



Testimony before the District of Columbia Council  
Committee of the Whole  
April 27, 2010

Public Hearing:  
Proposed Fiscal Year 2011 Budget for the Office of the State Superintendent of Education

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Good morning Chairman Gray and members of the Council. My name is Judith Sandalow. I am Executive Director of Children's Law Center<sup>1</sup> (CLC) and a resident of the District. I am testifying today on behalf of CLC, the largest non-profit legal services organization in the District and the only such organization devoted to a full spectrum of children's legal services. Every year, we represent 1,200 low-income children and families, focusing on children who have been abused and neglected and children with special health and educational needs. Nearly all of the children we represent are enrolled in public school in the District and a large percentage of them have disabilities that make them eligible for special education. I appreciate this opportunity to testify regarding the proposed FY 2011 budget for the Office of the State Superintendent of Education (OSSE).

I will focus my testimony on special education. I am concerned that the overall special education budget has been reduced by \$2.1 million.<sup>2</sup> This cut threatens to roll back the significant progress that the District has made in recent years in protecting the rights of children with disabilities. It is not clear where all of the cuts are from and I urge the Council to ensure a complete understanding of the implications of the cuts. We do know a quarter of this reduction comes from OSSE's proposal to reduce the number of special education hearing officers by almost half from seventeen (17) to eleven (11).<sup>3</sup> This does not seem to be a smart choice. This cut threatens to cause delays in scheduling due process hearings, possibly slowing the District's exit from the Blackman

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<sup>1</sup> Children's Law Center provides free, comprehensive legal services to thousands of low-income and at-risk children in Washington, DC to ensure they have safe homes, a meaningful education and healthy lives. Applying the knowledge gained from representing children and families, we advocate for changes in the city's laws, policies and programs. Children's Law Center is the largest nonprofit legal services provider in the District and the only to focus on children. For more information, visit [www.childrenslawcenter.org](http://www.childrenslawcenter.org).

<sup>2</sup> OSSE FY10 vs. FY 11 Agency Program Realignment Crosswalk at 2, A490-6.

<sup>3</sup> OSSE proposes to decrease the number of student hearing officers by six (6). OSSE FY 2011 Budget at D-47. The agency currently employs 17 hearing officers. <http://www.osse.dc.gov/seo/cwp/view,a,1222,q,563244,PM,1.asp>. OSSE website, Student Hearing Officer Resumes, Another quarter of the reduction comes from an anticipated reduction in attorney fees, OSSE FY 2011 budget at D-47. OSSE FY10 vs. FY 11 Agency Program Realignment Crosswalk at 2, A495. It is unclear what other programs have been reduced.

Jones class action lawsuit and costing the District federal funds.<sup>4</sup> Parents have a right under federal law to have a final decision in a due process hearing within 75 days of the filing of the hearing request.<sup>5</sup> With the current number of hearing officers, DC has finally come close to complying with the Federal requirements but has not yet succeeded. Approximately 8% of due process complaints were not adjudicated within the legally-required timeframe in the past year and a half.<sup>6</sup> CLC attorneys report that even now the student hearing office sometimes has difficulty finding a hearing officer able to preside over a case, especially when the hearing must be held on an expedited basis. Reducing the number of hearing officers will only exacerbate that difficulty. I urge the Council to restore the funding for the hearing officers in order to ensure that the student hearing office provides timely decisions.

In addition, I urge that the language in the Budget Support Act which requires parents to pay for due process hearing transcripts be removed.<sup>7</sup> While I am supportive of several revenue increases, this proposal imposes an inappropriate burden on low-income parents. It is also not clear OSSE can legally charge for these transcripts.<sup>8</sup> The IDEA gives parents the right to obtain a copy of the written record of a due process hearing.<sup>9</sup> OSSE expects to collect only approximately \$25,000 through charging for transcripts.<sup>10</sup> The benefit of this tiny amount of revenue is clearly outweighed

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<sup>4</sup> The U.S. Department of Education has withheld federal special education funds in the past because of the District's lack of reporting on the timeliness of due process hearings, among other required measures. See Letter to Dr. Kerry Briggs from Patricia Guard, Acting Director, Office of Special Programs, U.S. Department of Education, available at <http://www2.ed.gov/fund/data/award/idea/2009partb/dc-letter-2009b.pdf>.

