



Unequal Access

How Some California Charter Schools Illegally Restrict Enrollment

Charter schools are changing the landscape of public education in California.

The original vision of charter schools in the 1990s was to provide new opportunities to improve the quality of education for thousands of students living in under-resourced communities. However, charter schools can also heighten existing inequities. Through admissions policies that exclude vulnerable students by erecting various barriers to entry, charter schools have the potential to create a two-tiered system of public education. We believe charter schools are viable only if they are open to all students.

Although charter schools may be privately controlled and receive non-government funding, they are part of California's public education system. The California Constitution requires that all students, whether they choose to attend traditional public schools or charter schools, have equal access to educational opportunity. Like other public schools, it is illegal for charter schools to select which students to

enroll. The state legislature made this principle clear in the California Charter Schools Act, which plainly requires charter schools to **"admit all pupils who wish to attend."**¹ In other words, except for limitations due to space, **charter schools may not enact admissions requirements or other barriers to enrollment and must admit all students who apply, just as traditional public schools cannot turn away students.**

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Although the law is clear, our review of California charter schools' public, written policies reveals that many charters illegally prevent students from enrolling or remaining at their schools. **Specifically, out of the roughly 1,200 charter schools in California, at least 253, representing over 20% of all of California's charter schools, have policies that are plainly exclusionary because they:**

- **Deny enrollment to students who do not have strong grades or test scores.**

Example: Western Center Academy, Riverside County: "In order to apply as a sophomore: . . . Students must be earning an 'A' or 'B' in both Geometry and Biology; Students must have an overall 3.0 or higher GPA with no failing grades."

- **Expel students who do not maintain strong grades or test scores.**

Example: The Grove School, San Bernardino County: "Only students who show steady academic progress and remain independent and self-motivated (as evidenced by participation, attendance and effort) will be eligible for enrollment."

- **Deny enrollment to students who do not meet a minimum level of English proficiency.**

Example: Forest Charter School, Nevada County: "Each Student must demonstrate a language arts ability that is equivalent to scoring 80% or higher on a basic language arts assessment that is no lower than one grade level below his or her enrolled grade level." In addition to taking an exam, students may demonstrate English proficiency by "Independently writing a letter/paragraph to the teacher (and in front of the teacher) that demonstrates the required language arts ability."

- **Select students based on onerous pre-enrollment requirements such as student or parent/guardian essays or interviews.**

Example: University Preparatory High School, Tulare County: "Prior to admission, both students and parents will be required to complete The Student Application for Admission and participate in an interview."

- **Discourage or preclude immigrant students from attending by requiring parents/guardians or students to provide Social Security numbers or other citizenship information before enrollment.**

Example: Juan Bautista de Anza Charter Academy, San Diego County: "Check here if student was born outside the U.S. but granted U.S. citizenship at time of birth; Check here if foreign student temporarily schooling in the U.S.; Check here if student is foreign born and has been enrolled less than 3 cumulative years in the U.S."

- **Refuse to enroll students unless their parents/guardians volunteer or donate money to the school.**

Example: Paragon Collegiate Academy, Yuba County: "I support the parent partnership expectations and will fulfill 20 or more hours of annual volunteer service with Paragon Collegiate Academy. PCA recognizes that not all parents can be in the classroom for these hours, therefore, other specific service opportunities can and will be arranged on a one-to-one basis. A buy-out option is also available (only as a last option). PCA believes that showing your child that you are invested in their education is vital to their success. The fee is \$15.00 per hour for each hour that parents are unable to volunteer."

The policies identified in this report are likely only the tip of the iceberg.

Many charter schools do not post their admissions procedures, student handbooks, or enrollment materials online, and we have received reports from students and parents/guardians across the state that charter schools are engaging in exclusionary practices that are not apparent in the public materials.

These practices disadvantage certain groups of students, including legally protected classes such as English-language learners, students with disabilities, and immigrants, among others, by deterring or outright precluding enrollment. These exclusionary policies violate the California Education Code, the California and U.S. Constitutions, and state and federal civil rights laws.²

The fact that the websites, handbooks, and other public materials of so many schools contain plain violations demonstrates a clear failure of accountability. The entities that authorize charter schools, which include the California State Board of Education, county offices of education, and local public school districts, are responsible for ensuring that charter schools follow all laws and abide by the terms of their charters.³ Regardless of whether this failure is caused by a lack of resources, a misunderstanding of the law, or inadequate procedures for reviewing charter policies, it is troubling that so many authorizing entities have missed these clear violations of the law, all of which are publicly posted on the schools' websites.

What can you do?

According to the California Department of Education: "What is the protocol for filing a complaint about a charter school?"

Complaints should first be addressed at the school site by talking with the teacher and, if necessary, the school principal. If the problem is not resolved, the school's governing board should be contacted, followed by the school's charter-authorizing entity. Charter schools receiving federal funds are subject to provisions of the Uniform Complaint Procedure."⁴

Complaints can also be filed directly with the county office of education for the county where the charter school is located.⁵ Upon receiving a complaint, the county superintendent may monitor or conduct an investigation into the operations of the charter school.⁶

We are calling on the California Department of Education to issue guidance making clear that the practices highlighted in this report are illegal and ordering any offending charter schools to change their policies and immediately and publicly notify parents/guardians and students.

We ask charter school operators and charter-authorizing entities to check charter policies and public materials for legal compliance and to ensure that schools maintain simple and straightforward admissions procedures.

We urge students and their families to check their local charter schools' policies and advocate for changes when these policies are confusing, discouraging, or illegal. If the school refuses to remedy the problems, families, students and others should file complaints with the schools' authorizers or the county office of education where the school is located. Because charter schools lack a centralized authority, we must all be vigilant in ensuring that they meet their obligations.

Other exclusionary programs:

We are also concerned by the proliferation of magnet schools in California, many of which enact admissions barriers and exclude students for a variety of reasons, including based on academic performance. Such schools may amplify existing inequities by creating a system in which students who are already performing well receive more services at the expense of the students who need the most help.

In this report, we provide (1) an analysis of illegal charter school policies; (2) a description of the framework of laws that prohibit exclusionary policies; and (3) recommendations to ensure equal admission.

These policies are part of a larger trend.

In California and across the nation, certain charter schools have adopted other requirements and entrance barriers, some of which are beyond the scope of this report, including: applications made available just a few hours each year; lengthy application forms, often printed only in English; barriers based on disciplinary records; requiring teacher or other recommendations; medical records requirements; assessment exams; requiring documentation of a disability; and requirements about students' behavior at home.⁷

Examples:

- Willow Creek Academy, Marin County: "Willow Creek Academy's program must be determined to be an appropriate setting in which to implement your child's current IEP [Individualized Education Program] before they can be enrolled."
- West Sac Prep Charter, Sacramento County: "West Sac Prep Charter follows a lottery policy that gives preference to students who meet the following criteria. Please complete all questions: Please indicate parent(s) education level."
- SunRidge Charter, Sonoma County: Parents must enter into a partnership with the school to ensure their children receive "[w]holesome, minimally processed family meals"; have "[p]rotective layers of natural fibers, including hats for warmth and protection from the sun"; and have a "media free experience . . . at home. Media refers to electronic and screen technology, including handheld devices."

ACADEMIC REQUIREMENTS

Charter schools are governed by fewer rules than traditional public schools; they have the flexibility to develop unique learning environments and pursue innovative pedagogical approaches. However, under California law (*described in more detail in the Legal Framework section, page 15*), charter schools still must accept all students who apply if space permits.⁸ If the school is at capacity, it must use a random lottery to select students.⁹ In California, charter schools may not deny admission to students who have struggled academically in their previous schools or push out students who do not meet certain performance standards.¹⁰ Indeed, charters should embrace those students because they may benefit most from the schools' innovative educational philosophies.

In California, charter schools may not deny admission to students who have struggled academically in their previous schools or push out students who do not meet certain performance standards.

