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May 12, 2011

Ms. Anurima Bhargava  
Chief, Educational Opportunities Section  
U.S. Department of Justice, Civil Rights Division  
601 D Street, NW  
Washington, DC 20004

By Fax: (202) 514-8337

Re: Civil Rights Complaint against the District of Columbia

Dear Ms. Bhargava,

Please accept this complaint alleging discrimination by the District of Columbia ("District") against students with disabilities in violation of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

**Nature of the Complaint**

The District's public charter school system discriminates against students with disabilities in violation of the ADA and Section 504. Although charter school enrollment is in theory available to all District students, in practice District public charter schools often exclude students with disabilities, especially those with the most significant needs, from participating in charter school programs. In addition, because charter schools limit the special education services they will provide, students with disabilities seeking an alternative to traditional public schools are educated in needlessly segregated settings.

**Jurisdiction**

The District is a governmental unit subject to the ADA. Because the District receives federal financial assistance from the Department of Education, its education system is also subject to Section 504 of the Rehabilitation Act. The Department of Justice may process this complaint under its authority to investigate alleged violations of these federal antidiscrimination laws. The discrimination described in this complaint is continuing and has occurred within the last 180 days.

## **Facts**

The District provides public education services through 52 public charter schools,<sup>1</sup> as well as a traditional multi-school Local Education Agency (LEA), the District of Columbia Public Schools (DCPS). The District's charter schools are chartered by the Public Charter School Board (PCSB), which has sole authority to authorize new charter schools.<sup>2</sup> The PCSB is part of the District government and reports to the District's Deputy Mayor for Education.<sup>3</sup>

A District charter school may elect to have DCPS as its Local Education Agency (LEA) or it may opt to be in an "independent" LEA. There are 38 independent LEAs,<sup>4</sup> 11 of which have fewer than 250 students.<sup>5</sup> Fourteen charter schools have elected DCPS as their LEA.<sup>6</sup> All of the District's charter schools and independent LEAs receive federal funding.

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<sup>1</sup> D.C. Public Charter School Board 2010-2011 Charter School Directory (Sept. 15, 2010), *available at* [http://www.dcpubliccharter.com/data/files/DC\\_Public\\_Charter\\_School\\_Listing.pdf](http://www.dcpubliccharter.com/data/files/DC_Public_Charter_School_Listing.pdf) (last visited May 4, 2011). The District reports it has 94 charter schools. The District's figure counts each campus of a charter school as a single charter school. It also counts the elementary, middle, and/or high school of a charter school as separate schools. For example, AppleTree Learning Public Charter School has four campuses. Our figure of 52 charter schools counts all four campuses as part of a single charter school, and the District's figure counts the four campuses as four charters. We use the figure of 52 charter schools because we think it gives a more accurate picture. None of the following percentages or comparisons depends on whether the 52 or 94 figure is used.

<sup>2</sup> *See* About the District of Columbia Public Charter School Board, <http://www.dcpubliccharter.com/About-the-Board.aspx> (last visited Apr. 12, 2011); *see also* 5 D.C. CODE MUN. REGS. 5499 (2010).

<sup>3</sup> *See* D.C. CODE § 38-1802.14 (2010); *see also* PCSB Accountability, <http://www.dcpubliccharter.com/About-the-Board/PCSB-Accountability.aspx> (last visited May 4, 2011).

<sup>4</sup> *See* Public Charter School LEA Status for Special Education (2010-2011), *available at* [http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/special\\_education/final\\_dc\\_public\\_charter\\_school\\_lea\\_status\\_1082010.pdf](http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/special_education/final_dc_public_charter_school_lea_status_1082010.pdf) and DC Public Charter School Board 2010-2011 Charter School Directory, *available at* [http://www.dcpubliccharter.com/data/files/DC\\_Public\\_Charter\\_School\\_Listing.pdf](http://www.dcpubliccharter.com/data/files/DC_Public_Charter_School_Listing.pdf).

