



Testimony Before the District of Columbia Council
Special Committee on COVID-19 Pandemic Recovery Oversight Hearing
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The District 's Public Education System After the COVID-19 Pandemic

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Good morning Chairpersons Allen and Gray and members of the Special Committee on COVID-19 Pandemic Recovery. My name is Sharra E. Greer. I am the Policy Director at Children's Law Center.¹ I am also a resident of the District with two children attending public school in DC. 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.

The clients we represent are almost exclusively Black and Brown children and families who live below 300% of the poverty line. We reach these children and families through our medical legal partnerships, our work as *Guardian ad Litem* for children in foster care, and as attorneys for third party caregivers seeking to give children permanent homes. Whether fighting to get a child in foster care appropriate devices to use for distance learning or advising a client on how to request special education evaluations during the pandemic, our attorneys have seen first-hand the devastating impact the pandemic has had on the physical health, emotional health, and financial wellbeing of students in the District. Throughout the pandemic, we have seen our clients' strength as they were disproportionately impacted by COVID-19, as they adapted to online education, as their parents navigated reduced or lost employment, and confusing changes to public benefits and programs. Today we urge the Council to

focus on the supports and services that our youngest residents needs so that they can equitably access a public education in the months to come.

Introduction

Children’s Law Center appreciates the opportunity to provide testimony to the Special Committee on COVID-19 Recovery as we begin to think about how to reimagine our public school system. The devastating economic impact our clients have experienced will last far beyond the end of the public health emergency. Many of the clients we serve were already living on the edge of or in deep poverty even before the pandemic began. These families were already unemployed or underemployed. The pandemic made things dramatically worse.

Since March of 2020, our client families have lost jobs or had their hours substantially cut at their restaurant and other service industry jobs. Many were unable to continue to work or look for work because they needed to stay home and care for children engaged in virtual school or could not find or afford adequate childcare arrangements. Students with disabilities faced a host of unique issues when attempting to access their education compared to their non-disabled peers. Clients dealt and are still dealing with the physical effects of the pandemic after contracting COVID-19 or caring for a loved one who fell ill to virus. And some of our clients are still suffering with the emotional trauma of the pandemic after having lost a loved one to the virus

and lost opportunities to gather, to learn, and to be with family and friends. For many of our clients whose children were already falling behind their white and non-disabled peers academically, the pandemic widened that opportunity gap into a crater.

The impact of COVID-19 has fallen hardest on Black and Brown members of our community:²

| | | |
|--|---|---|
| 30,000 | 5x | 4+ months behind |
| <p>Nearly 30,000 of DC's Black or Latinx residents have been infected with COVID-19 compared to just 10,000 white residents</p> | <p>Unemployment East of the River skyrocketed to five times the rate in neighborhoods in Wards 2 and 3</p> | <p>During the first six months of virtual school, at-risk students fell five months behind in math and four months behind in reading</p> |

The disparate impact of the pandemic must be recognized if there is to be an equitable recovery. Those who historically have received the fewest resources in our community because of their race should have the chance to meaningfully access programs and initiatives that help to correct the economic harms caused by COVID-19. Further, an equitable recovery requires that our District government recognize that the pandemic has exacerbated the deeply imbedded inequities that these members of our community have long faced.³ That is why our testimony will focus on how the District government can best support low-income Black and Brown students and students with disabilities attending public schools beyond the end of the public health emergency.

There is no question that students, teachers, and staff coming back to the school building will be fundamentally changed. Besides accounting for pandemic related learning loss, school leaders must also take into consideration the sizable achievement gap that already existed between Black and Brown learners, learners with disabilities, and their white peers.⁴ This achievement gap has likely been compounded by factors like, grief, loss of family economic stability, increased at-home stressors, and loss of socialization opportunities with peers. Despite these challenges, the District finds itself in a position to reimagine what a public education could look like for the children and families we serve. We appreciate the Council taking this opportunity to solicit feedback from the community and from advocates as we envision a way forward that supports students, especially low-income Black and Brown students and those students with disabilities.

To Equitably Recover from The Pandemic We Must Keep Addressing the Digital Divide

One of the stark inequities laid bare by the COVID-19 pandemic is the digital divide. As schools switched to online learning, it quickly became apparent that many students, especially students of color and low-income students, lacked devices and reliable internet connections at home.⁵ These inequities create significant educational barriers. As a recent report stated, “[p]ermanently closing the digital divide is a fundamental matter of equity.”⁶

Mayor Bowser and school leaders have made some progress on this front.

Chancellor Ferebee has stated that “DCPS remains committed to providing technology resources and support for every student who needs a device or access to the internet.”⁷

Using CARES Act funding, both DCPS and charter LEAs invested significant sums to provide devices to students. In addition, last September Mayor Bowser instituted the “Internet for All” program,⁸ which seeks to provide 12-months of free home internet service to up to 25,000 low-income families.⁹

While progress has been made, much more needs to be done. According to a teacher survey conducted by the State Board of Education earlier this year, more than 75% of DC teachers reported that their students’ internet access was too slow for distance learning and more than 50% reported that they were not able to get help when they had technical issues.¹⁰ All students and teachers need access to the necessary technology in the classroom and at home to engage in a 21st century digital education as the COVID-19 public health crisis subsides and students return to school.

