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Testimony Before the District of Columbia Council
Committee of the Whole
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Budget Oversight Hearing:
District of Columbia Public Schools
Office of the State Superintendent of Education
Office of the Deputy Mayor for Education
District of Columbia Public Charter School Board
State Board of Education
Office of the Student Advocate
Ombudsman for Education

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Introduction

Good morning, Chairman Mendelson, Committee members, and staff. My name is Sharra E. Greer, and I am the Policy Director at Children's Law Center, a resident of the District, and a parent to two DCPS students. 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 as part of the Council's oversight of the education budget. Through our work, we represent DC students who regularly face barriers in accessing their education. In our medical-legal partnership, Healthy Together, we represent parents who are fighting for their child's right to access special education services. Through our Guardian ad litem project, our clients in foster care face myriad challenges with educational continuity. Our testimony and recommendations today arise from our experience representing students who are often furthest from opportunity.

The impacts of the pandemic were felt in every corner of the education sector. We will likely spend years trying to recover some sense of normalcy for students and educators. To accomplish this, the education sector budget must address not only the

losses that students suffered during the pandemic, but also the future needs that will manifest throughout our recovery efforts.

We would like to recognize the historic investments in education that have been made over the last two years. We commend the Mayor and the education sector for their diligent work providing digital devices and Wi-Fi to students,² ensuring students had access to regular meals despite learning virtually,³ and adapting the Summer Youth Employment Program to allow students to participate in virtual internships.⁴ Additionally, we were happy to see increases to the Uniform Per Student Funding Formula (UPSFF).⁵ We know that these investments, among others, were crucial in supporting students through an unprecedented time.

While all students have experienced educational disruption over the past two years, we know that the pandemic affected different groups in different ways. Our testimony will focus on two groups of students in particular – students with disabilities and students with behavioral health needs. The pandemic hindered schools' abilities to address these needs and, as a result, special education and behavioral health needs have increased. As a result, the Council must prioritize these students in the education sector budget to ensure that we don't continue to leave these students behind.

We urge the Council to make the following critical budget investments to ensure that students with special education and behavioral health needs are supported both in their everyday needs and in their effort to overcome the impacts of the pandemic:

1. **\$2.4 million in additional recurring local dollars** for the School-Based Behavioral Health Expansion program to restore CBO grant funding to \$80,000 per clinician and **\$300,000 in one-time local dollars** for the School-Based Behavioral Health Expansion program to fund a cost study to right-size the grant amounts for participating CBOs;
2. **At least \$20 million** to create a dedicated compensatory education fund within the Office of the State Superintendent of Education to pay for special education and related services missed during the pandemic; and,
3. **Restore 60 FTEs in OSSE's Division of Student Transportation and invest \$1 million in recurring local dollars for hiring, recruitment, and retention** incentives to ensure that OSSE-DOT has the drivers, bus attendants, nurses, and fleet support staff needed to transport students safely and timely.

We are fortunate in that the District's financial recovery from the pandemic is looking much better than expected. According to the latest projections from the Office of the Chief Financial Officer (OCFO), the District will take in approximately \$506 million more in revenue for FY2022 than was anticipated when the Council approved the FY2022 budget in August 2021.⁶ This is in addition to the \$566 million excess surplus from FY2021.⁷ Projected revenues for each year of the upcoming financial plan are also higher than previously anticipated. OCFO estimates that FY2023 revenues will be 3.9 percent more than FY2022 revenues – an increase of nearly \$360 million dollars.⁸ Given this

unanticipated additional revenue and the projected financial strength of the city, the Council is well-positioned to prioritize much-needed investments in the special education and behavioral health needs of our students who have suffered significantly over the past two years.

The needs of DC students are vast and complicated. However, we believe that these three targeted investments are crucial to ensuring that the education sector can address the foundational needs of students facing the greatest barriers to accessing their education.

In addition to financial investments, we also need to support students feeling safe and welcome at school. In the FY2022 Budget Support Act, the Council took an important first step in creating positive school climates by passing language that will gradually phase School Resource Officers (SROs) out of public schools in the District. However, the Mayor's proposed BSA language repeals the statute requiring the SRO phase out. We therefore urge the Council to maintain its commitment to phasing police out of schools by striking Title III, Subtitle D from the Mayor's Proposed Fiscal Year 2023 Budget Support Act of 2022.

Funding for the School-Based Behavioral Health Expansion Program Must Enable Providers to Cover Their Costs

We know that student behavioral health concerns impact their ability to access and participate in their education.⁹ Further, we can anticipate that the unmet behavioral health needs of students will lead to behavior incidents that result in exclusionary

discipline that ultimately prevents learning.¹⁰ Last spring, the Mayor and the Council made significant investments in the school-based behavioral health expansion program, with the goal of placing at least one behavioral health clinician in every DC public school (traditional and charter).¹¹ Children’s Law Center supported this goal for FY2022.¹²

As of the date of this budget hearing, we are approximately halfway through FY2022, which is the fourth year of DBH’s implementation of the school-based behavioral health expansion program. Although the majority of the 160 schools in Cohorts 1, 2, and 3 have full-time behavioral health clinicians providing services in school, less than a quarter of the 91 schools in Cohort 4 have hired clinicians.¹³ There are several reasons for the slower implementation for Cohort 4 – but the program’s struggle to hire and retain clinicians is fundamentally rooted in the fact that this program is not sufficiently or sustainably funded at the level needed to place a clinician in every school.

