



616 H Street, NW · Suite 300
Washington, DC 20001
T 202.467.4900 · F 202.467.4949
www.childrenslawcenter.org

**Testimony before the District of Columbia Council
Committee of the Whole
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**Agency Performance Hearing
Testimony Regarding:
Office of the State Superintendent of Education and
District of Columbia Public Schools**

**Judith Sandalow
Executive Director
Children's Law Center**

Good morning Chairman Brown and members of the Council. My name is Judith Sandalow. I am the Executive Director of Children's Law Center¹ (CLC) and a resident of the District. I am testifying today on behalf of CLC, the largest non-profit legal services organization in the District and the only such organization devoted to a full spectrum of children's legal services. Every year, we represent over 1,200 low-income children and families, focusing on children who have been abused and neglected and children with special health and educational needs. My testimony today will be split into observations and concerns regarding the District of Columbia Public Schools (DCPS) and the Office of the State Superintendent of Education (OSSE).

District of Columbia Public Schools

I appreciate this opportunity to testify regarding the performance of DCPS over the past year. The majority of the children that CLC represents attend DCPS. As with past years, I will focus my testimony on DCPS special education programs and services. I would like to take this opportunity to first acknowledge progress has been made over the past year. DCPS has worked to expand some effective programs. For example, CLC welcomes the DCPS enlargement of the Tools of the Mind program. It exemplifies the type of research-based models that we encourage DCPS to implement widely. This program focuses on helping children acquire foundational skills for academic achievement including cooperation, increased focus and sustained memory.² There is, however, still much progress to be made.

Program Capacity

In the past year, DCPS has continued to take incremental steps to strengthen its special education program. We appreciate the commitment of the DCPS leadership to improving the array of special education options within DCPS so that fewer children will need to attend nonpublic schools distant from their homes. While CLC is encouraged by the progress made by DCPS, there continues to be a significant lack of special education program capacity.

As this Council is well aware, DCPS has long had a severe shortage in program capacity, which requires the District to send children to schools in Virginia and Maryland where appropriate programs exist. The schools are often full-time therapeutic special education schools for children who require intensive levels of support. DCPS has developed some full-time therapeutic special education programs, in particular at the elementary school level, but gaps in program capacity remain. As DCPS now focuses on bringing children back to their neighborhood schools, we encourage them to take a very close look at their program capacity first. The District must ensure that they have the capacity to serve the needs of each special education student *before* bringing them back to the public system.

We share the goal of children being able to attend their local school with their peers. When the necessary supports exist for a child with a disability, inclusion in general education can help them to make tremendous progress. Participation in general education, with same-age peers, can allow a child to model the behaviors of those around them, gain confidence and social experience needed to help them to succeed in their own communities.

CLC attorneys have had positive experiences with some of the elementary school programs where DCPS has invested resources. For example, multiple CLC attorneys have reported that the non-categorical program at Cleveland Elementary School has been excellent. The teachers and staff have ensured children were thoroughly evaluated and their services were tailored to the individual student. In one specific case they helped a child with several medical needs transition into general education classes in the first grade over a gradual period, realizing that he would be too overwhelmed to approach it all at once. CLC attorneys have noted that the teachers and special education team are well qualified, caring and responsive to their students' needs.

Unfortunately, this is not yet a universal experience. There are many types of disabilities and special needs. We remain concerned that DCPS does not currently have the capacity to serve the

wide variety of students in its population. School districts must provide a continuum of alternative placements to meet the varying needs of students.³ Forcing a child into a classroom that is not capable of accommodating his or her disability can have disastrous results. Instead of building confidence, already fragile self-esteem can be shattered; children fall behind in classes that aren't being taught in a way they can understand; and in some cases, the health and safety of the students and those around them is jeopardized.

My colleagues work regularly with DCPS in order to find the most appropriate program to serve students' needs. They report that it is often next to impossible to determine what schools are capable of serving which students. Students with different needs require different levels of intervention and staff with varying degrees of expertise. For some students it would be appropriate to be included in a general education classroom with occasional support from a special education co-teacher. However many students require much more than that. Some students' disabilities, for example certain students on the autism spectrum, mean that a teacher will need specific training in order to be successful.

