



## REVIEW OF *WHY THE GAP? SPECIAL EDUCATION AND NEW YORK CITY CHARTER SCHOOLS*

*Reviewed By*

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### Summary of Review

This report attempts to shed light on the lower enrollment rates of children with disabilities in charter schools in New York City. It concludes that distinct differences in enrollment patterns can be largely attributed to lower application rates and not active measures by charter school officials to push out or “counsel out” students with special needs. While the report raises interesting issues about application and transfer patterns, it ultimately fails to provide useful results to inform policymakers. It neglects any review of related literature and therefore ignores alternate explanations for the statistical patterns found. Use of a restricted, non-representative data set places severe limitations on the generalizability of the findings and the conclusions that may be drawn. The report asserts but does not provide evidence that “counseling out” is minimal or does not occur, nor does it answer “why” disparities persist. The results do confirm the existence of enrollment disparities between charter and traditional public schools and growth in these disparities over time, and the report draws attention to the need to better understand the influences on parents’ decisions to apply to a charter school or not. The report also provides evidence that further research is necessary and suggests the need to employ student-level data, to track lottery applicants, and to employ a variety of research methods to ascertain both the precise contours of the “gap” and why it occurs in charter schools in New York City.

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# REVIEW OF *WHY THE GAP? SPECIAL EDUCATION AND NEW YORK CITY CHARTER SCHOOLS*

*Julie F. Mead, University of Wisconsin-Madison*

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## I. Introduction

This review examines the recent report jointly issued by the Center on Reinventing Public Education (CRPE) and the Manhattan Institute for Policy Research (MIPR) titled *Why the Gap? Special Education and New York City Charter Schools*.<sup>1</sup> As the title indicates, the study examined a group of New York City charter schools in order to better understand the persistent gap between the proportion of children with disabilities enrolled in charter schools and the larger proportional enrollment of the same population in traditional public schools.<sup>2</sup> The study's stated purpose is "to ascertain why the disparity in special education rates exists" (p. 3). The report uses data collected by the New York City Department of Education and data volunteered from 25 charter elementary schools to "discern whether there is a difference over time in special education rates between applicants who enrolled in charters and those who instead enrolled in traditional public schools" and "to assess the influence of factors that could contribute to the special education gap, such as student mobility across sectors and the probability that a student is newly classified or is declassified as having a disability" (p.3).

Using a variety of statistical approaches, the report concludes that these differences in enrollment patterns can be largely attributed to lower application rates and not active measures by charter school officials to push out or "counsel out" students with special needs. Moreover, the study concludes that an increasing gap over time stems from charter schools' preference for avoiding classifying students as needing special education and filling limited empty seats after kindergarten enrollment with children without disabilities, because children with disabilities do not seem to apply for available slots.

The report addresses an important issue that clearly deserves empirical study to understand the challenges and complexities of serving children with disabilities in non-discriminatory ways in charter schools. It also displays a variety of interesting patterns, including confirming the existence of the gap, demonstrating that the gap grows over time, and that the charter schools appear to serve only children with mild disabilities. Ultimately, however, the study does not deliver on its promise. The quantitative methods used do not answer "why" the long-standing disparities exist. In addition, the analysis is restricted to children in kindergarten through third grade in a small non-representative, voluntary sample of elementary charter schools. Problematically, the report does not the

address the seminal issue of whether the schools have the requisite capacity to serve a range of educational needs presented by children with disabilities.

This study appears to be another report<sup>3</sup> designed to further an advocacy goal and to blunt criticism from the Government Accountability Report that more attention is needed<sup>4</sup> in order to ensure that children with disabilities and their parents have non-discriminatory access to charter schools. Another objective of the report appears to be to challenge a recent change to New York's charter law that requires that authorizers examine charter schools' enrollment patterns with respect to children with disabilities. Although the study has both strengths and weaknesses, the limitations of the data restrict the applicability of the conclusions, thereby limiting the report's usefulness to inform policymakers. The report's real strength is in the questions for further empirical study that flow from the data presented.

