

Via email: ossecomments.proposedregulations@dc.gov

October 21, 2016

Jamai Deuberry
Legal Administrative Specialist
Office of the State Superintendent of Education
810 First Street, NE 8th Floor
Washington, DC 20002

Re: ANPR – Residency Verification for Public Schools and Public Charter Schools

Dear Ms. Deuberry:

Thank you for the opportunity to comment on the advanced notice of proposed rulemaking published in the District of Columbia (DC) Register on September 8, 2016 regarding residency verification. I am submitting these comments on behalf of Children's Law Center (CLC).¹ In the last year, CLC provided services to more than 5,000 low-income children and families, with a focus on children in foster care and children with special health and education needs. Nearly all the children we represent are enrolled in DC public schools.

Children's Law Center appreciates the Office of the State Superintendent of Education's (OSSE) meaningful engagement with the community regarding regulations for the residency verification policies and investigation procedures. OSSE wisely provided multiple opportunities for the public and other stakeholders to provide feedback on the proposed rule. We were pleased to participate in some of these engagement sessions. We offer the following comments in order to highlight the impact that the proposed rule may have for students similar to our clients.

The Proposed Rule Places a Greater Burden on Students with Disabilities and Students in Foster Care

CLC is concerned that the proposed subsection 5002.7 will have a discriminatory impact on students with disabilities and students who are in foster care. This particular proposed subsection also contains an unclear reference to the District Public Schools system. CLC believes it would be beneficial to edit proposed subsection 5002.7 as follows:

A LEA shall verify District residency of students who will be funded to attend when a decision is made to fund a student at a school or educational program outside the District of Columbia Public Schools system annually and when the LEA has reason to believe that the student's residency has recently changed or if the LEA has not verified the student's residency for the present school year. ~~Nothing in this subsection shall prevent the student from enrolling prior to the student's initial enrollment in such a school or educational program, during the pendency of the residency verification, and annually thereafter.~~

Students with disabilities and students in foster care are essentially the only groups of students who OSSE funds to attend schools or educational programs outside of the DC public school system. The proposed subsection places an increased burden on these groups of students in two ways: (1) by requiring them undergo the residency verification a second time and (2) by preventing them from enrolling in their new school until after their residency is re-verified.

As written, this subsection prevents students with disabilities and students in foster care from enrolling in their new school until the LEA has verified their residency. Under proposed subsection 5002.10, other students do *not* have to wait for their residency to be verified before they can enroll in their new school. Proposed subsection 5002.10 explicitly states, “A student shall be permitted to attend and remain enrolled in a school while his or her residency verification status is pending.” In the interest of fairness, we recommend that proposed subsection 5002.7 be edited to clearly allow students to enroll in their new school while their residency is being verified, thus bringing this chapter in alignment with proposed subsection 5002.10.

Secondly, in scenarios where the relevant funding decision is made after the student is already enrolled at a LEA, this subsection will effectively cause students with disabilities and students in foster care to undergo residency verification a second time. We recommend that proposed subsection 5002.7 be amended so that a student with disabilities or a student in foster care is not required to resubmit residency verification documents unless the LEA does not have any residency verification proof for that school year or if there is reason to believe that the student’s address has changed since the document were initially submitted.

Lastly, it is presently unclear whether the provision of proposed subsection 5002.7 apply to DC students who are transferring from a DCPS school to a DC Public Charter School. Parents’ right to school choice would be unnecessarily burdened by having to provide residency verification documents a second time when students transfer between DCPS school to a DC Public Charter School. We recommend that the proposed subsection be edited to include the phrase “District Public Schools” because this phrase is clearly defined in the proposed regulations and includes both DCPS and DC Public Charter schools. Using this phrase will make it clear that proposed subsection 5002.7 only applies to situations where students are transferring to non-public schools and schools outside of DC.

The Proposed Rule Does Not Require LEAs to Give Notice of Exceptions to Residency Verification Requirement

CLC applauds OSSE for providing exceptions to the residency verification requirement for homeless students (proposed section 5001.8) and undocumented students (proposed section 5001.9). However, the proposed rules do not provide clear processes through which the person seeking to enroll a student can alert the LEA that the student is homeless or undocumented. CLC is concerned that persons seeking to enroll homeless and undocumented students will not be aware these exceptions.

