

not
P.B. - BURR
CNS / BD

DISCUSSION TO THE WORK OF FLAT SCREENS

o EXERCISE & ACCESS FOR ALL

- ONLY THE LAST 30-40 YEARS WE HAVE MADE REAL PROGRESS ON THIS SCREEN - ACCESS
- NOT DONE SO WELL @ ACCESS
- 1) DATE STAMP BE ABLE HOW TO REPEAT SCREENS

o MONEY ALONE IS NOT THE ANSWER, MS. IS TOO CLOSE MONEY THE ANSWER - GLOBAL CONSISTENCY - MS. SCREEN

o STANDARDS - TODAY AND IN FUTURE EVER STATE - DON'T MOVE AWAY

o CHARGE - 1) A GOOD THING

o CHANGING BARRIERS IS CHANGING SITUATIONS

- NOT A CHARGE, COMPETITION
- KEEP ACCOUNTABILITY FOR PERFORMANCE
- CITE MURPHY

o PUBLIC ACCOUNTABILITY MUST FOLLOW PUBLIC

PROHIBIT
CNS

COMPENSATION
OFFER

EXAMPLE

PARENT
CANNOT NOT
ENTER COUNTRY

019982 PPT
ON
STAMP

OUR COUNTRY

o PRIVATE SITUATIONS WOULD
@ C.D. 7

THAT'S ALL

o DOOR CHARGE STAFF
o EXTENDED STAFF
o VACUUM STAFF

0. MUSIC POLLS FROM REFES

0. V. M. M. N. I. B. 4015

0. C. M. M. S. M. S.

X.C.7

MILLET -

= ALUMNI FROM THE LEFT

- JEAN MONEY
- CIVILIT - STATE
- CREATIVE / SKIMMING
- PROFIT MODEL
- ALLEGAT WORKING WORKS

"DEBUT IS A TACTICAL ATTEMPT TO FLIRT VOUCHERS"

- ALUMNI FROM THE LEFT

- VOUCHER SAVE MONEY
- CASUAL STUDENTS ARE THE ANSWER
- MAKE WORK WORKS
- ALL PROBLEMS ARE THE STUDENTS' PROBLEM

CONS - 7 CRITERIA FOR SUM A SESSION

- EMPLOY STATE INSURANCE (THESE ARE CHANCE STUDENTS)
- NOT REQUIRE PRIVATE STUDENT OUT OF CASUALTY
- ALUMNI - NO TOWN ADD-ON
 - OPEN TO ALL
- ALUMNI NOW PROVIDING (CHARTERS)
 - SPECIAL NEEDS STUDENTS
 - TRANSFERRED
 - INFORMATION

REGAN - ACCOUNTABILITY
- EQUITY

ERIC - EMPLOYABILITY

22

\$5 Billion - \$1000 for 500,000
BIDS

CAMAR - COURSES →

- G.I. BILL FOR BIDS

- Bill has cut out of committee

1 IN 10?

240 cities

CLUB - \$251K

- MORE ADMINISTRATORS

~~AS~~ ONE PART 1/2 OF
KIDNAS - PART

CONTROL NOT THE
INCLINING \$ PART

STAND

- AM PROGRAM MUST PRE-SUPPOSE SUPPORT FOR
PUBLIC SCHOOLS

- ERM STANDARD

- CONSUMER -

① DISTANCE

② ACCOUNTING

③ INVEST IN WHAT WORKS

7/25/65 - ASSOCIATE
SENATE

VT
Remarks to Press Club on Vouchers

THERE HAVE BEEN A NUMBER OF INTERESTING POINTS OF VIEW PRESENTED TODAY WHICH I THINK ILLUSTRATE THAT VOUCHERS ARE A PUBLIC POLICY ISSUE THAT HONEST PEOPLE OF GOOD INTENTIONS CAN DISAGREE ON. *Person*

I'LL BE BRIEF IN MY REMARKS BECAUSE I THINK THAT A LOT OF THESE ISSUES WILL BE EXAMINED DURING THE Q AND A AND I'D RATHER LEAVE A LOT OF TIME FOR THAT.

THERE IS A DIVISION IN OUR SCHOOLS IN THIS COUNTRY, BUT RATHER THAN A DIVIDE BETWEEN PUBLIC AND PRIVATE AS THE LINES IN THE VOUCHER DEBATE ARE COMMONLY DRAWN, IT IS A DIVISION BETWEEN GOOD SCHOOLS, THE KIND THAT WE WOULD ALL WANT TO SEND OUR KIDS TO, AND MEDIOCRE OR LOW-PERFORMING SCHOOLS THAT WE WOULD NOT. HOWEVER, THESE SCHOOLS AREN'T DELINEATED BY THEIR GOVERNANCE—PUBLIC OR PRIVATE, BUT RATHER BY THEIR PERFORMANCE. AS WE THINK ABOUT VOUCHERS I'D ENCOURAGE YOU TO LOOK AT THEM THROUGH THIS LENS, A PRIVATE SCHOOL IS NOT BY DEFAULT A GOOD SCHOOL NOR IS A PUBLIC SCHOOL BY DEFAULT A BAD SCHOOL. THE REALITY IS MORE COMPLICATED THAN THAT BUT IS OFTEN LOST IN THIS DEBATE.

show
TWO PRINCIPALS, ACCESS AND ACCOUNTABILITY¹ DEFINE PUBLIC EDUCATION. FOR A SCHOOL TO BE CONSIDERED A PUBLIC SCHOOL, PART OF OUR SYSTEM OF PUBLIC EDUCATION, IT SHOULD HAVE TO BE OPEN TO ALL, AND PUBLICLY ACCOUNTABLE FOR PERFORMANCE. IT IS IMPORTANT THAT WE LOOK AT PUBLIC SCHOOLS IN THIS LIGHT, ARE THEY OPEN TO ALL AND PUBLICLY ACCOUNTABLE FOR PERFORMANCE, THIS MORE THAN THE PARTICULAR GOVERNANCE MODEL ARE THE DEFINING TRAITS OF A PUBLIC SCHOOL.

NOW, OVER THE PAST 40 YEARS WE HAVE MADE GREAT STRIDES ON ACCESS AND PUBLIC SCHOOLS NOW SERVE A MORE DIVERSE POPULATION THAN EVER BEFORE, IN ADDITION, MINORITIES, STUDENTS WITH EXCEPTIONAL NEEDS AND

OTHER GROUPS THAT WERE PREVIOUSLY EXCLUDED NOW HAVE ACCESS TO ELEMENTARY AND SECONDARY EDUCATION. IT IS IMPORTANT THAT IN ALL THE HAND WRINGING OVER WHAT HAS HAPPENED TO SCHOOLS IN THE PAST 40 YEARS THAT WE NOT LOSE SIGHT OF THESE IMPORTANT ACCOMPLISHMENTS.

WE HAVE NOT HOWEVER ^{ACCOUNT}MADE THE STRIDES THAT WE MUST IN TERMS OF ~~EXCELLENCE~~, TOO MANY CHILDREN, ESPECIALLY IN OUR POOREST COMMUNITIES ARE NOT RECEIVING THE EDUCATION THAT THEY NEED TO BE COMPETITIVE IN OUR NEW ECONOMY. I THINK THERE IS GENERAL CONSENSUS ABOUT THAT. AND, AS HUGH PRICE HAS WRITTEN ELOQUENTLY, WHILE IN THE PAST PUBLIC EDUCATION DID A GOOD JOB OF ENSURING THAT A SUFFICIENT NUMBER OF CHILDREN RECEIVED A RIGOROUS EDUCATION AND LEFT SCHOOL WITH STRONG MINDS, FOR MOST AMERICANS A STRONG BACK WAS A MORE IMPORTANT ATTRIBUTE. BUT WE KNOW THAT OUR ECONOMY HAS CHANGED AND IS CONSTANTLY CHANGING AND AS A RESULT WE CANNOT AFFORD FOR ANY CHILDREN TO LEAVE SCHOOL WITHOUT A STRONG MIND AND THE SKILLS THEY NEED TO SUCCEED.

SO OUR CHALLENGE AS POLICY MAKERS AND POLICY LEADERS IS TO FIGURE OUT HOW TO ADDRESS THIS, TO ANALYZE WHAT WORKS AND FOSTER AND REPLICATE EXCELLENCE—OR QUITE POSSIBLY TO FOSTER THE CONDITIONS THAT ALLOW EXCELLENCE TO EXIST. AND IN TERMS OF VOUCHERS, CONTINUING TO ONLY LOOK AT THE ISSUE OF HOW WE FINANCE SCHOOLS, WHICH IS ALL THAT VOUCHERS ARE, MAKE NO MISTAKE ABOUT THAT THEY ARE SIMPLY A WAY OF FINANCING OUR SCHOOLS, FAILS TO ADDRESS THE CORE ISSUE OF FOSTERING EXCELLENCE AND IN THE PROCESS FAILS OUR CHILDREN.

THE ISSUE OF ACHIEVING EXCELLENCE IS NOT AS SIMPLE AS JUST TAKING KIDS FROM PUBLIC SCHOOLS AND PUTTING THEM INTO PRIVATE ONES.

NONETHELESS, DEFINING EXCELLENCE IS ONE AREA WHERE WE HAVE MADE TREMENDOUS PROGRESS IN THE PAST FEW YEARS. 48 STATES NOW HAVE STANDARDS IN AT LEAST MATH AND READING. NOT EVERY STATES IS WHERE THEY SHOULD BE IN THIS PROCESS, BUT OVERALL WE'VE MADE REAL PROGRESS IN THE PAST 10 YEARS. STANDARDS ENJOY BIPARTISAN SUPPORT AND ALSO SUPPORT FROM ALL ACROSS THE EDUCATION COMMUNITY. IT IS WORTH NOTING THAT AL SHANKER WAS ONE OF THE EARLIEST PROPONENTS OF STANDARDS.

HOWEVER, VOUCHERS WITHOUT ACCOUNTABILITY WOULD MOVE US AWAY FROM STANDARDS RATHER THAN CLOSER TO THEM. WE FINALLY HAVE REACHED A POINT WHERE EDUCATION RESOURCES ARE BEING INVESTED IN SCHOOLS THAT ARE BEING HELD ACCOUNTABLE TO MEETING STANDARDS—WHY WOULD WE WANT TO WALK AWAY FROM THAT BY USING PUBLIC FUNDS TO SUPPORT SCHOOLS THAT AREN'T ACCOUNTABLE FOR MEETING THE STATES AGREED UPON CONTENT STANDARDS?

SO I THINK THE GRAND BARGAIN WE SHOULD BE DISCUSSING IS NOT ONE ABOUT PUBLIC AND PRIVATE, MORE MONEY AND VOUCHERS, BUT RATHER ONE THAT RECOGNIZES ACCESS AND EXCELLENCE, INCREASES CHOICE FOR PARENTS, MAKES EDUCATION MORE COMPETITIVE, AND INCLUDES ACCOUNTABILITY.

