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**Testimony before the District of Columbia Council
Committee of the Whole
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**Public Oversight Roundtable
Testimony Regarding:
Public Education in the District of Columbia:
What Priorities Should the Council Address During the Remains of Council Period 19**

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Good morning Chairman Mendelson 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.

Let me start by saying that we are very supportive of your efforts, Mr. Chair, to immediately bring education to the forefront of the Council's Agenda in a focused and purposeful way. Your continued attention to the performance of our public education system is an important factor in our City's progress forward.

While Children's Law Center recognizes that the District of Columbia's public education system continues to make strides, my testimony today will focus on two discrete areas where there is room for substantial improvement: special education and systemic transparency.

Special Education

The topic of special education reform in our public schools is not a new one. Unfortunately however, the need for special education programs and services has not lessened, and the capacity to educate our children in DC Schools continues to fall short of the need. 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. These schools are often full-time special education schools for children who require intensive levels of support. DCPS has developed some full-time special education programs, in particular at the elementary school level, but gaps in program capacity remain.

As this year's budget season made crystal clear, DCPS plans to pull even more students out of their current non-public placements, returning them to them to District Schools – schools that we are, frankly, very concerned will not be able to meet their needs. It would not take long for someone paying attention to this issue to hear figures tossed around regarding “non-public tuition savings.” This is the money the District is celebrated for “saving” by bringing our kids back to our city. Mr. Chair, I urge you to help change the tone of this conversation. Our special education children and system should not be seen as the cash cow that funds other holes in the city's budget. These children are forced to travel far and wide to get an education that our city has not been able to provide them with. We share the goal of building a District-wide education system that can serve these students, but the investments MUST happen on the front end, before we are bringing children into schools that are ill-equipped to meet their varying, and often severe, needs. It is important to note here that the need for the continuum of special education services should not be borne by DCPS alone. Our charter schools must also focus on increasing program capacity, to ensure that our children can be comprehensively served by our city. We should not be in the business of outsourcing our children's education, but neither should we be pulling them out of schools that meet their needs, and putting them in classrooms with insufficiently specialized programming, support and teachers simply to say that “we brought the students back.”

School districts must provide a continuum of alternative placements to meet a range of student needs.² 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.

Too often, the conversation surrounding our special education students fails to consider them in the same way we consider all other DC students – as District children trying to learn and

grown into productive citizens. Instead, they are monetized in a way that makes it sound like the cost of educating these children takes away resources from other children. When we could think about a rising tide, where all education improves as special education improves, we instead discuss a zero sum calculation. It's a dangerous game we need to stop playing with our children.

Lastly on special education, we must note, that any conversation on this topic would be incomplete if it did not highlight the importance of Early Intervention in ensuring success. While what our city does to meet the needs of school age children is clearly important, if we wait until children are in school before we start serving their needs, we are already unnecessarily fighting an uphill battle. If we are able to identify our children when they are in the 0-3 age range, our early investment will pay big dividends in the long run. As the District contemplates ways to reduce special education costs, these investments are an effective way to do it. The earlier children are identified and services provided, the better the children's long term outcomes and the less likely they will even need special education classes when they enter school.

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.

As we mentioned during our both our budget and oversight testimony, OSSE acknowledges the need for progress in the area of Early Intervention. OSSE has taken significant steps to improve DC's EIP, including the launch of Strong Start, which aims to increase the number of children identified by raising awareness and a hearing just this week on the IDEIA Part C implementing regulations.

Part C is the section the IDEIA that addresses children 0-3. OSSE's draft regulations would expand the definition of children with a disability. 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.³ 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. We are optimistic about the new regulations and hope that they are quickly approved and implemented. We also hope that this is only one of many steps that our city takes to continue improving our Early Intervention identification rate and the services that we subsequently provide to the children in need of them.

Transparency

The other area where the Council could have tremendous impact with our public education system is to encourage more transparency. While it is often possible that DCPS has great plans and is doing great work, their lack of communication leaves parents, advocates and possibly DCPS staff themselves without information about what is available for students, where the holes are and what remains to be accomplished. When the information is either not publicly available or not even compiled internally, it is simply impossible to make comprehensive assessments of anything from the continuum of programs down to the performance of individual students. I will illustrate by way of a few examples how this broad theme unfortunately cuts across many specific and different interactions with the educational system.

Programs

Children's Law Center has asked DCPS on many occasions, over many years, to share with the parents, advocates and broader community a list of the special education programs available in District schools. This makes it difficult, for example, for parents to determine what school might be

able to meet their child's needs. It is unclear whether DCPS has such a list and is unwilling to make it public or if they too are unaware of the complete array of programs under their management and supervision. In either case we are concerned about what this means for children and families in need of special education in our neighborhood schools.

