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August 30, 2011

Frederick J. Weintraub, Independent Monitor  
Office of the Independent Monitor  
333 South Beaudry Avenue, 18<sup>th</sup> Floor  
Los Angeles, California 90017

Re: Innovation and Charter Schools Division Letter Regarding Admissions Requirements  
and Materials

Dear Mr. Weintraub:

Attached please find José J. Cole-Gutiérrez's August 30, 2011 letter and attachment to charter schools providing guidance regarding pre and post lottery enrollment forms. The attached is being provided to you in response to your "Findings of the Review of LAUSD Charter Applications and Enrollment Forms" and as promised at the MCD Meeting of the Parties.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Deneen Evans Cox".

D. Deneen Evans Cox  
Assistant General Counsel

c: Robert M. Myers, Esq.  
Catherine Blakemore, Esq.  
Sharyn Howell  
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José J. Cole-Gutiérrez



# *Innovation and Charter Schools*

## **LOS ANGELES UNIFIED SCHOOL DISTRICT**

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*Superintendent*

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**JOSÉ COLE-GUTIÉRREZ**  
*Director, Charter Schools*

August 30, 2011

### **RE: ADMISSIONS REQUIREMENTS AND MATERIALS**

Dear Charter School Leaders:

Thank you for providing the Innovation and Charter Schools Division (ICSD) a copy of your enrollment forms for our review this past spring (e.g. pre-lottery form and post-lottery enrollment packet). This letter and the accompanying attachment serve to provide both specific and general guidance to all LAUSD-approved charter schools following our analysis of the forms.

We remain committed to working with you to ensure that every school provides a quality choice to families and is fully accessible to the community. To that end, we are providing this guidance and direction regarding charter schools' pre- and post-lottery enrollment forms to address issues that may directly or indirectly discourage some parents from enrolling their children at the charter school. The attached does not contain an exhaustive list of all potential issues that may relate to requested information in pre-and post-lottery enrollment forms.

We appreciate your immediate cooperation in this matter. Please know your assigned ICSD staff member will follow up with your school/organization if there are any changes needed to your enrollment forms based on this analysis for response by October 30, 2011 and in advance of your next enrollment/lottery cycle for the 2012-13 school year. Thank you.

Best wishes this academic year.

Sincerely,

José J. Cole-Gutiérrez  
Director, Charter Schools

**CHARTER SCHOOLS'  
PRE- AND POST-LOTTERY  
ENROLLMENT FORMS  
ADMISSIONS  
REQUIREMENTS  
AND  
MATERIALS**

**August 30, 2011**

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## **STUDENT INFORMATION**

### **1. Student's Special Education Status/Background/Needs/504 Plan**

While charter schools may include questions about a student's special education status on admission forms, it is not recommended nor advised. If special education related questions are asked on charter school admission forms (especially on pre-admission forms), the District strongly recommends that charter schools include "disclaimer" language that assures parents that the charter school is requesting the information for evaluation and planning of services for the student only and not as an admission criteria.

The California Education Code requires charter schools to admit all pupils who wish to attend the school and prevents charter schools from discriminating against any student on the basis of identified characteristics, which include disability. A student's special education status should have no bearing on whether a student is admitted to the charter school, although it will be relevant to the school's evaluation of the educational needs and placement of the student; but only once he/she is admitted.

Additionally, Federal law prohibits any charter schools from denying admission to any student on the basis of a disability or the nature of, or extent of, a disability. A student with disabilities must be afforded the opportunity to participate in a charter school.

It is important that charter schools limit the scope of all questions on their pre-admission forms to help avoid inferences that the charter school may be using the information about a student's special education or 504 status (that should not be considered during the application process) to screen out students with disabilities in violation of federal and state special education laws/regulations.

### **2. Submission of Student's Individualized Education Program(s) ("IEP")**

As with special education related questions, a charter school may not require submission of a student's IEP document, or other special education related documentary records (e.g. a student's 504 plan) as a condition of admission without violating Education Code § 47605. Education Code § 47605(d)(2)(A) requires charter schools to admit all pupils who wish to attend the school. Therefore, the information contained in a student's IEP should have no bearing on whether or not a student is admitted.