The school-based behavioral health expansion program funds clinicians in schools through an annual grant to CBOs, who in turn partner with schools to hire clinicians to provide full-time behavioral health services in those schools. (See Exhibit A for an overview of the school-based behavioral health expansion program). For the past few years, the grant amount allocated per clinician has been approximately \$70,000.¹⁴ This grant amount was based on estimates regarding the costs of the program and the amount of work clinicians could do that would be reimbursable by Medicaid, offsetting their costs. For the past two years, the Council supplemented these grants with one-time

dollars to ensure the grants were sufficient to enable CBOs to do the work.¹⁵ For many CBOs, these supplemental funds were necessary to make participating in this program financially feasible – and without them, DBH would have found it even more challenging to place clinicians in schools from the earlier cohorts.

To be clear – \$70,000 grants are simply not sufficient to enable CBOs to place clinicians in every DC public school. This is true for several reasons:

- **Costs for providers have steadily increased** over the past few years and yet the grant amount has not changed.
- **Workforce shortages are driving increases in clinician salaries.** There is a nationwide shortage of behavioral health clinicians and mental health professionals – the same is true here in DC. The public’s overall demand for mental health treatment has increased exponentially during the pandemic.¹⁶ Further, the demand for mental health professionals in the District has increased tremendously as more and more programs and sectors across the city are looking to mental health professionals and behavioral health supports to address social problems such as community violence.¹⁷ CBOs cannot hire clinicians to work in schools if they cannot pay them competitive salaries.
- **The Medicaid reimbursements that the current funding model depends on are not consistent across all schools.** The current grant amount is based on a certain percentage of the clinician’s time being billable to Medicaid (Tier 3

services).¹⁸ But different schools have different needs – and some schools need their clinicians to prioritize Tier 1 and Tier 2 work.¹⁹ Further, many aspects of Tier 3 services aren't billable when you are providing services to children (e.g., a counseling session with the child may be billable, but following up with that child's parents and teacher would not be). As a result, the billing expectation isn't achievable in all schools, which means some CBOs are operating at a loss in some schools. This is not sustainable.

Taking a step back to consider the broader context – this program is only in its beginning stages. To fully meet the behavioral health needs of all DC public school students, there is more infrastructure to build – some schools have so many students requiring Tier 3 services that they will need multiple full-time clinicians, while other schools need more help delivering Tier 1 and Tier 2 services and may need to hire other types of non-clinical behavioral health professionals. A great deal of work is needed to increase awareness of the program amongst students, families, and teachers. The program must build communication pathways with school communities that enable accurate assessments of behavioral health needs, help families and students understand what services are available and how they can access them, and provide opportunities for families to give feedback on the program so that it can be strengthened and improved.

Before we can do any of this, however, we must build a stable foundation for this program by placing a clinician in every school and ensuring this resource is sufficiently

and sustainably funded. Underfunding the grant undermines the stability of the whole program – it makes it harder to hire and retain the professionals needed, risks the financial viability of the CBOs that the program relies on to staff and supervise the program, and leaves schools uncertain whether this is a program they can rely on in the long-term and whether it's worth the time and effort needed to integrate the clinician into their community.

Although the Mayor's proposed budget appears to include \$3.8 million for school-based behavioral health services, these funds have been designated for hiring additional clinicians, adding new DBH staff to support the program's infrastructure and evaluation, and boosting DBH's workforce pipeline efforts.²⁰ These are all valuable new investments, but the Mayor's proposal also cuts provider grants by about \$10,000 apiece (back down to \$70,000 per clinician). While we certainly support expansion of the program, it should not be done at the cost of undercutting the existing core. If the Council doesn't stabilize the foundation of this program and ensure it is financially sustainable for CBOs to provide behavioral health services in schools, we risk losing ground on the progress that we've made in recent years.

We therefore urge the Council to commit \$300,000 in one-time local dollars to fund a cost study to determine what it actually costs to implement the school-based behavioral health program now and in the future.²¹ Consistent and adequate funding is crucial to the longevity and success of this program. Without comprehensive data and analysis, it

is impossible to accurately calculate the cost of implementing the program or determine the grant amounts needed for CBO clinicians to sustainably deliver services to students. The District needs to conduct a comprehensive study to determine how the needs of individual schools, providers, and communities impact program costs and build a sustainable funding model for the program.

To bridge the gap while this cost study is conducted, we ask the Council to reverse the Mayor's cuts to provider grants and restore CBO grants to the financially sustainable level of \$80,000 per clinician (for a total investment of \$2.4 million in additional recurring local dollars in the FY2023 budget).²² Since it will take several years for the cost study to be completed, we also ask the Council to ensure grant amounts are appropriately adjusted for inflation each year during this time. By doing this, the Council will both preserve the progress we've already made and pave the way for the continued expansion of the school-based behavioral health program DC students need and deserve.

Funds Must Be Set Aside for Compensatory Education for Special Education and Related Services Missed During the Pandemic

In March 2020, schools across the country were closed and ultimately shifted to virtual instruction. We applaud the DC education sector for their efforts to adapt to the constantly shifting guidance from public health experts. However, for many students with special education needs, virtual learning could not provide the specialized instruction and related services to which they are entitled by federal law.

Some students with disabilities were unable to engage with the virtual platform. Some related services – such as physical and occupational therapies – could not be conducted virtually. For others who were able to learn virtually, by the time their specialized instruction and related services were made available online, they had missed several hours of services. We therefore recommend that the Council allocate at least \$20 million to a dedicated compensatory education fund within OSSE. From this fund, local education agencies (LEAs) could issue compensatory education services to students who missed significant special education and related services during the pandemic. With these funds, students and their families could seek private providers to make up for missed services.

