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FROM:LINDSEY J

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LRM ID: CJB115

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Friday, October 8, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Constance J. Bowers
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SUBJECT: JUSTICE Oversight Testimony on Justice Department Actions Concerning Charter Schools

DEADLINE: 4:00 p.m. Tuesday, October 12, 1999

In accordance with OMB Circular A-18, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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LRM ID: CJB115 SUBJECT: JUSTICE Oversight Testimony on Justice Department Actions
Concerning Charter Schools

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Constance J. Bowers Phone: 395-3803 Fax: 395-6148
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-7362

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The following is the response of our agency to your request for views on the above-captioned subject.

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

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STATEMENT OF

ANITA HODGKISS

**DEPUTY ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES**

CONCERNING

**CIVIL RIGHTS DIVISION ACTIONS
WITH RESPECT TO CHARTER SCHOOLS**

**PRESENTED ON
OCTOBER 14, 1999**

DRAFT 10/07/99 10:30 PM

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Mr. Chairman and Members of the Committee:

Thank you for inviting me to appear before you today to discuss how the Civil Rights Division's responsibility to ensure that school districts comply with the federal civil rights laws and any court orders and consent decrees entered pursuant to those laws may affect charter schools. President Clinton and this Administration have long championed the development of high quality charter schools. These schools begin with a vision shared by educators, parents, or community leaders who want to create a new and different learning environment for their children. Charter schools are a promising model for providing quality education to students and generating improvements in public education generally. Through programs under the Charter Schools Amendment Act of 1997, 20 U.S.C. §§ 8061-8067, the Charter School Expansion Act of 1998, and [], the Department of Education has granted some [\$X] to over [y] charter schools since [199x]. Grants range from \$25,000 to \$5 million per year, (FY 99 Application for new grants at 3) and are available for start-up expenses, planning, design, and initial implementation costs. These [y] schools are part of the 1,129 charter schools that were operating as of September 1998 to educate some 160,000 students.¹

¹ U.S. Dept. of Education, Office of Educational Research and Improvement, "The State of Charter Schools: Third Year Report" at 1 (1999) ("Third Year Report")

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While the Department of Education has the most direct role in developing and implementing federal programs to promote charter schools, the Department of Justice and the Civil Rights Division share the conviction that charter schools can provide an exciting and effective learning environment for students, teachers, and the men and women who step forward to bring them to life.

The Department believes just as firmly that it is possible to create and operate charter schools that are consistent with this nation's civil rights laws and with any outstanding court orders and consent decrees that govern a school district's operations. These orders, which are enforceable decrees of federal courts, were entered to ensure the elimination of any vestige of segregation or discrimination in a school district that had violated the constitutional guarantee of equal protection and the right to equal educational opportunity. Where the Civil Rights Division is a party to a desegregation case where such an order issued, it is our responsibility to ensure that any modifications to a student assignment plan, including the establishment of a new public school, that is covered by the court's order is consistent with that order.

Moreover, where the court has required that such changes be submitted to the court for approval, it is common practice for

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the court to ask us for our views before issuing its ruling. We carry out this responsibility for any new public school and any modification of attendance zones in a covered district that is brought to our attention, whether the new school is a charter school or another, traditional school. Accordingly, when we are notified that of a charter school has been proposed in a covered district, and when the applicable order covers the opening of a new school or the resulting changes in attendance plans, we attempt to gather the information needed to determine whether the new school, and any changes flowing from the opening of the school on existing schools and attendance patterns, will not impede the achievement of the order. School districts share this obligation, and in addition have a duty to ensure that future construction does not resegregate their school system.

In the majority of such cases involving charter schools, the Division should be able to obtain the necessary information from the district and the charter school ^{organizers} proponents, conclude that the school is consistent with the applicable decree, and accordingly raise no objection to the school. As of [], we expect there were [x] charter schools operating in [y] districts where the Division is a party to a court order. We made no objection to [z] of these [x] schools. This is comparable to our experience with other new schools, schools that are not charter schools; in

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covered districts. Over the last several years, we have agreed to new school construction in a host of districts, including Luther, Texas, Vicksburg, Mississippi, Temple, Texas, Tuscaloosa, Alabama, [Critanger Arkansas], Auburn Arkansas, Gibson, Texas, and Baton Rouge, Louisiana.