<sup>5</sup> *See* District of Columbia Office of the State Superintendent of Education, 2010 Fall Enrollment Audit Report, District of Columbia Public Schools and Public Charter Schools, Attachment B: Final Enrollment by School and Grade SY 2010-2011 ("Attachment B") (March 14, 2011), *available at* [http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/sled/attachment\\_b\\_final\\_enrollment\\_by\\_school.pdf](http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/sled/attachment_b_final_enrollment_by_school.pdf).

<sup>6</sup> Public Charter School LEA Status for Special Education (2010-2011), *supra* note 4.

The District – including its State Education Agency (SEA), the Office of the State Superintendent of Education (OSSE) – is responsible for ensuring that the District’s system of charter schools complies with the ADA and Section 504 of the Rehabilitation Act.<sup>7</sup>

OSSE has taken steps to address the discrimination complained of here. In March 2009, OSSE issued a “Memorandum on Discrimination against Children with Disabilities” (Memorandum on Discrimination), advising charter schools to stop their discriminatory enrollment practices.<sup>8</sup> In January 2010, OSSE instituted “Policies and Procedures for Placement Review” (Placement Review Policy) that require charter schools to consult OSSE before transferring a student to a segregated placement.<sup>9</sup> Neither action has adequately remedied charter schools’ exclusionary practices or the needless segregation of students with disabilities.

Students with disabilities continue to be underrepresented in the District’s charter schools.<sup>10</sup> The underrepresentation is most pronounced in the case of students with the most significant

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<sup>7</sup> “As the State Education Agency for DC, the OSSE sets statewide policies, provides resources and support, and exercises accountability for ALL public education in DC.” See Office of the State Superintendent of Education, Responsibilities, [http://osse.dc.gov/seo/cwp/view,A,1222,Q,535125,seoNav\\_GID,1507,seoNav,31195|.asp](http://osse.dc.gov/seo/cwp/view,A,1222,Q,535125,seoNav_GID,1507,seoNav,31195|.asp) (last visited Apr. 12, 2011), and has “authority over all state special education functions in the District...” Office of the State Superintendent of Education, Special Education, <http://osse.dc.gov/seo/cwp/view,a,1222,q,561151.asp> (last visited Apr. 12, 2011).

<sup>8</sup> See Deborah A. Gist, State Superintendent of Education, Memorandum No. 09-005 Discrimination against Children with Disabilities (Mar. 9, 2009), available at [http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Guidance\\_on\\_Discrimination\\_Against\\_Children\\_with\\_Disabilities.pdf](http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Guidance_on_Discrimination_Against_Children_with_Disabilities.pdf); see also State Superintendent of Education, Non-Regulatory Guidance to the Prohibitions on Discrimination against Children with Disabilities Memorandum No. 09-005 (Aug. 7, 2009), [http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Final\\_Admissions\\_Guidance\\_08\\_02.pdf](http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Final_Admissions_Guidance_08_02.pdf).

<sup>9</sup> See OSSE, Policies and Procedures for Placement Review (“Placement Review Policy”) (Jan. 5, 2010), available at [http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/policy\\_and\\_procedures\\_for\\_placement\\_review\\_final.pdf](http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/policy_and_procedures_for_placement_review_final.pdf). The January 5 policy replaces an earlier version of the policy promulgated by the OSSE on October 1, 2008.