Under the Individuals with Disabilities Education Act (IDEA), students with disabilities who are denied access to a free, appropriate public education (FAPE) can file a due process complaint and have their claim heard by an independent hearing officer.²³ Among the remedies available for students who have been denied services to which they were entitled under their Individualized Education Plan (IEP) is a judicially created remedy called compensatory education award. The purpose of a compensatory education award is “to place disabled children in the same position they would have otherwise occupied but for the school district’s violation of IDEA.”²⁴

For example, imagine a school’s speech language pathologist (SLP) resigns unexpectedly and it takes the school a month to hire a new SLP. During that month, a

student who had speech therapy on their IEP is unable to receive their services. Given the backlog that amassed during the month without an SLP, the school is unable to make up the missed services. The student's parent files a due process complaint for the denial of 20 hours of speech therapy. The hearing officer finds that there was a denial of FAPE and awards compensatory education. The LEA then issues funds to the parent for the compensatory award and the parent uses that money to pay for private speech therapy outside of school to make up for lost time.

Now, imagine that scenario multiplied by the 7,368 students in the District of Columbia who receive speech language pathology per their IEP.²⁵ Then multiply that number by length of the pandemic. Moreover, there are 6,585 students who receive behavioral support services and 4,240 students who receive occupational therapy.²⁶ In total, there are 14,911 District students with IEPs. If even just 25% of those students missed just 5 hours per month for the 11 months of virtual learning, the total missed services would be more than 200,000 hours.²⁷ The actual number of missed hours is likely much higher.

While compensatory education is a judicially created remedy for violations of the IDEA, it would be unnecessarily expensive – for both families and the City- to require each student who missed services during the pandemic to litigate their claim through a traditional due process complaint. In addition, the services to which a student was entitled during the pandemic would be further delayed by litigation. Further, to do so

would inequitably rely on a family's ability to both navigate the complex due process system and to afford legal representation and the time off work to participate in the hearing.

Moreover, relying on litigation poses a concern that many students will not be able to access compensatory services due to the two-year statute of limitations which states that "A parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint..."²⁸ For many, the recent 2-year anniversary of the District's transition to virtual learning will mean that parents cannot file new due process claims for services missed during the early days of the pandemic. If the parent of a student with a disability is unaware of their ability to file a due process complaint, is unable to navigate the system on their own, and/or cannot afford legal representation, they may soon lose their opportunity to seek compensatory education for services their student missed during the pandemic. The Council and the education sector should not foreclose the opportunity for compensatory education for these students because the pandemic outlasted the statute of limitations.

Instead of requiring that each student litigate their denial of services during the pandemic, we recommend that the Council create a dedicated fund within OSSE from which LEAs could receive funds to compensate students for missed services. If an LEA acknowledges that their backlog of missed services is too great to be overcome anytime

soon, they could request from OSSE an amount to be agreed upon by the student's IEP team to compensate for the lost time. Additionally, OSSE will need to provide guidance and technical assistance to schools that may not know what compensatory education funds are available to them or how to access them.

We estimate that a dedicated compensatory education fund will require an investment of at least \$20 million. We have based our calculations OSSE data reporting the number of students with disabilities in the District, the types of services those students receive, and the OSSE-approved rates for special education services provided by nonpublic providers.²⁹ The hours needed have been estimated based on recent hearing officer decisions from OSSE's Office of Dispute Resolution that have offered more than 100 hours of compensatory education for students who missed one school year of services.³⁰ The below chart estimates the costs of compensatory awards for various student populations. Our minimum funding the proposed dedicated compensatory education fund assumes that the students with the most significant disabilities are the most likely to need compensatory services. However, a change to this underlying assumption would mean that the need is significantly greater. If students need more than just compensatory tutoring hours, the cost to the District will quickly rise to more than \$75 million.

Student Population Served	Number of students³¹	Service Needed (OSSE Rate)	Hours Needed	Estimated Cost
Students who spend less than 40% of their day in a general education setting	2737	Tutoring (\$71.90)	100	\$19,679,030
Students who spend 40-79% of their day in a general education setting	2501	Tutoring (\$71.90)	50	\$8,991,095
Students who receive Speech-Language Pathology	7368	Speech (\$114.10)	25	\$21,017,220
Students who receive Occupational Therapy	4240	Occupational Therapy (\$130.38)	25	\$13,820,280
Students who receive Behavioral Support Services	6585	Counseling (\$71.90)	25	\$11,836,537
Total				\$75,344,162

It is important to note that the District will be responsible for these compensatory education awards regardless of whether the Council chooses to fund this proposed dedicated fund. However, the financial cost of this responsibility will increase astronomically LEAs have to litigate each case where a student was denied services due to the pandemic.

Guidance from the U.S. Department of Education notes that “IDEA Part B funds (both the regular IDEA Part B funds and the additional IDEA Part B funds appropriated under section 2014 of the ARP Act), as well as funds provided to States and LEAs through

the ESSER Fund and the GEER Fund, may be used for compensatory services.”³² Therefore, the compensatory services can be paid for with funds provided by the American Rescue Plan Act (ARPA). However, a lack of transparency has made it difficult to determine how the ARPA dollars received by the education sector have been used thus far and if there are any remaining IDEA Part B supplemental funds that can be allocated to the proposed dedicated fund. We recommend that any unspent IDEA Part B dollars from the ARPA allocations be invested into the proposed dedicated compensatory education fund. However, if all such funds have been exhausted, it will fall to Council to find the local dollars necessary to compensate students for more than a year of missed special education and related services.

OSSE Transportation Must Have the Resources Necessary to Recruit and Retain Drivers, Attendants, Nurses, and Fleet Support Staff

Even before the pandemic, we repeatedly testified about the problems with transportation services for students with disabilities.³³ Our clients who use OSSE transportation regularly report that their buses arrive late for morning pick up and afternoon drop off. These delays are incredibly disruptive for these students and their families.³⁴ While these issues certainly did not begin during the pandemic, they have been complicated by the workforce shortages that have grown in response to the public health crisis. Nationwide school districts are reporting labor shortages of bus drivers have served as a barrier to getting students with disabilities back into their classrooms.³⁵ Moreover, the DC metro area is suffering a bus driver shortage that impedes the ability

of public transit systems to resume pre-pandemic operations.³⁶ Amidst this severe workforce shortage, it is crucial that OSSE-DOT have the resources necessary to compete for bus drivers. For this reason, we ask the Council to invest \$1 million in recurring local dollars in the OSSE-DOT budget to support competitive incentives to recruit and retain the drivers, attendants, nurses, and fleet support staff needed to transport students safely and timely.

