

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

April 14, 2006

Trudy Reeves
Treasurer, ANC 3C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Re: Use of ANC Grant Funds to Construct Playground Climbing Wall

Dear Commissioner Reeves:

This responds to your e-mail message of March 16, 2006 in which you ask whether your Advisory Neighborhood Commission (ANC) may make a grant to the Oyster Community Council (OCC) to build a climbing wall on the Oyster Bilingual Elementary School playground area. You attach an ANC Resolution authorizing the grant as well as the OCC's grant request. For the reasons that follow, this Office concludes that the grant is permissible.

ANC 3C's Resolution 2005-077 (Resolution) was approved by unanimous vote of a quorum of commissioners at ANC 3C's regular monthly meeting held on December 19, 2005. It authorizes up to \$17,100 to the OCC, a "non-profit 501(c)(3)" parent-teacher organization. These funds would be used to build a climbing wall on an undeveloped portion of the Oyster school's playground. As described in the OCC's grant request, the "climbing-wall project" would include the construction of a five-foot retaining wall that will extend along 50 feet of an exposed earthen slope. The area at the base of the wall will be graded level and covered with poured rubber safety surfacing. The wall itself will include what is described as "climbing wall apparatus" that is shown by illustration to be contoured panels placed at intervals on the face of the wall. These panels, with their hand-holds and foot-hold protrusions and indentations would be used by children for climbing. The project would also include other improvements such as a chain-link fence, stairs from the bottom of the wall to the top, and, to comply with standards under the Americans with Disabilities Act, a synthetic climbing rock for those unable, because of physical disability, to utilize the wall.

The Resolution recognizes that the District, through the D.C. Public Schools (DCPS), has refused to provide funds for this project, though it has approved the request for the OCC to independently make these improvements.

Section 16(l)(1) of the Advisory Neighborhood Commissions Act of 1975, as amended, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(l)(1) (2005 Supp.) states in pertinent part: “[ANC] [e]xpenditures may be in the form of grants by the Commission for public purposes within the commission area pursuant to subsection (m) of this section.” Subsection (m)(1) states: “A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area. The services provided by the grantee organization must not be duplicative of any that are already performed by the District government.” D.C. Official Code § 1-309.13(m)(1) (2005 Supp.).

We have, on at least two occasions in the past, approved ANC grants for the purchase of playground equipment, most recently in a letter to you dated July 27, 2005. *See Letter to Trudy Reeves, July 27, 2005.*¹ There, we approved the grant request concluding that the grant was permissible because it met all of the above-mentioned criteria. Your current request differs only slightly in that the grant will be used to purchase items for placement on public school property. In the prior two instances the playground equipment was to be placed not upon District property, but property owned either by a private entity (day care center) or by the National Park Service (a community park).

Previously, we have denied grant applications involving public schools for two reasons: 1) because the grant would have been to the public school directly and would therefore violate appropriations law (*Letter to Westy McDermid, May 26, 1994; Letter to Deborah K. Nichols, September 17, 1999*); and 2) because a grant, though not to the public school directly, would nonetheless be used by the recipient organization to fund something for the school considered “duplicative” of items or services the school is already supposed to provide under its own budget (*Letter to Nik Apostolides, April 14, 2003*). Thus, we have disallowed grants for microscopes, musical equipment, art supplies, and athletic equipment and computers.

Notwithstanding, the Resolution makes clear that this project is not something the District government is going to fund. Nor do we view a climbing wall as something that the public school system must or should provide under its own budget. Rather, it is in the nature of optional recreational equipment that will benefit not only the students at the school, but likely all children in the community. The mere fact that it is placed upon District owned property should not disqualify it from grant consideration.

Accordingly, we conclude that the proposed grant request is permissible under ANC law.²

¹ *See also, Letter to Deborah K. Nichols, D.C. Auditor, September 17, 1999* (approving grant of playground equipment for a private day care center if a significant number of the day care attendees were residents of the ANC area).

² This letter does not authorize waiver of any legal defenses or claims that might be available to the District concerning the private developer who built the school and, whom you imply, might have obligations concerning clean-up of the site where the project is to occur. In light of the approval issued to the OCC by the DCPS, we do not address this issue.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

_____/s/_____

RJS/dps

(AL-O6-178)