To achieve this objective, the District needs to commit funding and planning to four key areas as recommended by the Digital Equity in DC Education coalition for DCPS:

- Ensuring a 1:1 student-device ratio and a computer for every teacher.
- Increased staffing for IT support and asset management.
- Enhancing digital literacy skills for students, families, and teachers.
- Increasing investment in tech infrastructure, including internet connectivity in schools and other classroom technology.¹¹

Children’s Law Center supports these objectives for both DCPS and public charter schools. We also believe the District should ensure all students have fast, reliable internet access at home. The Mayor’s “Internet for All” program has fallen short of expectations because many families are unaware of the program or have had difficulty signing up for it. It also is only funded for 12 months.

In December 2020, Congress authorized additional emergency relief funds for elementary and secondary schools, providing DC LEAs with the means to continue funding digital equity initiatives. DCPS has committed to using \$27 million of these funds to support the technology needs of students and teachers through FY22, with \$13.2 million going to ensure a 1:1 student-device ration in grades 3-12 and a 3:1 ratio in grades PK-2; \$5.7 million going to ensure every teacher has an updated, dedicated device; and \$8 million going to enhanced tech support and software.¹² DC’s public charter schools will have access to similar federal relief funds and should use them to help ensure digital equity for their students.¹³

The Council should assess whether these federal funds are sufficient to meet the technology needs of DC students in FY22. Some illustrative estimates suggest they may not be.¹⁴ If that is the case, the Council should appropriate additional local funds. The Council should also require the Mayor and school leaders to develop a long-term plan for closing the digital divide for DC students. It would be a serious mistake to view the digital divide as merely a problem during the pandemic. As a recent research paper

states, “the digital divide must not be thought of as a short-term problem with a short-term solution. It predated the coronavirus pandemic, and it will persist indefinitely unless we invest in robust and sustainable solutions.”¹⁵ The focus on digital equity created by the pandemic, and the federal funds that help provide short-term solutions,¹⁶ offer an opportunity to establish a long-term solution for closing the digital divide in the District.

The Council is already seizing this opportunity. In February, Councilmember Janeese Lewis George and eight of her Council colleagues introduced a bill – the DCPS Technology Equity Act of 2021 (B24-0077) – that would require DCPS to develop a comprehensive tech equity plan to solicit parent and teacher input, assess the technology needs for each DCPS school, provide detailed cost estimates, and identify potential funding sources. In April, Councilmember Allen, joined by nine of his colleagues, introduced the Internet Equity Amendment Act of 2021 (B24-0200). This bill would create a Digital Equity Division within the Office of the Chief Technology Officer and require OCTO to develop and implement solutions designed to ensure all District residents have equitable access to high-speed internet. Children’s Law Center supports these legislative efforts to close the digital divide, especially for DCPS and public charter school students.

We Must Not Rely on Standardized Testing to Show Us The Way Forward

While there is an understandable instinct to gather as many data as possible to get a comprehensive picture of the academic losses suffered by students over the last year, we would like to caution the Office of the State Superintendent for Education (OSSE) against requiring or even encouraging standardized testing *en masse* as students return to in-person learning. The federal Department of Education already granted DC a waiver for the PARCC testing for SY20-21.¹⁷ However, as we plan for SY21-22, we want to make sure that schools are supported in their efforts to conduct individualized, formative assessments that more accurately demonstrate a student's mastery of skills and topics.

Furthermore, statewide standardized assessments are unlikely to tell us anything we do not already know – namely, that the pandemic has impacted District residents inequitably. Communities in Wards 4, 5, 7, and 8 suffered greater rates of COVID infection¹⁸ and deaths¹⁹ in addition to greater rates of unemployment²⁰ and, thus, economic instability. Of course children trying to learn amidst such disruption will have greater rates of learning loss. As such, wasting hours of instructional time on high-stakes testing will impose an inequitable burden on students and schools hardest hit by the pandemic while providing little useful data upon which to allocate funds or supports. Alternatively, we ought to be allocating resources to those schools who have long suffered from underfunding. We should make sure that these historically under-resourced schools have staff sufficient to support the sort of particularized assessments that will allow schools to meet the needs of individual students.

We Must provide Black and Brown Students with The Resources Needed to Address The Widening Opportunity Gap

While COVID did not create the opportunity gap among DC's students, it has highlighted the degree to which young Black and Brown people in low-income communities are the furthest from opportunity on various fronts – education, healthcare, job security, among others. For this reason, we must conceptualize the return to school not as a return to “normal,” but rather as an opportunity to address the structural failures that have perpetuated the opportunity gap. “Normal” was failing most students in DC's public schools, particularly Black and brown students, and students with disabilities.

We have heard from school leaders in DCPS and the charter sector note their hesitancy to spend federal relief dollars on personnel.²¹ We understand the concern that establishing staff positions with one-time funds creates funding pressures in the future. However, we believe there are ways to use these one-time funds to staff temporary positions – such as tutors and interventionists – that could provide individualized supports to those students furthest from opportunity.