The Mayor's budget proposes modest investments in OSSE-DOT through one-time increases of \$2,125,000 in the Terminal Operations program to support a nursing services contract for students who require nursing support on the school bus, according to their Individualized Education Plan and \$1,100,000 in the Data Analysis and Support program to support technology and systems upgrades.³⁷ These important investments will address two significant concerns for families needing special education transportation: 1) the lack of sufficient nurses to travel with students who require medical support and 2) that OSSE-DOT can continue their work on an app that allows parents to know more precisely when their student's bus will arrive for pick up and drop off. These are both concerns that advocates have raised for years, and we are pleased to see them included in the Mayor's budget.

However, the Mayor's budget also proposes cutting 60.6 vacant FTEs within OSSE-DOT.³⁸ Doing so would prevent the agency from filling these vacant positions. In their most recent performance oversight responses, OSSE reported that, for every month

in the first semester of the 2021-2022 school year, there was a deficiency of at least 100 bus attendants.³⁹ For example, in January 2022, OSSE-DOT reports that the average number of bus attendants needed is 627. However, for the same month, the average number of attendants employed and active was only 514. Moreover, the average number of attendants present each day was only 415.⁴⁰ Bus attendants are critical to ensuring the safety of students during their commutes to and from school. They are responsible for ensuring that students are secure in their seats and that necessary supports remain in place throughout a student's trip. They also monitor student behavior and provide support and instruction to ensure compliance with safety and disciplinary rules.⁴¹ These are not tasks that a bus driver can safely undertake while driving. The severe shortage of attendants creates serious safety concerns for the students and drivers on OSSE-DOT buses.

Additionally, OSSE reported that the month-to-month shortage of bus drivers varied from 3 to 46.⁴² However, when looking at the average number of drivers present each day, the gap between drivers needed and drivers available was never less than 55.⁴³ For the drivers that are present each day, this shortage results in needing to drive extra routes each shift. For students and families, this means that their bus is seriously delayed in the mornings and afternoons. This in turn results in students being late to school or not arriving home until late in the evening. This not only disrupts the education of the

transported student but may also cause other students in the home to be late to school and risks parents being unpredictably and repeatedly late to work.

To fill more these critical vacancies, the OSSE-DOT budget will need not only the FTEs and correlative funds to cover the estimated salary and fringe benefits for these positions but will also need additional funds to provide hiring and retention incentives. Concerningly, OSSE reported more vacancies in FY2021 oversight responses than they had in FY2020.⁴⁴ Given the persistence of the bus driver and attendant shortages, it will be necessary to do more to ensure that OSSE-DOT is competitive in the labor market. To be competitive, OSSE-DOT may need to offer signing bonuses or other tools that incentivize prospective employees to choose the difficult but important work of transporting students with disabilities to and from school.

If OSSE-DOT is unable to compete with other employers, these vacancies will persist to the detriment of students with disabilities. Students will continue to arrive late to school and miss valuable specialized instruction and related services. Students will continue to return home from school late into the evening causing them to miss afterschool therapies and enrichment opportunities – not to mention time with their families. Further the unpredictability of bus arrivals creates significant challenges for families who cannot get their other students to school on time. For others, the OSSE bus delays cause family members to be late for work. This imposes undue stress students with disabilities and their families.

To alleviate this stress, we urge the Council to restore the 60 FTEs cut by the Mayor in her proposed budget. Cutting these vacant FTEs will mean that OSSE cannot fill them with new drivers and attendants. Additionally, we ask the Council to invest \$_____ million for hiring, recruitment, and retention incentives to ensure that OSSE's Department of Transportation has the drivers, bus attendants, nurses, and fleet support staff needed to transport students safely and timely.

Council Must Preserve its Commitment to Phase Out Police from Schools

In the FY2022 Budget Support Act of 2021, the Council committed to gradually phase out SROs between 2022 and 2025.⁴⁵ As a member of the Police-Free Schools Coalition, Children's Law Center supported this move away from schools with police and toward schools that are welcoming and safe for all students. However, now the Mayor asks the Council to go back on that promise by repealing the statutory language which mandates the SRO phase out. The Council must strike Title III, Subtitle D from the Mayor's Proposed Fiscal Year 2023 Budget Support Act of 2022 to preserve the Council's commitment to remove School Resource Officers (SROs) from public schools in the District.

As we have testified many times before, Children's Law Center believes that schools should be a safe space where students can learn and grow in a trauma-informed environment that supports their educational and socio-emotional learning goals.⁴⁶ SROs are too often involved in instances where students are having behavioral difficulties.

Because SROs are not school employees, they do not have access to a student's Individualized Education Plan (IEP) and/or Behavior Intervention Plan (BIP). As a result, an officer may respond to disability manifestation with policing practices rather than the intervention strategies in the student's IEP. Police officers are trained to anticipate crime and enforce the law as necessary. The presence of police officers in schools has narrowed the line between school discipline and policing. This police surveillance hinders the creation of positive school climates where students can grow and learn.

