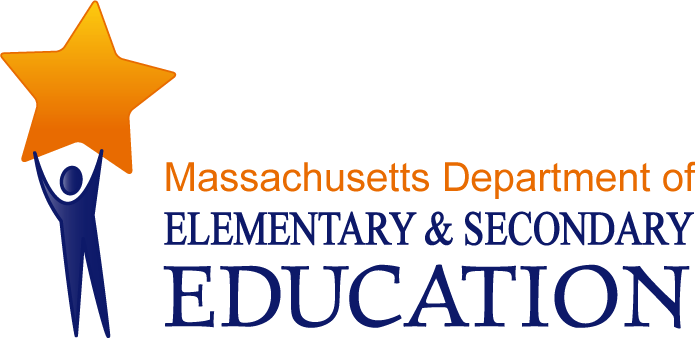
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|  | Massachusetts Primer on  Special Education and Charter Schools | | |
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| Section II: Information for State Officials and Others  September 2016 | | |
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**Massachusetts Primer on Special Education and Charter Schools**

Section II: Information for State and Local Officials and Other Interested Parties

**This information is intended for new staff in state agencies and others who need an overview of topics related to students with disabilities who are enrolled in Massachusetts charter schools. The information focuses on the main issues related to policies and procedures that govern special education in all stages of implementation for Massachusetts charter schools.**

**This document has been developed by the Massachusetts Department of Elementary and Secondary Education (ESE) with the assistance of the TA Customizer Project funded by the National Association of State Directors of Special Education (NASDSE).**

**This document was revised by the Office of Charter Schools and School Redesign in August 2016.**

Massachusetts Primer on Special Education and Charter Schools

Part II: Information for State and Local Officials and Other Interested Parties

Part II provides an overview of topics related to Massachusetts students with disabilities enrolled in Massachusetts charter schools. The information focuses on the primary issues related to policies and procedures that govern special education in all stages of implementation for Massachusetts charter schools and is intended to answer questions frequently raised by employees of state agencies and others.

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Massachusetts Primer on Special Education and Charter Schools

Part II: Information for State and Local Officials and Other Interested Parties

This section is an introduction for new staff members of state agencies and others who need an overview of topics related to Massachusetts students with disabilities enrolled in charter schools. The information focuses on the primary issues related to policies and procedures that govern special education in all stages of implementation for Massachusetts charter schools.

# **Background**

### What are charter schools?

A charter school is a public school that is governed by a board of trustees that is independent of any school committee and operates under a five year charter granted by the Board of Elementary and Secondary Education (Board). It has the freedom to organize around a core mission, curriculum, theme, and/or teaching method, to control its own budget, and hire (and fire) teachers and staff. In return for this freedom, a charter school must attract students and produce positive results within five years or its charter will not be renewed. There are two categories of charter schools: Commonwealth charter schools and Horace Mann charter schools. Horace Mann and Commonwealth charter schools differ in that a Horace Mann charter school must have its charter approved by the local school committee and, in some cases, the local teacher’s union in addition to the Board.

The Massachusetts charter school statute, G.L. c. 71, § 89 (d), lists the following purposes for charter schools:

(1) to stimulate the development of innovative programs within public education; (2) to provide opportunities for innovative learning and assessments; (3) to provide parents and students with greater options in choosing schools within and outside their school districts; (4) to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management; (5) to encourage performance-based educational programs; (6) to hold teachers and school administrators accountable for students’ educational outcomes; and (7) to provide models for replication in other public schools.

Like all public schools, charter schools are responsible for educating all students at no cost to parents and may not discriminate based on race, color, national origin, creed, sex, ethnicity, sexual orientation, gender identity, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement. As independent public schools, charter schools must enroll enough students to stay open and must achieve results that merit renewal of their five-year charter.

### When were charter schools established in Massachusetts?

The Massachusetts Education Reform Act of 1993 included among its provisions the creation of new, independent public charter schools. Twenty-five charter schools opened for the first time in the fall of 1995. Since then, charter schools have grown in number and enrollment and have become a significant part of the educational landscape in Massachusetts.

### How is a charter school in Massachusetts authorized?

Massachusetts authorizes its charter schools differently than most other states. Most other states allow multiple entities to authorize the creation of charter schools, including the state education agency (SEA), universities, municipalities, and others. Nationally, most charter schools are authorized by a local school district and function as part of that district. The Massachusetts Education Reform Act of 1993 sanctions only one authorizer for charter schools – the Board of Elementary and Secondary Education (BESE). As the sole authorizer, the BESE makes decisions regarding the approval, renewal, and revocation of all charters.

