

March 9, 2009

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(X) Informational

MEMORANDUM NO. 09-005 Discrimination against children with disabilities

TO: All District of Columbia Public Charter Schools
Recommended Distribution:

FROM: Deborah A. Gist 
State Superintendent of Education

RE: Guidance Related to Prohibitions on Discrimination Against Children with Disabilities in the Charter School Application During the Enrollment Process

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The purpose of this guidance is to state the expectation of the Office of the State Superintendent of Education (OSSE) that all children with disabilities residing within the District of Columbia receive the same level of access to high quality education afforded to their non-disabled peers. This Guidance is a direct response to key stakeholders' concern that charter schools within the District are not consistently applying student and parental safeguards guaranteed by law. As local education agencies (LEAs), all charter schools¹ are bound by the same laws as other publicly funded schools; discrimination of any kind, particularly as it relates to a child's disability status, in the application process during enrollment season is expressly prohibited under the federal and local law.

¹ Law prohibiting discrimination on the basis of disability applies equally to all charter schools in the District, including those who opt to provide special educational services through the District of Columbia Public Schools (DCPS).

Applicable Federal Law:

Section 504 of the Rehabilitation Act² and Title II of the Americans with Disabilities Act³ prohibit discrimination on the basis of disability. Section 504 applies to all programs receiving federal financial assistance. Title II applies to all public entities, including public charter schools. As such, they apply to each District of Columbia public charter school, whether or not the LEA has elected to have DCPS serve as its LEA for purposes of the Individuals with Disabilities Education Act (IDEA).⁴ Both statutes prohibit denial of public education participation, or enjoyment of the benefits offered by public school programs, based on a student's disability status. The definition of "disability" under these statutes is broader than the definition under the Individuals with Disabilities Act. Please see the online references provided in the citations below for more information.

The U.S. Department of Education, jointly with the **U.S. Department of Justice**,⁵ has also issued guidance to charter schools about the application of these statutes in the admissions process. Under Section 504 and Title II, you may not categorically deny admission to children on the basis of disability. For example, you may not deny admission to a child with a disability solely because of the child's need for special education or related aids and services.

The federal agencies also made clear in the same publication that admission "[e]ligibility criteria must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner."

Applicable Local Law:

The District of Columbia School Reform Act of 1995, the federal charter school law for the District of Columbia, is clear in stating "Enrollment in a public charter school shall be open to all students who are residents of the District of Columbia..." (D.C. Code §38-1802.06(a)). Further, the code includes specific language prohibiting discriminatory limitations on enrollment:

(b) Criteria for admission. – A public charter school may not limit enrollment on the basis of a student's race, color, religion, national origin, language spoken, intellectual or athletic ability, measures of achievement or aptitude, or status as

² "No otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination..." 29 USC § 794; available at www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#D.

³ "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by said entity." 42 USC 12132; see <http://www.ada.gov/> for more information.

⁴ D.C. Code §38-1802.04 (c)(5) and 38-1802.10(c)

⁵ U.S. Department of Justice, Office of Civil Rights, "Applying Federal Civil Rights Laws to Public Charter Schools: Questions and Answers" (May 2000). The report is available in pdf format on the Charter School Programs portal of the ED website at <http://www.ed.gov/programs/charter/legislation.html>.

a student with special needs. A public charter school may limit enrollment to specific grade levels.

(c) Random selection.—If there are more applications to enroll in a public charter school from students who are residents of the District of Columbia than there are spaces available, students shall be admitted using a random selection process, except that a preference in admission may be given to an applicant who is a sibling of a student already attending or selected for admission to the public charter school in which the applicant is seeking enrollment.⁶

The OSSE recognizes the practical concerns charter schools may face regarding the provision of special education and related services. However, it is every LEA's legal responsibility to ensure the provision of an appropriate education for all children. An LEA can begin to fulfill this obligation only if it effectively eliminates all potential barriers to access during the application period.

For the purposes of this Guidance, the term "application period" refers to an annual duration of time, usually occurring during the first quarter of the year, in which every charter school must accept applications from all interested students residing in the District of Columbia for the purpose of submitting all received applications to a lottery process characterized by random selection. During the application period, the school may not solicit information that is not essential to the lottery process from students or parents. "Essential" information in the application context refers to basic contact information, such as name and phone number, that would enable a school to contact families regarding an available spot for students selected from the lottery. Details are provided below.

Acceptable Application Fields:

The OSSE strongly recommends that public charter schools restrict their application forms to only the items below to prevent discrimination in the admissions process and ensure compliance with federal and local law.

Student/family information:

- ✓ Name (Last name, First name)
- ✓ Home address
- ✓ Phone/e-mail
- ✓ Date of Birth
- ✓ Gender
- ✓ Guardian/student relationship
- ✓ Anticipated grade level for application year

⁶ D.C. Code §38-1802.06 (b) – (c).

