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Testimony Before the District of Columbia Council  
Committee of the Whole  
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Public Hearing:  
B25-0847: Advancing Equity in Special Education Protocols Amendment Act of 2024  
Oversight of Education For Students with Special Needs

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## **Introduction**

Good afternoon, Chairman Mendelson, Committee members, and staff. My name is Danielle Robinette, and I am a Senior Policy Attorney at Children's Law Center. Children's Law Center believes every child should grow up with a strong foundation of family, health and education and live in a world free from poverty, trauma, racism and other forms of oppression. Our more than 100 staff – together with DC children and families, community partners and pro bono attorneys – use the law to solve children's urgent problems today and improve the systems that will affect their lives tomorrow. Since our founding in 1996, we have reached more than 50,000 children and families directly and multiplied our impact by advocating for city-wide solutions that benefit hundreds of thousands more.

Thank you for the opportunity to testify today regarding B25-0847, the Advancing Equity in Special Education Protocols Amendment Act of 2024 and oversight of the provision of education of students with disabilities in the District. Through our medical-legal partnership, Healthy Together, Children's Law Center represents parents whose children face barriers to accessing special education or receive inadequate specialized instruction and related services. My testimony and recommendations today arise from our experience representing these students and their families.

Children's Law Center supports the Advancing Equity in Special Education Protocols Amendment Act of 2024, and we are glad that the bill has initiated today's

important conversation about the ways in which the District is failing to meet the educational needs of students with disabilities. We thank Councilmember Henderson for her focus on this oft overlooked population of students. The bill identifies two important areas of inequity encountered by students in self-contained classrooms – feeder pattern continuity and student-to-teacher ratios.<sup>1</sup> For each key provision in the bill as drafted, we recommend amendments that we believe will strengthen the legislation and further its pursuit of equity for students with disabilities.

Beyond the present legislation, we encourage the Committee to increase oversight of special education to ensure that DC students with disabilities are receiving a more equitable education. As we have seen on the issue of attendance over the past year, focused attention from the Council can spur action from executive agencies.<sup>2</sup> Like with chronic absenteeism, the outcome data for students with disabilities should warrant serious concern from the Council and the Executive. If the goal is increased equity, DC must focus energy and attention on the unmet needs of students with disabilities.

### **The Proposed Legislation Requires Greater Clarity to Meet the Goal of Advancing Equity for Students with Disabilities**

The Individuals with Disabilities Education Act (IDEA) was a response to broad failures to meet the educational needs of children with disabilities.<sup>3</sup> Chief among the goals of the IDEA was the inclusion of students with disabilities in public schools with nondisabled students.<sup>4</sup> In furtherance of this goal, the IDEA mandates that students with disabilities be educated in the least restrictive environment (LRE) meaning that “[t]o the

maximum extent appropriate, children with disabilities, [...] are educated with children who are not disabled.”<sup>5</sup> Further, the use of “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>6</sup> When a student’s needs cannot be met in a general education setting, the IEP team may determine that the least restrictive environment on the continuum is a self-contained classroom.

Thousands of DC students are education in self-contained classrooms.<sup>7</sup> B25-0847 seeks to advance equity for students assigned to self-contained settings by codifying their right to continue in their feeder pattern and by requiring the Executive to establish a student-to-staff ratio for self-contained classrooms.<sup>8</sup> These provisions have the potential to expand school choice for students with disabilities and ensure that local education agencies (LEAs) are ensuring that self-contained classrooms have adequate resources and support. However, to ensure that the bill can meaningfully advance equity for students in self-contained settings, we recommend several revisions to the legislation.

#### The Bill’s Definition of Self-Contained Special Education Classroom May Unintentionally Limit Schools’ Ability to Tailor a Student’s IEP to Their Unique Needs

Neither the IDEA nor its implementing regulations define the term “self-contained.”<sup>9</sup> The term is also not defined in local law or regulations.<sup>10</sup> Within District of Columbia Public Schools (DCPS), “a self-contained classroom is a specialized educational

setting outside of general education “designed to give more support to students with disabilities who have a high level of need.”<sup>11</sup> A self-contained class is often the highest level of support offered within a public school.<sup>12</sup> In DCPS, “students with 20 or more hours of specialized instruction outside of general education in their IEP” are served in self-contained, districtwide classrooms.<sup>13</sup>

Like all elements of a student’s Individualized Education Program (IEP), the decision regarding LRE is highly individualized to the student and their educational needs. Moreover, the Supreme Court held that the IDEA demands “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>14</sup> These directives that a student’s IEP, including the decision regarding LRE, be tailored to the unique needs of that student, may be the reason that federal law and regulations have not codified a strict definition of a self-contained setting.