Additionally, the concerns about one-time funding to support our most at-risk students raises questions about oversight of the at-risk funds that the city invests in marginalized students. In recent years, there have been recurring debates about the tracking of at-risk dollars and whether these funds are supplementing or supplanting school budgets.²² We hope that the Council will continue to provide thorough oversight of funds – both federal and local – that are intended to address the opportunity gap. The

Council must ensure that these dollars are used for student-facing supports that are distributed across the District with an eye toward racial justice.

The Pandemic Has Allowed the District to Reimagine Attendance And Engagement

During the pandemic, educators were required to reevaluate how they conceptualize presence and engagement in the classroom. Prior to March 2020, DC measured student attendance by physical presence in their classrooms.²³ However, as schools transitioned to virtual learning, the regulations surrounding attendance shifted to threshold for engagement that constituted “presence” for the purposes of school attendance.²⁴

Schools should always be a place where a child feels welcomed with open arms. However, several school attendance policies in the District are connected to punitive consequences that ultimately disincentivize attendance. To address this concern, CLC supports two changes to attendance regulations proposed by the Every Student Every Day Coalition (ESED):

1. Eliminate the 80/20 Rule by amending regulatory definition of “Present”²⁵ and “Partial School Day.”²⁶
2. Eliminate failure due to absences for DCPS students.

The 80/20 Rule requires all public schools to mark absent any student who does not attend at least 80% of the school day.²⁷ For secondary students, where absences are more acute, this means that a student missing just 78 minutes of school is marked absent for

the entire day.²⁸ Previous leaders of D.C.'s public schools have testified to the unnecessary burden of tracking this particular regulatory requirement.²⁹ Moreover, DCPS schools are required to implement a stark exclusionary disciplinary response for absences captured under the 80/20 Rule – grade retention and class failure.³⁰ This “failure due to absences” disincentivizes students who have reached the 30-day threshold under 80/20, as they know they will be retained regardless of future attendance, engagement, or academic success.³¹

If our goal is to create schools that are welcoming and supportive of students, there should never be a time when there is no reason to bother showing up because there is no amount of hard work or dedication that will lead to grade promotion. It is important to note that current DC attendance regulations relying on the 80/20 Rule disproportionately affect at-risk students. At-risk students report higher instances of feeling unsafe due to bullying, harassment, and embarrassment.³² They are more frequently enrolled in schools with poor facility conditions, are more disconnected and disengaged from adults in the school community, have limited transportation options, and have additional familial responsibilities.³³ Failing to address these issues only increases student absenteeism.³⁴

D.C.'s current attendance policies were enacted to increase student safety and engagement but have failed to meet this goal.³⁵ Attendance data shows that at-risk students³⁶ are more likely to incur absences compared to their peers.³⁷ In fact, in D.C., at-

risk students' absenteeism rates have grown by 6% since the 2015-2016 school year.³⁸ This steady rise requires us to focus on evidence-based policies and practices.

“Penalties for students who miss school may unintentionally worsen the situation...[by] further exclude[ing] them from learning opportunities.”³⁹ Eliminating the 80/20 Rule will allow schools to monitor students who are repeatedly absent for appropriate interventions without incorporating blanket punishments for students who are only absent for portions of the day. Schools would still be required to track which students are late for school and which classes are missed.⁴⁰ Changing the definitions of “present” and “partial school day” will not change attendance interventions within 5-A DCMR.⁴¹ The change would simply eliminate a policy that is not increasing attendance and is likely helping to suppress it.

The 30-Day Failure rule poses similar problems as it disincentivizes students from attending school and disproportionately affects at-risk students. Eliminating this regulation will allow schools to focus on evidence-based programs supportive of attendance interventions, eliminating a punitive system that would otherwise contradict those interventions. It will also align DC with other jurisdictions who have rejected purely punitive measures in favor of a similar evidence-based focus on attendance interventions.⁴² To maintain focus on interventions encouraging engagement, ESED recommends repealing 5-B DCMR §2103.3 through 5-B DCMR §2103.6, eliminating punitive requirements that DCPS schools fail or retain students after 30 unexcused

absences. In the alternative, if this proposed change is not accepted, ESED proposes shifting 5-B DCMR § 2103.3 to “unexcused **full-school-day** absences.”⁴³

Schools Should Continue to Offer a Virtual Learning Option for Families

After hearing the Mayor’s announcement that all students would return in to in person learning for the fall, we had many families reach out to our attorneys with questions and concerns.⁴⁴ Some are worried about sending their younger children to school unvaccinated.⁴⁵ Other parents are hesitant to vaccinate their children at all.⁴⁶ And other children live with caregivers who may have chronic illness or who are otherwise susceptible to complications from a COVID-19 infection and who may feel uncomfortable sending their children back into the school building. It remains unclear how many of our client families plan to send their children back to the school building next fall.

Not all children are eligible for vaccines just yet. We know that to date there is no vaccine approved for children younger than 12.⁴⁷ Also, vaccine hesitancy for young people may become a challenge in the future. Further, as more and more individuals become vaccinated questions will arise as to the length of time vaccines remain effective for, vaccine effectiveness against novel variants, and the possibility of breakthrough infection in fully vaccinated children and adults. We also assume that going forward, children and school staff will remain subject to quarantine after exposures. It is likely

that we will need a high-quality virtual option to ensure education continuity for all students. For all these reasons, we believe that it is imperative that DCPS and Charter Schools be prepared to offer high quality virtual learning to students through the next school year.