BUT WE HAVE THIS BARGAIN ALREADY, IT IS NOT AS SEXY AS VOUCHERS NOR AS CONTROVERSIAL, BUT IT IS MORE WIDESPREAD, HAS BIPARTISAN SUPPORT, AND IS IMPACTING NOT A FEW THOUSAND, BUT HUNDREDS OF THOUSANDS OF STUDENTS EVERY DAY. I'M TALKING ABOUT CHARTER SCHOOLS. CHARTER SCHOOLS ARE PUBLIC SCHOOLS, OPEN TO ALL AND ACCOUNTABLE TO A PUBLIC AUTHORITY FOR RESULTS. THEY ARE FREED FROM MANY OF THE REGULATIONS THAT GOVERN TRADITIONAL PUBLIC SCHOOLS IN EXCHANGE FOR MEETING DEFINED PERFORMANCE GOALS AND STAYING OPEN ONLY AS LONG AS THEY DO.

As one that
has been
known to
this
A.M.

A CC 2007

PROPOSAL. AS A RESULT, THE SCHOOL BOARD RECONSIDERED ITS PREVIOUS POSITION.

AND IN TERMS OF THE WHOLE PUBLIC-PRIVATE DEBATE, IT IS WORTH NOTING THAT 1 IN 10 CHARTER SCHOOLS ARE FORMER PRIVATE SCHOOLS THAT HAVE CONVERTED TO CHARTER STATUS BY AGREEING TO BE OPEN TO ALL AND ACCOUNTABLE FOR PERFORMANCE. SO RATHER THAN UNPROVEN THEORIES AND POLITICALLY CATCHY IDEAS, WE OUGHT TO BE REPLICATING WHAT WORKS BY ENCOURAGING THIS GRAND BARGAIN, PUBLIC ACCOUNTABILITY—MEANING ACCESS AND ACCOUNTABILITY—OUGHT TO FOLLOW PUBLIC DOLLARS. THAT IS THE CHARTER SCHOOL MODEL.

IN TERMS OF THE GRAND BARGAIN OF INCREASING FUNDING BY 20 PERCENT IN LARGE URBAN DISTRICTS AND USING ADDITIONAL MONEY TO INTRODUCE VOUCHERS IN THE SAME PLACES----THAT BARGAIN ISN'T A GOOD ONE. NEITHER END OF THAT BARGAIN WOULD DO MUCH TO HELP KIDS IN FAILING SCHOOLS. AS I SAID, WITHOUT THE LINK TO STANDARDS, AND DON'T TAKE MY WORD FOR IT ABOUT THIS-- E.D. HIRSCH ONE OF THE INTELLECTUAL LEADERS OF THE STANDARDS MOVEMENT VOICES THE SAME CONCERN ABOUT CHOICE WITHOUT ACCOUNTABILITY— WITHOUT THE LINK TO STANDARDS AND DEMANDING MORE, JUST SPENDING MORE ISN'T THE ANSWER AND WON'T IMPROVE THE SCHOOLS FOR THE KIDS IN THEM. AND, FOR ALL THE KIDS WHO DON'T RECEIVE A VOUCHER UNDER THIS MODEL, THAT IS A BIG ISSUE, FIXING LOW-PERFORMING SCHOOLS. AND, FOR THE ONES THAT DO GET VOUCHERS UNDER THIS MODEL, MOST PARENTS DON'T CARE ABOUT A PUBLIC SCHOOL OR A PRIVATE SCHOOL FOR THEIR CHILD—THEY JUST WANT A GOOD SCHOOL. WE SHOULD BE MORE CONCERNED ABOUT CREATING BETTER SCHOOLS FOR THEM THAN JUST MOVING A FEW KIDS AROUND.

AND, CHARTER SCHOOL LAWS IN STATES WHERE THEY HAVE BEEN ENACTED HAVE BEEN FAR MORE SUCCESSFUL IN SPARKING THE CREATION OF NEW SCHOOLS, THAN THE VOUCHER PROGRAMS IN CLEVELAND AND MILWAUKEE HAVE. AND BY INCREASING THE SUPPLY OF PUBLIC OPTIONS FROM

WHICH PARENTS CHOOSE, WE INCREASE PARENT CHOICE WHICH IS WHAT WE WANT. SCHOOL CHOICE, WHERE SCHOOLS CHOOSE KIDS RATHER THAN KIDS CHOOSING SCHOOLS SHOULD NOT BE OUR GOAL.



AND, IN TERMS OF AN URBAN FOCUS, WASHINGTON DC REPORTS 122 FAMILIES WHO LIVED IN OTHER JURISDICTIONS LAST YEAR HAVE MOVED INTO DC AND HAVE THEIR KIDS ENROLLED IN CHARTER SCHOOLS. VOUCHER PROGRAMS AREN'T HAVING THAT EFFECT.

LET ME CLOSE BY SAYING THAT WE SHOULD NOT TOLERATE FAILING SCHOOLS, THE PRESIDENT HAS BEEN CLEAR ON THIS POINT AND HAS WORKED WITH CONGRESS TO ENACT HIS ACCOUNTABILITY FUND WHICH HELPS STATES AND LOCALITIES DO THE DIFFICULT WORK OF TURNING AROUND FAILING SCHOOLS. AND THE ACCOUNTABILITY FUND ALSO INCREASES PUBLIC SCHOOL CHOICE.

THE PRESIDENT HAS ALSO INVESTED IN CHARTER SCHOOLS, TO HELP INCREASE THE SUPPLY OF HIGH QUALITY SCHOOLS. THE FEDERAL GOVERNMENT HAS INVESTED MORE THAN \$375 MILLION OVER THE PAST FEW YEARS AND OUR BUDGET THIS YEAR WOULD INCREASE FUNDING BY AN ADDITIONAL \$30 MILLION. THESE FUNDS ARE USED PRIMARILY FOR START UP ACTIVITIES – WHICH CHARTER SCHOOL OPERATORS CONSISTENTLY CITE AS A KEY OBSTACLE TO OPENING A CHARTER SCHOOL.

SO WHILE THE AMERICAN PUBLIC IS MUCH LESS FAMILIAR WITH CHARTER SCHOOLS THAN VOUCHERS, THEY TEND TO SUPPORT THEM UPON LEARNING WHAT THEY ARE. IN ADDITION, CHARTERS ARE DEVELOPING A RECORD OF SUCCESS. IS EVERY CHARTER SCHOOL PERFECT, OR EVEN GOOD? OF COURSE NOT, LIKE EVERYTHING IN AN EDUCATION SYSTEM AS DECENTRALIZED AND DIVERSE AS OURS THEY'RE A MIXED BAG. BUT OVERALL, THE FORMULA OF PUBLIC MONEY, PUBLIC ACCOUNTABILITY AND PUBLIC ACCESS IS PROVING TO BE A GRAND BARGAIN FOR KIDS.

AND, UNLIKE TRADITIONAL PUBLIC SCHOOLS, PUBLIC ENTITIES INCLUDING UNIVERSITIES, MUSEUMS, COMMUNITY GROUPS, PARENTS AND TEACHERS, CAN OPEN CHARTER SCHOOLS NOT ONLY THE LOCAL SCHOOL DISTRICT. THIS INCREASES THE RANGE OF OPTIONS FOR PARENTS, INCREASES COMPETITION AMONG SCHOOLS, BUT AT THE SAME TIME INCREASES ACCOUNTABILITY FOR PERFORMANCE IN PUBLIC EDUCATION.

WHEN THEY FIRST APPEARED ON THE EDUCATION LANDSCAPE, THE COMMON ASSUMPTION WAS THAT CHARTER SCHOOLS WERE JUST A COMPROMISE ON THE WAY TO VOUCHERS. HOWEVER, THAT VIEW HAS BEEN PROVEN WRONG AS CHARTER SCHOOLS ARE PROVING TO BE A DYNAMIC REFORM AND A MEANS TO BETTER SCHOOLS, NOT A WAY-STATION TO ANYTHING.

MORE THAN 250,000 STUDENTS NOW ATTEND CHARTER SCHOOLS, 36 STATES AND THE DISTRICT OF COLUMBIA HAVE CHARTER SCHOOL LAWS, AND THERE ARE MORE THAN 1700 OPERATING RIGHT NOW. 1700, THERE WAS JUST ONE IN 1992. AND. ALREADY EVIDENCE OF A POSITIVE COMPETITIVE DYNAMIC IS EMERGING, PARENTS ARE SATISFIED, AND OVERALL CHARTER SCHOOLS ARE WORKING.

CHARTER SCHOOLS INCREASE CHOICE AND COMPETITION—WHICH VOUCHER SUPPORTERS PURPORT TO WANT BUT AT THE SAME TIME THEY INCREASE ACCOUNTABILITY BOTH TO PARENTS—SCHOOLS WITHOUT STUDENTS DON'T TEND TO STAY OPEN LONG—AND ALSO TO THE PUBLIC BECAUSE CHARTER SCHOOLS THAT DON'T MEET THEIR PERFORMANCE CONTRACT ARE SHUT DOWN.

LET ME GIVE YOU JUST ONE EXAMPLE, IN BOSTON A FEW YEARS AGO, THE BOSTON FEDERATION OF TEACHERS PROPOSED CREATING A SMALL SCHOOLS PROGRAM THERE. THE SCHOOL BOARD SAID NO AND AS A RESULT THE PROJECT WENT NOWHERE. AFTER MASSACHUSETTS CHARTER SCHOOL LAW PASSED, 18 OF THE FIRST 61 PROPOSALS TO THE STATE WERE FROM BOSTON INCLUDING SOME FROM THE SAME TEACHERS THAT HAD DEVELOPED THE SMALL SCHOOLS

