



The Center for  
Learner Equity

## State Actions to Improve Education Access and Outcomes For Students with Disabilities in Charter Schools

**CHARTER SCHOOL EQUITY, GROWTH, QUALITY, AND  
SUSTAINABILITY STUDY**

**JULY 2024**

## Executive Summary

States should be a central driver of efforts to improve educational opportunities for historically marginalized students. To date, however, state actions to address the needs of students with disabilities have lagged far behind their efforts to support improved academic outcomes more generally. This is despite existing achievement gaps between students with disabilities and their peers and the fact that disability compounds the disadvantages experienced by Black and Latinx, English language learners, and low-income students.

The lack of initiative by states to improve educational opportunities for students with disabilities is especially important in the context of charter schools. Charter schooling is a function of state policy, designed to provide schools with greater freedom in exchange for more accountability for results. While evidence suggests charter schools can benefit historically marginalized students, the sector's record of success supporting students with disabilities is considerably weaker.<sup>1</sup> Indeed, existing research shows that a complex mix of capacity gaps and discriminatory practices have left students with disabilities with fewer opportunities in charter schools compared to their non-disabled peers.<sup>2</sup>

This report addresses this challenge by identifying actions that state actors can take to strengthen charter schools' commitment to and ability to succeed with students with disabilities. To identify actions, we used a mixed methods research design that combined data drawn from legal research, statutory analysis, a media scan, and semi-structured in-depth interviews. Across these data, we sought to understand the role of states in shaping students with disabilities' experiences in charter schools and identify specific actions states can take to address these students' needs.

Overall, we found limited examples of actions that states had taken to address the needs of students with disabilities in charter schools. When states did act, they were more likely to do so through technical assistance and guidance activities rather than efforts to address resource gaps or increase accountability for results. Their efforts were also primarily focused on ensuring charter schools comply with the law rather than improving educational outcomes for students with disabilities in charter schools.

Given the relative anemic nature of most states' efforts and the dearth of evidence or expert consensus to guide policy development, this report provides examples of actions state-level actors are leading but does not provide definitive answers to the question of how states can address the needs of students with disabilities in charter schools. However, it suggests the urgent need for further study.

The actions profiled in this report suggest possibilities that could provide a springboard for other states to take more seriously how charter schools educate students with disabilities. Despite the limited number of states that have sought to improve how students with disabilities are educated in charter schools and the limited evidence available on the impacts of their initiatives, we believe the practices detailed in this report suggest that states have critical roles to play in strengthening charter schools' capacity to meet the needs of students with disabilities. Based on these practices, we developed the following recommendations.

## State Legislatures

- **Revise charter school or special education laws to prioritize enrollment access.** State legislatures can act to make equitable enrollment a critical indicator that authorizers must consider in their oversight of charter schools.
- **Pass legislation allowing for equitable enrollment preferences for students with disabilities.** Legislatures can add language to the state charter laws, allowing charter schools to utilize weighted lotteries or other enrollment preferences for students with disabilities.
- **Revise state education funding formulas to ensure charter school access to funds aligns with their responsibilities.** State legislatures should consider revisions to their funding formulas that adequately weight resources based on student needs and incentivize schools to educate students with disabilities equitably.
- **Engage schools, families, and disability advocates.** To inform their legislative efforts, policymakers should develop strategies to engage the stakeholders who are most impacted by new state initiatives on students with disabilities in charter schools, especially those who represent students who are Black, Latinx, and living in poverty.
- **Amend state law to eliminate unnecessary obstacles to charter schools taking advantage of Medicaid reimbursement.** Misaligned personnel standards create obstacles for charter schools to resource the services they provide to students with disabilities. Legislatures can address this challenge by aligning personnel standards in schools with those for Medicaid reimbursements.

## State Education Agencies and State Boards of Education

- **Strengthen accountability measures.** Develop and implement additional accountability mechanisms for authorizers and schools, such as detailed performance frameworks and comprehensive school report cards that explicitly include the learning experiences of students with disabilities.
- **Allocate sufficient funding and staffing to ensure the development and delivery of quality technical assistance and guidance to authorizers and charter schools.** States that receive federal charter school program funds should utilize a portion of those funds for these purposes, while states that do not should ensure that they allocate sufficient state dollars to quality technical assistance and guidance activities related to students with disabilities in charter schools.
- **Develop and disseminate guidelines that inform charter schools and charter school authorizers of their responsibilities to students with disabilities.** State education agencies can leverage their position as the primary entity responsible for administering special education programs to set ambitious expectations for how schools educate students with disabilities.
- **Provide guidance related to projected costs of providing appropriate special education services to students with disabilities.** Clear guidance regarding how federal, state, and, if relevant, local dollars for special education flow to autonomous charter schools is essential.

- **Develop state policy allowing for equitable enrollment preferences for students with disabilities.** In states where the law permits enrollment preferences, state policymakers tasked with implementing the law can develop policies to ensure that the enrollment preference does not negatively impact students with disabilities.
- **Strengthen the special educator workforce.** State education agencies should invest in understanding the underlying causes of special educator shortages and advance solutions to those challenges.
- **Build infrastructure for continuous improvement.** State education agencies should leverage existing data to understand and define emerging challenges and use this information to take action (e.g., issue guidance or allocate resources for TA).
- **Initiate and encourage collaboration.** State education agencies should convene and facilitate collective learning opportunities across divisions on issues related to educating students with disabilities to create a cohesive approach to supporting students with disabilities in charter schools.

## Funders

- **Fund policy advocacy.** As key enablers of the ecosystem surrounding charter schools, funders can influence policy changes that can strengthen charter schools' capacity to educate students with disabilities. This includes investing in advocacy groups and sector-wide initiatives that work towards advancing policy changes at the state and local levels to improve students with disabilities' access to and success in charter schools.
- **Support state policy research.** Allocate funds to research centers focusing on students with disabilities, particularly in states with underdeveloped policy environments. This research should identify gaps, provide evidence-based recommendations, and guide the development of effective policies.

## Charter Schools/Charter Management Organizations

- **Engage and activate state charter advocacy networks.** Pursue changes in state policy that will advance factors that enable charter schools to effectively educate students with disabilities (e.g., improved performance frameworks and equitable funding).

