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Committee on Education  
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Public Roundtable Hearing:  
“The State of Special Education and Disability Services in Public Schools”

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Good afternoon Chairperson Grosso and members of the Committee on Education. My name is Renee Murphy. I am a Senior Policy Attorney at Children's Law Center<sup>1</sup> 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. We represent about half of DC's children in foster care, many of whom have special educational needs, but we also represent children referred to us by health care providers because of special educational needs.

Thank you very much, Chairman Grosso and members of the Committee, for holding this hearing about special education services in public schools across DC. At heart, special education services are about the human rights of people with learning differences to learn, be included, and participate in life. The purpose of the *Individuals with Disabilities Education Act* is to prepare students with disabilities for future education, employment, and independent community living.<sup>2</sup> 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). Although we hope that we will hear more today about the work that all the education agencies and schools are

doing for students with disabilities and are aware of some slow progress, the reality is that, in DC, closing the unacceptable gap in achievement and outcomes for children with special needs and making sure that all public schools have capacity to effectively meet the needs of the variety of children with special needs must be urgent work.

### **Heartbreaking Outcomes for Students with Disabilities in Public Schools in DC**

DC's children with special needs continue to have abysmal academic performance and graduation outcomes. The Partnership for Assessment of Readiness for College and Careers (PARCC) scores of students with disabilities are only slightly less bleak than a year ago. Five percent are proficient in English/Language Arts (ELA) and six percent in Math, compared to 31% ELA and 29% Math for students not in special education.<sup>3</sup> Further illustrating public schools' current inability to effectively educate students with disabilities, 60% performed at level 1 in ELA and 49% in Math, compared to about 25-30% of students overall.<sup>4</sup> Although there has been minimal improvement, at the current rate, it will be over 20 years before even half of DC's children with disabilities are proficient. Graduation rates have improved, but only 49% of children with disabilities graduated on time and only 34% of graduated DCPS students with disabilities were enrolled in any post-secondary school or training or employed within one year.<sup>5</sup>

Recently, this Committee heard about the achievement gap for students eligible for at-risk funding, a group that overlaps significantly with children with disabilities.

At least 47% of DC foster children need special education.<sup>6</sup> Children who live in poverty or near-poverty are twice as likely to have a learning disability as other children.<sup>7</sup> Many children with disabilities in DC, thus, are experiencing additional chronic stress and trauma that further impacts their learning. Recommended changes for at-risk students will also assist many children in special education. Also, DC will not be able to close the achievement gap without focusing on improving achievement and accelerating progress for children in special education.

The educational progress of children with disabilities in DC is a serious problem. Parents seek help from CLC, because they 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 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. Some of them have never been diagnosed, despite how obvious the child's severe needs are. Just as we testified in the spring oversight hearings, parents continue to seek our help to get their school to start an evaluation, which has to happen first before special education services begin. So far this school year, for example, we have heard from parents who were told there is a waiting list, who were told they must go through a months-long Student Support Team process first, who were told the school could have them sign the necessary forms after January

when they have time, or whose request to evaluate had been flatly refused, even torn up. Some parents change schools when it is clear the child is falling further behind, or especially when the child is being punished instead of helped, which often means the child continues to go undiagnosed.

Other children are in special education, but not receiving the services they need to make progress. For most students, when they enter special education, they are already behind despite their capacity to learn,<sup>8</sup> so schools need to help them make more than a year of progress each year to catch up and learn the same curriculum as their peers. Parents are upset and scared about the future, when school personnel indicate that less than a year of progress is expected. They know their children will continue falling behind with those low expectations and by doing the same thing that is not working. Even then, most of our clients want to work with their children's schools, and the vast majority of CLC cases resolve without any litigation.

For older clients, the path to graduation seems almost impossible at times. Many of our older clients are many years behind in reading and math, and we have found that they often cannot get the intensive special education support they need in regular high school courses. After many of these students fail their ninth grade courses, they cannot get special education services in summer credit recovery in DCPS and some charter schools. They also struggle with stigma around being in special education pull-out classes to get the intensive instruction they need and often voice that they would

prefer to be in a separate special education school with other students like them.

Because the challenges facing our children with disabilities are so great, DC urgently needs to make changes to provide the special education envisioned by the IDEA that helps students progress towards their futures.