<sup>5</sup> 20 USC 1415(f), 34 C.F.R. § 300.515. The timeline may be shorter in some circumstances, such as when both parties agree to waive the resolution meeting. 34 C.F.R. § 300.510(c).

<sup>6</sup> See Defendants' Reply Memorandum in Support of Motion to Vacate, *Blackman v. D.C.*, Civil Action No. 97-1629 consolidated with Civil Action No. 97-2402, U.S. District Court for the District of Columbia, Exhibit A - Declaration of Dakarai D. Thompson paragraph 4 ("The comprehensive timeliness calculation for the period September 1, 2008 to December 31, 2009 is 92% and for the period January 1, 2009 to December 31, 2009 the comprehensive timeline calculation is 94.82%"). Filed February 12, 2010.

<sup>7</sup> Fiscal Year 2011 Budget Support Act of 2010, § 4051, Student Hearing Office Transcript Fee.

<sup>8</sup> See 34 C.F.R. 300.512(c)(3) Connelly, Letter to, 49 IDELR 135 (OSEP 2007), <http://www2.ed.gov/policy/speced/guid/idea/letters/2007-3/connelly081507dueprocess3q2007.pdf>

<sup>9</sup> 20 U.S.C. § 1415(h)(3), 34 C.F.R. § 300.512

<sup>10</sup> FY 2011 Revenue at 4-33, Table 4-14, "Policy Proposals Impacting General Fund Revenues, Fiscal Years 2010-2014.

by the impact on individual children who may be denied their right to appeal because their parents lack the resources to pay the extra fee.

On a more positive note, OSSE proposes to increase funding for training and technical assistance by approximately \$650,000<sup>11</sup> and funding for compliance and monitoring by approximately \$1.3 million.<sup>12</sup> In the past year, OSSE has promulgated a series of regulations and policies designed to bring the District into compliance with federal law, clarify District policies, and provide guidance to LEAs. The additional funding will help ensure these policies succeed. In the past, my colleagues have found that many LEAs are not fully aware of the scope of their responsibilities under special education law and a small number of LEAs entirely ignore their responsibilities to provide a free, appropriate public education to children with disabilities. I hope and expect that increased training and monitoring by OSSE will ensure that all LEAs understand and abide by federal and local law, a result which is good for children and should save the District money in the form of attorney fees and non-public placement tuition and transportation.

Lastly, OSSE has improved the DC Early Intervention Program (Individuals with Disabilities Education Act Part C) since that program became part of OSSE two years ago, and I am pleased that OSSE proposes to continue its commitment to Early Intervention by increasing its funding by approximately \$470,000.<sup>13</sup> I know the Council understands the importance of Early Intervention — addressing the disabilities of infants and toddlers leads to both better outcomes and reduced costs as young children enter school with less severe delays. As I noted in my testimony at the OSSE oversight hearing, much work still needs to be done for DC to have an effective Early Intervention program and this small investment is welcome.

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<sup>11</sup> OSSE FY10 vs. FY 11 Agency Program Realignment Crosswalk at 2, A493.

<sup>12</sup> OSSE FY10 vs. FY 11 Agency Program Realignment Crosswalk at 2, A491.

<sup>13</sup> OSSE FY10 vs. FY 11 Agency Program Realignment Crosswalk at 2, A496.

*Conclusion*

I know these are difficult financial times, but if we are going to maintain the progress we have made, I urge the Council to restore the funding for the hearing officers, to remove the charge for transcripts and to protect these modest increases.

Thank you and I look forward to answering your questions.