### What is the status of charter schools in Massachusetts?

As of the 2015-16 school year, Massachusetts has 81operating charter public schools - 71 are Commonwealth charters and 10 are Horace Mann charters. Total enrollment in charter schools is approximately 37,000 students, with an additional 44,000 students on charter school waiting lists.

### What types of charter schools exist in Massachusetts?

The Massachusetts charter school statute [G.L. c. 71 §89](http://www.doe.mass.edu/charter/laws.html) defines two types of charter public schools:

* A Commonwealth charter school is a public school, operated under a charter granted by the Board of Elementary and Secondary Education, which operates independently of any school committee and is managed by a board of trustees. The board of trustees of a Commonwealth charter school, upon receiving a charter from the BESE, shall be deemed to be public agents authorized by the Commonwealth to supervise and control the charter.
* A Horace Mann charter school is a public school or part of a public school operated under a charter approved by the local school committee in which the school is located and by the local collective bargaining agent. Horace Mann charter schools shall be operated and managed by a board of trustees independent of the school committees that approve said schools. The board of trustees may include a member of the school committee. In addition, the revision of [M.G.L. c. 71, § 89](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section89) in 2010 created three types of Horace Mann charter schools, each with a particular set of requirements. Requirements for the involvement of the collective bargaining unit vary by type. To the extent provided by their charters and as agreed to in a memoranda of understanding (MOU) with the school committee, as well as the faculty and relevant collective bargaining units, Horace Mann charter schools may be exempt from certain provisions in local collective bargaining agreements. Employees of a Horace Mann charter school, however, remain members of the local collective bargaining unit; continue to accrue seniority; and receive, at a minimum, the salary and benefits established by the local collective bargaining agreement.
  + **Horace Mann I:** Open to any district for a new school. The application must be submitted with the approval of the local collective bargaining unit and the school committee in the district in which it is located. Any MOU modifying provisions of a collective bargaining agreement must be approved by the school committee and collective bargaining unit and is submitted with the application.
  + **Horace Mann II:** Open to any district for conversion of an existing school. Horace Mann II applications may be submitted at any time; however, the application process remains the same as all other Horace Mann and Commonwealth applications, with similar timelines for reviewing the prospectus and final application, and charter granting. The application to convert an existing school is submitted with the approval of the school committee.
  + **Horace Mann III:** Open to any district for a new school but at least four must be located in Boston. The application must be submitted with the approval of the school committee. An agreement with the local collective bargaining unit is not required prior to Board approval, however, the charter school’s board of trustees must negotiate with the collective bargaining unit and the school committee regarding any modifications to collective bargaining agreements following the award of a charter.

In Massachusetts, each charter school is its own local education agency (LEA), and is defined as a school district for all matters pertaining to special education. As LEAs, Massachusetts charter schools must comply with state laws and regulations regarding how to identify students who have special needs and refer those students for evaluation.

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### What are the major differences between charter schools and other public schools in Massachusetts?

There are three major ways in which charter schools differ from other public schools.

* Charter schools are schools of choice that provide parents with the option to enroll their child in a charter school instead of the school their child would otherwise attend.
* All charter schools operate under a charter granted by the BESE and governed by a board of trustees, independent of any school committee.
* Charter schools are held accountable for success of their academic program, viability of their organization and faithfulness to the terms of their charter by the BESE. Charter schools that fail to meet these criteria or are found in noncompliant with relevant state and federal laws and regulations may be subject to non-renewal, renewal with conditions, probation, or revocation of their charter.

# **Department of Elementary and Secondary Education Responsibilities**

In Massachusetts, the Board of Elementary and Secondary Education (BESE) is the sole authorizer of charter schools, making decisions regarding the approval, renewal, and revocation of all charters. The day-to-day operations of reviewing charter school applications, maintaining operational oversight, and providing technical assistance and informational support to schools is the responsibility of the Department of Elementary and Secondary Education (ESE) Office of Charter Schools and School Redesign (OCSSR).