Based on the information provided at the public engagement meetings, CLC understands that OSSE plans to make a form with checkboxes with which the person seeking to enroll a student designate the type of residency verification documentation they are providing pursuant to proposed subsection 5004.2 and 5004.3. CLC recommends that the proposed rules be

amended to require LEAs to inform the person seeking to enroll a student that homeless and undocumented students are not required to establish residency when the person seeking to enroll a student is not able to provide any residency verification documentation pursuant to proposed subsection 5004.2 and 5004.3. The form that OSSE is drafting could also include this information. The following subsection should be added after 5004.3:

In the event that the person seeking to enroll a student indicates that they are unable to provide any of the documentation required to verify residency pursuant to subsections 5004.2 and 5004.3, the LEA is required to inform the person seeking to enroll a student of exceptions to the residency verification requirements provided by subsection 5001.8 and 5001.9.

The Proposed Rule Does Not Include an Exemption Created by the Education Continuity Act of 2014

The Education Continuity Act of 2014 created a tuition payment exemption for students who were DC wards while attending a DCPS or public charter school and were then placed in the permanent care of a parent, guardian, or custodian who resides outside of DC. See DC Code § 38-302(e). These students are exempted from paying tuition until the child completes the terminal grade in their current school. Given that these students are exempt from paying tuition, it follows that they also should be exempt from the residency verification requirements until they complete the terminal grade in their current school.

CLC recommends that a new subsection with the following language be added to in proposed chapter 5001: Establishing Student Residency:

Notwithstanding any provisions in this rule, a student who a ward of DC and attending a District Public School and who then comes into the permanent care of a parent, guardian, or custodian who resides outside of the District of Columbia will be exempt from the requirement to submit annual residency verification documentation until the student completes the terminal grade of the school they are attending as long as OSSE has been provided documentation that the student was a ward of DC while they were attending the District Public School.

The Proposed Rule Lacks a Strong Limiting Principle for Investigations

CLC is concerned that some subsections do not contain a limiting principles that would protect the time, privacy and liberty of the public during a residency investigation. As currently proposed, subsections 5002.4 and 5004.6 do not contain provisions that would adequately protect the public from intrusions by LEA employees into their homes. Nor do they limit the time, frequency, or manner of contact from the LEA while a residency verification investigation is occurring.

We recommend that proposed subsection 5002.4 be modified to read as follows:

Annual residency verification pursuant to 5002.3 shall not prevent OSSE from seeking further documentation to verify the student's residency, with a reasonable basis, or from investigating the residency status of the student. Neither OSSE nor

LEA staff will make more than five attempts each week to verify the student's residency.

We further recommend that OSSE add a subsection after subsection 5004.6 that clearly instructs the public of their recourse if an investigation is conducted in a way that violates their privacy or liberty. This subsection should also require OSSE to document residency investigation complaints so that OSSE can ascertain if there are any systemic training or procedural issues that could remedy the public's concerns. The following language would provide some recourse and accountability for problematic investigations:

In the event that a person seeking to enroll a student finds the residency verification investigation to be unreasonable, that person can file a written complaint to OSSE and OSSE will catalogue and respond to the complaint within 10 business days.

The Proposed Rule Requires Documents that May Be Difficult for the Public to Acquire

CLC appreciates OSSE's efforts to simplify and streamline the residency verification process for DC residents. We acknowledge that the proposed rules provide significant improvements, such as sharing data between local government entities to verify addresses.² However, the proposed rule requires documents that may be difficult for the public to acquire.

