

DRAFT

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

One of the fastest growing areas of public school reform is the charter schools movement. President Clinton has called for the creation of 3,000 charter schools by early in the next century as a vehicle for promoting choice and innovation within public school systems. Charter schools are public schools under contract--or charter--between a public agency and groups of parents, teachers, community leaders or others who want to create alternatives and choice within the public school system. In exchange for greater accountability for student achievement, charter schools are given expanded flexibility from statutory and regulatory requirements. However, charter schools remain subject to federal civil rights laws. This Questions and Answers Handout has been prepared by the Office for Civil Rights (OCR) in the U.S. Department of Education to assist charter schools in meeting their obligations under federal civil rights laws with respect to recruitment and admissions, provision of appropriate services to limited English proficient (LEP) students, and provision of a free appropriate public education and program accessibility to students with disabilities.

OCR is responsible for enforcing civil rights laws that protect students and other participants from discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance. These laws are: 1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin; 2) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; and 4) the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. Also, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities, including public charter schools and public school districts, regardless of whether they receive federal financial assistance.

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

Entity Responsible for Civil Rights Compliance

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

A: The entity that is responsible for ensuring that a public charter school is complying with federal civil rights laws generally is the same entity that is responsible for operating the charter school on a day to day basis. State charter school laws provide guidance regarding entities that are responsible for the operation of charter schools within a particular state. Unless the applicable state law provides otherwise, the entity that is responsible for the operation of the public charter school would also be responsible for ensuring that the public charter school is complying with the requirements of the federal civil rights laws. For example, where a charter school is part of a local educational agency, the local educational agency would be responsible for ensuring that the charter school is complying with the requirements of the federal civil rights laws.

While the charter school operator generally has responsibility for ensuring that the charter school complies with federal civil rights laws, the state educational agency (SEA) or other authorized chartering agency also may be responsible. For example, in cases where the SEA is the direct recipient of federal funds and the charter school is a subgrantee, the SEA must have policies that ensure that the subgrantee will comply with federal requirements.

Effect of Existing Desegregation Plans on Public Charter Schools

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

A: When a public charter school is being established in a school district that is under either a Title VI desegregation plan approved by OCR or a court order requiring desegregation, the charter school must be established and operated in a manner that is consistent with the OCR-approved desegregation plan or court order. Generally, the establishment of a public charter school in a school district that is under a desegregation plan or court order may not substantially impede or retard the scope of desegregation. For example, where the school district is operating under an OCR-approved or court-ordered desegregation plan,

the establishment of a public charter school must not adversely affect the racial composition of the schools from which the charter school students will be drawn, such that the school district would not be in compliance with the desegregation plan or court order. The local educational agency or other entity that is responsible for the day to day operation of the charter school should consult with its attorneys to determine whether establishment of a charter school is consistent with an applicable OCR-approved desegregation plan or court order and whether OCR or court approval is needed.

Recruitment and Admissions

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

A: Consistent with Title VI, Title IX, Section 504, and Title II, a public charter school must not recruit in a manner that discriminates against students of a particular race, color, national origin, or sex, or students with disabilities. Public charter schools should make sure that any outreach and recruitment efforts, such as radio advertisements or community meetings, are designed to effectively reach all segments of the parent community, including minority and limited English proficient parents.

Also, charter schools may make special efforts to encourage applications from minority and LEP students. For example, charter schools may: 1) conduct presentations or meetings with parent teacher associations or organizations at schools with a large number of minority students; 2) schedule meetings or consultations with minority community groups; 3) indicate in promotional materials that alternative language services will be provided for LEP students; 4) indicate in such materials that a free or low cost lunch program is available for eligible students; 5) disseminate information about the charter school in newspapers and other publications and on radio stations that serve minority communities; and 6) emphasize in meetings and promotional materials that students from all segments of the community will be welcome at the charter school.

Promotional materials that are used to recruit students must state that the charter school does not discriminate on the basis of race, color, national

origin, sex, or disability in its programs and activities.

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

A: A public charter school must ensure that parents who are not proficient in English are provided with appropriate and sufficient information about the charter school. This information must be effectively communicated to parents who are not proficient in English. For example, in those communities that have significant numbers of LEP parents, if outreach materials are made available to parents, these materials may have to be available in languages other than English to ensure effective communication. Where the local community includes significant numbers of individuals who have limited English proficiency, if the charter school conducts informational meetings with parents or community groups, in order to ensure effective communication, translation services should be available .

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

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

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

A: Public charter schools may not treat an individual differently on the basis of race, color, or national origin in determining whether he or she satisfies any admissions requirement. In order to receive the

charter school start-up grants that are available through the Federal Charter Schools Program, public charter schools must admit students on the basis of a lottery if more students apply for admission than can be accommodated.

In public charter schools that do not use a lottery for admissions, eligibility criteria must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. If these criteria have a disparate impact on the basis of race, color, or national origin, they must be necessary to meet the school's educational objectives and there should be no alternative admissions criteria that has less disparate impact and meets the school's educational objectives. If admissions criteria are permitted by state law and the school's charter, and if the school is not receiving a Federal public charter schools grant, a public charter school may use admissions criteria that are related to the nature of the school, for example, a requirement that students be at a particular grade level or that students be concentrating in a particular subject area.

