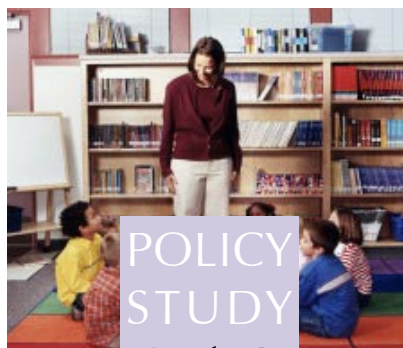




July 2004

SPECIAL EDUCATION ACCOUNTABILITY: STRUCTURAL REFORM TO HELP CHARTER SCHOOLS MAKE THE GRADE

By Lisa Snell



POLICY
STUDY
319



Reason Public Policy Institute

A division of the Los Angeles-based Reason Foundation, Reason Public Policy Institute is a nonpartisan public policy think tank promoting choice, competition, and a dynamic market economy as the foundation for human dignity and progress. Reason produces rigorous, peer-reviewed research and directly engages the policy process, seeking strategies that emphasize cooperation, flexibility, local knowledge, and results. Through practical and innovative approaches to complex problems, Reason seeks to change the way people think about issues, and promote policies that allow and encourage individuals and voluntary institutions to flourish.

Reason Foundation

Reason Foundation's mission is to advance a free society by developing, applying, and promoting libertarian principles, including individual liberty, free markets, and the rule of law. We use journalism and public policy research to influence the frameworks and actions of policymakers, journalists, and opinion leaders.

Reason Foundation is a tax-exempt research and education organization as defined under IRS code 501(c)(3). Reason Foundation is supported by voluntary contributions from individuals, foundations, and corporations. The views are those of the author, not necessarily those of Reason Foundation or its trustees.

Copyright © 2004 Reason Foundation. Photos used in this publication are copyright © 1996 Photodisc, Inc. All rights reserved.

Special Education Accountability: Structural Reform to Help Charter Schools Make the Grade

By Lisa Snell

Executive Summary

Charter schools in the United States serve between 56,000 and 80,000 special education students and meet two of the federal government’s most important goals for these students. First, charter schools successfully provide disabled students with a quality education in the “least restrictive environment” by including special education students in regular classrooms. Second, charter schools reduce the number of students labeled “special education” through aggressive early intervention strategies that keep students performing at grade level.

Yet, there is little research examining how charter schools account for special education students or examine academic achievement for their special education students. Testing charter school special education models demands structural reforms in special education financing at the charter school level and testing and reporting requirements for small group sizes under the No Child Left Behind federal legislation.

Special Education accountability is difficult for *all* schools. Yet, charter schools face unique challenges. With fewer resources available and less oversight and control than traditional schools, accountability is especially arduous for charters. Most charters are small and do not have the economies of scale to reduce the cost of special education services. In most cases, the quality of a charter school’s special education services rests largely on its authorizing school district, which controls the funding of the program. Regarding special education in California charter schools specifically, this study examines accountability, provision, and structural barriers to innovation, and recommends several policy changes to promote innovation and accountability.

Specific recommendations to improve innovation and accountability in charter schools include:

1. Structuring special education funding to follow each child into the charter school.
2. Encouraging special education cooperatives and insurance to pool resources among charter schools to achieve economies of scale and higher quality special education service provision.
3. Implementing value-added testing programs to measure individual student achievement gains for charter school students.
4. Linking special education funding at the state and federal level to student achievement and other performance measures for special education students.
5. Modifying the No Child Left Behind Act's data reporting requirements for small sample sizes so researchers can analyze special education student achievement in charter and traditional public schools.
6. Developing charter school "choice" pilot projects that grant charter schools a waiver from IDEA regulations in exchange for accountability.

Table of Contents

| | |
|--|----|
| Introduction | 1 |
| The Special Education Challenge | 3 |
| A. The Special Education Achievement Gap..... | 3 |
| B. Testing Exclusion..... | 4 |
| C. Federal Accountability Requirements..... | 4 |
| D. Special Education Versus Early Intervention..... | 5 |
| The Promise of Charter Schools | 7 |
| A. Neverstreaming..... | 7 |
| B. Full Inclusion..... | 9 |
| Barriers to Charter Innovation | 10 |
| A. Data Reporting Barriers | 10 |
| B. Special Education Funding in Charter Schools..... | 11 |
| Reason Foundation’s Special Education Survey | 15 |
| A. Satisfaction with Special Education Provision | 15 |
| B. Individualized Instruction and Early Intervention..... | 16 |
| C. Inclusion..... | 17 |
| D. Screening Out | 17 |
| Recommendations..... | 18 |
| A. Let Special Education Funding Follow the Child..... | 18 |
| B. Use Special Education Cooperatives and Insurance..... | 19 |
| C. Employ Value-Added Testing | 20 |
| D. Tie Performance to Funding..... | 22 |
| E. Change Data Reporting Requirements Under No Child Left Behind | 22 |
| F. Allow Special Education Charter School Choice Waivers | 22 |
| Appendix | 23 |
| About the Author..... | 25 |
| Related Reason Foundation Studies | 26 |
| Endnotes | 27 |

Part I

Introduction

According to *Education Week*'s "Quality Counts 2004: Count Me In: Special Education in an Era of Standards," approximately 6.6 million children receive special education services in the United States. This means that more than 12 percent of American students in kindergarten through 12th grade are assigned to the special education system.¹ Approximately 67 percent of disabled students have specific learning disabilities (SLD) or speech or language impairments.² Fewer than 12 percent have disabilities associated with significant cognitive impairments, such as mental retardation or traumatic brain injury.³

Charter schools in the United States serve a relatively small number of special education students. According to the most recent survey from The Center for Education Reform, about 3,000 charter schools in the United States serve approximately 800,000 children.⁴ If special education students represent between 7 and 10 percent of charter school enrollment this means charter schools are educating between 56,000 and 80,000 special education students.

In a 2003 study of 12 states, the average traditional school enrolled a higher percentage of special education students (except Washington, D.C.) than charter schools did, especially those with the most costly disabilities.⁵ Similarly, charter schools operators in the U.S. Department of Education's Schools and Staffing Survey reported that 7.8 percent of their students had Individual Education Plans (IEPs) compared with 16.1 percent of traditional public school students.⁶ Likewise, in a 2003 charter school study, RAND researchers found that approximately 7.6 percent of California charter school students were given an IEP in contrast to 8.9 percent of students in conventional schools. RAND also found that California charter schools reported that 1.3 percent of their overall student populations were severely disabled. Conventional public schools reported that 1.1 percent of students were severely disabled.⁷ Overall, evidence suggests that charter schools may serve slightly fewer special education students, and these lower percentages are often automatically assumed as evidence that charter schools are not serving special education students.

Yet, based on anecdotal evidence, RAND researchers speculate that charter schools may have a philosophical difference and "choose not to give marginal students an IEP out of a belief that the stigma of special education may cause more harm than benefit to the child."⁸ Congruently, a Reason Foundation 2003 Survey of California charter schools finds that school directors reported using aggressive early intervention strategies and remediation strategies to help reduce the rate of special education.⁹

In 2004 there has been a renewed interest in better academic outcomes for special education students. In "Quality Counts 2004," *Education Week* examines the issues surrounding special education and accountability. The report notes that "within a decade, federal law requires that all students—including those with disabilities—be performing at the "proficient" level on state tests."¹⁰ This requirement has caused controversial headlines. In December 2003 CNN headlines announced that "Special education students skew

test results” and lead to too many failing schools.¹¹ A January 2004 *New York Times* editorial suggested “Critics of No Child Left Behind want to abandon disabled children by counting them out of the push for higher standards.”¹²

These headlines reflect the tension between those educators who worry that schools will be unfairly penalized for the low academic performance of special education students and those educators who are concerned that schools have not been accountable for the academic performance of disabled children.

Several issues surround academic accountability for special education students in charter schools. Some of these issues characterize charter schools alone and some mirror the national debate over providing accountability for all special education students. While special education accountability is difficult for *all* schools, charter schools face unique challenges. Most charters are small and do not have economies of scale to reduce the cost of special education services. And most charters have fewer special education resources available than traditional public schools. Many charter operators lack oversight and control over the resources that are available to them, thus the quality of their special education services relies on the quality of special education services in their authorizing school district.

Special education accountability has played a role in the closure of a few charter schools nationwide. For example, in 2003 the Illinois State Board of Education revoked the Thomas Jefferson Charter School's charter when it failed to achieve compliance with federal special education law¹³; in Ohio, the state Department of Education cited the Summit Academy of Canton for special education failures¹⁴; and the Arizona Department of Education reported that charter schools receive more special education complaints than traditional public schools.¹⁵ Yet, charter schools have also been celebrated for their full inclusion of special education students, their small school size and focus on individualized instruction, and their prevention strategies that many parents say helps their children to learn.

