



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: April 26, 2017

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: H.S. No. 1 for H.B. 85 (Charter Schools)

The State Council for Persons with Disabilities (SCPD) has reviewed H.S. No. 1 for H.B. 85, which eliminates the use of an enrollment preference for students living within a 5-mile radius of a charter school.

This legislation was introduced on March 28, 2017. As of April 10 it had been released by the House Education Committee and awaited action by the full House. H.A. No. 1 has been placed with the bill.

Background on the bill is contained in the attached March 29, 2017 News Journal article. Existing law allows charter schools to adopt a preference for "students residing within a 5-mile radius of the school". See Title 14 Del.C. §506(b)(3)a. Only two (2) charter schools have adopted the preference, i.e., the Newark Charter School and the First State Montessori School. The main focus of the legislation is the Newark Charter School. Consistent with the article, proponents of the preference posit that the preference is justified "so schools could create a neighborhood atmosphere". Critics counter that the preference "has allowed charters to screen out at-risk kids - including those in poverty - and exacerbated racial and economic segregation".

The current legislation represents a compromise which substitutes an undefined "contiguous area" for the "5 mile radius". According the March 29 article, the effect of the substitution is to allow Newark Charter to give a preference only to the Newark part of the Christina School District and exclude students from Wilmington. However, H.A. No. 1 would strike the proposed "contiguous area" preference.

Similar legislation (H.B. No. 83) was introduced in 2015. It is described in the attached May 4, 2015 News Journal article. However, that bill proposed to both eliminate the 5-mile preference and ban discrimination “against any student in the admissions process because of the student’s residence’s proximity to the school”. The May 4 article included the concern that low-income Wilmington students could not gain admission to Newark Charter:

Rep. John Kowalko, D-Newark, said Newark Charter’s five-mile radius preference leads to de-facto segregation because it is situated in a mostly white, more affluent area of town. Demand for seats in the school is so high - its test scores among the best in the state - that it routinely has lengthy wait-lists which, Kowalko argues, makes it all but impossible for a black, low-income student from Wilmington to get in.

The charter school law already allows a preference for “students residing within the regular school district in which the school is located”. See line 10 of the bill. Therefore, if the 5-mile radius preference were stricken, Newark Charter could still have a preference for students of the Christina School District.

Statistics corroborate concerns that Newark Charter’s enrollment does not contain the expected percentage of special education, low income, or minority students. Consistent with the attached Department of Education statistics, the following table highlights the discrepancy:

	Newark Charter	Christina School District	State
Special Education Students	5.6%	18.6%	14.4%
White Students	64.9%	28.7%	45%
Low Income Students	7.9%	43.8%	36%

The Christina School District has more than 3 times the percentage of special education students and more than 5 times the percentage of low-income students as the Newark Charter School within its borders. Charter schools are public schools which should not ostensibly be operating as exclusive private schools.

Parenthetically, the exclusionary effect of the “five mile radius” preference is exacerbated by another preference in existing law: “students who have a specific interest in the school’s teaching methods, philosophy, or educational focus”. See Title 14 Del.C. §506(b)(3)c. Consistent with the attached articles and Attorney General’s opinion, the Wilmington Charter School was allowed to exclude students based on scores on a “placement” test and lack of enrollment in honors classes prior to application. Consistent with the attached Delaware Department of

Education statistics, the following table highlights the impact on special education, minority, and low income students:

	Wilmington Charter	Red Clay Consolidated School District	State
Special Education	0.5%	12.1%	14.4%
White Students	57.5%	43.6%	45%
Low Income Students	3.7%	35%	36%

A public school’s enrolling only a half of 1% of special education students is difficult to defend when the statutory norm is that students are admitted “by lottery in the case of over-enrollment”. See Title 14 Del.C. §506(a)(3)b. Moreover, the percentage of low income students in the host district (Red Clay) is almost 10 times the percentage of low income students in Wilmington Charter.

SCPD is endorsing the proposed legislation if amended by H.A. No. 1.

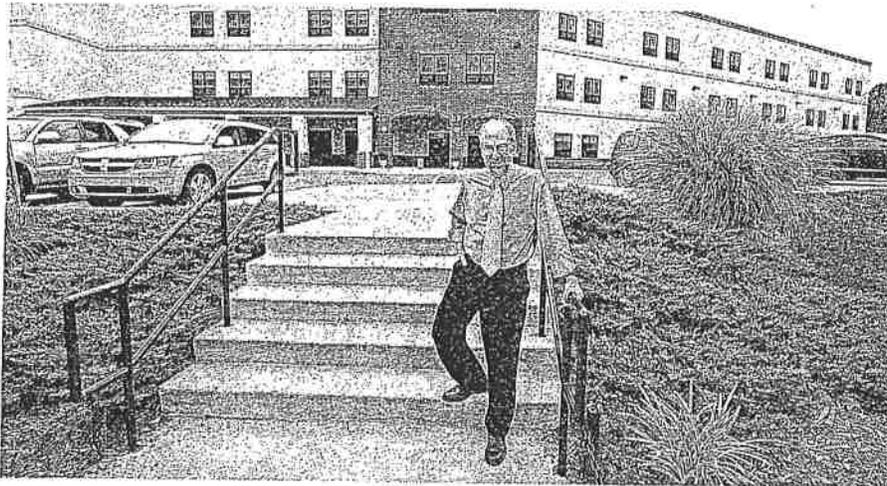
Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