In most cases, charter schools will not have a negative impact on compliance with a decree. Charter schools are relatively small, with a median enrollment of approximately 132 students.² Generally, this limited enrollment will not have significant impact on the attendance patterns and enrollment in the district's other schools, and will not affect compliance with the decree. In addition, charter schools generally serve students with demographic characteristics similar to those of the students in other public schools.³

The Department realizes the unique nature of charter schools and the challenges faced by those working to start these schools from scratch. The obstacles confronting ^{advers} proponents of a newly created school are akin to those facing a new small business. They need start-up funds, operating funds, facilities, and planning assistance. Unlike a new, district operated public

² Third Year Report at 1.

³ Third Year Report at 2.

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school, a charter school is likely to be organized by individuals outside of the established school administration - parents, teachers, small business owners, concerned community members. They may be unfamiliar with the requirements of, and perhaps even the existence of, laws and regulations governing their operation, including court orders and decrees that cover the district. And differences between states as to what agencies and institutions have authority to grant charters may further confuse the question of whether a particular school is covered by a particular order.

To address these challenges, the Civil Rights Division has been working with the Department of Education to develop a process through which the state chartering authorities are made aware of potentially applicable decrees and are in a position to notify and direct affected charter school ^{organizers} ~~proponents~~ to the appropriate information. We are committed to continuing these efforts, and are open to considering suggestions that will allow us and charter school ^{org} ~~proponents~~ to expand the number of charter schools operating consistently with our federal civil rights laws.

I. Charter Schools

Charter schools are publicly funded schools that operate

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pursuant to a contract or "charter" with a state or local agency that provides the school with public funds for a specific period of time. The charter generally allows the school to operate without a number of the restrictions and regulations that apply to public schools, for example with respect to hiring, curriculum, and budget approval.

Since 1991, charter schools have become an accepted part of the educational landscape in 33 states and the District of Columbia. As of 1998, 1,129 charter schools were operating in 29 of those jurisdictions.⁴ The majority of charter schools - 70% - are newly created schools. Nineteen percent of charter schools were traditional public schools that converted to charter status, often to gain increased autonomy. In nine states, private schools may convert to charter schools and receive public funds, thereby stabilizing their funding and attracting new students.⁵ In September of 1998, these formerly private schools made up 11 percent of all charter schools.⁵

While charter schools serve less than 1% of the students

⁴Third Year Report at 10.

⁵Third Year Report at 14. The nine states that allow private schools to become charter schools are Arizona, the District of Columbia, Michigan, Minnesota, North Carolina, Pennsylvania, South Carolina, Texas, and Wisconsin. Third Year Report at 12.

These private schools, however, must operate under the same rules as public schools. They are not exempt from the same rules as public schools. They are not exempt from the same rules as public schools.

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enrolled in public schools,⁶ they are a popular alternative for students and parents. Seventy percent of the charter schools in a recent survey reported having a waiting list for admission.⁷

State laws differ on the number and types of agencies that are allowed to grant charters. In 15 states, only local boards of education can grant charters, while in 6 states, only the state board of education has that authority. Other states allow multiple agencies to grant charters.⁸

II. The Educational Mission of the Civil Rights Division

The seminal case of Brown v. Board of Education and its progeny had two objectives: ending the legal structure of racial segregation, whose design and purpose were the creation and maintenance of a racial caste system that relegated African Americans to the lowest tier of society; and to enable African Americans to gain access to quality education, which is the key to overcoming the barriers and limitations of racial segregation and to attaining the full enjoyment of and participation in the

⁶ Third Year Report at 18.

⁷ Third Year Report at 10.

⁸ Third Year Report at 12.

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benefits of full citizenship.⁹

When many southern states refused to comply with the Supreme Court's mandate to desegregate "with all deliberate speed," it became necessary to sue individual districts in the courts to obtain relief. When Congress enacted the Civil Rights Act of 1964, 98% of black children in the South were still attending segregated schools. By 1970, enforcement actions brought by the Department and private plaintiffs had made the South the nation's leader in integrated schools.

The Department's initial enforcement efforts led to federal court orders requiring desegregation remedies in over 500 school districts. Private litigants obtained court ordered remedies in many other districts where the United States was not a party.

