

**Charter Schools and Special Education:  
Institutional Challenges and Opportunities for Innovation**

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## Abstract

*This paper explores the dual institutions of charter schools and special education, and the unique issues that arise when an institution whose organizational structure is grounded in autonomy is forced to comply, by law, with significant regulatory demands. An understanding of the historical origins of each institution enables a thoughtful analysis of the observed challenges for charter schools in serving children with special needs in the present era, including legal constraints, enrollment practices, and funding disparities. Several successful organizational practices operating at this critical intersection are highlighted, and policy recommendations and directions for future research are discussed.*

Keywords: charter schools; special education; Individuals with Disabilities Education Act (IDEA)

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*“Obviously a society to which stratification into separate classes would be fatal must see to it that intellectual opportunities are accessible to all on equable and easy terms.”*

*– John Dewey, Democracy and Education (1916)*

## **I. Introduction**

As institutions, charter schools and special education are seemingly aligned in their intended goals: serving the unique needs of a particular subgroup of students with a tailored educational model. Yet, the two take different approaches to education in ways that often put them at odds. The concept of charter schools is grounded in autonomy, a belief that freedom from regulation will enable schools to best serve the needs of local student populations. Special education laws, alternatively, use policy and regulation to ensure compliance with hard-fought civil rights on behalf of students with special needs. What happens, then, when autonomy is forced to confront regulation? President Bill Clinton famously described charter schools as “schools that have no rules,” but in reality, as public institutions charters are forced to comply with all laws governing disabled students (Garda, 2012, p. 660). Educating students with disabilities in compliance with federal laws may be one of the most complex challenges facing public charter schools today (Bulkley & Wohlstetter, 2004).

This unique challenge, though not new, has caught the eye of philanthropists in recent years. In 2018, the Bill and Melinda Gates Foundation made four grants exceeding \$2 million in total, related to helping charter schools address the needs of students with disabilities (Angelov & Bateman, 2016). How charters may use additional funds to better address students’ needs—and how they will seek to use their autonomy and ability to innovate within the confines of federal regulations—remains to be seen.

This paper will explore the overlap of these two educational institutions, discussing how their respective origins beget many of the challenges seen today, and highlighting some of the promising opportunities for future institutional alignment. Sections II and III begin with brief histories of each institution. Section IV offers a more in-depth analysis of the institutional pressures that create tension for charter schools in serving students with special needs. Section V describes some of the resulting failures caused by these pressures, including enrollment discrimination against students with disabilities, legal issues driven by attempts to retrofit laws written prior to the existence of charter schools, and funding challenges. Section VI concludes with a few current examples of innovation and a brief discussion of future needs for the field.

## **II. History of Charter Schools**

The conception of charter schools may be traced back two generations to Kenneth Clark, who wrote in an article entitled “Alternative Public School Systems” in *The Harvard Educational Review* in 1968 of the “pervasive and persistent” inefficiencies in the public school system and the need for a different form of school governance (Clark, 1968, p. 101). Though Clark never used the term “charter school,” his argument amplified the call for school choice and privatization (Abrams, 2019). Clark argued issues of increasing high school dropout rates, large numbers of special education students, and—most critically—the inefficiencies associated with segregation, could only be rectified by a shock to the current system in the form of competition. In calling for such reform, Clark was far from alone among progressive educators (Forman, 2005). Without competition, Clark argued, public schools had no need to improve, and the stakes for improvement were high. Mincing no words, he wrote:

“Even the public discussion of some of these possibilities might clear away some of the dank stagnation which seems to be suffocating urban education today... If we succeed in finding and developing these and better alternatives to the present educational inefficiency, we... will have saved our civilization through saving our cities” (Clark, 1968, p. 113).

These same educational inefficiencies were highlighted in *A Nation at Risk*, released by President Reagan's National Commission on Excellence in Education in 1983. The report contributed to the growing national consensus that American public schools were failing to educate students well (Reichgott Junge, 2012). It is within this reform-minded context, as well as the growing political movement towards governmental deregulation, that charter schools were born (Cohen, 2017).

