

March 20, 2002

**VIA ELECTRONIC MAIL AND U.S. MAIL**

Dana Shelburne  
La Jolla High Charter Petitioners  
750 Nautilus Street  
La Jolla, CA 92037

Re: Enrollment At La Jolla High School as a Charter School

Dear Mr. Shelburne:

You have asked whether the procedures and criteria regarding admissions, outreach and recruiting, contained in the charter for La Jolla High School which you provided to me March 19, 2002, are consistent with the Charter School Law (Education Code section 47600 et seq.) and other applicable provisions of law. Based on our understanding of the petition, we believe it does comply with applicable laws.<sup>1</sup>

As we understand the proposal, La Jolla High School will be a conversion charter school which attempts to preserve the status quo regarding enrollment, insofar as that is possible under applicable law. All current students will have the right to choose to continue to attend the school. Students living within the current attendance area, as defined by San Diego Unified School District, will be given preference in admissions. In addition, the charter will continue to rely on the SDUSD enrollment options office to attract and place students at the school. Enrollment through the VEEP, Choice and Seminar programs, as operated currently by the District, will be continued, and VEEP transportation costs will continue to be funded by the District. Thus, students enrolled at Muirlands Middle School (including VEEP, Choice and Seminar program students) will continue to be entitled to preference in admissions. Admissions preferences will also be given for students of staff of the charter school, as well as to siblings of current students.. A lottery will be conducted to fill vacancies, from applications submitted through the VEEP, Choice and Seminar Programs of the District. Of course, enrollment at La Jolla High will be voluntary

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<sup>1</sup> We have not been asked whether the charter complies with the Charter School Policy and Guidelines adopted by the San Diego Unified School District, and therefore do not address that policy.

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The following describes the laws affecting enrollment at La Jolla High as a charter school, and how the proposal has addressed those laws.

1. It may establish admissions requirements. Ed. Code §47605(b)(5)(H). The proposal requires commitment from students and parents to the goals and mission of the charter. No other admissions requirements are prescribed.

2. It may not discriminate against any pupil on the basis of ethnicity, national origin, gender or disability. Ed. Code §47605(d). The proposal includes such an affirmation.

3. It must admit students without regard to their place of residence within the state of California. Ed. Code §47605(d). The charter so provides.

4. It must give admissions preference to pupils who reside within the former attendance area of that school if it is a conversion of an existing public school. Ed. Code §47605(d). The proposal includes this preference.

5. All pupils who wish to attend La Jolla High must be admitted, unless the number exceeds the school's capacity, in which case a public random drawing must be held, giving preference to pupils currently attending the charter school and pupils residing in the district. Ed. Code §47605(d). The proposal provides for a lottery after preferences are given.

6. Other preferences may be permitted by the chartering authority if consistent with the law. Ed. Code §47605(d). The proposal gives preferences to pupils from Muirlands Middle School in order to maintain, insofar as possible, the integrity of the voluntary integration and choice programs currently operated by the District. To the extent that La Jolla High can be considered to be subject to the court order in *Carlin v. San Diego Unified School District*,<sup>2</sup> as contended by the District in its charter school policy, continuation of current integration programs would be consistent with that order. Preferences for pupils of staff members is also requested. Given the small number of students likely to be enrolled based on this preference, we do not expect this preference to materially alter the population at La Jolla High. Consequently, we believe it would also be consistent with the District's obligations under *Carlin*.

7. The charter must describe the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population within the district. Ed. Code §47605(b)(5)(G). This does not mean that the school must actually achieve such

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<sup>2</sup> We doubt this. Since La Jolla High, as a new charter school, was not a party to the suit, its interests and practices were not considered. It is axiomatic that only parties to a lawsuit may be bound by a resulting court order. See, e.g., *Peterson v. Fee International, Ltd.* (1975) 435 F. Supp. 938.

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balance, but only make efforts to do so to the extent permitted by law. The petitioners pledge to conduct broadly-based outreach programs designed to attract students from throughout the district. The petition also explicitly seeks to maintain the VEEP, Choice and Seminar programs that increase the diversity of the La Jolla High student body by requesting that the District continue to fund transportation costs for VEEP, and to work with the charter school to maintain these other programs. Although we would expect the school's outreach efforts to be articulated in greater detail in the future, by making the District's placements at Muirlands Middle School and ongoing VEEP transportation programs an integral part of the proposal, La Jolla High ensures that diversity will continue at the school. This is more than just a good faith effort to achieve balance, and meets the requirements of the law.

8. Preferential treatment in public education on the basis of race, sex, color, ethnicity or national origin is prohibited. Cal. Const., Art. I, section 31a. This provision, enacted by Proposition 209, prohibits both quotas and outreach efforts designed to give preferences in public education on the basis of these characteristics. *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 101 Cal. Rptr. 2d 653, 672-72. The proposal, on its face, does not call for preferential treatment either in enrollment or outreach efforts, other than through the placement programs established and administered by the District under the authority of the *Carlin* court order. The proposed lottery to fill vacancies, if any, contemplates a random lottery from among VEEP, Choice and Seminar Program applicants. No racially-based preferences are suggested in the charter.

9. A lottery may be required under federal law in order for charter schools to maintain eligibility for certain funds. 20 U.S.C. §8066. However, federal law has been interpreted to allow some preferences and exclusions. As described above, a lottery is proposed to fill vacancies after attendance area and other preferences are extended. We believe this approach comports with the federal requirement.

In our view, the charter proposal complies with these requirements of law. Once the petitioners have developed detailed plans and policies for outreach and admissions procedures, we would be happy to review those to ensure that they meet all legal requirements.

Sincerely,

Gregory V. Moser