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Here to Stay: A Place for Special Education in Illinois Charter Schools

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I. INTRODUCTION

For decades, education reformers have hypothesized and debated about a silver bullet to address the issues of the current public school system. It doesn't take a close examination to understand that there is no one solution to improving American education. However, in the past generation, more and more reformers have turned their attention to the creation and operation of charter schools, which are public schools that operate independently and are open to any student that applies.¹ Charter schools are known for their academic excellence along with their flexible curriculums to match student needs.² And everyone, especially those parents raising their children in a city with traditional public schools that do anything less than thrive, wants a coveted seat. However, while charter schools set sights high for student performance, one area of the schools that struggles to match up to traditional public schools is special education services. Despite the policy that charter schools are open for all, many of them, particularly in Illinois, just don't have all of the resources necessary to assist students with disabilities. This paper will

¹ In instances where the demand for seats outnumbers the availability, the school will host a lottery as provided by law. *About Charter Schools*, Illinois Network of Charter Schools (2014), incschools.org/charters.

² *Id.*

argue that Illinois charter schools need to be held uniformly accountable for providing the special education services that they are by law required to provide.

II. OVERVIEW OF SPECIAL EDUCATION LAWS IN ILLINOIS

As of 2013, there were 67 charter schools with 145 individual campuses in Illinois.³ These charter schools are governed by the Charter Schools Law listed under Article 27 of the School Code.⁴ In addition, charter schools must comply with special education laws under both the State of Illinois and the federal government. Most of these requirements fall under the Individuals with Disabilities Education Improvement Act of 2004 (also referred to as “IDEA”).⁵ IDEA recognizes the need to provide students with disabilities with an integrative and equal learning experience.⁶ The purpose of the Act is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living,,” and to “ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities.”⁷

³ *A Guide to Illinois Charter Schools*, Illinois Network of Charter Schools (2013), incschools.org/docs/INCS_Profiles_2013.pdf.

⁴ 105 Ill. Comp. Stat. §5/27A.

⁵ 20 U.S.C. § 1400 (2004).

⁶ *Id.*

⁷ *Id.*

In addition to IDEA, charter schools must follow the provisions in Section 504 of the Rehabilitation Act of 1973, which specifies that no student can be turned away from a publicly funded school because of their disability.⁸

A state is eligible for federal funding by submitting a plan to comply with the provisions of IDEA in its public schools.⁹ Illinois receives such funding, and thus, charter schools are subject to compliance under the governance of the Illinois State Board of Education.

The federal laws are unclear about which parties are responsible for ensuring that a particular charter school complies with the above-mentioned laws, making it imperative to have a uniform compliance system. This stems from the fact that charter schools can be either a Local Education Agency (“LEA”) or part of an LEA.¹⁰ If a charter school is its own LEA, it acts as its own school district and all responsibility for compliance falls on that one school.¹¹ If it is part of an LEA, it operates as just another school within a school district, and responsibility for compliance falls on the school district to which it belongs.¹²

III. HOW CHARTER SCHOOLS SUIT UP TO THE SPECIAL EDUCATION CHALLENGE

States that receive federal funding for special education services are required to submit a data collection to the Secretary of Education regarding free appropriate

⁸ 29 U.S.C. §701 (1998).

⁹ 20 U.S.C. §1400 (2004).

¹⁰ Jennifer Deutch, *Charter Schools and Students with Disabilities*, National School Boards Association Council of School Attorneys, 1-3 (2010), <http://education.texaschildrenscommission.gov/media/14407/Charter.pdf>.

¹¹ *Id.*

¹² *Id.*

public education in the least restrictive environment, as well as minority representation in special education services and transition services.¹³ In the 2011-2012 school year, twelve percent of charter school students received special education services.¹⁴

Students with disabilities are inconsistently represented in Illinois charter schools where some have a significantly greater percentage than in that district's other schools and vice versa.¹⁵

In 2013, the Center for Research on Education Outcomes ("CREDO") at Stanford University released the National Charter School Study to demonstrate the impact that charter schools have had on student performance. The data collected in the study shows that nationally, students in special education in charter schools displayed slighter higher scores in reading and math than their traditional public school counterparts.¹⁶ However, even the study conceded that it is difficult to accurately represent the impact of charter schools on the performance of students with disabilities because of the wide range of students that are designated as special education.¹⁷ The problem with the data that represents the numbers of students

¹³ 20 U.S.C. §1400 (2004).