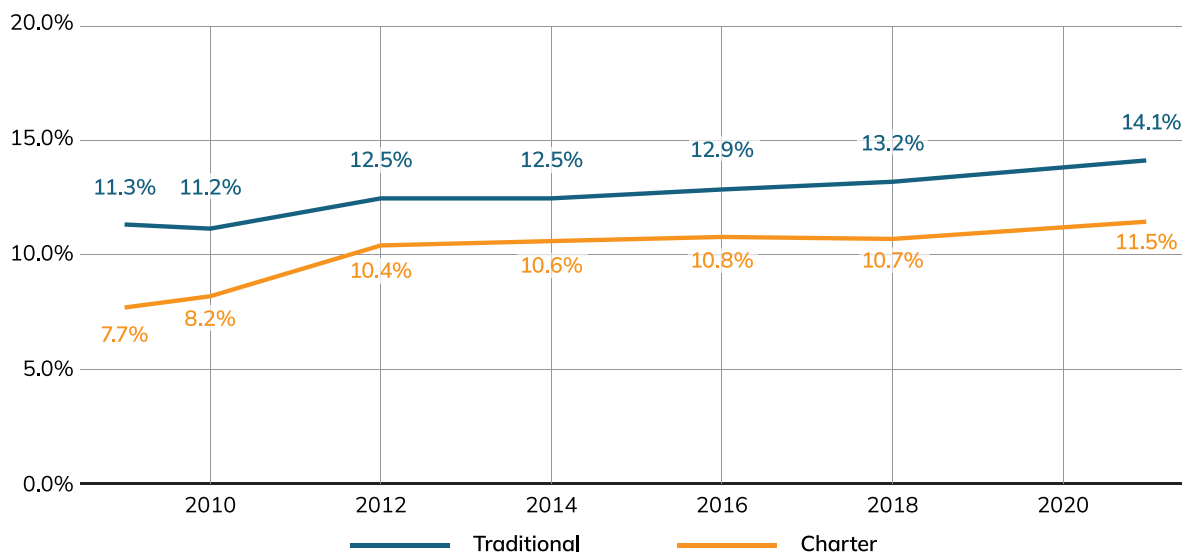


## CHARTER SCHOOL EQUITY, GROWTH, QUALITY, AND SUSTAINABILITY STUDY

CLE conducted the *Charter School Equity, Growth, Quality, and Sustainability Study* to 1) identify how the experiences of students with disabilities shape the charter sector’s sustainability and 2) examine key stakeholders’ role in shaping conditions that influence how charter schools enroll and educate students with disabilities. CLE sought to describe actions by key stakeholders identified for contributing to the success of students with disabilities, particularly those from Black, Indigenous, and other people of color (BIPOC) communities, as well as for the charter sector’s sustainability. A 12-member technical working group of subject matter experts advised on the overall study methodology and served as reviewers for the five stakeholder briefs. The Bill & Melinda Gates Foundation provided funding for the research. Views expressed here do not necessarily reflect positions or policies of the foundation.

CLE took a multi-phased approach to the study. During the initial phase, we conducted a media scan of 174 state-specific journalistic reports published since 2009 at the nexus of charter schools, special education, and students with disabilities, a quantitative analysis of charter school growth over the past 15 years, and an initial round of exploratory interviews with 11 key experts knowledgeable about stakeholder policies, practices and changes influencing the education of students with disabilities in charter schools. Thereafter, CLE conducted additional research to investigate the specific actions taken by key stakeholders (i.e., states, authorizers, nonprofits, and schools/networks) to improve access and outcomes of students with disabilities and an information-rich case study of the state of Washington. We also commissioned a scoping literature review to elevate high-leverage practices for students with disabilities that have positively impacted all students, emphasizing BIPOC students. Finally, CLE hosted a national convening of key stakeholders who contributed to the research in Denver in March of 2024 to review findings and contemplate the next steps to catalyze meaningful change for students with disabilities.

Figure 1. Percentage of Enrolled Students Receiving Services Under IDEA by School Sector (2008-2021)



**Sources**

- Data from 2008-2010 is from the Government Accountability Office. (June, 2012). [Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities.](#)
- Data from 2012-2021 is from U.S. Department of Education, Office for Civil Rights, 2012-21 Civil Rights Data Collection

## Introduction

Students with disabilities, especially Black, Latinx, and those living in poverty, have historically had the least access to high-quality public education, including the specialized accommodations and modifications critical to fully access robust curricula and instruction.<sup>3</sup> Charter schools have great potential to provide quality education to students from diverse backgrounds and with diverse learning needs. However, this potential has not been fully realized for students with disabilities.<sup>4</sup>

## Background: The Critical Role of States in Creating Enabling Conditions for the Sector

Charter schools operate in public education ecosystems governed by a complex mix of federal, state, and local actors. While the federal mandates in the Individuals with Disabilities Education Act (IDEA)<sup>5</sup>, the Americans with Disabilities Act (ADA)<sup>6</sup>, and Section 504 of the Rehabilitation Act of 1973<sup>7</sup> apply across all states and localities, implementation of those laws and their interactions with different state and local policies vary.

To date, states' efforts to improve access and outcomes in the charter sector have been relatively limited and largely compliance-focused. This lack of significant state action is likely due to the complexity inherent in successfully implementing accountability systems and the political challenges in many states with charter school laws. Nevertheless, states have enormous opportunities to move beyond compliance. They can shape practices in charter schools via their roles in funding special education services, their accountability frameworks, and how they focus their technical assistance efforts.

The state-level actors positioned to influence the educational experiences of students with disabilities in charter schools fall into two main categories: legislative and executive. State legislatures pass laws related to students with disabilities and charter schools, and they appropriate funds for their education. The executive branch, generally through state education agencies and the state board of education, guides the implementation of state and federal law by issuing rules, regulations, and guidance, overseeing local actors for compliance, and providing technical assistance.

Both states and the federal government have laws governing the education of students with disabilities, and charter schools are subject to their requirements. State law cannot circumvent or provide less protection than federal law. However, state law may fill in the gaps and add details where the federal statutes are more general. States can also pass laws to implement the requirements of the federal law. For example, while the IDEA mandates that states recognize specific disabilities as eligible for special education, states may include additional disabilities.

The executive branch of state government also plays an essential role in shaping policy for students with disabilities. The federal government empowers state education agencies to administer federal requirements for students with disabilities, though state boards of education also often play an active role.

These agencies develop rules for implementing federal and state laws related to students with disabilities, issue guidance to aid implementation, monitor local entities for compliance with those laws, and provide technical assistance to support compliance. These actions, in turn, shape schools' responsibilities to students with disabilities and the extent to which they are supported and held accountable for meeting those responsibilities.

