

CHARTERS AND CHOICE FOR STUDENTS WITH DISABILITIES IN THE SCHOOL
DISTRICT OF PHILADELPHIA: A MULTI-LEVEL POLICY ANALYSIS

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Abstract

A rapid expansion of charter schools is occurring across the United States in spite of the fact that significant issues have come to light in relation to charter schools educating students with disabilities. The School District of Philadelphia is currently relying on charters to educate more than a quarter of all public school students and the demographic make-up of these charters does not mirror the sending district schools in relation to students with disabilities. These students may not have access to the same educational opportunities as their non-disabled peers. Policy governing charters is foundational to the implementation of charter school reform and, therefore, a potential key factor driving disproportionate access. This project examines applicable state law, interpretation of federal and state law into local policy, and the relative strengths and weaknesses of these policies regarding students with severe disabilities accessing free and appropriate public education in Philadelphia charter schools. The theoretical framework I apply is critical ableism. The analytical framework I utilize is based on the Bardach's methodology. My findings from this analysis of charter policy are that there is theoretical support in policy for the socially desirable outcomes of equal access and non-discrimination, though none for a comprehensive definition of diversity. In practical, implementation-related policies significant problems arise. When applied to students with disabilities, there are inherent flaws in the market-based model that is supposed to drive innovation and competition. Policies do not aggressively promote charters vying for the opportunity to educated disabled students. Charter schools are disincentivized to educate students with severe disabilities by fiscal and accountability measures in current policy. Effective remedies to these problematic areas will require fundamental changes in approach to educating disabled students, not simply privatizing current special education practice.

Dedication

For Joshua Aaron Harper, a Philadelphia public school student, whose experience with charter schools very much reflects the strengths and the flaws I identify in this study.

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Chapter 1

Introduction

Philadelphia, like many urban areas, was propelled into the charter school movement by ideological, political, financial and educational forces. Chronic low test scores, high drop-out rates and sizeable chronic budget deficits for the last two decades left the School District of Philadelphia in a state of crisis. This crisis occurred in a national context of a neo-liberal ideological shift that blossomed in the Reagan years; privatization solves public problems. Supporters of privatization believed that public education, especially in large cities, was a dysfunctional monopoly languishing in bureaucracy and incapable of addressing the high levels of persistent failure. Supporters claimed that competition would bring innovation, efficiency and excellence to our school systems; parents would choose schools based on the quality of instruction and outcomes; and schools would meet this demand by producing better educational approaches (Lubienski & Weitzel, 2009, p. 363-4). In an urban district like Philadelphia, parents who have few alternatives could move children out of failing schools. The promise of privatization was that competition would lift Philadelphia out of its history of budgetary and educational crises.

By 2003, Philadelphia had 45 charter schools signaling a significant shift to privatization of education in the city. This “choice” trend has only continued to expand. Charter schools now serve over 1.5 million students in more than 5000 schools nationally. For the 2010-11 academic year in Philadelphia, 26% of children receiving public education were educated in one of the city’s 74 charter schools. Pushed by a continued budgetary crisis, the district’s most recently unveiled plan is that 40% of students will be enrolled in charters by 2017 (Mezzacappa, 2012). Federal policy supports this trend. In referring to the 2010 Race to the Top competition, Secretary of

Education Arne Duncan noted, “States that do not have public charter laws or put artificial caps on the growth of charter schools will jeopardize their applications under the Race to the Top fund” (David & Cuban, 2010, p. 36). The momentum of charters in educational reform clearly does not appear to be waning in Philadelphia or across the country. This rapid expansion is occurring in spite of the fact that significant issues have come to light in relation to charter schools educating students with disabilities. Policies at every level of government were promulgated, ostensibly, to ensure access for students with disabilities, yet problems persist. Accordingly, the aim of this study is to interrogate policies governing charter schools educating students with disabilities to determine where policy may contribute to the inequitable access for students with disabilities to this major school reform effort.

Statement of Problem

For students with disabilities, particularly students in urban centers like Philadelphia, where the increase in charter schools has been considerable, reform efforts centered around privatization via charter schools may be especially troubling. In spite of the long-standing federal mandate in the Individuals with Disabilities Education Act (IDEA) wherein students are entitled to a free and appropriate public education (FAPE), charter schools struggle to educate the full range of students that are served by their sending district schools (Government Accountability Office, 2012; Miron, Urschel, Mathis, & Tornquist, 2010; Drame & Frattura, 2011; Rhim & McLaughlin, 2001). In addition to federal safeguards, Pennsylvania regulation also offers protections under Chapter 711 “Charter and Cyber Charter School Services and Programs for Children with Disabilities.” Despite the additional protections in state law, charter schools in Philadelphia are educating a lower percentage of students with disabilities than the sending district schools and the students that they are educating tend to have milder

disabilities. Data from the School District of Philadelphia show that in 2007-08 more than 80 percent of special education students enrolled in neighborhood schools, compared with 66 percent of the regular student population (Langland, 2009). In addition to serving fewer students with disabilities, when they do enroll special education students, charters educate children with milder disabilities (Miron et al., 2010; Wilkens, 2010). In Philadelphia, only 15 of the 73 charter schools, for which there are data from the 2010-11 school year, served enough students with “severe exceptionality” to even have a reportable percentage. In comparison, 2.23% of the student body in the district schools are of severe exceptionality (Bureau of Special Education, 2011). Many of these schools that had no reportable percentage were large schools serving 500 students or more. Charter enrollment and service provision for students with disabilities, particularly students with severe disabilities is concerning.

The School District of Philadelphia is currently relying on charters to educate more than a quarter of all public school students and the demographic make-up of these charters does not mirror the sending district schools in relation to students with disabilities, particularly students with severe disabilities. These students may not have access to the same educational opportunities as their non-disabled peers. Additionally, issues with service provision for students with disabilities in charter schools are evident (Estes, 2009; Drame & Frattura, 2011, Wolf, 2010).

Research Purpose

The purpose of this study is to examine the charter school policy in Pennsylvania as it pertains to students with disabilities, particularly students with severe disabilities. Specifically, this project examines applicable state law, interpretation of federal and state law into local policy, and the relative strengths and weaknesses of these policies regarding students with severe disabilities accessing free and appropriate public

education in Philadelphia. Ideally, this analysis provides a framework which would be useful in other localities for examining charter policy as it relates to students with severe disabilities.

Rationale for the Study

In spite of the fact that charters appear to be perpetuating segregation by race, socio-economic status and special needs statuses (Miron et al., 2010), charters seem to continue to be a critical part of the current educational reform movement, especially in some urban centers like Philadelphia. In some regards, disproportionately low enrollment numbers for students with disabilities seems puzzling. Charters have many of the key elements to be successful in providing improved educational opportunities for children with disabilities (Wilkens, 2011; Miron et al., 2010). Charters in Philadelphia tend to have smaller class sizes and children with disabilities tend to be included in regular classrooms. These schools typically offer more individualized supports to all students. By law, students with disabilities have equal access to these same beneficial learning environments. So why are enrollment numbers so low? Why are parents not choosing to send their children to these schools in numbers comparable to traditional neighborhood schools? Numerous factors could contribute to the discrepancies in enrollment. Policy governing charters is foundational to the implementation of charter school reform and, therefore, a potential key factor driving disproportionate enrollment. An examination of the policies governing charter schools' responsibilities to educate students with disabilities is crucial to understanding how contemporary charter reform efforts support or fail to support educating these students.

Deficiencies in Existing Knowledge

In a recent report, the Government Accountability Office (2012) notes,

11 percent of students enrolled in traditional public schools were students with disabilities compared to about 8 percent of students enrolled in charter schools...most of the 13 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. (p.i)

The GAO concludes that, "Although there are differences in enrollment levels, the reasons for these differences are not entirely clear" (p.11). There are numerous studies examining enrollment demographics of charter schools, the intersection of special education and charter school reform, and state policies for implementation of charter reform. These studies are often seeking the reasons the GAO says are not clear. Why are enrollment numbers different? Researchers have pointed to a number of potential factors for issues with enrollment of students with disabilities in charters including: charter mission bias toward high achieving students without support needs; lack of experience; being ill equipped to handle specialized instructional needs; disconnect between deregulation and intense special education regulations; financial disincentives to serving high needs students; and discrimination based on a push to meet accountability standards (Howe & Welner, 2005; Drame & Frattura, 2011; Rhim, Ahearn & Lange, 2007). In addition to looking at enrollment and service provision in charter schools, research has been conducted that looks at how states have interpreted federal law into state statute and regulation (Rhim, Ahearn & Lange, 2007; Heubert, 2002; Rhim & McLaughlin, 2001). One area where we do not have adequate research, however, is in tracing policy to the *local* level in relation to disabled students. How do federal laws governing the education of disabled students translate into state laws and then into district level policy? In the context of the body of existing research which builds the case that charters do not provide equal access and struggle with provision of free and appropriate public education for students with disabilities, my study involves not just review of state level policy, but examination of policy closer to the implementation level.

Research Questions

The research questions for this study are:

For the School District of Philadelphia, what successes and failures in state law and local charter policy have manifested for students with severe disabilities?

(a) In what regards do policies support or fail to support equal access to school reform efforts for students with severe disabilities?

(b) In what regards do policies support or fail to support inclusion and provision of needed accommodations to students with severe disabilities?

Terms

Because they are rooted in normative ableist assumptions about bodily difference, I reluctantly use the unfortunate terms “severe disabilities”, “mild disabilities” and “severe exceptionality.” The terms are, however, used in Pennsylvania law and for data collection by the Pennsylvania Bureau of Special Education. For consistency and accuracy in reference to data and policy analysis, I use these terms through the study.

Severe disabilities. “[Disabilities] such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities” (PA Code § 14.132).

Mild disabilities. Disabilities other than what constitutes a “severe disability” in PA Code: learning disabilities, speech/language impairments, other health impairments, visual impairments, and developmental delays.

Severe exceptionality. Severe exceptionality refers to the following disabilities: mental retardation, hearing impaired including deafness, speech language impairment, visual impairment including blindness, emotional disability, orthopedic disability, other

health disability, specific learning disability, deaf-blind, multiple disabilities, autism and traumatic brain injury (Bureau of Special Education, 2011).

Theory

[Ableism is] a pervasive system of discrimination and exclusion that oppresses people who have mental, emotional and physical disabilities...Deeply rooted beliefs about health, productivity, beauty, and the value of human life, perpetuated by the public and private media, combine to create an environment that is often hostile to those whose physical, mental, cognitive and sensory abilities...who fall out of scope of what is currently defined as socially acceptable. (Rauscher & McClintock, 1996, p.198)

Ableism is systematic discrimination against people with disabilities. Campbell (2009) describes ableism as, "A network of beliefs, processes and practices that produces a particular kind of self and body (the corporeal standard) that is projected as the perfect, species-typical, and therefore essential and fully human. Disability is then cast as a diminished state of being human" (p.5). Ableism is an important lens with which to examine public policy. Nearly 20% of the population of the U.S. has a disability. 14% of public school children in Philadelphia qualify for special education services. Most of us will experience disability at some point in our lives, yet disability is often an afterthought in the promulgation of rules and policy. Charter school reform models and policy are no exception to this historic tendency.

The purpose of special education is, as promoted by the IDEA and stated by Hehir (2005), "to minimize the impact of disability and maximize the opportunities for children with disabilities to participate in the general education in their natural community" (p.49). Philosophically, public policy on the federal level certainly seems to have reinforced the notions that all people should be treated equally. Federal policy, however, falls short in that it does not address the underlying ableist assumptions that disability is something to

be fixed. Federal education policy focuses on anti-discrimination, access, support and integration without necessarily addressing the fundamental cultural assumption that disability is somehow not normal. This assumption drives public policy toward intervention that will create integration of “normalized” disabled people into our communities. To combat ableism, part of the charge needs to be a true acceptance of disability as part of diversity and incorporation of disabled perspectives instead of always working toward assimilation and normalization of the disabled. Ableist assumptions become dysfunctional when services become focused on disability to the exclusion of all else (Hehir, 2005, p. 16) and overriding goals become normalization and overcoming effects of disability. Hehir posits that “...an understanding of ableism should sensitize people about the role education often plays in reproducing social inequality” (p.42).