B25-0847 proposes to define “self-contained special education classroom” as “a full-time, outside of general-education classroom that provides instruction for students in accordance with their IEPs.”<sup>15</sup> However, the addition of this definition may have unintended consequences that limit the ability of LEAs to tailor a student’s educational placement to their unique circumstances. We are concerned that bill’s proposed definition raises more questions than it answers and could create disputes where none currently exist. For example, “full-time” could raise questions about whether it includes lunch and/or non-core subjects such as music, art, or physical education. In the District,

a “full-time” IEP is generally understood as either 20 hours for a classroom outside of general education with non-core classes and lunch in a general education setting or as 27.5 hours where lunch and non-core classes are taken in a special education setting. It is unclear whether the proposed definition would comprise both scenarios. Codifying a definition of self-contained may unintentionally limit the ability of IEP teams to tailor the student’s school day balance their support needs and ensure they are educated in the least restrictive environment possible. As such, we recommend an amended definition. Throughout this testimony, proposed changes to the text of the legislation are indicated in red. Additions are in **bold**, and cuts are denoted with a ~~strikethrough~~.

“(4A) “Self-contained special education classroom” means ~~a full-time~~ **an educational environment** outside of general-education classroom that provides **at least 20 hours of specialized** instruction for students in accordance with their IEPs.”.

This definition would be inclusive of both iterations of “full-time” and would preserve an LEA’s ability to tailor the details of a self-contained IEP to the unique needs of an individual student.

#### Feeder Pattern Continuity Would Advance Equity for Students with Disabilities, but as Written the Bill’s Exception Swallows the Rule

Families in the District invest significant energy strategizing about how to ensure their student attends the school that they feel will best set their student up for future success.<sup>16</sup> Given the District’s feeder pattern system, the decision about where a student

goes to kindergarten can determine the quality of education that they have access to for the next 13 years. As a result, feeder pattern considerations are front of mind for parents making decisions about their student's school enrollment.<sup>17</sup> Too often, however, DC students in self-contained classrooms are denied school choice.

When a student's LEA is unwilling or unable to provide a self-contained classroom at a student's present school, the LEA can change the student's location of service (LOS) to any other school within the LEA that has the relevant self-contained setting.<sup>18</sup> When this happens, the student not only loses access to their current school but may also lose their expected feeder pattern.<sup>19</sup> Because few charter LEAs in the District have guaranteed feeder patterns,<sup>20</sup> this issue arises most often within DCPS. For DCPS students who need a self-contained setting, "[s]eats in these classrooms are administratively assigned by the central office."<sup>21</sup>

Allowing LEAs to indiscriminately change the location of service for students with disabilities is inherently inequitable because it denies these students the level of school choice, the sibling preference, and the feeder pattern continuity afforded to their nondisabled peers. We understand that there are efficiency considerations inherent in an LEAs planning for where and how to meet the needs of their students. Like with all aspects of the budget, the Council and the Executive must make tough decisions about how to spend its limited resources. However, as we discuss a bill seeking to advance

equity for students with disabilities, we must speak plainly about when the pursuit of efficiency comes at the expense of equity.

The Advancing Equity in Special Education Protocols Amendment Act of 2024 seeks to lessen the inequity suffered by students with disabilities by codifying “the right to continue with their initial placement’s feeder pattern.”<sup>22</sup> Further, when a change in LOS is made, the bill as drafted would require the LEA to provide the student’s family with an explanation of why the student’s “current feeder pattern cannot meet the student’s need.”<sup>23</sup> These provisions seek to further equity by creating a presumption against LOS changes that would alter a student’s feeder pattern and by requiring the LEA to articulate why they cannot meet a student’s needs in their current feeder pattern. However, as drafted, the bill creates an exception to the student’s right to their feeder pattern when “the new service location within the feeder pattern does not have special education services available that would support the child’s IEP.”<sup>24</sup> Based on our experience representing the families of students with disabilities, we expect that this exception will swallow the rule. Under current law and practice, a student’s location of service is changed to another school when the student’s current school does not have an open seat in the relevant self-contained classroom. The bill as drafted would not change this practice. LEAs can continue to change a student’s LOS whenever their school *does not* currently offer the self-contained setting required by the student’s IEP. As such, we recommend the following changes:



“(a) A child with a disability has the right to continue with their initial placement’s feeder pattern as that term is defined in section 1102a(2A) of the School Based Budgeting and Accountability Act of 1998, effective June 21, 2014 (D.C. Law 20-114; D.C. Official Code § 38- 56 2801.01(2A)), unless the new service location within the feeder pattern **does not have** special education services **available** that would support the child’s IEP.”.

