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Testimony Before the District of Columbia Council
Committee on Education & Committee of the Whole
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Public Oversight Hearing:
Distance Learning in DC and Public Charter School

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Introduction

Good morning Chairman Mendelson, Chairman Grosso, and members of the Committee on Education and Committee of the Whole. My name is Sharra E. Greer. I am the Policy Director at Children's Law Center, a resident of the District, and a parent of two students engaged in distance learning who attend DC Public Schools.¹ 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 nearly 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.

The public health emergency has pushed all DC residents – especially parents and students - into new routines and a new normal. As we approach the seventh month of this new shared reality, distance learning has been implemented for students across the District to varying levels of success. Children's Law Center appreciates this opportunity to provide testimony on issues and concerns raised during distance learning in both traditional DC Public Schools (DCPS) and Public Charter Schools.

General Education Issues with Distance Learning

There are three general education issues we have identified during the public health emergency as sources of concern we want to raise today: access to technology, or

the Digital Divide; Home and Hospital Instruction, and attendance policies during distance learning.

Progress Has Been Made in Closing the Digital Divide, But More Needs to Be Done

Mayor Bowser and school leaders have made an important commitment to promote digital equity in DC 's public schools. Chancellor Ferebee has stated that "DCPS remains committed to providing technology resources and support for every student who needs a device or access to the internet."² To meet this commitment, DCPS plans to invest nearly \$17 million in technology for learning at home this fall and to expand its inventory to more than 45,000 devices for students in Pre-K through grade 12.³ It is our understanding that the Public Charter Schools are also seeking to ensure all their students have the technology they need to engage in distance learning.⁴

CLC strongly supports these commitments. The COVID-19 pandemic has disproportionately affected people of color and lower-income families, exacerbating structural inequities and racism that have long plagued the nation and the DC community.⁵ One example of these inequities can be seen in the "digital divide" in DC. According to one estimate, 25-30% of families of color in DC lack high-speed internet at home, compared to 5% of white families.⁶ As of mid-August, 24,000 parents had responded to DCPS's technology access survey, with 54 percent indicating need for a device.⁷ It is essential that all students have access to the technology necessary to engage in school.

DC schools are making progress toward meeting this goal. DCPS has distributed more than 26,000 devices to students.⁸ It has also provided home internet access (through a device equipped with free cellular Internet service or through a separate mobile hotspot) to a number of families. The Mayor has also announced a separate \$3.3 million program to provide free Internet to 25,000 families who receive SNAP or TANF benefits.⁹

While we are making progress in closing the digital divide, we need to do more. Digital Equity in DC Education, a citywide coalition of parents and education advocates, has been tracking technology access issues for DCPS students and providing very important feedback.¹⁰ In CLC's work, we continue to see families confronting digital equity issues. There are still students who lack the technology they need to participate in distance learning or who have faced delays in accessing this technology. For example, DCPS didn't begin distributing iPads to Pre-K students until three weeks into the school year.¹¹ We have also seen variations from school to school; while some schools have done an excellent job, others have failed to provide technology in an organized, timely fashion. We are also aware of cases in which special education students placed in non-public schools have had significant difficulty in obtaining devices. Schools need to make diligent outreach efforts to identify *all* students who still lack the technology and fill these gaps promptly.

Schools also must ensure that families and students have the technical support they need to engage in distance learning successfully. DCPS provides technical support through a website and also via telephone (the Family & Student Tech Call Center). While these resources have assisted many families, there have been times, especially at the start of the school year, when the call center has not had the capacity to handle all calls.

Many Public Charter Schools appear to be providing students with devices and Internet connectivity. But, as is often the case, there is less transparency concerning Public Charter School performance compared to DCPS. The Council, the Mayor, OSSE, and the Public Charter School Board must ensure Public Charter Schools are providing their students the technology they need. In 2018-2019, the Public Charter Schools served almost 44,000 students¹² – that is nearly half of all students enrolled in DC¹³. There needs to be transparency and public accountability regarding how the Public Charter Schools are ensuring students have access to education.