# **Implementation of Quality Authorizer Practices**

The Office of Charter Schools and School Redesign (OCSSR) ensures that applicant schools are reviewed prior to receiving a charter and that operating charter schools receive regular oversight. The OCSSR is responsible for a number of oversight activities that provide multiple sources of evidence used by the Board of Elementary and Secondary Education (BESE) in making renewal determinations for each school. In part, oversight responsibilities include:

Approval Procedures: The OCSSR has instituted a [multi-tiered, charter school application process](http://www.doe.mass.edu/charter/new/?section=app) designed to ensure that only applicant groups who submit high quality proposals will be granted a charter. The application process, including an initial prospectus and a full application stage, requires a description of how the school will provide students with disabilities and English language learners access to the general curriculum. The Department also instituted a one stage application process for current charter school boards of trustees who intend to apply for a new charter under an existing charter school network. In the one stage process, current charter school boards of trustees are exempt from submitting a prospectus but must still meet Proven Provider requirements, if applicable, and submit a complete final application addressing the criteria that is set forth in the charter statute, [G.L. c. 71, § 89](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section89), and the charter school regulations, [603 CMR 1.04(3)](http://www.doe.mass.edu/lawsregs/603cmr1.html?section=04) and further elaborated in the [Application for a Massachusetts Charter Public School for Current Boards of Trustees](http://www.doe.mass.edu/charter/new/?section=app2).

The applicant school must describe how programs will be implemented, including staffing projections for special education and related services for the term of the charter. Charter school final applications undergo a panel review process and final applicant founding groups are interviewed on the specific content of the application as well as the goals for the school.

Historically, about one-half of the groups that submit initial prospectuses are subsequently invited to submit full applications. Approximately one half of final charter school applications are recommended by the Commissioner of Elementary and Secondary Education to the BESE. As the state’s charter school authorizer, the BESE makes the final decision on granting charters.

Opening Procedures: The Department of Elementary and Secondary Education (ESE) staff offer technical assistance regarding the legal requirements for operating a school. In order to ensure new charter schools are prepared to offer a full range of programs and services to their students, ESE technical assistance may include, but is not limited to:

* English language education;
* special education;
* curriculum accommodations for diverse learners within the general education program
* transportation;
* nutrition; and
* hiring, evaluation, and professional development of staff.

Charter School Accountability and Oversight: Charter schools receive increased freedom in exchange for accountability for academic results. Specifically, the renewal of a public school charter is contingent on affirmative evidence in three areas: faithfulness to the terms of the charter, academic program success, and organizational viability. The Charter School Performance Criteria (Criteria) are presented in the three guiding areas of charter school accountability defined in the current regulations, 603 CMR 1.00: academic program success, organizational viability, and faithfulness to charter. The purposes of the Criteria are to:

* + 1. Articulate the expectations for all aspects of charter school accountability, from the application process to the renewal process;
    2. Provide charter schools with clear guidance about how the Massachusetts Board of Elementary and Secondary Education (BESE), the Massachusetts Department of Elementary and Secondary Education (Department), and the Commissioner of Elementary and Secondary Education (Commissioner) define charter school success and on what basis charter schools will be evaluated; and
    3. Clarify the connections between Massachusetts charter school accountability and state and federal accountability standards.

The Criteria were first developed in 2005 and were subsequently revised in 2010. The Department developed a third revision, version 3.0 (v.3.0), in 2013 after research and review of best practices of high quality charter school authorizers nationally. The Department has subsequently adjusted the Criteria (version 3.1 in 2014 and version 3.2 in 2015) based on the best practices, suggestions, and challenges that arose during implementation of prior versions. There are ten (10) Criteria that frame the Department's evaluation of the performance in the three guiding areas of charter school accountability.

The evidence in these areas is obtained through a variety of sources, including materials provided by the school itself, ESE site visits, and a renewal inspection visit. All [accountability documents](http://www.doe.mass.edu/charter/acct.html) used by ESE, including renewal and site visit protocols, are available on the [Office of Charter Schools and School Redesign website](http://www.doe.mass.edu/charter/default.html). The ESE gathers information and corroborates information provided by the school through the following oversight activities:

