** This center staffed by ordinary parents helping each other, provides advocacy, education and peer support for families of children with special emotional, developmental and educational needs. <http://www.familiesinvolved.org/>
- **PARENT ADVOCACY COALITION FOR EDUCATIONAL RIGHTS (PACER):** PACER is a parent advocacy organization that has a number of projects, one of which is the Technical Assistance Alliance for Parent Centers that supports a unified technical assistance system for the purpose of developing, assisting and coordinating Parent Training and Information Projects and Community Parent Resource Centers under the IDEA. This project is funded by the U.S. Department of Education, Office of Special Education Programs and consists of

1 national center and 6 regional centers. The project is funded to strengthen the connections to the larger technical assistance network and fortify partnerships between parent centers and state education systems at regional and national levels. PACER's website has a variety of resources developed to assist parents of children with disabilities and may be helpful in informing charter school operators regarding their obligations to parents of children with disabilities.

<http://www.pacer.org>

- **SPECIAL EDUCATION NEWS:** This private newsletter provides in-depth, up-to-date news related to educating students with disabilities.
<http://www.specialednews.com>
- **SPECIAL EDUCATION LAW:** This resource provides up-to-date information on judicial and legislative decisions concerning special education.
<http://www.specialedlaw.net>

State and National Charter School Networks

- **MARYLAND CHARTER SCHOOL NETWORK:** This network offers technical assistance and advocacy to all charter school stakeholders. Contact mcsn@mdcharternetwork.org for more information.
- **NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS (NACSA):** This organization renders support and technical assistance to those who sponsor or authorize charter schools. <http://www.charterauthorizers.org>
- **U.S. CHARTER SCHOOLS WEBSITE:** This is a rich resource supported by the U. S. Department of Education. <http://www.uscharterschools.org>

B. GLOSSARY

1. Acronyms
2. Definitions

SPECIAL EDUCATION IN CHARTER SCHOOLS: A RESOURCE PRIMER FOR THE STATE OF MARYLAND

Glossary (Acronyms and Definitions)

Part 1: Acronyms

- **ADA** Americans with Disabilities Act
- **ALT MSA** Alternate Assessment for Maryland students with disabilities (certificate track for graduation)
- **AYP** Adequate Yearly Progress
- **ADHD** Attention Deficit Hyperactivity Disorder
- **CEC** Council for Exceptional Children
- **CFR** Code of Federal Regulations
- **COMAR** Code of Maryland Administrative Regulations
- **CSLC** Charter Schools Leadership Council
- **CSP** Charter Schools Program (of the U.S. Department of Education)
- **DSE/EIS** Division of Special Education/Early Intervention Services
- **ED** U. S. Department of Education
- **ESEA** Elementary and Secondary Education Act
- **FAPE** Free appropriate public education
- **FERPA** Family Educational Rights and Privacy Act
- **FRC** Federal Resource Center
- **504** Section 504 of the Rehabilitation Act of 1974
- **HOUSSE** High, Objective, Uniform State Standard of Evaluation
- **HSA** High School Assessment
- **IDEA** Individuals with Disabilities Education Act
- **IEP** Individualized education program
- **IFSP** Individualized Family Service Plan
- **LEA** Local education agency (school district)
- **LSS** Local School System (Maryland term for LEA)
- **LRE** Least restrictive environment
- **MSA** Maryland State Assessment
- **MSDE** Maryland State Department of Education
- **NACSA** National Association of Charter School Authorizers
- **NAEP** National Assessment of Education Progress
- **NASDSE** National Association of State Directors of Special Education
- **NCLB** No Child Left Behind Act - the most recent reauthorization of the Elementary and Secondary Education Act (**ESEA**)
- **NICHY** National Information Center for Children and Youth with Disabilities
- **OCR** Office for Civil Rights
- **OESE** Office of Elementary and Secondary Education
- **OSEP** Office of Special Education Programs
- **PACER** Parent Advocacy Coalition for Educational Rights
- **PCSP** Public Charter School Program (Administered by the U.S. Department of Education)
- **RRC** Regional Resource Center
- **SEA** State education agency

Part 2: Definitions

ACCOMMODATIONS

Changes in the administration of an assessment, such as setting, scheduling, timing, presentation format, response mode, or others, including any combination of these, that do not change the construct intended to be measured by the assessment or the meaning of the resulting scores. Accommodations are used for equity, not advantage, and serve to level the playing field. To be appropriate, assessment accommodations must be identified in the student's Individualized Education Program (IEP) or Section 504 plan and used regularly during instruction and classroom assessment.

