

**IN THE COURT OF COMMON PLEAS OF PHILADLPHIA COUNTY,
PENNSYLVANIA**

	:	
D.W., a minor, by and through her	:	
Guardian, GEORGETTE HAND ¹ ,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No.
	:	
THE MATHEMATICS, CIVICS AND	:	CIVIL ACTION
SCIENCES CHARTER SCHOOL OF	:	
PHILADELPHIA INC.,	:	
Defendant.	:	

COMPLAINT

This complaint is filed on behalf of Plaintiff D.W., a minor, by and through her parent and guardian Georgette Hand (“G.H.”). D.W. is a six-year-old child who has been illegally denied enrollment in a public charter school on the basis of her disability. D.W. was properly accepted to The Mathematics, Civics, and Sciences Charter School of Philadelphia Inc. (“Charter School”). The Charter School’s refusal to enroll D.W. based on her disability constitutes discrimination in violation of Pennsylvania state law. In order to end this unlawful discrimination, D.W. seeks, among other relief, an order from this Court directing the Charter School to enroll D.W. immediately. A petition for a preliminary injunction and supporting memorandum of law is filed along with this Complaint.

¹ See 231 Pa. Code Rule 1018 and 2028 (requiring that a minor be designated by initials only). This filing is subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See 231 Pa. Code Rule 205.6.

PARTIES

1. Plaintiff D.W. (D.O.B. 2/24/2013) is a 6-year-old child with a disability in First Grade who resides with her adoptive mother, G.H., in Philadelphia, PA.
2. Defendant The Mathematics, Civics, and Sciences Charter School of Philadelphia Inc. (“Charter School”) is a Pennsylvania public “charter school” within the meaning of 24 P.S. § 17-1703-A and is located in Philadelphia County. As a public charter school, it is required to adhere to the provisions of the Charter School Law, 24 P.S. § 17-1701-A *et seq.* and to specific provisions of state law, including 22 Pa. Code § 11.11(b) and Section 26 of the Pennsylvania Constitution.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 2 Pa. C.S.A. § 752 and 42 Pa. C.S.A. § 933(a)(2). The challenged action is a decision by a local agency regarding a claim of entitlement under state law and thus constitutes an “adjudication” as defined in Section 101 of Administrative Law and Procedure, 2 Pa. C.S.A. § 101.² This case is an appeal from an administrative action and also sounds in equity.

FACTS

4. D.W. first came to live with G.H. on or around August 16, 2018. G.H. adopted D.W. in March 2019.
5. D.W. lives with G.H. at 7611 Gilbert Street, Philadelphia, PA 19150.

² School boards have broad discretion in determining school policy, however, intervention is warranted where a school board’s conduct is an abuse of discretion because it is “arbitrary, capricious and to the prejudice of public interest,” exceeds the scope of its authority or represents a constitutional error or error of law. *Commonwealth v. Hall*, 309 Pa. Super. 407, 455 A.2d 674, 676 (Pa Super. 1983).

6. D.W. is diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”). She has been found eligible as a child with a disability and receives special education and related services as required under federal and state law. *See* 20 U.S.C.A. § 1401 *et seq.*; 22 Pa. Code § 14.101 *et seq.*; 22 Pa. Code § 711.1 *et seq.*
7. D.W. attended kindergarten at Pennypacker Elementary School (“Pennypacker”) in the School District of Philadelphia during the 2018-2019 school year.
8. On May 7, 2019, G.H. and staff from Pennypacker drafted an Individualized Education Program (“IEP”), which outlined information about D.W.’s disability and the services required at the school to address educational needs related to her disability. The IEP required that D.W. receive 45 minutes per month of itinerant Learning Support instruction and a Positive Behavior Support Plan.
9. On June 27, 2019, G.H. submitted an application to the Charter School for D.W. to enter the First Grade for the 2019-2020 school year. She submitted all required documents for the application, including a copy of D.W.’s final report card.
10. According to its website, admission to the Charter School is “open to all eligible students who are residents within the limits of the City of Philadelphia and the state of Pennsylvania in grades 1 through 12.” *See* “Admissions Lottery,” *MCSCS Website*, available at <http://mcscs.org/admissions-lottery>. Students must be six-years-old by September 1st to be admitted to first grade. *Id.*
11. On information and belief, the Charter School’s charter does not outline further criteria for admission other than residency and age.
12. The Charter School describes its mission as preparing its students for higher education and the workforce through a rigorous curriculum, emphasis on creative

