

# Rights of Students with Disabilities in Public Charter Schools

U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
Office for Civil Rights  
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## Introduction: Use of Presentation

- This presentation provides general information and does not represent a complete recitation of the applicable law and policy.
- This presentation is a summary of guidance documents issued by the U.S. Department of Education's (ED) Office of Special Education and Rehabilitative Services (OSERS) and Office for Civil Rights (OCR); the guidance documents should be consulted directly for more information.
- The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.

## Introduction: Presentation Objectives

- This presentation outlines guidance issued by ED on December 28, 2016, to help parents, students, local educational agencies (LEA), state educational agencies (SEA), charter schools, and others better understand the rights of students with disabilities in public charter schools under Federal laws:
  - Joint Dear Colleague Letter (OSERS and OCR);
  - OSERS FAQ document about rights and responsibilities under the Individuals with Disabilities Education Act (IDEA); and,
  - OCR FAQ document about rights and responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504).

## **Introduction: Separate FAQ Documents on Section 504 and IDEA**

- Both IDEA and Section 504 ensure rights to students with disabilities.
- Because the laws are sufficiently different in terms of purpose, population of students covered, and requirements, ED issued separate, coordinated guidance.
- OSERS will first present on IDEA, followed by OCR's presentation on Section 504, and then we provide a list of resources.

# Office of Special Education and Rehabilitative Services (OSERS)

Rehabilitation Services Administration (RSA)

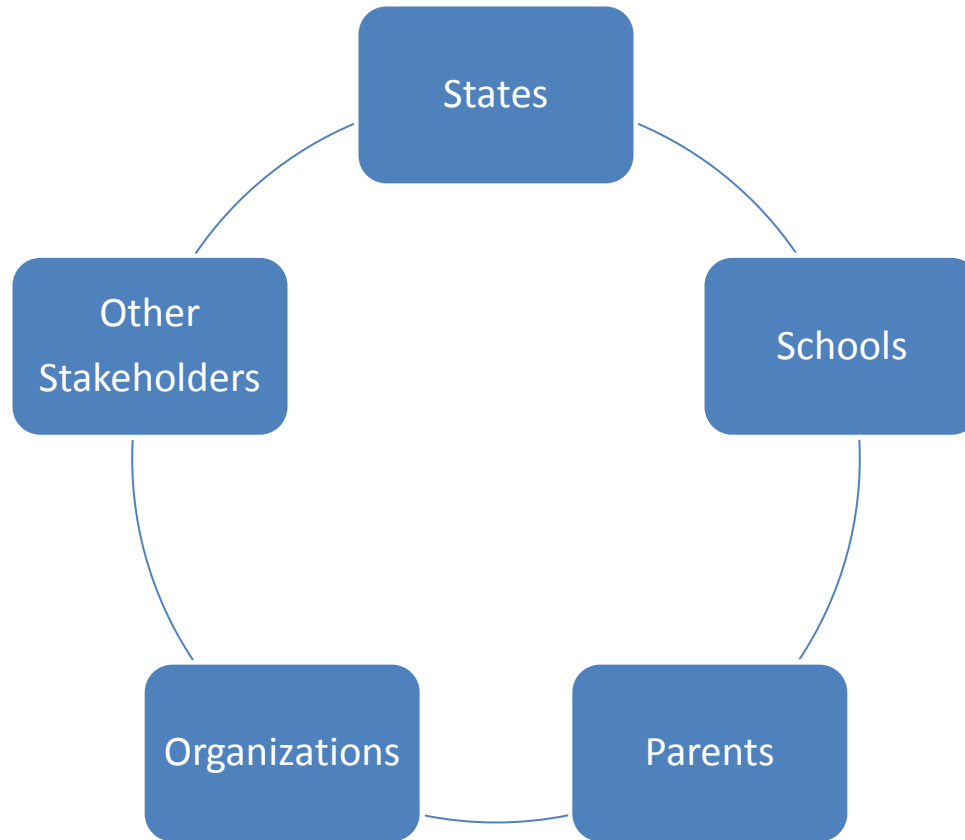
**Office of Special Education Programs (OSEP)**

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# OSEP's Mission

- OSEP is dedicated to improving results for infants, toddlers, children and youth with disabilities ages birth through 21 by providing leadership and financial support to assist states, local educational agencies, and other stakeholders.
- OSEP administers the Individuals with Disabilities Education Act (IDEA).
  - IDEA authorizes formula grants to states, and discretionary grants to institutions of higher education and other nonprofit organizations to support research, demonstrations, technical assistance and dissemination, technology and personnel development and parent-training and information centers.

