



Testimony Before the District of Columbia Council
Committee of the Whole
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Public Hearing:
Bill 24-135, Non-Public Student Educational Continuity Amendment Act of 2021

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Good morning, Chairman Mendelson and members of the Committee. My name is Danielle Robinette. I am a Policy Attorney at Children’s Law Center, a resident of Ward 6, and, prior to law school, I was a public-school teacher. I am testifying today on behalf of the Children’s Law Center which fights so every DC child can grow up with a stable 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.¹

Thank you for the opportunity to testify today regarding Bill 24-135, Non-Public Student Educational Continuity Amendment Act of 2021. This bill addresses the crucial educational needs of students at the margins of the margins. While a series of emergency and temporary bills have protected this vulnerable group of students in recent years, we appreciate the Committee for working to make this change permanent.

Bill 24-135, Non-Public Student Educational Continuity Amendment Act of 2021 makes a small, but important change to D.C. Code § 38-302(e). This change, if passed, would expand the definition of resident for the purposes of assessing tuition for students who live outside of the District while remaining enrolled in a DCPS or public charter school. Traditionally, students who reside outside the District of Columbia, but are enrolled in a DC public or public charter school are charged tuition. For the purposes of this tuition determination a minor student is deemed to not be a resident of DC that student

“does not have a parent, guardian, custodian, or other primary caregiver who resides in the District of Columbia.”²

However, D.C. Code creates exceptions for certain groups of students who do not meet the above definition but are still to be considered residents for the purposes of assessing tuition. As relevant here, § 38-302(e) includes students in the care and custody of the District of Columbia who cease to be in that care and custody due to an establishment of permanency outside the District. In other words, a child in foster care who achieves permanency outside of DC through adoption, guardianship, or custody agreement is permitted to continue attending their DC school through the end of that school’s educational program without triggering the requirement of tuition.³ This Code section is crucial to ensuring educational continuity does not conflict with permanency for students in foster care. This provision is particularly important in the DC context as the Child and Family Services Agency (CFSA) places roughly 50% of children in their care outside DC.⁴

Since the 2015 inclusion of § 38-302(e) in the District’s non-resident tuition law,⁵ however, a gap surfaced for students in care who are enrolled in a DCPS or public charter school but attend a non-public school. For students with disabilities, there are cases in which the school cannot meet the education needs outlined in the student’s Individualized Education Program (IEP). In such cases, the student’s IEP team may determine that the most appropriate placement for that student would be in a non-public

school. When the student's IEP team decides that a non-public school is warranted, the student's public school of origin is responsible for paying the student's tuition at the non-public school.⁶ However, when a student in foster care has special education needs so significant that they require a non-public school, DC Code § 38-302(e) lacked the clarity needed to ensure that DC continued to pay the student's non-public tuition in cases where the student achieves permanency outside the District.

This lack of clarity in the law led to DC LEAs declining to pay the non-public tuition for students who achieved permanency outside of DC. While DC Code § 38-302(e) required that the student be allowed to finish the education program at their DC public or public charter school, LEAs did not interpret this to mean that LEAs were also obligated to pay the student's non-public tuition. This interpretation created several perverse incentives for students and their families having to navigate the complexities of the foster care system and the special education system. For many families, paying tens of thousands of dollars in non-public tuition is simply not feasible. In these situations, families were forced to choose between achieving permanency or maintaining their student's placement in the setting best suited to meet their educational needs.

In early 2020, when the Council learned of this gap in the law, it passed emergency⁷ and temporary⁸ legislation to ensure that this vulnerable group of students was protected from education disruption or an overwhelming tuition bill. This legislation amended DC Code § 38-302(e) to clarify that students enrolled in a DC public or public charter school

but attending a non-public school are considered residents for the purposes of assessing tuition. Further, it amends § 38-302(e) to specify that this exception applies for the remainder of the school year in which the change in care and custody occurs and through the end of the following school year. These two amendments provide both immediate educational continuity and a reasonable timeline by which families can transition to alternative arrangements for their student.

When the above temporary legislation expired in January 2021, the Council again passed emergency⁹ and temporary¹⁰ legislation to ensure educational continuity for these students. In November 2021, a third round of emergency legislation¹¹ was introduced to avoid a lapse in coverage when the second round of legislation expired on December 1, 2021. While these temporary fixes have ensured financial and educational stability for these students during a tumultuous period, it is not a sustainable solution. As each new expiration date approaches, families worry that they will unexpectedly on the hook for an expensive tuition bill. For this reason, we appreciate the Council's work to make this legislative fix permanent. Passage of Bill 24-135 will provide families with a clear right to educational continuity for their student as well as a timeline by which they can plan for their student's educational future.

Thank you for this opportunity to testify and I welcome any questions.

¹ Children’s Law Center fights so every child in DC can grow up with a stable 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 D.C. Code § 38-302(a)(2).

³ See § 38-302(e)

⁴ See Brenda Donald, Child and Family Services Agency, “Performance Oversight Hearing Fiscal Year 2020-2021: Responses to Hearing Questions,” at 92 (February 119, 2021), available at:

[https://dccouncil.us/wp-content/uploads/2021/03/FY20-](https://dccouncil.us/wp-content/uploads/2021/03/FY20-21_CFSA_POH_PreHearing_Responses_FINAL2.pdf)

[21_CFSA_POH_PreHearing_Responses_FINAL2.pdf](https://dccouncil.us/wp-content/uploads/2021/03/FY20-21_CFSA_POH_PreHearing_Responses_FINAL2.pdf) (stating, in response to question 81, that in FY20 there were 693 children in foster care and, of those, 347 were residing with a foster care provider outside of DC).

⁵ See “Fiscal Year 2015 Budget Support Act of 2014” § 4042.

⁶ 34 CFR § 300.146.

⁷ B23-0650 “Non-Public Student Educational Continuity Emergency Amendment Act of 2020.”

⁸ B23-0651 “Non-Public Student Educational Continuity Temporary Amendment Act of 2020.”

⁹ B24-0004 “Non-Public Student Educational Continuity Emergency Amendment Act of 2021.”

¹⁰ B24-0005 “Non-Public Student Educational Continuity Temporary Amendment Act of 2021.”

¹¹ B24-0485 “Non-Public Student Educational Continuity Second Emergency Amendment Act of 2021.”