

2012

## With Charter School Popularity on the Rise, Illinois Takes Steps to Ensure Charter Schools are Open to All

Lynsey Stewart

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>



Part of the [Education Law Commons](#)

---

### Recommended Citation

Lynsey Stewart, *With Charter School Popularity on the Rise, Illinois Takes Steps to Ensure Charter Schools are Open to All*, 17 Pub. Interest L. Rptr. 89 (2012).

Available at: <http://lawcommons.luc.edu/pilr/vol17/iss2/2>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

# WITH CHARTER SCHOOL POPULARITY ON THE RISE, ILLINOIS TAKES STEPS TO ENSURE CHARTER SCHOOLS ARE OPEN TO ALL

*by* LYNSEY STEWART

**A**lthough charter schools in Illinois serve just fewer than 50,000 students, there are more than 19,000 applicants currently on waiting lists for charter schools in Chicago alone, demonstrating their abundant popularity.<sup>1</sup> With charter schools among the fastest growing segments in K-12 education, ensuring that all students have equal access to these innovative schools has become increasingly important.<sup>2</sup>

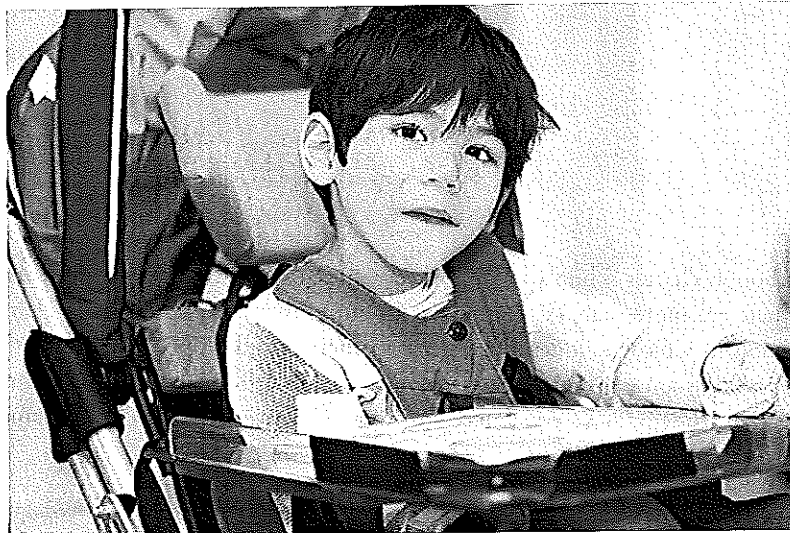
## Loyola Public Interest Law Reporter

Charter schools are public schools governed by an independent board of directors that come into existence through a contract, or charter, with an authorized public chartering agency.<sup>3</sup> Each charter school has complete autonomy over its educational plan and operations, provided that the school adheres to the terms and conditions of the approved charter agreement.<sup>4</sup>

Key components of the charter school's education plan, such as curriculum, staff, length of school day and year, professional development and "seat time" are left to the discretion of the charter school.<sup>5</sup> In this way, charter schools serve as a testing ground for innovative educational approaches that address the unique needs of students who may not succeed in a conventional educational environment.<sup>6</sup> There is concern, however, that students with special needs are not benefitting from states' substantial investment in charter schools.<sup>7</sup>

#### UNDERREPRESENTATION OF SPECIAL NEEDS STUDENTS IN CHARTER SCHOOLS

To partially address this fear, the Southern Poverty Law Center is suing the Louisiana Department of Education on behalf of thousands of disabled students in New Orleans who, according to the complaint, have been completely denied enrollment and forced to attend schools lacking the resources necessary to serve them.<sup>8</sup>



Additionally, in May 2011, the Bazelon Center, a nonprofit legal advocacy group, filed a complaint with the U.S. Department of Justice claiming that some of Washington, D.C.'s charter schools openly discourage parents from enrolling disabled children, especially those with the most significant needs.<sup>9</sup> Statistics in Bazelon's complaint reveal that while 18 percent of the city's traditional public school population receives special education services, only 11 percent of the charter population is comprised of special education students, and this gap only grows as the students' needs become more severe.<sup>10</sup>