The majority of charter schools in California that make their policies available online appear to accept all students. However, at least 22 schools in California have policies that expressly exclude low academic performers: (Visit aclusocal.org/unequal-access for a list of offending schools and the report's methodology)

- University High School, Fresno County: "Students entering UHS as **freshmen must have completed all of Algebra 1, Clovis USD Advanced Math 8 or Math 8, or other UHS approved math equivalent course with a grade of 'B' or better at each semester by the end of the 8th grade.** Include a copy of your final report card from Grade 7, and your first semester report card for Grade 8; applications will not be processed without this. Junior transfer applicants must submit a high school transcript."
- Visalia Technical Early College, Tulare County: "Requirements: 9-12 grade . . . **attendance record of 70% or higher.** No pattern of violence or discipline issues."
- Nuvieu Bridge Early College High School, Riverside County: "Students applying for Nuvieu Bridge Early College High School **must demonstrate a commitment to academics by having at least a 2.0 most recent term or cumulative G.P.A. of most recent four terms** (whichever is higher) from unweighted core classes of English Language Arts, Mathematics, Social Studies, and Science. Basic or above on state standardized tests are highly encouraged." "Eleventh and Twelfth grade applicants **must have passed both sections of the CAHSEE** prior to acceptance."
- Health Sciences High, San Diego County: "**HSHMC, Inc. will evaluate the performance of all enrollees annually and consider each for readmission.**" Criteria for evaluating students re-admission include:
 - Whether or not the student may have engaged in disruption of school activities or willful defiance of valid school authorities.¹¹
 - Whether or not the student and student's family reasonably continue to demonstrate a commitment to the instructional program.
 - Whether there is evidence of non-compliance with the provisions of the Student Handbook.
- Redding School of the Arts II, Shasta County: "Students entering Redding School of the Arts must be in **good standing academically and behaviorally at their current or previous school.** . . . Students will not be admitted to RSA with 10 or more absences, 5 unexcused absences, or excessive tardies."
- Elise P. Buckingham Charter Magnet High School, Solano County: "Buckingham Charter Magnet High School is a performance-based school. . . . [Students must]
 - **Complete 100% of all assigned work** (daily work, authentic assessments, and comprehensive tests) that is to be submitted within the deadlines established by each instructor.

- o **Maintain a minimum 70% competency level (equivalent to a C-), as established by each instructor's grading policy, in a minimum of four (4) academic classes** per semester.
- o **Failure to maintain these requirements will lead to dismissal from the school.** . . . To maintain compliance, students must [also] earn a minimum of 20 units per semester, maintain a 97% attendance rate, and maintain positive behavior."

- Western Center Academy, Riverside County: "Requires 3.0 minimum G.P.A. without failing grades for 9th grade applicants, and 'A' or 'B' grades in Geometry (along with the 3.0 G.P.A. without failing grades) for 10-12th grade applicants."

The legislature intended charters to provide low-performing students with greater opportunities to succeed, not fewer.

The California legislature created charter schools to "increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils

who are identified as academically low achieving."¹² So even if charter schools do not maintain policies that explicitly exclude low-performing students, they should not have any policies or practices that discourage academically struggling students from attending. The legislature intended charters to provide low-performing students with greater opportunities to succeed, not fewer. Still, many schools maintain policies that appear to be designed to discourage low-performing students from applying initially or push them out once enrolled.

- Mare Island Technology Academy, Solano County: "Students who do not turn in one or more assignments are subject to an escalating series of consequences, including calls home, Academic Recovery sessions scheduled after school and on Saturdays, and behavioral contracts. **Students who refuse to turn in assigned work, and/or refuse to comply with Academic Support assignments, will be designated as "Intentional non-Learners" and are subject to termination of enrollment (TOE)."***
- Mueller Charter, San Diego County: "Mueller Charter Leadership Academy (MCLA) is an academically rigorous, accelerated program that reflects the curriculum standards and expectation of a high achieving middle school 'honors' program. All eligible students are welcome to apply. However, it should be noted that **because this is a highly advanced, demanding program, it may not be appropriate for everyone.**"
- Accelerated Achievement Academy, Mendocino County: "Students in grades 9-12 who are on academic probation two consecutive semesters are considered to be in **a school that does not meet their needs.**"

RECOMMENDATION: Although charter schools may be privately controlled and receive private sources of funding, charter schools are still public schools, not private schools. To comply with the law, schools must accept all students and may not adopt any academic admissions requirements. To avoid all doubt, schools should ask for transcripts or test scores only after the school has enrolled the student and guaranteed him/her a place in the school. Schools may never disenroll, expel, or otherwise encourage a student to leave for struggling academically. Instead, the school must provide those students with extra attention and support.

* Emphasis added to policy examples.



My grandson Angelo attended Orange County School of the Arts (OCSA). He has suffered serious health issues throughout his childhood. School, in particular, has become a challenge as he struggles to keep up with homework while checking in and out of hospitals. When I heard he was attending OCSA, I was happy and proud. Every time I picked him up from school, he was surrounded by friends, and his teachers praised him for his hard work, resilience and talent. However, after three years of him going to OCSA, I received a call from the school counselor requesting that I come to school to discuss his poor performance. They explained that Angelo's G.P.A. had fallen to 2.0 and that he faced dismissal unless he could bring his G.P.A. up within 10 days. When I asked how this happened so suddenly, especially since my grandson had been doing

exceptionally well throughout the years, the school counselor merely replied, "it looks like this may not be the place for you. Maybe you should go back to your home school." Over the next two weeks, Angelo fought tirelessly to bring his grades up. Every day, he stayed up well into the night to complete assignments. He did bring his grades up, but despite his efforts, OCSA decided to dismiss him anyway. When they told Angelo that he had to leave the school, he was devastated. An otherwise positive kid, he started crying. Destroyed by the incident, he spiraled into a depression and grew quiet and distant. He is now trying to catch up at his new school, but it has been a struggle.

— Grandparent of former OCSA student



Families and students want charter schools to be respectful of community needs and wants. In September 2015, the Oceanside Unified School District informed families that Jefferson Middle School might be converted to a performing arts charter school. The school district proposed partnering with the Orange County School of the Arts Charter School to open a charter school. This charter school would have required a successful audition and a certain grade-point average for its students. It would have also strongly encouraged a \$5,000 donation per student. Students, teachers, and families spoke up against the proposed charter school at a packed hearing.

Community activists saw that the proposed partner charter, OCSA in Santa Ana, did not serve the students in its low-income neighborhood. Although people of color make up about 90% of the population in Santa Ana, only 10% to 20% of students who attended OCSA were people of color. Residents of the neighborhood surrounding Jefferson were concerned that the proposed charter school would similarly exclude local children of color.

Despite fierce opposition, the school district approved the charter school. However, in light of community concerns and environmental requirements, in February 2015, OCSA decided to search for a different location.

— Lillie Sanchez, Human Rights Council of Oceanside

The National Alliance for Public Charter Schools:

"Charter schools are unique public schools that are allowed the freedom to be more innovative while being held accountable for advancing student achievement. Because they are public schools, they are:

- Open to all children;
- Do not charge tuition; and
- Do not have special entrance requirements."¹³

ENGLISH LANGUAGE PROFICIENCY REQUIREMENTS

California has a long tradition of providing equal educational opportunity and access to students who come from families where English is not the primary language.¹⁴ **Like traditional public schools, charters may not bar from attending or otherwise discriminate against students who are learning English or whose families speak another language at home.**¹⁵ Based on our review of documents available online, many charter schools uphold this tradition and work to provide services and resources to students learning English; however, a handful of charter schools maintain policies that openly discriminate against students who are English learners or whose parents/guardians predominantly speak another language.

- ☐ Forest Charter, Nevada County: Students must **“scor[e] 80% or higher on a basic language arts assessment that is no lower than one grade level below his or her enrolled grade level. . . .** Independently writ[e] a letter/paragraph to the teacher (and in front of the teacher) that demonstrates the required language arts ability.”
- ☐ Community Montessori, San Diego County: **“Parents are expected to be enrolled in a program to learn English as well.”**
- ☐ West Sac Prep Charter, Sacramento: “West Sac Prep Charter School follows a lottery policy that gives preference to students who meet the following criteria. . . . What is the primary language spoken at home?”

Some schools do not have policies that exclude English learners outright but still include language in their public materials signaling that those students are not welcome. It is a violation of both federal and California law to adopt a policy that has an unjustified detrimental impact on protected classes of people, including English learners.¹⁶ For instance, Manzanita Middle School in Contra Costa has an application form that is available only in English and asks a number of questions aimed to identify English learners. The application only has a single sentence in Spanish: “Manzanita provides ALL instruction in English. We do not have bilingual classes. Manzanita usa INGLES para toda instruction. No tenemos classes bilingues.” Such policies leave schools vulnerable to legal liability because they may suppress attendance by English learners by sending a message that they are not welcome, which is generally prohibited by state and federal law.¹⁷

Further, many schools have forms that ask about the student’s and parent’s/guardian’s home language, students’ place of birth, or other information aimed to identify English learners during the admissions process. While schools need to determine students’ level of English proficiency to identify what services they need, questions about language proficiency **in the admissions materials** may have a chilling effect on non-English speaking families and discourage them from applying.

