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Via email: lionel.sims@dc.gov

May 27, 2011

Lionel Sims
General Counsel
Child and Family Services Agency
400 6th Street, S.W.
Washington, D.C. 20024

Re: Comments on Amendments to chapter 60 (Foster Homes) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Dear Mr. Sims:

Thank you for the opportunity to comment on the proposed rulemaking regarding foster home licensing that was published in the DC Register on April 29, 2011. I am submitting these comments on behalf of Children's Law Center (CLC),[1] which represents more than 1,200 low-income children and families in the District of Columbia every year, including 500 children in foster care, dozens of children at risk of entering foster care, and several hundred foster parents and relatives of children in foster care. Our comments are based on our experience representing those children and families.

We understand that the amendments proposed are designed in part to facilitate the placement of foster children with kin. We believe that increasing kin placement is an important goal. In DC, kinship foster placements are three times as stable as non-kinship foster homes and four times as stable as group homes[2] and are more likely to lead to positive permanency outcomes (reunification, adoption, or guardianship) than children in any other foster care placement.[3] DC,

[1] Children's Law Center, with over 70 staff members, is the largest civil legal services organization in the District of Columbia and the only organization providing comprehensive representation to children. Children's Law Center envisions a future for the District of Columbia in which every child has a safe home, a meaningful education and a healthy mind and body. We work toward this vision by providing free legal services to 1,200 children and families each year and by using the knowledge we gain from representing our clients to advocate for changes in the law.

[2] In FY 2010, the ratio of placement disruptions to placements was .21 to 1 for kinship placements, .60 to 1 for non-kinship foster homes, and .81 to 1 for group homes. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2010 Annual Report at 29 (2011). In FY 2009, the ratio of placement disruptions to placements was 0.17 to 1 for kinship placements and 0.57 to 1 for nonkinship foster care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2009 Annual Report at 37 (2010), http://cfsa.dc.gov/DC/CFSA/About+CFSA/Who+We+Are/Publications/Annual+Report+2009. In FY 2008, the ratio of placement disruptions to placements was 0.64 to 1 for non-kinship foster care and 0.17 to 1 for kinship care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2008 Annual Report, at 34 (2009), http://cfsa.dc.gov/DC/CFSA/About+CFSA/Who+We+Are/Publications/Annual+Report+2008. In FY 2007, 1919 children lived in non-kinship foster care and had 1227 placement disruptions – a ratio of 0.64 to 1 – while 662 children lived in kinship care and had 101 disruptions – a ratio of 0.15 to 1. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2007 Annual Report, at 25 (2008), http://cfsa.dc.gov/DC/CFSA/About+CFSA/Who+We+Are/Publications/Annual+Report+2007.

[3] Mary Eschelbach Hansen & Josh Gupta-Kagan, Extending and Expanding Adoption and Guardianship Subsidies for Children and Youth in the District of Columbia Foster Care System: Fiscal Impact Analysis at 9, Table 1 (2009),

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however, falls far below the national average of 24% placement with kin[4] and below the mark set by similar cities, which place as many as 40% of foster children with kin;[5] only 16% of DC foster children live with kin.[6] Eliminating that gap will dramatically improve outcomes for children.[7]

Significant regulatory reform is a necessary step towards eliminating this gap. Reform would give the Child and Family Services Agency (CFSA) stronger legal tools to achieve this essential outcome. We have previously proposed to CFSA several ways to begin to increase numbers of children placed with kin, and the December 2010 *LaShawn A.* order requires CFSA to take several of these steps by April 2011.[8]

Unfortunately, while there are some positive steps in the proposed amendments, the proposed regulatory changes do not go far enough and fail to address key reforms required by the *LaShawn A.* Order. Moreover, this proposal creates some new regulatory problems that will further hinder CFSA's work with kinship families and with foster families more broadly. We urge CFSA in the strongest possible terms to revise these proposed regulations dramatically before final promulgation.

I. Broader reform is needed

The December 2010 *LaShawn A.* Order requires that CFSA, reform the "exigent circumstances" requirement of § 6027 so that temporary kinship licensing can be used whenever "relative placement is determined to be in the best interest of the child and safety can be maintained," define "non-safety" standards which can be waived for kin and develop "age appropriate licensing standards" for foster youth 18 – 20 years old.[9]

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http://academic2.american.edu/~mhansen/fiscalimpact.pdf.

[4] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *The AFCARS Report: Preliminary FY 2009 Estimates as of October 2010*, at 1, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report17.pdf.