Critical ableism. Given the magnitude of charter reform, we should look closely at whether charter reform efforts reproduce social inequalities related to disability. To this end, I apply a critical ableism lens to guide my study. “Critical ableism” as coined by Campbell (2008) is a lens with which to probe assumptions, “associated with the production of ableness, the perfectible body” (p. 153). Campbell argued that, “As a conceptual tool ableism transcends levels of governance related to the procedures, structure, institutions and values of civil society and locates itself clearly in the arena of genealogies of knowledge. Ableism is deeply and subliminally embedded within the culture” (p.153). Building on the work of Rauscher, McClintock and Campbell, I use a critical ableism lens as a standpoint from which to examine the historic and cultural assumptions about disability and non-normative bodies and how these assumptions perpetuate inequality and the devaluing of disabled people in current school reform efforts.

Ableism is critical lens with which to examine the translation of the theory of action of charter reform into each level of policy. Does the translation of charter rationale into state policy and then local policy serve students with disabilities well, promoting innovation and offering an escape for students stuck in failing schools? Does it perpetuate existing social inequalities and how? Key criteria that I use in this policy analysis are: definitions or assumptions about diversity, segregation, low expectations and failure to produce accommodations (Hehir, p. 42-44). The charter reform effort has enormous impact on our educational system and our communities. It offers the hope for significant change in our approach to public education if students with disabilities fit into this rationale, model and resultant policy.

Summary

Enrollment statistics and research show that there are significant issues for students with severe disabilities in relation to charter school reform. Given the magnitude of the reform effort in some urban centers, like Philadelphia, this is a problem that certainly warrants examination. In seeking to understand the source of the issues with access, inclusion and accommodations that students with disabilities face, I conduct a multi-level policy analysis using a critical ableism lens to assess state and local charter policy.

Chapter 2

Methods

Introduction

The intent of this study is to examine charter school policy in Pennsylvania as it pertains to students with disabilities, particularly students with severe disabilities. Specifically, this project examines applicable state law, interpretation of federal and state law into local policy, and the relative strengths and weaknesses of these policies regarding students with severe disabilities accessing free and appropriate public education in Philadelphia. My theoretical framework is a critical ableism lens. The analytical framework I utilize is based on the “Eightfold Path” developed by Eugene Bardach (2000).

Research Design: Framework for Analysis

In *A Practical Guide to Policy Analysis (2000)*, Bardach outlines a basic framework for policy analysis. The first step is to *define the problem* which includes examining the rhetoric and noting both empirical and philosophical assumptions (p.1). Chapter 1 of this study outlines the problem from both empirical and philosophical standpoints. From the empirical standpoint, the chief problem is access by students with disabilities, particularly students with severe disabilities, to the charter schools reform effort. From a philosophical standpoint, the question of whether the theory of action driving charter school reforms applies to all students is important. In this case, the theory of action of charter schools is that the innovation and competition will improve schooling. Yet, as a review of the literature shows (see Chapter 3), this assumption may not hold for disabled students.

Bardach's second step is to *assemble the evidence*. By this, Bardach contends that it is necessary to examine the scope of problem, assess features of the specific policy situation and assess similar or applicable policies (p.7-8), as I have done throughout the introduction (Chapter 1) and the literature review (Chapter 3). Step three in Bardach's method is to *construct alternatives* by (1) looking at the existing state, (2) inventing alternative policy solutions and, (3) "let[ting] present trends continue undisturbed" (p. 12-13). Both Chapter 1 and Chapter 3, The Literature Review, look at the existing state for students with disabilities. Alternative policy solutions are examined in Chapter 4, in the Findings, where I examine each level of policy and several individual charter contracts. Because each level of policy (and subsequently each policy document) provides an interpretation of federal law into policy, I am treating each level as a policy "alternative" in this study. Based on my analysis, I propose additional alternatives in Chapter 5, The Discussion.

To augment the construction of alternatives, Bardach promotes using production models stating, "the main concern in understanding production systems should be to identify the parameters whose values, when they move out of a certain range, make the systems most vulnerable to breakdown, fraud and abuse, egregious diseconomies and the distortion of intended purpose" (p. 15). By looking at students with severe disabilities and how they fit or do not fit into this school reform effort, we are essentially, looking at a parameter that might be out of range. Charter schools are supposedly driven by competition. This competition for students is supposed to inspire innovation and raise student test scores and student achievement. Students with severe disabilities are arguably the most difficult students to educate in our public education system. Students with severe disabilities were the last minority group to be granted the right to education with the Education for all Handicapped Children Act of 1975 (PL 94-142). Our history of

providing free and appropriate public education to students with disabilities is fairly short and spotted with litigation for local and state-wide failures to meet the anti-discrimination provisions in federal law. Students with severe disabilities may require costly education services including specially designed instruction, instructional aides, accessible instructional materials and modified or alternate standardized testing scenarios. Using a production model, as Bardach recommends, the question is *does charter policy include students with disabilities to an extent that the purpose of the policy will be fulfilled for these students? Will charters compete for students with disabilities and will that competition raise their test scores, graduation rates and achievement? Will competition for students with disabilities promote access and inclusion? Will it drive innovation in our educational system?* These questions are addressed in the policy analysis in Chapter 4.

The fourth step in the “Eightfold Path” is to *select the criteria* to be applied in the analysis. What criteria should be used to make judgments about the policy provisions related to students with disabilities and charter schools? Bardach advises using both *evaluative* and *practical* criteria.

Evaluative criteria. The evaluative criteria in analysis are where we assess policy against socially desirable outcomes. In Bardach’s view, evaluative criteria are “where we expect subjectivity and social philosophy to cavort more freely” (p.19). The evaluative criteria applied in this analysis are:

1. **Promote Equal Access** – policies support and promote equal access to facilities, curriculum, extra-curricular activities
2. **Increase Inclusion** – policies support and promote inclusion in regular education classrooms and activities of the school
3. **Promote Non-discrimination** – policies address discrimination in enrollment, admission, identification, access to programming and promote non-discrimination
4. **Raise Expectations for Student Performance** – policies state or assume high expectations for academic achievement and for preparing students with disabilities for post-secondary opportunities, employment and community involvement

5. **Promote Availability of Accommodations** – policies support and promote provision of necessary services and supports for students to receive a free and appropriate public education in the least restrictive environment
6. **Promote Comprehensive Definition of Diversity** – policies support the characterization of disability as part of diversity

Practical criteria. Practical criteria, on the other hand, are “what happens when a [policy provision] moves through the policy adoption and policy implementation processes” (Bardach, p.24). The practical criteria that are applied to each policy document for charter schools relate more to concrete implementation issues. For example, if policy contains rules that discrimination based on disability status is not allowed, are there practical remedies for students who have been discriminated against? Does a student who was told that the charter school for which he or she sought enrollment does not educate children with autism have any recourse?

The practical criteria that are applied in this analysis are:

1. **Ensure Availability of Legal Remedy** - policies support increased remedy for non-compliance
2. **Ensure Enforceability of Non-Discrimination** – policies support remedy for discriminatory practices and activities
3. **Ensure Monitoring for Non-Discrimination/Access** – policies support monitoring for discriminatory practice, issues of equal access and provision of appropriate support
4. **Increase Financial Incentives for Inclusion** – policies incentivize inclusive rather than segregative practices
5. **Increase Financial Incentives for Access and Accommodations** – policies incentivize rather than are neutral or disincentivize equal access and provision for all necessary accommodations for students with disabilities

The criteria selected for my analysis were chosen by examining consensus values that have clearly emerged on a national level (reinforced in multiple laws and court decisions) and by thinking through desirable policy outcomes when applying a critical ableism lens to special education and charter policy. These desirable outcomes, broadly, are a free

and appropriate education in the least restrictive environment and disability understood and treated as simply part of human diversity.

Bardach's fifth step is to *project outcomes* using the policy alternatives weighed against each criterion (p.27-29). This analysis, presented in Chapter 4, is largely an exercise in logic, looking at things like disincentives for particular behaviors. Bardach's methodology involves developing an outcome matrix as a tool for this analysis. The ranking scale I utilize is illustrated in Figure 1.

The six and seventh steps of analysis are accomplished in Chapter 5, The Discussion. Bardach notes that step six is to *confront trade-offs* like flexibility for support and room for innovation versus protections. These "trade-offs" are central questions in examining charter policy. *Does a market-based approach to education as articulated in these policies drive innovation for students with disabilities? Does it drive further social inequality? Do the protections in policy limit innovation?* The seventh step is to *decide*. The discussion in Chapter 5 draws together evidence from my findings and from the literature review. In contextualizing my findings in broader research on this topic, desirable and undesirable "trade-offs" and potential remedies to policy issues are offered. The final step for Bardach is to *tell your story* which involves simplifying the message and making a concrete argument for the best path forward based on the criteria on which policy provisions were judged (p.41). I provide this summary and argument in Chapter 5, in my conclusion.

Figure 1: Rating Determinations for Outcomes Matrixes

Rating	Standard for Determination	Example
Strong	Policy must: (1) overtly address the area of concern/value; (2) provide multiple references throughout the policy document, reinforcing the value; (3) account for variable scenarios/settings in which the value may be applied or in question	A primary example from this analysis is equal access in Chapter 711. There are references to: federal anti-discrimination regulations, Section 504 and IDEA; clear expectations for charters to meet free and appropriate public education in least restrictive environment; specific provisions around admissions including admission criteria and only allowable restrictive criteria; procedural safeguards around expulsions/disciplinary actions; and access to instructional materials.
Moderate	Policy references the area of concern/value but: (1) does not account for variable situations or make multiple references; or (2) references are unclear or potentially conflicting with one another.	An example from this analysis is enforceability in relation to individual student rights. Students' rights including the right to due process are clearly outlined in Chapter 711; however, the burden of proof of discrimination falls on the student/parent which is a significant barrier for many students/families.
Weak	Policy contains reference to the value but the reference is minimal, lacking in guiding specifics.	An example from this analysis is non-discrimination and the "Authorizer Toolkit." One section of the Toolkit makes general reference to non-discrimination but there is literally no reference to disability in that document. The reference to non-discrimination without specificity or even other textual references to disability is weak in support of the value of non-discrimination.

Selection of Method

The primary reason for the selection of Bardach's methodology was the flexibility of the method and strength of the framework for data analysis (matrixes). The approach covers basic mechanistic functions of policy analysis but encourages and allows for flexibility of use. The outlined steps are not necessary for every policy analysis (Bardach, p.xiv). Bardach acknowledges that policy analysis is an iterative process and that

modification of the process may be necessary for particular analytical problems (p.xiv-xv). In this case, modification of Bardach's framework was necessary because his approach is designed to apply to creation of new policy, not evaluating existing policy. My primary modification of Bardach's method is in the use of "alternatives." Because Bardach focuses on the policy creation process, his reference to alternatives is for different possible solutions that may be offered up as legislation, regulation etc. Since my application of his method is to *existing* policy, the "alternatives" I analyze are provisions at each *level of policy*. For example, I examine how non-discrimination in enrollment is handled in the applicable state laws, the district policy and the district contract template.

Limitations

The primary limitation of this study is that it relies on document analysis without data collected on attitudes and/or experience of the implementation of charter reform in Philadelphia. The study would be more robust if complemented by a qualitative study that involved conducting interviews with key stakeholders at the state, district and individual school level. Another significant limitation of this study is that it does not engage a larger question of whether charter school reform has improved the quality of education, regardless of student status.

Population

Philadelphia is the nation's 8th largest school district in the U.S. with over 190,000 students. The student body is diverse with a make-up of 58.3% African American, 7% Asian, 13.8% Caucasian/Euro-American and 18% Hispanic/Latino children. 198 of the district schools provide universal free meal programs. 14% of the students are in special education (Office of Accountability, 2009). 2.1% of those special education students

have an intellectual disability, traumatic brain injury, blindness, deafness, multiple disabilities, autism, orthopedic, other health or emotional disability (Bureau of Special Education, 2011)

Role of the Researcher

I am a middle-class, white woman in my early forties and reside in an urban environment. Experiences relevant to bringing me to the study of this topic are more than 20 years working in the field of developmental and intellectual disabilities. In particular, I have worked closely with parent disability advocates and disabled adult activists on the local, state and national level. My personal and professional experiences have led me to be deeply suspect of privatization and market-based solutions as an approach to services and programs intended for the public good. Charter policy, however, very specifically incorporates anti-discrimination law and charters, by design, have some very promising features for students with disabilities.

