

QUESTIONS AND ANSWERS:

Application of Federal Civil Rights Laws to Public Charter Schools

U.S. Department of Education
Office for Civil Rights



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**QUESTIONS AND ANSWERS ON THE APPLICATION OF FEDERAL
CIVIL RIGHTS LAWS TO PUBLIC CHARTER SCHOOLS**

One of the fastest growing areas of public school reform is the charter schools movement. President Clinton has called for the creation of 3,000 charter schools by early in the next century as a vehicle for promoting choice and innovation within public school systems. Charter schools are public schools under contract -- or charter -- between a public agency and groups of parents, teachers, community leaders or others who want to create alternatives and choice within the public school system. In exchange for greater accountability for student achievement, charter schools are given expanded flexibility with respect to statutory and regulatory requirements. However, charter schools remain subject to federal civil rights laws.

This "Questions and Answers" Handout has been prepared by the Office for Civil Rights (OCR) in the U.S. Department of Education to assist charter schools in meeting their obligations under federal civil rights laws in the areas of recruitment and admissions, provision of appropriate services to limited English proficient (LEP) students, and provision of a free appropriate public education and program accessibility to students with disabilities. OCR is responsible for enforcing civil rights laws that protect students and other participants from discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance. These laws are: 1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin; 2) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; and 4) the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities, including public charter schools and public school districts, regardless of whether they receive federal financial assistance.

These Questions and Answers are not intended to provide all of the information that may be needed to ensure compliance with civil rights laws. Rather, our intent is to highlight key requirements. Details of these requirements are described in OCR regulations and policy documents and applicable court decisions. For more detailed information about the civil rights requirements addressed in these Questions and Answers, as well as other requirements under the federal civil rights laws, please contact the OCR enforcement office that serves your state. A list of the addresses and telephone numbers of the OCR enforcement offices is attached.

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Entity Responsible for Civil Rights Compliance

Q: Which legal entity is responsible for ensuring that a public charter school is complying with federal civil rights laws?

A: The recipient of federal financial assistance is responsible for ensuring that a public charter school is complying with federal civil rights laws. Where a charter school is part of a local educational agency (LEA), the LEA is responsible for ensuring that the charter school is complying with the requirements of the federal civil rights laws. Where the charter school is considered a "local educational agency" under the state charter schools law, then the charter school itself is responsible for ensuring compliance with the federal civil rights laws. It should be noted that where a charter school receives funds under the federal Public Charter Schools Program, the state education agency and any other authorized chartering agency also would be responsible for ensuring that the public charter school is complying with federal civil rights laws. In addition, the state educational agency (SEA) is responsible in all cases for having methods of administration that ensure nondiscrimination.

Effect of Existing Desegregation Plans on Public Charter Schools

Q: What effect does an existing desegregation plan for a school district have on the establishment or operation of a public charter school in that district?

A: When a public charter school is being established in a jurisdiction that is under a Title VI desegregation plan approved by OCR, a court order requiring desegregation, or a desegregation plan approved by any other administrative body of competent jurisdiction under state law, the charter school must be established and operate in a manner that is consistent with the desegregation plan or order. Generally, the establishment of a public charter school in a jurisdiction that is required to desegregate may not substantially impede or retard the extent of required desegregation. In jurisdictions required to desegregate, the establishment of a public charter school would be treated the same as the establishment of any other public school.

Before a charter school may be established in a jurisdiction that is under a Title VI desegregation plan approved by OCR, OCR must approve the establishment of the charter school as being consistent with the applicable OCR-approved desegregation plan, which may involve amending the Title VI desegregation plan. Where a charter school is being established in a jurisdiction with court-ordered desegregation or where desegregation is required pursuant to state law by an administrative agency of competent jurisdiction, the LEA or the charter school's governing board, if the charter school is governed by a board that is independent of the LEA, should review the required desegregation plan to determine whether establishment of the charter school is consistent with the desegregation plan and whether approval by the entity requiring desegregation is needed.

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In order to receive planning funds under the federal Public Charter Schools Program, an applicant for funds must certify either that the proposed charter school will not be located in a jurisdiction that is required to desegregate or that the charter school will take steps during the period of its planning grant to develop an application for approval under any applicable desegregation plan or order. The Secretary of Education urges charter schools seeking approval under a desegregation plan or order to submit their applications in sufficient time to ensure approval prior to the date the charter school is scheduled to open. A charter school is precluded from receiving implementation funds under the federal Public Charter Schools Program until it has actually received approval under the desegregation plan or order.

Recruitment and Admissions

Q: What steps should a public charter school take in order to be in compliance with federal civil rights laws with respect to the recruitment of students?

A: Consistent with Title VI, Title IX, Section 504, and Title II, a public charter school must not recruit in a manner that discriminates against students of a particular race, color, national origin, or sex, or students with disabilities. However, charter schools may make additional efforts to encourage applications from underrepresented groups.

Examples of ways that charter schools may recruit minority and LEP students are as follows: 1) conduct presentations or meetings with parent teacher associations or organizations at schools with a large number of minority students; 2) schedule meetings or consultations with minority community groups; 3) indicate in promotional materials that alternative language services will be provided for LEP students; 4) indicate in such materials that a free or low cost lunch program is available for eligible students; 5) disseminate information about the charter school in newspapers and other publications and on radio stations that serve minority communities; 6) promote the charter school in shopping malls and go door to door with promotional literature in minority communities; and 7) emphasize in meetings and promotional materials that students from all segments of the community will be welcome at the charter school.

Q: What steps does a public charter school have to take in its recruitment efforts with respect to parents who are limited English proficient?

A: A public charter school must ensure that parents who are not proficient in English are provided with appropriate and sufficient information about the charter school. This information must be effectively communicated to parents who are not proficient in English. For example, in those communities that have significant numbers of LEP parents, if outreach materials are made available to parents, these materials may have to be available in languages other than English

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to ensure effective communication with LEP parents. If the charter school conducts informational meetings with parents or community groups in local communities that include significant numbers of individuals who have limited English proficiency, then translation services should be available in order to ensure effective communication.

Q: What steps does a public charter school have to take in its recruitment efforts with respect to parents with disabilities?

A: A public charter school must ensure that information about the charter school is communicated as effectively to parents with disabilities as to other parents. Appropriate auxiliary aids and services must be made available whenever they are necessary to ensure effective communication for parents with disabilities. For example, if outreach materials are made available on request to parents, these materials should be made available in such alternative formats as Braille or large print for parents with visual disabilities. If the charter school conducts informational meetings with parents or community groups, qualified interpreters should be provided on request for individuals with hearing disabilities.

Q: What steps should a public charter school take in order to ensure that all students, regardless of race, color, and national origin, are treated in a nondiscriminatory manner in admissions?

A: Public charter schools may not discriminate on the basis of race, color, or national origin in determining whether the applicant satisfies any admissions requirement. Charter schools receiving federal Public Charter Schools Program funds may set minimum eligibility criteria for admission to the charter school, and thus for inclusion in the lottery, only to the extent that such criteria: (1) further the statutory purposes of the Public Charter Schools Program; (2) are directly related to the educational mission of the charter school; and (3) are consistent with federal civil rights laws. Regardless of whether charter schools receive federal Public Charter Schools Program funds, any admissions criteria must be permitted by state law and the school's charter and must be nondiscriminatory on their face and applied in a nondiscriminatory manner. If these criteria have a disparate impact on the basis of race, color, or national origin, the criteria must be necessary to meet the school's educational objectives and there must be no feasible alternative admissions criteria that have less disparate impact and meet the school's educational objectives. For more detailed information about the circumstances under which charter schools receiving federal Public Charter Schools Program funds may set minimum eligibility criteria for admission, see Public Charter Schools Program: Non-Regulatory Guidance.

Many state charter school laws also have specific provisions that are designed to ensure that charter schools are open to all students. For example, consistent with the federal Public Charter Schools Program, a significant number of states specifically require that public charter schools use a lottery system for admissions

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purposes where there are more applicants than spaces available. A few state charter school laws contain provisions designed to ensure that transportation services are provided to low-income students attending such schools.

Q: Under Section 504 and Title II, what steps should a public charter school take in order to ensure that students with disabilities are treated in a nondiscriminatory manner in admissions?

A: Students with disabilities may not be excluded from admission to a public charter school solely on the basis of their disability. In applying admissions criteria to students with disabilities, individualized determinations must be made as to whether a particular student meets the criteria, and those determinations must be made on a nondiscriminatory basis. For example, if students must take a written examination as part of the admissions process to a public charter school, a student who is blind would have to be provided appropriate accommodations in order to take the test.

Civil Rights Funding Requirements

Q: What civil rights requirements apply to the funding of charter schools?

A: States have broad discretion in determining how and from what revenue sources to fund charter schools. However, SEAs are responsible under civil rights regulations to ensure that their methods of administration for overseeing and supervising the provision of education under state law do not result in discrimination based on race, national origin, or sex. Part of that obligation is to ensure that state laws and procedures for financing public education do not have the effect of racial or sex discrimination based on the student composition by race and sex of LEAs. This obligation extends to the method of funding charter schools that are considered LEAs under state charter school laws. Thus, if charter schools enroll student bodies that vary significantly in terms of their race, national origin, or sex from that of other LEAs in the State, and the State's methods of funding charter schools result in disparate educational resources for charter schools compared to other LEAs, there would be a possible claim that the State is in violation of Title VI or Title IX. For example, some charter schools that are considered LEAs under a state charter school law enroll a higher proportion of minority students than other LEAs; if these charter school LEAs receive significantly lower levels of public financing per student than other LEAs in the State with corresponding deficiencies in educational resources for students, that could be a basis for a claim against the State for violating Title VI. The State could defend against such a claim by showing that any such disparities are educationally justified. If it succeeded in doing so, there would be a question regarding whether there is a less discriminatory alternative funding method that would satisfactorily meet the State's educational objectives. These issues would need to be examined on a case by case basis.

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The above-described standards do not assume any intent on the part of the State to discriminate, but rather apply a disparate impact analysis of discrimination provided for in Title VI and Title IX regulations. In addition, if it were shown that the State foresaw these disparate impacts and continued to under-fund charter schools, there would also be a question of possible intentional discrimination under these laws.

These principles would apply as well to methods used by LEAs to allocate public funds among charter schools and other public schools within their districts.

Discrimination on the Basis of Sex

Q: Are single sex charter schools permissible?

A: The Title IX regulation does not prohibit non-vocational elementary and secondary single sex schools. Under Title IX, where there is a public school for one sex, the other sex must be provided with comparable courses, services, and facilities pursuant to the same policies and criteria for admission. Therefore, if there is a single sex charter school for students of one sex, students of the other sex must be provided a comparable educational opportunity.

Provision of Appropriate Services to Students with Limited English Proficiency

Q: May a public charter school exclude from admission students who have limited English language proficiency?

A: A public charter school may not categorically exclude students based on their national origin from participating in a public charter school's program. If there are questions about the legality of the specific requirements of a program being offered by a charter school that may affect LEP students, please contact the OCR enforcement office that serves your state.

Q: Do the requirements to provide appropriate services to LEP students that apply when the LEP student attends any other public school also apply when the LEP student attends a public charter school?

A: Yes. Title VI prohibits the denial of equal access to education for a national origin minority child. Where the inability to speak and understand the English language excludes a national origin minority group child from effective participation in the educational program offered by a public school, the school must take affirmative steps to rectify the language deficiency in order to open its instructional program.