The Council Should Pass the Students' Right to Home or Hospital Instruction Act of 2019

On February 11, 2020, the Committee on Education unanimously approved the Students' Right to Home or Hospital Instruction Act of 2019 (B23-0392). To date, the bill has received the support of Councilmembers Grosso, Allen, Bonds, Cheh, Nadeau, Todd, Robert White, and Trayon White. It also received strong support in public testimony at an October 21, 2019 hearing.¹⁴ The bill will require all Local Education

Agencies (LEAs) to adopt and implement home or hospital instruction (HHI) policies, create timelines for determining eligibility and delivering services, create appeal rights, and promote transparency.

Children's Law Center urges the Committee of the Whole to move forward on this important bill so that it can be enacted this year. The need for action has taken on even greater importance as students who fall ill due to COVID-19 may have to depend on HHI to stay connected to their education.

Attendance Policies May Further Student Disengagement and Create Unnecessary Referrals to CFSA and PINS Cases

Truancy is a major problem for the District's students and families – over 11% of students were eligible for truancy referrals to CFSA or the juvenile justice system during the 2018-2019 school year.¹⁵ Since the onset of the pandemic and the transition to distance learning, accessing school has become more difficult than ever. During distance learning students are expected to log in once per day in order to be counted as present. Schools are also tracking attendance by period and or class.¹⁶ Currently, OSSE has not promulgated any policy or regulation that requires schools to consider pandemic related absences or complications as excused absences. The discretion to create new excused absence protocols and categories has been left up to the LEAs, which will likely lead to attendance policies being enforced differently across the District. Some foreseeable issues that may cause students to be absent are: the illness of a caregiver, technology issues (including lack of devices, lack of internet service,

technical issues with platforms and programs, broken devices, etc.), difficulty logging in due to parents work schedules, and difficulty logging in due to the child's disability and ability to engage online.

Parents have shared with our attorneys that they are concerned and fearful of attendance referrals to CFSA and the Office of the Attorney General but unsure of what resources or policies are in place to help them engage their students in distance learning, or how to know when an absence should be or could be excused. Just in the last two months, our attorneys have worked with a foster parent who has to attend dialysis and cannot get their student logged in the day they are at treatment. Another student client has a behavioral health diagnosis that makes it incredibly difficult for them to engage with online class for more than 10 minutes at a time. Their foster parent is working from home, and although they try to monitor the child's progress during the day, they worry the child will be marked absent if they log off or walk away from the screen in the middle of the day. The Child and Family Services Agency (CFSA) did issue a policy to schools encouraging significant outreach and engagement with the families prior to making a report to CFSA.¹⁷ However, we remain concerned that there will be an unnecessary flood of reports.

Further, we are concerned that schools may be enforcing the 80/20 policy and the 30 absences to failure policy without a complement of services that addresses the realities of distance learning in this pandemic. The 80/20 rule requires students to be

present for 80% of the school day to be marked as present.¹⁸ In today's distance learning context, we anticipate this policy will have a disproportionately negative impact on students who are low income, who have technology issues, or who may have parents who are unable to be engaged and present during the entire distance learning school day. Scenarios such as family or caregiver illness, work commitments, or childcare commitments may complicate a student's ability to log in for the proscribed amount of time. Further, if a student is absent from a class 30 times in a school year, they automatically fail the course for the year leaving little incentive to continue to attend.¹⁹ We are concerned that our older students will completely disengage from distance learning as the school year progresses.²⁰ Therefore, we recommend that OSSE and LEAs create attendance policy that is more focused on finding disengaged students and connecting them to resources, rather than creating unnecessary referrals to child welfare and pushing students out of school. We also urge the Council to consider steps address the impact of these rules.