<sup>10</sup> The precise extent of the underrepresentation is hard to quantify. The District conducts an audit of students each October and also conducts a “child find” count of students with disabilities each December. Based on these, the District reports the number of children attending school and the number of children receiving special education in both DCPS and charter schools. However, the reports do not make clear whether or how the more than 2,000 students attending segregated non-public settings are included. Another confounding factor is that many of the special education students in charter schools attend one of three segregated charter schools – that is, schools in which the majority of students have disabilities. The three are St. Colletta Special

disabilities.<sup>11</sup> Additionally, these students are concentrated in a few charter schools. Seventy-five percent of “Level IV” charter school students (students receiving the most special education services) attend one of three charter schools that serve primarily students with disabilities.<sup>12</sup>

These patterns both reflect and contribute to the segregation that is endemic in the District’s education system. The District has among the highest rates of segregation of students with disabilities in the entire United States.<sup>13</sup> As OSSE’s Assistant State Superintendent of Special Education, Tami Lewis, has noted, “[w]e place out an extraordinary number of our children into segregated placements of various kinds.”<sup>14</sup> According to the District’s Annual Performance

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Education Public Charter School (about 220 students with disabilities, representing nearly 98 percent of its student body), Options Public Charter School (about 250 students with disabilities, representing approximately 68 percent of its student body), and SAIL Public Charter School (about 75 students with disabilities, representing around 56 percent of its student body). Another such school, City Lights Public Charter School, closed in spring 2009. The District’s data from school year 2010-2011 shows that it had a total of 74,997 students, of which 11,947 (15.93 percent) received special education. About 73 percent of all special education students were enrolled in DCPS non-charter schools, although only 61 percent of total students attend DCPS non-charter schools.

<sup>11</sup> The District categorizes special education students by the number of hours of specialized instruction and related services prescribed in their IEPs. Students prescribed eight or fewer service hours are “Level I” and students prescribed 24 or more service hours are “Level IV.” See District of Columbia, Public Charter School Enrollment at 11 (Oct. 5, 2005), *available at* <http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/report.pdf> (last visited May 5, 2011). Although 39 percent of all students are enrolled in charter schools, only 29 percent of Level IV special education students are enrolled in charter schools. See “Attachment B,” *supra* note 5; District of Columbia Office of the State Superintendent of Education, 2010 Fall Enrollment Audit Report, District of Columbia Public Schools and Public Charter Schools, Attachment D: Summary of Students with Individualized Education Programs, SY 2010-2011 (“Attachment D”) (March 14, 2011), *available at* [http://seo.dc.gov/seo/frames.asp?doc=/seo/lib/seo/sled/attachment\\_d.pdf](http://seo.dc.gov/seo/frames.asp?doc=/seo/lib/seo/sled/attachment_d.pdf).

<sup>12</sup> Three-quarters of Level IV charter students are enrolled in the three segregated charters, St. Colletta, Options, and SAIL. See “Attachment D,” *supra* note 11.

<sup>13</sup> See Twenty-Fifth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act: Section III. Rank-Order Tables (2001), *available at* <http://www2.ed.gov/about/reports/annual/osep/2003/25th-vol-1-sec-3.pdf>; see also Twenty-Fifth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act: Section II. The State Picture (2001), *available at* <http://www2.ed.gov/about/reports/annual/osep/2003/25th-vol-1-sec-2.pdf>.

<sup>14</sup> See Testimony of Tameria Lewis, Transcript of Hearing before the Honorable Paul L. Friedman, *Blackman v. District of Columbia*, Docket No. CV-97-1629 (Feb. 2, 2009) (“February

Report (APR) to the Department of Education for SY 2009-2010, 11.86 percent of District special education students receive instruction and services outside the general education setting for more than 60 percent of each day, and another 28.97 percent are served in separate schools, residential facilities, or homebound or hospital placements.<sup>15</sup> More than 2,000 District students are served in nonpublic placements,<sup>16</sup> almost all of which are segregated settings, costing the District approximately \$200 million, or roughly 15 percent of its entire education budget.

#### The Charter School Enrollment Process Discriminates Against Students with Disabilities.

Enrollment in charter schools is supposed to be open to all District students.<sup>17</sup> When demand exceeds available slots, admission is to be decided by lottery.<sup>18</sup> In practice, however, charter schools are not available on an equal basis to students with disabilities.