We understand that DCPS is still deciding who may qualify for virtual learning next year. However, we note that the lack of information about who will qualify for virtual learning has already been a source of confusion and frustration to our client families. It is unclear if families will need to provide medical documentation to engage in virtual learning. We also do not know if students will be able to switch from virtual learning to in person learning throughout the school year and vice versa. Will they be able to make the change from virtual to in-person annually, quarterly, or at will? Parents, especially those of children with disabilities who receive related services during the school day, are eager to learn as much information about the process as possible since modified schedules and service delivery methods left many students unable to access their Free and Appropriate Public Education (FAPE) last year.

Parents are not the only community members who are anxious to learn more about DCPS's proposed virtual learning requirements. Pediatricians who are looking to support the families they care for have asked our Medical-Legal partnership attorneys what documentation required by DCPS might look like since families are also reaching

out to them for verification documents. While we appreciate that these are tough questions, we would like to stress that families need answers to these questions as soon as possible to begin to plan for next year.

Therefore, we recommend that DCPS expedite their internal process to provide families with clear guidance as to what medical conditions or family situations will qualify them to continue virtual learning this Fall. Other specifications that should be outlined as soon as possible any rules about switching from virtual learning to in person during the school year. Families should also be presented with information about how related services will be delivered virtually – even if there is no change from how they were offered this past school year. We cannot stress how important it is to ensure all this information is in an easily accessible format, all in one place, and translated into at least Spanish and Amharic – if possible, more languages – to ensure parents have plenty of time to make these difficult decisions on behalf of their children.

Similarly, we ask that individual Charter LEA's provide clear guidance to parents about what services will be available for the fall term. We know that OSSE has charged each LEA with completing a very detailed Continuous Education Plan which is due in June. We also know that OSSE has to approve those Continuous Education Plans and post them to their site. However, these plans are very long and not easily searchable or digestible for individual families who need to make quick decisions about enrollment for their students.⁴⁸ We recommend that Charter LEA's as well as DCPS

communicate clearly the most important parts of these Continuous Education Plans to families and students. As we mentioned before, this information should be available in multiple languages and in an easy-to-read format.

We Support the Creation of a DCPS Virtual Academy

Our client families and DCPS's current model simulcast/combined model of engagement with students has been problematic, especially for those students with disabilities. However, we have also heard from some of our client students that virtual learning has allowed them to participate and engage with their schoolwork now more than ever. Virtual learning has been specifically helpful for our students who are young parents, those who work, or who have struggled to engage in traditional brick and mortar classrooms for a variety of reasons. To ensure that students with chronic illnesses or those who want to continue virtual learning have an opportunity to do we support for the 2021 Fall reopening DCPS creating a Virtual Academy.

The idea of a fully online school is not new. Many school districts around the country have been using this model usually through private providers.⁴⁹ A Virtual DCPS Academy would be a stand-alone school program where teachers can provide live instructional content solely to virtual learners. Students could be grouped by school into virtual classrooms to keep them engaged with peers. Virtual Academy teachers would be able to teach from home or from a central office building which

would solve issues of internet connectivity and resources for some. This model has been successfully implemented by other countries⁵⁰ and jurisdictions.⁵¹

We Must Address Long-Standing Issues with Compensatory Education in DC

For students with disabilities, closing the learning loss gap compounded by the pre-existing opportunity gap will require the use of compensatory education to make students whole. Prior to the pandemic, Children’s Law Center testified about ongoing issues for students with disabilities to access compensatory education awards. Not only was the pool of eligible compensatory education providers shallow, but compensatory education providers often complained that DCPS was late to make payments or would not pay them for services at all.

If we are to increase the pool of compensatory education providers, then DCPS must flex its policy that does not allow DCPS teachers to serve in that role.⁵² Teachers know their students better than anyone. And although we recognize that teachers are working harder than ever to provide a high-quality education to students virtually and in person, widening the compensatory education pool to allow DCPS teachers who choose to provide services before or after school would help to shorten the compensatory education provider gap. We recommend that DCPS waive this policy to hopefully create more opportunities for students with disabilities to make up for lost educational opportunities sustained due to the pandemic.

Students with Disabilities Need Flexible Compensatory Education Options

Using compensatory education in a flexible and holistic way will help students with disabilities make up for lost progress on their educational goals. Usually, compensatory education looks like additional hours of tutoring for a student until they can meet the goals in their Individualized Education Plan (IEP). The pandemic is providing OSSE with a new way to envision using compensatory education to make children whole. Children with disabilities have missed out on key social experiences, transition services, and specialized instruction. We suggest that OSSE look at ways in which we can use compensatory education in a creative way to support these learners. Some examples of uses of compensatory education awards could include after school and summer enrichment activities, specialized summer camp, and socio-emotional learning sessions with professionals.

Another way to use compensatory education to help students with disabilities meet their educational goals post pandemic is to extend eligibility past age 22. For many students, their last two years of special education has been virtual and without meaningful access to key related services, social experiences, opportunities for socio-emotional growth and transition activities. For those students, we recommend that OSSE offer extended eligibility to ensure these students have sufficient time to access the resources and services that they are entitled to under the IDEA.⁵³ Several other

jurisdictions have already decided to use extended eligibility during pandemic recovery to ensure older students with disabilities receive FAPE.