School policing triggers two social determinants of health for students: education and racism.⁴⁷ “[I]t negatively affects Black students’ mental health, disrupts their educational attainment, diminishes their social supports (school-based protective health factors), and places them at heightened risks for justice-system involvement.”⁴⁸ By removing SROs, we create schools where more students feel safe and welcome. More positive school climates increase school engagement and decrease the involvement of young people in the criminal legal system. For these reasons, the Council must strike Title III, Subtitle D from the Mayor’s Proposed Fiscal Year 2023 Budget Support Act of 2022 to preserve the Council’s commitment to remove School Resource Officers (SROs) from public schools in the District.

Conclusion

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 Deputy Mayor for Education, “Ensuring Devices for Learning at Home During Coronavirus (COVID-19),” Edsight 15 (Oct 2020), *available at*: https://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/DME_EdSight%20Devices%20Start%20of%20School%20FINAL.pdf

³ See e.g., District of Columbia Public Schools, “School Year 21-22 Meal Services,” *available at*: https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/FY%2021-22%20DCPS%20Meal%20Service%20-%20English.pdf

⁴ See Dep’t of Employment Services, Office of Youth Programs, “Independent Evaluation: 2020 Mayor Marion S. Barry Summer Youth Employment Program,” *available at*: <https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/2020%20Mayor%20Marion%20S%20Barry%20Summer%20Youth%20Employment%20Program%20Evaluation%20FNL.pdf>

⁵ See Press Release, Deputy Mayor for Education, Mayor Bowser Announces 5.9% Increase to the Uniform Per Student Funding Formula, \$36 Million Recovery Fund to Provide Additional Support and Stability (Feb. 7, 2022), *available at*: <https://dme.dc.gov/release/mayor-bowser-announces-59-increase-uniform-student-funding-formula-36-million-recovery-fund>

⁶ On September 30, 2021, the Office of the Chief Financial Office (OCFO) released the September 2021 Revenue Estimates Letter, which reported that for the May 2021 Revenue Estimate used for the FY2022 Budget was adjusted to \$8,580.1 Billion. On February 28, 2022, the OCFO reported the February 2022 revenue estimate for FY2022 was reported as \$9,086.7 Billion. Therefore, the revenue used to set the FY2022 budget as compared to the current revenue estimate is a difference of \$506.6 Million ($\$9,086.7 - \$8,580.1 = \506.6). See Government of the District of Columbia, Office of the Chief Financial Officer, *Re: September 2021 Revenue Estimates*, September 30, 2021, *available at*: https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Sept_2021%20Revenue%20Estimate%20Letter.pdf. Government of the District of Columbia, Office of the Chief Financial Officer, *Re: February 2022 Revenue Estimates*, February 28, 2022, *available at*: <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/February%202022%20Revised%20Revenue%20Estimates%20for%20FY%202022%20-%202026.pdf>.)

⁷ Government of the District of Columbia, Office of the Chief Financial Officer, *Re: February 2022 Revenue Estimates*, February 28, 2022, *available at*: <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/February%202022%20Revised%20Revenue%20Estimates%20for%20FY%202022%20-%202026.pdf>.)

⁸ *Id.*

⁹ See, e.g., United States Department of Education, “Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs,” at 4, *available at*: <https://www2.ed.gov/documents/students/supporting-child-student-social-emotional-behavioral-mental-health.pdf>

¹⁰ See *id.*

¹¹ Mayor Bowser Presents Fair Shot Budget Proposal, Thursday, May 27, 2021, *available at*: <https://mayor.dc.gov/release/mayor-bowser-presents-fair-shot-budget-proposal>; Report and Recommendations of the Committee of the Whole on the Fiscal Year 2022 Budget and Corresponding

Budget Support Act, July 1, 2021, *available at:*

<https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/60de31f31217463998caf97e/1625174516309/DRAFT+COW+FY2022+Budget+Recommendations.pdf>.

¹² Tami Weerasingha-Cote, Children's Law Center, Testimony Before the District of Columbia Council Committee on Health, (June 4, 2021), *available at:* <https://childrenslawcenter.org/resources/budget-testimony-dbh-0/>; Children's Law Center, *DC Kids and Families Need Access to Behavioral Health, Strengthening Families Coalition*, *available at:* <https://childrenslawcenter.org/dc-kids-and-families-need-access-behavioral-health/>

¹³ Department of Behavioral Health, UPDATED CBO and DBH Clinicians_MASTERLIST 1.21.2022, *available at:* <https://dbh.dc.gov/node/1500291>; Cohort 1 School/Provider Status - As of 3.9.2022 ; Cohort 2 School/Provider Status - As of 3.9.2022; Cohort 3 School/Provider Status - As of 3.9.2022; and Cohort 4 School/Provider Status - As of 3.9.2022. All School/Provider Status reports are on file at the Children's Law Center.

¹⁴ Department of Behavioral Health, November 2021 Coordinating Council on School Behavioral Health Slides, on file with Children's Law Center.

¹⁵ District of Columbia FY2021 Department of Behavioral Health Budget, RM0, p. E-48; District of Columbia FY2022 Department of Behavioral Health Budget, RM0, p. E-48.

¹⁶ KKF, *Mental Health in the District of Columbia*, December 13, 2021, *available at:*

<https://www.kff.org/statedata/mental-health-and-substance-use-state-fact-sheets/>; American Psychological Association, *Demand for mental health treatment continues to increase, says psychologists*, October 19, 2021, *available at:* <https://www.apa.org/news/press/releases/2021/10/mental-health-treatment-demand>; District of Columbia Department of Health, *COVID-19 Pandemic Health and Healthcare Recovery Report*, May 2021, *available at:* https://dchealth.dc.gov/sites/default/files/dc/sites/doh/page_content/attachments/Pandemic-Recovery-Report_May-2021.pdf.

