

Exit Conference

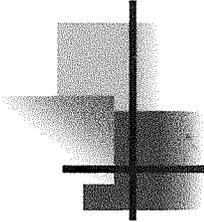
District of Columbia
Office of the Inspector General

**Audit of the Notification Procedures of the
D.C. Public Charter School Board and
the D.C. Board of Zoning Adjustment**

(Project: OIG No. 07-2-28GA)

December 17, 2007

Briefing Prepared for the D.C. Public Charter School Board



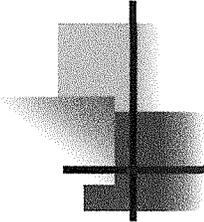
Objectives, Scope & Methodology

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Objectives. The audit objectives were to: (1) determine if the Public Charter School Board (PCSB) is providing proper notification to the Advisory Neighborhood Commissions (ANCs) when the Board grants or revises a public school charter and (2) evaluate the PCSB's process for notifying the ANCs.^[1]

Scope & Methodology. The audit team determined if the PCSB provided proper notification to the ANCs by: (1) reviewing documentation provided by the PCSB, and (2) interviewing Advisory Neighborhood Commissioners (Commissioners) in each ward. The audit team reviewed documentation for 2003 through 2007. Our audit was conducted in accordance with the generally accepted government auditing standards.

^[1] The audit team will not discuss the audit objective applicable to the Board of Zoning Adjustment during this presentation.



Notification Requirements

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Notification Requirements in ANC Act. For government actions and proposed actions, the ANC Act requires the Council, the executive branch, and independent agencies, boards, and commissions to provide a 30-day advance written notice to the ANCs (*see* D.C. Code § 1-309.10).^[21] The 30-day notice excludes weekends and legal holidays. The ANC Act also requires the entities to maintain a record of the notices sent to each Commission.

Notification Requirements in the School Reform Act. The School Reform Act requires the PCSB to provide a 10-day notice to the ANCs prior to holding public hearings on petitions to establish and amend charters (*see* D.C. Code §§ 38-1802.03 and 38-1802.04). The School Reform Act also requires the PCSB to publish a 10-day notice in the D.C. Register and newspapers of general circulation.



In April 2007, the current Attorney General for the D.C. Office of the Attorney General (OAG) opined that the PCSB has to follow the 10-day notice period and not the 30-day notice period in the ANC Act when the PCSB holds hearings on petitions to grant and revise charters.

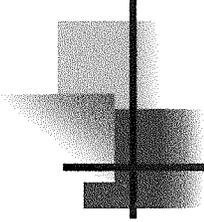
^[21] Under certain circumstances, the entities may provide a shorter notice.

Issue 1. Providing Notifications Required by the School Reform Act

The PCSB has not been consistently notifying the ANCs prior to holding public hearings on petitions to establish and amend charters, as required by the School Reform Act.

Establishing Charters. According to PCSB staff, PCSB has always sent notifications to the ANCs prior to holding public hearings on petitions to establish charter schools. However, the PCSB did not have documentation supporting it sent notifications to the ANCs for 4 of the 5 years reviewed (see Exhibit 1).

Amending Charters. According to PCSB staff, PCSB has not been consistent with sending notifications to the ANCs prior to holding public hearings on petitions to amend charters. From 2003 through 2007, the PCSB received 17 requests to amend charters. However, the PCSB did not have documentation supporting it sent notice to the ANCs prior to holding any of the hearings (see Exhibit 2).



Audit Results (cont'd)

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Results of Interviews. The audit team interviewed 14 current Commissioners, 2 former Commissioners, and 1 Commission staffer, and most of the individuals stated the PCSB does not notify their ANCs prior to holding public hearings. Specifically, 13 of the 17 individuals stated the PCSB does not send notifications to their ANCs.

Issue 2: Providing Notifications Required by the ANC Act

The School Reform Act does not state an organization's request to open a second facility constitutes an amendment to the organization's charter. Thus, the PCSB does not provide notice to the ANCs when an organization requests to open a second facility unless the PCSB has to amend the organization's charter. The PCSB only amends a charter when an organization wants to change its curriculum or offer new grade levels. Thus, if an organization currently has a school in ward 5 and the organization requests to open a second school in ward 6, the PCSB will not notify the ANCs if the second school offers the same grade levels and curriculum as the first school.

Although the School Reform Act does not require the PCSB to provide notice to the ANCs when an organization requests to open a second facility, the ANC Act requires the PCSB to provide notice. In November 2007, the Attorney General for the OAG opined 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..." (see Exhibit 3).

Exhibit 1. Notifications of Public Hearings on Petitions to Establish Charters

	Newspapers							
	D.C. Register		The Post		The Times		ANCs	
	Provided Notice?	Provided Timely Notice?						
2003 Cycle	no	-	no	-	yes	yes	no	-
2004 Cycle	yes	yes	yes	yes	yes	yes	no	-
2005 Cycle	yes	yes	yes	yes	yes	yes	no	-
2006 Cycle	no	-	yes	yes	no	-	no	-
2007 Cycle	yes	yes	yes	yes	no	-	yes	yes

Exhibit 2. Notifications of Public Hearings on Petitions to Amend Charters

School	Date of Hearing	Newspapers							
		D.C. Register		The Post		The Times		ANCs	
		Provided Notice?	Provided Timely Notice?						
Paul Charter	07/19/03	no	-	no	-	no	-	no	-
D.C. Preparatory Academy	07/13/04	yes	no	no	-	no	-	no	-
Sasha Bruce	05/16/05	no	-	yes	yes	no	-	no	-
Arts and Technology Academy	08/15/05	no	-	no	-	no	-	no	-
Howard Road	11/21/05	no	-	no	-	no	-	no	-
W.E. Doar	01/23/06	no	-	no	-	no	-	no	-
Arts and Technology Academy	05/16/06	no	-	yes	yes	no	-	no	-
Capital City	05/16/06	no	-	yes	yes	no	-	no	-
KIPP-DC	05/16/06	no	-	yes	yes	no	-	no	-
Carlos Rosario	05/16/06	no	-	yes	yes	no	-	no	-
Friendship Edison	08/21/06	no	-	no	-	no	-	no	-
Howard Road	10/16/06	yes	yes	yes	yes	no	-	no	-
Maya Angelou	12/18/06	no	-	yes	yes	no	-	no	-
Friendship Edison	12/18/06	no	-	no	-	no	-	no	-
Arts and Technology Academy	05/22/07	yes	yes	no	-	no	-	no	-
E.L. Haynes	05/22/07	yes	yes	no	-	no	-	no	-
Options	08/08/07	no	-	yes	no	no	-	no	-

Exhibit 3

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.).

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.

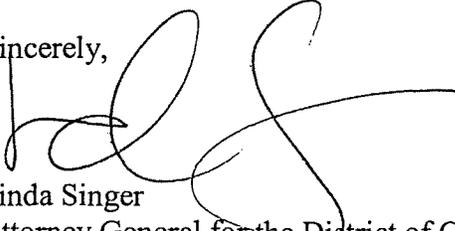
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In my view, a proposal to open a new school facility is sufficiently significant for a neighborhood to trigger the 30-day notice requirement and the opportunity to comment under the ANC Act. It is important to note that section 2203(c)(3) of the Charter 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

LS/sk

(AL-07-164B)