- cc: The Honorable Matthew Denn, Office of Attorney General
- The Honorable Susan S. Bunting, Ed.D., Department of Education
- Jeff Taschner, Delaware State Education Association
- Kathleen MacRae, ACLU
- Mr. Brian Hartman, Esq.
- Governor’s Advisory Council for Exceptional Citizens
- Developmental Disabilities Council

HS 1 for HB 85 charter schools 4-24-17

3-29-17 405

Bill seeks changes to charter school rules



FRED COMEGYS/THE NEWS JOURNAL

Greg Meece, head of school at Newark Charter School, supports a proposed change in charter school enrollment rules.



DELAWARE LEGISLATIVE SESSION MATTHEW ALBRIGHT

Lawmakers are considering changes to charter school enrollment preferences and the school choice process.

It is an issue that previously has been fraught with emotional debate between supporters of charters and traditional schools, but the two sides are trying to

work out some compromises this legislative session.

"I think it's much better when we can come together and work things out instead of just fighting," said Rep. Kim Williams, D-Newport. "I think you're going to see more of this in the future."

When charters have more applicants than seats, state law allows them to give preference to certain students. Charter school supporters say that allows them to fulfill their specialized missions, but traditional school advocates say that has allowed charters to screen out at-risk kids — including those in poverty — and exacerbated racial and economic segregation.

In 2013, the General Assembly created a task force to study the issue. Williams chaired that group and is rolling out legislation this year to implement some of its recommendations.

The first is a bill that would eliminate one of the enrollment preferences, which allows schools to prioritize kids who live within a 5-mile radius of the school.

Two schools currently have that preference in their charter: Newark Charter School and First State Montessori in Wilmington.

The 5-mile radius was included so schools could create a neighborhood atmosphere, said Kendall Massett, director of the Delaware Charter Schools Network.

"When kids are closer to school, it allows for our parents and our families to have more access to the school," said Massett, whose group helped craft Williams' bill.

Despite this reasoning, parents and educators in traditional school districts have criticized the 5-mile provision. Newark Charter, in particular, has been a lightning rod among supporters of the Christina School District who believe it is sapping students and money from the district.

If Williams' bill passes, the 5-mile preference would be eliminated, meaning charters would need to give preference to any student who lives in the district.

"We want our schools to be accessible to all our kids," Williams said.

The legislation makes one tweak to address the peculiar geography of the Christina School District, which mostly covers the Newark area but also includes

a small piece of Wilmington. Christina is one of only four "non-contiguous" school districts in the country.

Williams' bill would allow charter schools in Christina, like Newark Charter, to give preference to students only in the Newark part of Christina.

Newark Charter School leaders support the change.

"It basically preserves our ability to fulfill the school's mission, which includes focusing on the Greater Newark community," said Greg Meece, head of school.

Meece said the 5-mile radius can be confusing to parents and that the new setup would make it simpler to understand who gets the enrollment preference.

Newark Charter has some of the highest test scores in Delaware and routinely wins academic honors. The school currently has a wait-list of almost 3,000 kids, Massett said.

The school's critics point out that it serves mostly affluent, white students. During the last school year, less than 8 percent of its students were from low-income families, about 6 percent required special education services and only 2 percent were English language learners — those numbers are fractions of those for the Christina district as a whole.

Meece and Massett said the new enrollment rules could prove problematic if state leaders reduce the number of school districts in Delaware. Some officials have called for such a change to save costs, but charter advocates say that would also mean their schools would be required to serve much larger geographic areas.

"If redistricting happens, we may have to revisit this," Massett said. "But we can't deal with the what-ifs. We must deal with what's in front of us right now."

Perhaps the biggest sticking point is a rule that allows charters to give preference to kids who "have a specific interest in the school's teaching methods, philosophy or educational focus." Williams and other advocates argue that allows some charters to "cherry pick" top students away from traditional schools.

Charters defend the practice as an important way to preserve their unique roles in Delaware's education system.

Williams said she will be introducing legislation to address other enrollment preferences soon. Some of those may draw stiffer opposition from the charter sector, but she praised the charters for their collaboration.

Massett said she thinks this kind of collaboration is better in the long run.

Contact Matthew Albright at malbright@delaware-online.com, (302) 324-2428 or on Twitter @TNJ_malbright.



