

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

May 16, 2018

Honorable Councilmember Vincent C. Gray
Chair of the Committee on Health

Dear Councilmember Gray:

You asked whether the Landrieu Act¹ (“Statute”) has been satisfied as it relates to Fletcher Johnson Middle School in Ward 7. The short answer is yes. Under the Statute, the Mayor² is required to provide a right of first offer to charter schools or other eligible entities before she can dispose of the Fletcher Johnson Middle School and property located at 4650 Benning Road, S.E. (together “Fletcher Johnson”). The Mayor complied with the Statute by providing a right of first offer in 2014.

The Statute requires the Mayor to “give the right of first offer to purchase, lease, or otherwise use an excess school facility to an eligible entity.”³ When extending the right of first offer under the Statute, the Mayor is required to give first preference to an existing tenant that is a public charter school, second preference to a high performing and financially sound charter school, and third preference to any other eligible entity, which includes certain existing tenants who are nonprofit elementary or secondary schools and community based non-profit arts education organizations. According to information provided by DGS General Counsel, a right of first offer

¹ The Landrieu Act refers to the law introduced by Senator Mary Landrieu as an amendment to section 2209 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat 1321; D.C. Official Code § 38-1802.09 (2012 Repl.)). It was amended by the Comprehensive Planning and Utilization of School Facilities Amendment Act of 2014, effective June 21, 2014 (D.C. Law 20-114; 61 DCR 4669) and the Excess School Facilities Existing Tenant Preference Amendment Act of 2016, effective Oct. 8, 2016 (D.C. Law 21-160; 63 DCR 10775).

² The Mayor’s authority to make the right of first offer under the Statute was delegated to the Chief Property Management Officer (now the Director of the Department of General Services (“DGS”)) and the authority to negotiate the offers was delegated to a selection committee comprised of the Deputy Mayor for Education and the Chief Property Management Officer, by Mayor’s Order 2008-162, effective December 4, 2000. Although the authority was delegated to DGS, for ease of reference in this letter we refer to the Mayor.

³ D.C. Official Code § 38-1802.09(b)(1)(A)(i) (2012 Repl.).

was made for Fletcher Johnson in 2014.⁴ Notes contained in the agenda from the Fletcher Johnson Public Meeting dated February 22, 2017, state that: on “9/30/14 – [the] RFO [was] released” and on “10/31/14 – [the] RFO [was] closed” and a “[d]etermination [was] made not to award the site.”

Although it is not clear whether the Mayor received any offers from eligible entities for Fletcher Johnson, she would not have been required by the Statute to accept any first offers even if she had received them. The Statute does not define what a “right of first offer” entails or the process by which the Mayor must evaluate any offers received, other than establishing a general order of preferences for the offers of certain charter schools over the offers of others. The Mayor is not required by the Statute to accept any offer that she determines is not in the best interest of the District. Once a right of first offer has been made, there is no requirement that the Mayor offer a school property again. Certainly, the Mayor has the discretion under the Statute to offer eligible entities a right of first offer again if she chooses to do so. However, because the Mayor made a right of first offer for Fletcher Johnson in 2014, she has satisfied the requirements of the Statute.

If you have any questions concerning this letter, please do not hesitate to contact me at 727-3400.

Sincerely,



Karl A. Racine
Attorney General

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⁴The 2015 Master Facilities Plan Addendum states that Fletcher Johnson was property of DCPS for which a fall 2014 solicitation had been made, but no award had ensued from the solicitation. David Fisher, Deputy Attorney General, Commercial Division, indicates that according to information provided to him from the Office of the Deputy Mayor for Education, after receiving no offers pursuant to the right of first offer, a Request for Proposals for use of the property was issued, but no disposition of the property was made.