Chapter 3

Literature Review

The purpose of this review of literature is to contextualize the current issues for students with disabilities in the charter school reform effort. As with contemporary charter school reform, students with disabilities were not in the forefront of policy design in previous educational reform efforts. The first portion of the literature review is aimed at illuminating the origins of special education and the early segregative practices in public education for disabled students. Next is an overview of the role of charters in educational reform including background on the theoretical underpinnings of the reform. These theoretical underpinnings are problematized as they relate to students with disabilities. Following, the literature looks at federal anti-discrimination and special education law as applied to charters. In the last section, the focus shifts more specifically to students with disabilities and what the research tells us about how they fare in charters in relation to enrollment, inclusion and access.

Origins of Public Education for Disabled Students

Compulsory school attendance marked a new era in the history of American education. The crippled, the blind, the deaf, the sick, the slow-witted, and the needy arrived in growing numbers. (Cremin, 1961, p. 127-8)

Beginning in the mid-19th century, states began passing compulsory school attendance laws. By 1907, only a few states did not have such laws. Two forces were at play in reducing the number of children occupied in factories and other labor: (1) tightening of child labor laws and (2) an increase in immigration flooding the labor force with adult laborers. To manage these otherwise unoccupied children, states strengthened laws compelling public school attendance (Trent, 1994). States increased the length of the school year as well as the number of grades required. Trent argues that

it is this context of increasing state mandates for compulsory schooling that provided for the creation of special education (p. 145).

As schools were educating growing numbers of a more diverse population of students, reports of classroom inefficiency and teacher frustration became more common (Trent, p.147). Educators voiced concerns that disabled students were hindering progress of non-disabled students (Carey, 2009, p. 60). A Stanford researcher, Will S. Monroe, conducted and published a pivotal survey of teachers about their classroom composition. Based on his research, Monroe ultimately became an advocate for segregated “special education” citing the success of European models (Trent, p.147). Cities in the United States followed suit. Philadelphia’s first special education classroom opened in 1901. By 1923 almost 34,000 American students were in special schools or special classrooms (Trent, p.147).

With the advent of special classrooms and special schools came a refinement of the typologies and a proliferation of professions to sort and educate students in the new settings. Whatever the impairment (social or physical in origin¹), it was primarily “slow learners” that were finding themselves in these special classes. By the turn of the 20th century, special educators had distinguished the “mentally deficient” from the “backward” pupils (Trent, p.149). “Imbeciles” and “idiots” were typically pre-sorted out and resided in institutional settings. Once these special settings were created and “special educators” had emerged, impetus for placing children in these settings was fed by several things. First, the dichotomy we still see today between regular and special education had congealed. Believing that students classified as backward or mentally deficient learned differently, the special educators were believed to be better equipped to educate these

¹ Language barriers, educational access and cultural differences were a significant factors in labeling in this time period as evidenced by the fact that when the Binet intelligence test was administered on immigrants passing through Ellis Island, 40-50% of them were determined to be “feeble-minded” (Carey, p.54).

students so students were sorted to special settings. Second, complaints about the rights of non-disabled students being violated by the presence of the disabled children in schools pressed educators to use the option of separate settings (Carey, p. 71). Additionally, teachers reported tremendous teasing and bullying of backward and mentally deficient students. Educators argued that these students would be safer in segregated classrooms (Trent, p.150). With these forces at play, the industry of special education began to proliferate. Specialized teacher education programs sprung up. Because institutions were seen as having expertise in the education and management of the mentally deficient, they were the backbone of early special education instruction for teachers, thus the “extension of institutional perspectives to local educators” (Trent, p. 151). This perspective included training on psychological testing for teachers to apply to students in their classrooms. These tests, “medical” tests, were integral to the management of the . “mentally deficient” at a time historically, that mental deficiency was seen as a scourge that would be the downfall of America. Eugenics was thriving on both sides of the Atlantic (Mitchell & Snyder, 2001). Sorting out and managing the deficient was necessary for addressing this scourge. Psychological testing and the subsequent medical diagnosis that accompanied was foundational to the indefinite incarceration of people with disabilities.

Early special education was deeply entrenched in the institutional system and, in turn, the institutional perspective was deeply entrenched in eugenics. Superintendents of large state institutions, given their experience in managing mentally deficient populations, became leading voices in educational design (Trent, 1994). Superintendents essentially promoted the notion that special education would not ultimately create law abiding self-sufficient adults; rather, the mentally deficient would need lifelong support and protection. However, special classes could train students for

living productive lives in institutional communities “by beginning manual training early in the students’ school experience” (Trent, p. 153). Students could be trained in these special environments to be good institutional community members. Manual training coupled with institutional living as adults could manage the mentally deficient population to ensure that they did not marry and reproduce more mentally defectives as was the concern of the time. The development of special education, with coinciding teacher education, functioned to reinforce eugenic population management for people with disabilities.

A key question for Hehir in relation to special education policy is does it reinforce social inequality? Special education practice at the turn of the 20th century certainly (re)produced social inequality, training disabled students for institutional life to discourage reproduction and interaction with the larger public. The origins of special education are very obviously rooted in ableist assumptions. The binary educational system in contemporary United States is undoubtedly an evolution of this earlier model. Have we evolved significantly? What are our expectations for achievement for disabled students – well-educated independent thinkers or people who received manual training so they can be managed? Our segregated classrooms today are perhaps a slightly more sophisticated training ground for students to transition into adult services systems which are more established in community settings but still ripe with institutional features of population control. The primary question in relation to this history of special education and charter schools is, do charters offer less of a reproduction of this inequality? Do charters step away from this model of special education? Do they offer more hope of stepping away from it?

Role of Charters in Educational Reform.

The charter school movement is characterized as “an escape hatch from broken systems” and is part of a larger movement for parental choice (David & Cuban, 2010, p.33). Beginning in the 1960-70s, liberals promoted vouchers. Magnet schools sprung up in many areas as a direct response to desegregation orders (David & Cuban, p.35). Since the late 90s, charter schools have been the most successful of these choice options. In numerous parts of the United States, charters comprise a significant portion of the school options for public school students. In Dayton 36% of students attend charters. In New Orleans more than 60% of students attend charters. Parental choice is also heavily embedded in No Child Left Behind. Provisions of the law allow for students in persistently failing schools to transfer out of the schools and for state take-over of those same schools. The state is then permitted to outsource the operation of those schools. Beyond just the notion of parental choice, the market-based thinking behind charters is that schools free from regulatory burdens will be more innovative and will “jolt boards of education and superintendents, fearful of losing students and state funds, into working harder to improve all urban schools” (David & Cuban, p.36)

The assumptions about “schools without rules” and freedom from regulation sparking innovation, are central to discussion about charters and students with disabilities. The theory of action for charters is that by lifting the burdens of regulation, introducing flexibility, choice and competition, charters will be able to create more efficient and innovative schools that produce better educational outcomes for students. Charters, in this theory of action, however, raise some important questions when applied to students with disabilities and special education. Charters are exempted from some regulation. They are exempted from collective bargaining and union contracts, some teacher certification standards and some bureaucracy but not from potentially the most stringent

of regulations, special education law. Beyond the challenges that are posed by educating students with disabilities and the requirements for charters to abide special education laws, the very market logic behind the charter model has also been questioned. Researchers have argued from both the supply and the demand sides that the logic behind the charter model is faulty.

Lubienski and Weitzel (2009), in their *supply-side* analysis of the market as applied to charters, note that there are significant problems in the incentives provided by the reforms. They contend that charters are actually disincentivized from “diversifying American education” (p. 374). Several of Lubienski and Weitzel’s criticisms of the assumptions behind the market-driven educational policies are compelling: first, the policy makes assumptions about the basis on which parents make decisions; second, that it is reductionist in thinking about the myriad factors that, in combination, tend to account for student achievement (socio-economic status, parent support, background etc.); and, finally, that the desired social outcomes are actually disincentivized.

If the desired outcome is really “no child left behind,” then the structures of charters do not necessarily promote innovative educational solutions for all students (Lubienski & Weitzel, 2009). One of the most basic competitive strategies that businesses have at their disposal, price competition, is *not* available to charters. Developing other competitive innovative strategies is an option for charters but, unlike many other markets, there is a “strong impact of non-institutional factors such as student demographic background or peer effects” (p. 363). Therefore, from a business standpoint in this particular market environment, charter operators may try to garner a competitive edge by appealing to a target audience and shaping their pool of applicants (Lubienski & Weitzel, p. 363). Lubienski & Weitzel conclude, “given the strong relationship between student background and achievement, schools of choice may

recognize an incentive to *attract* rather than simply *produce* [my emphasis], ‘better’ students” (p. 364).

In order to survive in the marketplace, charters need to attract students and suppress costs. Charters, like traditional public schools, are currently held to account for standardized testing above all other measures. Students with disabilities currently have the largest achievement gap - 30% between non-disabled and disabled students (Pew Charitable Trust, 2004). Further, standardized testing (alternate and accessible formats) and outcome measurement have not necessarily been figured out for students with disabilities yet, making them, an even less attractive target student. Howe and Welner (2005) conclude in their meta-analysis that standardized testing measures are one of the forces driving down enrollment of disabled students in charters. Charters also have serious fiscal disincentives to serving children who have additional educational needs and are costly to educate. In trying to be competitive and suppress costs, charters are essentially incentivized to cream the lowest costing, highest performing students (Howe & Welner, 2005). In its reductionist logic and potential negligence in considering how students who may need more costly supports fit into a competitive school market, the rational choice market logic does not account well for diversity of our public school students.

Complementing the Lubienski and Weitzel supply-side analysis, Ben-Porath (2009) provides a *demand-side* analysis of school choice policies, looking directly at assumptions about parental choice. Ben-Porath’s central argument is that rationality, as conceived in policy (rational choice theory in the tradition of Kant and Mills), does not correspond with our empirical knowledge of how individuals make choices. The rationality conceived in choice policy is that of “idealized notions” of cost-effective utilitarianism wherein actors can act autonomously (p. 531). Ben-Porath cites the

empirical research showing that individual choice is not conceived in a Kantian autonomous manner; rather, choice is subject to cultural and institutional influence and dependent on framing and context of choice sets. Ben-Porath, therefore, argues for policy that reflects the "bounded rationality" of choice. Choice is "bound" by context, by the way the choices are framed and by myriad other factors that influence an individual's decision-making.

In looking at enrollment numbers of students with disabilities in Philadelphia charter schools, this notion of bounded choice becomes a real consideration. There is a significant body of research from across the country that points to counseling out and steering away of students with disabilities as a factor for the disproportionate enrollment of students with disabilities in charters (Estes 2001; Estes 2009; Fiore, Harwell, Blackorby, & Finnegan, 2000; Howe & Welner, 2005). These practices of counseling out also happen in Philadelphia (Kintish, p.2). If parents are unclear about their child's rights or charters appear unequipped to handle the specialized instructional needs or, frankly, the physical access needs², their choice, indeed, becomes quite bounded. They are likely to remain in the district school, as appears to be occurring in Philadelphia. For Ben-Porath these assumptions about rationality and autonomy in the parental choice movement lead to, "the weakest children in terms of the crucial factors of parental involvement and social capital are left to attend the weakest schools" (p.541).

Legal Protections in Federal Special Education Law

Charters, indeed, have freedom from some of the regulations that bind traditional district schools. They, however, are not exempt from provisions protecting the rights of

² According to the 2/2/2010 "Independent Charter Schools Report" conducted by the Office of Independent Monitoring, out of the 29 charter school sites in Los Angeles monitored for ADA compliance, none were fully compliant. Several sites were stair access only. Several sites had no accessible restroom facilities for staff or students. Compliance issues ranged from complete non-compliance to minor infractions.

students with disabilities including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. In Pennsylvania, Chapter 711 specifies how charters in Pennsylvania will meet their federal obligations to students with disabilities. These federal obligations include a free and appropriate public education (FAPE) in the least restrictive environment (LRE) (20 U.S.C. §§ 1400). Scholarship on policy demonstrates significant issues have arisen in relation to charters and special education law. Inherent confusion seems to stem from deregulation that spawned charters and the remaining obligation to the most intense regulations, special education. It is a misconception to think of charters as schools with no rules. There is no deregulation in relation to responsibilities to provide disabled students with a free and appropriate education.