¹⁷ Elliot C. Williams, *D.C. extends program to dispatch more 911 mental health calls to social workers*, NPR WAMU 88.5, November 15, 2021, *available at:* <https://www.npr.org/local/305/2021/11/15/1055789888/d-c-extends-program-to-dispatch-more-911-mental-health-calls-to-social-workers#:~:text=D.C.%20is%20extending%20a%20pilot%20program%20that%20calls%20on%20the,news%20of%20the%20program's%20extension>; Sam P.K. Collins, *D.C. Students Voice Demands for More Mental Health Services*, *The Washington Informer*, February 2, 2022, *available at:*

<https://www.washingtoninformer.com/d-c-students-voice-demands-for-more-mental-health-services/>. Melissa Millar and Amber Rieke, *Re-Routing Behavioral Health Crisis Calls from Law Enforcement to the Health System*, *DC Health Matters Collaborative*, May 2021, *available at:* https://www.dchealthmatters.org/content/sites/washingtondc/ReRouting_Crisis_Response_white_paper_May_2021.pdf.

¹⁸ DBH FY2020 Performance Oversight Response, response to Q27, *available at:* <https://dccouncil.us/wp-content/uploads/2021/06/dbh.pdf>.

¹⁹ DBH began to implement the expansion of the school-based mental health expansion program during the 2018-2019 school year. The goal of the program is for all public schools to provide a full array of behavioral health supports at three tiers: (1) Tier 1 encompasses mental health promotion and prevention for all students; (2) Tier 2 includes focused interventions for students at risk of developing a behavioral health problem; and (3) Tier 3 is comprised of intensive support/treatment for individual students who are experiencing a behavioral health problem. *See* Department of Behavioral Health, *Guide to Comprehensive Behavioral Health*, p. 2-4, *available at:*

https://dbh.dc.gov/sites/default/files/dc/sites/dmh/page_content/attachments/PRIMARY%20GUIDE_SCHOOL%20BEHAVIORAL%20HEALTH_JUNE%202019.pdf.

²⁰ Mayor’s Proposed FY 2023 Budget and Financial Plan, Volume 4 Agency Budget Chapters – Part III, Department of Behavioral Health [RM0], p. E-32; Mayor Bowser Presents Fiscal Year 2023 Budget Proposal, Wednesday March 16, 2022, *available at*: <https://mayor.dc.gov/release/mayor-bowser-presents-fiscal-year-2023-budget-proposal>.

²¹ This number is an estimate based on the cost of prior rate studies the District has commissioned. Ultimately, our request is for adequate funding to conduct a comprehensive and informative cost study of the program.

²² According to DBH, the FY2022 grant amount per school is \$77,515. See DBH, November 2021 Coordinating Council on School Behavioral Health Slides, on file with Children’s Law Center. Of the \$77,515, only \$70,344 is funded with recurring dollars; \$7,171 is covered by one-time funding from the Council. Adjusting for inflation (using Congressional Budget Office projected inflation and Consumer Price Index for All Urban Consumers monthly data), to keep funding levels consistent in FY2023, the grant amount per school should be \$79,254. We are rounding up to \$80,000 per school for ease of reference/calculation: $\$80,000 - \$70,344 = \$9,656 \times 251 \text{ schools} = \$2,423,656$ (\$2.4 million) increase in FY2023.

²³ 30 C.F.R § 300.507(a)(1), § 300.511(c)

²⁴ *Reid v. District of Columbia*, 43 IDELR 32 (D.C. Cir. 2005).

²⁵ See Dr. Christina Grant, Office of the State Superintendent of Education, “Responses to Fiscal Year 2021 Performance Oversight Questions,” at 245 Q76 attachment (Feb 18, 2022), *available at*: <https://osse.dc.gov/node/1583551>

²⁶ *Id.*

²⁷ Calculation was made by dividing the total number of students with IEPs (14,911) by 4 to get 25% of students with disabilities (3727.75). This number was then multiplied by 55 (representing 5 hours per month for 11 months) to determine an estimate for missed hours (205,026) accrued throughout the pandemic.

²⁸ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415(f)(3)(C).

²⁹ See DC Office of the State Superintendent of Education, “Maximum evaluation Costs under 5 DCMR § A-2853,” *available at*: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2021-22%20School%20Year%20OSSE%20Nonpublic%20COA%20Regs%20Rate%20Charts.pdf>

³⁰ OSSE publishes redacted Hearing Officer Decisions (HODs) on their website. For the purposes of the compensatory education calculations, we reviewed HODs from February 2022, *available at* <https://osse.dc.gov/node/1586431>, and December 2021, *available at* <https://osse.dc.gov/node/1581961>.

³¹ See Dr. Christina Grant, *supra* note 25

OSSE reported data in quintiles based on time spent outside of the general education classroom. These data were realigned to comport with the three federal reporting categories. Additionally, 704 students were removed from the group “Inside regular class less than 40% of the day” because 704 students attend a nonpublic school. These students spend 100% of time in a special education setting. While the student’s DC-based LEA is still financially responsible for any missed services, the calculation for compensatory services likely will not translate in the same that it would for DCPS or charter LEAs.

³² See U.S. Dep’t of Educ., Office of Special Education and Rehabilitative Services, “Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act,” at 31 (Sept. 30, 2021), *available at*: <https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf>

³³ See, e.g., Office of the State Superintendent of Education, Public Oversight Hearing Before the Comm. on Educ., (Feb. 27, 2018) (testimony of Renee Murphy, Senior Policy Attorney, Children’s Law Center), at 17-21, *available at*: https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC-OSSE-Oversight-testimony-2018-FINAL_0.pdf

³⁴ See Debbie Truong, “Listen: How one local family is dealing with school staffing shortages” WAMU (Feb. 11, 2022), available at: <https://wamu.org/story/22/02/11/dc-public-school-staff-shortage/>

³⁵ See Press Release, U.S. Dep’t of Educ., U.S. Department of Education Announces Joint Temporary Action with U.S. Department of Transportation to Help Address School Bus Driver Labor Shortage, (Jan. 4, 2022), available at: <https://www.ed.gov/news/press-releases/us-department-education-announces-joint-temporary-action-us-department-transportation-help-address-school-bus-driver-labor-shortage>

³⁶ See Luz Lazo, “Bus driver shortage hurts D.C. region’s ability to return to pre-pandemic transit service levels,” (Nov. 26, 2021), available at: <https://www.washingtonpost.com/transportation/2021/11/26/bus-driver-shortage-washington/>

³⁷ See DC Office of the Chief Financial Officer, Special Education Transportation Budget Chapter & Tables (March 22, 2022), available at: <https://app.box.com/s/1i72f5jrzluti73tuif3mzvzenepdrc2/file/934378886463>

³⁸ See *id.*

³⁹ Dr. Christina Grant, *supra* note 25, at 297-98.