While states possess enormous influence over the implementation of federal protections for students with disabilities, state actors have not consistently used their positions to address the needs of students with disabilities in charter schools. Researchers have attributed existing inequities in educating students with disabilities to the "variability and lack of specificity among states in the legislative structures they maintain for charter schools and how responsibility for special education is assigned."<sup>8</sup> Absent strong state policy and associated regulations, guidance, funding, and accountability structures, it can be challenging for other actors (e.g., authorizers and charter school operators) to fulfill their responsibilities.<sup>9</sup>

This report identifies state-level actions designed to improve access and outcomes for students with disabilities in charter schools. We identified actions that state actors currently use and elevated those with promise for strengthening charter schools' commitment and capacity to educate students with disabilities. It is important to acknowledge that while these state-level actions create the enabling conditions for educating students with disabilities in charter schools, their full implementation may also rely on local school districts, boards of education, and authorizers.

## Methodology

To identify actions that state actors have introduced, we used a mixed methods research design that combined legal research, statutory analysis, and semi-structured interviews. Across these data, we sought first to identify and, after that, understand the role of states in shaping access and education quality for students with disabilities in charter schools, as well as identify specific actions that states have taken to address challenges in charter schools.

## Data Collection and Analysis

Building on the information that surfaced during the initial phase of the larger study (e.g., literature review, key informant interviews, and media scan), our targeted research for this report included the following data collection phases:

## Legal Research

CLE engaged attorneys at Phelps Dunbar LLP to conduct legal research and statutory analyses of 12 state-level legislative changes across 11 states that have introduced policies to enhance charter growth and the education of students with disabilities. CLE identified these legislative events through our media scan and policy expert interviews.

## State Legislatures Scan

CLE partnered with the Policy Innovators in Education (PIE) Network to conduct a 45-state policy and legislation scan of the past 15 years using keyword searches that captured the intersection of charter schools and students with disabilities. The PIE Network partners with Quorum™, which maintains a comprehensive legislation database.

## State Education Agency Website Scan

We scanned state education agency websites in 45 states with charter laws to identify relevant documents (e.g., handbooks, guidelines, memos, and initiatives) related to special education in charter schools.

## Stakeholder Interviews

CLE conducted 25 fact-checking interviews with local stakeholders in 13 states identified during the legislative and website scans. The stakeholders were identified as knowledgeable about state-wide policies and interviewed to learn about the context and impact of specific state actions. We asked for their assessment of how these policies have impacted the education of students with disabilities in charter schools. We incorporated these interview data into the narratives of this report.

We analyzed the data from primary sources and interviews to identify key themes, triangulate findings, and check facts.

## Study Limitations

CLE collected evidence of state-level actions spanning 15 years across all states with charter laws. While comprehensive, CLE acknowledges we may not have exhausted the universe of all relevant state-level actions. We have also not listed every state that employs each specific action. Rather than a comprehensive inventory of all actions, our goal was to present rich examples of state actions that might interest actors in other states contemplating how to improve access and outcomes for students with disabilities. Finally, we acknowledge that it is beyond the scope of this research project to verify the long-term impact of policies beyond conducting stakeholder interviews and tracking research and news media coverage of the respective actions. Lastly, because of our explicit focus on state action at the intersection of charter schools and students with disabilities, our research does not include state actions stemming from broader IDEA policy implementation, such as monitoring and compliance, which reach all public schools, including charter schools.



## Findings

### State actors can improve students with disabilities' access to charter schools.

The foundational indicator of equity for students with disabilities in charter schools is whether they have access to those schools. Access is necessary for the quality of the education offered to be relevant. While not a perfect measure given that the overidentification of students with disabilities introduces its own concerns,<sup>10</sup> enrollment shares of students with disabilities is a credible proxy for access.

Research indicates that, on average, charter schools enroll 2.5% fewer students with disabilities than traditional public schools do.<sup>11</sup> While the drivers of this enrollment gap are a matter of some debate, research suggests that discriminatory practices and the lack of robust support for students with disabilities in charter schools are contributing factors.<sup>12</sup> Several states have taken action to address such enrollment disparities, leveraging their influence over the admission criteria that charter schools are permitted to use, the practices that charter school authorizers administer in their oversight of charter schools, and how charter schools communicate their responsibilities to students with disabilities to prospective families and the public at large. As the Actions below illustrate, some states focused their policymaking with authorizers as the target audience, while others focused on charter schools.

#### *Action 1: Passing Legislation or Regulations to Enable the use of Admission Preferences for Students with Disabilities in Charter Schools*

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##### *Actors: State Legislatures, State Education Agencies*

As public schools, charter schools are open enrollment, with most charters employing blind lotteries when applications exceed the seats available. Many state charter laws include enrollment preferences as an exception to the blind lottery. Common enrollment preferences include those for siblings of currently enrolled students or children of charter board members.

Several state legislatures have passed laws allowing enrollment preferences for students with disabilities. In the District of Columbia, for example, the legislature (i.e., the City Council) passed a law<sup>13</sup> in 2014 enabling charter schools to petition their authorizers for permission to use an enrollment preference for students with disabilities. The D.C. statute requires a finding by the authorizer that the preference will “increase educational opportunities for, and not adversely impact” students with disabilities.<sup>14</sup> In 2022, Colorado passed similar legislation, allowing charter schools, with the approval of their authorizers, to utilize enrollment preferences for students with disabilities.<sup>15</sup> The Colorado statute specifies that charter schools may allow parents to voluntarily provide information about whether their child has a disability as part of this process.<sup>16</sup>

While these state laws address enrollment preferences generally, some state laws are more specific regarding the type of preference allowed. The weighted lottery is one form of enrollment preference, where the applications of students with specific characteristics are given more weight in the blind lottery. For example, in a blind lottery system where every applicant's name is placed in the pool once, the names of applicants with specific characteristics might be placed twice.

A few states have utilized this form of enrollment preference for students with disabilities in legislation or regulations. For example, Maryland's legislature passed a law in 2015 permitting charter schools to utilize weighted lotteries for students with disabilities.<sup>17</sup> That same year, the Georgia legislature passed legislation defining "educationally disadvantaged" students to include students with disabilities and explicitly allowed charter schools to use weighted lotteries for educationally disadvantaged students if their charter agreements permit.<sup>18</sup> In 2017, New Jersey's Department of Education passed regulations to allow charter schools to seek approval from the state commissioner of education to use weighted lotteries in favor of educationally disadvantaged students, including students with disabilities.<sup>19</sup> One stakeholder from New Jersey's local charter schools association shared that in the Newark region, many charter schools voluntarily use a weighted admissions process for students with disabilities.

