

January 18, 2011

Via email ICDocketMgr@ed.gov

James H. Shelton III
Assistant Deputy Secretary for Innovation and Improvement
U.S. Department of Education
Office of Innovation and Improvement
400 Maryland Avenue, S.W., LBJ
Washington, DC 20202-4537

Re: Notice of Proposed Information Collection Requests: National Charter School Resource Center Authorizer Survey, 75 Fed. Reg. 69985 (November 16, 2010)

Dear Assistant Deputy Secretary Shelton,

The undersigned organizations, which share a strong interest in and commitment to civil rights and ensuring the educational success and well-being of all youth, submit the following comments on the Department of Education's proposed information collection requests for a National Charter School Resource Center Authorizer Survey.

We applaud the Department's decision to develop a survey to collect information on the activities and practices of charter school authorizers. As the Department stated in its Notice of Proposed Information Collection Requests: "[C]harter school authorizers are the public entities primarily responsible for initial charter authorizations, ongoing monitoring and oversight, and charter renewal and closure decisions. Therefore, there needs to be a comprehensive tool for collecting data critical to tracking the activities of and evaluating the quality of charter school authorizers nationwide."

We also applaud the U.S. Department of Education's Office of Innovation and Improvement and The National Charter School Resource Center's plan to develop, "a national database of all charter authorizers and the schools they have chartered." We agree that answers to a survey of authorizers, and information gathered from public records, should be entered into a publicly-available national database and updated each year. It is not clear from the proposed survey, however, what more will be collected or reviewed in the national database being developed. Nor is it clear whether or how charter authorizers will be evaluated with the reported data, which – as the Department states in the Abstract of this Notice – is one of the purposes of the Charter School Program office pursuant to Part B, Section 5201 of the Elementary and Secondary Education Act. We believe that the proposed survey, by focusing solely on the "reasons for school closings and renewals" is far too narrow in scope.

Currently many of our nation's charter schools are not captured in the Civil Rights Data Collection (CRDC). To the extent that federal policy and funding is used to promote the expansion of charter schools, we believe that every charter school should participate in the CRDC each year the survey is conducted. This is especially important in light of concerns raised in congressional testimony regarding whether charter schools are

providing equal access to English language learners, and students with disabilities. These data will also be critical to the evaluation of charter authorizers with regard to their school monitoring function and the protection of civil rights.

Providing transparent information about enrollment of students by socio-economic status is critical, including whether the charters are offering the option of free and reduced price lunches.¹ Also, information about transportation is critical, because students from failing schools who are not provided with transportation to higher performing schools in or outside of their district may have *no choice* but to attend a replacement charter school.² Given the central nature of choice to the function of public charter schools in our systems of education, we would want charter authorizers to ensure that through free transportation, or other means, that attending a charter school always reflected a positive student and family choice.

Additionally, we believe that charter schools could become important sources for diverse educational opportunity for students whose district boundaries would otherwise negate such possibilities. Consequently, it will be important for the Department to conduct a comprehensive review of the impact of each state's and authorizer's decisions on the opportunity for the students served to be educated in diverse educational environments. This should include data on the racial and ethnic composition of the staff as well as the student body.

For all of these reasons, we recommend the collection of a truly comprehensive set of information that we believe is essential to evaluating both charter schools and the authorizers charged with approving, closing and monitoring them.

However, we understand the importance of framing our suggestions to fit within the scope and format of the specific request as presented in the Federal Register. Therefore, we urge the Department to require this additional information be added to either the proposed survey of charter school authorizers or through additional data collection instruments that would cover all charter schools. Only with this additional comprehensive information will we correct the current lack of transparency and be able to ensure that civil rights data are reviewed as part of the process of evaluating charter school operators and the consideration of charter schools for replication. We also believe this information is key to evaluating the impact charter school authorizers are having on their schools, and, by extension, their students.

The proposed survey questions are divided into five basic categories: (1) Authorized Schools; (2) Schools No Longer Under Oversight, Including School Closures; (3) Cautionary or Remedial Action Status; (4) Renewal Process; (5) Authorizer Standards and Practices. Within that framework, we recommend that the Department modify the proposed survey instrument to include the following questions.

¹ The Los Angeles Times, "California Unable to Determine if Charter Schools are Meeting Students' Nutritional Needs," October 22, 2010, available at <http://articles.latimes.com/2010/oct/22/local/la-me-1022-school-food-20101022>.

² The National Coalition on School Diversity, *Federally Funded Charter Schools Should Foster Diversity*, March 2010, available at <http://www.prrac.org/pdf/diversityincharters3.26.10.pdf>.