Rep. John Kowalko; left; Gregory Meece; and Kathleen MacRae

5-4-15 25

Five-mile enrollment under scrutiny

Some argue preference is leading to re-segregation

MATTHEW ALBRIGHT THE NEWS JOURNAL

Charter schools shouldn't be able to give enrollment preference to students who live within five miles of their campus because doing so is leading to re-segregation, some lawmakers and advocates argue.

If a charter school has more applicants than seats, Delaware law currently allows charters to give preference to students who live within five miles of their building, as long as they include that preference in their charter.

The only charter that currently uses that preference is Newark Charter School, which has almost 2,000 students in grades K-10 and is expanding into a full K-12 school. Eastside Charter and the Delaware Met have approval to do so in their charters, but have not yet exercised it because they have not had more applicants than available seats.

Rep. John Kowalko, D-Newark, said Newark Charter's five-mile radius preference leads to de facto segregation because it is situated in a mostly white, more affluent area of town. Demand for seats in the school is so high — its test scores among the best in the state — that it routinely has lengthy wait-lists which, Kowalko argues, makes it all but impossible for a black, low-income student from Wilmington to get in.

"Newark Charter's a good school and it's not going anywhere," Kowalko said. "But we have to assure, because it is a school funded with public money, that

See FIVE-MILE, Page 6A

Five-mile

Continued from Page 1A

there is equal access for every student."

More than 65 percent of Newark Charter's students are white, while only about 11 percent are black, according to figures from the Department of Education. Only 7.2 percent of its students are low-income, and only 5.6 percent are special education.

Contrast that with the whole state of Delaware, in which only 46 percent of students are white and 31 percent are black, or the Christina School District, in which the school is housed, which is only 31 percent white and 39 percent black.

Statewide, 35 percent of kids are low-income, five times the percentage of Newark Charter. In Christina, 41 percent of students are low-income, almost six times as many.

Kowalko has proposed House Bill 83, which would eliminate charters' ability to give preference to nearby families. He has long criticized the five-mile radius provision, and is a frequent charter school critic.

Greg Meece, the director of Newark Charter, said he's "confused" as to why lawmakers would want to prevent charters from having a geographical preference when traditional schools have feeder patterns that are often smaller than five miles.

"The legislature listed this preference in order to keep communities together in order to encourage parent involvement in their schools and to mirror

what is done in traditional schools," Meece said.

Meece argued that it doesn't make sense to compare Newark Charter's student population to Christina's because the two are completely different. Christina's schools include many urban Wilmington students in addition to the Newark suburbs in which the charter is located.

"I think you look at the community our school was created to serve, we reflect that community very well," Meece said.

The debate over the five-mile radius preference fits into a larger discussion of whether charters are "re-segregating" Delaware schools by screening out low-income and minority students.

In December, the Delaware branch of the American Civil Liberties Union filed a complaint with the U.S. Department of Education in which they said more than three-quarters of all charters were "racially identifiable" as either mostly white or mostly minority schools.

"My thinking is that, although I don't think the five-mile radius is the most significant problem with the charter school law that is causing re-segregation, I still think this is a good idea," said Kathleen MacRae, executive director of the ACLU Delaware.

MacRae said other enrollment preferences, like admissions tests or GPA requirements, are also causing re-segregation and won't be changed by Kowalko's bill.

Contact Matthew Albright at malbright@delawareonline.com, 324-2428 or on Twitter @TNJ_malbright.

Skip to content

[RSS Feeds](#) [Phone Numbers](#) [Mobile](#) [Help](#) [Email](#)

State of Delaware
Date updated - Winter 2016

[Glossary](#) | [Help](#)



District: Department Of Education
Address: 401 Federal Street, Suite 2, Dover DE 19901
Secretary of Education: Susan Bunting

Telephone: (302) 735-4000
Web: [Department Of Education Page](#)

Search schools: [Great Schools Delaware](#)

State Student Information

Enrollment by Race/Ethnicity

	<u>2015-16</u>	<u>2016-17</u>
African American	30.7%	30.4%
American Indian	0.4%	0.4%
Asian	3.7%	3.7%
Hawaiian	0.1%	0.1%
Hispanic/Latino	16.0%	16.8%
White	46.0%	45.0%
Multi-Racial	3.2%	3.5%

[Info](#) | [Details](#)

Other Student Characteristics

	<u>2014-15</u>	<u>2015-16</u>
English Language Learner	6.0%	6.4%
Low Income	36.0%	36.0%
Special Education	13.9%	14.4%
Enrolled for Full Year	94.5%	N/A

[Info](#) | [Details](#)

Recently Arrived ELL Students

	<u>2015-16</u>
Number of Students Not Tested on ELA Assessment	737

[Info](#) | [Details](#)

Public School Student Transportation (2015-16)

Number of Students Transported	116,000
Percent of Students Transported	81.8%

[Info](#) | [Details](#)

Vocational Technical High School Percentage (2016-17)