The Civil Rights Division continues to work to eliminate the vestiges of discrimination and segregation that remain in our educational system, and to provide access to equal educational opportunities for all students. Today, we live in a society where the school age population is much more diverse than the older population. Latino and Asian students, who received relatively little attention in the 1950's and 1960's, make up an

⁹ LDF Port-Brown bullets

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increasingly significant proportion of our population and an even larger percentage of our school enrollment. By 1996, Hispanic students made up 14% of students in the south and the nation as a whole, while Asian students are nearly 4%, and on a path to becoming 10% of the enrollment.

Check EdEA LK
Congress has recognized that socioeconomic isolation and racial isolation are harmful to students, particularly minority students.¹⁰ In [19], Congress enacted the Magnet Schools Assistance Program ("MSAP"), which in part authorized the Secretary of Education to award grants to assist districts under court or state ordered desegregation plans, and to fund magnet schools designed pursuant to a voluntary plan to reduce, eliminate or prevent minority isolation. The MSAP was reauthorized in 1980, and is a part of the current Elementary and Secondary Education Act Reauthorization introduced in the Congress. In the last two years, the Department of Education has provided [\$x] of awards to [y] schools in [z] districts.

The Civil Rights Division currently is a party to pending

¹⁰ LDF Post-Brown bullets (most studies cited actually point to socio economic rather than racial isolation. MSAP findings? Michigan expert reports?) "When African American and Latino students are segregated into schools where the majority of students are non-white, they are very likely to find themselves in schools where poverty is concentrated. This is not the case with segregated white students, whose majority white schools almost always enroll high proportions of students from the middle class" Orfield Report at 2.

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orders in 497 school districts in 20 states.¹¹ Since virtually all of these pending orders define the school district's student assignment plan, including the construction of new public schools, changes to the districts attendance plans require court approval. As a party to these orders, when we are notified of a new school, new construction, or other change in an attendance plan that is covered by the order, it is our responsibility to determine whether the proposed modification is consistent with the requirements of the order and to advise the court of our views. The court, of course, will make the final decision. This responsibility applies to all covered construction and modification of which we are notified, whether the modification involves a traditional public school under the direct supervisory authority of the district or whether it is a charter school. The local school district, which has an affirmative obligation not to take any action that would impede the process of disestablishing a segregated system and its effects,¹² shares this responsibility. Reviews of modifications to a court order and questions of compliance with desegregation orders are necessarily fact specific.

¹¹ States with number of covered districts: Alabama (100), Arkansas (16), Florida (16), Georgia (94), Louisiana (41), Mississippi (75), Missouri (25), North Carolina (9), South Carolina (24), Tennessee (17), Texas (42), Arizona (2), California (1), Connecticut (1), Illinois (4), Indiana (21), Louisiana (41), Kansas (1), New York (1), Utah (2), Virginia (4).

¹² See ED Memo on Charters at 2 quoting Dayton v. Brinkman, 443 U.S. 526, 538 (1979).

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Of course, the fact that a school operates pursuant to a court desegregation order does not mean that the school system can not make changes in its operations or educational programs. To deny school districts the ability to modify the organization of their schools in the face of changing demographics or aging facilities, or to adopt new educational programs, would be counterproductive to sound educational practices.

Sixteen of the 20 states in which we have pending orders have authorized the creation of charter schools: Arkansas, Arizona, California, Connecticut, Florida, Georgia, Illinois, Kansas, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Texas, Utah, and Virginia. The chart below provides some details on the number of existing charter schools in covered districts, by state.

[Insert table]

III. The Establishment of Charter Schools is Not Inconsistent with Our Mission

Most charter schools, especially newly created schools, have relatively small enrollments and are thus unlikely to significantly affect the operation and balance of a school

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district. 65% of all charter schools were small schools enrolling fewer than 200 students, and 74% of newly created charter schools were of this size.¹³

In addition, the majority of charter schools have enrollments with demographic characteristics similar to those of the surrounding district.¹⁴ On the whole, charter schools have enrolled a slightly larger percentage of students of color than all public schools. Depending upon which of two methods are used, the Department of Education found that white students made up 52 percent of charter school students versus 60 percent of all public school students, or 55 percent of charter school students versus 63 percent of all students.¹⁵

For example, in Georgetown County, South Carolina, the Harbor School for Arts and Science charter school is currently operating with an enrollment of 137 students. Half of the students are black, and half are white. Given the size and demographics of the student body, we concluded that the school would not have a detrimental impact on the districts compliance with the court's decree, and we have raised no objection to the

¹³ [Third Year Report at] of course a large number of small schools in a single district could have a significant impact.