These changes would preserve the ability of the LEA to change a student’s LOS but would limit the applicability of the exception to cases where the LEA *cannot* offer the relevant self-contained setting in the student’s current school.

#### Additional Protections Are Needed to Ensure Parent Participation When an LOS Change Is Proposed

In enacting the IDEA, Congress found that “the education of children with disabilities can be made more effective by... strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home.”<sup>25</sup> However, current DC law allows changes in service location to be made without input from the student’s parent or IEP team. To improve parents’ ability to meaningfully participate in proposed LOS changes, we recommend three changes to B25-0847:

1. Require LEAs to convene an IEP team meeting when an LOS change is proposed;
2. Require LEAs to explain why the student’s current LOS cannot offer the services required by the student’s IEP; and,
3. Require the LEA to Offer Parent the Opportunity to Enroll Siblings in New LOS.

Together, these changes will increase parent participation in the LOS change process and limit the burden on families that result from a change in service location.

1. *Require LEAs to Convene an IEP Team Meeting When an LOS Change Is Proposed*

IEP Team meetings are the key mechanism by which parents of students with disabilities can participate in their child's education.<sup>26</sup> The IEP Team is responsible for the development, review, and revision of the student's IEP.<sup>27</sup> However, under current DC law, an LEA can change a student's location of service (i.e., their school) without input from the IEP team or consent from the parent.<sup>28</sup> LEAs are only required to "provide the parent with written notice of the proposed change." B25-0847 would change this to require that the LEA "consult with the child's IEP team" before making a change to a student's service location.<sup>29</sup> However, the term "consult" is too vague to ensure that the IEP team – including the student's parent – has a meaningful chance to participate in decisions regarding a proposed LOS change. To strengthen parental participation in this decision, we recommend the following changes to line 59-62:

“(b)(1) Before any change in service location for a child with a disability is made, the LEA shall ~~consult with~~ **convene a meeting of** the child's IEP team as defined by 20 USC § 1414 (d)(1), **waivable by the parent**, and shall provide the IEP team with written notice of the proposed change, which shall at minimum include:”.

This change will ensure that the student's IEP team, including their parent(s), will be convened to discuss the proposed change in service location. However, where the parent

already understands and agrees with the proposed LOS change, this language would allow them to waive the meeting requirement. These changes are consistent with the IDEA's directive that LEAs provide parents with a meaningful opportunity to participate in their child's education.

2. *Require LEAs to Explain Why a Student's Current LOS Cannot Offer the Services Required by the Student's IEP*

When an LEA decides to change a student's LOS, current DC law requires that the LEA provide parent with written notice of the proposed change that includes a explanation of how and why the LEA has come to this decision.<sup>30</sup> However, in our experience, this notice often does little more than announce the change in school and affirm that the new LOS offers the relevant self-contained setting. For DCPS, this notice generally follows the below format:

"[School A] has been identified as the location of services for [Student Name] for the [XX-XY] school year. [School A] has the programming in place to meet [Student's] current IEP needs. [Student's] location is changing for the [XX-XY] school year because [School A] is the closest school to your home address with space available in the [relevant self-contained] classroom."<sup>31</sup>

This notice does the bare minimum to meet legal requirements but does not provide parents with a meaningful explanation as to why the student's current school or the next school in their feeder pattern cannot meet the student's IEP needs. It does not explain why the school nearest to the student's home was chosen over a school within the existing

feeder pattern. It does not offer insight regarding when the decision was made, by whom, or for what reason(s). This can leave parents with more questions than answers.

B25-0847 proposes a change to the notice requirement to include an explanation as to “[w]hy the special education services in the current feeder pattern cannot meet the student’s needs, if the action removes the child from their current placement’s feeder pattern.”<sup>32</sup> However, we suspect that this requirement will result in minimal change to the substance of the present notice. Likely, LEAs would add to the above notice format a line stating:

“[Student’s Current School / Next Feeder Pattern School] cannot meet [Student’s] IEP needs because it does not have space available in a [relevant self-contained] classroom.”

