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**Testimony before the District of Columbia Council
Committee on Education
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**Agency Performance Oversight Hearing:
Public Charter School Board**

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Good morning Chairman Catania and members of the Committee. My name is Elizabeth Tossell. I am a Senior Policy Attorney at Children's Law Center¹ (CLC). 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 more than 2,000 low-income children and families, focusing on children who have been abused and neglected, and children with special health and educational needs. A large number of the children we work with attend DC public charter schools.

Achievements

I appreciate this opportunity to testify regarding the performance of the Public Charter School Board (PCSB). The Public Charter School Board has had a number of significant achievements this year. It continues to lead the education agencies in sharing meaningful data with the public and using data strategically to improve school performance. The data that PCSB has made public about suspensions and expulsions achieved its intended purpose of encouraging schools to reduce the use of exclusionary discipline: the charter schools reported a significant reduction in expulsions from last year to this year.² PCSB spearheaded the development of the Equity Reports, which for the first time provide a comprehensive overview of attendance, discipline, proficiency, and mobility across both the charter and traditional public schools.³ Last year, PCSB put in place a special education audit policy that allowed it to identify and intervene with schools that appear to be discriminating against student with disabilities. Thanks to that policy, PCSB this year worked with several schools to improve their policies and practices.⁴ These achievements are a testament to the creativity and spirit of community engagement that Scott Pearson and his leadership team have brought to the Board.

Special Education Capacity

While PCSB has done a great deal of important work and many individual charter schools offer excellent special education services, the sector does not yet offer high quality special education services across the board. I have several recommendations to increase the special education capacity of the charter schools. I raised some of these recommendations in my testimony regarding the Office of the State Superintendent of Education (OSSE), as implementing them would require the cooperation of the two agencies.

Reporting program information

The only way for a parent to learn what special education supports are available in the charter sector is by contacting each charter school individually. Whereas DC Public Schools (DCPS) reports basic data publicly on all of its special education programs, PCSB offers no such centralized data.⁵ This makes it very difficult for parents to determine which schools might be the best fit for their children. A parent with a child interested in math or Classics can easily search on the PCSB website for schools that specialize in those subjects, but a parent of a student with a reading disability has no simple way to determine which schools have expertise in educating students with such disabilities. A search for "special education" on the PCSB's website turns up only one school: St. Coletta's Public Charter School, a full-time special education school designed for students with autism and intellectual disabilities. The website provides no information about the special education offerings at the approximately 60 other charter school Local Education Agencies (LEAs). (Note that the information provided by DCPS does not include information about the special education offerings at the DCPS dependent

charter schools.) I urge PCSB to make information about charter schools' special education offerings available to parents.

I understand that PCSB is reluctant to provide centralized data about the charter schools' special education offerings out of concern that it might give parents the impression that their children are not welcome and legally entitled to enroll at all of the charter schools. It is true that every LEA has the responsibility to provide whatever special education services a student may need. At the same time, parents very much want to know which schools already have the expertise necessary to serve their children and which ones would need to create it from the ground up. They also want to compare curricula and staffing between schools. Just as a parent might prefer a school that offers Expeditionary Learning, a parent of a student with a reading disability might prefer a school that offers Lindamood Bell. Providing more information to parents about special education offerings would be consistent with PCSB's emphasis on improving schools through transparency and parent choice. Knowing that program information would be made public would likely encourage charter schools to grow and strengthen their programs.