- ✓ Siblings already attending charter school

School-specific information:

- ✓ Application date
- ✓ School name and contact information
- ✓ Campus (in the case of multiple campuses)
- ✓ Deadline for submission of application
- ✓ Date for the public lottery for available spaces
- ✓ Date of lottery selection and public notification of numbers drawn

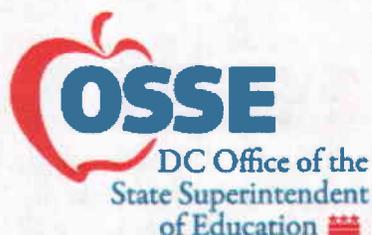
All charter school materials and activities that occur during the application process must be non-discriminatory in terms of presentation and substance. In order to avoid the creation of unnecessary hardship or the inference of discrimination, schools may not require parents to contact, visit, or tour the school in order to obtain application materials. In addition to publicly available hard copies, the school must post downloadable application forms on its website to allow easy access to all families. Applications must also include the following information to ensure that all parents have a meaningful opportunity to understand the application process and materials:

Non-discrimination policy: “[PCS Name] prohibits discrimination on the basis of a student’s race, color, religion, national origin, language spoken, intellectual or athletic ability, measures of achievement or aptitude, or status as a student with special needs.”

The Family Educational Rights and Privacy Act (FERPA): “The Family Educational Rights and Privacy Act (FERPA), a Federal law, requires that [PCS Name], with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child’s education records. However, [PCS Name] may disclose appropriately designated “directory information” without written consent, unless you have advised the LEA to the contrary in accordance with LEA’s procedures. The primary purpose of directory information is to allow the [PCS Name] to include this type of information from your child’s education records in certain school publications.”

“If you do not want [PCS Name] to disclose directory information from your child’s education records without your prior written consent, you must notify the LEA in writing by [insert date].”

Procedurally, charter schools may not require students to interview or submit recommendations/referrals of any kind. In this context, “interview” is defined broadly as a formal or informal, spoken or written interaction intended to solicit any additional information not covered in the application form; this includes parental or student essay questions (even



when labeled optional). To provide further clarification, OSSE has identified prohibited application questions listed below.

Prohibited Application Fields:

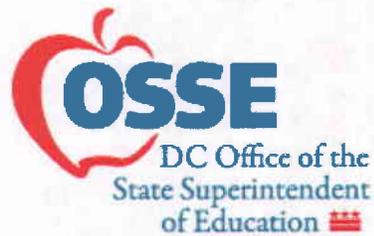
Any effort to gather particular information about the student's academic history and educational needs in order to best serve the student must be done after enrollment in the public charter school in order to ensure that illegal factors are not considered during the enrollment process. Specifically, the following may not be requested or considered as part of the admissions process before enrollment.

Student information:

- ✓ Existence, past or present, of an Individualized Education Plan (IEP), Individualized Family Service Plan (IFSP), 504 Plan, specialized assessment or other special accommodation, or any other question which would tend to reveal the special needs status (physical, academic or emotional) of the applicant
- ✓ Student's history of receiving English as Second Language (ESL) services
- ✓ Student's history of early intervention services
- ✓ Student's medical records/health records (including any sort of assessment)
- ✓ Student's health insurance information or number
- ✓ Student's Social Security Number or Alien Number
- ✓ Birth certificate/Citizenship/Country of birth
- ✓ Request for recent photo of student
- ✓ Questions about previous school(s) attended or previous educators/counselors
- ✓ Student's academic records, in any form (report cards, progress reports, or standardized assessment scores, etc.)
- ✓ Student's attendance/truancy records, in any form
- ✓ Student disciplinary information, in any form
- ✓ Evidence of transfer or reasons for leaving current school
- ✓ Legal records, in any form (juvenile court, settlement agreements, hearing officer determinations, etc.)

Family/parental information:

- ✓ Languages spoken at home/ primary or preferred language
- ✓ Parental education level
- ✓ Parental employment/income information
- ✓ Parental marital status
- ✓ Mandatory parental volunteer hours or other family resources
- ✓ Mandatory media release
- ✓ Proof of legal Guardian's identity (i.e. photo copy of state issued ID)
- ✓ Student or family history of any government assistance (including TANF/WIC)
- ✓ History of any Free/Reduced Family Meals Application



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- ✓ Current living arrangement or explanation of related economic hardship
 - ✓ Legal records, in any form (i.e. family court)

Schools may request this kind of information after admissions in order to serve individual students. Schools may not condition enrollment on submission of the information or request the information in a manner that effectively dissuades a student from enrolling. School administrators should keep in mind that requests for IEP information must be handled consistent with the IEP process and rights spelled out in the IDEA.

Compliance and Monitoring of Enrollment Practices

Please be advised the OSSE will be conducting unannounced monitoring activities during the admissions season to ensure compliance by charter schools with federal discrimination law.

Additional Guidance

Please direct any questions regarding the content of this Guidance to **Grace Chien at (202)741-5089 or by e-mail Grace.Chien@dc.gov**. The OSSE has the authority as the state education agency (SEA) to issue additional guidance regarding charter policy and related practice implementation to ensure that all LEAs are complying with the law in providing appropriate services to children with disabilities.