[5] Casey Family Services compared the District to 14 similar urban jurisdictions. The District had the fifth lowest percentage of foster children in kinship care of the 15 cities studied. Many of those cities surpassed the national average: Baltimore placed 40.2% of foster children in relative care, Detroit 36.7%, Milwaukee 34.9%, Brooklyn 37.5%, the Bronx 35.9%, Manhattan 32.3%, and Chicago 29.2%. Casey Family Services, *A Comparison of Urban Jurisdictions: Child Welfare and Demographic Indicators*, at 4.

[6] CFSA FY 2011 Performance Oversight Questions, Round 2, Q30; CFSA 2009 Needs Assessment at 31 (noting 2143 children were in foster care as of Sept. 30, 2009) & 40 (noting 322 children in kinship foster care), http://cfsa.dc.gov/DC/CFSA/About+CFSA/Who+We+Are/Publications/Needs+Assessment+Reports/2009+Needs+Assessment.

[7] Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes, *Marc A. Winokur, et al.,* 89 Families in Society: Journal of Contemporary Social Services 338 (2008), http://www.familiesinsociety.org/New/Teleconf/081007Winokur/89-3Winokur.pdf (kinship care increases foster children's placement stability, reduces the time children spend in foster care, reduces the risk of abuse or neglect by a foster parent or group home).

[8] The *LaShawn A.* Order included an original deadline of November 2010, which was subsequently extended to April 2011. Center for the Study of Social Policy, *LaShawn A. v. Gray* Progress Report for the Period July 1 – December 31, 2010, at 59 (2011).

[9] The Order also required CFSA to fully implement its temporary kinship licensing agreement with Maryland. We do not discuss that issue in these comments because we recognize that it extends beyond what CFSA can accomplish through regulations.

The proposed regulatory changes are an appropriate place to address these requirements.[10] We urge that several changes be added that will help improve kin placement and satisfy the order.

1. We urge that CFSA remove the exigent circumstances requirement from the temporary kinship regulation. That requirement limits the situations in which CFSA can apply the expedited kinship licensing process,[11] thus delaying kinship licensing and placement for many children post-disposition. These delays are problematic because the full licensing process typically takes many months and does not lend itself to decision-making that follows a child's sense of time. These delays cause other problems in more complicated cases – especially legacy cases in which significant efforts identify kin who were previously unknown to CFSA or unable to take care of the child at a previous point in the case. CFSA goes to great lengths to host a "LYFE" meeting to "listen to youth and family and experts" and thus identify permanency resources for older youth who have been in foster care for some significant time. When those meetings successfully identify a kinship resource, youths' expectations are naturally excited, but, despite youth and families' expertise, CFSA then imposes a months-long licensing process Those delays create a particularly difficult state of foster care limbo for foster youth with the greatest level of needs – and thus the least ability to manage that uncertainty.

   Removing the exigent circumstances requirement or broadening its definition will ensure that CFSA regulations "permit[] temporary kinship licensing to be utilized in circumstances in which relative placement is determined to be in the best interest of the child and safety can be maintained," as the *LaShawn A.* Order requires. Without such a change, CFSA creates a substantial and unjustifiable disparity between its practice and the requirements of the *LaShawn A.* order.[12]

   We thus urge CFSA to make the following regulatory changes:
   - Delete 29 D.C.M.R. § 6027.1(e).
   - Add "and" at the end of 29 D.C.M.R. § 6027.1(c);
   - Replace the "; and" with "." at the end of 29 D.C.M.R. § 6027.1(d)
   - Delete 29 D.C.M.R. § 6027.2.
   - Renumber 29 D.C.M.R. §§ 6027.3-6027.8 as §§6027.2-6027.7, respectively.

2. We urge that these regulations list licensing factors that could be defined as "non-safety."

[10] As noted in the Monitor's recent report, the Agency did invite a CLC attorney to join a "workgroup" to address those issues. CSSP Report at 90. But that workgroup has met only twice since January. The CLC attorney on the workgroup raised proposals to satisfy each of the *LaShawn A.* Order's requirements listed above, but none are reflected in this regulatory proposal.

[11] 29 D.C.M.R. §§ 6027.1(e) & 6027.2.

[12] CFSA officials have stated that CFSA's MOU with the Metropolitan Police Department prohibited it from removing the "exigent circumstances" requirement. The next day, when asked if the Agency had sought to renegotiate that MOU with the MPD, a senior CFSA staff member said it was the FBI's requirement and not the MPD's. When asked via email to provide the FBI MOU or other document that so provided, that staff member did not respond. We remain unclear what, if any, barrier there is to this change. Even if such a MPD or FBI requirement existed and could not be renegotiated, alternative solutions exist – such as a broader definition of "exigent circumstances" than the current definition provides.