¹⁴ *Charter School Data Finder: Charter Sector Overview*, Illinois Network of Charter Schools, <http://incschools.org/charters/charter-school-data-finder/data-illinois-charter-overview>.

¹⁵ (Illinois State Charter School Commission, *Chartering: The First Biennial Report of the Illinois State Charter School Commission*, 58 (2014), <http://www.isbe.state.il.us/%5C/charter/pdf/biennial-rpt-1112-1213.pdf>).

¹⁶ Edward Cremata, et al., *National Charter School Study*, Center for Research on Education Outcomes, 40-41 (2013), <http://credo.stanford.edu/documents/NCSS%202013%20Final%20Draft.pdf>.

¹⁷ *Id.* at 77.

with disabilities is that they do not represent the severity of the students' disabilities. Oftentimes, parents of special needs children get the sense that charters are private-type schools more catered to 'normal' students, and they are discouraged from sending their disabled child there. While data demonstrating special needs students' test scores is not as helpful in determining whether charter schools are truly meeting the requirements set forth by IDEA, there are other ways in which the legislature can work toward a more consistent compliance scheme. For example, in 2012, The Council for Exceptional Children recommended congressional action to support charter school policies that specified that:

- Students with disabilities receive appropriate services and supports by supporting charter school policies that explicitly identify responsibility for providing and paying for services associated with educating students with disabilities, including building renovations and the provision of education and related services.
- Charter schools participate in the accountability system in the same way as traditional public schools.
- Equitable participation of students with disabilities by monitoring charter schools to ensure their enrollment of students with disabilities is comparable with the local population.¹⁸

¹⁸ These were just some of the suggestions made in the report by the Council for Exceptional Children. Improving Special Education in Charter Schools, Council for Exceptional Children, 2 (2012), https://www.cec.sped.org/~media/Files/Policy/Charter%20Schools/Charters_Issue%20Brief%20April%202012.pdf.

By ensuring that some of the suggestions referenced above are enforced against all charter schools, Illinois can be one step closer to ensuring a stronger foothold in special education services across the board.

IV. CHALLENGES PRESENTED WITH THE SPECIAL EDUCATION REQUIREMENT

Though it is important to enforce a uniform set of standards for charter schools to follow, in doing so, we encounter a number of challenges. Though charter schools are public schools and meant to function as such, because they are given a great deal of independence in their general operation and instruction, they are not equipped in quite the same way as traditional public schools.

One obstacle that charter schools face is the amount of funding they receive. An argument from some schools is that they just do not receive enough funding to implement the programs that the law requires. In Illinois, the Charter Schools Law states: “In no event shall the funding be less than 75% or more than 125% of the school district's per capita student tuition multiplied by the number of students residing in the district who are enrolled in the charter school.”¹⁹

In a February 2014 Charter School Funding Task Force Report by the Illinois State Charter School Commission, the following data was collected to demonstrate the funding that each charter in the state receives²⁰:

¹⁹ 105 Ill. Comp. Stat. §5/27A-11(b).

²⁰ Senator Iris Martinez and Commissioner DeRhonda Williams, *Charter School Funding Task Force Report*, Illinois State Charter School Commission, 20 (2014), <http://www.isbe.state.il.us/SCSC/pdf/csftf-final-report.pdf>.

Authorizer	FY12 PCTC (per capita tuition charge)	# of Charters	PCTC % to charter schools
Beardstown CUSD 15	\$6,974	1	87%
City of Chicago SD 299	\$9,462	47	X ³
Community Unit School District 300	\$8,349	1	100%
Decatur SD 61	\$9,056	1	100%
East St. Louis SD 189	\$12,050	2	75%
Jacksonville SD 117	\$7,566	1	82%
McLean County USD 5	\$8,407	1	100%
North Chicago SD 187	\$11,555	1	100%
Peoria SD 150	\$9,710	1	85%
Rockford SD 205	\$8,529	3	100%
Springfield SD 186	\$9,937	1	75%
State Charter School Commission	Varies	4	100%

³ CPS presented internal analyses to the Task Force indicating that, on average, the district funds its charter schools at different levels within the 75%-125% range and that on average the funding is approximately 97% of PCTC. That data is presented in Appendix M. A counter to this analysis was prepared by INCS and is included as Appendix N. The State Board has not verified the data in either submission.

As evidenced above, all of the charter schools in Illinois receive at least the minimum funding required by law, with most schools getting at least 100% of their tuition charge.