ACHIEVEMENT TEST

An instrument designed to efficiently measure the amount of academic knowledge and/or skill a student has acquired from instruction. Such tests provide information that can be compared to either a norm group or a measure of performance.

ADEQUATE YEARLY PROGRESS

Adequate Yearly Progress (AYP) is the minimum level of improvement that states, school districts and schools must achieve each year. It is an individual state's measure of yearly progress toward achieving state academic standards required by NCLB.

ALTERNATE ASSESSMENT

An instrument used in gathering information on the standards-based performance and progress of students whose disabilities preclude their valid and reliable participation in general assessments. Alternate assessments measure the performance of a relatively small population of students who are unable to participate in the general assessment system, with or without accommodations as determined by the IEP Team.

ASSESSMENT

The process of collecting data in accordance with COMAR 13A.05 to be used by the IEP Team to determine a student's need for special education and related services.

AUTHORIZER

The office or organization that accepts applications, approves, exercises oversight and, after the period of approval, decides on renewal or revocation of a charter school. The MD charter school law uses the term, "Public Chartering Authority" which is designated as a local/county board of education. A "Secondary Public Chartering Authority" is the State Board acting in its appeal review capacity or as the Public Chartering Authority for restructured schools.

CHARTER

In MD, a charter is a formal agreement or contract entered into by a chartering authority and an applicant who is statutorily approved applicant.

CHARTER APPLICATION

In Maryland, the application to establish a charter school is the mechanism through which an applicant explains in detail its plans to establish and operate a school. The chartering authority may assist the applicant in understanding the application process, but the applicant has responsibility of completing the process.

CHARTER SCHOOLS

Charter schools are independent public schools designed and operated by educators, parents, community leaders, educational entrepreneurs and others. In Maryland they are authorized by local school systems (LSSs) who monitor their quality and effectiveness but allow them to operate outside of the traditional system of public schools.

Maryland charter school laws defines a charter school as follows:

"Public charter school" means a public school that:

- (1) is nonsectarian in all its programs, policies and operations;
- (2) is a school to which parents choose to send their children;
- (3) is open to all students on a space-available basis and admits students on a lottery basis if more students apply than can be accommodated;
- (4) is a new public school or a conversion of an existing public school;
- (5) provides a program of elementary or secondary education or both;
- (6) operates in pursuit of a specific set of educational objectives;
- (7) is tuition-free;
- (8) is subject to federal and state laws prohibiting discrimination;
- (9) is in compliance with all applicable health and safety laws
- (10) is in compliance with § 9-107 of this title;
- (11) operates under the supervision of the public chartering authority from which its charter is granted and in accordance with its charter and, except as provided in § 9-106 of this subtitle, the provisions of law and regulation governing other public schools;
- (12) requires students to be physically present on school premises for a period of time substantially similar to that which other public school students spend on school premises; and
- (13) is created in accordance with this title and the appropriate county board policy.

CHILD WITH A DISABILITY (*See Student With a Disability.*)

EVALUATION

Evaluation means the process of reviewing:

- Information from parents;
- Existing data; and
- Results of assessment procedures used to determine whether a student has a disability, and the nature and extent of the special education and related services that the student needs.

Evaluation means a review at a meeting of the IEP team, and other qualified professionals, as appropriate, in accordance with federal regulations.

FREE APPROPRIATE PUBLIC EDUCATION

Free appropriate public education (FAPE) means special education and related services that:

- are provided at public expense, under public supervision and direction, and without charge;
- meet the standards of the Department, including the requirements of federal regulations and COMAR 13A.05; include preschool, elementary school, or secondary school education and are provided in conformity with an individualized education program (IEP).
- Include preschool, elementary, or secondary education; and
- Are provided in conformity with an IEP that meets the requirements of federal and COMAR 13A.05 regulations.

HIGH, OBJECTIVE, UNIFORM STATE STANDARD OF EVALUATION (HOUSSE)

A pair of rubrics developed by MSDE, allowing teachers to demonstrate competence in their subject area(s) without taking additional tests.