Furthermore, charter school staff may not advise parents against enrolling their child with a disability in the school or otherwise inform parents that their child's educational needs cannot be met within the charter school's program. Requesting a copy of a student's IEP or information contained in a student's IEP during the pre-admission stage creates an inference (and may potentially result in a parents' submission of discrimination claims to OCR) that the charter school may be using this information to "counsel out" or otherwise discourage students with disabilities from seeking admission to the school in violation of federal and state special education laws/regulations.

However, requesting a copy of a student's IEP once he/she is admitted is necessary since it will be used in the school's evaluation of the educational needs and placement of the student. In fact, it is common practice for schools to request a copy of a student's IEP upon admission because the 30-day interim administrative placement required by Education Code § 56325 is based upon services comparable to those described in the student's previously approved IEP.

### **3. Student's Race and/or Ethnicity**

While charter schools may include this question on pre- and post-admission forms, they cannot require students to submit this information as a condition for admission without violating Education Code § 47505(d). Education Code § 47605(d) requires charter schools to admit all pupils who wish to attend the school and prevents charter schools from discriminating against any student on the basis of the identified characteristics, which include race or ethnicity. A student's racial or ethnic status cannot have any bearing on whether or not a student is admitted, although there may be legitimate grounds for seeking this information once he/she is admitted.

Requesting this information prior to admission raises a concern that the practice may have a discriminatory impact on certain groups of students by discouraging them from submitting an application for enrollment in the charter school. Therefore, the District will require charter schools to explain why this information is requested on pre-admission forms, so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information at that time.

### **4. Home Language Survey**

This information can only be requested after a student is admitted to assist in the charter school's obligation to identify English Learner students.

Education Code § 52164.1(a) provides:

“ . . . The primary language of new pupils shall be determined as they enroll. Once determined, the primary language need not be redetermined unless the parent or guardian claims there is an error. Home language determinations are required only once, unless the results are disputed by a parent or guardian.”

### **5. Student's English Learner Status**

While charter schools may include this question on pre- and post-enrollment forms, they cannot require students to submit this information as a condition for admission without violating Education Code § 47605. A student's EL status cannot have any bearing on whether or not a student is admitted, although it will be relevant and necessary to the school's evaluation of the educational needs and placement of the student once he/she is admitted.

Requesting this information prior to admission raises a concern that the practice could have a discriminatory impact on certain groups of students (EL students and their parents) by

discouraging them from enrolling. Therefore, the District will require charter schools to explain why this information is requested on pre-admission forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information at that time.

## **6. Student's Migrant Status**

While charter schools may include this question on pre- and post-enrollment forms, they cannot require students to submit this information as a condition for admission without violating Education Code § 47605. Education Code § 47605(d) requires charter schools to admit all pupils who wish to attend the school and prevents charter schools from discriminating against any student on the basis of the identified characteristics which includes nationality. A student's migrant status should have no bearing on whether or not a student is admitted. It will also be relevant to the NCLB Migrant Education Program. (Education Code §§ 54440 *et seq.*)

Requesting this information prior to admission raises a concern that the practice may have a discriminatory impact on certain groups of students (Migrant students and their parents) by discouraging them from enrolling. Therefore, the District will require charter schools to explain why this information is requested on pre-admission forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information at that time.

## **7. Student's Birthplace**

While charter schools may include this question on pre- and post-enrollment forms, they cannot require students to submit this information as a condition for admission without violating Education Code § 47605. Education Code § 47605(d) requires charter schools to admit all pupils who wish to attend the school and prevents charter schools from discriminating against any student on the basis of those characteristics identified, including nationality.

As with other categories, requesting this information prior to admission raises concern that the practice may have a discriminatory impact on certain groups of students (those born outside of the U.S.) by discouraging them from enrolling. Also, undocumented students who reside in California may not be denied a free public education based on their status.

Since charter schools shall comply with all laws establishing minimum age of public school attendance (Education Code §§ 47610(c), 47612(b), 48000 *et seq.*, 48210), after a student is admitted, the charter school should obtain a copy of the student's birth certificate or other valid proof of age. (See, e.g., Education Code § 48002.) Such document should include information regarding the student's birthplace.