Many state charter school laws also have specific provisions that are designed to ensure that charter schools are open to all students. For example, consistent with the Federal Charter Schools Program, a significant number of states specifically require that public charter schools use a lottery system for admissions purposes. A few state charter school laws contain provisions designed to ensure that transportation services are provided to low-income students attending such schools.

Where a public charter school is established in a school district that is remedying past discrimination, the charter school may make a narrowly tailored use of race or national origin in admissions to remedy the effects of that past discrimination.

be required
to ~~remedy~~

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

A: Students with disabilities may not be excluded from admission to a public charter school solely on the basis of their disability. In applying admissions criteria to students with disabilities, individualized determinations must be made as to whether a particular student meets the criteria and those determinations

must be made on a nondiscriminatory basis. For example, if students must pass a written examination in order to be admitted to a public charter school, a student who is blind would have to be provided appropriate accommodations in order to take the test.

Discrimination on the Basis of Sex

- Q:** Do charter schools have the same Title IX obligations as other public schools?
- A:** Yes. Consistent with Title IX, public charter schools must ensure that they do not discriminate on the basis of sex in their programs and activities. Also, Title IX protects students from unlawful sexual harassment in all of a school's programs or activities, whether they take place in the facilities of the school, on a school bus, or at a class, training program, or other activity sponsored by the school at another location. In order to receive technical assistance regarding Title IX, please contact the OCR enforcement office that serves your state.

Provision of Appropriate Services to Students with Limited English Proficiency

- Q:** May a public charter school exclude from admission students who have limited English language proficiency?
- A:** A public charter school may not categorically exclude LEP students from participating in a public charter school's program. If there are questions about the legality of the specific requirements of a program being offered by a charter school that may impact LEP students, please feel free to contact the OCR enforcement office that serves your state.
- Q:** Do the same requirements to provide appropriate services to LEP students that apply when a LEP student attends any other public school also apply when a LEP student attends a public charter school?
- A:** Yes. Title VI prohibits the denial of equal access to education for national origin minority children. Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a public school, the school must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

Public schools must implement procedures that ensure that all LEP students are identified, evaluated, and provided necessary language services by properly trained staff and that the educational program is periodically evaluated to ensure that it is effective in meeting the educational needs of LEP students. These legal requirements are explained in OCR policy documents and technical assistance materials. Public charter schools need to become familiar with the details of these legal requirements.

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

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

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

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

A: Where a public charter school is part of an LEA, unless state law makes another agency responsible, the LEA would be responsible for ensuring that there is adequate funding for the provision of appropriate services to LEP students. Where the charter school is controlled by a governing board independent of the LEA, unless state law makes another agency responsible, the independent governing board would be responsible for ensuring that there is adequate funding for the provision of appropriate services to LEP students.

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

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

Program Accessibility for Individuals with Disabilities

- Q: Are public charter schools responsible for ensuring that their programs and activities are accessible to persons with disabilities?
- A: Yes. Public charter schools are subject to the same program accessibility requirements as other public schools. Program accessibility requirements often involve complex issues. For assistance in understanding program accessibility requirements, you may want to review OCR technical assistance materials.
- Q: Are there different legal requirements that apply to public charter schools located in older facilities as compared to newer facilities?
- A: Yes, the legal requirements are different. Under the federal civil rights laws, older facilities (which are referred to as "existing facilities" in the Section 504 and Title II regulations) do not have to meet the requirements of federal accessibility codes. For such facilities, the legal standard is that programs and activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. New construction and alterations are required to be in compliance with federal accessibility codes.

Section 504 and Title II have different time frames regarding what constitutes existing facilities and new construction and alterations. Under Section 504, an existing facility is a facility that was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. Under Section 504, new construction means ground-breaking took place

on or after June 3, 1977. Under Title II, an existing facility is a facility that was in existence or in the process of construction on January 26, 1992, the effective date of the regulation. Under Title II, new construction refers to any building for which bids were invited after January 26, 1992.

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

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

Provision of a Free Appropriate Public Education to Students with Disabilities

Q: What are the responsibilities of public charter schools to educate students with disabilities who are protected by Section 504 and Title II?

A: A state or local government agency must provide students with disabilities, consistent with their individual educational needs, a range of choice in educational programs and activities that is comparable to that offered to students without disabilities. This includes magnet schools, charter schools, or other schools offering different curricula or instructional techniques. Under Section 504 and Title II, the charter school itself, if it is considered a local educational agency, or the local educational agency, of which a charter school may be part, must provide a free appropriate public education (FAPE) to all students with disabilities who have been admitted to the charter school, unless state law designates another entity as being responsible for the provision of FAPE.

Under Section 504 and Title II, the provision of FAPE includes: 1) establishment of nondiscriminatory evaluation and placement procedures to prevent misclassification or inappropriate placement of students and periodic reevaluation of students who have been provided special education or related services; 2) the provision of regular or special education and related services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met; 3) participation of each student with a disability with nondisabled students in academic settings and in nonacademic services and activities to the maximum

extent appropriate to the needs of the student with a disability; and 4) establishment of due process procedures and procedural safeguards. FAPE requirements cover specific issues that are addressed in detail in the Section 504 and Title II regulations and OCR's technical assistance resources.

Q: Could a child be covered under Section 504 and Title II but not be eligible to receive services under Part B of the Individuals with Disabilities Education Act (IDEA)?