Public schools must implement procedures that ensure that all LEP students are identified, evaluated, and provided necessary alternative language services by

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properly trained staff and that the educational program is periodically evaluated to ensure that it is effective in meeting the educational needs of LEP students. These legal requirements are explained in OCR policy documents and technical assistance materials. Public charter schools need to become familiar with the details of these legal requirements.

There are, of course, many different kinds of programs offered by public charter schools. For technical assistance regarding how the program being offered by a charter school can comply with Federal civil rights requirements to serve LEP students, you should contact the OCR enforcement office that serves your state.

Q: Under Title VI, what must a public charter school do to ensure that parents who are not proficient in English are provided with appropriate and sufficient information about school activities?

A: As with other public schools, charter schools must effectively notify parents who are not proficient in English of school activities that are called to the attention of other parents. Such a notice, to be effective, may have to be provided in a language other than English.

Q: How may charter schools pay for the provision of appropriate educational services to LEP students?

A: The entity responsible for the operation of the public charter school may want to consider applying for Title VII funds from ED's Office of Bilingual Education and Minority Languages Affairs. However, if an independent governing board is responsible for the operation of a public charter school, the charter school must constitute an LEA under the Elementary and Secondary Education Act of 1965 in order for the charter school to receive Title VII funds as an LEA.

Many public charter schools receive Title I funding from ED's Office of Elementary and Secondary Education. Qualifying charter schools would receive Title I funds directly from the SEA if the charter school is treated as an LEA or from the school district if the charter school is treated as a public school within an LEA. Title I funds also may be used to meet the educational needs of LEP students. In addition, a public charter school could be assisted in meeting its obligations through such means as joining with other charter schools or working with LEAs to share qualified staff. It is important to note that a public charter school, like other public schools, cannot excuse its failure to provide appropriate educational services to LEP students because of inadequate financial resources.

Site Selection

Q: When selecting the location of facilities that will house public charter schools, what are the applicable federal civil rights requirements?

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A: The site or location of a public charter school should not result in excluding or limiting enrollment on the basis of race, color, or national origin.

With respect to individuals with disabilities, recipients are prohibited from selecting a site facility that is not readily accessible. The duty not to select an inaccessible site also imposes a duty on an applicant for federal financial assistance, or a recipient of such assistance, to evaluate accessibility when selecting a site. The term "readily accessible" is not the equivalent of an absolute barrier-free standard; the phrase incorporates a level of reasonableness. The "readily accessible" standard also does not foreclose flexibility in application. For example, a recipient may make an inaccessible facility readily accessible, but this must be accomplished within a reasonable period of time of acquisition.

Program Accessibility for Individuals with Disabilities

Q: Are public charter schools responsible for ensuring that their programs and activities are accessible to persons with disabilities?

A: Yes. Public charter schools are subject to the same program accessibility requirements as other public schools. Program accessibility requirements often involve complex issues. For assistance in understanding program accessibility requirements, you may want to review OCR technical assistance materials, which are available from the OCR enforcement office that serves your state.

Q: Are there different legal requirements that apply to public charter schools located in older facilities as compared to newer facilities?

A: Yes, the legal requirements are different. Under the federal civil rights laws, for older facilities (which are referred to as "existing facilities" in the Section 504 and Title II regulations), the legal standard is that programs and activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. Both the Section 504 and Title II regulations permit considerable flexibility in how the legal standard for older facilities can be met. Structural changes are not required in older facilities if nonstructural methods are effective in achieving program accessibility.

For new construction and alterations, under Section 504 and Title II, the legal standard is that a new or altered facility (or the part that is new or altered) must be readily accessible to and usable by individuals with disabilities. The new construction and alterations requirements focus on providing physical access to buildings and facilities rather than on providing access to programs and services.

Section 504 and Title II have different time frames regarding what constitutes existing facilities and new construction and alterations. Under Section 504, an

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existing facility is one that was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. Under Section 504, new construction means ground-breaking took place on or after June 3, 1977. Under Title II, an existing facility is one that was in existence or construction was commenced after January 26, 1992, the effective date of the regulation. Under Title II, new construction refers to any building where construction commenced after January 26, 1992.

It is important to note that, under Section 504, where a facility (constructed or altered post-1977) is acquired by a recipient after design and construction or alterations have been made, the requirements for new construction and alterations are not applicable unless the facility was constructed or altered by or for the recipient. Likewise, under Title II, where a facility (constructed or altered post-1992) is acquired by a public entity after design and construction or alterations have been made, the requirements for new construction and alterations are not applicable unless the facility was constructed or altered by or for the recipient.

Q: What are the program accessibility requirements that apply if the public charter school leases its space from another entity?

A: Leased facilities are subject to the program accessibility requirements for existing facilities or new construction and alterations, depending on the date that the buildings were constructed or altered. The requirements for existing facilities and new construction and alterations are discussed above.

Provision of a Free Appropriate Public Education to Students with Disabilities

Q: Must students with disabilities have an opportunity to participate in public school choice programs?

A: Yes. A state or local government agency must provide students with disabilities, consistent with their individual educational needs, a range of choice in educational programs and activities that is comparable to that offered to students without disabilities. This includes charter schools, magnet schools, and other schools offering different curricula or instructional techniques.

Q: What is the relationship of Section 504 and Title II to the Individuals with Disabilities Education Act (IDEA)?

A: Section 504, Title II, and IDEA are related federal laws but are different in many important ways. Section 504 and Title II are civil rights laws that protect persons with disabilities from discrimination on the basis of disability. Section 504 and Title II are enforced by OCR. The IDEA is a federal statute that provides funds to SEAs and LEAs to help educate children with disabilities and is administered by the Office of Special Education and Rehabilitative Services (OSERS) of the U.S.

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Department of Education. The IDEA has its own separate requirements that are not discussed in this publication; this publication focuses only on Section 504 and Title II. For information on IDEA and its requirements, contact OSERS' Office of Special Education Programs.

Q: What are the requirements for the education of students with disabilities who are protected by Section 504 and Title II?

A: Under Section 504 and its regulations, children with disabilities in public elementary and secondary education programs operated by recipients of federal financial assistance are entitled to a free appropriate public education (FAPE). Under Title II, children with disabilities in a public charter school, regardless of whether the school is a recipient of federal assistance, are also entitled to FAPE. OCR interprets Title II and its prohibition against discrimination on the basis of disability in programs and activities of State and local governmental entities as consistent with Section 504 and its regulations.

Under the Section 504 regulations, the provision of FAPE encompasses several substantive and procedural requirements. Among these requirements is that a student with a disability receive appropriate regular or special education and related aids or services that are designed to meet the individual needs of the student as adequately as the needs of nondisabled students are met.

In general, one method that satisfies the FAPE obligation under Section 504 and Title II is compliance with the requirements of IDEA. As noted above, the Office of Special Education Programs has information on IDEA's requirements.

Q: Is a student with a disability required to be educated with students without disabilities?

A: The education of students with disabilities must be designed to meet their individual needs. Thus, classroom assignments of students with disabilities are governed by the general principle that a student with a disability must be educated with nondisabled students to the maximum extent appropriate to the needs of that student. A student with a disability may be placed in another setting only if educating the child in the regular educational environment, even with the use of supplementary aids and services, cannot be achieved satisfactorily. The student's placement team is responsible for selecting the setting that satisfies these requirements.

Q: Is there flexibility in meeting the Section 504 and Title II requirements for children with disabilities attending public charter schools?

A: Yes. As noted above, one way to meet the FAPE requirements of Section 504 and Title II is to comply with the FAPE requirements of the IDEA. Among other things, the IDEA allows a State to designate some other entity as the agency

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responsible for meeting the IDEA requirements for children with disabilities attending a public charter school. This flexibility is also available for meeting the Section 504 and Title II FAPE requirements. It should be noted that, if a State designates another entity as being responsible for providing FAPE to children with disabilities attending the charter school, that entity's duties include the obligation to provide FAPE in the charter school as long as the charter school is an appropriate placement for the student. As described above, a student with a disability must be educated in the placement that is appropriate to meet his or her individual needs and constitutes the least restrictive environment.

Q: What action should be taken with regard to a student who is suspected of having a disability?

A: Under Section 504 and Title II, an individual with a disability is an individual who either (i) has a physical or mental impairment that substantially limits one or more major life activities (such as learning), (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

Under Section 504 and Title II, a student with a disability who needs or is believed to need special education or related services because of a disability must be evaluated according to prescribed procedures. A child must be evaluated before initial placement as well as before any subsequent significant change in placement. Further, students with disabilities must be reevaluated on a periodic basis. As noted above, compliance with the relevant IDEA requirements would constitute compliance with these Section 504 and Title II requirements.

Q: What other rights and responsibilities are included with the provision of FAPE?

A: Under Section 504 and Title II, students with disabilities and their parents or guardians are entitled to due process rights concerning identification, evaluation, and placement. Due process includes notice and the right to request an impartial hearing. In addition, a student with a disability must have an equal opportunity to participate in nonacademic and extracurricular services and activities. In general, compliance with the relevant IDEA requirements would constitute compliance with these Section 504 and Title II requirements.

Q: Could a child be covered under Section 504 and Title II but not be eligible to receive services under Part B of the IDEA?

A: Yes. Although this is a rare occurrence, there are students with disabilities who are covered only by Section 504 and Title II, but who are not eligible to receive services under Part B of the IDEA. For example, a child with juvenile rheumatoid arthritis who requires the periodic administration of medication during the school day, but does not need any special education services, may be covered by Section 504 and Title II, even though the child is not eligible for services under Part B of the IDEA.

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As noted above, the IDEA is administered by the Department's Office of Special Education, while Section 504 and Title II are enforced by OCR. Under certain circumstances, public charter schools may be eligible for IDEA funds. For further information about IDEA requirements, contact the Office of Special Education Programs.

Q: How can I learn more about the FAPE requirements of Section 504 and Title II?

A: These answers are intended only as a general introduction to the FAPE requirements. The FAPE requirements cover many specific issues in more detail; you may become familiar with them by reviewing the Section 504 and Title II regulations and OCR technical assistance resources available through the OCR enforcement office that serves your state.

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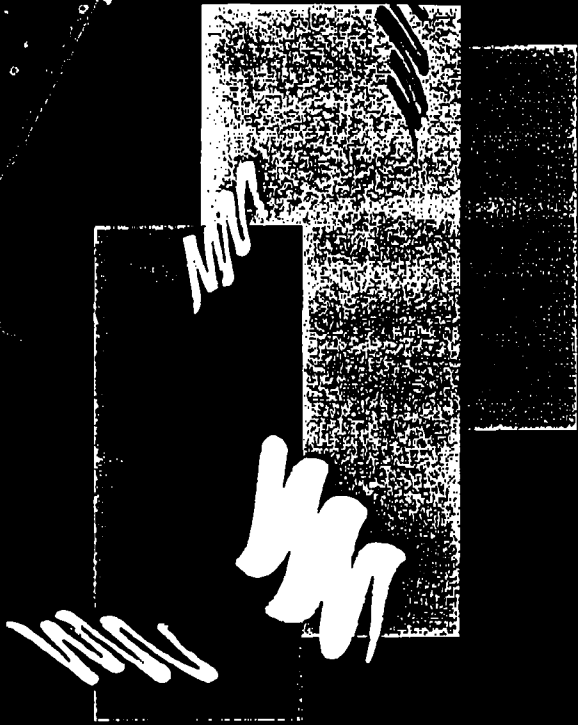
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Effect of Existing Desegregation Plans on Public Charter Schools

- Q:** What effect does an existing desegregation plan for a school district have on the establishment or operation of a public charter school in that district?
- A:** When a public charter school is being established in a jurisdiction that is under a Title VI desegregation plan approved by OCR, a court order requiring desegregation, or a desegregation plan approved by any other administrative body of competent jurisdiction under state law, the charter school must be established and operate in a manner that is consistent with the desegregation plan or order. Generally, the establishment of a public charter school in a jurisdiction that is required to desegregate may not substantially impede or retard the extent of required desegregation. In jurisdictions required to desegregate, the establishment of a public charter school would be treated the same as the establishment of any other public school.