thinking, and a focus on children and youth who are “classified as academically at-risk.” See “About Us,” *MCSCS Website*, available at <http://mcscs.org/about-us>. The Charter School describes itself as meeting the needs of children who have varied learning styles through an “alternative style and setting for children experiencing learning difficulties.” *Id.* The Charter School promises an “advanced curriculum” and “small class sizes (not to exceed 20 students) with a highly qualified team of certified teachers and full-time assistant for children in grades 1 through 5.” *Id.* In addition, the Charter School provides “character education and self-esteem” as part of its curriculum “which give[s] students the ability to have confidence, pride, make moral decisions and foster a positive attitude when dealing with any negative situations.” *Id.* Finally, the school provides “tutoring, free of charge, during the day and after school to all MCSCS students.” *Id.*

13. G.H. chose to send her daughter to the Charter School because of these features, which would be of particular benefit to D.W., who was previously in foster care and experienced trauma, needed small class sizes, additional teacher support, and a curriculum focused on self-esteem building.
14. During the 2017-2018 school year, the Charter School reported that just 6 percent of its student body were students with IEPs. This was far below the average percentage of students with IEPs for all charter schools in Philadelphia, which was identified as 18 percent for the same year.³ The School District of Philadelphia reported that 14 percent of its student body were students with IEPs during that school year. *Id.*

³ *Renewal Recommendation Report 2017-2018: Mathematics, Civics, and Sciences Charter School*, Sch. Dist. of Philadelphia, available at https://drive.google.com/file/d/1_pqTIsgSO1Gjl3yz42OMON8ZTGqPmDan/view.

15. The Education Law Center’s 2019 report, *Safeguarding Educational Equity*, analyzed data from nearly all charter schools across Philadelphia. None of the charter schools analyzed in this study reported a percentage of students with IEPs below 10 percent.⁴
16. According to its website, the Charter School employs one special education teacher for the entire school. See “Teacher Directory,” *MCSCS Website*, available at <http://mcscs.org/teacher-directory>.
17. On July 10, 2019, the Charter School sent a letter communicating to G.H. that D.W. was accepted as a first grader.⁵
18. The acceptance letter instructed that G.H. needed to bring the following documents for enrollment: 1) immunization records; 2) proof of age; and 3) proof of residency. The letter stated that submission of D.W.’s final report card was optional. Although designated as “optional,” the letter stated, “if your child is in Special Education, we *must* have a copy of the most recent Individualized Education Plan, NORA and CER” (emphasis added).
19. On July 17, 2019, G.H was very excited to receive the Charter School’s written acceptance letter. She made an appointment to meet with Nicole Portier, Admissions staff at the Charter School, on July 22, 2019 and immediately began compiling all of the necessary documents for D.W.’s enrollment.

⁴ *Safeguarding Educational Equity*, Education Law Center (Feb. 2019), available at https://www.elc-pa.org/wp-content/uploads/2019/02/ELC_report-Safeguarding-Civil-Rights.pdf. The Education Law Center was unable to access data from Mathematics, Civics, and Sciences Charter School for the report.

⁵ (“Letter of Acceptance”). Attached as Exhibit A.

20. On July 22, 2019, G.H. brought D.W. to the Charter School and submitted D.W.'s immunization records, birth certificate, electricity bill, G.H.'s driver's license, and her May 7, 2019 IEP to Ms. Portier. D.W. was very excited to visit her new school.
21. While G.H. and D.W. waited, they believed that Ms. Veronica Joyner, Founder and Chief Administrative Officer of the Charter School, reviewed D.W.'s enrollment documents, including her May 7, 2019 IEP.
22. After less than 20 minutes, Ms. Joyner met with G.H. and D.W. and told them that D.W. could not enroll in the Charter School because she had an IEP for an emotional disability. She told G.H. that the Charter School did not have the class or teacher to provide the services required by her IEP.
23. Ms. Joyner momentarily observed D.W. and remarked that she did not seem to exhibit the "problems" in her IEP, but, nevertheless, she could not enroll her with the IEP.
24. When G.H. asked Ms. Joyner if D.W. could attend the Charter School if she did not have her IEP, Ms. Joyner responded that she could.
25. Ms. Joyner provided instructions on how G.H. could revoke her IEP when G.H. asked whether she could attend without an IEP.
26. D.W. overheard the entire exchange between G.H. and Ms. Joyner. When they left the Charter School, D.W. asked her mother why Ms. Joyner did not want her to attend the Charter School.
27. G.H. was not permitted to enroll D.W. in the Charter School for the 2019-2020 school year.