¹⁴ Third Year Report at 2.

¹⁵ Third Year Report at 30.

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schools operation. In contrast, when the district was asked to approve the opening of three charter schools in the very buildings that, as part of the decree, were to be closed and merged in to new consolidated schools, we opposed the charters because they would clearly impede desegregation under the decree. Ultimately, before the court ruled, the voters of Georgetown County rejected that proposal. [Bolick Response].

Similarly, in Monroe, Louisiana, the local school board asked the court to evaluate whether operation of a charter school would adversely impact the desegregation of the city system before it approved the charter. The court granted a continuance for the hearing on the charter, and allowed the school to open for the time being. The board, the State of Louisiana, the Civil Rights Division and the charter have reached a satisfactory agreement. There have been no new developments. [details from Franz].

IV. Louisiana

At the end of the 1998, there were 6 charter schools operating in Louisiana - [names and locations]. Four additional schools were slated to open/opened in the 1998-1999 school year. [names].

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In Louisiana, white students made up 32% of the enrollment for the six charter schools operating in the 1997-1998 school year, while whites make up 51% of all public school students.¹⁶

The Committee has expressed a particular interest in our involvement with four charter schools located in East Baton Rouge Parish Louisiana - United Charter, Children's Charter, J.K. Haynes Elementary, and The Community Center for Apprenticeship Learning - as well as the proposed SABIS International charter school in St. Helena Parish. Because the decree in East Baton Rouge Parish is somewhat unique, it will be helpful to describe in some detail what the decree requires and how the proposed United Charter School may affect that district's ability to comply with the decree.

East Baton Rouge Parish is a large school district which currently enrolls approximately 56,000 students, of whom approximately 67% are black. The system runs 97 schools of which at least 50 are considered "one race" schools. (AH Files, EBR CHARTER SCHOOLS, Civil Rights Division Involvement in Louisiana Charter School Matters at 1).

→ fine - what % 1 race?

The case was initially filed in 1956 by private plaintiffs.

¹⁶ Third Year Report at 33.

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The United States intervened in the suit in 1979. In 1980, the Court granted the United States' motion on liability, and thereafter entered remedial orders for the elementary, middle, and high schools. AH EBR at 1. Three system wide magnet schools were approved.

The order did not achieve full desegregation. However, when a court finds unlawful segregation, one permissible remedy to make up for the discrimination is for the court to order that money be spent on programs in segregated schools.¹⁷ In 1996, the parties entered into a consent decree which permitted the district to implement a new plan devised by the board to create at least 26 magnet program schools and to rezone all schools other than the magnet schools. The district also agreed to enhance many of the one-race schools. The 1996 Consent Decree also prohibits the board from opening new schools without prior Court approval. US response at 1.

The district has not complied with the decree, in part, it claims, because it does not have sufficient funds. {JG memo 5/3/99}. For instance, the district initially did not adequately wire two one-race schools to accommodate their computer magnet focus, or provided appropriate facility and program enhancements

¹⁷ Anita's notes on Orfield p.1

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at 30 one race schools which were designed to attract opposite race students. Nor has the district eliminated a large number of temporary classrooms.

A. Existing Charter Schools in East Baton Rouge Parish

The three existing charter schools — Children's Charter, J.K. Haynes Elementary, and the Community School for Apprenticeship Learning — were approved and opened in 1997 by the school board without either informing the plaintiff parties or obtaining Court approval. US Response at 1. In July of 1999, the board sought approval for the proposed expansion of Children's Charter and Haynes Elementary to accommodate new fourth and fifth grade classes. Complaint at 1.

Louisiana's charter school provision specifies that a charter school shall "be subject to any court-ordered desegregation plan in effect for the city or public school system."¹⁸ The Department does not oppose the continued operation of these schools at their current size because they do not impede the desegregation process. We have, however, raised concerns and asked for assurances about the effect that proposed expansion of these schools would have on the implementation of

¹⁸ Letter to F. Marshall from J.K. Haynes Foundation at 1 (July 19, 1999).

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the decree.