In a frequently cited study, Rhim, Ahearn and Lange (2007) examine 41 charter statutes in order to analyze implications of these laws for students with disabilities in charters. They conclude that few existing state laws provide a clear guidance for charter operation in relation to provision of special education services. Pennsylvania's Chapter 711 actually addresses many of the policy ambiguities that Rhim et al. (2007) reference. For example, both governance via the lead education agency (LEA) and the accountability measures for charters and special education are laid out thoroughly in Pennsylvania state law. There is one glaring instance, however, where Pennsylvania statute does fall short. Rhim et al. recommend states have a requirement for charter authorizers to "articulate special education plans in the initial charter application" (p. 61). Chapter 711 does not contain this provision.

Rhim and McLaughlin (2001) also look at how state level policies influence charters' ability to provide special education services for students with disabilities. They identify two fronts, in addition to the regulatory (but which influence regulatory adherence),

critical to examining charters and students with disabilities. First, how charters are financed can have a big impact on services. Many charters are quite small compared to the district schools. There is no economy of scale for financing additional individualized student services. Second, knowledge of special education is essential. Charters were found to be lacking knowledge and experience. They argue that with potential financial disincentives and a lack of experience, charters may find themselves at a serious disadvantage in trying to provide quality education to students with disabilities.

In the literature, other key legal/policy concerns for special education and charters are related to admissions and identification of status of local education agency (LEA). Ahearn (2001) points out that, by law, charters are prohibited from discrimination in admissions. If more students apply than the school has that enrollment availability, a lottery must be conducted. Selection criteria cannot be utilized to suppress enrollment of students with disabilities. Ahearn also stresses the importance of clarity on local education agency (LEA) status for charters in state law. In Pennsylvania, the charter is the LEA, meaning that it is responsible for all special education provision to students with disabilities. As LEAs, charter schools are legally obligated to ensure that evaluations, supplementary aids and services, transition services, access to instructional materials, extended school year services and necessary related services are provided in accordance with the law (Ahearn, 2001). This designation significantly impacts how services are delivered to students with disabilities.

Federal law does provide legal protections and remedies for students with disabilities. These federal laws are then typically reinforced in state laws governing charter schools. Protections guaranteed for disabled students range from equal access to a host of specialized services necessary for students to be granted a free and appropriate public education in the least restrictive environment. Legal protections are, nevertheless,

typically only as good as the monitoring and enforcement of them. Unfortunately, the issues charters have demonstrated with service provision and adherence to special education laws are compounded, at least in part, by lax enforcement. Fierros and Blomberg (2004) focus on a need for enforcement of special education regulations. They compared for-profit and non-profit charters in California examining patterns of enrollment for students with disabilities. This study looked at overall enrollment and restrictiveness of settings. The authors conclude that without enforcement of special education laws, students with disabilities remain “vulnerable” in new charter arrangements. The ineffective monitoring and lax enforcement cited by Fierros and Blomberg are echoed by special education advocates in Philadelphia.

Charters and Students with Disabilities

How does this philosophical and practical conflict of the intense special education regulations within a somewhat deregulated, autonomous school model translate into practice for students with disabilities? How well have laws aimed at protecting students with disabilities from discrimination and providing them with equal access to education translated into policy and practice on the local level? Research points to the translation of this conflict into problems in enrollment, segregative practices and provision of adequate services.

Enrollment. Miron, Urschel, Mathis and Tornquist (2010) note a concern about charters potentially perpetuating educational inequalities because of the conflict between the heavy regulations surrounding special education and the notion of deregulating schools via charters. To investigate, they compared demographic characteristics of charter schools (charters managed by Educational Management Organizations (EMOs))³ to their sending districts. Miron et al.’s data from 968 schools demonstrates inequalities

³ Miron notes that 95% of which are charters

arising in charter school reform efforts. The research conducted by Miron et al. (2010) is important because it is sizeable and it looks at demographic data revealing disproportionality of students with disabilities by both extent of disability and numbers educated in charters versus sending district schools. Notably, the findings of this project are that, in spite of the fact that traditional schools are still educating more students with disabilities and students with more severe disabilities than charters, the gap may be closing gradually (p. 21). Segregative trends⁴, however, were still found to be most pervasive for students with disabilities. Most charters had low percentages of students with disabilities and some charters who specialize in serving students with disabilities had very high percentages. Philadelphia appears to be no exception to this. According to the authors, “data paint a pattern of schools gravitating to the extremes-regarding race/ethnicity, poverty status, special needs status or English language learner (ELL) status – rather than clustering around district averages” (p. 25).

Enrollment and inclusion. In another study that investigated both enrollment numbers and educational settings for students with disabilities, Wilkens (2011) examined and compared inclusion of students with disabilities in urban Massachusetts charter and district schools. Wilkens found that though urban charters are educating 74.3% of students with disabilities in predominately general education classrooms versus the district schools’ 40.3%, they are educating significantly fewer students with severe disabilities. The typology of students included impacts the question of inclusion immensely. Including a student with a mild speech language impairment in general education classes likely requires a significantly different level of service provision and expertise than including a student with autism in those same classes. Interestingly, Wilkens notes that access to the general education classroom seems more influenced

⁴ The segregation that Miron et al. examined was demographic clustering in schools, not separations between general education and special education classrooms.

by city than by school type (p. 14). Echoing the findings of the Miron et al. (2010) study, he concludes students that have historically been educated in segregated classrooms “have been left even farther out on the margins” (p. 18) in urban charters. He supports this claim by providing rates for enrollment of students with severe disabilities in urban Massachusetts district schools at 5.1-8.2% to charter rates of .6-3.3% (p. 16-17).

Students historically likely to be in segregated educational settings are educated in charters at less than half the rate they are educated in district schools. The upshot of Wilken’s research is that students with severe disabilities are less likely to be enrolled in charters but, when they are, they are more likely to be included in general education classrooms.

Though inclusive education is generally believed to produce better outcomes than segregated education and, by law, students with disabilities should have access to the least restrictive educational environments, this model is not always embraced in public schooling. Charter schools have been promoted as a path to innovation but it is unclear the extent to which they are educating children with disabilities (particularly students with severe disabilities) in regular classrooms. Further, the extent to which they are innovative is unclear. Wilkens, like the GAO, remarks that the question of *why* students with disabilities, particularly students with severe disabilities, are not being enrolled in charters needs to be answered. Hopefully, this study will provide some answers to his question by examining policy incentives and disincentives.

Provision of services. In addition to enrollment concerns, charters are frequently criticized for lacking in provision of adequate special education services. Research indicates that, though there is clear regulatory guidance, charters do not always abide by the law. Additionally, charter schools lack information and expertise for effective service provision. Drame and Frattura (2011), in their participatory research, posit that charters

often have many of the right elements to make good inclusive educational settings for students with disabilities (smaller class sizes, inclusive classrooms, more individualized supports) but lack the infrastructure and technical expertise to deliver. Wolf's (2010) scathing study of New Orleans's charters echoes this finding. Wolf charges that the inability to deliver appropriate services was perpetuated by a funding structure in which schools are disincentivized to provide expensive services.

Estes (2009) found that charters engage in the counseling out of students with disabilities to avoid serving them (p. 222). Her findings in this replication study were that there has been an increase in understanding of IDEA and overall special education requirements in school personnel since her initial study in 2000. All school personnel interviewed acknowledged they understood manifest determination⁵ but only 60% noted that they abide it. In fact, two respondents said they have sent students back to district schools for code of conduct offenses. This finding suggests that, though understanding

⁵ Explanation of Manifest Determination from

http://www.ldonline.org/article/What_is_a_Manifest_Determination_Meeting%3F

"Hearings follow disciplinary actions by the school that result in expulsion or a changing in placement. If a disciplinary action involves a request for a suspension or other actions involving removal from a program for more than ten days, the IEP team must meet to determine whether the misconduct resulted from the disability. This is referred to as a manifest determination hearing, review or IEP meeting.

A manifest determination for a student with disability involves a review of the student's misconduct, the student's disability, and the services provided to determine if (1) the behaviors resulted from or were a manifestation of an inappropriate placement or educational program for the student and (2) if the misconduct resulted from the student's disability. If the answer to either of these questions is "yes," the student will not be expelled but a student's placement can be changed. If the answers to both questions are "no," the school can proceed with the recommendation for expulsion. Expulsion of a student with disability, in that case, must occur as it would for a student without a disability.

The manifest determination hearing, or IEP team meeting, occurs after a child with a documented disability is recommended for suspension. Most often student suspension results when a student carries a weapon to school or to a school function, or if a child knowingly possesses or uses illegal drugs or sells or solicits the sale of such drugs. School officials can also request and alternative educational setting (AES). Under IDEA a student may have his/her educational placement changed due to disciplinary action for one of three circumstances:

For certain drug and weapons offenses

By a hearing officer for certain offenses

By school officials for certain violations of state and local codes of conduct."

of obligations under IDEA increased in charter personnel, it does not necessarily translate into real adherence to the law. Under IDEA charters are prohibited from counseling out/steering away, yet, like manifest determination adherence, the extent to which they abide this regulation is suspect.

The crux of the problem with service provision that Drame and Frattura (2011) identify is that “staff perceptions formed a dichotomy in service delivery” (p. 72) with special educators promoting a remedial model and general educators wanting specialized services in their classrooms. The general education teachers seemed to distance themselves from responsibility for the students with disabilities and the special educators were viewed as the only ones to adequately understand the complexity of the issues that faced some of their students. Caseloads were noted as too high which resulted in communication barriers and delays in referral response. This is an issue certainly shared by traditional public schools but an issue that raises questions about the extent to which charters are innovative if they are struggling with the same problems as the district schools.

Summary

...deregulation, however popular it may be among policymakers, educators and parents, is not a simple matter; achieving it in this case would call into question a value of equal importance: equal rights for persons with disabilities. (Heubert, 2002, p.14)

The review of literature relevant to this project reveals several things. First, our current binary educational system with special and general education is a relic of a system borne from institutional and eugenic practices in the last century. Charter schools do not seem to be stepping away from this model. Second, research sheds light on the complexity of navigating a new educational model and new governance structures. Part

of what drives the complexity of this new model is the conflict arising between the push for autonomy, deregulation, innovation and efficiency and the responsibility of educating all learners and meeting all special education requirements. The charter model's core is that of flexibility and opportunities for new approaches, yet operators are bound to abide by significant rules in relation to special education. Students with disabilities do not fit neatly into the market-based reform efforts as embodied in charter schools. Charter school reform, as currently manifested, has numerous problematic areas for students with disabilities. On a theoretical level, research shows that there are flaws in the market-based logic behind charter schools, particularly when applied to students with disabilities. Because charters cannot compete by manipulating the price of their goods, they need to compete by attracting the right consumers (Lubienski and Weitzel, 2009). A charter school's performance is judged by achievement and standardized testing measures so charters are incentivized to cream the lowest costing, highest performing students (Howe & Welner, 2005).

The literature links the conflicts and theoretical flaws to the concrete issues that are evidenced in the studies. Concretely, disabled students are "creamed" by being steered away or counseled out of charters. Concretely, the issues of access run deeper than just enrollment. Research establishes that charters tend to lack infrastructure and/or needed expertise for provision of adequate accommodations. States and districts are in new roles with regard to requesting, reviewing, approving and monitoring contracts. Responsibilities and oversight are different in these arrangements and enforcement of compliance with special education laws has also been cited as an area that needs improvement for students with disabilities to access free and appropriate public education in charter settings.

The one area with some promise that emerged from the literature was in relation to charters and inclusive practices. Though it is not an area where there was significant research, early studies are showing greater rates of inclusion for disabled students but those students tend to have milder disabilities (Miron, 2010; Wilkens 2011). For students with severe disabilities, they are less likely to be enrolled in charters but, when they are, they are more likely to be included in general education classrooms. These areas of trouble and promise highlighted in the research are all echoed and evidenced by my policy analysis which follows.

Chapter 4

Policy Analysis

Introduction

Federal laws contain significant protections addressing issues of access for students with disabilities. These protections span from the basic level of non-discrimination in admissions to provision of the accommodations necessary for every child to have equal access to the standard curriculum offered in our public schools. In spite of these extensive laws guaranteeing equal access, problems with access are apparent for disabled students with charter schools. To examine charter policy down to the local district level in Philadelphia, I conducted an analysis using Bardach's methodology. The following policy documents, that should echo and provide for implementation of federal laws, were analyzed:

- Act 22 of 1997 - Act 22, the "Charter School Law" (P.S. § 24 17-1701)
- Chapter 711 "Charter School and Cyber Charter School Services and Programs for Children with Disabilities" (22 Pa. Code 711)
- Pennsylvania Department of Education (PDE) Charter Authorizer "Toolkit"
- School District of Philadelphia Charter School Policy
- School District of Philadelphia Charter School Contract Template
- School District of Philadelphia Charter School Renewal Application
- Current contracts from three charter operators in Philadelphia

Extended summaries of each policy document as it related to students with disabilities can be found in the Appendix.