Students with disabilities often face discrimination in the enrollment process. Before admitting applicants, many charter schools ask detailed questions about the applicants' disabilities. Others seek information that would reveal the applicants' disabilities. Some charters require:

- Disclosure of any disability for which the student will need assistance;<sup>19</sup>

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2009 *Blackman* Hearing”) at 98. “[T]his [i]s a serious, serious civil rights concern that students with disabilities are simply not being afforded the appropriate opportunities to be educated in classrooms with their peers.” *Id.*

<sup>15</sup> See District of Columbia, Part B State Annual Performance Report (APR) for FFY 2009 (SY 2009-2010) at 40-42. “One of the reasons for the continued lack of progress in this area ... is that smaller LEAs have not utilized their resources to effectively provide a continuum of services to meet the needs of their special education population.” *Id.* at 42.

<sup>16</sup> See Testimony of Tameria Lewis, Transcript of Hearing before the Honorable Paul L. Friedman, *Blackman v. District of Columbia*, Docket No. CV-97-1629 (June 26, 2009) (“June 2009 *Blackman* Hearing”) at 61.

<sup>17</sup> See District of Columbia Public Charter School Board, “Enrollment and Lottery Guidelines,” available at <http://www.dcpubliccharter.com/Enrolling-Your-Child/Enrollment-and-Lottery-Guidelines.aspx> (last visited Apr. 29, 2011).

<sup>18</sup> *Id.*

<sup>19</sup> Booker T. Washington Public Charter School for Technical Arts, Student Enrollment Admissions Application, available at <http://www.btwschool.org/documents/2010-2011ApplicationDocument.pdf> (last visited Apr. 15, 2011) [hereinafter “Booker T. Washington Application”] (asks whether the student receives Special Education Services); Thea Bowman Preparatory Academy Public Charter School, Registration Form, available at [http://centralpt.com/upload/415/4560\\_Registration%20Form\\_3-14-08.pdf](http://centralpt.com/upload/415/4560_Registration%20Form_3-14-08.pdf) (last visited Apr. 15,

- Submission of special education records (*i.e.*, current Individualized Education Program (IEP) documents), previous IEPs, evaluations or assessments associated with an IEP, or documents reflecting prior discharge from special education;<sup>20</sup>
- Submission of psychological or speech and language evaluations;<sup>21</sup>
- Submission of any past or current “504” plans;<sup>22</sup>
- Disclosure of any individual or family history of psychiatric conditions;<sup>23</sup>
- Disclosure of services the child receives from a mental health clinic;<sup>24</sup> and
- Permission to examine all of the child’s school records.<sup>25</sup>

Such requests violate OSSE’s recent guidance to charters regarding information that may be solicited through admissions applications.<sup>26</sup>

Moreover, charter schools often discourage students from even applying for admission. In September 2009, an expert team appointed by the U.S. District Court for the District of

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2011) [hereinafter “Thea Bowman Application”] (must identify applicant as a special education student or as potentially qualifying for special education services).

<sup>20</sup> Booker T. Washington Application, *supra* note 19 (asks about any prior discharge from special education, current IEP, and any previous IEP); Meridian Public Charter School, Authorization to Release Student Record Information, *available at* <http://mpcs.learningstation.com/school/pages/enrollment> (last visited Apr. 15, 2011) [hereinafter “Meridian Application”] (requests evaluations and assessments associated with an IEP); Thea Bowman Application, *supra* note 19 (requests test scores and IEPs). An attorney has recently reported that Imagine Public Charter School requires the applicant to disclose whether the student has an IEP or a “504” plan.

<sup>21</sup> Meridian Application, *supra* note 20.

<sup>22</sup> *Id.*; Thea Bowman Application, *supra* note 19.

<sup>23</sup> Booker T. Washington Application, *supra* note 19.

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

<sup>25</sup> *See* Hyde Leadership Public Charter School, Application for Admission, *available at* [http://hydedc.whipplehill.net/ftpimages/471/misc/misc\\_77192.pdf](http://hydedc.whipplehill.net/ftpimages/471/misc/misc_77192.pdf) (last visited Apr. 15, 2011) [hereinafter “Hyde Application”]; Meridian Application, *supra* note 20.