# OSEP works with....



# IDEA funds flow by formula to States

## **OSEP supports SEAs in ensuring that:**

- Charter schools provide equitable access to children with disabilities and their families;
- Charter schools appropriately receive IDEA funds and/or support services, as required by IDEA and by the Charter School Expansion Act; and
- Children with disabilities in charter schools have access to a free appropriate public education in the least restrictive environment.



# Complex and varied State charter laws and State structures

- States must ensure that charter school LEAs and LEAs that include charter schools meet all of their responsibilities under Part B of the IDEA

# General Supervision

The IDEA FAQ document is part of multiple technical assistance and related efforts by OSERS in support of the important role that State educational agencies play in ensuring that charter schools and all educational programs for children with disabilities in the State meet State education standards and the requirements of Part B of the IDEA.

# Charter schools under IDEA

- Charter school, as used in IDEA, has the meaning of “charter school” in the Elementary and Secondary Education Act of 1965.
- Three options under Part B regulations:
  - 1) charter schools can be public schools of the LEA;
  - 2) charter schools can be LEAs themselves; or
  - 3) charter schools can be nonprofit entities that are neither LEAs nor schools of an LEA

# Rights of children with disabilities in charter schools under IDEA

- Students with disabilities attending charter schools and their parents retain all rights and protections under Part B of IDEA that they would have if attending other public schools.

# Child with a Disability under IDEA

- A child with a disability is a child evaluated in accordance with the IDEA evaluation procedures as having one or more specified disabilities and who, because of disability, needs special education and related services.

# Free Appropriate Public education (FAPE) under IDEA

- FAPE includes special education and related services that:
  - are provided at public expense, under public supervision and direction, and without charge;
  - meet the standards of the SEA, including IDEA Part B requirements;
  - include an appropriate preschool, elementary school, or secondary school education in the State involved; and
  - are provided in conformity with an IEP.

# FAPE under IDEA

- Under IDEA, all students with disabilities, including charter school students with disabilities, must receive FAPE.
- The vehicle for ensuring the provision of FAPE to all students with disabilities, including charter school students with disabilities, is a properly-developed IEP.

# FAPE under IDEA

- A charter school may not unilaterally limit the services it will provide a particular student with a disability.
- The responsible charter school LEA, or the LEA that includes the charter school, must provide a program of FAPE for the student in the least restrictive environment in which the student's IEP can be implemented.



# Least restrictive environment under IDEA

- States must ensure that charter school LEAs and LEAs that include charter schools meet all their responsibilities under Part B of IDEA, including the LRE requirements.
- The LRE provisions require that, to the maximum extent appropriate to their needs, students with disabilities attending public charter schools be educated with nondisabled students.

# Placement under IDEA

- Placement decisions must be made by a group of persons (the placement team), including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.
- Each child's placement decision also must be made in conformity with IDEA's LRE provisions.

# Placement under IDEA

- Charter schools that are LEAs are responsible for ensuring that the IEP and placement requirements of Part B of IDEA are met, unless State law assigns responsibility to some other entity.
- When a charter school that is a public school of an LEA,, the LEA in which the charter school is located is responsible for implementing a child's IEP and placement, unless State law assigns responsibility to some other entity.

# Child Find and Evaluation Requirements under IDEA

- What happens if a charter school suspects that one of its students may be a child with a disability?
- How may a charter school implement a response to intervention (RTI) framework as part of its child find process?
- When is a reevaluation required for an IDEA-eligible child with a disability who attends a charter school?

# Procedural Safeguards under IDEA

- Procedural Safeguards and dispute resolution
- Positive behavior interventions and supports
- Applicability of discipline procedures

# IDEA Funding

- Eligibility to receive subgrants under Part B of IDEA;
- Provisions related to newly-created charter school LEAs;
- Base payment calculations for charter school LEAs under IDEA;
- Base payment adjustments for new or expanding charter school LEAs.

# IDEA Funding

- How the funding formula is calculated for expanding charter schools;
- Whether an IDEA subgrant may be made even if the charter school LEA is not serving any children with disabilities;
- Funding requirements in Part B of IDEA that apply to LEAs that have charter schools that are public schools within the LEA.