The underrepresentation of students with disabilities in charter schools is not limited to Washington, D.C., however. Charter schools in Illinois also typically serve a smaller proportion of special needs students than the school district in which the charter is located.<sup>11</sup> For instance, in the 2010-2011 school year, 13.1 percent of students in Chicago Public Schools were students with disabilities, compared to 11.8 percent of students in charter schools.<sup>12</sup>

However, when these numbers are broken down according to the severity of the disability and the amount of services required, charter schools in Illinois are serving roughly half as many students with severe disability classifications than traditional public schools.<sup>13</sup> Furthermore, in the category of students requiring the most services, the proportion of disabled students receiving these services in public schools is more than 5 times greater than the number of students receiving services in charter schools.<sup>14</sup>

#### CHARTER SCHOOLS AND THE LAW

While there is no definitive evidence as to why many charter schools serve so few students with disabilities, there is some anecdotal evidence that the parents of children with special needs are often discouraged from applying for admission, and that some students with complex needs are counseled back to traditional public schools.<sup>15</sup> There are also reports that some charter schools simply do not provide comprehensive special education services, which would be a violation of federal law.<sup>16</sup>

While state charter laws enable charter schools to create educational models and practices free from local and state regulations, these statutes cannot grant exemptions from any federal special education or federal disability laws.<sup>17</sup> These federal mandates include Section 504 of the Rehabilitation Act of 1973,

Title II of the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA).<sup>18</sup>

Under IDEA, charter schools are required to provide the same supplemental services as all public schools.<sup>19</sup> Charter schools must also satisfy the requirement to educate children with disabilities in the same classes as children without disabilities to the maximum extent appropriate.<sup>20</sup> Accordingly, it is illegal for charter schools to direct children with disabilities who are difficult or costly to serve away from charter schools and toward traditional public schools, or for charter schools to fail to provide adequate services to children with disabilities.<sup>21</sup>

#### PLANNING AHEAD: SAFEGUARDING SCHOOL CHOICE FOR DISABLED STUDENTS IN ILLINOIS

Avoiding disability discrimination means ensuring parents of children with disabilities have the same choices of either charter or non-charter schooling that parents of other children enjoy.<sup>22</sup> For Hillary Coustan, Associate Director of the ChildLaw and Education Institute at Loyola University Chicago School of Law, it begins with the application to open a charter school.<sup>23</sup> "Charter schools should have IDEA in mind from the front end," said Coustan.<sup>24</sup>

"Special education needs to be a more integral part of the charter application process," remarked Coustan.<sup>25</sup> "It comes down to planning and training, and these things have to happen before the doors open."<sup>26</sup>

The Illinois State Board of Education (ISBE) agrees with Coustan, and in November 2011, ISBE promulgated the Special Education Services and Implementation Rubric required for approval of new charter school applications as well as renewal applications for existing charter schools.<sup>27</sup> The rubric compels charter schools to identify the procedures and practices they will use to ensure the successful implementation of services to disabled youth.<sup>28</sup>

Thus, in the future, charter proposals must demonstrate that the school will comply in all material respects with state and federal special education laws as a condition of approval and certification, and that the charter school will not discriminate on the basis of need for special education services.<sup>29</sup>

Coustan believes that by implementing the new rubric requirements, ISBE has taken a big step toward ensuring that disabled students in Illinois have equal access to charter schools.<sup>30</sup> Coustan remarked, “Charter schools are going to have to think about special education services and IDEA from the front end. It’s going to make a big difference.”<sup>31</sup>

---

#### NOTES

1 ILL. STATE BD. OF EDUC., 2009-2010 & 2010-2011 ILLINOIS CHARTER SCHOOL BIENNIAL REPORT 4 (2012), available at [http://www.isbe.net/charter/pdf/biennial\\_rpt\\_09-10\\_10-11.pdf](http://www.isbe.net/charter/pdf/biennial_rpt_09-10_10-11.pdf); *Record Number of Chicago Families Seek Charter Schools*, WALL ST. J., Jan. 28, 2012, available at <http://www.marketwatch.com/story/record-number-of-chicago-families-seek-charter-schools-2012-01-28>.

