



Key points:

- **Work with parents to address eligibility changes**
- **Maintain consistent enrollment policies throughout school year**
- **Provide accommodations for pre-enrollment exams, auditions**

Charter schools: Maintain nondiscriminatory admissions criteria

A [charter school](#) student with ADHD and other disabilities moves out of his school's attendance boundaries in the middle of his first-grade year. The school denies him admission for second grade, citing an enrollment policy that gives preference to existing students who reside within the district. The student's parent subsequently claims that the school discriminated against her son and denied him admission because of his disability.

In this recent case, *J.C. v. Cambrian School District*, [67 IDELR 199](#) (9th Cir. 2016, *unpublished*), the court rejected the parent's claim, saying it found no evidence that the denial of enrollment was connected to the student's disability. Under Section 504, charter schools, like all traditional public schools, cannot deny admission to students on the basis of disability. [34 CFR 104.31](#). However, acceptable, nondiscriminatory admissions criteria may include a student's resident status or grade level, said Michelle Laubin, an attorney at [Berchem, Moses & Devlin PC](#) in Milford, Conn.

Here, the charter school's best defense was showing that it consistently enforced its admissions policy and did not admit any nonresident students for that school year, regardless of disability status.

How can your charter maintain and enforce similar nondiscriminatory enrollment policies? Keep these guidelines in mind:

- **Address eligibility changes**

In the *Cambrian* case, the main issue was what a school should do when an already-enrolled student undergoes a change to his admissions eligibility, like moving out of the district midyear, said Bennett Rodick, an attorney at [Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP](#) in Arlington Heights, Ill.

Be careful how you treat a student with a disability who is already enrolled, Rodick said. Through the IEP process, explain to parents the changes that may occur to their child's special education placement and services as a result of the eligibility change. Charters may need to coordinate with their authorizing district to address how the student's needs will continue to be met, he said.

- **Be ready to provide reasons behind admissions decisions**

Like traditional public schools, charter schools must admit any student who applies. If there are more applicants than seats, admission is determined by lottery. Be consistent with your lottery process, Laubin said. In the *Cambrian* case, for example, the school consistently gave first preference to resident students, followed by already-enrolled students, students with siblings in the district, and lastly, new applicants.

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Additionally, maintain consistent enrollment policies to avoid discrimination complaints, Laubin said. In the *Cambrian* case, the charter school showed that it consistently enforced its enrollment policy by not admitting any nonresident students for that school year. The parent was thus unable to show that the school denied her son admission based on his disability and not his residency status.

Still, the parent argued that the school "could have made room" for her child because the school reduced the capacity of its second-grade class from 89 students the previous year to 87 students, due to budgetary concerns. However, it's OK to change enrollment caps, such as classroom size, from year to year as long as you can explain the reason for the change, Rodick said.

- **Provide accommodations for admissions exams, auditions**

Charter schools are allowed to establish prerequisites for enrollment -- such as an audition, essay, or placement exam -- as long as a student's admission is not conditioned solely on his performance. Keep in mind that students with disabilities must be offered reasonable accommodations to comply with the admissions process, Laubin said.

For example, a student with a mobility impairment cannot be excluded from an audition for a performing arts school because of his disability, she said. He must be offered reasonable accommodations to participate equally in the audition, such as acting or singing instead of dancing.

- **Ensure enrollment forms are nondiscriminatory**

Don't ask about a student's disability or accommodation needs on an enrollment form, Laubin recommended. Keep it simple and stick to basic biographical information such as the student's name, age, gender, grade level, and address. Avoid questions such as, "Does the student have a disability?", "Does the student have an IEP or 504 plan?", or "Does the student take any medication?"

"If you ask about [a student's disability or accommodation needs] in the initial application, it gives rise to a guess as to whether that is being considered in deciding whether or not [he] will be accepted," Laubin said.

Wait until the student is enrolled to ask about disability status or medication needs, she advised.

In addition, ensure enrollment forms include your school's statement of nondiscrimination. Admissions policies and nondiscrimination statements should also be posted on the school's or district's website and available in the school office, Laubin said.

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