Special education consortium

Last year, a number of charter schools benefited from expert special education training, technical assistance, evaluations, and direct services provided by the District of Columbia Association for Special Education (DCASE) through a pilot grant from OSSE.⁶ That grant gave each school that participated in the American Institutes for Research study \$10,000 to spend on services of their choice. The DC Association for Special Education reported that they trained over 800 school staff members through the program and provided direct services to over 30

students at both DCPS and charter schools.⁷ They anticipate that they could serve even more staff and students in the future, as some schools were not able to make full use of the opportunity because they had insufficient notice of its availability. The Maryland Department of Education has for some time supported a similar program, operated through the Maryland Association of Nonpublic Special Education Facilities, which Maryland identifies as “instrumental in assisting [the Department in] reducing restrictive placements.”⁸

Given the success that the DC Association for Special Education Consortium experienced in its pilot year and the promising example from Maryland, I have urged OSSE and the Council to provide the Consortium the necessary funding to continue and expand. Expanding the Consortium is a wise investment because it will both improve the services that individual students receive and, through staff training and technical assistance, expand the charter schools’ capacity to serve students with special needs. I hope that PCSB will also support this model.

Satellite classrooms

Last year, OSSE also piloted another innovation to increase the charter sector’s capacity to serve students with complex disabilities: co-located classrooms (also called satellite classrooms). In this model, a charter school develops a specialized classroom at which other charter schools can place students. These classrooms expand the sector’s capacity by providing an alternative option for high needs students whose emotional disabilities are more severe than their home schools can accommodate. This allows these students to stay within the public system, avoiding the expense and long bus rides that come with nonpublic placements.

I have encouraged OSSE to continue to support and expand this model. However, I specifically encourage OSSE to revise the model to hew more closely to the original proposal for a satellite special education classroom, developed in partnership with the Special Education Cooperative. That original proposal included several elements missing from the model used by OSSE. In the original proposal, LEAs that sent students to a co-located classroom would have been required to send their staff to the co-located classroom for regular training. This would allow the sending schools to prepare for the child's return and also increase their capacity to serve students with similar disabilities. In the original proposal, a nonprofit such as the Special Education Cooperative could have applied to operate a co-located classroom at a charter school. This would have allowed for deeper special education expertise.

I would be remiss if I did not acknowledge that the first incarnation of this model at Options Public Charter School was a failure. My staff raised concerns about their clients' experiences there for some time before OSSE and PCSB took action against the school. The failures at Options are not a reflection on the model of a co-located classroom. They are instead a reflection of poor leadership at Options and poor oversight by OSSE and PCSB. I will discuss my recommendations for improving that oversight later in my testimony.

Transition services

As I expressed at the Roundtable on Special Education last fall, I have serious concerns regarding the ability of all DC schools to prepare students with disabilities for adulthood. I also see significant opportunities for DC to improve in this area in the coming year. Under federal special education law, schools are obligated to provide special education students between 16 and 22 with "transition services."⁹ These services can include a wide range of activities to

prepare students for independent living, employment, and further education. DC has for many years failed abjectly in meeting federal requirements for secondary transition. As of November 2013, only 47% of DC students aged 16 and older had IEPs that included appropriate transition goals and showed that the other basic procedural requirements for transition planning were met.¹⁰ The Department of Education last summer directed DC to use \$250,000 of its federal special education funds to address noncompliance with these secondary transition requirements.¹¹

OSSE is focusing on improving compliance with transition planning procedural requirements, but no agency has yet taken ownership for ensuring that the charter sector has the programs necessary to implement students' transition plans. DCPS students have access to several strong transition programs that prepare them for careers and independence: Project Search, Marriott Bridges, and Competitive Employment Opportunities (CEO). While these programs are not sufficient in size or scope to meet the needs of all DCPS students, they do provide excellent training for a number of students. Charter school students do not have access to these programs. We have raised our concerns about charter schools' lack of transition programs with the PCSB leadership and hope that they will take steps this year to ensure that students at charter schools have access to high quality transition programs. I understand that PCSB and the charter schools have largely relied on the Rehabilitative Services Agency (RSA) to provide transition services, but that is not sufficient because RSA typically does not provide services until after a student has completed high school.¹²

