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Introduction

Good afternoon, Chairman Mendelson, Chairman Grosso and members of the Committees. My name is Sharra E. Greer. I am the Policy Director at the Children's Law Center¹ and a resident of the District. I am also the parent of two children who attend a DC Public School (DCPS). 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 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 represent attend DCPS.

I appreciate this opportunity to testify regarding the performance of DCPS. Although I will note some areas where DCPS has shown improvement, we continue to see areas where students are struggling and not receiving the supports they need to succeed academically. DCPS is making important investments in expanding its school based mental health initiative and improvements in school culture to reduce exclusionary discipline. Unfortunately, we continue to see a lack of progress for our students with disabilities, an ongoing truancy crisis, and issues with placement of students in residential treatment facilities.

Expansion of School-Based Mental Health Services

Year after year, Children's Law Center has testified that many of the children we work with – children in the foster care system or receiving special education services – only need our services because their mental health needs have gone unaddressed.

Many of these children have faced multiple adverse childhood experiences and have resulting complex trauma and need access to high quality services to achieve stability.

One of the best ways to improve access to mental health care for children is to provide services where they are. Counseling services in school or at the school building can make a huge difference for the children who need them. In addition, prevention services and lower level services provided in the school can help children from escalating and needing high level and acute services.

The expansion of school based mental health services is currently in its second year of implementation. This expansion takes a public health approach to providing mental health services to children in their schools and communities and involves the Department of Behavioral Health (DBH) partnering with community-based organizations (CBOs) to bring mental health services to all public schools – both traditional and charter – in the District of Columbia. The goal of this reform is for all public schools, traditional and charter, to have Tier 1, Tier 2, and Tier 3 behavioral health supports, consisting of a variety of programs, and services that individual schools can tailor to meet the needs of their students and community.²

Implementation of the expansion for year two has gone significantly better than last year. In January of 2019, only a handful of the 52 schools in Cohort 1 had clinicians in place providing services to students.³ This year over 75% of the Cohort 1 and 2 schools – approximately 85 schools – have Community Based Organization (CBO) clinicians providing services in the school.⁴

In addition to working to get CBO clinicians in schools, significant work has been done to support the program and ensure its success. One key part of the program is that each school have a School Behavioral Health Coordinator (SBHC) to ensure collaboration and coordination of the whole school behavioral health/wellness team. The SBHC also collaborates with the school behavioral health team to identify school-wide or classroom trends in social, emotional, and behavioral health needs and develop student programming based on those trends. Most schools now have an identified SBHC.

With this infrastructure in place at the school level it has been possible for schools to complete the School Strengthening Tool & Work Plan. The School Strengthening Tool & Work Plan were adapted from the Center for Disease Controls (CDC) School Health Index and embrace the Whole School, Whole Community, Whole Child (WSCC) framework. The WSCC framework is student-centered and emphasizes the role of the community in supporting the school, the connections between health and academic achievement, and the importance of evidence-based school policies and

practices. Based off the information from the School Strengthening Tool the SBHC develops and then uses that assessment to create the work plan for the school to address its unique needs. At this point the vast majority of schools have completed the School Strengthening Tool (95 schools) and a work plan based on the tool (85 schools).⁵

While the school based mental health expansion is being led by DBH, it will not be successful without the participation and support of the schools. We commend DCPS for the significant progress that has been made over the past year in the expansion of the school based mental health program and the exciting new initiatives supporting the expansion. DCPS has been an active presence on the Coordinating Council on School Behavioral Health – facilitating the matching process between CBOs and DCPS schools, co-chairing the implementation subcommittee, and engaging in active communication with schools, CBOs, and other government agencies to problem-solve and facilitate progress.⁶ We hope to see DCPS to maintain its high level of engagement in the school based mental health expansion. We would also like to see DCPS increase support to DCPS staff who are responsible for supporting the school based mental health expansion.

Schools have many different priorities and constraints. Ensuring that all schools are integrating the new clinicians and supporting the SBHC is important for success. For the school based mental health expansion to work, there must be meaningful engagement between the individual school administration, the school wellness team,

the school community, the CBO clinician and the CBO. To support this necessary engagement and communication, DBH recently completed a Memorandum of Understanding (MOU) with DCPS and the Office of the State Superintendent of Education (OSSE) to fund two dedicated staff to support schools in the expansion process.⁷ We applaud this investment of resources, and urge permanently funding of these positions in DCPS and OSSE's budgets to ensure schools have the support they need to remain engaged in this program and to provide a source of agency-level accountability and oversight over the implementation of this program.

DCPS also noted in its oversight responses that the most consistent feedback DCPS has received from staff regarding the SBHC role is "concern about the capacity to effectively realize the SBHC role as it is intended, while maintaining responsibility for other core components of their jobs."⁸ We believe it is critical that DCPS – and the District – pay close attention to this feedback. Effective SBHCs are critical to the long-term success of the school based mental health expansion. It may not be feasible to simply layer the responsibilities of the SBHC on top of the existing job duties of a school staff member with no additional supports or compensation. We urge DCPS and the Committee to dig deeper into this feedback and identify ways to fully support this position so that SBHCs are properly equipped and resourced to support school based mental health programs in their schools.

School Discipline

For years we advocated alongside parents, teachers, mental health professionals, and many other advocates in support of the *Student Fair Access to School Amendment Act* (SFASAA), in order to build an education system that is more effective at identifying and responding to students' needs.⁹ Enacted in May 2018, SFASAA strictly limits the use out-of-school suspension as a means of discipline and protects students' right to an education in the event an out-of-school suspension has been determined to be necessary.¹⁰ SFASAA requirements for students in kindergarten through eighth grade came into effect for this school year 2019-2020, and the requirements for high schoolers will take effect next year (SY2020-2021).

