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[Judge Says NYC Charter School Serving the Disabled Can Stay Open Despite Test Results](#)

The city tried to close grades six through eight of the Harlem school due to failure rates on state tests

Opportunity Charter School says about 60% of its 180 middle-school students have moderate to severe learning disabilities, speech delays and other problems.

By Leslie Brody
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All grades of a Harlem charter school focused on children with disabilities will stay open for the 2017-18 academic year, despite New York City's efforts to shut its middle school down for poor performance on state tests.

At a hearing Thursday in state Supreme Court in Manhattan, Judge James D'Auguste left intact a temporary restraining order barring the city Department of Education from closing grades six through eight of Opportunity Charter School.

About 60% of its 180 middle-school students have moderate to severe learning disabilities, speech delays and other problems, the school says. The charter argued it isn't fair to penalize it for catering to students who were among the least proficient in the city when they enrolled.

Chlarens Orsland, a lawyer for the city, said that, even so, the school had to show students were being prepared for college and careers. State data said 8% of its middle-school students passed in English language arts last year and 3% did so in math.

The case shows the difficulty of applying accountability rules to schools with unique student bodies. Charter schools, which are publicly funded and privately operated, get freedom from many district regulations in return for autonomy, and can be shut if they don't show good academic results.

The department's lawyer said that considering the ongoing dispute, students at the middle school could keep attending the charter for the coming academic year because it was too late to find them other spots.

Layta Downs, who has a seventh-grader there, expressed relief. Her son has a cancer that affects his brain and attention span, and teachers had given him lessons even during his hospital stays. She said his reading and math had improved at the school, he felt comfortable there, and if it closed, "he would be lost."

The school's charter—or contract—expires in June. Earlier this year the department said it would renew its charter for high school grades on condition that the middle grades close. The school and eight parents, including Ms. Downs, sued to keep it open.

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They argued its students are making progress and it is unfair for the department to expect the school to meet arbitrary rates of proficiency on standardized tests. They say the evaluation system discriminates against disabled students.

On Thursday, the judge echoed that stance, telling the department's lawyer that "You use standards that are not standards which are appropriate for children with disabilities."

The judge also criticized the department for failing to provide data that he requested previously showing how many children at the charter weren't meeting the targets of their "individualized education plans," or IEPs, which spell out services and goals for each student.

The department's lawyer said it would be a "Herculean task" to get data on how many of these students met goals of their IEPs, compared with students at other schools.

The judge underscored the charter's unusual mission. Many charters are accused of systematically nudging out hard-to-serve students, an accusation that these schools typically deny.

"The biggest objection I hear from this present administration is that charter schools who are performing exceptionally well are doing it because they are dumping students with disabilities," he said, alluding to Mayor Bill de Blasio.

The judge said the city's evaluation of the charter didn't involve in-depth observations of teachers in the classroom. He asked the school and department to consider a settlement that would include more detailed monitoring, and scheduled another hearing in July.

The charter is authorized by the city Department of Education, which serves as a gatekeeper and must submit its recommendations for charter issuance to the state Board of Regents. Due to the dispute, the proposed renewal hasn't been sent to the board.

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