Charter schools meet two of the federal government's most important goals regarding special education students. First, by including special education students in regular classrooms, charter schools successfully provide disabled students with a quality education in the “least restrictive environment.” Second, charter schools use aggressive early intervention strategies to keep students performing at grade level and reduce the rate of special education by preventing students from being labeled as special education in the first place.

Anecdotal evidence, survey data, and preliminary research indicate that California charter schools do a better job of meeting “inclusion” goals by educating disabled students with their non-disabled peers, using individualized curriculum and small class sizes to meet the instructional needs of special education students, and using early intervention strategies to catch learning problems early and avoid the “wait to fail” special education model. However, most of these outcomes have not been sufficiently validated by control group research or by analyzing student achievement data for special education students enrolled in charter schools. Testing charter school special education models requires structural reforms in special education financing at the charter school level and testing and reporting requirements for small group sizes under the No Child Left Behind federal legislation.

This study examines several issues involved in special education accountability and makes recommendations based on those issues.

Part 2

The Special Education Challenge

A. The Special Education Achievement Gap

The 2004 “Quality Counts” report reveals a sizeable achievement gap between disabled and non-disabled students. More specifically:¹⁶

- On fourth-grade reading tests, 30 of the 39 states with complete data had achievement gaps of 30 percentage points or more between special and general education students.
- In Arkansas, Iowa, Montana, New Hampshire, Oklahoma, and Vermont, the gaps were more than 50 percentage points.
- Gaps in eighth-grade reading tended to be even wider. Only five of the 39 states—Michigan, Mississippi, Nebraska, South Carolina, and Texas—reported achievement gaps under 30 percentage points.
- On high school reading exams, 32 of 36 states reported achievement gaps larger than 30 percentage points.

Similarly, in a February 2004 commentary from the Thomas B. Fordham Foundation’s *Education Gadfly*, Andy Smarick, director of The Charter School Leadership Council, argues that “on average, disabled students lag farther behind their non-disabled classmates than African American and Hispanic students lag behind their white classmates.” For example:¹⁷

- In Maryland, 66 percent of eighth graders in regular education are proficient or advanced in reading, while only 20 percent of special education students reach the same level.
- In Connecticut, 41 percent of eighth-grade special education students are “below basic” in writing, but only 6 percent of regular education students fall in the same category.
- In Wisconsin, 78 percent of tenth graders in regular education are at or above proficient in reading. Only 27 percent of special education students reach these same levels.
- In New Jersey, 77 percent of eleventh graders in general education are proficient or advanced in math, but only 26 percent of special education students achieve the same results.

Smarick’s data point to another trend in academic achievement for special education students: the longer the students remain in special education, the larger the achievement gap becomes between disabled and non-disabled students.

Research confirms that the longer students remain in special education, the farther they fall behind. For example, the longer students remain in special education, the lower their reading ability when compared to

that of other poor readers. As Louise Spear-Swerling and Robert J. Sternberg explain in their 1998 book *Off Track: When Poor Readers Become “Learning Disabled,”* “Poor readers in special education may be particularly likely to suffer decreases in practice, to benefit less from instructional interaction with a teacher, to engage in un motivating instructional activities, and to draw maladaptive conclusions about what reading is.”¹⁸ In parallel fashion, a 1989 study by education researchers Richard Allington and Anne McGill-Franzen found that poor readers in special education programs received less instructional time in reading than did regular classroom students or Title I students.¹⁹ A 2001 survey of 500 special education teachers by the Council for Exceptional Children found that most reported devoting less than one hour a week to one-on-one time with students.²⁰

B. Testing Exclusion

Due to large achievement gaps, schools have often excluded special education students from testing as a strategy to raise overall test scores. Some states were celebrated for having national test score increases on the 1998 National Assessment of Educational Progress (NAEP) after excluding higher percentages of special education students from national tests.²¹ The 1998 NAEP results initially appeared to show significant improvements in fourth-grade reading scores in nine states between 1994 and 1998.

But the progress reported in this study was largely fictitious. A skeptical parent in Kentucky, Richard Innes, discovered a problem with the 1998 NAEP reading scores.²² According to the official results, Kentucky was one of the most improved states in fourth-grade reading. But, using data gleaned from the Internet, Innes discovered that the gains in some states, including Kentucky, resulted from the exclusion of students considered to be slow learners and those with learning disabilities. Innes asked this critical question: Can a state's scores be accurate when they don't include large numbers of low-scoring students? An analysis by the U.S. Department of Education confirmed that several states had inflated average reading scores by excluding greater numbers of special education students from testing in 1998 than in 1994.²³ The federal analysis established that more than half of the 36 states where the NAEP is administered had excluded significantly larger numbers of special education students in 1998.²⁴

For example, Kentucky dumped test results for 10 percent of the students who were selected for its 1998 sample, compared with 4 percent in 1994. Louisiana ignored 13 percent in 1998, up from 6 percent in 1994. And Connecticut, the nation's highest-scoring state, removed 10 percent of the students selected to participate, compared with 6 percent in 1994.²⁵

C. Federal Accountability Requirements

Schools no longer have the option to exclude special education students from testing.

The 1997 version of the Individuals with Disabilities Education Act (IDEA) requires states to set goals and standards for special education students that are consistent, to the maximum extent appropriate, with those for all students.²⁶ The law requires states and districts to include students with disabilities in their testing systems and report the results. The 2001 No Child Left Behind Act also holds schools accountable for the “adequate yearly progress” of students with disabilities on state tests. No Child Left Behind has focused even more attention on special education accountability because of the consequences for entire schools when

special education students fail. In fact, in 2003 one of the most contentious elements of the No Child Left Behind Act deemed thousands of schools across the country “failing” because of the test scores of special education students.²⁷

New rules released in January 2004 allow states to use alternate academic standards and assessments when determining the proficiency of students with the most significant cognitive disabilities.²⁸ A cap is set, though, so only 1 percent of all students (about 10 percent of disabled students) may have their scores on alternate standards be counted toward the state's adequate yearly progress for all students. The bottom line is that 99 percent of students in a grade—regardless of race, gender, English language learner status, or disability—must be taught a curriculum aligned with state content standards and be assessed accordingly. The most cognitively disabled students—but not more than 1 percent of the students in a grade—may be held to a different academic standard, though they, too, must be taught an appropriate, challenging curriculum and be assessed on their progress in mastering it.²⁹

D. Special Education Versus Early Intervention

Much recent debate erupts over the degree to which the largest special education category of specific learning disability (SLD) reflects a true disability or an instructional failure in reading in the early grades. For example, Manhattan Institute education analyst Jay Greene observes that the Specific Learning Disability (SLD) category “has more than tripled from 1.8% of the student population in 1976–7 to 6.0% in 1998–9. All other categories of special education combined...have actually declined from 6.5% to 5.8% of the student population during the same period.”³⁰ Greene sees these trends as cause for skepticism about the validity of SLD designations. “If a general increase were truly underway in the proportion of students with learning problems,” he writes, “then it should be evident in more than just one category of special education.”³¹ His argument gives more weight to the need to focus on early intervention and reading problems before students are labeled as learning disabled.

Federal law defines SLD as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.”³² To prevent overuse of the label, federal regulations stipulate that it be limited to students who show a “severe discrepancy” between their achievement in one or more subject areas and their intelligence, usually as measured by an IQ test.³³ For example, a child who scores lower on a standardized reading test than on an IQ test might be classified as having a reading disability.

Even with these criteria, an SLD diagnosis remains subjective. In addition to the federal standard, there are 50 different state definitions of learning disability, and the methods used to determine intelligence vary widely. University of Minnesota education researchers James Ysseldyke and Bob Algozzine estimate that more than 80 percent of all schoolchildren in the United States could qualify as learning disabled under one definition or another.³⁴ In a 1986 study, UCLA education psychologist Esther Sinclair and her colleagues applied five different formulas to a sample of 137 children. Those classified as learning disabled ranged from 4 percent to 28 percent.³⁵

A consensus report published by the National Institute of Child Health and Human Development in 2001 concluded that it's impossible to clearly distinguish between an SLD in reading and low achievement: “Dyslexic children simply represent the lower portion of the continuum of reading capabilities.”³⁶

A 2002 report from the President’s Commission on Special Education estimated that 80 percent of students who receive an SLD diagnosis—two out of five special education students—are assigned to the program “simply because they haven’t learned how to read.”³⁷ In a similar vein, an in-depth analysis in *Rethinking Special Education for a New Century*, a 2001 report published by the Fordham Foundation and the Progressive Policy Institute, estimates that nearly 2 million children would not have been classified as learning disabled if the public schools they attended had provided proper, rigorous, and early reading instruction.³⁸ Unlike special education, early intervention with intensive instruction appears to reduce the number of children who have reading difficulties later in life.