We commend the Council for passing this legislation and moving DC away from the excessive use of exclusionary discipline, which only serves to keep students out of school and hinder their growth and learning. Over the past year, DCPS took positive steps towards the implementation of SFASAA. To implement the SFASAA requirements that came into effect this year, DCPS reports that it issued guidance and held training sessions for school leaders, teachers, and behavior staff on the requirements and implications of the legislation.¹¹ DCPS also hired two Restorative Practice Specialists and three Social Emotional Learning Specialists to support schools in developing positive learning environments, creating alternative approaches to discipline, and providing interventions for students struggling with behavioral

challenges.¹² In order to monitor compliance with SFASAA, DCPS has developed the DCPS Data Analysis Center, which will provide daily updates on student discipline data and identify schools that need additional support to address discipline challenges.¹³

We appreciate these significant investments by DCPS and we hope they signal a firm commitment to ending the excessive use of exclusionary discipline – but the discipline data from the 2018-2019 school year demonstrates so far there has not been progress. DCPS’s out-of-school suspension rate remained the same – representing thousands of children kept out of school this past year.¹⁴ Nearly 1,300 DCPS students received multiple out-of-school suspensions – of which 48 percent were suspended from school more than three times.¹⁵ Again, the data shows that students of color are disproportionately impacted by these practices. For example, 97 percent of the DCPS students who received an out-of-school suspension were students of color,¹⁶ even though they comprise 85 percent of DCPS’ student population.¹⁷

DCPS students also continue to be kept out of school for unacceptably long periods of time before a hearing is conducted at the Office of Administrative Hearings (OAH) to examine the legitimacy of the long-term suspension imposed. Although DCPS made slight improvements in the average number days between the date of the underlying disciplinary incident and the hearing – from nearly 10 days in school year 2017-2018 to 6.8 days in school year 2018-2019¹⁸ – DCPS is still out of compliance with

DC regulations which require hearings to be held within four school days.¹⁹ DCPS reports that an average of 2 additional days elapse between the hearing date and the hearing officer's report recommendation – meaning that an average of two weeks of school go by between the incident and the hearing officer's recommendation.²⁰ This is particularly unconscionable where 40 percent of cases were either dismissed by the hearing officer or voluntarily dismissed,²¹ meaning students were denied their education before receiving the fair hearing to which they are entitled.²²

This disappointing data for school year 2018-2019 underscores the need for the SFASAA requirements scheduled to come into effect this year and next year. We expect DCPS to continue its efforts to replace exclusionary discipline practices with social and emotional learning tools and successfully implement SFASAA in the years to come. We look to the Committee to continue its close involvement and oversight over this issue and expect better outcomes next year.

DCPS Students with Disabilities Are Performing Far Below Their Peers

Fifteen percent of DCPS students have disabilities and were enrolled with an (Individualized Education Program) IEP during the 2018-2019 school year.²³ These students should be performing on the same level as their peers. Unfortunately, that is not the case. Students with disabilities are still performing far below their general education peers. Although there was a modest increase in PARCC scores for all DCPS

students, including those with disabilities, the results are still shocking. Only 10% of students with disabilities are scoring proficient in English/Language Arts (ELA) and 8.5% are scoring proficient in Math, compared to 39.9% ELA and 40.1% Math for all DCPS students.²⁴ Behind these poor standardized testing outcomes are real students who struggle to make educational progress and obtain the supports they need to succeed in DCPS schools. After reviewing the FY19 DCPS Oversight responses, CLC recommends that DCPS: revisit the use of Response to Intervention (RtI) policies, clarify the 504 plan grievance process, improve Central Office document translation services, and reduce the amount of time it takes to implement related services as a means to address this achievement gap.

DCPS Should Not Use Response to Intervention Processes (RtI) to Delay Evaluation

The RtI process is intended to allow teachers to deliver a multi-tiered approach which differentiates learning instruction based on an individual student's identified needs. The first tier of instruction provides all students with the same level of quality instruction. The second tier of instruction is for students who need supplemental grade level instruction to occur simultaneously during the instructional time. The third tier of intervention is for students who cannot master the grade level concepts using tier one and two instructional modalities. These students receive more intensive and targeted interventions provided by highly trained staff.²⁵ The RtI framework, however, is not a substitute or prerequisite to obtaining a special education evaluation and special

education services. Unfortunately, that is often happening. Our attorneys report that schools are using the RtI framework to delay evaluations for DCPS students who need special education services. Parents tell us that DCPS schools make them wait at least eight weeks through the conclusion of RtI before the school will even schedule a meeting to discuss conducting an evaluation for special education. This is not a new problem. Children's Law Center has testified before about our concerns regarding the use of RtI as a delay tactic to deny children the special education services they are entitled to. This year's Office of the Ombudsman for Special Education's annual report highlighted that RtI is sometimes used incorrectly and inconsistently, and that schools are telling parents incorrectly that RtI had to occur before a child could be evaluated.²⁶ The report goes a step further this year and has created a model RtI process that can be applied citywide and hopefully will reduce barriers to having children evaluated for special education while also allowing students who need the RtI framework to succeed to access the program. We hope that DCPS will incorporate the Office of the Ombudsman for Special Education's annual report suggestions, more aggressively monitor evaluation denials, and work to create a Districtwide framework that will help standardize the application of RtI.