Before a charter school may be established in a jurisdiction that is under a Title VI desegregation plan approved by OCR, OCR must approve the establishment of the charter school as being consistent with the applicable OCR-approved desegregation plan, which may involve amending the Title VI desegregation plan. Where a charter school is being established in a jurisdiction with court-ordered desegregation or where desegregation is required pursuant to state law by an administrative agency of competent jurisdiction, the LEA or the charter school's governing board, if the charter school is governed by a board that is independent of the LEA, should review the required desegregation plan to determine whether establishment of the charter school is consistent with the desegregation plan and whether approval by the entity requiring desegregation is needed.

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In order to receive planning funds under the federal Public Charter Schools Program, an applicant for funds must certify either that the proposed charter school will not be located in a jurisdiction that is required to desegregate or that the charter school will take steps during the period of its planning grant to develop an application for approval under any applicable desegregation plan or order. The Secretary of Education urges charter schools seeking approval under a desegregation plan or order to submit their applications in sufficient time to ensure approval prior to the date the charter school is scheduled to open. A charter school is precluded from receiving implementation funds under the federal Public Charter Schools Program until it has actually received approval under the desegregation plan or order.

Recruitment and Admissions

Q: What steps should a public charter school take in order to be in compliance with federal civil rights laws with respect to the recruitment of students?

A: Consistent with Title VI, Title IX, Section 504, and Title II, a public charter school must not recruit in a manner that discriminates against students of a particular race, color, national origin, or sex, or students with disabilities. However, charter schools may make additional efforts to encourage applications from underrepresented groups.

Examples of ways that charter schools may recruit minority and LEP students are as follows: 1) conduct presentations or meetings with parent teacher associations or organizations at schools with a large number of minority students; 2) schedule meetings or consultations with minority community groups; 3) indicate in promotional materials that alternative language services will be provided for LEP students; 4) indicate in such materials that a free or low cost lunch program is available for eligible students; 5) disseminate information about the charter school in newspapers and other publications and on radio stations that serve minority communities; 6) promote the charter school in shopping malls and go door to door with promotional literature in minority communities; and 7) emphasize in meetings and promotional materials that students from all segments of the community will be welcome at the charter school.

Q: What steps does a public charter school have to take in its recruitment efforts with respect to parents who are limited English proficient?

A: A public charter school must ensure that parents who are not proficient in English are provided with appropriate and sufficient information about the charter school. This information must be effectively communicated to parents who are not proficient in English. For example, in those communities that have significant numbers of LEP parents, if outreach materials are made available to parents, these materials may have to be available in languages other than English

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to ensure effective communication with LEP parents. If the charter school conducts informational meetings with parents or community groups in local communities that include significant numbers of individuals who have limited English proficiency, then translation services should be available in order to ensure effective communication.

Q: What steps does a public charter school have to take in its recruitment efforts with respect to parents with disabilities?

A: A public charter school must ensure that information about the charter school is communicated as effectively to parents with disabilities as to other parents. Appropriate auxiliary aids and services must be made available whenever they are necessary to ensure effective communication for parents with disabilities. For example, if outreach materials are made available on request to parents, these materials should be made available in such alternative formats as Braille or large print for parents with visual disabilities. If the charter school conducts informational meetings with parents or community groups, qualified interpreters should be provided on request for individuals with hearing disabilities.

Q: What steps should a public charter school take in order to ensure that all students, regardless of race, color, and national origin, are treated in a nondiscriminatory manner in admissions?

A: Public charter schools may not discriminate on the basis of race, color, or national origin in determining whether the applicant satisfies any admissions requirement. Charter schools receiving federal Public Charter Schools Program funds may set minimum eligibility criteria for admission to the charter school, and thus for inclusion in the lottery, only to the extent that such criteria: (1) further the statutory purposes of the Public Charter Schools Program; (2) are directly related to the educational mission of the charter school; and (3) are consistent with federal civil rights laws. Regardless of whether charter schools receive federal Public Charter Schools Program funds, any admissions criteria must be permitted by state law and the school's charter and must be nondiscriminatory on their face and applied in a nondiscriminatory manner. If these criteria have a disparate impact on the basis of race, color, or national origin, the criteria must be necessary to meet the school's educational objectives and there must be no feasible alternative admissions criteria that have less disparate impact and meet the school's educational objectives. For more detailed information about the circumstances under which charter schools receiving federal Public Charter Schools Program funds may set minimum eligibility criteria for admission, see Public Charter Schools Program: Non-Regulatory Guidance.

Many state charter school laws also have specific provisions that are designed to ensure that charter schools are open to all students. For example, consistent with the federal Public Charter Schools Program, a significant number of states specifically require that public charter schools use a lottery system for admissions

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purposes where there are more applicants than spaces available. A few state charter school laws contain provisions designed to ensure that transportation services are provided to low-income students attending such schools.

- Q:** Under Section 504 and Title II, what steps should a public charter school take in order to ensure that students with disabilities are treated in a nondiscriminatory manner in admissions?
- A:** Students with disabilities may not be excluded from admission to a public charter school solely on the basis of their disability. In applying admissions criteria to students with disabilities, individualized determinations must be made as to whether a particular student meets the criteria, and those determinations must be made on a nondiscriminatory basis. For example, if students must take a written examination as part of the admissions process to a public charter school, a student who is blind would have to be provided appropriate accommodations in order to take the test.

Civil Rights Funding Requirements

- Q:** What civil rights requirements apply to the funding of charter schools?
- A:** States have broad discretion in determining how and from what revenue sources to fund charter schools. However, SEAs are responsible under civil rights regulations to ensure that their methods of administration for overseeing and supervising the provision of education under state law do not result in discrimination based on race, national origin, or sex. Part of that obligation is to ensure that state laws and procedures for financing public education do not have the effect of racial or sex discrimination based on the student composition by race and sex of LEAs. This obligation extends to the method of funding charter schools that are considered LEAs under state charter school laws. Thus, if charter schools enroll student bodies that vary significantly in terms of their race, national origin, or sex from that of other LEAs in the State, and the State's methods of funding charter schools result in disparate educational resources for charter schools compared to other LEAs, there would be a possible claim that the State is in violation of Title VI or Title IX. For example, some charter schools that are considered LEAs under a state charter school law enroll a higher proportion of minority students than other LEAs; if these charter school LEAs receive significantly lower levels of public financing per student than other LEAs in the State with corresponding deficiencies in educational resources for students, that could be a basis for a claim against the State for violating Title VI. The State could defend against such a claim by showing that any such disparities are educationally justified. If it succeeded in doing so, there would be a question regarding whether there is a less discriminatory alternative funding method that would satisfactorily meet the State's educational objectives. These issues would need to be examined on a case by case basis.

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The above-described standards do not assume any intent on the part of the State to discriminate, but rather apply a disparate impact analysis of discrimination provided for in Title VI and Title IX regulations. In addition, if it were shown that the State foresaw these disparate impacts and continued to under-fund charter schools, there would also be a question of possible intentional discrimination under these laws.

These principles would apply as well to methods used by LEAs to allocate public funds among charter schools and other public schools within their districts.

Discrimination on the Basis of Sex

Q: Are single sex charter schools permissible?

A: The Title IX regulation does not prohibit non-vocational elementary and secondary single sex schools. Under Title IX, where there is a public school for one sex, the other sex must be provided with comparable courses, services, and facilities pursuant to the same policies and criteria for admission. Therefore, if there is a single sex charter school for students of one sex, students of the other sex must be provided a comparable educational opportunity.

Provision of Appropriate Services to Students with Limited English Proficiency

Q: May a public charter school exclude from admission students who have limited English language proficiency?

A: A public charter school may not categorically exclude students based on their national origin from participating in a public charter school's program. If there are questions about the legality of the specific requirements of a program being offered by a charter school that may affect LEP students, please contact the OCR enforcement office that serves your state.

Q: Do the requirements to provide appropriate services to LEP students that apply when the LEP student attends any other public school also apply when the LEP student attends a public charter school?

A: Yes. Title VI prohibits the denial of equal access to education for a national origin minority child. Where the inability to speak and understand the English language excludes a national origin minority group child from effective participation in the educational program offered by a public school, the school must take affirmative steps to rectify the language deficiency in order to open its instructional program.

Public schools must implement procedures that ensure that all LEP students are identified, evaluated, and provided necessary alternative language services by

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properly trained staff and that the educational program is periodically evaluated to ensure that it is effective in meeting the educational needs of LEP students. These legal requirements are explained in OCR policy documents and technical assistance materials. Public charter schools need to become familiar with the details of these legal requirements.

There are, of course, many different kinds of programs offered by public charter schools. For technical assistance regarding how the program being offered by a charter school can comply with Federal civil rights requirements to serve LEP students, you should contact the OCR enforcement office that serves your state.

Q: Under Title VI, what must a public charter school do to ensure that parents who are not proficient in English are provided with appropriate and sufficient information about school activities?

A: As with other public schools, charter schools must effectively notify parents who are not proficient in English of school activities that are called to the attention of other parents. Such a notice, to be effective, may have to be provided in a language other than English.

Q: How may charter schools pay for the provision of appropriate educational services to LEP students?

A: The entity responsible for the operation of the public charter school may want to consider applying for Title VII funds from ED's Office of Bilingual Education and Minority Languages Affairs. However, if an independent governing board is responsible for the operation of a public charter school, the charter school must constitute an LEA under the Elementary and Secondary Education Act of 1965 in order for the charter school to receive Title VII funds as an LEA.

Many public charter schools receive Title I funding from ED's Office of Elementary and Secondary Education. Qualifying charter schools would receive Title I funds directly from the SEA if the charter school is treated as an LEA or from the school district if the charter school is treated as a public school within an LEA. Title I funds also may be used to meet the educational needs of LEP students. In addition, a public charter school could be assisted in meeting its obligations through such means as joining with other charter schools or working with LEAs to share qualified staff. It is important to note that a public charter school, like other public schools, cannot excuse its failure to provide appropriate educational services to LEP students because of inadequate financial resources.

Site Selection

Q: When selecting the location of facilities that will house public charter schools, what are the applicable federal civil rights requirements?

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- A:** The site or location of a public charter school should not result in excluding or limiting enrollment on the basis of race, color, or national origin.

With respect to individuals with disabilities, recipients are prohibited from selecting a site facility that is not readily accessible. The duty not to select an inaccessible site also imposes a duty on an applicant for federal financial assistance, or a recipient of such assistance, to evaluate accessibility when selecting a site. The term "readily accessible" is not the equivalent of an absolute barrier-free standard; the phrase incorporates a level of reasonableness. The "readily accessible" standard also does not foreclose flexibility in application. For example, a recipient may make an inaccessible facility readily accessible, but this must be accomplished within a reasonable period of time of acquisition.

