



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

NOV - 4 1998

Mr. B. J. Stockton
Supervisor, Vocational Education Programs
Missouri Department of Elementary and Secondary Education

Dear Mr. Stockton:

This is in response to your letter dated July 30, 1998, sent via electronic mail to the U.S. Department of Education's Office for Civil Rights (OCR), Kansas City Office. Your letter requests OCR's assistance in addressing two questions regarding the applicability of Federal civil rights laws to charter schools created pursuant to a recently enacted Missouri State statute.

Specifically, you raised the following questions:

1. Will the schools designated as charter schools be required to comply with the Americans with Disabilities Act and Section 504, as required for all public schools in the state?
2. Secondly, must the public school [district] enter into a written agreement (contract) with the charter school to assure that buildings, services and programs are accessible?

On October 7, 1998, you spoke with a member of my staff and someone from the Department's Office of the General Counsel. At that time, you clarified that with respect to question number one, you were seeking the Department's opinion as to whether Missouri charter schools would be regarded as public or private schools for purposes of compliance with these statutes. You also stated your interest in obtaining information about the applicability of the Individuals with Disabilities Education Act (IDEA) to schools designated as charter schools. Finally, you asked for information about whether the Department would require that Missouri's charter schools be public in order to qualify for Federal charter school funding.

I am enclosing a letter dated October 8, 1998, from the Department's Acting Deputy Secretary, Marshall S. Smith, to Superintendent John T. Benson of the State of Wisconsin Department of Public Instruction and a letter dated October 13, 1998 from our Office of the General Counsel to John H. Sauerberg, also of the Wisconsin Department of Public Instruction. These letters address issues similar to those you have raised and set out the Department's analyses. As you will note, the issue of whether a class of schools is "public" or "private," is primarily a matter of State law. Generally, the Department does not interpret State law issues, but would rely upon a reasonable interpretation by the State. However, for the reasons articulated in the Benson letter, we believe that charter schools generally should be presumed to be public schools and, therefore, subject to requirements regarding a free appropriate public education in the Individuals with Disabilities Education Act (IDEA).


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The letters also include a discussion of Section 504 of the Rehabilitation Act of 1973 (Section 504) to charter schools. An analysis under Title II of the Americans with Disabilities Act (ADA) would be similar in substance to Section 504. Please note that in order to be eligible for funds under the Federal charter schools grant program, the participating charter schools must be public schools that comply with the IDEA and Section 504. 20 U.S.C. §8066.

Finally, whether public schools must enter into written agreements with charter schools to ensure that buildings, services and programs are accessible, is also left to States and chartering entities. There is no prescribed method in the above-referenced Federal statutes, or their regulations, for meeting the accessibility requirements that apply to charter schools. One common practice for addressing accessibility is to include provisions within the charter agreement between the charter school and the chartering entity that address the responsibilities for carrying out compliance with Section 504, the ADA, and the IDEA. However, a State may achieve compliance through other means as well.

I hope this is helpful in addressing your questions. Please do not hesitate to contact me if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy H. Lewis".

Cathy H. Lewis
Enforcement Director
Midwestern and Western Divisions

Enclosures
As stated