My findings in this analysis are that, though there is significant theoretical support for access and inclusion of disabled students, on a practical level policies fail to adequately account for students with disabilities in this reform effort. The fact that policy designed to organize charter school reform does not account for the full breadth of the student body speaks to the ableist assumptions in designing this reform. Fiscal and accountability related policies make high need students who may not perform well on standardized

tests unattractive students for charters to serve. Enforcement of provisions to ensure compliance with anti-discrimination law is also clearly inadequate to combat the forces that drive charters to steer away or counsel out disabled students. Review of individual charter contracts from three active charter schools in Philadelphia confirms this assessment of the failures in policy from the state to the local district level. Additionally, review of these individual contracts, raises larger concerns about the lack of potential for innovation that charter reform may hold for disabled students.

Background on Laws

Federal Laws. Charters are obligated to uphold laws governing the rights of students with disabilities including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). These provisions related to students with disabilities are far reaching, affecting personnel, pedagogy, curriculum, discipline and finances (Heubert, p.311). The Individuals with Disabilities Education Act (IDEA) is the foundation of special education law. It is here, in the IDEA, that access for students with disabilities is defined. IDEA provides for access to all academic and non-academic programs or activities in which non-disabled children participate. Additionally, children with disabilities are entitled to a “free and appropriate public education” (FAPE), which means that special education and necessary related services are provided to the student by the school. Students with disabilities, further, are entitled to an “individualized education program” (IEP), which details all accommodations, specialized instruction, and related services the child may need to achieve FAPE. Finally, children are entitled to receive their public education from highly qualified teachers in the “least restrictive environment” (LRE).

Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act are both fundamentally broad anti-discrimination laws. Section 504

applies to any recipient of federal financial assistance. Title II applies to any “services, programs and activities provided or made available by public entities” (28 CFR § 35.102(a)). Unlike IDEA, both Section 504 and Title II of the ADA apply to a wider range of students with disabilities. IDEA only applies to students who require “specially designed instruction.” Anti-discrimination law applies to *all* students with a qualifying disability. In summary, charters are not exempted from any of the sweeping federal anti-discrimination laws and are obligated to provide free and appropriate public education including individualized education plans to qualifying students with disabilities. Part of the function of state and local charter policy is to provide guidance for charters to implement these federal laws. The principles of access outlined in these federal laws drive many of the criteria utilized in my analysis of state and local policy.

Pennsylvania State Law. The governing law for charter schools in Pennsylvania is Act 22, “The Charter School Law.” The primary governing law for special education in Pennsylvania is Chapter 14. Given the complexity of both laws and the distinct nature of charter schools, a separate state law for special education in charters was promulgated, Chapter 711 “Charter and Cyber Charter School Services and Programs for Children with Disabilities.” Charters, because they are subject to Chapter 711, are exempt from Chapter 14. This, however, hardly means they are exempt from abiding by extensive special education rules. Because of the federal requirements for special education, there is significant overlap between Chapter 14 and Chapter 711. Students qualifying for special education, therefore, are provided the same protections and all public schools held to the same standards for providing specialized instruction, extended school year, transition services, etc. Between charter obligations to federal and state laws, clearly, they are not “schools without rules.”

Lead education agency (LEA). Federal law does not dictate how states determine lead education agency (LEA) status for charter operations. This designation has enormous implications for students with disabilities, charter authorizers and charter operators. LEAs are legally obligated to ensure that evaluations, supplementary aids and services, transition services, access to instructional materials, extended school year services and necessary related services are provided in accordance with the law (Ahearn, 2001). Importantly, Pennsylvania law specifies that each charter is its own LEA. This is unlike the governance of the traditional district and district schools wherein the district is the LEA for all of the schools within the district. For charters, LEA status means that they must either maintain or arrange for the necessary expertise and specialized services and supports. Districts, especially large districts, have an economy of scale for the coordination and purchase of these services. There are pros and cons to this for students with disabilities. A benefit of this economy of scale may be that tremendous expertise and resources are available to meet a student's needs. A detrimental impact of this economy of scale may be that, because the district can pool resources, students with like disabilities (especially those with "severe exceptionality" like intellectual disabilities, autism, deafness, etc.) may be pulled from neighborhood schools to attend segregated classrooms in "regional" district schools.

Guidance for new roles. Relationships between districts and charters are quite distinct from the relationship between districts and traditional schools. Under state law, districts become "authorizers" instead of "operators" of schools. Given this new role, the Pennsylvania Department of Education (PDE) provides additional guidance to districts on their new role as charter "authorizers." PDE developed the Charter Authorizer "Toolkit" for Act 22 implementation. The PDE "Toolkit" is not necessarily legally binding but it does provide PDE's interpretation of charter school law and how authorizers can

comply with the law. As the document intended to guide districts, the Toolkit is a crucial data source for understanding PDE's expectations regarding charters.

Local policy. On the local level, policy is promulgated in several fashions. First, the School District of Philadelphia (SDP) publishes a "Charter School Policy" which details local governance. Next, the actual contract for charters is an important source of policy in bringing federal policy and the market-based operation of charters closest to actual implementation. Philadelphia has a basic charter contract template for its charters. The contract reinforces the charter's status as the LEA and the subsequent responsibilities. Another local policy document is the SDP Charter School Contract Renewal Application. Charter operators must re-apply for their charter every five years. SDP created an application specific to the renewal process. The document provides insight into the SDP's approach to educating disabled students in charter schools.

Policy Analysis

As explained in Chapter 2: Methods, the approach to the data analysis of this study is guided by Bardach's "Eightfold Path" wherein both evaluative and practical criteria are applied to each policy document via outcomes matrixes. *Table 1* shows the application of the evaluative criteria to each level of policy from state to local district policy and contract. *Table 2* shows the application of the practical criteria to each level of policy from state to local district policy and contract.

Table 1: Application of Evaluative Criteria Matrix

	Evaluative Criteria					
	Promote Equal Access	Increase Inclusion	Promote Non-Discrimination	Raise Expectations for Student Performance	Ensure Availability of Accommodations	Promote Comprehensive Definition of Diversity
Act 22 Charter School Law	1	2	1	3	2	
Special Education Charter, Chapter 711	1	1	1	3	2	
PDE Charter Authorizer “Toolkit”	3		3	3	2	
Philadelphia Charter Policy	1	2	1	2	2	
Philadelphia Charter Contract	1	2	1	2	1	
Philadelphia Charter Contract Renewal Application	1			1	1	

Rating Scale

1 = Strong (multiple references, accounting for variable situations, maximizes the value)

2 = Moderate (addresses issue but neither maximizes nor minimizes)

3 = Weak (reference to issue/policy solution is existent but weak, minimizes the value)

(See *Figure 1* for explanation of rating scale)

Table 2: Application of Practical Criteria Matrix

	Practical Criteria				
	Ensure Legal remedy (non-compliance)	Ensure Enforceability of non-discrimination	Ensure Monitoring	Increase Financial Incentives for Inclusion	Increase Financial Incentives for Access and Accommodations
Act 22 Charter School Law	2	3	2	2	
Special Education Charter, Chapter 711	2	3	2	2	
PDE Charter Authorizer “Toolkit”	2	3	3		
Philadelphia Charter Policy	2	3	2		
Philadelphia Charter Contract	1	3	2		3
Philadelphia Charter Contract Renewal Application	2	2			

Rating Scale

1 = Strong (multiple references, accounting for variable situations, maximizes the value)

2 = Moderate (addresses issue but neither maximizes nor minimizes)

3 = Weak (reference to issue/policy solution is existent but weak, minimizes the value)

(See *Figure 1* for explanation of rating scale)

Findings

The overall findings from this analysis of charter policy in relation to students with disabilities are that there is theoretical support in policy for the more traditional socially desirable outcomes, though none for a comprehensive definition of diversity. It is in the practical, implementation-related policies where significant problems for students with

disabilities arise. Looking at the evaluative criteria matrix (Table 1), it is evident that at most levels of policy, issues of access and non-discrimination are overtly and strongly addressed. It is, however, in the matrix of practical criteria (Table 2) we see that there are moderately strong legal remedies available for non-compliant charter operators though, unfortunately, enforceability and the type of monitoring required to ensure remedy are fairly weak. In other words, at most policy levels, the law is quite clear about expectations for charters to serve a full range of students and the support that must be provided for those students. Charters, however, have numerous barriers and few incentives to follow those laws and, unfortunately, enforcement mechanisms are weak.

Table 2 leads us to a primary reason charters struggle to educate disabled students. Again, the law may be clear about expectations but in a market-based system, businesses need financial incentives for motivation. The problem follows a fairly simple premise; if a charter will go out of business or lose money doing something, it is not likely to do it. With the exception of Act 22 promoting inclusion, the socially desirable outcomes of non-discrimination, inclusion and providing accommodations are not incentivized for students with severe disabilities. As Lubienski and Weitzel (2009) point out, survival in the current marketplace means that charters need to attract high achieving students and suppress costs. Students with severe disabilities are not likely to fare well in that climate. My analysis of charter policy from the state to the local level demonstrates that current policy does little to combat this educational marketplace behavior of creaming lower cost, higher performing students. Like educational reform at the turn of the last century, current reforms were implemented with ableist bias. The education of disabled students, complete with high standards and equal access, was not planfully built into the educational model.

Evaluative Criteria

Promote equal access and non-discrimination. As evidenced in the evaluative criteria matrix (Table 1), at each level of policy governing charter schools in Pennsylvania, there are typically strong provisions ensuring equal access and non-discrimination for disabled students. Statute and regulation both include distinct language on the restriction for charters to refuse to serve students based on their disability status or their need for support. Laws even address the issue of the unique nature of charter missions/specialization and the conditions under which charters can be selective about students. Given charters tendency to have particular areas of concentration or focus, Chapter 711 clarifies that admission policies or practices, “may not discriminate in its admission policies on *achievement or aptitude* [my emphasis]” (711.7c). In other words, charters may limit enrollment to a grade level or area of study (e.g. the arts, mathematics, or science) but they may not discriminate on the basis of disability. To promote equal access to the curriculum, charter schools also must maintain highly qualified teachers, including 100% of special education staff being certified. They are also subject to the same accountability standards as traditional district schools in relation to annual yearly progress (AYP) including counting students with disabilities in annual yearly progress reports. In a further effort to promote access, policy directs charters to conduct outreach and include in outreach efforts information about special education services.

The PDE “Charter Authorizer Toolkit” is the weakest of policy documents related to equal access, many sections of it having literally no reference to special education or students with disabilities. Given the unique role of districts in this new governance model for schooling, this is an unfortunate oversight. The School District of Philadelphia’s Charter Policy is probably the strongest and most directive policy in that it actually

provides some *proactive* requirements for charter operators to address students with disabilities. The review panel for charter applications must have a special education expert on the panel. Additionally, in evaluating charter applications, Philadelphia's review panel utilizes a rubric that includes Curriculum Equity Safety/Climate and Special Education. These criteria are in addition to the list that PDE suggests in the Toolkit. Philadelphia's Charter Renewal Application asks applicants to answer, "Is the school fulfilling its legal obligations related to access and services to students with special needs?" and "How does the school identify, diagnose and address the needs of these students?" (p.12) In summary, at most levels of policy, the provisions promoting equal access and non-discrimination are strong.

Increase inclusion. Table 1 shows moderate support for increasing inclusion for students with disabilities, in part, because policy on this value is ambiguous. The primary policy citations for educational setting simply reference federal rules on least restrictive environment. Does the lack of reference to segregated settings mean that the expectation is for charters to educate disabled students in inclusive settings? Typical special education law like Chapter 14 tends to outline the parameters in which students can be educated *outside* of the regular classrooms (§ 14.102.A(1)(iii-iv) and 14.104 (b)(4)). For example, Chapter 14's assumptions (in spite of reference to providing education in the least restrictive environment) are clear when it contains language like, "special education supports and services *may be* [my emphasis] delivered in the regular classroom" (§14.131(a)(1)). Special education is essentially expected to be provided outside of the regular classroom so this clarification is necessary. The law assumes that students who qualify will be educated through special programming in a variety of typically segregated settings.

