



VIA EMAIL: osse.publiccomment@dc.gov

April 20, 2011

Tamera Lewis, Assistant Superintendent of Special Education
Office of the State Superintendent of Education
Division of Special Education
810 First St. NE - 5th Floor
Washington, DC 20002

RE: Comments on Proposed “Certificates Approval for Nonpublic Special Education Schools and Programs Serving Students with Disabilities funded by the District of Columbia”

Dear Ms. Lewis,

Thank you for the opportunity to comment on the proposed rulemaking on Certificates of Approval for Nonpublic Special Education Schools and Programs that was published in the DC Register on March 25, 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. Many of the children we work with have special education needs and most are enrolled in DC public schools.

We appreciate the need for regulation of the process of placing children with disabilities who cannot be served in our public schools into appropriate non-public schools. However, we have concerns regarding how the regulations might impact those DC children who, because public schools are not an option, rely on non-public schools to ensure they receive a free and appropriate public education. The following comments are based on our knowledge of the legal framework associated with educating children with disabilities in addition to our experiences as guardians *ad litem* and as advocates for systemic reform.

1) Truancy Procedures (proposed DCMR A2821 et. seq)

Though we understand the need to provide intervention mechanisms when a child has accrued unexcused absences in their non-public placement, we want to ensure that the regulations are not misread to overly focus on change in placement as the only viable remedy to address issues of truancy.

We suggest making the language in the proposed regulations that deal with truancy more closely track the language from the Truancy Regulations found in Title 5 of the DC Municipal

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.

Regulations at Chapter A2103. In this way, both the non-publics and the sending LEA will be aware of their responsibilities in addressing a child's potentially unmet needs. For example, after 10 unexcused absences, the truancy regulations instruct an LEA to take immediate steps through a student support team "with a plan for immediate intervention *including delivery of community-based programs and any other assistance or services to identify and address the student's needs on an emergency basis.*" (5 DCMR A2103.3(4), emphasis added).

We are concerned that in the currently proposed regulations, the steps recommended for children in full time non-public placements, who are children with some of the highest level of need, do not instruct an LEA to look to additional supports for the child before taking action that could result in a change in placement (see, proposed DCMR 2821.9(b)). Because children in full time non-public placements have some of the highest needs within the DC system, ensuring consistency for placement and supports is crucial to their goal of becoming successful and productive members of DC's community.

As currently worded, the LEA appears to have the option to consider "intervention strategies," while being mandated to make another placement determination. Though placement is an important part of the conversation, we would recommend that this chapter specifically highlight that the LEA must consider and offer community supports or services as part of the intervention strategies for each child. For those cases where the only reason the placement team is convening is due to an issue of truancy, we also feel strongly that a change in placement should be considered by the placement team only after other interventions and supports have been put into place for the family.

Consequently, we would recommend that the language from proposed DCMR A2821.9 mirror the requirements from DCMR A2103.3(4), and be changed to:

(1) A nonpublic special education school or program shall notify the sending LEA in writing, not later than two (2) instructional school days after the accrual of ten (10) unexcused absences at any time within the school year. In each such case:

- (a) **The**² nonpublic special education school or program shall consult with the sending LEA regarding whether or not the current placement or location assignment is appropriate; and
- ~~(b) Sending LEA shall convene an IEP team meeting as soon as possible to review the student's absences, to make recommendations as appropriate with regard to intervention strategies, and to make a determination regarding the continued appropriateness of the current placement.~~

The sending LEA will convene a meeting at the non-public to make recommendations for a plan for immediate intervention including the addition or delivery of additional services, community-based programs and any other assistance to assist in identifying and addressing the student's needs on an emergency basis.

² **Bold** indicates new proposed language and ~~strikethrough~~ indicates suggested deletions.

(c) After six weeks of interventions, or the accrual of an additional five (5) unexcused absences, the team will reconvene to review the child's needs.

(2) Should those interventions prove ineffective, the team will meet to discuss the child's needs and the continued appropriateness of the current placement.

Finally, we suggest the addition of the right of a non-public or an LEA to appeal the automatic payment stoppage outlined in proposed DCMR A2821.13 after a child has fifteen consecutive unexcused absences. As children are only placed at non-public schools or programs after there has been a determination that there is no appropriate placement available within the public school system, not providing an appeal to a disruption of the placement may be harmful to the student.

