

When Management Policies Collide: An Examination of How the Autonomous Intent of Charter School Laws Work with the Rigid Accountability of Idea

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INTRODUCTION

In the mere 23 years since the initial legislation creating policy for public charter schools took place in Michigan, 43 of the 50 states have charter school policy included within their state legislation. According to the National Alliance of Public Charter Schools, in 2013-2014 there were 6,440 public charter schools and 89,775 traditional public schools in the United States. With the continuous growth of charter schools each year across the country, it seems for the foreseeable future, school choice will be a part of the public school system. A point to consider along side this inevitable demand for choice is the mandated requirement of the public school system to educate students with disabilities in the Individuals with Disabilities Education Act.

Reported by the United States Government Accountability Office, in the 2009-2010 school year 42,337,326 (11.2%) students with disabilities were served in traditional public schools, while 1,574,985 (8.2%) were served in charter schools. How legislation, policy and practice are addressing the requirement to educate students with disabilities in charter schools is quite varied. In a review of the empirical research on students with disabilities and charter schools, several trends were discovered not only in the findings but also in the recommendations. The purpose of this chapter was to examine the results of previous research conducted addressing special education in charter schools, document trends, and discover how state charter school laws pertaining to special education align with the trends, which can then be translated into practice in how to manage the balance between autonomy and required policy.

How We Got Here: Brief Historical Overview

Both special education and charter schools began as a grassroots movement. Before any legislation in the United States existed addressing the issue, groups of concerned citizens gathered to create organizations and bring awareness to the issue. For example, the American Association on Mental Deficiency, which held its first convention in 1947, was one of the first advocacy groups created for people with disabilities (The ARC, 2016). On their heels were organizations such as United Cerebral Palsy Association, the Muscular Dystrophy Association, and John F. Kennedy's Panel on Mental Retardation. The efforts of groups like these led to the first public law regarding the education of people with disabilities, the Education of the Handicapped Act in 1970. For the charter school movement, Ray Budde, a former teacher, school administrator, and educational leadership professor, first wrote about the idea of charter schools in 1974. Budde published a paper entitled *Education by Charter*, which proposes a 10-year plan for restructuring the organization of local school districts into hometown public schools. It wasn't

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until the publication of *A Nation at Risk* in 1983 that the need for education reform peaked national attention. So, in 1988, Budde republished his paper, and this time it caught the attention of Al Shanker, president of the American Teacher Foundation. Shanker was quoted in the New York Times as giving his support for teachers setting up autonomous schools and citing Budde as appropriately naming these schools charters (Kolderie, 2005). Shanker expanded Budde's ideas and Minnesota was the first state to sign charter schools into their legislation in 1991.

As with most new ideas leading to the creation legislation, litigation ensues to work out the kinks. Two landmark cases that shaped special education were *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* (1971) and *Mills v. Board of Education of District of Columbia* (1972). The PARC case resulted in the establishment of Least Restrictive Environment, which required schools to educate students with disabilities alongside their non-disabled peers to the maximum extent possible. The Mills case resulted in school districts being prohibited by the 14th Amendment from denying services to students with disabilities due to inadequate funding. Because charter school legislation is state law, most of the litigation, surrounding charter schools, is at the state level. However, there have been a few cases the federal appeals courts issued a ruling: *Arizona State Board for Charter Schools v. United States Court of Appeals for the Ninth Circuit* (2006) and *Racine Charter One, INC. v. United States Court of Appeals for the Seventh Circuit* (2005). In the Arizona case, the federal court of appeals was charged with determining the statutory interpretation of the meaning of the word "included." This court ruled the word to mean "such as," resulting in "all schools, including charters schools, had to be nonprofit to receive IDEA and ESEA funds" (p. 3). In the Racine case, the plaintiffs appealed the court's decision that a school district was not obligated to transport students to charter schools due to the unique and additional costs that such bussing would present. This decision was upheld in the federal courts. As states continue to create and modify their charter school legislation, inevitably more cases will be appealed to the federal courts for ruling which will in turn continue to shape the charter school laws.

Presently, both groups, Special Education Advocates and Charter School Advocates, feel they are fighting to protect the civil rights of children. Dorene Philpot (2002), an attorney, wrote, "...those of us fighting The Good Fight against the unbelievable injustices that we still see going on today, must keep in mind that this fight for the rights of children with disabilities will take years, just as the fight for other civil rights has required through the centuries" (p. 1). The mission statement of a charter school network, Achievement First (2016), reads Closing the achievement gap is the civil rights issue of our time. The problem is that the charter school educational structure is clashing with the special education educational structure, which is impeding the progress of this civil rights movement. Garda (2012) best summarized this clash as:

Charter schools operate in a culture of regulatory freedom and flexibility. They arose out of the modern era of accountability reform, in which student outcomes are the primary measure of school success and the driving engine of agency oversight. In stark contrast, special education laws were conceived in the civil rights era of education reform, which emphasized process and paid little attention to outcomes. The education of disabled students is steeped in a culture of procedures. Special education and charter schools stand on competing foundations in the same schoolhouse. (p. 655)

Garda's description of the problem is supported over and over again in the research on charter schools and students with disabilities dating back from 1997 to 2013 (Ahearn, Lange, Rhim, & McLaughlin, 2001; Black, 2012; Heubert, 1997; Lange, Rhim, & Ahearn, 2008).

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