



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

Testimony Before the District of Columbia Council
Committee on Education
April 26, 2017

Public Hearing:
Agency Budget Hearing
Office of the State Superintendent of Education

Sharra E. Greer
Policy Director
Children's Law Center

Introduction

Good morning Chairman Grosso and members of the Committee. My name is Sharra E. Greer. I am the Policy Director at 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 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. Nearly all the children we represent attend DC public schools – whether traditional public schools, charter schools, or nonpublic special education schools funded by DC.

The Office of the State Superintendent of Education (OSSE) plays a variety of critical roles in ensuring that DC residents, from birth through adulthood, are able to learn. Today, my testimony will focus on OSSE's supports for children with disabilities: the expansion of the Strong Start/DC Early Intervention Program (DCEIP), the extension of transition planning to middle school students (age 14), the acceleration of evaluation timelines from 120 days to 60 days, and special education.

Although the budget is not transparent on much of the special education funding, OSSE has informed us that they have maintained funding at the level spent in FY17.² However, the budget has a significant omission in that it fails to specifically designate funding for the legal reforms required by the *Enhanced Special Education*

Services Act of 2014. Without a specific line-item designation for these changes, these reforms cannot be made legally enforceable. Without the requirement that these reforms go into effect, we are concerned that Local Education Agencies (LEAs) will not comply with them, and there will be further delays in implementation. We urge that this barrier to full implementation be removed.

While this omission is disappointing, we are encouraged by the fact that OSSE indicates it intends to move forward with implementing these significant reforms in FY18: namely, expanding DC EIP, beginning post-secondary transition planning at age 14, and making initial evaluations faster.³ We know that Superintendent Kang, along with Amy Maisterra, Assistant Superintendent of Elementary, Secondary & Specialized Education, and Elizabeth Groginsky, Assistant Superintendent of Early Learning, have done a lot of work over the last year to put these reforms in place for next year. Many steps have already been taken to move the reforms forward.

Also, we take this opportunity to note here our concern that the proposed budget's 1.5 percent per-pupil funding increase falls far short of OSSE's recommendation for a 3.5 percent increase and that of the standard 2 percent annual increase in recent years.⁴ OSSE specifically justified the 3.5 percent increase on the basis of, among other reasons, "to provide the most flexible funding for core program services and is enough to help fill identified gaps in funding at DCPS" and "to ensure that there is adequate funding for all students, and ensure that funding distributed from

the at-risk weight is better leveraged and remains a supplement for the needs of those students most at risk.”⁵ We are therefore concerned that the 1.5 percent increase is insufficient and will create undue financial pressures on the District’s schools, particularly with respect to meeting the needs of its low-income and at-risk students.

In addition, we want to note that the *Fiscal Year 2018 Budget Support Act of 2017* (BSA) proposes an amendment to the definition of “at-risk.” The current definition includes “qualify for Temporary Assistance for Needy Families (TANF) or the Supplemental Nutrition Assistance Program (SNAP).”⁶ The amendment changes “qualify” to “certified to receive or is [actually] receiving TANF or SNAP benefits.”⁷ We understand this change is driven, in large part, by the logistical challenges of looking beyond those families who are certified to receive or are receiving benefits to properly identify those families who could theoretically qualify but have not applied. We also understand the current definition may have prompted some LEAs to investigate into the personal finances of the families of their students, a practice to which CLC would strongly object. That said, the definition as amended would not accurately capture the entire “at-risk” population and we encourage the Committee and OSSE to work on a solution.