⁴⁰ *Id.*, at 298.

⁴¹ See DC Dept of Human Resource, OSSE Bus Attendant Job Posting, available at: https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/DCHR%20PD-DOT-BUS%20ATTENDANT.pdf

⁴² Dr. Christina Grant, *supra* note 25, at 297-98.

⁴³ *Id.*

⁴⁴ Compare Dr. Christina Grant, Office of the State Superintendent of Education, “Responses to Fiscal Year 2021 Performance Oversight Questions,” at 298 Q92(a), (Feb 18, 2022), available at:

<https://osse.dc.gov/node/1583551> (noting 135 vacancies in the Division of Student Transportation) with Shana Young, Office of the State Superintendent of Education, “Responses to Fiscal Year 2020 Performance Oversight Questions,” at 225 Q81(a) attachment (Feb 26, 2021), available at: <https://dccouncil.us/wp-content/uploads/2021/03/FY20-POH-Narrative-v7.2.pdf> (noting 95 vacancies in the Division of Student Transportation).

comparing FY2020 and FY2021 osse POH response re: vacancies – see also, letter to Mendelson following up on oversight hearing questions

⁴⁵ D.C. Act 24-159. Fiscal Year 2022 Budget Support Emergency Act of 2021, Sec 3082(b).

⁴⁶ See, e.g., Metropolitan Police Department and Office of Neighborhood Safety and Engagement, Budget Oversight Hearing Before the Comm. on Judiciary and Public Safety, D.C. Council, (June 10, 2021) (testimony of Danielle Robinette, Policy Attorney, Children’s Law Center), available at:

https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC-Testimony_MPD-FY22-Budget-Oversight-Testimony.pdf; *The Recommendations of the Police Reform Commission*, Joint Public Hearing Before the Comm. of the Whole and the Comm. on Judiciary and Public Safety, D.C. Council, (May 20, 2021) (testimony of Danielle Robinette, Policy Attorney, Children’s Law Center), available at:

https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC-Testimony_Joint-Hearing-on-PRC-Recommendations_Revised.pdf; *School Security in the District of Columbia and Public Charter Schools*, Public

Hearing Before the Comm. of the Whole, D.C. Council, (April 21, 2021) (testimony of Danielle Robinette, Policy Attorney, Children’s Law Center), available at: https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC-Testimony_School-Security-in-the-District-of-Columbia-and-Public-Charter-Schools.pdf; *Metropolitan Police Department*, Public Oversight Hearing Before the Comm. on the

Judiciary and Public Safety, D.C. Council, (March 11, 2021), (testimony of Danielle Robinette, Policy Attorney, Children’s Law Center), available at: https://childrenslawcenter.org/wp-content/uploads/2021/07/CLC_MPD-Oversight-Testimony_FINAL.pdf

⁴⁷ See Thalia Gonzalez, *Race, School Policing, and Public Health*, 73 Stan. L. Rev. Online 180, 188, (2021), available at: <https://www.stanfordlawreview.org/online/race-school-policing-and-public-health/>

⁴⁸ *Id.*



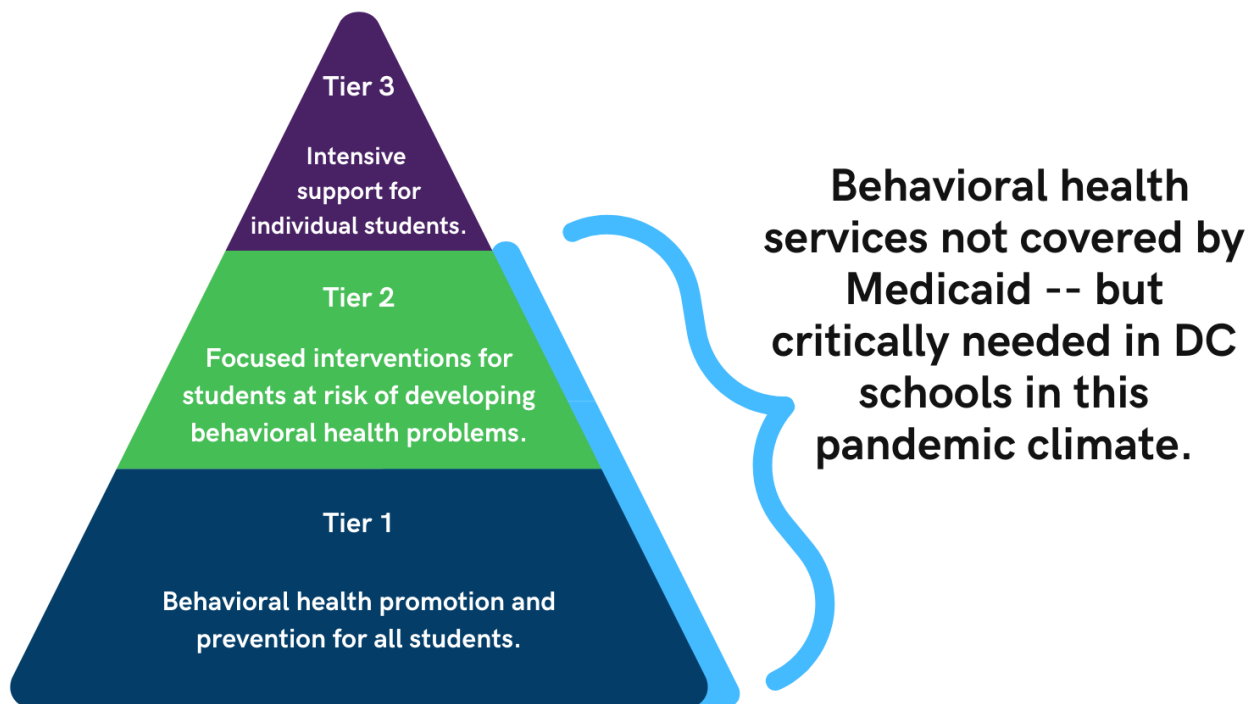
DC Must Build on Investments in the School-Based Behavioral Health Expansion Program