This will not provide parents with any meaningful insight into why their student is being forced to change schools. To further strengthen the notice requirement in B25-0847, we recommend the following addition:

“(4) Subsection (b)(1)(B) is amended to read as follows:

“(B) An explanation of the following:

- (i) Why the LEA proposes to take the action; ~~and~~
- (ii) Why the special education services in the current feeder pattern cannot meet the student’s needs, if the action removes the child from their current placement’s feeder pattern; ~~and~~
- (iii) Why the special education services required by the student’s IEP cannot be offered at the student’s current**

**location of service, if the action removes the child from their current location of service;”.**

This change would require the LEA to articulate not only why the student’s feeder pattern cannot, under current conditions, meet the student’s IEP, but also why the LEA cannot adapt the student’s current LOS to offer the necessary IEP services. This more detailed notice, combined with the abovementioned IEP team meeting requirement, would ensure that the parents of students with disabilities are offered a meaningful opportunity to participate in their child’s education, as required by the IDEA.

*3. Require the LEA to Offer Parent the Opportunity to Enroll Siblings in New LOS*

In addition to convening an IEP meeting, we recommend two amendments to the bill that would require the LEA to consider the student’s family circumstances when choosing a new LOS for a student whose present school cannot offer the necessary self-contained classroom setting. Currently, the DC Code does not provide any limitations on an LEA’s ability to change a student’s LOS.<sup>33</sup> The law only requires that the LEA provide written notice of a proposed LOS change to parents.<sup>34</sup> This notice shall include, among other things, a “description of any other factors relevant to the LEA’s proposal.”<sup>35</sup> However, the law does not specify any factors that LEAs are to consider when making the decision to change a student’s service location. In their Special Education Family Guide, DCPS states that “[t]o the best extent possible, we offer the opportunity to attend a school as close as possible to the neighborhood school to receive services in a self-

contained classroom.”<sup>36</sup> However, in limiting consideration to only the distance from the student’s home, this practice ignores the myriad other factors that impact a family’s decision regarding where to enroll their student.

One concern that arises often for our client families is moving students with disabilities to a new school while the child’s siblings remain at the previous school. Even if the new LOS is the closest option to the student’s home, the family’s before- and afterschool routines are significantly disrupted by separating siblings. Outside of special education, DCPS acknowledges that “[e]nrolling siblings together at a school is beneficial to students, families, and schools” and offers a sibling preference in the My School DC Lottery.<sup>37</sup> However, when proposing a change in LOS, this sibling preference is lost. To ensure that families of students with disabilities are not denied the same sibling preference afforded to their nondisabled peers, we recommend the following addition to subsection (b) of the legislation:

**(5) A new subsection (b)(1A) is added to read as follows:**

**“(b)(1A) When a change in service location for a child with a disability is made, the LEA shall offer the child’s parent the opportunity to enroll any of the child’s siblings in the new service location, unless the new service location exclusively serves students with disabilities.**

This addition will require LEAs to consider the impact of an LOS change on the student’s family and, in most cases, to offer seats at the new service location to any siblings that might otherwise be separated due to the change in service location.

## The Student-to-Staff Ratio Provision Requires Additional Specificity to Achieve Its Intent

Like with the provision regarding feeder pattern continuity, the bill's requirement that OSSE develop a student-to-staff ratio for self-contained classroom could advance equity for students in those settings. Councilmember Henderson's Statement of Introduction highlights that clear student-to-staff ratios are critical to both teacher well-being and improvements in student engagement, achievement, and behavior.<sup>38</sup> As drafted, the bill directs the Executive to promulgate rules regarding a student-to-staff ratio in self-contained classrooms.<sup>39</sup> However, we are concerned that bill does not provide sufficient specificity to ensure that the legislative intent is met. We understand a desire for legislation not be overly prescriptive and to defer to the content area expertise of the relevant agency, However, OSSE has historically declined to use regulations to provide greater clarity than the relevant statutory text.<sup>40</sup> As such, we urge the Committee to ensure that the legislative language is sufficiently specific regarding the regulations that OSSE is directed to promulgate.

To ensure that the legislation contains the requisite clarity regarding the regulations required, we recommend that the proposed Sec. 105 be revised as follows:

"Sec. 105. Self-contained classroom size.

**"(a) The Office of State Superintendent of Education shall, pursuant to section 106, promulgate regulations, establish minimum student-to-staff ratios for self-contained special education classrooms**

based on recognized best practices. These regulations shall, at a minimum, include:

(1) set student-to-staff ratios for self-contained classrooms based on the level of need of the students typically assigned to that placement;

(2) a definition of “staff” for the purposes of these regulations, including any necessary licensure or other qualifications;

(3) guidance regarding whether an individual student’s dedicated aide can be counted toward as “staff” for the purpose of determining a classroom’s ratio; and,

(4) guidance regarding the factors that an LEA must consider when determining the applicability of these regulations to a specific classroom.