In 1974, Ray Budde outlined an idea for a novel contract arrangement between innovative teachers and the public school system, defining for the first time the term "charter school" (Angelov & Bateman, 2016). This decentralized structure, Budde argued, would give teachers a high level of autonomy over school operations in exchange for increased accountability for student achievement. Budde elaborated on this new model of education governance in his 1988 book, *Education by Charter: Restructuring School Districts*, and is widely credited with the initial concept for today's charter school structure (Angelov & Bateman, 2016). The same year, Al Shanker, then-President of the American Federation for Teachers, put his weight behind the concept of charter schools in a speech at the National Press Club and a subsequent column in the *New York Times* entitled "A Charter for Change" (Reichgott Junge, 2012). For both Budde and Shanker, charter schools were not to operate as alternatives to public schools but rather as innovative institutions within the public system employing unionized teachers guided by alternative pedagogical strategies (Kahlenberg, 2007; Abrams, 2019).

Minnesota was the first state to pass charter school legislation and in doing so broke with Budde and Shanker in permitting school leaders to operate outside the public system. After leading the way in initiating voluntary open enrollment between districts in 1987, Minnesota authorized charter schools in 1991 (Reichgott Junge, 2012). California followed suit in 1992, and today 44 states have enacted charter school laws (NCES, 2019). Roughly 3 million out of the 50 million public school students in the United States attend one of more than 7,000 charter schools that exist today (David & Hesla, 2018).

Since Minnesota's law passed in 1991, state charter laws have become increasingly nuanced. In contrast to Budde's original conception, charters today are contracts between authorizers and nonprofit

boards seeking permission to operate schools of choice (Angelov & Bateman, 2016). Charters set performance expectations and a timeline by which they should be met. Initial charters are typically established for a period of five years, at which point they are up for either renewal or termination by the authorizing body (ECS, 2014). The key idea is the exchange of accountability for autonomy in order to foster higher quality education and the possibility of innovation for students who enroll by choice. State laws establish who is allowed to grant charters, and the extent to which charter schools are subject to state and local education regulations.

### **III. History of Special Education**

References to disabled individuals are observed as early as the Greek and Roman mythologies, which describe a wide range of human behavior (Winzer, 1993). Prior to the 1700s, individual deviation was not tolerated, and those who differed were exiled by all facets of society: legal scholars denied them civil rights, theologians excluded them from the church, and philosophers pronounced them incapable of any form of improvement (Winzer, 1993). The mid-eighteenth century was a turning point for individuals with disabilities in Europe. The broad intellectual movement of the Enlightenment stimulated new ideas and perceptions about the disabled, and the growth of special education became part of a wider movement involving the dissolution of social strata and the belief that all members of a society were equal, regardless of ability (Winzer, 1993). By the end of the eighteenth century, special education in Europe was considered an ingrained component of public education.

Special education's development in America followed a different path, though it was still modestly influenced by Enlightenment teachings. Americans responded to the acceptance inherent to Enlightenment values believing something must be done for the disabled members of society, but saw the education of exceptional individuals primarily as an opportunity to bring them to the Bible and instill in them patriotic notions of duty (Winzer, 1993). These goals were remarkably similar to those espoused by proponents of the broader Common School movement in America, who sought control over an

increasingly diverse populace amid concerns of social cohesion (Rebell, 2018). Indeed, Horace Mann and Henry Barnard—founders of the Common School movement—were involved in the campaign to establish separate institutions to serve deaf, blind, and “mentally retarded” (in the parlance of the day) individuals (Winzer, 1993). Institutions were seen as a mechanism for ordering society and exerting control over the lower classes, from which many children with special needs happened to come (Anti-Defamation League, n.d.). While the late 1800s saw gradual increases in general school attendance, large numbers of children with special needs remained out of school entirely (Winzer, 1993).

Nearing the end of the nineteenth century, urbanization, industrialization, and immigration had increased, and public concerns about coinciding increases in crime resulted in an insidious era of American history wherein scientists sought to stamp out the roots of “feeble-mindedness” (the latest parlance for those with special needs) thought to be the cause of many societal ills (Winzer, 1993). More institutions were established to segregate and sterilize those with any “aberrant” behavior, under the banners of social Darwinism, eugenics, and a belief in inherited intelligence (Winzer, 1993; Kaestle, n.d.). IQ testing became the norm in American education, as did a belief in fixed intelligence—the idea that any changes in environment or amount of education would have little influence over a child’s development (Kaestle, n.d.). The passage of compulsory attendance laws, though a positive step for the education of students with disabilities who had previously been kept home, resulted in additional pressure on schools during this period (Kauffman et al., 2018). School districts, faced with maintaining increasing numbers of unruly, low-functioning, and non-English speaking students, created the in-house equivalent of institutions—segregated classrooms (Kauffman et al., 2018). This era of “hereditary determinism” continued until after WWI when the need for a more organized and skilled labor force necessitated the expansion of special education training programs, though segregated instruction was still common and accepted (Winzer, 1993).