To address the gaps in learning that many DC students experienced over the course of the pandemic, as well as help our kids prepare for the future, the District must ensure that children's behavioral health needs are met.

The Fiscal Year (FY) 2022 budget included significant investments in School-Based Behavioral Health Expansion Program (SBBH) resources, including ensuring that there is enough funding to support at least one full-time clinician in all public schools and providing community-based organizations (CBOs) with a much-needed one-time supplement to address the financial strains of the pandemic. Yet, more investments are needed to sustain this success and fully realize the benefits of the program.

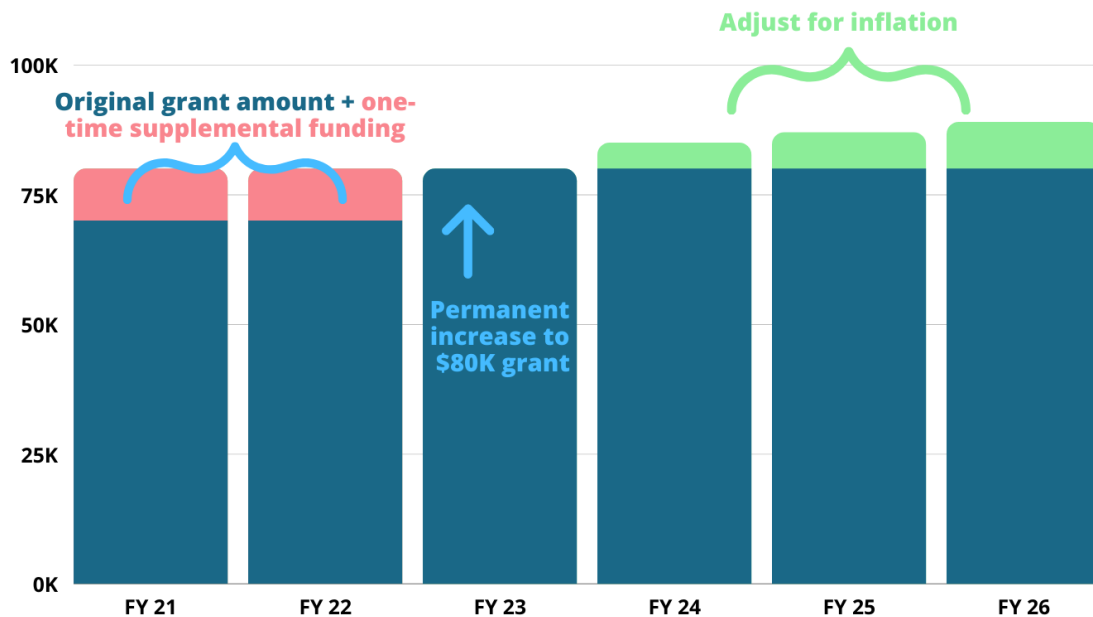
We urge the Mayor and the DC Council to take the following actions in FY23:

- **Provide \$300,000 to fund a cost study to determine the actual costs and needs of SBBH:** The current grant amount is outdated and does not meet the needs of students or providers in the pandemic climate, undermining the longevity and success of the program. DC needs to conduct a comprehensive study to determine how student, provider, and community needs impact SBBH costs, and identify a more sustainable CBO funding model.



- **Invest an additional \$2.4 million to stabilize CBO grant funding:** For the past two years, DC has provided one-time supplements to address the financial strains of the pandemic on providers. We strongly believe that these supplements should be made permanent and that the CBO grant amount should cover inflationary cost increases over the next three years while the cost study is being conducted.

Funding needed to stabilize CBO grants



The District should maintain FY22 grant levels in FY23 and include increases to cover the cost of inflation from FY24-26.

- **Adequately fund the Community of Practice:** The Community of Practice is an integral piece of SBBH, providing a collaborative learning environment where providers, school staff and leaders can share best practices and receive technical assistance. Needs have changed now that all schools are in the program, and the Community of Practice will need additional resources to increase its capacity to serve staff from all schools.
- **Investing in a workforce pipeline of culturally competent clinicians:** Having a strong behavioral health workforce is foundational to the long-term success of the SBBH expansion. DC should invest in workforce development strategies that can address its current limited behavioral health workforce.
- **Expanding information-sharing and family engagement efforts:** Families are essential partners in making SBBH a success. Yet, many families face information barriers that keep them in the dark about the availability of behavioral health resources in schools and in their communities. We believe the city should address current information gaps to ensure DC children are getting the help they need, when they need it.

We ask the Mayor and the Council to invest in both the financial stability and implementation of SBBH. Doing so is foundational to children, families, and communities being able to better recover from the pandemic.

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