- ☐ Pacific Collegiate School, Santa Cruz County: **“What is the primary language spoken at home?”** “If Foreign Born: When did the student first attend school in the United States?”
- ☐ American River Charter, El Dorado County: “What language/dialect does your son/daughter most frequently use at home? Which language/dialect did your son/daughter learn when he/she first began to talk? **What language/dialect do you most frequently speak to your child?** Has your child ever been given the CELDT Test (Calif English Language Development Test)?”

RECOMMENDATION: Charter schools should make clear that they will accept and serve all students, including students who are English learners and whose parents/guardians are not proficient in English. Charter schools should only ask for information regarding the student’s or parent’s/guardian’s English proficiency or administer English proficiency tests after the school guarantees the student a spot. Further, charter schools should prominently note that they will use information families provide about their English proficiency only to identify services for the student and it will not affect his/her enrollment eligibility.



I am a ninth grader in high school. I live with my mother, father, sister, and older brother. I speak English and Spanish at home equally. When I am at school I speak mostly in English. I am an English-language learner. I went to Public Safety Academy of San Bernardino (PSASB) for middle school. I went there because I wanted to be a police officer.

When I was at PSASB I had trouble understanding my teachers. My teachers talked too fast and used words that were not familiar to me. When I asked for help, some teachers would help me but others would not. I received no help from the school to help me learn English. I did not receive tutoring or any special classes, so my grades started to drop.

At the end of the first semester of my 8th grade year, I was kicked out for failing to maintain a 2.0 G.P.A. At the time, my G.P.A. was 1.9. In late December, the principal called me into a meeting with her and several other English-language learner students. The principal told us we were being kicked out because of our poor grades. She sent me home with a letter to my parents saying that I was no longer allowed to go to PSASB. I was sad about leaving my school and it was so hard for me to catch up at my new school.

— *English-language learner student*

Charter schools must provide English language services.

In addition to not maintaining any minimum language requirements, charter schools must provide English-language services to students who are not proficient in English. As the U.S. Supreme Court recognized in 1974, schools must provide an effective language instruction education program that allows students to have meaningful access to the school's academic content.¹⁸

PRE-ENROLLMENT INTERVIEW AND ESSAY REQUIREMENTS

Some charter schools have burdensome and complicated applications or enrollment processes resembling those of private schools. **Charter schools may not use students' performance on essays or interviews to determine which students to enroll.**¹⁹ These hurdles undermine the principle that charter schools must provide opportunities to all students, not only a select few, and violate the Charter Schools Act's requirement that charter schools must admit all students who wish to enroll.²⁰

Further, even when charter schools require essays or interviews but purportedly do not use them to select students, these hurdles give the appearance of selectivity, which may discourage applications from students from less-privileged backgrounds or students who lack confidence in their abilities. Such policies may violate state and federal civil rights laws if they have an unjustified negative disparate impact on protected student groups such as students of color, English learners, or immigrant students.²¹

At least 92 California charter schools maintain mandatory essay or interview requirements. (Visit aclusocal.org/unequal-access for a list of offending schools).

Interview Requirements:

- Delta Charter, Santa Cruz County: “**Interview Details: You must be on time to guarantee an interview. Remember to bring the following: Two Letters of Reference; . . . Writing sample; . . . Letter of Intent to Apply; . . . Transcripts; . . . Recent Grade Reports (If available); . . . Special Education Requirements/I.E.P.; . . . Application Form - Completed.**”
- University Preparatory High, Tulare County: “Prior to admission, both student and parents/guardians will be required to complete the Student Application for Admission and **participate in an interview.**”
- Redding School of the Arts II, Shasta County: “Students in grades 6-8 must **complete an interview process** prior to enrollment.”
- Forest Charter School, Nevada County: “Forest Charter School **interviews each student and family** to ensure our personalized learning program is the best fit for your student.”
- Orange County School of the Arts (OCSA), Orange County: “Prospective and current OCSA students can audition for a maximum of two conservatories or programs. Audition requirements should be carefully reviewed, applicants who do not conform to the audition requirements will not be considered for admissions.”
- Orchard View School, Sonoma County: “At the appointment with the student and parent, the philosophy of the school will be explained and a decision will be made regarding the appropriate placement of the student at Orchard View School.”

Essay Requirements:

- Orange County Educational Arts Academy, Orange County: “Grades 2 and 3 – Personal Essay Instructions: In a 2 to 3 paragraph essay (minimum 5 sentences per paragraph), tell us why you want to come to OCEAA – what interests you most about the school? You must use proper grammar and punctuation.”
- Paragon Collegiate Academy, Yuba County: “Please have your child write a letter from the student stating why they would like to attend Paragon Collegiate Academy. (If your children are unable to write, please have them draw a picture on the back representing the same.)”
- Creative Connections Arts Academy Elementary School, Sacramento County: “Student Essay Form: Write a one-page essay describing why you want to attend Creative Connections Arts Academy Elementary School and why you would be a good addition to the student body. You may use the space below or attach another handwritten sheet. All students must complete essay in his/her own handwriting (Parental assistance is okay for children entering Kindergarten); typed responses will not be accepted. ... Parent/Guardian Essay Form Write a one-page essay describing why you want your child to attend Creative Connections Arts Academy Elementary School and why your participation would benefit the school. You may use this page, or attach a computer generated response.”
- University Preparatory High, Tulare County: “**Please read the following article, *Let Kids Run Wild Online*, out of *Time Magazine* and produce a 500-600 word persuasive essay taking a stance on kids’ online access.** Do you agree that kids should be free to explore online without parent interference or should parents have control over what their kids do online? Your persuasive essay needs to be typed, contain a clear stance, be double-spaced, use spell check and grammar check, use MLA Format, and be clear and concise.”

- Tree of Life Charter, Mendocino County: “1. What are your responsibilities at home that pertain to taking care of yourself (getting dressed, brushing teeth, washing clothes, etc.)? 2. What are your responsibilities at home that pertain to helping your family? 3. Do you have pets for which you are responsible? If so, what kind of pet and what are your duties? 4. What activities do you like to do at home? 5. How do you usually spend your time at home? 6. Do you receive an allowance or spending money? If so, do you earn it by doing special jobs, or do you receive it whether you do jobs or not? School Life. 7. Where did you go to school before Tree of Life Charter School? Did you enjoy that school? 8. What activities do you like to do at school? 9. What activities do you do well at school? 10. What activities were most difficult for you at school? 11. What would you like to learn next? 12. What do you want more help with? 13. Have you ever done research or reports on subjects that you chose because you wanted to find out something? If so, what were your favorites? 14. In this school students have the freedom to set their own goals and make decisions about what they want to study. Have you ever done this before? How do you think you will do? 15. In this school students are excited about learning and do not need grades or competition to get them to learn better. What do you think about this? 16. In this school students and staff decide together about rules of respect and responsibility. Have you ever done this before? 17. Do you have any questions about this school that haven’t been answered?”

**Alex Medler, vice president of policy and advocacy at the
National Association of Charter School Authorizers:**

“I believe strongly that these [test and interview] practices should not be allowed. There shouldn’t be barriers to entry based on test performance or interviews where the school is picking or choosing the child.”²²

RECOMMENDATION: Charter schools should not maintain any essay or interview requirement during the application or enrollment process. If a charter school insists on using essays or interviews to determine what level of services to provide to students, it should (1) only request the essay or interview after the student is guaranteed a spot at the school and (2) the school should make clear that the essays and interviews will not impact the student’s admission status or continued enrollment.

SOCIAL SECURITY AND BIRTH CERTIFICATE REQUIREMENTS

Over 30 years ago, the Supreme Court held that immigrant or undocumented students are guaranteed equal access to public education under the 14th Amendment.²³ The Court recognized that “denying these children a basic education” would “deny them the ability to live within the structure of our civic institutions” and deny our nation the future contributions of educated undocumented students.²⁴ Yet many charter schools maintain policies that deny immigrant or undocumented children this basic equality by requiring admissions documents such as Social Security numbers and birth certificates that immigrant families cannot provide or asking intrusive questions about citizenship that discourage them from enrolling.

