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Testimony Before the District of Columbia Council
Committee of the Whole
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Public Roundtable:
Special Education Policies for Students with Disabilities

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Introduction

Good morning, Chairman Mendelson, and members of the Committee. My name is Danielle Robinette, and I am a policy attorney at Children’s Law Center. I am a resident of the District 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.¹ In our medical legal partnership, Healthy Together, we represent parents and families of students with disabilities in their efforts to enforce their student’s rights under the Individuals with Disabilities Education Act (IDEA). Through this case work, we identify systemic issues that arise for students with disabilities in the District. Our comments are grounded in the experiences of our attorneys and clients who interact with the special education system regularly.

As the Committee has identified, special education students are regularly behind their non-disabled peers.² Moreover, the challenges of the public health emergency have had a deep – and diverse – impact on students with disabilities.³ We appreciate the Committee for holding this roundtable to hear from stakeholders regarding the challenges that students with disabilities face and to discuss possible solutions. In preparation for today’s hearing, we spoke with our special education case handling attorneys to identify those issues that are arising most often in current cases. From these conversations, two themes arose – insufficient staffing and an increase in incidents of

informal discipline. Our testimony outlines issues raised by our cases and connects these concerns to our policy advocacy regarding the regulation of seclusion and restraint.

Staffing Shortages

Across the country, schools are facing staffing shortages.⁴ And DC is no exception.⁵ For student with disabilities, staffing shortages are preventing students with disabilities from receiving the services to which they are entitled under federal law. For example, both instructors in the deaf/hard-of-hearing program at Payne Elementary School have quit this school year. The school has not offered our client any options to make up for services missed when the classroom was without a qualified instructor. Several clients enrolled in charters have missed related services such as speech therapy and behavioral support services due to a lack of speech pathologists and school social workers, respectively.

The purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.”⁶ For students with disabilities, missed services mean that they have limited or no access to the general education curriculum. If the education sector hopes to close gaps between students with disabilities and their nondisabled peers, we cannot continue to skip the services that allow them to access their education. We urge the Council, along with the education agencies, the charter sector, the Washington Teachers Union, and other community stakeholders to

develop a comprehensive strategy for addressing these staffing shortages and to ensure that students with disabilities have the support and services to which they are entitled.

Informal Discipline

Regarding informal discipline, our attorneys report a recent increase in incidents where students with disabilities are being sent home early from school or asked to stay home in response to behavior or discipline incidents. In these cases, parents are not being told that their student has been suspended, but rather that they need to go home to “cool off.” However, under the Student Fair Access to School Amendment Act of 2018 (SFASAA),⁷ when a student is sent home for less than half of a school day for disciplinary reasons, they have been excluded from school per an “involuntary dismissal.”⁸ Furthermore, SFASAA is clear that an involuntary dismissal is an “out-of-school suspension.”⁹

In our clients’ experiences, these *de facto* suspensions are not being documented as formal discipline incidents. One parent even reported not knowing that their child had been suspended until their OSSE bus did not arrive to pick the student up for school. Under SFASAA, school discipline policies must include plans for continuity of education while a student is suspended and must require school personnel facilitate parent involvement in response to an incident resulting in a disciplinary action.¹⁰ If a parent does not even know that their student has been suspended, there was not meaningful involvement of the parent.

While this is a concerning trend for all students, for students with disabilities, we are concerned that informal suspensions reflect a failure to conduct the manifestation review required by local and federal law.¹¹ SFASAA and the IDEA require that schools “take special consideration regarding the exclusion of a student with a disability.”¹² Schools must conduct a manifestation determination review to determine whether the discipline incident that resulted in exclusion was the result of the student’s disability and/or a failure of the school to implement the child’s Individualized Education Plan (IEP).¹³ If the incident was a manifestation of the student’s disability, the school is required to perform a functional behavioral assessment and implement a behavioral intervention plan for the student to prevent future school exclusion.¹⁴

Further, if these *de facto* suspensions are not being documented for students and parents, there is reason to be concerned that these incidents may not be documented for the purposes of OSSE’s annual school discipline report. We urge the Council to maintain close oversight over the reporting process to ensure full compliance with SFASAA.

Regulating Seclusion and Restraint

Long before this rise in *de facto* suspensions, we have been concerned about the lack of clarity regarding discipline policies for students with disabilities. OSSE has spent more than seven years revising Chapter 30 of the DCMR regarding special education.¹⁵ Children’s Law Center has provided input to OSSE on these revisions in 2014 focus groups, the advanced notice of public rulemaking in 2017, the first proposed rulemaking

comment periods in mid-2018 and early 2020, and the second proposed rulemaking in October 2021.¹⁶ OSSE has yet to publish a Final Rulemaking for Ch. 30.

One of the many concerns that we have had about the current Ch. 30 regulations is the absence of regulations governing the seclusion and restraint of students with disabilities. Due to a lack of available data the extent of the improper use of seclusion and restraint in the District is unknown.¹⁷ Subjecting students to seclusion and or restraint can create trauma for the student and lead to their injury and even death.¹⁸ The most recent proposed rulemaking would see some improvements in this realm; however, until the regulations are finalized, the use of seclusion and restraint remains a concern.