Therefore, the District will require charter schools to explain why this information is requested in pre-admission forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information at that time.

## **8. Date of Student's Enrollment in U.S. School**

While charter schools may include this question on pre- and post-enrollment forms, they cannot require students to submit this information as a condition for admission without violating Education Code § 47605. Education Code § 47605(d)(2)(A) requires charter schools to admit all pupils who wish to attend the school and prevents charter schools from discriminating against any student on the basis of those characteristics identified, including nationality.

Therefore, the District will require charter schools to explain why this information is requested on pre-admission forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information at that time.

## **9. Free/Reduced Price Meal Qualification**

Education Code § 49558 provides that applications and records concerning any student made by any public officer or agency in connection with the administration of the free or reduced price meal program shall be confidential. Notice of the availability of the free or reduced price meal program should be distributed to all students annually and to every new student who enrolls in a school.

California law provides that preference in a charter school's lottery may be given to children who qualify for free or reduced-price meals if approved by the chartering authority. As a result, if a charter school's charter indicates that the school will give preference in the lottery to students who qualify for free or reduced-price meals, it is permissible to ask this question on a pre-admission application form so that the charter school can implement this preference in its lottery.

However, while charter schools may include this question on pre- and post-enrollment forms, they cannot require students to answer this question as a condition for admission without violating Education Code § 47605 or as a condition of continued enrollment since participation in the Meal Program is voluntary.

## **10. Student's Criminal Juvenile Record Information**

Charter schools cannot ask any questions related to a student's criminal juvenile record information on pre- or post-admission forms. Generally, a court order is required to compel disclosure of a minor's juvenile records. (Welfare & Institutions Code § 827.)

## **11. Student's History of Drug or Alcohol Abuse**

The District recommends that charter schools not ask this question as it may conflict with one or more student privacy interests (e.g., it may be part of a student's juvenile court record). The information may be available as part of the student's discipline record that the charter school can obtain from the student's prior school upon admission. Also, the question may violate the student's constitutional right to privacy, which minors, as well as adults possess, exposing the charter school and the District to potential liability.

## **12. Student's Suspension/Expulsion History**

Obtaining this information is necessary for the charter school to determine whether a student can be admitted. The nature of the offense for which a student was expelled and whether the student's expulsion period has expired will affect whether the student may be admitted. Parents are required to give notice to charter school if their son/daughter student was expelled from his/her previous school for an act other than those listed in Education Code § 48915 (a) or (c).

## **13. Request for Student's CST Scores**

While charter schools may include this question on pre- and post-enrollment forms, they cannot require students to submit this information as a condition for admission without violating Education Code § 47605. Since Education Code § 47605(d)(2)(A) requires charter schools to admit all pupils who wish to attend the school, a student's CST score should have no bearing on whether or not a student is admitted, although it will be relevant to the school's evaluation of the educational needs and placement of the student once he/she is admitted.

Requesting this information prior to admission raises a concern that the practice may have a discriminatory impact on certain groups of students (e.g., lower achieving students) by discouraging them from submitting an application to enroll at the school. It also creates an inference that the charter school may be improperly basing admission on student CST scores.

## **14. Whether student is identified as GATE**

While charter schools may include this question on pre- and post-enrollment forms, they cannot require students to submit this information as a condition of enrollment without violating Education Code § 47605. Since Education Code § 47605(d)(2)(A) requires charter schools to admit all pupils who wish to attend the school, a student's GATE status cannot have any bearing on whether or not a student is admitted, although it may be relevant to the school's evaluation of the educational needs and placement of the student once he/she is admitted.

Requesting this information prior to admission raises a concern that the practice may have an impact on certain groups of students (e.g., lower achieving students) by discouraging them from submitting an application to enroll at the school. It also creates an inference that the charter school may be improperly screening out lower achieving students to increase student performance statistics.

