

**BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION**

THE LEGAL CENTER FOR PEOPLE WITH  
DISABILITIES AND OLDER PEOPLE,

Complainant,

v.

DOUGLAS COUNTY SCHOOL DISTRICT,

Respondent.

COMPLAINT UNDER § 504 OF THE  
REHABILITATION ACT OF 1973 AND  
TITLE II OF THE AMERICANS WITH  
DISABILITIES ACT

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## I. INTRODUCTION

This Complaint is brought against Douglas County School District (DCSD). DCSD has discriminated against students with disabilities by offering vouchers, called “scholarships,” for private schools that provide only limited services (if any) for students with disabilities. DCSD’s publicly-funded Choice Scholarship Program excludes children with disabilities, beyond mild<sup>1</sup>, from equally participating in the Choice Scholarship Program. Moreover, in order to implement the Choice Scholarship Program, DCSD has created a public charter school, the Choice Scholarship School. The public Choice Scholarship School provides only limited services to students with disabilities, does not provide special education services, and only serves students with mild disabilities. Thus, students with disabilities do not have equal access to the benefits of the Choice Scholarship School as well as the Choice Scholarship Program.

In order to participate in the Choice Scholarship Program/Choice Scholarship School, parents of students with disabilities must forgo needed accommodations and support services for their children. Moreover, despite the fact that the Choice Scholarship School is a public charter school, the Choice Scholarship Program/Choice Scholarship School will treat students in special education as parentally placed private school children under the Individuals with Disabilities Education Act (IDEA). As parentally placed private school children, these students will only have access to limited services and will not be offered individualized services through an individualized education program (IEP). On the other hand, parents of students without disabilities who wish to participate in the Choice Scholarship Program/Choice Scholarship School are not asked to forgo any of their children’s rights. Thus, parents of students with disabilities do not have the same choice to participate in this program. This violates section 504 of the Rehabilitation Act<sup>2</sup> and Title II of the Americans with Disabilities Act (ADA).<sup>3</sup>

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<sup>1</sup> Exceptions are: 1) Humanex Academy, a for-profit segregated school for students with disabilities/at-risk with annual tuition of \$18,000 and 2) Mackintosh Academy, for students with disabilities who are also gifted.

<sup>2</sup> 29 U.S.C. § 794(2006).

<sup>3</sup> 42 U.S.C. § 12131 *et seq.* (2006).

## II. STATEMENT OF FACTS

### A. Douglas County School District

The Douglas County School Board approved the Choice Scholarship Program on March 15, 2011. The Choice Scholarship Program gives vouchers to the parents of 500 students to attend private schools (called “Partner Schools”) for the 2011-2012 school year. The district receives \$6,100 annual per pupil funding and will keep 25% of this and give the remaining 75% to the voucher school. The value of the voucher (“scholarship”) will be \$4,575 or the actual cost of tuition, whichever is less. DCSD will write checks to parents who are required to sign them over to the Partner School.<sup>4</sup> If the private partner school’s tuition exceeds \$4,575, the parents are responsible for the excess tuition. In that event, the parents of children with disabilities will be charged to participate in the public Choice Scholarship School. Additionally, several of the Partner Schools have indicated that they will charge parents for the costs of additional services required by the child’s disability.

Records from DCSD, dated June 8, 2011, show that 16 schools, of which 12 are religious schools, have been approved to participate in the Choice Scholarship Program.<sup>5</sup> As part of the application process, Partner Schools are asked to provide information regarding how they intend to serve children with disabilities. Participating Partner Schools, however, will not be required to change their admissions criteria in order to participate in the program. Thus, the private Partner Schools differ from the public schools because the Partner Schools almost totally exclude students with more than mild disabilities and they do not provide special education services. DCSD does generally state that “A Private School Partner is prohibited from discriminating in its employment or enrollment decisions on any basis protected under applicable federal or state law,....”<sup>6</sup> The majority of the private partner schools, however, do not enroll or provide services for students with disabilities (beyond mild). Moreover, many of the private

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<sup>4</sup> Choice Scholarship School Application

<sup>5</sup> CD’s received from ACLU/Arnold & Porter, LLP, containing documents obtained pursuant to the Colorado Open Records Act.