NEED FOR SPECIAL EDUCATION REFORM

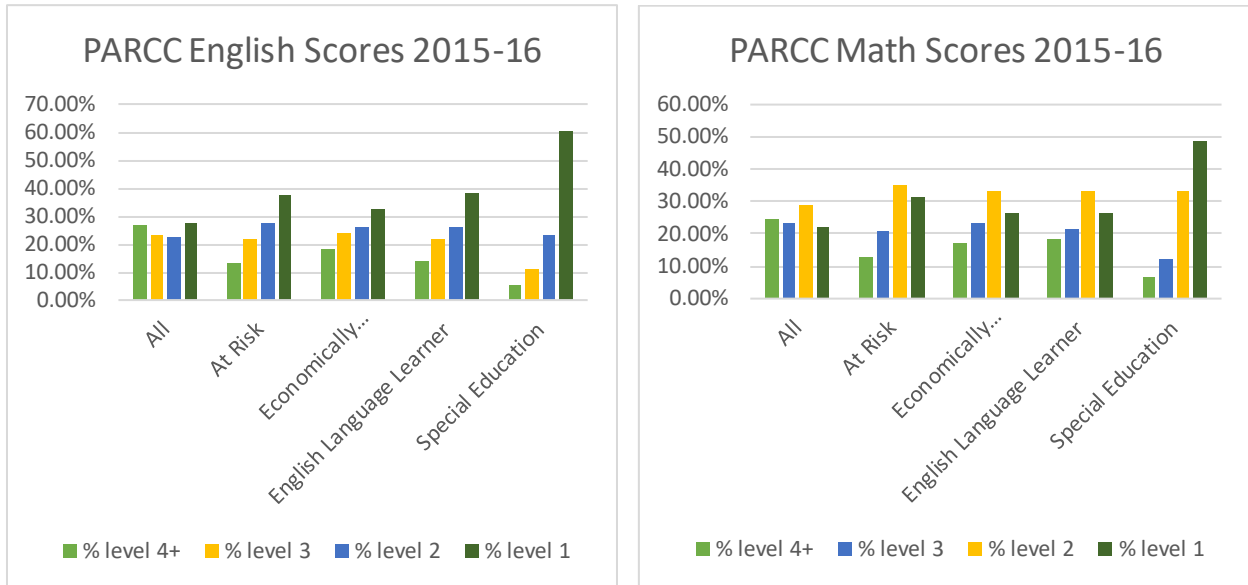
As we have testified many times, we are failing our children with disabilities in special education, who make up 15% of students enrolled throughout the year.⁸ Special

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.⁹

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, being sent home instead of getting help with their emotional needs, and not going to be prepared for adulthood. For many of these 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. Some of them 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 are in special education—just not receiving the services they need to make progress.

Unfortunately, city-wide test results show that our clients' struggles to help their children progress and stay on grade level are not unusual. In fact, they are the norm. Children with disabilities have worse academic achievement than any other group, by far. Many are years behind despite their ability to learn. Only 5% of students in special education are proficient (Level 4+ on PARCC) in English/Language Arts (ELA) and 6%

in Math. Sixty percent are scoring at the lowest level (Level 1) in ELA and 49% in math, compared to 25-30% of all students.¹⁰



Merely 4% of high schoolers are college or career-ready on the English statewide exam and less than 2% on the math exams, which improved less than one percent since last year.¹¹ Last school year, only 50% of children with disabilities graduated on time with a diploma, while 25% dropped out.¹² Only 37% of students with disabilities were enrolled in any post-secondary school or training or employed within one year of leaving high school.¹³

IMPLEMENTATION OF SPECIAL EDUCATION LAW REFORMS: *Expand Strong Start/DC Early Intervention Services, Begin Post-Secondary Transition Planning at Age 14, Make Initial Evaluations Faster, and Support Parent Involvement*

To begin improving special education outcomes, children need OSSE to ensure the full implementation of the *Enhanced Special Education Services Act of 2014*. The

remaining reforms will profoundly impact children and schools by getting services to children with disabilities earlier and faster.

Expand Early Intervention Services (Part C of the IDEA)

In DC, many babies and toddlers have unaddressed developmental delays and, as a result, start school behind their peers. One of the key provisions of the special education reform laws that was not funded and implemented on time is the expansion of DC's Strong Start/Early Intervention Program (DC EIP). Strong Start/DC EIP meets the needs of DC's infants and toddlers with developmental delays by conducting evaluations and providing individualized plans for services in the child's natural, inclusive environment. It provides family-focused early intervention services and much needed service coordination to ensure services from a variety of funding sources, including Medicaid, are delivered timely.

The good news is that 46% of children who get early intervention services completely catch up and several years later are still doing as well as peers, according to national research.¹⁴ For other, more severely delayed or disabled children, getting help early improves their expected skills.¹⁵ Research on early intervention programs shows they produce long-lasting and substantial gains in outcomes, such as reducing the need for special education placement, preventing grade retention, increasing high school graduation rates, improving labor market outcomes, reducing social welfare program use, and reducing crime.¹⁶ Children who do not receive the specialized support they

need as infants and toddlers have a much harder time making up lost ground later.¹⁷

Expanding Strong Start/DC EIP is a truly effective way to help children start strong.