The U.S. Department of Education Office for Civil Rights (ED OCR) and U.S. Department of Justice have made clear that schools:

- “may not prevent your child from enrolling in or attending school if you choose not to provide your child’s social security number;”
- “may not require you to provide your own social security number in order for your child to enroll in or attend school;” and
- “may not prevent or discourage your child from enrolling in or attending school because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.”²⁵

Still, at least 132 charter schools in California require that students or parents/guardians provide a birth certificate or Social Security number without clarifying that applicants can provide alternative forms of documentation or explaining that non-citizens are eligible for enrollment. (Visit aclusocal.org/unequal-access for a list of offending schools). Many of these schools directly ask students or parents/guardians about their immigration status or whether they are citizens – a question that might cause some non-citizens to avoid the application process altogether.

Birth Certificates and Social Security Numbers

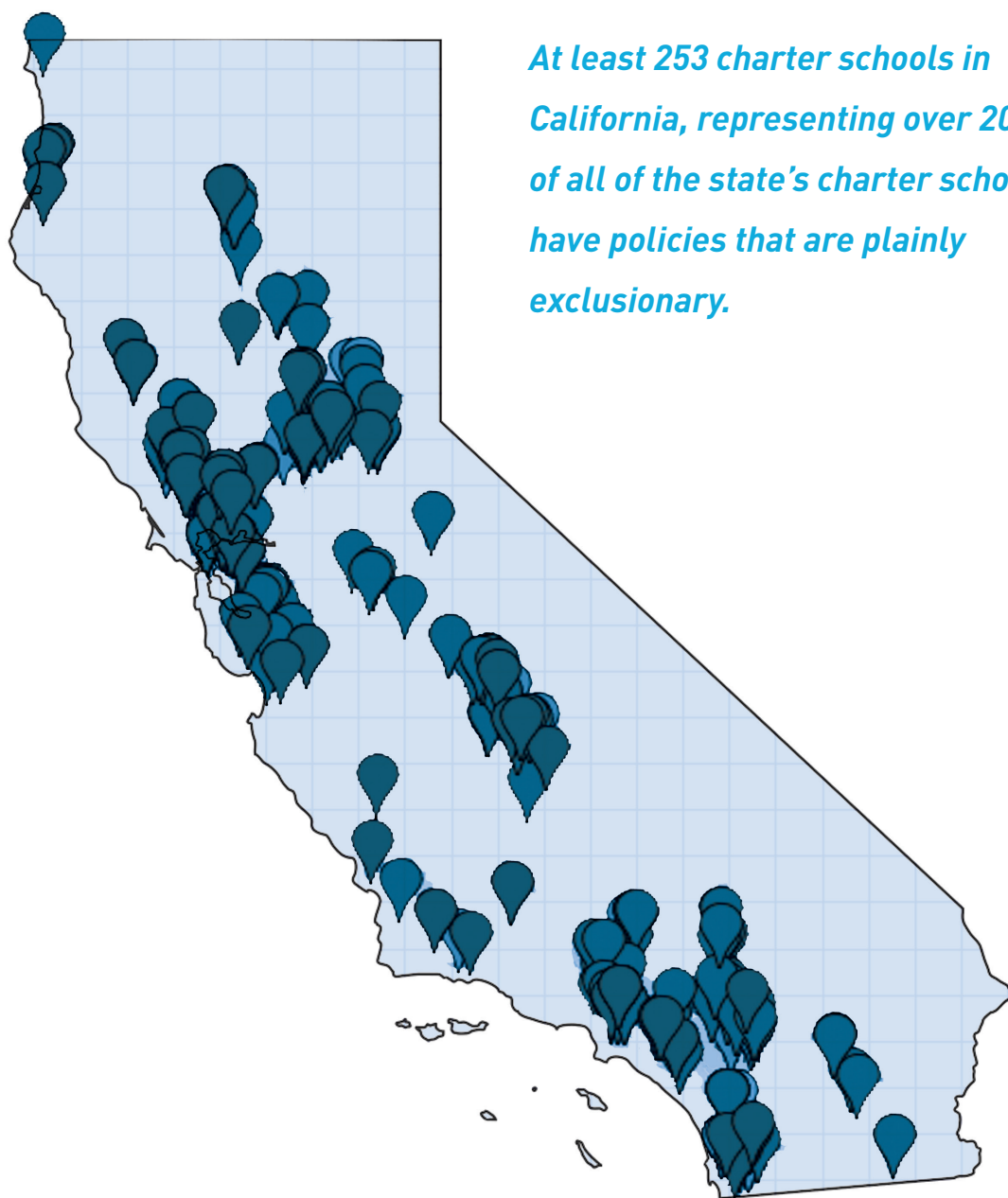
- ASA Charter, San Bernardino County: “Birth Verification - State or hospital issued birth certificate, current passport, NUMI printout [Social Security application printout], Certificate of US Naturalization, Alien registration card or other INS work papers.”
- Morris E. Dailey Charter Elementary, Fresno County: “Enrollment Kindergarten Requirements: Birth Certificate - Must be a State Certification of Vital Records, not a hospital birth notice, Social Security card (office can make a copy).”

Citizenship

- Juan Bautista de Anza Charter, San Diego County: “Check here if student was born outside the U.S. but granted U.S. citizenship at time of birth; Check here if foreign student temporarily schooling in the U.S.; Check here if student is foreign born and has been enrolled less than 3 cumulative years in the U.S.”
- Sacramento Valley Charter, Yolo County: “When did/will your child first enter the United States?” “From what country did your child enter the United States?” “When did/will your child first attend school in the United States?”

What documentation can you ask for?

ED OCR recommends that schools provide families with the following **options** for identity verification: “a religious, hospital, or physician’s certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent/guardian; a birth certificate; previously verified school records; or any other documents permitted by law.”²⁶



At least 253 charter schools in California, representing over 20% of all of the state's charter schools, have policies that are plainly exclusionary.

Social Security numbers should not be used as ID.

The Social Security Administration recommends that schools do not use Social Security numbers as identifiers: "An organization's collection and use of SSNs can increase the risk of identity theft and fraud. . . . We strongly urge all organizations that use SSNs as the identifier in their record keeping systems to use alternate identifiers. . . . Organizations should avoid using Social Security numbers (SSNs) as identifiers for any type of transaction."²⁷

RECOMMENDATION: Charter schools should provide families and students with a range of documents with which to establish the students' residency and age. The application materials should make clear that the school will enroll non-citizens and will accept non-U.S. documents, including birth records. Charter schools should not request full or partial Social Security numbers from parents/guardians or students.

PARENT/GUARDIAN VOLUNTEER REQUIREMENTS

Familial support and engagement are important ingredients of student success, and parent/guardian volunteers can enrich school communities. It is therefore important for schools to encourage parental involvement and provide families with the resources they need to participate. However, charter schools that require parent/guardian involvement cross the line between encouraging healthy participation and excluding certain student groups. For example, students in foster care or group home situations, students raised by elderly grandparents, and students whose parents have intensive work and child-care obligations are often unable to meet such obligations. Further, these requirements violate the California Constitution and Education Code's guarantee of free public education for all children.²⁸ A November 2014 Public Advocates report (<http://www.publicadvocates.org/forced-parent-work-policies>) found nearly one in three charter schools reviewed required parent/guardian volunteer hours, which prompted 2015 guidance from the California Department of Education clarifying that this practice is illegal.²⁹

At least 63 charter schools maintain illegal parent/guardian volunteer requirements. (Visit aclusocal.org/unequal-access for a list of offending schools). These schools require parents/guardians to commit a certain number of work hours to the schools, with some allowing "buyouts" for parents to pay their way out of these work obligations.