3. We propose that CFSA develop a regulatory scheme for licensing individuals to be foster parents for youth 18 to 20 years old. CFSA's own data show that 80 percent of older youth with a goal of APPLA "already had an established or potential lifelong connection with at least one stable, caring adult."[13] We know that many of these youth live with and depend upon their extended family after they emancipate from foster care. But instead of living with their lifelong connections, many older foster youth live in expensive congregate care placements or in relatively unstable non-kinship foster homes. We urge the Agency to promulgate regulations that recognize that a detailed licensing process for youth 18 and older is less appropriate and less necessary than it is for younger, more vulnerable children, especially when a young adult chooses to live with a particular lifelong connection. For youth of this age, a minimalist process – background checks and a home visit – should suffice.

We urge the Agency to promulgate strong regulatory reforms on these three issues – and thus come into compliance with the kinship care provisions of the *LaShawn A.* Order.

II. Kinship waiver process under 29 D.C.M.R. § 6000.5

The proposed change to 29 D.C.M.R. § 6000.5 contains a welcome technical change. The proposal would broaden § 6000.5 from its current focus on temporary kinship licensing only to include permanent licensing, thus permitting the Agency to issue a permanent license to kin who do not meet one of the many licensing requirements, but who are nonetheless best suited to raise a specific child. We endorse this important technical change.

The change, unfortunately, does not go far enough. Section 6000.5 – both in its current form and in revised form as proposed by CFSA – requires kinship waiver requests to go all the way to the Director, a requirement which raises two problems. First, the regulation undermines the goal of inducing social workers to use the kinship waiver process. Many social workers will naturally be reluctant to go raise this issue to the Director level necessarily triggering close scrutiny of their work. We anticipate workers at private agencies will also be reluctant to seek the Director's approval since they are familiar with their own agency's procedures but less so CFSA's procedures.

Currently, even when social workers do seek a kinship waiver from the Director, the process takes far too long. There is no legal or clinical reason that a waiver process needs to go from a social worker to a supervisor to a program manager to an administrator to a deputy director, to the general counsel's office and finally to the Director. That process can take weeks or months and leave children in limbo unnecessarily.

The *LaShawn A.* Order envisions more substantial changes, stating: "CFSA shall reassess 29 D.C.M.R. § 6000.5 and whether its assignment of waiver authority to the Director remains appropriate." But the proposed regulation does not reflect a serious "reassessment" of this process. We urge CFSA to use the present regulatory process to comply with the *LaShawn A.* Order and

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[13] Roque Gerald, Testimony to the U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, March 16, 2010, at 5, *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=2484f209-149a-4963-8c83-34a83200acea.

revise § 6000.5 to resolve the problems identified above. We recommend that CFSA revise § 6000.5 to read:

> The ~~Director of~~[14] Child and Family Services Agency, upon written application and for good cause, may waive any provision of this chapter for licensing of kin that does not adversely affect **the safety of the specific** child **or children** ~~safety~~ **for whom the license is granted**. **Such a waiver shall be issued upon the written agreement of the child or children's social worker, that social worker's supervisor, and a social worker or supervisor with foster home licensing responsibility. Any disagreement among those individuals may be resolved by the Director of the Child and Family Services Agency or his/her designee. A final resolution of any kinship waiver request shall be reached within 7 calendar days of its submission.**

In the alternative, the Agency could revise § 6000.5 to read:

> The ~~Director of~~ Child and Family Services Agency, upon written application and for good cause, may waive any provision of this chapter for licensing of kin that does not adversely affect **the safety of the specific** child ~~safety~~ **or children for whom the license is granted. A final resolution of any kinship waiver request shall be reached within 7 calendar days of its submission.**

The Agency could then specify via a Policy which staff are needed to grant a waiver, the timeline for doing so, and the process for resolving disagreements among CFSA staff. We would be pleased to work with the Agency in crafting such a document.

III. Temporary kinship licensing procedures and lead certificates under 29 D.C.M.R. § 6027.

The proposed regulations create a new and unnecessary barrier to the temporary kinship licensing process. The proposed regulations would create a new 29 D.C.M.R. § 6027.1(f) that would require kinship caregivers to obtain a certificate that any lead-based paint in the home does not pose a danger to children. Although this requirement sounds innocuous and even beneficial at first glance, a closer examination of its impact on children reveals grave cause for concern.

The core problem is that lead-based paint certificates can take weeks or months to acquire – during which time children will spend languishing in foster care. The risk of the additional trauma that this time in foster care will almost certainly impose far outweighs the risk that lead paint will impose an ongoing safety risk in a kinship home. The majority of kinship homes do not have lead paint problems and when such problems exist, lead abatement can mitigate or eliminate the risk before chronic exposure occurs.

The better course is for CFSA to apply the expedited kinship licensing process without a lead-based paint certificate. CFSA should thus *not* promulgate the proposed regulation. Existing regulations will ensure that kin must obtain lead certification before obtaining a permanent license.[15]

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[14] **Bold** indicates new proposed language and ~~strikethrough~~ indicates suggested deletions.
[15] 29 D.C.M.R. § 6028.3(k).