“(b) If the student-to-staff ratio in a self-contained special education classroom exceeds the ratio set by the rules promulgated pursuant to section ~~106~~ **105(a) for more than 5 consecutive or 10 cumulative school days**,<sup>41</sup> an LEA shall provide a written explanation to the special education teacher in an affected self-contained special education classroom, the parents of the students in an affected self-contained special education classroom, and school administrators, describing the additional resources or personnel that will be allocated to a self-contained special education classroom to meet each student’s needs as defined by their IEP, within 5 business days. **Compliance with this notice requirement shall not be a defense to a denial of a free appropriate public education as defined in D.C. Official Code § 38-2561.01”**.



These changes seek to clarify expectations and ensure that OSSE has sufficient guidance regarding the regulations they are charged with promulgating. Moreover, we propose language would require that the rules set forth by OSSE be based on best practices and that they anticipate a variety of circumstances in which they may need to be applied. These additions would establish clearer guidelines for OSSE when they are going through the rulemaking process and, in turn, lead to stronger final regulations.

### **Legislation Alone Cannot Solve the District’s Systemic Failures to Meet the Needs of Students with Disabilities**

While the Advancing Equity in Special Education Protocols Amendment Act of 2024 works to create additional protections for students in self-contained settings, the District needs a more comprehensive plan to address the many ways in which students with disabilities are systemically underserved. To this end, we have two recommendations for the Committee – (1) increase oversight of special education and (2) lead the education sector in the development of a comprehensive plan to reform special education in the District of Columbia.

### **The Council Must Increase Oversight of Special Education to Ensure That Students with Disabilities Are Receiving an Equitable Education**

Over the past year, we have seen how the Committee’s focused attention on chronic absenteeism has spurred action across the education and human services clusters.<sup>42</sup> Special education needs comparable attention to identify and address the barriers faced by students with disabilities. As such, we urge the Committee to increase

its oversight of special education through regular public hearings or roundtables to hear from parents, teachers, students, local and national experts, and the relevant agencies about the systemic challenges faced by students with disabilities in DC. Importantly, greater oversight from the Committee could result in much needed reform to the District's provision of special education and, in turn, decrease the District's reliance on costly litigation to identify and remedy issues in special education.

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 and prepare them for further education, employment, and independent living [and] to ensure that the rights of children with disabilities and parents of such children are protected."<sup>43</sup> As such, the primary goal of LEAs should be ensuring that students with disabilities are receiving the specialized instruction and related services necessary for them to access their education.

Understandably, there will be times when mistakes are made, or disputes arise between the school and the student's parent(s). The IDEA anticipates this reality and outlines procedural safeguards for parents and children to ensure that their rights under the law are protected.<sup>44</sup> These safeguards include tools by which disputes between parents and LEAs can be resolved, including due process hearings.<sup>45</sup> However, over the years, we have observed an increasingly adversarial dynamic develop between DCPS

and students' families. Too often, families must fight tooth and nail to get their child the services and supports to which they are entitled under the IDEA.

The IDEA creates a private right of action by parents can use the legal system to enforce the law when they feel that their student is being denied a free, appropriate public education (FAPE).<sup>46</sup> However, the IDEA's reliance on parents to navigate the legal system, or pay an attorney to represent them, has led to wealth-based disparities in enforcement.<sup>47</sup> Concerns about the legal system, and the associated costs, likely dissuade many parents from ever pursuing enforcement of their student's IEP. As a result, the invocation of the legal system can become be used to oppose, delay, or impeded access to special education. Even in cases where the parent seeks to enforce their rights under the IDEA, drawn out litigation timelines and administrative delays often result in missed educational opportunities for students in the interim.

According to the Center for Appropriate Dispute Resolution in Special Education (CADRE), hundreds of Due Process Complaints are filed in DC each year.<sup>48</sup> If the parent and the LEA are not able to resolve their dispute through a resolution meeting or mediation, a due process hearing is held before a hearing officer contracted by OSSE's Office of Dispute Resolution. At any time before an HOD is issued, parties can continue settlement negotiations. Data from OSSE's performance oversight responses indicate concerning trends in dispute resolution practices in DC. Specifically, LEAs are choosing to litigate cases where they are overwhelming found to be in the wrong. Among cases in

which a final Hearing Officer Decision (HOD) is made, the HOD is issued against the LEA more than 90% of the time (see chart below).<sup>49</sup>

**Due Process Hearings That Resulted in Final Order Issued**

	<b>Total Number of Hearing Officer Decisions Issued Against LEAs or SEAs</b>	<b>Total Number of Hearing Officer Decisions Against Parents</b>	<b>Total Number of Hearing Officer Decisions Issued</b>
FY22	52	5	57
FY23	64	3	67
FY24 to-date (Jan 31, 2023)	34	2	36