# Charter School Closures under IDEA

- Issues surrounding the closure of charter schools including:
  - Funding
  - The responsibility for FAPE
  - Transfer of records, and
  - Equipment purchased with IDEA funds for children with disabilities.



# Contact information

- If you have questions regarding IDEA, please send them to the Office of Special Education and Rehabilitative Services by email at [ideacharterschools@ed.gov](mailto:ideacharterschools@ed.gov) or by phone at 202-245-7468, (800)-877-8339 (TDD).

## Introduction: OCR

- Office within ED that enforces the civil rights laws, including laws prohibiting discrimination on the basis of race, color, national origin, sex, disability, or age, that apply to programs and activities that receive Federal financial assistance from ED;
- Headquartered in Washington, D.C.; 12 regional offices;
- Investigates/resolves complaints alleging discrimination; conducts OCR-initiated compliance reviews; and, upon request, provides technical assistance.
- This presentation does not provide specific determinations of compliance; OCR's determinations of compliance depend on specific facts and are evaluated on a case-by-case basis.
- OCR attorneys Doreen Dennis and Elizabeth Greczek are presenting today.

## Introduction: Section 504

- Section 504 prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance from ED.
- Section 504 applies to Local Educational Agencies (LEAs) that receive federal financial assistance (FFA). This includes traditional LEAs with charter schools and charter school LEAs.
- OCR also enforces Title II of the Americans with Disabilities Act and the Title II regulations, which prohibit discrimination on the basis of disability by State or local public entities, including LEAs, SEAs, and public charter schools, regardless of whether they receive Federal funds.

## Section 504: Overview

- Charter school students with disabilities (and those seeking to attend) have the same Section 504 rights as other public school students with disabilities in elementary and secondary education.
- OCR's FAQ on the rights of students with disabilities in public charter schools under Section 504 does not establish new requirements; rather it explains existing legal requirements in the context of public charter schools.

## Section 504: Public Charter School Students with Disabilities Protected

- Section 504 protects all *qualified students with disabilities* in charter schools.
- Section 504 defines *disability* and *qualified*.

## **Section 504: Nondiscrimination and Equal Opportunity, Generally**

- Section 504 prohibits treating qualified persons with disabilities differently than individuals without disabilities on the basis of disability unless the different treatment is necessary to provide the person with a disability with aid, benefits, or services that are as effective as those provided to others.
- Section 504 also prohibits criteria, policies, practices, and procedures that are neutral in language and evenhandedly implemented but have the effect of discriminating against students on the basis of disability.

## Section 504: Recruitment

- Section 504 requires charter schools to conduct any recruitment activities, and to provide the opportunity to apply to a charter school, in a nondiscriminatory manner, including:
  - Content of recruitment materials; and
  - Recruitment activities and application materials.

## **Section 504: Admissions and Enrollment, Generally**

- Prohibitions against disability discrimination apply to all aspects of application, admission, and enrollment-related activities.
- Requirements related to admissions procedures are separate from requirements related to Section 504 free appropriate public education (FAPE) requirements for placements.
- Section 504 also prohibits disability discrimination in charter school disenrollment criteria, policies, practices, and procedures.



## Section 504: Admission and Enrollment, Criteria and Policies

- Section 504 prohibitions include :
  - Admissions policies or criteria that explicitly exclude students on the basis of disability;
  - Admissions practices that exclude students on the basis of disability;
  - Admissions policies or practices that exclude any student because the student needs special education or related aids or services to ensure a FAPE;
  - Admissions criteria, policies, practices, and procedures neutral in language and evenhandedly implemented with respect to students with and without disabilities, but that have the effect of discriminating against students on the basis of disability.

## **Section 504: Admissions and Enrollment, Criteria and Policies (continued)**

- Section 504 requirements include an obligation to make reasonable modifications of admission criteria, policies, practices, and procedures of general applicability when necessary to avoid disability discrimination, subject to the fundamental alteration limitation.
  - For example, Section 504 prohibits an admission policy or practice that excludes any student who needs a reasonable modification, for example, to participate in interscholastic athletics.