### **Capacity to Meet the Variety of Special Needs Remains Problematic**

The problem that students with disabilities are not making meaningful progress illustrates the fact that capacity within our public schools to provide effective, appropriate education for students with disabilities remains a key issue. Students with disabilities have a great variety of different strengths and needs, so the IDEA requires that each LEA offer an array of services and settings, from fully-inclusive general education with necessary supports, to pull-out smaller groups in the school, all the way to specialized separate schools.<sup>9</sup> Some children may only need an hour or two of group speech therapy or counseling each week and can spend the rest of their school days in a mainstream classroom. Other children who would also be considered “in inclusion” need fully co-taught classrooms providing specialized instruction in all areas. Some children have such serious emotional needs that they must have a trained clinician in their classroom at all times to help them manage their behavior. Some children need intensive evidence-based reading instruction focused on their specific weaknesses in very small groups in order to learn to read. Some children cannot function in the noise and bustle of a mainstream school building, even within a self-

contained classroom. The reduced number of children in nonpublic schools, which was the focus for so many years, has not solved the problem that many local schools cannot provide the specialized supports necessary to educate children with needs beyond those resulting from the mildest disabilities.

Although DCPS and many PCS's goals of moving more children into inclusive classrooms is laudable, our public education system must not neglect the needs of children who must have effective services in a smaller setting, nor those who must have a small specialized school in order to learn. As described above, many students are years behind, and we have yet to see a method that helps these students progress multiple years inside a general education classroom or even, most times, in the pull-out special education classrooms in their neighborhood schools. It is our understanding that DCPS has some internal data about the progress, or lack thereof, of students in different amounts of inclusion, pull-out specialized instruction, and their own full-time special education classrooms, and some PCS may also be analyzing such data.<sup>10</sup> That data is not available to the public, however, which would help inform and build effective services throughout our schools.

DCPS and PCSs lack capacity to educate students with severe disabilities of all types who need small, specialized schools. At this point, DCPS has only one specialized school, River Terrace Education Campus, while St. Coletta's is the only fully special education charter school, both of which focus on the needs of students with

developmental disabilities, like Autism and intellectual disabilities. DCPS has closed all of its specialized schools for children with learning disabilities and emotional needs over the last decade.<sup>11</sup> While many of the closed programs had serious problems, this leaves all our public schools relying on nonpublic school placements for children who need a very small specialized school. Most of these schools are outside of DC. Our students and parents would prefer to have quality specialized school options within DC. DCPS's recent strategic plan includes intentionally making nonpublic schools part of the continuum, with which we agree; however, over the past year, the reliance on nonpublic schools has caused instability. Two nonpublic schools that were actually located in DC, National Children's Center and High Road DC, closed their doors. High Road DC closed suddenly near the end of the summer, leaving OSSE, DCPS, and PCS scrambling to place students with intensive needs. Robust options in the public school sector and truly strong relationships with experienced and effective nonpublic schools, would be more predictable. One hopeful sign has been DCPS's partnership with Ivymount School, but a lot of work remains to realize the vision of an Ivymount School and other similar schools in DC.

### **DC Needs to Commit to Funding the 2014 Special Education Legislative Reforms**

Students with disabilities need DC to commit the resources that they need to succeed in the upcoming Fiscal Year 2018 Budget. Their needs have already been put to the side in the current fiscal year. During this year and every year that both branches of



DC government delay, more children will fall further behind. DC needs to fully fund the *Enhanced Special Education Services Act of 2014* and the *Special Education Quality Improvement Act of 2014*. As a community, DC already deliberated and decided that the reforms will have impact on student achievement. A unanimous Council, including current Mayor Bowser, supported these Acts. Fully funding the Acts will ensure students will receive diagnoses and assistance earlier, that schools will begin to plan for adulthood sooner, and that dedicated funding is available to improve schools' capacity to help children progress.

Specifically, once funded, the *Enhanced Special Education Services Act of 2014* requires LEAs to evaluate and diagnose students within two months rather than more than a semester.<sup>12</sup> The impact that faster diagnosis and thus faster services will have on students cannot be understated. The amount of funding in the Fiscal Impact Statement will actually be more than schools need to cover the cost of every complete initial evaluation, not just a cost-differential to complete them faster.<sup>13</sup> Fully funding this provision should, thus, allow schools to implement earlier evaluation and diagnosis of children and fix the problems that are currently causing inappropriate delays or make other investments.

The *Enhanced Special Education Services Act of 2014* also will require LEAs to start planning about the student's future, called transition plans, in eighth grade. Transition service plans can include a wide range of activities to prepare students for independent

living, employment, and further education. Most importantly in eighth grade, it will mean important planning about what high school will provide opportunities suited to the child's interests and discussions about diploma coursework. DCPS's policy for this year is that all students should have a transition plan starting at age 11, thus DCPS is already implementing this reform without additional funding.<sup>14</sup> OSSE has also already begun offering training to middle schools on transition planning.<sup>15</sup> The FIS for this reform was minimal, which should allow this provision to easily be funded and go into effect in FY18.