Clarify what parents can do when 504 Plans are not implemented with fidelity

Although most of the clients we represent have special education needs addressed through their IEP, over 1,300 DCPS students have a 504 plan.²⁷ A 504 plan

provides supports for students who have a physical or mental impairment that substantially limits one or more major life activities.²⁸ While section 504 applies to students who have a qualifying disability under the IDEA, it also applies to students with disabilities who do not have special education needs. The 504 plan is different from an IEP but is still a key document which outlines concrete steps needed to ensure a student's academic success. When a 504 plan is not followed by school staff, our clients and attorneys report having a difficult time filing grievances and getting schools to implement these plans with fidelity.

This year's DCPS oversight answers describe the process by which parents can file a school-level grievance about a student's 504 plan. Once the school level grievance is filed, then it travels to DCPS Central Office and is sent back to the school to be addressed by the 504 plan coordinator in a meeting with the parent and school based team. However, our attorneys are not seeing this process play out in real time. Parents and advocates are unsure of what to expect when a grievance is filed, how long each step in the process takes, and what recourse, if any exists, for their grievances besides going to federal court. We believe the 504 grievance process is underutilized and in fact, DCPS reports that the number of grievances filed by parents was so small this year, they were not able to report on the data.²⁹ From the experiences of our staff attorneys over the years, we believe that the lack of grievances can be attributed to an opaque dispute resolution process with few procedural safeguards and no mechanism for

parents to appeal a 504 coordinators decision besides litigation in federal court. We urge DCPS to revisit their 504 grievance procedures, provide clearer timelines for parents, and an opportunity to appeal a 504 coordinators determination so that students' 504 plans are properly implemented without the need to file in federal court.

Ensure parents can participate fully in IEP meetings by providing language access

DCPS has recognized that an increasing number of its student families are English language learners (ELL) and we applaud the investments they have made and the partnerships forged in FY19 year to better serve these families.³⁰ However, our clients for whom English is not a native language still struggle to have important documents like IEP's translated in advance of IEP team meetings. When our clients request translated documents, they usually receive only a translated piece of an IEP, or a summary translated by DCPS Central Office but not the entire IEP document. By providing a piecemeal interpretation of the IEP document, DCPS is denying parents the opportunity to fully engage in the IEP process. Our attorneys have also encountered translated documents like report cards which displayed passing grades in English and failing grades in the translated version. These inconsistencies create frustration and unnecessary delay for parents and students with disabilities. As the demographics of the District continue to change, we recommend that DCPS invests in its Central Office's capacity to translate documents completely and faithfully to ensure that parents can fully participate in their student's IEP team meetings.

Improve the delivery time of related services for students with disabilities

Students with disabilities receive a variety of related services through DCPS as a part of their IEP. These related services can be as general as occupational therapy and as critical as speech and language services to help a child speak and swallow. Any delay in implementing related services for students with disabilities means depriving them of all the tools that have been deemed necessary to access a Free and Appropriate Public Education (FAPE) by their IEP. Unfortunately for DCPS students, related services are provided in a timely fashion a paltry 69.8% of the time.³¹ In FY19, only 11 DCPS schools reported providing related services in an appropriate amount of time 90% of the time or better. The school with the worst service delivery rate in FY19 was Luke C. Moore High School, which delivered related services on time only 25% of the time.³² We strongly urge DCPS to address these delays in related services delivery by not only identifying service barriers but also taking actionable steps to overcome these service barriers this fiscal year.³³

Chronic Absenteeism and Truancy Prevention Remain a Problem

Despite DCPS's continued efforts, chronic absenteeism and truancy continue to be a significant challenge for DCPS schools, families, and children. Generally, all children between the ages of five and 18 are required to attend school every day,³⁴ and children with ten or more days of unexcused absences within a single school year are

considered “chronically truant.”³⁵ Students that go on to miss more than ten percent of school days within a single year are considered to suffer “chronic absenteeism,” and may even be disenrolled from their schools.³⁶ Chronic absenteeism and truancy are linked to poor academic outcomes and increased risk of dropping out of school entirely, limiting those students’ future employment prospects and ability to be self-sufficient.³⁷

In school year 2018-2019, DCPS reports that of the approximately 41,000 students enrolled in DCPS schools, 7,557 students had between six and ten unexcused absences, 5,791 students had between 11 and 20 unexcused absences, and 7,092 students had 21 or more unexcused absences.³⁸ To give these numbers some context, this means that 12,883 (over 30 percent) of students in DCPS were chronically truant.³⁹

DC has a number of programs and interventions in place intended to help students and their families avoid or remediate chronic truancy and absenteeism. The *Attendance Accountability Amendment Act of 2013* requires schools to conduct Student Support Team (SST) conferences with students and their families when a student reaches five unexcused school absences.⁴⁰ The purpose of the SST meetings is to learn the specific reasons the child is missing school and work with the student and develop an intervention plan.⁴¹ In school year 2018-2019, 13,064 students accrued five or more unexcused absences resulting in a SST referral. DCPS held SST meetings for approximately 79 percent of these students,⁴² which is a slight improvement from the previous year when SST meetings were held for only 71 percent of referred students.⁴³

Aside from this minor improvement, however, most of the data related to SST meetings as a truancy intervention is discouraging. Of the approximately 15,350 students who had SST meetings in school year 2017-2018,⁴⁴ 2300 students (15 percent, excluding graduates) did not re-enroll in school year 2018-2019.⁴⁵ Of the 12,211 students that did re-enroll, 7,063 students (58 percent) were truant again in school year 2018-2019.⁴⁶

