



**CENTRO DE
COMUNIDAD Y
JUSTICIA**

Center for Community and Justice

May 18, 2015

Office for Civil Rights
U.S. Department of Education
915 Second Avenue, Room 3310
Seattle, WA 98174-1099

Discrimination Complaint of Centro de Comunidad y Justicia, Inc., Against the State of Idaho, Idaho Dept. Of Education, Idaho Board of Education, Idaho Charter School Commission and Idaho's 48 Charter Schools And Their Boards Of Directors

Dear Sir or Madam:

Centro de Comunidad y Justicia, Inc. (formerly known as Council on Hispanic Education, Inc.) ("CCJ") is an Idaho nonprofit corporation incorporated in 1996 that is tax exempt pursuant Internal Revenue Code § 501(c)(3). As stated in CCJ's Articles of Incorporation, CCJ's purposes, include, among other tax exempt purposes, "[t]o enhance the educational, economic and social welfare of Hispanics in the State of Idaho."

CCJ hereby files this discrimination complaint on behalf of those that it has been organized to serve. This complaint is against the State of Idaho, Idaho Dept. Of Education, Idaho Board of Education, Idaho Charter School Commission and Idaho's 48 Charter Schools and their Boards Of Directors.

In filing this complaint, CCJ has no desire to limit or deny the educational benefits of charter schools to any other students. Rather, CCJ simply seeks equal opportunity and representation in Idaho's public charter schools for Latino students, students with limited English proficiency, students with disabilities and students from low income families. To this end, CCJ is ready, willing and able to assist the OCR and the State of Idaho (whether as a contractor, consultant or other adviser) in reaching out to the Latino community and recruit students for enrollment in Idaho's charter schools.

This complaint is filed with the OCR with regard to discrimination based upon race, color, national origin, ethnicity and disability. The facts, circumstances and law supporting this complaint are set forth below. CCJ possesses a comprehensive collection of data in support of its positions that CCJ will make available to the OCR upon request.

Background.

For two decades CCJ has been active in promoting policy efforts to address the academic and English language acquisition needs of Latinos and other students who have traditionally struggled to achieve academically and to succeed in Idaho's public schools. Our staff and board members have participated in almost every educational policy decision affecting Latinos and English Language Learners ("ELL") and Limited English Proficient ("LEP") students. As part of these efforts, CCJ has been monitoring public charter schools in Idaho for more than a decade.

CCJ was initially optimistic when the Idaho Public Charter School Act (Idaho Code §§ 33-3501 *et seq.*,) was enacted in 1998. Despite this initial optimism, however, Idaho's charter school program has evolved into a separate but unequal public school system that discriminates against students of color, LEP students, students with disabilities (many of whom are Latino) and students from low income families.

Although CCJ has for many years attempted to persuade the Idaho Legislature, the Idaho Dept. of Education and the Idaho Charter School Commission that this systemic discrimination should be rectified, Idaho officials have turned a deaf ear to CCJ's concerns and refused to engage in any meaningful discussion. Instead, state officials have mocked CCJ's positions. These officials have suggested that the lack of Latino students in Idaho's charter schools is the fault of the parents; i.e., Latino parents have irresponsibly failed to pursue charter school enrollment for their children and, therefore, have no right to complain.

Idaho's Public Charter School System.

Admittedly, the Idaho Public Charter School Act and its regulations (collectively the "Act") give lip service to Idaho's obligations to operate its charter schools system in a nondiscriminatory fashion and in accordance with federal law. That said, the Act says nothing about Idaho's obligation to apply the Act in a nondiscriminatory manner. To the contrary, even though the Act contains provisions for a lottery and a scheme for dealing with overenrollment (*see*, Idaho Code § 33-5205(3)(k)), the Act's lottery is riddled with exceptions, so-called "preferences," that present obvious opportunities for abuse. These preferences include special categories for so-called "founders," "siblings" and "children of full-time employees." Preferences effectively allow the preferred students to preempt the lottery and obtain admission to a charter school before other students participating in the lottery may even be considered. More often than not, this leaves very few spaces available for those students who must participate in the lottery. The net effect of these preferences is to allow students who are well-connected to obtain admission to the school and to prevent the admission of students who are not so well-connected. This system assumes its ultimate form in an incredibly arcane lottery system

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that purports to establish an “Equitable Selection Process” even though the structure of the preference system speaks to the contrary. *See*, Idaho Administrative Code, IDAPA 08.02.04 § 203.07.

One might imagine that some of the inequities of the Act’s system of preferences could be mitigated with the approaches described in the OCR’s May 14, 2014 “Dear Colleague Letter,” Page 4. The OCR has suggested that “[i]f a charter school wishes to promote racial diversity or avoid racial isolation, it has the flexibility ... to pursue a variety of approaches. ... Race neutral approaches can take racial impact into account to promote diversity or avoid racial isolation; examples include targeting specific media outlets in which to advertise, reaching out to particular community groups, or using lotteries that give extra weight based on the socioeconomic status of a child’s parents.” To the best of CCJ’s knowledge, no charter school in Idaho has ever taken such measures.

