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Testimony Before the Committee of the Whole & Committee on Education,
Council of the District of Columbia
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Public Hearing:

B23-0392, the "Students' Right to Home or Hospital Instruction Act of 2019"

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Introduction

Good morning Chairman Mendelson, Councilmember Grosso and members of the Committee. My name is Buck Logan. I am an attorney at Children's Law Center and have lived in the District for thirty years. 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 one out of every nine children in DC's poorest neighborhoods – more than 5,000 children and families each year.¹

Children's Law Center supports B23-392, the "Students' Right to Home or Hospital Instruction Act of 2019." The bill will help ensure that students who are confined to home or hospital receive some educational instruction until they can return to school.

Sometimes children face a serious health condition that keeps them out of school for a prolonged period. They might be hospitalized or confined to home for more than 10 straight days. Or they may have a chronic condition, like sickle cell anemia, that causes repeated, intermittent absences. More than 150 DC students find themselves in these situations every year and request home or hospital instruction.¹¹

Unfortunately, too many families are facing serious obstacles in getting this much-needed instruction. At the very time when families are struggling to deal with a very sick child, they also can't arrange home or hospital instruction – or HHI – to keep

their child's education on track. The problems we've seen fall in three general categories.

First, there's a lack of transparency. Parents often don't have sufficient information – and sometimes *any* information – about the right to request home or hospital instruction and the process for requesting it. We're aware of cases in which schools repeatedly raised truancy concerns about a sick child who had been absent from school for more than 10 days, yet never informed the parents about the option of requesting HHI. While some public charter schools have published written HHI policies, others have not, and some charter schools may have no HHI policy, written or otherwise. And while DCPS has posted a parent guide to HHI on its website, it has yet to publish its HHI handbook so parents can fully understand the process.

Second, HHI is being denied or delayed without justification. In recent years, DCPS has denied HHI to approximately one out of every three families who have requested it, asserting that the request was either incomplete or failed to establish eligibility.ⁱⁱⁱ That's an alarmingly high denial rate. In other cases, students ultimately were found eligible, but only weeks, sometimes months, after submitting the initial request for HHI. These problems seem to be at least partly caused by schools second-guessing certifications submitted by the student's doctor. We recognize a school's need to understand the child's medical needs and to work with the child's doctor to figure how best to meet those needs. But we don't think it makes sense for school personnel,

who typically lack medical training, to override a doctor's opinion about the child's medical condition.

Third, even when students are found eligible, there are no legally enforceable minimum standards governing the quantity and quality of HHI. Too often students receive too little HHI and end up falling far behind their peers.

B23-392 would establish basic principles and require OSSE to adopt rules to remedy these problems. It would require all LEAs to adopt and implement HHI policies, create timelines for determining eligibility and delivering services, create appeal rights, and promote transparency. We support each of these vital steps. We also recommend some revisions to the bill:

First, with respect to the appeals process, when a parent appeals the denial of eligibility, we believe the bill should require that the student receive HHI pending the outcome of the appeal. In addition, on appeal, the school should have the burden of presenting evidence from a medical professional to rebut the certification of need provided by the student's doctor. This would avoid the "second guessing" of medical opinions by non-medical personnel, similar to the approach taken in the DC Family and Medical Leave Act in the employment context. We also urge that the Committee consider permitting parents to take appeals to the Office of Administrative Hearings, which has experience adjudicating medical issues given that it already handles appeals

concerning Medicaid and disability services, rather than having appeals be heard by OSSE.^{iv}

Second, we recommend that the bill specify the minimum amount of instruction a student should receive under the HHI program, rather than having OSSE establish the minimum standard in its rulemaking. In particular, we propose that the bill require LEAs to provide at least 5 hours per week of direct home or hospital instruction for students in Kindergarten through 5th grade, and at least 2½ hours per week per core subject for students in grades 6 through 12. This would bring DC in line with the minimum HHI standards in school jurisdictions in other states.^v

Finally, we recommend a few additional revisions, including revisions to promote greater transparency and clarify some of the defined terms in the bill.^{vi}

Thank you for the opportunity to testify before you today.

ⁱ Judges, pediatricians and families turn to Children’s Law Center 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. In addition to advocating for individual families and children, we advocate for city-wide solutions that benefit all children. See <https://www.childrenslawcenter.org/>.

ⁱⁱ See DCPS Responses to Fiscal Year 2018 Performance Oversight Questions at 140-141, available at: https://www.dropbox.com/sh/ontbjkp1y9c5cz2/AAAuHwo5FGiLniA5nVlvNU6Va/Performance%20Responses/D.C.%20Public%20Schools?dl=0&preview=POH+-+DCPS+FY18+Response+final.pdf&subfolder_nav_tracking=1.

ⁱⁱⁱ This estimate is based on DCPS data regarding the number of HHI referrals and denials for school year 2018-19 and 2017-2018, as set forth in its responses to Fiscal Year 2018 Performance Oversight Questions from the DC Council’s Committee on Education. *Id.*

^{iv} OAH’s website describes the types of cases it handles. See <https://oah.dc.gov/page/types-cases>.

^v For example, under the HHI policy for Fairfax County Public Schools, secondary students are generally provided with a maximum of 2.5 hours of instruction per week for each core class; elementary

students are generally provided 5 hour/week of instruction. Arlington County and Montgomery County provide students receiving HHI at least 1 hour/day for elementary school students; 8 hours/week for middle school students; and 2 hours/core subject/week for high school students. Information about the HHI policies of these school systems is publicly available on their websites.

vi For example, we recommend the following revisions:

- Define a qualifying “health condition” as a “physical or mental illness, injury, or impairment that prevents a student from participating in the normal day-to-day activities typically expected during school attendance.”
- Clarify that HHI policies should cover not only absences of 10 or more consecutive days, but also partial or intermittent absences that are anticipated to add up to 10 or more days due to a health condition.
- Require LEAs to provide parents a copy of their HHI policies when a parent first requests HHI and also any time a student accumulates 10 days of absences from school due to a medical condition.
- Permit a parent to make an HHI request to the student’s school or the LEA’s central office responsible for the HHI program.
- Prohibit LEAs from requesting an HHI recertification for periods of less than 60 days for the same set absences related to a health condition.