



501 3rd Street, NW · 8th Floor
Washington, DC 20001
T 202.467.4900 · F 202.467.4949
childrenslawcenter.org

Testimony Before the District of Columbia Council
Committee on Education and Committee of the Whole
February 26, 2019

Public Hearing:
Performance Oversight Hearing
District of Columbia Public Schools

Michael Villafranca
Policy Analyst
Children's Law Center

Introduction

Good afternoon, Chairman Mendelson and Chairman Grosso and members of the Committees. My name is Michael Villafranca. I am a Policy Analyst at the Children's Law Center¹ and a resident of the District. I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With almost 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. Many of the children we represent attend DC Public Schools (DCPS).

I appreciate this opportunity to testify regarding the performance of DCPS. As the new Chancellor comes on board, there is a lot of work to be done. In our testimony today, we continue to urge for more progress within DCPS. More progress in keeping students in the classroom and learning by increasing focus on reducing truancy and the use of exclusionary discipline. And, more progress for students with disabilities.

Student Attendance and Discipline

If students are not in class, none of the education reforms matter. Keeping students in school is essential to their academic success.

Chronic Absenteeism/Truancy Prevention

Truancy continues to be significant problem in the District of Columbia. For the 2017-2018 school year, DCPS reported a truancy rate of 28.7%, a more than 2% increase

from the previous year.² Schools are the best place to address individual student's barriers to attendance. The student, parents, teachers and other staff who work with the child on a regular basis should be at the heart of any truancy reduction effort. The *Attendance Accountability Amendment Act of 2013* recognizes this by requiring schools to conduct Student Support Team (SST) meetings when a student reaches five unexcused school absences.

However, it is deeply concerning that schools are still not fully complying with this law or its underlying regulations. DCPS completed only 71% of their required attendance-related SST meetings in school year 2017-18, a decrease from the previous year.³ To learn the specific reasons a child is missing school and to respond with the necessary interventions, someone from the school must meet with the student and his or her parents. Plain and simple, that is what an SST meeting is. We continue, as we have for several years now, to urge full funding and staffing in the schools to ensure compliance with the truancy interventions required by current law.

Additionally, when the school has not met with the student and family to resolve attendance issues, we recommend the school be prohibited from referring students to the courts or the Child and Family Services Agency (CFSA). This will ensure that schools can't use referrals out to replace their obligation to meet with and assist students. To fully effectuate this goal, we also continue to recommend that the school's failure to conduct an SST meeting be made an affirmative defense to truancy petitions

made against students age 14 and older. Court involvement is inappropriate, if a student has not been offered interventions or services.

Further, as we've testified many times before, we continue to believe referrals to the courts and CFSA for unexcused absences may be ineffective and might even be counterproductive. The data collected by DCPS continues to suggest that SST meetings are more effective than referrals to court or CFSA. Of the DCPS students who were truant in SY2016-2017 and reenrolled in DCPS in SY2017-2018, 55% of students who were referred for an SST meeting were truant again, compared to 66% of students referred to CFSA and 77% of students referred to Court Social Services (CSS).⁴ We urge that this data continue to be collected, not just from DCPS, but the public charter schools, as well.

Reducing Exclusionary Discipline

Excessive use of exclusionary discipline also keeps students out of school. We testified last year, and many times before, that reducing the use of exclusionary discipline is an important part of making sure every student is in school every day of the school year, so they can learn and succeed. In fact, we advocated alongside parents, teachers, mental health professionals, and many other advocates, last year, in support of the *Student Fair Access to School Amendment Act*, which is now law, in order to build an education system that is more effective at identifying and responding to students' needs.

Out-of-school suspensions, alone, keep thousands of DC's children out of school each year. For DCPS, the out-of-school suspension rate for SY2017-18 remained unchanged from the previous school year.⁵ More than 1,200 DCPS students received multiple out-of-school suspensions—of which, 45% were suspended from school more than three times.⁶ The data also shows that students of color continue to be disproportionately impacted by these practices. For example, 98% of the DCPS students who received an out-of-school suspension were students of color.⁷

Additionally, students are being kept out of school for long periods of time before a hearing is conducted at the Office of Administrative Hearings (OAH) to examine the legitimacy of the long-term suspension imposed. DCPS acknowledges an average of 10 days between the date of incident and hearing,⁸ contrary to DC regulations which require hearings to be held within four school days.⁹ Because hearings are taking so long to be scheduled and held, some students are spending more time out of school than they should, especially for the cases where no violation is eventually found.¹⁰ These practices lead to denials of education for students before they have the fair hearing to which they are entitled.¹¹

