

June 2012

CHARTER SCHOOLS

Additional Federal Attention Needed to Help Protect Access for Students with Disabilities

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Highlights of [GAO-12-543](#), a report to congressional requesters

Why GAO Did This Study

While the number of charter schools is growing rapidly, questions have been raised about whether charter schools are appropriately serving students with disabilities. GAO was asked: (1) How do enrollment levels of students with disabilities in charter schools and traditional public schools compare, and what is known about the factors that may contribute to any differences? (2) How do charter schools reach out to students with disabilities and what special education services do charter schools provide? (3) What role do Education, state educational agencies, and other entities that oversee charter schools play in ensuring students with disabilities have access to charter schools? GAO analyzed federal data on the number and characteristics of students with disabilities; visited charter schools and school districts in three states selected on the basis of the number of charter schools in the state, among other things; and interviewed representatives of federal, state, and other agencies that oversee charter schools.

What GAO Recommends

GAO recommends that the Secretary of Education take measures to help charter schools recognize practices that may affect enrollment of students with disabilities by updating existing guidance and conducting additional fact finding and research to identify factors affecting enrollment levels of these students in charter schools. Education agreed with our recommendations.

View [GAO-12-543](#). For more information, contact George Scott at (202) 512-7215 or scottg@gao.gov.

CHARTER SCHOOLS

Additional Federal Attention Needed to Help Protect Access for Students with Disabilities

What GAO Found

Charter schools enrolled a lower percentage of students with disabilities than traditional public schools, but little is known about the factors contributing to these differences. In school year 2009-2010, which was the most recent data available at the time of our review, approximately 11 percent of students enrolled in traditional public schools were students with disabilities compared to about 8 percent of students enrolled in charter schools.

GAO also found that, relative to traditional public schools, the proportion of charter schools that enrolled high percentages of students with disabilities was lower overall. Specifically, students with disabilities represented 8 to 12 percent of all students at 23 percent of charter schools compared to 34 percent of traditional public schools. However, when compared to traditional public schools, a higher percentage of charter schools enrolled more than 20 percent of students with disabilities. Several factors may help explain why enrollment levels of students with disabilities in charter schools and traditional public schools differ, but the information is anecdotal. For example, charter schools are schools of choice, so enrollment levels may differ because fewer parents of students with disabilities choose to enroll their children in charter schools. In addition, some charter schools may be discouraging students with disabilities from enrolling. Further, in certain instances, traditional public school districts play a role in the placement of students with disabilities in charter schools. In these instances, while charter schools participate in the placement process, they do not always make the final placement decisions for students with disabilities. Finally, charter schools' resources may be constrained, making it difficult to meet the needs of students with more severe disabilities.

Most of the 13 charter schools GAO visited publicized and offered special education services, but faced challenges serving students with severe disabilities. Most charter school officials said they publicized the availability of special education services in several ways, including fliers and placing ads in the local newspaper. Many charter schools GAO visited also reported tailoring special education services to individuals' needs, but faced challenges serving students with severe disabilities due to insufficient resources. About half of the charter school officials GAO interviewed cited insufficient resources, including limited space, as a challenge.

The U.S. Department of Education's (Education) Office for Civil Rights has undertaken two compliance reviews related to charter schools' recruitment and admission of students with disabilities in three states, but has not issued recent guidance covering admission practices in detail, nor has Education conducted recent research about factors affecting lower enrollment in charter schools. The three states GAO visited already have taken steps to monitor charter schools' admission practices. In addition, officials in these three states reported prohibiting disability-related questions on charter school admission forms, in part to protect students with disabilities' access.

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Abbreviations

CCD	Common Core of Data
CSP	Charter Schools Program, U.S. Department of Education
Education	U.S. Department of Education
ESEA	Elementary and Secondary Education Act of 1965
FAPE	free appropriate public education
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
Justice	U.S. Department of Justice
LEA	local educational agency
OCR	Office for Civil Rights, U.S. Department of Education
OESE	Office of Elementary and Secondary Education, U.S. Department of Education
OII	Office of Innovation and Improvement, U.S. Department of Education
OSEP	Office of Special Education Programs, U.S. Department of Education
OSERS	Office of Special Education and Rehabilitative Services, U.S. Department of Education
Section 504	Section 504 of the Rehabilitation Act of 1973
SEA	state education agency

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

June 7, 2012

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

The Honorable Raúl Grijalva
House of Representatives

As the number of charter schools in the United States continues to grow, questions have been raised about whether charter schools, a relatively new phenomenon in public education that began in the early 1990s, are appropriately serving students with disabilities and providing access to students with more severe disabilities. Actions at both the state and local levels have shed light on this issue and brought it to the attention of the public. For example, a class-action lawsuit filed against the Louisiana Department of Education in October 2010 alleges that students with disabilities were denied access to New Orleans public schools, most of which are charter schools, and cites lower percentages of students with disabilities in charter schools compared to traditional public schools.¹

Charter schools provide students and parents with increased educational options, and all students, including students with disabilities, generally enroll in charter schools on the basis of their parents' choice. States grant charter schools increased autonomy in school management in exchange for agreeing to improve student achievement, but charter schools do not have the authority to waive federal statutory requirements related to education.

In response to questions about enrollment levels of students with disabilities in charter schools, we addressed the following questions: (1) how do enrollment levels of students with disabilities in charter schools and traditional public schools compare, and what is known about the factors that may contribute to any differences; (2) how do charter schools reach out to students with disabilities and what special education services

¹This lawsuit is currently pending in the U.S. District Court for the Eastern District of Louisiana and was filed by the Southern Poverty Law Center. *P.B. v. Pastorek*, No. 2:10-cv-04049.

do charter schools provide; and (3) what roles do the Department of Education (Education), state educational agencies (SEA), and other entities that oversee charter schools play in ensuring students with disabilities' access to charter schools?

To compare enrollment levels of students with disabilities in charter schools and traditional public schools,² we analyzed school-level data for school years 2008-2009 and 2009-2010, the most recent data available at the time, from a custom data file provided by Education. The data include counts of students with disabilities in traditional public schools and charter schools, students' age and disability type, the educational environment, and whether each school is its own local educational agency (LEA) or part of a larger LEA. To examine how charter schools reach out to students with disabilities and the types of services charter schools provide, we visited a major metropolitan area in three states and interviewed officials in 13 charter schools as well as several school districts, selected to include states with a large number of charter schools, a mix in LEA status, and geographic diversity. To determine the role Education and other organizations play in ensuring students with disabilities' access to charter schools, we reviewed relevant federal laws and regulations and interviewed representatives of Education, the Department of Justice, selected SEAs, and other entities, such as charter school authorizers that oversee charter schools. We also interviewed representatives of state and local charter school organizations and organizations representing parents of students with disabilities about their perspective on students with disabilities' access to charter schools. Appendix I provides a detailed description of our methodology and its limitations, as well as the scope.

This study was not intended to determine charter schools' compliance with applicable federal requirements for educating students with disabilities.

We conducted this performance audit from February 2011 to May 2012, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

²We use the term "traditional public school" to distinguish charter schools from other types of public schools. For more information on the different types of public schools, see app. I.

findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We assessed the reliability of the data file that Education provided by (1) performing electronic data testing for obvious errors in accuracy and completeness, (2) reviewing existing information about the data and the system that produced the data, and (3) interviewing agency officials knowledgeable about these data. We determined that the data were sufficiently reliable for the purposes of this report.

Background

Charter schools are public schools created to achieve a number of goals, including encouraging innovation in public education and addressing failing schools. Charter schools operate with more autonomy than traditional public schools in exchange for agreeing to improve student achievement, an agreement that is formalized in a contract or charter with the school's authorizing body. From about 3,000 charter schools in school year 2003-2004 to almost 5,000 in school year 2009-2010, the number of charter schools in the United States continues to grow. Spurring this growth are parents' and others' desire for schools that reflect their vision of public education, and federal incentives, such as the recent \$4 billion Race to the Top (RTT) competitive grant fund, which among other things, encourages the growth of high performing charter schools, and the Charter Schools Program Grants for Replication and Expansion of High Quality Charter Schools.

States specify which entities within the state can authorize the establishment of a charter school, including state departments of education, state boards of education, school districts or local educational agencies (LEA), institutions of higher education, and municipal governments. Some states have also created independent charter school boards that can authorize charter schools in the state. Once charter schools are in operation, the authorizer is generally responsible for monitoring school performance and has authority to close the school or take other actions if academic goals or state financial requirements are not met.

States also define how charter schools will be structured and they do so in different ways (see fig. 1). For example, unlike traditional public schools that are part of a larger LEA, some states establish charter schools as their own LEA. Other states require them to be part of a larger LEA, while still other states allow charter schools the option to choose between being a distinct LEA or part of a larger LEA. Further, some states allow charter

schools to be their own LEA for some purposes and part of a larger LEA for others, including for purposes of special education. With respect to special education, two common practices are that (1) in states that define a charter school to be a part of a larger LEA, the responsibility for providing special education services to charter school students with disabilities remains with that LEA and (2) in states where charter schools are their own LEA, the state makes charter schools responsible for providing the services themselves.

Figure 1: Differences in Charter Schools' LEA Status for Purposes of Special Education



Source: GAO review of relevant federal laws and regulations.