<sup>6</sup> DCSD Policy JCB Choice Scholarship Program page 7 (ATTACHMENT 1)

school partners have exclusively high admission standards, which they will not waive and most of the partner schools are religious schools. Since religious schools are not required to comply with the ADA or Section 504, these schools have no experience accommodating students with disabilities. All but one Partner School state that they can only provide limited (if any) services for students with disabilities.<sup>7</sup> For example:

1. Front Range Christian School (FRCS): “The parents of a student who comes to FRCS with an Individualized Educational Plan (IEP) or 504 plan (Americans with Disabilities Act) while attending FRCS, will need to be aware that FRCS is privately funded and is not legally required to be in compliance with these documents. \*\*\*  
Any services necessary, above and beyond what FRCS can provide, as determined by the administration, special needs and teaching staff, will need to be provided privately by the parent.”
2. Evangelical Christian Academy: “ECA is unable to accommodate students with Individualized Education Plans.”
3. Denver Christian Schools: “As is true of any private school, Denver Christian Schools is not required to develop or follow an Individual Learning Plan (ILP) or Individual Educational Plan (IEP).”
4. Our Lady of Lourdes Catholic School: “Students with disabilities that cannot be accommodated in our school are not enrolled. Older part of the building is not ADA accessible.”
5. The Rock Academy: “Learning disabilities are served only by modifiacations [sic] that a regular classroom teacher is able to make.”
6. Southeast Christian School: “We have limited services for students with disabilities.\*\*\*  
We also allow parents to provide their own private Behavioral Therapists and Dyslexia Therapy during school. The parents are responsible for the cost of the therapist and for the Dyslexia Therapy.”
7. Regis Jesuit High School: “While we do not have students with severe learning disabilities...”

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<sup>7</sup> Direct quotes from Private School Applications for CSP

8. Valor Christian High School: “We do not have a Special Education program or Resource program at Valor as our admissions standards preclude having a population with significant need.”
9. Trinity Lutheran High School: “Trinity can accommodate students with ADD, ADHD, and mild learning or other disabilities where an IEP makes recommendations for classroom modifications that a classroom teacher can implement.”
10. Lutheran High School: “Students will be admitted to Lutheran High School if the student does not have a learning, behavioral, or emotional disability or disorder for which the school is not prepared to provide special services. \*\*\*  
The Resource Program provides strategies and modifications for students with organizational and educational challenges. It is not a special education program with special education services.”
11. Shepherd of the Hills Christian School: “As for learning or emotional disabilities...the direction in dealing with those disabilities depends on the severity of the disability, whether we have the resources to make this the best educational placement for the child in addressing the disability, and whether there are elements of the disability that might detract from the larger school environment.”
12. Woodlands Academy: “Serious disabilities are not best served at Woodlands, as we do not have the facilities for these students.”

#### Charter School Designation

On June 27, 2011, the Douglas County School Board approved, as a public charter school, the Choice Scholarship School. The Choice Scholarship School exclusively serves students enrolled in private partner schools through the Choice Scholarship Program. Students receiving vouchers will enroll in the charter, which will then contract with participating private schools to provide the students’ educational services. Inasmuch as it serves only as an umbrella administrative entity for the Partner Schools, the charter itself will provide no instruction. In fact, despite being a public charter school, the Choice Scholarship School has no teachers, no unique curriculum, and no

building.<sup>8</sup> Douglas County School Board minutes state: “Students participating in the Choice Scholarship Program will be enrolled in the Choice Scholarship School, and receive their education at a private school partner to which the family will direct their Choice Scholarship funds. This action would establish the Choice Scholarship School under the Colorado Charter Schools Act.”<sup>9</sup>

Moreover, some members of the DCSD’s accountability committee, which makes recommendations regarding charter school applications, question the legality of the new charter school being created to send students to private religious schools that discriminate on the basis of religion and do not serve students with disabilities. These members cited the following examples: the Southeast Christian School in Parker, Colorado whose application states “reserves the right to deny admission to any student whose needs we cannot meet or compromises the expressed mission, goals, purpose, safety or philosophy of Christian education” and Valor Christian School which notes “We do not have a Special Education program or Resource program at Valor as our admissions standards preclude having a population with significant need.”<sup>10</sup>

## **B. Parties**

### **1. The Complainant**

The Legal Center for People with Disabilities and Older People (The Legal Center), a non-profit organization, is Colorado’s federally mandated Protection and Advocacy System. We protect human and civil rights, work to eliminate discrimination and help people access services through legal representation, advocacy, education, and legislative analysis.