Students With Disabilities Face Specific Barriers to Accessing Services and a Free Appropriate Public Education (FAPE)

Long before the declaration of our public health emergency, Children's Law Center has testified many times about our concerns about the lack of educational progress for students receiving special education services. Reviewing 2019 data, we know that 44% of DC students without disabilities scored proficient in the English Language Arts (ELA) statewide assessment, while only 8% of students with disabilities

scored proficient.²¹ We are concerned that for students with disabilities distance learning will only serve to widen this gap. Through our Medical Legal Partnership, our attorneys work with students with disabilities who are referred by their health care providers when there are concerns about educational goals or needing additional supports in the classroom to learn and thrive. While working with District families, we have identified a few areas where students with disabilities are struggling to receive the education they are entitled to while engaged in distance learning.

Timely Evaluations Have Not Been Performed Since March Of 2020

One of OSSE's mandates under the Individuals with Disabilities Education Act (IDEA) is that the state education agency find children who may be eligible for special education services. Through these child find activities, children are referred for evaluation either for early intervention services or school based special education services. In order to determine a child's eligibility, a comprehensive evaluation needs to be performed to determine the nature and severity of a child's disability and what services should be put in place to support the child. Unfortunately, the pandemic forced in person evaluations to cease in March of 2020, as in person testing and meetings became difficult to schedule. Although we understand the importance of implementing extensive public health measures that prohibit in person assessments, we are concerned that continuing to postpone or delay evaluations may create irreparable harm to students who need special education services. To date, we have seen some

Charter Schools starting to perform needed evaluations but the majority of LEAs, including DCPS, have yet to resume evaluations. We urge OSSE, DCPS, and all Public Charter Schools to immediately begin to safely and swiftly conduct evaluations. There is a backlog of students who have not been identified as needing special education services, or who have been identified as potentially needing services but who remain unevaluated. This backlog is only growing, and evaluations will likely take even longer to schedule than before. We urge schools to go forward with eligibility determinations for students with special education services and, if parts cannot be completed now, complete the components of evaluations that must be completed in person at a later date. This would ensure that students are engaging in these critical services as soon as possible to mitigate further learning loss.

In addition, prior to the pandemic, there were already routine evaluation lags during the summer months when staffing in school buildings was lower than during the school year. We ask the Council to consider pressing for the allocation of more staff now and for LEAs to prepare with additional staff for the end of the year and next the summer so that evaluations can be conducted quickly and thoroughly to ensure all students who are eligible for services can receive them as soon as possible.

Not All Related Services Are Successfully Provided Via Distance Learning

Many students with disabilities also receive a complement of related services along with their specialized instruction. We recognize that some LEAs were able to

pivot quickly to provide some of these related services like speech language therapy and occupational therapy virtually, and some of our clients have been able to engage and benefit from these services. However, for other students engaging virtually with their related services has been a challenge. Students who normally have one on one dedicated aides during the day to support them with their academics and help them stay on track or with emotional regulation are not able to access that same level of support through the computer screen. Other students are unable to focus on the computer or interact through the computer due to their disabilities and are missing out on valuable instructional content and services each and every day. For example, we have found that Occupational Therapy (OT) and Applied Behavioral Analysis (ABA) services are some of the hardest therapies to replicate virtually and often rely heavily on parents to implement. We ask that the Council press DCPS and Charter Schools for their plans to provide safe and socially distant opportunities for students with disabilities who are struggling to engage with distance learning.

The District Continues to Face a Compensatory Education Provider Shortage

Many of the students who receive special education services will need to make up for lost educational progress during distance learning through compensatory education. A judicial remedy, compensatory education services are awarded and then usually obtained by parents through private providers. Before the pandemic, our client parents expressed frustration over the lack of compensatory education providers in the

District that meet the requirements set forth by DCPS and sometimes faced significant barriers to getting their child the hours that had been awarded. The lack of compensatory education providers can partially be attributed to a DCPS policy which states that DCPS employees cannot provide compensatory education services.²² We recommend that this DCPS policy be relaxed so that teachers and staff can be compensatory education providers. By allowing DCPS employees who are already familiar with a child's strengths and needs to serve as the compensatory education provider, students have the opportunity to receive a continuation of the instruction they are receiving in the classroom. Further, increasing the number of providers will likely ensure that students receive the hours they are entitled to as soon as possible during and after the public health emergency.

