

Via email: osse.publiccomment@dc.gov

May 26, 2016

Elisabeth Morse
Deputy Assistant Superintendent for Policy, Planning, and Charter
Office of the State Superintendent of Education
810 First Street, NE 8th Floor
Washington, DC 20002

Re: Comments on Second Proposed Rulemaking on Special Education Transfer of Rights
published on May 13, 2016

Dear Ms. Morse:

Thank you for the opportunity to comment on the second proposed rulemaking published in the District of Columbia (DC) Register on May 13, 2016 regarding Special Education and the transfer of decision-making rights to students at age 18. 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 and many receive special education services.

Children's Law Center appreciates the Office of the State Superintendent of Education's (OSSE) meaningful engagement with the community regarding regulations for transfer of rights to adult students and commitment to timely implementing the *Special Education Student Rights Act of 2014*.² OSSE wisely issued the first notice of rulemaking far in advance of July 1, 2016 deadline for these regulations in order to engage in thoughtful conversations. We were pleased to work with your team about our previous comments on behalf of the hundreds of parents and students we assist each year. We were also pleased to see the reasoned changes since the first rulemaking.

OSSE has proposed a set of stronger and clearer regulations that will guide all Individualized Education Program team members about the full spectrum of options for adult students with disabilities to receive supports with important educational decisions as wanted or needed. Thank you for incorporating many comments, such as aligning these regulations with existing DC law about incapacitated individuals, including a strong descriptive definition of supported decision-making, and strengthening the provision about powers of attorney. As these provisions are implemented, we have some concern that without sample forms for required written supported decision-making arrangements and

powers of attorney,³ some students will face challenges conveying their choices to receive support with decisions or continue to have a trusted adult make important educational decisions in a way that schools will accept. OSSE should create and distribute sample supported decision-making forms and powers of attorney to assist students and schools with implementing these sections of the regulations.⁴

For students unable to provide informed consent for educational decisions, OSSE clearly committed to making the process of appointing an educational representative meaningful but not overly burdensome. OSSE's decision to include more safeguards for the students, including a directive to the public school to inform the student in a comfortable communication method, is an indication of OSSE's understanding that students with disabilities need their rights explained in multiple ways.

We have two clarifying revisions to suggest. In section 3034.2, regarding supported decision-making, OSSE is clear that a student can have multiple parents or family members in their supportive network. OSSE should also be clear that a student without close family, like some of our clients in foster care, could have multiple other adults help with their educational decisions. We suggest this minor clarification:⁵

Any student who has reached eighteen (18) years of age and to whom all IDEA rights afforded parents under the IDEA have transferred, may voluntarily choose to receive support from his or her parents, family members, or **any other** ~~another~~ willing adults to aid the student with educational decision-making. The student's decisional choice shall prevail any time that a disagreement exists between the student and the other adults providing support in this manner and the student may withdraw his or her decision to receive support at any time.

In section 3035.4, OSSE indicates that an educational representative should be sought when supported decision-making is not appropriate. Given that DC law on capacity, the *Special Education Student Rights Act of 2014*, and this Second Notice of Proposed Rulemaking recognize powers of attorney as an additional alternative to an appointed decision-maker, this section should clearly recognize them as well.⁶ We suggest this clarification:

Appointment of an educational representative should be sought only where necessary and where supported decision-making **or a power of attorney** is not appropriate.

Thank you for the opportunity to comment on these proposed regulations, and for your openness to comments while creating these policies to assist young adult students

with disabilities. If you have any questions, please do not hesitate to contact me at (202) 750-7529 or rmurphy@childrenslawcenter.org.

Respectfully,



Renee Murphy
Senior Policy Attorney

Cc: Amy Maisterra, Assistant Superintendent of Elementary, Secondary & Specialized Education

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 DC Act 20-486, sections 104 and 301.

³ The requirements for documents for supported decision-making and powers of attorney are at proposed sections 3034.3 and 3035.2, respectively.

⁴ We would be happy to assist with creating a sample power of attorney for educational decisions. DCPS created a Supported Decision-Making Agreement form, which OSSE could provide to assist other LEAs. Accessed May 25, 2016 at

<http://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Supported%20Decision%20Making%20Form.pdf>

⁵ **Bold** indices proposed additions and ~~strikethrough~~ indicates proposed deletions.

⁶ See DC Code § 21–2002(d), DC Act 20-486 section 104.