We are, however, encouraged to see DCPS becoming more invested in supporting students with challenging behaviors and preparing schools for implementation of the *Student Fair Access to School Amendment Act*.¹² DCPS has issued some guidance and held multiple training sessions for school leaders and staff. We are

also very encouraged to see DCPS engaging various stakeholder groups to gather feedback to better inform implementation.¹³

While the resources and initiatives that DCPS has invested in (e.g. Restorative Justice programs, trainings, the expansion of school-based mental services, etc.) may be beneficial in reducing schools' use of exclusionary discipline, as envisioned in the new law, a much larger investment is needed to ensure that those resources are directly benefiting the teachers, staff and students in the schools that need them. Full funding and staffing in the schools to implement positive approaches to out-of-school exclusion, with fidelity, is essential. Therefore, we adamantly urge the Mayor and this Council to ensure the necessary resources are provided in the upcoming budget.

The 2014 Special Education Reforms

The really good news from last year is that the 2014 special education reforms were fully funded in the FY19 Budget and have gone into effect. DCPS has done a substantial amount of work to make sure these reforms were successfully implemented. We are hopeful that these reforms will have a significant impact on changing the outcomes for students with disabilities.

Evaluate Children to Get Special Education Services Faster

One of the significant changes that went into effect last year was a shortening of the time to evaluate and diagnose students to two months rather than more than a semester. Prior to July 2018, when the *Enhanced Special Education Services Act of 2014*

went into effect, schools had 120 days to complete the evaluation—the longest timeline in the nation.¹⁴ Fortunately, the implementation of the reform by DCPS is well underway. DCPS evaluators have been operating on a 45-day deadline for their evaluation reports to be done, even faster than the maximum allowed by law.¹⁵ The impact of faster diagnosis, and thus faster services, cannot be overstated.

Plan Earlier for Life After High School

The *Enhanced Special Education Services Act of 2014* also required LEAs, including DCPS, to start planning about the student’s future in eighth grade. Under federal special education law, schools are obligated to develop “transition plans” for special education students between ages 16 and 22 years old to help them prepare for life after high school.¹⁶ Recognizing the importance of these transition activities, the *Enhanced Special Education Services Act of 2014* lowers the age at which transition planning must begin to age 14. This change also went into effect July 2018. For eighth graders, this will allow planning for high school opportunities suited to the child’s interests and ensure that the child and parents learn about the options for diploma coursework.¹⁷

Fortunately, despite a lack of clearly appropriated funds until this fiscal year, DCPS began implementing this reform a few years ago.¹⁸ In fact, DCPS has a newly established partnership for SY2018-19 with SchoolTalk’s DC Youth Leadership Network, in response to the changes law.¹⁹ In addition to beginning transition planning earlier, however, DCPS must continue to focus on improving the quality and quantity

of services offered to students for successful post-secondary transition. The success of all students with disabilities depends on this effort, but especially the significant number who are not graduating on time and those who drop out.

Students with Disabilities Continue to Struggle

While the reforms are significant, there is still a great deal more DCPS needs to do to serve children with disabilities in special education, who make up more than 15% of students enrolled throughout the year.²⁰ Special education, at its most fundamental level, is about the human rights of people with disabilities – to learn, be included, and participate in the life of our community. The purpose of the *Individuals with Disabilities Education Act* (IDEA) is to prepare students with disabilities for future education, employment, and independent community living.²¹ Because that is the goal, students are given a right to an education appropriate to that student’s unique needs, designed to allow the student to access the same curriculum as other students and make progress (a “free, appropriate public education” or FAPE).

DC’s children with special needs continue to have abysmal academic performance, graduation outcomes and progress in proficiency. Children with disabilities have the worst academic achievement of any group, by far. Only six percent of DCPS students with disabilities are proficient in English/Language Arts (ELA) and seven percent in Math, compared to 35% ELA and 31% Math for all DCPS students.²²

Further, merely three percent of DCPS high schoolers in special education are college or career-ready on the English statewide exam and only one percent on the Math exams.²³

Graduation rates and outcomes also continue to be profoundly low for students with disabilities. Last year, only 46% of DCPS students with disabilities graduated on time²⁴—of which, 33% have attended college.²⁵ Even worse, 42% of students who left specialized education in SY2018-18 dropped out.²⁶

Behind these statistics are children and parents. At Children’s Law Center, we receive calls every day from parents who are worried that their children are not learning to read, not learning math and are not going to be prepared for adulthood. For many of the children, the truth is that they are not making meaningful progress and are many years behind. Too many of the children we see in middle and high school are still only able to read and do math at early elementary levels, and their teachers and school leadership do not seem to know how to help. Some of the children have never been diagnosed with a disability, despite how obvious the child’s severe needs are and, at times, despite the parent asking for special education. Other children in special education are just not receiving the services they need to make progress. Parents are upset and scared about the future, as their child falls further and further behind.