Act 22, Chapter 711 and the Philadelphia Charter School Contract Template do include a provision that actively promotes inclusion. Each includes a requirement for peer support so that special and general education teachers can work together to provide better access to the general curriculum for students with disabilities. This type of collaborative work between teachers is key for supporting diverse learners in inclusive settings.

Raise expectations for student performance. Table 1 reflects that generally language related to expectations was of moderate to weak strength in each document examined. Again, the lack of specific reference made rating this section of the matrix challenging. Generic accountability standards are outlined in several levels of policy, not explicitly stating (or not stating) different expectations for students with disabilities. Is the assumption that expectations are the same for all students? Given the current achievement gap for students with disabilities and the fact that special education is a separate subpopulation, more clarity about expectations may be helpful. Unfortunately, Chapter 711's expectations on student performance were unclear and references tended to be about intervention.

Promoting availability of accommodations. If expectations are that disabled charter students are in general education classes and achieving at high levels (working on closing the massive achievement gap), necessary accommodations should be readily available. Each level of policy addresses, with varying strength, provisions for needed accommodations for students with disabilities (see Table 1). Act 22 lays out the responsibility for accommodations in designating the charter school as the LEA. Charters are responsible to meet all of a student's needs for accommodations (including any modification or support needed to access the transportation provided by the district). Policy *does* allow for a charter to purchase services from the Intermediate Unit which

means the charter has access to a variety of specialists they may not otherwise have on staff. Largely, policy focuses on compliance with the federal laws governing the services and supports to disabled students including extended school year, transition and positive behavior supports. Though the policy outlines expectations for a school to provide all necessary accommodations for disabled students to receive a free and appropriate education, we will see in reviewing the practical criteria that there are interfering implementation barriers.

Disability as diversity. If disability is simply part of the natural diversity of humans and we believe that diversity brings richness to our communities and human interactions, the way we organize our schools and our classrooms is likely different than if we presume disability to be a deficit, something broken and to be fixed. The focus shifts from containing and managing difference or intervening and segregating to embracing and including. Evidence of this conceptualization of disability in policy would signal a departure from ableism. Unfortunately, indications that the conceptualization of disability moves away from ableism are absent in reviewing policy documents related to educating students with disabilities in charter schools. The absence of reference to disability in many instances seems like an oversight, *not* an attempt to be inclusive. References below demonstrate the lack of disability awareness and subsequent ableist assumptions in PDE's Toolkit:

- “Outreach plans will include a broad and diverse audience, including low-literacy and non-English speaking populations”
- The applicant is instructed to describe how the school will meet the needs of students with *special needs* [my emphasis], “including students whose first language is not English, students in need of emotional supports, and students who are not performing at grade level.”

If the environment in which these statements are made were one in which all school buildings were accessible and Pennsylvania were not ranked in the bottom quartile of states for inclusive education, we might be able to assume that disability is not included

in these statements because it is no longer “special” and that it is assumed to be part of the understanding of diversity. But this is plainly not the climate in which these policies were promulgated or are implemented.

Practical Criteria

Ensure legal remedy (non-compliance) and enforceability of non-discrimination.

Table 1 shows strong provisions for equal access and non-discrimination. Policy supporting availability for accommodations was also moderate to strong. Table 2 shows that moderate strength provisions are made at every level of policy for legal remedies. Indeed, there are remedies on both the student and school level. On an individual student level, due process rights are available. The burden of proof, however, is on the student/parent which can be a hardship for people seeking remedy through this process. On the school level, because they are tied to contracts, these remedies have potential to be stronger and more enforceable than for traditional district schools. There are strong, enforceable, market-based remedies for non-compliance and discrimination. Simply stated, the remedies are going out of business or not getting paid. Act 22 states,

During the term of the charter or at the end of the term of the charter, the local board of school directors may choose to revoke or not renew the charter based on... violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities. (§17-1729-A)

The SDP Contract Template contains another robust remedy that is applied to a higher standard of performance. The remedy is more robust because the charter school must repay the district for any special education students who do not have legally sufficient IEPs or Notice of Recommended Educational Placement (NOREPs) (p.21). The district also expects “a 100% Special Education compliance each year” (Contract No. 855/F11, RFP Section, p.14) or face intervention including revocation. The standard is higher because the charter operator’s *application* is considered part of the contract

therefore legally binding (Contract Template, p.4). Given the strength of some of the requirements outlined in the Requests for Proposals released by SDP, this could mean that charter operators are held to quite a high standard.

Remedy is, of course, linked to enforceability. Policy governing enforceability is weaker than the available remedies at each level reviewed. Remedies are available but the district is not required to utilize them. It is at the charter authorizer's discretion to renew, not renew or revoke a charter operator's agreement. The operative word here, in law, is that the district "may" use these remedies for non-compliance. If authorizers were bound to ("shall") revoke or refuse renewal based on evidence of patterns of non-compliance or clear violations of non-discrimination clauses, protections for disabled students would likely be better honored and more enforceable. In summary, legal remedies for non-compliant schools are available to a much greater extent than in traditional schools. Market-based remedies like loss of contract or repayment could have dire and immediate consequences for charter operators. Remedies, however, are useful only if they are enforced and enforcement hinges on identification of non-compliance.

Monitoring. Legal remedy and enforceability are really only as good as the monitoring that may identify problem areas. Act 22 provides for monitoring of charter schools via the annual report, a self-reporting mechanism, the format of which the Secretary of Education determines. Currently the report includes information on the information displayed in *Figure 2*.

Figure 2: Annual Reporting Requirements Related to Special Education (2011)

Authorizing Policy	Required Data
Act 22	<ul style="list-style-type: none"> • Annual yearly progress (AYP) • Suspensions/expulsions • School improvement plans • Analysis of school trends in school's Pennsylvania System of School Assessment (PSSA) and local assessment data • Description of finances • Special education data • English language learner (ELL) data.
Chapter 711	<ul style="list-style-type: none"> • Age and type of exceptionality for each enrolled child with a disability • Level of intervention provided to each child with a disability • Certification of staff providing services to each child with a disability • Programs and services available to children with a disability

The local school board is to utilize the report to annually assess whether each charter is meeting goals and to conduct a comprehensive review every five years (§17-1728-A(a)). The school board has access to facilities and records to ensure “the requirements for testing, civil rights and student health and safety are being met” (§17-1728-A(a)). Given the history of disproportionate enrollment and evidence of poor service provision for charters, the combination of self-reporting, five year comprehensive reviews and occasional site visits by district personnel seems inadequate to ensure that disabled students’ rights are being protected and that the charter reform effort is providing high quality innovative education to this group of students. Fifteen years after the passage of Act 22, if this were an adequate level of monitoring to ensure that disabled student’s rights were protected, we should not be seeing the trends that we are seeing.

Financial incentives. Given the market-driven theory behind charters, it is critical to examine whether financial incentives are present to promote desirable outcomes both in light of federal law and a critical ableism lens. Do the financial measures in charter policy

support or promote high quality education for students with disabilities in least restrictive environments? The short answer, as evidenced in Table 2, is that there is little in policy making it financially beneficial to educate students with severe disabilities who need additional educational support, though there are some incentives for inclusion of students with disabilities in regular education classroom *if/once they are enrolled*. Charter school policy does not drive charters to compete with one another to gain enrollment of students with disabilities, especially students with severe disabilities.

Act 22 outlines payments for students in charters for both non-special education and special education students. Charters receive a per student rate for each enrolled non-special education student. A charter school receives a rate for a special education student that is based on an average, not a rate that reflects the needs of a particular student (§17-1725-A)⁶. For students without great need for accommodation, this may be very adequate compensation to the school. For students that require significant accommodation like individual specialized instruction, an instructional aide and an accommodation to use transportation, this is likely inadequate. These expenses are all the responsibility of the charter. For some smaller schools educating a few students with high accommodation costs may not be a viable financial option. Certainly these expenses may make a charter operator think about whether to educate that child or try to counsel or steer away from applying for the school.

Charter schools do tend to be smaller schools, not having the economy of scale that larger district schools may have. They also do not have the district as LEA to pool and coordinate resources like a traditional school does. In this context, the policies governing financial arrangements contain potentially both incentives and disincentives for inclusive

⁶ The 2010-11 rate for general education students in Philadelphia was \$8608. For special education students they receive a per student rate that is the non-special education student rate plus a special education rate. In 2010-11 that rate was \$18,512 plus a federal subsidy of \$1521 for each student who qualifies under IDEA (Contract No. 862/F11, p.10)

practices. Because there is not an economy of scale, it is unlikely that a charter program would design and finance segregated special education classrooms as we see in traditional district schools under Chapter 14: Special Education Law. In a small school, it is likely more economical to simply include a student with disabilities in regular classroom activities with support. Because these policies would most frequently disincentivize a charter from creating a segregated program to serve students with particular disabilities, especially severe disabilities that tend to have higher costs to educate, current charter policies would also seem to discourage the segregated regional classrooms that traditional districts may have. Charters do, however, have another option. They can send students to approved private schools as long as they cover the expenses. From a critical ableism standpoint the assumptions of inclusion in policy coupled with the likely financial disincentive to created segregated settings is good. If issues with enrollment can be addressed and the use of approved private schools curtailed, then disabled students may have access to more inclusive settings than they have in traditional district schools. As noted above, the incentives for inclusion are not definitive because, though charter policies may encourage inclusion in small school contexts, the flat per student rate, may hinder charters from serving students with more severe disabilities in any capacity.

Review of Individual Contracts

In the course of this study, I reviewed three contracts for charter schools in Philadelphia: Hope Charter School, Inc. (Contract No. 132/F08), Universal Audenried Promise Neighborhood (Contract No. 862/F11) and Mastery Charter School Clymer Elementary (Contract No. 855/F11). Hope Charter School, Inc. was heavily redacted and was primarily just useful in examining the standard contract language. The Audenried and Clymer contracts, however, were highly instructive, confirming my analysis of the

failures in state and local charter policy. In these particular contracts, the SDP very specifically deviated from standard policy to address some of the barriers to enrolling and supporting disabled students that I note above. These deviations signal that Howe and Welner's (2005) assessment is correct. In current policy, charters are essentially incentivized to cream the lowest costing, highest performing students. Further, examining these contracts led to another overall concern for charter reform which is that, at least in these particular contracts, there are ways in which the district has simply privatized the exact operations within the exact structures it used to perform which certainly leaves less room for innovation.

Model Drift. To begin, it is important to contextualize the Audenried and Clymer contracts which are both "Turn-Around" or "Renaissance"⁷ schools. Renaissance Schools in the district have a higher average of students with disabilities than other district schools. The percentages SDP cites for average Renaissance School special education enrollment is elementary 12%, middle 20.3% and high school 22.9% (Contract No. 855/F11, RFP Section, p.57). Both Audenried and Clymer opened serving the student body that had been enrolled in the same school when operated by the district and both are *required* to serve all children in the attendance zone for the school. Further,

⁷ Turn-Around or "Renaissance Schools" are explained by the SDP as, "On January 27, 2010, the School District of Philadelphia launched the Renaissance Schools initiative. The initiative is aimed at bringing transformative changes to the District's lowest performing schools in order to bring about *dramatic improvement in student achievement*."

Now in its third year, the Renaissance Schools initiative is aimed at bringing transformative changes to the District's lowest performing schools by working with school communities to recruit and select individuals and organizations that have proven track records of operating and supporting high-achieving schools.

There are three major components of the Renaissance Schools initiative:

- Identifying chronically low-performing District schools ([Renaissance Alert Schools](#)) that are not likely to achieve dramatic improvements without transformative change
- Identifying individuals and organizations that are capable and prepared to turnaround around failing schools in Philadelphia
- Empowering school communities to play an active role in the turnaround and ongoing support of their schools" Retrieved 7/13/2012

<http://webgui.phila.k12.pa.us/offices/r/renaissance-schools/>

the contracts for Turn-Around schools specify that district maintains the right to “place students in Special Education Placement Programs in Renaissance Schools” (Contract No. 855/F11, RFP Section, p.17). Beyond dictating *which* students the charter serves, in the case of Mastery’s Clymer contract, part of *how* the charter is to educate certain disabled students was established in contract. They were required to serve students in needs of “Life Skills Support or Multi-Disabilities Support” by providing two Life Skills Support classes and two Multi-Disabilities classes for a one year term. The district is, in essence, contracting with the charter operators to manage the existing arrangements for special education students. This is quite a departure from the model that charters are “schools without rules” so that they can innovate and compete to better public education as a whole. These contracts demonstrate that the charter model and charter policies do not support education of students with disabilities. To remedy this, the SDP, drifting from the intended model of charters, simply pays a private contractor to do what it was doing.

