



Massachusetts Primer on Special Education and Charter Schools

Section I: General Information

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Section I: General Information

This information is intended for those readers who may not fully understand the legal status of charter school within the Massachusetts public education system, or who may not have a working knowledge of, or need a brief update on, federal special education laws and regulations.

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Part I: General Information

Part I provides an explanation of a charter school’s legal status within the Massachusetts public education system and a synopsis of federal laws that are most relevant to special education in charter schools. The information is intended for those who may not fully understand the legal status of charter schools within the Massachusetts public education system, or may not have a working knowledge of, or need a brief update on, federal special education laws and regulations.

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A. Charter School Legal Status and Linkage to a Local Education Agency

Charter schools must abide by federal special education laws and regulations because they are part of the public education system. However, the way this is carried out in practice depends on a charter school's legal identity and its linkage to a traditional local education agency (LEA) for purposes of special education. In Massachusetts, each Commonwealth charter school is its own LEA or school district for all matters pertaining to special education. Horace Mann charter schools are also LEAs, but may choose to work with the district in which they are located to share responsibility for special education. As LEAs, Commonwealth and Horace Mann charter schools must comply with federal and state special education laws and regulations.

B. Federal Laws Relevant to Special Education in Charter Schools

The following list and 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.

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

The federal laws and regulations that have most relevance for implementing special education are:

- Individuals with Disabilities Education Act (IDEA) <http://idea.ed.gov>
- No Child Left Behind Act (NCLB) <http://www.ed.gov/nclb>
- Section 504 of the Rehabilitation Act of 1973 (Section 504) <http://www.hhs.gov/ocr/504.html>
- Americans with Disabilities Act (ADA) <http://www.ada.gov>
- Family Education Rights and Privacy Act (FERPA) <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

2. Which federal agency is responsible for overseeing these laws?

The U.S. Department of Education (USED), 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 is enforced by the U.S. Department of Justice. The Office of Elementary and Secondary Education (OESE) manages the Elementary and Secondary Education Act, reauthorized as the No Child Left Behind Act of 2001 (NCLB). The Family Compliance Policy Office provides technical assistance for Family Education Rights and Privacy Act (FERPA) requirements.

3. What is the Individuals with Disabilities Act?

The Individuals with Disabilities Education Act-2004 (IDEA), is a federal special education law that requires states and public schools to provide students with disabilities with a free and appropriate public education and access to the general education curriculum. The educational placement of students with disabilities must be provided in the least restrictive environment and meet the unique needs of the students. For each eligible student, the school develops a written individualized education plan, documenting the special education services required by the student. The Massachusetts Department of Elementary and Secondary Education (ESE) has developed helpful tools and resources to assist educators in implementing selected provisions of IDEA that can be accessed at http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/#. The ESE *Administrative Advisory SPED 2007-1: IDEA-2004 Implementing Regulations* highlights

key aspects of the IDEA-2004 regulations which took effect on October 13, 2006. This administrative advisory is available at http://www.doe.mass.edu/sped/advisories/07_1.html.

4. What common terms and acronyms should I know?

The common terms are:

- IEP: A team of professionals and parents arrange for the student's evaluation, determine eligibility, decide on the individualized special education and related services for the student, and prepare an **individualized education program** containing student specific services that are reviewed at least annually. An IEP includes measurable annual goals, how the student will be included in state and district assessments, and how the student will access the general education curriculum in order to meet state's academic standards.
- FAPE: Students with disabilities are entitled to a **free and appropriate public education**.
- LRE: The **least restrictive environment** refers to placement in a setting that most closely resembles the regular classroom. Students with disabilities must have available to them a continuum of placements that range from fulltime in a regular classroom to a substantially separate placement. 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 education classroom.
- IEP Team: A group of persons, meeting participant requirements of federal special education law who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, and/or determine placement. The U.S. Department of Education's (USED) Office of Special Education Programs (OSEP) provides information on the requirements of the Individuals with Disabilities Act (IDEA) and is available at www.ed.gov/about/offices/list/osers/osep/index.html.