Like traditional public schools, charter schools are subject to a number of federal requirements. Section 504 of the Rehabilitation Act of 1973³ and the Individuals with Disabilities Education Act⁴ (IDEA), as amended, are the two primary laws that address the rights of students with disabilities to education.

- *IDEA* was enacted in 1975 and authorizes federal funding for special education and related services. For states that accept IDEA funding, the statute sets out detailed requirements regarding the provision of special education, including the requirement that children with disabilities receive a free appropriate public education.⁵ In addition,

³Codified at 29 U.S.C. § 794.

⁴Codified at 20 U.S.C. § 1400 et seq.

⁵20 U.S.C. § 1412(a)(1).

under IDEA, states must ensure that an Individualized Education Program (IEP) is developed and implemented for each student with a disability. The IEP process creates an opportunity for teachers, parents, school administrators, related services personnel, and students (when appropriate) to work together to improve educational results for children with disabilities. These requirements apply in public charter schools just as they do in traditional public schools. IDEA provides funding and assigns responsibility for complying with requirements to states, and through them, to LEAs. In ensuring that IDEA requirements are met for students with disabilities attending charter schools, states may retain that responsibility or assign it to the charter school LEA, the larger LEA to which the charter school belongs, or some other public entity.⁶

- *Section 504 of the Rehabilitation Act*, enacted in 1973, is a civil rights statute that prohibits discrimination against an otherwise qualified individual with a disability solely by reason of disability in any program or activity receiving federal financial assistance or under any program or activity conducted by an executive agency. Education's Section 504 regulation states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activities which receives federal financial assistance.⁷ Subpart D of Education's regulation contains specific requirements regarding elementary and secondary education, including the provision of a free appropriate public education (FAPE) to each qualified person with a disability in the recipient's (recipient of federal financial assistance) jurisdiction, regardless of the nature or severity of the person's disability.⁸ Even if a state declines IDEA funds, the state must comply with Section 504 if it receives other federal financial assistance. Education's Office for Civil Rights (OCR) enforces Section 504 for the department's programs through investigation of complaints and compliance reviews that are initiated by the department.
- *Title II of the Americans with Disabilities Act of 1990, as amended*, prohibits discrimination based on disability in public entities, including

⁶34 C.F.R. § 300.209.

⁷34 C.F.R. § 104.4(a).

⁸34 C.F.R. §§ 104.33-104.36.

schools.⁹ The Department of Justice and OCR both have jurisdiction to investigate complaints under this title.¹⁰

Enrollment Levels of Students with Disabilities in Traditional Public Schools and Charter Schools Differed, but Little Is Known about Factors Contributing to Differences

Charter schools enrolled¹¹ a lower percentage of students with disabilities than traditional public schools in both school years 2008-2009 and 2009-2010 (see fig. 2).¹² For example, in school year 2009-2010, there was about a 3 percentage point difference between the percentage of students with disabilities enrolled in traditional public schools and charter schools. As shown in figure 2, the percentage of students with disabilities in charter schools increased slightly between the 2 school years we examined, while the percentage of students with disabilities in traditional public schools stayed about the same.

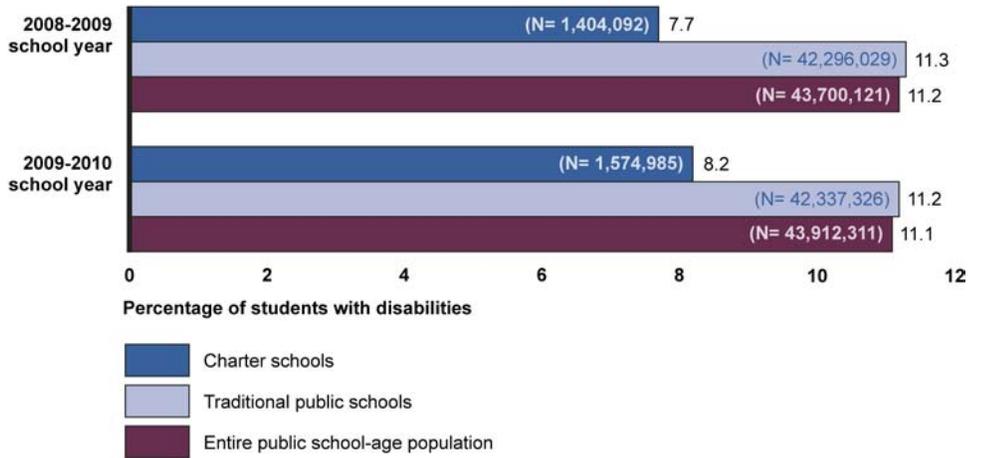
⁹42 U.S.C. § 12132. Public entities include any state or local government and any of its departments, agencies, or other instrumentalities.

¹⁰Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II for all program, services, and regulatory activities related to the operation of public elementary and secondary education programs, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries. The Department of Justice (Justice) amended its regulations in 2010 to allow Justice to exercise its discretion to retain a Title II complaint that may fall within another agency's jurisdiction. Justice stated that it would consult with the other agency if it does plan to retain the complaint. 28 C.F.R. § 35.190(e) and Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56, 164, 56, 229 (Sept. 15, 2010).

¹¹For purposes of our analysis, the term "enrolled" includes students with disabilities who received special education and related services under IDEA in a regular classroom as well as students in other educational environments whose services were provided through a traditional public school district or charter school LEA. For more information on the different educational environments for students with disabilities, see app. I.

¹²The student population for our analysis includes students aged 6 to 21 in those 40 states with operating charter schools and the District of Columbia during school years 2008-2009 and 2009-2010 only. Data for students in traditional public schools in those 10 states without operating charter schools during school years 2008-2009 and 2009-2010 are omitted from our analysis. We also excluded schools categorized as closed, inactive, or future schools as well as charter schools with an enrollment level of zero. School-level data on students with disabilities were not available for the District of Columbia, Mississippi, Rhode Island, and Tennessee for school year 2008-2009 and for Tennessee and Utah for school year 2009-2010. See app. I for more information.

Figure 2: Percent of Students in Charter Schools and Traditional Public Schools Who Had Disabilities Compared to Students with Disabilities' Overall Representation in Public Schools



Source: GAO analysis of ED Facts data and the Common Core of Data.

Note: The student population for our analysis includes students aged 6-21 in those 40 states with operating charter schools and the District of Columbia during school years 2008-2009 and 2009-2010 only. School-level data on students with disabilities were not available for District of Columbia, Mississippi, Rhode Island, and Tennessee for school year 2008-2009 and for Tennessee and Utah for school year 2009-2010. Therefore, students in those states were excluded from our denominator when calculating the percentages shown above. See app. I for more information.

When examining enrollment levels of students with disabilities in traditional public schools and charter schools for individual states, a more varied picture emerges. In most states, charter schools enrolled a lower percentage of students with disabilities when compared to traditional public schools. For example, in the state of New Hampshire, about 6 percent of students in charter schools were students with disabilities compared to about 13 percent of students in traditional public schools. However, in eight states—Iowa, Minnesota, Nevada, New Mexico, Ohio, Pennsylvania, Virginia, and Wyoming—charter schools enrolled the same percentage or a higher percentage of students with disabilities than traditional public schools in the state (see fig. 3). For example, in Wyoming, the enrollment level of students with disabilities in charter schools was about 4 percentage points greater than in traditional public schools.

students with disabilities, such as schools for students with autism, for example, which may help explain this difference.

Table 1: Percent of Traditional Public Schools and Charter Schools Serving Students with Disabilities in School Year 2009-2010

Percentage of students with disabilities out of each school's total enrollment	Percent of traditional public schools (N=74,673)	Percent of charter schools (N=4,111)
less than 4	3.4	16.8
4 to less than 8	19.3	29.7
8 to less than 12	34.2	23.1
12 to less than 16	24.7	12.5
16 to less than 20	10.4	6.1
>=20	8.0	11.7