<sup>26</sup> *See* Deborah A. Gist, State Superintendent of Education, Memorandum No. 09-005, at 3-6, *supra* note 8; *see also* February 2009 *Blackman* Hearing, *supra* note 14, at 100 (“We have made very clear ... that [charter schools] may not do anything in their admissions process that could be perceived to be asking questions that could reveal the student’s status as a student with disabilities.”).

Columbia in *Blackman v. District of Columbia*, Nos. 97-1629, 97-2402 (D.D.C.), reported to the Court that charter schools often “counsel” parents who inquire about special education to apply to other schools.<sup>27</sup> The team also found that charter schools limit the special education services they will provide students. For example, Hospitality Public Charter School indicated that it will provide students only up to 6.5 hours of special education services per week.<sup>28</sup> IDEAL Public Charter School made a similar representation.<sup>29</sup> The Evaluation Team concluded that “the self-defined limitations of charter schools in meeting the needs of students with special needs results in the exclusion of students with a high level of need during the enrollment process . . . .”<sup>30</sup>

Attorneys who represent students in due process proceedings have corroborated the Evaluation Team’s findings. One attorney reported that staff at Booker T. Washington Public Charter School and Maya Angelou Public Charter School regularly tell her that her clients should not apply for admission if they require more than 10-15 hours of special education services per week. According to complaints filed with the Public Charter School Board (and on file with the Bazelon Center), both the César Chavez Public Charter School and the William E. Doar, Jr. Public Charter School for the Performing Arts have told parents they cannot serve students with significant special education needs.<sup>31</sup>

#### The Charter School System Promotes the Segregation of Students with Disabilities.

Students with disabilities seeking an alternative to traditional public schools are pushed into needlessly segregated settings. As noted above, within the charter school system, students with significant disabilities are concentrated in a few segregated schools. In addition, the limitations that charter schools have placed on serving children with disabilities “results in . . . the transfer of significant numbers to more restrictive placements mostly in nonpublic schools after admission.”<sup>32</sup> Although most charter schools are LEAs, they “do not offer a full continuum of

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<sup>27</sup> See “Report for the Evaluation Team for the 2008/09 School Year” 75 (“*Blackman Report*”) (Sept. 25, 2009).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 77-78.

<sup>31</sup> As far as we are aware, the District has not organized or otherwise supported efforts by the charter schools to pool resources to serve students with disabilities, as has happened in other jurisdictions. See, e.g., California Department of Education, California Special Education Local Plan Areas, <http://www.cde.ca.gov/sp/se/as/caselpas.asp> (last visited Apr. 15, 2011) (all school districts are required to join regional consortiums of sufficient size and scope to provide all special education needs of the children within their geographical boundaries).

<sup>32</sup> *Blackman Report*, *supra* note 27, at 77-78.

services” to special education students.<sup>33</sup> To effectuate their “self-defined limitations ... in meeting the needs of students with special needs,” charter schools place students with disabilities in segregated non-public settings.<sup>34</sup>

Ms. Lewis has acknowledged this dynamic. Although “IDEA requires that every LEA maintain a continuum of alternative placements to meet the needs of a student, regardless of the severity of their disability,” Ms. Lewis has testified, charter schools “have had a very difficult time wrapping their heads around what that means.”<sup>35</sup> “We have a great many Charter Schools ... that ... if a student reaches a certain level of need, ... they will simply say we can’t provide those services.”<sup>36</sup> “[I]n practice what has been happening over the years is [that] Charter Schools [...] [have held the] view that if a case was difficult, a child’s situation was difficult, ... of course the normal classroom can’t serve that child, [so] we’ll send them to a private placement.”<sup>37</sup>

Between October 2008 and August 2009 alone, District charter schools sought to place 130 of their students into segregated settings.<sup>38</sup> Sixty-nine of the students (more than 50 percent) were placed in more segregated settings, even after OSSE’s intervention.<sup>39</sup> All but two of those students were placed in segregated nonpublic schools.<sup>40</sup> The Friendship Public Charter School placed 12 of these students,<sup>41</sup> the Meridian Public Charter School placed eight,<sup>42</sup> and the DC Preparatory Academy Public Charter School placed seven.<sup>43</sup>

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<sup>33</sup> *Id.* at 74.