5. Does the Individuals with Disabilities Education Act include charter schools?

The Individuals with Disabilities Education Act (IDEA) affirms that students who attend charter schools are covered under this law. The law makes specific references to charter schools and includes:

- Students with disabilities who attend public charter schools and their parents retain all rights under IDEA.
- Charter schools are included in the definition of a local education agency (LEA) when they are established as LEAs by state law.
- A charter school that functions as its own LEA is responsible for ensuring that the requirements of IDEA are met.
- The state special education advisory panel must include a charter school representative.

6. Do students with disabilities need to be treated in a nondiscriminatory manner?

Yes. Section 504 of the Rehabilitation Act (Section 504) specifically prohibits discrimination solely on the basis of disability to public and private programs and activities that receive federal financial assistance, which includes charter schools. This protection extends not only to students covered under Section 504, but also to students who are eligible for special education services.

7. What protections does the Individuals with Disabilities Education Act provide if a parent disagrees with the school about special education?

The Individuals with Disabilities Education Act (IDEA) contains procedural safeguards and due process rights for parents in the identification, evaluation, and placement of their child. Parents

must be provided with prior written notice of these rights. The law put various procedures in place for resolving conflicts between parents and schools and requires that parents be notified of their right to access those procedures at least once a year, as well as at any 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.

8. Are there students with disabilities who are not covered by the Individuals with Disabilities Education Act?

Yes. To be eligible under Individuals with Disabilities Education Act (IDEA), students must meet the eligibility criteria for one or more of the specific disability categories as defined in the law. A student eligible for special education must have a disability and *on account of that disability*, be unable to access the general education curriculum unless they are provided with specialized instruction. Students who are not eligible under IDEA may still qualify for accommodations of some type under Section 504 of the Rehabilitation Act (Section 504).

C. Disability Rights and Access in Charter Schools: Section 504 of the Rehabilitation Act and the Americans with Disabilities Act

9. What is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) is a federal law that requires places of public accommodation to provide goods and services to persons with disabilities on an equal basis with the general public. Such public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. For schools specifically, the ADA requires that, as recipients of federal funds, public schools ensure that they operate programs and activities that are, when viewed in their entirety, readily accessible to handicapped persons. ADA resources and publications are available from the U.S. Department of Justice at <http://www.ada.gov>.

10. What is Section 504 of the Rehabilitation Act?

Section 504 of the Rehabilitation Act (Section 504) is a federal law that prohibits discrimination based on a disability, and applies to all school districts (including charter schools) as recipients of federal funds. Section 504 covers eligible students, employees, and other individuals with disabilities and requires that they be provided reasonable accommodations. An individual is considered eligible under Section 504 if they have a disability that substantially limits one or more major life functions. Examples of a major life function include, but are not limited to, hearing, seeing, walking, speaking, learning, breathing, or performing manual tasks.

11. How do Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Individuals with Disabilities Education Act differ?

Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) define disability much more broadly than the Individuals with Disabilities Education Act (IDEA). The IDEA specifically addresses access to education. Section 504 and the ADA 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 impairment, or who is regarded as having such impairment. Reasonable accommodations are required by Section 504 and the ADA. Section 504, however, specifically requires the provision of educational and related aids and services

designed to meet the individual educational needs of the student. Including Your Child, a guide for parents on IDEA, Section 504 and ADA, is available at <http://www.ed.gov/pubs/parents/Including/chapter3.html>.

12. What are examples of disabilities that may be covered under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act but not under the Individuals with Disabilities Education Act?

Students who have chronic illnesses such as diabetes or a physical impairment that may require the use of a wheelchair may be eligible for specific accommodations or services. These same students may not meet the Individuals with Disabilities Education Act (IDEA) eligibility criteria for special education because they may not require specially designed instruction. Such students are entitled to an evaluation and to a free and appropriate public education (FAPE) if they are found to meet the definition of "handicapped person" as specified in Section 504 of the Rehabilitation Act (Section 504). A Section 504 Accommodation Plan is usually developed for these students. The U.S. Department of Education document *Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* is available at <http://www.ed.gov/about/offices/list/ocr/504faq.html?exp=0>.