## *Action 2: Empowering or Requiring Authorizers to Prioritize Access for Students with Disabilities*

### *Actors: State Legislatures, State Education Agencies, State Boards of Education*

Charter school authorizers are the entities that approve, oversee, renew, and sometimes revoke approval of charter schools. State law can constrain and enable how authorizers approach their work, including the criteria by which new charter schools are permitted to open and the performance benchmarks that authorizers must monitor as part of ongoing monitoring and charter renewals. As a result, state legislatures have immense authority to grant powers to and mandate actions from charter authorizers. Some state legislatures have leveraged that authority to emphasize access for students with disabilities.

One way states can directly impact the enrollment of students with disabilities in charter schools is through legislation that empowers or requires charter school authorizers to actively oversee enrollment practices and their results. States can require authorizers to screen charter school applicants' plans for enrolling students with disabilities and monitor the extent to which students with disabilities enroll in charter schools at similar rates as nearby traditional public schools. While strict enrollment quotas can create significant problems, including the risk of overidentification of students with disabilities, basing enrollment requirements instead on achieving enrollment proportionate to that in corresponding districts could minimize that risk.

In 2010, the state of New York passed legislation requiring the state's two primary authorizers, the Board of Regents and the State University of New York, to only consider charter applications that, among other requirements, have a rigorous plan to "meet or exceed enrollment and retention targets" for several student subgroups, including students with disabilities.<sup>20</sup> In addition, the law requires a consideration of enrollment and retention data during the decision-making process on charter renewals,<sup>21</sup> and it specifies that repeated failure to meet these targets may be used as grounds for charter revocation.<sup>22</sup>

In a similar vein, the Massachusetts legislature added a provision to their charter law in 2010, requiring the state's sole authorizer, the Board of Elementary and Secondary Education (BESE), to develop requirements for charter applications that must include the submission of a student recruitment and retention plan that provides for "deliberate, specific strategies the school will use to ensure the provision of equal educational opportunity and to attract, enroll and retain a student population that, when compared to students in similar grades in schools from which the charter school is expected to enroll students, contains a comparable

academic and demographic profile.”<sup>23</sup> A staff member from the Massachusetts Department of Elementary and Secondary Education (DESE) considered this 2010 law to be impactful because it also requires every successful charter school applicant to annually develop an updated student recruitment plan and report student retention statistics.<sup>24</sup> In Massachusetts, enrollment trends reflect the growing parity between charter and district schools since the policy’s enactment. Specifically, the percentage of students with disabilities enrolled in Massachusetts charter schools increased from 11.8% in 2010 to 15.6% in 2020.<sup>25</sup>

In 2015, the Louisiana legislature also took this approach when they amended their charter law, adding a provision mandating that charter schools outside of New Orleans enroll a proportional rate of economically disadvantaged students and students with disabilities compared to their neighboring traditional districts.<sup>26</sup> In the statute, the Louisiana legislature directed the state board of education to monitor and report on charter school compliance with the proportional enrollment requirements.<sup>27</sup> To support the effective implementation of this new requirement, the Louisiana Department of Education issued detailed guidance<sup>28</sup> to the affected schools. Consistent implementation of this policy has been strained, with a state legislative audit detailing how local school districts, in their authorizer capacity, struggled to implement the standards as codified in law.<sup>29</sup>

Sometimes, states harness the power granted in general legislative language to implement rigorous requirements. One example is in Illinois. The state’s charter school law, similar to the law in many states, includes a detailed list of required components for charter school applications with a final “catch-all” requirement of “any other information reasonably required by the State Board of Education.”<sup>30</sup> Using this broad authority, the Illinois State Board of Education (ISBE) developed a “Charter School Initial/Renewal Proposal for the Provision of Special Education,”<sup>31</sup> a detailed form that charter schools must complete as part of the application process both at the initial application stage and when requesting renewal of their charter contracts. This 12-page document is a comprehensive assessment of the school’s plans and capacity to educate students with disabilities that authorizers in Illinois can use to determine whether charter school applicants and charters applying for renewal are equipped to educate students with disabilities appropriately.

### *Action 3: Passing Policy Related to Anti-Discrimination Requirements Contained in Federal Law*

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#### *Actors: State Legislatures, State Education Agencies*

Federal regulations require that all public schools, as recipients of federal funds, notify participants, applicants, and employees that they do not discriminate based on disability.<sup>32</sup> This mandate also requires that schools include a written non-discrimination statement in any informational or recruitment materials.<sup>33</sup> Despite this clear federal directive, some states have found it necessary to pass state policies requiring their charter schools to provide notice of nondiscrimination.

One example is Massachusetts, where DESE passed regulations<sup>34</sup> requiring charter schools to provide written notice to all applicants about the rights of students with disabilities to attend their schools and to receive services and support. The regulation also requires schools to include the notice in their application and enrollment materials and to make the information available in outreach materials, student handbooks, and on school websites.<sup>35</sup> DESE supports implementing these requirements by posting sample notices on their website<sup>36</sup> in five different languages. A staff member from DESE reported that charter schools have complied with the mandate, posting different versions of the notices on their websites and in parental rights documents. Stakeholders shared that this helped improve the public's perception of how charter schools enroll and educate students with disabilities.

Some states have implemented other regulatory solutions to address the issue of non-discrimination. For example, in 2023, after the U.S. Department of Education's Office for Civil Rights received 29 complaints about problems with the enrollment of students with disabilities in Colorado's charter schools,<sup>37</sup> the Colorado Board of Education amended its rules to address the concerns. Under the amendments, when an application is for enrollment in a charter school in a districtwide centralized enrollment system, the district must ensure that it does not use any information collected about a student's disability status until after the admissions have been completed.<sup>38</sup> This rule change prohibits charter schools from discriminating against prospective students. The Colorado Department of Education subsequently provided resources on its website<sup>39</sup> to further help prevent discrimination.

## State actors play an important role in ensuring charter schools can resource the education of students with disabilities.

