



# Advocates for Children of New York

Protecting every child's right to learn

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## News Release

### For Immediate Release

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## Complaint Filed Against Success Academy Charter Schools and NYC Department of Education for Failure to Uphold Rights of Students with Disabilities

**November 29, 2018 (NEW YORK CITY)** — Today, Advocates for Children of New York (“AFC”) along with co-counsel Akin Gump Strauss Hauer & Feld LLP filed a complaint with the New York State Education Department against Success Academy Charter Schools and the New York City Department of Education (“DOE”) for failing to comply with civil rights laws protecting students with disabilities who attend Success Academy schools. The complaint alleges that Success Academy has changed the special education placements of students with disabilities without following procedures required to protect the rights of students with disabilities and their parents and has refused to comply with administrative hearing orders in special education cases.

Under federal and state law, before changing the special education placement of a student with a disability, school districts must hold an Individualized Education Program (“IEP”) meeting with the parent, teacher, and other key participants to review the student’s evaluations and discuss the appropriateness of any change. The U.S. Supreme Court has noted that these civil rights laws reflect “Congress’ unquestioned desire to wrest from school officials their former unilateral authority” to determine the placement of students with disabilities and to “emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” Charter schools are responsible for requesting that the DOE convene an IEP meeting if they want to discuss a change in placement.

However, Success Academy has demonstrated a practice of changing their students’ special education placements without following these important procedures. For example:

- Success Academy moved a student mid-year from the 7<sup>th</sup> grade integrated class required by her IEP to a 6<sup>th</sup> grade 12-student special education class without holding an IEP meeting to discuss whether such a change was warranted, telling the parent that the decision was not up for discussion. “Because Success Academy refused to follow the law, my child missed out on months of grade-level instruction,” said Brenda Melendez-Lozada, the parent of this student.

- Success Academy gave a parent of another student with a disability an ultimatum—the school would retain the student in the fourth grade unless the parent agreed to move the student from an integrated class to a 12-student special education class, even though no IEP meeting had taken place.

Although the DOE is responsible for ensuring that students with disabilities receive appropriate educational services in both DOE schools and charter schools, the DOE did not correct these violations. In fact, in one case, the DOE itself noted on a student’s IEP that Success Academy had “informally” placed the student in a 12-student special education class, in violation of the student’s IEP, but did not ensure that the student returned to his proper placement.

In addition, under federal and state law, parents who disagree with their students’ special education placement have the right to request an administrative hearing to challenge it. While the hearing moves forward, students have the right to stay in their previous placement. This provision, known as “pendency,” provides students with stability and ensures that schools cannot unilaterally force them to move to a placement that their parents are challenging as inappropriate. However, Success Academy has refused to comply with pendency orders, moving students with disabilities to the special education placement the parent is challenging in defiance of orders issued by special education hearing officers. The DOE has not ensured that Success Academy follows these hearing orders. As a result, parents have had to go to court to protect their civil rights, and students with disabilities have spent months in inappropriate special education placements.

“Students with disabilities do not give up their civil rights when they enter a charter school,” said Kim Sweet, Executive Director of AFC. “These laws exist to protect students with disabilities and guarantee parents a voice in their children’s education. We need the State to ensure that Success Academy and the DOE work together to safeguard established rights of the students and parents they both serve.”

“The law provides charter schools with significant flexibility in how they operate, but upholding the rights of students with disabilities is not optional,” said Caitlin Griffin, Associate at Akin Gump Strauss Hauer & Feld LLP.

[Read the complaint filed with the New York State Education Department and the list of demands.](#)

#### **About Advocates for Children of New York (AFC)**

*Since 1971, Advocates for Children of New York has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds who are at greatest risk for failure or discrimination in school because of their poverty, disability, race, ethnicity, immigrant or English Language Learner status, sexual orientation, gender identity, homelessness, or involvement in the foster care or juvenile justice systems. AFC uses four integrated strategies: free advice and legal representation for families of students; free trainings and workshops for parents, communities, and educators and other professionals to equip them to advocate on behalf of students; policy advocacy to effect change in the education system and improve education outcomes; and impact litigation to protect the right to quality education and compel needed reform.*