Schools Must Reimagine Pandemic Academic Recovery Must Address Mental Health and Socioemotional Learning

The students entering our school buildings in Fall of 2021 will be much different than those who left the school building in March of 2020. Schools must be ready to provide flexible, student centered solutions to behavioral issues and socioemotional learning challenges that are likely to occur. Since the Mayor's announcement that DCPS plans to bring all students back into school buildings in the fall with in-person learning, there has naturally been a great deal of focus on the logistics of fully returning to in-person learning in the fall, given the shifting public health situation. Important as it is to address issues of learning loss, enrollment and attendance, and student and teacher health and safety, we must also prioritize meeting students' behavioral health needs when they return to school buildings.

For school reopening to be successful, we must be prepared to address the toxic stress and trauma students have experienced during the pandemic and meet their behavioral health needs.⁵⁴ We should not be surprised if some students struggle to re-integrate back into in-person classrooms, to follow directions from teachers, or to get along with classmates they have not seen in over a year. If we are to successfully re-engage students and their families back into school communities, we must understand

challenging student behaviors as symptoms of behavioral health needs that have not been met – instead of as “problems” requiring punishment.⁵⁵ To do this, schools must have resources in place that enable them to identify and appropriately address students’ behavioral health needs.

DBH’s school-based mental health expansion program (SBMH) provides schools with a critical resource for identifying and addressing behavioral health needs across the school community broadly, as well as for individual students and teachers. SBMH takes a public health approach and partners with community-based organizations (CBOs) to bring behavioral health services to children in all public schools – both traditional and charter. SBMH is currently in its third year of implementation, reaching over 160 schools.⁵⁶ Even with school buildings closed, SBMH clinicians have been able to connect with students virtually and continue to deliver services.

For SY21-22 we ensure that all DC students have access to this vital resource. Expanding SBMH to all remaining DC public schools (traditional and charter) means that every school will have at least one full-time behavioral health clinician available on site to provide services from low level supports to clinical interventions.⁵⁷ Clinicians hold many essential responsibilities including assessing behavioral health needs of students, mapping out existing resources and gaps, and connecting students and families to services beyond school walls. Ensuring that clinicians have full-time positions helps promote a high-quality delivery of services.

Conclusion

Children’s Law Center appreciates the opportunity to provide this testimony on reimagining our public education system after the pandemic. We believe that if all students are to thrive, then the District should continue to place its focus on students with disabilities and Black and Brown students who have historically faced an incredible achievement gap. This gap, now compounded by the pandemic, reflects historical inequalities and a reality that for many District residents, race predicts opportunities, outcomes, and the distribution of resources for children and youth. An equitable recovery would ensure that those students who have historically received the fewest resources in our school communities because of their race and disability status would have the chance to access programming and supports that would not only correct the academic imbalance caused by COVID-19 and would also recognize the lack of academic progress and structural racism experienced by these students before the pandemic occurred. We appreciate that the Council is now consciously analyzing and prioritizing the goals of Race Equity into its work and we hope to continue to see its importance in the way we think about education. It is our sincere hope that the Council and District government maintains its focus on pandemic recovery generally through this lens of Racial Equity as we move forward in the coming months and years.

I thank you for the opportunity to testify and welcome any questions the Special Committee may have.

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 are not learning in school, or who have health problems that cannot 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 See Children’s Law Center Annual Report – 2020 at 4, *available at* <https://www.childrenslawcenter.org/sites/default/files/Final.childrens.law.annual.report.2020..pdf> . See also Letter from Mayor Bowser to Honorable Phil Mendelson, at 1 (May 18, 2020), *available at* <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC-GOVT-FY-2021-PROPOSED-BUDGET-VOLUME-1.pdf> (page 21) (recognizing the “distressing health disparities that exist across our nation and within our community”); Perry Stein, “Low Attendance and Covid Have Ravaged D.C.’s Poorest Schools – Fall Will Be About Reconnecting,” *Washington Post* (May 10, 2020), *available at* https://www.washingtonpost.com/local/education/in-dc-schools-spring-was-ravaged-by-covid-and-disconnection-fall-will-be-about-catching-up/2020/05/10/60ad1774-8b3f-11ea-8ac1-bfb250876b7a_story.html .

³ See President Obama’s commencement speech historically Black colleges and universities (May 16, 2020) (recognizing “the disproportionate impact of COVID-19 on our communities” and stating that “a disease like this just spotlights the underlying inequities and extra burdens that black communities have historically had to deal with in this country”), *available at* <https://www.nytimes.com/2020/05/16/us/obama-hbcu-speech-transcript.html?action=click&module=RelatedLinks&pgtype=Article> .

⁴ OSSE’s 2019 Students with Disabilities Landscape analysis highlights this problem. Looking at ELA PARCC scores, only two out of 20 students with Disabilities scored at grade level compared to their non-disabled peers who performed at grade level nine out of 20 students. See OSS, Students with Disabilities Landscape Analysis, at 8, (2019), *available at* https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/SWD%20Landscape%20Analysis%2010.10.19.pdf .