## II. Findings and Conclusions of the Report

The report's findings are highlighted in bullet form in the executive summary of the report (pp. 3-4). They are reproduced here verbatim:

- The gap in special education enrollment exists primarily because students with disabilities— particularly those with autism or who have a speech or language impairment—are less likely to apply to charter schools in kindergarten than are regular enrollment students.
- The gap in special education rates between charter and traditional public schools grows considerably as students progress from kindergarten through third grade. A large part (80 percent) of the growth in this gap over time is that charter schools are less likely than district schools to classify students as in need of special education services and more likely to declassify them.
- The other 20 percent of the growth in the gap of special education rates is explained by students transferring between charter and district schools.
- Surprisingly, the results do not suggest that charter schools are refusing to admit or are pushing out students with special needs. In fact, more students with previously identified disabilities enter charter schools than exit them as they progress through elementary grade levels. The 20 percent growth in the gap is driven by greater proportions of general education students entering charter schools between kindergarten and third grade, which has the effect of reducing the total proportion of students with special needs compared to the total number of students. In other words, the gap increases because the number of regular

enrollment students in charter schools goes up as new students enroll, not because the number of students with disabilities goes down.

- The growth in the special education gap between charter and traditional public schools occurs mostly in what could be considered the most subjective categories of student disabilities: emotional disability and specific learning disability. By far, the most substantial growth in the special education gap occurs in the least severe category, that of specific learning disability. Rates of classification in what might be considered the more severe (and less subjective) categories of special education—autism, speech or language impairment, or intellectual disability—remain quite similar in charter and traditional public schools over time.
- There is great mobility among special education students regardless of whether they attend a charter or traditional public school. Nearly a third of charter school students who receive special education services leave the charter school by the fourth year of attendance. However, more than a third of traditional public school students who receive special education services leave their traditional public school before the fourth year of attendance.

The study concludes with a reasonable suggestion that policymakers “should consider the underlying causes of the special education gap when weighing policies intended to address it” and that “[m]ore research is needed” (p. 20).

Throughout the study limitations are identified and the caveat given that “results based on this sample strictly hold for those schools only, and not the New York City charter sector as a whole” (p. 8) and “may or may not apply more broadly” (p. 20). Those warnings seem to be lost in the press about the report, including the official press release from CRPE which trumpets the findings without providing the context from which they were found.<sup>5</sup>

### III. The Report’s Rationale for Its Findings and Conclusions

The report bases its findings and conclusions on analyses of two datasets. The first is the New York City Department of Education’s (NYCDOE) longitudinal student-level data for students in kindergarten through third grade during the school years 2008-2009 through 2011-2012. The second dataset contains information on the applicants to the twenty-five charter schools, both those enrolled and those denied, during the same time period. These data (names of applicants and the results of random selection lotteries) were collected by the charter schools and voluntarily provided to the researcher who then matched names to the student level data provided by the NYCDOE.

It is this approach that provides both the value and primary limitation of the study. It is certainly helpful to approach the issue with student-level data in order to “provide a

comprehensive assessment of the factors related to the gap in the percentages of students with disabilities in New York City charter and traditional public elementary schools” (p. 20). However, the data is limited to the early elementary years without any discussion of why this approach was selected or why (or whether) the limitation is germane to the questions under study. In other words, the study draws conclusions based on four grade levels (k-3) with no consideration of the remaining nine (4-12).<sup>6</sup> Even if one considers that the majority of NYC charter schools serve elementary populations, it does not explain why the study capped the inquiry at third grade, omitting grades 4 and 5.