The law also requires DCPS to refer all students between the ages of five and 13 who are deemed chronically truant to CFSA for investigation into educational neglect.⁴⁷ Schools are also required to refer students between the ages of 14 and 17 who accrue 15 unexcused absences within a school year to the Court Social Services Division of DC's Superior Court and the Office of Attorney General Juvenile Section.⁴⁸ As we have testified for several years now, the data outcomes for these referral programs demonstrate they are not effective tools for addressing chronic truancy or absenteeism.⁴⁹ Of the 2,256 DCPS students referred to CFSA during school year 2017-2018, 345 (15 percent, excluding graduates) did not re-enroll. Of the 1,911 students that did re-enroll, 1,429 (75 percent) were truant again in school year 2018-2019. The court referral program outcomes are even worse. Of the 788 DCPS students referred to Court Social Services during school year 2017-2018, 167 (21 percent, excluding graduates) did not re-enroll. Of the 621 students that did re-enroll, 498 (80 percent) were truant again in school year 2018-2019.

For years now the data on the CFSA and court referral programs have consistently shown them to be ineffective at reducing truancy.⁵⁰ We again urge the Council to shift resources away from these unproductive programs and focus on establishing and supporting individualized school-and community-based interventions to help DCPS students improve attendance. CLC continues to believe individual student and family focused interventions delivered at the school and community level are the best way to tackle chronic truancy and absenteeism. The SST program takes this approach but with nearly 60 percent of students with SST team meetings becoming truant again in the following school year, we cannot call this program a success yet.⁵¹ Although the SST program outcomes are better than those for the CFSA or court referral programs, we need more information to understand the circumstances under which the SST program can effectively address truancy. To start, we need more fulsome responses to performance oversight questions that address details of the SST program. For example, performance oversight Question 53 asked for data regarding parental involvement in SST meetings, root causes for unexcused absences identified at SST meetings, and information regarding action plans and timelines.⁵² The agency's response listed nearly 50% of identified root causes as "other" and provided no information on timelines, parental participation rates, or action plans or follow-up actions.⁵³ We urge DCPS and the Council to dig deeper to understand how the SST

program is operating at the individual level, and identify ways to make this program more broadly successful at eliminating truancy.

Aside from legally mandated referral programs, DC has made other effort to address the problem of chronic truancy and absenteeism. In addition to coordinating efforts to address truancy across government through the Mayor's Every Day Counts! Task Force, DCPS has undertaken a number of initiatives designed to improve school attendance, including partnering with CFSA to support a specialized education neglect social work unit; piloting the Kininvolved Attendance Intervention program, which seeks to improve communications between teachers and parents through a mobile-based platform; scaling up implementation of Harvard University's Proving Ground attendance intervention pilot, which uses personalized letters to communicate with families regarding attendance issues; and piloting a research-based Postcard Project, which uses targeted postcards to communicate with families about absences and missed instructional content.⁵⁴ The city is also continuing to fund and support community-based programs addressing truancy, such as the Show Up, Stand Out program, which works with families to develop individualized plans to improve attendance.⁵⁵

While these efforts by DCPS and its agency and community partners are encouraging, we have yet to see these efforts result in significant improvements in DCPS's rates of chronic truancy and absenteeism. We urged DCPS, the Committee, and the Council to maintain its sense of urgency in addressing these problems. The

consequences of missing school are grave for our children – it truly limits what they will be able to achieve in life. We cannot afford to let these high rates of chronic truancy and absenteeism continue year after year. Finding solutions that keep kids in school consistently needs to be a priority for DCPS, and we ask the Council and Committee to maintain careful oversight with respect to this issue.

Budget Transparency is Needed to Assess the Impact of Educational Investments

As we testified in June and October last year, CLC believes that transparency is critical for a public education system that is a mix of traditional and charter schools and which requires students and parents to make important choices about what school to apply to attend. How scarce resources are allocated and how those resources will be used to support specific students is central to this process.

Education represents one of the largest expenditures in the District's overall budget. While we are still working to fully fund the schools, we are making progress. Just this month, the Mayor announced she plans to significantly increase the per pupil funding for schools.⁵⁶ It is vital that the public and this Council know how that money is being spent and whether it is being invested appropriately and equitably. But without budget transparency, it is very difficult to assess the impact of these investments.

Despite the countless hours CLC and our advocacy partners spend each year examining education agency budgets, we are unable to discern basic information about

how resources are being allocated. More specifically, CLC looks to the budget every year to determine what supports are planned for the District's most vulnerable youth— youth with disabilities, youth in foster care, parenting youth, and youth who are homeless. Robust funding, staffing, and other supports are necessary for these students, who face the largest academic achievement gaps⁵⁷ and biggest challenges to school attendance and completion. Every year we are stymied in our attempt to learn how the city is allocating its resources for these students. Without this information, it's practically impossible to determine whether lack of financial resources or programmatic failures lie at the root of poor student outcomes. Greater financial transparency would mean greater accountability for the educational outcomes of these vulnerable youth.

At this time, the Council is considering several bills intended to increase transparency and accountability in both traditional and charter public schools: the *At-Risk School Funding Transparency Amendment Act of 2019* (B23-046), the *School Based Budgeting and Transparency Amendment Act of 2019* (B23-239), and the *Public School Transparency Amendment Act of 2019* (B23-0199).⁵⁸ We ask the Committee to please move forward with an omnibus bill that will ensure school budgets are uniform, detailed, searchable, easy to compare across different schools, and consistent with expenditure reporting, and to do this in time for DCPS to implement the new budget reporting standards at the start of the next budget cycle in the fall.