Addressing Disincentives. In my analysis, I have noted that major barriers to charters enrolling and educating students with severe disabilities are financial disincentives (costly specialized services and accommodations for in transportation) and the pressure for charters for meet AYP. Recognizing these barriers, the district made the following provisions (which are not required by federal or state charter law) in the Audenried and Clymer contracts:

- Existing extended year programs (ESY) will remain a district program staffed by district personnel at district expense (Contract No. 862/F11, RFP section, p.17)
- The district will pay for specialized transport for students in Multi-Disabilities and Life Skills Support classrooms (Contract No. 855/F11, RFP section, p.17)
- Because the district maintains the right to place special education students in the school, “the scores on all standardized tests for students recommended by the School District who do not reside in the Attendance Zone shall *not be attributed to the Charter School for accountability purposes* [my emphasis].” (Contract No. 855/F11, p.11)

Beyond any requirement in state charter law, the SDP arranged that it would absorb some of the costs for supporting special education students in these schools including the entire cost for extended school year programming and specialized transportation. In addition, the district will be paying a higher than average per pupil cost for some students in Mastery's multi-disabilities classrooms. Mastery charter announced they were closing the multi-disabilities classrooms, as soon as their contract allowed, arguing that the cost of maintaining these programs was unsustainable under the current per pupil rate. Mastery argued that the cost per student was more than \$50,000 annually on average (2.5 times the payment they receive from the district per pupil). Under public pressure, the district agreed to support Mastery to continue the classroom. (Herold, 2012)

The review of these individual contracts exposes a couple of things. First, the district recognizes that the state and local charter policy does not adequately account for the education of disabled students. The district undoubtedly recognized the potential issues both with the financial viability of a charter serving students with severe disabilities as well as concerns charters have in the current culture of accountability with enrollment of students who historically have the largest achievement gap. Second, these individual contracts raise grave questions about the role of charters as innovators in relation to students with disabilities. The district literally specified in the contract that the charter maintain the same segregated special education classrooms and that the district's intention was to continue to use the two schools as regional schools for children with severe disabilities. If charters are required to replicate the traditional district arrangements and classrooms for certain groups of disabled children, where is the room for innovation? On the one hand, these contracts ensure that charters are serving students with severe disabilities and that the specialized services are being provided. On

the other hand, it means that the segregated settings and social inequalities of the current special education system are being perpetuated. Private contractors now take over the segregated practices that arose from eugenic mindsets at the turn of the last century.

Summary

In this study, I utilize evaluative and practical criteria to analyze charter school policy documents from state law to key local implementation documents like the School District of Philadelphia contract. The criteria I selected are related to values represented in either federal policy or critical ableism. The evaluative criteria selected were: equal access, inclusion, non-discrimination, expectations for student performance, availability of accommodations and comprehensive definition of diversity. The practical criteria used were availability of legal remedy, enforceability of non-discrimination/access, monitoring of compliance, and financial incentivization.

A quick glance at Table 1 shows that there is generally support in policy for the typical socially desirable outcomes. Table 1 does, however, reveal a fundamental philosophical problem from a critical ableism standpoint. Nowhere in review of policy documents is there evidence that disability is considered part of a larger spectrum of human difference. The understanding of disability through the policy documents is a very traditional medical model that maintains clear distinctions between special education and regular education. With this underlying assumption, practices that draw hard lines between special and regular education are likely to continue, preserving existing social inequalities and leaving less room for innovation for all learners.

Charter policy at most levels is quite definitive on issues of access and non-discrimination, as demonstrated in Table 1. It is when we move to the matrix of practical criteria (Table 2) that we see significant gaps in policy related to concrete

implementation steps. To begin with, legal remedy and enforceability are only effective when monitoring identifies violations and problem areas. Given the documented history of issues with charters educating disabled students, the combination of annual self-reporting, five year comprehensive reviews and site visits by district personnel seems wholly inadequate to ensure that disabled students' rights are being protected and that the charter reform effort is providing high quality innovative education to this group of students. Inadequate monitoring is then compounded by the financial disincentives for charters to serve high needs students. With a fixed per student rate, charters are certainly not encouraged to educate students who may have significant need for specially designed instruction, transition services, extended school year and related services because those costs may far exceed the rate of compensation the school receives from the district. Current accountability practices may further cause charters to be reluctant to serve students with disabilities. Not only may these students be more costly to educate but they are probably entering with larger achievement gaps than any other group of students. For a school struggling to meet AYP, students likely to bring down overall scores are not desirable students.

From a critical ableism standpoint there are both encouraging and discouraging signs that arise from the review of practical criteria in charter policy. The assumption of inclusion in policy coupled with financial disincentives to create segregated settings is encouraging. If issues with enrollment can be addressed, then disabled students may have access to more inclusive settings than they have in traditional district schools. From my review of the individual charter contracts, it appears that the School District of Philadelphia did try to directly address some of the barriers to charters serving disabled students. The solution, however, is of concern. In these two schools, the historic special education programming is simply continuing. From a critical ableism perspective, this is

discouraging because historic programming relies on segregated services and maintains a massive achievement gap. From a school reform perspective, it is also disappointing. The charter school reform effort is aimed at innovation and driving competition, not simply repeating structures known to fail our students. Bardach says policy analysis should “identify the parameters whose values, when they move out of a certain range, make the systems most vulnerable to breakdown” (p.15). The education of students with severe disabilities in the current charter system is plainly one such parameter.

Chapter 5

Discussion

Over the past decade, the increase in charter schools has been considerable. In Philadelphia, 26% of public school students attended charter schools in the 2010-11 school year. By 2017, as many as 40% of students may attend charter schools in Philadelphia. Charters have been sold as “schools without rules” that, because of their greater flexibility and competitiveness, will bring innovation and higher achievement to our public education system. This market-based choice model does not appear to be delivering on this promise. The Center for Research on Education Outcomes 2011 Report on “Charter School Performance in Pennsylvania” found very mixed results for charter performance generally. They noted that:

Elementary school students enrolled in charter schools outperformed their peers in traditional public schools in both math and reading, while those enrolled in middle and multilevel charter schools performed worse in both subjects than their peers at traditional public schools. Charter schools of all ages in Pennsylvania on average perform worse than traditional public schools, and charter school students grow at lower rates compared to their traditional public school peers in their first 3 years in charter schools, although the gap shrinks considerably in math and disappears entirely in reading by the third year of attendance. (p. 20)

For students with disabilities, the issues run deeper than math and reading scores to questions of basic access. In spite of myriad federal and state protections wherein students are entitled to a free and appropriate public education, charter schools struggle to educate the full range of students that are served by their sending district. In addition to serving fewer students with disabilities, when they do enroll special education students, charters educate children with milder disabilities. Charter schools, in contrast to what the model predicted, are not competing for students with disabilities, particularly students with severe disabilities.

The aim of this study was to examine applicable state law, interpretation of federal and state law into local policy, and the relative strengths and weaknesses of these policies regarding students with severe disabilities accessing free and appropriate public education in charter schools in Philadelphia. The primary research questions were: *For the School District of Philadelphia, what successes and failures in state law and local charter policy have manifested for students with severe disabilities? In particular, in what regards do policies support or fail to support equal access, inclusion and provision of accommodations?*

Problems with the Underlying Model

For students with disabilities, particularly students with severe disabilities, there are flaws in the very departure points for the underlying model of charter school reform as well as the policies that were promulgated to implement the model in Pennsylvania. From a critical ableism standpoint, this reform effort, as currently conceived, provides little to no advancement in our approach to educating students with disabilities. Knowing the history of special education, the history of discrimination against disabled students, the existing trends and research and the staggering achievement gap our traditional education system maintains for disabled students, a reform effort should aggressively and directly address this 14% of the student population. In this case, because it is a market-based reform model, incentivizing desirable behavior of suppliers seems a minimum requirement.

The charter model is premised on the market-based notion of choice propelling competition and thus innovation. For students with disabilities, this premise is false in two significant regards. First, the market that has been designed in such a way that students with severe disabilities are not desirable target students for educational providers, hence the producers/suppliers are not competing by providing higher quality

education for these students. Second, the assumptions about parental choice in the charter model are reductionist and based on idealized notions of choice. Choice is not made by totally autonomous actors using reason to make choices based solely on standardized test scores as markers of quality. Choice is bound by context (Ben-Porath, 2009). Parents and students make choices in contexts, in contexts that are often very limited or limiting. In the list of factors that may play into a choice of schools, quality of the education (as assumed in rational choice theory that drives the charter model) may not be top of the list. If a student has no way to get to a school or a parent has to quit a job to get a student to that school, that school may not be top of the list of choices. The school that scores well on all the performance measures may be well outside of the neighborhood, in a neighborhood the family is unfamiliar with and doesn't feel comfortable. For a student with a disability, frankly, that school may be a school that they were steered away from because they said "weren't equipped" to serve the student. For students with disabilities, the promise of innovation through charter school reform, as currently conceived, is false. No one is really competing for their business and choice is not always based on perceived quality alone.

Problems in State and Local Policy

The School District of Philadelphia's contracts that were reviewed for this study expose the issues at the heart of the problem for disabled students and charters. The financial and accountability disincentives for charters to serve students with disabilities are evidenced by the district's modifications to the standard provisions in Pennsylvania law. In two of the three contracts reviewed, the district provides payment beyond the standard flat rate for special education students to cover accommodations for students with severe disabilities. In one of the contracts the district agrees to allow the charter not to count some of the special education students toward accountability measures. On the

one hand, the district recognized that for charters to serve high cost students who may not perform well on standard measures, both issues need to be addressed and they took steps to remedy these disincentives. On the other hand, the district simply contracted for the charters to operate special education programming in the same fashion and locations that had been done previously by a traditional district school. The contract even specifies that the district is allowed to continue to use the schools as regional special education (segregated) classrooms. Essentially, the type of educational arrangements that have resulted in a 30% achievement gap between students with and without disabilities are being continued, just by private operators.

Equal access and accommodations. Policy measures outlining requirements for equal access, non-discrimination and availability of accommodations are generally strong in state and local policy. Beyond financial and accountability disincentives noted above, there are three main issues that arose related to these areas; (1) minimal requirements for charter operators to *plan* for serving students with disabilities; and (2) weak enforceability coupled with (3) only moderately strong monitoring. We know and have known for a decade that interested students with disabilities are steered away or counseled out of charter schools and yet policy on the state level does not require specific plans for charter operators to support the full range of students who may seek enrollment in their schools. In a national study, Rhim and McLaughlin (2001) examined how state level policies influence charters' ability to provide special education services for students with disabilities. They recommended states include a requirement for charter authorizers to "articulate special education plans in the initial charter application" (p. 61). A charter operator *planning* specifically for how it will meet the needs of all students that enroll should be a minimum requirement *prior* to the granting of a charter. The PDE Toolkit is a guidance document that could encourage authorizers to seek that

plan in charter applications. The Toolkit could additionally even assist authorizers in determining criteria by which to judge a plan submitted by a charter operator to serve students with disabilities. Across every evaluative and practical criteria weighed in the course of this study, however, Pennsylvania Department of Education's own guidance for charter authorizers is quite weak in relation to special education. So, without strong guidance from PDE, these authorizers and “schools with no rules” enter into the highly regulated realm of special education responsible for provision of all specialized services while often lacking infrastructure and expertise to deliver those services. PDE's Authorizer Toolkit is not a regulatory document requiring substantial public process so it could be easily updated to bolster guidance.

The trend for disproportionate enrollment for student with disabilities in charters is not new. The enrollment numbers have been improving but, from data review, they are clearly still spotty. The legal remedies available to districts to ensure compliance with special education laws are strong, frankly stronger than with traditional schools. The district has several powerful tools at its disposal – plan of corrections, repayment, non-renewal and revocation of contract. Requirements for enforcement of compliance could, however, be strengthened. In order for the district to use the tools at its disposal more aggressively better monitoring is also required.