Weighted lottery

DC should allow charter schools to adopt weighted lotteries that give preference to students with disabilities. Currently, DC law forbids charters from giving admissions preferences to any students except for siblings of current students or children of founding board members.¹³ A number of schools would like to be able to give preference to students with IEPs in order to ensure that they have students to fill the seats in the specialized programs that they develop. In our discussions with DC education stakeholders, we found universal support for allowing weighted lotteries. The charter schools that support the proposal range from those whose mission is to serve only students with severe disabilities (St. Coletta's PCS) to those whose mission is inclusion (Bridges PCS) to those that would like to build specialized programs but need to ensure they will fill the seats in those programs (Capital City PCS). We understand that PCSB is also in support of this proposal. We hope that the necessary legislation will pass this Council session so that weighted lotteries can go into effect in the 2015 lottery. We recommend that the Council, OSSE, and PCSB build in protections to ensure that the weighted lotteries do not become a back door for schools to select against students with severe disabilities. Thoughtful oversight and monitoring should be sufficient to mitigate that risk.

School health and mental health staff

Only 58 of 109 charter school campuses have a full or part-time school nurse provided by the Department of Health.¹⁴ While this is an increase from last year, it is still far from sufficient. Only 13 of 109 charter school campuses have school-based mental health staff provided by the Department of Behavioral Health (DBH).¹⁵ While PCSB and DBH plan to add seven (7) more mental health staff in the next few months,¹⁶ that level of staffing will still be far from sufficient. Additional funding is needed in the DOH and DBH budgets to allow all charter

schools to have nurses and mental health staff. Many students with disabilities need nursing or mental health services; without staff who can provide those services, charter schools will be unable to serve those students.

Special Education Oversight

Compliance with special education law

Both OSSE and the Public Charter School Board take on some responsibility for ensuring that charter schools comply with the Individuals with Disabilities Education Act. This shared oversight model has not been fully successful. The hazards of the model were vividly illustrated this year by Options Public Charter School, where it took a *Washington Post* investigation before PCSB took steps to close the school even though OSSE had documented for several years that the school had failed to comply with special education requirements. We have seen similar circumstances at other charter schools over the years. Although most of the offending charters were eventually closed, it was not until students had suffered without appropriate special education for years. Most of the egregious failures to provide special education services at charter schools occurred before the current PCSB leadership was in place, but the oversight structure has not changed fundamentally under the new leadership.

In practice, we understand that the PCSB does not proactively monitor charter schools' procedural compliance with the Individuals with Disabilities Education Act. Instead, the Charter Board largely relies on data provided by OSSE to learn about schools that may be out of compliance. The triggers for the Board's special education audit policy are based on OSSE reports and other demographic data that schools submit routinely.

PCSB does include special education instruction as part of its assessment of schools' overall performance in its Qualitative Site Reviews (QSRs). The Board conducts QSRs for all charter schools in their 5th, 10th, or 15th years and for schools that review low ratings on PCSB's Performance Management Framework or OSSE's ESEA waiver ranking system.¹⁷ These reviews include site visits in which staff with a background in special education observe the delivery of specialized instruction in push-in, pull-out, resource, and self-contained settings.¹⁸ The results of the special education observations are included in the overall report for each school.

PCSB has some ability to enforce compliance with special education law, but that ability is limited. PCSB has the power to deny charter renewal requests if it determines that a school has committed a material violation of special education law.¹⁹ PCSB also has the authority to place a charter school applying for renewal in a probationary status that requires the school to take remedial actions.²⁰ Outside of the charter renewal and revocation process, PCSB has no authority to require a school to take any specific steps to improve their special education. OSSE does have some ability to fill that gap: it can withhold or condition federal funding when schools fail to comply with special education law.²¹ But this piecemeal approach, where each agency collects different data and has different enforcement tools available at different times, has serious flaws. It can only work if both agencies share information seamlessly. And even then it may still allow schools to fall through the cracks, with neither agency taking full responsibility for ensuring their quality and compliance.