⁵ “The divide disproportionately affects Black, Latinx, and Native American students (who make up about 55% of disconnected students while representing about 40% of total students). It also disproportionately affects students in lower-income families: About 50% of disconnected students come from families with annual incomes less than \$50,000.” Common Sense Media, et al., “Looking Back, Looking Forward: What it will take to permanently close the K-12 digital divide,” at 5 (2021) (2021 Digital Divide Report), *available at* [k https://www.common Sense Media.org/sites/default/files/uploads/pdfs/final_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vfeb3.pdf](https://www.common Sense Media.org/sites/default/files/uploads/pdfs/final_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vfeb3.pdf) .

⁶ 2021 Digital Divide Report at 8 (“Historically, students caught in the digital divide have had overall GPAs about 0.4 points lower than students with access.”).

⁷ Email from Chancellor Ferebee to DCPS community (Aug. 13, 2020), *available at* <https://dcpsreopenstrong.com/updates/technology-tips-for-learning-at-home/> .

⁸ <https://dc.gov/release/mayor-bowser-announces-33-million-investment-provide-home-internet-low-income-dc-students#:~:text=Washington%2C%20DC-Mayor%20Bowser%20Announces%20%243.3%20Million%20Investment%20to%20Provide,to%20Low%20Income%20DC%20Students&text=OCTO%20is%20reaching%20out%20to,schools%20to%20the%20internet%20providers> .

⁹ The program is funded by a \$3.3 million grant from the Governor’s Emergency Education Relief Fund established by the 2020 federal Coronavirus Aid, Relief and Economic Security (CARES) Act.

¹⁰ DC State Board of Education, 2021 DC All-Teacher Survey at Table 7 (March 17, 2021), *available at* <https://sboe.dc.gov/sites/default/files/dc/sites/sboe/publication/attachments/2021-03-17-FINAL-DC%20State%20Board%20All-Teacher%20Survey%20Report%20%28March%202021%29.pdf> .

¹¹ Letter from Digital Equity in DC Education to Mayor Bowser (Jan. 11, 2021) (Digital Equity in DC Education Jan. 11 Letter), *available at* <https://drive.google.com/file/d/1BT2hnTODdlTxuFNrCVgGc9bPq5a6q-0H/view> .

¹² See Testimony of Chancellor Ferebee Before the Committee of the Whole (April 2, 2021), *available at* <http://chairmanmendelson.com/wp-content/uploads/2021/04/04.02.2021-DCPS-School-Level-Budget-Testimony.pdf> ; DCPS ESSER Overview, *available at* <https://dcpsbudget.com/budget-data/central-office-budgets/covid-19-agency-budget-additions/> ; Digital Equity in DC Education, March 2021 Update, *available at* <https://drive.google.com/file/d/1SdNCZkIYRre61SpSPOuaCzcq4Pa7p2w0/view> .

¹³ See OSSE Preliminary Allocations of ESSER Funds (updated April 1, 2021), *available at* https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/ESSER%20II%20%26%20Equivalent%20Allocation%20Table_4-1-21.pdf .

¹⁴ For illustration purposes, the Digital Equity in DC Education coalition estimated that “[f]illing gaps in device provision and IT support/asset management will require at least \$32 million” – and that estimate only covers DCPS’s needs. Digital Equity in DC Education Jan. 11 Letter at 2.

¹⁵ 2021 Digital Divide Report at 8.

¹⁶ These federal funds include the federal ESSER funds described above, the FCC’s Emergency Broadband Benefit program, and other federal relief funds that potentially could be used to help close the digital divide. See National Digital Inclusion Alliance, Digital Equity Stimulus Funding (March 25, 2021), *available at* <https://www.digitalinclusion.org/blog/2021/03/25/digital-equity-stimulus-funding>; FCC Emergency Broadband Benefit, *available at* <https://www.fcc.gov/broadbandbenefit>.

¹⁷ See Letter from Ian Rosenblum, Deputy Assistant Secretary for Policy and Programs, US Department of Education, to Interim Superintendent Shana Young, Office of the State Superintendent of Education of the District of Columbia (April 6, 2021), *available at*: https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/DC%20assessment%20response%20letter.pdf

¹⁸ See Total Positive Cases by Ward, COVID-19 Surveillance (last accessed May 25, 2021), *available at* <https://coronavirus.dc.gov/data> .

¹⁹ See Total Lives Lost by Ward, COVID-19 Surveillance (last accessed May 25, 2021), *available at* <https://coronavirus.dc.gov/data> .

²⁰ See Office of Labor Market Research and Performance, Department of Employment Services, “D.C. Labor Market Indicators: January 2015 - April 2021”, at 6 “Unemployment Rate by Ward,” (2021), *available at* https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DC%20Labor%20Market%20Indicators_April2021.pdf .

²¹ We know that a school community who supports its students is made up of more than just educators. For example, over the past year, librarians have been an instrumental part of reaching families and providing technical assistance and training to engage students with online learning. Most of the school level budget cuts released in May of 2021 showed that schools East of the River were going to be facing personnel shortages – including librarians – as compared to wealthier schools. See Swaak, T., *More DCPS schools could lose librarians next year. With \$14 mil in added funding, will they be added back?*, The DC Line (May 21, 2021), *available at* <https://thedcline.org/2021/05/20/more-dcps-schools-could-lose-librarians-next-school-year-with-14m-in-added-funding-will-they-be-brought-back/> .