Skip to content

[RSS Feeds](#) [Phone Numbers](#) [Mobile](#) [Help](#) [Email](#)

Newark Charter School
Date updated - Winter 2016

View: [District Page](#) | [State Page](#) | [Glossary](#) | [Help](#)

District: Newark Charter School
Address: 2001 Patriot Way, Newark DE 19711
Principal: Gregory Meece

Telephone: (302) 369-2001
Web: [Newark Charter School Page](#)

School Demographics

Fall Enrollment

	2015-16	2016-17
Kindergarten	188	191
Grade 1	191	190
Grade 2	190	190
Grade 3	191	190
Grade 4	191	190
Grade 5	194	192
Grade 6	191	192
Grade 7	164	190
Grade 8	166	169
Grade 9	158	162
Grade 10	158	155
Grade 11	158	158
Grade 12		153
Total	2,140	2,322

[Info](#) | [Details](#)

Enrollment by Race/Ethnicity

	2015-16	2016-17
African American	11.1%	10.7%
American Indian	0.3%	0.3%
Asian	13.0%	13.1%
Hispanic/Latino	5.0%	5.2%
White	64.9%	64.9%
Multi-Racial	5.7%	5.8%

[Info](#) | [Details](#)

Other Student Characteristics

	2014-15	2015-16
English Language Learner	2.5%	2.4%
Low Income	7.2%	7.9%
Special Education	5.6%	6.4%
Enrolled for Full Year	99.6%	N/A

[Info](#) | [Details](#)

School Promotion by Grade

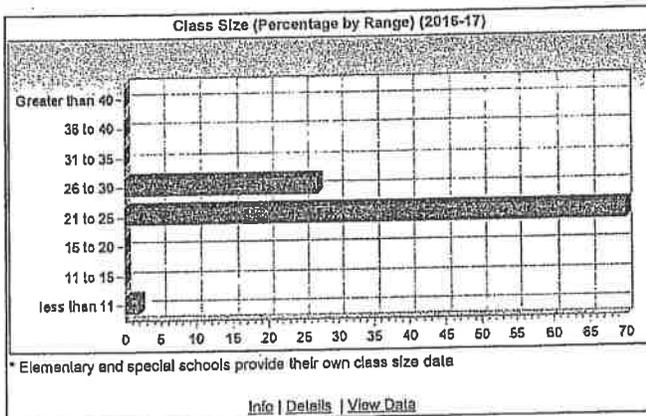
	2014-15
Kindergarten	95.3%
Grade 1	100.0%
Grade 2	99.5%
Grade 3	100.0%
Grade 4	100.0%
Grade 5	100.0%
Grade 6	100.0%
Grade 7	100.0%
Grade 8	100.0%
Grade 9	100.0%
Grade 10	100.0%

[Info](#) | [Details](#)

Recently Arrived ELL Students

	2015-16
Number of Students Not Tested on ELA Assessment	0

[Info](#) | [Details](#)



School Finances

District Expenditure per Pupil (2014-15)

\$11,577

Skip to content

Christina District

Date updated - Winter 2016

View: [State Page](#) | [Glossary](#) | [Help](#)



District: Christina School District

Telephone: (302) 552-2600

Address: Drew Educational Support Building, 600 N. Lombard Street, Wilmington DE 19801

Web: [Christina School District Page](#)

School District Superintendent: Noreen LaSorsa

District Information

	2015-16	2016-17
African American	39.6%	39.4%
American Indian	0.2%	0.2%
Asian	4.9%	5.1%
Hawaiian	0.1%	0.1%
Hispanic/Latino	21.2%	21.9%
White	30.1%	28.7%
Multi-Racial	3.9%	4.6%

[Info](#) | [Details](#)

	2014-15	2015-16
English Language Learner	8.3%	8.8%
Low Income	41.0%	43.8%
Special Education	17.9%	18.6%
Enrolled for Full Year	91.4%	N/A

[Info](#) | [Details](#)

	2015-16
Advanced Placement Courses	21
No. of Students Enrolled	451
No. of Exams Taken	735
Total No. of Exams Passed	213

[Info](#) | [Details](#)

Recently Arrived ELL Students

	2015-16
Number of Students Not Tested on ELA Assessment	110

[Info](#) | [Details](#)

District Drop Out Information

DropOut	2013-14		2014-15		2014-15-Percent	2014-15-Count
	2012-13-Percent	2012-13-Count	2013-14-Percent	2013-14-Count		
District	6.1%	229	3.4%	127	3.8%	143

[Info](#) | [Details](#)

Persistently Dangerous School (2015-16)

The school district has no "Persistently Dangerous Schools"

[Info](#) | [Details](#)

Student Achievement

11th Grade School Day SAT Reasoning Test (2014-15)

	District	State
Math	415	435
Critical Reading	434	441
Writing	410	422
Total	1,259	1,298
Participation	85%	93%