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

It should be noted that the IDEA is administered by the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS), while Section 504 and Title II are enforced by OCR. Under certain circumstances, public charter schools may be eligible for IDEA funds. For further information about IDEA requirements, contact OSERS's Office of Special Education Programs.

① DRAFT/ DRAFT Per comment - (+) Cover note

October 30, 1997

② Consolidate

NOTE TO ELENA KAGAN

Attached is Draft Q&A guidance prepared by the Office for Civil Rights at Education that is designed to advise charter school operators of their obligations under federal civil rights law. The guidance has been prepared to distribute beginning Monday at next week's national charter school conference that ED is hosting, in the context of sessions that OCR is going to run on this topic.

I believe that a copy of this was faxed to you by Art Coleman earlier this week. The attached copy also includes comments provided by OLC at Justice, and notes some other changes that OCR has indicated to me that they plan to make.

OCR is anxious to know of any comments that we have so they can make final changes on Friday and get copies printed for Monday. I have also distributed copies for Mike, Tanya, Dawn Chirwa, and Jon Schnur (in OVP) to look at. Dawn is also checking with Civil Rights and the Associate's office at DOJ on this.

Could you please take a look at this tonight? I see some of the issues presented by this document as the following:

1. Overall issue: At this point, is it too counter-productive message-wise to put out paper like this, dealing with issues of legal requirements, in the midst of a conference that is designed to focus on the non-bureaucratic approach of charter schools?

③ ✗
Suggest
Remove
Dawn
2. PP. 5 -6: Note the assertion about use of race for diversity purposes beginning at the bottom of p. 5. ED indicates that OLC requested this statement, as well as the added language and footnote, because it was concerned that to do otherwise would signal that such a use is not permissible. On the other hand, there is little to point to in terms of case law, etc., as grounding for such an approach for K-12 education (as opposed to higher ed, where there is Bakke). ED acknowledged that they were basically extending the principles derived from higher ed to K-12. My question is whether this will be perceived as breaking new policy ground and possibly make this document more controversial than it needs to be.

✗
3. P. 6: The guidance notes the Title IX responsibility of schools not to discriminate on the basis of sex "in their programs and activities." The guidance does not address the issue of single-sex schools, although this section might prompt a reader to wonder whether that's something that's allowed. P. 3 / admission - (4) (+) Q & A - single sex - under review.

4. Pp. 6-8: LEP Requirements. Here again, the guidance does not address the issue of bilingual instruction versus other approaches to meeting the needs of LEP kids, but the discussion of the requirement to provide "alternative language services" could prompt questions about the

California initiative, etc.

My geneal take is that, while the document is a little clumsy, we should probably let it go forward, perhaps with "DRAFT" stamped on it and an invitation to conference attendees to comment. While we may risk a little flak for sending mixed messages about flexibility and freedom from bureaucracy, if we don't provide something concrete like this to charter school developers, we could well be increasing the likelihood of a much stickier problem down the road, when well-meaning, entrepreneurial charter school developers run afoul of civil rights requirements and OCR has to investigate. In addition, providing this guidance probably will be helpful to our long-term efforts to build support for charter schools, as some groups that have been skeptical of charter schools (including many in the minority community) as potentially hostile to civil rights will see that we are serious about helping make sure that these schools understand and follow through on their civil rights obligations.

Thanks.

-- Bill

X - Single Sex

X - AR in Act

X DRAFT/DRAFT/for comment

OCR cover page.

-- **bilingual education**. paragraph 3. refers to "provision of alternative language services". Does this language mean or imply providing students instruction in their own language? (This is also relevant to the Question # 10 on page 7, where it refers to legal requirements explained in OCR policy documents and technical assistance materials". What do these documents say and how they define "alternative language services?")

-- **suggested edit**. Last sentence of paragraph 3. Could this be changed to read:

"These questions and answers focus on issues raised in frequently asked questions as well as in the handful of OCR investigations concerning charter schools. (This would make the emphasis more on responding to the many questions on this issue by placing that point at the beginning of the sentence. It would also make clear that there have only been a handful -- as far as I know -- of investigations re" charter schools.)

Question 1: What is the entity that OCR is suggesting is responsible for ensuring a charter school complies with civil rights laws generally (OCR Question 1), as well as with desegregation plans (OCR Question 2)? The guidance says this will be "the same entity that is responsible for the operation of the charter school." What does this mean? Does it mean the public chartering agency that authorizes the creation of the school and that can review and revoke the school's charter? Does it mean the charter school's governing board (or principal) that is actually responsible for the day-to-day operation of the school? The OCR answer is very vague, leading the reader to guess that it might actually be the charter school's board or principal. I am not sure they mean this. But I am not sure what they mean.

Question 2 -- What effect does a desegregation plan have..."

-- legal entity question relevant here, too

-- ALSO, The second sentence in the answer to this question says "Generally, the establishment of a public charter school may not substantially impede or retard the scope of desegregation", I think the sentence would say what they appear to mean by adding "in a school district that is under a desegregation plan or court order" after the words "public charter school."

Question 6 -" What steps should a public charter school take in order to ensure...non-discriminatory admissions"

-- last sentence says " a public charter school may use admissions criteria..." I would add "-- if admissions criteria are permitted by state law and the school's charter, and if the school is not receiving a federal public charter school grant" here.

Question 11 -- "How do charter schools pay for ...appropriate educational services to LEP students?