The table below demonstrates how charter schools throughout the country receive funding for special education. As shown, Illinois' special education funding is determined by negotiations with the school district, though as long as the charter

school provides the special education services, they receive funding for the actual cost of the services.²¹

TABLE 5 Special Education Funding			
Based on Disabilities of Students Enrolled In Charter School	Based on Negotiations with School District	Matches District's Education Spending or Revenue	School Special Spending or Revenue
Arizona, ¹ Delaware, District of Columbia, Florida, Georgia, ² Hawaii, ² Kansas, ² Michigan, New Jersey, New Mexico, ² Minnesota, ⁵ South Carolina, Texas, Wisconsin ¹	California, Colorado, Connecticut, ³ Illinois ³	Alaska, ⁴ Louisiana, Massachusetts, Milwaukee, Pennsylvania, ⁴ North Carolina, ⁴ Rhode Island	Arizona, ¹
<p>¹ All school districts and charter schools in Arizona receive a weight of 0.158, worth about \$375, for every pupil enrolled, whether or not they have a disability. No other funding is available for low-cost disabilities such as speech and learning disabilities, but students with middle- and high-cost disabilities generate substantial funding through a weighting system.</p> <p>² On same basis as any school in the district as opposed to receiving direct funding from the state formula.</p> <p>³ District of residence pays actual cost if charter school provides service.</p> <p>⁴ Special education students generate funding, but not based on a specific disability.</p> <p>⁵ Based on actual cost.</p>			

In assessing the amount of funding that Illinois charter schools receive in general as well as the funding they receive for special education services alone, it can be well-argued that they are not for want (at least, not any more than traditional public schools). Just as traditional public schools comply with laws regarding special education based on the funding they receive, so must charter schools. Though an argument may be made for more proportionality amongst traditional public schools and charter schools for special education, charter schools need be proactive to ensure they are doing everything they can to maximize their funding. By doing so,

²¹ F. Howard Nelson, et al., *Venturesome Capital: State Charter School Finance Systems* 39 (U.S. Department of Education, 2000).

charter schools might be better equipped to serve students with even the most severe disabilities.

Another obstacle that charter schools claim to face in serving students with disabilities is not having adequate special education expertise in terms of teachers and administrators. Often, because charter schools do not require that all of their teachers are state certified, they will not have the staff to appropriately provide special education services, particularly to those students with severe disabilities. One resolution that charter schools might look to for assistance is the special education cooperative model. Through this model, a number of charter schools would be able to share personnel and resources to serve students with disabilities.²² In turn, charter schools would not have to spend precious resources on in-house support if it does not have a large number of students with disabilities. In order for a special education cooperative to be successful, the member schools would have to be in close proximity, the member schools would have to have similar needs, and the cooperative would have to be something that could be funded by state and/or federal money so that the schools will not have to pay out-of-pocket.

Finally, another obstacle to charter schools providing adequate special education services is a level of ineffectiveness amongst administrators. Leman Kaniturk Kose points out that “a lack of clear communication and accountability channels were found to be contributing to the insufficient expertise of charter

²² *Charter Schools and the Special Education Cooperative Model*, National Charter School Resource Center, February 2011.

school operators.”²³ Because the communication and definition between school districts and charters is often unclear, it is not uncommon for accountability to get lost somewhere in between the two, leaving charter schools left without the appropriate services needed to serve students with disabilities. With an Illinois code that requires charter schools to be proactive about their relationship with their school districts to ensure they are receiving the appropriate funding for services, special education can more easily be integrated into the school’s instruction.

V. CONCLUSION

There is no doubt that charter schools present a welcomed alternative to the traditional public school model. They employ unique teaching styles, operate independently, and have the flexibility to lengthen instruction time and alter the curriculum depending on the needs of the students. Despite their independence, charter schools are still governed by a set of federal and state statutes, most notably, IDEA, which requires charter schools to provide special education services for students with disabilities. Aside from charter schools designed specifically for special education students, many charter schools do not actually have a sizeable disability population. And for those that do, their students often do not have severe disabilities. This all stems from a number of difficulties that charter schools face in providing special education, including funding concerns, lack of communication between the schools and the districts, and a lack of expertise in the schoolteachers and staff. By implementing a more uniform code regarding special education

²³ Leman Kanitürk Kose, *Challenges of Charter Schools with Special Education: Issues of Concern for Charter School Authorizers and Service Providers*, 1 Mid-Atlantic Education Review, 36, 39 (2013).

requirements and compliance in charter schools, the Illinois legislature could bring the state one step closer to harmoniously serving students of all educational needs.