

DATE: February 19, 2014
TO: Members, Oregon House Committee on Education
FROM: Kaaren Heikes, on behalf of charter schools
RE: SB 1538A

We have done our best to stay neutral on this bill this session—even though our charter schools do not love it—in the spirit of collaboration with other stakeholders and because of the policy piece we were able to add on the Senate side, a piece that is important to students and to charter schools.

I would like to talk with you about this element of the bill, Section 4, which Senator Roblan sponsored and Senators Hass and Kruse also worked with me to create – allowing charter schools to give admission priority to students with ethnic and racial minority status, students in low-income households, and English language learner students – this is something that many charter schools have wanted for a long time.

It will ALLOW (not require) charter schools to give priority in admission, in the lottery, to students who have been historically underserved and marginalized in our society, namely children in communities of color, in lower-income households and English language learners. Several other states already allow charter schools to “set aside” spots for specific student groups and many school districts give admission priority to students with specific characteristics (e.g., native language for dual immersion programs, as well as gender, SES and race to achieve “balance” in those areas)

Full-disclosure, please know that I am a co-founder of a new nonprofit in Portland, KairosPDX (www.kairospdx.org), designed specifically to eliminate the racial achievement gap. We operate an Early Learning Network and will open a public K-5 charter school this fall and a preschool in the future. At any rate, Kairos is the impetus for me to pursue this policy change NOW, so that Kairos can use this during our first admission cycle, this spring, to ensure a diverse student population (students that start in a school’s 1st year tend to influence demographics for many years given the admission priority for siblings).

That said, many other charter school leaders are VERY enthusiastic about this. For example, Four Rivers CS in Ontario...the principal has submitted written testimony for you to consider today. District-operated language immersion programs regularly reserve, or set-aside, student slots for “native language speakers” (i.e., Spanish speakers if the program is Spanish/English immersion). It is common practice. However, since Four Rivers is a charter school, and given the strict, non-weighted lottery requirements we currently have on the books for charter schools, this school is unable to do what other public language immersion schools do.

Most charters want to serve diverse student demographics. Many charter leaders have expressed this to me, and not one has ever said or implied they are not interested in serving more diverse student demographics. However, the funding realities – i.e., they receive NO transportation fund and HALF the operational funding make this challenging – and other systemic barriers make it challenging to do so.

This policy (Section 4 of 1538A) doesn't address those larger barriers – that's for another session – but it DOES address the fact that parents in the dominant culture “know how to navigate the system” and get their kids into the lottery pool. Allowing charters to give admission priority to kids of color, kids from low-income families, and English Language Learners will actually provide more equitable access for those historically underserved students.

In terms of the recently raised legal question, we all know very well that attorneys disagree on interpretation of law. We also know this is a highly complex area of law. I am not an attorney, however, I would like to present a few things for your consideration:

- The US Department of Education's Civil Rights office and US Department of Justice's Civil Rights Division have jointly issued a legal opinion that states that school districts CAN voluntarily use specific strategies and approaches “to further their compelling interests in achieving diversity and avoiding racial isolation, consistent with case law under Title IV, Title VI, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution; this 14-page document makes specific suggestions for public schools in how to do so. <https://www2.ed.gov/programs/charter/diversityguidance.pdf>
- Some school districts in Oregon and elsewhere DO have policies and practices that give admission priority to students based on gender, native language, and SES. Since we are focused on Portland today, and that's my personal district, let's look at their policies and practices in this matter. Please refer to a number of PPS documents that specify all the ways the district gives “weight” or “admission priority” to students based on gender, language, and SES (e.g., http://www.pps.k12.or.us/files/enrollment-transfer/Lottery_Logic_14-15_Final.pdf). I doubt PPS is the only district in Oregon that utilizes these strategies. I find it hard to believe these practices are illegal.
- Our provision is NOT purely racial...race/ethnicity is one of three pieces, the other two are income and ELL...while this is not an “affirmative action” or “quota” type situation, we can look to case law in these areas for insight...my understanding is that no affirmative action lawsuits that have included characteristics other than race have been won...the entire premise of AA is that you can't have preferential treatment based on race, but when you add other sub-groups, it's NOT a racial issue.

This is about equality. As we have said repeatedly, we are absolutely willing to work on language...we want to make sure whatever language we use does not leave room for abuse (i.e., “home-schoolers or TAG kids are “underserved...” that's why we specify ELL, low-income, and racial/ethnic minority)...of course, everyone wants it to be legal...we beseech you to not dismiss it completely without further exploring and agreeing to language that will enable us to accomplish the goal of TRUE EQUAL ACCESS.

Thank you for your consideration.