Skip to content

Charter School of Wilmington
Date updated - Winter 2016

View: [District Page](#) | [State Page](#) | [Glossary](#) | [Help](#)

District: Red Clay Consolidated School District
Address: 100 North duPont Road, Wilmington DE 19807
Principal: Samuel Paoli

Telephone: (302) 651-2727
Web: [Charter School of Wilmington Page](#)

School Demographics

Fall Enrollment

	2015-16	2016-17
Grade 9	243	249
Grade 10	239	244
Grade 11	244	236
Grade 12	246	242
Total	972	971

[Info](#) | [Details](#)

Enrollment by Race/Ethnicity

	2015-16	2016-17
African American	6.8%	6.3%
American Indian	0.4%	0.5%
Asian	28.7%	30.9%
Hawaiian	0.2%	0.1%
Hispanic/Latino	3.5%	4.6%
White	60.3%	57.5%
Multi-Racial	0.1%	0.7%

[Info](#) | [Details](#)

Other Student Characteristics

	2014-15	2015-16
English Language Learner	0.1%	0.2%
Low Income	2.3%	3.7%
Special Education	0.2%	0.5%
Enrolled for Full Year	99.9%	N/A

[Info](#) | [Details](#)

School Promotion by Grade

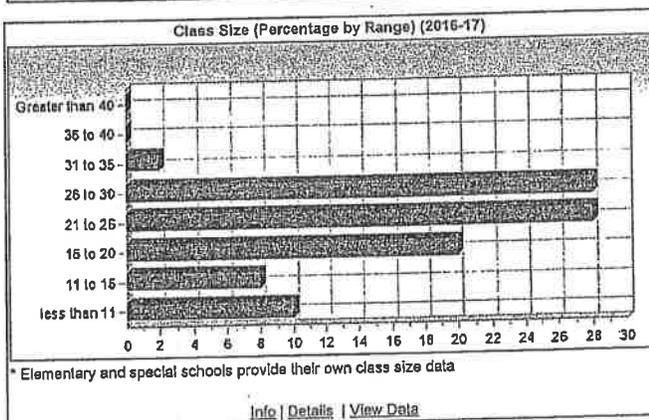
	2014-15
Grade 9	99.2%
Grade 10	100.0%
Grade 11	100.0%
Grade 12	100.0%

[Info](#) | [Details](#)

Recently Arrived ELL Students

	2015-16
Number of Students Not Tested on ELA Assessment	0

[Info](#) | [Details](#)



School Finances

District Expenditure per Pupil (2014-15)

\$12,495

Skip to content

[RSS Feeds](#) [Phone Numbers](#) [Mobile](#) [Help](#) [Email](#)

Red Clay District
Date updated - Winter 2016

View: [State Page](#) | [Glossary](#) | [Help](#)



District: Red Clay Consolidated School District

Telephone: (302) 652-3700

Address: 1502 Spruce Avenue, Wilmington DE 19805

Web: [Red Clay Consolidated School District Page](#)

School District Superintendent: Mervin Daugherty

District Information

	2015-16	2016-17
African American	21.2%	20.5%
American Indian	0.2%	0.3%
Asian	6.7%	6.6%
Hawaiian	0.0%	0.1%
Hispanic/Latino	25.3%	26.4%
White	44.3%	43.6%
Multi-Racial	2.3%	2.5%

[Info](#) | [Details](#)

	2014-15	2015-16
English Language Learner	10.4%	10.8%
Low Income	33.8%	35.0%
Special Education	11.9%	12.1%
Enrolled for Full Year	96.1%	N/A

[Info](#) | [Details](#)

	2015-16
Advanced Placement Courses	52
No. of Students Enrolled	1,265
No. of Exams Taken	2,574
Total No. of Exams Passed	1,778

[Info](#) | [Details](#)

	2015-16
Number of Students Not Tested on ELA Assessment	152

[Info](#) | [Details](#)

DropOut	2013-14		2014-15		2014-15	
	Percent	Count	Percent	Count	Percent	Count
District	2.6%	142	2.0%	111	1.7%	92

[Info](#) | [Details](#)

Persistently Dangerous School (2015-16)
The school district has no "Persistently Dangerous Schools"
[Info](#) | [Details](#)

Student Achievement

	District	State
Math	485	435
Critical Reading	492	441
Writing	476	422
Total	1,453	1,298
Participation	93%	93%



STATE OF DELAWARE
DEPARTMENT OF JUSTICE



CARL C. DANBERG
Attorney General

NEW CASTLE COUNTY
Cervel State Building
120 N. French Street
Wilmington, DE 19801
Criminal Division (302) 577-8500
Fax: (302) 577-2496
Civil Division (302) 577-8400
Fax: (302) 577-6630
TTY: (302) 577-5783

KENT COUNTY
102 West Water Street
Dover, DE 19904
Criminal Division (302) 739-4211
Fax: (302) 739-6737
Civil Division (302) 739-7641
Fax: (302) 739-7657
TTY: (302) 739-1345

SUSSEX COUNTY
114 E. Market Street
Georgetown, DE 19847
(302) 856-8353
Fax: (302) 856-5358
TTY: (302) 856-2500

April 10, 2006

PLEASE REPLY TO:

New Castle County-Civil Division

Honorable Nancy H. Wagner
State Representative
Legislative Hall
P. O. Box 1401
Dover, DE 19903

RE: Charter School of Wilmington Preferences

Dear Representative Wagner:

You have asked whether the student recruitment and selection process ("Process") at the Charter School of Wilmington ("School") complies with the Charter School Law.