Budget

The FY13 budget planning period is the most recent example of how the lack of transparency, particularly at DCPS, can be an impediment to progress. This year DCPS was the only Agency whose budget we follow that did not provide a budget briefing in advance of its hearing before the Council. In order to make analysis meaningful and public testimony most useful, it is often necessary to ask questions about new or changed line items so that we can compare real numbers to previous year's budgets and to our understanding of current need. The inability to have that opportunity at any point prior during the budget process significantly reduces the utility of this process.

This problem is compounded by the fact that DCPS budget line items are often not broken down in ways that allow readers to know what the money is actually going to be used for. For example, this year's proposed budget included a line item for special education capacity building.⁴ Nowhere was it explained what this line item actually meant. It is unclear if this money will be spent to fund programs, teachers, staff or other less direct uses simply categorized as capacity building.

Further, we are told that the city is saving millions in dollars in non-public tuition when students return to neighborhood schools; however, we are not able to track this savings or see how it is being directly reinvested in building the programs that this city needs. As we've stated many times, these children are not being sent out of the city randomly, in most cases they are being sent to schools that can meet their needs because DC did not have the programs to do so. It is imperative

that we have the capacity to ensure the District is building those programs with funding sufficient to make them operational.

Classroom Observation

In what is perhaps the most concrete example of a lack of transparency, Children's Law Center has seen a shift over the past year in the DCPS policy surrounding classroom observations. Parents, evaluators and guardians ad litem are more and more frequently being prevented from observing their children in class.

Guardians ad litem sometimes need to observe children in class in order to make appropriate recommendations to the Family Court regarding the child's best interests. Evaluators sometimes need to observe children in order to complete comprehensive psychological, speech / language, or other educational testing aimed at identifying suspected disabilities. DCPS's own parent guide on independent educational evaluations states that it "expects that all IEE reports will contain an educational component, including an observation of the student in his or her educational environment."⁵ We have received recent reports⁶ that evaluators have been denied access to the classroom by building principals, when the evaluator was seeking to sit in the back of the room and monitor the child in his or her natural environment, as required by DCPS policy.

Finally, we had a recent incident where a disabled grandparent caregiver attempted to observe her grandchild (for whom she is the educational decision maker) in school with the help of Children's Law Center staff and was denied access. This grandmother had a debilitating aneurysm a few years ago and required assistance in order to have any meaningful observation of her child. While she was physically capable of sitting in the classroom, she did not feel that she could adequately understand the situation without assistance. She has serious concerns about her granddaughter's progress in her current educational setting and wanted to see firsthand how she was

getting along in the classroom. When she requested to do this with assistance, she was told that would be impossible, despite the fact that she made her disability know to the principal.

The lack of access to classroom observation coupled with the lack of information about what programs and services are available in school means that parents are routinely being denied meaningful participation in the educational process for their children.

Discipline

Finally, we have praised DCPS and OSSE many times in the past for updating the sections of the DC Municipal Regulations that apply to their agencies. As the Council knows, these regulations bring clarity and specificity to both the rights and the responsibilities of the city and our residents. However, work remains to be done. While Chapter 25 of the DCMR governs DCPS discipline, there are currently no regulations governing the specifics of discipline at the charter schools. While we are under the impression that OSSE has been working on them for several months, they have not yet been released. This leaves every individual charter school with the ability to create its own policy, which is not subject to the same legislative process and review that a regulation would be. It has been our experience that some LEAs have discipline policies that are unnecessarily vague, do not provide sufficient notice to children and families and are punitive instead of being student focused. 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. We encourage OSSE to finalize the regulations so that all LEAs and families can have clear guidance and basic uniformity.

Thank you again for the opportunity to testify. CLC looks forward to working with the Chairman and DC Council on these important issues and I am happy to remain and answer any questions you might have.

¹Children’s Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. We are the largest provider of free legal services in the District and the only to focus on children. Our 80-person staff partners with local pro bono attorneys to serve more than 2,000 at-risk children each year. We use this expertise to advocate for changes in the District’s laws, policies and programs. Learn more at www.childrenslawcenter.org.

² See 34 CFR § 300.115.

³ 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>.

⁴ District of Columbia Public Schools FY 2013 Proposed Budget and Financial Plan, FY 2013 Proposed Operating Budget and FTEs, by Division and Activity, Subtotal (3000) Special Education Local, Line Item 3510 Special Education Capacity Building.

⁵ Parent Guide; A DCPS Office of Special Education Guide; Section 2 – For the Provider, Step – 1 DCPS Requirement of Independent Educational Evaluations, pg 18, updated June 15, 2012.

⁶In October 2011, a clinical psychologist, working with a Children’s Law Center Guardian ad Litem, and attempting to complete an FBA, was denied access to Ballou Senior high school. On a second attempt, the same psychologist was told that the child was not present, when in fact she was attending her assigned special education program