Data Regarding Systemic Discrimination In Idaho’s Public Charter Schools.

Although the Act provides for four types of “authorized chartering entities” (Idaho Code § 33-5202A), only the Idaho Charter School Commission (“Commission”) and certain local school districts have assumed the role of authorizing entities. Of Idaho’s 48 charter schools, the Commission has chartered thirty-five and local school districts have chartered thirteen. CCJ has comprehensive data for both the Commission and school district authorized schools, which it obtained from the Idaho Dept. of Education and the Commission through FOIA requests and from the Commission’s official published documents. The data from the Commission is particularly relevant and telling because it is a part of the “Idaho Public Charter School Commission 2014 Annual Report” (“Annual Report”) published in Spring 2015, which is located at chartercommission.idaho.gov. The Annual Report states:

Approximately 14,950 studentes are served by the PCSC’s [the Commission’s] portfolio schools. Idaho also offers 13 district authorized charter schools/ The total number of public charter schools students in Idaho is approximately 19,265; about 5,450 of these are enrolled in virtual charter schools. Annual Report, page 1.

The Annual Report contains a section on the demographics of the Idaho’s traditional public schools and charter schools. Annual Report, page 9. This Demographics section contains the following table that compares the demographics of state and local school districts versus the demographics of the Commission authorized charter schools¹:

¹ Note that the local school district data included as part of this comparison includes data for the thirteen district authorized charter schools. The Annual Report does not disaggregate data for the district authorized charter schools.

	Higher than District	Comparable to District (within 2%)	Lower than District
Non-White	6%	3%	90%
Limited English Proficiency	10%	3%	87%
Special Education	13%	32%	55%
Free & Reduced Lunch	19%	3%	77%

According to this table, non-whites, LEP students, special education students and free and reduced lunch students are vastly under-represented in almost all of the Commission authorized charter schools. If one goes even deeper into the Annual Report (pages 10 to 27), the Annual Report provides details regarding the scope of this under-representation. It is clear that the under-representation of LEP students in the Commission's charter schools is especially egregious in all but a few of the Commission authorized charter schools.² Based upon Idaho Department of Education information that the substantial majority of LEP students are Spanish-speaking, it is evident that the under-representation of the LEP students in the Commission's charter schools bears a direct relationship to their race, ethnicity and/or national origin.

As stated above, CCJ also possesses a substantial collection of data that it has obtained from other public sources. This additional data confirms the Commission's conclusions as published in the Annual Report and the fact that similar discrimination is occurring in the thirteen public charter schools that the local school districts have authorized. CCJ will make this additional data available to the OCR upon request. Even if the respondents to this complaint maintain that this discrimination is not intentional, there can be no credible argument that the Act as applied does not have a devastating discriminatory effect based upon race, color, national origin, ethnicity and disability.

² Based upon information contained in the 2013 Legislative Report of the Idaho Department of Education (Public School Information), page 6, CCJ knows that 78.2% or more of the LEP students in the Idaho public school system have Spanish as their native language.

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The Relief That CCJ Seeks.

CCJ seeks the following relief from the OCR: (1) a thorough investigation of Idaho's public charter school system, including all of Idaho's 48 public charter schools, the Commission and the Idaho Dept. of Education; (2) a determination that the Act violates federal law inasmuch as Idaho has implemented a public charter school system that discriminates based upon race, color, national origin, ethnicity and disability; (3) a determination that the Act as applied discriminates based upon race, color, national origin, ethnicity and disability; (4) a requirement that Idaho's public charter school lottery be completely revamped in order to create an equitable and inclusive admission process for Idaho's charter schools that takes race, color, national origin, ethnicity and disability into account; (5) a requirement that Idaho operate a comprehensive busing program to remove the geographical inequities in Idaho's charter school system; (6) a mandate that all of Idaho's charter schools implement programs for free and reduced lunch; (7) a mandate that Idaho apply a broad range of approaches to prevent the reoccurrence of discrimination in Idaho's public charter school system, including raced-based and race-neutral approaches as described in page 4 of the OCR's May 14, 2014 "Dear Colleague Letter," e.g., targeting specific media outlets, reaching out to community groups and establishing a lottery that gives extra weight to socioeconomic status of a child's parents; (8) require that all organizing documents for existing and new charter schools in Idaho adhere to strict nondiscrimination rules in accordance with federal law; (9) implement a program of monitoring the Idaho public charter schools system as well as all respondents to this complaint for a period of not less than ten years; and (10) require that all respondents to this complaint prepare and publish annual reports that demonstrate substantial progress and compliance with respect to the issues raised in this complaint.

Thank you for your courtesy and cooperation in this matter. If you have any questions, please call me at 208.378.1368 or send an email to lesbock@comunidadjusticia.org

Best regards,

A handwritten signature in blue ink, appearing to read "Les Bock", written over a horizontal line.

Les Bock
Staff Attorney