* Site visits: Site visits take place at least once during a charter term and may be conducted at additional times when deemed necessary by the Department. Site visits vary in length depending on the size, location, age, and/or specific conditions of a particular school. They are one of the ways the Department documents each charter school’s performance and progress over time, and corroborates and augments the information reported each year in the school’s annual report. The [*Charter School Performance* *Criteria* (Criteria)](http://www.doe.mass.edu/charter/acct.html?section=criteria) form the foundation of this process and are the basis on which the Site Visit Protocol was written. During the site visit, the school will be assessed on a subset of the performance indicators contained in the Criteria.
* Coordinated Program Review: In addition to the OCSSR accountability and oversight procedures, all Massachusetts public schools, including charter schools, receive a Coordinated Program Review (CPR) on a six year cycle and a follow-up Mid-Cycle Review (MCR) of special education, English language learner and other selected criteria. These reviews are conducted by the Program Quality Assurance (PQA) unit of the ESE.
* Renewal procedures: Schools are awarded five-year charters. No earlier than March 1 of the school’s third year and not later than the August 1st after the fourth year of operation, the school must submit an Application for Renewal. Following submission of the renewal application, each school undergoes a renewal inspection visit by a renewal inspection team. The renewal inspection team prepares a renewal inspection report summarizing the team’s findings regarding the school’s performance relative to a sub-set of the Charter School Performance Criteria. A Summary of Review is developed by the OCSSR for the BESE, based on the school’s Renewal Application, Renewal Inspection Report, Site Visit Reports, CPR and MCR reports, annual audits, and other sources of evidence.

Please see the Commissioner’s 2013 [Considerations for Charter School Renewal](http://www.doe.mass.edu/news/news.aspx?id=7802) memo for a description of renewal outcomes and the rationale for making renewal decisions. In brief, based on Board votes in 2009 and 2013, the Commissioner has been delegated the authority to grant charter renewals that do not involve probation or nonrenewal. In these cases, the Commissioner notifies the Board ahead of any intended actions, and the Board may ask to bring the renewal to the full board for a vote. If the Board does not ask to bring the renewal to the full board, the Commissioner's decision stands and the charter will be renewed, with or without conditions. For renewals involving probation or non-renewal, or for any item requested by the Board to be discussed at a meeting, the Board then votes either to renew, to renew with conditions, to renew with probation, or not to renew the school’s charter.

# **Types of Charter Schools**

Massachusetts charter schools offer a variety of programs to serve children throughout the state. Schools are chartered to either give preference to students within a particular district or to serve a region. Schools serve a variety of grade spans, ranging from only elementary grades to K-12. Many charter schools offer extended day and school year programs and were chartered with a variety of missions. A complete list of all Massachusetts charter schools is available at <http://profiles.doe.mass.edu/search/search.aspx?leftNavId=>.

# **Special Education in Charter Schools**

### What are the basic requirements of the Individuals with Disabilities Education Act (IDEA)?

The Individuals with Disabilities Education Act-2004 (IDEA), is a federal special education law that requires that states and public schools provide students with disabilities a free and appropriate public education (FAPE), access to the general education curriculum commensurate with their non-disabled peers, and that the educational placement of students with disabilities be in the least restrictive educational placement which still meets the unique needs of the student.

Federal IDEA entitlement funds are allocated through state education agencies (SEA) to the local education agencies (LEA) to support special education and related services. Every SEA receives these funds and must ensure that all LEAs, the state’s school districts and charter schools, are in compliance with the mandates of IDEA.

### What common terms and acronyms should I know?

The common terms are:

* IEP: A team of professionals and parents arrange for the student's evaluation, determine eligibility, decide on the individualized special education and related services for the student, and prepare an ***individualized education program*** containing student-specific services that are reviewed at least annually. An IEP includes measurable annual goals, how the student will be included in state and district assessments, and how the student will access the general education curriculum in order to meet state’s academic standards.
* FAPE: Students with disabilities are entitled to a ***free and appropriate public education***.
* LRE: The ***least restrictive environment*** refers to placement in a setting that most closely resembles the general education classroom. Students with disabilities must have a continuum of placements available to them that range from full time in a general education classroom to a substantially separate placement. They are entitled to be placed in the setting that will meet their individual needs while removing them as little as possible from the general education classroom.
* IEP Team: A group of persons, meeting participant requirements of federal special education law who, together, discuss evaluation results, determine eligibility, develop or modify an IEP, and/or determine placement. The U.S. Department of Education’s (USED) Office of Special Education Programs (OSEP) provides information on the requirements of IDEA and is available at: [www.ed.gov/about/offices/list/osers/osep/index.html](http://www.ed.gov/about/offices/list/osers/osep/index.html).

### Do charter schools serve students with disabilities?

Yes. All charter schools in Massachusetts serve students with disabilities. Charter schools must accept all students whose names are selected through a lottery. They may not discriminate in admissions or enrollment against students on the basis of disability, special need, or prior academic achievement.