-- Last paragraph, last sentence says "It is important to note that a public charter school cannot excuse its failure to provide appropriate educational services to LEP students because of inadequate financial resources." Could add " like other public schools" after "public charter school."

Question 13 -- older facilities and newer facilities

Question 15 and 16 -- re: "provision of FAPE to students with disabilities."

-- Each of these is quite confusing. Obviously, these are complex topics. But these should be written much more clearly.

Overall: Distinguish between statutory requirements and recommendations.

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The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) enforces civil rights laws that protect students and other participants from discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance. These laws are: 1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin; 2) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; 4) the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and 5) Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities, including public charter schools and public school districts, regardless of whether they receive federal financial assistance.

The following Questions and Answers were developed to provide information on public charter schools' obligations under civil rights laws with respect to recruitment and admissions, provision of alternative language services to limited English proficient (LEP) students, and provision of a free appropriate public education and program accessibility to students with disabilities. These Questions and Answers focus on issues that have been the subject of OCR investigations concerning charter schools or have been the most frequently asked questions.

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Community leaders

is responsible for enforcement

and innovation
increasing the state's educational achievement
See suggested language a Hacker

new to clarify if this only applies to [5].

more detailed

Insert on page 1

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While the charter school operator generally has responsibility for ensuring that the charter school complies with federal civil rights laws, the state educational agency (SEA) or other authorized chartering agency also may be responsible. For example, in cases where the SEA is the direct recipient of federal funds and the charter school is a subgrantee, the SEA must have policies that ensure that the subgrantee will comply with federal requirements.

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racial composition of the schools from which the charter school students will be drawn, such that the school district would not be in compliance with the desegregation plan or court order. The local educational agency or other responsible entity should consult with its attorneys to determine whether establishment of a charter school is consistent with an applicable OCR-approved desegregation plan or court order and whether OCR or court approval is needed.

Recruitment and Admissions

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Consistent with Title VI, Title IX, ^{must not} Section 504, and Title II, a public charter school ^{statutory?} should not recruit in a manner that tends to exclude or limit the enrollment of students of a particular race, color, national origin, or sex, or students with disabilities. Public charter schools should make sure that any outreach and recruitment efforts are designed to effectively reach all segments of the parent community, including minority and limited English proficient parents. ^{Don't} ^{awk.} When a particular type of outreach program, such as radio advertisements or community meetings, is used to publicize a charter school generally, efforts should be made to ensure that these activities are carried out in a manner likely to reach a reasonable number of minorities.

Also, charter schools may make special efforts to encourage applications from minority and LEP students. For example, charter schools may: 1) conduct presentations or meetings with parent teacher associations or organizations at schools with a large number of minority students; 2) schedule meetings or consultations with minority community groups; 3) indicate in promotional materials that alternative language services will be provided for LEP students; 4) indicate in such materials that a free or low cost lunch program is available for eligible students; 5) disseminate information about the charter school in newspapers and other publications and on radio stations that serve minority communities; and 6) emphasize in meetings and promotional materials that students from all segments of the community will be welcome at the charter school.

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Promotional materials that are used to recruit students should state that the charter school does not discriminate on the basis of race, color, national origin, sex, or disability in its programs and activities. ~~These materials also should avoid perpetuating stereotypes as to race, color, national origin, sex, or disability.~~

to be removed per Art Column

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

A: A public charter school must ensure that parents who are not proficient in English are provided with appropriate and sufficient information about the charter school. This information must be effectively communicated to parents who are not proficient in English. For example, if outreach materials are made available to parents, these materials may have to be available in languages other than English to ensure effective communication in those communities that have significant numbers of LEP parents. If the charter school conducts informational meetings with parents or community groups, in order to ensure effective communication, translation services should be available where the local community includes significant numbers of individuals who have limited English proficiency.

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

A:

~~Public charter schools should not use an admissions process that has the effect of excluding or limiting admission of students of a particular race, color, or national origin.~~ In order to receive the charter school start-up grants that are available through the Federal Charter Schools Program, public charter schools must admit students on the basis of a lottery if more students apply for admission than can be accommodated.

Many state charter school laws also have specific provisions that are designed to ensure that charter schools are open to all students. For example, consistent with the Federal Charter Schools Program, a significant number of states specifically require that public charter schools use a lottery system for admissions purposes. A few state charter school laws contain provisions designed to ensure that transportation services are provided to low-income students attending such schools.

In public charter schools that do not use a lottery for admissions, eligibility criteria must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. If these criteria have a disparate impact on the basis of race, color, or national origin, they must be necessary to meet the school's educational objectives. A public charter school may use admissions criteria that are related to the nature of the school, for example, a requirement that students be at a particular grade level or that students be concentrating in a particular subject area.

Public charter schools may not treat an individual differently on the basis of race, color, or national origin in determining whether he or she satisfies any admissions requirement. ~~Also, public charter schools may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin.~~

Where a public charter school is established in a school district that is remedying past discrimination, the charter school may consider race or national origin in admissions to remedy the effects of that past discrimination. A public charter school may also

make a narrowly tailored use?

voluntarily consider race in a narrowly tailored way in admissions to achieve the educational benefits of diversity.* "a compelling governmental interest such as"

* add: Q:
technical
assistance/
call local OCR
office A:

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

Students with disabilities may not be excluded from admission to a public charter school solely on the basis of their disability. In applying admissions criteria to students with disabilities, individualized determinations must be made as to whether a particular student can be provided an appropriate program at the public charter school, including whether the student can participate in the program with the provision of supplementary aids and services.