Perceptions of disabled individuals continued to shift over time, and at the beginning of the twentieth century, they were viewed as deserving of the same educational rights as non-exceptional

individuals, though it was not until the 1960s that the quality of life for disabled individuals began to improve as federal involvement expanded. *Brown vs. Board of Education*, though focused on segregation by race, set a new precedent for the important legal concept that separate education facilities were inherently unequal (Angelov & Bateman, 2016). Educators began to question the value of segregated classes, and research responded by analyzing the largely negative effects these learning environments were having on students (Winzer, 1993). The 1970s saw a shift toward the abandonment of segregated, “special” classes, and a move toward the inclusion of individuals with disabilities; and, federal support followed suit. In 1973, Congress passed the Rehabilitation Act, Section 504, which prohibited recipients of federal funds, including public schools, from discriminating against individuals with disabilities (Angelov & Bateman, 2016). Two years later, the Education for All Handicapped Children Act (EAHCA) was passed, mandating that all students, regardless of ability, receive free, appropriate public education (FAPE) (Angelov & Bateman, 2016).

The most recent reauthorization of EAHCA was passed in 2004, giving the legislation its current name—the Individuals with Disabilities Education Act (IDEA) (Kauffman et al., 2018). IDEA does not prescribe one path for all children with disabilities, but rather creates a process by which the team of individuals who know a child best determine what is appropriate for the child’s education. The four basic provisions of IDEA ensure that regardless of a child’s unique needs that 1) all children are entitled to an appropriate education at the public expense (FAPE); 2) a continuum of alternative placements (CAP) must be available to every student with a disability; 3) every student will be educated in their least restrictive environment (LRE), a regulation specifically targeting the segregated nature of special education’s history; and 4) every student with special needs will have developed an individualized education plan (IEP) providing for their unique educational needs (Kauffman et al., 2018).

In 2001, No Child Left Behind (NCLB) built on the framework set out in IDEA by requiring schools to report on and to be held accountable for the performance of students with disabilities on state assessments (Angelov & Bateman, 2016). This additional level of accountability was continued through



the most recent reauthorization, the Every Student Succeeds Act (ESSA) of 2015, and solidifies the high-stakes nature of accountability embedded within the web of special education regulations today.

#### **IV. Regulated Autonomy? Institutional Pressures Creating Tension for Charters in Serving Students with Special Needs**

While charter schools and the education of students with special needs are both institutions designed to improve the education of a specific subgroup of students, their respective historical paths have resulted in two vastly different approaches, based on distinct—and conflicting—principles. As the two institutions are forced to coincide with one another, a fixed tension emerges that may not result in outcomes that are best for students, as each institution would otherwise intend.

Charter schools were designed to be “schools without rules” (Garda, 2012). The release from much of the burdensome oversight of district and state regulation was granted in exchange for the potential that freedom to innovate might produce better student outcomes. Charters are, by design, deregulated and autonomous market-based institutions grounded in the concepts of freedom and flexibility. They arose in the era of accountability reform, with student outcomes—as measured by graduation rates and performance on standardized assessments—as the primary measures of success (Lange et al., 2008; Garda 2012). Critically, while charters are ostensibly “schools without rules,” they are also primarily schools of choice. They were never intended to address the wide range of needs of all possible students who may attend. What sets charter schools apart from other public schools is that they are able to specialize, to market themselves to a specific subset of the populace. They are, by design, not for everyone. These foundational principles—accountability, autonomy, and specialization—are diametrically opposed to the principles of special education.

Special education is one of the most highly regulated components of public education in the United States, addressed by federal, state, and local laws (Miron, 2014). Special education laws were

conceived in the civil rights era, with immense emphasis on process and compliance and little attention paid to student outcomes (Angelov & Bateman, 2016). IDEA and Section 504 were legislated long before school choice or charter schools were ever conceived, and these critical laws were written with different guiding principles in mind. Special education law presumes that public schools must be all things to all students (Garda, 2012). The school adapts to the child, not the reverse. “Zero reject”—the idea that no public school can turn away a child based on their ability level—is one of the central tenets of federal regulation governing the operation of public schools (Garda, 2012). These regulations force charter schools into difficult operating positions. As public institutions, the requirements imposed by civil rights legislation protecting the rights of individuals with special needs cannot be waived. Charter schools, therefore, are forced to comply with a complex web of special education rules and regulations in an otherwise deregulated environment.