Under the *Enhanced Special Education Services Act of 2014*, children who are 25% delayed in one area of development would have become eligible for DC EIP in July 2017, if expansion had been funded. This reform would finally bring DC's eligibility in line with most states.¹⁸ Currently, infants and toddlers are eligible for early intervention services in DC if they have a delay of 50% in one area or 25% in two or more areas.¹⁹ Hundreds of children will likely become eligible under the expanded eligibility criteria.²⁰ Children with this milder 25% delay are more likely to catch up to peers, if they receive early intervention services.²¹ Many will have mild-to-moderate language delays, which, if unaddressed, are associated with later reading, social, emotional, and behavioral problems in and out of school; therefore, investments in improving language skills need to be made well before school, in order to change the trajectory of language delays/disorders.²² In addition, the expansion would help all children with delays. Other states with broad 25% delay eligibility find and provide services to a larger percentage of children with severe developmental delays, and DC can expect similar results.²³

While the funding for this expansion is not specifically designated as a line item in the Mayor's FY18 budget proposal, OSSE indicates it is on track to expand eligibility by July 1, 2018 to infants and toddlers who demonstrate a delay of at least 25% in one

developmental area.²⁴ OSSE has taken several steps to prepare for this change. One step is implementing the Natural Learning Environment Practices approach to the delivery of early intervention services.²⁵ This model includes coaching, primary services provider teaming, evidence-based practices and family routine components. This approach should improve the efficiency of service delivery, making it easier to serve more children.

OSSE has stated that the funding for the expansion in FY18 is in the OSSE budget.²⁶ This is despite the fact that the funding for Early Intervention is flat in the proposed FY18 budget.²⁷ As expressed in my introduction, we remain concerned that the funding is not certified and expansion still remains subject to appropriations.

Post-High School Transition: Plan Earlier and Do Better

Another important reform in the *Enhanced Special Education Services Act of 2014* is lowering the age at which transition planning must begin to age 14.²⁸ Under federal special education law, schools are obligated to provide special education students between ages 16 and 22 years old with plans about what they will do after high school, including “transition services.”²⁹ Transition service plans can include a wide range of activities to prepare students for independent living, employment, and further education. For eighth graders, this will mean important planning about high school opportunities suited to the child’s interests and discussions about diploma coursework. OSSE has made a commitment to moving forward with this reform and has already

begun offering training to middle schools on transition planning.³⁰ In addition, the OSSE-coordinated Post-Secondary Transition Community of Practice is creating additional training and resources.³¹ In addition, OSSE states it will release \$3.7M from the Special Education Enhancement Fund to support LEAs' transition to the new requirements. OSSE also states it will also release approximately \$1.5M through a competitive grant process. OSSE plans to release similar funding to LEAs in FY18.³²

The original Fiscal Impact Statement (FIS) for this provision was changed to \$155,000.³³ OSSE now says that its fiscal estimates are challenging to determine.³⁴ We urge that this be resolved. As stated above, without certified provision of funds and the law going into effect, we are concerned LEAs will not feel obligated to move forward on this reform. Another reason it is so important to remove the subject-to-funding language is that, once funds are appropriated and the law is in effect, the Department of Disability Services (DDS) will also be able to 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.³⁵

Evaluate Children to get Special Education Services Faster

Currently, schools have 120 days to complete the evaluation, the longest timeline in the nation.³⁶ This lengthy timeline can result in a whole school year, or more, passing without a child receiving needed services. Under the *Enhanced Special Education Services Act of 2014*, a student with a suspected disability must be evaluated in 60 days, if the

reform is funded.³⁷ The impact that faster diagnosis, and thus faster services, will have on students cannot be overstated.

Since almost all school districts in the United States are able to evaluate children within the shorter 60-day timeline, OSSE should be able to provide schools with model processes gleaned from other states and districts as technical assistance very quickly.

OSSE has made a commitment to moving forward with this reform.³⁸ We were surprised not to see this reform fully funded in the FY18 budget. OSSE's current response is the same as the response to the transition timeline change: they will provide funding this year and next to help LEAs make the change.³⁹ Our concern is similar as well: without a legal obligation, LEAs will not feel obligated to move forward, and there will be further implementation delays.

Conclusion

Thank you for the opportunity to testify. 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 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 Presentation by Superintendent Kang at OSSE budget briefing, April 20, 2017.