Discrimination on the Basis of Sex

Q: Do charter schools have the same Title IX obligations as other public schools?

A: Yes. Consistent with Title IX, public charter schools must ensure that they do not discriminate on the basis of sex in their programs and activities. Also, Title IX protects students from unlawful sexual harassment in all of a school's programs or activities, whether they take place in the facilities of the school, on a school bus, or at a class, training program, or other activity sponsored by the school at another location. In order to receive technical assistance regarding Title IX, please contact the OCR enforcement office that serves your state.

Provision of Appropriate Services to Students with Limited English Proficiency

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

A: A public charter school may not categorically exclude LEP students from participating in a public charter ~~strong word~~

¹ In Hopwood v. State of Texas, the U.S. Court of Appeals for the Fifth Circuit determined that colleges may not consider race or national origin for the purpose of achieving diversity, although race or national origin may be considered when needed to remedy the effects of discrimination by a college. This ruling

knowsⁱⁿ applies only in the states of Texas, Louisiana, and Mississippi.
Concert local counsel, etc., on law.

school's program. If there are questions about the legality of the specific requirements of a program being offered by a charter school, please feel free to contact the OCR enforcement office that serves your state.

that may impact LEP students

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

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

Public schools must implement procedures that ensure that all LEP students are identified, evaluated, and provided necessary alternative language services by properly trained staff and that the alternative language program is periodically evaluated to ensure that it is effective in meeting the educational needs of LEP students. These legal requirements are explained in OCR policy documents and technical assistance materials. Public charter schools need to become familiar with the details of these legal requirements.

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

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

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

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

A: Where a public charter school is part of an LEA, unless state law makes another agency responsible, the LEA would be responsible for ensuring that there is adequate funding for the provision of appropriate services to LEP students. Where the charter school is controlled by a governing board independent of the LEA, unless state law makes another agency responsible, the independent governing board would be responsible for ensuring that there is adequate funding for the provision of appropriate services to LEP students.

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

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

Program Accessibility for Individuals with Disabilities

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

A: Yes. Public charter schools are subject to the same program accessibility requirements as other public schools. Program accessibility requirements often involve complex issues. For assistance in understanding program accessibility requirements, you may want to review OCR technical assistance materials.

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

A: Yes, the legal requirements are different. Under the federal civil rights laws, older facilities (which are referred to as "existing facilities" in the Section 504 and Title II regulations) do not have to meet the requirements of federal accessibility codes. For such facilities, the legal standard is that programs and activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. New construction and alterations are required to be in compliance with federal accessibility codes.

[You should be aware] that Section 504 and Title II have different time frames regarding what constitutes existing facilities and new construction and alterations. Under Section 504, an existing facility is a facility that was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. Under Section 504, new construction means ground-breaking took place on or after June 3, 1977. Under Title II, an existing facility is a facility that was in existence or in the process of construction on January 26, 1992, the effective date of the regulation. Under Title II, new construction refers to any building for which bids were invited after January 26, 1992.

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

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

Provision of a Free Appropriate Public Education to Students with Disabilities

Q: What are the responsibilities of public charter schools to educate students with disabilities who are protected by Section 504 and Title II?

A: A state or local government agency must provide students with disabilities, consistent with their individual educational needs, a range of choice in educational programs and activities that is comparable to that offered to students without disabilities. This

includes magnet schools, charter schools, or other schools offering different curricula or instructional techniques. Under Section 504 and Title II, the charter school itself, if it is considered a local educational agency, or the local educational agency, of which a charter school may be part, must provide a free appropriate public education (FAPE) to all students with disabilities who have been admitted to the charter school, unless state law designates another entity as being responsible for the provision of FAPE.

Under Section 504 and Title II, the provision of FAPE includes: 1) establishment of nondiscriminatory evaluation and placement procedures to prevent misclassification or inappropriate placement of students and periodic reevaluation of students who have been provided special education or related services; 2) the provision of regular or special education and related services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met; 3) participation of each student with a disability with nondisabled students in academic settings and in nonacademic services and activities to the maximum extent appropriate to the needs of the student with a disability; and 4) establishment of due process procedures and procedural safeguards. FAPE ^(or add up) requirements cover ~~many~~ specific issues that ~~you may~~ become familiar with by reviewing the Section 504 and Title II regulations and OCR's technical assistance resources.

in detail by

Q: Could a child be covered under Section 504 and Title II but not be eligible to receive services under Part B of the Individuals with Disabilities Education Act (IDEA)?

A: Yes. Although, this is a rare occurrence, there are students with disabilities who are covered only by Section 504 and Title II, but who are not eligible to receive services under Part B of the IDEA. For example, a child with juvenile rheumatoid arthritis who requires the periodic administration of medication during the school day, but does not need any special education services, may be covered by Section 504 and Title II, even though the child is not eligible for services under Part B of the IDEA. Public charter schools ~~need to make sure that they have in place~~ procedures to ensure that students covered by Section 504 and Title II, but not by the IDEA, receive [FAPE].

should ~~recall~~
test

9/17

It should be noted that the IDEA is administered by the U.S. Department's Office of Special Education and of Education.

Rehabilitative Services (OSERS), while Section 504 and Title II are enforced by OCR. Under certain circumstances, public charter schools may be eligible for IDEA funds. For further information about IDEA requirements, contact OSERS's Office of Special Education Programs.