I. Authorized Schools

A. Creation, Application, Admissions, Enrollment, and Other Practices

1. Creation of the school

New charter schools have and will be created with federal School Improvement Grant funds. Therefore, we think it is important to ask the following questions:

- (1) Please indicate, for each charter school, whether it was created with School Improvement Grant funds.
- (2) Please indicate, for each charter school, whether it was intended to replace a closed school (the “restart” model).
- (3) If the charter school was created with School Improvement Grant funds, to replace a failing school, did all former students have the opportunity to attend the new charter school? Did they also have the choice of attending a different adequately performing school, along with transportation, besides the replacement charter school?
- (4) If the charter school was intended to replace a closed school, what percentage of former students actually attended and matriculated at the new charter school?

2. Charter application process

In order to ensure that authorizers are engaging in practices that support the development of the strongest charter applications possible, the survey should include the following questions about the charter application process:

- (1) Please briefly describe your application and review process, listing the approximate amount of time allocated for each stage of the process.
- (2) Does your organization assist applicants in developing their charter school applications?
- (3) Please list the total number of charter applications received since 2005 (or later if your organization did not exist or authorize charters at that time).
- (4) For each year indicated in question (3), please supply the number and percentage of applications received since 2005 (or later, if applicable) that were ultimately authorized.
- (5) During an application cycle, are applicants permitted to amend and re-submit applications? If so, how many times during a single application cycle may an applicant receive and incorporate feedback and then submit a new application?
- (6) What is/are the most common reason(s) that your organization denies charter school applications?
- (7) Do you provide written feedback to applicants whose submissions are denied?
- (8) Do you require applicants and operators to develop and include civil rights compliance policies in their applications? If so, what is your process for

reviewing the sufficiency of these policies and the capacity of charter applicants and operators to comply with Federal and State civil rights requirements, including but not limited to Title IV of the Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sec. 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act?

- (9) Do you review charter operators with regard to whether their schools contribute to educational opportunities in diverse settings?
- (10) Is there a specialized process for the creation of alternative charter schools? Are there certain criteria that must be met in the application process? If so, please describe the process.
- (11) For charters that you have renewed for a shorter term, please state the reason for the limited renewal.

3. *Admissions process*

Authorizers also should report whether their schools conduct a lottery for admission and whether there is a wait list for admission. The use of a lottery and wait list to manage enrollment indicates that there is high interest in the school. With this information, authorizers, the Department, and stakeholders can explore programmatic and policy differences between schools with wait lists and those with low enrollment. Therefore, we recommend adding the following questions to the survey:

- (1) Describe the recruitment, admissions, and continuing enrollment policies of each charter school under your jurisdiction.
- (2) Is admission to and enrollment in the school automatic, or is there a lottery for admission? If a lottery is used, is it weighted for any specific factors (e.g., race, gender, residence, sibling attending the school, etc.)?
- (3) Is there a wait list for admission?
- (4) Is information about the operator's charter schools provided to parents with limited English proficiency in a language and form they can understand?
- (5) Is information about the operator's charter schools provided to parents with disabilities in a language and form they can understand?
- (6) Is admission open to students at every grade served by the charter schools?
- (7) Do any grades in any of the operator's charter school require students to pass an exam to be promoted to the next grade? If so, which grades?
- (8) Have there been any complaints filed against any of the operator's charter schools that any aspect of the enrollment process has an exclusionary impact on ELLs, students with disabilities, or other subgroups of prospective students?
- (9) Is there a publicized process for filing complaints against a charter school under your authority pertaining to admissions?

4. *Issues Regarding Enrollment, Discipline and Attrition*

Civil rights advocates are concerned about the transparency of charter school enrollment and attrition. Because of this, we would like charter authorizers to provide the following baseline data to the state and federal government each year. As the Secretary of Education has highlighted concerns with school disciplinary practices, and the links between school suspension and increased dropout rates, we also believe it imperative to have the following baseline information for all charter authorizers seeking to expand the number of charter schools under their authority.³

(A) Enrollment, Attrition, and Discipline Data

- (1) For each school under your authority, please provide enrollment figures, by grade, disaggregated by race, ethnicity, English learner status, disability status, gender, socio-economic status and migrant status.
- (2) For each school under your authority, please provide the number and percentage of students that were enrolled in the 2009-2010 school year but who did not re-enroll for the 2010-2011 school year (excluding those who successfully graduated or completed the terminal grade at the school), by grade, disaggregated by each of the subgroups in paragraph (1).
- (3) For each school under your authority, please provide the following data, disaggregated by the subgroups in paragraph (1):
 - (a) the number and percentage of students suspended out-of-school for a day or more, without duplicating.
 - (b) the number and percentage of students suspended out-of-school for more than ten days or expelled, without duplicating.
- (4) For each school under your authority, please provide, disaggregated by the subgroups in paragraph (1), the number of school code infractions leading to out-of-school suspension or expulsion.
- (5) For each school under your authority that extends through grade 12, please provide, disaggregated by the subgroups in paragraph (1), the adjusted four-year graduation rate.