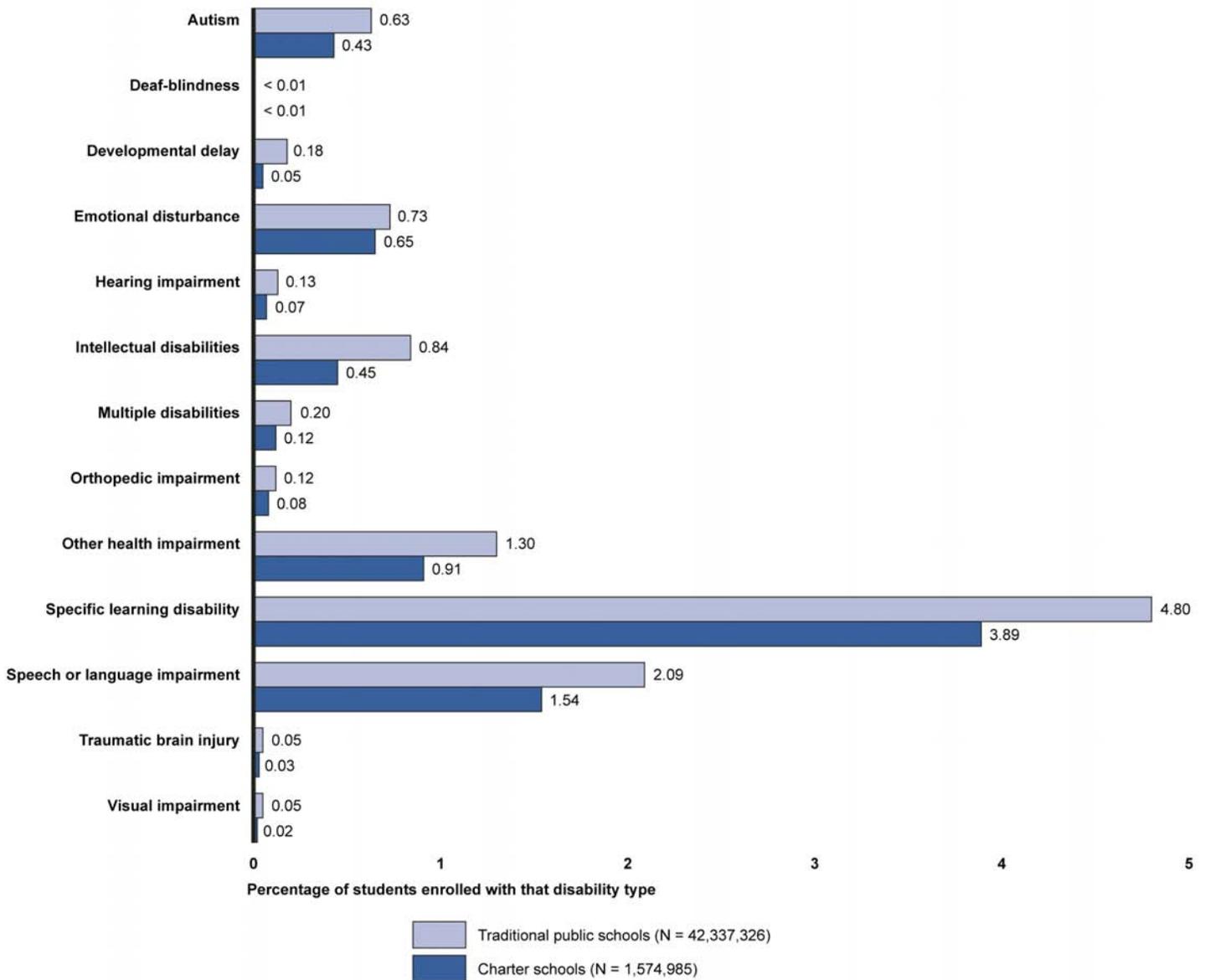
Source: GAO analysis of ED Facts data and the Common Core of Data.

Note: See app. I for more information on how we arrived at the total number of traditional public schools and charter schools in order to calculate the percentages shown and for information on missing data.

A more detailed look at aggregate enrollment data of students with disabilities in traditional public schools and charter schools shows that compared to traditional public schools, charter schools enrolled a lower percentage of students in each of the 13 disability categories¹³ in school year 2009-2010 (see fig. 4). For example, of all students enrolled in traditional public schools, about 5 percent of students had a specific learning disability, compared to about 4 percent of all students enrolled in charter schools. For information about the distribution of students' disability types, see appendix III.

¹³The 13 categories defined by IDEA are: (1) autism, (2) deaf-blindness, (3) developmental delay, (4) emotional disturbance, (5) hearing impairment, (6) intellectual disabilities, (7) multiple disabilities, (8) orthopedic impairment, (9) specific learning disability, (10) speech or language impairment, (11) traumatic brain injury, (12) visual impairment, and (13) other health impairment. Some states do not use all of these disability categories.

Figure 4: Percent of Students with Disabilities Enrolled in Traditional Public Schools and Charter Schools by Disability Type for School Year 2009-2010



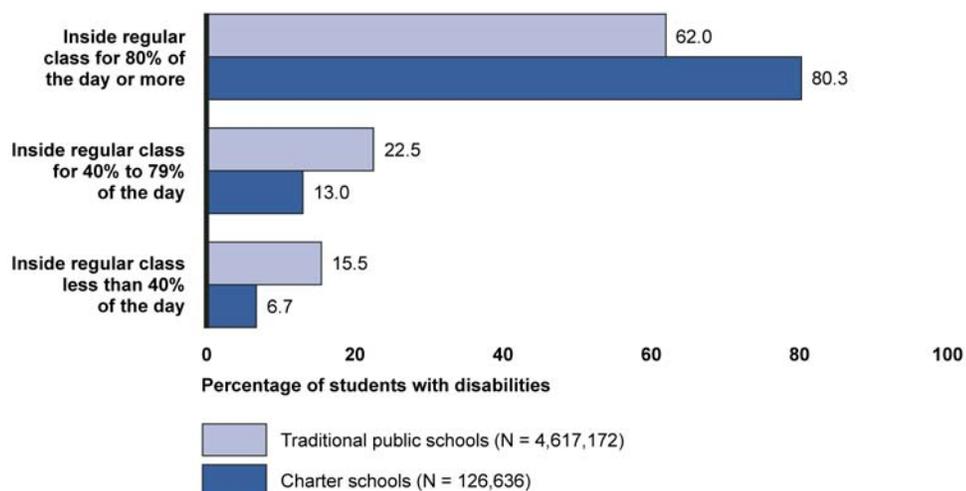
Source: GAO analysis of EDFacts data and the Common Core of Data.

Note: Missing data are not shown.

Of those students with disabilities who spent time in regular class, a higher percentage of students with disabilities in charter schools spent 80 percent or more of the day in a regular classroom compared to those

students in traditional public schools (see fig. 5). For example, about 80 percent of students with disabilities in charter schools spent 80 percent or more of the day inside regular class compared to about 62 percent of students with disabilities in traditional public schools.

Figure 5: Amount of Time Spent inside Regular Class by Students with Disabilities, School Year 2009-2010

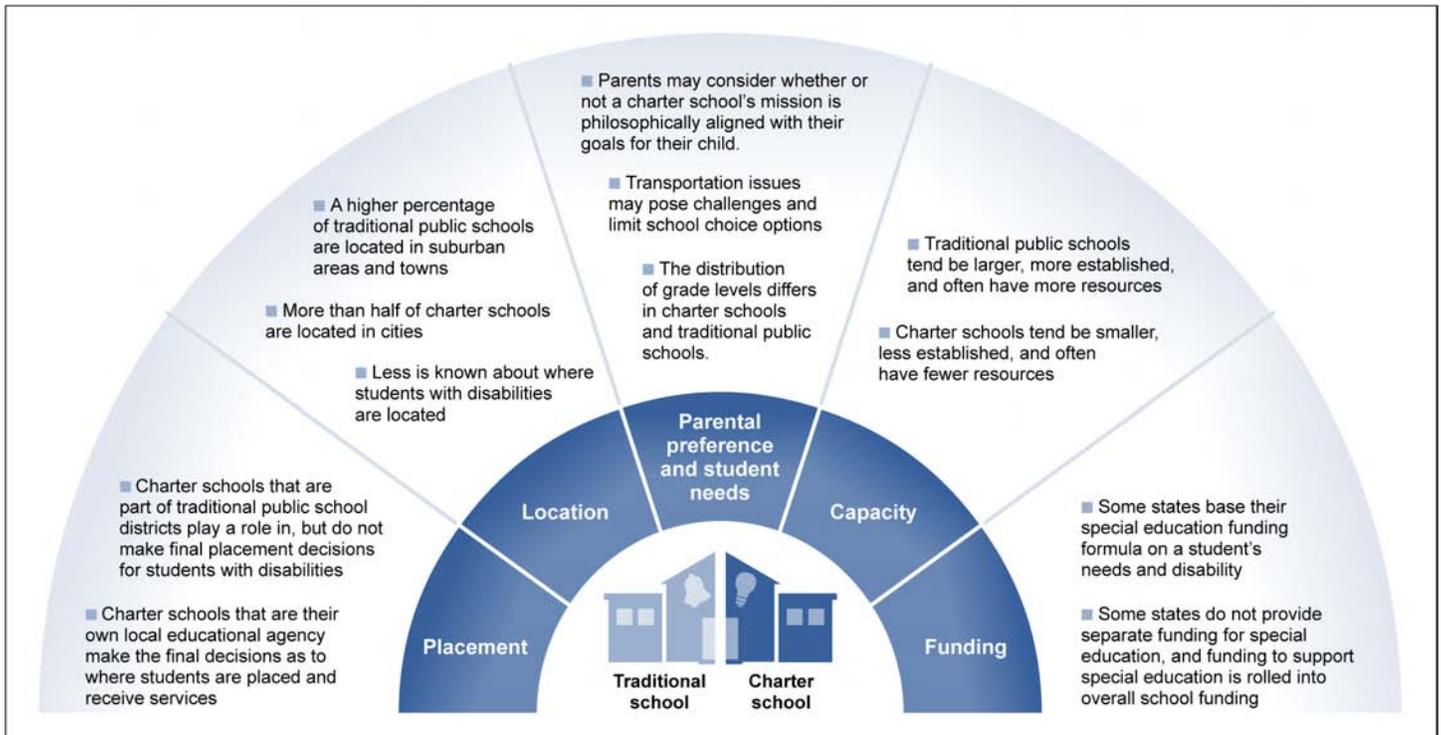


Source: GAO analysis of EDFacts data.