DCPS Fails to Serve the Educational Needs of Students Placed in PRTFs

We urge DCPS to improve its oversight of the educational needs of DC students placed in psychiatric residential treatment facilities (PRTFs) and residential treatment facilities (RTFs). PRTFs and RTFs offer intensive inpatient services to children and youth who have various mental health conditions who cannot be served in their communities. CFSA and other entities place students in PRTFs throughout the year.⁵⁹ All PRTF placements currently are out-of-state, with some as far away as Florida. In FY19, two percent of children in foster care (a total of 23) spent time at a PRTF. In FY20 to date, three percent of children in foster care (a total of 19 to date) spent time at a PRTF.⁶⁰

It is vital for a student placed in a PRTF to continue to receive educational instruction and special education services, if eligible. DCPS plays a critical role in the pursuit of this objective. Under an MOU it has reached with CFSA and OSSE, DCPS is the local education agency (LEA) for DC children and youth placed in PRTFs.⁶¹ As the LEA, DCPS is responsible for convening all IEP meetings (including the annual IEP review), eligibility meetings (including the student's triennial evaluation), and any other meetings necessary to ensure timely and appropriate delivery of services to the student. The MOU requires DCPS and CFSA to communicate regularly regarding a student placed in a PRTF and to jointly plan for the return of the youth to the community as appropriate. Prior to a student's discharge from a PRTF, DCPS must

convene an IEP team or section 504 meeting to address the student's transition back to the community or other location. When the student is high-school age and will be moving to a new school, DCPS must conduct a transcript analysis for the student. DCPS also is responsible for maintaining the educational records for all students subject to the MOU.

In our experience over the past few years, DCPS has fallen far short in carrying out its duties in this important area. We are concerned that students placed in PRTFs may not be receiving adequate educational instruction and special education services, and often face difficulty in transitioning from the PRTF to their next educational placement. The problems include:

Insufficient Staffing

It is our understanding that there is currently only one DCPS placement monitor charged with monitoring all the youth in care placed at PRTFs. (It is conceivable that this same person may also be responsible for monitoring the education needs for non-wards who are placed in PRTFs by OSSE when DCPS was the child's prior LEA.) This level of staffing is clearly inadequate. Meeting the complex needs of students placed in PRTFs requires close tracking and coordination with multiple schools and institutions. One staff person is simply not enough.

Insufficient Oversight

DCPS is failing to provide sufficient oversight and coordination regarding PRTF educational programs and special education services. Indeed, in our experience DCPS often is not even aware a child has been placed in a PRTF until an attorney or other advocate for the child has made it known to DCPS; in many cases this appears to be the result of CFSA's failure to properly notify DCPS when CFSA places a student at a PRTF.⁶² Even when DCPS is aware of the placement, too often DCPS fails to follow-through with its monitoring responsibilities to ensure the student's educational and special education needs are met. Contrary to DCPS's "child find" obligations,⁶³ PRTF students with disabilities who are currently not receiving special education services often are not being identified and evaluated to see if they are eligible for these services despite exhibiting significant mental health or interfering behaviors deeming them eligible for placement at a PRTF. Students who already have IEPs or 504 plans often are not receiving the services to which they are entitled.

For example, DCPS failed to intervene or provide assistance for one of our clients placed at a residential treatment facility in Virginia after the facility staff repeatedly stated that they were not a school and thus did not implement IEPs. The child's IEP was not updated or implemented for over a year and a half and was allowed to expire. Required evaluations were not conducted, as the facility did not have the personnel to complete them.⁶⁴

In two other cases we are currently working on, the children have been at a PRTF in Baltimore since last summer, yet the PRTF still does not have access to their complete education records. This is primarily due to the fact that the PRTF is not one of the eight PRTFs on the OSSE approved list and therefore does not have access to the “Special Education Data System” (SEDS) used by LEAs in the District and maintained by OSSE. SEDS was designed to facilitate ready access to a student’s records, including when the student changes schools. Due to the limited options on the OSSE list, students are often placed by CFSA or DBH at other locations, and these facilities are denied access to the vital student records available in SEDS. DCPS, OSSE, and CFSA should work on an appropriate arrangement that would allow PRTFs to access SEDS. In the meantime, DCPS should ensure the PRTF receives all of the student’s relevant records by sending those records directly to the PRTF promptly after the student’s placement at the facility; DCPS should also have responsibility for updating the student’s SEDS records based on developments in the student’s special education program at the PRTF. DCPS failed to take these steps in the two cases involving the Baltimore PRTF. Until last month, DCPS wrongly assumed that the PRTF had access to SEDS, despite the PRTF’s repeated insistence that it did not. It was only very recently that DCPS realized that, as the PRTF was not on the OSSE approved list, they were not permitted SEDS access. It was not until that point, at least five months after the school year began, that DCPS finally sent updated IEPs and other necessary school records concerning the two

students to the Baltimore PRTF (although the PRTF still does not have access to the complete records). As a result of this confusion and lack of access to records, these students have faced prolonged delays in the proper implementation of their special education programs. Additionally, the educational decisionmakers repeated requests for updated information about their progress went unanswered. All of this is contrary to DCPS's legal obligation to oversee the implementation of the child's IEP and help ensure the student receives appropriate special education services at the PRTF.

