

Colorado Department of Education

**COLORADO CHARTER
SCHOOLS
SPECIAL EDUCATION
COMPLIANCE PLAN
GUIDELINES:**

***FOR NEGOTIATING NEW AND RENEWAL CHARTER
CONTRACTS FOR COLORADO CHARTER SCHOOLS***

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GUIDELINES FOR SPECIAL EDUCATION COMPLIANCE PLANS IN NEGOTIATING NEW AND RENEWAL CHARTER CONTRACTS

Purpose

Under the Institute Charter Schools Act and Colorado Charter School Act (CCSA), charter schools must comply with all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability or the need for special education services. Students with disabilities attending charter schools are entitled to the same rights as special education students attending traditional public schools and must be provided with the special education services as outlined in their Individualized Education Program (IEP). Under the federal Individuals with Disabilities Education Act (IDEA) and Colorado's Exceptional Children's Educational Act (ECEA), a charter school's administrative unit is responsible for ensuring all students receive a free and appropriate public education (FAPE). A charter school's administrative unit may be its authorizing school district, the Charter School Institute, or a Board of Cooperative Educational Services (BOCES). Although the administrative unit is responsible for ensuring a student receives FAPE, a charter school is accountable to its authorizer for compliance with special education and disability laws.

The purpose of these guidelines is to assist local boards of education, charter school organizers and charter school governing boards in identifying legal, procedural and funding issues related to serving students with disabilities in Colorado charter schools that need to be negotiated in a school's charter application or renewal contract. As best practice, new and renewal charter school applications should contain a specific plan for compliance with federal and state special education laws. These guidelines provide a framework for developing the compliance plan or revising an existing compliance plan, and are also intended to help the parties to better anticipate special education needs and situations, including how special education services will be delivered and funded. Information in these guidelines are interpretations of the Colorado Department of Education and do not constitute legal advice. Those needing legal advice should contact their legal counsel.

Structure of the Guidelines

These guidelines are organized in a format that follows the provisions in a sample charter school compliance plan. Each section contains a brief discussion of the provision and identifies considerations for that particular provision in a compliance plan. It is important to note that these guidelines highlight some major areas but are not an exhaustive review of all special education requirements.

I. Compliance with Federal & State Special Education and Disability Laws

This provision is a statement of understanding of the special education responsibilities among the parties. In order to determine which entities are responsible for special education, it is essential for charter school operators to understand the distinction

between the charter school's authorizer and the administrative unit who is responsible for ensuring special education students attending the charter school receive a FAPE.

Authorizers

Under Colorado's charter school laws, a charter school may be authorized by its school district or the Charter School Institute (CSI). Under the Exceptional Children's Education Act (ECEA), Colorado's special education law, an administrative unit is responsible for assuring that students with disabilities within its unit receive a free and appropriate public education (FAPE). While the administrative unit that is responsible for special education is directly related to its authorizer, a charter school's authorizer and administrative unit may not always be the same entity.

Administrative Units

Under Colorado law, the CSI is both an authorizer and an administrative unit. School districts with student populations of more than 4,000 students or more than 400 special education students may be both an authorizer and an administrative unit. Smaller school districts are part of a regional special education administrative unit called a Board of Cooperative Educational Services (BOCES). Therefore, a charter school authorized by the CSI will have the CSI as an administrative unit, while a charter school authorized by a school district may have its authorizing school district or a BOCES as its administrative unit.

Considerations for the responsibilities in this provision include:

_____ Who is the charter school's administrative unit?

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

_____ If the administrative unit is not the same entity as the charter school's authorizer, how will the administrative unit communicate the charter school's compliance with special education laws with the charter school's authorizer?

II. Responsibility for Special Education Services

In Colorado, special education funds are passed through to charter schools in the form of cash, in-kind services, and pooled monies based on the service delivery model agreed to by the charter school and its authorizer.¹ Several special education service delivery models are utilized in Colorado: (i) the insurance model, (ii) the contracted model, and (iii) the combination/modified insurance model.

¹ Special education funds are disbursed to the authorizer if the authorizer is an administrative unit as defined by ECEA Rule 3.01(1). If the authorizer is not an administrative unit (i.e. a BOCES), special education funding goes to the authorizer's administrative unit.

Under the **insurance model**, the charter school contracts with the authorizer for the administrative unit to provide all special education services. Under this model, the administrative unit controls the provision of services and is responsible for compliance with special education laws. The charter school pays the authorizer a fee based on a per pupil formula that counts all students enrolled in the charter school. Such fees are centrally pooled and used by the administrative unit to provide the services required by students' individualized education programs (IEPs). The charter school may exercise little or no control regarding services provision, but because the administrative unit is providing direct services, the charter school has significantly less exposure for noncompliance with special education laws.