Funding for the education of students with disabilities in public schools is a complex combination of federal, state, and local dollars. When states developed funding formulas for education, most did not anticipate the creation of autonomous charter schools. As a result, the evolution of funding in charter schools, including funding for the education of students with disabilities, has involved a patchwork of retrofitted policies and practices.<sup>40</sup> In many instances, there is notable ambiguity regarding the flow of special education dollars and the corresponding assignment of responsibility for educating students with disabilities in charter schools.<sup>41</sup> Some states have passed legislation or issued guidance to address this challenge.



## *Action 1: Creating Equitable and Appropriate Funding Allocations for Students with Disabilities in Charter Schools*

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### *Actors: State Legislatures, State Education Agencies*

One way to address this funding challenge is to develop formulas that thoughtfully allocate funding for the education of students with disabilities in charter schools. Several states have taken this approach, and we highlight two here.

When Louisiana amended its charter law in 2015, the legislature added provisions to enable New Orleans charter schools to receive allocations of state education funds differentiated based on tiers of student characteristics, including tiers of differentiated funding for students with disabilities.<sup>42</sup> The law directed state and local stakeholders to develop the district-level allocation policy and underlying formula for local implementation.<sup>43</sup>

More recently, Tennessee completely overhauled its education funding formula with the 2023 passage of the Tennessee Investment in Student Achievement Act (TISA)<sup>44</sup> which funds public schools across Tennessee using a differentiated funding formula. TISA is an example of state policy that takes a collaborative approach, with the state legislature and the Department of Education playing a role. Under TISA, every student is assigned a base amount of funding, with two additional categories of funds, weighted funding and direct funding, added for specific student groups.<sup>45</sup> While the statute lists the specific weights to be applied to the varied categories of students, including ten different weights for students with disabilities, it does not specify which students are assigned to each category and instead requires the Tennessee Department of Education (TDOE) to promulgate rules establishing how to categorize students with disabilities.<sup>46</sup> TDOE subsequently developed rules basing weights for students with disabilities on the services and service hours designated in their Individualized Education Programs (IEPs),<sup>47</sup> with weights ranging from fifteen percent (15%) for students in Category One to one hundred and fifty percent (150%) for students in Category Ten.<sup>48</sup> The rules include a twenty percent (20%) weight for students who do not have IEPs but who have been identified as having “characteristics of dyslexia” as defined in TISA.<sup>49</sup> For direct funding, TISA lists categories of students who shall receive direct funding but leaves the specific allocation amounts to TDOE.<sup>50</sup> One of those categories is students in charter schools, and TDOE developed a formula for determining how much additional direct funding each charter school student will receive.<sup>51</sup> This combination of additional weighted funding for students with disabilities and direct funding for students in charter schools is intended to provide more equitable funding for the students who need it. While TISA is in its first year of implementation, stakeholders hope the differentiated funding model will lead to better outcomes.

## *Action 2: Passing Legislation and Issuing Guidance to Ensure that Extraordinary Costs for Educating Students with Disabilities are Accessible*

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### *Actors: State Legislatures, State Education Agencies*

Federal law requires that students with disabilities receive a free, appropriate public education (FAPE).<sup>52</sup> Providing FAPE to students with more significant needs can be extremely expensive. The IDEA specifies that states may reserve a portion of their federal IDEA allotment to create a state high-cost reimbursement fund to support districts in paying for these services, and federal regulations specify that charter schools acting as their LEAs must have access to this fund.<sup>53</sup> While access to these funds is important, federal funding alone is usually inadequate to meet the financial need, and both LEA charter schools and charters that operate as part of larger LEAs still often struggle to fund these higher costs. Some states have taken steps to address the challenge of financing the education of students with more significant needs.

Massachusetts is an example of a state that has addressed this issue for its charter schools, which operate as their own LEAs. Because of their LEA status, charters in Massachusetts are responsible for the financial and programmatic aspects of the education of their students with disabilities.<sup>54</sup> However, the Massachusetts legislature passed an exception to this requirement when a student's needs cannot be met at their charter school, thus necessitating an out-of-district placement. In these limited circumstances, the law specifies that the student's district of residence is responsible for both the programmatic and financial aspects of the placement.<sup>55</sup> This statutory exception recognizes the financial challenges charter schools face when trying to meet the needs of students with more significant needs. Given the inherent risks of counseling out that may occur in these scenarios, DESE acted to mitigate that risk by issuing detailed guidance<sup>56</sup> on the process to follow to collaboratively determine whether an out-of-district placement is appropriate for a specific student. This type of guidance is critical to ensuring that policies are implemented with fidelity, avoiding unintended, negative consequences for students with disabilities.

Tennessee is an example of a state that has addressed this issue for charter schools that do not act as their own LEAs. Tennessee, like most states, created a high-cost reimbursement fund using the federal IDEA set aside funds discussed above.<sup>57</sup> Under Tennessee's system, schools submit requests for these funds to their districts, which then request an allocation from the state fund. However, districts rarely included their charter schools' high-cost reimbursement requests in their allocation applications. While federal law requires that states make these funds available to charter schools acting as their own LEAs, it is silent on charter schools such as those in Tennessee, which exist as part of larger districts.<sup>58</sup> Because of these challenges, the Tennessee legislature amended the state's law related to high-cost reimbursement funds, adding specific requirements for districts to include charter school requests in their annual allotment requests and further requiring that districts distribute those funds to the charter schools that incurred the expenses.<sup>59</sup>

### *Action 3: Issuing Guidance to Ensure Charter Schools Receive their Legally Designated Funding for Educating Students with Disabilities*

#### *Actors: State Education Agencies*

Some states are taking action to remedy situations where the funding laws, as written, are not being implemented. Guidance is often the vehicle to achieve this goal. While guidance is an interpretation of existing policy and not the creation of new policy, it is often helpful in clarifying requirements and processes. In Connecticut, for example, the Department of Education first issued a memo<sup>60</sup> in 2021 to charter school leaders on the implementation of state law on reimbursements for special education services, clarifying invoicing requirements and reminding them that it is impermissible to allow students' special education programs or related services to lapse due to billing disputes. In 2022, the state education agency issued guidance<sup>61</sup> answering frequently asked questions about charter schools, which included a reminder that Connecticut law required local districts to "pay the state charter school, quarterly, an amount equal to the difference between the reasonable cost of educating such students and the sum of the amount received by the state charter school from all sources." Despite these efforts to clarify invoicing responsibilities and processes for special education services, invoicing disputes still occurred. For example, a media report in 2023 reported that a Connecticut charter school still incurred large sums of special education costs that were not reimbursed by the resident district.<sup>62</sup>

### **States can strengthen the capacity of charter schools and their authorizers to address the needs of students with disabilities.**

In addition to formal policy-making, states can impact the education of students with disabilities in charter schools by issuing guidance and providing quality technical assistance on critical special education issues. States may provide this guidance and technical assistance directly to charter school operators or offer it to authorizers to assist them in developing quality practices related to the education of students with disabilities. Prioritizing available funds to support these efforts is another significant action that states can take.