This omission is a serious one when considering the enrollment patterns of children with disabilities. There is a well-documented increase in the number of children with disabilities that occurs throughout grades 1-5. This jump is attributed to the shift in

**Table 1. Child Count Data for New York State for 2011**

Disability	Age 6	Age 7	Age 8	Age 9	Age 10	% Change from age 6 to age 10
<i>Intellectual disabilities</i>	282	417	470	634	742	+163%
<i>Hearing impairments</i>	228	270	332	352	381	+67%
<i>Speech or language impairments</i>	12,987	12,681	11,271	9,847	8,790	-33%
<i>Visual impairments</i>	x	101	105	85	110	+1%
<i>Emotional disturbance</i>	760	1,088	1,401	1,701	1,930	+153%
<i>Orthopedic impairments</i>	187	196	183	x	171	-9%
<i>Other health impairments</i>	3,387	4,032	4,555	4,780	4,957	+46%
<i>Specific learning disabilities</i>	1,635	3,768	6,886	9,957	12,602	+670%
<i>Deaf-blindness</i>	0	x	x	x	x	
<i>Multiple disabilities</i>	949	945	1,073	1,077	1,164	+23%
<i>Autism</i>	2,028	2,091	2,130	2,134	2,020	-1%
<i>Traumatic brain injury</i>	x	x	x	x	x	
<i>Developmental delay</i>	-	-	-	-	-	
<b>All disabilities</b>	<b>22,566</b>	<b>25,625</b>	<b>28,452</b>	<b>30,780</b>	<b>32,954</b>	<b>+46%</b>

Source: United States Department of Education (2011). *Historical State-Level IDEA Data Files, Part B, Child Count*. Washington, DC: Author. Retrieved October 18, 2013 from <http://tadnet.public.tadnet.org/pages/712>.

curricular emphasis from learning to read/compute and reading/computing to learn. Or stated another way, as the curriculum becomes more demanding, some students with disabilities begin to require additional supports in the form of special education and related services in order to meet those demands.<sup>7</sup> Table 1 displays the child count data for the state of New York for 2011 and illustrates the pattern.

As shown, the number of students identified as having a disability increases each year. In particular, the number of students identified as having intellectual disabilities, emotional disturbance, other health impairments, specific learning disabilities, and multiple disabilities grows substantially over the course of elementary school. The only disability category that substantially decreases over the same period is children with speech and language disabilities, with much of that decrease happening at ages 9-10 (typically grades 4 and 5). As such, this report's concentration on grades kindergarten through third grade not only neglects the phenomenon at middle and high schools, it also misses much of what we need to know and understand about enrollment patterns of children with disabilities in elementary schools. For example, Table 3 (p.10) shows that the largest category of children with disabilities served by charter schools is speech and language disabilities. If charter schools are not serving and/or identifying children with other disabilities (which tend to go up in 4<sup>th</sup> and 5<sup>th</sup> grades) and experience a similar decline in the number of children with speech/language impairments as statewide data would predict, it is likely that the gap between charter and traditional schools is even larger if all elementary grades (k-5) are included. This omission is a serious one and undercuts the validity and generalizability of the report's conclusions.

Properly understood, then, the report shows that there is a gap in early elementary enrollment patterns in NYC charter schools that begins at the point of application and grows thereafter. The remaining findings must be read with extreme caution given the sampling restrictions as will be described in the review of the report's methods below.

#### **IV. The Report's Use of Research Literature**

The CRPE/MIPR study engages in no real review of related literature declaring (without citation to previous studies) that “[t]hus far, the empirical consideration of the special education gap has not ventured past simple comparisons of the overall percentages of students with special needs in each sector. No hard evidence exists to definitively explain or quantify the disparity between special education enrollment rates in charter and traditional public schools.” (p. 5-6). While it is true that research is just beginning to “quantify the disparity” in more nuanced ways and the longitudinal approach taken here contributes to that knowledge, it is an over-statement to suggest that there is no evidence on the issue. Three studies provide examples.

