



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

Testimony Before the Office of the State Superintendent of Education
December 12, 2019

Public Hearing:

Proposed Rulemaking to Adopt a New Chapter 30 for Special Education in Subtitle A of Title 5 of
the District of Columbia Municipal Regulations

Elizabeth Oquendo
Policy Attorney
Children's Law Center

Good evening Ms. Weaver-Harris and members of the OSSE staff. My name is Elizabeth Oquendo and I am a policy attorney at Children's Law Center. I am testifying 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 serve receive special education services.¹ Further, our Guardian ad Litem project represents children that are Wards of DC and who are involved with the Children and Family Services Administration (CFSA), so our comments will reflect our unique expertise in meeting the educational needs of children in Care. We appreciate this opportunity to testify about the proposed rulemaking to adopt a new Chapter 30 for Special Education in Subtitle A of Title 5 of the District of Columbia Municipal Regulations (DCMR).

I want to start by recognizing the important but immense task of reworking these regulations and CLC thanks you for taking the time to read through the lengthy proposed comments that we provided in 2017 and 2018. Although CLC will be providing extensive written comments before January 7th on the entirety of the proposed rulemaking, the focus of my testimony this evening will be on a few parts of the regulations that OSSE has asked for comment on including: Criteria for Individualized Education Program (IEP) Certificate of Completion, Qualifications for Paraprofessionals, Eligibility Criteria for Disability Categories, Homebound Services and Hospital Instruction, and Seclusion and Restraint.

IEP Certificate of Completion

Many of the students we serve are eligible to receive IEP certificates of completion. Having the opportunity to earn an IEP certificate of completion is not only significant for a student's motivation to continue with education or skills training, but it is also tied to their ability to access services post-graduation. In fact, in our experience some Rehabilitation Services Administration

(RSA) service providers are requiring that students provide an IEP certificate of completion to enroll. Although the Developmental Disabilities Administration (DDA) does not require that students obtain an IEP certificate of completion to access services, we know that some providers DDA contracts with do require the certificate of completion. This leads to confusion for students and families when transitioning to these new services. We recently had a case of a student who was allowed to walk at graduation after their IEP team determined they met their IEP goals. Unfortunately, the student was not awarded an IEP certificate of completion after the ceremony. With out this document, we are having a very difficult time getting this student into the RSA services that they are being currently referred to.

Further, for students that have more severe impairments, the current IEP certificate of completion requirements and credit categories proposed in this rulemaking will be problematic. For example, a student with an Intellectual Disability may have an IEP team who has determined that the student will not be receiving instruction in some of the required content areas listed. Therefore, we recommend that the language of 3027.1-part A be modified to read that the IEP certificate of completion policy establish a minimum number of unit credits or minimum hour requirements, as determined by the IEP. We also recommend the addition of these content areas to 3028.1 (a): Life skills classes, job shadowing, job training, experiential learning in a job or trade, or services to improve adaptive functioning. In the alternative, we suggest that OSSE add another subsection that would lay out a policy for an IEP Diploma, which would be a diploma option for students whose disabilities prevent them from meeting the requirements of the IEP certificate of completion.

Qualifications of Paraprofessionals

Although we appreciate the effort to create a baseline level of qualifications for paraprofessionals, we would like to stress that those with on the job training and experience are usually the most capable to work with our clients. We recommend that OSSE consider a robust

training requirement instead of a credential requirement or a one-year experience qualification. In the alternative, we would recommend that OSSE give equal weight to candidates with more than 2 years of on the job training and experience and the obtainment of educational credentials.

Homebound and Hospital Instruction

The proposed regulations (sections 3023 and 3024) set forth some general requirements concerning “home and hospital” instruction (HHI) for a student with a disability. The DC Council is currently considering legislation (B23-392) which would create a more robust Homebound and Hospital Instruction program.ⁱⁱ Our recommendations for this section are based on the schema put forth by B23-392, which CLC supports.