Regarding physical restraint, we appreciate that most recent proposed version of the Ch. 30 regulations removed §3045.4(b). Currently, this section allows the use of restraints when the practice was consistent with the child's IEP. We reiterate our belief that restraints should never be a planned intervention and should only be utilized as a method of last resort and only when there is imminent danger of serious physical harm to self or others. Regarding the use of chemical restraints, we believe that a forced injection should constitute a restraint. However, the proposed language for §3045.3 could be read to allow forced injection. To safeguard students' civil and human right to bodily autonomy, we recommend that OSSE modify the relevant language to allows injections of students only where the medication is voluntarily taken.

Finally, we would like to call to the Committee’s attention the extensive list of questions submitted to the Chairman by the Special Education Advocates Coalition on January 7, 2022 and appended to this testimony. This letter provides a detailed overview of the areas in which OSSE declined to promulgate regulations in most recent proposed rulemaking for DCMR Ch. 30. Children’s Law Center encourages the Committee to consider these questions during today’s hearing as well as in upcoming oversight hearings.

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 See DC Council, Committee of the Whole, Hearing Notice: Special Education Policies for Students with Disabilities, available at: <https://dccouncil.us/wp-content/uploads/2022/01/2.2.22-Special-Education-Policies-for-Students-with-Disabilities.pdf>

³ See Hannah Natanson, *et al.*, *How America failed students with disabilities during the pandemic*, WASH POST (May 02, 2021), available at: <https://www.washingtonpost.com/education/2021/05/20/students-disabilities-virtual-learning-failure/>

⁴ See Vanessa Romo, *Lawmakers are rewriting rules as schools grapple with teacher shortages*, NPR (Jan. 14, 2022), available at: <https://www.npr.org/2022/01/14/1073253450/lawmakers-are-rewriting-rules-as-schools-grapple-with-teacher-shortages>

⁵ See Perry Stein, *District to hire more substitute teachers and contact tracers to help understaffed schools*, WASH POST (Oct. 16, 2021), available at: https://www.washingtonpost.com/local/education/dc-schools-substitutes-teachers-covid/2021/10/16/78e24cf8-2de4-11ec-baf4-d7a4e075eb90_story.html

⁶ *Individuals with Disabilities Education Act*, 20 U.S.C. 1400(d)(1)(A).

⁷ DC Code § 38-236.01 *et seq.*

⁸ See DC Code § 38-236.01(9).

⁹ See DC Code § 38-236.01(13)(A).

¹⁰ See DC Code § 38-236.03(b)(4)-(5).

¹¹ See DC Code § 38-236.05(b); *see also* IDEA, 20 U.S.C. 1415(k)(1)(E).

¹² DC Code § 38-236.05(a).

¹³ See IDEA, 20 U.S.C. 1415(k)(1)(E)(i)(I)-(II).

¹⁴ See *Id.*, at § 1415(k)(1)(F)(i).

¹⁵ See Office of the State Superintendent of Education, “LEA Look Forward October 16-23, 2014,” available at: https://osse.dc.gov/sites/default/files/dc/sites/osse/release_content/attachments/LEALookForwardPre-Template%20%2838%29.pdf (noting that the deadline for “5-E DCMR Chapter 30 LEA Focus Group Registration” was October 17, 2014).

¹⁶ See Children’s Law Center, *Comments on the Notice of Proposed Rulemaking for new Special Education Regulations in Chapter 30 of Title 5A of the DC Municipal Regulations* (Oct. 4, 2021), available at: https://childrenslawcenter.org/wp-content/uploads/2021/11/CLC_Chapter30WrittenComments_Oct2021.pdf; *Proposed Rulemaking to Adopt a New Chapter 30 for Special Education in Subtitle A of Title 5 of the District of Columbia Municipal Regulations, Public Hearing Before the Off. of the State Superintendent of Educ.*, (Dec. 12, 2019) (testimony of Elizabeth Oquendo, Policy Attorney, Children’s Law Center), available at: <https://childrenslawcenter.org/wp-content/uploads/2021/07/Chapter-30-Regs-Hearing-Testimony.pdf>; *Children’s Law Center, Comments on the Advanced Notice of Proposed Rulemaking for new Special Education Regulations in Chapter 30 of Title 5A of the DC Municipal Regulations* (July 16, 2017), available at: <https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC-Comments-on-Chapter-30-Special-Education-Rulemaking.pdf>; *Special Education Rulemaking, Public Hearing Before the Off. of the State Superintendent of Educ. Div. of Elementary, Secondary, and Specialized Educ.*, (Aug. 20, 2015) (testimony of Renee Murphy, Senior Policy Attorney, Children’s Law Center), available at: <https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC-Testimony-re-OSSE-Special-Education-Requirements-2015.pdf>.

¹⁷ See Disability Rights DC, *Need for Oversight and Restriction of the Seclusion and Restraint of District Youth Attending DC Public Schools*, (Oct. 2019) available at: <http://www.uls-dc.org/media/1185/2019-seclusion-restraint-report.pdf>

¹⁸ See Hannah Fry, *After autistic boy dies during school restraint, 3 educators charged with manslaughter*, LOS ANGELES TIMES (Nov 13, 2019) available at: <https://www.latimes.com/california/story/2019-11-13/autistic-boy-dies-school-restraint-educators-charged-manslaughter>