-  Oasis Charter Public School, Monterey County: "There is a school requirement that **ALL families are obligated to contribute a minimum of 45 hours in volunteer time OR the equivalent of \$10.00 per hour for any portion of the hours your family is unable to volunteer.**"
-  Santa Ynez Valley Charter, Santa Barbara County: "**Parents/Guardians will: . . . volunteer a minimum of 3 hours per month or 36 hours per year.** . . . In recognition of the fact that the work schedules of some parents do not allow them to regularly participate in volunteer activities, families are allowed to make a financial contribution to the school in lieu of volunteer hours at the rate of \$25 per volunteer hour. Failure to put in volunteer hours and/or make financial contributions in lieu of such hours may result in a student's loss of enrollment priority for the following school year."
-  Paragon Collegiate Academy, Yuba County: "**I support the parent partnership expectations and will fulfill 20 or more hours of annual volunteer service with Paragon Collegiate Academy.** PCA recognizes that not all parents can be in the classroom for these hours, therefore, other specific service opportunities can and will be arranged on a one-to-one basis. A buy-out option is also available (only as a last option). PCA believes that showing your child that you are invested in their education is vital to their success. The fee is \$15.00 per hour for each hour that parents' are unable to volunteer."
-  River School, Napa County: "2014-2015 Family Participation Agreement: **I AGREE to fulfill my 25 hour volunteer commitment to the River School Community.** I UNDERSTAND that my work at River School is valuable because it shows my student what it means to be a responsible member of a community. I UNDERSTAND that my work at River School is important because it helps keep River School's administrative costs low and frees up that money to be spent on the students. I UNDERSTAND that failure to complete my volunteer commitment will result in the loss of sibling priority status in the school admissions lottery; AND, it will result in my 8th grade student not being able to attend the 8th grade field trip; AND, it may result in my student's dismissal from River School."

RECOMMENDATION: Charter schools should encourage family engagement, but should make clear in all of its policies that parent volunteering or contributions are not mandatory. Charter schools may take no adverse actions against students or parents who choose not to volunteer or who are unable to volunteer.

CHARTER SCHOOLS MAY NOT EXCLUDE STUDENTS BASED ON ACADEMIC REQUIREMENTS

Charter schools must admit and serve all students, regardless of whether they are academically low-achieving, require greater academic support, or belong to any other high-need student group. The Charter Schools Act plainly states that **a charter school “shall admit all pupils who wish to attend the school.”**³⁰ This means that charter schools may not adopt any policy that limits access for certain students. Indeed, the California legislature has long made clear that students who are struggling academically are precisely the students who should benefit from charter schools, which were created to “increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.”³¹ **Accordingly, refusing enrollment, disenrolling, or threatening to disenroll students who do not maintain a minimum G.P.A., have failing grades, or require academic support is illegal.**

The Charter Schools Act only allows for a handful of exceptions to the general rule that charter schools shall be open to all students, and none of those exceptions allows schools to adopt academic admission requirements.

The Act only allows charter schools to implement three types of admissions preferences:

- If applications exceed capacity, schools “shall” hold a “public random drawing.”³² Preference “shall” be extended to current pupils and pupils who reside in the district.³³
- If a charter school was partially or entirely converted from a public school, the school must give “an admission preference to pupils who reside within the former attendance area of that public school.”³⁴
- If a charter school is located in the attendance area of a public elementary school in which 50 percent or more students are low-income (qualify for free or reduced lunch), then the school “may give a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter school site is located.”³⁵

California courts have consistently recognized that charter schools have a legal responsibility to admit and serve all students. According to the California Supreme Court, charter schools function “within public school districts, accept all eligible students, charge no tuition,³⁶ and are financed by state and local tax dollars[.]”³⁷ Indeed, a California Court of Appeal determined that charter schools did not violate the California Constitution in part because they are “open to all students” and are free, nonsectarian, and nondiscriminatory.³⁸ Most recently, in 2010, the Court of Appeal acknowledged that “charter schools must admit all students who wish to attend to the extent the schools have the capacity to do so.”³⁹

As such, charter schools may not enact any admissions requirement or adopt any other practice or policy that excludes students aside from the limited geographical preferences described above.

Charter schools may not maintain minimum G.P.A. requirements, requirements that students cannot fail classes, requirements that students meet a minimum level of academic progress, or any other requirements that condition enrollment on academic performance, just as traditional public schools cannot.⁴⁰

While the majority of charter schools in California appear to understand and abide by the law, many maintain illegal academic admission requirements on their websites, charters, or handbooks. Some schools require students to have a minimum G.P.A. of 2.0 to enroll. Others refuse to admit students who have a single failing

California Charter School Association (CCSA):

“Charter schools are open to ALL children and they are committed to serving a student body that reflects the local community. . . By law, charter schools cannot have admission processes that unlawfully discriminate against students. Charter schools accept all students who want to attend. If there are more students who want to attend than there are seats available, a charter school will use a process to randomly select students, oftentimes a lottery system.”⁴³

A charter school in San Bernardino informed an 8th grade student with an auditory processing disability that he would be dismissed from the school if he did not bring his G.P.A. above 2.0. The student's guardian filed a lawsuit against the charter claiming numerous civil rights violations.⁴⁴ The charter argued that it was not a state actor and that it was exempt from the application of many civil rights laws.⁴⁵ In an order denying the charter school's motion to dismiss the case, the court found that charter schools are state actors and within the public school system and decided that the plaintiffs could move forward with the lawsuit.⁴⁶ Ultimately, the parties settled the matter. In exchange for withdrawal of the lawsuit, the charter school agreed to numerous conditions including eliminating the minimum 2.0 G.P.A. requirement, complying with its legal obligations to serve all students including those with disabilities, and paying a settlement sum of \$190,000.

grade in a class, regardless of overall G.P.A. Still others require students to make a minimum level of academic progress, which often is left undefined, under threat of being disenrolled and sent back to their traditional public school. None of these policies are permitted by the law, and the schools or their authorizing entities must take immediate steps to rescind them.⁴¹

Charter schools cannot enact admissions requirements because such barriers cannot be reconciled with the charter school mission to expand learning experiences for students who need the most support.⁴² Under the California Constitution and Education Code, charter schools have an obligation to expand learning opportunities for **every** student – not only those who are already performing well or who already have the appropriate resources. Charter schools cannot be a viable alternative to public schools unless they remain open to all students and serve the entire communities in which they are located.

CHARTER SCHOOLS MAY NOT DISCRIMINATE AGAINST ENGLISH LEARNERS AND MUST PROVIDE THEM WITH APPROPRIATE LANGUAGE INSTRUCTION

1.CHARTER SCHOOLS MAY NOT RESTRICT ACCESS TO ENGLISH LEARNERS

Charter schools may not restrict access to English learners or maintain policies that discourage English learners from enrolling. Beyond requiring charter schools to admit all pupils, the Charter Schools Act also provides that “a charter school shall not discriminate against any pupil on the basis of” certain protected characteristics, including “disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, [and] sexual orientation[.]”⁴⁷ It is well-settled that denying English learners equal access to educational opportunities because of their limited English proficiency constitutes unlawful discrimination under Title VI of the 1964 federal Civil Rights Act.⁴⁸

Other California laws buttress the non-discrimination provision in the Charter Schools Act. For instance, California Government Code section 11135, modeled after Title VI, protects against discrimination in state-administered and state-funded programs and activities, including charter schools, stating:

“No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”⁴⁹

Section 11135 prohibits not only intentional discrimination, but also actions or policies that have an adverse disparate impact on protected groups.⁵⁰ In other words, section 11135 prevents charter schools from establishing practices that seem neutral, but have an unjustified negative impact on a protected class, including English learners.⁵¹

The Equal Educational Opportunities Act of 1974 (“EEOA”), in addition to Title VI, bars discrimination based on race, color, or national origin, including policies that restrict access to English learners or any practices that disproportionately discourage them from applying or enrolling. This right to equal educational participation regardless of linguistic background or ability has been confirmed by numerous court decisions and was recently reiterated by ED OCR in a Dear Colleague Letter.⁵² ED OCR further made clear that any enrollment practices that “may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status . . . contravene Federal law.”⁵³ These enrollment practices do not necessarily have to be intended to exclude students based on impermissible categories to violate the EEOA or Title VI; it is enough that they have the effect of such exclusion or discouragement.⁵⁴ Taken together, these guidelines make clear that charter schools, like other schools that are part of the public school systems receiving federal funding, may not institute practices that discriminate against or discourage enrollment by English learner s or students whose parents/guardians are limited English proficient.⁵⁵

U.S. Department of Education Office for Civil Rights:

“Federal civil rights laws, regulations, and guidance that apply to charter schools are the same as those that apply to other public schools. For this reason, it is essential that charter school officials and staff be knowledgeable about Federal civil rights laws. These laws extend to all operations of a charter school, including recruiting, admissions, academics, educational services and testing, school climate (including prevention of harassment), disciplinary measures (including suspensions and expulsions), athletics and other nonacademic and extracurricular services and activities, and accessible buildings and technology.”⁵⁶

Again, while most charter schools appear to have policies that comply with the law, a handful of charters have enacted minimum language proficiency requirements such as requiring minimum test scores on language testing or requiring that students or their parents/guardians be proficient in English. These requirements plainly discriminate against English learners and are in violation of the Charter Schools Act and federal and state civil rights laws. Further, many schools ask parents and students information about their English proficiency during the application process without making it clear that applicants’ answers will not be used to select students. The inclusion of such questions in schools’ application materials without the appropriate context, may prevent English learners from applying.