### Can charter schools waive responsibilities for special education?

No. Charter schools are public schools and must comply with all federal education laws, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA). There is no provision to request a waiver from federal requirements pertaining to students with disabilities. However, all Massachusetts public school districts, including charter schools, may submit a written proposal (Request for Waiver) to the Department of Elementary and Secondary Education (ESE) for approval to satisfy the requirements of the *state* special education requirements in an alternative manner. ESE may approve the proposal if it demonstrates substantial promise of contributing to improvements in the methods for meeting the goals of the state special education regulations and does not conflict with any provision of state law.

### What does Individuals with Disabilities Education Act (IDEA) say about charter schools?

The Individuals with Disabilities Education Act (IDEA) states that students who attend charter schools are protected under this law. [IDEA, 34 CFR, § 300.209](http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CC%2C300%252E209%2Cb%2C), refers to charter schools and their students:

* Students with disabilities in charter schools and their parents retain all procedural safeguards.
* Charter schools are included in the local education agency (LEA) definition when established as an LEA by state law.
* Students with disabilities in charter schools that are part of an LEA must be served in the same manner as that LEA serves students with disabilities in its other schools, including the provision of supplementary and related services at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools. The LEA must also allocate funds to charter schools on the same basis that it provides funds to its other public schools.
* A charter school that functions as its own LEA is responsible for ensuring that the requirements of IDEA are met, unless state law assigns that responsibility to some other entity.
* The state’s Special Education Advisory Council must include a charter school representative.
* The IDEA requires SEAs to implement specific procedures, including evaluations for students to determine if they are eligible for special education, to provide subsequent services and to re-evaluate eligible students. Under IDEA, SEAs receive grant funds that are allocated to LEAs to provide special education and related services to students with disabilities. All states are allocated these funds and are required to follow the IDEA mandates.

What are charter schools responsible for providing?

Charter schools are responsible for the provision of free and appropriate public education (FAPE), including a full continuum of services to students with disabilities, except for students who require an out-of district day or residential school, the that programmatic and financial responsibility returns to the school district where the student resides.

Who is responsible for the oversight of special education programs in charter schools?

All charter schools in Massachusetts must appoint an individual to act as the Administrator of Special Education. This person must be qualified to perform all required duties, including supervision and oversight of all special education services and programming within the school, and ensure compliance with all federal and [state special education laws](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=03#start).

Are special education teachers required to be licensed?

### Special education teachers in Horace Mann charter schools are required to hold an appropriate Massachusetts teaching license because employees of a Horace Mann charter school are, for collective bargaining purposes, employees of a school district. Any staff implementing specialized instruction included in an Individual Education Program (IEP) must meet the qualifications for service delivery provider established by the ESE pursuant to IDEA § 34 CFR 300.156(a):

The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

The appropriate qualifications for a Commonwealth charter school staff to independently deliver specialized instruction are:

* Holding a valid (in or out-of-state) license or its equivalent as a special education teacher for the appropriate grades and severity level and/or
* Having successfully completed an undergraduate or graduate degree in an approved special education program.

# Specialized instruction provided by personnel who do not meet the above qualifications must be delivered in consultation with a qualified individual who provides supervision and oversight of the delivery of the specialized instruction. This supervision should be documented on those students’ IEPs, typically in “Grid A” as a consult. The Department of Elementary and Secondary Education (ESE) Massachusetts Charter Schools [*Teacher Qualifications in Massachusetts Charter Schools*](http://www.doe.mass.edu/charter/guidance/2016-2.html)clarifies the Massachusetts and federal professional qualification requirements.

Are there required forms and notices that charter schools should use?

Charter schools must use [individualized education programs (IEPs) forms and notice letters](http://www.doe.mass.edu/sped/iep/eng_toc.html), which contain all the required elements mandated in state regulations.

### Is there special education compliance monitoring at charter schools?

The ESE oversees school district compliance with special education requirements through the Coordinated Program Review (CPR) process. All compliance reviews monitor selected special education and civil rights requirements; and as appropriate, selected English language learner and other general education requirements. Subsequent to the monitoring review, the ESE issues a CPR report identifying education requirements that are implemented and any areas of non-compliance identified during the school’s onsite review. The school district is required to develop a Corrective Action Plan (CAP) that addresses the identified areas of non-compliance.

The ESE compliance monitoring process occurs on a six-year cycle and maintains copies of all previous monitoring reports. In addition, Massachusetts requires a Mid-Cycle Review (MCR) follow-up visit three years after the CPR. The MCR verifies the implementation status and effectiveness of the school district’s compliance and effectiveness in remedying previously identified noncompliance issues in the area of special education. The MCR also reviews special education criteria that have been substantially changed in response to IDEA-2004 and selected English language learner requirements. As part of the Web Based Monitoring System (WBMS), schools conduct a special education program self-assessment, which includes reviewing student special education records and required policies and procedures.