## **15. Request for Student's Report Card/Transcripts**

While charter schools may include a request for a student's information on pre- and post-enrollment forms, they cannot require students to submit this information as a condition for admission without violating Education Code § 47605. Since Education Code § 47605(d)(2)(A) requires charter schools to admit all pupils who wish to attend the school, a student's grades should have no bearing on whether or not a student is admitted, although it will be relevant to the school's evaluation of the educational needs and placement of the student once he/she is admitted. Requesting this information prior to admission raises a concern that the practice may

have an impact on certain groups of students (e.g., lower achieving students) by discouraging them from enrolling. It also creates an inference that the charter school may be improperly screening out lower achieving students to increase student performance statistics.

#### **16. Student's Residency Information**

Education Code § 47605 requires charter schools to admit students who are California residents and wish to attend subject to capacity. Charter schools need to be able to verify whether a student is a resident of California.

Education Code § 47605(d)(2), provides that when the number of students who wish to attend the charter school exceeds the school's capacity, attendance shall be determined by a random drawing, and "preference shall be extended to pupils currently attending the charter school and pupils who reside in the district . . . ." In order to give preference to in-district students in the lottery, the charter school needs to be able to verify which applicant students are in-district residents. Post-admission residency inquiries are permitted for other legitimate purposes, for instance, confirming a parent's mailing address for school-related correspondence.

#### **17. Student's Type of Residence (shelter, hotel, etc.) for McKinney-Vento Act**

Charter schools are required to adhere to the provisions of the McKinney-Vento Homeless Assistance Act and ensure that each child of a homeless individual and each homeless youth have equal access to the same free, appropriate public education as provided to other children and youths.

If the purpose for requesting this residence information is to determine whether a child qualifies for services under the McKinney-Vento Act, it may be asked only after admission. Requesting this information in the pre-admission stage creates an inference that the charter school may be using this information to deter homeless students from seeking admission to the school in violation of Education Code § 47605. Also, requesting this information prior to admission raises a concern that the practice may have an impact on certain groups of students (e.g., homeless) by discouraging them from applying.

Therefore, the District will require charter schools to explain why this information is requested in pre-admission forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information at that time.

#### **18. Student's Residence (Licensed clinical institution or foster home)**

Since Education Code § 47605(d)(2)(A) requires charter schools to admit all pupils who wish to attend the school, a student's residence status at school should have no bearing on whether or not a student is admitted, although it may be relevant to the school's evaluation of the educational needs and placement of the student once he/she is admitted.

Requesting this information in the pre-admission stage creates an inference that the charter school may be using this information to deter these students from seeking admission to the school in violation of Education Code § 47605.

Therefore, the District will require charter schools to explain why this information is requested on pre-admission forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information at that time.

#### **19. Social Security Number of Student**

Charter schools that have included this question in its forms will be required to explain why this question is included on pre-admission/lottery application forms. A person has a recognized constitutionally protected privacy right in his/her own social security number and cannot be compelled to disclose it. However, there may be legitimate administrative reasons for obtaining a student's social security number only after admission (e.g. for internal verification or other administrative purposes).

#### **20. Request for Student Essays**

A charter school may impose admission requirements. Reasonably comprehensive descriptions of admission requirements must be included in a charter petition. However, a charter school cannot require students parents to submit essays as a condition of admission without violating Education Code § 47605.

Requiring essays prior to admission may raise a concern that the practice may have an impact on certain groups of students (e.g., lower achieving students or ELL students) by discouraging them from submitting an application to enroll at the school because of the essay requirement. However, there may be legitimate education purposes for requesting student essays once a student is admitted.

#### **21. Mandatory Summer School Attendance (student automatically withdrawn if violates)**

The District will ascertain from individual charter schools that include this requirement the reasons why and under what circumstances mandatory summer school attendance is required. This practice may run afoul of student due process rights.

#### **22. Attendance/tardy policy contract (student may be automatically withdrawn if violates)**

While charter schools are not obligated to follow the procedures in Education Code §§ 48260 *et seq.*, related to truant students, a charter school's process of disenrolling a student from the charter school for violating the school's attendance/tardy policy, may run afoul of student due process rights.

## **PARENT INFORMATION**

### **23. Parents' Employment Status**

A charter school will be required to explain why this question is included on its forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information.

