

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia



ATTORNEY GENERAL

November 9, 2007

Ms. Monica Graves
Director of School Audits
Office of the Inspector General
717 14th Street, N.W., 5th Floor
Washington, D.C. 20005

**Re: Notice Requirements to Advisory Neighborhood Commissions
for Pending Actions at the Public Charter School Board**

Dear Ms. Graves:

This is in response to your e-mail dated October 17, 2007, regarding whether the Public Charter School Board ("PCSB" or "Board") would be required to provide an Advisory Neighborhood Commission ("ANC") 30-days notice under the ANC Act¹ when a charter school seeks approval to establish a second school facility in that ANC's district, and the pending action does not trigger the 10-day notice requirement under the Board's enabling statute. District of Columbia School Reform Act of 1995² ("Charter Schools Act"), approved April 26, 1996, 110 Stat. 1321, D.C. Official Code §38-1802.01 *et seq.* (2007 Supp.).³ Your inquiry is part of an audit by the Office of the Inspector General ("OIG") that was requested by ANC Commissioner Joseph Fengler, Chair of ANC 6A. While you indicate that the OIG is examining in general whether the PCSB is providing legally required notice to ANCs, your specific inquiry to this Office involves the notice requirements for a proposal to open a second school facility. You have interpreted the

¹ The 30-day notice requirement is contained in section 13 of the Advisory Neighborhood Commissions Act of 1975 ("ANC Act"), as amended, effective March 26, 1976, D.C. Law 1-58, D.C. Official Code §1-309.10 (2006 Repl.)

² The Charter Schools Act was enacted by Congress as Title II of An Act making appropriations for fiscal year 1996 to make a further down payment toward a balanced budget, and for other purposes.

³ Under the Charter Schools Act, the PCSB must provide a 10 day notice to an affected ANC when a petition to establish a charter school is filed, D.C. Official Code §38-1802.03(c)(3) (2007 Supp.), and when a charter revision is being considered, D.C. Official Code §38-1802.04(c)(10) (2007 Supp.). In addition, pursuant to the Charter Schools Act an applicant seeking to convert a public school into a charter school must provide notice to all ANCs that represent an area within the attendance area of the public school. D.C. Official Code §38-1802.01(a)(2) (2007 Supp.).

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legal advice that this Office provided to Commissioner Fengler, in a letter dated April 5, 2007 ("Fengler letter"), as requiring the 30-day notice in this situation. For the reasons that follow, I agree with your interpretation that the PCSB would be required to provide the 30-day notice under the ANC Act to the ANC for the neighborhood where the proposed second school would be located.

The PCSB takes the position that a charter school's request to open a second facility does not constitute a charter revision;⁴ therefore it would not trigger the 10-day notice requirement to the affected ANC under section 2204(c)(10) of the Charter Schools Act. D.C. Official Code §38-1802.04(c)(10) (2007 Supp.)⁵ PCSB's practice is not to provide ANC notice under these circumstances. According to PCSB, a determination regarding such a proposal would be considered and voted on at a public meeting, as is the case with all official actions by the Board. The public would have an opportunity to present views on the matter during the comment period of the meeting, but not necessarily prior to a vote by the Board.⁶

The Court of Appeals held in *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1373 (D.C. 1977), that the 30-day notice requirement contained in section 13 of the ANC Act, D.C. Official Code § 1-309.10 (2006 Repl.), as construed with the ANC notice requirement in section 738(d) of the Home Rule Act, D.C. Official Code §1-207.38(d), applies only to proposed District government actions that are "of significance to neighborhood planning and development." The Court in *Kopff* held that at a minimum matters requiring a public hearing would be "of significance" and therefore require the 30-day notice. However, the Court also recognized that there may also be infrequent situations where a hearing is not required, but the matter is in the "realm of significance" triggering the notice requirement. *Id.*

⁴ D.C. Official Code §38-1802.03(h)(2) (2007 Supp.) provides that a "charter" is an approved petition to establish a charter school that includes the following: a statement defining the mission and goals of the proposed school and the manner in which the school will conduct any districtwide assessments; a description of the proposed rules and policies for governance and operation of the proposed school; copies of the proposed articles of incorporation and by-laws; a description of the procedures the proposed school plans to follow to ensure the health and safety of students, employees, and guests and to comply with applicable federal and District health and safety laws; and assurance that the proposed school will seek, obtain and maintain accreditation from one of the entities listed in D.C. Official Code §38-1802.02(16); an explanation of the relationship that will exist between the public charter school and the school's employees; and any amendments or conditions agreed to by the eligible applicant pursuant to D.C. Official Code §38-1802.03(d) (2007 Supp.).

⁵ Information regarding PCSB's practices contained in this letter are based on a telephone discussion between Sheila Kaplan, Assistant Attorney General, Legal Counsel Division, and Josephine Baker, PCSB Executive Director.

⁶ PCSB states that a charter school's request for increased enrollment, the issue that was addressed in the Fengler letter, would be considered in the same manner at a public meeting.

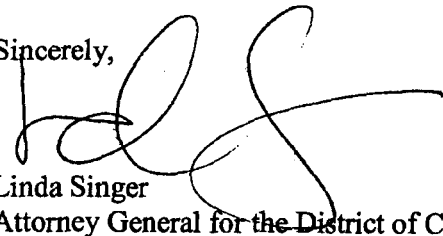
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In my view, a proposal to open a new school facility is sufficiently significant for a neighborhood to trigger the 30-day notice requirement and the opportunity to comment under the ANC Act. It is important to note that section 2203(c)(3) of the Charter Schools Act, D.C. Official Code §38-1802.04(c)(3) (2007 Supp.), provides for an affected ANC to receive notice of a proposed facility (albeit a shorter 10-day notice) when an applicant first petitions for a charter to establish a charter school. The fact that the Charter Schools Act does not similarly provide notice when the proposed facility would be operated by a charter school that has already be granted a charter, does not mean that other legally required notice does not apply. Section 738(d) of the Home Rule Act (D.C. Official Code §1-207.38(d)), provides that the ANCs are entitled to notice under the ANC Act, "*in addition to any other notice required by law...*" Thus, because the Charter Schools Act does not specifically provide for notice when a second facility is proposed, the ANC 30-day notice requirement would still apply.

Please note that while I find that a proposal by a charter school to open a new facility would be sufficiently significant to a neighborhood to require the regular 30-day notice to the affected ANC, nothing in this letter is intended to decide whether the notice requirements would apply to other PCSB official actions. Such determinations would have to be made on a case-by-case basis depending on the particular circumstances.

Sincerely,



Linda Singer
Attorney General for the District of Columbia

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(AL-07-164B)