Court of Appeals, State of Colorado **101 W. Colfax Avenue, Suite 800** **Denver, CO 80202** Appeal from District Court, Denver County, Colorado Honorable Michael A. Martinez Case No. 2011CV4424, consolidated with 2011CV4427	**^ COURT USE ONLY^**
Appellants: COLORADO BOARD OF EDUCATION, DOUGLAS COUNTY SCHOOL DISTRICT, et al. **and** **Intervenors-Appellants:** FLORENCE and DERRICK DOYLE, et al., **v.** **Appellees:** JAMES LARUE, TAXPAYERS FOR PUBLIC EDUCATION, et al.	Case No. 11CA1856 11CA1857
Attorneys for Amicus Curiae, The Legal Center for People with Disabilities and Older People: Chester R. Chapman, #8673 Randy L. Parcel, #2635 455 Sherman Street Suite 130 Denver, CO 80203 E-mail: rchapman@thelegalcenter.org rparcel@thelegalcenter.org Phone Number: 303-722-0300 Fax Number: 303-722-0720	
ANSWER BRIEF OF *AMICUS CURIAE*, THE LEGAL CENTER FOR PEOPLE WITH DISABILITIES AND OLDER PEOPLE, IN SUPPORT OF APPELLEES	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies:

The brief complies with C.A.R. 28(g) because it does not exceed 30 pages.

The brief complies with C.A.R. 28(k) because it contains, under a separate heading, a concise statement of the applicable standard of appellate review with citation to authority.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/ Chester R. Chapman

_____

Chester R. Chapman

TABLE OF CONTENTS

ISSUE PRESENTED FOR REVIEW…….1

SUMMARY OF ARGUMENT……..1

ARGUMENT……..2

STANDARD OF REVIEW…….2

I. THE DCSD IS A PUBLIC ENTITY TO WHICH SECTION 504 AND THE ADA APPLY……...2

II. THE CHOICE SCHOLARSHIP CHARTER SCHOOL IS A PUBLIC ENTITY SUBJEC TO SECTION 504 AND THE ADA, AND IS SUBJECT TO COLORADO STATUTE PROHIBITING DISCRIMINATION AGAINST STUDENTS WITH DISABILITIES……3

III. THE DCSD AND THE CHOICE SCHOLARSHIP SCHOOL DISCRIMINATE AGAINST STUDENTS WITH DISABILITIES AND, AS SUCH, VIOLATE SECTION 504, THE ADA AND THE COLORADO CHARTER SCHOOLS ACT……4

CONCLUSION…….5

TABLE OF AUTHORITIES

Cases

Valdez v. People, 966 P.2d 587, 590 (Colo. 1998)……2

Statutes

29 U.S.C. §§794, *et seq.* (2006)……..1, 2

42 U.S.C. §§12131, *et seq.* (2006)……..1, 3

20 U.S.C. §7801(26)(A) (2006)…….3

C.R.S. §§22-30.5-101, *et seq.* (2011)…….1, 3, 4

ISSUE PRESENTED FOR REVIEW

Do the Douglas County School District ("DCSD") and the Choice Scholarship Charter School, through adoption and attempted implementation of the Choice Scholarship Pilot Program ("Choice Scholarship Program"), discriminate against students with disabilities, in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. §794 (2006) ("Section 504"), Title II of the Americans with Disabilities Act, 42 U.S.C. §§12131, *et seq.* (2006) ("ADA"), and the Colorado Charter Schools Act, C.R.S. §§22-30.5-101, *et seq.*?

SUMMARY OF ARGUMENT

Appellants do not dispute the trial court's finding that: "The Scholarship Program permits participating private schools to discriminate against students with disabilities." Trial Court Order dated August 12, 2011 ("Order"), Findings of Fact, paragraph 49, page 13.