For example, adult students are required under proposed subsection 5001.10 to provide proof of physical presence within the residence of their parents, custodian, guardian or other primary caregiver. The proposed rule does not clearly specify what documents are sufficient to prove physical presence, but proposed subsections 5004.2 and 5004.3 list items that will establish both a physical and legal presence in DC. CLC is concerned that it would be impossible for an unemployed adult students to acquire documentation, such as pay stubs or proof of personal income tax payment, as required under proposed subsection 5004.2. Furthermore, if the adult student is living with their parents, custodian, guardian or other primary caregiver then they are not likely to be able to provide two of the items listed in proposed subsection 5004.3, because the lease, the bills, and the vehicle registration are likely to be in the name of the adult student's caregiver. Therefore, CLC recommends that a subsection be inserted after proposed subsection 5004.3 that states the following:

Pursuant to subsection 5001.10, an adult student may establish a physical presence within the residence of their parents, custodian, guardian or other primary caregiver by providing documentation as required under subsections 5004.2, 5004.3, or 5005.3 that is in the name of the adult student or their parents, custodian, guardian or other primary caregiver. The adult student may also establish a physical presence within the residence of their parents, custodian, guardian or other primary caregiver by consenting to a home visit pursuant to 5004.5.

Another concerning issues is found in proposed subsection 5004.3(d), which allows the person enrolling the student to provided utility bills and paid receipts or cancelled checks in order to establish a physical and legal presence in DC. As an organization that serves transient low-income families, CLC is concerned that many of our clients would not be able produce

utilities receipts that reflect a zero balance. Therefore, CLC recommends that proposed subsection 5004.3(d) be amended as follows to clarify that the receipts only need to show that some payment has been made for the utility within two months of the residency consideration:

(d) Utility bills (excluding telephone bills) and paid receipts or cancelled checks (from a period within the 2 months immediately preceding consideration of residency), indicating payment of some portion of the bill, in the name of the person seeking to enroll the student that show a District residence address.

The Proposed Rule Creates a Heavier Verification Burden for Parents with Informal Custody Agreement

Under proposed subsection 5001.7, when a student's parents have formal custody agreement the student is considered residents of the District as long as one of the parent is a bona fide resident of the District. However, under proposed subsection 5001.6, when the student's parents have an informal custody agreement the student is only considered to be a resident of the District if the parent with care and control of the student is a resident of the District.

CLC takes issue with proposed subsection 5001.6 because it conflicts with DC custody law and because it disadvantages students whose parents do not have the resources or the desire to register their custodial agreement with the court. D.C. Code § 16-914 establishes a presumption of joint legal and joint physical custody. Therefore, it would be most congruent with the D.C. Code if proposed subsection 5001.6 treated parents who do not have a formal custody agreement as if they share joint legal and joint physical custody and apply to them the treatment provided in proposed subsection 5001.7(a). Additionally, CLC believes that applying a care and control standard to students whose parents do not have a formal custody agreement is likely to primarily disadvantage students in low-income families and students whose parents have never been married.

The following changes would bring the proposed subsection 5001.6 into alignment with the spirit of DC custody law and allow for similar treatment of similarly situated students:

In the event the student's parents do not maintain the same residency and do not have a formal custodial agreement entered into by a court of competent jurisdiction, the student shall be presumed to be a resident, if ~~the student is in the care or control of a one of the parents who has~~ established bona fide a residency of in the District.

The Proposed Rule Should Allow Anyone to be a Designee of the Person Seeking to Enroll the Student

During the Special Engagement Session on October 18, 2016, registrars from LEAs indicated that it would be burdensome for families if the definition of "designees" under proposed subsection 5004.4 (a) were limited to professional service providers. Multiple registrars indicated that disabled parents and guardians often need to rely on the aid of family members in order to submit the residency verification documentation. During the meeting, OSSE indicated that it would consider these concerns.

CLC supports OSSE's consideration of this concern and urges OSSE to refrain from limiting the definition of "designee" to professional service providers. We understand and appreciate OSSE's concern about verifying the authenticity of any authorization to access documentations of financial assistance. However, we suggest that such concerns be resolved by requiring LEAs to contacting the person seeking to enroll the student electronically or by phone.

The Proposed Rule's Notice Provisions Could Be Improved

We applaud the proposed rules' requirement that OSSE notify the adult student or the student's parent, guardian, custodian or other primary caregiver of OSSE's finding of non-residency. There are a few changes that OSSE could make to further improve the notice provisions.

CLC suggests that proposed subsection 5008.6 require OSSE to make the results of its residency investigations available to the adult student or the student's parent, guardian, custodian or other primary caregiver upon request. The following would incorporate our suggestion:

OSSE shall make the results of the investigation available to the LEA, the District of Columbia Office of the Inspector General ~~and~~, the District of Columbia Office of the Attorney General, and the person seeking to enroll the student, upon request.

