



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR - 4 2003

Ms. Debra Farmer  
Director  
Special Education Section  
Hawaii Department of Education  
637 18<sup>th</sup> Avenue  
Honolulu, Hawaii 96816

Dear Ms. Farmer:

This letter is in response to the Hawaii Department of Education's (HDE) recent electronic mail message regarding a State's obligations to students with disabilities whose parents choose to place them in a charter school. You ask:

Keeping in mind that Hawaii is a centralized, statewide school system and charter schools are not LEAs [local educational agencies], if FAPE [free appropriate public education] is offered at a department (DOE) public school (i.e. the IEP team feels that the DOE school is the appropriate placement for the student), but the parent still chooses to send their child to a charter school, what is the state's obligation to that student attending the charter school?

You acknowledge in your inquiry that Hawaii is a centralized, statewide school system that serves both as the State educational agency (SEA) and the local educational agency (LEA). Further, based on your inquiry, it is our understanding that the charter schools in question are public schools within the statewide school system and that under Hawaii's charter schools law, charter schools are not their own LEAs.

Under applicable Federal law—Part B of the Individuals with Disabilities Education Act (Part B), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II), children with disabilities attending public charter schools and their parents retain all rights under these statutes, including the right to a free appropriate public education. 34 C.F.R. §300.312(a); 34 C.F.R. §104.4 and 28 C.F.R. §35.130. Generally, States have great flexibility in determining how students with disabilities who are placed in public charter schools will be provided FAPE, including the option of designating another entity as responsible for ensuring that the requirements of Part B are met and the option of allowing a charter school to establish its eligibility for funds as its own LEA. 34 C.F.R. §§300.312; 300.180-300.185 and 300.220-300.250. Hawaii appears to have chosen to maintain responsibility for serving these students within its unitary school system, and it is our understanding that responsibility for ensuring that FAPE is made available to these students has not been

assigned to some other entity. This means that, under 34 C.F.R. §300.241, those students with disabilities attending charter schools must be served in the same manner as students in other schools, or, if funds under Part B are provided to other schools, then charter schools must be provided funds in the same manner.

The Department also has determined that parental choice programs are consistent with Part B, Section 504, and Title II if they allow the parent to choose between one or more LEAs or public agencies that, if chosen, would be responsible for ensuring that FAPE is provided. See, *Letter to Lutjeharms*, 16 EHLR 554 (1989); *Letter to Tatel*, 16 EHLR 349 (1990). However, while the Department previously determined that it is consistent with Part B for a parental choice program to allow the parent to choose between one or more placements within an LEA or public agency where FAPE will be provided to the child, it is not consistent with Part B for a parental choice program to allow a placement determination, arrived at by the appropriate team within an LEA or public agency, to be unilaterally overridden by the parent without regard to the provision of FAPE. See, *Letter to Siegel*, 16 EHLR 797 (1990); *Letter to Lugar*, 17 EHLR 834 (1991); *Letter to Evans*, 17 EHLR 836 (1991); *Letter to Burton*, 17 EHLR 1182 (1991); *Letter to Bina*, 18 EHLR 582 (1991); and *Letter to Bayh*, 17 EHLR 840 (1991). Therefore, to the extent that Hawaii's parental choice program allows parents to choose between the school that the student would attend and a charter school of the unitary school system, then FAPE must be made available to the child at the charter school if the student's needs could be met in a school setting with special education and related services and additional aids and supports. However, students whose needs cannot be met in a school setting with special education and related services and additional aids and supports -- for example, students requiring residential placements -- would not need to have FAPE provided through the public charter school placement where that charter school is not a residential school.

Further, under Section 504 and Title II, parents of students with disabilities must be provided the same access to public charter schools and parental choice programs as parents of students without disabilities. Therefore, if public charter schools are schools of the school system, charter schools that offer FAPE must be made available to parents of students with disabilities in selecting a school for their children.

It is our understanding that the State is continuing its policy and practice of ensuring that FAPE is made available to all students with disabilities attending charter schools by requiring that their special education and related services needs, as expressed in the IEPs, be fully addressed. Please be advised that the Office of Special Education Programs is available to provide technical assistance on this issue.

The Seattle Office for Civil Rights also is available to provide technical assistance concerning the requirements of Section 504 and Title II with regard to charter schools and parental choice.

U.S. Department of Education  
Office for Civil Rights, Seattle Office  
915 Second Avenue, Room 3310  
Seattle, WA 98174-1099  
Telephone: (206) 220-7900  
FAX (206) 220-7887; TDD (206) 220-7907  
Email: [OCR\\_Seattle@ed.gov](mailto:OCR_Seattle@ed.gov)

If we can be of further assistance, please do not hesitate to call Dr. JoLeta Reynolds at (202) 205-5507, press (3).

Sincerely,



Stephanie S. Lee  
Director  
Office of Special Education Programs

cc: Gary D. Jackson, Director  
Seattle Office for Civil Rights