Talking Points on OCR Charter Schools for Press Club

- THIS IS A GREAT EXAMPLE OF THE MARGINS CONTINUING TO DOMINATE THE DEBATE. AS I SAID, THERE ARE MORE THAN 1700 CHARTER SCHOOLS IN THE COUNTRY, AND THE ISSUE THAT IS BEING RAISED HERE HAS AFFECTED FEWER THAN 20, AND WHERE THERE HAS ACTUALLY BEEN ANY SORT OF ACTIVITY I THINK AROUND 10. SO BASICALLY, LESS THAN 1 PERCENT OF ALL CHARTER SCHOOLS.
- A RECENT NATIONAL SURVEY LISTED 21 OBSTACLES THAT CHARTER SCHOOLS FACE AND ASKED CHARTER SCHOOL OPERATORS TO CITE WHICH ONES ARE PROBLEMS FOR THEM. ONLY 4 PERCENT CITED FEDERAL OBSTACLES, THE LEAST OF ANY OF THE 21 WHICH INCLUDED PROBLEMS SUCH AS COMMUNICATION WITH PARENTS, TEACHER TURNOVER, FUNDING, START UP FUNDING, FACILITIES, TEACHER BURNOUT, LACK OF PARENTAL SUPPORT, INTERNAL CONFLICTS AND A HOST OF OTHER OBSTACLES UNRELATED TO THE FEDERAL GOVERNMENT. THIS IS A MARGINAL ISSUE.
- DESECRATION ORDERS ARE COURT ORDERS AND AS SUCH ARE DEALT WITH BY THE COURTS, NOT THIS ADMINISTRATION.
- THE LARGER POINT HERE SERVES TO REMIND US THAT CHARTER SCHOOLS ARE PUBLIC SCHOOLS AND AS SUCH ARE REQUIRED TO MEET COURT ORDERS, FEDERAL LAWS CONCERNING STUDENTS WITH SPECIAL NEEDS, AND SO FORTH. THESE QUOTE UNQUOTE ONEROUS REGULATIONS ARE ACTUALLY PRETTY IMPORTANT ISSUES TO GROUPS THAT HAVE HISTORICALLY BEEN EXCLUDED FROM PUBLIC SCHOOLS AND SHOULDN'T BE TREATED LIGHTLY.
- OCR AND DOJ ARE STATUTORILY REQUIRED TO INVESTIGATE WHEN A COMPLAINT IS FILED, THEY DON'T GO OUT SEARCHING FOR COMPLAINTS.
- OCR PROVIDES TECHNICAL ASSISTANCE AND ANSWERS QUESTIONS.
- IN MOST CASES WHERE THEY HAVE BEEN INVOLVED THEY HAVE SUPPORTED THE CHARTER SCHOOL.
- NY GIRLS SCHOOL IS NOT EVEN A CHARTER SCHOOL

o DISTRACTION

o ACCTBLT

o INVT IN WHT WRS

Florida Facts

— CHARGES MUCH MORE REGULATED THAN
PARENTAL PRIVATE SCHOOLS

- VOUCHER SCHOOL MUST ACCEPT STUDENTS ON A RANDOM BASIS AND ACCEPT AS TUITION THE "OPPORTUNITY SCHOLARSHIP".
- 800 KIDS ELIGIBLE, 53 ^{21%} GOT VOUCHERS AND 68 WENT TO HIGHER PERFORMING PUBLIC SCHOOLS INSTEAD. 5 SCHOOLS ACCEPTED VOUCHERS (1 MONTESSORI, 4 SECTARIAN).

MILWAUKEE

- 8,000 KIDS

DC —

122 FAMILIES

CLEVELAND

- 3000 KIDS
- 20 percent couldn't get into the school they wanted, 1 in 5, according to Harvard Study

IJ POINTS ON VOUCHERS:

First, language is important. In particular, wording emphasizing that school choice is about opportunities for Children -- not subsidies for private schools -- will help the Legal defense. Programs that expand opportunities for the Educationally disadvantaged often enjoy special judicial deference.

- Checker Finn paper at National Education Summit about standards and marketplace accountability working hand in hand.
- Rofes study on district impact,
- AZ impact

DEBATE IS:

1/2 WANT IT BUT IF
IT MUST GO/STAY

Running schools is hard work:

- Whittle
- Brennan

HERE ARE:

ADVANCED STANDARDS

• PETERS & ZIGANT GUY / WERE GUY
SO WHAT?

The 1999 Florida Statutes

[View Statutes](#)[Order Statutes](#)[Online Sunshine](#)[Print View](#)**Title XVI****Chapter 228**[View Entire Chapter](#)

EDUCATION Public Education General Provisions

228.056 Charter schools.--

(1) AUTHORIZATION.--The creation of charter schools is hereby authorized. Charter schools shall be part of the state's program of public education. All charter schools in Florida are fully recognized as public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status.

(2) PURPOSE.--The purpose of charter schools shall be to:

- (a) Improve student learning.
- (b) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as academically low achieving.
- (c) Encourage the use of different and innovative learning methods.
- (d) Increase choice of learning opportunities for students.
- (e) Establish a new form of accountability for schools.
- (f) Require the measurement of learning outcomes and create innovative measurement tools.
- (g) Make the school the unit for improvement.
- (h) Create new professional opportunities for teachers, including the opportunity to own the learning program at the school site.

(3) PROPOSAL.--A proposal for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of this state. The district school board or the principal, teachers, and/or the school advisory council at an existing public school, including a public school-within-a-school that is designated as a school by the district school board, shall submit any proposal for converting the school to a charter school. An application submitted proposing to convert an existing public school to a charter school shall demonstrate the support of at least 50 percent of the teachers employed at the school and 50 percent of the parents voting whose children are enrolled at the school, provided that a majority of the parents eligible to vote participate in the ballot process, according to procedures established by rules of the state board. A private school, parochial school, or home education program shall not be eligible for charter school status.

(4) SPONSOR.--A district school board may sponsor a charter school in the county over which the board has jurisdiction.

(a) A district school board shall receive and review all applications for a charter school. A district school board shall receive charter school applications through at least November 15 of each calendar year for charter schools to be opened at the

beginning of the school district's next school year. A district school board may receive applications later than this date if it chooses. In order to facilitate an accurate budget projection process, a district school board shall be held harmless for FTE students which are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. A district school board must by a majority vote approve or deny an application no later than 60 days after the application is received. If an application is denied, the district school board must, within 10 calendar days, articulate in writing the specific reasons based upon good cause supporting its denial of the charter application. Upon approval of a charter application, the initial startup must be consistent with the beginning of the public school calendar for the district in which the charter is granted unless the district school board allows a waiver of this provision for good cause.

(b) An applicant may appeal any denial of that person's application to the State Board of Education no later than 30 days after the district school board's decision and shall notify the district school board of its appeal. Any response of the school board shall be submitted to the state board within 30 days after notification of the appeal. The state board must by majority vote accept or reject the decision of the district school board no later than 60 days after an appeal is filed in accordance with state board rule. The state board may reject an appeal submission for failure to comply with procedural rules governing the appeals process. The rejection shall describe the submission errors. The appellant may have up to 15 days from notice of rejection to resubmit an appeal that meets requirements of rule. An application for appeal submitted subsequent to such rejection shall be considered timely if the original appeal was filed within 30 days after the school board denial. The state board shall remand the application to the district school board with its written recommendation that the district board approve or deny the application consistent with the state board's decision. The decision of the State Board of Education is not subject to the provisions of the Administrative Procedure Act, chapter 120.

(c) The district school board must act upon the recommendation of the State Board of Education within 30 days after it is received. The district board may fail to act in accordance with the recommendation of the state board only for good cause. Good cause for failing to act in accordance with the state board's recommendation arises only if the district school board determines by competent substantial evidence that approving the state board's recommendation would be contrary to law or contrary to the best interests of the pupils or the community. The district school board must articulate in written findings the specific reasons based upon good cause supporting its failure to act in accordance with the state board's recommendation. The district board's action on the state board's recommendation is a final action subject to judicial review.

(d) The Department of Education may provide technical assistance to an applicant upon written request.

(e) Paragraph (a) notwithstanding, a state university may grant a charter to a developmental research school created under s. 228.053. In considering such charter, the state university must consult with the district school board of the county in which the developmental research school is located. The decision of a state university may be appealed pursuant to the procedure established in this subsection.

(f) The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement. The sponsor shall not impose unreasonable rules or regulations that violate the intent

of giving charter schools greater flexibility to meet educational goals. The applicant and sponsor shall have 6 months in which to mutually agree to the provisions of the contract. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application, except disputes regarding charter school application denials. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge may rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the contract violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial. The costs of the administrative hearing shall be paid by the party whom the administrative law judge rules against.

✶ (g) The sponsor shall monitor and review the charter school in its progress towards the goals established in the charter.

✶ (h) The sponsor shall monitor the revenues and expenditures of the charter school.

(5) NUMBER OF SCHOOLS.--The number of newly created charter schools or existing public schools which may convert to charter schools is limited to no more than 28 in each school district that has 100,000 or more students, no more than 20 in each school district that has 50,000 to 99,999 students, and no more than 12 in each school district with fewer than 50,000 students.

(6) ELIGIBLE STUDENTS.--

(a) A charter school shall be open to any student covered in an interdistrict agreement or residing in the school district in which the charter school is located. Any eligible student shall be allowed interdistrict transfer to attend a charter school when based on good cause. When a public school converts to charter status, enrollment preference shall be given to students who would have otherwise attended that public school. A charter school may give enrollment preference to a sibling of a student enrolled in the charter school or to the child of an employee of the charter school.

(b) The charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such case, all applicants shall have an equal chance of being admitted through a random selection process.

(c) A charter school may limit the enrollment process only to target the following student populations:

1. Students within specific age groups or grade levels.
2. Students considered at risk of dropping out of school or academic failure. Such students shall include exceptional education students.
3. Students enrolling in a charter school-in-the-workplace established pursuant to subsection (22).
4. Students residing within a reasonable distance of the charter school, as described in paragraph (13)(c). Such students shall be subject to a random lottery and to the racial/ethnic balance provisions described in subparagraph

(9)(a)8. or any federal provisions which require a school to achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

(d) A student may withdraw from a charter school at any time and enroll in another public school as determined by school board policy.

(e) Students with handicapping conditions and students served in English for Speakers of Other Languages programs shall have an equal opportunity of being selected for enrollment in a charter school.

(7) **LEGAL ENTITY.**--A charter school shall organize as, or be operated by, a nonprofit organization. A charter school may be operated by a municipality or other public entity as provided for by law. As such, the charter school may be either a private or a public employer. As a public employer, a charter school may participate in the Florida Retirement System upon application and approval as a "covered group" under s. 121.021(34). If a charter school participates in the Florida Retirement System, the charter school employees shall be compulsory members of the Florida Retirement System. As either a private or a public employer, a charter school may contract for services with an individual or group of individuals who are organized as a partnership or a cooperative. Individuals or groups of individuals who contract their services to the charter school are not public employees.

(8) **REQUIREMENTS.**--

(a) A charter school shall be nonsectarian in its programs, admission policies, employment practices, and operations.

(b) A charter school shall admit students as provided in subsection (6).

(c) A charter school shall be accountable to its sponsor for performance as provided in subsection (9).

(d) A charter school shall not charge tuition or fees, except those fees normally charged by other public schools.

(e) A charter school shall meet all applicable state and local health, safety, and civil rights requirements.

(f) A charter school shall not violate the antidiscrimination provisions of s. 228.2001.

(g) A charter school shall be subject to an annual financial audit in a manner similar to that of a school district.

(h) No organization shall hold more than 15 charters statewide.

(9) **CHARTER.**--The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing body of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address, and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to

be included.