### **2. The Respondent**

Douglas County is located south of Denver, Colorado. The Douglas County School District is the third largest school district in Colorado. Its main office is located at 620

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<sup>8</sup> *Uncharted charter territory spurs debate*, The Denver Post, July 14, 2011

<sup>9</sup> Website, Douglas County School District

<sup>10</sup> *Advisory group questions ‘voucher charter’* Education News Colorado, [www.ednewscoloraod.org/2011/07/13](http://www.ednewscoloraod.org/2011/07/13).

Wilcox Street, Castle Rock, CO 80104. The Superintendent of Schools is Dr. Elizabeth Celandia-Fagan and the school board president is John Carson. The Douglas County School District serves 58,723 students and, as of last December, 5,498 of these students were considered eligible for special education services under the IDEA. Additionally, upon information and belief, there are a number of students in Douglas County who have been identified as having disabilities under Section 504 and the ADA. The Legal Center requested that information from the school district, but did not receive a response.<sup>11</sup> According to the school district, its students outpace state performance in every grade and on every subject tested by the Colorado Student Assessment Program (CSAP). For special education students, secondary schools are expected to have a comprehensive continuum of services to meet students' needs. Elementary schools provide a variety of programs.<sup>12</sup>

### 3. Timeliness

DCSD's Choice Scholarship Program excludes children with disabilities from participating because the Partner Schools do not offer services for students with more than mild disabilities, if at all. The students who received vouchers will begin attending the Partner Schools in August, 2011. Of the nearly 500 vouchers already distributed, it is unknown how many were received by children with disabilities. DCSD declined to respond to questions sent by The Legal Center on June 22, 2011.

### III. APPLICABLE LAW

Public institutions may not discriminate against people with disabilities. Section 504<sup>13</sup> and Title II of the ADA<sup>14</sup> prohibit "recipients of federal financial assistance" or "public entities" from discriminating against individuals with disabilities. "Recipients" means "any state or its political subdivision" under § 504,<sup>15</sup> and public entities are

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<sup>11</sup> Letter to Robert Ross, Douglas County School District Counsel (ATTACHMENT 3)

<sup>12</sup> Website, Douglas County School District.

<sup>13</sup> 29 U.S.C. § 794(2006).

<sup>14</sup> 42 U.S.C. § 12131 *et seq.* (2006).

<sup>15</sup> 34 C.F.R. § 104.3 (2010).



defined as “any state or local government” under the ADA.<sup>16</sup> DCSD qualifies under both definitions as an entity that is prohibited from discriminating against people with disabilities. DCSD receives federal funding for special education services.

#### **A. Americans with Disabilities Act (ADA/§ 504)**

The definition of disability is broader under federal anti-discrimination laws than it is under the Individuals with Disabilities Education Act (IDEA),<sup>17</sup> which requires a student to have a condition that requires special education and related services. The ADA and § 504 only require that a person have a condition that “affects [or substantially limits] a major life activity” to be considered to have a disability within the meaning of the law.<sup>18</sup> For example, students with diabetes, HIV, cancer, or arthritis may not require special education and related services and may not be eligible for IDEA services. These students, however, are persons with disabilities under Section 504 and the ADA and must have equal access to the services offered by the school district, including the Choice Scholarship Program and the Choice Scholarship School.

The language of § 504’s enacting regulations<sup>19</sup> provides in relevant part:

104.4 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, **be excluded from participation in**, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received Federal financial assistance...

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives or the recipient’s program or activity with

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<sup>16</sup> 42 U.S.C. § 12131(1)(A)(2006).

<sup>17</sup> 20 U.S.C. § 1400 *et seq.* (2006).

<sup>18</sup> 34 C.F.R. § 104.3(1)(1)(2010).