By litigating cases that they overwhelmingly lose, LEAs are not only delaying access to services for the student but are expending resources that could have been used to support the student’s need in the first place. Moreover, when the caregiver prevails in their claims, the LEA is responsible not only for the cost of the service they should have offered from the start, but also the parent’s attorney’s fees and, in some cases, compensatory education for the period of time that the student was denied FAPE.<sup>50</sup> These costs become even greater when the same issues are faced by students over and over again. Historically, systemic failures in the provision of special education in the District have historically led to class action lawsuits on behalf of all affected students with disabilities.<sup>51</sup> Like with enforcement of individual denials of FAPE, it seems that systemic reform to DC’s provision of special education comes only when court ordered. This has perpetuated an adversarial and litigious relationship between families of students with disabilities and DCPS and OSSE. But it does not have to be this way.

As the Committee is aware, the realm of special education comprises myriad concerns including evaluations, academic achievement, provision of services, parent participation, language access, student attendance, OSSE transportation, continuum of placements, staffing concerns, secondary transitions, nonpublic schools and residential facilities, litigation costs and compensatory education, among others. Hearings focused on these issues would bring to light the various areas of reform needed to improve the District's provision of special education, inform future legislation, and ideally reduce the need for costly litigation to enforce students' rights to special education.

#### The District Needs a Comprehensive Plan for Special Education Reform

Oversight will uncover the gaps in DC's special education system, but more will be needed to ensure that meaningful change is made. As such, we urge the Committee and the education agencies to work together to develop a comprehensive plan for the improvement of special education in the District based on the lessons learned through the public hearings. While OSSE has a strategic plan "to raise the quality of education and close opportunity gaps in the District,"<sup>52</sup> we believe that the work of reforming special education will require action the whole of DC's education sector. OSSE, the Deputy Mayor for Education, the Public Charter School Board (PCSB), DCPS, and the charter LEAs will all need to work together to ensure DC's students with disabilities are receiving an equitable education. To do so, they need a shared vision and comprehensive plan for how to move forward. Given the Committee of the Whole's jurisdiction over

agencies in the education cluster, you have both the opportunity and the responsibility to be a leader of this work. As such, we urge the Committee to lead a cross-agency coalition of education stakeholders to develop a comprehensive plan to guide improvement of special education in the District. Rather than wait for the next court-ordered consent decree, the District must proactively examine where it is missing the mark and what is needed to course correct.

Thank you for this opportunity to provide testimony. I welcome any questions.

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<sup>1</sup> See B25-0847, *Advancing Equity in Special Education Protocols Amendment Act of 2024*.

<sup>2</sup> See Danielle Robinette, Children’s Law Center, Testimony Before the Council of the District of Columbia, Committee of the Whole, Public Hearing on Chronic Absenteeism and Truancy (November 13, 2024), p.12, fn. 1, available for download at: <https://lims.dccouncil.gov/Hearings/hearings/536>

<sup>3</sup> See 20 U.S.C. § 1400(c)(2).

<sup>4</sup> See 20 U.S.C. § 1400(c)(2)(B).

<sup>5</sup> 20 U.S.C. § 1412(a)(5).

<sup>6</sup> Id.

<sup>7</sup> See Corie Colgan, District of Columbia Public Schools, Testimony Before the Council of the District of Columbia, Committee of the Whole, Public Hearing on B25-847 “Advancing Equity in Special Education Protocols Amendment Act of 2024” and Oversight of Education for Students with Special Needs (November 20, 2024), p. 4, available for download at: <https://lims.dccouncil.gov/Hearings/hearings/521> (noting that DCPS educated 2,400 students in self-contained classrooms in SY23-24).

<sup>8</sup> See B25-0847, *Advancing Equity in Special Education Protocols Amendment Act of 2024*.

<sup>9</sup> See 20 U.S.C. § 1401 and 34 CFR § 300.4-300.45.

<sup>10</sup> See DC Code § 38-2471.02 and 5A DCMR Ch. 30.

<sup>11</sup> See District of Columbia Public Schools, Common Terms in Special Education, “Self-Contained,” available at: <https://dcps.dc.gov/page/common-terms-special-education>

<sup>12</sup> See Corie Colgan, District of Columbia Public Schools, Testimony Before the Council of the District of Columbia, Committee of the Whole, Public Hearing on B25-847 “Advancing Equity in Special Education Protocols Amendment Act of 2024” and Oversight of Education for Students with Special Needs (November 20, 2024), attached slides, p. 7, available for download at: <https://lims.dccouncil.gov/Hearings/hearings/521> (noting that, along the continuum of least restrictive environments, self-contained is followed by a separate day school).

