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Testimony Before the District of Columbia Council  
Committee of the Whole  
June 7, 2021

Public Hearing:  
Budget Oversight Hearing  
Office of the Ombudsperson for Children

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## Introduction

Good afternoon Chairman Mendelson and Councilmembers. My name is Judith Sandalow. I am the Executive Director of Children's Law Center<sup>1</sup> and a resident of the District. I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a stable family, good health and a quality education. With nearly 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.

I am here today to ask the Council to ensure the Office of the Ombudsperson for Children is fully funded in next year's budget, with \$800,000 in local recurring dollars. The bill creating the Office of the Ombudsperson for Children ("Ombudsperson for Children") became law just a few months ago – thanks to this Council taking the bold step of overriding the Mayor's veto. By passing this bill unanimously in December and then overriding the Mayor's veto 12 to 1 in February, the Council recognized the urgency and importance of establishing the Ombudsperson for Children to meeting the needs of DC's foster children.<sup>2</sup> The Council must now take this legislation over the finish line by committing the \$800,000 in local recurring dollars needed to fully fund the Ombudsperson for Children.<sup>3</sup>

The Ombudsperson for Children will serve DC's most vulnerable children and families: those involved with DC's child welfare system. This includes DC's foster

children – children removed from their homes and their families by the District government. By taking these children away from their families, the District and its government take responsibility for their lives and well-being. These are the children to whom the District owes the highest levels of duty and care. For far too long, the District has struggled to fulfill these duties and this responsibility. Too many of our foster children are suffering from high levels of placement instability, behavioral health challenges, poor education outcomes, and insufficient preparation for independent living. Failing to meet the needs of foster children in these basic and foundational areas often means failing to provide them with a path to a happy, healthy, and stable future.

The Ombudsperson for Children is a critical tool this Council needs to be able to fulfill its duty to DC's foster children and exercise effective oversight of DC's child welfare system – a system that encompasses many agencies beyond just the Child and Family Services Agency (CFSA). The Department of Behavioral Health (DBH), the Department of Health Care Finance (DHCF), the Office of the Superintendent of Education (OSSE), District of Columbia Public Schools (DCPS), the Department of Youth Rehabilitation Services, the DC Housing Authority, and the Metropolitan Police Department all have a role to play in ensuring the District fulfills its responsibilities to DC's foster children and their families. The Ombudsperson for Children can help the Council hold all relevant city agencies accountable for meeting the needs of child welfare-involved families and actively facilitate interagency cooperation.

For the past twenty-five years, Children’s Law Center attorneys have served as guardians ad litem for children in the care and custody of CFSA. At any given time, we represent approximately half the children involved with CFSA – several hundred children in foster care and protective supervision each year.<sup>4</sup> In addition to representing children in individual cases, we have also worked to support systemic change. Over the years, we have engaged with the child welfare system at every level of government. We work closely with CFSA; we sit on the Mayor’s Advisory Committee on Child Abuse and Neglect; we are heavily engaged with the Council through the legislative, oversight, and budget processes; we meet regularly with CFSA’s court monitor; and we stay in close contact with child welfare advocates and stakeholders throughout the city. We have seen a great deal of progress in DC’s child welfare system – but many of our foster children are still struggling to have their needs met and are aging out into instability and despair.<sup>5</sup>

Decades of experience have led us to conclude DC’s child welfare system has a critical oversight gap – and the Ombudsperson for Children is the right solution to fill this gap.

### **The Ombudsperson for Children Will Both Identify Systemic Issues and Address Everyday Problems**

The Office of the Ombudsperson for Children is designed to support child welfare-involved children and families at both the systemic and individual levels. The functions of the Ombudsperson for Children will be split between a main office, which

would focus on analyzing and reporting on systemic issues (including those related to interagency communication and coordination), and a co-located office onsite at CFSA, which would work with individual families on problem-solving, information-sharing, and navigating the system in specific cases.

The two-part structure of the Office also allows the main office to maintain some distance and independence from CFSA and the executive administration – even as the co-located office builds relationships within the agency to facilitate problem-solving in individual cases. Independence is critical to the Ombudsperson for Children fulfilling its mission and effectively extending Council oversight over agency actions that impact foster children and their families. Families, caseworkers, and other stakeholders must be able to share their concerns and their experiences with the Ombudsperson for Children without fearing retaliation.

Although CFSA has made significant efforts in recent years to focus on prevention services that aim to keep families together and avoid removals whenever possible,<sup>6</sup> the fact remains that families involved with DC's child welfare system are facing the possibility that their children may be taken away from them. This is a terrifying prospect that inevitably creates a significant power imbalance between CFSA and the families it serves. The Ombudsperson for Children can be an essential tool for re-balancing this power dynamic, providing families with a safe place to get

information and raise concerns – but only if families believe the Ombudsperson for Children is an independent entity that can be trusted to help them.