The existing charter schools enroll a predominantly black student body. Based on statistics from the [1998-1999?] school year, Children's Charter had 76 students in pre-Kindergarten through 2nd grade of whom 91% were black. J.K. Haynes Elementary was established in 1997. Complaint at 2. Ultimately, the J.K. Haynes Charter is projected to have 140 students enrolled in grades K-6.¹⁹ Haynes enrolled 77 students in K-3, 97% of whom were black. In July, the Foundation sought a declaratory judgment that its operations would not adversely affect implementation of the decree entered by the court in Davis. Complaint at 6. US Response fn.1 Subsequently, the Foundation withdrew its request. The Community School for Apprenticeship Learning served 111 students in grades 6 through 8, 57% of whom are black.

Under the standards of the decree, two schools — J.K. Haynes and Children's Charter — are racially identifiable. US Response at 2. We have asked the charter school administrators to agree not to enroll black students attending predominantly white schools or white students attending predominantly black schools so as not to negatively affect the fragile level of integration

¹⁹ J.K. Haynes Letter July 19 at 1

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that has been achieved thus far.

"The Board has previously invoked a lack of funds as an impediment to fully implementing the consent decree, particularly with respect to the extensive magnet program that it agreed to undertake in 1996." US Response at 3-4. "Each student attending a charter school reduces the regular amount of operational funding available to the system approximately \$4,700." (US Response at 4.) Accordingly, operating the [3] charter schools at their full capacity under current caps - 370 students - would result in an annual loss to the system of approximately \$1.7 million. US Response at 5.

Given the Board's previous assertions regarding its financial constraints with respect to the implementation of the decree, we believe it was fair to question the Board's decision to approve the expansion of three schools that could result in a diversion of almost \$2 million from the system. US Response at 5. However, in light of the Board's assurances that the operation of the school would not impede its ability to satisfy its obligations under the decree, the US did not oppose the board's motion to approve the expansion. US Response at 6. The Court ruled in August of 1999 that the schools, as presently constituted, were small enough not to present a financial

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impediment to the implementation of the consent decree. The Court declined, however, to approve additional expansion beyond one additional grade at each school for the 1999-2000 school year, and directed that any further requests for expansion be submitted for approval. Court order.

B. Proposed United Charter School

In February of 1998, we were informed that the district had received an application for the establishment of the United Charter School. The school would enroll 650 students in its first year, and ultimately serve 1200 students in grades K -12. It is thus several times larger than the existing schools and than most charter schools.

We reminded the board that court approval would be required. We also met with administrators of the proposed charter school and requested information, not all of which was provided. In February 1999, the board filed a motion with the court requesting approval of United Charter. However, at the same time, the board asked that the court not take any action on its motion. The charter school group sought to intervene, and we opposed that request on the grounds their interests were adequately

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represented by the school board. On March 24, the Court denied the charter school's request.

C. St. Helena Parish

St. Helena is a small district with approximately 1200 students, of whom 91% are black. (Bolick response, Email from ED.) When the desegregation plan for the parish was implemented, a majority of the white students in the parish left the public schools to attend a private school in a nearby parish. Today, most of the white students residing in the parish continue to attend private schools.

We have been informed by St. Helena's Superintendent that the private school is experiencing financial difficulties and has notified parents of a tuition increase. The Superintendent believes that the white parents are seeking an alternative to the private school, but do not want to enroll their children in the predominantly African-American St. Helena Parish system. The proposed charter school is located in the neighborhood where the white students who left the district live. It is a rural area, and there is no plan to provide transportation for students attending the charter school. When the State Board over-ruled the local board and authorized the establishment of the school, we asked for additional information and that the State Board

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reevaluate its position in light of the possible effects that the charter school would have on desegregation in the parish.

Conclusion

The Department of Justice, along with the Department of Education, strongly supports the creation of charter schools to meet increasing enrollment demands and to foster public school choice. There is no inherent tension between the creation of charter schools and desegregation obligations. Most charter schools opening in areas under court-ordered desegregation plans should be able to comply with those orders. We stand ready to aid states, chartering authorities, local educational agencies, and community members who are considering charter schools, as well as other new schools. Part of that assistance includes help with identifying applicable civil rights obligations and ensuring compliance. With early notice and cooperation, we believe many new schools will avoid costly delays, challenges, or litigation.

Waiver Guidance for Waivers Available under the Goals 2000: Educate America Act, Elementary and Secondary Education Act, School-to-Work Opportunities Act

The Charter Schools Waiver Authority

What waivers may be granted under the charter schools waiver authority of the ESEA?