At the school and district level, the tension that results from this institutional misalignment often results in frustration among school leaders who find special education requirements burdensome and constricting. For instance, while many states waive teacher certification requirements for charter schools, allowing them autonomy within their hiring practices, this does not extend to special educators, who must meet federal qualifications for working with students with disabilities (Bulkley & Wohlstetter, 2004). This tension is only exacerbated by national shortages of qualified special education teachers (Rhim et al., 2007). Additionally, conflicting federal and state laws around teacher certification requirements have left many charter schools confused about their responsibilities (Kose, 2013). A study from 2007 found that charters in many states choose to abide by the less restrictive state laws surrounding teacher certification, either due to a lack of knowledge about federal requirements or a sheer inability to comply as a result of labor shortages (Rhim et al., 2007).

Attempts to comply with special education rules and regulations in an environment conceived to be autonomous often result in operational conflict for charter schools, in ways not limited to the teacher certification issues previously described. The landscape of regulatory oversight and complex special

education procedures necessarily limits the organizational flexibility of charter schools. The following section describes some of the ways this institutional conflict has played out.

## **V. Challenges in Educating Students with Disabilities in Charter Schools**

### ***A. Legal Issues***

#### Federal Protections for Students with Disabilities

Two main laws affect the education of students with disabilities: the Individuals with Disabilities Education Act (IDEA) of 1975 (originally PL 94-142, the Education for All Handicapped Children Act); and Section 504 of the Rehabilitation Act of 1973. These laws apply to all public schools in the United States that accept any form of federal financial assistance, including charter schools, and each were grounded in the civil rights principles established by *Brown vs. Board of Education* (Bulkeley & Wohlstetter, 2004). These laws have fundamentally changed the way students with special needs are educated in this country, and are the root of much of the tension that charter schools face in appropriately serving students with disabilities, as all three laws were passed long before charters came into existence.

Prior to the passage of IDEA in 1975, it was legal to prevent students with disabilities from attending public schools. The law includes seven core components, described in detail in Table 1, each of which was developed in response to the sordid history of educating individuals with disabilities in the U.S. and concerns about protecting students' civil rights.

*Table 1. Central Accountability Components of IDEA*

1	Public schools are not allowed to reject any student (a “zero reject” policy).
2	Students suspected of having a disability are guaranteed a nondiscriminatory evaluation by a licensed professional at the school’s expense.
3	All students with special needs are guaranteed access to a free, appropriate public education (FAPE).
4	Students with disabilities must each have developed an individualized education plan (IEP).
5	Students with disabilities must be served in their least restrictive environment (LRE).
6	Parents have a right to participate in the education of their children with special needs, including the development of the IEP.
7	Parents have a right to dispute resolution and due process if they are unhappy with the plan put in place for their child.

*Sources:* IDEA, 2004; Angelov & Bateman, 2016

IDEA provides for the protection of 13 categories of disabilities: specific learning disability, other health impairment, autism, emotional disturbance, speech or language impairment, visual impairment, deafness, hearing impairment, deaf-blindness, orthopedic impairment, intellectual disability, traumatic brain injury, and multiple disabilities (IDEA, 2004). Table 2 highlights the distribution of students served under IDEA within each of these federally defined categories. The responsibility for identifying and evaluating children who may have a disability rests with state and local education agencies, in a process that IDEA calls “child find” (IDEA 2004). The “child find” provision of the law mandates that all public schools evaluate students demonstrating potential signs of disabilities. For students who attend public schools and who are not referred for special education through an external medical professional, there is a formalized referral process for special education services. State and local education agencies bear both the responsibility and cost for the referral process, as well as the provision of any services deemed required for students qualifying for an IEP under one of the 13 federally defined disability categories (IDEA, 2004).