I recommend that the two agencies work together to catalog all of the information that they collect about special education in charter schools and what enforcement mechanisms they have available. Once they have amassed that information, they should develop a taskforce to

make recommendations for improving data sharing and oversight. The recommendations should be made public by the start of the next fiscal year.

Quality reviews

OSSE and the Public Charter School Board have developed duplicative mechanisms for helping charter schools to improve their special education programs. I am concerned that it is confusing and inefficient to have two separate quality review tools. Both are voluntary for the charter schools. While OSSE is encouraging LEAs to use the self-evaluation tool developed by the American Institutes for Research (called the Special Education Quality Review), the Charter School Board is encouraging charter schools to use its own system, the Special Education Quality Assistance Review (QAR).²² The Charter School Board does share information obtained from its system with OSSE, but I believe additional conversation between the two agencies is needed to assess whether offering two separate tools is truly necessary.²³ I understand that such conversations are ongoing. Finally, the results of any quality reviews should be made available to the public. At this time, neither OSSE nor PCSB makes those results public on a routine basis: OSSE does not even see the results themselves, while PCSB only shares the results with the school's permission.

DCPS dependent charters

DC Public Charter Schools currently have a choice of acting as their own LEA for special education purposes or designating DCPS to act as their LEA.²⁴ In our experience, the charters that elect to act as their own LEA provide better special education services. At the charters that elect to use DCPS as their LEA, often neither the charter school nor DCPS takes full responsibility for students' special education. These charters have no incentive to develop

strong special education programs because they can hand off their students to DCPS if the students' needs require more intensive services than the charter currently offers. Their compliance with special education law has not been tracked on a school-by-school basis, which makes it difficult to hold them accountable.²⁵ We recommend that DC eliminate the option for charter schools to choose to have DCPS serve as their LEA. The Public Charter School Board, DCPS, and the Special Education Cooperative all support this proposal. It will require the Council to amend the School Reform Act. We encourage the Council to do so this session.

School stability for foster and homeless children

Graduation Requirements

PCSB should work with the other education agencies to ensure that Local Education Agencies' disparate graduation requirements do not prevent highly-mobile students from graduating from high school. Losing credits often leads to students becoming disengaged and failing to graduate.²⁶ In DC, we cannot afford to give students more reasons to drop out: this year's oversight data showed that one-third of DC public charter high schools had dropout rates of over 25% for the graduating class of 2013.²⁷ The current DC policy of allowing each Local Education Agency to set its own requirements for high school graduation makes it more difficult for students who change LEAs to graduate from high school.

If families choose voluntarily to move during high school, it may be reasonable to expect them to accept the educational consequences. But the several thousand DC students who are homeless or in foster care cannot control when they have to change schools. They should not be penalized as a result. OSSE reports that approximately 1,850 students attending DCPS and the charter schools are homeless.²⁸ There are approximately 1,400 children in the care of CFSA in

out-of-home placements and approximately 750 of these children are teens.²⁹ These students should not have to lose credits when they involuntarily change schools, but often one Local Education Agency refuses to accept credits from another. LEAs also sometimes refuse to accept credits earned in Maryland public schools and out-of-state residential treatment centers, which causes problems for the many children in foster care who are placed by CFSA in foster homes in Maryland or residential treatment centers.

Several states have taken innovative approaches to providing flexibility for children in foster care. California has passed legislation requiring that schools accept partial credits for students in foster care and is currently considering expanding that protection to homeless students.³⁰ Other states have moved to awarding credit to students who can demonstrate mastery of course material.³¹ DC should consider these different approaches in order to develop a plan to ensure that students who change schools involuntarily do not fall behind. I encourage PCSB to cooperate with the other education agencies to develop such a plan.