<sup>19</sup> 34 C.F.R. § 104.4.

respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.<sup>20</sup>

**B. Colorado Charter School Act:<sup>21</sup>**

(1) A charter school shall be a public, nonsectarian, nonreligious, non-home-based school which operates within a public school district.

(2)(b) A charter school shall be a public school of the school district that approves its charter application and enters into a charter contract with the charter school.

(3) A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, sex, sexual orientation, national origin, religion, ancestry, **or need for special education services**....Enrollment decisions shall be made in a nondiscriminatory manner specified by the charter school applicant in the charter school application.

(4.5)(a) In order to clarify the status of charter schools for purposes of tax-exempt financing, a charter school, as a public school, is a governmental entity.

(5) Except as otherwise provided in sections 22-20-109, 22-32-115, and 22-54-109, **a charter school shall not charge tuition.**

**IV. ARGUMENT**

The Choice Scholarship Program and its Partner Schools through the Choice Scholarship School discriminate against children with disabilities by denying equal participation in the program for students with disabilities. The private partner schools and the public Choice Scholarship School provide only limited services to students with disabilities and, to the extent they serve children with disabilities, they only accommodate those with mild disabilities. Children without disabilities have the option of choosing a Choice Scholarship Program school or staying in public school. The parents

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<sup>20</sup> *Id.* § 104.4 (emphases added). The enacting regulations of Title II of the ADA are identical. See 28 C.F.R. §§ 35.130(b)(3)(i)-(iii)(2010).

<sup>21</sup> C.R.S. 22-30.5-104 (emphases added).

of children with disabilities are expected to forgo their children’s legal rights to individualized special education services under the IDEA or accommodations under the ADA and Section 504 in order to participate in the Choice Scholarship Program. The parents of children **without disabilities**, however, are not required to forgo any of their children’s legal rights to participate in the Choice Scholarship Program. Thus, children with more than mild disabilities and/or needing special education do not have a real choice because they do not have equal access to the Choice Scholarship Program.<sup>22</sup>

**A. The ADA Prohibits Actions that Have the Effect of Excluding Children with Disabilities.**

The Supreme Court has held that the isolation and segregation of persons with disabilities constitutes unlawful discrimination by the state.<sup>23</sup> The “integration mandate” of the ADA and § 504, as expressed in Federal regulations and *Olmstead v. L.C.*,<sup>24</sup> requires that when a state provides services to individuals with disabilities, it must do so “in the most integrated setting appropriate to their needs.” Children with disabilities should be integrated in the Choice Scholarship Partner Schools. The Choice Scholarship Program, however, excludes children with disabilities from Partner Schools by not admitting them or not providing adequate support services.

DCSD does not require that Partner Schools modify their admission criteria or education programs. DCSD views the participation of special education students in the Choice Scholarship Program as a voluntary parental placement in the private school. Special education students will only receive the limited level of services provided by the Partner School.<sup>25</sup> In contrast to that, information on the Colorado Department of Education website states:

Question: “May charter school students be required to take an entrance exam or be subject to other admission criteria?”

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<sup>22</sup> With the exception of Humanex Academy, a segregated school for children with disabilities with \$18,000 annual tuition or Mackintosh Academy if the child is gifted.

<sup>23</sup> *Olmstead v. L.C.*, 527 U.S. 581 (1999).

<sup>24</sup> *Id.*

<sup>25</sup> DCSD Choice Scholarships Executive Summary (ATTACHMENT 4)

Answer: “No. The Charter Schools Act [C.R.S. 22-30.5-104(3)] prohibits discrimination based on academic ability. Diagnostic or placement exams may be given to students after they have been officially enrolled. As with all public schools, a charter school may create eligibility thresholds for enrollment that are consistent with their area of focus or grade levels, but the school’s methods for determining eligibility cannot be designed, intended, or used to discriminate on the basis of a child’s knowledge, skills, or disability. For instance, a charter high school may deny admission to a student not completing the 8<sup>th</sup> grade, but it cannot deny admission to a student who has an “unsatisfactory” score on a CSAP test.”<sup>26</sup>

Furthermore, DCSD seeks to relieve itself from providing services to children with disabilities based on parental agreement to participate in the Choice Scholarship Program. DCSD Policy states: “The parent of a Choice Scholarship student shall acknowledge that the District will not create specialized programs in Private School partners. Participation in the Choice Scholarship program will be viewed as a voluntary parental placement in the private school for purposes of special education services, and students will receive the level of services provided by the Private School Partner.”<sup>27</sup> With this limit, parents of children with disabilities cannot choose to enroll their children in the Choice Scholarship Program unless they agree to give up services. In effect, parents of children with disabilities, who need more than limited services, need not apply to the Choice Scholarship Program.