Children in the Care of CFSA Face Particular Hardships Accessing Distance Learning

Students in the care of CFSA also face additional barriers to engaging with and being successful in their distance learning curriculum. Foster parents report additional expenses and stresses brought on by distance learning and more hours in the home environment. Often foster parents have multiple children who are enrolled in different schools and struggle to juggle multiple different platforms and schedules. We have seen foster parents have difficulties with coordinating log in times for a student with many related services provided at different times and different days of the week. In most instances foster parents are balancing monitoring distance learning with their

jobs.²³ While these are challenges shared by many parents, foster parents are also supporting children who have already experienced the abuse or neglect that brought them into care, followed by the trauma of being removed from their homes which can often create additional parenting and academic challenges.

Foster youth also are highly mobile. There have been several cases where students had computers in one home and so a device was not obtained for them, but when they changed foster homes the device remained with the foster parent or family member. In other cases, we have students being discharged from Psychiatric Residential Treatment Facilities (PRTFs) and returning to the community without being provided devices. Much of this is exacerbated by LEAs not getting updated information from CFSA about the contact information for who is responsible for the child's education. In addition, it is the current CFSA policy that foster parents and youth must try to get a device first from their LEA before CFSA will assist getting a device. This has resulted in students not getting a device until several weeks into the school year.

We know the Students in the Care of DC working group in the Deputy Mayor for Education's office has been working with the advocates and Agencies to address these issues, however, there is still much work to be done to ensure all children in foster care are able to access education.

Conclusion

As the District shifts from pandemic response and into pandemic recovery, we hope to see OSSE, DCPS, and our Charter Schools adapt to ensure they are meeting students' needs. We appreciate the opportunity to share our suggestions and our client experiences as we all adapt to distance learning. I look forward to answering any questions you may have.

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 nearly 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 Email from Chancellor Ferebee to DCPS community, (Aug. 13, 2020), (DCPS Aug. 13 Email), *available at*: <https://dcpsreopenstrong.com/updates/technology-tips-for-learning-at-home/>.

³ *Id.*

⁴ *See, e.g.*, <https://www.kippdc.org/wifi-tips/> (“KIPP DC is committed to supporting students' connectivity to promote remote learning success.”).

⁵ *See* Letter from Mayor Bowser to Honorable Phil Mendelson, at 1, (May 18, 2020), *available at*: <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC-GOVT-FY-2021-PROPOSED-BUDGET-VOLUME-1.pdf> (page 21) (recognizing the “distressing health disparities that exist across our nation and within our community”); Delgadillo, N., “Why Do Latinos Have The Highest Rate Of Coronavirus Infection In D.C.?” (May 11, 2020), *dcist*, *available at*: <https://dcist.com/story/20/05/11/why-do-latinos-have-the-highest-rate-of-coronavirus-infection-in-d-c/> (“Communities of color in the city continue to be disproportionately affected by the virus—black residents make up 80 percent of the people who have died from the disease here, despite being just 46 percent of the population. Latino residents, meanwhile, have the highest incidence of coronavirus infection per capita in the District, at 1,200 per 100,000. (The rate for black residents is 820 residents per 100,000, while it's 175 per 100,000 white residents).”).

⁶ *See* <https://futureready.org/homework-gap/#map>.

⁷ DCPS Aug. 13 Email.

⁸ Grablick, C., *Office of Inspector General to Audit Remote Learning in DC Public Schools*, *dcist*, (Sept. 18, 2020), *available at*: <https://dcist.com/story/20/09/18/dcps-online-learning-inspection-audit/>.

⁹ *See* <https://www.techtogetherdc.com/internetforall>.

¹⁰ Digital Equity in DC Education has conducted a technology and online learning survey for DCPS families, which should provide very useful data for this oversight hearing.

¹¹ DC Public Schools, [@DCPublicSchools] (Sept. 21, 2020), Tweets: “iPads are ready for distribution for Pre-K students to support learning at home. Elementary schools are contacting families with details on how to pick up their devices. #DCPSatHome”, available at:

<https://twitter.com/dcpublicschools/status/1308108895295016961>.