(B) Conditions of Enrollment

Many charter schools tie student enrollment to certain conditions. These conditions may include parental involvement agreements or behavior contracts, dress codes, or other non-academic requirements. It is important to collect this information as it provides insight on the type of school climate policies the schools employ and gives some indication of the barriers some students may face in enrolling at the schools. In order to track the types of conditions that students (and their parents) must meet to attend charter schools, the survey should ask authorizers:

³ We recognize that there is a slight overlap between some of these questions and some of the questions in the CRDC. It is especially important to include these questions in the survey because the CRDC is not universal.

- (1) Does the school place conditions on student enrollment?
- (2) If the answer to (1) is yes, (a) what types of conditions? (b) How many enrolled students have discontinued their enrollment or declined to apply because they, or their parents, did not meet the conditions?
- (3) Does the school place conditions on enrollment for any particular grade? (e.g. all students whether currently enrolled or prospective applicants must pass a grade 8 proficiency test to attend grade 9)?
- (4) Have any complaints been filed against any of the operator's charters asserting that, as a condition of enrollment, parents had to agree to a change in a student's IEP or 504 plan, or agree not to seek support for English language acquisition for a limited English proficient student?

4. *Alternative Charter Schools*

Charter schools could play an important role in the education of students with challenging behaviors. Asking authorizers whether their charter schools enroll students who leave traditional public schools as the result of disciplinary decisions will provide information on the number of schools serving students who have been suspended or expelled from traditional public schools. Therefore, we recommend adding the following questions to the survey:

- (1) Does the school enroll students who leave traditional public schools as a result of disciplinary decisions?
- (2) If the answer to (1) is yes, what percentage of the school's students came from traditional public schools as a result of disciplinary decisions?

B. Teachers

1. *Teacher qualifications*

To understand the effects of charter authorizers and schools on student success and the school learning environment, it is critical to track the charter school authorizers' requirements for and oversight of the selection and qualifications of teachers in their schools. Teacher certification and experience has a strong impact on student academic achievement. No Child Left Behind currently requires states to ensure that all of their teachers are "highly qualified," but it provides a partial exception for charter school teachers, allowing state law to determine if they must be certified. While NCLB requires schools to ensure that low-income and minority students are not taught at higher rates by out-of-field teachers, the unfortunate reality is that low-income and minority students still are far more likely than students in higher income areas to receive instruction from underprepared and less effective teachers. In high-poverty secondary schools, for example, more than one in three core academic classes are taught by out-of-field teachers, compared to about one in five classes in low-poverty schools.⁴

⁴ Haycock, K., & Peske, H., "Teaching Inequity: How Poor and Minority Students Are Shortchanged on Teacher Quality," The Education Trust, June 2006.

To get a clear picture of the distribution of high quality, effective teachers in public charter schools, the following data should be requested in the authorizer survey:

- (1) What number and percentage of the school's teachers have full state certification or licensure in the subjects that they are currently teaching?
- (2) What number and percentage of the school's teachers are teaching outside of the fields for which they were certified or outside their areas of expertise?⁵
- (3) What number and percentage of the school's teachers have less than two (2) years of teaching experience?
- (4) What number and percentage of the school's teachers have special education certification?
- (5) What number and percentage of the school's teachers are certified to teach ESL and bilingual education?

2. *Teacher attrition rates*

Additionally, the quality of education provided to students can be affected by excessive teacher turnover. Information on this critical factor is important to assessing the learning environment at charter schools. Therefore, the survey should ask:

- (1) What is and has been the school's rate of teacher attrition over the last five years?

C. Single-Sex Education

In the last several years – particularly since the Department issued its 2006 regulations regarding single-sex education, weakening Title IX safeguards and making it easier for schools to adopt such programs – hundreds of single-sex programs were initiated in schools around the country, many of which are not providing students with equal opportunities as the law requires. Far too many of these programs, whether single-sex schools or coeducational schools that offer single-sex classes, differentiate their instruction of boys and girls based on egregious and harmful stereotypes about the different talents, interests, and abilities of males and females that are not supported by evidence and that limit opportunities for all students. Currently, there is no reliable source for accurate data on single-sex programs, and the new survey of charter authorizers presents an opportunity for the Department to identify where such programs are and which entities are authorizing them. For example, some queries about single-sex classes that would be useful to the Department as it evaluates charter authorizers and their programs include:

- (1) Is the charter school's enrollment limited to students of one sex? If so, is enrollment limited to male or female students?
- (2) Is the charter school a coeducational school that offers single-sex classes? If so, in what subjects and what grades are single-sex classes offered?