Program Accessibility for Individuals with Disabilities

- Q:** Are public charter schools responsible for ensuring that their programs and activities are accessible to persons with disabilities?

- A:** Yes. Public charter schools are subject to the same program accessibility requirements as other public schools. Program accessibility requirements often involve complex issues. For assistance in understanding program accessibility requirements, you may want to review OCR technical assistance materials, which are available from the OCR enforcement office that serves your state.

- Q:** Are there different legal requirements that apply to public charter schools located in older facilities as compared to newer facilities?

- A:** Yes, the legal requirements are different. Under the federal civil rights laws, for older facilities (which are referred to as "existing facilities" in the Section 504 and Title II regulations), the legal standard is that programs and activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. Both the Section 504 and Title II regulations permit considerable flexibility in how the legal standard for older facilities can be met. Structural changes are not required in older facilities if nonstructural methods are effective in achieving program accessibility.

For new construction and alterations, under Section 504 and Title II, the legal standard is that a new or altered facility (or the part that is new or altered) must be readily accessible to and usable by individuals with disabilities. The new construction and alterations requirements focus on providing physical access to buildings and facilities rather than on providing access to programs and services.

Section 504 and Title II have different time frames regarding what constitutes existing facilities and new construction and alterations. Under Section 504, an

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existing facility is one that was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. Under Section 504, new construction means ground-breaking took place on or after June 3, 1977. Under Title II, an existing facility is one that was in existence or construction was commenced after January 26, 1992, the effective date of the regulation. Under Title II, new construction refers to any building where construction commenced after January 26, 1992.

It is important to note that, under Section 504, where a facility (constructed or altered post-1977) is acquired by a recipient after design and construction or alterations have been made, the requirements for new construction and alterations are not applicable unless the facility was constructed or altered by or for the recipient. Likewise, under Title II, where a facility (constructed or altered post-1992) is acquired by a public entity after design and construction or alterations have been made, the requirements for new construction and alterations are not applicable unless the facility was constructed or altered by or for the recipient.

Q: What are the program accessibility requirements that apply if the public charter school leases its space from another entity?

A: Leased facilities are subject to the program accessibility requirements for existing facilities or new construction and alterations, depending on the date that the buildings were constructed or altered. The requirements for existing facilities and new construction and alterations are discussed above.

Provision of a Free Appropriate Public Education to Students with Disabilities

Q: Must students with disabilities have an opportunity to participate in public school choice programs?

A: Yes. A state or local government agency must provide students with disabilities, consistent with their individual educational needs, a range of choice in educational programs and activities that is comparable to that offered to students without disabilities. This includes charter schools, magnet schools, and other schools offering different curricula or instructional techniques.

Q: What is the relationship of Section 504 and Title II to the Individuals with Disabilities Education Act (IDEA)?

A: Section 504, Title II, and IDEA are related federal laws but are different in many important ways. Section 504 and Title II are civil rights laws that protect persons with disabilities from discrimination on the basis of disability. Section 504 and Title II are enforced by OCR. The IDEA is a federal statute that provides funds to SEAs and LEAs to help educate children with disabilities and is administered by the Office of Special Education and Rehabilitative Services (OSERS) of the U.S.

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Department of Education. The IDEA has its own separate requirements that are not discussed in this publication; this publication focuses only on Section 504 and Title II. For information on IDEA and its requirements, contact OSERS' Office of Special Education Programs.

Q: What are the requirements for the education of students with disabilities who are protected by Section 504 and Title II?

A: Under Section 504 and its regulations, children with disabilities in public elementary and secondary education programs operated by recipients of federal financial assistance are entitled to a free appropriate public education (FAPE). Under Title II, children with disabilities in a public charter school, regardless of whether the school is a recipient of federal assistance, are also entitled to FAPE. OCR interprets Title II and its prohibition against discrimination on the basis of disability in programs and activities of State and local governmental entities as consistent with Section 504 and its regulations.

Under the Section 504 regulations, the provision of FAPE encompasses several substantive and procedural requirements. Among these requirements is that a student with a disability receive appropriate regular or special education and related aids or services that are designed to meet the individual needs of the student as adequately as the needs of nondisabled students are met.

In general, one method that satisfies the FAPE obligation under Section 504 and Title II is compliance with the requirements of IDEA. As noted above, the Office of Special Education Programs has information on IDEA's requirements.

Q: Is a student with a disability required to be educated with students without disabilities?

A: The education of students with disabilities must be designed to meet their individual needs. Thus, classroom assignments of students with disabilities are governed by the general principle that a student with a disability must be educated with nondisabled students to the maximum extent appropriate to the needs of that student. A student with a disability may be placed in another setting only if educating the child in the regular educational environment, even with the use of supplementary aids and services, cannot be achieved satisfactorily. The student's placement team is responsible for selecting the setting that satisfies these requirements.

Q: Is there flexibility in meeting the Section 504 and Title II requirements for children with disabilities attending public charter schools?

A: Yes. As noted above, one way to meet the FAPE requirements of Section 504 and Title II is to comply with the FAPE requirements of the IDEA. Among other things, the IDEA allows a State to designate some other entity as the agency

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responsible for meeting the IDEA requirements for children with disabilities attending a public charter school. This flexibility is also available for meeting the Section 504 and Title II FAPE requirements. It should be noted that, if a State designates another entity as being responsible for providing FAPE to children with disabilities attending the charter school, that entity's duties include the obligation to provide FAPE in the charter school as long as the charter school is an appropriate placement for the student. As described above, a student with a disability must be educated in the placement that is appropriate to meet his or her individual needs and constitutes the least restrictive environment.

Q: What action should be taken with regard to a student who is suspected of having a disability?

A: Under Section 504 and Title II, an individual with a disability is an individual who either (i) has a physical or mental impairment that substantially limits one or more major life activities (such as learning), (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

Under Section 504 and Title II, a student with a disability who needs or is believed to need special education or related services because of a disability must be evaluated according to prescribed procedures. A child must be evaluated before initial placement as well as before any subsequent significant change in placement. Further, students with disabilities must be reevaluated on a periodic basis. As noted above, compliance with the relevant IDEA requirements would constitute compliance with these Section 504 and Title II requirements.

Q: What other rights and responsibilities are included with the provision of FAPE?

A: Under Section 504 and Title II, students with disabilities and their parents or guardians are entitled to due process rights concerning identification, evaluation, and placement. Due process includes notice and the right to request an impartial hearing. In addition, a student with a disability must have an equal opportunity to participate in nonacademic and extracurricular services and activities. In general, compliance with the relevant IDEA requirements would constitute compliance with these Section 504 and Title II requirements.

Q: Could a child be covered under Section 504 and Title II but not be eligible to receive services under Part B of the IDEA?

A: Yes. Although this is a rare occurrence, there are students with disabilities who are covered only by Section 504 and Title II, but who are not eligible to receive services under Part B of the IDEA. For example, a child with juvenile rheumatoid arthritis who requires the periodic administration of medication during the school day, but does not need any special education services, may be covered by Section 504 and Title II, even though the child is not eligible for services under Part B of the IDEA.

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As noted above, the IDEA is administered by the Department's Office of Special Education, while Section 504 and Title II are enforced by OCR. Under certain circumstances, public charter schools may be eligible for IDEA funds. For further information about IDEA requirements, contact the Office of Special Education Programs.

Q: How can I learn more about the FAPE requirements of Section 504 and Title II?

A: These answers are intended only as a general introduction to the FAPE requirements. The FAPE requirements cover many specific issues in more detail; you may become familiar with them by reviewing the Section 504 and Title II regulations and OCR technical assistance resources available through the OCR enforcement office that serves your state.

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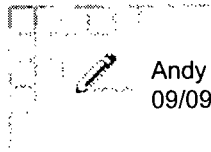
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Andy Rotherham
09/09/99 04:55:14 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: charter school guidance

I'm having a meeting with Peter Rundlett on Tuesday at 3PM on the charter school guidance about religion. I'd like to touch base with you beforehand and also have you in the meeting if you can make it.

Is there a time that works for you tomorrow or Monday?

Andy

MEMO:

TO: ANITA HODGKISS
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

MAY 3, 1999

FROM: JEREMIAH GLASSMAN
ACTING CHIEF
EDUCATIONAL OPPORTUNITIES SECTION

SUBJECT: CHARTER SCHOOLS

As you are aware, Clint Bolick has criticized the Department for the positions that it has taken on proposed charter schools in four school districts. Those Districts are East Baton Rouge, Louisiana, Monroe, Louisiana, St. Helena Parish, Louisiana, and Georgetown, South Carolina. Below we briefly review the proposed charter schools, and what we have done in each case.

East Baton Rouge, Louisiana

This is a case in which the Legal Defense Fund is a party and AAAG Lee is recused.

This is a longstanding school desegregation case. In recent years, the parties entered into a consent decree which permitted the district to modify its desegregation plan and rezone some schools to be neighborhood schools. The district agreed to enhance many of the one race schools and also to open magnet schools and programs. The district has not complied with the consent decree, partly because it claims not to have sufficient funds.

The district recently passed a tax levy, and we have agreed that the district should go forth with many of the technological improvements and salary increases included in the levy. However, we do have a dispute with the district over the proposed construction projects. The district proposes to increase the size of segregated schools and has not considered integrative options. We are attempting to resolve our differences amicably.

In February, 1998, we were informed by the district that it had received an application for the establishment of the Children's Charter School and that the Board would likely approve the school at its next meeting. We reminded counsel that court approval would be necessary. We also met with the administrators of the proposed charter school on several occasions to discuss how the school would operate in light of the extant court order, and we requested information to ascertain the potential impact of the charter on desegregation in the East Baton Rouge school district. These discussions occurred sporadically for several

months and the charter school administrators did not provide all of the information requested.

It was the charter school's position that as a charter school it is exempt from most regulation and therefore, should be allowed to operate without regard to its possible effect on the East Baton Rouge schools so long as it did not discriminate on the basis of race.

On February 9, 1999, the district filed a motion with the court asking for approval. However, at that same time, the school board, not the United States, asked the court to postpone consideration of the motion -- approval to open the charter school. Therefore the court relieved the parties of the responsibility to respond to the motion.

We have met with the school board and informed them of concerns, including the possible impact on the little bit of desegregation achieved at the schools near the proposed charter. Contrary to the articles suggestion that the charter would enroll 650 students, the actual contemplate enrollment is 1200. 650 is just the first year. We have also expressed some concern about the drain of funds since the district claims it cannot fulfill its responsibilities under the decree because of lack of funds.

The charter school group sought to intervene and we opposed the intervention in the lawsuit by the charter school group, stating that their interests are adequately represented by the school board. On March 24, 1999, the court denied the motion on those grounds.

We are now informed that the district intends to withdraw its motion so that it will purportedly no longer represent the charter schools interests, and that the charter school has asked Mr. Bolick to represent it in future proceedings.

Currently, three other charter schools operate in the district, one of which is operated by the proponents of the proposed Children's Charter. We have not objected to these schools. They are relatively small. However, we have expressed concern about proposed expansion, because of the potential effect on desegregation.