*Table 2. Percentage of Students Served Under the Individuals with Disabilities Act (IDEA) by Disability Type in School Year 2018-19*

<b>Disability Category</b>	<b>Percentage of Students Served Under IDEA</b>
Specific Learning Disability	33%
Speech or Language Impairment	19%
Other Health Impairment	15%
Autism	11%
Developmental Delay	7%
Intellectual Disability	6%
Emotional Disturbance	5%
Multiple Disabilities	2%
Hearing Impairment	1%
Orthopedic Impairment	1%

*Source:* National Center for Education Statistics (2020)

While IDEA is the main federal law regulating the education of students with disabilities, Section 504 adds additional civil rights protections. Originally written as a component of the Rehabilitation Act in 1973, the statute was subsumed under the Americans with Disabilities Act in 1990 (Angelov & Bateman, 2016). Section 504 is an anti-discrimination statute applicable to students with disabilities under which students are eligible for accommodations even if they are not formally diagnosed as having a disability or they do not have an IEP (Bulkley & Wohlstetter, 2004). The statute is a civil rights mandate that offers protection to individuals with disabilities the same way that other civil rights laws offer protection against discrimination on the basis of race or gender. The civil rights of all IDEA students are protected under Section 504, but not all Section 504 students may be protected under IDEA (U.S. Department of Education, 2018).

### Violations of Federal Protections

Since the creation of charter schools in the early 1990s, there have been several examples of schools or districts violating students' civil rights under the aforementioned laws. In 2010, the Southern Poverty Law Center filed a class action lawsuit against the Louisiana Department of Education over New

Orleans charter schools' treatment of students with disabilities (Lurye, 2018). The plaintiffs included a blind fourth-grade student whose mother attended school with him daily because no staff member was assigned to help him move through the hallways and a fourth-grader with emotional disturbance who was kept full-time in an "isolation" room with no teacher (Chang, 2010). Schools named in the suit included KIPP Believe College Prep, New Orleans Charter Science and Math Academy, and several charter schools directly run by the Recovery School District (Chang, 2010). The case was settled in 2015, and the city of New Orleans put in place several reforms to protect against future discrimination, including: adopting a centralized expulsion system to provide oversight over individual schools' decisions to remove students; a citywide enrollment system known as the OneApp, which gives all students a nearly equal chance of enrolling in the school of their choice; and independent monitors contracted every quarter to report on how a sample of New Orleans' charter schools are complying with IDEA (Lurye, 2018).

The Department of Education's Office of Civil Rights (OCR) has also received a number of complaints stemming from charters' treatment of students with special needs in the past three decades. Since October 2013, the Department has issued 71 letters addressing the issue (Rhim et al., 2016). Specific examples include a 2014 complaint against a Texas charter management organization (CMO) alleging underrepresentation of students with disabilities—2.7% in charter schools compared to 7.3% in public schools (Rhim et al., 2016). The complaint was resolved with an agreement outlining the steps the CMO needed to take in order to ensure compliance with IDEA. In 2016, a group of parents in New York filed a complaint with OCR against another CMO alleging it had failed to identify students as eligible for special education or to provide appropriate accommodations; illegal discipline practices; and inadequate communication with parents regarding their rights (Rhim et al., 2016). The complaint has yet to be resolved.

### Charters' Legal Status

Charter schools' legal status plays a key role in understanding their ability to comply with federal regulations and adequately provide services for students with special needs. Nationwide, public school districts are also known as local education agencies (LEAs). Federal special education laws delegate implementation responsibilities to state education agencies (SEAs), who then pass the responsibility along to LEAs, which have historically centralized special education compliance processes at the district level for all local schools under their administration. The creation of charter schools, however, introduced a twist to the concept of an LEA—a single school carrying the same legal status as a full district (Bulkley & Wohlstetter, 2004). This legal structure is appealing to charter schools as it grants them the greatest operational flexibility. Independent charter schools (those operating as their own LEA) have the freedom—and responsibility—in designing their chosen curriculum, over hiring practices, and in the overall design of the school's daily operations. However, without the economies of scale that a traditional district structure provides, it is more challenging for independent charters to provide for students with a wide array of disabilities or for students with profound special needs (Bulkley & Wohlstetter, 2004).

There exist today both independent charter schools as well as charters that operate within traditional LEA structures. The LEA status of charter schools, whether independent or part of an existing LEA, has ramifications for how this unique subset of public schools operates and is funded to serve students with disabilities. Independent charter schools, for the most part, receive state and federal funds directly and are able to manage all funds as they see fit, but are wholly responsible for the provision of special education for any students who may attend—regardless of their level of need (Angelov & Bateman, 2016). Charter schools that operate as part of an existing LEA, on the other hand, have access to a centralized set of services to assist with special education provision which can be useful in providing for students with severe needs who require expensive services. However, they must trade off some autonomy for this arrangement. These charter schools can take advantage of large contracts with service providers,

the district's transportation services, and its legal counsel, but also must adopt the district's approach to educating students with disabilities, regardless of how that approach may or may not align with the charter school's stated mission (Angelov & Bateman, 2016). There also exist a third type of charter, often known as "partial link" charter schools, which may or may not be legally part of an existing LEA but which share the responsibility for the provision of special education with the local agency (Bulkley & Wohlstetter, 2004).