It has been the experience of attorneys at CLC that placements are recommended for children that have almost no correlation to their individual needs. To illustrate this point, here are a few specific examples:

CLC represents Anna. She has a degenerative neurological condition that required her to stay in the hospital for 4 weeks. During that stay, it became clear Anna would need a wheelchair in order to return to school. Anna's old school was not wheelchair accessible. After advocacy from Anna's CLC lawyer, DCPS proposed three possible placements. Of these possible options, only one was wheelchair accessible.

CLC also represents Javon. Javon is classified as having an emotional disturbance. Javon's current school determined that he required a full-time placement, and there was no dispute among the IEP team. The DCPS representative proposed a placement. When the attorney and parent went to visit the proposed school, they found that not only was the school unable to provide full-time services, it did not even have a program for emotionally disturbed children.

As DCPS moves forward and strives to bring children closer to home and back to the public system, we urge them to ensure the necessary investments are made on the front end. Any cost savings that arise when DCPS is no longer paying for a private placement must first be passed back to the students in the form of viable programs with a sufficient number of qualified teachers and support staff. These programs will not simply exist because we are bringing children into the District to fill them; DCPS must invest the resources to ensure they are created and supported.

It would also be helpful if there was a resource that identified what programs existed within DCPS. Despite repeated requests for this information, there is no comprehensive, and publicly accessible, list of special education programs within DCPS. Short of calling each individual DCPS school for the information, parents, students and their attorneys have virtually no way of knowing where programs exist, what methodologies they are using in the classroom, what staff are in the classrooms or what training and licensing the professionals have. This makes it difficult to access the existing programs.

Early Stages

Before a child can start receiving the individualized attention that his or her disability will require, he or she must be identified as having that disability. There is a priority placed on identifying children with disabilities as soon as possible.⁴ The earlier children are identified and provided with supports and services the better the outcome. For children ages 3-5 in the District of Columbia, the responsibility for identifying, evaluating and serving their needs lies largely with Early Stages, operated by DCPS.⁵

Much attention has been focused on Early Stages in the last few years as they have redone their facility, hired enthusiastic new staff and even expanded their physical location. However, concerns remain that this important organization is to some extent a victim of its own success. The

improved early identification of need has not kept pace with the ability to fully evaluate and provide services.

A typical example of this was our client Marco:⁶

Marco was receiving early intervention services before turning three (3) and transitioning to Early Stages in August of 2010. At that time Marco received an updated round of testing with Early Stages. That testing recommended immediate services. A full time Individualized Education Program (IEP) was created in September of 2010 and it called for a full time special education placement. Marco did not start receiving special education services until January of 2011 and he did not start his physical therapy until March of 2011, both of which were required by the IEP.

We have also seen delays in eligibility determinations. For example our client Devon:

Devon was evaluated by Early Stages when he was still in day care. Early Stages received information that his first day care kicked him out because of social and emotional struggles. After that, Devon was psychiatrically hospitalized and referred for evaluations. Because his evaluations did not show a cognitive delay, Early Stages took the position that more data was needed to show an adverse impact on his education before they could find him eligible for services. Devon's CLC attorney took his case to a due process hearing, where DCPS immediately settled the case because there was ample evidence to qualify Devon for services.

To continue to be a success, Early Stages needs the resources and support to not just screen but fully evaluate children in a timely manner. Further, once the need is identified, the District must ensure that there exist sufficient resources for children to get timely services.

Office of the State Superintendent of Education

In the past year, OSSE has continued to make substantial progress toward improving the education system in the District of Columbia. OSSE also continues to be a model agency in its openness to community feedback and its well-organized policy-making process. I do, however, have some concerns and suggestions.

Oversight of Local Education Agencies

OSSE, as the State Education Agency, has oversight responsibility for the Local Education Agencies (LEAs). While we appreciate OSSE's guidance for the LEAs there remain some gaps in

compliance. LEAs do not seem to always understand that they are subject to OSSE's regulations. Even when they do acknowledge this, they are not always quick to adopt the standards and practices recommended. CLC supports OSSE's continued efforts to bring a level of uniformity and oversight to the LEAs in the District.

