

Delaware's Charter School experience raises legal questions

DSEA wants to know: Are charter schools public schools or not?

The law says that they are. If that is the case, should the state not look at possible violations?

• **Two state legislators are members of charter school boards.** Since the Delaware Constitution prohibits members of the Legislature from holding dual office, we would raise the question about whether legislators should sit on public school district boards or charter school boards. (No legislators sit on public school district boards.)

The Delaware Constitution, in Article II, Section 14 says that "No member of Congress, nor any person holding any office under this State... shall during his or her continuance in Congress or in office, be a Senator or Representative....). The question becomes, is a public school board member holding a state office?

• **Prestige Academy** in Wilmington, chartered recently by the Red Clay School District, is recruiting only African-American males – a clear violation of the charter school law which says that a Charter School may not "...discriminate against any student in the admissions process because of race, creed, color, sex, handicap, or national origin..." In fact, the only selectivity allowed is "by age and grade; and by lottery in the case of over-enrollment."

• **The Wilmington Charter School** continues to be the subject of controversy regarding how it admits students. We believe that an argument can be made that it discriminates in its recruitment and admissions process.

The school uses various factors to determine if a student has sufficient "interest" to attend this school. As listed on their web site, these factors are:

- Recommendations from teachers
- Final 7th and 8th grade report cards
- The results of a placement test
- Essay to display their interest in science or math
- Copies of 6th or 7th grade standardized test results

Students who are not accepted may appeal by requesting a personal interview. It is not clear if any of these students have subsequently been accepted; what else might be considered during the interview process; and if the students who are appealing have the same opportunity for acceptance as the students who are accepted initially – or do their names go in the lottery?

In April 2006, the Attorney General was asked to issue an opinion on whether or not this school discriminates in its recruitment and admissions process. At the time, the school was using a point score to rate level of interest. Students at the 78th percentile were admitted, unless the number exceeded their

capacity and a lottery was held. The Dept. of Education is seeking clarification on changes the school has made since 2006 in how it gauges "interest" in the school's curriculum.

The 2006 opinion concluded that the Attorney General could not render an opinion because he was unable to determine whether or not Wilmington Charter School's recruitment and selection process did or did not violate the Charter School Law. One reason, he said, was because it is up to the chartering authority, in this case the Red Clay School District, to make that determination!

The opinion did speak to the fact that test scores and grades may be more about aptitude than "interest," and that the issue of what charter schools can use to determine "interest" in their school's emphasis needs clarification.

Check the Charter School law out for yourself at: <http://delcode.delaware.gov/title14/c005/index.shtml#TopOfPage>.

Charter school law implementation raises questions

Conduit bond financing for charter school construction not the only muddy issue.

The Minner Administration issued a decision in September not to allow the Delaware Military Academy to use the State's tax-exempt bond issuing authority through Delaware's Economic Development Office for capital construction purposes ('conduit' bonds).

Soon thereafter, Kent County Levy Court did issue such financing to help Providence Creek Charter School raise funds for a new building and 30 acres of land. Kent County Commissioner Eric Buckson, a member at Polytech High School, did say that he would not approve another such bond to be issued without the General Assembly weighing in.

The state's charter school law, enacted in 1995, prohibits state funds for capital construction for charter schools. The law is silent on conduit bond financing for this purpose.

DSEA's position is that state agencies in a position to issue conduit bonds for educational purposes are wrong to assume that conduit bond financing for school construction is state policy. Moreover, DSEA believes that the state has an interest and obligation to make its policy crystal clear.

Many questions raised regarding use of conduit bonds for charter school construction

❶ Should all public school districts be allowed to have access to the conduit bond issuing process? That is, without having to go through a local referendum or obtaining a Certificate of Need from the State Dept. of Education, or without gaining approval from the General Assembly's Bond Committee or without gaining approval from the Governor's Office of Management and Budget?

❷ If the General Assembly gives charter schools the right to use the tax-exempt 'conduit' bond process, will charter schools have to submit their construction plans through any

kind of accountability process other than a limited financial review? For example, will they have to obtain approval of affected local public school boards?

- Will they have to obtain a Certificate of Need from the State Department of Education?
- Will they have to obtain the approval of the General Assembly's Bond Committee or the approval of the Controller General (chief executive staff person of the General Assembly) and Director of the State's Office of Management and Budget?

If so, what governmental bodies should be allowed, on their own, to issue tax-exempt 'conduit' bonds for charter schools without any accountability standards, safeguards or review by educational policy-making bodies? County governments? City governments? Economic development agencies (e.g. Delaware Economic Development Office)?

❸ Should capital funding policy for charter schools be determined in isolation of school funding issues for all public schools --- local community schools and charter schools alike?

Charter school law being violated in other ways also

❹ Can we stop disturbing trends? A third-party analysis of Delaware's Charter School experience (a three-year study commissioned by the Dept. of Education) pointed out certain disturbing trends:

- Re-segregation of schools, particularly in New Castle County
- Failure of some charter schools to enroll comparable numbers of special education, English second language and low income students.
- "Cherry-picking" of high performing students by some charter schools.

❺ Should legislators be allowed to serve on charter school boards?

Sen. Dave Sokola is on the board of the Newark Charter School, and Rep. Debbie Hudson is on the board of the Pencader Charter School. See story above.

❻ Should the Prestige Academy be allowed to limit their students to a single race and sex? See above.