³ OSSE Responses to Fiscal Year 2018 Budget Oversight Questions, April 18, 2017, Q. 11.

⁴ OSSE's Report on the Uniform Per Student Funding Formula, January 2017, accessed at https://seo.dc.gov/sites/default/files/dc/sites/osse/release_content/attachments/OSSE%20Report%20on%20UPSFF%20to%20Council%20Jan%202017.pdf. In its January 2017 report, OSSE stated that "an increase in the base rate provides the greatest flexibility to meet the diverse needs of the greatest number of schools, and schools with varying demographic populations, including alternative schools, charter schools, and DCPS schools. Id. at 4.

⁵ Id. at 4 and n. 2 (citing to DCPS testimony to the Education Committee).

⁶ DC Code § 38-2901(2A) (definition of “at-risk”).

⁷ See, FY18 Budget Support Act of 2017, B22-244 at 41-42, §§ 4081-4082.

⁸ This statistic comes from a look at all students who were enrolled at any point in school year 2015-16. See, OSSE (2016). *State of Discipline: 2015-2016 School Year*, p. 15. Retrieved from http://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2015-16%20School%20Year%20OSSE%20Discipline%20Report.pdf. We acknowledge that point-in-time numbers, such as those included in OSSE Oversight, show about 13% students with disabilities, but the Discipline Report reveals that about 2000 students with disabilities are cycling in and out of schools and account for 15% of all school year enrollment, which may be a sign that the needs of those mobile students are not being met.

⁹ 34 CFR 300.1

¹⁰ Detailed 2015-16 and 2014-15 PARCC and MSAA Achievement Results, OSSE, at <https://drive.google.com/open?id=0BxRyVj1lhggyY0JKTnRXOHhUd0U>. This is minimal improvement from last year, about 1-2%. DC scores on the National Assessment of Educational Progress, administered in 2015, are very similar, with about 4-6% of students with disabilities “proficient” (compared to 25% of non-disabled students) and 73-83% Below Basic in Reading (compared to about 40% of non-disabled students).

https://www.nationsreportcard.gov/reading_math_2015/files/2015_Results_Appendix_Reading.pdf

¹¹ Detailed 2015-16 and 2014-15 PARCC and MSAA Achievement Results, OSSE, at

<https://drive.google.com/open?id=0BxRyVj1lhggyY0JKTnRXOHhUd0U>.

¹² OSSE FY16 Performance Oversight Responses, Q10-ACGR and Q50.

¹³ OSSE FY16 Performance Oversight Responses, Q52 and District of Columbia IDEA Part B, Local Education Agency Report for Federal Fiscal Year 2014 (July 1, 2014- June 30, 2015).

<http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Report%20to%20the%20Public%20Part%20B%20FFY%202014.pdf> Note: This report contains the most recent audited data regarding special education performance.

¹⁴ https://www.sri.com/sites/default/files/publications/neils_finalreport_200702.pdf

¹⁵ <http://ectacenter.org/eco/assets/pdfs/childoutcomeshighlights.pdf>

¹⁶ Karoly, L. A., Kilburn, R. M., & Cannon, J. S. (2005). *Proven benefits of early childhood interventions*. Santa Monica, CA: RAND Corporation. http://www.rand.org/pubs/research_briefs/RB9145.html. See also, Law, J., Todd, L., Clark, J., Mroz, M. & Carr, J. (2013). High quality early intervention services to young children who have or are at risk for developmental delays have been shown to positively impact outcomes across developmental domains, including health, language and communication, cognitive development, and social/emotional development. See, Center on the Developing Child at Harvard University. (2010). *The foundations of lifelong health are built in early childhood*.

<http://developingchild.harvard.edu/resources/the-foundations-of-lifelong-health-are-built-in-early-childhood/>;

American Speech-Language-Hearing Association. (2008). *Role and responsibilities of speech-language pathologists in early intervention: Technical report*. <http://www.asha.org/policy/TR2008-00290.htm>;

and Landa, R. J., Holman, K. C., O'Neill, A. H., & Stuart, E. A. (2010). Intervention targeting development of socially synchronous engagement in toddlers with autism spectrum disorder: A randomized controlled trial. *Journal of Child Psychology and Psychiatry*, 52(1), 13-21.