An Attorney General's Opinion is appropriate when there is no issue of material fact to be decided and the question presented is one of law. As discussed below, however, in this case there are several factual issues that must be resolved in order to provide a definitive answer to your question. Moreover, the Charter School Law itself provides the appropriate means for evaluating and determining the legality of the School's student recruitment and selection process. Therefore, this opinion will not finally resolve this matter.

You have also asked "[i]f they are found to be in error, then the question will need to be posed as to how to enforce the law to make sure that they are in compliance." Again, the statute provides a process for enforcement. As discussed below, the Red Clay Consolidated School

The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 2

District ("Red Clay") is the School's approving authority and is responsible for oversight of the charter school.¹ Additionally, the Department of Education ("Department"), the State Board of Education and the approving authority may conduct financial, programmatic, or compliance audits of any charter school.²

Historical Background

The School is a Delaware public charter school whose charter was approved by Red Clay. The School opened in 1996. In its first few years of operation, there were fewer applicants than seats available and all who applied were admitted. Many students struggled with the school's curriculum and the failure and attrition rate exceeded 25%. As a result, when applications exceeded the number of seats available, the school began to apply a system of admission preferences.³ In 2003, the Auditor conducted an audit of the School and issued a report ("Report") containing a factual conclusion that "[t]he Charter School of Wilmington . . . did not conduct a lottery for the over subscription of ninth grade students submitting applications for school year 2003/2004. . . ."⁴ However, in a letter dated February 4, 2004 with which he transmitted the Report to the Secretary of Education, the Auditor noted that:

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on compliance [with the Charter School Law]. Accordingly, we do not express such an opinion.

¹ 14 Del. C. §513(a)

² 14 Del. C. §513(c)

³ The preferences and the processes by which they are implemented are as set forth herein and, to the extent required by 14 Del. C. §505(b)(3), the preferences are described in the school's charter.

⁴ Auditor's Final Report on Statewide Charter School Student Enrollment Agreed-Upon Procedures as of May 1, 2003, at p. 4

The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 3

Accordingly, the Auditor did not actually opine that the School's student recruitment and selection process was in violation of the Charter School Law. Nevertheless, acting in response to the Report the School amended its admission preferences. Specifically, the School amended its method of applying the "interest" preference provided for in 14 Del. C. §506(b)(3)c. That section permits an admission preference for "[s]tudents who have a specific interest in the school's teaching methods, philosophy, or educational focus." The statute provides no guidance as to how a charter school is to determine that a student has a "special interest."

In order to determine whether an applicant could receive the "interest" preference, the School adopted an admissions procedure that uses a combination of the following:⁵

1. Placement test which measures the applicant's exposure to math and reading;
2. The applicant's grades in 7th and 8th grade which shows the applicant's interest in math/science irrespective of at what level he/she was being taught in grade school. This factor does not try to compare one grade school to another;
3. Teacher Recommendations;
4. Enrollment in honor classes for math/science;
5. Activities in math or science extra-curricular functions; and
6. An essay written by the applicant.

⁵ The following is a verbatim description of the process provided to us by counsel for the School and Red Clay.

The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 4

Each of the above factors is assigned a point total. The maximum score for each item is as follows:

Placement Test	198
Grade School Scores	120
Teacher Recommendation	25
Honor Courses	10
Extra-Curricular Activity	10
Essay	<u>20</u>
Total	383 ⁴

The showing of interest cut-off is set at the 78th percentile; however, students who fall below the 78th percentile may still demonstrate that they have the requisite specific interest in the School's philosophy and educational focus of Math and Science. These students may request a personal interview with the School. The School uses panels of three (3) Faculty members to interview the applicants. Based upon the interviews, the Faculty may add applicants to those who have demonstrated a specific interest in the School's philosophy and educational focus.

Once the above process has established a pool of students who the School deems to have met the "interest" preference, then the following preferences are applied to the pool in the following order:

1. Red Clay residents;
2. Siblings;
3. Children of full-time employees;
4. Children of the School's founders.

⁴ Obviously this system heavily weighs in favor of an applicant's test score and grades.