²² In fact, we are still concerned that increases in the Uniform Funding Per Pupil Formula will not be used to support the at-risk students it was intended to protect. By allowing these funds to go directly to the LEA instead of individual schools, we continue to be in danger of having those critical funds absorbed by administrative costs and other expenses.

²³ See 5-A DCMR §2199 (defining ‘present’ as “a single school day on which the student is *physically* in attendance [...]” (emphasis added)).

²⁴ See Office of the State Superintendent of Education, “Guidance: Collecting Attendance for the 2020-21 School Year” (Oct. 13, 2020), available at:

[https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2020-](https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2020-21%20School%20Year%20Attendance%20Guidance%2010.13.20.pdf)

[21%20School%20Year%20Attendance%20Guidance%2010.13.20.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2020-21%20School%20Year%20Attendance%20Guidance%2010.13.20.pdf); see also District of Columbia Public Schools, “Reopen Strong – Virtual Attendance Guidance,” available at [https://45biv636w8lm1agg3ozqtg1-](https://45biv636w8lm1agg3ozqtg1-wpengine.netdna-ssl.com/wp-content/uploads/2020/08/FINAL_DCPS_Virtual_Attendance_Guidance.08.21.20.pdf)

[wpengine.netdna-ssl.com/wp-](https://45biv636w8lm1agg3ozqtg1-wpengine.netdna-ssl.com/wp-content/uploads/2020/08/FINAL_DCPS_Virtual_Attendance_Guidance.08.21.20.pdf)

[content/uploads/2020/08/FINAL_DCPS_Virtual_Attendance_Guidance.08.21.20.pdf](https://45biv636w8lm1agg3ozqtg1-wpengine.netdna-ssl.com/wp-content/uploads/2020/08/FINAL_DCPS_Virtual_Attendance_Guidance.08.21.20.pdf) .

²⁵ 5-A DCMR § 2199.

²⁶ 5-A DCMR § 2199. ESED proposes defining “Partial School Day” because it is referenced later in 5-A DCMR § 2101.3. Partial Schools days will now only be tracked for data purposes and will no longer be tied to punitive measures.

²⁷ 5-A DCMR § 2199.

²⁸ Assuming a standard 6.5-hour school day.

²⁹ See Perry Stein, *Is D.C.’s 80/20 Attendance Rule Unfair to Students*, Washington Post (Dec. 29, 2017)

[https://www.washingtonpost.com/local/education/is-dcs-8020-attendance-rule-unfair-to-](https://www.washingtonpost.com/local/education/is-dcs-8020-attendance-rule-unfair-to-students/2017/12/29/b328d8ba-e517-11e7-833f-155031558ff4_story.html)

[students/2017/12/29/b328d8ba-e517-11e7-833f-155031558ff4_story.html](https://www.washingtonpost.com/local/education/is-dcs-8020-attendance-rule-unfair-to-students/2017/12/29/b328d8ba-e517-11e7-833f-155031558ff4_story.html) (quoting former DCPS Chancellor Antwan Wilson and former SBOE member Kamili Anderson).

³⁰ 5-B D.C.M.R. § 2103.3 and 5-B D.C.M.R. § 2103.6.

³¹ *Id.*

³² Valerie L. Marsh, *Understanding Chronic Absenteeism: What Research Tells Us about Poor Attendance at School*, American Federation of Teachers (AFL-CIO) (Winter 2019–2020)

<https://www.aft.org/ae/winter2019-2020/marsh> .

³³ *Id.*

³⁴ *Id.*

³⁵ See South Capitol Street Memorial Amendment Act of 2012, 2 D.C. Code § 2157 (2012).

³⁶ Office of the State Superintendent of Education, *District of Columbia Attendance Report: 2018–2019 School Year*, at 25 (2019) [https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2018-](https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2018-19%20School%20Year%20Attendance%20Report.pdf)

[19%20School%20Year%20Attendance%20Report.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2018-19%20School%20Year%20Attendance%20Report.pdf) (outlining that at-risk students are defined as those receiving Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP); students who are homeless: students under the care of CFSA; and students who are in high school and are at least one year older than the expected age for their grade).

³⁷ *Id.*

³⁸ *Id.* As compared to their peers, students not considered at-risk absenteeism rates only grew by 1.3% since the 2015- 2016 school year.

³⁹ NATIONAL FORUM ON EDUCATION STATISTICS, *Every School Day Counts: The Forum Guide to Collecting and Using Attendance Data*, 1 (Feb. 3, 2009), <https://nces.ed.gov/pubs2009/2009804.pdf> .

⁴⁰ 5-A D.C.M.R. 2101.3(h). See 5-A D.C.M.R. § 2299 (requiring 120 hours of in-seat attendance to earn a Carnegie Unit, therefore attendance in each class period must be tracked).

⁴¹ For example, the interventions and tracking required under 5-A DCMR §2103 *et. seq* remain the same.