Section 504 and the ADA prohibit "any program…receiving Federal financial assistance" and any "public entity", respectively, from discriminating against individuals with disabilities. The DCSD and the Choice Scholarship School qualify under both definitions as they are prohibited from discriminating against people with disabilities. In addition, as a charter school, the Choice Scholarship School is

prohibited by the Colorado Charter Schools Act from discriminating against a child on the basis of his or her need for special education services. The Choice Scholarship Program proposes disbursing approximately $2.1 million of public funds to private schools that the DCSD has admitted are permitted to discriminate against students with disabilities. Therefore, the Scholarship Program violates both federal and state law and provides an independent basis for the District Court's permanent injunction Order dated August 21, 2011 ("Order").

ARGUMENT

STANDARD OF REVIEW

The interpretation of statutes is a question of law reviewed *de novo. Valdez v. People*, 966 P.2d 587, 590 (Colo. 1998).

I. THE DCSD IS A PUBLIC ENTITY TO WHICH SECTION 504 AND THE ADA APPLY

Section 504 provides that "No otherwise qualified individual with a disability…shall, solely by reason of her or his disability, be excluded from the participation in…any program or activity receiving Federal financial assistance…." 29 U.S.C §794(a) (2006). "Program or activity" is defined as including all operations of a "local education agency". 29 U.S.C. §794(b)(2(B). "Local education agency" is defined as including a "public board of education", 20 U.S.C.

§7801(26)(A) (2006). This definition clearly includes the DCSD.

The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity…." 42 U.S.C. §12132 (2006). "Public entity" is defined as including "any department, agency, special purpose district, or other instrumentality of a State or States or local government…." 42 U.S.C. §12131(1)(B) (2006). This definition also clearly applies to DCSD.

II. THE CHOICE SCHOLARSHIP CHARTER SCHOOL IS A PUBLIC ENTITY SUBJECT TO SECTION 504 AND THE ADA, AND IS SUBJECT TO COLORADO STATUTES PROHIBITING DISCRIMINATION AGAINST STUDENTS WITH DISABILITIES.

On June 21, 2011, the DCSD authorized the creation of the "Choice Scholarship Charter School" pursuant to the Colorado Charter Schools Act, C.R.S. §§22-30.5-101, *et seq*. (2011). That School will have no buildings, employ no teachers, require no supplies or books, nor have a curriculum. Rather, the Choice Scholarship Charter School will simply be a person or persons within the DCSD who will administer the Scholarship Program. Order, Findings of Fact, paragraph 21, page 5. The sole source of funding for the Choice Scholarship Schools will be "per pupil revenue" received from the State. Order, Findings of Fact, paragraph 25,

page 6. Thus, in addition to the DCSD itself, the Choice Scholarship School is a "public entity" to which Section 504 and the ADA apply. Furthermore, the Charter Schools Act specifically prohibits discrimination on the basis of a child's needs for special education services: "A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability…. Enrollment decisions shall be made in a nondiscriminatory manner…." C.R.S. §22-30.5-104(3) (2011).

III. THE DCSD AND THE CHOICE SCHOLARSHIP SCHOOL DISCRIMINATE AGAINST STUDENTS WITH DISABILITIES AND, AS SUCH, VIOLATE SECTION 504, THE ADA AND THE COLORADO CHARTER SCHOOLS ACT

The trial court found that: "The [Choice] Scholarship Program permits participating schools to discriminate against students with disabilities." Order, Findings of Fact, paragraph 49, page 13. The Appellants in this matter have not disputed this finding. By virtue of their administration of the Choice Scholarship Program and distribution of approximately $2.1 million of public funds to those participating schools, the DCSD and the Choice Scholarship School become active participants in such discrimination. Those actions are in direct violation of the above-cited provisions of Section 504, the ADA and the Colorado Charter Schools Act.

CONCLUSION

The District Court was correct in its issuance of a permanent injunction against the Choice Scholarship Program. That decision should be upheld.

Respectfully submitted on May 31, 2012.

s/ Chester R. Chapman

_____

Chester R. Chapman
Randy L. Parcel
Attorneys for *Amicus Curiae*
The Legal Center for People with Disabilities and Older People
455 Sherman Street
Suite 130
Denver, CO 80203
303-722-0300