Failure or Delays in Conducting Evaluations

As the LEA and upon an appropriate referral, DCPS is responsible for conducting a comprehensive and individualized evaluation to determine whether a child is eligible for special education services.⁶⁵ Under DC law, the evaluation must be completed within 60 days.⁶⁶ A child found eligible for special education services generally must be re-evaluated in all areas of suspected disability every three years or even sooner depending on the student's particular circumstances (*e.g.*, a sudden change in the child's life that affects school performance).⁶⁷

In our experience, evaluations rarely occur when a student is receiving care at a PRTF. In many cases, the requirement to conduct the evaluation is simply overlooked. Moreover, many PRTFs are ill-equipped to conduct evaluations due to a lack of staff with the required credentials.⁶⁸ In these cases, DCPS, despite its obligations as the LEA,

fails to ensure a proper, expeditious evaluation takes place, either by doing it remotely or arranging to have it done on-site.

CLC has worked on behalf of child at a PRTF in Florida who has faced extraordinary delays in the evaluation and IEP process. Because the PRTF lacked the expertise to conduct the appropriate evaluation, DCPS agreed to an independent education evaluation last March but then failed to provide the necessary consent forms until May. The evaluation was not completed until August despite multiple follow ups with DCPS. There was an IEP meeting in October where the team agreed to add goals in new areas based on the evaluation, but DCPS *still* has not updated the IEP – almost a year after the evaluation process started.

Students who have been placed at a PRTF have, almost by definition, undergone major changes to their life that can have a dramatic impact on their school performance. This is the sort of circumstance that cries out for an evaluation of the student to ensure the right mix of special education services are being provided. But, due to DCPS's delays and lack of oversight, too often that is not happening.

Insufficient Transition Planning

In many cases DCPS has failed to conduct sufficient advance planning to ensure that a student receives a timely and appropriate school placement following discharge from a PRTF. This planning needs to take place well before the discharge, especially where the student may need a non-public placement. We have seen delays of more than

a month before a student is able to attend school once returning from a residential facility. Additionally, students are also remaining at out-of-state facilities past their recommended discharge dates due to delays in the identification of a school program.

These delays and the lack of predictability add instability not only to the student's academic progress, but also may lead to regression in the community and home environments, leading to limited bandwidth to access their education. Students are denied educational instruction and special education services in their least restrictive environment for extended periods. Poor oversight of the transition process also has led to delays in the transfer of educational records and the failure to give students credit for the schoolwork they completed at the PRTF. Students have often been placed in courses they have already completed or have been advanced to courses when they have not completed the pre-requisite coursework.

1. *Failing to Include Parents and Educational Decisionmakers in the Process*

By law and by DCPS policy, parents and education decisionmakers play a critical role in the special education process.⁶⁹ This participation is especially important when a student is at a PRTF. Yet we have encountered numerous situations where DCPS has failed to fully include parents and education decisionmakers (and their attorneys, when applicable) in the process. This failure denies families their rights and undermines a critical source of information about the child's condition and circumstances.

Young people placed in foster care and then a PRTF often face a great deal of instability and stress. Without proper oversight, their education can be lost in the shuffle, adding to the challenges they already face. DCPS needs to do a better job preventing this from happening. It must ensure it has dedicated enough staffing and resources to ensure students placed in PRTFs receive appropriate education instruction and special education services.

Conclusion

Thank you again for the opportunity to testify and 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 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.

² Tier 1 refers to mental health promotion and prevention for all students, including increased parent awareness of mental health resources, student-centered learning and wellness events, and teacher-centered professional development on trauma informed care and mental health. Tier 2 is focused group and individual intervention for students at-risk of mental health challenges and includes clarifying referral process and improving support structures for referred students, student group sessions and trauma-related professional development for staff. Tier 3 is intensive support and interventions for individual students and includes: community based organization clinician to facilitate support group, referral process to refer individual students or families for additional support, develop school policies and protocols for mental health crises, and provide in-school clinical service for families and individual students.

³ Minutes of the Coordinating Council on School Behavioral Health on file with Children’s Law Center.

⁴ Data provided by the Coordinating Council as of January 2020. 119 schools were initially identified to be included in Cohorts 1 and 2 of the school based mental health expansion that began during the 2018-2019 school year. Of these, five schools are not currently participating. One of the charter schools closed and another is closing, two other schools requested to delay joining the program and one is not participating

currently for another reason. Six schools have received clinicians through DBH. For the remaining 108 schools, 106 have been matched with a CBO and CBO clinicians have been placed in 85 of these 106 schools. 95 schools have been matched.

⁵ Data provided by the Coordinating Council.

⁶ DBH FY2019 Performance Oversight Responses, Q12. Available at: <https://dccouncil.us/wp-content/uploads/2020/02/dbh.pdf>.

⁷ DBH FY2019 Performance Oversight Responses, Q31(2). Available at: <https://dccouncil.us/wp-content/uploads/2020/02/dbh.pdf>.

⁸ DBH FY2019 Performance Oversight Responses, Q13(c). Available at: <https://dccouncil.us/wp-content/uploads/2020/02/dbh.pdf>.

⁹ *Student Fair Access to School Amendment Act*, D.C. Code 22-157.

¹⁰ *Id.* at § 204.

¹¹ See DCPS, FY2019 Performance Oversight Responses, Q6(a).

¹² *Id.*

¹³ *Id.*

¹⁴ See OSSE FY2019 Performance Oversight Responses, Q9 Attachment 1 (reporting an out-of-school suspension rate of 6.61%).