School stability post-adoption

In our experience, school placement disruption is the single factor that contributes most to foster children's poor performance in school. DC foster children are often forced to change schools when they change homes. Research shows that students lose months of educational progress with each school change, and the effect is compounded with repeated changes.³² Often, the new school uses a somewhat different curriculum from the previous school, which may lead to a child falling behind. As discussed above, older students often lose credits because the previous school and the new school have different requirements. Children must deal with the stress of adapting to a new school location, schedule, teachers, and classmates.

Managing this stress on top of the stress of adapting to a new home is an extremely difficult task to ask of a child, and is especially difficult for a child who already struggles with trust issues and anxiety. Children also lose the benefit of their established relationships with faculty, staff, and peers at their original school. Research shows that a strong relationship with a supportive adult is one of the primary sources of resilience for children who have experienced trauma.³³ By disrupting children's school placements, we also take away their chance to develop these positive relationships.

The Child and Family Services Agency (CFSA) has taken important steps to minimize school disruption for children when they are removed from home. However, there is a statutory change necessary to further improve school stability for these youth. Currently, when a child attains permanency (guardianship or adoption) with families who live outside DC, they lose the right to attend DC schools. Families sometimes choose to delay permanency and leave children in foster care so that they can maintain the child's DC school placement. Instead of forcing families to decide between permanency and school stability, DC law should be amended to allow children who have exited foster care to remain at their DC school without having to pay out of state tuition for up to three years after they have been adopted or finalized guardianship with a family in Maryland.³⁴ This would allow them to complete their current level of schooling and plan a smooth transition to a Maryland school. While there would be a cost involved with allowing these children to attend DC school without paying tuition, it should be offset by the reduced cost from children exiting foster care more promptly.

The Public Charter School Board supports this proposal. When we approached PCSB last summer to discuss the needs of foster children, Mr. Pearson was very willing to engage in a

dialogue with us. Together, we identified this statutory change as necessary. We understand that the Deputy Mayors for Education and for Health and Human Services also support the proposal. We urge the Council to work with the PCSB and the Deputy Mayors to amend the law.

Conclusion

Thank you again for the opportunity to testify. I welcome any questions.

¹ Children’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 PCSB reports that the number of expulsions for non-Federal reasons for the period of August through December declined from 28 last year to 8 this year. PCSB FY 13 Oversight Responses, Q3.

³ PCSB FY 13 Oversight Responses, Q24.

⁴ PCSB FY 13 Oversight Responses, Q59.

⁵ PCSB FY 13 Oversight Responses, Q44.

⁶ OSSE FY 13 Oversight Responses, Q37.

⁷ DCASE Special Education Consortium, Final Report, September 23, 2013, on file with Children’s Law Center.

⁸ Maryland FFY 2008 State Performance Plan and APR report, p. 46, available at http://mdideareport.org/SupportingDocuments/08-09_Part_B_APR.pdf.

⁹ See 34 C.F.R. § 300.320(b)(2).

¹⁰ November 2013, Results of Secondary Transition Review, shared at Secondary Transition Community of Practice meeting, on file with Children’s Law Center.

¹¹ See July 1, 2013 letter from U.S. Department of Education to Superintendent Mahaley Jones, available at <http://www2.ed.gov/fund/data/award/idea/2013partb/dc-letter-2013b.doc>.

¹² PCSB FY 13 Oversight Responses, Q63 and Q 64.

¹³ D.C. Code § 38-1802.06 currently allow charter schools to give preference in admissions only to students who are siblings of current students and children of founding board members.

¹⁴ PCSB FY 13 Oversight Responses, Q24.

¹⁵ OSSE FY 13 Oversight Responses, Q69 Attachment.

¹⁶ PCSB FY 13 Oversight Responses, Q24.

¹⁷ PCSB FY 13 Oversight Responses, Q2.

¹⁸ PCSB FY 13 Oversight Responses, Q60.

¹⁹ DC Code § 38-1802.12(c)(1).

²⁰ DC Code § 38-1802.12(d)(5).

²¹ 34 C.F.R. § 300.600(a)(3).

²² OSSE FY13 Oversight Questions, Q56.

