



Education Law Center

Making sure that all of Pennsylvania's children
have access to quality public schools

STUDENTS WITH DISABILITIES ATTENDING PUBLIC CHARTER SCHOOLS

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice

1. What are charter schools and cyber charter schools?

In Pennsylvania, charter schools are public schools created by agreement ("a charter") with a local school board. They must be non-profit organizations, be free to students and parents, and they cannot teach religion. Charter schools can be created and operated by parents, teachers, community members, business people, museums, nonsectarian colleges, universities and others, and must include the words "charter school" in their name.

Charter schools are schools of "choice" and are considered alternatives to traditional public schools. Charter schools are exempt from some -- but not all -- of the laws and regulations that govern other public schools. Charter schools must provide at least 180 days of instruction and are required to participate in Pennsylvania's state assessment system. Charter schools must comply with laws protecting civil rights and student health and safety. Charter schools must obey state law when they suspend or expel students, and must obey federal special education laws and state regulations that are specific to children with disabilities who attend charter schools.

One kind of charter school is called a "cyber charter." Cyber charter schools (cyber charters) operate under charters from the Pennsylvania Department of Education and use technology (Internet or other electronic means) to provide a significant portion of their instruction and curriculum to its students. Cyber charters must comply with the same federal and state rules on educating students with disabilities that apply to regular charter schools. When a cyber charter school applies for a charter, it must explain how it will provide education and related services to students with disabilities, including evaluation and the development and revision of Individualized Education Programs. For more information about cyber charter schools, see ELC's fact sheet *CyberCharter Schools - Frequently Asked Questions at: <http://www.elc-pa.org/pubs/downloads/english/charter%20Schools%20in%20PA%20-%20Frequently%20Asked%20Updated%208-08.pdf>.*

2. *Who can enroll in a charter school?*

Any student who is a resident of Pennsylvania is eligible for admission to a charter school. First preference must be given to students who reside in the district where the charter is located. If more students apply than there are spaces at the charter school, qualified students must be selected randomly (for example, by lottery). Students who are not residents of the school district may be admitted if there is enough space.

3. *Can a charter school limit admission to a particular group or exclude some students?*

Charter schools **cannot** limit admission on any basis that would be illegal if used by a school district. Charter schools cannot deny enrollment or otherwise discriminate against a student on the basis of the student's disability or need for special education or supplementary aids or services. Charter schools also **cannot** limit admission on the basis of intellectual or athletic ability, measures of achievement, or English proficiency. A charter school must admit students regardless of the nature and severity of their disability as long as they meet the other general requirements for enrollment.

Charter schools **are permitted** to limit their enrollment to a particular grade level or area of concentration (the arts, mathematics, or science). Charter schools **can** establish reasonable criteria to evaluate prospective students, but the criteria must be outlined in the charter agreement. Charter schools **may** also limit admission to a targeted group of "at risk" students. At-risk students include students who risk educational failure because of lack of English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage. Charter schools **may** give preference to students of parents actively involved in the creation of the charter school, and to siblings of enrolled students.

4. Do charter schools have to comply with special education laws?

Yes. Charter schools must comply with all federal disability laws, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA), and must provide eligible students with all of their federally mandated rights and protections. (For a comparison of the IDEA, Section 504, and the ADA, go to <http://www.dredf.org/advocacy/comparison.html>.) Students with disabilities who are enrolled in charter schools are entitled to a free appropriate public education (FAPE), including appropriate related services and all of the procedural protections guaranteed to students and parents by federal law. Charter schools do not have to comply with Pennsylvania's special education regulations known as Chapters 14 and 15, or with Chapter 16 (governing gifted education), but they do have to comply with a special set of regulations, called Chapter 711, that applies to students with disabilities who attend charters and cyber charters.

5. Are there special rules for charter school staff that teach students who are eligible for special education?

Pennsylvania's charter school law requires only 75 % of the teachers in charter schools to be certified teachers. However, persons who provide special education or related services to children with disabilities in charter schools must have special education certification and have to meet the "highly qualified" teacher requirement that applies to teachers in public schools. In addition, the state regulations have

specific education and experience standards for “educational interpreters” (individuals who provide interpreter or transliteration services to students who are deaf or hard of hearing), paraprofessionals who help certified staff provide instructional programs and services to students with disabilities, and personal care assistants. For more details on these requirements, see Chapter 711 at: <http://www.pacode.com/secure/data/022/chapter711/chap711toc.html>. .

6. *Who supervises charter schools' compliance with federal disability laws?*

The Pennsylvania Department of Education is responsible for monitoring charter schools' compliance with federal disability laws. Charter schools must comply with the Department's monitoring requirements, provide information requested by the Department, and complete all corrective action ordered by the Department if it finds that the school has violated state or federal special education laws. Charter schools are also required to file an annual report with the Department that includes the number, age, and disability of enrolled children who receive special education services, the programs and services being implemented by the charter school, including those provided by charter school staff, outside contractors, an intermediate unit, any staff training and technical assistance provided by the Department, the certification of staff providing services to children with disabilities, and other information.

7. *Who pays for special education services provided by a charter school?*

Funding for special education services is transferred from the student's school district to the charter school. Charter schools may also use Medical Assistance and other public and private sources to fund special education services.

8. *Do all charter schools have to be accessible to students with disabilities?*

Yes. Charter schools must comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act and ensure that students with disabilities have access to the programs and benefits of the charter school.

9. *Who is responsible for evaluating or reevaluating students enrolled in charter schools to determine if they are eligible for special education services and what services they need?*

The charter school must locate, identify, and evaluate all students it suspects may have a disability and who need special education services. Each charter school must also have a system for screening children to determine whether they should be referred for a special education evaluation. The screening must be at reasonable intervals to determine how students are performing based on grade-appropriate standards in core academic subjects.