## *Action 1: Providing Special Education-Focused Guidance and Technical Assistance to Charter Schools and their Authorizers*

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### *Actors: State Education Agencies*

Given the complexities of federal and state laws on educating students with disabilities, issuing guidance is a relatively straightforward way for state education agencies to support implementation. All states issue more general guidance that is helpful to both traditional district schools and charter schools. However, our focus is on guidance specific to students with disabilities in charter schools. Sometimes, as in the examples cited earlier from Louisiana, Colorado, Connecticut, and Massachusetts, the state education agencies issue guidance to support the implementation of complex or new policies related to students with disabilities in charter schools or to reinforce the existence of policies that are not being followed. Another example from Massachusetts concerns the state law allowing districts to come together to form education collaboratives, a method of sharing educational programs and services.<sup>63</sup> When charter schools were not given access to this opportunity, DESE issued guidance clarifying that charter schools may apply to participate in these collaboratives, either as a collection of charters or alongside traditional district members.<sup>64</sup>

The development of model policies and manuals for charter schools is another lever states can utilize to strengthen charter schools' capacity to educate students with disabilities. Colorado developed its Colorado Charter Schools Special Education Guidebook in 2002.<sup>65</sup> Similarly, Massachusetts created a three-volume primer on special education in charter schools, with the third volume focused on providing charter school operators with the information they need related to the education of students with disabilities during the development and operation of charter schools.<sup>66</sup> A more recent example is Wisconsin's Model Independent Charter School Special Education Policies and Procedures,<sup>67</sup> developed and released by the Wisconsin Department of Public Instruction in 2022. This guide is intended for charter schools to use as a reference tool when developing their policies and procedures for educating students with disabilities.

States can also provide technical assistance to charter schools and charter school authorizers, which may lack established expertise in administering educational programs for students with disabilities. For example, New York's Department of Education has partnered with several organizations, including the Center for Learner Equity, to launch NY-RISE, which stands for Resources, Information, Support, and Engagement.<sup>68</sup> NY-RISE has an entire component dedicated to special education, with offerings such as "Building Inclusive Programs" and "Supporting Students with Disabilities 101."<sup>69</sup> Similarly, in Maryland, the state education agency contracts with the Maryland Alliance of Public Charter Schools to provide learning opportunities to Maryland charter school staff, including training related to the education of students with disabilities.<sup>70</sup> In Minnesota, the state education agency hosts Charter School Boot Camps, which offer technical assistance related to the education of students with disabilities. They inform charter school leaders and authorizers about the training opportunities through a monthly newsletter.<sup>71</sup> In Mississippi, the state's Department of Education provides training to school leaders on educating students with disabilities.<sup>72</sup>



In Texas, the state education agency provides charter school-specific technical assistance, support, and training to enhance charter schools' implementation of special education programming, with these tools all implemented through Texas' regional Education Service Centers.<sup>73</sup> During its charter portfolio meeting in January of 2021, Texas also provided training on the legal requirements related to students with disabilities in charter schools, which included offering a written summary of the requirements to attendees and placing a copy of that summary on its website.<sup>74</sup>

States can also provide guidance to authorizers, which can empower them with the information they need to hold their schools accountable for educating students with disabilities. For example, in 2023, the Minnesota Department of Education (MDE) developed and released a Special Education Primer for Authorizers and Charter Schools<sup>75</sup> that addresses special education in charter schools from pre-approval through renewal and revocation. This guidance document provides authorizers with the information they need to prioritize the education of students with disabilities in their authorized schools.

## *Action 2: Utilizing Federal Charter School Program State Entity Funds to Provide Special Education-Focused Technical Assistance*

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### *Actors: State Education Agencies*

State entities that receive Charter School Program (CSP) grants are required to reserve at least seven percent (7%) of the federal funds they receive under the program to be spent providing technical assistance to charter schools and authorizers.<sup>76</sup> States can use some of these funds to provide technical assistance explicitly related to educating students with disabilities. In fact, according to two recent reports by the National Charter School Resource Center,<sup>77</sup> the technical assistance discussed above provided by Maryland, Minnesota, and Mississippi were all funded with these CSP technical assistance funds.

## **States can catalyze the development of special education infrastructures that benefit students with disabilities in charter schools.**

Across the country, state legislatures have authorized entities most commonly known as education service agencies (ESAs), which exist to “develop, manage, and provide various programs and services to local education agencies.”<sup>78</sup> Many states have established a form of ESA to act as a special education infrastructure system to provide centralized support to public schools. However, though these special education infrastructures now exist in over 40 states with charter laws, very few states have developed charter-specific collaboratives. Charter-specific special education infrastructures can produce multiple benefits, such as ensuring that schools have sufficient funds and staffing capacity, allocating resources more efficiently, and organizing a full continuum of placements among members.

## *Action 1: Passing Legislation and Establishing Governance Structures to Allow Charter Schools to Form Special Education Infrastructure*

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### *Actors: State Education Agencies*

California is the only state with codified charter-specific special education infrastructure systems. In 1974, California passed a law creating Special Education Local Plan Areas (SELPA), which are regional ESA structures for the provision of special education and related services to students with disabilities.<sup>79</sup> The law at that time did not include the option for charter school SELPAs, as California's charter law would not exist for eighteen more years. After California passed its charter law in 1992, charter schools faced challenges in joining the traditional SELPAs because they were not affiliated with authorizing school districts within the geographic SELPA and were also not their own LEAs for special education purposes. Therefore, charter schools could not receive the benefits of the SELPA structures.