2. The focus of the curriculum, the instructional methods to be used, and any distinctive instructional techniques to be employed.
3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. This section shall include a detailed description for each of the following:
 - a. How the baseline student academic achievement levels and prior rates of academic progress will be established;
 - b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school; and
 - c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.
4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. Students in charter schools shall, at a minimum, participate in the statewide assessment program.
5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 232.246.
6. A method for resolving conflicts between the governing body of the charter school and the sponsor.
7. The admissions procedures and dismissal procedures, including the school's code of student conduct.
8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.
9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services. Both public sector and private sector professional experience shall be equally valid in such a consideration.
10. The manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.
11. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 3, 4, or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the local school board. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 10-year charter, subject to approval by the local school board.

Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only for specific good cause according to the provisions set forth in subsection (10).

12. The facilities to be used and their location.

13. The qualifications to be required of the teachers.

14. The governance structure of the school, including the status of the charter school as a public or private employer as required in subsection (7).

15. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

16. In the case of an existing public school being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or school board policy in the absence of a collective bargaining agreement.

(b) A charter may be renewed every 5 school years, provided that a program review demonstrates that the criteria in paragraph (a) have been successfully accomplished. In order to facilitate long-term financing for charter school construction, charter schools operating a minimum of 3 years and demonstrating exemplary academic programming and fiscal management are eligible for a 15-year charter renewal. Such long-term charter is subject to annual review and may be terminated during the term of the charter.

(c) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor and the approval of both parties to the agreement.

(d) The governing body of the charter school shall make annual progress reports to its sponsor, which upon verification shall be forwarded to the Commissioner of Education at the same time as other annual school accountability reports. The report shall contain at least the following information:

1. The charter school's progress towards achieving the goals outlined in its charter.
2. The information required in the annual school report pursuant to s. 229.592.
3. Financial records of the charter school, including revenues and expenditures.
4. Salary and benefit levels of charter school employees.

(e) A sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 229.591.

(f) Upon receipt of the annual report required by paragraph (d), the Department of Education shall provide to the State Board of Education, the Commissioner of Education, the President of the Senate, and the Speaker of the House of Representatives an analysis and comparison of the overall performance of charter school students, to include all students whose scores are counted as part of the state assessment program, versus comparable public school students in the

district as determined by the state assessment program currently administered in the school district, and, as appropriate, the Florida Writes Assessment Test, the High School Competency Test, and other assessments administered pursuant to s. 229.57(3).

(g) Whenever a municipality has submitted charter applications for the establishment of a charter school feeder pattern (elementary, middle, and senior high schools), and upon approval of each individual charter application by the district school board, such applications will then be designated as one charter for all purposes listed pursuant to this section.

(10) CAUSES FOR NONRENEWAL OR TERMINATION.--

(a) At the end of the term of a charter, the sponsor may choose not to renew the charter for any of the following grounds:

1. Failure to meet the requirements for student performance stated in the charter.
2. Failure to meet generally accepted standards of fiscal management.
3. Violation of law.
4. Other good cause shown.

(b) During the term of a charter, the sponsor may terminate the charter for any of the grounds listed in paragraph (a).

(c) At least 90 days prior to renewing or terminating a charter, the sponsor shall notify the governing body of the school of the proposed action in writing. The notice shall state in reasonable detail the grounds for the proposed action and stipulate that the school's governing body may, within 14 days after receiving the notice, request an informal hearing before the sponsor. The sponsor shall conduct the informal hearing within 30 days after receiving a written request. The charter school's governing body may, within 14 days after receiving the sponsor's decision to terminate or refuse to renew the charter, appeal the decision pursuant to the procedure established in subsection (4).

(d) A charter may be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened. The school district in which the charter school is located shall assume operation of the school under these circumstances.

(e) When a charter is not renewed or is terminated, the school shall be dissolved under the provisions of law under which the school was organized, and any unencumbered funds from the charter school shall revert to the district school board. In the event a charter school is dissolved or is otherwise terminated, all district school board property and improvements, furnishings, and equipment purchased with public funds shall automatically revert to full ownership by the district school board.

(f) If a charter is not renewed or is terminated, the governing body of the school is responsible for all debts of the charter school. The district may not assume the debt from any contract for services made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the district and the governing body of the school and that may not reasonably be assumed to have been satisfied by the district.

(g) If a charter is not renewed or is terminated, a student who attended the school may apply to, and shall be enrolled in, another public school. Normal application deadlines shall be disregarded under such circumstances.

(11) EXEMPTION FROM STATUTES.--A charter school shall operate in accordance with its charter and shall be exempt from all statutes of the Florida School Code, except those pertaining to civil rights and student health, safety, and welfare, or as otherwise required by this section. A charter school shall not be exempt from the following statutes: chapter 119, relating to public records, and s. 286.011, relating to public meetings and records, public inspection, and penalties. The sponsor, upon request of a charter school, may apply to the Commissioner of Education for a waiver of provisions of chapters 230 through 239 which are applicable to charter schools under this section, except that the provisions of chapters 236 or 237 shall not be eligible for waiver if the waiver would affect funding allocations or create inequity in public school funding. The commissioner may grant the waiver if necessary to implement the school program.

(12) EMPLOYEES OF CHARTER SCHOOLS.--

(a) A charter school shall select its own employees. A charter school may contract with its sponsor for the services of personnel employed by the sponsor.

(b) Charter school employees shall have the option to bargain collectively. Employees may collectively bargain as a separate unit or as part of the existing district collective bargaining unit as determined by the structure of the charter school.

(c) The employees of a conversion charter school shall remain public employees for all purposes, unless such employees choose not to do so.

(d) The teachers at a charter school may choose to be part of a professional group that subcontracts with the charter school to operate the instructional program under the auspices of a partnership or cooperative that they collectively own. Under this arrangement, the teachers would not be public employees.

(e) Employees of a school district may take leave to accept employment in a charter school upon the approval of the district school board. While employed by the charter school and on leave that is approved by the school board, the employee may retain seniority accrued in that school district and may continue to be covered by the benefit programs of that school district, if the charter school and the district school board agree to this arrangement and its financing. School districts shall not require resignations of teachers desiring to teach in a charter school. This paragraph shall not prohibit a school board from approving alternative leave arrangements consistent with chapter 231.

(f) Teachers employed by or under contract to a charter school shall be certified as required by chapter 231. A charter school governing board may employ or contract with skilled selected noncertified personnel to provide instructional services or to assist instructional staff members as education paraprofessionals in the same manner as defined in chapter 231, and as provided by State Board of Education rule for charter school governing boards. A charter school may not employ an individual to provide instructional services or to serve as an education paraprofessional if the individual's certification or licensure as an educator is suspended or revoked by this or any other state. A charter school may not knowingly employ an individual who has resigned from a school district in lieu of disciplinary action with respect to child welfare or safety, or who has been

dismissed for just cause by any school district with respect to child welfare or safety. The qualifications of teachers shall be disclosed to parents.

(g) A charter school shall employ or contract with employees who have been fingerprinted as provided in s. 231.02. Members of the governing board of the charter school shall also be fingerprinted in a manner similar to that provided in s. 231.02 prior to approval of the charter.

(13) REVENUE.--Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a chartered developmental research school shall be as provided in s. 228.053(9).

(a) Each charter school shall report its student enrollment to the district school board as required in s. 236.081, and in accordance with the definitions in s. 236.013. The district school board shall include each charter school's enrollment in the district's report of student enrollment.

(b) The basis for the agreement for funding students enrolled in a charter school shall be the sum of the school district's operating funds from the Florida Education Finance Program as provided in s. 236.081 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; multiplied by the weighted full-time equivalent students for the charter school. Charter schools whose students or programs meet the eligibility criteria in law shall be entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program by the Legislature, including transportation. Total funding for each charter school will be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education.

(c) Transportation of charter school students shall be provided by the charter school consistent with the requirements of chapter 234. The governing body of the charter school may provide transportation through an agreement or contract with the district school board, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

(d) If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in charter schools in the school district shall be provided federal funds for the same level of service provided students in the schools operated by the district school board. Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment.

(e) Any administrative fee charged by the school district relating to a charter school shall be limited to 5 percent of the available funds as defined in paragraph (b). The sponsor shall provide certain administrative and educational services to charter schools at no additional fee. These services shall include contract management services, FTE and data reporting, exceptional student education

administration, test administration, processing of teacher certificate data, and information services.

(f) School boards shall make every effort to ensure that charter schools receive timely and efficient reimbursement, including processing paperwork required to access special state and federal funding for which they may be eligible. The district school board may distribute funds to a charter school for up to 3 months based on the projected full-time equivalent student membership of the charter school. Thereafter, the results of full-time equivalent student membership surveys must be used in adjusting the amount of funds distributed monthly to the charter school for the remainder of the fiscal year. The payment shall be issued no later than 10 working days after the district school board receives a distribution of state or federal funds. If a warrant for payment is not issued within 30 working days after receipt of funding by the district school board, the school district shall pay to the charter school, in addition to the amount of the scheduled disbursement, interest at a rate of 1 percent per month calculated on a daily basis on the unpaid balance from the expiration of the 30-day period until such time as the warrant is issued.

(g) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the school district may not sell or dispose of such property without written permission of the school district. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The charter organizers shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards.

(h) If other goods and services are made available to the charter school through the contract with the school district, they shall be provided to the charter school at a rate no greater than the district's actual cost. To maximize the use of state funds, school districts shall allow charter schools to participate in the sponsor's bulk purchasing program if applicable.

(14) IMMUNITY.--For the purposes of tort liability, the governing body and employees of a charter school shall be governed by s. 768.28.

(15) LENGTH OF SCHOOL YEAR.--A charter school shall provide instruction for at least the number of days required by law for other public schools, and may provide instruction for additional days.

(16) FACILITIES.--A charter school shall utilize facilities which comply with the State Uniform Building Code for Public Educational Facilities Construction adopted pursuant to s. 235.26 or with applicable state minimum building codes pursuant to chapter 553 and state minimum fire protection codes pursuant to s. 633.025, as adopted by the authority in whose jurisdiction the facility is located.

(17) INITIAL COSTS.--A sponsor may approve a charter for a charter school before the applicant has secured space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working capital.

(18) INFORMATION.--The Department of Education shall provide information to the public, directly and through sponsors, both on how to form and operate a charter school and on how to enroll in charter schools once they are created. This

information shall include a standard application format which shall include the information specified in subsection (9). This application format may be used by chartering entities.

(19) GENERAL AUTHORITY.--A charter school shall not levy taxes or issue bonds secured by tax revenues.