HIGHLY QUALIFIED TEACHER [IDEA 2004 §602(10)]

(A) IN GENERAL- For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also--

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS- When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS- When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS- When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

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

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA- A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

IEP TEAM

A group of individuals responsible for:

- Identifying and evaluating students with disabilities in accordance with federal and COMAR regulations;
- Developing, reviewing, or revising an IEP for a student with a disability in accordance with federal and COMAR regulations; and
- Determining the placement of a student with a disability in the least restrictive environment (LRE) in accordance with federal and COMAR regulations.

INDIVIDUALIZED EDUCATION PROGRAM

An individualized education program (IEP) is a written statement for a child with a disability that is developed, reviewed and revised in a meeting in accordance with IDEA and COMAR 13A.05 regulations.

INDIVIDUALIZED FAMILY SERVICE PLAN

The Individualized Family Service Plan (IFSP) is a written plan for providing early intervention services to infants and toddlers eligible under Part C of IDEA.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act (IDEA) is the major federal law related to special education that provides funding to states and sets specific procedural requirements for the identification and education of students with disabilities.

LEAST RESTRICTIVE ENVIRONMENT

The IDEA requires that, to the maximum extent appropriate, school districts must educate students with disabilities in the least restrictive environment (LRE), i.e., in the regular classroom with appropriate aids and supports (referred to as “supplementary aids and services”) along with their non-disabled peers in the school they would attend if not disabled, unless a student’s individualized education program (IEP) requires some other arrangement.

LOCAL EDUCATION AGENCY (LEA)

A local education agency (LEA) is a public institution (often referred to as a school district) that has administrative control and direction of one or more public elementary or secondary schools, and the term includes a public charter school that is established as an LEA under state law.

LOCAL SCHOOL SYSTEM (LSS)

Any of the 24 public school systems in Maryland responsible for providing a free appropriate public education to students with disabilities.

MEETING

A prearranged event when personnel of a public agency, a parent, and others who have knowledge of special expertise regarding the student, at the discretion of the public agency of the parent, come together at the same time and place to discuss matters related to the identification, evaluation, educational placement, and the provision of FAPE for a student with a disability.

Meeting does not include:

- Informal or unscheduled conversations with public agency personnel;
- Conversations on issues of teaching methodology, lesson plans, or coordination of service provision, if these issues are not addressed on the student’s IEP; or
- Preparatory activities of public agency personnel necessary to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

NATIONAL ASSESSMENT OF EDUCATION PROGRESS

The National Assessment of Education Progress (NAEP), conducted since 1969, is the only nationally representative and continuing assessment of what American students know and can do in various subject areas. Students with disabilities participate according to NAEP criteria. (For a copy of the criteria, see <http://nces.ed.gov/nationsreportcard/about/criteria.asp>).

OFFICE OF SPECIAL EDUCATION PROGRAMS

The Office of Special Education Programs (OSEP) is that section of the U. S. Department of Education that is responsible for the implementation of the IDEA. It carries out activities related to state eligibility for IDEA funds and monitoring state compliance with IDEA requirements.

RELATED SERVICES

Related services means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education.

Related services include:

- speech-language pathology;
- audiology;
- interpreting service
- psychological services;
- physical and occupational therapy;
- recreation, including therapeutic recreation;
- early identification and assessment of disabilities in children;
- counseling services, including rehabilitation counseling;
- orientation and mobility services;
- medical services for diagnostic or evaluation purposes;
- school health services;
- school nurse services designed to enable a student with a disability to receive a free appropriate public education as described in the IEP of the child;
- social work services in schools; and
- parent counseling and training.

SPECIAL EDUCATION

Specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals, in institutions, and in other settings. Special education includes speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; travel training, career and technology education, and instruction in physical education if the service consists of specially designed instruction.

STATE EDUCATION AGENCY (SEA)

A state education agency (SEA) is the component of state government that is primarily responsible for the state supervision of public elementary and secondary schools.

STUDENT WITH A DISABILITY

A student, ages three (3) through the end of the school year in which the student turns 21 years old.