2 KEVIN BOOKER, BRIAN GILL & TIM R. SASS, ACHIEVEMENT AND ATTAINMENT IN CHICAGO CHARTER SCHOOLS 1 (RAND Education 2009), available at [http://www.rand.org/pubs/technical\\_reports/2009/RAND\\_TR585-1.pdf](http://www.rand.org/pubs/technical_reports/2009/RAND_TR585-1.pdf) (Nationally, more than 4,000 charter schools have been established since the 1990s, and they serve more than 1 million students); but see Thomas Hehir, *Charters: Students with Disabilities Need Not Apply?*, EDUC. WEEK, Jan. 26, 2010, available at [http://www.edweek.org/ew/articles/2010/01/27/19hehir\\_ep.h29.html?tkn=QQNC6AY97%2B01O7%2Bu4nwLniojY%2BAvdDbAtU](http://www.edweek.org/ew/articles/2010/01/27/19hehir_ep.h29.html?tkn=QQNC6AY97%2B01O7%2Bu4nwLniojY%2BAvdDbAtU).

3 ILL. STATE BD. OF EDUC., *supra* note 1, at 2.

4 *Id.*

5 *Id.*

6 *Id.*

7 Bazelon Center for Mental Health Law, *Civil Rights Complaint Against the District of Columbia*, at 9, May 12, 2011, available at <http://www.bazelon.org/LinkClick.aspx?fileticket=ZHSqwTj8U78%3d&tabid=77>.

8 *Special Education in New Orleans Public Schools*, S. POVERTY LAW CTR., Dec. 2010, available at <http://www.splcenter.org/access-denied/special-education-in-new-orleans-public-schools>.

9 Bill Turque, *D.C. Charter School Under Scrutiny for Lack of Special-Ed Students*, WASH. POST, Feb. 2, 2012, available at [http://www.washingtonpost.com/local/education/dc-charter-school-under-scrutiny-for-lack-of-special-ed-students/2012/01/30/gIQAtrRRBIQ\\_story.html](http://www.washingtonpost.com/local/education/dc-charter-school-under-scrutiny-for-lack-of-special-ed-students/2012/01/30/gIQAtrRRBIQ_story.html).

10 *Id.*

11 ILL. STATE BD. OF EDUC., *supra* note 1, at 20.

12 *Id.*

13 OFFICE OF NEW SCHOOLS, CHI. PUB. SCHOOLS, COMPACT BETWEEN CHICAGO PUBLIC SCHOOLS AND CHARTER SCHOOLS IN CHICAGO 6, Nov. 2011, available at [http://cps.edu/NewSchools/Documents/Chicago\\_District\\_Charter\\_Compact.pdf](http://cps.edu/NewSchools/Documents/Chicago_District_Charter_Compact.pdf).

14 *Id.*

15 Hehir, *supra* note 2.

16 *Id.*

17 Rebekah Gleason, *Charter Schools and Special Education: Part of the Solution or Part of the Problem?*, 9 U. D.C. L. REV. 145, 149 (2007).

18 *Id.* at 155.

19 Individuals with Disabilities Education Act, 20 U.S.C. § 1412.

Loyola Public Interest Law Reporter

20 *Id.*

21 Mark C. Weber, *Special Education from the (Damp) Ground Up: Children with Disabilities in a Charter School-Dependent Educational System*, 11 LOY. J. PUB. INT. L. 217, 234 (2010).

22 *Id.*

23 Interview with Hillary Coustan, Associate Director, ChildLaw and Education Institute at Loyola Univ. Chi. Sch. of Law (Mar. 14, 2012).

24 *Id.*

25 *Id.*

26 *Id.*

27 Memorandum from Elizabeth Hanselman, Assistant Superintendent for Special Education & Support to Superintendents, Special Education Directors, Regional Offices of Education and Interested Parties 3-7, (Nov. 2011), available at [http://www.isbe.net/charter/pdf/charter\\_sped\\_svcs\\_inst.pdf](http://www.isbe.net/charter/pdf/charter_sped_svcs_inst.pdf).

28 *Id.* at 2.

29 *Id.* at 1-2.

30 Coustan, *supra* note 23.

31 *Id.*