Funding the expansion of the Strong Start/DC Early Intervention Program from the Act will also assist schools with special education. In DC, too many babies and toddlers have unaddressed developmental delays and as a result start school behind. The good news is that 46 percent of children who get early intervention services completely catch up and several years later they are still doing as well as peers, according to national research.<sup>16</sup> For other, more severely delayed or disabled children, getting help early improves their expected skills.<sup>17</sup> This is a truly effective way to start children strong.

Lastly, the *Special Education Quality Improvement Act of 2014* established a Special Education Enhancement Fund. The Enhancement Fund is to provide additional funding for capacity expansions, including partnerships, collaborations, satellite classrooms for specific high-needs students, joint training, and development of programs for overage

youth with intensive special education needs. As discussed earlier, DC schools in both sectors need support to improve their capacity to effectively educate students. Despite that, nothing was included in this fiscal year's budget for the Enhancement Fund, and there were no "leftover" nonpublic tuition funds to fuel the Fund. The initiatives that the Enhancement Fund will allow schools to undertake in order to increase their ability to successfully serve students with disabilities are too important to be leftovers.

### **DC should Make Meaningful Progress Part the Requirements for Special Education**

As discussed in depth by DC Appleseed Center in their recent report *A Place for Every Student: Managing Movement Along the Special Education Continuum in DC*, DC should go beyond minimal federal requirements to ensure that children in special education are truly able to make educational progress and that schools are focused on outcomes rather than checking compliance boxes. The prevailing federal standard defines the free, appropriate public education (FAPE) required under the IDEA as "instruction with sufficient supports to permit the child to benefit educationally from that instruction."<sup>18</sup> Courts in DC have interpreted the requirement that the child receive some educational benefit to mean that a child is receiving FAPE if his IEP is "reasonably calculated" to allow him to make progress that is more than de minimus. This extremely low expectation is part of the reason that children in special education who can learn at grade level fall further and further behind each year, and that parents are frustrated and scared for the futures of their children. Other jurisdictions endorse a

standard of meaningful progress in the child's education, defined broadly to include academics, social-emotional, and life skills.<sup>19</sup> Since DC's shared goal should be achievement for students with disabilities, we agree with DC Appleseed's Report that DC law should change to focus everyone on outcomes.

### **DC Needs to Ensure that Information about Special Education is Transparent and**

#### **Easily Found**

Public reporting can be an important mechanism for accountability, for sharing of best (and worst) practices, and for change to happen. Currently, parents struggle to find out information about special education programming, and about how schools are doing educating students with disabilities. If information were easily and centrally publically available, most likely on LearnDC, about what schools were doing and about whether that was working, students, parents, and other schools would benefit. The type of information that DC schools should be transparent about includes staffing details, caseloads, details about specialized classrooms, types of supports in inclusion classrooms, and evidence-based programs and practices for both academics and social-emotional progress.<sup>20</sup> In the same place, DC should also have transparent information about the LEA's performance on IDEA Federal compliance measures, and other compliance data such as percent of services in IEPs actually delivered and attrition of special education students. Lastly, public information about the performance, progress, and proficiency of children with disabilities in those different programs and at different

levels of inclusion programming (mostly inclusion, some pull-out specialized instruction, self-contained special education, etc) will be key to fueling change. As stated by DC Appleseed, “Without that data, the District cannot compare students’ performance in general and specialized public and nonpublic settings, or determine where it needs additional internal or external capacity to serve students with certain kinds of disabilities.” There is currently no centralized source of information on DC’s special education programs, but this Committee should change required public reporting.

### **DC Needs to ensure that Practices that Support Students with Disabilities are**

#### **Implemented**

*Ensure Special Education Supports are included in Summer School and Credit Recovery*

Over several years, DCPS has reported that it would not provide special education services during summer school.<sup>21</sup> Instead, DCPS would encourage teachers to offer students with IEPs accommodations from their IEPs (e.g., extended time on tests) but would not provide them with their specialized instruction or related services. This means students with disabilities were denied a meaningful opportunity to make up classes they may have failed during the school year. Since falling behind contributes to students with disabilities dropping out of school, public schools should always offer specialized instruction and related services in summer school and in credit recovery in order to help the most vulnerable students make progress toward graduation.