We also believe that it would be helpful for the notice referenced in proposed subsection 5009.2 to be dispatched to the email, school, or work address of the adult student or the student's parent, guardian, custodian or other primary caregiver. The following amendments to proposed section 5009.2 would further guarantee that the person seeking to enroll the student is promptly notified of OSSE's findings:

When OSSE issues a finding that a student is not a resident of the District of Columbia, OSSE shall provide the adult student or the parent, guardian, custodian or other primary caregiver of the minor student written notification of the finding and an opportunity for review as specified in this chapter. The written notification shall be mailed by OSSE to the last known address on file with the LEA for the student ~~and~~, to the out-of-District address of record, and the home, work, or school address for the person seeking to enroll the student. Electronic notification shall be provided to the email address of the person seeking to enroll the student.

The Proposed Rule Contains Time Limits that Need Further Consideration and Clarification

CLC appreciates OSSE's efforts to set time limits that strike a balance between the need for accurate information and speedy verification of residency. There are some timing-related provisions that we suggest OSSE clarify and reconsider.

Proposed subsection 5004.3 (b) and (d) require the person enrolling the student to present cancelled checks or paid receipts of rent and utility bills from a period of 2 months immediately preceding consideration of residency. It may be difficult for households that receive utility assistance or that pay their rent all at once to be able to acquire these proofs of payment.

CLC recommends that the following changes be made to proposed subsection 5004.3 (b) and (d) in order to clarify that the person seeking to enroll the student provide proofs of payment that demonstrate that the person seeking to enroll the student made some payments towards the cost of rent or utilities for some period of time within 2 months immediately preceding consideration of residency:

(b) A valid unexpired lease or rental agreement in the name of the person seeking to enroll the student, and paid receipts or canceled checks (that demonstrates payment for a some period within 2 months immediately preceding consideration of residency) for payment of rent on a District residence in which the student actually resides;

...

(d) Utility bills (excluding telephone bills) and paid receipts or cancelled checks (that demonstrates payment for a some period within the 2 months immediately preceding consideration of residency) in the name of the person seeking to enroll the student that show a District residence address.

CLC is also concerned that proposed subsection 5009.3 allows for an OSSE non-residency finding to become final ten (10) days after OSSE provides written notification of the non-residency finding unless the student requests an administrative review of the non-residency finding. Once the finding is final, the student will be disenrolled from school. This is a very short time frame, especially because it does not appear that the 10-day time limit allows for the time delay that mailing requires. The proposed rule also lacks any exception for good cause for delays.

We recommend that the following amendments be made to the proposed subsection in order to account for mailing delays and to establish an exception for good-cause delays, such as medical or housing emergencies:

(f) Notwithstanding any provision in this subsection, ten (10) business days will be calculated from three business days after the written notice is dispatched.

(g) Notwithstanding any provision in subsection 5009.3 (d), OSSE will allow the student to remain enrolled in the school in the event that a person seeking to enroll the student has good cause for failing to provide OSSE notice of their

request for administrative review. Good cause may include a failure to receive OSSE's written notification of the non-resident finding within three (3) business day of dispatch, hospitalization, or inability to respond.

The Proposed Rule Does Not Include Pre-Kindergarten Aged Students in the Definition of School-Age Student

CLC recommends that the definition of school-aged children be edited as follows in order to include pre-Kindergarten students in the definition:

School age student – A child who is between ~~five~~four (54) years of age on or before September 30 of the current school year and eighteen (18) years of age.

Thank you considering these comments and questions. If you have any questions about these comments, please feel free to contact me at (202)467-4900 ext., 609 or AEdwards-Luce@childrenslawcenter.org.

Respectfully,



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¹ Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to be the voice for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone. With 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

² Please note that proposed subsection 5004.2 includes Supplemental Security Income (SSI) in a list of financial assistance received from District Government. However, SSI is not a DC program. CLC also recommends that OSSE consider included Supplemental Nutrition Assistance Program (SNAP) in the list contained in proposed subsection 5004.2.