(20) REVIEW.--

(a) The Department of Education shall regularly convene a Charter School Review Panel in order to review issues, practices, and policies regarding charter schools. The composition of the review panel shall include individuals with experience in finance, administration, law, education, and school governance, and individuals familiar with charter school construction and operation. The panel shall include two appointees each from the Commissioner of Education, the President of the Senate, and the Speaker of the House of Representatives. The Governor shall appoint three members of the panel and shall designate the chair. Each member of the panel shall serve a 1-year term, unless renewed by the office making the appointment. The panel shall make recommendations to the Legislature, to the Department of Education, to charter schools, and to school districts for improving charter school operations and oversight and for ensuring best business practices at and fair business relationships with charter schools.

(b) The Legislature shall review the operation of charter schools during the 2000 Regular Session of the Legislature.

(21) RULEMAKING.--The Department of Education, after consultation with school districts and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules shall require minimum paperwork and shall not limit charter school flexibility authorized by statute.

(22) CHARTER SCHOOLS-IN-THE-WORKPLACE.--

(a) In order to increase business partnerships in education, to reduce school and classroom overcrowding throughout the state, and to offset the high costs for educational facilities construction, the Legislature intends to encourage the formation of business partnership schools or satellite learning centers through charter school status.

(b) A charter school-in-the-workplace may be established when a business partner provides the school facility to be used; enrolls students based upon a random lottery which involves all of the children of employees of that business or corporation who are seeking enrollment, as provided for in subsection (6); and enrolls students according to the racial/ethnic balance provisions described in subparagraph (9)(a)8. Any portion of a facility used for a public charter school shall be exempt from ad valorem taxes, as provided for in s. 235.198, for the duration of its use as a public school.

History.--s. 1, ch. 96-186; s. 1, ch. 97-207; s. 20, ch. 97-384; s. 1, ch. 98-206; s. 2, ch. 98-292; s. 1, ch. 99-374; s. 44, ch. 99-398.



"Palmer, Scott" <Scott_Palmer@ed.gov>
02/28/2000 07:36:00 PM

Record Type: Record

To: Andy Rotherham/OPD/EOP

cc:

Subject: Additional Information on Charter Schools

I apologize for the delay in getting you this additional information. Based on a quick review from our enforcement offices, we have determined the following:

1. OCR has never received a formal complaint against a charter school alleging that it has negative effects on an OCR Title VI desegregation plan. We have provided technical assistance to LEAs telling them what we would look for if a school district is planning to open up a charter school in a district operating under an OCR desegregation plan. This includes both general guidance, specifically the draft charter school Q&As, and specific guidance to a handful of states and/or school districts based on informal inquiries.
2. We have reviewed and are reviewing (through complaints or compliance reviews) approximately 20 cases dealing with charter schools and disability issues. In all of the cases that we have resolved thus far (approximately 10 cases), the charter schools were able to continue, to maintain their educational mission, and comply with the civil rights requirements.
3. We have also received a relatively small number of additional cases dealing with charter schools and other civil rights issues, but I do not have a firm count for you.

Having said all of this, the general interest in this area is increasing as the number of charter schools increases, which is why we are revising and working on reissuing our currently draft Q&As on civil rights issues related to charter schools. (NOTE: The draft you received in our e-mail last week is a near final draft for your information, but it should not be distributed at this point.)

Finally, with regard to the talking points sent to you last week, I have been informed of a small correction -- It is Michigan, not Ohio, that has a number of cases dealing with FAPE. Ohio has problems with accessibility. In sum, I recommend against getting into specifics regarding any discrete state or case!

I hope this is helpful.

Florida Facts

- VOUCHER SCHOOL MUST ACCEPT STUDENTS ON A RANDOM BASIS AND ACCEPT AS TUITION THE "OPPORTUNITY SCHOLARSHIP".
- 800 KIDS ELIGIBLE, 53 GOT VOUCHERS AND 68 WENT TO HIGHER PERFORMING PUBLIC SCHOOLS INSTEAD. 5 SCHOOLS ACCEPTED VOUCHERS (1 MONTESSORI, 4 SECTARIAN).

MILWAUKEE

- 8,000 KIDS

CLEVELAND

- 3000 KIDS

IJ POINTS ON VOUCHERS:

First, language is important. In particular, wording emphasizing that school choice is about opportunities for Children -- not subsidies for private schools -- will help the Legal defense. Programs that expand opportunities for the Educationally disadvantaged often enjoy special judicial deference.

FAX TRANSMITTAL

TO: *Andy Rothman*
ORGANIZATION: *DPC - White House*

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NUMBER OF PAGES:

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MESSAGE:

*Hi Andy - Scott P. asked me
to forward to you any book that
could be helpful re Charters
Here are some articles + a
DOJ response to the Wall St.
Journal that I had shared
with you previously. Pls. let
me know if*

IF RE-TRANSMISSION IS NECESSARY, PLEASE CALL CANDICE HALL
AT 202-205-8217. *(P/S Jeanette Sim will you have Dr.
be out next Mon + Tues - if you
have any questions re our
talking points or case - give
me a call - Lilian*

The Wall Street Journal

11/04/97 Category: Editorial REVIEW & OUTLOOK

Above the Law?

Yesterday's refusal by the Supreme Court to review the constitutionality of Prop. 209, the California initiative banning public preference programs based on race or gender, will resound for years. The only corner of American life not likely to notice is the current government of the United States.

The Clinton Administration hasn't let any mere Supreme Court decision get in the way of its nonenforcement of the Beck decision banning involuntary union dues for political activity. So why should anyone expect it to be bothered that its current nominee for the nation's top civil rights job at the Justice Department, Bill Lann Lee, is on record opposing Prop. 209?

Mr. Lee's nomination is reportedly in trouble with the Senate Judiciary Committee, and the usual spin will be that "conservative" Senators are simply holding up a fellow they ideologically disagree with. The White House says Mr. Lee "represents mainstream thinking." Of affirmative action, Bill Clinton says, "mend it, don't end it." Problem is, the actions of this Administration make its professions of moderation and reasonableness utterly non-credible. It has spent five years using administrative fiat and enforcement actions to achieve what it simply no longer can hope to get with legislation, much less higher court decisions.

We went over much of this, of course, during the 1993 Lani Guinier nomination. Ms. Guinier was the subject of a famous article on this page carrying the headline "Quota Queens." But there were two nominees in that article. The other, who somehow got approved, was Norma V. Cantu, now the Education Department's Assistant Secretary for Civil Rights. By now, Norma Cantu has a record, one that suggests the gulf between the moderate Clinton face and the reality.

Ms. Cantu was a graduate of the Mexican American Legal Defense and Education Fund a longtime advocate of group rights over individual rights. That compulsion is now well known at every level of this country's academic institutions.

Start with her assault on the Texas university system. In the landmark case Hopwood v. Texas, the Fifth Circuit ruled that public universities generally may not consider the race of applicants. The Supreme Court denied review to an

appeal -- just as it denied review to Prop. 209 this week. Undeterred, Ms. Cantu ignored Hopwood and ordered Texas universities and colleges to reinstate race-based admissions programs. Only widespread publicity and public rage forced her to back down.

In California, she has taken a position similar to that advocated by Mr. Lee, attacking the state university system's move to end racial preferences in graduate admissions. No matter that a Ninth Circuit panel had overturned a lower court's determination that Prop. 209 was unconstitutional. An enforcer such as Norma Cantu has her own kind of authority: The executive branch has in its power the ability to pull billions in federal funds from educational institutions.

Moving on questionable interpretations of Title IX or the First or 14th amendments, Cantu teams have swooped down on schools and universities many times more frequently than did Orepresentatives under previous presidents. Her office spent more than two years studying Johns Hopkins University's athletic department. The university reports that OCR interviewed head coaches and team captains for 27 sports three times each. One OCR representative assailed school officials over the fact that women's basketballs were smaller than men's; the investigator was apparently unaware that smaller balls are the NCAA standard.

In New York's East Harlem, Ms. Cantu's cops descended on the newborn Young Women's Leadership School, investigating the absurd question of whether the very existence of a girls' school inherently discriminated against boys. Boston's Renaissance Charter School, another new project, has suffered similar onslaught.

So there's a reason for the caution about approving Bill Lann Lee. These appointments become important in a legally reckless regime like Mr. Clinton's. We suppose there will be negotiations now with Senate Judiciary. We'd like to suggest some starting points for Chairman Hatch and his colleagues before acceding to the Lee nomination:

No nominations of any sort will be approved until this Administration starts enforcing the Supreme Court's Beck decision. No new judges will be approved until the Clinton Administration nominates someone to run the criminal division at Justice, now vacant for two years. Alternatively, no more judicial nominations until Janet Reno appoints an independent counsel to investigate the Clinton fund-raising apparatus, as any normal reading of that statute now so clearly requires.

The Bill Lann Lee nomination is about enforcing the law. Good subject.

The Wall Street Journal11/20/97 Category: Commentary **Letter to the Editor*****Just Doing Our Job, Not 'Swooping Down'***

In response to your Nov. 4 editorial "Above the Law?": the Education Department's Office for Civil Rights is investigating the University of Texas System of higher education based on a Supreme Court case, *U.S. v. Fordice*, regarding the obligations of states that have a history of racial segregation in higher education to eliminate all current vestiges of that discrimination. Contrary to your assertion, Ohas not at any time ordered the University of Texas System to "reinstate race-based admissions programs" in disregard of the ruling of the Court of Appeals in the Hopwood case.

You also describe OCR's investigation of the University of California as "attacking the . . . move to end racial preferences in admissions." OCR is neither "attacking" nor even investigating the decision to no longer consider race in admissions. Rather, it is investigating a complaint alleging that some institutions currently are using criteria that disproportionately exclude students on the basis of race or national origin. If such criteria are identified, OCR will determine whether they are nonetheless legally permissible. In so doing, OCR is applying long-standing legal principles, recognized and affirmed by the Supreme Court.

You state that based on a "questionable interpretation" of Title IX, OCR "swooped down" to investigate Johns Hopkins University's athletics program. You mischaracterize the Title IX requirement for equity in athletics, and fail to note that courts have consistently confirmed OCR's interpretation of that requirement. In its investigation at Johns Hopkins, OCR found substantial inequities in the women's athletic program, which the university is committed to correcting.

You state that "OCR cops descended on" a leadership school for girls in New York, and that a charter school in Boston "suffered similar onslaught." Both investigations have been conducted only in response to complaints, which OCR is required by law to address.

Norma V. Cantu

Assistant Secretary,

Office for Civil Rights

Daily Education News

Page 2 of 2

Department of Education

Washington

The Wall Street Journal

03/22/99 Category: Commentary

Bill Lann Lee's War on Charter Schools

By Clint Bolick*

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 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.

TD 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 welcomed 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).

Wall Street Journal

October 20, 1999 Category: Editorial

Charter Hypocrisy

"When I became president, there was one independent public charter school in all of America. With our support, there are 1,100 today. My budget assures that early in the next century, there will be 3,000."

-- President Clinton, 1999 State of the Union address.