Inclusion. Arguably, on a practical level state and local charter school policy do promote inclusion for the students who are enrolled in charters. Charter schools have many of the right elements for inclusion – more individualized support and smaller class sizes. Charters, because of a lack of economy of scale, often do not have the resources to set up separate segregated settings so inclusion is at least a default. This inclusion, of course, hinges on a few things. First, the student with the disability has to be enrolled, meaning not steered away or counseled out because the school claims it does not have

the resources to support the student. Second, the charter has to opt to serve the student in that school instead of contracting with an approved private school to educate that student. Third, the charter has to provide the array of services to ensure that student is actually included. The fact that charter schools, as their own LEAs, do not have the infrastructure for delivering special education services that the district has is potentially a benefit in that they may not repeat the same segregative trends in special education that mark the past. There may be some room for innovation here.

Outside the parameters. In its 2012 report on charters and disabled students, the Government Accountability Office asked why enrollment trends are disproportionate. This analysis of state and local policy confirms claims in previous research on these access issues. There is conflict in a model that is based deregulation and flexibility but requires adherence to a body of strict regulations governing protections for students with disabilities. When applied to students with disabilities, there are inherent flaws in the market-based model that is supposed to drive innovation and competition in these schools. Policies do not aggressively promote charters vying for the opportunity to educate disabled students. Proactively, there are practical implementation issues in that our policies do not require charter operators to conduct significant planning to serve students with disabilities. Reactively, strong remedies are in place but the requirements for districts to enforce compliance are weak and the monitoring to identify the issues is only moderate.

The assessment of charter policy against a production model, as encouraged by Bardach, involves looking for “the parameters whose values, when they move out of a certain range, make the systems most vulnerable to breakdown, fraud and abuse, egregious diseconomies and the distortion of intended purpose” (p. 15). Students with severe disabilities certainly appear to be out of range for the intended purpose of charter

policy. The system has broken down when, as Miron et al. (2010) noted, “data paint a pattern of schools gravitating to the extremes—regarding race/ethnicity, poverty status, special needs status or English language learner (ELL) status – rather than clustering around district averages” (p. 25). Miron et al., found that most charters had low percentages of students with disabilities and some charters who specialize in serving students with disabilities had very high percentages. A distortion of charter purpose is occurring where the attempts to resolve issues in the current policy mean that SDP is literally contracting to a private company to provide the exact segregated special education services to the same students, in the same “regional” classrooms. Students with severe disabilities are outside of the parameters of charter policy as conceived.

Potential Remedies within the Model

Based on my analysis, I would argue there are some potential fixes that will better serve students with disabilities. The first and most essential fix is to develop and promote a comprehensive definition of diversity. Promoting this definition would require breaking down the barriers between regular education and special education. It could be fundamentally transforming of how we organize schools and educate teachers. This fix would mean more than peer support for general education and special education teachers. It would mean a deep commitment to teaching all teachers to support diverse learners – breaking down what Drame and Frattura (2011) noted as “the dichotomy in service delivery” (p. 72). A century after the eugenics movement solidified this dichotomy, engagement in reform efforts that actually deconstruct these ableist frameworks is long overdue. Embracing disability as part of diversity also requires engaged in honest discussion about our violent and oppressive history and infusing disability history and culture throughout curriculum at all levels of our education system.

Next, remedying disincentives in a way that does not simply re-create what we already have is imperative. To remedy the disincentives in relation to annual yearly progress and performance, a growth model should be adopted so that charters that take on students who struggle tremendously with performance measures are not penalized when they are making decent progress but not meeting proficiency levels. In relation to fiscal issues, Pennsylvania needs different funding formulas which incentivize the desired behavior. If we want charters to serve high cost students and students who may not have performed well in the past, this must be financially beneficial to charter operators. It is, after all, the marketplace. A special education funding bill has passed each chamber of the Pennsylvania General Assembly numerous times in recent years but has not made it through the entire legislative process successfully yet. The most recent incarnation of the bill may be helpful in remedying some of the issues serving high needs/high cost students. The bill (SB 1115) includes three cost categories for students with disabilities instead of one. More sophisticated funding formulas like this may help mitigate the steering away of high cost students. Additionally, enforcement of the available legal remedies would also have to be bolstered. Stronger mechanisms for monitoring along with stronger requirements for authorizers to address problematic trends are necessary to ensure that students with disabilities have equal access to the opportunities provided by charter schools.

Finally, there is also the more radical suggestion from Heubert (2002) that we address core conflict of this model more directly. The model of charters relies on deregulation for results but operators are still subject to the extensive regulations in place protecting disabled students. Heubert suggests that one solution is to allow modifications to federal and state rules governing students with disabilities for some schools (traditional and charter) to experiment with new ways to identify and address the needs of students with

disabilities. Close monitoring would need to occur but emphasis could switch from compliance to measuring student achievement, as it has with non-disabled students. Coupled with promoting a comprehensive definition of diversity and some heavy-weight watchdogs, this solution has some potential to breakdown the general and special education dichotomy that currently exists in our education system. This solution has the potential for innovation.

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Appendix A

Summary of Disability-Related Provisions in Federal, State and Local Policy Relevant to Charter Schools

Individuals with Disabilities Education Act (IDEA)

IDEA's key provisions are non-discrimination in admissions and access to all academic and non-academic programs or activities in which non-disabled children participate. Additionally, children with disabilities are entitled to a "free and appropriate public education" (FAPE), which means that special education and necessary related services are provided to the student by the school. Students with disabilities, further, are entitled to an "individualized education program" (IEP), which details all accommodations, specialized instruction, and related services the child may need to achieve FAPE. Finally, children are entitled to receive their public education in the "least restrictive environment" (LRE). IDEA also legislates that students must be educated by highly qualified teachers.

Section 504 and Title II. Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act are both fundamentally broad anti-discrimination laws. Section 504 applies to any recipient of federal financial assistance. Title II applies to any "services, programs and activities provided or made available by public entities" (28 CFR § 35.102(a)). Both of these laws apply to public school students including those served in charter schools. Unlike IDEA, both Section 504 and Title II of the ADA apply to a broader range of students with disabilities. IDEA only applies to students who require "specially designed instruction." Anti-discrimination law applies to *all* students with a qualifying disability. It is this anti-discrimination legislation that protect a student from being asked to forfeit services on an IEP in order to gain admission to a charter school (Heubert, p. 325). Under Section 504 students are also entitled to FAPE. A public

school, including charters, therefore, may also not make a site selection that denies access to students with disabilities. In summary, charters are not exempted from any of the sweeping federal anti-discrimination laws and are obligated to provide free and appropriate public education including individualized education plans to qualifying students with disabilities.

Act 22 of 1997

Act 22, the “Charter School Law” (P.S. § 24 17-1701), is described by the Pennsylvania Department of Education (PDE) as providing opportunity to:

- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system; and
- Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems. (PDE Website)

Act 22 certainly reinforces the theory of action guiding the charter school movement. Key provisions relating to students with disabilities in Act 22 are the specification that accountability measures apply equally to charter schools, which means that under the Elementary and Secondary Education Act (ESEA), Annual Yearly Progress (AYP) provisions apply to charters just like district schools. Act 22, further, provides that charters maintain highly qualified teachers and cannot refuse to serve students. Act 22 specifies that 75% of a charter school’s professional staff have appropriate state certification. For special education professional staff, 100% must hold the appropriate certification. It also outlines the role of districts as authorizers of charters. In interpreting the statute for local implementation, PDE provides guidance in a series of documents called the “Charter Authorizer Toolkit.” Essentially the role of , as written in Act 22, is to

ensure compliance with charter agreements, monitor testing, civil rights and student health.

Chapter 711

In Pennsylvania, Chapter 711 “Charter and Cyber Charter School Services and Programs for Children with Disabilities” specifies how charter schools in Pennsylvania will meet their federal obligations to students with disabilities. These federal obligations, as noted above, include a free and appropriate public education (FAPE) in the least restrictive environment (LRE), highly qualified teachers (34 CFR § 300.17-19) and non-discrimination under Section 504. Chapter 711 also very specifically outlines charter requirements to abide by federal rules governing transition services, extended school year services, access to instructional materials, positive behavior support and procedural safeguards. Importantly, Pennsylvania law specifies that each charter is its own lead education agency (LEA).

Each charter school is also subject to these additional key requirements in Chapter 711:

- Arranging for peer support for teachers to assist with general education curriculum
- Annual reporting that includes numbers of students served in special education, services provided and staff training in special education
- Ensuring non-discrimination in enrollment
- Applying policies and procedures to ensure children who are in need are located, identified and evaluated
- Participating in public awareness about special education including in handbook and website
- Addressing disproportionality of identification of students with disabilities

Pennsylvania Department of Education (PDE) Charter Authorizer “Toolkit.”

Since the relationships between districts and charters are quite distinct from the relationship between districts and traditional schools, the Pennsylvania Department of

Education (PDE) provides additional guidance to districts on their new role as charter “authorizers.” PDE developed the Charter Authorizer “Toolkit” for Act 22 implementation. The PDE “Toolkit” is not necessarily legally binding but it does provide PDE’s interpretation of charter school law and how authorizers can comply with the law. The Toolkit is the primary resource referenced by PDE to assist districts to understand and fulfill their role in authorizing. The Toolkit is comprised of numerous sections:

1. The Role of the Charter School Authorizer in PA Charter School Implementation
2. Timeline for initial Charter Application Review Process
3. Charter School Statement of Assurances
4. Sample Application for Charter Schools
5. Budget Form for Charter School Applications
6. Charter School Application Review Tool
7. Charter School Application – Summary of Reviews
8. Charter School Public Hearing Guidance
9. Charter School Materials Checklist
10. Additional Guides: Rules and Timelines for Annual Reports, Financial Analysis, Laws, Non-renewal and Revocation, Handling Liabilities and Assets

As evidenced by the breadth of content covered in the toolkit, it essentially provides guidance for all aspects of a district’s role as authorizer. As the document intended to guide districts, the Toolkit is a crucial data source for understanding PDE’s expectations regarding charters.

School District of Philadelphia (SDP) Charter School Policy

The School District of Philadelphia promulgated local policy regarding charter schools. The stated purpose of the policy is,

the development and expansion of charter schools as part of a system of education that includes successful models for reform. The SDP will work in collaboration with charter schools to relieve overcrowding at SDP schools, to operate in underserved neighborhoods, and to provide specific academic programs for underserved student populations. (p.1)

The policy details local governance, including the creation of the Charter School Office (CSO), which has the primary responsibilities of responding to complaints by the public, reviewing requests of charters for amendments, conducting site visits, providing the annual assessments of each charter, scheduling audits and preparing an annual compliance summary. Procedures regarding both the charter application and provisions for the scoring of applications are also included in the district's policy. Notably, the policy is stronger in relation to special education than PDE's Toolkit is.

School District of Philadelphia Charter School Contract Template

The document bringing federal policy and the market-based trend of charters closest to actual implementation is *the contract*. Philadelphia has a basic charter contract template for its charters. The contract template contains the legal representations and warranties that include things like copies of by-laws, proof of 501 (c)(3) status and certificate of insurance. Importantly, for this project, the contract also contains sections on compliance with applicable laws. IDEA, No Child Left Behind (NCLB) and state laws are referenced. Clear non-discrimination clauses are also incorporated. The contract reinforces the charter's status as the LEA and the subsequent responsibilities. A section of the contract is devoted to curriculum and includes an entire section on special education curriculum. This section details expectations for enrollment and communication with the district about identification of students. The contract also includes specific requirements for all staff qualifications, including the certifications for special education staff. Accountability measures in the contract detail, among other things, reporting on special education programming and AYP. The contract spells out payment to the charter and the circumstances and process for termination of the contract. Markedly, the contract specifies that the charter application is considered part of the contract. This means that whatever the charter operator proposed in their

application in relation to curriculum and instruction, agreements on personnel, etc. is legally binding unless amended.

School District of Philadelphia Charter School Contract Renewal Application

Charter operators must re-apply for their charter every five years. SDP created an application specific to the renewal process. The application is aimed at obtaining clear evidence of charter performance. The document begins with the statutory criteria for renewal with a specific reference to non-renewal for violations of federal law related to students with disabilities and proceeds to request information on systems in place to serve students with disabilities.