Little Is Known about Factors Contributing to Differences in Enrollment Patterns

Although there are differences in enrollment levels, the reasons for these differences are not entirely clear. During the course of our work, we learned about several factors such as parental preference and school capacity that may help explain why charter schools enroll a lower percentage of students with disabilities when compared to traditional public schools (see fig. 6). However, information about these factors is often based on anecdotal information, and little is known about how each of the factors actually contributes to differences in enrollment levels, if at all.

Figure 6: Selected Factors That May Contribute to Differences in Enrollment Levels of Students with Disabilities in Traditional Public Schools and Charter Schools



Source: GAO review of Education documents; interviews with Charter School experts and school and federal agency officials; and relevant research.

Parents' preferences and students' needs may play a role in contributing to differences in enrollment levels. For example, according to a national organization representing special educators and parents of students with disabilities, parents often weigh their options and take many things into consideration when deciding whether or not to enroll their child in a charter school. Parents may consider whether or not a charter school's mission—such as that of a single-language immersion charter school—is philosophically aligned with their goals for their child. Parents also may consider the availability of transportation, what grades the charter school serves, and whether the charter school's special education services would meet their child's needs.

Anecdotal accounts also suggest that some charter schools may be discouraging students with disabilities from enrolling and denying admission to students with more severe disabilities because services are too costly. Representatives of a parent organization we spoke with said

that some charter schools do not identify disabilities or document special education services, but rather provide the interventions “informally,” without including them on students’ IEPs. The representatives expressed concern about this practice, because if a student transfers to another school, the school may not be aware of the types of services the student had previously been receiving. Furthermore, some charter schools give “placement exams,” which schools say are designed to provide baseline information on students’ knowledge, but representatives of this organization said that these types of exams can be frustrating to some students with disabilities and may discourage them from enrolling. However, there are no comprehensive data to determine the extent to which charter schools may be discouraging students with disabilities from enrolling or the extent to which such practices actually contribute to differences in enrollment levels.

Moreover, how placement decisions are made for students with disabilities may also influence enrollment levels. For example, in some instances, charter schools are not ultimately responsible for making the final placement decision for students with disabilities. This is the case for those charter schools that are part of a larger LEA where final placement decisions for students with disabilities are made by the LEA, not the charter school. It may be the case that more often than not, LEAs determine that traditional public schools, not charter schools, are in a better position to commit resources and to ensure that the services agreed upon in a student’s Individualized Education Program (IEP) can adequately be provided. For example, charter schools may not have the same capacity, resources (e.g., space), knowledge, or experience necessary to serve students with specified disabilities. In addition, charter school LEAs may face challenges acquiring special education services or providers because charter school LEAs, which are often smaller than traditional public school districts, may not have the same resources that larger-sized school districts have. Different state funding formulas for special education may also drive placement decisions. For example, some states provide a higher level of funding for special education based on the severity of a student’s disability, making it more feasible financially for schools to serve students with more severe disabilities. In contrast, other states do not take such factors into consideration when providing funding for special education, which may place a heavy financial burden on individual schools.

The distribution of grade levels in traditional public schools and charter schools differs, which may contribute to differences in enrollment levels of students with disabilities as well. Education’s National Center for

Education Statistics (NCES) reported that elementary schools constituted 71 percent of traditional public schools compared to 54 percent of charter schools during school year 2008-2009.¹⁴ Therefore, parents of elementary school-aged children with disabilities may find fewer charter school options because a lower percentage of charter schools serve this age group and because charter schools represent a small percentage of all public schools nationwide.¹⁵

Further, we heard anecdotally from charter school representatives and researchers that, following a reassessment, school officials may determine that a student that previously had an IEP no longer needs special education, which could account for the lower percentages of students with disabilities in charter schools.¹⁶ However, there are no available data to support this, and an Education official suggested that students with disabilities in general do not leave special education in large numbers.

Charter Schools We Visited Offer Special Education Services, but Faced Challenges with Severe Disabilities

Most of the 13 charter schools we visited reported using multiple strategies to publicize the availability of special education services in their school and the charter school's presence in the community. For example, some charter school officials mentioned word-of-mouth as a way of informing parents about their school.¹⁷ Some also reported distributing fliers in the community, mailing fliers to parents of every kindergarten student or 5th grader, or placing ads in the local newspaper or other media. Some schools said that they did not specifically target students with disabilities.

¹⁴Secondary and combined schools accounted for 27 and 19 percent of charter schools, respectively, and for 24 and 5 percent of traditional public schools, respectively.

¹⁵In school year 2008-2009, approximately 45 percent of all school-aged students with disabilities were aged 6 to 10; 24 percent of students were aged 11-13; 25 percent 14-18; and 6 percent 19-21.

¹⁶Education collects data on the number of students with disabilities, ages 14 through 21 only, who exited special education. Therefore, there are no comprehensive data for all school-aged students who leave special education.

¹⁷A table describing the characteristics of the charter schools we visited is provided in appendix I.

In combination with these more informal strategies, many of the charter schools we visited also said that they held an open house or meeting during which prospective students and their parents could visit the school, ask questions, and tour the school. Some saw the open houses as an opportunity to discuss the special education services they offered. Officials at one school said that their special education teachers attended the open house and discussed their program, including any limitations in the school's special education offerings. Several of the charter schools could not accommodate all of the students wishing to enroll and held a lottery to determine admission. Some said that they had waiting lists and emphasized that they accepted students on a first come, first served basis, and thus give no preference to students with disabilities or other student subgroup.

Many of the charter school officials we interviewed demonstrated awareness that inquiring about a student's disability status on the charter school application might be perceived as an attempt to discourage enrollment and took steps to minimize the possibility. For example, in two of the states we visited, in charter schools that asked parents to fill out an application form, charter school officials said that the form did not ask questions about the student's disability status. Once the child was accepted to the school and enrolled, some schools asked parents to fill out an enrollment form that asked for information about the child's health history, and, if transferring from another school, about the child's prior academic program, including receipt of special education services. Charter school officials emphasized that questions about disability status or prior receipt of special education services were not asked on the application form and made reference to state requirements that prohibited such questions before enrollment. According to state officials, such questions were prohibited to prevent charter school officials from using the information to identify students that were potentially more costly to serve and to attempt to discourage the parents from enrolling such students before an assessment of their needs was done.

In contrast, some charter school officials in one of the three states we visited did include questions about receipt of special education services and whether the child had an IEP on the charter school application form. Officials representing the school acknowledged that the application includes such questions but said that they look at the application only for name, address and telephone number. Officials at another charter school reported that the school's admission application collects information about whether a child has special needs, but discounted the accuracy of the

information, saying that some parents of students with disabilities become confused about the services their child has received and the terminology.

Charter Schools Reported Tailoring Special Education Services to Individual Students' Needs

Many of the charter school officials we interviewed reported providing services specific to each child's needs. The special education services offered by most of the charter schools we visited included speech and language therapy, occupational and physical therapy, counseling, and academic supports, usually in reading and math. Some charter schools visited offered vision, hearing, and behavioral supports and some mentioned providing technologies to assist students with more severe learning disabilities.

Almost all of the charter schools we visited offered special education services to students in the regular classroom for most of the day, with "pull-out" sessions in a resource room for more focused services. The term "pull-out" sessions refers to the practice of providing special education services for students with disabilities in a place that is separate from the regular classroom. One school reported using "push-in" sessions, in which the special education teacher went into the classroom to provide special education services. Officials at three schools reported teaching students in a self-contained classroom, but some said they did not have the resources to provide that type of educational environment. One charter school official said that when a student's IEP includes a service that the school does not offer, such as a self-contained classroom, the IEP committee has modified the IEP to accommodate facility limitations while still meeting the needs of the child. For example, that school offered more intensive services in the general classroom staffed by a general education teacher, a special education teacher and a teaching assistant, for students whose IEP specifies those services.

When faced with a need for services by a child already enrolled that were greater than the charter school could provide, the charter schools we visited took different approaches. In charter schools where the district was responsible for placement, most of the charter school officials we interviewed said that the school district intervened to decide the appropriate placement for the child and inform the parents. In contrast, charter school LEAs took different approaches. One said that parents were told during an IEP meeting that the school could not serve certain severe disabilities. Before moving the child, officials reconvened the IEP meeting to consider the decision. Two others discussed the issue with the parents, but allowed them to make the decision on where to place the child, without reference to an IEP placement decision meeting.

About Half of the Charter Schools We Interviewed Cited Insufficient Resources to Serve Severe Disabilities as a Challenge

Officials representing about half of the 13 charter schools we visited said that having sufficient resources to serve students with more severe disabilities, including providing a self-contained classroom when needed, was their greatest challenge. For example, two officials said that their school facility could not provide a self-contained classroom. A third official explained that providing a self-contained classroom is especially challenging because of the need to provide separate classrooms for each grade grouping as well as teachers. Thus, if a school had 3rd and 4th graders requiring self-contained classrooms, they would need to have space to accommodate two separate classrooms. The official said that the charter school would not have enough teachers to cover those different grade levels. According to representatives of charter school organizations we interviewed, providing services to students with severe disabilities can be very costly and some charter schools could face severe financial difficulties serving students with very severe disabilities.