The experience with early intervention programs that emphasize phonemes (basic units of speech) indicates that the rate of truly intractable reading problems is close to the rate of other serious disabilities. In five recent studies, when kids with poor phonological skills were given intensive instruction in phonemes and phonics, the expected incidence of learning disabilities—originally 12 percent to 18 percent—was reduced to below 6 percent.³⁹

Programs nationwide have shown that when schools focus on early reading intervention, the rate of special education labeling falls dramatically. For example, by focusing on intensive reading instruction in the late 1990s, New York City’s public school system reduced the number of students in special education programs. The number of special education students fell from 160,000 to 120,000, special education funding was capped and more money was directed toward general education.⁴⁰

“The emphasis on prevention begs the question of what constitutes a disability,” wrote reading expert Reid Lyon and his colleagues in the 2001 *Rethinking Special Education* report.⁴¹ “If the role of inadequate instruction is taken seriously, and more aggressive attempts are made to teach all children to read, the meaning of disability could change in the future. In this scenario, the actual diagnosis of LD could be reserved for children whose reading or other academic problems are severe and intractable.”⁴² Lyon argues that complex assessments and disability determinations should be replaced by a system offering intensive instruction to all children who score below the 25th percentile in reading achievement.⁴³

The current reauthorization bills for IDEA acknowledge the need for a focus on prevention. This legislation will give flexibility to local school districts to use up to 15 percent of their funds for pre-referral services for students before they are identified as needing special education.⁴⁴ Many charter schools embrace the early intervention philosophy and put a strong emphasis on targeting resources toward prevention in the early grades.

Part 3

The Promise of Charter Schools

Charter school advocates have argued that charter schools can inherently serve special education students better because of their mainstreaming approach coupled with small classrooms and individualized instruction. In testimony before the President's Commission on Excellence in Special Education in 2002, Elizabeth Giovanetti, Managing Director of Special Education Services for New American Schools, asserted that: "Parents of children with mild to moderate learning disabilities often find that their child performs best in a charter environment, given the student-centered focus, small scale, and the emphasis on achievement and accountability."⁴⁵

A. Neverstreaming

One strategy used by charter schools is "neverstreaming" which is designed to avoid special education placements in the first place. Education researcher Robert Slavin defines neverstreaming as "implementing prevention and early intervention programs powerful enough to ensure that virtually every child is successful in the first place."⁴⁶ The purpose of this approach is—as the name implies—to provide early intervention and services so the child never leaves the general education classroom.

Neverstreaming in Elk Grove, California

Elk Grove Unified in California is a pioneer of the neverstreaming model. At Elk Grove the neverstreaming model was first implemented during the 1994-95 school year. The goal was to decrease the number of students referred for special education assessment, improve schoolwide performance, improve staff collaboration, and improve school attendance.

In 1999 a California Department of Education evaluation found that special education referrals dropped from about 1,300 during the 1996-97 school year to about 500 during the 1998-99 school year.⁴⁷ Schoolwide performance on standardized tests and attendance also improved.⁴⁸ Elk Grove has reduced its special education rate from about 17 percent in 1995 to approximately 6 percent of students.⁴⁹

At the beginning of the school year, each Elk Grove teacher does an assessment of all the students in the classroom. Elementary students are assessed on decoding fluency, comprehension, encoding/spelling and math. Within the first month, the teacher meets with representatives of all the categorical supports in the school system. These can include special education, a Title I representative, speech/language pathologists, a school psychologist and the principal. This group is the Cooperative Conference.

The teacher presents a matrix of data of how all the students are performing in class. She sits down with the team and assesses who requires what intervention. This process is repeated with every teacher.

Students who are behind get lessons in phonics, spelling and other skills in small groups at campus “learning centers” staffed by special education teachers and other specialists.

The team continues to meet throughout the year to monitor the effectiveness of the intervention. This allows the team to identify the students in need of further help, those students who need temporary aid and those who have an actual learning disability and require further assessment.

“We are front-loading services for students with what they need, when they need it, rather than providing services based on categories of students,” said Martin Cavanaugh, Elk Grove assistant superintendent.⁵⁰

Bill Tollestrup, director of special education and neverstreaming for the Elk Grove Unified School District, stresses that the program “really, really helps in the implementation of IDEA '97. The general education teachers are almost always involved in the IEPs of students. They know they have the support and are comfortable having the students.”⁵¹

In neverstreaming, categorical resources such as Title I, bilingual education, migrant education and special education, are blended in the prevention program, which provides early intervention to students.

Neverstreaming is breaking the cycle of school failure in which students have to wait until third or fourth grade before a “severe discrepancy” between their ability and achievement can be measured, thus qualifying them for specialized services. Additionally, all students in the six neverstreaming elementary schools improved academically. The neverstreaming schools outperformed other schools in the district in 14 of 18 areas tested on the California Achievement Test.⁵²

The charter members of the Shasta County Charter Schools Special Education Consortium use neverstreaming as their main approach to special education. In an article for the Charter Schools Development Center, charter school researcher Julie Obbard explains the Shasta County Consortium’s approach to neverstreaming:

The consortium defines the approach as integration and cohesiveness between special education students and their classmates. The underlying principle is that all kids, regardless of whether they have been diagnosed with a physical or cognitive disability, are taught at their own instructional level and fully participate in the regular core curriculum. Classes are skill-based rather than grade-based, which means that special education students rarely have to be pulled out of the classroom. For example, a 10-year-old student at Redding School of the Arts, who is partially paralyzed, actively participates in his 4th grade class. With the exception of occasional one-on-one time with a speech and language therapist and RSP (Resource Specialist Program) teacher, he participates in everything the class does. As a result of efforts to ensure that this student feels included, teachers report that he is an active, confident, and respected member of the class.⁵³

Neverstreaming reflects a philosophy of using special education labels and treatment as a last resort rather than a tool to get children more instructional support. The key to this approach is to provide instructional support up front, without having the child enter the special education system to get extra help.

Ironically, public schools and charter schools that offer services early on and actually reduce their special education population through neverstreaming or other early intervention strategies may be criticized as not properly serving special education students. Schools are often judged by their special education percentages or rates as evidence of meeting special education obligations. Under current No Child Left Behind and IDEA regulations, if schools actually reduce the number of special education students and increase overall test

scores there is no way to account for this in the current special education accountability structure. Schools are often evaluated on their rates of special education students—not reasons “why” they may have fewer special education students. The federal funding proposal that would shift some IDEA funds to early intervention would recognize this strategy.

B. Full Inclusion

Federal law requires that special education children be educated in the “least restrictive environment.” Inclusion or mainstreaming refers to providing instruction to children with disabilities in regular classrooms in the presence of their non-disabled peers. Inclusion appears to be the prevailing practice in charter schools. A 2003 study by Rand found that California charter schools are more likely to mainstream special education students (39 percent) than matched public schools (19 percent), start-up charter schools are most likely to mainstream special education students (64 percent); and that charter schools are less likely to serve special education students in pullout programs (which take students away from daily lessons to offer remedial support) (37 percent) than matched public schools (61 percent).⁵⁴ As RAND researchers conclude, “Clearly, charter schools tended to rely heavily on mainstreaming their special education students where matched conventional public schools tended to rely heavily on pullout programs.”⁵⁵

The Los Angeles Unified School District created a partnership with the Community Honoring Inclusive Model Education (CHIME) charter school in Woodland Hills to train special education teachers from San Fernando Valley's public schools. At the CHIME Charter Elementary School, students who are hard of hearing or have cerebral palsy and other developmental challenges study side-by-side with students who don't have any disabilities. The CHIME program is a nationally acclaimed model program that L.A. Unified officials want to see emulated. Similarly, the Bowling Green charter school in Sacramento uses an inclusion model that integrates 45 orthopedically handicapped students with general education students. The school has a peer education component as part of its curriculum that helps students explore what it's like to have a physical disability. The program includes wheelchair rugby, limiting kids' range of motion, putting them in wheelchairs to perform certain tasks, and discussions of various disabilities. The curriculum is designed to help the kids have increased understanding and respect for differences.⁵⁶

Part 4

Barriers to Charter Innovation

While charter schools hold the potential to offer innovative special education programs, data reporting and financial barriers make it difficult to evaluate the effectiveness of their special education programs.

A. Data Reporting Barriers

In practical terms, it is difficult to test whether the charter school model leads to better outcomes for special education students. While NCLB requires test scores to be distinguished by subgroup, schools with small sample sizes are not required to report test score data. Therefore, only very large charter schools and public schools have to report their special education data. This hinders education researchers in understanding the effect of charter school innovation on student achievement. While charter schools could volunteer their own data, there is no independent data to analyze under NCLB. For example, in California, if a grade has less than 10 students in a subcategory, then test score data is not reported. This data is not even encoded in the in-depth research data files available to allow researchers to run comparisons. Therefore, only very large charter schools have data with more than 10 special education students per grade available for comparison with traditional public schools and districts. Of course small to medium-sized schools in California will also often have less than 10 students per grade in special education and therefore show no special education test data at the school level.