Estes reported findings from a mixed methods study of Texas Charter schools.<sup>8</sup> She utilized statewide data from the Texas Education Agency to compute enrollment patterns in charter and traditional schools. She also interviewed seven officials responsible for 20

charter schools.<sup>9</sup> She found enrollment gaps and a tendency to enroll children with mild disabilities, and she raised issues concerning why these patterns exist. For example, in a fashion similar to the CRPE/MIPR report, she reports that more children with disabilities are served in traditional classrooms rather than pull-out classrooms. The Estes report then used qualitative interview data to shed further light on that tendency, showing that the schools studied had adopted a “full inclusion” delivery model that administrators were reluctant to adjust. As she explained, “[w]hether total inclusion provides for a free, appropriate public education, however, depends on the needs of the child. IDEA calls for

*The quantitative methods used do not answer “why” the long-standing disparities exist.*

the IEP [individualized education program] committee to consider individual needs and make an individualized placement decision.”<sup>10</sup> Moreover, interviewed officials demonstrated a poor understanding of some aspects of the IDEA process. The CRPE/MIPR report opines that enrollment disparities may stem from reluctance on the part of charter schools to classify students with disabilities and an increased tendency to serve them in traditional classrooms, assuming these practices are always and uniformly positive. However, as Estes documents, that may or may not be so if individual children’s needs are not being adequately met.

A more recent study by Garcy might also have provided a means to compare the CPRE/MIPR results to previous research. Garcy studied enrollment patterns of children with disabilities in Arizona charter schools.<sup>11</sup> He, too, used state student level data, in this case the records of all children with disabilities in Arizona, in grades 3, 5, and 8 who took the state’s required mathematics assessment in 2003. He then employed quantitative statistical analyses to examine the issue. He found that charter schools tended to serve mild disabilities. Recognizing that each disability category includes children on a continuum from mild to severe needs, he then examined the services needed as a measure of severity, showing that even within a given category (e.g., learning disabilities) charter schools tended to serve children on the mild end of the needs continuum, leaving high cost, difficult-to-serve children concentrated in traditional public schools. The CPRE/MIPR study neglects any discussion of the fact that children within a disability category vary as to severity of need.

Finally, a study by Blackwell is especially germane, though it was published just shortly before the CRPE/MIPR report.<sup>12</sup> In a mixed methods study that used statistical analysis of student enrollment data<sup>13</sup> coupled with a content analysis of state IDEA compliance reports for districts and charter schools,<sup>14</sup> Blackwell found that charter schools are enrolling smaller proportions of children with disabilities from less severe categories and are less likely to provide services in pull-out or separate instructional settings. He also found that some areas in which charter schools had been identified for non-compliance related to these enrollment patterns. For example, he found that less than 60% of



Massachusetts charter schools were compliant with respect to seven monitoring criteria that were central to individualization of instruction and non-discriminatory practices.<sup>15</sup>

What is particularly interesting is that the CPRE/MIPR report confirms many of the findings of these studies, but it discussed none of the alternate explanations for the patterns identified in the prior literature. As such, the report inflates the positive interpretation of its findings while simultaneously undercutting the potential to use these results to add clarity to the overall issue by ignoring comparisons to other studies in other places. That narrow discussion also constrains the identification of questions in need of further research.

## V. Review of the Report's Methods

The report employs some promising methodologies. It uses student-level data to follow students over time in order to understand both where children start and where they move if they change sectors. This approach is a reasonable one and has the potential to track whether, children with disabilities admitted to charter schools are subsequently transferring—whether voluntarily or otherwise—to traditional public schools. Likewise, the examination of those who apply—not simply those who were admitted—to charter schools is important to a full understanding of the disparity of special education rates.

That said, there are serious limitations to the data used to form the report's conclusions. In addition to the grade level restriction mentioned earlier, several of the study's conclusions rely on the analysis of the lottery applicants to kindergarten from 25 (13.7%) of the city's 183 charter schools.<sup>16</sup> The schools volunteered to participate in the study and provided lists of applicants to the researcher. As one commenter pointed out, "any schools actively counseling students out would presumably have declined to participate."<sup>17</sup> Moreover, not all 25 schools provided data for all 4 school years under study. As Table 2 shows, only ten schools provided lottery data for all four school years.