What is the process for application and review of charter school startup?

During the state’s charter school application phase, access and equity specialist from the Office of Charter School and School Redesign (OCSSR) review each proposal for evidence of a special education program that can effectively identify, assess, and serve diverse student populations. The application must demonstrate knowledge of program requirements and implementation; appropriate staffing levels and program organization to support delivery of quality student services; and program evaluation procedures that indicate the special education program can effectively serve the targeted student populations. During the first year of operation, the OCSSR conducts a first year site visit to observe, among other criteria, the special education program and the implementation of individualized education program (IEP) services; to review the program’s policies, student special education records, and IEPs; and to verify that special education program requirements are in place.

### What is child find and what are charter schools responsibilities?

The Individuals with Disabilities Education Act (IDEA) requires each state to “have in effect policies and procedures to ensure that all students with disabilities residing in the state who are in need of special education and related services are identified, located and evaluated.” States develop procedures that their local education agencies (LEAs) must follow to carry out these responsibilities. Because a charter school is its own LEA for special education, the school must follow the Massachusetts procedures like other LEAs. Charter schools are responsible for students only when they are actually enrolled in the charter school. All charter schools must conduct “child find” activities for their full student population so that students who may need special education services are appropriately identified and, if necessary, referred for evaluation.

### Are there requirements regarding physical accessibility of charter school facilities?

All charter schools must be fully accessible to persons with disabilities.

Are charter schools responsible for providing related services?

Charter schools must provide related services (i.e., speech and language therapy, occupational and/or physical therapy) as determined necessary by the student’s individualized education program (IEP) in order for the student to receive a free and appropriate education (FAPE). All related service providers at charter schools must comply with all professional licensure and certification requirements.

# **Finance**

How are Commonwealth charter schools funded?

For each child that a Commonwealth charter school enrolls, it receives a tuition amount from the state equal to a per-pupil amount calculated by the Department’s school finance office. The state then deducts the same amount from the sending district’s state aid account (the sending district being the school district in which the student resides). Like other public schools, Commonwealth charter schools are eligible to receive federal and state grant funds. Commonwealth charter schools may apply for private grants and receive contributions. For more detailed information about how the state calculates tuition payments for Commonwealth charter schools, visit <http://www.doe.mass.edu/charter/finance/tuition/>.

How are Horace Mann charter schools funded?

Funding for a Horace Mann charter school comes directly from the school district in which the school is located, through a memorandum of understanding (MOU) with the district. An application for a Horace Mann charter school may specify a total budget allocation that the school committee has approved for the charter school’s first year. Each year thereafter, the board of trustees of a Horace Mann charter school will submit a budget request for the following fiscal year to the superintendent and school committee of the district. Under the law, a Horace Mann charter school cannot receive less than it would have under the district’s standard budgetary allocation rules. A school may appeal a disproportionately small budget allocation to the Commissioner. Depending upon the terms of its charter and the MOU, a Horace Mann charter school may receive its share of federal and state grant funds from the district or receive the funds directly. Horace Mann charter schools may apply for private grants and receive individual contributions.

### Are there fiscal responsibility exceptions for charter schools regarding programs for students with

### disabilities?

Yes. Commonwealth charter schools function as standalone local education agencies (LEAs) for special education implementation and accountability. They are responsible for all aspects of special education programming and operation, similar to any Massachusetts city or town *except* that they are not required to provide out-of-district placements to students who may require a full time day or residential program of special education services. Please refer to the [Technical Assistance Advisory SPED 2014-5: *Charter School Out of District Placement "28.10" Guidance*](http://www.doe.mass.edu/sped/advisories/2014-5ta.html) for more information.

### Are there any additional state funds available for students with disabilities?

Yes. First implemented in fiscal year 2004, the "[circuit breaker](http://www.doe.mass.edu/finance/circuitbreaker/)" program reimburses a local education agency (LEA) for students with disabilities who require individualized education program (IEP) services that cost greater than four times the statewide foundation budget. A LEA may be reimbursed, subject to appropriation, for up to 75% of these costs. Although the majority of charter school students who meet this service threshold are served at private day or residential placements and are the programmatic and financial responsibility of the their school district of residence, some charter schools may be qualified for “circuit breaker” reimbursement.