¹⁵ See OSSE FY2019 Performance Oversight Responses, Q9 Attachment 1.

¹⁶ See OSSE FY2019 Performance Oversight Responses, Q9 Attachment 2.

¹⁷ DCPS. *DCPS at a Glance: Enrollment*. available at: <https://dcps.dc.gov/page/dcps-glance-enrollment>.

¹⁸ See DCPS FY2019 Performance Oversight Responses, Q56(c).

¹⁹ 5 DCMR § B2506.2.

²⁰ See DCPS FY2019 Performance Oversight Responses, Q56(d).

²¹ See DCPS FY2019 Performance Oversight Responses, Q56(f).

²² *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

²³ DCPS FY2019 Performance Oversight Responses, Q62.

²⁴ OSSE. *2019 DC Statewide Assessment Results*. Available at:

https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2019%20Statewide%20ELA%20and%20Math%20Public%20Results.pdf.

²⁵ This definition of the RtI process was adapted from the Office of the Ombudsman for Public Education's annual report. See: Office of the Ombudsman for Public Education. *Annual Report 2019*. (October 2019). Available at:

https://sboe.dc.gov/sites/default/files/dc/sites/sboe/DCO%202019%20Annual%20Report%20Final_WEB.pdf.

²⁶ *Id.*

²⁷ DCPS FY2019 Performance Oversight Responses, Q66 at page 180.

²⁸ For more information about Section 504 of the Rehabilitation Act of 1973 and its relationship to the Individuals with Disabilities Education Act (IDEA), please see: U.S. Department of Education Office for Civil Rights. *Protecting Students With Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities*. (January, 10, 2020). Available at:

<https://www2.ed.gov/about/offices/list/ocr/504faq.html>.

²⁹ *Id.*

³⁰ DCPS has been making investments to provide better connections and supports to students who are English Language Learners (ELL). In the 2019-2020 school year DCPS plans to hire a secondary ELL manager to support all high school clusters, increase the number of ESL teachers and bilingual counselors

assigned to schools, provide scheduling guidance for middle and high schools with ELL students, provide international academy coordination and support at Cardozo, Roosevelt and Cooidge, as well as implement the supporting immigrant families toolkit, newcomer toolkit, and implement Hochman in 3 schools. DCPS FY2019 Performance Oversight Responses, Q77.

³¹ DCPS FY2019 Performance Oversight Responses, Q66

³² *Id.*

³³ DCPS FY2019 Performance Oversight Responses, Q65, at 146.

³⁴ D.C. Code § 38-202.

³⁵ DCPS, *DCPS Attendance and Truancy Policy* (Aug. 13, 2018) Available at:

https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/FINAL%20DCPS%20Attendance%20and%20Truancy%20Policy%2008-21-18.pdf.

³⁶ 5-A DCMR § 2199.

³⁷ “Missing school in the early grades can have a snowball effect. It sets kids up to fall behind in the fundamental reading skills they need in order to move on to more complicated work...Research shows that kids who are allowed to miss school when they’re young are more likely to skip school when they’re older...Being chronically absent affects high school graduation rates and the chances for success in college.” Kelly, Kathy. *Chronic Absenteeism: What you need to Know*. UNDERSTOOD.ORG, Available at: <https://www.understood.org/en/school-learning/partnering-with-childs-school/working-with-childs-teacher/chronic-absenteeism-what-you-need-to-know>. (Last visit: Feb. 18, 2020).

³⁸ See DCPSFY2019 Performance Oversight Responses Q52.

³⁹ *Id.*

⁴⁰ *Attendance Accountability Amendment Act of 2013*.

⁴¹ 5 DCMR § A2103.2(3).

⁴² See DCPS FY2019 Performance Oversight Responses, Q53.

⁴³ See DCPS FY2018 Performance Oversight Responses, Q52. Available at: https://dccouncil.us/wp-content/uploads/2019/02/dcps19_Part1.pdf.

⁴⁴ In 2019, total of first three rows equals 15,347; In 2018, DCPS held SST meetings for 15,368 of 21,793 students referred for SST meetings. Compare DCPS FY2019 Performance Oversight Responses, Q55 (a) and (b). with DCPS FY2018 Performance Oversight Responses, Q52. Available at: https://dccouncil.us/wp-content/uploads/2019/02/dcps19_Part1.pdf.

⁴⁵ See DCPS FY2019 Performance Oversight Responses, Q55 (a) and (b).

⁴⁶ *Id.*

⁴⁷ *Attendance Accountability Amendment Act of 2013*; 5 DCMR § A2103.5(a).

⁴⁸ *Attendance Accountability Amendment Act of 2013*; 5 DCMR § A2103.5(b).

⁴⁹ Michael Villafranca, Children’s Law Center, Testimony Before the District of Columbia Council Committee on Education and Committee of the Whole, (Feb. 26, 2019) Available at:

https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/CLC%20Testimony%20--%20DCPS%202019%20Oversight_FINAL.pdf); Judith Sandalow, Children’s Law Center, Testimony

Before the District of Columbia Council Committee on Education and Committee of the Whole, (Feb. 23, 2017) Available at:

<https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/CLC%20Testimony%20--%20District%20of%20Columbia%20Public%20Schools%202017%20Oversight.pdf>.