Another lie, it turns out. When it comes to actual treatment of the nation's fledgling charter schools, the Clinton Administration follows another policy: It tortures them.

Consider what it is doing to Louisiana's United Charter school. Back in 1995, Louisiana lawmakers surveyed their failing schools. After decades of desegregation orders, mandatory busing and so on, Louisiana school kids, half of whom are black, ranked 49th in the nation in overall achievement. Distressed, legislators passed one of the nation's more far-reaching laws for charter schools -- public schools that are given autonomy to try their own educational approach without bureaucratic oversight. Among the new schools planned was United Charter, a K-8 center for 650 at-risk children in an abandoned mall in inner-city Baton Rouge. Again, bear in mind we're talking about a public school. Applications flowed in. "It's something our kids need," parent Estella Percy told the local paper.

This didn't sit well with Mr. Clinton's civil rights czar, Acting Assistant Attorney General Bill Lann Lee. To Mr. Lee and his fellow crusaders at Justice, it seems, the actual welfare of flesh-and-blood students ranks a distant second to abstract notions of "rights." Tucking a 43-year-old court desegregation decree under their collective arm, Mr. Lee's attorneys descended on Louisiana to block United Charter.

In meetings with local officials and school advocates, the Justice Department let it be known that it had concerns about the project, among them that the new school might draw too many white children from neighboring schools, upsetting those schools' racial balance. "What the parents want isn't important to me," a Justice official told Rolfe McCollister, a

charter backer. "I'm interested in the law."

This struck locals as ridiculous. First of all, what matters more, skin color or education quality? Second, it wasn't clear that, after years of forced busing, there were enough whites in the community left to recruit even if United Charter sought to do so. As Roger Moser, the local system's school board president, told the Greater Baton Rouge Business Report, United Charter "has a chance of either improving education dramatically for blacks and/or evolving to the point it could be desegregated. But given the location it would have, I don't see any way it would ever become a high proportion of white kids."

Nonetheless, the feds continued to pepper the fragile project with questions. Particularly frustrating to locals was that the government's lawyers never laid out their case against the school on paper. Soon thoroughly intimidated, Baton Rouge authorities halted plans to open United Charter. That's why parents, represented by the Washington-based Institute for Justice, are now turning to the courts to try to resurrect their dream.

Unfortunately, United Charter is far from the only school to find itself harassed by Justice police. When SABIS International, a private school management firm, tried to open another charter school in St. Helena Parish, near the Mississippi River, the civil rights division used yet another desegregation order to block that project. The New Vision Charter School in Monroe was luckier. Though Justice had set its sites on the school, federal Judge F.A. Little Jr. let the project proceed.

This mode of attack on charter schools, moreover, is by no means confined to Louisiana. Nineteen of the 30 states that have charter laws also have areas that are under some sort of desegregation order, all potential battlefields for Justice litigators. In a recent hearing before Congress, Deputy Assistant Attorney General Anita Hodgkiss testified that the Justice Department has opposed charter schools in three other states: Texas, Mississippi and South Carolina.

Some argue that the never-confirmed Bill Lann Lee is the exception in an otherwise centrist Administration. In fact, Mr. Lee represents more the pattern than the exception. His counterpart at the civil rights division of the **Education Department**, Norma Cantu, spent months harassing another infant school, New York City's Young Womens Leadership School, with the threat that its single-sex program was discriminatory. According to Kimberly Schuld of the

Independent Women's Forum, Ms. Cantu backed off only after her boss at education, Richard Riley, began making repeated positive references to charter schools in speeches.

We wish we had confidence that the exposure of the Administration's ongoing hypocrisy toward charter schools would shame it into better behavior. But so long as the Democratic Party's future is tied to the teachers unions, the opposite is more likely.



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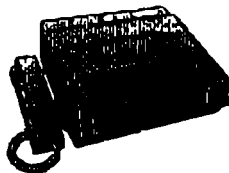
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To the Editor:

Your recent editorial citing the Clinton Administration's "torture" of the nation's fledgling charter schools is just plain wrong ("Charter Hypocrisy", October 20, 1999). Your readers deserve better information.

The Justice Department strongly supports charter schools and the wide range of innovative programs they provide. In fact, we know of at least 50 charter schools in districts where we are party to a desegregation decree. And in the vast majority of those districts, we raised no objection. At the same time, we remain committed to making good on the promise of Brown v. Board of Education by enforcing existing court orders designed to eliminate the last vestiges of segregation in our public schools. Both objectives can be achieved simultaneously.

Charter schools, like all public schools, can and should fulfill their civil rights obligations. Indeed these responsibilities have not prevented more than 1700 charter schools from opening just this fall. In a recent national survey, charter school leaders identified 14 other issues that were more troublesome than federal regulations -- with the lack of dollars for start-up as the most daunting challenge facing these new schools.

For this reason, the Administration has supported the Department of Education's charter school grant program, which provides resources that help charter schools meet those start-up costs. Over the past few years, the vast majority of new charter schools have received federal grants to help plan their schools, design curriculum, train teachers, buy materials or refurbish facilities. To date, this program has delivered more than \$230 million in grants to support charter schools. The budget request currently before Congress would increase the annual funding for charter schools to \$130 million -- \$30 million more than the previous fiscal year.

Also contrary to your editorial's suggestion, the Justice Department has not objected to any charter schools in Louisiana. We have simply sought information about various proposals to ensure their compliance with existing court orders. Louisiana state law explicitly requires charter schools to comply with desegregation orders in districts where they operate. In East Baton Rouge, we supported the expansion of existing charter schools once we confirmed that they would not prevent the school district from meeting its financial obligations under the court's order and that students were not leaving integrated schools so as to make them newly-segregated schools.

Your editorial also inaccurately assails Acting Assistant Attorney General Bill Lann Lee for the Department's actions in East Baton Rouge and St. Helena Parishes, Louisiana. In fact, before joining the Justice Department, Mr. Lee recused himself from all discussions and actions in that litigation because of his previous work with the NAACP Legal Defense Fund -- which is also a party to those cases.

We, together with the Department of Education, continue to work to help people better

understand and fulfill the obligations that face all new schools -- including charters -- in areas under court order. Uninformed criticisms and inaccurate portrayals are not helpful.

Sincerely,

Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division, U.S. Department of Justice

APPLYING FEDERAL CIVIL RIGHTS LAWS TO PUBLIC CHARTER SCHOOLS

QUESTIONS AND ANSWERS

As part of the U.S. Department of Education's (ED's) and the U.S. Department of Justice's (DOJ's) efforts to support innovation and choice within the public school system, this publication provides important information on how public charter schools may be developed and operated consistent with federal nondiscrimination laws. The purpose of this publication is to answer civil rights-related questions that charter school developers and operators have raised.

The civil rights principles that apply to public charter schools are the same principles that apply to all public schools. This publication contains no new law. Rather, it is designed to assist charter school developers and operators by making available a summary of civil rights issues applicable to public schools.

This publication provides general information that covers a broad range of federal civil rights issues. It does not seek to answer every question that may arise. In many cases, answers will turn on the particular facts of a given situation. In others, the law regarding the issue is evolving. Finally, other state or local civil rights requirements may apply.

For additional information, we encourage you to contact ED's Office for Civil Rights (OCR) or visit OCR's Web site at <http://www.ed.gov/offices/OCR/>. A list of the addresses and telephone numbers of OCR offices is attached. DOJ contributed significantly to this document by preparing the portions where DOJ is featured. Contact information for DOJ and for other federal offices is included where appropriate.

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BACKGROUND

One of the fastest growing areas of public school reform is the charter schools movement. 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. Charter schools create choice for parents and students within the public school system, while providing a system of accountability for student achievement. Charter schools also encourage innovation and provide opportunities for parents to play powerful roles in shaping and supporting the education of their children. As a result, charter schools can spur healthy competition to improve public education.

In exchange for increased accountability, public charter schools are given expanded flexibility with respect to select statutory and regulatory requirements. Federal legislation provides support for the creation of public charter schools as a means of promoting choice and innovation within public school systems. Of course, charter schools, like all public schools and other recipients of federal financial assistance, must operate consistent with civil rights laws.

The U.S. Department of Education (ED), Office for Civil Rights (OCR) enforces a number of civil rights laws that apply to public schools, including public charter schools. These laws include: Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs; Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination on the basis of disability; and the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. These laws apply to programs and activities that receive federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability by public entities, including public schools. Title II applies to public entities, regardless of whether they receive federal financial assistance. OCR receives and resolves more than 5,000 complaints of discrimination each year and provides technical assistance on a wide range of issues.

In addition, the U.S. Department of Justice, Civil Rights Division (DOJ-CRD) works on a variety of legal issues involving elementary and secondary schools. DOJ enforces in the courts many of the same statutes that OCR enforces administratively, including Title VI, Title IX, Section 504, and Title II. DOJ also enforces Title IV and Title VII of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974. DOJ may intervene in private suits that allege violations of education-related anti-discrimination statutes and the Fourteenth Amendment of the U.S. Constitution. The DOJ-CRD is also responsible for monitoring more than 400 school districts currently covered by desegregation court orders in over 200 desegregation cases where the United States is a party.

ED and DOJ support the implementation of public charter schools as a valuable way to enhance choice among public schools and to give more students the opportunity to learn to challenging standards. This guidance seeks to aid charter school developers and operators in their efforts to

plan, develop, and deliver their important educational programs in a nondiscriminatory manner.

RESPONSIBILITIES FOR CIVIL RIGHTS COMPLIANCE

Perhaps the most common image associated with education is the relationship between a child and his or her teacher. Of course, public education is that and more. It includes shared responsibility by many entities, including the school, the school district, and the state, acting in cooperation with parents. In much the same way, the responsibility for safeguarding the civil rights of the students, parents, and teachers in a public school, such as your charter school, is shared and does not fall exclusively on any one individual or agency.

1. *Who is responsible for making sure that my public charter school is complying with federal civil rights laws?*

Public schools, including your charter school, are responsible for complying with several federal civil rights laws, based on their status as recipients of federal financial assistance and as public entities. Other entities share responsibility for your school's compliance. If your charter school is part of a Local Educational Agency (LEA), such as a school district, the LEA is also responsible for ensuring that your school is complying. Furthermore, if your charter school receives federal funds through the State Educational Agency (SEA) or an authorized public chartering agency that receives federal funds, or is chartered by the SEA or its designee, the SEA is also responsible. The SEA is responsible in all cases for having methods of administration that are not discriminatory, including procedures for chartering schools.

Sources of federal education funds include programs authorized under the Elementary and Secondary Education Act of 1965, as amended, including the Public Charter Schools Program.