The legal status of charter schools is also critically linked to their financial independence. Fully independent charter schools, legally responsible for the provision of all special education for students, may need to contract with outside vendors to provide certain specialized services, such as occupational therapy or speech and language services. While these services are often centralized at the district level, the same contracted services can be proportionately more expensive for single-site operations which may not need them full-time—a particular challenge for small schools with finite resources (Angelov & Bateman, 2016). A study from 2013 found that charters' LEA status was a significant factor in determining the amount of funding charters need to succeed, as the education of students with special needs can cost more than twice as much as the education of students in general education (Kose, 2013; ECS, 2015). Research from more than a decade prior further noted that one child with a severe disability has the potential to bankrupt a small charter school (Miron & Nelson, 2000).

Further complicating matters is a lack of clarity in state laws regarding charters' legal status and how special education is overseen in charter schools. Some states assign special education responsibility based on charter schools' legal status, some assign based on who authorizes the school, and some states define all charter schools as independent LEAs with the exception of the provision of special education, which is overseen by the district (Rhim et al., 2007). This lack of consistency is most likely the result of state attempts to retrofit existing laws following the creation of charter schools, and to evolve as quickly as the field of charter schools has evolved. Early on in charter schools' history, the federal government recognized this potential source of confusion. A GAO report from 1995 recommended the federal



government clarify for all states who is ultimately responsible for educating students with disabilities in charter schools (GAO, 1995). This clarification has never been made. Further, case law regarding charter school responsibilities toward the administration of special education is still evolving.

Some scholars have gone so far as to assert that IDEA should be amended to prohibit any charter schools from operating as independent education agencies, given the limitations and challenges they face in adequately serving students with special needs. Congress actually foresaw these issues in its original passage of IDEA (then the EAHCA), even though charter schools had yet to come into existence. EAHCA authors believed that small LEAs would struggle to fulfill the Act's mandates, and therefore precluded states from distributing federal funds to small LEAs eligible to receive less than \$7,500 as prescribed by the EAHCA funding formula (Garda, 2012). These small education agencies could only receive funding under EAHCA by filing applications along with other small agencies to create programs "of sufficient size and scope" to meet the needs of children with disabilities (Garda, 2012). Inexplicably, original policy rationales were lost during the 1997 reauthorization of IDEA—the first iteration of the law to account for charter schools. This version removed the prohibition on funding small LEAs and permits charter schools to exist as independent agencies (Garda, 2012). These provisions still exist today.

### ***B. Enrollment Discrimination***

Charter schools now serve more than 3 million students nationwide in more than 7,000 institutions (NCES, 2019). While in theory students with special needs would be equally distributed across traditional public schools and charter schools due to federal requirements to offer open enrollment in all public schools, there has historically been a gap between the proportion of students with disabilities attending the two types of schools, with charters enrolling on average two percentage points fewer annually (Miron, 2014). Charter advocates argue they do not have the capacity to identify, evaluate, and serve students with disabilities, particularly those with severe special needs, while charter critics point to

issues of systemic and illegal discrimination against this population of students (Angelov & Bateman, 2016; Lacireno-Paquet et al., 2002).

Questions about charters' potential enrollment discrimination have been asked for decades, though there has been little resulting consensus on the prevalence of the issue over time. Charter discrimination against students with disabilities was the subject of a Congressional hearing in 2010 and a subsequent Government Accountability Office (GAO) report in 2012. The GAO conducted a nationwide analysis of enrollment data, spurred by public concerns about disproportionate enrollment rates of students with special needs between charters and traditional public schools. The report concluded that in the 2008-09 school year a 3.6 percentage point gap existed between the two types of schools, and that most of the charter schools surveyed faced operational and financial challenges in serving students with severe disabilities (GAO, 2012). A report from the Manhattan Institute the following year assessed charter schools in New York City, specifically, and found that the enrollment gap primarily existed because students with disabilities were less likely to apply to charter schools in kindergarten, and that the gap in enrollment rates simply grows progressively for students between kindergarten and third grade (Winters, 2013).