FAX COVER SHEET

U.S. Department of Education
Office for Civil Rights
330 C. Street, SW
Mary E. Switzer
Washington, D.C. 20202

Program Legal Component
(202) 260-1363 * Fax (202) 260-3040

TO**FROM**

Name: Bill Kincaid
Title:
Organization: White House
Fax: 456-5581
Date: 10/31/97 Time: 6:00

Name: David Berkowitz /
Jeannette Lin
Title:
Telephone:
Fax: 260-3040
No. of Pages (including cover) ~~15~~ 11

COMMENTS

~~See~~ Please see attached.

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FAX COVER SHEET

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330 C. Street, SW
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Washington, D.C. 20202

Program Legal Component
(202) 260-1363 * Fax (202) 260-3040

TO**FROM****Name:**

Bill Kincaid

Title:

DPC

Organization:

white House

Fax:**Date:****Time:****Name:**

Jeanette Lim

Title:

Director, Program Legal

Telephone:**Fax:****No. of Pages (including cover)**

COMMENTS

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Office for Civil Rights

Fax Transmittal

File: Dept of
Education
General

10/27/97

To: Mike Cohen / Bill Kincaid / Elena Kagan

Organization: White House

Phone Number:

Fax Number: 456 - 5581

Number of Pages (excluding cover page): 13

From: Art Coleman
Deputy Assistant Secretary

Phone Number: 202-205-5557

Fax Number: 202-205-5381

Message: Please see attached, per my earlier
conversation w/ Bill.

If there are transmission problems, please call Millie Palmer at 202-205-5557.

OCT 27 1997

NOTE TO ELENA KAGEN, MIKE COHEN AND BILL KINCAID

FROM ART COLEMAN

As Bill and I discussed last week, here is a draft of a handout we plan to circulate regarding civil rights and charter schools.

The U.S. Department of Education's Office for Civil Rights has prepared a Questions and Answers brochure that addresses the application of Federal civil rights laws to public charter schools. The attached brochure will be available for dissemination at the national charter schools conference being sponsored by the Department, beginning November 3.

Because the charter schools movement is so new, charter school operators and parents have many questions about the civil rights requirements applicable to charter schools. The Questions and Answers focus on issues that have been the subject of OCR investigations regarding charter schools or that have been the most frequently asked questions that OCR has received regarding charter schools. The Questions and Answers provide general information on three major aspects of these requirements: 1) recruitment and admissions; 2) the provision of alternative language services to limited English proficient students; and 3) the provision of a free appropriate public education and program accessibility to students with disabilities.

The U.S. Department of Justice is currently reviewing this draft, as well.

Thank you for your help on this.

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

One of the fastest growing areas of public school reform is the charter schools movement. President Clinton has called for the creation of 3,000 charter schools by early in the next century as a vehicle for promoting choice within public school systems. Charter schools are public schools under contract--or charter--between a public agency and groups of parents, teachers, school administrators or others who want to create alternatives and choice within the public school system. Although public charter schools are freed from many regulatory burdens and paperwork requirements, [they must comply] with federal civil rights laws.

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) [enforces] civil rights laws that protect students and other participants from discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance. These laws are: 1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin; 2) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; 4) the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; (and 5) Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities, including public charter schools and public school districts, regardless of whether they receive federal financial assistance. }

The following Questions and Answers were developed to provide information on public charter schools' obligations under civil rights laws with respect to recruitment and admissions, provision of [alternative language] services to limited English proficient (LEP) students, and provision of [a free appropriate public education and program accessibility] to students with disabilities. These Questions and Answers focus on issues that have been the subject of OCR investigations concerning charter schools or have been the most frequently asked questions.

These Questions and Answers are not intended to provide (you) with all the information (you) may need to ensure compliance with civil rights laws. Rather, our intent is to highlight key requirements. Details of these requirements are described in OCR regulations and policy documents and applicable court decisions.

For information about the civil rights requirements addressed in these Questions and Answers, as well as other requirements under the federal civil rights laws, please contact the OCR enforcement office that serves (your) state. A list of the addresses and telephone numbers of the OCR enforcement offices is attached.

Entity Responsible for Civil Rights Compliance

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

A: The entity that is responsible for ensuring that a public charter school is complying with federal civil rights laws generally is the same entity that is responsible for the operation of the charter school. State charter school laws provide guidance regarding entities that are responsible for the operation of charter schools within a particular state. Unless the applicable state law provides otherwise, the entity that is responsible for the operation of the public charter school would also be responsible for ensuring that the public charter school is complying with the requirements of the federal civil rights laws. For example, where a charter school is part of a local educational agency, the local educational agency would be responsible for ensuring that the charter school is complying with the requirements of the federal civil rights laws.

*charter
entity*

While the charter school operator generally has responsibility for ensuring that the charter school complies with federal civil rights laws, the state educational agency (SEA) or other authorized chartering agency also may be responsible. For example, in cases where the SEA is the direct recipient of federal funds and the charter school is a subgrantee, the SEA must have policies that ensure that the subgrantee will comply with federal requirements.