The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 5

If any seats remain to be filled, the School conducts a lottery among the pool of remaining students who have satisfied the "interest" preference. The result is that the School ranks preferences and, in effect, makes the "interest" preference a super preference for admission. The effect of this process is that only students who qualify for the "interest" preference are admitted to the school.

The Charter School Law

The law prohibits a charter school from restricting student admissions except by age and grade, and by lottery in the case of over-enrollment.⁷ However, 14 Del. C. §506(b) provides:

Preferences in student admissions may be given to:

- (1) Siblings of students enrolled at the school;
- (2) Students attending an existing public school converted to charter status. Parents of students at a school converted to charter status shall be provided with a plan the district will use to address the educational needs of students who will not be attending the charter school;
- (3) Students enrolling in a new (non-converted) charter school may be given preference under the following circumstances as long as the school has described its preferences in the school's charter:

- a. Students residing within a 5-mile radius of the school;

⁷ 14 Del. C. §506(a)(3)a. and b.

The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 6

- b. Students residing within the regular school district in which the school is located;
- c. Students who have a specific interest in the school's teaching methods, philosophy, or educational focus;
- d. Students who are at risk of academic failure;
- e. Children of persons employed on a permanent basis for at least 90.0 hours per week during the school year by the charter school.

(4) Children of a school's founders, so long as they constitute no more than 5% of the school's total student population. For the purposes of this paragraph, "founder" shall not include anyone whose sole significant contribution to the school was monetary, but otherwise shall be determined by the founding Board of Directors subject to Department of Education regulations.

The law does not directly address the rank ordering of preferences, nor does it provide any specific direction as to how preferences are to be applied. As noted above, oversight authority is vested in the School's approving authority, Red Clay, pursuant to 14 Del. C. §515. An approving authority has the ability to submit a school's charter to formal review and to order remedial measures including placing the school on probation or revoking

The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 7

its charter.² The statute provides a process by which issues may be investigated, a school's comments may be received and, potentially, public hearings held to assist the approving authority in determining whether the school is in compliance. To our knowledge, none of those processes has occurred in this case. Further, the State Board of Education and the Department of Education have the authority to audit a charter school pursuant to 14 Del. C. §513. It is our understanding that discussions are currently underway between the Department and Red Clay to craft a process to implement the provisions of section 513.

Discussion

Preliminarily, we believe that a rank-ordered system of imposing admissions preferences may, if properly crafted and implemented, comply with the Charter School Law. The law does not require the granting of any preference. A charter school "may," but is not required to give a preference. 14 Del. C. §506(b). The law does not require that a charter school give all or any of the permitted preferences, nor does it restrict the order in which preferences may be granted until a school is fully enrolled. Accordingly, a charter school is not precluded from creating an admissions process that gives priority to certain preferences as a pre-condition to the imposition of other preferences permitted by law.

At the core of this matter is the School's application of the "specific interest" preference in 14 Del. C. §506(b)(3)c., and its use of a test and grades as a part of the method of determining eligibility for the preference. If that preference and the other preferences permitted by law are being properly applied and all eligible seats are filled as a result thereof, then there is no need to

² 14 Del. C. §§15(e) through (h), inclusive.

The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 8

conduct any lottery other than the one described above. The potential problem with the School's process is that it assumes that a student's special interest may be determined by grades and test scores. In effect, the School assumes that success or doing well is the same as having a "specific interest" in the School's teaching methods, philosophy, or educational focus.

While we have solicited supporting materials from counsel for the School, we are without a factual record that would enable us to determine whether the test currently being used by the School is simply an aptitude test or a test that may also be used to reliably measure student interest. This is a question of psychometrics that is more properly left to the review and determination of those responsible for oversight under the statutory scheme; namely, Red Clay, the State Board of Education and the Department of Education. Likewise, we have no evidence that either proves or disproves that the use of grades is an appropriate measure of interest rather than simply a measure of aptitude. Again, at issue is the assumption that success in testing or the ability to achieve good grades is the functional equivalent of a demonstration of "specific interest." These are issues that merit serious examination and the input of educators with expertise in these areas. It would be inappropriate for us to assume facts that have not been established in the proper forum, and to substitute our determination for the informed judgments of appropriate experts in these highly specialized areas.

Conclusion

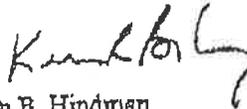
For the reasons set forth above, we are unable to determine whether the student recruitment and selection process employed by the Charter School of Wilmington is compliant

04/10/2006 10:55 DEPT OF EDUCATION -> 97395126
04/11/2006 10 18 PMA 302 01' 2885

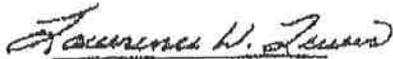
The Honorable Nancy H. Wagner
Charter School of Wilmington
April 10, 2006
Page 9

with the provisions of the Delaware Charter School Law. This is a determination that must be made pursuant to the processes provided by the Charter School Law.