St. Helena Parish, Louisiana

This is a case in which the Legal Defense Fund is a party and AAAG Lee is recused.

St. Helena Parish is a small school district of approximately 1200 students of whom 91% are African-American. The school district is one of the poorest in the state. On February 26, 1998, the local school board rejected the charter school developer's application but was overruled by the State Board. We have not opposed the charter, but we have asked the

State Board for information regarding its impact on desegregation and the likely racial composition of the school. We have not been supplied all of the information that we requested by letter in March, 1999.

This proposed charter came to our attention in August, 1998, while we were discussing the proposed charter in East Baton Rouge.

Many years ago, when the district was ordered to desegregate, the white students who resided in the district enrolled in the public or private schools in the neighboring Parish. Now, most of the white students who reside in the Parish attend private schools. St. Helena's Superintendent informs us that the private school is experiencing financial problems and has notified parents that it will be raising tuition. According to the Superintendent, the parents are looking for an alternative to the private school and do not wish to enroll their children in the predominantly African-American St. Helena Parish system. The proposed charter would be located in a rural section of a predominantly white residential area. Transportation would not be provided. The State Board is providing us with information.

Monroe, Louisiana

In August, 1997, the local school board rejected the charter school application. However, the State Board overruled the local board. The local board sought our assistance. Thereafter, the district filed a motion for a restraining order seeking to enjoin the operation of the charter school. Conferences were held with the court in July, 1998. We requested that before the court approve the charter, there should be an evaluation of whether the charter adversely impacts desegregation in the city school system. A hearing followed in October, 1998, during which it appeared that the board and the charter school proponents could agree on the parameters of the operation of the charter. We supported continuing the hearing until the agreement could be worked out. The court, continued the hearing and permitted the charter to open for the time being. Nothing has happened since.

Georgetown, South Carolina

This case has been active in recent years regarding the closing of schools and the construction of new schools.

The United States and the District entered into a Consent Decree, which was approved by the court on August 28, 1997. In the Consent Decree, the District acknowledged its duties to alleviate the racial isolation of African American students in the Choppee area of the county and equalize resources. Thus, the District agreed to consolidate certain attendance areas, close schools, and replace the closed schools with new facilities. County voters approved a \$109 million bond referendum and the District committed to opening the new schools prior to the 2001-

02 school year.

In the fall of 1998, a group of parents formed the Pleasant Hill Area Charter Schools Committee. The Committee intended to apply to the Georgetown County School Board to convert the schools closed under the consent decree to charter schools, pursuant to the South Carolina Charter Schools Act of 1996 (S.C. Code § 59-40-10 et seq.). Pursuant to the statute and at the Committee's request, the Board held an election among the Pleasant Hill schools' faculty, who voted in favor of the conversion to charter schools.

The United States sent Board counsel a letter dated November 6, 1998, in which we stated that to fulfil its Constitutional responsibility to desegregate, the District must abide by its commitments under the consent decree. Thus, the board should disallow conversion of schools closed under the decree to charter schools.

In discussions with Board counsel, we explained that our position was not in conflict with South Carolina state law. First, Section 59-40-50 of the South Carolina Charter School Act states that a charter school must adhere to the same civil rights requirements as are applied to other schools operating in the same school district. Second, in Beaufort County Bd. of Educ. v. Lighthouse Charter Sch. Comm. and the State of South Carolina, No. 97-CP-07-794, Order at 13-14 (S.C. Ct. Com. Pleas Feb. 21, 1998), the Court of Common Pleas reversed the South Carolina Board of Education's decision approving the application of the Lighthouse Charter School Committee. The Court held that the Committee had failed to prove that the charter school could adhere to the Beaufort County Board of Education's voluntary compliance agreement with the U.S. Department of Education, Office for Civil Rights.

On December 1, 1998, the parents in the Pleasant Hill area voted by a 2 to 1 margin against converting the three public schools into charter schools.

A charter school currently operates in the district. We do not object to that charter.

St. Helena, LA - received

Local school requested

conty did not like the private school

asked state to give info - 3/99 - they signed letter

Nothing has happened - pending

East Baton Rouge LA - received

operator 3 C.S. Board supported C.S. gave up state + local funds.

asked for info, + met w/ them

2 issues

- Design may be jeopardized w/ any controls -

- has not implemented on earlier consent decree - don't have to comply - may lose \$

DOE willing to work w/ them

w/ drawing their motion so Clinton group will retract

State Board

CR

No pending C.S. case but there is a pending magnet school - IQ test, consent list. Landerum very involved

School Board has come up w/ appropriate

1 page statement

Letter

include Landerum School Report info

DOE/Educ. Fed took force on T.A.

DOE will send e-mail document

BU MA 5/3

Anton Jeremy Caslow
Alex

Arh
Alex
Gordon Jim

Charter Schools - small, lot of them, ~~lots~~
45% urban demographic - LEP, ^{less 3%} special ed, ~~more~~ more minority
more minority

Less than 5% of ~~the~~ high white students

Computer

Books

Site visits

Commitment to both

- \rightarrow have grown

Conclude - LA is different - has not grown

memo

Charter School Report - BA W&P

- Next week in Washington or DC

- Support both

LA

Baton Rouge \rightarrow still recessed
St. Helena

Consent decree

South

California

Close premier schools from 1 in the middle but then ~~the~~ board
wanted to create a CS in the area where schools ~~that~~ ~~to~~ closed
Parents voted to not to - Can close

Monroe, LA

- Local school board rejected charter school, State board overruled local
- Local board ~~was~~ sorry ~~at~~ Fed help.
- School opened but my go out of business



Bethany Little
04/26/99 03:56:48 PM

Record Type: Record

To: Irene Bueno/OPD/EOP
cc:
Subject: FW: charters and deseg

Hot off the presses...

----- Forwarded by Bethany Little/OPD/EOP on 04/26/99 03:56 PM -----



"Kimball, Kristi" <Kristi_Kimball@ed.gov >
04/26/99 03:56:05 PM

Record Type: Record

To: Bethany Little/OPD/EOP, Jonathan H. Schnur/OPD/EOP, Tanya E. Martin/OPD/EOP
cc: "Kole, Adina" <Adina_Kole@ed.gov >
Subject: FW: charters and deseg

As promised, the draft SEA letter on deseg and charters is attached (in email below). I am also going to paste in the letter to make sure you can read it.

Please send any comments to me and Adina Kole.

Thanks,
Kristi

Dear Chief State School Officers:

The United States Department of Education (Department) has received many questions relating to the creation of new public elementary and secondary schools, including charter schools and magnet schools. The Department strongly supports the creation of new public schools, both to meet increasing enrollment demands and to foster public school choice. ~~We~~ are ready to aid states, local educational agencies, and community members who are considering opening new schools. That technical assistance includes help in identifying applicable civil rights obligations and in ensuring compliance. With early notice and technical assistance, we believe many new schools will avoid costly delays and litigation. This letter does not state any new policy but merely summarizes existing obligations under civil rights laws.

In an effort to address these questions and do support the creation of new public schools,

A

The development of new public schools for the purpose of promoting public school choice often serves to enhance educational programs for at risk students and to promote desegregation. There is no inherent tension between the establishment of these schools and desegregation obligations. However, civil rights compliance issues may arise in particular situations.

Under Title VI of the Civil Rights Act of 1964, recipients of federal financial assistance are prohibited from using "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin." 34 C.F.R.

100.3(b)(2). In addition, "in determining the site or location of facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination . . . on the ground of race, color, or national origin." 34 C.F.R. 100.3(b)(3). When a new school opens in a district that is covered by a state or federal desegregation order, or a plan approved by the Department's Office for Civil Rights (OCR), any recipient of federal funds with authority over that school may have an obligation to ensure that the new school is consistent with that order or plan. This could include a local educational agency that opens a new school in a district covered by a federal court order. It could also include a chartering authority that receives federal funds and approves a charter school in an area covered by a desegregation order, as well as a recipient of federal funds that vests authority over charter schools in another entity. The precise nature of a school's obligations under a desegregation order or plan will vary depending upon the type of order, the terms of the order and the characteristics of the school.

Particularly given the variety of interested agencies, community organizations, and individuals involved in developing schools, we encourage your agency to exercise a leadership and coordinating role in ensuring that these obligations are appropriately and constructively addressed in your States. We are prepared to work with you to that end. OCR and our Office of Elementary and Secondary Education (OESE), are available to aid states, local educational agencies, and community members with identifying any applicable desegregation orders or plans. In the case of OCR plans, OCR can also provide advice regarding the nature of the desegregation obligation. Where an order was issued by a state or federal court, OCR or OESE can provide referrals to the appropriate state or federal agency. We can also offer suggestions to states attempting to determine the most appropriate process to ensure that the state satisfies its obligations under Title VI. A list of contacts is attached to this letter.

> -----Original Message-----

> From: Kole, Adina

> Sent: Monday, April 26, 1999 3:40 PM

> To: Kimball, Kristi; Wright, Sylvia; Medler, Alex; Fiegel, John;

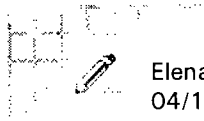
> Grimes-Miller, Cathy; Lim, Jeanette; Berkowitz, David;

Do we

> 'Juliette.N.Kayyem@justice.usdoj.gov'; 'Karen.L.Stevens@usdoj.gov';
> 'jeremiah.glassman@justice.usdoj.gov'
> Cc: Winnick, Steve; Craig, Susan; Lahring, Karl
> Subject: charters and deseg
>
> <<charters.rewrite.doc>> Attached is the draft of the new school/deseg
> letter that will be forwarded to the White House today. Thank you for
> your comments. Please call me if you have any further questions or
> comments.
>
> Thanks,
>
> Adina




- charters.rewrite.doc



Elena Kagan
04/16/99 01:41:16 PM

Record Type: Record

To: Irene Bueno/OPD/EOP
cc: Jonathan H. Schnur/OPD/EOP, Bruce N. Reed/OPD/EOP
bcc:
Subject: Re: Charter Schools/Bill Lan Lee 

The Ed letter isn't going to do the trick. Your suggestion sounds fine, but quite honestly, so long as Justice is where Justice is on this issue, Tracy is going to have a hard time just making it go away.
Irene Bueno



Irene Bueno
04/16/99 11:38:55 AM



Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Jonathan H. Schnur/OPD/EOP, Laura Emmett/WHO/EOP
Subject: Charter Schools/Bill Lan Lee

I have been asked to participate in a conference call today, Friday at 4pm on Bill Lan Lee and need your advice.

After our meeting on charter schools earlier this week, Tracey Thornton called me to inform me that Senator Hatch and other folks have linked the charter schools issue with Bill Lan Lee's nomination and they feel they need a letter or some document that separates this issue from his nomination asap.

I explained to Tracey that Education is drafting a letter that addresses the larger issue of civil rights and schools. Tracey thought that would be fine, however upon further reflection, I am not sure if this Education letter is really the kind of response that will separate the issue from Bill's nomination. It may make more sense for someone else - preferably with credibility in both the charter school and civil rights arenas - send a letter that separates this issue from Bill's nomination. Of course, we should provide policy directions but the letter could be similar to the general letter that White House Counsel's office drafted last month that indicates that the Administration supports both charter schools and civil rights.

Please let me know what you think. Thanks.