When a parent requests an evaluation of a student enrolled in a charter school (which should be in writing), the charter school must conduct the evaluation and give the parents a written Evaluation Report within 60 calendar days (minus the summer months) from the date the parent agrees in writing to the evaluation, *or* the school district must notify the parents that they can request a special education due process hearing to determine whether the student is in need of the evaluation. If a parent verbally asks that the child be evaluated, the school must, within 10 calendar days, give the parent the form on which to make a written request.

A parent can request a reevaluation once a year or more often if the charter school agrees. Children must be reevaluated at least every three years (every two years if the child has mental retardation), unless the parent agrees in writing that no reevaluation is needed. The reevaluation must be completed within 60 calendar days (minus the summer months).

10. *Do charter schools have to provide "special education" for gifted students?*

No. Students who are gifted are entitled to special education services under Chapter 16 of the Pennsylvania School Code. These regulations are "waived" for charter schools. A charter school may choose to provide such services, but is not required to do so.

11. Are charter schools required to serve preschool students with disabilities?

Yes, if the charter school chooses to serve students below school age, it must also serve students with disabilities within the same age group *and* provide them with all of the special education services and procedural protections guaranteed by federal law.

12. If a student has an Individualized Education Program (IEP) from a Pennsylvania school district when she enrolls in the charter school, does the charter school have to implement the IEP?

The charter school either must adopt and implement the IEP the student has at the time of enrollment in the charter school, or it must develop, at an IEP Team meeting, a new IEP with which the family agrees. Charter schools must provide all of the special education and related services listed on a student's agreed-to IEP. If the school and the family cannot reach an agreement, the family can request mediation or an impartial special education hearing. For more information on special education dispute resolution options, see ELC's Fact Sheet *How to Resolve Special Education Disputes* at

<http://www.elc-pa.org/pubs/downloads%202009/How%20to%20Resolve%20Special%20Education%20Disputes%204-15-09.pdf>

If a dispute arises between the school and the family over what should be in the child's IEP, the charter school should provide services that approximate, as closely as possible, those listed in the IEP the child had when she enrolled in the school.

13. Is a student in a charter school or a cyber charter eligible for "extended school year" services?

Children with disabilities in charter schools are entitled to Extended School Year (ESY) services on the same basis as children in public schools. For details on when a child is eligible for ESY, see ELC's Fact Sheet, *When is Your Child with a Disability Entitled to Extended School Year Services*, at: <http://www.elc-pa.org/pubs/downloads/english/dis-Extended%20School%20Year%208-08.pdf>.

14. Does the student's school district of residence have any responsibility for the special education needs of a student enrolled in a charter school?

No, the responsibility to provide special education passes along with the funding to the charter school. The charter school becomes the student's "local educational agency" for purposes of special education.

14. Who is responsible for transporting students to and from charter schools?

Districts must provide free transportation to resident students with disabilities who attend a charter school located within the district, a regional charter school of which the school district is a part, or a charter school that is located within 10 miles of the district's borders. This includes transportation to a child's ESY program at a charter school. A school district must provide transportation to charter school students when the charter school is in session, whether or not it provides transportation to its own students during those dates and times.

If the Pennsylvania Department of Education determines that a school district is not providing the required transportation to students who attend a charter school, the Department will pay the charter school to transport these students (the Department will deduct the cost of this transportation from funds it provides to the district.) Districts that transport students to charter schools in other districts will be eligible for some reimbursement from the Department.

Students who are eligible for special education are entitled to free transportation to school that takes account of their disability. So if the child needs special transportation such as a lift bus, that service must be listed on the child's IEP and must be provided. However, special equipment or bus aides are the obligation of the charter school.

In general, children who are enrolled in cyber charters don't need transportation. If they do need transportation for a related service, the cyber

charter must provide it.

15. *Can a charter school suspend or expel a student with a disability?*

Generally, charter schools must at minimum provide students enrolled in the charter school with the same protections that apply to all students within other public schools, including notice of the misconduct and an opportunity to challenge the decision to exclude the student. Charter schools must give students who are eligible for special education the additional special disciplinary protections mandated by federal law, including determining whether the behavior for which the student is being punished is related to the student's disability. The procedures for disciplining students are different for students with mental retardation and for students who bring weapons or drugs to school or who have seriously hurt others in the school setting. For more details on this complicated topic, see ELC's Fact Sheet, *School Discipline for Children with Disabilities*, at:

<http://www.elc-pa.org/pubs/downloads%202009/School%20Discipline%20for%20Children%20w-Disabilities%204-15-09.pdf>.

16. *When parents feel that charter schools are violating a student's right to special education services, where do the parents complain?*

Parents should first complain to the director of the charter school and try to resolve the problem. If this is not successful, parents can request Mediation or a Due Process Hearing. Students enrolled in charter schools have all of the due process protections guaranteed to parents by federal special education laws, including the right to file an administrative complaint with the Pennsylvania Department of Education. For the details on how to file a complaint or request a hearing, see ELC's Fact Sheet, *How to Resolve Special Education Disputes*, at:

<http://www.elc-pa.org/pubs/downloads%202009/How%20to%20Resolve%20Special%20Education%20Disputes%204-15-09.pdf>.

The Pennsylvania Department of Education has also published a parent's guide to Special Education in Charter Schools. You can obtain a copy by contacting one of

the Pennsylvania Training and Technical Assistance Network (PaTTAN) regional offices (Harrisburg: 800-360-7282; Pittsburgh: 800-446-5607; King of Prussia: 800-441-3215) or by visiting their web page at:

<http://www.pattan.net/files/Charter/Charter-Sch-Gd-ENG022009.pdf>.

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