In sum, Charter schools may not prevent English learners from enrolling and, to the contrary, must provide them with appropriate language instructions.

California Charter Schools Association:

Charter schools should be “committed to serving a student body that reflects the local community.”⁵⁷ As such, CCSA encourages charter schools to actively recruit English-learner students by “(1) leveraging strong community relationships, (2) proactive, assertive recruitment efforts focused on non-English speaking families, including multilingual outreach, and (3) word of mouth.”⁵⁸

California Charter Schools Association:

“How is oversight provided to charter schools? Charter schools must operate in accordance with state and federal law. They must abide by health and safety laws, and cannot discriminate on the basis of race, color, religion, sex or national origin.”⁵⁹

Who may investigate potential discrimination?

Any Federal agency, including the Department of Justice and the Department of Education Office for Civil Rights, may investigate a charter school’s compliance with Title VI and the EEOA and may bring a lawsuit or administrative action against these educational entities.⁶⁰ Further, students or families who are discriminated against in violation of these laws can file a civil lawsuit under certain circumstances or file a complaint with ED OCR to initiate an administrative investigation.⁶¹ To find more information about filing a complaint with ED OCR, visit <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.

2. CHARTER SCHOOLS MUST PROVIDE ENGLISH LANGUAGE SERVICES TO ENGLISH LEARNERS

Beyond ensuring that charter schools do not enact discriminatory admission policies, they must also actively identify English learners and provide them with services and instruction to overcome their language barriers. Title VI and the EEOA require school districts to ensure that English learners can participate meaningfully and equally in educational programs. These laws require schools to provide English learners with “language assistance to enable them to participate in the instructional program of the district[.]”⁶² California law bolsters these federal protections, providing that:

“the government and the public schools of California have a moral obligation and a constitutional duty to provide all of California’s children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society, and of these skills, literacy in the English language is among the most important.”⁶³

Under these laws, local education agencies including charters shall take “appropriate action” to overcome language barriers that impede students from equal participation in instructional programs.⁶⁴ Appropriate action includes an effective language instruction education program that affords meaningful access to the school’s academic content.⁶⁵ **In other words, it is not enough for charter schools to end restrictions on access to English learners; charter schools must also provide these students with effective language instruction and services.**

CHARTER SCHOOLS MAY NOT SELECT STUDENTS BASED ON PERFORMANCE ON ESSAYS OR INTERVIEWS

Many charter schools in California require students or parents/guardians to submit essays or conduct interviews during the admissions process. As discussed, charter schools must accept all students and generally may not enact any policies or practices that have an adverse disparate impact on English learners or other protected classes.⁶⁶ Charter schools that use application essays or interviews as a basis for selecting or rejecting students plainly violate their obligation to admit all students. Even when a charter school does not choose students based on their performance on interviews or essays, subjecting families and students to such requirements before enrollment may violate Title VI or Section 11135 because they have the potential to discourage enrollment by members of protected classes.⁶⁷ For instance, these procedures may prevent students and parents/guardians who are not English proficient from submitting applications to the school because they believe they will be rejected for their inability to speak English or because the task is unduly onerous for them.

Still, in certain narrow circumstances, a charter school may have legitimate reasons for requesting student essays or interviews. For instance, a charter school could use the essays or interviews to assess whether a student needs additional support or use an interview as an opportunity to explain school procedures to families. In order to ensure that such policies do not discourage or exclude certain students, charter schools should be sure to conduct essays or interviews only after a student is already admitted, and schools should make clear that they are optional. Doing so will protect the school from legal liability by eliminating the possibility and appearance of bias or discrimination and will ensure that all students have an equal opportunity to attend.

CHARTER SCHOOLS MAY NOT ADOPT POLICIES OR PRACTICES THAT EXCLUDE IMMIGRANT STUDENTS

Charter schools may not enact policies that prevent or impede immigrant students from enrolling or otherwise deny them equal access to an education. In *Plyler v. Doe*, the Supreme Court held that it is unconstitutional for school districts to deny enrollment and withhold state funds for undocumented K-12 students.⁶⁸ The Court emphasized that a policy that denies innocent children – whatever their immigration status – access to an education “can hardly be considered rational[.]”⁶⁹ On the basis of *Plyler*, ED OCR published guidance making clear that “immigration or citizenship status is not relevant to establishing residency in the district.”⁷⁰ ED OCR states that a school “cannot deny enrollment to a student if he or she (or his or her parent) chooses not to provide the student’s social security number” and “may not bar or discourage a student from attending school because the student lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.”⁷¹ Accordingly, to the extent that charter schools ask for such documents, they must inform families that they are able to choose from a number of methods of verifying their students’ identity and age, including prior academic records, an affidavit, a foreign birth certificate, or some other form of identification.

CHARTER SCHOOLS MAY NOT FORCE PARENTS/GUARDIANS TO VOLUNTEER OR WORK FOR THE SCHOOL

While schools should encourage familial participation, public schools, including charters, may not require parents to perform work at the school as a condition of their child's enrollment or participation in educational activities. Such policies discriminate against poor families, single-parent families, non-traditional households, and working parents, and thereby exclude children who may stand to benefit significantly from attending nurturing public schools. Most important, requiring parents or family members of a student to work at a public charter school violates both the California Constitution and the California Education Code.

AB 1575

In 2012, California passed AB 1575, which allows any person to submit a UCP complaint if he/she believes that a school or charter school is charging an illegal fee, including illegally requiring parents to volunteer. *For more information on the complaint process, visit: aclusocal.org/cases/doe-v-california/school-fees/.*

The California Constitution includes education as a fundamental right guaranteed to all California children⁷² and requires the state to establish a system of free public schools.⁷³ Requiring parents/guardians to do unpaid work at a public school violates the California Constitution's "free schools" clause because the requirement to perform unpaid labor constitutes a non-monetary fee.⁷⁴ A parent/guardian who is forced to work is compelled to give up her labor instead of dollars in exchange for her child's enrollment or participation in educational activities. This also violates section 49011(b)(4) of the California Education Code, which prohibits public schools from requiring donations of money or services from families.⁷⁵

In 2014, Public Advocates released a report (<http://www.publicadvocates.org/forced-parent-work-policies>) exposing the widespread practice of public charter schools regularly requiring parents to work at the school in exchange for educating their

child.⁷⁶ In response, the California Department of Education (CDE) issued Fiscal Management Advisory 15-01 clarifying that existing law prohibits charter schools and school districts from requiring parents to donate "service hours" to a public school.⁷⁷ In the wake of Public Advocates' report and the CDE's advisory, numerous charter schools modified their policies to clarify that parent volunteer hours are truly voluntary and not required. Yet more than two years later, our investigation reveals that at least 57 charter schools still maintain explicit parent work requirements in their written policies and parent handbooks.

A school that wishes to encourage familial participation should ensure that its policy makes clear that this participation is not a requirement and that no adverse consequence will occur for any family that does not contribute service hours. The policy statement should advise families to file a complaint using the AB 1575 process if they believe the parent service hours are being interpreted as mandatory rather than truly voluntary.

RECOMMENDATIONS FOR PARENTS AND STUDENTS

- Review your charter school's charter petition, handbooks, and admissions forms to ensure that they do not have any illegal or exclusionary admissions policies or practices that may discourage enrollment, including:
 - G.P.A. or other academic requirements or minimums
 - Minimum level of English proficiency
 - Questions regarding citizenship, immigration status, or country of birth of students or parents/guardians
 - Mandatory submission of Social Security numbers or birth certificates
 - Pre-enrollment entrance essays
 - Pre-enrollment student or family interviews
 - Parent/guardian volunteer or buyout requirements
-

- If your charter school has an illegal or exclusionary policy, first contact the school's administration or charter network and ask them to change their policy. If you speak to them over the phone or in person, ask for the individual's name and be sure to follow up in writing (with an email or letter). If they do not change the policy, you should file a complaint with the charter school authorizer. If the school still does not change the policy, you can file a complaint with the county office of education in which the school is located.