There is a recognized privacy interest in a person's work history (e.g., names of employers, dates of employment, etc.). Therefore, a parent may choose not to disclose this information asserting privacy right protection.

### **24. Parents' Marital Status**

A charter school will be required to explain why this question is included on its forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information.

There is a recognized privacy right in marriage. Therefore, a parent may choose not to disclose this information asserting privacy right protection.

### **25. Parents' Custody Status**

While a charter school may request this information on a pre- or post-admission form, there is no foreseeable legitimate need for this information prior to admission. A charter school cannot deny admission if this information is not provided.

Once a student is admitted, a charter school has a legitimate education-related purpose for requesting this information. For example, a parent's custody status (e.g. legal or physical custody) will impact the rights a parent has regarding his/her child's student records (see, e.g., Education Code § 49061) or access to the student.

### **26. Parents' Level of Education**

A charter school will be required to explain why this question is included in its forms so that LAUSD can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information.

While there is no clear legal basis that prevents a charter school from requesting this information on a pre- or post-admission form, there is no foreseeable legitimate need for this information prior to admission, and a charter school cannot deny admission to a student if this information is not provided by a parent.

Furthermore, requesting this information prior to admission raises a concern that the practice may have an impact on certain groups of parents/students (e.g. parents with a lower level of education) by discouraging them from enrolling.

Once a student is admitted, a charter school may have a legitimate education-related purpose for requesting this information, for instance, this information may help the charter school determine whether a student will need more assistance, or a charter school may have an online independent study based education program which requires extensive parent involvement. However, the charter school cannot use this information to discriminate against any student.

### **27. Family Income**

A charter school will be required to explain why this question is included in its forms so that the District can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information.

A charter school cannot deny admission if this information is not provided. A right of privacy exists as to a party's confidential financial affairs.

### **28. Government Assistance status (Cal-Works, Healthy Families)**

Generally, social service agency records relating to individuals in connection with programs funded by federal grants-in-aid are, by statute, not “open to examination for any purpose not directly connected with the administration of the program ...” (Welfare & Institutions Code § 10850).

### **29. Health Insurance status**

A charter school will be required to explain why this question is included in its forms so that LAUSD can determine whether the charter school has a legitimate non-discriminatory purpose for requesting this information.

A person does have a constitutional privacy right in his/her medical records. A person may assert that this privacy right encompasses information regarding his/her health insurance status.

### **30. Social Security Number of Parent**

A person has a recognized constitutionally protected privacy right in his/her own social security number and cannot be compelled to disclose it. Parents and students have the same privacy rights as to their social security numbers, but there is an even stronger reason for parents not to comply with this request since charter school should have no legitimate administrative need for this information.

### **31. Whether Parent or Close Relative Incarcerated**

Release of arrest records or information about arrests implicates the arrestee's right of privacy.

### **32. Miscellaneous: Does family have Internet? Does family have computer? How many books in home?**

Charter schools will be required to explain why these questions are asked. While a charter school may request this information on a pre-or post-admission form, there is no foreseeable legitimate need for this information prior to admission, and the charter school cannot deny admission if this information is not provided.

Furthermore, requesting this information prior to admission raises a concern that the practice may have an impact on certain groups of parents/students (e.g. lower-income families) by discouraging them from applying if they are unable to answer these questions affirmatively.

After a student is admitted there could be potentially legitimate reasons for requesting this information (e.g. related to the charter school's education program).

### **33. Parent Volunteering Commitment**

Education Code § 47605 requires a charter school to describe in its petition, the governance structure of the school, including the process to be followed by the school to ensure parental involvement.

A charter school may require parent volunteering commitments as part of its admission criteria. However, depending on the specific circumstances of what a charter school requires (e.g., large time commitment and larger requirement if parent has multiple children attending), a concern may arise that the time commitment could prove to be an undue burden for some parents, and, as a result, may have an effect/impact on those parents and their children.

When a charter school requires parent volunteering as a condition for admission, it should make alternative means available for parents to meet their volunteer time commitment and/or provide a means for parents to be able to opt out of or reduce the commitment because of hardship.

### **34. Weekly Parent Meeting requirement**

Education Code § 47605 requires a charter school to describe in its petition, the governance structure of the school, including the process to be followed by the school to ensure parental involvement.