In addition, the unintended consequence of the current law is that it discriminates against large schools that appropriately “search and serve” students with disabilities. A school with high academic growth but a large special education population may be designated as failing while a school with lower overall academic achievement but a smaller special education subgroup may not be penalized because the special education data is not scrutinized. As one California charter school operator explains:

*The current law grossly discriminates against large schools that appropriately “search and serve” students with disabilities. A school half our size with the same percentage of special education students and similar test scores easily makes AYP (adequate yearly progress) because its 81 special education students is not a “significant” group and must not achieve AYP! This is something we need help to change. Our API (academic performance index) score improved 44 points—550 percent of our target growth, yet we are not an achieving school because our special education subgroup did not make AYP!*⁵⁷

One partial solution to improving the ability of researchers to test innovative special education models would be to continue to suspend NCLB penalties for small sample sizes but to report the test score data for these

small groups for research purposes. For example, 25 percent of the students at the CHIME charter school are special education in an innovative and highly regarded full-inclusion model. Yet, since the school only has 120 students, there will never be outcome data available that allows the public to understand the effect of the innovation on student achievement. The fundamental nature of charter school size means that most subgroups will be too small to measure. Therefore, changing the sample size reporting requirement would allow researchers to make comparisons between charter schools and traditional public schools.

Measuring Special Education Achievement in Los Angeles

Reason Foundation examined student achievement data for 2003 between Los Angeles County charter schools, the Los Angeles Unified School District, and the state of California. Most of the Los Angeles charter schools had sample sizes that were too small to make meaningful comparisons. For example, out of 65 charter schools in Los Angeles County, only 16 had large enough sample sizes in fifth grade for special education scores for language arts to be reported by the California Department of Education (CDE) at the school level. On average, the 16 charters with fifth grade data had 13.6 percent special education enrollment.⁵⁸ The results show that these 16 specific charters have slightly higher proficiency rates for fifth graders for language arts at 7.8 percent proficient versus 7 percent for Los Angeles Unified and lower proficiency rates than the state of California which had 9 percent of special education fifth graders scoring proficient in language arts. Besides demonstrating that both charter schools and public schools have very low proficiency rates for special education students in fifth grade language arts, this data tells nothing about overall trends in charters versus district schools. Unless data from small sample sizes are reported it will be very difficult to test the performance of special education students in charter schools or most public schools at the school level. Reason requested the data for smaller populations from the California Department of Education. The CDE has the data because schools with small sample sizes are still included in district and statewide averages for special education performance. However, the CDE does not compile the data at the school level unless the school reaches the minimum sample size for more than 10 special education students in each grade level.

The second issue in reporting of student achievement data for special education children concerns lumping all disabilities together regardless of severity. Many critics have complained that it is unfair to count special education scores because of the wide variation in disabilities. In other words, critics worry that children with severe disabilities will skew special education results. However, rather than excluding special education scores, the results should be further defined by type of disability. This would allow a research-based component to test which type of intervention works with each type of disability.

B. Special Education Funding in Charter Schools

Much of the charter school movement's difficulty with special education is centered on the funding model for special education students. In Reason Foundation's California charter school study, a major complaint was that individual charter schools do not receive the full amount of special education funds based on their student enrollment. In the majority of cases, special education funding does not follow the child into the charter school. The most common model for special education funding is that the sponsoring district keeps the special education funding and provides special education services to the charter school.

The extent to which charter schools can invest in special education students is complicated by their special education funding mechanism. The most critical issue for charter school special education funding is the charter's legal status within the public education system. Charter schools range from independent Local

Education Agencies (LEAs) to extensions of existing LEAs, which are most often the authorizing school district.⁵⁹ On the one hand, independent LEA status can increase charter schools' autonomy and give them control over their special education funds. On the other hand, charter schools are not large enough to have economies of scale for the costs of special education services. In practical terms, most charter schools do not control their special education funding.

A charter school's special education obligation depends on its LEA status, since at the local level, LEAs are responsible for implementing IDEA's requirements. Although LEAs are most commonly school districts, IDEA regulations explicitly state that the statutory definition of an LEA includes a public charter school that is established as an LEA under state law.⁶⁰

As new American School's Special Education Director Elizabeth Giovannetti, testified before the President's Commission on Excellence in Special Education, the federal IDEA law makes two fundamental assumptions about LEAs: 1) they are assumed to be big enough to have reasonable economies of scale for sharing the costs of special education, and 2) they are assumed to be committed to the special education success of all their schools. In her testimony, Giovannetti argued that "these assumptions do not hold true for charters in that much like small districts, they are not large enough to create economies of scale, and too often, the charter school's district of residence may be hostile to the charter school, seeing it as competition and is not motivated to serve it equally."⁶¹

The special education funding structure in California can help clarify the distinction between charter schools as independent LEAs and charter schools that are extensions of existing school districts for special education purposes. In California, charter schools can be their own LEAs or they can be under the LEA of their authorizing school district. The California education code states that for the purpose of compliance with federal special education law and for eligibility for federal and state special education funds, a charter school shall be deemed a public school of the local education agency (LEA) that authorized the charter, unless it is itself deemed an LEA.⁶²

The funding structure of special education in California directs all special education funding to the Special Education Local Plan Area (SELPA).⁶³ There are 118 SELPAs statewide, of which 35 are single-district SELPAs with the rest being SELPAs with multiple districts and LEAs often organized at the county level with a county office of education. Many of California's students are in large single district SELPAs like Los Angeles Unified School District. Special education funding comes to the SELPA based on the total average daily attendance (ADA) of all the members of the SELPA. In other words, if a SELPA were comprised of three districts, the SELPA would collect a dollar amount for each student that counted toward ADA in the three districts.

Each SELPA has a local plan for delivering special education services. Every local plan is different, each reflecting the members' decisions as to how programs and services will be delivered and how funds and costs will be divided. This means that the students who attend a charter school generate ADA dollars for the SELPA; if the charter school is its own LEA, the SELPA distributes funds to the charter school.

The most common type of arrangement for a charter school within a SELPA is that the charter school is considered part of a school district (usually the chartering district) for purposes of special education services.⁶⁴ Under this arrangement, the charter school does not have formal membership within the SELPA, but is represented as part of the district. In a few cases, a charter school may have full membership within a SELPA as an LEA.

However, in most cases for special education services, the charter is not an LEA and the charter school's special education funds are distributed to the district that authorized the charter. A formal agreement between the charter and the district dictates how the special education funds and services are provided in the charter school. In many cases, the district keeps the charter's special education ADA funding and provides services as needed or the charter school bills the district for its special education expenses. In any case, as is true for schools within a district, the district office becomes the middleman between a charter school and special education services. In the majority of cases, for the purposes of special education services, charter schools are "de-chartered" and they are not exchanging funding and flexibility and regulatory relief for accountability for special education students.

As Lisa Corr, charter school special education attorney, from The Law Offices of Spector, Middleton, Young and Minney explains:⁶⁵

Charter schools need to have firm agreement on how special education programs and services are provided and how funds are divided. Charter schools should never agree to take on unfunded special education costs without limit—this could bring a quick demise to the school if it enrolls a low incidence, high cost student. Generally, it's a good model to have the charter school allow the district to keep the funds attributable to the school's students, but to be responsible for providing special education programs and services. At some times, this works to the financial advantage of the school district; at other times to the financial advantage of the charter school. It's important to balance risks. In some cases, shouldering a portion of unfunded costs may be acceptable, but it should not be a "price" for chartering. Charter petitioners should not agree to anything they can't deliver.

Similarly, districts should not encourage charter schools to take on a greater burden than they can realistically manage. Charter schools definitely need to watch out for situations in which the district keeps all the funds, bills the charter for a share of encroachment, and bills the charter school for excess costs of students who have extraordinary needs; that's the worst of all worlds for the charter school.

The largest drawback to accepting special education services from a school district is that charter schools must then accept the same quality of service the district provides to all special education students. This limits the charter schools' ability to innovate or use special education funds to experiment with different kinds of service provision. For example, if the district's special education philosophy favors "pull out" and the charter school emphasizes individualized curriculum within the general education classroom, the charter school cannot use special education resources to purchase or develop the individualized curriculum and must accept the pull out services from the district.