²³ OSSE FY13 Oversight Questions, Q58.

²⁴ DC Code § 38-1802.10 states that “each public charter school shall elect to be treated as a local educational agency or a District of Columbia public school for the purpose of part B of [IDEA] and [Section 504].”

²⁵ This year, OSSE has provided more data on a school-by-school basis. PCSB FY 13 Oversight Questions, Q60.

²⁶ Elaine M. Allensworth, John Q. Easton, What Matters for Staying On- Track and Graduating in Chicago Public High Schools, Consortium on Chicago School Research at the University of Chicago (July 2007).

²⁷ OSSE FY13 Oversight Questions, Q36.

²⁸ OSSE Guidance Regarding Graduation Fees for Students in Transitory Housing, available at:

<http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Graduation%20Guidance%20October%202012.pdf>.

²⁹ LaShawn A. v. Gray Progress Report for the period January 1-June 30, 2013, 99 (November 21, 2013).

³⁰ Ensuring Educational Rights and Stability for Foster Youth: AB 490 Summary, Youth Law Center/ Children’s Law Center of Los Angeles, http://www.youthlaw.org/fileadmin/ncyl/youthlaw/events_trainings/ab490/AB490_Summary.pdf. AB 1806 was

introduced on Feb. 18, 2014 to would extend these protections to homeless children. Bill text available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1806.

³¹ See "State Strategies for Awarding Credit to Support Student Learning," National Governors Association Issue Brief, available at <http://www.edweek.org/media/23biz-state-1202educreditbrief.pdf>

³² Legal Center for Foster Care and Education, Fact sheet: Educational stability and continuity for children and youth in out-of-home care (Washington, D.C.: American Bar Association, 2007). D. Wood et al., "Impact of family relocation on children's growth, development, school function, and behavior," *Journal of American Medical Association* 270, no.11, (1993). David Kerbow, *Patterns of urban student mobility and local school reform*. (Washington, D.C.: Center for Research on the Education of Children Placed at Risk, 1996)

³³ E.g. Toxic stress: The facts, Center on Child Development, Harvard University. (2012).

http://developingchild.harvard.edu/topics/science_of_early_childhood/toxic_stress_response

³⁴ There are two federal laws that are relevant to this discussion: McKinney-Vento Homeless Education Assistance Improvement Act of 2001 and Fostering Connections to Success and Increasing Adoptions Act of 2008. They both provide legal protections to improve school stability for children in foster care but do not cover children once they are adopted (or in a guardianship). The McKinney-Vento Homeless Education Assistance Improvements Act of 2001 gives homeless children the right to remain at their school of origin for the remainder of their school year and requires the school district to provide them with transportation comparable to what they provide to non-homeless children. The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires child welfare agencies to ensure that foster children remain at their school of origin if it is in their best interest. These laws aim to keep children in their school of origin even when their home placement changes. Additionally, while children are in foster care, they retain the right to attend DC public and charter schools even if they live in Maryland (or another state). See DC Code § 38-307 ("A student entitled to enrollment without payment of nonresident tuition shall be....a child who is otherwise eligible for admission to the DCPS or a public charter school, and who qualifies for free instruction under one of the following categories [which include] a child who is a ward of the District."). See also 5 DCMR § E-2000.2 ("A student under eighteen (18) years of age who is otherwise eligible for admission to a D.C. public school shall be admitted, and may continue enrollment, without payment of non-resident tuition only if the student qualifies for free instruction under one of the following categories [including] (c) A student who is a ward of the District of Columbia"), 5 DCMR § E-916 (For a public charter school to enroll a youth "who is a ward of the District of Columbia court system but resides outside of the District, the school must have proper documentation on file, such as a signed court order placing the student in a facility/home in Virginia or Maryland."), and 5 DCMR § E-3019.1 ("Enrollment in a public charter school shall be open to all residents and wards of the District of Columbia.")