**Table 2. Participating Charter Schools and Years Data Provided**

Years of lottery data	Number of schools
4 years (2008, 2009, 2010, 2011)	10
3 years (2009, 2010, 2011)	2
2 years (2010, 2011)	5
1 years (2011)	8

Source: Table 1, p. 9, Winters, M. A. (2013). *Why the Gap? Special Education and New York City Charter Schools*. Seattle, WA: Center on Reinventing Public Education (CRPE) and Manhattan Institute for Policy Research. Retrieved October 19, 2013, from [http://www.crpe.org/sites/default/files/CRPE\\_report\\_speced\\_gap-nyc-charters.sept13.pdf](http://www.crpe.org/sites/default/files/CRPE_report_speced_gap-nyc-charters.sept13.pdf).

Accordingly, it is important to note that the study's sample is extremely limited, potentially unrepresentative, and likewise so are its findings.<sup>18</sup>

In addition, no attempt is made to provide an understanding of the participating schools and whether or not they mirror non-participating schools. For example, while the report names the schools, the discussion does not indicate where these schools are and whether they represent all parts of the city.<sup>19</sup> More importantly, we do not know what special education services these schools have readily available and whether or not their approach to special education delivery is similar or different from non-participating schools. For that matter, the report provides the reader no context for special education delivery in the comparison district schools either. As such, the report rests on data voluntarily provided from a small non-representative sample of schools.

Finally, the report uses the presence or absence of an individualized education program (IEP) as its proxy for disability. This use is reasonable as a starting point, but must be understood as a very crude measure. As Garcy showed,<sup>20</sup> the label tells us nothing about the severity of the disability and the number and kind of services outlined on the IEP as necessary to meet the law's mandate of a free appropriate public education for a particular child.

## **VI. Review of the Validity of the Findings and Conclusions**

The findings and conclusions must, therefore, be viewed in light of these methodological limitations. In addition, the report's discussion of the results suffers from insufficient examination of alternate explanations for the findings:

### **Lack of applications from students with disabilities**

The report's central finding that parents of disabilities are less likely to apply for kindergarten admission raises more questions than it answers. Most importantly, the finding begs the question "why?" The report posits that the pattern may exist because "students had an IEP prior to entry into kindergarten" and wished to remain in the schools that served them or were associated with prior preschool special education services (p.10). While this assertion may be so, no evidence is cited to suggest the number of students who may be in that situation; in fact, state-level data suggest it unlikely that prior special education services accounts for the differences in application patterns noted, especially with respect to children identified with autism or speech and language disabilities.<sup>21</sup> The study examines what happens after an application is filed. It does not address what happens prior to the application phase and whether "counseling out" or "counseling away" does or does not occur during the pre-application phase. Accordingly, it is inappropriate to assert that this report either refutes or confirms the practice.

This finding about application rates highlights the need to better understand what programs and services charter schools readily make available. The study clearly shows that

understanding enrollment gap patterns requires an examination of what factors influence parents' choices to apply in the first place. While it may be that parents of children with disabilities are actively counseled away from charter school application, the difference may also stem from the power of charter school officials to determine what special education expertise they have readily available. A parent who knows or suspects that their child may need a particular service or professional expertise is unlikely to apply, much less enroll, in a school that lacks that service—even if officials promise to acquire the expertise, if needed. Likewise, availability of services could also influence movement across sectors after initial enrollment in kindergarten and the likelihood that a parent of a child with a disability would apply for an available seat in a later grade. As such, programmatic choices made by charter school officials may effectively constrain and direct the application choices of parents.

### **Rate of classification and declassification**

That charter schools are less likely to classify students as in need of special education and are more likely to declassify them is an interesting finding, but one that requires far greater scrutiny. The report seems to cast the finding as wholly positive, but an equally plausible explanation is that charter schools are not properly evaluating students when they should. For example, the report asserts (without citation to empirical evidence) that charter schools are more likely than district schools to not promote students to the next grade (p. 7). Perhaps, charter schools are over-using grade retention without properly considering whether learning problems may suggest the presence of a disability. It could also be that charter schools have less capacity to conduct evaluations and therefore are less likely to refer children for evaluation, or that schools are trying to avoid the costs associated with evaluation and placement in special education. Finally, this result could also stem from a lack of understanding of when an evaluation should be conducted. Simply put, we do not know the reason why classification and de-classification differs across sectors and this study does not answer that question.