Charter schools that cited insufficient resources as a challenge included both charter school LEAs and charter schools within a district. Other resource challenges school officials cited included the cost of specialists' services, and obtaining staff qualified to serve their students' needs, such as a bilingual special education teacher or a specialist to teach an autistic child. However, two charter schools within a district said that, because the district provided all services needed, the cost of services was not a challenge. Both charter schools were located in the same school district.

Education Is Reviewing Admission Practices, and Some States Have Implemented Preventive Measures

The Office for Civil Rights (OCR) is responsible for ensuring equal access to education through enforcement of the civil rights laws, including Section 504 of the Rehabilitation Act. OCR has issued regulations implementing Section 504 and conducts complaint investigations and compliance reviews to determine if entities that receive federal financial assistance from Education are in compliance with these regulations. The Section 504 regulations prohibit discrimination on the basis of disability by recipients and subrecipients of federal financial assistance from Education.¹⁸ The Section 504 regulations also require that entities that receive federal financial assistance from Education and that operate public elementary or secondary schools provide a free appropriate public education to qualified students with disabilities regardless of the nature or

¹⁸34 C.F.R. Part 104.

severity of the disability.¹⁹ In addition, OCR issues guidance that explains the requirements of the regulations and in 2000 issued “Applying Federal Civil Rights Laws to Public Charter Schools, Questions and Answers” about the civil rights requirements applicable to charter schools, including Section 504 requirements. OCR also provides technical assistance to school districts, parents, and other stakeholders regarding the requirements of Section 504.

During fiscal year 2010, OCR told us that it had investigated complaints concerning students with disabilities in charter schools. According to OCR, more than 50 percent of all the complaints OCR received that year concerned disabilities, but of those complaints, about 2 percent were made against charter schools.²⁰ OCR could not readily determine from its complaint management system how many of those complaints concerned admission to charter schools.

OCR officials also said that OCR has several broad compliance reviews underway related to students with disabilities and charter schools. Four of 37 compliance reviews OCR began conducting in fiscal year 2011 focus on charter schools. Of these, two pertain to recruitment and admissions issues and two address FAPE. Officials said that because all of these reviews are currently ongoing, they were unable to share details of what they have found thus far. The officials said that their compliance reviews involve extensive investigations that may last up to a year and result in reports of findings and violations, if any, which are posted on OCR’s website. They said they thought that the ongoing reviews were the first that had included issues of students with disabilities and charter schools.

Additionally, Justice officials we interviewed said that the department has recently amended its regulations to permit it to retain complaints under Title II of the Americans with Disabilities Act (ADA) of 1990, as amended,

¹⁹34 C.F.R. §§ 104.33-104.36. OCR stated that it recognizes that state charter school laws may affect how responsibilities are allocated among varying entities in connection with the provision of FAPE for students with disabilities enrolled in charter schools. In enforcing Section 504 regulations, OCR stated that its responsibility is to determine whether students with disabilities are treated in a nondiscriminatory manner and are provided a FAPE. OCR also noted that there is nothing in its regulations or guidance that indicates that the obligations of recipients to provide nondiscriminatory admissions and a FAPE are limited because of factors such as a lack of resources.

²⁰In school year 2009-2010, approximately 3.6 percent of all students enrolled in public schools were enrolled in charter schools.

which may include complaints of discrimination against students with disabilities by public schools, including charter schools. Justice's Civil Rights Division conducts the investigations, and told us that its jurisdiction would include complaints related to admissions issues, including the types of questions asked by charter schools in applications as well as schools' practices and procedures for serving students with disabilities. However, the Civil Rights Division's data collection system does not capture the number of complaints it received by type of disability or type of school.

Education's Guidance and Research May Not Address the Range of Issues Confronting Charter Schools Today

In 2000, Education both issued its guidance on applying federal civil rights laws to public charter schools and sponsored an in-depth study highlighting issues about students with disabilities' access to charter schools. However, although the number of charter schools has increased since the issuance of this guidance and research, Education has not updated its guidance, and officials in Education's Program and Policy Studies Service and Institute for Education Sciences are not aware of further research that might address the challenges and issues confronting charter schools today. Education's guidance addresses a number of issues, including issues related to the education of students with disabilities. For example, with respect to outreach and recruitment practices, the guidance provides that schools may not discriminate against students with disabilities, among others, and that recruiting efforts should be directed at all segments of the community served by the school, including students with disabilities. Regarding admissions, the guidance specifically states that charter schools may not categorically deny admission to students on the basis of disability, including a student's need for special education or related aids and services. The guidance also notes that when an enrolled student is believed to have a disability, the school is required to follow appropriate procedures to identify and refer the student for evaluation in a timely manner. While the guidance does provide basic information about charter school practices concerning students with disabilities, it does not provide more detailed information on the acceptability of specific practices, such as asking on a charter school application form whether a child has a disability or previously had an IEP.

Education also sponsored an in-depth study of students with disabilities' access to charter schools in 2000. This study, issued by the Office of Educational Research and Improvement, examined some of the factors that may explain the difference in students with disabilities' enrollment in charter schools and traditional public schools, most prominently highlighting a practice where parents of students with disabilities were

being discouraged during the admissions process from enrolling their students in charter schools.²¹ The study, based on site visits to 35 charter schools, detailed a lack of fit between the curriculum and the student's needs and insufficient resources as reasons given for discouraging enrollment of students with disabilities.²² At the time of this study, the charter school population was less than one third its current size, and this study may not fully explain the factors underlying lower enrollment levels in charter schools.

All Three of the States We Visited Monitored Charter Schools' Admission Practices

Among the three state educational agencies (SEA) we visited, all have implemented measures addressing admission practices in some capacity. One SEA reported that it had developed detailed monitoring and guidance for charter schools concerning their responsibilities for serving students with disabilities.²³ This SEA said that charter schools are advised of their IDEA responsibilities in the school's application to the state for federal grant funds and in the state application to become a charter school. This SEA also reported that a nondiscrimination clause is included in the state's charter school application, which it said precludes charter schools from asking for information about disability status or prior receipt of special education services in their applications for admission. Admission and enrollment forms are reviewed intensively as part of the charter school application and renewal process.²⁴

²¹See Thomas Fiore, Lessley M. Harwell, Jose Blackorby and Kara S. Finnegan, *Students with Disabilities in Charter Schools: A National Study* (Washington, D.C.: U.S. Department of Education, 2000).

²²The study employed a purposive sample of schools based on five variables that defined key characteristics of charter schools. The variables, identified from a review of research, represented factors that may influence charter schools' capacity to serve students with disabilities. The variables were (1) proportion of students with disabilities enrolled, (2) federal public charter school grant recipient status, (3) level of operational autonomy based on the extent of the schools' control over admissions and budgets, (4) grade levels served, and (5) geographic region.

²³At the state level, SEAs oversee compliance with IDEA's requirements for identification and assessment of students with disabilities and the provision of a free appropriate public education. In addition, SEAs may assist the state authorizer with its charter school oversight responsibilities, including accepting and reviewing applications to become a charter school and assessment of the charter school's performance at charter renewal.

²⁴However, this SEA monitors only charter school LEAs authorized by the State Board of Education.

A second SEA sponsors webinars and works with charter schools prior to schools opening so that charter schools have more opportunities to learn about the regulations and their responsibilities for educating students with disabilities before they open. For example, this SEA is developing a webinar on how to implement state charter school law requirements that set enrollment targets for students with disabilities for all charter schools. The law also required the SEA to develop a uniform, statewide charter school admission form. The SEA official we interviewed told us that the state's admission form does not include questions concerning disability status. While parents' needs and preferences may influence their decisions about whether or not to place their child in a charter school, the law requires charter schools to demonstrate a good-faith effort to recruit them. The third SEA also does not allow charter schools to ask applicants about anything related to their need for special education services at the time they apply for admission to the school.

In contrast to the SEAs, the school district authorizers interviewed reported little monitoring of charter schools' recruitment or special education service delivery plans.

Conclusions

Against the backdrop of a growing and changing charter school landscape, we found that enrollment of students with disabilities in the aggregate is lower in charter schools than in traditional public schools. Whether these enrollment differences will persist or continue to narrow is difficult to predict, given the lack of information about factors underlying these differences and how they affect enrollment levels. By issuing guidance that raises awareness about the practices that might be perceived as an attempt to discourage enrollment, officials in the states we visited have already begun to take steps to forestall the possibility that charter school admission practices play a role in lower enrollment levels in charter schools. However, the guidance Education issued in 2000, while important in providing basic information to charter schools with respect to students with disabilities, does not provide more detailed information on the acceptability of specific admission practices under applicable civil rights laws. Moreover, while Education sponsored research several years ago that pointed out problems in charter school admission practices, we believe that the study's findings do not adequately address the range of possible factors affecting enrollment raised in our report.

Recommendations for Executive Action

To help charter schools recognize practices that may affect enrollment of students with disabilities and improve the information available for monitoring and oversight, we recommend that the Secretary of Education do the following:

1. Update existing guidance to ensure that charter schools have better information about their obligations related to the enrollment of students with disabilities.
2. Conduct additional fact finding and research to understand the factors affecting enrollment of students with disabilities in charter schools and act upon that information, as appropriate.

Agency Comments and Our Evaluation

We provided a draft of this report to the U.S. Department of Education for review and comment. The comments are reproduced in appendix IV.