Another drawback is that school districts do not always meet their contractual obligation to provide services to special education students in charter schools. For example, in November 2003, the U.S. Department of Education's Office of Inspector General (OIG) released its audit of how New York State local school districts handled their responsibilities toward charter schools in regard to special education funding.⁶⁶ The OIG found that charters were being cheated out of IDEA funds to which they were entitled, and that local districts had made it difficult-to-impossible for charters to get legally mandated special education information. Similarly, a recent audit by the Illinois State Board of Education found that the Chicago Public School District failed to provide adequate services to special education students in charter schools.⁶⁷ In addition, the current special education funding model does not cover all of the costs and services for California's disabled students. The "encroachment" of special education costs into general education funds varies from one LEA to another. One of the most difficult issues for charter schools and their authorizing districts is how much money a charter school should pay the district out of its general education funds to

account for its share of “district” encroachment. SELPAs are responsible for the delivery of services to students from infancy through age 21. Because a charter school often covers only a limited number of grades (K-3, or 9-12), it is difficult to fairly evaluate what the charter school’s contribution to cover encroachment should be. This issue is especially contentious because if a school district is wasteful or is overly reliant on special education litigation and has high encroachment costs, the charter school must pay a portion of those encroachment costs, yet has no control over reducing special education spending or inefficiencies within the district. In other words, a small charter school must pay a portion of the costs of a large bureaucratic special education program without any authority over those costs.

Under California state law, the authorizing district is allowed to levy a tax on charter schools to pay for district-wide special education programs, but the law doesn’t specify a percentage. In 2003, the *LA Daily News* reported that Los Angeles Unified officials proposed taking 40 percent of special education funding from the Vaughn Next Century Learning Center and the Fenton Avenue Charter School to pay for district-wide legal and administrative costs. As a result, the two schools would lose some \$600,000 used for exemplary special education programs for more than 400 special education students. “This is totally discriminating against special-education kids in charter schools,” Vaughn principal Yvonne Chan told the *LA Daily News*. “This is destroying a special education program that has worked in the last 10 years.”⁶⁸

Reason Foundation’s special education survey of California charter school operators found several instances where charter schools reported that the district charged encroachment fees and kept the charter school’s special education funding, but provided little special education services or substandard services in exchange for the money. Some charter schools in Reason’s survey had positive relationships with their districts. In many of these cases, the district kept the special education funding, provided services, and did not charge an encroachment fee. In this way the district made money off the charter school as the charter school’s per pupil ADA for special education did not exceed the level of service it used from the districts.

If charter schools work to reduce their special education rates through early intervention, they are actually providing the SELPA with a profit, as the charter school will use fewer special education resources than other LEAs in the system. In a sense, some charter schools are penalized twice. They are forced to pay encroachment fees for expensive special education practices they do not control, and if they use early intervention strategies to reduce their special education cost (which then reduces the district’s cost) the charter schools receive no reward for the cost savings.

In fact, in California some school districts have found that providing special education services for charter schools can be a revenue-generating proposition for the district. For example, a large charter school that serves at-risk high school students has generated close to a million dollars in special education funds for the sponsoring district but uses only a small fraction of those resources to serve special education students enrolled in the charter school. In essence, it is possible for school districts to make generous “profits” on charter school special education students. This is especially true because many charter schools use a “neverstreaming” approach of intensive early intervention and aggressive student study teams that improve academic outcomes for these students before they are labeled as “special education.” Some charter schools have strategically reduced the percentage of their students labeled as special education while improving academic outcomes. When this occurs charter schools do not receive any additional funding to focus on prevention strategies. Instead the SELPA makes more money off the charter school’s special education ADA revenue.

Part 5

Reason Foundation's Special Education Survey

In a Reason Foundation December 2003 survey, 35 California charter school directors answered questions about their special education practices. The participating charter schools served between 25 and 2000 students and included both classroom-based and non-classroom-based charter schools. The survey questions were open-ended and explored the charter schools' relationships with school districts and their satisfaction with their role in the special education system.

A. Satisfaction with Special Education Provision

Although the questions were open-ended, the general level of satisfaction with special education arrangements could be determined from individual responses. Thirty-four percent of charter school directors were satisfied with their special education arrangement, 12 percent were somewhat satisfied, and 54 percent were not satisfied with their special education service provision. Of those charter school operators who were satisfied, most reported positive relationships with their charter-authorizing school districts or retained more control over their special education resources and offered in-house special education services. Those charter operators who were unsatisfied felt that they lacked control over their special education practices and that charter schools were de-chartered when it came to special education. In other words, dissatisfied charter school operators felt they lacked flexibility and resources to design special education services that fit with the goals and mission of their charter schools.

The Reason Foundation California charter school survey found that most charter schools in California receive special education services from the school district. The charter school's satisfaction with the special education services was directly contingent on the charter school's relationship with the school district. Some charter schools were very satisfied with their special education contract with the district while others wanted more control over their special education dollars and services for students. For example, one charter school principal wrote, "Since the relationship in regard to special education is good with the district our students are served well."

A consistent theme in the Reason survey responses was the amount of money the charter schools generate in special education funds for the district or Special Education Local Plan Area (SELPA) compared to the level of services the charter school receives. Many charter operators felt that they generated a large sum of money

for special education yet received an inferior level of service in exchange for those resources. The sample responses below provide examples of unsatisfactory charter school funding arrangements:

- One charter school serves a population of approximately 800 students. All of the special education funds generated by the students go directly to the county SELPA. The survey respondent wrote “I am not satisfied with this arrangement since the SELPA receives approximately \$320,000. The charter school still pays approximately an additional \$60,000-\$80,000 per year. The rationale from the county is that we have a program that could place the county and district at risk. The school has been in operation since 1998. To date this high risk child has not materialized. We currently serve approximately 30 students in special education and the school employs 1 full time special education resource specialist that is on top of the \$320,000 and \$80,000.”
- “I am not satisfied with our SELPA funding model. Our school brings in hundreds of thousands of dollars in special education funds and we only see a small fraction of the money. We serve kids the best we can. I don't even want more money, just the money that our kids generate. We generate \$900,000 for the SELPA and see just a fraction of the dollars.”
- “We spent almost \$1 million, which is 10 percent and special education funding is \$600,000 as the district withheld encroachment of 15 percent but provided no services. Charter schools should receive funds directly from the state instead of flowing through the sponsoring district, which withholds a large sum for encroachment and refuses to provide services. At this time, sponsoring districts takes as much as 37 percent from us and provide zero service in return.”
- “Our charter-granting agency receives approximately \$700+ per ADA from the SELPA and charges us an additional \$300 and growing per ADA for their encroachment. For this we receive one part-time teacher (who has systematically alienated all of the staff), one six-hour per day instructional assistant, the district’s special educational administrator for all IEP meetings, and occasional speech/language and psychologist support.”

B. Individualized Instruction and Early Intervention

Several charter schools employed strategies including individual assessment and academic benchmarking for every child at the beginning of the academic year, or a policy of creating an individualized education plan for every student so that special education students were not stigmatized. Charter schools often developed individualized learning goals tailored to each child’s current achievement level. In addition, several charter schools described the enrichment programs and intervention programs provided to charter school students. Neverstreaming was also a popular approach cited by multiple charter school operators. For example, one charter operator described neverstreaming as “providing support when they begin to struggle rather than when the student is well behind their peers.”

Other specific examples of individualized instruction and intervention from the survey include:

- “We have recently implemented a ‘learning center’ approach to working with students. It is very individualized.”
- “All of our students benefit from the enriched program at our charter school – multiple technological resources in all classrooms, arts specialist, music teachers, science specialists, psychomotor program, multiple curricular trips, full-time school psychologist and counselor, and a family center.”

- “Massive prevention and intervention. We have universal preschool, 200 children (ages 3-4) attending full day, 200-days, all free. We put a great deal of personnel, including a full-time speech therapist for these little ones.”
- “We are a personalized learning school so each student works within an individualized learning plan based on needs and learning styles. We work IEP goals into each student's plan and consult with our own two resource teachers. One of these teachers is a full-time advisory teacher, creating and implementing plans for IEP students.”
- “Several of us have special ed backgrounds. We screen children for dyslexia in-house and train parents to use a multi-sensory phonics program by Sue Barton. Our student study team process is also very comprehensive. Our staff works extremely well as a team.”

C. Inclusion

Charter school operators also reported that they served special education children within the regular classroom. One charter school operator described the “inclusion” model as a sense of ownership of special education students. She wrote,

We have a strong inclusive and supportive special ed program. However, our special education students were not successful when they entered the large neighborhood middle schools. Therefore, beginning 2002, we extended to middle school and kept our kids. They are still special ed but they are not thrown to the ‘wolves.’ We are adding a high school component in two years so we can keep our special ed students. Therefore, charter schools do take ownership of their students and will do whatever it takes to protect their investments (the students, especially the special ed students whom we have cared for and helped educate all these years, with blood, sweat and tears!).

Similarly, another charter school operator described the importance of mainstreaming students: “We mainstream. We do not like pullout as our students fall farther behind. We have a very extensive academic support program with before-school literacy and ESL classes, academic literacy and math classes for all students, advisory for all students, and after-school office hours and tutors for all students optionally and mandatory for students with one or more D’s or F’s.”