More recent data analysis has found that while the enrollment gap has decreased slightly since the GAO's report on data from the 2008-09 school year, it has persisted. A review of information from the Civil Rights Data Collection from the most recent year, 2015-16, shows that approximately 10.8% of charter school students have special needs, compared to 12.8% of students in traditional public schools (Rhim et al., 2019). There are several theories about why this gap exists and persists. Systemic issues such as differential funding, limited charter capacity, transportation issues, and parental knowledge gaps may each play a role (Angelov & Bateman, 2016). However, there also exists evidence of charters' discriminatory practices, such as "cropping off" service to students whose disabilities make them among the costliest to educate, counseling out students with severe needs, or advising families of students with disabilities not to apply (Lacireno-Paquet et al., 2002; Fiore et al., 2000; Bergman & McFarlin, 2018).

Other evidence suggests the observable gap in enrollment rates of students with disabilities between charters and traditional public schools may have less to do with discrimination at the point of enrollment and more to do with student classification or identification as having special needs once enrolled. The same Manhattan Institute report that highlighted the gap in New York City’s school system also noted that 80% of the observed growth in the enrollment gap as students age is due to charters’ decreased likelihood of identifying students with disabilities initially, and their increased likelihood of declassifying students who may enroll already having an IEP (Winters, 2013). Variation in classification rates may actually be a central underlying cause of the enrollment gap, and recent research in Denver’s school system found similar results. In 2017, Winters found that attending a Denver charter school reduces the likelihood that a student is classified as having a specific learning disability—the largest and most subjectively diagnosed of the 13 federally defined disability categories (Winters, 2017; Sullivan & Bal, 2013). Further, Winters found no evidence that attending a charter school reduces the probability of a student’s being classified as having a speech or language disorder or autism—two of the more objectively defined disabilities (Winters, 2017).

With no definitive answers about the most prevalent, driving forces of the observed enrollment gap between charters and traditional public schools, but with a desire to enforce equitable enrollment practices, some cities have adopted unique, non-regulatory practices in order to informally police existing policies. In 2012, the District of Columbia (DC) Public Charter School Board (PCSB) created a “mystery shopper” program to ensure charter schools were not turning away students with disabilities (O’Donnell, 2015). The program entails DC PCSB staff members and volunteers calling charter schools pretending to be parents seeking to enroll a child with special needs and tracking how inquiries are received by charters within the District. Schools were notified of the program before it began, and since its inception the number of schools giving parents improper responses has fallen. Additionally, DC publicizes data about special education students’ enrollment and performance at each public school in citywide equity reports

annually. Inspired by DC's success, the Massachusetts Department of Elementary and Secondary Education created a similar "mystery shopper" program in 2013 (NCSECS, 2016).

### ***C. Funding***

Congress knew when it passed the Education for All Handicapped Children Act in 1975 that it was not just taking necessary steps to create a more equitable framework for educating children with special needs, but it was also imposing upon states a series of regulations that would result in additional costs. At the time of its writing, it was estimated that special education would cost twice as much as general education, and Congress promised that 40% of the costs of educating children with disabilities in public schools—now mandatory under federal law—would be borne by the federal government (Angelov & Bateman, 2016; Kauffman et al., 2018). The actual level of federal funding provided to states has never approached this amount. In the 2013-14 school year, federal assistance covered 16% of the cost of educating students with disabilities, leaving the remaining costs to be borne by states and localities (Angelov & Bateman, 2016). The provision of special education has the potential to drain an LEA's resources—particularly those of an independent charter school—through required testing, evaluation, and the provision of necessary services (Bordelon, 2010). Court decisions since the early 1990s have made clear that a lack of funding is not a sufficient excuse for schools failing to provide for students with special needs under federal law (Angelov & Bateman, 2016).

Charter schools receive funding for special education through a combination of federal, state, and local district formulas and policies—some of which have been retrofitted to account for the existence of independent charter schools, and some which have not. On average, charter schools operate with less funding than traditional public schools as a result of their limited access to money raised through increases in property taxes (Rhim et al., 2015). A study from the University of Arkansas found that among the states with the largest populations of charter schools, charters received 28% less in per-pupil expenditures, on average, than traditional public schools, due primarily to differences in access to local

funds (Wolf et al., 2017). Approximately 46% of all dollars allocated to support special education come from localities. Accordingly, this discrepancy amounts to a significant challenge for charter schools (Rhim et al., 2015). Approximately 45% of special education funding comes through state per-pupil allocations allocated through annual state budgetary processes (Rhim et al., 2015). There are a variety of state-level funding schemes for distributing special education funding, including: weighted funding, census-based distributions, resource-based funding, percentage reimbursements, block grants, or various combinations of these funding mechanisms (ECS, 2015).