28. On September 11, 2019, G.H., through her attorney, contacted counsel for the Charter School to request D.W.'s immediate enrollment. The Charter School did not respond.
29. On October 4, 2019, the Charter School's attorney communicated that Ms. Joyner did not believe that D.W. was admitted to the school and requested information about the special education services she would require.
30. On October 4, 2019, G.H.'s attorney submitted the July 10, 2019 acceptance letter and requested D.W.'s immediate enrollment. The Charter School did not respond.
31. D.W. currently attends Pennypacker, but she seeks to attend the Charter School.
32. To date, D.W. continues to reside with G.H. in Philadelphia and she has not been able to enroll in the Charter School.

Count I:
Violations of 24 P.S. § 17-1715-A and 24 P.A. § 17-1723-A

33. The prior allegations of the Complaint are incorporated in this paragraph as if fully stated herein.
34. Plaintiff D.W. is entitled to enroll in the Charter School pursuant to 24 P.A. § 17-1723-A.
35. By refusing to enroll D.W. because of her status as a child with a disability, the Charter School has violated 24 P.S. § 17-1715-A(3) and 24 P.A. § 17-1723-A(b)(1).
36. D.W. has a right to attend the Charter School as a child properly admitted through the admissions process.
37. D.W. is entitled to injunctive and declaratory relief to address the Charter School's violations of 24 P.S. § 17-1715-A(3) and 24 P.A. § 17-1723-A(b)(1).

Count II:

Violations of 22 Pa. Code § 11.11b

38. The prior allegations of the Complaint are incorporated in this paragraph as if fully stated herein.
39. State enrollment law mandates that a child be enrolled in a school district or charter school the next business day or within 5 days of submission of certain enrollment documents. 22 Pa. Code § 11.11(b).
40. On July 22, 2019, G.H. presented the requisite enrollment documents to the Charter School in the form of proof of age, residence, and required immunizations.
41. By refusing to enroll D.W. within 5 days of submission of enrollment documents, the Charter School violated 22 Pa. Code § 11.11(b).
42. D.W. is entitled to injunctive and declaratory relief to address the Charter School's violations of law.

Count III:
Violations of Pennsylvania Constitution

43. Section 26 of Pennsylvania's Constitution prohibits discrimination by any political subdivision of the Commonwealth and bars such authorities from denying to any person the enjoyment of any civil right or discriminating against any person in the exercise of any civil right. Pa. Const. Art. I, § 26.
44. A political subdivision is defined as "any county, city, borough, incorporated town, township, school district, vocational school district, county institution district or municipal or other local authority." Pa. R.C.P. No. 76.
45. By refusing to enroll D.W. because of her status as a person with a disability, the Charter School has violated D.W.'s constitutional rights.

46. D.W. has a right to attend the Charter School as a child properly admitted through the admissions process.

47. D.W. is entitled to injunctive and declaratory relief to address the Charter School's violations of constitutional law.

WHEREFORE, Plaintiff requests that this Court:

- (a) Issue a Preliminary and Permanent Injunction directing the Charter School to enroll D.W. immediately without further delay and to continue to educate her;
- (b) Award compensatory education services to D.W. to make up for the time she was illegally excluded from the Charter School;
- (c) Order the Charter School to adopt, make publicly available, and implement a new policy to effectuate the inclusion of students with disabilities through changes to the charter school's application and enrollment process, instructional programming, access to extracurricular activities and all other school programming. The policy shall include a specific statement and notice to all parents applying to the school that all properly admitted students with disabilities shall be enrolled and welcomed in the Charter School regardless of the services required in their IEPs and that no child will be excluded or limited from fully participating in all school activities to the greatest extent possible with non-disabled peers;
- (d) Order the Charter School to contract with a qualified training provider to provide an awareness and skills training to all staff on inclusion and diversity, including

legal requirements, inclusion skills and techniques, communication, and best practices;

- (e) Order the Charter School to pay Plaintiffs' attorneys fees and costs; and
- (f) Grant such other and further relief as may be appropriate.

DATED: October 17, 2019



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