One area of particular concern is the lack of uniformity in school discipline policies. It has been our experience that some LEAs' discipline policies are unnecessarily vague, do not provide sufficient notice to children and families and are punitive instead of being student focused. For example:

CLC represents Xavier. Xavier was 4 years old and in prekindergarten and had already been suspended from his charter school three times for disruptive or dangerous behavior. The behavior that led to these suspensions was described by witnesses as kicking off his shoes and having a tantrum. Xavier's mother reported to the school in December that she was concerned that he was a child with special needs. When his school attempted to expel him in April of the same year for a similar incident, they did not notify his mother of any method for appeal, did not give her any of the details in writing and did not follow the law regarding protections for students suspected of having disabilities.⁷

We appreciate that part of the benefit of charter schools is diversity and flexibility. However, there should be minimum standards that all schools follow, and all schools must follow local and federal law. OSSE promulgated draft discipline regulations for all LEAs that have yet to be finalized. We encourage OSSE to finalize the regulations so that all LEAs and families can have clear guidance and basic uniformity.

Early Intervention

OSSE is the State Agency responsible for the Early Intervention Program (EIP), which administers Part C of the Individuals with Disabilities Education Improvement Act (IDEIA) for infants and toddlers ages 0-3. OSSE is responsible for identifying, evaluating and serving this population. OSSE has taken significant steps to improve DC's EIP. We applaud OSSE for their launch of Strong Start in the summer of 2011. Strong Start aims to increase the number of children

who are identified early with disabilities in the District by raising awareness of the EIP program. While we are still waiting for metrics, the early indications are that there has been an increase in children being screened and served -- and we have all seen the campaign signs on the buses in both English and Spanish. This is a great step forward, as the earlier children are identified and services provided the better the children's long term outcomes and the less likely they will need special education classes when they enter school.

We also know that OSSE has been considering modifying the criteria for services. Currently, in order to qualify as a child with disability under Part C in the District of Columbia, a child must have a 50% delay in one or more domains of development. This is among the most narrow eligibility criteria in the nation. Most states establish eligibility for EI services at a 25% delay in one or more areas of development.⁸ Additionally, many other states have recognized that the definition should be different for children less than one year of age because of the rate at which development occurs and the opportunity to achieve better outcomes that are unique to this age range. OSSE announced that they will soon be releasing new proposed regulations that may expand the eligibility criteria. We hope that the revised OSSE rules will expand the eligibility criteria and serve more children.

Thank you again for the opportunity to testify. CLC looks forward to working with OSSE and DCPS in the coming year and I am happy to remain and answer any questions.

¹Children's Law Center works to give every child in the District of Columbia a safe home, meaningful education and healthy life. As the largest nonprofit legal services provider in the District, our 80-person staff partners with hundreds of pro bono attorneys to serve 1,200 at-risk children each year. Applying the knowledge gained from this direct representation, we advocate for changes in the city's laws, policies and programs. For more information, visit www.childrenslawcenter.org.

²See DCPS webpage: What your child is learning in Preschool, Pre-k and Kindergarten
<http://dc.gov/DCPS/In+the+Classroom/The+DCPS+Academic+Plan/What+does+this+plan+mean+for+my+child%3F/What+your+child+is+learning+in+Preschool,+Pre-k,+and+Kindergarten>

³ See 34 CFR § 300.115.

⁴ See 34 CFR § 300.11 Child Find; While 34 CFR 303.1 Purpose of the early intervention program for infants and toddlers with disabilities references children 0-3 years old, its existence emphasizes the importance placed on early identification

⁵ Beginning at the third birthday, children with disabilities receive services through the Early Childhood Special Education (ECSE) system. ECSE is regulated by Part B of IDEA. ECSE services in DC are administered through the Local Educational Agencies (LEA). DCPS is the largest LEA and operates Early Stages, the child find center for early childhood special education in DC.

⁶ The case examples used are based on real cases; however, the names and identifying information have been changed to protect the privacy of our clients.

⁷ Federal law requires that students who are suspected of having a disability qualify for the same disciplinary protections that apply to children with documented disabilities. 34 CFR 300.534. Those protections include a meeting prior to suspension to determine if the child's behaviors are a manifestation of his or her disabilities.

⁸ Shackelford, J. (2006). State and Jurisdictional Eligibility Definitions for Infants and Toddlers with Disabilities Under IDEA. *NECTAC Notes*, 21. <http://www.nectac.org/~pdfs/pubs/nnotes21.pdf>.