Bethany Little
04/12/99 09:05:45 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Laura Emmett/WHO/EOP

Subject: Civil Rights Meeting

A meeting to discuss civil rights guidance for charter schools and the editorial written on Bill Lan Lee and charter schools has been scheduled for Tuesday, April 13 at 11:00 am. It will be in Room 211. Thanks!

Message Sent To:

- Jonathan H. Schnur/OPD/EOP
- Tanya E. Martin/OPD/EOP
- Elena Kagan/OPD/EOP
- Irene Bueno/OPD/EOP
- Peter Rundlet/WHO/EOP
- Edward W. Correia/WHO/EOP

Ed.

(1)

- Some deseg orders are 30 yrs old - body point B way to update Ed would not proactively update the plans but wait for ~~req~~ request b/c of resource limits (see tabent).

- ~~the~~ send letter + guidance - reminding them to Title IX requirements - in ^{reg} (charter schools) new districts, etc. + provide TA. letter tied to ID issue at conf. No draft letter yet.

DOJ (Bill, Kevin)

- Some concern - there are some plans that do require OCL ~~reg~~ plan or court order. Most school districts have a going plan & that would require some approval. Schools are good about updating this.

- Charter school conf. feels that uneven enforcement or name b/c of ongoing school boards explain the Ed b/c § C 5, is being opened.

Gene - what's the problem? ②

What does C.S. need to show? - no discrimination

- attendance - pop - who attends enrollment - difficult
- how will impact nearby deseg orders the % of pop in C.S.
- bottleneck in the developer.

process to start in charter school

- Go to parties if objection
- If no ^{objection} stipulation - LDF, private individuals, LEA, DART, State, etc.

(- If ~~parties~~ ^{parties} object (particularly if not party in original suit))

- If objection by LEA, go to Ct as party, and/or charter school
- DOJ would ~~be~~ consider ~~the~~ certain factors - ~~state~~ enrollment, discrimination
- If no objection, DOJ supports
- Charter Schools - diff b/c gun roots if delayed may just give up
- Should we support intervention of C.S.?

DCR Plans - 441(17)16) = 750 - 800 total
Ark, GA, MS, NC, OK, SC, TX, VA, TN, MD, LA, IA, KS

DOJ - 400 ~~plans~~ orders in Southern ~~States~~ States - Chicago

Some states required deseg orders - CT, CA, ~~IL~~
Others - ?
State/Local - SF, Cleveland, IN, etc. - ~~many~~ many cases have been dismissed.

Guidance

end round on deseg
Orbit guidance ^{outlets} for you
S: groups - ^{small} some have been unhappy, some no issues others not being supportive of CS
A - Education will be responsible - consider

Julie King Pante Options
4/13/19

Proposed Strategy for Addressing the Relationship of Charter Schools and Other New Schools to Desegregation

- Do not communicate a requirement that chartering authority or school obtain prior approval from court or OCR.
- With respect to OCR-approved desegregation plans enforcement generally would occur through the handling of complaints filed by third parties or compliance reviews, consistent with normal enforcement procedures.
- With respect to new schools in jurisdictions under court order, there would be no general requirement that the schools be cleared by DOJ. Our guidance would indicate that creation of such schools may need to be cleared by the cognizant court and that recipients should use due diligence to ensure that any new schools do not impede desegregation obligations. Chartering authorities should address this issue in each case.
- The Department would write a letter to State educational agencies alerting them to the importance of their exercising leadership and coordination in ensuring that civil rights and desegregation issues are appropriately addressed in connection with the creation of new LEAs and public schools, making it clear that there are a wide variety of ways that they can do this, and offering them technical assistance. In instances when OCR has an ongoing compliance or enforcement relationship with States, such States would be advised to expect additional follow up from OCR. The Department would write a similar letter to chartering authorities and LEAs.
- The main point of the letter is to encourage recipients with the authority to approve the creation of new schools, including new charter schools and other public schools of choice, to be aware of existing desegregation responsibilities, when making decisions about opening any new schools. The letter is not meant to discourage the creation of new public school choices, including charter schools, in jurisdictions where continuing vestiges of prior discrimination are being eliminated. Rather, it is designed to head off possible Title VI problems in the future by drawing attention to these concerns prior to the creation of new schools.
- To assist chartering authorities and schools in addressing these and other civil rights issues, the Department would offer to coordinate technical assistance. We anticipate that this could include working in conjunction with the OCR Regional Offices, our ten federally funded regional Equity Assistance Centers, and, where appropriate, the Department of Justice, State and local agencies, and other ED offices, such as the Public Charter Schools Program, to help to identify applicable desegregation obligations, and provide technical assistance to entities with these Title VI responsibilities. Additionally, we would be available to provide assistance to new schools that encounter desegregation responsibilities as roadblocks to their creation.

- States and other recipients have a broad range of discretion in determining how to carry out these responsibilities, including exercising independent judgment as to whether the new school would impede desegregation obligations; establishing a process for review of any new schools proposed; or, directly assisting the new school in getting all necessary approvals from the entity overseeing the desegregation efforts.

**ESTABLISHMENT OF NEW CHARTER SCHOOLS IN JURISDICTIONS THAT ARE
UNDER EXISTING DESEGREGATION PLANS**

Extent to Which Proposed New Public Schools Are Required to Be Approved Under Office for Civil Rights (OCR) Desegregation Plans Before They Open

One of OCR's enforcement offices reports that about half of OCR's 441B plans expressly or implicitly suggest that OCR be notified, and provided an opportunity for review and approval, regarding the establishment of proposed new public schools or zone changes to ensure consistency with the OCR 441B plan. OCR's enforcement offices report that in some cases, districts come to OCR for approval of new schools or rezoning. Other times, OCR has been alerted to possible resegregation regarding establishment of new schools or rezoning through complaints. Some districts have requested OCR's review and approval of school boundary changes in order to head off problems with local communities. Generally, 441B plan districts may believe that the desegregation plans were "one time, one shot" plans and addressed the assignment of Black and White students at the time of the initial desegregation back in the early 1970's.

In general, with respect to proposed new schools in 441B plan districts, applicable information needs to be provided to OCR regarding the planned new school, such as the projected racial composition of the new school's student body and the impact that the new school will have on the racial composition of the other public schools in the district. The same requirements would apply in situations where a new neighborhood school is being proposed in a predominantly minority community that is part of a 441B plan district. Generally, OCR makes a final decision regarding the approval of new public schools within 90 days of the date a complete information package is provided to OCR.

Recent Experiences Regarding the Approval of New Charter Schools in School Districts Under OCR 441B Plans and Under Court Orders Requiring Desegregation

None of the OCR enforcement offices that have OCR 441B plan districts within their jurisdiction report that any school district or charter school has sought OCR review or clearance prior to or after a charter school has been recognized or funded in a school district. However, note that attorneys for the Lighthouse Charter School in Beaufort, SC visited OCR for technical assistance. The school has not been opened because of a state court injunction obtained by the Beaufort County School District.¹ It should also be noted that OCR's Dallas Office has entered into a methods of administration agreement with the State of Texas that all new charter schools approved by the State Board of Education will file assurances of compliance with OCR; OCR's Dallas Office has received 19 such assurances from new charter schools, all in Houston.

¹ In the injunction, the court stated that the Lighthouse Charter School Committee had failed to prove that the charter school would adhere to the Beaufort Board of Education's existing desegregation compliance agreement with OCR, and that the Board's decision to deny the application was not arbitrary and capricious because the Committee had not received clearance from OCR for establishing the charter school. Beaufort County Board of Education vs. Lighthouse Charter School Committee and the State of South Carolina, No. 97-CP-07-794, Order at 13-15 (S.C. Ct. of Common Pleas Feb. 21, 1998).

Letter

want to enable # to ... (3) not
Draft it - notice to - need to ~~comply~~ ^{comply} - impede cannot delay writing
Stem clear of targeting CS
TA extended not enforcement oriented.

goal vs.
caption

(no neutrality view on C.S. + new domains)

① Min table. ~~zutter~~ next week draft

~~Here~~ (*) Lots of issues. need to ^{keep} ~~keep~~ aware speak on this.
Issues, keep informed,

~~Guidance~~ TA Guidance - need to be worked on.

To the Editor:

Clint Bolick's article about Bill Lann Lee and charter schools argues that Mr. Lee has "launched a campaign to stop charter schools in their tracks." Some campaign. Under President Clinton, the number of charter schools in America has gone from just one in 1993 to more than 1,100 today.

There is no "campaign" or "battle" against charter schools being waged by Bill Lann Lee or anyone else in the Clinton Administration. Thanks to the leadership of President Clinton, school districts across the country are embracing charter schools as an innovative way to improve the quality of education in America, particularly in distressed areas where the need is so great. Bill Lann Lee, Acting Assistant Attorney General for Civil Rights in the Department of Justice, shares the President's vision and supports Administration policy and the law completely.

Fundamental civil rights goals of breaking down segregation and ensuring equal educational opportunities for all Americans can be achieved simultaneously with the development of charter schools. The rapid growth of charter schools during the last six years is proof. For example, in the East Baton Rouge case, the Department of Justice did not oppose the opening of a new charter school. It simply asked the new charter school to take steps to avoid further segregating the community. In the South Carolina case, the government moved to enforce an existing consent decree which closed certain schools to alleviate the isolation of African American students and equalize resources, and the state court agreed. **The closed schools are to be replaced by new facilities.** In no case has the government acted against any charter school simply because it is a charter school. In every case the government has acted to protect the public interest in desegregation.

Mr. Bolick imagines a "war" against charter schools that simply does not exist. The only battle being waged is by Mr. Bolick and his allies against the nomination of Bill Lann Lee. But their complaint is not really with Mr. Lee. It is with the civil rights laws themselves, which Mr. Lee has been acting to enforce for the past year. His track record of success -- and the Clinton Administration's success in promoting charter schools -- speak for themselves.

Sincerely,

James E. Kennedy
Special Advisor To The White House Counsel

Bruce/Elena
for your review
gmm

To the Editor:

Clint Bolick's article about Bill Lann Lee and charter schools argues that Mr. Lee has "launched a campaign to stop charter schools in their tracks." Some campaign. Under President Clinton, the number of charter schools in America has gone from just one in 1993 to more than 1,100 today.

There is no "campaign" or "battle" against charter schools being waged by Bill Lann Lee or anyone else in the Clinton Administration. Thanks to the leadership of President Clinton, school districts across the country are embracing charter schools as an innovative way to improve the quality of education in America, particularly in distressed areas where the need is so great. Bill Lann Lee, Acting Assistant Attorney General for Civil Rights in the Department of Justice, shares the President's vision and supports Administration policy and the law completely.

~~The cases cited by Mr. Bolick are ones in which the federal government is simply acting to enforce the law.~~ Fundamental civil rights goals of breaking down segregation and ensuring equal educational opportunities for all Americans can be achieved simultaneously with the development of charter schools. The rapid growth of charter schools during the last six years is proof.

All the cases cited by Mr. Bolick are ones in which the federal government is working to ensure that the civil rights laws are enforced at the same time as charter schools are allowed to develop. For example, in the South Carolina case, the government moved to enforce an existing consent decree which closed certain schools to alleviate the isolation of African American students and equalize resources. The closed schools are to be replaced by new facilities. ~~A move to reopen the closed schools as charter schools constituted a violation of the consent decree, and the South Carolina Court of Common Pleas~~ The court agreed, reversing a state Board of Education decision approving the charter schools. ~~In addition, last December~~ with the Department. Moreover, the parents in the region of the closed schools voted by a 2 to 1 margin against converting the three public schools into charter schools. The federal government's action in this matter was therefore completely consistent with the legal judgment of the South Carolina courts and the political judgment of the local community.