Our prior testimonies explain, in detail, the types of systemic issues and the individual case problems the Ombudsperson for Children will be able to address.<sup>7</sup>

Examples of systemic issues include:

- the ongoing placement crisis, which has resulted in foster children bouncing through multiple foster homes every year, running away, or spending nights at homeless shelters or the agency building;
- a significant number of foster children requiring psychiatric hospitalization each year;
- low high school graduation rates among foster children; and
- foster youth aging out into unstable housing situations or homelessness.

Solutions to these persistent problems will require action and coordination between multiple District agencies and the Council. The Ombudsperson for Children is uniquely positioned to identify areas where interagency coordination must be improved to better meet the needs of DC's foster children.

The need for the Ombudsperson for Children is particularly acute with respect to systemic issues impacting crossover youth – children who experience both the foster care system and juvenile justice system. Crossover youth experience significant challenges to their well-being and stability, too often rolling from one system into the

next: from foster care to DC's homeless or juvenile justice systems; from the juvenile justice system to prison. They face even greater barriers to positive outcomes in adulthood – including more difficulties in school and higher unemployment rates – than foster care youth involved in only one system. Currently, no District agency comprehensively tracks crossover youth or conducts systemic analyses on factors affecting their outcomes. As a result, these youth and their problems have remained largely invisible to the Council and the agencies responsible for their well-being. The Ombudsperson for Children is explicitly tasked by law to report annually on crossover youth and identify systemic issues impacting their outcomes.<sup>8</sup>

The Ombudsperson for Children will also be able to help children and families navigate the complexities of the child welfare system and work to resolve everyday problems. Such problems could include overcoming bureaucratic hurdles to obtaining essential items (such as shoes, underwear, hygiene products, or school supplies); facilitating smooth transitions between schools when necessitated by placement changes; connecting children and families to hard-to-find behavioral health services; and figuring out where to get additional support for achieving critical milestones such as obtaining a driver's license, work permit, or applying for college. To be clear, CFSA and other DC agencies often offer programs and services designed to meet all these needs and more – but children and families sometimes struggle to connect with the right person or to get their needs met in a timely manner. In the past, we have

sometimes had to escalate these issues to the court in order to get the relief our foster children clients needed. These everyday problems have a profound impact on a child but should not require formal court hearings to resolve. Children, families, and agency staff need a place to informally work through and resolve these conflicts quickly together – the Ombudsperson for Children will provide that space and the necessary support.

### **The End of Federal Court Oversight in *LaShawn* Makes Funding the Ombudsperson for Children Urgent**

For the past thirty years, CFSA has been under the supervision of a court-appointed monitor as a result of *LaShawn A. v. Bowser* (“*LaShawn*”) – a federal class action lawsuit filed in 1989 on behalf of abused and neglected children in the District of Columbia.<sup>9</sup> In 1993, the court issued an extensive remedial order imposing numerous requirements, changes, and reforms in every area of the child welfare system and tasked the Center for the Study of Social Policy (“CSSP”) to monitor and report on the District’s progress in implementing these reforms.<sup>10</sup> As the court monitor, CSSP has been able to collect data, documents, and other information from CFSA to a certain extent. CSSP has, in turn, provided this information to the public and the Council in the form of regular reports and testimony.<sup>11</sup>

On June 1, 2021, CFSA entered into a final settlement in *LaShawn*, ending CSSP’s role as the court monitor. Although CSSP has some lingering reporting obligations over the next year or so, this important source of information and analysis will likely end by



June 2022.<sup>12</sup> Losing the court monitor and its regular publication of detailed analysis and data reports will significantly impact the Council's ability to exercise oversight over CFSA. Performance oversight simply cannot cover the depth and complexity that the court monitor's reports do – nor does the testimony of the agency provide the independent insight into the agency's performance that the court monitor does.

The end of federal court oversight in *LaShawn* means that funding and standing up the Ombudsperson for Children in this budget cycle is all the more urgent. The Ombudsperson for Children will have direct access to CFSA data in the same way that the court monitor did and will be responsible for regularly reporting data trends and analysis to the Council, just as the court monitor did. Without the court monitor, the Council needs the Ombudsperson for Children to be able to exercise effective oversight over CFSA and take any necessary action to ensure the needs of DC's foster children and their families are being adequately met.

## **Conclusion**

For these reasons, I strongly urge the Council to ensure the Ombudsperson for Children is fully funded in next year's budget with \$800,000 in local recurring dollars. Because the Office of the Ombudsperson for Children will be a new legislative office, the Council will need to create a new budget chapter in which to place the funding. This work cannot wait – it must be done now, during this budget cycle.