### Are charter schools entitled to federal funds?

Yes, charter schools are eligible for the same federal funds that go to all public schools. Each federal program has its own requirements. [Special education grant information](http://www.doe.mass.edu/sped/iep/eng_toc.html) is available on the Department of Elementary and Secondary Education website.

### Can charter schools access Medicaid benefits for students who are eligible?

Yes. As of 2007, Massachusetts school districts, because they are considered Medicaid providers, can file Medicaid claims to obtain federal reimbursements for students who receive special education services, as delineated on an individualized education program (IEP), and who have MassHealth. This is called the [School Based Medicaid Program](http://www.mass.gov/eohhs/provider/insurance/masshealth/school-based-medicaid/). In Massachusetts, the federal match for state dollars spent on Medicaid services is 50%. For every dollar that the Commonwealth spends on Medicaid-eligible services, the federal government contributes 50 cents. Therefore, schools can bill for half of the cost of the services they provide. This can be a significant source of additional funding for schools.

There are two categories of Medicaid billable services that schools provide:

* Direct services to students - this includes physical therapy, occupational therapy, speech and language services, audiological services, behavior management and/or counseling, and 1:1 nursing services; and
* Administrative activities - these are indirect services that are not child-specific, and include: providing resources and referrals, overall planning for all student health services, prenatal/postnatal counseling for pregnant students, and outreach to identify and enroll eligible students in MassHealth (including helping families with the MassHealth application).

No family is required to enroll their child in MassHealth in order for him or her to become eligible for special education and receive a free and appropriate public education (FAPE). In order for a local education agency (LEA) to bill MassHealth for Municipal Medicaid services, the parent or guardian must give consent, as the school will be sharing information about the student with MassHealth in order to submit a claim for Medicaid reimbursement for school-based health services. The school should also have a written policy and procedures for documenting all health services. Additionally, school personnel must meet both federal and state provider qualifications for the service he or she provides.

# **Transportation**

### What are the transportation requirements for students who attend charter schools?

Massachusetts charter school regulation [603 CMR 1.07(3)](http://www.doe.mass.edu/lawsregs/603cmr1.html?section=07) requires that, for students attending a charter school located in their town of residence, school districts provide transportation for charter school students to and from school on the same basis as it is provided to other public school students in the district. The charter school may also choose to arrange for alternative transportation if an agreement cannot be reached with the district, in which case the charter school’s transportation costs are deducted from the district’s funding, and used to reimburse the charter school.

Transportation for students with disabilities who attend a charter school in their town of residence must be provided by the school district of the town. Special education transportation for students who live outside the town in which the charter school is located must be arranged and paid for by the charter school. More information can be found in the Department of Elementary and Secondary Education [*Charter School Technical Advisory 16-1: Transportation*](http://www.doe.mass.edu/charter/guidance/2016-1.html).

# **Enrollment**

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### What is a recruitment and retention plan?

### Existing Massachusetts charter schools are required to have a student recruitment and retention plan that includes deliberate, specific strategies the school will use to attract, enroll, and retain a student population that, when compared to students in similar grades in schools from which the charter school enrolls students, contains a comparable academic and demographic profile as stated in [G.L. c. 71, § 89(e-f).](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section89)

### As defined in [MGL c. 71 § 89](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section89) and [603 CMR 1.05](http://www.doe.mass.edu/lawsregs/603cmr1.html?section=05) Massachusetts charter schools must receive approval from the Department for a recruitment and retention plan which is updated annually. In developing the recruitment and retention plan, charter schools should review the charter school regulations governing student recruitment, enrollment, and retention, found at [603 CMR 1.05](http://www.doe.mass.edu/lawsregs/603cmr1.html?section=05).

### The statute also requires that the plan include a detailed description of deliberate, specific strategies the school will use to maximize the number of students who successfully complete all school requirements and prevent students from dropping out. The student recruitment and retention plan is reported on and updated annually through the charter school accountability process in the school’s annual report, and is, included in consideration at during renewal as stated in [G.L. c. 71, § 89 (i)(3)](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section89).

### The charter school statute outlines certain demographic groups that must be included in all recruitment and retention plans, including limited English proficiency, special education, free lunch, and reduced-price lunch students, as well as those who are sub-proficient on the MCAS, at risk of dropping out of school, have dropped out of school, or other at-risk students who should be targeted to eliminate achievement gaps. The Board of Elementary and Secondary Education will consider the extent to which the school has followed and updated its recruitment and retention plan as one of the factors in making a renewal decision ([Chapter 71, § 89(i)](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section89)).