D. Screening Out

Most charter school operators acknowledged that they had heard of screening out special education students but had not seen it in practice. In fact, several charter school operators reported screening in special education students and accepting referrals for special education based on the school’s reputation of effective service delivery for special education students. For example, one charter operator wrote “No, just the opposite, many of our special education students have elected to attend our school because of the individualized instruction they receive.” Similarly, another operator noted, “Quite the opposite—parents of students having trouble with academics in their current school seek us out as they have been told by other parents or their child's teacher or principal ‘to enroll at our charter school because they have the resources to help your child.’ This occurs quite frequently.”

Part 6

Recommendations

A. Let Special Education Funding Follow the Child

Special education ADA or per-pupil funding should follow each child into the charter school. In California, Gov. Arnold Schwarzenegger and Education Secretary Richard Riordan are proposing to restructure California's education finance system through a "weighted student formula" based on several studies and a new book by UCLA Professor of Management William G. Ouchi, *Making Schools Work: A Revolutionary Plan to Get Your Children the Education They Need*.⁶⁹ This model would allow special education funding to flow directly to charter schools in California.

Ouchi and a team of 12 researchers found, after studying a variety of public and Catholic school systems in North America, that decentralized school systems run more efficiently and produce better student achievement. Schools perform better on fiscal and academic outcomes when there is 1) local control of school budgets by principals, and 2) open enrollment, which allows the per-pupil funding to follow the child.⁷⁰

Overall, the decentralized public school districts and Catholic schools had significantly less fraud, less centralized bureaucracy and staff, more money at the classroom level, and higher student achievement. The decentralized public school districts all used the "weighted student formula" pioneered by Edmonton school superintendent Michael Strembitsky. The formula attaches school funding to the backs of children and in so doing gives budgetary control to each school principal.

For example, in the Seattle area, students are assigned "weights" for supplementary funds for categories such as poverty, limited English proficiency, and special education. The weighting scheme is simple and described on one page in the Seattle district's budget book. Each child is worth a weight of between 1 and 9.2 depending on the needs of the individual child.

Each school is funded by a basic operating grant from the district plus the weighted funds brought in by each individual child enrolled at the school. The weighted student formula allows individual schools to compete for students and allows principals to control their budgets and tailor their schools to the needs of their specific school populations.

The weighted student formula is based on five principles that are not currently practiced in California's school finance system:

- Resources follow the student
- Resources are distributed in dollars, not full-time-equivalent staff
- The allocation of resources varies by the personal characteristics of each individual student
- The formula is applied consistently in the treatment of all students and all schools
- School principals control the allocation of budget resources

Simply put, the weighted student formula allocation system delivers resources more equitably to students based on their educational needs and increases flexibility for tailoring and funding academic achievement plans at the school level. This weighted student formula fits the nature of charter schools with their open enrollment policies and school-level decision-making, as they are likely to benefit from a funding structure that sends all resources to the school level.

Charter schools would benefit greatly because they would have a level playing field with public schools, as each student enrolling in the charter school would be worth the same dollar value as any student enrolling in a public school. The charter school operators could then make decisions about special education at the school level rather than waiting for the district to provide resources. Charter schools would still be free to develop partnerships for shared services and invest in special education risk pools.

B. Use Special Education Cooperatives and Insurance

An emerging strategy for charter schools is the pooling of resources to achieve economies of scale in collective purchasing power. For example, charter schools in California, Indiana, Texas, and Washington, D.C. have formed special education cooperatives to share specialized staff and limit potential financial risk. These cooperatives have given charter schools more control over their special education funding and the quality of service provision. Specifically, the Austin Area Charter School Cooperative is a shared service arrangement for nine charter schools in Austin, Texas. The Co-op staff includes a director of special education, a psychologist, two speech pathologists, a diagnostician, and an occupational therapist employed to meet the assessment and intervention needs of charter school staff, students, and families.⁷¹

Similarly, the D.C. Public Charter School Cooperative, with 21 members, aims to provide information to members about the complexities of special education, hire and make available specialized staff that no school would want to employ alone, and develop a Medicaid billing system to increase reimbursements for special education services.⁷²

The advantage to a special education consortium is the ability to pool resources while still controlling the special education service provision. In addition, the pooled resources allow a charter school to benefit from all its eligible special education funds rather than putting large encroachment fees down a large district's special education "black hole." Currently, the special education funding structure in California limits the potential of shared services for special education. In order for the Consortium model to work more effectively, the special education ADA or per-pupil allotment must follow the child. If a charter school in a neighboring SELPA wanted to join a consortium of charter schools in another SELPA, the funds would not flow from one SELPA to another. Only when a charter school's ADA funds flow directly to the charter school will the school gain enough control over resources to organize more robust shared service arrangements.

Shasta County Charter Schools Special Education Consortium⁷³

Jean Hatch of the Redding School of the Arts (RSA) charter school in Redding, California formed a Charter Schools Special Education Consortium open to charter schools in Shasta County. The consortium currently serves five charter schools with 1000 students. The schools pool their special education dollars into a central fund, and the consortium coordinates all special education services. This includes staff for diagnostic assessments, special education teaching, assistance in writing IEPs, and handling due process hearings. The RSA became its own LEA and formed the Consortium so that other charter schools could benefit from its LEA status and services. The consortium is open to charter schools that are sponsored by a district or county office of education in Shasta County. Member schools must agree to join for three years and believe in "neverstreaming." The member school signs an "Agreement of Participation" with the Consortium and a Memorandum of Understanding (MOU) with its charter-granting district which allows all special education funds to flow to the consortium. The charter school becomes the legal arm of the new LEA. Each member school agrees to pool its individual special education funding into a shared consortium resource allocation pool. Any remaining balance in the pooled resources is carried through to the next year. If the costs of services exceed the pooled resources the consortium can charge member schools a per-student encroachment fee. To date, no charter school members have paid encroachment fees. The consortium also requires each member school to maintain 5 percent of its special education allocations as a special education contingency reserve from the charter's general education resources. The consortium founder, Jean Hatch, "sees the greatest advantage to the Consortium as the ability to engage in independent decision-making and provide alternative special education services according to the school's mission and philosophy."⁷⁴

Congress should reauthorize the Individuals with Disabilities Education Act (IDEA) sometime after the 2004 elections. Although both the House and Senate have new reauthorization proposals, it looks unlikely that these bills will pass before the 2004 election. Both reauthorization bills include authorizing the use of federal funds to create state risk pools to ease the impact of high cost cases on districts and individual public schools, including charters.⁷⁵ The Senate bill includes a stronger provision on risk pools, requiring that states set aside a specified percentage of their federal funds to help pay for individual high cost student cases. This could also include establishment of cooperatives or consortia of charter schools that would achieve greater economies of scale in serving students needing particular services who attend different charter schools.

The bills also clarify the eligibility of charters operating as LEAs for research, technical assistance and funding for pilot projects to test special education innovations. The legislation also allows the Secretary of Education to give priority to certain projects, including those that address the needs of students in charter schools. These projects may include special education consortiums.

C. Employ Value-Added Testing

Perhaps more than any other type of student, special education students could benefit from a value-added testing model to measure student achievement.⁷⁶ Value-added testing measures student gain based on the student's current testing baseline. In other words, it can measure the gain that a teacher adds to a student based on a student's individual test scores. In the Winter 2003 *Education Next*, Patrick J. Wolf proposes a move toward value-added assessment for special education students.⁷⁷

Wolf argues that the move to a results-based accountability system would “entail a switch from the guarantee of a ‘free and appropriate education’ to an assurance of a ‘free and effective education.’” He identifies the following specific features of a results-based accountability system in special education:⁷⁸

Every student's IEP would set forth clearly: 1) what skills and knowledge the student is supposed to acquire; 2) over how long a period; 3) what specific tests would be used to measure those skills; and 4) with what specific testing accommodations.

The tests and accommodations for each student would be applied consistently, year after year, for all students with nondegenerative disabilities.

The process would begin with a set of baseline tests to measure initial levels of ability and achievement soon after the student has been diagnosed with a disability.

Subsequent results would be reported as gains or losses from that baseline, noting also whether the outcomes exceed, meet, or fall short of the benchmarks established in the IEP.

Reports also would include narratives from the teachers, counselors, and administrators who are educating the student, in order to place the gains or losses in context.

Evidence of aggregate declines in the performance of the special education students in a given district would lead to a state or federally led intervention involving supervised programmatic changes.