⁵ It would be helpful to include with the survey Departmental guidance on the meaning of "teaching outside of the fields for which they were certified or outside their areas of expertise."

- (3) If the answer to (2) is yes, do you offer equal co-educational classes for those students who do not wish to be in single-sex classes?

II. Schools no longer under your oversight, including school closures

Occasionally, charters are revoked by authorizers and schools are closed down, including sometimes during the school year. To evaluate the impact of these closures on students and the surrounding community, including traditional public schools in the area, it is important to include the following questions at the end of the section in the survey devoted to closure information:

- (1) If closed, please indicate whether and how students were reassigned to other schools, and to which schools they were reassigned.
- (2) If closed, please describe whether and how assets that were acquired with state or federal funds (e.g. facilities, per pupil allocations, equipment, books, etc.) were recovered.

III. Cautionary or Remedial Action Status

In order to hold charter schools accountable, it is important that information be made available regarding their record on improving student achievement and civil rights compliance. Therefore, we recommend that the survey include the following inquiry:

- (1) Please indicate for each school whether it has been identified under Title I of the Elementary and Secondary Education Act for school improvement, corrective action, or restructuring, and how many years it has been in that status.
- (2) Please indicate the following for the charter operator, and for each school under the authority of the operator:
 - a. Whether the operator or school has been the subject of a federal OCR or DOJ civil rights complaint on the grounds of:
 - i. Alleged violation of Title VI of the Civil Rights Act of 1964
 - ii. Alleged violation of Title IX of the Education Amendments of 1972
 - iii. Alleged violation of Section 504 of the Rehabilitation Act of 1973
 - iv. Alleged violation of the Americans with Disabilities Act
 - v. Alleged violation of Title IV of the Civil Rights Act of 1964
 - b. Whether the operator or school has been the subject of an investigation based on an alleged violation of a state civil rights law.
 - c. Whether the operator or school has been the subject of an administrative complaint or lawsuit pursuant to the IDEA.
- (3) For each instance listed in response to paragraph (2), please describe the substance and status of the complaint(s).
- (4) Do any of the charter schools authorized contain a goal or plan for promoting a racially and socio-economically diverse educational environment?

- (5) For each school, indicate which charter schools serve school districts currently under a school desegregation order.
 - a. If serving a district under a desegregation order, does the charter school include a plan to contribute to integration?
 - b. How are the charter schools integration plans reviewed? What are the results of those reviews?

IV. Authorizer Standards and Practices

A. Accountability for Each School’s Stated Mission and Goals

In addition to being accountable under the Adequate Yearly Progress provisions of Elementary and Secondary Education Act, charter schools are supposed to be accountable to parents for attaining the mission and goals specified in their charter documents. Charter schools should be held accountable by their authorizers in this regard. Therefore, we recommend adding to the survey the following questions:

- (1) Does your state require each authorized charter school to submit an annual written report to its authorizer assessing whether and to what extent it is meeting the mission and goals specified in its written charter, along with steps taken and planned to address any shortcomings?
- (2) Aside from state-level requirements, do you require such reports from each school you have authorized?
- (3) From how many, and which, of your authorized schools have you received such reports for the 2009-2010 school year?

B. Diversity and Civil Rights

- (1) Does the school provide free transportation for students?
- (2) If the answer to (1) is yes, what percentage of students in the school’s total population use the transportation services provided?
- (3) Does the school participate in the National School Lunch Program?
- (4) If the answer to (3) is yes, what percentage of the school’s students qualify for free and reduced price lunches through the program?
- (5) Does the school report data to the Department’s Office for Civil Rights through the Civil Rights Data Collection (CRDC)?

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Thank you for the opportunity to comment on the Department's proposed information collection requests for a National Charter School Resource Center Authorizer Survey. We would be happy to discuss our suggestions further or answer any questions you may have. For additional information, please contact Lara S. Kaufmann of the National Women's Law Center at (202) 588-5180, or Daniel Losen of The Civil Rights Project at UCLA at (781) 861-1222.

Sincerely,

American Association of University Women (AAUW)
American Federation of Teachers
Lawyers' Committee for Civil Rights Under Law
NAACP Legal Defense and Educational Fund, Inc.
National Alliance for Partnerships in Equity
National Center for Lesbian Rights
National Coalition for Women and Girls in Education
National Education Association
National Organization for Women
National Women's Law Center
Poverty and Race Research Action Council
The Civil Rights Project at UCLA
The Women's Law Project