Effect of Existing Desegregation Plans on Public Charter Schools

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

A: When a public charter school is being established in a school district that is under either a Title VI desegregation plan approved by OCR or a court order requiring desegregation, the charter school must be established and operated in a manner that is consistent with the OCR-approved desegregation plan or court order. Generally, the establishment of a public charter school may not substantially impede or retard the scope of desegregation. For example, where the school district is operating under an OCR-approved or court-ordered desegregation plan, the establishment of a public charter school must not adversely affect the

racial composition of the schools from which the charter school students will be drawn, such that the school district would not be in compliance with the desegregation plan or court order. The local educational agency or other responsible entity should consult with its attorneys to determine whether establishment of a charter school is consistent with an applicable OCR-approved desegregation plan or court order and whether OCR or court approval is needed.

Recruitment and Admissions

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

A: Consistent with Title VI, Title IX, ^{must not} Section 504, and Title II, a public charter school should not recruit in a manner that tends to exclude or limit the enrollment of students of a particular race, color, national origin, or sex, or students with disabilities. Public charter schools should make sure that any outreach and recruitment efforts are designed to effectively reach all segments of the parent community, including minority and limited English proficient parents. When a particular type of outreach program--such as radio advertisements or community meetings--is used to publicize a charter school generally, efforts should be made to ensure that those activities are carried out in a manner likely to reach a reasonable number of minorities. cancel.

Also, charter schools may make special efforts to encourage applications from minority and LEP students.] —
For example, charter schools may: 1) conduct presentations or meetings with parent teacher associations or organizations at schools with a large number of minority students; 2) schedule meetings or consultations with minority community groups; 3) indicate in promotional materials that alternative language services will be provided for LEP students; 4) indicate in such materials that a free or low cost lunch program is available for eligible students; 5) disseminate information about the charter school in newspapers and other publications and on radio stations that serve minority communities; and 6) emphasize in meetings and promotional materials that students from all segments of the community will be welcome at the charter school.

Promotional materials that are used to recruit students should state that the charter school does not discriminate on the basis of race, color, national origin, ~~(sex)~~ or disability in its programs and activities. ~~These materials also should avoid perpetuating stereotypes as to race, color, national origin, sex, or disability.~~

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

A: A public charter school must ensure that parents who are not proficient in English are provided with appropriate and sufficient information about the charter school. This information must be effectively communicated to parents who are not proficient in English. For example, if outreach materials are made available to parents, these materials may have to be available in languages other than English to ensure effective communication in those communities that have significant numbers of LEP parents. If the charter school conducts informational meetings with parents or community groups, in order to ensure effective communication, translation services should be available where the local community includes significant numbers of individuals who have limited English proficiency.

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

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

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

A:

*ESRA
Public*

Public charter schools should not use an admissions process that has the effect of excluding or limiting admission of students of a particular race, color, or national origin. In order to receive the charter school start-up grants that are available through the Federal Charter Schools Program, public charter schools must admit students on the basis of a lottery if more students apply for admission than can be accommodated.

Many state charter school laws also have specific provisions that are designed to ensure that charter schools are open to all students. For example, consistent with the Federal Charter Schools Program, a significant number of states specifically require that public charter schools use a lottery system for admissions purposes. A few state charter school laws contain provisions designed to ensure that transportation services are provided to low-income students attending such schools.

In public charter schools that do not use a lottery for admissions, eligibility criteria must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. If these criteria have a disparate impact on the basis of race, color, or national origin, they must be necessary to meet the school's educational objectives. A public charter school may use admissions criteria that are related to the nature of the school, for example, a requirement that students be at a particular grade level or that students be concentrating in a particular subject area.

Public charter schools may not treat an individual differently on the basis of race, color, or national origin in determining whether he or she satisfies any admissions requirement. Also, public charter schools may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

make a narrow tailored use of

Where a public charter school is established in a school district that is remedying past discrimination, the charter school may consider race or national origin in admissions to remedy the effects of that past discrimination. A public charter school may also

~~voluntarily consider race in a narrowly tailored way in admissions to achieve the educational benefits of diversity.~~¹

in compelling governmental interest, such as

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

A: Students with disabilities may not be excluded from admission to a public charter school solely on the basis of their disability. In applying admissions criteria to students with disabilities, individualized determinations must be made as to whether a particular student can be provided an appropriate program at the public charter school, including whether the student can participate in the program with the provision of supplementary aids and services.

Discrimination on the Basis of Sex

Q: Do charter schools have the same Title IX obligations as other public schools?

A: Yes. Consistent with Title IX, public charter schools must ensure that they do not discriminate [on the basis of sex in their programs and activities]. Also, Title IX protects students from unlawful sexual harassment in all of a school's programs or activities, whether they take place in the facilities of the school, on a school bus, or at a class, training program, or other activity sponsored by the school at another location. [In order to receive technical assistance regarding Title IX, please contact the OCR enforcement office that serves your state.]

Provision of Appropriate Services to Students with Limited English Proficiency

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

A: A public charter school may not categorically exclude LEP students from participating in a public charter

¹ In Hopwood v. State of Texas, the U.S. Court of Appeals for the Fifth Circuit determined that colleges may not consider race or national origin for the purpose of achieving diversity, although race or national origin may be considered when needed to remedy the effects of discrimination by a college. This ruling applies only in the states of Texas, Louisiana, and Mississippi.

With respect to Oklahoma at School districts my wish to consult with local council to obtain the current status of the law.

school's program. If there are questions about the legality of the specific requirements of a program being offered by a charter school, please feel free to contact the OCR enforcement office that serves your state.