Federal funds make up the remaining percentage of funds for special education, and are distributed through IDEA grants as well as Medicaid reimbursements. Federal funds through Part B of IDEA are distributed to states and localities to support the general education of students with special needs, while funds through Part C are allocated towards early intervention services for infants and toddlers (Angelov & Bateman, 2016). Funds are given to states based on the number of students with disabilities in the state times the average per-pupil expenditure nationwide (Rhim et al., 2015). This structure can result in disproportionately higher funding to small states and states with fewer students, limiting funding for states and districts with the greatest needs. To qualify for Medicaid reimbursements, students must have an individual education plan filed with the state, and districts—as well as charters who are legally operating as school districts—must be validated by the federal government as eligible providers of services (Rhim et al., 2015). This process is particularly burdensome for small districts and independent charter schools that have limited human resource capacity but a great need for additional financial assistance.

Some charter schools and charter management networks seek out additional funding from private sources to supplement the limited government funding received. For instance, the Noble Minds Institute for Whole Child Learning is a charter school in New Orleans founded in 2017 serving a high number of special needs students (Noble Minds, 2017). The school's curriculum focuses on socio-emotional learning, and boasts its own clinical director and in-house therapeutic programs (Lurye, 2018). These

non-standard resources cost money, and so far, have come from external sources, including a start-up donation from the Walton Family Foundation for \$325,000 and an additional grant from the Institute for Mental Hygiene (Lurye, 2018). With a staff of just 11 full-time employees, Noble Minds staffers are each responsible for multiple jobs in order to limit the school's operational budget. As an independent charter, the biggest challenge the school will face in the coming years is translating these fixed costs into an operating budget that can endure despite the uncertainty that comes with relying on external resources, as many independent charters must in their early years. In 2018, lower than expected enrollment at Noble Minds forced budget cuts resulting in reductions in full-time staff hours (Jewson, 2018). Whether or not the school can find its way through the field of high-stakes student recruitment in a city that is nearly 100% open-enrollment charter schools will likely determine its ultimate survival.

## **VI. Conclusion**

The passage of landmark civil rights legislation in the 1970s set a new course for the education of students with special needs in the U.S. After a long history of discrimination, all public schools were required to serve any student who walked through the door, regardless of their level of ability or need. In the years since these laws were passed, a new form of chartered public schooling took shape, changing the landscape of public education and presenting new challenges for compliance with federal civil rights legislation. This paper has provided an overview of some of these challenges, beginning, critically, with a discussion of the fundamental tension of regulation versus autonomy that charter schools face in addressing students' special needs, stemming from the historical differences in each institution's development. Other charter school challenges include: inabilities to develop useful economies of scale; a lack of clarity around legal responsibilities in educating students with disabilities; funding discrepancies between charter schools and traditional public schools; and, issues of enrollment discrimination. As the charter school sector continues to evolve, so too should legislation governing charter schools' special

education responsibilities, as well as research into best practices, efficient funding structures, and functioning charter-district administrative arrangements.

In recent years, a growing surge of innovative pseudo-governance structures have developed to assist charter schools in addressing their special education responsibilities. In Boston, for example, traditional district schools along with charter and Catholic schools formed a compact in 2011 in order to provide collective professional development on special education practices (Rhim et al., 2016). The St. Louis school district provides KIPP schools free rent in surplus buildings in the city in exchange for KIPP giving district leaders access to its teacher leadership development program (Rhim et al., 2016). New York City has developed a Special Education Collaborative that charter schools can elect to join as a means of accessing resources, training, and other support services (NCSECS, 2017). The initiative utilizes a tiered membership structure allowing charter schools to tailor their involvement based on their needs and budgets. Membership ranges from \$4,000 to \$14,000 per year. In 2015-16, the Collaborative served 185 charter schools in the city (NCSECS, 2017).

Finally, in Colorado, all charters are mandated to be part of an existing LEA, but the state allows charters to choose from a spectrum of options in terms of how independent they would like to be in terms of special education provision. Schools can choose to leave all special education service provision to the district, to provide select services themselves while relying on the district to provide the remainder, or to fully provide all special education themselves (Rhim et al., 2016). This is perhaps the most innovative current example of states maneuvering thoughtfully through the complex web of existing special education regulations and the tension charters face between desired autonomy and their need for support.

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