

# Just The Facts: Charter Schools (and Cutting Through Some Myths and Hot Air)

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## Education Law Notes

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As anyone reading the newspapers can observe, Connecticut charter schools are receiving some unwanted attention these days due to: 1) a myriad of issues involving a charter school management company; and 2) virulent attacks from, among others, those who either currently hold or who hope to attain political office. Once politically favored by both major political parties, some educators and politicians are now suggesting significant legislative changes to charter schools, if not outright questioning the entire charter school movement. Before proposing possibly unnecessary legislative changes, however, it is important to first understand what the current laws require.

**The FOIA:** Not only are charter schools themselves subject to the Freedom of Information Act [“FOIA”], they already have to comply with **stricter** transparency requirements than are imposed upon local and regional school districts. For example, state law requires “state” charter school governing councils to post on their websites the agendas and minutes of all their meetings, including meetings of their subcommittees. *Connecticut General Statutes §10-66k(a)*. Conversely, a short-lived requirement that the minutes of municipal agencies (including school districts) be posted on the agency’s website was repealed in 2010, and school districts are only required to post online agendas for their “special” meetings. *Understanding the Connecticut Freedom of Information Act and Access to Public Meetings and Records*, by Mark J. Sommaruga (4<sup>th</sup> Ed. 2013), at pp. 18, n. 11 and 24.

What is less clear -- and has therefore triggered controversy -- is whether charter school management organizations (e.g., entities some charter schools contract with for educational design, implementation, or “whole school” management services) are subject to the FOIA. Both the courts and the Freedom of Information Commission [“FOIC”] have construed the FOIA to cover the “functional equivalent” of public agencies. For instance, an “endowed incorporated” private academy has been found to be the functional equivalent of public agency and covered by the FOIA, in light of the academy’s performance of a governmental function, the level of governmental funding, and the extent of government involvement and regulation. *Board of Trustees of Woodstock Academy v. FOIC*, 181 Conn. 544 (1980). Given this, charter school management companies may already be covered by the FOIA.

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**Special education/enrollment.** The laws governing charter schools -- not to mention state and federal anti-discrimination statutes -- clearly prohibit charter schools from excluding students with disabilities or students requiring special education. Thus, charter schools are legally prohibited from “skimming” the best students and refusing disabled or troubled students. Indeed, 1) admission is by way of blind lottery (assuming that there is more demand than seats available), and 2) an application for renewal of a charter school may be denied if the efforts of the school are deemed to be insufficient in effectively enrolling and retaining, among others, students identified as requiring special education. *Connecticut General Statutes §10-66bb(f)*.

In addition to being prohibited from excluding special education students, charter schools have a legal responsibility to ensure that students receive those services specified in their individualized education programs. In terms of the roles of a charter school and the school district in which a student resides, the school district’s “only” powers are to: 1) convene the Planning and Placement Team meetings conducted for the purposes of, among other things, developing, reviewing and revising the IEP, and 2) pay for the additional costs of special education services being provided to a student. *Connecticut General Statutes §10-66ee(c)(2)*. The charter school is then legally responsible for ensuring that the student receive the services mandated by the individualized education program, whether such services are provided by the charter school or by the school district in which the student resides.

Finally, it should be noted that the statutes governing special education for **charter schools** and **magnet schools** are nearly identical, so it is difficult to understand how anyone could praise one but criticize the other regarding their obligations to admit and provide services to disabled students.

### ***Moral of the Story***

Lawyers often say that bad facts make bad law, but inaccurate facts can lead to even worse results. Consequently, regardless of what side one takes in the debate over charter schools, it is important that the dialogue between charter school proponents and opponents be informed by an accurate understanding of the law.

**Posted in** CT General Statutes, The Freedom of Information Act (FOIA)

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