The report also suggests that charter schools may be doing a better job than traditional schools at meeting students' needs in typical classrooms without the need for special education classification and services (p. 3). Again, that assertion may or may not be true, but what is clear is that the quantitative analysis of enrollment patterns conducted for this study does not provide evidence for such a conclusion.

### **“Counseling Out”**

The report also purports to show that charter schools are not counseling students out. While it is true that the study “found little evidence that charter schools push students with special needs out the door after they’ve admitted them,”<sup>22</sup> this study does not tell us whether the evidence was lacking because the practice is not happening or because of the limitations of the dataset or the method used to analyze the data were simply insufficient to capture the phenomenon. In short, the claim is not substantiated.

## Mobility of Special Education Students

The finding that special education students are highly mobile in both sectors, although reasonably deduced from the evidence available, is compromised by two factors: 1) the limitations of using a highly restricted dataset and 2) lack of discussion of general mobility within the city. The report shows a comparison between children with and without IEPs, but provides no context such as reporting the city's overall student mobility rates.

## VII. Usefulness of the Report for Guidance of Policy and Practice

While this report presents its findings as instructive for policymakers, its limitations actually render it of little use to officials concerned with the issue. There are simply too many unresolved questions raised by the study to rely on it for policy formation. Nonetheless, the authors assert “that recent attempts to address the special education gap through legislation are unlikely to yield meaningful results and could prove harmful to students” (p. 20). The predicted “harm” stems from a concern that enrollment targets may cause schools to engage in unnecessary classification in order to satisfy a target. What this discussion lacks, however, is a clear explanation of the New York policy to which it refers. New York statutes require that when charter schools apply for renewal (once every 5 years) that they report (among other requirements) to their authorizer:

The means by which the charter school will meet or exceed enrollment and retention targets as prescribed by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, ... which shall be considered by the charter entity prior to approving such charter school's application for renewal.<sup>23</sup>

Another provision establishes failure to meet or exceed the target as one of several grounds for charter revocation.<sup>24</sup> These regulations require three rather modest policy responses: 1) that state officials provide comparative enrollment targets for special populations; <sup>25</sup> 2) that charter schools provide a report of their practices relative to the targets; and 3) that authorizers consider the data when making renewal and revocation decisions. The regulations do not require authorizers to take any definitive action—only that they take a look at what might be considered a red flag. In fact, charter school authorizers must consider the explanations proffered by the school if its comparative data suggests an enrollment pattern of concern. Moreover, the regulation applies only to charters once established and does not require new information prior to determining whether or not to grant the charter in the first place. Nothing in the CRPE/MIPR study provides evidence that engaging in an examination of the issue through the use of enrollment targets is an inappropriate policy response.<sup>26</sup>

The report's observation that “it is difficult to hold [charter schools] accountable for the free choice of individuals deciding whether or not to apply to the charter sector” (p.20) is particularly troubling because it ignores the ways charter schools may intentionally or

unintentionally influence those choices—particularly by deciding what services are available. The option to select a school that cannot meet the learning needs of a child is not a genuine or “free” choice. So while schools may not be held accountable for others’ choices, they should be held accountable for the choices they make in developing programs, determining what services to provide, advertising their programs, and recruiting applicants—all actions which may impact whether parents of children with disabilities apply to a charter school at kindergarten or any other grade level.

For all the reasons discussed, while this report has limited utility for policymakers, it nicely demonstrates the complexity of the issue and the need to better understand how charter schools do and do not serve children with disabilities. As the report correctly reminds the reader, “[w]e cannot discern the reasons for their parents’ choices in a statistical analysis alone, and the issue deserves further study” (p.4). In addition to understanding parents’ choices, we need to better understand schools’ choices about the availability of services in charter schools, charter schools’ understanding and use of the special education referral and evaluation procedures, and broader empirical studies show the presence or absence of “counseling out.”