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

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

Public schools must implement procedures that ensure that all LEP students are identified, evaluated, and provided necessary alternative language services by properly trained staff and that the alternative language program is periodically evaluated to ensure that it is effective in meeting the educational needs of LEP students. These legal requirements are explained in OCR policy documents and technical assistance materials. Public charter schools need to become familiar with the details of these legal requirements.

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

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

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



U.S. Department of Justice

Civil Rights Division

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Bill Kencaid,
DPC (White House)
456-5581

Office of the Assistant Attorney General

P.O. Box 65808

Washington, D.C. 20035-5808

Telephone (202) 514-2151

TELEFACSIMILE COVER SHEET

DATE: _____

TO: Jeanette Lim

PHONE: _____

FAX: 260-3040FROM: WhiteOFFICE OF THE ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

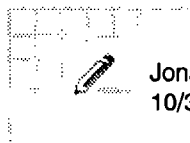
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COMMENTS: Edits in first 7 pages

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Jonathan H. Schnur @ OVP
10/31/97 02:39:13 PM

Record Type: Record

To: William R. Kincaid/OPD/EOP, Jonathan H. Schnur/OVP @ OVP

cc:

Subject: comments, FINAL

1) What is the entity that OCR is suggesting is responsible for ensuring a charter school complies with civil rights laws generally (OCR Question 1), as well as with desegregation plans (OCR Question 2)? The guidance says this will be "the same entity that is responsible for the operation of the charter school." What does this mean? Does it mean the public chartering agency that authorizes the creation of the school and that can review and revoke the school's charter? Does it mean the charter school's governing board (or principal) that is actually responsible for the day-to-day operation of the school? The OCR answer is very vague, leading the reader to guess that it might actually be the charter school's board or principal. I am not sure they mean this. But I am not sure what they mean.

2) OCR cover page.

-- **bilingual education.** paragraph 3. refers to "provision of alternative language services". Does this language mean or imply providing students instruction in their own language? I am concerned that OCR may be suggesting -- or be seen to be suggesting -- that charter schools must have a particular approach to bilingual education. (I am not sure about this, but the language has the feel of language that has been defined in a specific way in other laws or regs.) **(This is also relevant to the Question # 10 on page 7, where it refers to legal requirements explained in OCR policy documents and technical assistance materials". What do these documents say and how they define "alternative language services?")**

-- **suggested edit.** Last sentence of paragraph 3. Could this be changed to read:
"These questions and answers focus on issues raised in frequently asked questions as well as in the handful of OCR investigations concerning charter schools. (This would make the emphasis more on responding to the many questions on this issue by placing that point at the beginning of the sentence. It would also make clear that there have only been a handful -- as far as I know -- of investigations re" charter schools.)

3) Question 1 -- "what legal entity..." (see comment #1)

4) Question 2 -- What effect does a desegregation plan have..."

-- (see comment # 1, apply to the last paragraph to the answer to this question)

relevant

-- ALSO, The second sentence in the answer to this question says "Generally, the establishment of a public charter school may not substantially impede or retard the scope of desegregation", I think the sentence would say what they appear to mean by adding "in a school district that is under a desegregation plan or court order" after the words "public charter school."

5) Question 3 -- What steps should a public charter take....recruitment"

-- **Single-sex.** First sentence says "a public charter school should not recruit in a manner that

tends to limit or exclude or limit the enrollment of students of a particular...sex"

This would seem to prohibit recruiting for a single-sex school under any circumstance. Is this OCR's position?

-- **Stereotypes.** The last sentence says "These [the school's promotional] materials also should avoid perpetuating stereotypes as to race, color, national origin, sex, or disability."

What does this mean? Are all public schools already subject to this requirement? Based on what? While the goal may be admirable, does it mean that OCR is going to look at whether charter school brochures show more boys playing sports, or girls as cheerleaders? I know this sounds like I am stretching it, but the language could be read this way.

6) Question 5 -- "What steps should a public charter school take...with respect to parents with disabilities?"

-- This answer says "if outreach materials are made available to parents, these materials should be made available in such alternative formats as braille or large print for parents with visual disabilities." and "qualified interpreters should be provided [on request] for individuals with hearing disabilities. Again, a laudable goal, but 2 questions concerning these schools' capacity to do this for every bit of material produced.:

- 1) Are all public schools subject to this requirement?
- 2) Is OCR's position that the charter school may not make available informational materials to parents if those materials are not produced in braille, etc. for parents with visual disabilities? If so, is this based on law? Regs? Previous guidance? (This seems onerous, even if getting at a very laudable goal.)

7) Question 6 -- "What steps should a public charter school take in order to ensure...non-discriminatory admissions"

-- last sentence says "a public charter school may use admissions criteria...". I would add "-- if admissions criteria are permitted by state law and the school's charter, and if the school is not receiving a federal public charter school grant" here.

8) Question 11 -- "How do charter schools pay for ...appropriate educational services to LEP students?"

-- Last paragraph, last sentence says "It is important to note that a public charter school cannot excuse its failure to provide appropriate educational services to LEP students because of inadequate financial resources." Could add "like other public schools" after "public charter school."

9) Question 13 -- older facilities and newer facilities

Question 15 and 16 -- re: "provision of FAPE to students with disabilities."

-- Each of these is quite confusing. Obviously, these are complex topics. But these should be written much more clearly.