RECOMMENDATIONS FOR CHARTER SCHOOL OPERATORS

- Eliminate all exclusionary admission or continued enrollment requirements, including:
 - G.P.A. or other academic requirements or minimums
 - Minimum level of English proficiency
 - Questions regarding citizenship, immigration status, or country of birth of students or parents/guardians
 - Mandatory submission of Social Security numbers or birth certificates
 - Pre-enrollment entrance essays
 - Pre-enrollment student or family interviews
 - Parent/guardian volunteer or buyout requirements
-
- If a charter school asks for academic records, student or parent identification, essays, or interviews, it must not consider the information when determining whether to enroll a student. To avoid all doubt, the school should request the information only after it has guaranteed a student enrollment and it may not rescind admission on the basis of any information students or their parents/guardians provide. Academic records may include transcripts, report cards, English-language proficiency surveys, information about student disabilities, and information about previous enrollment in special programs.
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- Make clear that students may verify their residency with a variety of documents, including but not limited to:
 - utility bills
 - lease agreements
 - tax documents
 - payroll stubs
 - social services documents
 - affidavits from a parent/guardian

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- Make clear that students may verify their age with a variety of documents, including but not limited to:
 - U.S. or foreign birth certificates
 - adoption records
 - passports
 - baptismal records
 - previous school records
 - other forms of U.S. or foreign government-issued identification
 - affidavits from a parent/guardian or pediatrician
-
- Include the following information on your website, handbook, and charter:
 - All students are welcome to enroll, including English learners, non-U.S. citizens, students with disabilities, low-income students, and students who are struggling academically or require additional academic supports.
 - Make clear that students may only be turned away if more students want to attend than there are seats available. In those instances, the school will use a “public random drawing” process to select students.
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- If your school formerly had admissions requirements or other illegal requirements
 - Make clear on all materials that the requirements have been rescinded
 - Send a letter to families notifying them that the requirements are no longer in effect
 - Post notices on school grounds informing families that no student will be removed or excluded for the specified admission or enrollment requirements
 - Notify administrators and teachers that previous admission or enrollment requirements are no longer grounds for student exclusion or removal
-
- Conduct an annual internal compliance review to ensure that all policies and practices comply with the Charter Schools Act, Education Code, and state and federal civil rights laws.

RECOMMENDATIONS FOR CHARTER AUTHORIZERS

- Do not approve or renew any charter petition with illegal or exclusionary admissions or enrollment requirements, including:
 - G.P.A. or other academic requirements or minimums
 - Minimum level of English proficiency
 - Questions regarding citizenship, immigration status, or country of birth of students or parents/guardians
 - Mandatory submission of Social Security numbers or birth certificates
 - Pre-enrollment entrance essays
 - Pre-enrollment student or family interviews
 - Parent/guardian volunteer or buyout requirements
-
- As required by Education Code § 47604.32, audit, monitor, or otherwise investigate every charter school under your jurisdiction at least once a year to ensure that each school does not use any of the illegal admissions or enrollment requirements described above. If any schools are not in compliance, direct them to correct their policies. If schools do not make the appropriate corrections, begin the charter-revocation process.
-
- Ensure that charter schools allow students to verify their residency with a variety of documents, including but not limited to:

- o utility bills
- o lease agreements
- o tax documents
- o payroll stubs
- o social services documents
- o affidavits from a parent/guardian

-
- Ensure that charter schools allow students to verify their age with a variety of documents, including but not limited to:
 - o U.S. or foreign birth certificates
 - o adoption records
 - o passports
 - o baptismal records
 - o previous school records
 - o other forms of U.S. or foreign government-issued identification
 - o affidavits from a parent/guardian or pediatrician
-

- Disseminate a directive to all authorized charter schools informing them that they are not allowed to deny admission or dismiss students based on any of the discussed exclusionary practices. Such guidance should include the legal obligation of charter schools to enroll and serve all students pursuant to federal and state law.
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RECOMMENDATIONS FOR CALIFORNIA DEPARTMENT OF EDUCATION

- Issue formal guidance informing all charter schools and authorizers in California that charters may not bar admission to students who do not meet academic minimums; exclude English learners; select students based on their performance on entrance essays or interviews; require students to submit Social Security numbers, U.S. birth certificates, or other citizenship information to enroll; or require families to volunteer at or provide payment to the school.
-
- Take appropriate action, including immediate and effective steps, to ensure that the charter schools listed at [placeholder webpage] correct their illegal policies, including investigating the schools' relevant policies, sending individualized notices to the schools providing guidance about the law and their obligations, providing technical assistance where appropriate, and following up to ensure that the schools have come into compliance with the law.
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- Investigate the remaining charter schools in California to determine if any are implementing these illegal policies.
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- Revisit this issue annually to assess whether charter schools are complying with the law. If certain charter schools are not, take further steps with greater penalties at that time to abolish the practice.
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- Require yearly training on civil rights laws and best practices for charter school board members and administrators.
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- Make clear that authorizers must review new applications for charter schools for compliance with the Charter Schools Act, Education Code, and state and federal civil rights laws.
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- Require authorizers to conduct bi-annual reviews of charter schools for compliance with the Charter Schools Act, Education Code, and state and federal civil rights laws.
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- ¹ Cal. Educ. Code § 47605(d)(2)(A) (“A charter school shall admit all pupils who wish to attend the school.”).
- ² Cal. Educ. Code § 47605(d)(2)(A); 20 U.S.C. § 1703(f); Cal. Gov’t. Code § 11135; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; *Plyler v. Doe*, 457 U.S. 202, 229-30 (1982).
- ³ Charter Schools FAQ Section 3, California Department of Education (last visited July 12, 2016), *available at* <http://www.cde.ca.gov/sp/cs/re/qandasec3mar04.asp> (“The charter authorizing entity is responsible for ensuring the charter school operates in compliance with all applicable laws and the terms of its charter.”).
- ⁴ *Id.*
- ⁵ Cal. Educ. Code § 47604.4 (“a county superintendent of schools may, based upon written complaints by parents or other information that justifies the investigation, monitor the operations of a charter school located within that county and conduct an investigation into the operations of that charter school.”).
- ⁶ *Id.*
- ⁷ See, e.g., Stephanie Simon, *Special Report: Class Struggle- How Charter Schools get Students They Want*, Reuters (Feb. 2013), *available at* <http://mobile.reuters.com/article/idUSBRE91EOHF20130215?irpc=932>.
- ⁸ Cal. Educ. Code § 47605(2)(A) (“A charter school shall admit all pupils who wish to attend the school.”).
- ⁹ Cal. Educ. Code § 47605(2)(B).
- ¹⁰ *Id.*
- ¹¹ Willful defiance is a subjective rule violation susceptible to interpretations of student behavior that often reflect implicit racial and other biases. Willful defiance remains the single largest category for which students are suspended from school in California, and students of color are disproportionately impacted by such policies. See Daniel Losen, et al., *Closing the School Discipline Gap in California: Signs of Progress*, The Civil Rights Project (Nov. 2015), *available at* <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/ccrr-school-to-prison-pipeline-2015>.
- ¹² Cal. Educ. Code § 47601(b).
- ¹³ About Charter Schools, National Alliance for Public Charter Schools (last visited July 12, 2016), *available at* <http://www.publiccharters.org/get-the-facts/public-charter-schools/>.
- ¹⁴ See, e.g., Cal. Educ. Code § 300.
- ¹⁵ Cal. Ed. Code § 47605(d)(1) (citing Cal. Educ. Code § 220 (listing characteristics)); Cal. Educ. Code § 220, Cal. Gov’t. Code § 11135, 42 U.S.C. § 2000d, et seq.; 20 U.S.C. § 1703(f).
- ¹⁶ Cal. Educ. Code § 220, Cal. Gov’t. Code § 11135, 42 U.S.C. § 2000d, et seq.
- ¹⁷ *Id.*
- ¹⁸ *Lau v. Nichols*, 414 U.S. 563, 566 (1974); 20 U.S.C. § 1703(f).
- ¹⁹ Ed Code § 47605(2)(A) (“A charter school shall admit all pupils who wish to attend the school.”).
- ²⁰ *Id.*
- ²¹ Cal. Gov’t. Code § 11135, 42 U.S.C. § 2000d, et seq.
- ²² Avi Welfman-Arent, *Delaware School Entrance Assessments Face Tough Test*, Newsworks (Dec. 15, 2014), *available at* <http://www.newsworks.org/index.php/local/delaware/76322-delaware-school-entrance-assessments-face-tough-test>.
- ²³ *Plyler v. Doe*, 457 U.S. 202, 229-30 (1982).
- ²⁴ *Id.* at 223.
- ²⁵ Fact Sheet: Information on the Rights of All Children to Enroll in School, U.S. Department of Justice & U.S. Department of Education (2014), *available at* <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf>.
- ²⁶ Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents, U.S. Department of Justice & U.S. Department of Education (2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201405.pdf>.
- ²⁷ Avoid Identity Theft: Protect Social Security Numbers, U.S. Social Security Administration (last visited July 13, 2016), *available at* <https://www.ssa.gov/phila/ProtectingSSNs.htm>.
- ²⁸ *Hartzell v. Connell*, 35 Cal. 3d 899, 905-08 (1984); Cal. Const. Art. IX, § 5; see also Cal. Educ. Code § 49011(b)(4).
- ²⁹ Richard Zeiger, Pupil Fees: Parent Service Hours, California Department of Education (Jan. 20, 2015), *available at* <http://www.cde.ca.gov/re/lr/fm/fma1501.asp>.
- ³⁰ Cal. Educ. Code § 47605(d)(2)(A) (emphasis added).
- ³¹ Cal. Educ. Code § 47601(b).
- ³² Cal. Educ. Code § 47605(d)(2)(B).