<sup>34</sup> *Id.* at 77.

<sup>35</sup> See June 2009 *Blackman* Hearing, *supra* note 16, at 43.

<sup>36</sup> See February 2009 *Blackman* Hearing, *supra* note 14, at 97.

<sup>37</sup> *Id.*

<sup>38</sup> *Blackman* Report, *supra* note 27, at 77.

<sup>39</sup> *Id.*; see also Placement Review Policy, *supra* note 9.

<sup>40</sup> *Blackman* Report, *supra* note 27, at 77.

<sup>41</sup> See The Office of the State Superintendent of Education, Department of Special Education, Focused Monitoring Report: Friendship Public Charter School at 4 (Jul. 31, 2009).

<sup>42</sup> See The Office of the State Superintendent of Education, Department of Special Education, Focused Monitoring Report: Meridian Public Charter School at 4 (Jul. 31, 2009).

<sup>43</sup> See The Office of the State Superintendent of Education, Department of Special Education, Focused Monitoring Report: DC Preparatory Academy Public Charter School at 4 (Jul. 31, 2009).

## **Legal Claims**

The ADA and Section 504 of the Rehabilitation Act forbid the District of Columbia from discriminating against students with disabilities in the operation of its charter school system. 42 U.S.C. § 12132 (2006); 29 U.S.C. § 794 (2006). Moreover, the ADA and Section 504 require the District to provide educational services in the most integrated setting appropriate to students' needs. 28 C.F.R. § 35.130(d) (2010); 34 C.F.R. § 104.34(a) (2010); *see also Olmstead v. L.C.*, 527 U.S. 581 (1999).

The District has failed in both respects. The District's charter school system is not open on an equal basis to all students. Moreover, the charter school system contributes to and aggravates the longstanding failure of the District's school system to serve students in the most integrated and least restrictive environment. If, as claimed, charter schools are important and effective alternatives to traditional public schools, they must be made available to all students and they must not be allowed to serve as engines of segregation.

That charter schools are privately operated does not relieve the District of Columbia of its obligations under the ADA and Rehabilitation Act. As a federal court noted in a similar context, the District "cannot evade its obligation to comply with the ADA by using private entities to deliver services that are planned, implemented, and funded as part of a statewide [service delivery] system."<sup>44</sup>

The District of Columbia has not adequately secured compliance with the ADA and Section 504 in its charter school system. Non-regulatory guidance on charter school admissions has not stopped discriminatory enrollment practices. Students continue to be systematically assigned to segregated charter schools and transferred to segregated non-public schools. Training and technical assistance offered by the District through the OSSE seems to have limited effect, as participation is optional and schools that do not participate incur no penalty.

## **Conclusion**

The District of Columbia has been a leader in developing charter schools. Unfortunately, students with disabilities are not benefitting from this investment as they should. They are being excluded from the services and programs available to other students and are being pushed into segregated settings by a charter school system that discriminatorily limits services available to students with disabilities.

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<sup>44</sup> *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d. 184, 193 (E.D.N.Y. 2009).

Thank you for your attention to this letter. We would be happy to provide other information that may aid the Department's processing of this complaint. Please feel free to contact Lewis Bossing at (202) 467-5730, ext. 307 or [lewisb@bazelon.org](mailto:lewisb@bazelon.org) with any questions.

Sincerely,

/s/ Ira A. Burnim  
Ira A. Burnim  
Legal Director

/s/ Lewis Bossing  
Lewis Bossing  
Senior Attorney