Some charter schools have reported a number of advantages and disadvantages to this model. Reported advantages include accessibility to the special education expertise of the administrative unit, predictability in budgeting, and not having to hire special education staff while also providing high quality special education services that are consistent with those provided to students with disabilities in traditional district schools. Some reported disadvantages of the insurance model are that it may be potentially more expensive than other funding models, and special education staff assigned to the charter school must answer to two supervising entities and may not always share the charter school's philosophy. Many Colorado school districts mandate the insurance model based on their legal interpretation of the IDEA requirement that a school district must treat its charter schools in the same manner as it treats its traditional schools with regard to special education service provision and IDEA funding.

Under the **contracted model**, the administrative unit passes through to the charter school its proportionate share of federal and state special education funding, and the charter school provides special education services either by hiring its own service providers or by contracting with independent third parties. Under this model, the charter school exercises control over service provision, but also bears increased risks for special education noncompliance and the costs of serving disabled students with moderate to severe needs. The administrative unit remains legally responsible for assuring that the charter school provides a free and appropriate public education (FAPE) to its students in compliance with federal and state special education laws. Under the contracted model, some charter schools have reported a number of benefits including increased autonomy from their authorizers and the sense that this is a less expensive model.

Under the **combination model**, the charter school and its authorizer negotiate a combination of services provided by the charter school and by the administrative unit. Similarly, under the **modified insurance** model, the charter school contracts for some services and pays the authorizer a per student fee for services the charter school does not provide. These models encourage collaboration between the administrative unit and the charter school, and are also the most flexible. Each party can identify the critical areas of importance to it (i.e., control, autonomy, risk exposure, etc.) and then negotiate for those values. Advantages reported by some charter schools include increased opportunity to hire special education staff who are supportive of the charter school's

mission; opportunities for interaction and relationship-building between the administrative unit and the school; and the ability to offer integrated services to students with disabilities. Reported disadvantages include increased administrative time for coordinating the activities of special education providers.

In selecting a service delivery model, a charter school should consider the special education programs and placement options available to students, the special education teacher qualification requirements, and related services available to students.

A. Least Restrictive Environment and Age-Appropriate Classrooms

Programming/Placement: A child with a disability should be educated in the least restrictive environment (LRE). LRE means that (1) to the maximum extent appropriate, a child with a disability is educated with nondisabled students, and (2) segregation of the disabled student from the regular education environment occurs only if the nature and severity of the child's disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. However, an administrative unit must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities within its unit. The term "placement" means the provision of special education and related services, as well as the educational environment where a student receives those services. Placement *does not* mean a specific place such as a particular school or classroom. The special education placement of a student is determined by the student's IEP team.

Considerations for selecting a special education service delivery model in the context of LRE include:

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

_____ What special education services is the administrative unit providing or planning to provide?

_____ What special education services provided by the administrative unit can be provided at the charter school?

_____ What special education programs and services are centrally provided by the administrative unit such that they will not be provided at the charter school? How will such 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?

B. Special Education Teacher Qualifications

Although a charter school may obtain state and district waivers for the qualifications of regular education personnel, this is not the case for special education teachers and related services providers. The IDEA and ECEA require that all personnel providing special education services to students with disabilities meet state licensure requirements. Which entity selects special education staff or whether there will be an opportunity to provide input on the selection of service providers generates another set of important considerations in selecting a special education service delivery model:

_____ For those special education services that are provided by the administrative unit, will the charter school be given the opportunity to participate in the hiring and/or selection of the special education service providers (special education teachers, speech-language pathologists, 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 administrative unit have the opportunity to review and comment on the charter school's service providers and other vendors?

_____ Which entity will have supervisory responsibility for special education service providers in the charter school?

C. Related Services

Under the IDEA and the ECEA, related services are supportive services that may be required to assist a child with a disability to benefit from special education. The kinds of related services are many and include assistive technology, psychological and counseling services, occupational therapy, and health care services. Considerations for selecting a special education service delivery model in the context of related services include:

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

III. Special Education Funding

In Colorado, special education is funded by a combination of sources. The amounts disbursed by these sources are subject to change each year. The following percentages are based on amounts disbursed in the 2007-2008 school year.

Federal Funds: Currently, IDEA funding contributes to approximately 21% of the overall cost of special education programs. The CDE distributes federal special education funds to the administrative units, and the funds are then shared across the school district.

State Funds: State categorical special education funding under the ECEA is distributed, on a per pupil basis, directly to administrative units in two ways. The bulk of ECEA funds (base funds) are for administrative units to provide special education services to students with disabilities enrolled in their respective units. The remaining balance is available specifically for costs incurred for students with disabilities who live in eligible facilities located within the boundaries of the school districts. Approximately 16% of special education is funded with state categorical moneys.

Other Sources: Approximately 1% is funded by other sources such as tuition cost payments from other administrative units, Medicaid funding, and funding through the division for developmental disabilities.