A charter school may require weekly parent meetings as part of its admission criteria. However, depending on the specific circumstances of what a charter school requires (e.g., large time commitment and larger requirement if parent has multiple children attending), a concern may arise that the time commitment could prove to be an undue burden for some parents, and, as a result, may have an effect/impact on those parents and their children.

When a charter school requires weekly parent meetings as a condition for admission, it should make alternative means available for parents to meet their weekly meeting commitment and/or

provide a means for parents to be able to opt out of or reduce the time commitment because of hardship.

### **35. Parent Workshop/Training Participation**

Education Code § 47605 requires a charter school to describe in its petition, the governance structure of the school, including the process to be followed by the school to ensure parental involvement.

A charter school may require parents to participate in a workshop/training as part of its admission criteria. However, depending on the specific circumstances of what a charter school requires (e.g., large time commitment and larger requirement if parent has multiple children attending), a concern may arise that the time commitment could prove to be an undue burden for some parents, and, as a result, may have an effect/impact on those parents and their children.

When a charter school requires parents to participate in a workshop/training as a condition for admission, it should make alternative means available for parents to meet their workshop/training participation commitment and/or provide a means for parents to be able to opt out of or reduce the participation commitment because of hardship.

### **36. Parent Contract (with some schools, it may lead to student disenrollment if violated)**

Parent “contracts” may include a parent volunteering commitment as a condition/requirement of the contract. If it does, see “Parent Volunteering Commitment” above. If it does not, then generally parent contracts are okay, but the District will require the charter school to submit the contract for review of all conditions imposed.

Also, the District has concerns, and will request supportive documentation of the prior due process afforded the student if it appears that a charter school disenrolls a student without providing some minimal level of due process to the student.

### **37. In-Person Interviews**

Although not legally prohibited, requiring in-person interview prior to admission raises a concern that the practice may have a discriminatory impact on certain groups of students by discouraging them from submitting an application to enroll at the school.

### **38. Submission of Application – hand delivery required**

Although not legally prohibited, requiring hand delivery submission of an application raises a concern that the practice may have a discriminatory impact on certain groups of students by discouraging (or preventing) them from submitting an application to enroll at the school.

The District will be contacting individual charter schools that have this requirement to ascertain whether the charter school has any type of alternative exception in place for those individuals who are unable to hand deliver and would in effect be denied the ability to apply because of the requirement and will require the discontinued use of this practice.

### **39. Mandatory Fees/Contributions**

Education Code § 47605(d)(1) specifically prohibits charter schools from charging tuition. Additionally, the California Constitution provides for a free public school system of which charter schools are a part.

California public school students are entitled to a “free schools guarantee” and cannot be charged fees for any materials or activity that constitutes an integral component of public education. The California Supreme Court has further clarified that extracurricular activities are an integral, fundamental part of education and a necessary element of a school’s activity.

Even if a fee waiver is available, requiring a low income student to apply for the waiver is discriminatory and violates the Free Schools Guarantee. Similarly, allowing a low income student who cannot raise funds to “opt out” of an activity could still be discriminatory if the student is “opting out” due to his/her inability to raise funds. Therefore, students who do not raise funds cannot be barred from activities, even if the student has the option to “opt out” of the activity. Your assigned ICSD staff will be in touch with each charter school to discuss and determine what constitutes permissible and non-permissible fees.

### **40. Donations**

Educational opportunities must be provided to all students without regard for their families’ ability or willingness to pay fees or request special waivers. Schools may solicit donations from students and parents, but the process must be:

- (1) Voluntary; and
- (2) In no way a prerequisite to participation in program or activity.

Any statement or explanation related to a donation that could lead a reasonable person to believe the donation is not truly voluntary should be avoided. Examples:

- a. Specified minimum amount of donation;
- b. Date by which donation is due; and
- c. Lesser donation amount if funds are received early.

Any statement or action that exerts explicit or implicit pressure on students or parents to make a donation should be avoided .

The District will be monitoring individual charter school donation solicitation practices to ensure that the above-stated guidelines are implemented.