2. *In general, what are the federal civil rights obligations that apply to public elementary or secondary schools, including my charter school?*

Public schools, including public charter schools, must not discriminate on the basis of race, color, national origin, sex, or disability in any of their programs or activities. The primary federal civil rights laws addressed in this publication include:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;

Other applicable federal civil rights laws not directly addressed in this publication include:

- Title IV of the Civil Rights Act of 1964;
- Title VII of the Civil Rights Act of 1964; and
- Equal Educational Opportunities Act of 1974.

See the endnotes to this document for more information on these laws.

- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability; and
- the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.

RECRUITMENT AND ADMISSIONS

Students attend charter schools by choice, but their admission might be subject to certain qualifications or a lottery. This is one factor that may distinguish the operation of your charter school from many other public schools. Although your civil rights obligations are no different from those of other public school officials, the fact that your students are not simply assigned to attend means that you need to be even more mindful of the rights of children and parents in your community when publicizing your school to attract students and when evaluating their applications for admission.

3. *Do I have any responsibility regarding the recruitment of students in order to be in compliance with federal civil rights laws?*

Yes. When announcing your charter school or conducting outreach, you may not discriminate against students of a particular race, color, or national origin, or against students with disabilities. If your charter school is co-educational, then you may not discriminate in recruitment on the basis of sex. If your charter school recruits students, you should recruit them from all segments of the community served by the school, including students with disabilities and students of all races, colors, and national origins. If you wish, you may target additional recruitment efforts toward groups that you believe might otherwise have limited opportunities to participate in your program.

Title IX allows single-sex programs, classes, and schools under certain conditions. For more information, see [Question 9](#).

4. *What steps should I take with respect to parents who are limited-English proficient?*

You must make sure that parents in your community who are not proficient in English have the opportunity to understand the outreach information provided to other parents. This information may need to be provided in a language other than English. For example, if you conduct public informational meetings with parents or community groups, you should make sure that limited-English proficient parents who can be reasonably expected to attend have a meaningful opportunity to understand what is being presented. If outreach materials are made available to parents, you must make sure that those parents who do not understand English are provided the content of the materials in a manner and form they understand.

5. *What steps should I take with respect to parents with disabilities?*

You must make sure that a parent with a disability has a meaningful opportunity to understand the outreach information given about the charter school as effectively as other parents. Appropriate auxiliary aids and services must be made available whenever they are necessary to ensure effective communication with disabled parents. For example, if you conduct public informational meetings with parents or community groups, those meetings must be physically accessible to individuals with disabilities. Qualified interpreters or another effective means of

communication must be provided if requested. If outreach materials are made available to parents, you need to make sure that parents with disabilities have appropriate access to the content of the materials. If requested, you may need to provide the materials using alternative formats, such as Braille, large print, or audio cassette.

6. *What is my obligation to make sure that all students – regardless of race, color, or national origin – are treated in a nondiscriminatory manner in admissions?*

You may not discriminate on the basis of race, color, or national origin (including language proficiency) in determining whether an applicant satisfies any admissions requirements. Students with limited-English proficiency must have the opportunity to meet any minimum eligibility criterion for admission, consistent with the mission of the charter school. Eligibility criteria must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. If such criteria have a disparate impact on the basis of race, color, or national origin, then the criteria should be examined to ensure that they are educationally justified and that no alternative criteria exist that would equally serve your goals and have a lesser disparate impact. It is important to understand that disparities alone do not constitute discrimination under Federal law.

For schools receiving funds under the federal Public Charter School Program, see the discussion on establishing minimum eligibility criteria for admission and other important information in Public Charter Schools Program: Non-Regulatory Guidance at http://www.uscharterschools.org/res_dir/res_primary/fed_gud_pcsp.htm.

If your charter school receives funds under the federal Public Charter Schools Program, you must use a lottery to admit students if the charter school is oversubscribed.

7. *May my charter school consider race in admissions decisions?*

A charter school may take race into account in making admissions decisions in limited circumstances. Race may be used only in a narrowly-tailored way to meet a compelling interest, such as to remedy discrimination, to promote the educational benefits of diversity, or to reduce minority-group isolation. The state of the law in this area is undergoing close examination by the courts. The legal standard that applies to your state may vary, depending on State law and the federal circuit in which your state is located.

For more information and technical assistance concerning the use of race in admissions, contact the OCR Office that serves your state and see, for example, the *Federal Register* notices on the Magnet Schools Assistance Program application notice, at <http://www.ed.gov/legislation/FedRegister/announcements/1998-1/021798c.html>.

8. *What is my obligation to make sure that student applicants with disabilities are treated in a nondiscriminatory manner in admissions?*

Under Section 504 and Title II, you may not categorically deny admission to students on the basis of disability. For example, you may not deny admission to a student with a

For more information on addressing the educational needs of students with disabilities, see Questions 23 to 30 concerning Services to Students with Disabilities.

disability solely because of that student's need for special education or related aids and services. Students with disabilities must have the opportunity to meet any minimum eligibility criterion for admission, consistent with the mission of the charter school.

9. *Does Title IX permit single-sex classes, programs, or schools?*

Title IX permits LEAs to establish single-sex elementary or secondary schools as long as they are not vocational schools. However, when an LEA establishes a public school for one sex – unless it is necessary to remedy discrimination – any student excluded based on sex must have made available comparable courses, services, and facilities, pursuant to the same policies and criteria of admissions.

The Title IX regulation generally prohibits single-sex classes or programs in co-educational schools. There are some exceptions, including contact sports, chorus, and portions of classes dealing with human sexuality. Separate classes may also be provided for pregnant students, but participation must be voluntary. Title IX also allows for single-sex classes and programs if they are necessary to remedy discrimination found by a court or OCR, or as a response to conditions that have limited participation by sex.

ED is reviewing its Title IX regulation pertaining to single-sex programs and schools. If you are thinking of establishing a single-sex class, program, or school, we encourage you to contact OCR for more specific guidance.

SCHOOLS AFFECTED BY DESEGREGATION PLANS OR COURT ORDERS

Some school districts have desegregation obligations under plans or court orders that could affect or be affected by the establishment of your charter school, even if your charter school is its own LEA. Desegregation plans and court orders are resolutions of past segregative discrimination by school districts determined by OCR or by the courts, in some instances with the participation of the U.S. Department of Justice, Civil Rights Division (DOJ-CRD). If the jurisdiction in which your charter school is located is under a desegregation plan or order, there are steps you can take to ensure compliance and avoid unnecessary delays.

10. *How do I determine whether my proposed charter school is in a jurisdiction with a duty to desegregate?*

If you are uncertain whether your charter school is in a jurisdiction that is covered by an existing desegregation plan or court order, you may contact several entities for assistance. First you may contact the appropriate LEA, your SEA, or DOJ-CRD to determine if there is an applicable court order where the United States is a party. To assist you in this process, DOJ-CRD has provided your chief state school officer with a list of the LEAs in the state that are subject to such a court order. Second, you may contact the appropriate LEA or the OCR office that serves your state to determine if there is an applicable OCR Title VI desegregation plan.

If you have questions about a desegregation court order where the United States is a party, you may contact DOJ-CRD at 202-514-4092. If you have questions about a Title VI desegregation plan, you may contact the OCR office that serves your state. A list of OCR offices is attached.

You should also know that there are other desegregation plans and orders that do not involve DOJ-CRD or OCR. These desegregation plans and orders only involve private parties in state or federal courts, or state agencies that have ordered districts to desegregate. In these cases, you should consult your SEA or the appropriate LEA to determine whether the jurisdiction has a desegregation obligation.

11. *What steps should my LEA or I take in order to establish a school that complies with an existing desegregation plan or court order?*

The establishment of any new public school, including a new charter school, in a jurisdiction with a duty to desegregate must be consistent with the LEA's obligations under its desegregation plan or court order. Alternatively, it is possible to seek a modification of the applicable plan or order. If you are establishing a charter school in a jurisdiction that is under an OCR Title VI desegregation plan, OCR should be consulted on any applicable Title VI obligations. Similarly, DOJ-CRD should be contacted if you are establishing a charter school in a jurisdiction under a desegregation court order in which the United States is a party. You, the appropriate LEA, or your chartering authority may contact these agencies. Early consultation will speed the process for your charter school proposal and can avoid unnecessary delay or disruption in the future.

Review of any new school by a court or OCR involves a case-by-case, fact-bound determination that takes into account the particular charter school's impact on the ability of the appropriate LEA to comply with its unique desegregation obligations.

12. *What information is needed for this consultation process to be effective?*

As a first step, you should provide a copy of the charter school application to either OCR or DOJ-CRD. In general, OCR and DOJ-CRD are interested in the effect a new public school will have on the appropriate LEA's obligations. Your charter application will contain at least some of the information needed to make this determination.

Because charter school application forms vary from state to state, and because each court order and OCR Title VI desegregation plan is different, DOJ-CRD or OCR may need more information than is included in your charter application. The information below is especially helpful to DOJ-CRD or OCR in evaluating the impact of your school on the LEA's desegregation obligations:

- theme and target population;
- recruitment and admissions processes;
- proposed location;
- projected racial composition of students, faculty, and staff for the coming school year; and
- impact on racial composition of students at other schools in the LEA.

13. *In the case of a court order, what does DOJ-CRD do with this information?*

If your jurisdiction is under a desegregation court order where the United States is a party, you should consult with DOJ-CRD. When DOJ-CRD receives information on your charter school, it will review your submission, its own files, and any other readily available information to see if these sources provide enough data to reach a position about the charter school's impact on compliance with the desegregation order. If more information is needed, DOJ-CRD will contact you and the appropriate LEA to request the additional information.

When an LEA is subject to a desegregation court order, it is the court, not DOJ, that determines whether or not to approve a new school. Where approval is required, the court will ask the other parties to the case, including DOJ, for their views.

In many cases, the limited enrollment of a charter school does not have a significant impact on the attendance patterns and enrollment in the appropriate LEA's other schools, and does not adversely affect compliance with the desegregation order. In such cases, and in other cases where DOJ-CRD concludes there is no adverse impact, DOJ-CRD will advise you and the appropriate LEA that it has no objection to the proposed operation of the charter school.

If DOJ-CRD's review of the information raises concerns about compliance with the desegregation order, DOJ-CRD may offer suggestions and modifications that address these concerns, where appropriate.

14. *Who is responsible for notifying the court about a new charter school to obtain court approval when required?*

If your jurisdiction is under a desegregation court order, the appropriate LEA may need to have the court approve any new school, including a public charter school. Where court approval is required, charter school developers should contact their LEA or SEA for information on how best to obtain the approval of the court. Where appropriate, DOJ-CRD may be able to make a joint motion with a charter school or LEA to seek court approval for a new charter school. However, DOJ-CRD can not represent charter school developers before the court, and can not submit motions on their behalf.

