



## Arizona State Board for Charter Schools Information Pertaining to Special Education

All students, including students with disabilities, are entitled to receive a meaningful education and have equal opportunities at school. Students with disabilities who seek to enroll in an Arizona charter school have important rights secured by state and federal law. Charter schools must comply with the federal Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), and state special education laws. State and federal law prohibit Arizona charter schools from denying or limiting admission on the basis of disability. Nor is it permissible for a charter school to influence a prospective student with a disability (or parent) not to apply to or enroll in a charter school because the prospective student has a disability.

The U.S. Department of Education's Office for Civil Rights and Office of Special Education and Rehabilitative Services has issued guidance providing charter schools with information about the rights of charter school students with disabilities and prospective charter school students with disabilities. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-charter-school.pdf>. These documents are *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973*, issued by the U.S. Department of Education's Office for Civil Rights, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>, and *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act*, issued by the U.S. Department of Education's Office of Special Education and Rehabilitative Services, <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf>.

The Office of Civil Rights can provide technical assistance to help charter school operators understand and comply with the civil rights laws and other laws enforced by the Office for Civil Rights. OCR's Customer Service Team can be contacted at (800) 421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov).

The Arizona Department of Education, Exceptional Student Services also provides resources to charter schools, <http://www.azed.gov/specialeducation/>. ADE's Special Education Dispute Resolution has also specifically addressed special education issues pertaining to charter schools, <http://www.azed.gov/disputeresolution/category/charterschools/>

### ***Can charter schools put a cap on the number of pupils eligible for special education that it will accept for enrollment?***

No. Charter schools may limit admission to pupils within a given age group or grade level, but cannot "limit admission based on ethnicity, national origin, gender, income level, disabling condition, or proficiency in the English language, or athletic ability." [A.R.S. § 15-184(F)] "A charter school shall enroll all eligible pupils who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade level or building." [A.R.S. § 15-184(A)] Note that "program" used here is not synonymous with a specific educational placement; special education is not a "program" under this definition. (If special education were a

program under A.R.S. § 15-184(A), then this would automatically invalidate A.R.S. § 15-184(F), leading to an absurd result.) It is important to remember that the purpose of the IDEA 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 . . .” [34 C.F.R. § 300.1(a)], emphasizing that special education is not a place or a program. Denial of enrollment based on disability or special education status could lead to claims of discrimination and possibly an investigation by the United States Department of Education/Office for Civil Rights (OCR).

As part of the Exceptional Student Services (“ESS”) division of the Arizona Department of Education (“ADE”) general supervision activities an annual review of special education data for each Public Education Agency (PEA) is completed. The percentage of special education students as compared to the national average is one of several items evaluated to determine a PEA’s risk factors. Monitoring activities for a PEA outside of the national norm for special education population may include a review of student files specific to areas related to identification and evaluation to ensure students are being properly located and identified. This monitoring occurs to assist a school in identifying any anomalies in their implementation of policies and practices that may be causing an issue with location and/or identification, if one exists. If no concerns with the implementation of policies and practices are found, no further action is required of the school. There are no punitive actions, funding or otherwise, taken against any PEA solely based on their special education population indicator.

***Can a public school district or charter school designate itself as an inclusion-only school and turn special education students away if they need a more restrictive placement?***

No. In Arizona, charter schools may not “limit admission based on ethnicity, national origin, gender, income level, disabling condition, or proficiency in the English language, or athletic ability.” (Emphasis added) [A.R.S. § 15-184(F)] The regulations that implement the IDEA state that schools “must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” [34 C.F.R. § 300.115(a)] Schools must ensure that determinations regarding a child’s educational placement are made by the child’s IEP team, including his or her parent, and that they are made in conformity with the least restrictive environment provisions of the IDEA. [34 C.F.R. § 300.116] Placement decisions must be made based on the needs of the student and not the philosophy or convenience of the school.

***Are charter schools required to offer everything a public school district must provide to children with disabilities?***

The federal regulations are clear that children with disabilities who attend public charter schools and their parents retain all rights afforded to them under the IDEA, and the charter school is responsible for ensuring that it carries out all of the requirements of Part B of the IDEA. [34 C.F.R. §§ 300.209(a) and (c)] In Arizona, charter schools are considered public schools [A.R.S. § 15-181(A)], and Arizona state law requires that “[a]ll school districts and charter schools shall develop policies and procedures for providing special education to all children with disabilities within the district or charter school.” [A.R.S. § 15-763(A)] Each public school must make available a full continuum of alternative placement options to meet the needs of children with disabilities, including “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.” [34 C.F.R. § 300.115(a) and (b)(1)] Schools are also required to “make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.” [Id. at subsection (b)(2)]

*The material contained in this document is for informational purposes only. The information is not intended to be and should not be considered legal advice. Charter schools should consult their own legal counsel for further information and advice.*