Minnesota Department of Education

TO: Charter School Directors
Charter School Board Chairs
Charter School Sponsors

FROM: Alice Seagren
Education Commissioner

DATE: July 26, 2007

RE: Charter School Enrollment Applications

It has recently come to the attention of the Minnesota Department of Education (MDE) that the student application forms of some charter schools require applicants to disclose more information than permitted by state law. This memorandum is intended to advise your charter school of the statutory limitations related to charter school student admission policies and serves as official notice of an additional required data element to be included in your school's annual 2006-07 Annual Report. Charter schools must now include compliant admissions policies and procedures, and corresponding application and enrollment forms with the 2006-07 Annual Report due to MDE by October 1, 2007.

INTRODUCTION

Minn. Stat. § 124D.10, subd. 8(h) provides that "a charter school is subject to and must comply with chapter 363A…," the Minnesota Human Rights Act. In addition to compliance with Chapter 363A, Minn. Stat. 124D.10, subd. 9 states that "[A] charter school may not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability." This memo will address what charter schools can and cannot ask potential students on an application form, and when charter schools can request additional information from students to assist with placement. This memo will also address legitimate enrollment limits of charter schools.

ANALYSIS

I. What Information Can Charter Schools Ask For in Application for Enrollment?

The Minnesota Human Rights Act under Minn. Stat. § 363A.13 specifically protects the rights of Minnesota students in educational settings. Specifically, the statute governs what information may not be asked of an individual seeking admission to a charter school, including what cannot be included in a charter school application. Minn. Stat. § 363A.14 states:

> "Subd. 2. **Exclude, expel, or selection.** It is an unfair discriminatory practice to exclude, expel, or otherwise discriminate against a person *seeking admission* as a student.... because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability. (emphasis added)
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> Subd. 3. **Admission form or inquiry.** It is an unfair discriminatory practice to make or use a .... *form of application for admission* that elicits or attempts to elicit information, or to make or keep a record, concerning the creed, religion, sexual orientation, or disability *of a person seeking admission*, except as permitted by rules of the department. (emphasis added)
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> Subd. 4. **Purpose for information and record.** It is an unfair discriminatory practice to make or use a written or oral inquiry or *form of application* that elicits or attempts to elicit information, or to keep a record concerning the race, color, national origin, sex, age, or marital status of a person seeking admission, unless the information is collected for *purposes of evaluating the effectiveness of recruitment, admissions, and other educational policies, and is maintained separately from the application*." (emphasis added)

Charter schools can ask for basic information from students, such as their name, contact information, including address and phone number, and name of parent or guardian. This basic information provides charter schools with all necessary information to admit the student. Pursuant to the Minnesota Human Rights Act, it is unlawful for charter schools to ask potential students about their religion, ethnicity, race, disability status, and sexual orientation at any point during the admission process, including on the admission form students and their parent or guardian submit to charter schools.

II. Once a Student is Enrolled at a Charter School, What Can Schools Ask to Assist With Placement?

Once a student is admitted and enrolled in a charter school, additional information can be requested to assist with student placement. Minn. Stat. § 363A.13, subd 4 (see above for text) emphasizes that requests for information such as "race, color, national origin, sex, age, or marital status of a person seeking admission" cannot be used in an application. This subdivision also lays out an exception to the bar against gathering this information, providing that such information *can* be collected if "the information is collected for purposes of *evaluating* the effectiveness of recruitment, admissions, and other educational policies...." *Id.* Evaluating effectiveness involves examining the program or process after the fact. Thus, a charter school can ask students who have already been admitted to and enrolled in the school for this information if it will be used to evaluate effectiveness of recruitment, admissions or other educational policies. For example, after being admitted, a charter school may ask a student about disability status or ethnicity, and use this information to better place the student in an appropriate program or class and identify resources or supports the student will need to succeed.

Furthermore, Minn. Stat. §363A.13, subd. 4 provides an additional condition to the collection of information, including race, color, and national origin. This statute requires that any request for such information used to evaluate effectiveness be "maintained separately from the [student's] application." *Id.* In order for charter schools to keep such information separate from a student's application for admission, this information would need to be gathered after the student has completed the admission application and been admitted to the school.

III. What Happens When Charter Schools Have Legitimate Enrollment Limits?

Under Minn. Stat. § 124D.10, subd. 9, a charter school can limit admission in three situations.

> A charter school may limit admission to:
> (1) pupils within an age group or grade level;
> (2) people who are eligible to participate in the graduation incentives program under section 124D.68; or
> (3) residents of a specific geographic area where the percentage of the population of non-Caucasian people of that area is greater than the percentage of the non-Caucasian population in the congressional district in which the geographic area is located, and as long as the school reflects the racial and ethnic diversity of the specific area.

Furthermore, under the statute, all students who submit timely applications to a charter school must be enrolled unless the application number exceeds the school's program, class, grade level, or building capacity. Minn. Stat. § 124D. 10, subd, 9(3). Under the statute, if a charter school faces a situation in which the "number of applications exceeds the capacity of a program, class, grade level, or building," students must be accepted by lottery. *Id.* Certain preferential situations also exist in which specific students are given priority in admission over students in the lottery pool, such as siblings of an already enrolled student. *Id.* Additionally, pursuant to the Minn. Stat. 124D.10, subd. 9, "a charter school may not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability." *Id.*

If a charter school encounters a situation in which applications for enrollment surpass the capacity of the school, the school can decline a student's application for enrollment. When a charter school declines a student's application for enrollment, the school should notify the student and parent or guardian and inform them why.

See also Minn. R. 5000: 2250, subp. 4. This rule governs records at educational institutions and supports the Minnesota Human Rights Act, Minn. Stat. § 363A.13.

> "An educational institution shall not make inquiries; or create, maintain, or use records that are prohibited in Minnesota statutes, section 363A.13, subdivision 3, except for meeting the requirements of an affirmative action plan; or meeting the reporting requirements of federal or state agencies. When these exceptions do occur, all material or information that identifies the race, color, creed, religion, national origin, sex, age, marital status, or disability of a student or person seeking to be admitted as a student to the institution, when received, must be kept secure and private. The material or information must be available only to authorized personnel for meeting affirmative action requirements or reporting requirements of federal or state agencies."

CONCLUSION

It is a violation of state law for charter schools to ask students for information pertaining to race, ethnicity, national origin, age, sexual orientation, gender, disability status, marital status, public assistance status, creed, or religion on an application form. Charter schools throughout the state of Minnesota must modify their application forms and remove inappropriate questions posed to potential students asking for such information.

Charter schools may ask students for their name, address, phone number, and parent or guardian name and contact information on an application form. In addition, once a student is admitted and enrolled in a charter school, additional information can be requested if it is used to assess effectiveness and if the information is kept separate from the student's application.

Please contact Kerstin Forsythe Hann at 651-582-8583 if you have questions about application and enrollment policies and contact Stephanie Olsen at 651-582-8348 if you have questions about the 2006-07 Annual Report.