Wolf also proposes that parents of special education students who have "persistent performance declines or a chronic failure to achieve sufficient progress at the individual, school, or district level would . . . [be able] to enroll their children in another public or private school of their choosing, with each child's entire per-pupil spending (regular and special education) following her to the chosen school."⁷⁹

Education analyst Nelson Smith notes in a recent analysis of the No Child Left Behind Act and charter schools for the Education Commission of the States that:

*No state has directly challenged NCLB by creating a true value-added assessment model. This may turn out to be a serious problem for charter schools that serve underachieving populations. Students who arrive in 9th grade bearing 4th-grade reading skills will need some time to catch up, even in the most rigorous academic environments. During that time, their average performance is likely to land below the state benchmark for AYP, especially since that benchmark escalates every year or two. So a state accountability system that only tells what percentage of a given school's students are at the 60th percentile in reading performance tells nothing about the achievement of a school that moves students from the 10th to the 30th percentile in a single year.*⁸⁰

Similarly, Reason Foundation's survey of California charter schools found no instances where charter schools were using value-added testing with their special education or regular student populations. The research literature provides very few examples of value-added testing with special education students. However, charter schools seem to be a natural laboratory where value-added testing strategies could be employed.

D. Tie Performance to Funding

The Quality Counts 2004 report also noted that no state had linked special education funding to student achievement or any other performance measures for special education students. Special education reform should include explicit financial incentives to increase student achievement for special education students.

In this respect, policy makers can learn something from child welfare reform. Foster care funding is usually based on how many days children remain in the system; the longer they stay, the more revenue they generate. The unintended consequence is that kids languish in foster care, neither reunited with their natural parents nor adopted by new parents. Some innovative states, such as Kansas and Michigan, have tied foster care payments to the speed with which agencies find permanent placements for children. Agencies that move children into permanent family arrangements quickly receive more money. Likewise, a better approach to special education would reward states that lower their disability rates through intensive early intervention and improve achievement levels for special education students.

E. Change Data Reporting Requirements Under No Child Left Behind

In order for researchers to evaluate the effectiveness of special education services in charter schools and traditional public schools, the NCLB should be modified to require schools to report student achievement data for all students. However, individual schools should not be sanctioned or penalized for the results of student achievement scores for small sample sizes.

F. Allow Special Education Charter School Choice Waivers

While part of the charter school special education challenge relates to how we incorporate charter schools into existing mechanisms, it also emerges from a potential conflict between a major goal behind charter schools – to respond to *parental* choice – and IDEA – which places a higher premium on the *collective determinations of IEP teams* about how best to serve a child. Charter schools should receive waivers from special education regulations that respect the ability of the parent to choose the best school for his or her special education child. In Florida, the McKay scholarship program, which serves 12,000 special education students, allows parents to opt out of the state special education regulatory system. Like the weighted student formula model, the special education dollars that a student generates in Florida public schools follow the child to the public or private school chosen by the child’s parents. In Florida a robust market of more than 500 private schools has been created to serve McKay scholarship students. Similar to the McKay scholarship program, Congress should establish a pilot charter school special education choice project that would let students, parents, and participating charter schools opt out of the current special education regulatory regime in exchange for accountability to parents. This would allow parents who choose charter schools to opt out of the regulatory process in exchange for performance.

Specifically, individual states could develop a pilot charter school choice project modeled after the McKay scholarship program that would allow charter schools to waive IDEA requirements in exchange for accountability and results. The special education funding would still follow a disabled child but the charter school would receive regulatory relief in exchange for meeting performance goals as determined by parental satisfaction.

Appendix

**California Charter School
Special Education Survey
Reason Foundation
December 15, 2003**

1. Charter school name.
2. Grades served and number of students enrolled in the school.
3. What percent of your student population is identified as special education? More specifically, please state the number of special-ed students and give an indication of the range of disabilities.
4. What percentage of your school resources goes toward special education? What percentages of special education costs does special education funding cover?
5. What is your school's special education agreement with the school's chartering authority?
6. Please explain whether your school serves special education students through internal staff, outsourcing, or through district staff.
7. Are you satisfied with your school's special education service provision?
8. What percentage of your school's special education students participate in standardized tests?
9. What percentage of your school's special education students participate in alternative assessment?
10. Does your charter school use any kind of value-added testing with your school's special education students? Please explain.
11. Has your charter school met its state-mandated AYP achievement goals for special education students?
12. Does your school use pullout, regular classes, or separate classes to serve your special education students?
13. In your opinion, what specific advantages or disadvantages do charter schools have when serving special education students?

14. Does your charter school use any innovative strategies or programs to serve special education students?
15. Have you had first-hand experience with parents choosing a charter school to avoid special education identification? If so, how frequently does this occur?
16. Do you use any early-intervention strategies to reduce the number of special education students?
17. Have you heard of or had first-hand experience with charter schools screening out special education students?
18. Do you have specific regulatory frustrations with special ed? Please explain.
19. How would you change special education service provision in charter schools?
20. Do you have any specific stories or anecdotes that describe special education provision in your charter school?
21. How do you think special education service provision differs in the traditional public versus the charter public school?
22. Would you be willing to participate in a follow-up interview?
23. Do you have any additional comments about special education in charter schools?

About the Author

Lisa Snell directs the Education and Child Welfare Program at Reason Foundation, where she oversees research on education issues. Her most recent policy studies include: *Child Advocacy Centers: One Stop on the Road to Performance-Based Child Protection*; *Child Welfare Reform and the Role of Privatization*; *School Vouchers as a Legal Sanction*; *Workplace Charter Schools: Florida Blazes the Trail*; *Remedial Education Reform: Private Alternatives to Traditional Title I Private Options to Help Students Read*; and *Innovative School Facility Partnerships: Downtown, Airport, and Retail Space*.

Ms. Snell has published numerous articles and op-eds on child welfare issues and school choice in newspapers including *USA Today*, *Las Vegas Review Journal*, *Orange County Register*, and the *Los Angeles Daily News*.

Ms. Snell is a contributing editor to *School Reform News*, writes a monthly column for *Privatization Watch* on education privatization and an annual synthesis of education privatization for Reason's *Annual Privatization Report*.

Before joining Reason, Ms. Snell taught public speaking and argumentation courses at California State University, Fullerton. She was also a recipient of the 1994 Charles G. Koch Fellowship and worked on public policy issues for the Institute for Justice and *Reason* magazine.

Related Reason Foundation Studies

Private Options to Help Students Read, by Lisa Snell, Policy Brief 14, December 2000.

Reforming Remedial Education: Private Alternatives to Traditional Title I, by Lisa Snell, Policy Study 266, January 2000.

Meeting the Challenge: How the Private Sector Serves Difficult to Educate Students, by Janet R. Beales, Policy Study 212, August 1996.

Special Education: Expenditures and Obligations, by Janet R. Beales, Policy Study 161, July 1993.

Endnotes

- ¹ “Quality Counts 2004: Count Me In: Special Education in an Era of Standards,” *Education Week*, January 2004. <http://www.edweek.org/sreports/qc04/>
- ² Ibid.
- ³ Ibid.
- ⁴ “Number of Operating Charter Schools Up Ten Percent,” Center For Education Reform, press release, Washington, D.C., February 11, 2004.
- ⁵ F. Howard Nelson, Edward Muir, and Rachel Drown, “Financing Autonomy: The Impact of Mission and Scale in Charter School Finance,” *The State Education Standard* (Autumn 2003) http://www.nasbe.org/Standard/14_Autumn2003/nelson.pdf
- ⁶ Ibid.
- ⁷ Cassandra Guarino and Derrick Chau, “Special Education in Charter and Conventional Public Schools,” in *Charter School Operations and Performance: Evidence from California* (Santa Monica, California: RAND, 2003).
- ⁸ Ibid.
- ⁹ Reason Foundation, Special Education Survey, December 10, 2003. For specific questions see Appendix.
- ¹⁰ “Quality Counts 2004.”
- ¹¹ “Special Education Students Skew Test Results,” CNN.com, December 2, 2003. <http://www.cnn.com/2003/EDUCATION/12/02/special.ed.testing.ap/>
- ¹² “Leaving Some Children Behind,” *New York Times*, January 27, 2004.
- ¹³ Ames Boykin, “State Pulls the Plug on Jefferson,” *Chicago Daily Herald*, August 9, 2003, p.1.; *Individuals With Disabilities Education Act: Under (IDEA), Title 20 U.S.C. § §1400 et seq.*, and Title 34, Code of Federal Regulations (C.F.R.) Part 300, “all children between 5 and 18 years of age who have a disability that causes them to need specialized education services to benefit from their education are entitled to receive special education and related services. Special education children have a right to participate in *free appropriate public education*.”
- ¹⁴ “Questions Raise at Charter School,” *Akron Beacon Journal*, July 13, 2002, p.1.
- ¹⁵ Pat Kosan, “Charter Schools Exceed in Special Ed Complaints,” *The Arizona Republic*, December 10, 2002.
- ¹⁶ “Quality Counts 2004.”
- ¹⁷ Andy Smarick, “A Special Education Focus on People, Not Process,” *The Education Gadfly*, February 19, 2004.
- ¹⁸ Louise Spear-Swerling and Robert J. Sternberg, *Off Track: When Poor Readers Become Learning Disabled* (Boulder, Colorado: Westview Press, 1998), p. 132.