## Notes and References

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- 1 Winters, M. A. (2013). *Why the Gap? Special Education and New York City Charter Schools*. Seattle, WA: Center on Reinventing Public Education (CRPE) and Manhattan Institute for Policy Research. Retrieved October 19, 2013, from [http://www.crpe.org/sites/default/files/CRPE\\_report\\_speced\\_gap-nyc-charters.sept13.pdf](http://www.crpe.org/sites/default/files/CRPE_report_speced_gap-nyc-charters.sept13.pdf).
- 2 U.S. Government Accountability Office (GAO) (2012, June). *Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities*, Publication No. GAO-12-543. Washington, DC: Author.
- 3 Lake, R., Gross, B., & Denice, P. (2012). *New York State Special Education Enrollment Analysis*. Seattle, WA: Center on Reinventing Public Education. Retrieved October 12, 2013, from <http://www.crpe.org/publications/new-york-state-special-education-enrollment-analysis>;  
  
Baker, B. (2012). *Review of "New York State Special Education Enrollment Analysis."* Boulder, CO: National Education Policy Center. Retrieved October 12, 2013 from <http://nepc.colorado.edu/files/ttr-crpe-ny-sped-baker.pdf>.
- 4 U.S. Government Accountability Office (GAO) (2012, June). *Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities*, Publication No. GAO-12-543. Washington, DC: Author.
- 5 Center on Reinventing Public Education (2013, September 30). *Study pinpoints sources of special ed disparity in NYC charter schools* (press release). Seattle, WA: Author. Retrieved October 19, 2013 from <http://www.crpe.org/news/press-release-study-pinpoints-sources-special-ed-disparity-nyc-charters>.
- 6 IDEA actually guarantees access for children ages 3-21, inclusive. 20 U.S.C. §1412(a)(1)(A).
- 7 IDEA eligibility requires three elements are met: 1) the child has an identifiable disability; 2) that disability adversely affects educational performance; 3) the adverse effect is such that, by reason thereof, special education and related services are needed. 20 U.S.C. §1401(3)(A); 34 C.F.R. §300.9. As such, a child only becomes identified as a child with a disability as defined by the IDEA when special education is needed for appropriate education to result.
- 8 Estes, M.B. (2004). Choice for all? Charter schools and students with special needs. *The Journal of Special Education*, 37(4), 257-267.
- 9 Officials were contacted based on geographic proximity to the researcher.
- 10 Estes, M.B. (2004). Choice for All? Charter Schools and Students with Special Needs. *The Journal of Special Education*, 37(4), 265.
- 11 Garcy, A.M. (2011). High expense: Disability severity and charter school attendance in Arizona. *Education Policy Analysis Archives*, 19(6), 1-30.
- 12 Blackwell, W.H. (2013). An Era of Charter School Expansion: An Examination of Special Education in Massachusetts' Charter Schools. *Journal of Disability Policy Studies*, 24(2), 75-87.