13. Are there requirements regarding physical accessibility of charter school facilities?

Yes. Pursuant to both Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) a local education agency (LEA), including a charter school functioning as an LEA, may not exclude persons with disabilities, including parents and students, from the benefits of programs and activities offered at the school because of inaccessible facilities. The *ADA Standards for Accessible Design* is available at <http://www.usdoj.gov/crt/ada/adastd94.pdf>.

D. Charter Schools and No Child Left Behind

14. What is the No Child Left Behind Act?

The No Child Left Behind Act of 2001 (NCLB) is the reauthorization of the Elementary and Secondary Education Act of 1965. NCLB is the education reform legislation passed into law on January 8, 2002. NCLB is built on four principles: accountability for results, more choices for parents, greater local control and flexibility, and an emphasis on implementing effective practices based on scientific research. The U.S. Department of Education NCLB website is <http://www.ed.gov/nclb>.

15. What parts of No Child Left Behind are particularly relevant to charter schools?

Charter schools are subject to the same No Child Left Behind (NCLB) accountability requirements as other public schools in a state, and their students must participate in the state assessment system. NCLB also requires that charter school teachers must be highly qualified as defined by the law. The Department of Elementary and Secondary Education (ESE) *Charter School Technical Advisory 03-2: The Impact of NCLB on Massachusetts Charter Schools* is available at http://www.doe.mass.edu/charter/tech_advisory/03_2.html.

16. What specific No Child Left Behind assessment requirements pertain to students with disabilities?

All students, including those with disabilities, must participate in the state's assessment and accountability system. A state's assessment system must be valid and accessible for use by students with disabilities and students covered under Section 504 of the Rehabilitation Act

(Section 504). The participation of students with disabilities in such assessments is covered in the Individuals with Disabilities Education Act (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 students who cannot participate in state and district-wide assessment programs even with accommodations.
- The IEP for all students with disabilities will specify how they will participate in state assessments.

It is important to note that a procedure for the inclusion of all students with disabilities in large scale assessments is a developing area of knowledge and practice. The National Center on Educational Outcomes provides extensive resources on this topic at <http://www.education.ummn.edu/nceo/>.

17. Must students with disabilities be included in No Child Left Behind school/district accountability reports?

Yes. As stated in No Child Left Behind (NCLB), Adequate Yearly Progress (AYP) by school districts, including charter schools, must be calculated by applying 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 eligible for special education, to be considered separately under certain conditions in determining whether a school has met AYP targets.

An important part of the NCLB regulations is known as "the one percent rule". When measuring AYP, states and school districts have the flexibility to count the "proficient" and "advanced" scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards—as long as the number of those proficient and advanced scores does not exceed one percent of all students in the grades tested. This rule applies to students with significant disabilities, and was added to the NCLB regulations in December 2003. The Department of Elementary and Secondary Education (ESE) issued a summary of that rule at <http://www.doe.mass.edu/mcas/alt/04statesum.pdf>.

"Students receiving special education services" is one of the subgroups for which NCLB requires disaggregated reports of assessment results. NCLB provides, however, 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.

18. What qualifications are required for special education teachers under No Child Left Behind?

Changes to the Individuals with Disabilities Education Act (IDEA) in 2004 require that special education teachers of core academic subjects meet the same highly qualified standards as all teachers under No Child Left Behind (NCLB). In accordance with IDEA, all special education teachers, must demonstrate subject matter competence in order to be considered highly qualified. A summary of the federal highly qualified special educator requirements may be accessed at <http://idea.ed.gov/explore/home>. The Department of Elementary and Secondary Education (ESE) *Charter School Technical Advisory 07-1: Teacher Qualifications in Massachusetts Charter Schools* clarifies the Massachusetts and federal professional qualification requirements and is available at http://www.doe.mass.edu/charter/tech_advisory/07_1.html.