~~Mr. Bolick imagines a "war" against charter schools that simply does not exist.~~ In the East Baton Rouge case, the Department of Justice did not oppose the opening of a new charter school. It simply asked the new charter school to take steps to avoid further segregating the community.


Mr. Bolick imagines a "war" against charter schools that simply does not exist. The only battle being waged is by Mr. Bolick and his allies against the nomination of Bill Lann Lee. But their complaint is not really with Mr. Lee. It is with the civil rights laws themselves, which Mr. Lee has been acting to enforce for the past year. His track record of success -- and the Clinton Administration's success in promoting charter schools -- speak for themselves.

~~How decided in part?~~ How decided in part?



Jonathan H. Schnur
03/22/99 08:26:50 PM

Record Type: Record

To: Irene Bueno/OPD/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: letter 

I agree with Irene and Tracey. I don't think we should send a letter focusing on the specifics of Bollick's charter school/deseg arguments unless and until:
1) (as Tracey says) we find out it would be helpful to Bill Lee's confirmation, and
2) we have had a chance to discuss the charter school/deseg issues in Friday's meeting.
We could always have that meeting sooner if needed, but I think we need that discussion before determining the best timing, content, and message for the charter school editorial.


Irene Bueno



Irene Bueno
03/22/99 08:11:08 PM



Record Type: Record

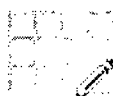
To: Tracey E. Thornton/WHO/EOP @ EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: letter 

Tracey -

I agree. We should wait to hear from you on your meetings with LA Senators whether it would help Bill's nomination for someone to do a letter to the Editor that attacks Bollick's op-ed. As I mentioned in earlier an e-mail, DPC is hosting a meeting later this week to discuss our policy on this issue so please let me know if you learn anything from your Hill meetings that we should consider in our discussions.


Irene

Tracey E. Thornton



Tracey E. Thornton
03/22/99 07:51:03 PM

Record Type: Record

To: Irene Bueno/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Re: letter 

I'm not sure what this is all about. The bottom line question in any of this stuff relating to Bill Lee is does it advance his nomination in some way? If we need to do this for the LA Senators then we should. If we don't need to do it for our Senate folks, we should concentrate our energies elsewhere. We are asking the members now and we'll let you know what we get. I'm not a press person but I do know a bit about nominations and shoring up votes and I'll say this again -- **we could use some positive pieces right now on Bill Lee. Is anybody working on that piece of this?** And finally, let me say that while it is very tempting to get into this debate with the Bolick forces, there's a person attached to this debate who we have a great deal of power to destroy professionally -- however inadvertently. And we should focus on that and not Clint Bolick. If Bill is not harmed by the Bolick piece then we should move on. Bolick is trying to pick off the LA Dems; has he succeeded? If not, we're just chasing our tail. It is early in this game and we will soon learn this week how Democrats want to work this. Until then, we are going to have to play this close. If we're trying to get Lee confirmed, we need to focus on that and not permit the right wing to make us scramble around every time they get ink. For every negative piece, there should be a positive one -- not a response to the negative one.

Message Copied To:

Peter Rundlet/WHO/EOP
Edward W. Correia/WHO/EOP
Irene Bueno/OPD/EOP
James E. Kennedy/WHO/EOP
Amy Weiss/WHO/EOP
Jonathan H. Schnur/OPD/EOP
Caroline R. Fredrickson/WHO/EOP

Message Copied To:

Peter Rundlet/WHO/EOP @ EOP
Edward W. Correia/WHO/EOP @ EOP
James E. Kennedy/WHO/EOP @ EOP
Amy Weiss/WHO/EOP @ EOP
Jonathan H. Schnur/OPD/EOP @ EOP
Caroline R. Fredrickson/WHO/EOP @ EOP

Message Copied To:

tracey e. thornton/who/eop
peter rundlet/who/eop
edward w. correia/who/eop
james e. kennedy/who/eop
amy weiss/who/eop
caroline r. fredrickson/who/eop

Bill Lann Lee's War on Charter Schools

As critics, including me, predicted, Bill Lann Lee, the thrice-nominated, never-confirmed "acting" chief of the Justice Department's Civil Rights Division, has relentlessly pursued racial preferences in his 15 months at the helm. But now he has unleashed his forces on a new target: charter schools.

Wielding school desegregation decrees that often are many decades old, Mr. Lee

Rule of Law

By Clint Bolick

has launched a campaign to stop charter schools in their tracks. His actions put him provocatively at odds both with the goals of desegregation and the Clinton administration's official education policy.

Charter schools are break-the-mold public schools, freed from most bureaucratic restraints, that tend to serve largely minority-student populations—also the supposed beneficiaries of desegregation decrees. President Clinton backs charter schools as an alternative to vouchers for private schools, going so far as to predict that "the only way public schools can survive . . . is if all of our schools are eventually run like . . . charter schools."

Neither law nor policy deters Mr. Lee, who is waging the battle against charter schools with the same ideological zeal with which he fought for forced busing and racial balance in public schools as a lawyer for the NAACP Legal Defense Fund.

The main battleground is Louisiana. In East Baton Rouge, a group called Children's Charter won local approval to open United Charter School last year to offer an alternative for 650 at-risk children. Residents Estella and Winfield Percy wel-

comed the school for their academically troubled sons. "It's a very structured environment," explained Mrs. Percy, "and it's something our kids need."

But the Civil Rights Division went to court to halt United Charter School from opening. Longstanding desegregation orders require all public schools to be within 15 percentage points of the district's 65% black student population and United Charter School agreed to those racial parameters. But some of the district's other public schools are more than 95% black, and Justice Department officials apparently fear that the charter school will siphon some of the few white students—a dubious proposition given that the new school will be located in a black neighborhood.

But no one knows the division's reasoning for sure, because it refuses to explain itself. One frustrated member of the charter school committee took a photo of a blackboard after a meeting with Justice Department officials in order to finally record something in writing. The division opposed the school's motion to intervene in the desegregation case, and has urged the trial court to postpone consideration until it would be too late for the school to open next fall.

The division's actions to prevent a company called SABIS International from opening a charter school in St. Helena Parish are even more mystifying. The school district is 91% black and has only one elementary school, one junior high, and one high school, making it definitionally impossible to racially balance. Moreover, the charter school agreed that more than 90% of its students would be academically at risk.

Again Mr. Lee's Civil Rights Division objected, apparently believing that the charter school would draw white students who attend private schools in the suburbs. Of course, attracting white students to the

overwhelmingly black school district would aid, not inhibit, desegregation. Even if the goals of desegregation are furthered, Mr. Lee apparently is inherently suspicious of any measure that takes power out of the hands of the courts and puts it into the hands of parents.

The division also supported an effort to shut down the New Vision Charter School in Monroe, but federal Judge F.A. Little Jr. refused to go along.

Statewide, the division has demanded racial statistics as a precondition for approving any charter schools. But how can a school that doesn't yet exist provide such data? As Gov. Mike Foster has pointed out, exact demographics are impossible until students enroll and staff are hired. Without approval, that process cannot commence, thereby creating precisely the Catch-22 the Civil Rights Division clearly intends.

"There are a lot of desegregation orders in Louisiana, and the charter law is at risk," remarks Children's Charter board member Rolfe McCollister. "If the final say belongs to a guy from Washington, D.C., we're in trouble."

And not just in Louisiana. These early skirmishes have nationwide ramifications: more than 500 school districts remain subject to court desegregation orders; many of them in large cities and heavily minority school districts that desperately need educational opportunities.

Another battleground is South Carolina, where the Civil Rights Division put a stop last November to a school district's efforts to convert certain schools to charter schools. The division ordered the school

district to maintain existing schools and attendance zones, period. The charter schools' impact on racial balance and educational opportunities wasn't even considered.

Meanwhile, Mr. Lee's opposite number in the Education Department's Office for Civil Rights, Norma Cantu, has been using the federal Individuals with Disabilities Education Act to challenge charter schools. Between Mr. Lee and Ms. Cantu, the concept of charter schools, predicated upon freedom from stifling state and local controls, could perish beneath the federal regulatory hammer. Ironically, such efforts to stifle charter schools could drive more education reformers to embrace vouchers for private schools.

Mr. Clinton has just submitted Bill Lann Lee's nomination to the Senate Judiciary Committee for a third time. He still must persuade Senate Republicans why they should support a civil rights law-enforcement official who refuses to abide by the Supreme Court's precedents on racial preferences. Now the president also must convince pro-charter school Democrats to support an official who is wielding the nation's civil rights arsenal to wreak havoc upon this vital public school reform.

Meanwhile, the East Baton Rouge school system toils under its 43rd year of federal judicial control. Some of the original plaintiff schoolchildren now are 60 years old. How sad that their grandchildren still are denied educational opportunities—and how perverse that the deprivation is visited upon them by the Justice Department's Civil Rights Division.

Mr. Bolick is litigation director of the Institute for Justice in Washington D.C., and author of "Transformation: The Promise and Politics of Empowerment" (1998, ICS Press).



Bill Lann Lee

WHAT TO DO

ON A SAAB

TEST DRIVE

Charter School

Ed guidance - any charter school would need to comply w/ Aseg
order - + need prior approval by OCA at Ed or
courts + get up start up ^{Fed.} funding but can get ^{implimental} funding.
Ed was not sure what they are doing

- Bruce ~~called~~ called Mike Smith. held up ~~the~~ guidance
- meeting this week
- Stuart & Ishimaru 514 - 3845
- + Juliette

- Charter School local approval - local ^{to sit} ~~at~~ Charter local
⇒ Apply to state for Fed \$ ^{body}
- Fed - new process - probably ok. how do you to do it

Desegregation



Irene Bueno

03/23/99 08:55:11 AM



Record Type: Record

To: Edward W. Correia/WHO/EOP

cc:

bcc:

Subject: Re: letter

I understand Jim and your points and I want to do everything we can to support Bill and the Administration's positions on charter schools and civil rights.

I think there should be a response to Bollick op-ed but the issue is what, when, and who should send the response. Also, we need to keep in mind Tracey's caution that we do not anything that will undermine Bill's confirmation prospects.

- **What is in the response** - I think a clear statement of the Administration's policy on these issues and arguments why Bill should be confirmed should be added to the current draft.

- **When to respond** - I think the meeting on Friday could change or make stronger and clearer the Administration's positions on this issue. I will try to move up the timing of this meeting.

- **Who sends the letter** - The WH can certainly sends this letter because its faster. Another option is to find a supporter of Bill who has credibility in both the education and civil rights community to send a letter to the editor attacking Bollick's article.

I am meeting with Bruce and Elena this morning and will discuss with them.

Edward W. Correia



Edward W. Correia



03/23/99 08:46:14 AM

Record Type: Record

To: James E. Kennedy/WHO/EOP

cc: See the distribution list at the bottom of this message

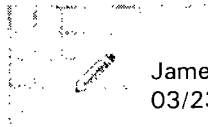
Subject: Re: letter

I agree that we don't need to respond to every negative piece, but this one is specific, hard-hitting and read by lots of people, probably including every Republican Senator on the Judiciary Committee. Given the general points of the draft letter, I don't understand what would come out of the meeting with the LA senators that would make us think responding doesn't help. (They may want more specifics on the Louisiana cases, but that's fine.) Is the Friday meeting going to come up with something that would change the general points in the letter? If so, maybe we

should wait, but I don't see how that meeting likely to change these basic ideas. So, I tend to think we should get this out, or some version people are comfortable with. If there is a disagreement, maybe Maria can resolve it. (Chuck is out.)