After a pilot project by the California State Board of Education paved the way,<sup>80</sup> California passed legislation<sup>81</sup> in 2010 to allow charter schools to become LEAs participating in "local plan areas." This legislation permitted charter schools to exit district SELPAs and find the desired autonomy elsewhere. After this change, some district SELPAs, such as the Los Angeles Unified School District SELPA, restructured to provide more options for charters' autonomy and ultimately incentivized some charter schools to stay within the district SELPA. California's SELPA structure has since evolved into three subtypes: (1) district/county SELPAs, (2) charter SELPAs, and (3) hybrid district SELPAs. Charter schools that petition and are approved to act as their own LEAs assume responsibility for providing special education services.<sup>82</sup> Schools receive all federal and state funding minus the administrative fee they must pay to the charter SELPA.<sup>83</sup>

One example of a charter-specific SELPA formed under this state law is the El Dorado Charter SELPA, which has 462 charter schools under its umbrella. The El Dorado SELPA provides multiple supports to schools, including support to school leaders, special education coordinators, and teachers.<sup>84</sup> Charter-specific SELPAs have shifted the political environment by giving charter schools more autonomy to choose an ESA structure. CLE also learned from a stakeholder who works at a county education agency that the development of charter-only SELPAs allowed charter management organizations (CMOs) and larger charter schools to better access IDEA funding and to support their students with a full continuum of services. However, there are still challenges regarding how charter SELPAs effectively support families. Charter SELPAs are not regionally based, which sometimes makes it difficult to address local issues effectively.

## Non-charter-specific state actions can lead to innovative implementation approaches.

Charter schools are founded on the idea that the schools receive heightened freedom in exchange for increased accountability. However, charter schools do not have total autonomy, and there are some circumstances where state laws and regulations that apply to all districts have a distinct impact on charter schools acting as LEAs. In some circumstances, applying the more general state law to charter schools spurs innovation and creativity that benefits students with disabilities. One area where this has occurred is personnel requirements for all LEAs in states where charter schools act as their own LEAs. In Illinois, for example, charter schools authorized by the state board of education serve as their own LEAs.<sup>85</sup> The Illinois State Board of Education passed regulations requiring that all LEAs, or special education cooperatives to which LEAs belong, employ a full-time director of special education.<sup>86</sup> This regulation helped catalyze the creation of a nonprofit, the Illinois Special Education Charter Cooperative (ISECC), which provides this service and other special education support to member charter schools.<sup>87</sup>

In Minnesota, where all charter schools are their own LEAs,<sup>88</sup> the Minnesota Department of Education passed a rule placing a similar requirement on districts.<sup>89</sup> This requirement spurred the creation of Indigo Education, a nonprofit that offers an array of special education supports, including the provision of itinerant special education administrators to charter schools across the state.<sup>90</sup>

It is important to note that the existence of these entities alone does not guarantee their efficacy. However, their existence does result in charter schools' increased access to expertise in educating students with disabilities. Access to that expertise is a necessary first step in meeting the law's requirements.

## Charter schools face continued challenges that state action could address.

CLE identified two areas where there is potential for state action but where, to date, no successful policy exists. The first relates to school-based Medicaid reimbursements, and the second concerns the nationwide shortage of special educators.

### *Challenge #1. School-Based Medicaid Reimbursement*

Medicaid is a significant source of federal funding for schools in the U.S, offering schools the ability to seek reimbursement for diagnosis, therapy, assistive technology, behavioral health, and other services they provide to students with disabilities.<sup>91</sup> All public schools, including charter schools, are legally eligible to seek Medicaid reimbursement for qualifying special education expenses. In practice, however, many barriers prevent charter schools from recouping these critical funds.

While federal law has distinct mandates related to Medicaid reimbursements, it also grants states significant flexibility to tailor their Medicaid programs around their state-specific needs and priorities.<sup>92</sup> This results in a confusing jumble of requirements and processes that differ by state. Added to this confusion is the fact that personnel standards for Medicaid reimbursement often differ from the personnel requirements for school employees. Therefore, the person at the school level who administers the service may be qualified to do so under the state's education law but not qualified for Medicaid reimbursement. Because of this complicated mix of laws and requirements, many charter schools have left significant amounts of Medicaid dollars unclaimed. For example, in 2022, a study showed that charter schools in North Carolina accessed Medicaid reimbursement at a much lower rate than school districts, mainly due to staffing capacity.<sup>93</sup>

Providing targeted guidance and technical assistance to charter schools on the Medicaid reimbursement process would help those schools claim Medicaid reimbursements for eligible expenditures. In addition, amending state policies to align personnel standards in schools with those for Medicaid reimbursements where appropriate would remove another hurdle for charter schools.

## *Challenge #2. Special Educator Shortages*

The nationwide shortage of special educators is broader than the charter sector. However, it often disproportionately impacts the ability of charter schools to educate students with disabilities effectively. Because this is a long-term pipeline and an attrition problem,<sup>94</sup> states can implement a multi-faceted approach to attract, retain, and support qualified educators in this field. States can establish targeted scholarship programs or financial incentives to attract students to special education teacher preparation programs and simplify the process of transferring state-specific credentials. Creating mentorship and professional development opportunities can help new teachers navigate special education challenges and enhance their skills over time. Moreover, fostering a supportive work environment with manageable workloads and access to resources can increase job satisfaction and retention rates among special education teachers.<sup>95</sup> By taking such comprehensive measures, states can contribute significantly to solving the special education teacher pipeline problem and ensure that students with disabilities in all public schools, including charters, receive the quality education they deserve.



## Conclusion and Recommendations

This report has identified examples of states acting to address the needs of students with disabilities in charter schools. Despite the bright spots, it is clear that there is much work left to do to ensure students with disabilities have access to and are educated in charter schools. Overall, the example actions highlighted in this report suggest that states are more likely to address challenges concerning students with disabilities in charter schools through technical assistance and guidance activities. The focus on support over legal requirements reflects one of the underlying tensions inherent to the work of charter schooling, which by design empowers policymakers to hold charter schools accountable for their results with students. Still, it leaves much of how they achieve those results unspecified.

We do not know whether states' actions have yielded positive results for students with disabilities in charter schools. In some cases, stakeholders reported that state action has produced tangible benefits. However, given the relative anemic nature of most states' efforts to address the needs of students with disabilities in charter schools and the dearth of either evidence or expert consensus to guide policy development, this report cannot provide definitive answers. However, it suggests the urgent need for greater initiative-taking and further study.