The Secretary has broad authority under Part C of Title X of the ESEA to waive requirements applicable to public charter schools. The Secretary may waive any statutory or regulatory requirement over which he exercises administrative authority except those requirements relating to the elements of a charter school described in section 10306(1) of the ESEA, if the waiver is requested in an "approved application," and the Secretary determines that granting the waiver will promote the purposes of the ESEA charter schools provisions.⁽¹⁾

What are the specific requirements that may not be waived under the charter schools waiver authority?

Under the charter schools waiver authority, any requirement relating to the elements of a charter school described in section 10306(1) of the ESEA may not be waived. In particular, a charter school must be a non-sectarian public school that does not charge tuition. It must comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act. In addition, a charter school may not obtain waivers of requirements of the Americans with Disabilities Act.

What is meant by requiring the waiver requests to be included in an "approved application"?

To be considered by the Secretary, waiver requests must be included in a charter schools application of an SEA (or other eligible applicant) that is approved for funding by the Secretary. An SEA that receives funding under the ESEA charter schools provisions may request waivers on behalf of charter schools that receive a subgrant under this authority, as well as on behalf of other charter schools in the State. The waivers may be requested in either the SEA's original charter schools application or in an amended application. An SEA may amend its application simply by sending the Secretary a request for waivers not sought previously.

Who is eligible to submit an application for funding to the Secretary under the charter schools program?

In the initial competition, SEAs were eligible to apply to the Secretary for funding under the Public Charter Schools Program. If an SEA elected not to apply or applied and did not receive funding, "eligible applicants" within that State, as defined in section 10306(3) of the ESEA, could apply directly to the Secretary.

What entities are eligible for waivers under the charter schools program?

The entities eligible to receive waivers under the charter schools waiver authority are: charter schools receiving funding under this program from an SEA whose application is approved by the Secretary; other charter schools in a State whose application is approved by the Secretary, if the schools meet the definition of charter schools contained in section 10306(1) of the ESEA; and charter schools that receive funding under this program directly from the Secretary.

What requirements govern waiver requests under the charter schools provisions?

For waivers to be considered by the Secretary, a charter schools application must contain: (1) a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes would facilitate the successful operation of the charter school; and (2) a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school. The requested waiver also must promote the purposes of the ESEA charter schools provisions.

What notice requirements govern requests for waivers under the charter schools waiver authority?

Although the charter schools provisions do not expressly require an SEA or other eligible applicant to provide the public with notice and an opportunity to comment on waiver requests, the Secretary encourages applicants to do so.

What is the duration of a waiver under the charter schools waiver authority?

Waivers will initially be granted for up to three years. The Secretary may extend this period if he determines that the waivers have enabled the charter schools to achieve their objectives and if continuation is in the public interest. On the other hand, the Secretary may terminate any waivers if he determines that the results obtained are no longer adequate to justify continuation or if the waivers are no longer needed to achieve their original purposes.

Foot Notes:

1. See ESEA Section 10304(e).

-###-

[Title I Desegregation Waiver Authority]  [Review of Waiver Requests]

Last Updated -- August 12, 1997, (dob)

- Adequate standards for funding

- Altering incentives to ensure that performance counts

- Social science provides few definitive answers about how improve educational outcomes for disadvantaged students

Peter Runkle - DPC Gen. Counsel

Steve Winnock - DPC Deputy Gen. Counsel

Irene Buero - Spec Asst.

Art Coleman - Civil Rights C. E. D.
- Deputy for Civil Rights



Title VI and Education



Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education.

Under the regulations implementing Title VI (34 C.F.R. Part 100), specific discriminatory actions prohibited under Title VI in federally funded programs or activities include:

- denying an individual any service, financial aid, or other benefit provided under the program;
- providing any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, form that provided to others in the program;
- subjecting an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
- restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
- treating an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided with any service, financial aid, or other benefit under the program;
- denying an individual an opportunity to participate in the program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under the program; and
- denying a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

Title VI also has been interpreted to require that school districts receiving federal financial assistance must provide alternative language services for limited English proficient students enrolled in the district to enable them to participate effectively in the regular instructional program.

At the elementary and secondary level, potential Title VI issues include:

- inappropriate use of assessment instruments for placement of minority students in classes and programs;
- failure to identify and provide alternative language services to students who are limited English proficient;
- disproportionate overrepresentation of minority students in special education classes or programs;
- underinclusion of minority students in gifted and talented education programs;
- ability grouping or tracking that results in racially segregated classes;
- racial harassment of students, and;