Evaluated in accordance with federal and COMAR regulations as having:

- Autism,
- Deaf-blindness,
- Emotional Disturbance,
- Hearing Impairment, including deafness,
- Mental Retardation,
- Multiple Disability;
- Orthopedic Impairment;
- Other Health Impairment;
- Specific Learning Disability;
- Speech or Language Impairment,
- Traumatic Brain Injury, or
- Visual Impairment, including blindness.

Who, because of the impairment needs special education and related service.

SUPPLEMENTARY AIDS AND SERVICES

Aids and services and other supports provided in regular education classes or other education-related settings to enable a student with a disability to be educated with students without disabilities to the maximum extent appropriate.

TRANSITION SERVICES

For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, the IEP must contain a statement of the transition service needs of the student that focuses on the student's courses of study and, beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages. IDEA describes the components as services that promote movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. (See also (See also CHILD WITH A DISABILITY)

TRANSPORTATION

Services which include travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a student with a disability.

C. SPECIAL EDUCATION TALKING POINTS:
NEW AND RENEWAL CONTRACTS FOR
CHARTER SCHOOLS*

***Modification of document developed by
The Colorado Department of Education
201 East Colfax Avenue
Denver, CO 80203**

***SPECIAL EDUCATION TALKING POINTS:
New and Renewal Contracts for Charter Schools***

General Discussion Points

- _____ What special education services is the charter school already providing?
- _____ What special education services does the charter school plan to provide?
- _____ What special education services is the local school system (LSS) district providing?
- _____ What special education services does the LSS plan to provide? Where will those services be provided?
- _____ What LSS special education programs and services are centralized such that they will not be provided at the charter school?
- _____ How will special education services be funded?
- _____ Regardless of the funding mechanism, how will the LSS share its special education procedures, policies, guidelines, memoranda, and other specialized resource materials (e.g., IEP software and forms, procedural safeguards notice, etc.) with the charter school?
- _____ Regardless of the funding mechanism, how will the LSS include the charter school in the school district's communications to its schools regarding new and important special education information and updates?
- _____ Regardless of the funding mechanism, how will the LSS make in-service training and other professional development opportunities provided by the LSS to its special education personnel available to charter school personnel?
- _____ Regardless of the funding mechanism, how will the LSS make its special education staff available to the charter school for purposes of technical assistance?
- _____ Regardless of the funding mechanism, will the charter school make in-service training and other professional development opportunities provided by the charter school to its special education personnel available to LSS special education staff?
- _____ For those special education services that are provided by the

charter school, will the LSS provide to the charter school a list of resources, vendors and contacts in order for the charter school to purchase special education materials (e.g., assessment instruments, IEP software, etc.)?

_____ Will the LSS require its vendors to provide the same discounts to the charter school as are provided to the school district?

_____ For those special education services that are provided by the LSS, will the charter school be given the opportunity to participate in the hiring and/or selection of the LSS providers (special education teachers, related services providers, paraprofessionals) who will be assigned to the charter school?

_____ For those special education services that are provided by the charter school, will the LSS have the opportunity to review and comment on the charter school's service providers and other vendors?

_____ When a charter school requires legal advice regarding a special education matter, who will choose the attorney? What entity will be responsible for the resulting attorneys' fees and legal costs?

_____ How will the charter school report to the LSS required information regarding special education services and expenditures?

_____ How will pupil counts for special education funding be conducted?

_____ How will the LSS determine the charter school's legal compliance with federal and state special education laws?

Specific Discussion Points

Enrollment Procedures:

_____ How will the charter school make nondiscriminatory enrollment decisions involving children with disabilities?

_____ What procedures will the charter school use to determine whether it can serve a child with a disability?

_____ What communications will occur between the LSS's special education director and the charter school administrator when the charter school anticipates that it will be enrolling a child with a disability?

Procedures for Transfer Students:

_____ What communications will occur between the LSS's special education director and the charter school administrator when the charter school anticipates that it will be enrolling a newly transferred student on an IEP?