Education agreed with our findings and recommendations. Education commented that it is committed to providing meaningful updated guidance to its stakeholders and that it is actively working with the charter school community, parents, civil rights organizations, and other stakeholders to determine what additional questions are most pressing and what type of revised guidance would be useful. The department also said that it anticipates that the knowledge gained from the four compliance reviews currently underway will provide additional insights into compliance issues specific to charter schools that could inform the development of guidance. Further, Education said that based on information they have received to date, including information provided in our study, the department is considering additional or updated guidance for charter schools related to recruitment, admissions, accessibility, and the provision of a free appropriate public education (FAPE). With respect to our second recommendation, Education said that over the next several years, it proposes to examine issues underlying enrollment of students with disabilities in several ways. For example, it plans to conduct focus groups with parents of students with disabilities in a sample of communities with a larger charter school presence, compile a set of case studies of charter schools with both high and low enrollment of students with disabilities, and review state policies and guidance concerning students with disabilities in charter schools. Education also provided technical comments, which have been incorporated in the report as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Education.

In addition, the report will be available at no charge on GAO's website at <http://www.gao.gov>. If you or your staff have any questions about this report, please contact me at (202) 512-7215 or scottg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs can be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



George A. Scott
Director
Education, Workforce, and Income Security Issues

Appendix I: Scope and Methodology

This appendix discusses our methodology for examining enrollment levels of students with disabilities in charter schools and traditional public schools, the types of services charter schools provide, and the U.S. Department of Education's (Education) role in ensuring students with disabilities' access. The work was framed around three questions: (1) How do enrollment levels of students with disabilities in charter schools and traditional public schools compare, and what is known about the factors that may contribute to any differences? (2) How do charter schools reach out to students with disabilities and what special education services do charter schools provide? (3) What roles do the U.S. Department of Education, state educational agencies (SEA), and other entities that oversee charter schools play in ensuring students with disabilities' access to charter schools?

To compare enrollment levels of students with disabilities in charter schools and traditional public schools, we examined school-level data on counts of students with disabilities for those 41 states¹ with operating charter schools in school years 2008-2009 and 2009-2010 only. To accurately compare enrollment levels, we did not include data for those 10 states without operating charter schools in our analysis. We conducted an analysis of the data at the aggregate level, as well as at the state level, since the aggregate analysis may mask differences in enrollment levels. To complement the aggregate analysis, we examined how charter schools reach out to students with disabilities and the types of services charter schools provide in selected states, and interviewed the relevant oversight agencies.

To address the questions, we used several sources of data, including data for school years 2008-2009 and 2009-2010, the most recent data available at the time, from a custom data file provided to us by Education, which includes counts of students with disabilities at the school-level; site visit interviews with officials from charter schools and school districts in three states selected on the basis of states with a large number of charter schools, a mix in local educational agency (LEA) status and geographic diversity; and interviews with Education, Department of Justice, and SEA officials, and charter school authorizers. We also interviewed representatives of state and local charter school organizations and

¹For purposes of this report, we include the District of Columbia in our analysis of states.

organizations representing parents of students with disabilities about their perspective on students with disabilities' access to charter schools.

Before deciding to use the data provided by Education, we conducted a data reliability assessment. We assessed the reliability of the data file that Education provided by (1) performing electronic data testing for obvious errors in accuracy and completeness, (2) reviewing existing information about the data and the system that produced the data, and (3) interviewing agency officials knowledgeable about these data. We determined that the data were sufficiently reliable for the purposes of this report. We discuss our assessment procedures and steps we took to mitigate any data limitations in more detail below, as part of the methodology for determining enrollment levels of students with disabilities in charter schools and traditional public schools. We conducted descriptive analyses of the students with disabilities data, a qualitative analysis of the site visit data, and a synthesis of the interviews with federal officials, SEA officials, and charter school authorizers, in addition to reviewing relevant federal laws and regulations. To obtain an alternative perspective, we also interviewed organizations representing charter schools and parents of students with disabilities in the communities of our site visit locations.

This study was not intended to determine charter schools' compliance with applicable federal requirements for educating students with disabilities.

Procedures for Analyzing Data on Students with Disabilities

To compare enrollment levels of students with disabilities in charter schools and traditional public schools, we analyzed data for school years 2008-2009 and 2009-2010, the most recent data available at the time, from a custom data file provided to us by Education. To prepare the file, Education analysts extracted the data elements we specified from the department's large-scale *EDFacts* data system. The custom data file includes counts of students with disabilities at the school-level, which are reported to *EDFacts* by SEAs through Education's Data Exchange Network (EDEN) Submission System. This custom data file also includes the number of students with disabilities, aged 6-21, served both in charter schools and traditional public schools, disability type, the educational environment in which students with disabilities receive services, and whether each school is its own local educational agency (LEA) or part of a larger LEA. While we received data for school years 2008-2009 and 2009-2010, we decided to focus our analysis on data from school year 2009-2010 because states were required to submit more school-level

information in 2009-2010 than in 2008-2009, and because we could not establish trends or patterns by analyzing only 2 years of data.

We were able to distinguish charter schools from traditional public schools using the charter school indicator for each school included in the custom data file. We use the term “traditional public school” in order to distinguish between charter schools and other types of public schools included in the custom data file. For purposes of our analysis, traditional public schools include regular schools, special education schools, vocational education schools, alternative or other schools, and reportable programs. Charter schools may also be vocational schools or special education schools, for example, but we did not include school type variations as a variable in our analyses.

The custom data file provided by Education includes counts of children who received special education and related services under the Individuals with Disabilities Education Act (IDEA) according to an Individualized Education Program (IEP), Individual Family Service Plan, or services plan. The data file contains an educational environment variable which provides more detail on the setting in which students receive special education and related services. The variable includes several response categories in addition to a regular classroom setting. For example, a small percentage of students with disabilities included in the custom data file were placed in settings other than a regular classroom such as a correctional facility, a residential facility, or a separate school. In addition, a very small percentage of students included in the custom data file were not “enrolled” in either a traditional public school or a charter school, but were homebound or in hospitals or were parentally placed in private schools. However, students in these types of settings may receive special education services from a traditional public school district or charter school LEA and may be included in a school’s student count. For example, in some states, parentally-placed students in private schools who are also receiving special education services through a regular public school are included in the child count for that public school by the LEA. This is done to avoid duplicating counts of students with disabilities who may receive special education services from more than one school.

In order to calculate the total number of students enrolled in charter schools and traditional public schools, we obtained all schools’ total enrollment for school years 2008-2009 and 2009-2010 from Education’s Common Core of Data (CCD) and matched this information electronically to each of the schools in the custom data file, because the custom data file provides school-level counts of students with disabilities only, not total

enrollment counts. In those instances where there was no match in CCD (697 cases), we excluded those schools from our analysis. Schools categorized as closed, inactive, or future schools, as well as charter schools with an enrollment level of zero (3,106 cases), were also excluded from our analysis.

Matching schools' total enrollment numbers from CCD to each of the schools in the custom data file allowed us to arrive at the total number of students enrolled at each individual school included in our analysis, as well as the total number of students enrolled in all charter schools and traditional public schools for those 41 states with operating charter schools. In some states, charter schools that are their own local educational agency (LEA) may operate more than one school or campus, often serving different grade levels. In our custom data file, some charter school LEAs operate more than one charter school, and schools within these charter school LEAs share the same LEA identifier. However, each school or campus within the LEA possesses a unique school identifier (see app. II for more information on charter schools' LEA status). For purposes of our analysis, each campus with a unique school identifier counts as one school.

For most of our analyses, the unit of analysis was students, rather than schools. We calculated the percentage of students with disabilities enrolled in charter schools and traditional public schools by adding the school-level counts of students with disabilities in charter schools and traditional public schools from the custom data file and by dividing by the total number of students enrolled in all charter schools and traditional public schools, respectively, using enrollment data from CCD. We also conducted additional analyses at the aggregate level based on cross-tabulations using the number of students with disabilities and variables such as disability type, and educational environment.

In addition to the aggregate analysis on students with disabilities, we also analyzed enrollment levels of students with disabilities at the state-level, for those 41 states with operating charter schools in school year 2009-2010. According to technical notes provided by Education, 27 states operated less than 100 charter schools. The availability and quality of the data in our custom data file vary by state. For example, some states that operated charter schools did not submit school-level data to Education on students with disabilities. In addition, while the percentages shown in figure 2 of the report were calculated using school-level data on students with disabilities, aggregations at the school-level do not always equal the aggregations at the LEA and state levels. For example, when states

submit annual data on students with disabilities to Education, they are not required to submit school-level data for children with disabilities who are homebound or in hospitals, or for those students with disabilities who are parentally-placed in private schools. Therefore, in the custom data file, for those states that did not submit school-level data for children in these educational settings, total counts of students with disabilities at the school level were less than total counts at the LEA and state levels.

For schools in the 41 states with operating charter schools in school year 2009-2010, data on counts of students with disabilities at the school-level were missing for 784 out of 4,895 charter schools (16 percent) and for 5,998 out of 80,671 traditional public schools (7 percent). Missing data represent both those schools that did not enroll any students with disabilities and therefore were not required to report information, as well as any schools that may have enrolled students with disabilities, but did not report the data. We were not able to distinguish between the two types of missing data.