¹⁷ See, Zero to Three Policy Center, “Improving Part C Early Intervention: Using What We Know about Infants and Toddlers with Disabilities to Reauthorize Part C of IDEA,” available at:

<http://main.zerotothree.org/site/DocServer/PartC.pdf?docID=567>; “Early Childhood Experiences: Laying the Foundation for Health Across a Lifetime,” available at:

<https://folio.iupui.edu/bitstream/handle/10244/613/commissionearlychildhood062008.pdf?sequence=2>.

¹⁷ 34 C.F.R. § 303.321(c).

¹⁸ At least 32 other states extend eligibility to children with a delay of less than 50% in one area of development. Of those states, 17 – including Maryland and Virginia – extend Part C eligibility to children with a 25% delay in one area of development. Additionally, six states extend eligibility to children who are “at risk” of developmental delay, as permitted by the Individuals with Disabilities Education Act (IDEA). These children may be at risk of developmental delay because of biological and environmental factors including low birth weight, nutritional deprivation, or a history of abuse or neglect.

¹⁹ 5 DCMR A §3108.3

²⁰ Revised Fiscal Impact Statement – *Enhanced Special Education Services Act of 2014*, (October 6, 2014) estimates over 1,000 children; OSSE Report on the Implementation of Strong Start Quarter 1, April 2017 estimates the increase would be 300-400 children.

²¹ See, Hebbeler, K., Spiker, D., Bailey, D., Scarborough, A., Mallik, S., Simeonsson, R., & Singer, M. (2007). *Early intervention for infants & toddlers with disabilities and their families: Participants, services, and outcomes. Final report of the National Early Intervention Longitudinal Study (NEILS)*, at page 2-9

²² Law, J., Todd, L., Clark, J., Mroz, M. & Carr, J. (2013). *Early Language Delays in the UK*. London, UK: Save the Children. (Citing studies from around the world about early language delay’s connections with emotional or mental health concerns and later behavioral and criminal issues at pages 10-11.); National Academies of Sciences, Engineering, and Medicine. (2016). *Speech and Language Disorders in Children: Implications for the Social Security Administration’s Supplemental Security Income Program*, p 88.

²³ McManus, B., Magnusson, D., & Rosenberg, S. (2013). Restricting State Part C Eligibility Policy is Associated with Lower Early Intervention Utilization, *Maternal & Child Health Journal*, 18, 1031-1037.

²⁴ OSSE Responses to Fiscal Year 2018 Budget Oversight Questions, April 18, 2017, Q. 11.

²⁵ OSSE Responses to Fiscal Year 2018 Budget Oversight Questions, April 18, 2017, Q. 11.

²⁶ OSSE Responses to Fiscal Year 2018 Budget Oversight Questions, April 18, 2017, Q. 11.

²⁷ OSSE Budget – E803 – It appears from the budget book there is a \$ 940,000 increase in the Office of Early Intervention. We have been advised that was an error and there is no actual increase. Presentation by Superintendent Kang at OSSE budget briefing, April 20, 2017.

²⁸ See, *Enhanced Special Education Services Act of 2014–DC Act 20-487*.

³¹ 34 C.F.R. § 300.320(b)(2).

³⁰ See, e.g., OSSE LEA Look Forward Newsletter for October 26-November 1, 2016, publicizing a free half-day training, Introduction to Secondary Transition for Middle Schools.

³¹ Children’s Law Center is participating in the Community of Practice, thus has knowledge from attending meetings over the fall and from Working Group planning documents circulated in the Community of Practice.

³² In OSSE Responses to Fiscal Year 2018 Budget Oversight Questions, April 18, 2017, Q. 11, OSSE states it will be moving forward with this change in July 2019. OSSE’s budget presentation on April 20, 2017 indicated it would be July 2018 as did an email from Amy Maisterra to the OSSE Secondary Transition Community of Practice members on April 10, 2017.

³³ Revised Fiscal Impact Statement – *Enhanced Special Education Services Act of 2014*, (October 6, 2014).

³⁴ OSSE FY Budget Questions – OSSE Responses April 18, 2017, Q. 11.

³⁵ 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

³⁶ “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.

³⁷ See, *Enhanced Special Education Services Act of 2014–DC Act 20-487*.

³⁸ Information provided during meeting with OSSE leadership, including Sup. Kang and Asst. Superintendent for Elementary, Secondary, and Special Education Dr. Amy Maisterra, January 4, 2017.

³⁹ OSSE FY Budget Questions – OSSE Responses April 18, 2017, Q. 11.