Initial Evaluations:

- _____ What entity will be responsible for obtaining informed parental consent for initial evaluations and re-evaluations?
- _____ What entity will be responsible for tracking special education referral, initial evaluation and re-evaluation timelines?
- _____ What entity will be responsible for conducting initial evaluations and re-evaluations?
- _____ If the charter school will be conducting initial evaluations and reevaluations, how will the LSS share with the charter school its assessment policies and procedures, and also its list of approved assessment instruments?
- _____ If the charter school will be conducting initial evaluations and reevaluations, how will charter school assessment personnel consult with LSS assessment personnel?
- _____ If the charter school will be conducting initial evaluations and reevaluations, how will the charter school obtain the necessary assessment instruments? (a) will the LSS share its approved assessment instruments with the charter school at no cost? (b) will the LSS provide the assessment instruments to the charter school at the LSS's cost? or (c) will the charter school independently obtain the assessment instruments? If so, will the LSS require its vendors to extend to the charter school any discounts that it affords to other schools in the LSS?
- _____ If the charter school will be conducting initial evaluations and reevaluations, will the LSS give charter school assessment personnel the opportunity to attend any in-service training in these areas that are sponsored by the LSS?

IEP Development/Review Meetings:

- _____ What communications will occur between the charter school and the LSS's special education director when IEP meetings are being scheduled?
- _____ What entity will be responsible for tracking IEP development and review timelines?
- _____ What entity will be responsible for preparing the required notices for IEP team meetings and related documentation?

_____ How will the LSS share its IEP software, forms and instructions with the charter school?

_____ What entity will be responsible for obtaining written parental consent for initial placement?

_____ What entity will be responsible for transition services and arranging for the attendance of other public agencies necessary for the implementation of transition services?

Related Services:

_____ When a child with a disability requires a related service, how will the related service be funded? Which entity will be responsible for providing the related service?

_____ When a child with disability requires transportation services, under what circumstances and how will this related service be funded? Which entity will be responsible for providing this related service?

_____ How will assistive technology needs be determined? When a child with a disability requires expensive assistive technology, such as the provision of a computer for use at home, how will this service be funded?

Programming/Placement:

_____ What special education services is the charter school providing or planning to provide?

_____ What special education services provided by the LSS can be provided at the charter school? What special education services provided by the LSS are centralized and not available at the charter school? How will the latter services be provided to students who attend the charter school if they are needed?

_____ How will the charter school provide curricular modifications and adaptations to students with disabilities in order to allow them to attend the school?

Extended School Year (ESY) Services_:

_____ If the IEP team determines that a child with a disability needs ESY services, what entity will provide those services?

State and Local Assessments:

_____ Does the LSS have policies, procedures or guidelines available to assist IEP teams in making decisions about a child’s participation in statewide or local assessments?

Disciplining Students with Disabilities:

_____ What discipline (suspension and/or expulsion) procedures will the charter school apply?

_____ What discipline (suspension and/or expulsion) will the LSS apply?

_____ Will the charter school develop its own expertise in conducting manifestation determination reviews or will it use LSS personnel? Will the LSS provide technical assistance when requested?

_____ When the IEP team is required to conduct a functional behavioral assessment and then develop a behavior intervention plan for a child with a disability, will the charter school develop its own expertise for these procedures or will it use LSS personnel? Will the LSS personnel provide technical assistance?

_____ To what extent will the charter school be able to utilize interim alternative educational settings (IAES) available in the LSS when a child with a disability engages in behavior involving dangerous weapons, illegal drugs or controlled substances?

_____ If the charter school believes that a child with a disability is a danger to himself/herself or others, what communications will occur between the charter school and the LSS in order for the charter school to access appropriate procedures, such as requesting an expedited hearing?

_____ When a charter school requires legal advice regarding a disciplinary issue involving a student with a disability, which entity will select legal counsel? Which entity will be responsible for the resulting attorneys’ fees and legal costs?

Programming Disputes Involving Parents:

_____ When a parent expresses disagreement with a proposed or existing IEP, what communications will occur between the charter school and the LSS?

_____ When a charter school requires legal advice regarding a special education dispute with a parent, which entity will select legal counsel?

Which entity will be responsible for the resulting attorneys' fees and legal costs?

_____ In those cases where the charter school is providing special education services, will the charter school carry liability insurance that will indemnify the school district for its legal costs in defending claims alleging that the charter school has violated federal and State regulations?

Section 504 Eligibility and Services:

_____ If the IEP team determines that a student is not eligible for services under the IDEA, what entity will be responsible for determining whether the child qualifies for educational services under Section 504?

_____ If a child qualifies for Section 504 educational services, what entity will be responsible for developing the Section 504 plan and the provision of appropriate educational services?

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