Increase Parent Involvement with IEP Development

DCPS should deepen efforts to ensure all public schools in DC follow the requirements from the *Special Education Students Rights Act of 2014* aimed at ensuring

meaningful parental involvement. This law requires all schools to provide records to all parents in advance of IEP meetings, provide the finalized IEP in a timely fashion, and translate IEPs for parents with limited English proficiency in a timely manner.

Unfortunately, even when my colleagues remind schools of these responsibilities, only a few parents in our cases have timely received the information they need to be engaged in their child's education. Schools often suggest that a meeting be postponed when they have not followed the law, rather than prioritize getting records to parents. DCPS should track how schools are doing and examine reasons for meetings being postponed in order to ensure schools take the law seriously.

Conclusion

Thank you again for the opportunity to testify and I welcome any questions.

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 advocate 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 almost 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 DCPS (September 2018). *DCPS Annual Truancy Report*, p. 4. Retrieved from https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/FinalAttendanceReport%20SY1718_1.pdf

³ DCPS FY18 Performance Oversight Responses, Q52.

⁴ DCPS FY18 Performance Oversight Responses, Q54.

⁵ OSSE FY18 Performance Oversight Responses, Q10 Attachment 1.

⁶ *Id.*

⁷ There were 3,326 students who received an out-of-school suspension. 2,990 were Black/African-American and 244 were Hispanic/Latino. See OSSE FY18 Performance Oversight Responses, Q10 Attachment 2.

⁸ DCPS reports an average of 9.7 calendar days from the incident date to the date of the hearing. See DCPS FY18 Performance Oversight Responses, Q55.

⁹ 5 DCMR § B2506.2.

¹⁰ 14% of the cases heard in SY2017-18 were dismissed by the hearing officer. See DCPS FY18 Performance Oversight Responses, Q55.

¹¹ *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

¹² DCPS FY18 Performance Oversight Responses, Q6.

¹³ *Id.*

¹⁴ “The District’s 120-day timeframe still appears to be the longest period of time in the country. 2015 Dunst Direct ¶ 89. In only five states does the timeframe exceed 60 days. *Id.*” Corrected Memorandum of Opinion & Findings for Fact and Conclusions of Law, (June 21, 2016), *D.L. v. D.C.*, Civil Action 05-1437, at Finding of Fact 100.

¹⁵ We know this from experiences in DCPS IEP meetings, as well as the fact that DCPS has included a 45-day deadline to complete evaluation reports in DCPS guidelines. See, e.g., DCPS. (August 10, 2016). *Speech and Language Program Guidebook School Year 2016-2017*. Washington, DC, page 66 and 82 (copy on file with the Author from a FOIA request).

¹⁶ 34 C.F.R. § 300.320(b)(2). Transition plans can include a wide range of activities to prepare students for independent living, employment, and further education.

¹⁷ Now that funds are appropriated, and the law is in effect, the Department of Disability Services (DDS) can start using currently-available Federal funding under the *Workforce Innovation and Opportunity Act* for services in middle schools and to students age fourteen and up during summer work opportunities. The WIOA requires DDS to use 15% of the Federal WIOA funding on students prior to graduation (Pre-Employment Transition Services) and allows it to use funds at the transition age set in IDEA (which is 16) or local law. See http://ruralinstitute.umt.edu/transition/handouts/VRBS_and_WIOA-28apr15.pdf.

¹⁸ DCPS FY16 Performance Oversight Responses, Q78.

¹⁹ DCPS FY18 Performance Oversight Responses, Q59.

²⁰ This calculation is based on data from OSSE and DCPS oversight responses. See OSSE FY18 Performance Oversight Responses, Q43 Attachment and DCPS FY18 Performance Oversight Responses, Q65.

²¹ 34 CFR § 300.1

²² OSSE (August 16, 2018). *DC’s 2018 PARCC Results*. Retrieved from https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2018%20PARCC%20Results%20Release%20%28Aug.%2016%2C%202018%29.pdf

²³ *Id.*

²⁴ OSSE FY18 Performance Oversight Responses, Q11 Attachment 1.

²⁵ DCPS FY18 Performance Oversight Responses, Q61.

²⁶ OSSE FY18 Performance Oversight Responses, Q44 Attachment.