⁴² P.G. County Public Schools, Montgomery County Public Schools, and New York City Public Schools have each made this change. See PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS, ADMINISTRATIVE PROCEDURE 5113: STUDENT ATTENDANCE, ABSENCE AND TRUANCY (Mar. 20, 2021)

<https://offices.pgcps.org/generalcounsel/index.aspx?id=179107> (illustrating that P.G. County public schools made a similar shift in 2018); see also Lindsay Watts, *After State Audits Show Excessive Student Absences, PGCPs Relaxes Attendance Policy*, FOX 5 DC (Dec. 26, 2018) <https://www.fox5dc.com/news/after-state-audits-show-excessive-student-absences-pgcp-relaxes-attendance-policy>; see also Montgomery County Public Schools, MD JEB-RA, Placement, Promotion, Acceleration, and Retention <https://www.montgomeryschoolsmd.org/departments/policy/pdf/jebra.pdf> (last visited Apr. 7, 2021) (illustrating that Montgomery County does not tie attendance to punitive measures); see also NYC DEP'T OF EDUC., *Attendance*, <https://www.schools.nyc.gov/school-life/school-environment/attendance> (last visited Mar. 23, 2021) (illustrating that a jurisdiction as large as New York City does not require attendance to be directly tied to promotion).

⁴³ The alternative change would read: DCPS students accumulating thirty (30) or more unexcused **full-school-day** absences within a full school year shall only be promoted if they meet an exception set forth in D.C. Official Code §§ 38-781.02(c) or 38-781.05.

⁴⁴ Franklin, J., *DC public schools will fully reopen by fall, mayor says*, WUSA9, (April 8, 2021), available at <https://www.wusa9.com/article/news/education/bowser-expects-dc-schools-fully-reopen-fall-2021/65-033ad701-8c4e-47a8-9613-00ee57afd539>.

⁴⁵ Although we know that some vaccines have been approved for kids 12 and over, it is unclear if vaccines will be available for younger before next year. Kennedy, M., *Fauci says he expects vaccines for younger children by the end of year or early 2022*, NPR (May, 20, 2021), available at <https://www.npr.org/sections/coronavirus-live-updates/2021/05/20/998533237/fauci-says-he-expects-vaccines-for-younger-children-by-end-of-year-or-early-2022>.

⁴⁶ This Washington Post opinion piece gives some of the reasons why parents are experiencing vaccine hesitancy. Calarco, J., *Some parents won't vaccinate their kids against COVID. Here are their reasons* (March 29, 2021), Washington Post, available at <https://www.washingtonpost.com/outlook/2021/03/29/parents-oppose-coronavirus-vaccine/>.

⁴⁷ See Kennedy, *Supra* note 33.

⁴⁸ Here are some examples of the Continuous Education Plans from SY 20-21. Although very detailed, these would be difficult for individual families to access and digest. We recommend that a family facing summary be developed and disseminated. See OSSE, *LEA Continuous Education Plans*, available at <https://osse.dc.gov/publication/lea-continuous-education-plans>.

⁴⁹ Before the pandemic, there were concerns with the quality of for-profit online learning academies already operating. Their reported educational outcomes were below average. Although this is an old article, it summarizes some of our concerns about teacher and education quality. Please see Kamenetz, A., *Virtual Schools Bring Real Concerns About Quality* (February 2, 2015), NPR, available at <https://www.npr.org/sections/ed/2015/02/02/382167062/virtual-schools-bring-real-concerns-about-quality>.

⁵⁰ Some school districts in Ontario, Canada are using this model to deliver online content to students. See Wong, J., *Centralized virtual schools and synchronous delivery: How remote learning is shaping up for fall* (August 24, 2020), CBC, available at <https://www.cbc.ca/news/canada/e-learning-fall-update-1.5695047>.

⁵¹ Fairfax County has announced they will have a virtual program available to students who qualify due to a medical condition. The program will be staffed by teachers who are fully virtual. Fairfax County Public Schools. *Virtual Program School Year 2021-2022*, available at <https://www.fcps.edu/registration/virtual-program-school-year-2021-22>.

⁵² Employees of the District of Columbia are not able to provide compensatory education services. See OSSE, *Parent Guide to Independent Services* (2020), available at https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Parent_Guide_to_Independent_Services_August_2020_v21.pdf at 23.

⁵³ Extended eligibility is a recognized remedy available to individuals under the IDEA. See 34 CFR § 300.106.

⁵⁴ See Stein, P, *Low Attendance and Covid-19 Have Ravaged D.C.'s Poorest Schools – Fall Will Be About Reconnecting* (May 10, 2020), Washington Post, (“And when students do finally return to the classrooms, [DCPS Chancellor] Ferebee said the immediate focus will be on students’ mental health, addressing the trauma that many students have experienced during the health emergency... ‘It’s traumatic...Students have experienced trauma and stress,’ Ferebee said in an interview.”), available at https://www.washingtonpost.com/local/education/in-dc-schools-spring-was-ravaged-by-covid-and-disconnection-fall-will-be-about-catching-up/2020/05/10/60ad1774-8b3f-11ea-8ac1-bfb250876b7a_story.html.

⁵⁵ Kirp, D., *A four year old child is not a problem. And Expulsion is not a solution.* (April 25, 2021), The New York Times, available at <https://www.nytimes.com/2021/04/25/opinion/preschool-children-mental-health.html>.

⁵⁶ For more information, please see our FY21 DBH performance oversight testimony available at https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/TWeerasingha-Cote_CLCTestimony_DBHOversightHearing_FINAL.pdf.