Message Copied To:

Jonathan H. Schnur/OPD/EOP
Irene Bueno/OPD/EOP
Tracey E. Thornton/WHO/EOP
Peter Rundlet/WHO/EOP
James E. Kennedy/WHO/EOP
Amy Weiss/WHO/EOP
Caroline R. Fredrickson/WHO/EOP



James E. Kennedy
03/23/99 08:38:12 AM

Record Type: Record

To: Jonathan H. Schnur/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Re: letter 

Here's my view, for what it's worth:

1. The Bolick article is not simply an attack on Bill Lann Lee; it is an attack on the President's commitment to charter schools as well, and as such is deserving of an immediate response.
2. The Bolick article, un rebutted, paints a damning picture. Not responding is tantamount to an admission that Bolick's right. Once I saw the real facts, I understood the bigger picture. But everyone following the story deserves to see those same facts, especially the media and swing votes.
3. Without an immediate response, everyone following the issue has Bolick's point of view, and no other, on this issue. Even conservative Dems on the Hill, whose support we need but do not necessarily have, can be adversely affected by a slanted piece like this.
4. The response can be framed in a way that conveys a positive message about Bill Lann Lee and the Clinton Administration re: charter schools and civil rights.
5. We've appeared to be in a fetal position in the media, taking sharp attacks and not counterpunching. A positive piece about Bill Lann Lee in some publication is great, and should be done (I have one draft), but we also need to demonstrate we're fighting for this nomination and can't let unfair attacks sit out there as if they're correct.


Message Copied To:

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Tracey E. Thornton/WHO/EOP
Peter Rundlet/WHO/EOP
Edward W. Correia/WHO/EOP
James E. Kennedy/WHO/EOP
Amy Weiss/WHO/EOP
Caroline R. Fredrickson/WHO/EOP

Edward W. Correia

03/23/99 08:46:14 AM

Record Type: Record

To: James E. Kennedy/WHO/EOP
cc: See the distribution list at the bottom of this message
Subject: Re: letter 

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Caroline R. Fredrickson/WHO/EOP



U.S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D. C. 20530

TELEFACSIMILE COVER SHEET

DATE: 3/22/99

TO:	Peter Rundlet	456-5053
	Eddie Correia	456-5055
	John Schnur	456-5581
	Irene Bueno	456-5581

FROM: JULIETTE KAYYEM
 DEPARTMENT OF JUSTICE - CIVIL RIGHTS DIVISION
 FAX NUMBER: 202-514-0293
 PHONE: 202-514-305-0587

MESSAGE:

Eddie, please share with Bill Lee Confirmation Team. John has press statement. I will be out of the office from 12-4 today. Please contact Stuart Ishimaru.

NUMBER OF PAGES TRANSMITTED (EXCLUDING THIS SHEET)

2
(max. 30 pages)

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS THE PROPERTY OF THE UNITED STATES AND MAY BE ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY CALLING THE SENDER OF THIS MESSAGE.

1. The South Carolina matter referred to in the article is United States v. Georgetown County School District. The United States and the District entered into a Consent Decree, which was approved by the court on August 28, 1997. In the Consent Decree, the District acknowledged its duties to alleviate the racial isolation of African American students in the Choppee area of the county and equalize resources. Thus, the District agreed to consolidate certain attendance areas, close schools, and replace the closed schools with new facilities. County voters approved a \$109 million bond referendum and the District committed to opening the new schools prior to the 2001-02 school year.

In the fall of 1998, a group of parents formed the Pleasant Hill Area Charter Schools Committee. The Committee intended to apply to the Georgetown County School Board to convert the schools closed under the consent decree to charter schools, pursuant to the South Carolina Charter Schools Act of 1996 (S.C. Code § 59-40-10 et seq.). Pursuant to the statute and at the Committee's request, the Board held an election among the Pleasant Hill schools' faculty, who voted in favor of the conversion to charter schools.

The United States sent Board counsel a letter dated November 6, 1998, in which we stated that to fulfill its Constitutional responsibility to desegregate, the District must abide by its commitments under the consent decree. Thus, the board should disallow conversion of schools closed under the decree to charter schools.

In discussions with Board counsel, we explained that our position was not in conflict with South Carolina state law. First, Section 59-40-50 of the South Carolina Charter School Act states that a charter school must adhere to the same civil rights requirements as are applied to other schools operating in the same school district. Second, in Beaufort County Bd. of Educ. v. Lighthouse Charter Sch. Comm. and the State of South Carolina, No. 97-CP-07-794, Order at 13-14 (S.C. Ct. Com. Pleas Feb. 21, 1998), the Court of Common Pleas reversed the South Carolina Board of Education's decision approving the application of the Lighthouse Charter School Committee. The Court held that the Committee had failed to prove that the charter school could adhere to the Beaufort County Board of Education's voluntary compliance agreement with the U.S. Department of Education, Office for Civil Rights.

On December 1, 1998, the parents in the Pleasant Hill area voted by a 2 to 1 margin against converting the three public schools into charter schools.

2. East Baton Rouge.

The Division did oppose the intervention in the lawsuit by the charter school group, stating that their interests are adequately represented by the school board, which they agreed with.

The school board approved the charter school and filed a motion with the court asking for approval. However, the school board, not the United States, asked the court to postpone consideration of the motion -- approval to open the charter school. Therefore the court relieved the parties of the responsibility to respond to the motion. However, we have met with the school board and informed them of concerns, including the drain of funds necessary to support the consent decree and the possible impact on the little bit of desegregation achieved at the schools near the proposed charter. Contrary to the articles suggestion that the charter would enroll 650 students, the actual contemplate enrollment is 1200. 650 is just the first year.

The article says that our concern that the proposed charter will draw off white students is dubious because the charter will be located in a black neighborhood. However, the charter will be in a new building on the edge of a black neighborhood in a strip mall on a major thoroughfare next to police station. So our concern is not dubious. All we have asked is that the charter take measure to avoid drawing these few white students out of these nearby schools, and the same with respect to black students at white schools.

3. St. Helena. Small rural school district of less than 2000 students, which is close to 95% black. The local school board rejected the charter application because of concerns about the impact of the charter on the system. State Board over-ruled the local board. We simply asked the State Board to re-evaluate its position in light of the possible effects on desegregation. The State Board is providing us with information.

Several years ago when the desegregation plan was implemented, the majority of the white students left to go to a private school in an adjoining parish. The location of the charter school is in the neighborhood where those students live.

4. Statewide. St. Helena is part of statewide. But all we have done statewide is ask the state board to develop a process to let us know when charter applications are pending and to ensue to the extent practical that the operation of the charter is consistent with the desegregation plan.

5. Monroe. The local school board rejected the application. The State Board overruled. The local board sought our

assistance. Conferences were held with the Court. We requested that before the court approve the charter, there should be an evaluation of whether the charter adversely impacts desegregation in the city school system. We did not seek to close the charter - it wasn't open. A hearing followed, during which it appeared that the board and the charter folks could agree on the parameters of the operation of the charter. We supported continuing the hearing until the agreement could be worked out. The court, continued the hearing and permitted the charter to open for the time being. Nothing has happened since.

To the Editor:

Clint Bolick's article about Bill Lann Lee and charter schools argues that Mr. Lee has "launched a campaign to stop charter schools in their tracks." Some campaign. Under President Clinton, the number of charter schools in America has gone from just one in 1993 to more than 1,100 today.

There is no "campaign" or "battle" against charter schools being waged by Bill Lann Lee or anyone else in the Clinton Administration. Thanks to the leadership of President Clinton, school districts across the country are embracing charter schools as an innovative way to improve the quality of education in America, particularly in distressed areas where the need is so great. Bill Lann Lee, Acting Assistant Attorney General for Civil Rights in the Department of Justice, shares the President's vision and supports Administration policy and the law completely.

The cases cited by Mr. Bolick are ones in which the federal government is simply acting to enforce the law. For example, in the South Carolina case, the government moved to enforce an existing consent decree which closed certain schools to alleviate the isolation of African American students and equalize resources. The closed schools are to be replaced by new facilities. A move to reopen the closed schools as charter schools constituted a violation of the consent decree, and the South Carolina Court of Common Pleas agreed, reversing a state Board of Education decision approving the charter schools. In addition, last December, the parents in the region of the closed schools voted by a 2 to 1 margin against converting the three public schools into charter schools. The federal government's action in this matter was therefore completely consistent with the legal judgment of the South Carolina courts and the political judgment of the local community.

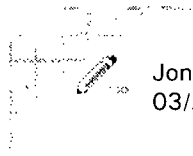
Mr. Bolick imagines a "war" against charter schools that simply does not exist. The only battle being waged is by Mr. Bolick and his allies against the nomination of Bill Lann Lee. But their complaint is not really with Mr. Lee. It is with the civil rights laws themselves, which Mr. Lee has been acting to enforce for the past year. His track record of success -- and the Clinton Administration's success in promoting charter schools -- speak for themselves.

Education Q&A
March 22, 1999

Q: An editorial in this morning's Wall Street Journal criticizes Bill Lann Lee for preventing charter schools from opening because of concerns they will affect the racial composition of schools established in desegregation orders. Is this true?

A: The President has championed the charter school movement as a way to expand choice in public education, especially for students in greatest need. Under President Clinton's leadership the number of charter schools has grown from just one when he was elected to approximately 1100 this year. At the same time, the President is committed to enforcing our civil rights laws, including in educational institutions.

Today's Wall Street Journal op-ed alludes to specific active investigations, and questions about these investigations should be directed to the Justice Department. But the President and Administration strongly support charter schools, and the Justice Department's review of whether a particular charter school complies with a standing desegregation order should not be seen as calling into question this strong support.



Jonathan H. Schnur
03/22/99 10:33:02 AM

Record Type: Record

To: Irene Bueno/OPD/EOP, Tanya E. Martin/OPD/EOP, Peter Rundlet/WHO/EOP

cc:

Subject: draft Q&A on charter/deseg -- need any reactions very quickly

Q: An editorial in this morning's Wall Street Journal criticizes Bill Lann Lee for "waging a battle" against charter schools -- a movement that the editorial notes is strongly backed by President Clinton -- by blocking charter schools in Louisiana from opening because of concerns they will affect the racial balance of student populations established in desegregation orders.

A: The President has advocated tirelessly on behalf of providing opportunity to minority children and other children in need -- both through improved public schools and through protection of civil rights. The President has championed the charter school movement as a way to expand choice in public education for students and their families, and especially for those in greatest need. Under President Clinton's leadership the number of charter schools has grown from just one when he was elected to approximately 1100 this year. The President also strongly believes in protecting the civil rights of all of our people and that one of this country's greatest strengths is its diversity.

The Wall Street Journal editorial apparently alluded to specific active investigations, and we routinely refer questions about Justice Department investigations to the Justice Department. But the President and Administration strongly support charter schools, and any Justice Department review of desegregation cases should not be seen as calling into question the strong support from the President and Administration for strengthening public education through the charter school movement.