Based on local stakeholders' evaluations of the impact, we found that state actions related to access, specifically those addressing requirements for inclusive recruitment and marketing practices and recruitment/retention plans, are most impactful. CLE acknowledges that more research is needed to gauge the efficacy and ramifications of these state actions and their real-world local impact. A thorough investigation could uncover the nuanced effects of these state actions, thereby shedding light on successful strategies and areas that require refinement.

The actions profiled in this report suggest possibilities that could provide a springboard for other states to take more seriously how charter schools educate students with disabilities. Despite the limited number of states that have sought to improve how students with disabilities are educated in charter schools and the limited evidence available on the impacts of their initiatives, we believe the practices detailed in this report suggest that states have critical roles to play in strengthening charter schools capacity to meet the needs of students with disabilities. Based on these practices, we developed the following recommendations.



## State Legislatures

- **Revise charter school or special education laws to prioritize enrollment access:** State legislatures can act to make equitable enrollment a critical indicator that authorizers must consider in their oversight of charter schools. This may include articulating specific goals (e.g., within 2 percent of enrollment proportions in neighboring districts) and explicit consequences for failure (e.g., schools must develop a corrective action plan outlining steps to increase access and enrollment).
- **Pass legislation allowing for equitable enrollment preferences for students with disabilities.** Legislatures can add language to their state charter laws allowing charter schools to utilize weighted lotteries or other enrollment preferences for students with disabilities, thereby increasing students with disabilities' access to charter schools.
- **Revise state education funding formulas to ensure charter school access to funds aligns with their responsibilities.** State legislatures should consider revisions to their funding formulas that adequately weight resources based on student needs and incentivize schools to educate students with disabilities equitably. States can also clear up ambiguities in state laws to ensure that responsibility for providing special education and related services and the corresponding funding flow to the correct entity.
- **Engage schools, families, and disability advocates.** To inform their legislative efforts, policymakers should develop strategies to engage the stakeholders who are most impacted by new state initiatives on students with disabilities in charter schools, especially those who represent students who are Black, Latinx, and living in poverty, who are disproportionately impacted by charter schools' struggles to meet the needs of students with disabilities.
- **Amend state law to eliminate unnecessary obstacles to charter schools taking advantage of Medicaid reimbursement.** Misaligned personnel standards create obstacles for charter schools to resource their services to students with disabilities. Legislatures can address this challenge by aligning school personnel standards with those for Medicaid reimbursements.



## State Education Agencies and State Boards of Education

- **Strengthen accountability measures.** Develop and implement additional accountability mechanisms for authorizers and schools, such as detailed performance frameworks and comprehensive school report cards. These should focus on assessing and reporting the access, education quality, and academic growth of students with disabilities.
- **Allocate sufficient funding and staffing to ensure the development and delivery of quality technical assistance and guidance to authorizers and charter schools.** While states that receive federal charter school program funds should utilize a portion of those funds for these purposes, states that do not should ensure that they allocate sufficient state dollars to quality technical assistance and guidance activities related to students with disabilities in charter schools.
- **Develop and disseminate guidelines that inform charter schools and charter school authorizers of their responsibilities to students with disabilities.** State education agencies can leverage their position as the primary entity responsible for administering special education programs to set ambitious expectations for how schools educate students with disabilities. These expectations should include guidelines that are accessible and easily understood. They should identify legal responsibilities, communicate that following the law is a minimum standard, and identify practices that go above and beyond this benchmark.
- **Provide guidance related to projected costs of providing appropriate special education services** to students with disabilities and clear guidance regarding how federal, state, and, if relevant, local dollars for special education flow to autonomous charter schools.
- **Develop state policy allowing for equitable enrollment preferences for students with disabilities.** In states where the law permits enrollment preferences or the legislature passed laws allowing them, state boards of education or departments of education tasked with implementing the law can develop policies to ensure that the enrollment preference does not negatively impact students with disabilities.
- **Strengthen the special educator workforce.** State education agencies should invest in their understanding of the underlying causes of special educator shortages and advance solutions to those challenges (e.g., introduce financial incentives, reduce credentialing barriers for out-of-state teachers, and create robust professional development opportunities).
- **Build infrastructure for continuous improvement.** State education agencies should leverage existing data to understand and define emerging challenges and use this information to take action (e.g., issue guidance or allocate resources for TA). Technical assistance efforts should address compliance challenges charter schools are struggling with, help charter leverage all available resources available to support the education of students with disabilities (e.g., Medicaid reimbursements and state high-need grants), and work to define and remove barriers to implementing best practices.

- **Initiate and encourage collaboration.** Convene and facilitate collective learning opportunities across divisions in the state education agency, among charter authorizers and charter school leaders on issues related to educating students with disabilities to create a cohesive approach to supporting students with disabilities in charter schools.

## Funders

- **Fund policy advocacy.** As key enablers of the ecosystem surrounding charter schools, funders have important roles in influencing policy changes that can strengthen charter schools' capacity to educate students with disabilities. Funders should invest in advocacy groups and sector-wide initiatives that work towards advancing policy changes at the state and local levels to improve students with disabilities' access to and success in charter schools. These changes should specifically aim to benefit students with disabilities in the charter sector, focusing on equitable access, resource allocation, and quality education.
- **Support state policy research:** Allocate funds to research centers focusing on students with disabilities, particularly in states with underdeveloped policy environments. This research should identify gaps, provide evidence-based recommendations, and guide the development of effective policies.

## Charter Schools/Charter Management Organizations

- **Engage and activate state charter advocacy networks** to pursue changes in state policy that will advance factors that enable charter schools to effectively educate students with disabilities (e.g., improved performance frameworks, and equitable funding).





## Appendix

Table A1. Key-Informant Organization Affiliations

| ENTITY                                  | NUMBER OF INTERVIEWEES |
|---|------------------------|
| Charter support nonprofit organizations | 7                      |
| State education agencies                | 5                      |
| Regional charter school associations    | 5                      |
| State boards of education               | 2                      |
| State boards for charter schools        | 2                      |
| Charter school authorizers              | 2                      |
| Total                                   | 23                     |



## About the Center for Learner Equity (CLE)

CLE is a nonprofit organization dedicated to ensuring that students with disabilities have equitable access to high-quality public education. CLE provides research, policy analysis, coalition building, and technical assistance to a variety of stakeholders nationwide.

### Mission

We are committed to catalyzing student success and eradicating the complex, pervasive, and systematic barriers that prevent students with disabilities from accessing school choice, educational opportunities, quality support, and inclusive environments.

### Vision

All students with disabilities are respected, learning, and thriving.

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