We recommend that OSSE establish more specific requirements to ensure students receive HHI when it is needed. In particular, the regulations should require LEAs to take specific steps to promote transparency of their HHI policies, such as publishing their policies on the school website. When deciding whether a student is eligible for HHI, the LEA should generally defer to the opinion of the student’s health-care provider, since the student’s need for HHI typically involves a medical determination. The regulations should also establish timelines and minimum instruction hours that LEAs should follow in implementing their HHI programs. Finally, the regulations should require LEAs to establish an appeals process when a parent believes a school has violated a student’s HHI rights.

We also note that CLC believes that LEAs should be required to provide HHI to any student who will be absent for ten or more consecutive or cumulative days due to a certified health condition, whether or not the student qualifies as a “child with a disability” as that term is defined in the regulations. We would also recommend including a provision that states that this section also applies to students who are pregnant or caring for a child.

Eligibility Criteria for Disability Categories

The Eligibility Criteria for Disability Categories section of these proposed regulations treat certain disabilities (autism, emotional disturbance, intellectual disabilities, multiple disabilities, OHI, SLD, and speech language impairment) differently from all other disability categories by making it optional for the IEP team to use and consider other sources of existing data and medical records when making their determinations. For all other disability categories, the regulation states the IEP team “shall review and consider” medical documentation. For consistency, we recommend all disability categories state that the IEP team “shall consider and use as the basis for its determination any other sources of existing data or medical documentation”. The IEP team should make no distinction when reviewing other sources of existing data or medical documentation for the disabilities mentioned above. CLC has had cases where IEP teams or LEA officials have failed to honor information provided by physicians, and we believe that a physician’s clinical judgement and documentation from a physician should always be considered by the IEP team.

Seclusion and Restraint

CLC appreciates the inclusion of the section on seclusion and restraint into this rulemaking, but we have serious concerns about how the potential health and safety consequences of these regulations as written. Due to a lack of available data the extent of the improper use of seclusion and restraint in the District is unknown and we are concerned that LEAs may be using the practice of seclusion and or restraint to manage classroom behavior and prevent classroom disruptions.ⁱⁱⁱ Subjecting students to seclusion and or restraints can create trauma for the student and lead to their injury and even death.^{iv} We support the comments provided by our colleagues at the Juvenile and Special Education Law Clinic at UDC and Disability Rights DC which urge that seclusion and restraint only be utilized as a method of last resort and only when there is imminent danger of

serious physical harm to self or others.^v We also recommend that these regulations eliminate seclusion and restraint as a planned intervention for any particular student. Finally, we urge OSSE to consider that not all students who are subject to restraint and seclusion techniques have special education needs. In fact, during the 2011-2012 school year it was reported that 28% of students subject to physical restraint were not receiving Special Education services.^{vi} We recommend that procedures on restraint and seclusion for students not in special education also be included in the upcoming Chapter 25 rulemaking to address their use on the non-special education population.

Conclusion

We thank you for the opportunity to testify on the proposed regulations and we welcome any questions you may have.

ⁱ 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.

ⁱⁱ See *B23-0392 Student’s Right to Home or Hospital Instruction Act of 2019*. DC Council. July 9, 2019. Retrieved from: <http://lims.dccouncil.us/Legislation/B23-0392>.

ⁱⁱⁱ See Disability Rights DC. *Need for Oversight and Restriction of the Seclusion and Restraint of District Youth Attending DC Public Schools*. (Oct. 2019). Retrieved from: <http://www.uls-dc.org/media/1185/2019-seclusion-restraint-report.pdf>.

^{iv} See Hannah Fry. *After autistic boy dies during school restraint, 3 educators charged with manslaughter*. (November 13, 2019) Los Angeles Times. Retrieved from <https://www.latimes.com/california/story/2019-11-13/autistic-boy-dies-school-restraint-educators-charged-manslaughter>.

^v See Disability Rights DC. *Need for Oversight and Restriction of the Seclusion and Restraint of District Youth Attending DC Public Schools*. (Oct. 2019). Retrieved from: <http://www.uls-dc.org/media/1185/2019-seclusion-restraint-report.pdf>.

^{vi} *Id.*