- ³³ Cal. Educ. Code § 47605(d)(2)(B) also states “[o]ther preferences may be permitted by the chartering authority on an individual basis and only if consistent with the law[,]” but this merely refers to the discussed geographic preferences.
- ³⁴ Cal. Educ. Code § 47605(d)(1).
- ³⁵ Cal. Educ. Code § 47065.3.
- ³⁶ Charter schools may also supplement their state and federal funding with private contributions. Any additional private financial support does not affect their obligations to enroll all students.
- ³⁷ *Wells v. One2One Learning Foundation*, 39 Cal. 4th 1164, 1178 (2006).
- ³⁸ *Wilson v. State Board of Educ.*, 75 Cal. App. 4th 1125, 1137 (1999) (emphasis added).
- ³⁹ *California School Boards Association v. State Bd. of Educ.*, 191 Cal. App. 4th 530, 573 (2010).
- ⁴⁰ Cal. Educ. Code § 47605(d)(2)(A)
- ⁴¹ *Id.*
- ⁴² Cal. Educ. Code § 47601(b).
- ⁴³ Frequently Asked Questions, California Charter School Association (last visited July 13, 2016), available at <http://www.ccsa.org/understanding/faqs/>.
- ⁴⁴ *C.S. v. Public Safety Academy of San Bernardino, et al.*, First Amended Complaint for Declaratory and Injunctive Relief, and Individual Damages, filed 08/12/14, (EDCV14-00941-RGK).
- ⁴⁵ *Id.*, Notice of Motion and Motion to Dismiss Complaint for Failure to State a Claim Upon Which Relief can be Granted; Memorandum of Points and Authorities in Support, filed 08/29/14.
- ⁴⁶ *Id.*, Order re Academy’s Motion to Dismiss, filed 11/26/2014.
- ⁴⁷ Cal. Educ. Code § 47605(d)(1) (citing to Cal. Ed. Code § 220 (listing characteristics)).
- ⁴⁸ *Lau v. Nichols*, 414 U.S. 563, 567-68 (1974).
- ⁴⁹ Cal. Govt. Code § 11135.
- ⁵⁰ To determine whether a policy or practice has an adverse disparate impact in violation of section 11135, a court will first determine whether the policy has a negative impact on a protected class of students. If there is an adverse impact, the court will then assess whether there is a substantial legitimate justification for the policy or, in other words, whether the policy is necessary to meet an important educational goal. Finally, if there is a legitimate justification, the court will determine whether there are alternative policies that would meet the stated goal with less of a burden or adverse impact on the affected group. If such alternatives exist, the policy or practice violates section 11135. See *Darensburg v. Metro. Transp. Comm’n*, 636 F.3d 511, 519 (9th Cir. 2011).
- ⁵¹ California Education Code § 220 also prohibits discrimination against students based on race/ethnicity, nationality, and other characteristics. See Cal. Educ. Code §220, *et seq.*
- ⁵² Catherine Lhamon, et al., Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, U.S. Department of Education & U.S. Department of Justice at 6 (Jan. 7, 2015), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf> (citing *Castañeda v. Pickard*, 648 F. 2d 989 (5th Cir. 1981) (sets the standards for English learner programs’ compliance with civil rights law); *United States v. Texas*, 601 F.3d 354, 366 (5th Cir. 2010) (reaffirming and applying the *Castañeda* test); *Horne v. Flores*, 557 U.S. 433, 439 (2009) (holding that state agencies as well as local educational agencies have an affirmative duty for states as well as local educational agencies to ameliorate language barriers)).
- ⁵³ Catherine Lhamon, et al., Dear Colleague Letter: School Enrollment Procedures, U.S. Department of Education & U.S. Department of Justice at 1 (May 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>.
- ⁵⁴ Catherine Lhamon, Dear Colleague Letter: Charter Schools, U.S. Department of Education Office for Civil Rights at 3 (May 14, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf> (“In addition, a charter school may not use admissions criteria that have the effect of excluding students on the basis of race, color, or national origin from the school without proper justification.”).
- ⁵⁵ *Id.*
- ⁵⁶ *Id.* at 1.
- ⁵⁷ Frequently Asked Questions, California Charter School Association (last visited July 13, 2016), available at <http://www.ccsa.org/understanding/faqs/>.
- ⁵⁸ Matt Taylor, *Success for English Learners in Charter Schools*, California Charter Schools Association at 11 (June 2015), available at <http://www.ccsa.org/SuccessForEnglishLearnersInCharterSchools.pdf>
- ⁵⁹ Frequently Asked Questions, California Charter School Association (last visited July 13, 2016), available at <http://www.ccsa.org/understanding/faqs/>.
- ⁶⁰ Catherine Lhamon, et al., Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, U.S. Department of Education & U.S. Department of Justice at 5 n.10 (Jan. 7, 2015), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.
- ⁶¹ See, e.g., Cal. Educ. Code § 262.3-b and Cal. Gov’t. Code §11139.

⁶² *Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981).

⁶³ Cal. Educ. Code § 300.

⁶⁴ 20 U.S.C. § 1703(f).

⁶⁵ *Lau v. Nichols*, 414 U.S. 563, 566 (1974).

⁶⁶ See, e.g., Cal. Gov't. Code § 11135; Cal. Educ. Code § 47605(d)(2)(A) ("A charter school shall admit all pupils who wish to attend the school.").

⁶⁷ See Cal. Gov't. Code § 11135; 42 U.S.C. § 2000d, et seq.

⁶⁸ *Plyler v. Doe*, 457 U.S. 202, 223-24 (1982).

⁶⁹ *Id.* at 223.

⁷⁰ Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts, and Parents, U.S. Department of Justice & U.S. Department of Education at 1 (May 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201405.pdf>.

⁷¹ *Id.* at 3-4.

⁷² *Serrano v. Priest*, 5 Cal. 3d 584, 607-09 (1971).

⁷³ *Hartzell v. Connell*, 35 Cal. 3d 899, 905-08 (1984); Cal. Const. Art. IX, § 5.

⁷⁴ *Id.*

⁷⁵ In 2011, in response to a lawsuit by the ACLU, the California legislature codified the Constitution's "free schools" guarantee through the passage of AB 1575. This codification includes Education Code § 49011(b)(4), which provides a "school district or school shall not offer course credit or privileges related to educational activities in exchange for money or donations of goods or services from a pupil or a pupil's parents or guardians, and a school district or school shall not remove course credit or privileges related to educational activities, or otherwise discriminate against a pupil, because the pupil or the pupil's parents or guardians did not or will not provide money or donations of goods or services to the school district or school."

⁷⁶ Hilary Hammell, *Charging for Access: How California Charter Schools Exclude Vulnerable Students by Imposing Illegal Family Work Quotas*, Public Advocates (Nov. 2014), available at <http://www.publicadvocates.org/forced-parent-work-policies>.

⁷⁷ Richard Zeiger, *Pupil Fees: Parent Service Hours*, California Department of Education (Jan. 20, 2015), available at <http://www.cde.ca.gov/re/lr/fm/fma1501.asp>

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