¹² The total number of students enrolled in Public Charter Schools for SY 18-19 was reported as 43,911. See DC Public Charter School Board, *Student Enrollment*, available at: <https://dcpcsb.org/student-enrollment>.

¹³ The total number of students enrolled in SY18-19 according to OSSE was 93,708. See OSSE, *Audit and Verification of Student Enrollment for the 2018-2019 School Year*, (Feb. 7, 2019), available at:

https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2018-19%20School%20Year%20Audit%20and%20Verification%20of%20Student%20Enrollment%20Report.pdf.

¹⁴ Testifying in support of the bill were Buck Logan of Children’s Law Center, Maria Blaeuer of Advocates for Justice & Education, Molly Whelan of DC Association for Special Education, Attorney Margaret Kohn, and a number of parents who have faced obstacles in obtaining HHI for their children.

¹⁵ In 2018-2019, DCPS had 49,103 students enrolled. The 2018-2019 SY had almost 5,500 students recorded as truant. A total of 3,876 students were eligible for a CFSA referral for educational neglect due to truancy and 1,603 students were eligible for referral to the judicial system for truancy. That means more than 11% of DCPS students were eligible for attendance referrals. See DCPS, *DCPS Enrollment Increases in School Year 2018-2019*, (Nov. 7, 2018), available at: [https://dcps.dc.gov/release/dcps-enrollment-increases-school-year-2018-2019#:~:text=\(Washington%2C%20DC\)%20%2D%20In,to%20preliminary%20data%20released%20today](https://dcps.dc.gov/release/dcps-enrollment-increases-school-year-2018-2019#:~:text=(Washington%2C%20DC)%20%2D%20In,to%20preliminary%20data%20released%20today).

See also: DCPS, *Annual Truancy Report*, (Aug. 2019), available at: <http://chairmanmendelson.com/wp-content/uploads/2019/12/DCPS-Final-Attendance-Report-SY18-19.pdf>.

¹⁶ See OSSE, *Guidance: Collecting Attendance for the 2020-21 School Year*, (Jun. 30, 2020), available at:

<https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2020-21%20School%20Year%20Attendance%20Guidance.pdf>.

¹⁷ CFSA’s new attendance guidance would require schools to complete a certain level of outreach before they will accept a referral for educational neglect. See CFSA, *School Year 2020-21 Operating Procedures for Local Education Agencies (LEAs), DC Public Schools (DCPS), DC private schools and DC Child and Family Services Agency (CFSA) in response to student attendance concerns*, (Aug. 28, 2020), available at:

https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/CFSA_SY2020-21%20Attendance%20Reporting%20Procedures_Final.pdf

¹⁸ Students who are not present for 80 percent or more of the day are considered absent. See 5-A DCMR § 2199.1.

¹⁹ See 5 5-E DCMR § 2103.6

²⁰ As of September 11, 2020, more than 20,000 students had yet to be enrolled in school. See Stein, P, *DC Says 20,000 Students Started the Enrollment Process But Did Not Complete It*, (Sept. 11, 2020). The Washington Post, available at: https://www.washingtonpost.com/local/education/dc-says-20000-students-started-the-enrollment-process-but-did-not-complete-it/2020/09/11/2aca8a66-f448-11ea-999c-67ff7bf6a9d2_story.html.

²¹ See OSSE, *Students with Disabilities in the District of Columbia Landscape Analysis*, (2019), available at:

https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/SWD%20Landscape%20Analysis%2010.10.19.pdf.

²² See DCPS, *SY 2018-2019 Parent Guide to Independent Services*, (Nov. 1, 2018), available at:

<https://dcps.dc.gov/node/995392>.

²³ Foster parents are required to be financially independent, which means many have full time jobs and may be working remotely or outside the home during distance learning. This limits the hours they can dedicate to supervising distance learning or providing assistance to the foster children in their care.