Once children are placed with kin, CFSA should help kinship foster parents obtain such a certificate, and, help kinship foster parents take any necessary steps to abate any lead paint.

Our opposition should not be taken as minimizing the risk posed by lead to young children. Rather, our opposition reflects a true family-focused philosophy, which recognizes that placing children with strangers when family members are willing and able to raise them harms children. Rather than create an inflexible and time-consuming bar to placing children with family members, the real harm to children from languishing in foster care when family members are available must be balanced against the speculative harm of lead paint that either does not pose a threat or will soon be mitigated.

IV. Social worker visitation requirements under 29 D.C.M.R. § 6003.2

We have significant concerns about the proposed amendment to § 6003.2 governing required visits between social workers, foster parents, and children. Existing regulations provide that "the social worker" shall visit the child with the minimum frequency indicated. The proposal would replace that phrase with "CFSA or the contracting agency," permitting different individuals to visit on different occasions.

This proposal raises significant concerns. Social work depends on relationships between social workers, children, and families. If social workers delegate visit tasks to other staff, then the social worker cannot build those relationships. And without such relationships, social workers cannot effectively build teams and the Agency cannot live up to its often-stated commitment to teaming.

As a result of this proposal, children and families will see CFSA as represented by a rotating set of staff, not a single, consistent staff member. Frequent turnover of social workers and transfers of cases already undermine the relationships between CFSA and foster families and children, and this proposal would further undermine those essential relationships.

To live up to its commitment to teaming and high quality social work, the Agency should ensure that social workers take responsibility for the relationship building task of visiting child clients regularly. CFSA rightly claims credit for maintaining appropriate caseloads for social workers, and so social workers should be able to visit the child with the minimum frequency indicated in the existing regulation.

V. Back up caregiver requirements under proposed 29 D.C.M.R. § 6033

The proposed regulations contain a proposal to require each foster parent to identify a back-up caregiver to provide short-term overnight care if the foster parent cannot do so. Under the new proposed section the back-up caregiver must undergo an abbreviated background check process, unless the caregiver is licensed "under this chapter of the D.C.M.R."[16] That language would exclude back up caregivers who are licensed foster parents in another state thus imposing a significant administrative burden on those caregivers and CFSA. Especially with the large number of foster families who live in Maryland, requiring the back-up caregiver to be licensed "under this chapter of the D.C.M.R." should not be necessary so long as the caregiver is licensed.

[16] Proposed 29 D.C.M.R. § 6033.2.

As a technical matter, the proposed regulation reads as if the presence of a foster home license only exempts a back-up caregiver from the requirements in § 6033.2. Similar exemptions should be made explicit for other provisions.

We urge the agency to revise this regulation accordingly.

§ 6033.2 should be revised to read:

> Unless the back-up caregiver is licensed to provide care to a foster child ~~under this chapter of the DCMR~~, the back-up caregiver shall:

§ 6033.3 should be revised to read:

> **Unless the back-up caregiver is licensed to provide care to a foster child, t**~~T~~he back-up caregiver and all adults residing in the back-up caregiver's home shall obtain a child protection register check."

§ 6033.5 should be revised to read:

> **Unless the back-up caregiver is licensed to provide care to a foster child, t**~~T~~he back-up caregiver and all adults residing in the individual's home shall obtain a criminal record check that is performed by the Federal Bureau of Investigation and by:"

VI. Technical changes regarding timelines

We support the proposed adjustments to the timelines for foster care licenses. We agree that a foster care license should be valid for at least two years, not one year, and endorse the change to that effect and related changes regarding training hours requirements.[17]

We also endorse the proposal to extend the timeline for granting a permanent license from 120 days to 150 days, and the related extension of a temporary kinship license's validity from 120 days to 150 days.[18] We note that this proposal implicitly acknowledges one of the core points made above – that foster care licensing is a time consuming process that takes several months.

Conclusion

Everyone in the District's child welfare community – including CFSA – has voiced a commitment to valuing families, respecting them as experts regarding their children, and respecting their choices for where children should live when they cannot live with their parents. That should mean valuing kinship care and crafting a regulatory regime to help place children in kinship care.

Unfortunately, the existing regulatory regime imposes obstacles to kinship care. And the proposed regulatory changes fail to remove those obstacles, and impose a new obstacles.

We urge that the Agency make the changes necessary to implement real reform.

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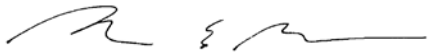
[17] Proposed §s 6026.5, 6028.2, and 6028.7.

[18] Proposed §s 6027.4, 6028.4(a), 6028.5.

Respectfully,



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