General Funds: Currently, approximately 62% of special education is funded through a school district's general fund. General funds come from state taxes, local specific ownership (vehicle registration) taxes and local property taxes. Consequently, charter schools should plan on subsidizing special education services out of their general fund by 60 - 70%

Under the IDEA, administrative units must serve students with disabilities attending their charter schools in the same manner as they serve special education students in their traditional schools. Similarly, an authorizer's administrative unit must provide IDEA funds to their charter schools in the same manner as they provide those funds to their traditional schools. Special education funding is directly related to the special education service delivery model negotiated between the charter school and its authorizer. Within these legal constraints, the parties negotiating a new charter or a renewal charter may negotiate both the funding and the responsibilities for providing special education services. Special education funding considerations include:

_____ Which special education service delivery model will be used by the charter school?

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

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

_____ If the charter school has an eligible special education student who resides outside of the administrative unit, will the charter school seek tuition cost from the district of residence?

IV. Enrollment/IEP Transition Procedures

Under state law, charter school enrollment must be open to any child who resides within the authorizing school district, and if space is available, a charter school may enroll nonresident children. Additionally, enrollment in charter schools authorized by the CSI must be open to any child who resides within the state. The opportunity for any child to enroll includes children with disabilities. A charter school's enrollment decisions must be made in a nondiscriminatory manner. Considerations for nondiscriminatory enrollment procedures include:

_____ 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 will occur if the charter school believes that it cannot meet the needs of a child with a disability?

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

V. Transfer Students

When a child with a disability transfers into a charter school from another district, the child must be provided with a free and appropriate public education (FAPE) including the special education services or services comparable to those described in the child's IEP from the previous district. These services must be provided until (1) the child's IEP from the previous district is adopted, or (2) a new IEP is developed through the IEP process.

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

_____ What communications will occur between the charter school and the special education director when the charter school anticipates that it will be enrolling a student who resides outside of the district?

VI. Pre-referral Interventions and Pre-referral Team

Pre-referral Interventions: Pre-referral interventions are planned, systematic efforts by regular education staff to address a student's apparent learning or behavior problem. A pre-referral intervention may be an instructional modification or modification to classroom management. A comprehensive system of tiered interventions is an integral component of the Response to Intervention (RTI) approach to identifying children with suspected learning disabilities.

_____ What process will be used by the charter school for pre-referral interventions? What criteria, such as number of interventions attempted, will be indicators of a successful intervention? How will such interventions be documented?

_____ Will the administrative unit make available to the charter school a list of suggested interventions?

_____ Who will comprise the charter school's pre-referral team?

_____ What training will be provided on pre-referral interventions and procedures? How will such training be provided? Who will be responsible for providing such training?

_____ Who will be responsible for keeping the parent(s) of the student informed of the interventions used and the child's progress?

_____ If the pre-referral team believes a child has a disability, how will the charter school make the special education referral for initial evaluation?

VII. Initial Evaluation and Re-evaluation Procedures

The IDEA and the ECEA require that an initial evaluation be conducted before providing special education and related services to an eligible child with a disability. The IDEA and the ECEA also require that re-evaluations occur at least every three years, unless the parent and the administrative unit agree that re-evaluation is unnecessary. Parental consent to the evaluation must be obtained prior to conducting assessments for an initial evaluation or re-evaluation.

_____ Which entity will be responsible for obtaining informed parental consent for initial evaluations and re-evaluations?

_____ Which entity will be responsible for tracking special education referral, initial evaluation and re-evaluation timelines?

_____ Which entity will be responsible for conducting initial evaluations and re-evaluations?

_____ Who will participate in the eligibility determination?

_____ After an initial evaluation, if a child is found to have a disability and is eligible for special education services, which entity will be responsible for obtaining written parental consent for initial provision of special education and related services?

_____ If the charter school will be conducting initial evaluations and re-evaluations, will the administrative unit share its assessment policies and procedures, and its list of approved assessment instruments with the charter school?

_____ If the charter school will be conducting initial evaluations and re-evaluations, how will the charter school obtain the necessary assessment instruments? Will the authorizer share the administrative unit's approved assessment instruments with the charter school at no cost? Will the authorizer's administrative unit provide the assessment instruments to the charter school at cost? Will the charter school independently obtain the assessment instruments, and if so, will the authorizer's administrative unit require its vendors to extend any discounts to the charter school?

_____ If the charter school will be conducting initial evaluations and re-evaluations, how will charter school assessment personnel consult with administrative unit assessment personnel?

_____ If the charter school will be conducting initial evaluations and re-evaluations, will the administrative unit give charter school assessment personnel the opportunity to attend any in-service training in these areas that are sponsored by the administrative unit?