<sup>13</sup> See District of Columbia Public Schools, Common Terms in Special Education, “Self-Contained,” available at: <https://dcps.dc.gov/page/common-terms-special-education>; see also, DC Special Education Hub, “DCPS Self-Contained Programs: How are Students Assigned to a School?” available at: <https://youtu.be/Xaw-sPsyU90?si=m0XHUMRnU6UhJrF->

<sup>14</sup> *Andrew F. v. Douglas County School District RE-1*, 580 U.S. \_\_\_, slip op. at 14-15 (2017).

<sup>15</sup> B25-0847, *Advancing Equity in Special Education Protocols Amendment Act of 2024*, lines 47-49.

<sup>16</sup> See Vanessa Williamson, et al., Brookings, “‘We all want what’s best for our kids’: Discussions of D.C. public school options in an online forum,” available at: [https://www.brookings.edu/wp-content/uploads/2021/03/Discussions\\_DC\\_public\\_school\\_options\\_online\\_forum\\_Brookings-Report.pdf](https://www.brookings.edu/wp-content/uploads/2021/03/Discussions_DC_public_school_options_online_forum_Brookings-Report.pdf)

<sup>17</sup> Id., p. 20 (finding that “[a]lmost a fourth of all conversations on the forum refer to feeder patterns.”)

<sup>18</sup> See DC Special Education Hub, Key Terms, “Location of Service,” available at:

<https://specialeducation.dc.gov/page/key-terms> (defining Location of Service (LOS) as “[t]he place where a student receives their services (their school). DCPS students in self-contained programs are typically assigned an LOS that differs from their in-boundary school).

Note: Given that most of the charter LEAs have only one campus, this practice is generally limited to DCPS and the larger charter LEAs. For example, KIPP DC has The Learning Center at their Douglass Campus which serves “approximately 60 students in grades PreK4 through 8 who are currently enrolled in KIPP DC schools, and whose Individualized Education Programs (IEPs) indicate that they require specialized instruction and related services in a full-time setting outside of general education.” KIPP DC:

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Public Schools, KIPP DC News, “KIPP DC Opens The Learning Center” (Aug. 21, 2015), *available at*: <https://www.kippdc.org/kipp-dc-opens-the-learning-center/>

<sup>19</sup> See District of Columbia Public Schools, DCPS Special Education Family Guide, “SY24-25 Self-Contained Classrooms by High School Feeder,” *available at*: <https://dcpsspeciald.wixsite.com/home/self-contained-feeder-patterns>

<sup>20</sup> See My School DC, “Public Charter Schools: 2021-22 School Year Feeder Patterns,” *available at*: [https://www.myschooldc.org/sites/default/files/dc/sites/myschooldc/page/attachments/SY21-22%20Feeder%20Patterns%20%28PCS\\_ENG%29.pdf](https://www.myschooldc.org/sites/default/files/dc/sites/myschooldc/page/attachments/SY21-22%20Feeder%20Patterns%20%28PCS_ENG%29.pdf)

<sup>21</sup> District of Columbia Public Schools, DCPS Special Education Family Guide, “SY24-25 Self-Contained Classrooms by High School Feeder,” *available at*: <https://dcpsspeciald.wixsite.com/home/self-contained-feeder-patterns>

<sup>22</sup> B25-0847, *Advancing Equity in Special Education Protocols Amendment Act of 2024*, lines 53-54.

<sup>23</sup> *Id.*, lines 66-67.

<sup>24</sup> *Id.*, lines 56-57.

<sup>25</sup> 20 U.S.C. § 1400(c)(5)(B).

<sup>26</sup> See 34 CFR § 300.322.

<sup>27</sup> See 34 CFR § 300.324.

<sup>28</sup> DC Code § 38-2571.03(1)

<sup>29</sup> B25-0847, *Advancing Equity in Special Education Protocols Amendment Act of 2024*, line 58-62.

<sup>30</sup> See DC Code § 38-2571.03(1).

<sup>31</sup> Various examples on file with Children’s Law Center.

<sup>32</sup> B25-0847, *Advancing Equity in Special Education Protocols Amendment Act of 2024*, line 63-68.

<sup>33</sup> See DC Code § 38-2571.03.

<sup>34</sup> DC Code § 38-2571.03(1).

<sup>35</sup> DC Code § 38-2571.03(1)(G).