Very truly yours,


for John B. Hindman
Deputy Attorney General

Approved by:


Lawrence W. Lewis
State Solicitor

Xc: The Honorable Carl C. Danberg
Malcolm S. Cobin, Chief Deputy Attorney General
Phillip Johnson, Opinion Administrator
Alfred J. D'Angelo, Jr., Esq.

I:\Data\C\cc\tr\p\ndcr\06\Wagner.response.ltr.doc



<http://www.delawareonline.com/apps/pbcs.dll/article?AID=/20060413/NEWS/60413015>

AG unable to determine legality of Charter practice

Update 3:17 pm

CECILIA LE
CECILIA LE
THE NEWS JOURNAL
04/13/2006

The Delaware Attorney General's Office has concluded it cannot determine whether Charter School of Wilmington is violating state law by using an admissions test.

That authority rests with the Red Clay school district, which approved the school's creation and is responsible for its oversight, according to Deputy Attorney General John B. Hindman.

Red Clay officials say Wilmington Charter is doing nothing wrong by screening students for admission, which ensures they can handle the school's rigorous curriculum.

But critics, including some state legislators and Delaware's secretary of education, say the public school violates state law by denying all students an equitable chance to attend.

Contact Cecilia Le at 324-2794 or e-mail cl@delawareonline.com

See complete coverage in Friday's News Journal and at www.delawareonline.com.

Copyright © 2006, The News Journal. Use of this site signifies your agreement to the Terms of Service and Privacy Policy (updated 10/3/2005)



<http://www.delawareonline.com/apps/pbcs.dll/article?AID=/20060414/NEWS/604140348/1006>

Opinion lets Charter keep admission test

BY CECILIA LE
THE NEWS JOURNAL
04/14/2006

For now at least, the public Charter School of Wilmington will continue its controversial practice of using a selective admissions process.

The Attorney General's Office has concluded it cannot determine whether the prestigious math and science high school is breaking the law by using an admissions test and other factors to select students.

That authority rests with the Red Clay school district, which approved the school's creation and is responsible for its oversight, according to Deputy Attorney General John B. Hindman.

Red Clay officials have said Wilmington Charter is doing nothing wrong by screening students for admission, which ensures they can handle the school's rigorous curriculum. But critics, including some legislators and Delaware's secretary of education, say the public school violates state law by denying all students an equitable chance to attend.

Earlier this year, Rep. Nancy Wagner, R-Dover, asked the attorney general for an opinion on the legality of Wilmington Charter's admissions policy.

In a response Monday, Hindman said the core of the matter is whether high test scores, grades, teacher recommendations and other academic criteria are legitimate indicators of a student's interest.

State law says charter schools may give preference to students who express a "specific interest in the school's teaching methods, philosophy or educational focus."

"The potential problem with the school's process is that it assumes that a student's special interest may be determined by grades and test scores," Hindman wrote.

"We are without a factual record that would enable us to determine whether the test currently being used by the school is simply an aptitude test or a test that may also be used to reliably measure student interest. ... Likewise, we have no evidence that either proves or disproves that the use of grades is an appropriate measure of interest rather than simply a measure of aptitude."

Those questions are better left, he wrote, to educators in Red Clay or the state Department of Education, which may audit any charter school.

Wagner, a critic of the school's admissions policy, did not return calls for comment Thursday.

Red Clay Superintendent Robert Andrzejewski said he's satisfied Wilmington Charter is acting within the law, but recognizes many people have concerns.

Obviously, there are still questions out there," he said. "It's important we clarify the issue with the community.

A39

"There are laws that are crystal clear, and there are some laws that are not crystal clear. Since we are the chartering agent, the authority rests with the Red Clay board. Pending a lawsuit or something, we have to stick with their interpretation."

Secretary of Education Valerie Woodruff had no comment Thursday because she had not seen the opinion, department spokesman Ron Gough said.

Woodruff has said Wilmington Charter is breaking the law, but that enforcement is the responsibility of Red Clay.

She said the school should be open to all students interested in its focus on math and science, not just the best and brightest.

Horacio Lewis, whose son will graduate from Wilmington Charter this year, submitted his own request for a legal opinion from the attorney general.

Lewis said schools like Wilmington Charter are needed to challenge gifted students, whose needs are neglected in other schools where resources are directed toward underachieving students.

"It seems to me he is, in essence, letting status quo prevail and we can move on from here," said Lewis, a high school Spanish teacher who formerly worked for the Department of Education. "I'm happy with that. Hopefully, this should quiet the secretary of education."

Wilmington Charter President Ron Russo also said the decision sounds like good news.

"I'm in favor of anything that would resolve the issue in favor of the kids," Russo said. "I think we're doing right by the kids and I think we're in compliance with the law."

Contact Cecilia Le at 324-2794 or cle@delawareonline.com.

Copyright © 2006, The News Journal. Use of this site signifies your agreement to the Terms of Service and Privacy Policy (updated 10/3/2005)