



## Charter Schools Cannot Cap Enrollment of Students with Disabilities

Last week, the Arizona State Board for Charter Schools (ASBCS) issued [guidance](#), clarifying ASBCS's position on key questions pertaining to enrollment of students with disabilities:

1. *Can charter schools put a cap on the number of students eligible for special education that it will accept for enrollment?*
2. *Can a public school district or charter school designate itself as an inclusion-only school and turn special education students away if they need a more restrictive placement?*
3. *Are charter schools required to offer everything a public school district must provide to children with disabilities?*

ASBCS answers the first two questions, "No," and the third, "Yes." ASBCS's position mirrors the position long taken by the Arizona Department of Education and the federal Office of Civil Rights.

**1. Special Education is not a "program" that can be capped.** Under state law, "a charter school shall not limit admission based on ... disabling condition," "except as provided in subsections A through D of this section." A.R.S. § 15-184(F). The referenced "exceptions" include a provision requiring charter schools to enroll all eligible students who submit a timely application, "unless the number of applications exceed the capacity of a program, class, grade level or building." The ASBCS guidance rejects the assertion that special education is a "program." This position is in keeping with the IDEA definition of special education as "specially designed instruction." 34 C.F.R. § 300.39(a); see also 15 A.R.S. § 15-763(a). Accordingly, the exception does not apply and fails to support efforts to place caps on enrollment of students with disabilities.

**2. A charter school may not define its school philosophy to exclude students with disabilities who require a more restrictive placement.** Regarding IDEA-eligible students, placement decisions are to be made by the student's IEP team and must be "based on the needs of the student and not the philosophy or convenience of the school."

**3. Charter schools must provide the same "continuum of services" that would be available to students with disabilities enrolled in any**

## Education Law

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**traditional public school.** “[C]hildren who attend public charter schools and their parents retain all rights afforded to them under the IDEA, and the charter school is responsible for ensuring that it carries out all of the requirements of ... the IDEA.” Accordingly, ASBCS states that each charter school is obligated to make available “a full continuum of alternative placement options” to meet the needs of IDEA-eligible students who choose to enroll in the school.



**4. ASBCS’s Guidance is in line with the position of the Arizona Department of Education and the Office for Civil Rights.** The ASBCS guidance adopts (verbatim) the position previously advanced by the Arizona Department of Education’s Office of Special Education Dispute Resolution, which published precisely the same guidance in June 2016 (available [here](#), under “Charter Schools”). This position is also in line with comprehensive guidance to charter schools, published in December 2016 by the U.S. Department of Education, Office for Civil Rights and Office of Special Education and Rehabilitative Services (available, respectively, [here](#) and [here](#)).

**Bottom Line:** “State and federal law prohibit Arizona charter schools from denying or limiting admission on the basis of disability.” Charter schools risk claims of improper discrimination if they turn away students with disabilities, based on: (a) disability-related enrollment caps, even if based on budgetary concerns; (b) a school “philosophy” that has the effect of excluding students with disabilities who require more restrictive placements; or (c) a school’s representation that it cannot accommodate a student’s needs or suggestion that the student should enroll in another school. These actions also put a school at risk for non-compliance findings from ASBCS, OCR investigations, and related legal action.

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