<sup>36</sup> District of Columbia Public Schools, DCPS Special Education Family Guide, “SY24-25 Self-Contained Classrooms by High School Feeder,” *available at*: <https://dcpsspeciald.wixsite.com/home/self-contained-feeder-patterns>

<sup>37</sup> District of Columbia Public Schools, “SY24-25 District of Columbia Public Schools Enrollment and Lottery Handbook,” p. 18-19 (Dec. 2023), *available at*: [https://enrolldcps.dc.gov/sites/dcpsevenrollment/files/page\\_content/attachments/SY24-25%20DCPS%20Enrollment%20and%20Lottery%20Handbook.pdf](https://enrolldcps.dc.gov/sites/dcpsevenrollment/files/page_content/attachments/SY24-25%20DCPS%20Enrollment%20and%20Lottery%20Handbook.pdf)

<sup>38</sup> See Councilmember Christina Henderson, Chairperson, Committee on Health, DC Council, “Statement of Introduction: Advancing Equity in Special Education Protocols Amendment Act of 2024,” (June 10, 2024), *available at*: <https://lims.dccouncil.gov/downloads/LIMS/55662/Introduction/B25-0847-Introduction.pdf?Id=192345>

<sup>39</sup> B25-0847, *Advancing Equity in Special Education Protocols Amendment Act of 2024*, line 70-82.

<sup>40</sup> See Office of the State Superintendent of Education, Notice of Final Rulemaking, 70 D.C. Reg. 006850, 006853 (May 12, 2023) (wherein OSSE declined to add “pregnancy or birth of a child” to the definition of health condition “because the definition of health condition included in the proposed rulemaking is consistent with D.C. Official Code § 38-251.01”).

<sup>41</sup> The specific number of days may be flexible. The key to this change is to address whether an LEA needs to go through this notice process every time a staff member is out for any period (e.g., calls out sick). We believe that a better approach would be to require notice to families when there are extended or recurring staffing disruptions in a particular classroom (e.g., teacher out on medical leave or resigns midyear).



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<sup>42</sup> See Danielle Robinette, Children’s Law Center, Testimony Before the Council of the District of Columbia, *supra* note 2.

<sup>43</sup> 20 U.S.C. § 1400(d)(1).

<sup>44</sup> See 34 CFR § 300.500 *et seq.*

<sup>45</sup> See 34 CFR § 300.506-300.520.

<sup>46</sup> See Eloise Pasachoff, “Special E Special Education, Poverty, and the Limits of Private Enforcement,” 86 Notre Dame L. Rev. 1413, p. 1422 (2011), *available at*:

<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1690&context=facpub>

<sup>47</sup> *Id.*, at 1426.

<sup>48</sup> See The Center for Appropriate Dispute Resolution in Special Education, “National & State DR Data Dashboard,” *available at*: <https://www.cadeworks.org/national-state-dr-data-dashboard> (filtering Total Events by State/Entity “District of Columbia” showing the number of Due Process Complaints filed by school year. SY21-22 - 237; SY20-21 - 190; SY19-20 – 268; SY18-19 – 346; SY17-18 – 333; SY16-17 – 323.

<sup>49</sup> See Office of the State Superintendent of Education, FY23 Performance Oversight Responses, response to Q79, p 207, *available at*: <https://dccouncil.gov/wp-content/uploads/2024/08/FY23-OSSE-Performance-Oversight-Hearing-Council-Responses.pdf>

<sup>50</sup> Through our medical-legal partnership, Healthy Together, Children’s Law Center often represents families in special education matters that sometimes result in Due Process Hearings. When our parent-client prevails in these cases, we do not seek attorney’s fees from the LEA, except in rare circumstances.

<sup>51</sup> See e.g., Judge David L. Bazelon Center for Mental Health Law, “Closed Cases: Blackman v. District of Columbia,” *available at*: <https://www.bazelon.org/blackman-v-district-of-columbia/>; Office of the State Superintendent of Education, “D.L. v. District of Columbia at a Glance,” *available at*:

[https://osse.dc.gov/sites/default/files/dc/sites/osse/page\\_content/attachments/D.L.%20v%20District%20of%20Columbia%20at%20a%20Glance.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/D.L.%20v%20District%20of%20Columbia%20at%20a%20Glance.pdf); Children’s Law Center, “The District Fails to Provide Transportation for Students with Disabilities,” *available at*: <https://childrenslawcenter.org/our-impact/education/the-district-fails-to-provide-transportation-for-students-with-disabilities/>

<sup>52</sup> Office of the State Superintendent of Education, “Road to Restoration: 2023-2025 Strategic Plan,” p. 1, *available at*:

[https://osse.dc.gov/sites/default/files/dc/sites/osse/page\\_content/attachments/STRATPlan\\_FINAL.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/STRATPlan_FINAL.pdf)