Tennessee and Utah—two states with operating charter schools—reported data on students with disabilities at the district and state levels, but did not report data on counts of students with disabilities at the school-level. Because our analysis was based on total counts of school-level data, data on students with disabilities in charter schools and traditional public schools were missing for these two states. Missing data for these two states combined represent 94 of the 784 charter schools with missing data, and 2,609 of the 5,998 traditional public schools with missing data. Because school-level data on counts of students with disabilities were missing for Tennessee and Utah, when calculating the percentages of students with disabilities in all charter schools and traditional public schools, we excluded total student enrollment numbers for charter schools and traditional public schools in these two states from our denominator when dividing by the total number of students enrolled in charter schools and traditional public schools. Similarly, for school year 2008-2009, we excluded total enrollment numbers for charter schools and traditional public schools in the District of Columbia, Mississippi, Rhode Island, and Tennessee because school-level data on counts of students with disabilities were missing.

We reported information paying particular attention to tabulations based on small cell sizes or cross-tabulations of the same data by other variables, in such a way as to prevent direct or indirect disclosure of information that would allow the identification of particular students or schools. To prevent the potential for identifying personal information from

the *EDFacts* custom data file, we only present data with categories that have a count of 10 or greater. If the number of cases is less than 10, the data were either suppressed or collapsed with other categories to create a count of 10 or greater.

In addition to analyzing data on students with disabilities in charter schools and traditional public schools by disability type and educational environment, we also attempted to analyze the data at the metropolitan level and to include charter school LEA status as a variable in our cross-tabulations. However, data limitations and design issues prevented us from including findings at the metropolitan level and on charter schools' LEA status in our report. For more information, see appendix II.

To determine some of the factors that may contribute to differences in enrollment levels, we relied on conversations with representatives of charter school organizations and researchers, information learned during our site visits to charter schools and districts in three states, interviews with federal and state officials, and existing research on charter schools. We also interviewed individuals familiar with available research on the topic of students with disabilities in charter schools and identified research through these sources. For several of the factors cited in this report, much of the research we reviewed and information we received was based on anecdotal information, and information on factors contributing to differences in enrollment levels is inconclusive. For those studies with quantitative analyses on students with disabilities in charter schools, we did not conduct a methodological assessment of each study's methodological quality, and therefore cannot confirm the reliability of these data.

Site Visit Selection, Data Collection, and Analysis

To examine how charter schools reach out to students with disabilities, the types of services charter schools provide, and any challenges they may face in doing so, we conducted site visits to a major metropolitan area in three states. We selected these locations on the basis of the number of charter schools in the state, a mix in LEA status and geographic diversity. Characteristics of the sites visited are summarized below.

Table 2: Site Visit Characteristics

City and state	Number of charter schools visited	Charter schools' LEA status	Authorizer type	No. of charter schools in the state	Geographic location
City and state 1	4	Own LEA—2 Part of larger LEA—2	SEA, State Board of Education, LEA	536	South
City and state 2	5	Own LEA— all	State Board of Education, Independent Charter School Board, LEA	504	West
City and state 3	4	Part of larger LEA for special education—all	State university, State education department, LEA	139	Northeast

Source: GAO.

During the site visits, we interviewed officials from charter schools to obtain information about the special education services the charter school provides; the educational environment in which services are provided; challenges faced in providing services; and the charter school's LEA status. We compared responses about LEA status and services provided to determine if LEA status is related to the types of services charter schools offer to students with disabilities. We also asked questions about outreach strategies, which provided us with information about whether schools are actively seeking to enroll students with disabilities. The findings of our analysis cannot be generalized to the charter school population or states with operating charter schools.

Interviews with Charter School Authorizers and State and Federal Agency Officials

To determine the role Education and other organizations play in ensuring students with disabilities' access to charter schools, we reviewed relevant federal laws and regulations and interviewed Education, Department of Justice, and SEA officials, and charter school authorizers. At Education, we interviewed representatives from the Office of Special Education and Rehabilitative Services (OSERS), the Office for Civil Rights (OCR), the Office of Innovation and Improvement (OII), and the Office of Elementary and Secondary Education (OESE) regarding their responsibilities for oversight of states, school districts, and charter schools. Open ended questions were used to guide the discussions and the topics included

- policy or guidance concerning enrollment of students with disabilities in charter schools

- collaboration with other Education offices or Justice's Civil Rights Division in providing guidance to charter schools about enrollment of students with disabilities,
- any assistance provided to charter schools to pool resources for serving students with more severe disabilities,
- any assistance provided to states concerning their monitoring of charter schools' implementation of IDEA, and
- any research sponsored or supported concerning students with disabilities and charter schools.

We also interviewed representatives of state and local charter school organizations and organizations representing parents of students with disabilities about their perspective on students with disabilities' access to charter schools.

Appendix II: Additional Analysis

In addition to conducting analyses at the aggregate level, we also attempted to analyze the data at the metropolitan level and to include charter school local educational agency (LEA) status as a variable in our cross-tabulations. However, data limitations and design issues prevented us from including findings at the metropolitan level and on charter schools' LEA status in our report.

Metropolitan-Level Analysis

Due to variation in charter school structure and policies across states, and because decisions about the placement of students with disabilities in charter schools, traditional public schools, or a separate facility of some type, are made at the school district level, and placement decisions vary according to students' needs, aggregated data may mask differences in enrollment levels of students with disabilities in charter schools and traditional public schools at the metropolitan level. Therefore, in addition to an aggregate and state-level analysis for the 41 states with operating charter schools, we also attempted to analyze counts of students with disabilities at the school-level for selected metropolitan areas. However, several factors hindered us from conducting this type of analysis. Some of the metropolitan areas we considered were missing data on students with disabilities, while geographical issues presented challenges in other areas. Specifically, in states where charter schools are their own LEA, it was not always clear where the charter schools were physically located in the metropolitan area, and therefore difficult to determine which traditional public school district should serve as the appropriate basis of comparison. This is especially true for charter schools located in large metropolitan cities with more than one school district. In addition, charter schools' service areas are not always as well defined as the boundaries for traditional public school districts, and charter schools may enroll students from different school districts across the entire metropolitan area, which also complicates designing this type of data analysis.

We did, however, conduct an exploratory analysis of enrollment levels of students with disabilities in charter schools and traditional public schools for one metropolitan area. For this particular area, all of the charter schools are part of a larger LEA. To protect the privacy of students with disabilities, we have not disclosed the name of the metropolitan area. Results from our analysis showed that the percentage of students with disabilities in charter schools was lower than in traditional public schools. However, these results cannot be generalized to other metropolitan areas, and had we been able to conduct this type of analysis for several different locations based on variation in LEA structure and geographic location, our analysis may have produced mixed results.

Local Educational Agency (LEA) Analysis

Charter school experts we spoke with also indicated that charter schools' LEA status may affect enrollment levels of students with disabilities in charter schools because charter schools that are their own LEA have different responsibilities for serving students with disabilities than charter schools that are part of a traditional public school district. For example, traditional public school districts oversee the placement of students with disabilities in charter schools that are part of the school district and are often responsible for providing special education services for those charter schools, whereas charter schools that are their own LEA are legally responsible for providing or securing special education services themselves. According to an Education official, in addition to satisfying any Individualized Education Program eligibility requirements, for those charter schools that are their own LEA, the school also assumes the responsibility of enforcing least restrictive environment service provision requirements for students with disabilities, as well as acting as the responsible party during any due process hearings. Therefore, we also attempted to conduct an analysis including charter schools' LEA status as a variable in our cross-tabulations to see how enrollment levels of students with disabilities may differ within the charter school population. However, several limitations prohibited us from analyzing information on LEA status in the findings section of this report, which we discuss below.

Using the LEA identifier from the *EDFacts* custom data file, we were able to identify charter schools that are part of a larger, traditional public school district, as well as those individual charter schools that are their own LEA. However, even though a charter school may be its own LEA, depending on state law, the school may be part of a larger district for purposes of the Individuals with Disabilities Education Act (IDEA).¹ Therefore, any type of analysis including charter schools' LEA status may not necessarily provide meaningful insight into who is responsible for providing special education services or why enrollment levels of students with disabilities might differ in charter school LEAs and charter schools within a district.