15. *In the case of a desegregation plan, what does OCR do with this information?*

If your jurisdiction is under an OCR desegregation plan, you should consult with the OCR office that serves your state. After OCR receives information on your charter school, we promptly examine it along with the Title VI desegregation plan and any other readily available information to determine if establishing the new school would be consistent with the appropriate LEA's Title VI obligations. If OCR needs more information, we will contact you or the appropriate LEA. In many cases, a new charter school does not adversely affect compliance with the OCR Title VI desegregation plan because its limited enrollment has a minimal effect on the attendance patterns and enrollment in the LEA's other schools. In such cases, and in other cases where OCR concludes there is no adverse impact, OCR will advise you and the appropriate LEA that it has no objection to the proposed operation of the charter school.

If OCR's review of the information raises concerns about compliance with the LEA's Title VI obligations, OCR may offer suggestions and modifications that address these concerns, where appropriate.

SELECTION OF FACILITIES TO PROVIDE ACCESS TO STUDENTS WITH DISABILITIES

For some people with physical disabilities, an otherwise outstanding program may as well not exist if it is located in an inaccessible facility. Section 504 and Title II require that persons with disabilities have access to the programs and activities offered at public schools. Because charter schools often open in older or renovated buildings that may lack contemporary attention to accessible design, it is important that you be aware of these requirements.

16. *Are there requirements for physical access that apply when I select the facilities that will house my charter school?*

Yes. An LEA (including your charter school if it is its own LEA) may not deny persons with disabilities, including parents and students, the benefits of programs and activities offered at its schools because of inaccessible facilities. The selection of the facility for your charter school may not result in excluding or limiting enrollment of people with disabilities from any school program or activity.

The program accessibility requirements of Section 504 and Title II often involve complex issues. For technical assistance regarding accessible programs and facilities, please contact the OCR Office that serves your state.

17. *Are there different legal requirements that apply to public charter schools located in existing facilities as compared to newer facilities?*

Yes. For existing facilities, a public school's programs and activities, when viewed in their entirety, must be readily accessible to individuals with disabilities. Both the Section 504 and Title II regulations permit considerable flexibility in meeting this legal standard. For example, structural changes are not required in existing facilities if nonstructural methods are effective in achieving program accessibility.

For new construction and alterations, Section 504 and Title II require 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 focus here is on providing physical access to buildings and facilities in addition to programs and activities. This means you must make sure that a child with a physical disability has access to every part of the new building or the parts that are newly-altered.

For example, if your charter school is in a new building, all parts of the building, including the third-floor chemistry labs, must be accessible for use by persons with disabilities. In contrast, if your charter school is in an existing facility, you might be able to meet the program accessibility requirement by locating at least one chemistry lab in an accessible location like the first floor.

18. *How do I know if a building is considered an existing facility or new construction?*

Unless you built or made alterations to your facility, it is likely to be considered an existing facility, regardless of its age. Any building or alteration by or on behalf of your charter school for which construction began after your school was chartered is considered new. There is a possibility that the building or alteration would be considered new construction under Section 504 and an existing facility under Title II. In these cases, the more stringent standard for new construction would apply.

Any construction that began before June 4, 1977, is considered existing. Any construction or alteration by or on behalf of your charter school that began after January 26, 1992, is considered new. Construction that began on or between those two dates is new under Section 504 and existing under Title II.

19. *What should I consider when acquiring the space in which I operate my program?*

In summary, when you purchase, take title to, lease, or rent a facility, you are encouraged to look for the most accessible space available. At a minimum, you must make sure that the educational program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, in accordance with the requirements for existing facilities. Construction or alteration initiated by you or for your charter school must also meet standards for new construction.

EDUCATING STUDENTS WHO ARE LIMITED-ENGLISH PROFICIENT

A growing number of students in the public school population are national-origin minority students who are limited-English proficient (LEP). These children include recent immigrants to the United States. Others are second- and third-generation U.S. citizens raised with languages other than English. Others are indigenous, such as Native American children. Generally, these children's limited ability to speak, read, write, and understand English well enough to participate meaningfully is a barrier to their educational success. Federal civil rights law requires that public schools provide LEP children appropriate services designed to teach them English and the general curriculum.

20. *What civil rights requirements apply if there are LEP students attending my charter school?*

In *Lau v. Nichols*, the U.S. Supreme Court held that school districts must take affirmative steps to help LEP students overcome language barriers so that they can participate meaningfully in each school district's programs. Under Title VI, public school districts must identify LEP students and provide them educational services so they can learn English-language skills and acquire the knowledge and skills in academic content areas that all students are required to know.

Public schools are not required to adopt any particular model of instruction for LEP students. However, where a program is necessary to ensure equal educational opportunity for LEP students, it must be based on a sound educational theory, adequately supported with qualified staff and adequate resources so that the program has a reasonable chance for success, and periodically evaluated and revised, if necessary.

21. *Are there federal funds available to help me educate LEP students?*

Yes. A wide variety of resources are available to help you serve your charter school's LEP students. In addition to receiving general educational funds and state and local funds appropriated for the education of LEP students, LEAs may qualify for Federal financial assistance. For example, like any public school, your charter school might qualify for funds from Title I, Title VII, or other grants awarded under the Elementary and Secondary Education Act of 1965, as amended. These grant funds may be used to supplement the services that the LEA is required to provide using state and local educational funds. Title I is administered by ED's Office of Elementary and Secondary Education (OESE). There are specific requirements that you must meet in order to receive Title I funds. Contact your SEA to find out if these funds are available to you. LEAs may apply for Title VII funds from ED's Office of Bilingual Education and Minority

Title I provides assistance to at-risk children in high-poverty schools. For further information on Title I, visit OESE's World Wide Web site at <http://www.ed.gov/offices/OESE/CEP/index.html>. Title VII helps LEAs meet their needs and objectives related to improving the instruction of LEP students. For further information on Title VII, visit OBEMLEA's Web site at <http://www.ed.gov/offices/OBEMLEA/>.

Languages Affairs (OBEMLA).

Your charter school might also join with other charter schools or work with LEAs to share qualified staff and other resources. Keep in mind that the obligation to educate LEP students is the same regardless of whether special funds or resources are available.

22. *What must I do to make sure that limited-English proficient parents of students in my school are provided with information about school activities?*

Like operators of other public schools, you must ensure that language-minority parents who are not proficient in English receive the same information provided to other parents, in a manner and form they understand. This may include information about their children's program, progress, and disciplinary problems, as well as information about the school's rules, policies, and activities. This information may have to be provided in a language other than English for parents who are not proficient in English.

You may find assistance through real-time interpreting services, such as those provided by telecommunications companies.

EDUCATING STUDENTS WITH DISABILITIES

Some children arrive at school with disabilities that affect their participation in the educational program. Sometimes, these disabilities are known; sometimes they remain hidden until a parent or teacher raises a concern. The challenge for all public schools is to identify children with disabilities, assess their individual needs, and provide appropriate educational services.

23. *What civil rights requirements apply to my charter school for the education of students with disabilities?*

Under Section 504 and Title II, students with disabilities enrolled in public schools, including your charter school, are entitled to a free appropriate public education (FAPE). The Section 504 regulation includes several substantive and procedural requirements regarding the provision of FAPE. Among these requirements is that a student with a disability must receive appropriate regular or special education and related aids and services. The requirement is designed so that the individual educational needs of the disabled student are met as adequately as the needs of nondisabled students.

24. *Are there federal funds available to help me meet my obligation to educate students with disabilities?*

Yes. Charter schools may be eligible under the Individuals with Disabilities Education Act (IDEA) to receive federal funds from your state educational agency or your state. The IDEA is a federal law that provides funds to SEAs, LEAs, and schools to help serve students with disabilities. There are specific requirements of the IDEA that you must meet in order to receive these federal funds. Contact your SEA to find out if these funds are available to you.

Like Section 504 and Title II, the IDEA has FAPE requirements. In general, if you satisfy the FAPE requirements under the IDEA, then you will be in compliance with the FAPE requirements of Section 504 and Title II. The IDEA, which has distinct requirements that are not discussed in detail in this publication, is administered by ED's Office of Special Education and Rehabilitative Services (OSERS).

25. *Are there additional ways to help me meet my obligations under Section 504 and Title II?*

Yes. In addition to providing federal funds to eligible entities, the IDEA allows a state the flexibility to designate some other entity as responsible for ensuring that the requirements of the IDEA are met for children with disabilities enrolled in public schools, including your charter school. Where you are meeting your charter school's Section 504 and Title II FAPE responsibilities through compliance with IDEA requirements, the IDEA's flexibility could help

For further information on the IDEA and its requirements, contact OSERS' Office of Special Education Programs (OSEP) at 202-205-5507, or visit OSEP's World Wide Web site at <http://www.ed.gov/offices/OSERS/OSEP/index.html>.

you meet your charter school's Section 504 and Title II FAPE responsibilities. Generally, if a state designates another entity as responsible for ensuring that all of the IDEA requirements are met for children enrolled in a particular charter school, that designated entity would provide FAPE to each of those students, generally at the Charter School site.

26. *Could a child be protected by Section 504 and Title II but not be eligible to receive services under the IDEA?*

Yes. Some students with disabilities are protected by Section 504 and Title II, but are not eligible to receive services under the IDEA because they do not need special education. One example would be a child with juvenile rheumatoid arthritis who requires the periodic administration of medication during the school day, but who does not need any special education services. The child may have the right to FAPE under Section 504 and Title II, even though the child is not eligible for services under the IDEA.

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

27. *May I limit the participation of students with disabilities to certain aspects of my charter school's program?*

No. Consistent with their individual educational needs, students with disabilities must be provided a range of choices in programs and activities that is comparable to that offered to students without disabilities. This includes an opportunity to participate in a range of nonacademic or extracurricular programs and activities offered at your charter school.

28. *Is a student with a disability required to be educated with students without disabilities?*

A student with a disability must be educated with nondisabled students to the maximum extent appropriate for the disabled student. The education of students with disabilities must be designed to meet their individual needs. A student with a disability may be placed in a setting outside the regular classroom only if the regular educational environment – including using supplementary aids and services – cannot meet the student's educational needs. The group making placement decisions is responsible for selecting the setting that satisfies these requirements.

The Section 504 regulation requires that any placement decision be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

29. *What do I need to do when a student enrolled in my charter school is believed to have a disability?*

When a student is believed to have a disability, your charter school, like any public school, must initiate the procedures established by your SEA or the LEA to identify and refer the student for evaluation.

30. *What other rights and responsibilities are included in the provision of FAPE regarding student identification, evaluation, and placement?*

Under Section 504 and Title II, students with disabilities, and their parents or guardians, are entitled to due process concerning student identification, evaluation, and placement. Due process includes notice, the opportunity for review of records, the right to request an impartial hearing with representation by counsel, and a procedure for review. In general, when you comply with the relevant IDEA procedural-safeguard requirements, you are complying with these Section 504 and Title II requirements.

Endnotes: [TO BE ADDED.]