Further, once the Ombudsperson for Children is fully funded, the Council must remain focused on this Office and immediately begin the appointment process. The Ombudsperson for Children is appointed by the Council. The Council must therefore conduct an expeditious search for the best candidates and select an individual with the full set of skills and experiences necessary to make this Office a success. The selection of the first Ombudsperson for Children will be critical to the long-term success of this Office. The first Ombudsperson for Children will be responsible for creating all the procedures and operational structures of the Office, staffing the Office, and building initial relationships across the District government. The Ombudsperson for Children must be able to balance all of these essential functions and do them effectively for this Office to realize its purpose and provide meaningful services to foster children and their families. The responsibility for selecting the right person for the job lies squarely with the Council, and we urge you to make this a priority in the months to come.

Thank you for the opportunity to testify today. I welcome any questions the Council may have.

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<sup>1</sup> Children’s Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to 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 more than 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

<sup>2</sup> The Office of the Ombudsperson for Children Establishment Amendment Act of 2020 was introduced and referred to the Committee on Human Services in September 2019. A public hearing on the bill was held in October 2019. The bill was marked up in November 2020. The first reading was December 1, 2020, and all Council members voted in favor of the bill with no amendments. Its final reading was held on December 15, 2020 at which, again, all council members voted in favor of the bill. The bill was transmitted

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to the Mayor on December 29, 2020. The Mayor vetoed the bill on January 13, 2021. On February 2, 2021, all council members but one voted to override the Mayor’s veto, and the bill was enacted as A23-0617. It was transmitted to Congress on February 16, 2021 and became effective on April 23, 2021. See DC Legislative Management System (LIMS), B23-0437, available at: <https://lims.dccouncil.us/Legislation/B23-0437>.

<sup>3</sup> The office would cost \$577,000 in FY 2021, \$799,000 in FY 2022, \$801,000 in FY 2023, and \$828,000 in FY 2024. This totals \$3,005,000 through FY 2024. The primary costs include \$1,834,000 to pay salaries for the Ombudsperson and support staff and \$453,000 for their fringe benefits. See Government of the District Of Columbia, Office of the Chief financial Officer, *Memorandum: Financial Impact Statement – Office of the Ombudsperson for Children Establishment Act of 2020* (November 23, 2020), p. 4, available at: [http://app.cfo.dc.gov/services/fiscal\\_impact/pdf/spring09/FIS%20Office%20of%20the%20Ombudsperson%20for%20Children.pdf](http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS%20Office%20of%20the%20Ombudsperson%20for%20Children.pdf).

<sup>4</sup> The term “protective supervision” means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision. D.C. Code § 16-2301(19).

<sup>5</sup> Tami Weerasingha-Cote, Children’s Law Center, Testimony Before the District of Columbia Council Committee on Human Services, (February 25, 2021), available at: [https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/TWeerasingha-Cote\\_Children%27s%20Law%20Center%20Testimony%20for%20Feb.%2025%2C%202021%20CFSA%20versight%20Hearing\\_FINAL.pdf](https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/TWeerasingha-Cote_Children%27s%20Law%20Center%20Testimony%20for%20Feb.%2025%2C%202021%20CFSA%20versight%20Hearing_FINAL.pdf).

<sup>6</sup> *Id* at p. 5-10.

<sup>7</sup> *Id*; Judith Sandalow, Children’s Law Center, Testimony Before the District of Columbia Council Committee on Human Services, (October 28, 2019), available at: <https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/FINAL%20CLC%20Testimony%20before%20the%20DC%20Council%20on%20B23-437%20%20.pdf>.

<sup>8</sup> *Office of the Ombudsperson for Children*, DC Act 23-617, Sec. 108(b)(3).

<sup>9</sup> *LaShawn A v. Kelly*, 887 F. Supp. 297, 298 – 300 (D.D.C. 1995).

<sup>10</sup> *Id*.

<sup>11</sup> Center for the Study of Social Policy, *Class Action Litigation: Washington DC’s Child and Family Services Agency Reports*, available at: <https://cssp.org/our-work/projects/our-projects/class-action-litigation-washington-dcs-child-and-family-services-agency/>.

<sup>12</sup> *LaShawn A. v. Bowser*, Civil Action No. 89-1754 (TFH) Settlement Agreement (August 2020), available at: [https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Aug%202020\\_LaShawn%20A%20v%20Bowser%20Settlement%20Agreement%20%28Fully%20Executed%29.pdf](https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Aug%202020_LaShawn%20A%20v%20Bowser%20Settlement%20Agreement%20%28Fully%20Executed%29.pdf).