VIII. IEP Development and IEP Review Meetings

The IDEA and the ECEA require that an IEP must be developed for each child with a disability. Each student's IEP must be reviewed at least annually. The IEP team must be comprised of individuals serving specific roles, including the administrative unit's special education director or designee.

_____ What communications will occur between the charter school and the special education director or designee when IEP meetings are being scheduled?

_____ Which entity will be responsible for tracking IEP development and review timelines?

_____ Which entity will be responsible for preparing the required notices for IEP meetings and related documentation?

_____ Will the authorizer's administrative unit share its IEP software, forms and instructions with the charter school?

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

Another important consideration in IEP development is state assessments. In Colorado, every student with a disability must participate in the Colorado State Assessment Program (CSAP) or the CSAP-Alternate (CSAP-A). The IDEA requires a child's IEP to include a statement of any individual accommodations that are necessary to measure the academic achievement and functional performance of the student on state assessments. In certain situations, an IEP team may determine that a student with a disability must take the State alternate assessment (CSAP-A).

_____ Will the authorizer provide the charter school with policies, procedures, or guidelines on individual accommodations for State assessments?

_____ Does the authorizer's administrative unit have policies, procedures or guidelines available to assist IEP teams in making decisions about a child's participation in the CSAP or the CSAP-A?

IX. Procedural Safeguards

The IDEA and ECEA have procedural safeguards to protect the due process rights of parents of students with disabilities. The procedural safeguards require certain notices to be provided to parents on a regular basis or in certain situations.

_____ Which entity will provide the Procedural Safeguards notice to parents of children with disabilities annually? Which entity will provide a copy of the procedural safeguards notice upon initial referral to special education or request for a special education evaluation?

_____ Which entity will provide Prior Written Notice to parents of children with disabilities if there is a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child?

X. Extended School Year Services

ESY services are special education and related services that are provided to a child with a disability (1) beyond the normal school year (e.g., during the summer months, before or after school, during school year breaks, etc); (2) in accordance with the child's IEP; and (3) at no cost to the child's parents. ESY services are intended to maintain already learned skills concerning the child's IEP goals rather than teaching the child new skills.

_____ How will the authorizer's administrative unit share its policies, procedures, or guidelines to assist the IEP team in determining a student's eligibility for ESY services?

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

XI. Student Discipline

Prior to subjecting a child with a disability to a disciplinary action that constitutes a change of placement; the child's IEP team must be convened to determine whether the child's behavior is a manifestation of his or her disability. A disciplinary change of placement occurs when a child is suspended or expelled for more than ten consecutive school days in a school year, or when a series of suspensions of ten consecutive school days or less constitute a pattern because of their proximity to each other and because of other factors.

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

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

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

_____ When the IEP team is required to conduct a functional behavioral assessment and 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 administrative unit personnel? Will the administrative unit provide technical assistance?

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

_____ 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 administrative unit 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?

XII. Dispute Resolution

A parent may disagree with an IEP or special education placement decision; or a parent may refuse to consent to an evaluation or initial provision of special education services. When such a disagreement arises, there are special education dispute resolution mechanisms of mediation, state complaints or due process hearings.

_____ When a parent expresses disagreement with a proposed or existing IEP, or refuses to consent to an evaluation or the initial provision of special education services, what communications will occur between the charter school and the administrative unit?

_____ When the 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 authorizer's administrative unit for its legal costs in defending claims alleging that the charter school has violated the IDEA or the ECEA?

XIII. Confidentiality and Special Education Records

_____ How will the charter school maintain the confidentiality of personally identifiable information in special education records? Will the charter school follow the administrative unit's policies and procedures for maintaining confidentiality?

_____ How will the charter school communicate a parent's request for special education records to the administrative unit?

XIV. Professional Development, Technical Assistance and Other Communications

_____ How will the authorizer's administrative unit 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?

_____ How will the administrative unit include the charter school in the administrative unit's communications to its schools regarding new and important special education information/updates?

_____ How will the administrative unit make in-service training and other professional development opportunities provided by the administrative unit to its special education personnel available to charter school personnel?

_____ How will the administrative unit make its special education staff available to the charter school for purposes of technical assistance?

_____ 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 administrative unit special education staff?

XV. Special Education Vendors

_____ For those special education services that are provided by the charter school, will the administrative unit 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 administrative unit require its vendors to provide the same discounts to the charter school as are provided to the administrative unit?

XVI. Section 504

Section 504 of the Rehabilitation Act has specific procedural requirements for the identification, evaluation and placement of students with disabilities. A child who is not eligible for special education under the IDEA and the ECEA may nevertheless be eligible for educational services under Section 504.

_____ Will the authorizer provide professional development and/or technical assistance to the charter school on Section 504 eligibility?

_____ If the special education eligibility team determines that a student is not eligible for services under the IDEA, which 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, which entity will be responsible for developing the Section 504 plan and the provision of appropriate educational services?