*Improve Special Education Transportation Policies and Procedures*

We must repeat the same concerns about OSSE transportation policies that we raised for the last two years. This Committee should ensure that OSSE's Division of Transportation makes the following changes to their policies:

- Allow parents to designate different pick-up and drop-off addresses. OSSE's transportation policy limits students to one address for pick-up and drop-off.<sup>22</sup> That address must be their address of District residency.<sup>23</sup> The policy indicates that OSSE will make exceptions to the requirement that the address used for transportation be the address of District residency on a case-by-case basis for children in foster care or living in group homes.<sup>24</sup> However, children with divorced parents, children who need to be dropped off at after-school therapy appointments, and children who need to attend before or after care nonetheless bear the burden of this policy.
- Provide transportation for partial-day inclusion programs. This would allow a student to attend a nonpublic school for part of the day and then be bused to his local public school for the remainder of the day. For many students, this is the best and most realistic way to prepare them to return to a public school. We anticipate that this proposed policy change would pay for itself in reduced nonpublic tuition costs by allowing more students to successfully transition back to the public schools.

- Provide transportation home after extracurricular activities. OSSE's current policy is not to provide transportation from extracurricular activities unless the activity is identified as necessary by the students' IEP team. This prevents many students with disabilities from participating in extracurricular activities. Students placed at schools far from home because their local schools don't have the services they need and students who have disabilities that prevent them from using public transportation cannot participate in extracurricular activities unless the school system provides transportation. DC's failure to do so is arguably a violation of Section 504, the federal law that requires schools to provide students with disabilities equal access to school activities.<sup>25</sup>
- Limit ride times to 60 minutes for students who live and attend school in DC, with a waiver for extenuating circumstances. While the *Petties* order was in effect, ride times for students who lived and attended school in DC were limited to 60 minutes each way. After *Petties* closed, OSSE extended the ride time limit to 75 minutes each way for students traveling to programs in the District of Columbia.<sup>26</sup> We have heard from some parents that their children are on the bus for over an hour each way even though they only live a few miles from school. These long rides are harmful to students – they keep them from homework, additional therapies, sports, and time with their families.

Accordingly, we recommend that OSSE return to the previous limit. In the few cases where distance and traffic make it truly impossible to cross town in 60 minutes, OSSE should be allowed to waive the limit with appropriate documentation provided to the IEP team.

#### *Increase Parent Involvement in Special Education*

All public schools in DC need to follow the requirements from the *Special Education Students Rights Act of 2014* that ensure meaningful parent involvement. The law requires that all schools provide records to all parents in advance of Individualized Education Program (IEP) meetings, provide the finalized IEP in a timely fashion, and translate IEPs for parents with limited English proficiency in a timely fashion. 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. Instead of schools sending records as they should, we have seen a pattern that schools instead offer that the parent can simply reschedule a needed meeting, which was not the intent. OSSE should be required to incorporate the requirements with warnings in the Special Education Data System (SEDS) to ensure compliance. OSSE should also assist schools with automated transmissions to parents using SEDS as much as possible, to reduce administrative burdens for school staff.

#### *Ensure Smooth Transitions for Students with the Most Intensive Needs*



DC must ensure that LEAs will quickly provide the needed intensive supports for children transitioning from residential treatment placements (none are available inside DC), or wards of DC who attended full-time special education programs returning from out of state to live in DC. Over the past school year and past years, DCPS made students go through the Office of Youth Engagement (OYE) regarding placement. Often, OYE had little information about the student, and assigned the student to the local public school for at least 30 days before considering a more specialized placement. These were students who, at their residential treatment or out-of-district placement, received full-time special education support because their IEP teams had decided it was necessary. DCPS's practice of requiring children to go to neighborhood schools without the resources and supports they need for at least 30 days can be extremely harmful and destabilizing for these high-needs students. As well as harming the students, this practice runs counter to federal law, which requires schools implement the students' IEPs or provide comparable services upon transfer.<sup>27</sup> The Council could clarify the law by providing a deadline for the student to be placed in the comparable placement to the last IEP.

### **Conclusion**

Public schools in both sectors need to make major improvements to effectively educate children with disabilities. The tragic educational outcomes we see for students with disabilities, both achievement results and graduation, and slow progress at

improving schools' ability to do better will doom another generation of DC residents without major focus. As a first step this year, DC needs to stop making children with disabilities wait for the investment they need and deserve, and the Mayor and this Council need to prioritize fully funding the reforms in special education legislation unanimously passed two years ago for fiscal year 2018. Thank you for the opportunity to testify, and I look forward to answering any questions.

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<sup>1</sup> 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.

<sup>2</sup> 34 CFR 300.1

<sup>3</sup> Detailed 2015-16 and 2014-15 PARCC and MSAA Achievement Results, OSSE, at <https://drive.google.com/open?id=0BxRyVj1IhggyY0JKTnRXOHhUd0U>. This is minimal improvement from last year, about 1-2%.