2) Invoicing from IEP (Proposed DCMR A2833.2)

Though we appreciate the need for consistency in billing, unfortunately for DC students, the EasyIEP program does not provide much latitude for listing services that are not part of the drop-down menu. Schools should be provided a mechanism to bill for services that cost money to implement and are necessary for some children with disabilities like tutoring, staff training, or other necessary but uncommon related services. Since schools need to be able to provide the services that address each child's unique needs regardless of whether they are a part of the EasyIEP program, it is imperative that necessary services not part of the EasyIEP programming can still be invoiced.

3) Residential Treatment Facilities (proposed DCMR A2834.6 and A2844.7)

Because a finding of medical necessity is not a requirement under the IDEIA, we suggest changing the relevant language of proposed DCMR A2834.6 to:

An LEA shall give placement preference to a Psychiatric Residential Treatment Facility (PRTF) that meets the District of Columbia Department of Health Care Finance (DHCF) standards and requirements specified in 29 DCMR § 948. It is the responsibility of the LEA, with the consent of the child's parent pursuant to 34 C.F.R. § 300.154, to contact DHCF to determine whether the child is eligible or entitled to Medicaid benefits and **should request obtain** a certification from the District of Columbia Department of Mental Health (DMH) stating that admission to a PRTF is medically necessary under 29 DCMR § 948.7.

With that same assessment, we recommend changing the wording in proposed DCMR A2844.7 to:

In order to place a student in a PRTF, the LEA shall obtain prior written consent from a student's parent or guardian authorizing the LEA to contact:

- ~~a) The District of Columbia Department of Mental Health (DMH) for a certification that admission to a PRTF is medically necessary; and~~
- ~~(b) DHCF to determine whether the child is eligible or entitled to receive~~

~~Medicaid benefits.~~

(a) DHCF to determine whether the child is eligible or entitled to receive services; and

(b) The District of Columbia Department of Mental Health (DMH) to see whether the child qualifies for a certification that admission to a PRTF is medically necessary.

4) Continuum of Placements related to Proximity (proposed DCMR A2844.4)

Though we appreciate the desire to place into the regulations standards that have been codified by DC Code 38-2561.02, we recommend that the regulatory language introducing the continuum of placements mirror the statutory language, specifically:

Decisions regarding student placement shall give preference to appropriate special education schools or providers located in the District of Columbia. Special education placements deemed appropriate for the student shall be made in the following order of priority **provided that the placement is appropriate for the student and made in accordance with the IDEA and this chapter:**

Priority considerations in placements are only to be applied if the placements under consideration are appropriate and if the law had been followed in the course of making the determination. As such, it is important to incorporate this statutory language. In our experience, a lack of understanding about the role of the priority in placement decisions has led to inappropriate schools being offered simply because that school was higher up on the priority list than an appropriate placement. Ensuring that the consideration of a child's unique needs and the law is tied directly to the discussion of priority considerations in placements will lead to better placements and less litigation.

5) Transportation Considerations for Placement Decisions (proposed DCMR A2844.10, A2844.11)

Similar to the comments above, it is important to include the language from DC Code 38-2561.02 to ensure that, unless specifically tied to the child's unique needs, the proximity to bus or metro lines does not inappropriately sway a placement decision.

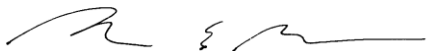
6) Rate Setting Considerations

Ensuring there is a fair and consistent method for setting and paying rates for non-public placements is an important function, and one that DC has been lacking for too long. However, in the proposed regulations, though individual schools are able to appeal to OSSE to receive higher tuition and related service rates, there is no indication of what factors OSSE will consider when determining whether the request is based on a "methodology OSSE deems to be reasonable." To ensure that non-public placements can effectively prepare their requests, and that evaluations will be conducted consistently, we suggest OSSE provide guidance that sets forth areas of consideration to help guide the process. Because it is difficult to delineate exactly what factors might play into a decision of reasonableness, we suggest that it be clear the list of likely considerations is not fully inclusive.

One reason we raise the rate-setting issue is that, for most publicly funded students in non-public schools, the placement comes because the public school system does not have a placement that can meet their needs. Because the unique nature of the District of Columbia, non-public schools and programs are part of the continuum of placements for our children. Consequently, we can foresee that a number of non-public schools, when serving children who could not be served in the full time public school settings, may have programs that are more intensive, and therefore more costly than the public programs.

Thank you for considering these comments. If you have any questions about these comments, please feel free to contact me at (202) 467-4900 ext. 565, or sgreer@childrenslawcenter.org.

Respectfully,

A handwritten signature in black ink, appearing to read 'S. Greer', with a stylized flourish at the end.

Sharra E. Greer
Director of Policy