### The Department encourages schools to use the [Charter Analysis and Review Tool](http://www.doe.mass.edu/charter/finance/chart/) (CHART) to access school specific demographic data for a sub-set of the categories. CHART has been designed to provide multi-school demographic comparison data in three categories:

### Enrollment percentages by subgroup (First Language Not English, English Language Learners, Students with Disabilities, [Economically Disadvantaged](http://www.doe.mass.edu/infoservices/data/ChangingMetric.pdf#search=%22economically%22), and High Needs)

### Attrition percentages by grade level and subgroup

### Student indicator statistics, including suspensions and graduation rates.

### In CHART, a charter school’s data is graphed against comparable schools in its region, the median and first quartile of the comparison schools, and the state average. For enrollment demographics, a statistically derived "comparison index" is also graphed. The comparison index provides a comparison figure derived from data of students who reside within the charter school’s sending district(s).

### What issues should charter schools consider when designing their enrollment forms?

Under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Title II of the Americanswith Disabilities Act (ADA) and the Massachusetts Charter School Law and Regulations, schools may not categorically deny admission to students on the basis of disability. The ESE Charter School Administrative and Governance Guide defines the enrollment policy and nondiscrimination requirement:

*Massachusetts law is clear; charter schools may not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, gender identity[[1]](#footnote-1), mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement in admitting students, and charter schools may not set admissions criteria that are intended to discriminate or that have the effect of discriminating on any of these bases. A student must be a resident of Massachusetts at the time of application to be eligible for a charter school’s enrollment process. The charter school must hold a lottery to determine which students to admit if there are more applications received than seats available. Every time an admissions lottery takes place, the process must be fair and all rules must be consistently applied.*

Although a [charter school application](http://www.doe.mass.edu/charter/governance/EnrollmentChecklist.pdf) may ask whether or not a student is currently receiving special education services, the application form must include a nondiscrimination disclaimer with all the protective categories and adhere, as required, to an open and fair lottery process. While it is essential that the charter school has this information in order to plan and hire staff for the school year, the information obtained may not be used in a discriminatory manner. Charter schools may not administer tests to potential applicants or predicate enrollment on results from any test of ability or achievement. The charter school may also initiate student records requests from the student’s home district.

### Does the Department of Elementary and Secondary Education provide guidance on conflict

### resolution and due process?

[The Bureau of Special Education Appeals (BSEA)](http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/) conducts mediations, advisory opinions, and hearings to resolve disputes among parents and school districts, charter schools, private schools and state agencies concerning eligibility, evaluation, placement, individual education programs (IEPs), special education services, and procedural protections for students with disabilities. In addition, a parent may request a hearing on any issue involving the denial of the free appropriate public education (FAPE) guaranteed by Section 504 of the Rehabilitation Act of 1973 (Section 504). The BSEA derives its authority from federal IDEA law and regulations and Massachusetts law and regulations.

### What assistance does the Department of Elementary and Secondary Education offer persons who

### believe that a charter school is not meeting its obligations under federal and state special education laws and regulations?

The [Problem Resolution System (PRS)](http://www.doe.mass.edu/pqa/prs/) is the process for receiving, reviewing, and resolving concerns from the public regarding students who allegedly are not receiving education services under federal and state laws and regulations as required. Individuals who believe that any charter school student is not receiving special educational services or procedural protections that by law must be provided to students with disabilities may access the PRS by contacting:

Massachusetts Department of Elementary and Secondary Education

Problem Resolution Intake Specialist

75 Pleasant Street, Malden, MA 02148

Telephone: 781-338-3700

TTY:N.E.T. Relay: 1-800-439-2370

FAX: 781-338-3710

E-mail: [compliance@doe.mass.edu](mailto:compliance@doe.mass.edu)

# **Resources**

* ESE Office of Charter Schools and School Redesign [www.doe.mass.edu/charter/](http://www.doe.mass.edu/charter/)
* ESE Special Education Policy, Planning and Development Unit <http://www.doe.mass.edu/sped>
* Massachusetts Charter Public School Association [www.masscharterschools.org/](http://www.masscharterschools.org/)
* National Association of Charter School Authorizers [www.qualitycharters.org](http://www.qualitycharters.org)

1. Since the Administrative and Governance Guide was published, gender identity was added to the Massachusetts nondiscrimination statement. [↑](#footnote-ref-1)