- 13 Data included enrollment files compiled by the Massachusetts Department of Elementary and Secondary Education for all charter schools and school districts for the 2009-2010 school year. In all data concerning 62 charter schools and 37 school districts was analyzed.
- 14 Compliance reports from monitoring completed by the Massachusetts Department of Elementary and Secondary Education were collected for the 2005-2006 through 2009-2010 school years. That sample yielded reports concerning 43 charter schools and 31 school districts for analysis.
- 15 Blackwell, W.H. (2013). An Era of Charter School Expansion: An Examination of Special Education in Massachusetts' Charter Schools. *Journal of Disability Policy Studies*, 24(2), 85-86.
- 16 The New York City Charter School Center reports that the city's 183 charter schools break into levels as follows: 99 Elementary Schools, 24 Middle Schools, 19 High Schools, 13 K-12 Schools, 17 K-8 Schools, 11 Secondary Schools (6-12). Accordingly, the sample of 25 charter schools was drawn from a total population of 129 schools that serve grades K-3 and comprises 19.4% of charter schools that serve those grade levels.
- New York City Charter School Center (2013). Charter School Facts, 2013-2014, New York City, NY: Author. Retrieved October 22, 2013, from <http://www.nyccharterschools.org/sites/default/files/resources/FACTS082713.pdf>.
- 17 Darville, S. (2013, October 1). Report: District-charter special ed gap not from "counseling out." Gotham Schools. Retrieved October 21, 2013, from <http://gothamschools.org/2013/10/01/report-district-charter-special-ed-gap-not-from-counseling-out/>.
- 18 For example, Table 4 (p. 11) and Table 5 (p.12) both rely on the lottery data and report percentages for each year of charter enrollment. However as not every school had a lottery in each of the school years under study, each column includes data from fewer and fewer schools and therefore fewer and fewer students.
- 19 A report by Gittleson demonstrates that special education enrollment patterns vary both across parts of the city and by the entity which authorized the charter school. See:
- Gittleson, K. (2010) Closing the gap: Charter school special education stats. *Gotham Schools*. Retrieved October 18, 2013, from <http://gothamschools.org/2010/05/11/closing-the-gap-charter-school-special-education-stats/>.
- 20 Garcy, A.M. (2011). High Expense: Disability Severity and Charter School Attendance in Arizona. *Education Policy Analysis Archives*, 19(6), 1-30.
- 21 The most recent child count data would suggest it unlikely that receiving preschool special education services provides a primary explanation for the reluctance of parents of children with disabilities to apply to charter schools. That data show that in 2011 the entire state of New York reported only 2,290 children with identified speech and language disabilities and 325 children with autism who were four years old (the 2 disability categories singled out by the report). See:
- United States Department of Education (2011). Historical State-Level IDEA Data Files, Part B, Child Count. Washington, DC: Author. Retrieved October 18, 2013 from <http://tadnet.public.tadnet.org/pages/712>.
- 22 Lake, R. (2013). BLOG - Charter Schools: Special Needs "Served Well Here" or "Need Not Apply"? Seattle, WA: Center on Reinventing Public Education. Retrieved October 21, 2013, from <http://www.crpe.org/updates/blog-charter-schools-special-needs-served-well-here-or-need-not-apply?>

23 New York Education Law §2851(4)(e) (McKinney 2011).

24 New York Education Law §2855(1)(e) (McKinney 2011). The provision reads (emphasis added):

The charter entity, or the board of regents, **may** terminate a charter upon any of the following grounds:

- (a) When a charter school's outcome on student assessment measures adopted by the board of regents falls below the level that would allow the commissioner to revoke the registration of another public school, and student achievement on such measures has not shown improvement over the preceding three school years;
- (b) Serious violations of law;
- (c) Material and substantial violation of the charter, including fiscal mismanagement;
- (d) When the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of section two hundred nine-a of the civil service law involving interference with or discrimination against employee rights under article fourteen of the civil service law; or
- (e) ***Repeated failure to comply with the requirement to meet or exceed enrollment and retention targets of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program pursuant to targets established by the board of regents or the board of trustees of the state university of New York, as applicable. Provided, however, if no grounds for terminating a charter are established pursuant to this section other than pursuant to this paragraph, and the charter school demonstrates that it has made extensive efforts to recruit and retain such students, including outreach to parents and families in the surrounding communities, widely publicizing the lottery for such school, and efforts to academically support such students in such charter school, then the charter entity or board of regents may retain such charter.***

25 The targets are ranges based on data from traditional schools and the population from which a school draws its applicants.

26 For a discussion of ways in which charter school policies may be used to further the goal of equal educational opportunity for all children, including children with disabilities, see:

Mead, J.F. & Green, P. C. (2012). *Chartering Equity: Using Charter School Legislation and Policy to Advance Equal Educational Opportunity*. Boulder, CO: National Educational Policy Center;

Mead, J. F. and Green, P. C. (2012). *Model Policy Language for Charter School Equity*. Boulder, CO: National Educational Policy Center.



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