- ¹⁹ Richard L. Allington and Anne McGill-Franzen, "School Response to Reading Failure: Instruction for Chapter I and Special Education Students in Grade Two, Four, and Eight," *The Elementary School Journal*, vol. 89 no. 5 (1989), pp.529-542.
- ²⁰ Mary Ruth Coleman, *Conditions of Teaching Children with Exceptional Learning Needs: The Bright Futures Report* (Arlington, Virginia: The Council for Exceptional Children, June 2001).
- ²¹ "NAEP Test Results Questioned," *The Education Reporter*, July 1999.
<http://www.eagleforum.org/educate/1999/july99/naep.html>
- ²² Richard G. Innes, "The NAEP is Losing Credibility," *The Education Reporter*, July 2000.
- ²³ "NAEP Test Results Questioned," July 1999.
- ²⁴ Ibid.
- ²⁵ Ibid.
- ²⁶ Title 20 U.S.C. § §1400 *et seq.*, and Title 34, Code of Federal Regulations (C.F.R.) Part 300.
- ²⁷ "Special Ed Students Skew Test Results," Associated Press, December 2, 2003.
- ²⁸ U.S. Department of Education, "New No Child Left Behind Provision Gives Schools Increased Flexibility while Ensuring All Children Count, Including those with Disabilities," Press Release, December 9, 2003. <http://www.ed.gov/news/pressreleases/2003/12/12092003.html>
- ²⁹ Ibid.
- ³⁰ Jay P. Greene, "The Myth of the Special Education Burden," *Education Week*, June 12, 2002.
- ³¹ Ibid.
- ³² "Education of All Handicapped Children Act", P.L. 94-142.
- ³³ Ibid.
- ³⁴ James Ysseldyke and Bob Algozzine, "LD or not LD: That's not the Question!" *Journal of Learning Disabilities*, vol.16 no.1, (1983), pp. 29-31.
- ³⁵ Esther Sinclair and Joyce Axelson, "Learning Disability Discrepancy Formulas: Similarities and Differences Among Them," *Learning Disabilities Research*, vol. 1, no.2 (1986), pp. 112-118.
- ³⁶ Daniel J. Reschly, "Identification and Assessment of Students with Disabilities," *The Future of Children* (Spring 1996), pp. 40-53.
- ³⁷ *A New Era: Revitalizing Special Education for Children and Their Families*, President's Commission on Excellence in Special Education, July 2002.
<http://www.ed.uiuc.edu/news/Newsletters/specialedDOE.pdf>.
- ³⁸ Chester E. Finn, Andrew J. Rotherman, and Charles R. Hokansen, eds., *Rethinking Special Education for a New Century* (Washington, D.C.: Progressive Policy Institute and Thomas B. Fordham Foundation, May 2001).
- ³⁹ G. Reid Lyon and Jack M. Fletcher, "Early Identification, Prevention, and Early Intervention for Children At-Risk for Reading Failure," *Basic Education*, Council for Basic Education, October 15, 2001.
- ⁴⁰ Michael R. Blood, "Special Ed Referrals Dip," *New York Daily News*, August 19, 1999, p. 8.; Joanne Wasserman, "Special Ed Count Reduced," *New York Daily News*, January 20, 1999, p. 25.
- ⁴¹ G. Reid Lyon et. al., "Rethinking Learning Disabilities," in Finn, Rotherman, and Hokansen, eds., *Rethinking Special Education for a New Century*.
- ⁴² Ibid.

- 43 Ibid.
- 44 “The Improving Education Results for Children with Disabilities Act,” Bill Summary, House Education and the Workforce Committee, April 9, 2003.
<http://edworkforce.house.gov/issues/108th/education/idea/billsummary.htm>
- 45 Statement of Elizabeth Giovanetti, Managing Director of Special Education Services, New American Schools, “Regarding Parents as Accountability Measures,” Before President’s Commission on Excellence in Special Education, March 13, 2002.
- 46 R.E. Slavin, “Neverstreaming: Preventing Learning Disabilities,” *Educational Leadership*, February 1996, pp. 4-7.
- 47 “Neverstreaming Program Uses Early Intervention to Ensure Inclusion,” *California Special Education Alert*, vol.6 no.11 (May 2, 2000).
- 48 Ibid.
- 49 Duke Helfand, “Twice Failed: California’s Lost Students,” *Los Angeles Times*, December 12, 1999.
- 50 “Neverstreaming Program Uses Early Intervention to Ensure Inclusion,” *California Special Education Alert*.
- 51 Ibid.
- 52 Ibid.
- 53 Julie Obbard, “Special Education Strategies that Work,” *Charter Currents*, Charter Schools Development Center, Winter 2004, pp. 25-27.
- 54 Guarino and Chau, “Special Education in Charter and Conventional Public Schools.”
- 55 Ibid.
- 56 Obbard, “Special Education Strategies that Work.”
- 57 Reason Foundation, Special Education Survey 2003.
- 58 All of the percentages in this section are from calculations by Lisa Snell based on 2003 Star test results reported at the California Department of Education website.
- 59 Eileen M. Ahearn, “Charter Schools and Special Education: A Report on State Policies,” National Association of State Directors of Special Education, March 1999.
http://www.uscharterschools.org/pub/uscs_docs/fs/sped_policies.htm#critical .
- 60 IDEA-Part B, Final Regulations, Public Charter Schools, March 1999,
<http://www.ideapractices.org/law/briefs/brief09.php>.
- 61 Statement of Elizabeth Giovanetti, Managing Director of Special Education Services, New American Schools, “Regarding Parents as Accountability Measures,” Before President’s Commission on Excellence in Special Education, March 13, 2002.
- 62 Special Education and Charter Schools: Questions and Answers, California Department of Education, September 10, 2002. http://www.cde.ca.gov/spbranch/sed/se-cs_qna091002.pdf
- 63 Advisory Commission on Charter Schools, Meeting Notes, July 25, 2002,
http://www.smymcharterlaw.com/resources_notes/Notes_072502.pdf.
- 64 Special Education and Charter Schools: Questions and Answers, California Department of Education.
- 65 Advisory Commission on Charter Schools, Meeting Notes.

- ⁶⁶ U.S. Department of Education, *Charter Schools Access to IDEA, Part B Funds in the State of New York*, Office of Inspector General, November 19, 2003.
<http://www.ed.gov/about/offices/list/oig/auditreports/a09c0025.pdf>.
- ⁶⁷ Lori Olszewski, "Chicago Schools warned on Special ed," *Chicago Tribune*, February 10, 2004.
<http://student-voices.org/news/index.php3?NewsID=9210>.
- ⁶⁸ Helen Gao, "Charters May Lose Funding; LAUSD Proposes Taking Special-education Money," *The Daily News of Los Angeles*, p. N3, February 15, 2003.
- ⁶⁹ William G. Ouchi and Lydia G. Segal, *Making Schools Work: A Revolutionary Plan to Get Your Children the Education They Need* (New York: Simon & Schuster, September 2003).
- ⁷⁰ Ibid.
- ⁷¹ Austin Area Charter School Cooperative, <http://www.aceoftexas.org/cap/coop.htm>
- ⁷² Bryan C. Hassel, "Friendly Competition: Sleek education management firms are a vital component of the charter school movement, but innovation is more likely from the visionaries who create unique, grassroots charters," *Education Next*, Winter 2003.
- ⁷³ Laurie Gardner, "Spotlight on Innovation: The Shasta County Charter Schools Special Education Consortium," *Charter Currents*, Charter Schools Development Center, California State University Sacramento, June 2001. http://www.cacharterschools.org/pdf_files/june_2001_currents.pdf
- ⁷⁴ Ibid.
- ⁷⁵ For more details on the House IDEA bill, go to:
<http://edworkforce.house.gov/issues/108th/education/idea/idea.htm>; and for more details of the Senate bill, go to: http://health.senate.gov/bills/013_bill.html.
- ⁷⁶ For a comprehensive review of value-added testing to date see: Kevin Carey, "The Real Value of Teachers: Using New Information about Teacher Effectiveness to Close the Achievement Gap (Washington, D.C.: The Education Trust, Winter 2004).
<http://www2.edtrust.org/NR/rdonlyres/5704CBA6-CE12-46D0-A852-D2E2B4638885/0/Spring04.pdf>
- ⁷⁷ Patrick J. Wolf, "Sisyphean Tasks," *Education Next*, Winter 2003, p.23.
- ⁷⁸ Ibid.
- ⁷⁹ Ibid.
- ⁸⁰ Nelson Smith, "Two Years and Counting: Charter Schools and No Child Left Behind," *Education Commission of the States*, December 2003.



Reason Public Policy Institute
 3415 S. Sepulveda Blvd., Suite 400
 Los Angeles, CA 90034
 310/391-2245
 310/391-4395 (fax)
www.rppi.org