⁵⁰ In the 2015-2016 school year of the 15,291 students who were referred for an SST meeting, 6,741 (52%) re-enrolled and were truant and 1,728 (11%) did not re-enroll or graduate. Of the 1,953 students who were referred to CFSA 963 (58%) re-enrolled and were chronically truant and 287 (15%) did not re-enroll or

graduate. Of the 1,020 students who were referred for CSSD 747 (88%) re-enrolled and were chronically truant and 111 (11%) did not re-enroll or graduate. See DCPS FY2017 Performance Oversight Responses, Q54. Available at: <https://dccouncil.us/wp-content/uploads/2018/10/dcps.pdf>.

In the 2016-2017 school year, of the 14,873 students who were referred for an SST meeting, 6,517 (55%) re-enrolled and were truant and 1,849 (12%) did not re-enroll or graduate. Of the 1,573 students who were referred to CFSA, 857 (66%) re-enrolled and were truant and 277 (18%) did not re-enroll or graduate. Of the 839 students who were referred to CSSD, 489 (77%) re-enrolled and were truant and 160 (19%) did not re-enroll or graduate. See DCPS FY2018 Performance Oversight Responses Q54. Available at: https://dccouncil.us/wp-content/uploads/2019/02/dcps19_Part1.pdf.

In the 2017-2018 school year of the 15,347 students who were referred to SST meeting, 7,063 (58%) of students re-enrolled and were truant, and 2,300 (15%) did not re-enroll or graduate. Of the 2,256 students who were referred to CFSA, 1,429 (75%) re-enrolled and were truant and 345 (15%) did not re-enroll or graduate. Of the 788 students who were referred to a CSSD, 489 (80%) re-enrolled and were truant and 167 (21%) did not re-enroll or graduate. See DCPS, FY2019 Performance Oversight Responses, Q55.

⁵¹ See DCPS FY2019 Performance Oversight Responses, Q55.

⁵² See DCPS FY2019 Performance Oversight Responses, Q53.

⁵³ *Id.*

⁵⁴ See DCPS FY2019 Performance Oversight Responses, Q54.

⁵⁵ *Id.*; See also Show up, Stand Out, Available at: <https://www.showupstandout.org/how-it-works/> (last visited Feb. 18, 2020).

⁵⁶ D.C. City Government, *Mayor Bowser Launches Mobile DCPS Pocket Budget Guide for School Communities* (Feb. 3, 2020) Available at: <https://mayor.dc.gov/release/mayor-bowser-launches-mobile-dcps-pocket-budget-guide-school-communities>.

⁵⁷ Only six percent of DCPS students with disabilities are proficient in English/Language Arts (ELA) and seven percent in Math, compared to 35% ELA and 31% Math for all DCPS students. Similarly, only 17% percent of DCPS students identified as at-risk are proficient in English/Language Arts (ELA) and 13% percent in Math, compared to 35% ELA and 31% Math for all DCPS students. See OSSE (Aug. 16, 2018). *DC's 2018 PARCC Results*. Available at:

https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2018%20PARCC%20Results%20Release%20%28Aug.%2016%2C%202018%29.pdf

⁵⁸ B23-046, *At-Risk School Funding Transparency Amendment Act of 2019*, Available at:

<http://lims.dccouncil.us/Download/41637/B23-0046-Introduction.pdf>; B23-239, *School Based Budgeting and Transparency Amendment Act of 2019*, Available at: <http://lims.dccouncil.us/Download/42219/B23-0239-Introduction.pdf>;

B23-0199, *Public School Transparency Amendment Act of 2019*, Available at:

<http://lims.dccouncil.us/Download/42104/B23-0199-Introduction.pdf>.

⁵⁹ For the sake of brevity, references in this testimony to “PRTFs” include RTFs.

⁶⁰ See CFSA Responses to Hearing Questions, Performance Oversight Hearing Fiscal Year 2019-2020, at 54 (Jan. 31, 2020).

⁶¹ The MOU is available at

https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2017%20CFSA_OSSE_DCPS%20MOA%20Summary%20Page.pdf.

⁶² Under the MOU, CFSA is required to provide enrollment forms and other relevant documents to DCPS within five business days of the PRTF placement.

⁶³ An LEA must ensure that all children with disabilities or suspected of having a disability and who are in need of special education and related services are identified, located, and evaluated. *See* 20 USC § 412(a)(3); 34 CFR § 300.111.

⁶⁴ IEPs must be reviewed and revised as necessary, but at least once a year. *See* 20 USC § 1414(d)(4).

⁶⁵ *See* 20 USC § 1414(b); 34 CFR § 300.304.

⁶⁶ 5 D.C. Municipal Reg. § 3005.2(a).

⁶⁷ *See* 20 USC § 1414(a)(2); 34 CFR § 300.303(b)(2).

⁶⁸ Even when a PRTF manages to complete an evaluation, DCPS tends to treat it as an independent evaluation and often finds it insufficient.

⁶⁹ *See* *Andrew F. v. Douglass County School District*, 137 S.Ct. 988 (2017) (the Individuals with Disabilities in Education Act “emphasize[s] collaboration among parents and educators”); DCPS Special Education Programs & Resources Guide for Families at 2 (“As the guardian of your child, you are a very important member of the IEP team. Accordingly, the Special Education Student Rights Act of 2014 requires your child’s school to send you any relevant documents that will be discussed at an IEP or eligibility meeting within 5 days of the meeting date. This is to ensure you have time to review and prepare for the meeting. Under the same law, you may expect that a copy of the IEP will be sent to you within 5 days after the meeting has taken place.”) *available at* <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Family%20Programs%20and%20Resources%20Guide18-19.pdf> .