Furthermore, some undetermined proportion of charter school LEAs in our analysis operated more than one charter school or campus during school year 2009-2010. In our *EDFacts* custom data file, for these

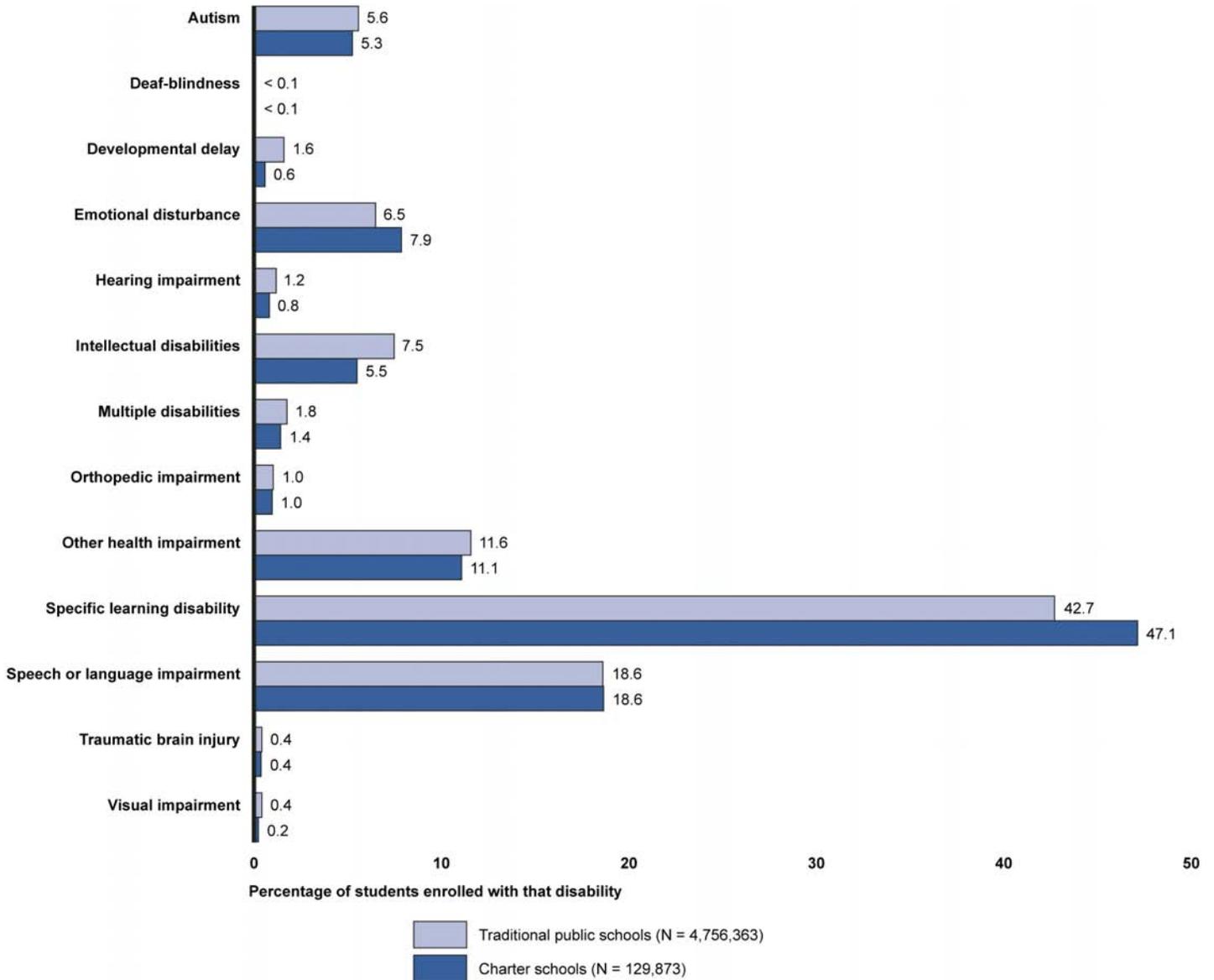
¹In addition, in some states, each student's district of residence LEA may be responsible for evaluation and services.

multicampus charter school arrangements, in some states multiple charter schools or campuses share the same LEA identifier. These multicampus charter school arrangements make it difficult to assign LEA status to each individual school or campus within a multicampus arrangement. While we learned that some states equate one LEA with one charter, we were not able to determine from the data whether or not these multicampus arrangements operated under one or more charters. Therefore, we could not determine whether these arrangements should count as one or more than one LEA.

Appendix III: Additional Data

For the most part, we found that traditional public schools and charter schools served a similar distribution of students by disability type. More than 70 percent of students with disabilities in traditional public schools and charter schools had disabilities such as a specific learning disability, a speech or language impairment, or other health impairment, and both types of schools enrolled lower percentages of students with hearing, orthopedic, or visual impairments, for example (see fig. 7). However, when comparing the distribution of students with certain disabilities, such as students with an emotional disturbance or a specific learning disability, the percent was higher in charter schools than traditional public schools.

Figure 7: Distributions of Students' Disability Types for Students with Disabilities Enrolled in Traditional Public Schools and Charter Schools for School Year 2009-2010



Source: GAO analysis of EDFacts data.

Note: Missing data are not shown.

Appendix IV: Comments from the U.S. Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INNOVATION AND IMPROVEMENT

May 18, 2012

Mr. George A. Scott
Director, Education, Workforce,
and Income Security Issues
Government Accountability Office
Washington, DC 20548

Dear Mr. Scott:

Thank you for the opportunity to comment on the Government Accountability Office (GAO) draft report, "Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities."

We appreciate the time that GAO has committed to this study, and I am pleased to respond on behalf of the U.S. Department of Education. Our technical comments on the draft report are enclosed, and our responses to your specific recommendations to the Department follow.

We would like to point out that given the small sample size and the relatively small differences identified between charter and other public schools, it is difficult to draw any particular conclusions based directly on the limited information provided in the report. However, we agree that this is an important area, and the Department is committed to taking steps to address the issues discussed in the report.

Recommendation 1: Update existing guidance to ensure that charter schools have better information about their obligations related to the enrollment of students with disabilities.

The Department agrees with this recommendation and is committed to providing meaningful updated guidance to its stakeholders. We are actively working with charter schools, charter authorizers, charter management organizations, parents, civil rights organizations, and other stakeholders to determine what additional questions are most pressing and what type of revised guidance would be most useful. For example, on March 30, 2012, the Department held the "Voluntary Public School Choice" conference. District and school leaders who work with charter schools, magnet schools, and other school choice programs attended the conference and were encouraged to express their questions about federal law. The Department's Office of Innovation and Improvement (OII) is sponsoring, on June 19, 2012, a one-day conference entitled, "Building the Capacity of Charter Schools: Effectively Serving Students with Disabilities." This conference, as well as other anticipated meetings with charter school authorizers and operators, will provide the Department with the opportunity to hear from the charter school community and other stakeholders about the issues, and whether, and on what topics if any, additional or updated guidance would be helpful.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Also, as GAO notes, the Department's Office for Civil Rights (OCR) is conducting four compliance reviews that include issues regarding charter schools and students with disabilities. OCR anticipates that the knowledge gained from these reviews (whether or not noncompliance is identified) will provide some additional insight into compliance issues specific to charter schools, and thus inform the development of possible additional or updated guidance that will be useful to charter schools, school districts, and parents. OCR also plans to review a sample of recent complaint resolutions involving charter schools and students with disabilities for the same reason.

Based on the information received to date, including information provided in GAO's study and information from several offices within the Department, some issues the Department anticipates considering for additional or updated guidance are charter schools' obligations regarding recruitment, admissions, provision of a free appropriate public education, and accessibility. In addition to the civil rights laws enforced by OCR, the requirements of the Individuals with Disabilities Education Act (IDEA) and the IDEA regulations, administered by the Department's Office of Special Education Programs within the Office of Special Education and Rehabilitative Services (OSERS), also affect the obligations of charter schools related to students with disabilities. OII, OCR, and OSERS will closely coordinate on any additional or revised guidance concerning charter schools and students with disabilities.

Recommendation 2: Conduct additional fact finding and research to understand the factors affecting enrollment of students with disabilities in charter schools and act upon that information, as appropriate.

The Department agrees with this recommendation and plans to conduct additional fact finding and research on factors that may be affecting enrollment of students with disabilities in charter schools, as appropriate. Over the next several years, the Department proposes to examine these issues through activities designed to inform guidance and support targeting stakeholders in the charter school community—including charter school authorizers, charter school support organizations, and charter schools themselves—pertaining to charter school enrollment of, and services for, students with disabilities. Specific activities within the next several years may include:

- Reviewing and documenting state policies, guidance, and reports regarding enrollment of, and services to, students with disabilities in charter schools;
- Conducting focus groups with parents of students with disabilities in a sample of communities with a large charter school presence; and
- Compiling a set of case studies of charter schools with both high and low enrollment of students with disabilities, of varied levels of severity and significance, representing various policy contexts.

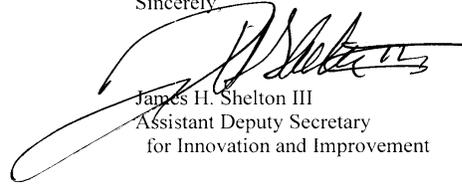
In addition to activities to inform guidance and support on this subject, the Department will continue to require charter school grantees to assure compliance with applicable laws and regulations related to students with disabilities, and we will also consider incentives, if

**Appendix IV: Comments from the U.S.
Department of Education**

appropriate, to charter schools and other grantees who propose additional outreach to students with disabilities. For example, the Charter Schools Program's grant notices are likely to continue to include competitive and invitational priorities for applications that propose to improve achievement for students with disabilities and promote diversity, including for students with disabilities.

Thank you again for the opportunity to comment on the draft report. The Department remains committed to inclusion, diversity, and high performance for all charter school students, and will continue to work with states, authorizers, and charter schools on these issues. Please let us know if you have any questions or would like to discuss our comments. We look forward to receiving the final report.

Sincerely,



James H. Shelton III
Assistant Deputy Secretary
for Innovation and Improvement

Enclosure

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

Sherri Doughty, Assistant Director; Sara Edmondson, Analyst-in-Charge; Meredith Moore; Jason Palmer, Susannah Compton, Luann Moy, Ying Long, Amy Sweet, Sheila McCoy, James Rebbe, and James Bennett also made significant contributions to this report.

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