**B. The Choice Scholarship School Must Comply With The ADA Because It Is Publicly Financed And Receives Federal Financial Assistance.**

The Charter Schools Act<sup>28</sup> prohibits discrimination on the basis of a child’s need for special education services. As a public school, a charter school must comply with the

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<sup>26</sup> <http://wwwcde.state.co.us/cdechart/faq.htm>

<sup>27</sup> DCSD Policy JCB Choice Scholarship Program Page 5 (ATTACHMENT 1)

<sup>28</sup> C.R.S. 22-30.5-104(3)

federal IDEA, the ADA, Section 504, and any state special education laws.<sup>29</sup> The Choice Scholarship School application, however, clearly states: “Participation in the Choice Scholarship Program will be viewed as a voluntary parental placement in the private school for purposes of special education services. District-provided services to parentally-placed students with disabilities are limited.”<sup>30</sup> Thus, as a public school, the Choice Scholarship School does not comply with the ADA and § 504. Moreover, under the IDEA, parentally placed private school children do not have an individual right to special education and related services, an IEP, or some or all of the services the child would receive in a public school.<sup>31</sup> Thus, unlike parents of children without disabilities, parents of children with disabilities must forgo their children’s rights in order to participate in the Choice Scholarship Program/Choice Scholarship School

The Choice Scholarship School should accept students with disabilities and provide them with appropriate services, the same as other public schools. However, the Choice Scholarship Program schools explicitly state to families of children with disabilities that “lesser services” are provided for children with disabilities. In addition, more than one of the Partner Schools charges fees for special education services and all of the Partner Schools charge tuition that parents are required to pay beyond the voucher amount. This clearly violates the ADA and § 504 requirement that persons with disabilities not be excluded from participation in any program on the basis of their disability.<sup>32</sup>

Public schools receive federal funding and must comply with Title II of the ADA and Section 504. The private Partner Schools, however, are private and primarily religious schools that historically have not had an obligation to comply with the ADA/504/IDEA. Thus, the private Partner Schools have little or no experience providing accommodations. The Choice Scholarship Program seeks to include the private Partner Schools under the umbrella of the publicly chartered Choice Scholarship School. DCSD

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<sup>29</sup> <http://www.cde.state.co.us/cdechart/faq.htm>

<sup>30</sup> Choice Scholarship School Application (ATTACHMENT 5)

<sup>31</sup> 34 C.F.R. § 300.137.

<sup>32</sup> 34 C.F.R. § 104.4.

wants to have its cake and eat it, too. DCSD wants to have a public charter school made up of private (often religious) schools that need not comply with the ADA. As a public “Charter School,” however, the Choice Scholarship School cannot limit services to students with disabilities. The services DCSD provides to students with disabilities through the Choice Scholarship Program and the “public” Choice Scholarship School are limited. The services DCSD provides to children **without disabilities** through the Choice Scholarship Program and the “public” Choice Scholarship School are NOT limited. This violates the ADA and Section 504.

**V. CONCLUSION AND REQUEST FOR RELIEF**

To avoid the gross injustice perpetrated by this program, the Department of Justice should fully investigate this complaint and direct DCSD and the Partner schools themselves to discontinue or remedy their actions with respect to qualified students with disabilities.

Complainants therefore ask the Department of Justice to:

- Investigate fully these claims;
- Ensure that schools participating in the voucher program give equal access to students with disabilities by enrolling them and providing services for them in compliance with the requirements of the ADA;
- Stop the implementation of the voucher program unless and until the discrimination issues are remedied; and
- Grant any other relief it deems just and proper.

Dated this 18<sup>th</sup> day of July 2011.

Respectfully submitted by



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**VI. ATTACHMENTS**

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