## **Section 504: Questions about Prospective Student's Disability Generally Prohibited During the Application Process**

- During the application and admissions process, a charter school generally may not ask a prospective student if he or she has a disability.
- Limited exceptions:
  - Remedial action after an OCR finding of disability discrimination;
  - Voluntary action to overcome the effects or conditions that resulted in limited participation in the recipient's program by qualified persons with disabilities; or,
  - A charter school, chartered to serve the educational needs of students with a particular disability, may ask prospective students if they have that specific disability.

## **Section 504: Questions about Disability After Enrollment**

- When a student with a disability is admitted to and enrolls in a charter school, the student is entitled to FAPE under Section 504. After enrollment, a charter school may ask if a student has a disability.

## Section 504: *Counseling Out* on the Basis of Disability Prohibited

- Section 504 prohibits:
  - *Counseling out*, i.e, to try to influence a prospective student with a disability not to apply to or enroll in a charter school, because the student has a disability;
  - Counseling out to influence an enrolled student to transfer to another school because the student has a disability.
- A decision about placement for a particular student with a disability, consistent with Section 504 FAPE requirements, is distinguishable from counseling out.

## **Section 504: Right to FAPE**

- The right of a charter school student with a disability to FAPE under Section 504 is the same as the right of a student with a disability enrolled in a traditional public elementary or secondary school in a traditional LEA.
- The provision of FAPE under Section 504 includes requirements to (1) provide a student with a disability regular or special education and related aids and services that are designed to meet the student's individual educational needs as adequately as the needs of students without disabilities are met, and (2) comply with Section 504 requirements pertaining to evaluation and placement, educational setting, and procedural safeguards.

## **Section 504: FAPE Evaluation**

- Under Section 504, if a charter school student needs, or the recipient has reason to believe the student needs, special education or related aids or services because of a disability, the recipient must conduct an evaluation.
- An evaluation is required prior to an initial placement of the student and prior to any subsequent significant change in placement.

## **Section 504: FAPE Educational Setting and Placement**

- Educational placement is an individualized decision about what educational and related aids and services a student with a disability needs. Decisions must be made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
- Charter school students with disabilities must be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability.
- A student with a disability is entitled to be placed in the charter school regular educational environment unless the recipient demonstrates that education of that student cannot be achieved satisfactorily, even with the use of supplementary services, in the charter school's regular educational environment.



## Section 504: FAPE Procedural Safeguards

- Under Section 504, recipients are required to develop and implement a system of procedural safeguards to address FAPE concerns specifically, such as the identification, evaluation, and educational placement of students with disabilities.
- Procedural safeguards include notice; an opportunity for records review by parents or guardians; an impartial due process hearing, with an opportunity for participation by the student's parents or guardian and representation by counsel; and a review procedure.

## **Section 504: Nonacademic and Extracurricular Services and Activities**

- Section 504 requires nondiscrimination and equal opportunity for charter school students in nonacademic and extracurricular services and activities.
- Examples of such services and activities include counseling services, health services, school clubs, and interscholastic athletics.

## **Section 504: Accessibility of Charter School Programs and Facilities**

- Recipients are required to ensure that students and others with disabilities, including parents, are not denied access to the school's programs or activities because of inaccessible facilities, including academic buildings, walkways, restrooms, athletic facilities, and parking spaces.
- The specific requirements recipients must meet to ensure that programs and activities are accessible depends on the date a building was built or altered.
- Regardless of when a charter school's facilities were built or altered, the recipient must ensure that qualified persons with disabilities are not excluded from or denied participation in the recipient's program or activity because the facility is inaccessible to or unusable by persons with disabilities.

## Section 504 and IDEA: Resources for More Information

- Joint DCL, Dec. 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-charter-school.pdf>;
- OCR FAQ, Dec. 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf> (includes information about how to file a complaint of discrimination and contact information for questions);
- OSERS FAQ, Dec. 28, 2016, <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf> (includes contact information for questions);
- Joint *Know Your Rights: Students with Disabilities in Charter Schools*, Dec. 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-charter-school.pdf> (includes information about how to file a complaint of discrimination and contact information for questions).

## Section 504 and IDEA: Resources for More Information (continued)

- Fiscal information on IDEA funds and charter schools, <https://osep.grads360.org/#program/idea-funds-and-charter-schools>
- For assistance related to civil rights, you may contact the OCR headquarters office in Washington D.C. or the OCR enforcement office serving your state or territory.
- Contact information available at: [wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm](http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm), or by phone at 1-800-421-3482; TDD 1-800-877-8339.