<sup>4</sup> *Id.*

<sup>5</sup> DCPS FY15 Performance Oversight Responses, Q72.

<sup>6</sup> Conversation of CLC with Megan Blamble Dho, CFSA, November 10, 2016. National research aligns, indicating that children in foster care are 2.5 to 3.5 times more likely to have educational disabilities, U.S. Department of Education. (2016). *Non-regulatory guidance: Ensuring educational stability for children in foster care*, at <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>.

<sup>7</sup> ChildTrends, Indicators on Children and Youth Databank Indicator: Learning Disabilities (updated August 2014), <http://www.childtrends.org/indicators/learning-disabilities/>

<sup>8</sup> A significant gap between capability to learn and achievement is, in fact, one definition of "Specific Learning Disability." Specific Learning Disability is the most common way for DC children to be eligible for special education, representing about a third of students with disabilities. See OSSE Part B Initial Evaluation/Reevaluation Policy (March 22, 2010), p. 30, <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Part%20B%20Initial%20Evaluation%20Reevaluation%20Policy.pdf>; OSSE FY2015 Oversight Responses, Q51.

<sup>9</sup> 34 C.F.R. § 300.115 requires that each state have a continuum of alternative placements available to meet the needs of children with disabilities. The continuum must include the alternative placements listed in §

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300.38: regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.

<sup>10</sup> Comments of Kerri Larkin, DCPS Deputy Chief, Specialized Instruction, at Special Education Attorney Roundtable meeting, October 19, 2016. DCPS has ended a contract with one evidence-based literacy instruction program, Lindamood Bell, but we have not seen the data about why, or how effective their investments in other specific research-based instructional programs are.

<sup>11</sup> See our testimony from 2013 for a full listing of closed programs. Prospect Learning Center for students with learning disabilities closed in summer 2013, see <https://www.washingtonpost.com/apps/g/page/local/dc-public-schools-closure-list-january-2013/25/Mamie-D.-Lee-and-Sharpe-Health-consolidated-at-River-Terrace-in-summer-2015>.

<sup>12</sup> See *Enhanced Special Education Services Act of 2014– DC Act 20-487*.

<sup>13</sup> OSSE’s Special Conditions Reports from 2014-15 (latest available) state that all public schools had 2641 initial special education evaluations to complete that year. The Fiscal Impact Statement for this provision is a total of \$16M for both sectors, which would give schools over \$6000 per initial evaluation. Most initial evaluations consist of only a Psychoeducational Assessment and one or two other assessments. Using the OSSE Maximum Evaluation Costs under 5 DCMR § A-2853, and generously including four assessments, the cost adds up to a little over \$3500. Thus, \$6000 per evaluation is far more than schools should need to complete an evaluation on a quicker timeline. Our understanding of DCPS and PCS financing in DC is that the funds need to be added to the Uniform Per Student Funding Formula.

<sup>14</sup> DCPS SY 2016-17 Transition Services Manual, found at <http://dcpstransition.com/wp-content/uploads/2016/10/2016-FINAL-TRANSITION-MANUAL.pdf>

<sup>15</sup> 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.

<sup>16</sup> [https://www.sri.com/sites/default/files/publications/neils\\_finalreport\\_200702.pdf](https://www.sri.com/sites/default/files/publications/neils_finalreport_200702.pdf)

<sup>17</sup> <http://ectacenter.org/eco/assets/pdfs/childoutcomeshighlights.pdf>

<sup>18</sup> *Bd. of Ed. v. Rowley*, 458 U.S. 176 (1982)

<sup>19</sup> See Massachusetts’ definition of “educational progress” at 603 CMR 28.02(17).

<sup>20</sup> DCPS has made vast improvements in describing its self-contained special education classrooms and telling the public where they are located, in the last five years. However, information at the school level about staffing and about how inclusion classes are supported (e.g., co-teaching all day or for certain subjects, what evidence-based/research-based programs should be used in the pull-out classes) is either not available or disbursed.

<sup>21</sup> DCPS FY13 Performance Oversight Responses, Q60 (stating that students with IEPs and 504 plans receive the same instruction as general education students in summer school, though their teachers are “encouraged” to offer them the accommodations from their IEPs).

<sup>22</sup> OSSE FY15 Oversight Questions, Q61 Attachment – Special Education Transportation Policy.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> 29 U.S.C. § 794.

<sup>26</sup> OSSE FY15 Oversight Questions, Q61(f).

<sup>27</sup> See 34 C.F.R. § 300.232(a) and 300.232(f).