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Testimony Before the District of Columbia Council
Committee on Education

Public Roundtable Hearing:
"Education for Students During and After Detention, Commitment, or Incarceration"

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Introduction

Good afternoon Chairperson Grosso and members of the Committee. My name is Renee Murphy. I am the Supervising Attorney in the Policy team at Children's Law Center¹ and a resident of the District. I am submitting this testimony on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. We represent about half of DC's children in foster care because of neglect, and we are appointed to cases in the juvenile justice system as education attorneys or as guardians *ad litem* in the Person in Need of Supervision (PINS) system. We also represent youth who have special needs through our medical-legal partnership, Healthy Together.

Thank you, Chairperson Grosso, for your sincere interest in the educational needs of young people before, during, and after detention, commitment, or incarceration. Research is clear that education, including connection to school and relationships there, "provides a reliable pathway" for youth in any of the court systems to become positive members of their communities.² We share the concerns that you learned from our colleagues from the Public Defender Service, School Justice Project, Georgetown University Juvenile Justice Initiative, and others about how the public schools in DC lead to, and perpetuate, system involvement through inaccurate

attendance information, about the quality of education and lack of special education services at Youth Service Center (YSC) and DC Jail, lack of coordination between YSC and other schools about course content and credits, and about how parents are cut off from information and participation by these systems. We would like to highlight one point that others made, in particular, that Do Not Admit Lists and other undocumented suspension practices cause serious miscarriages of justice, leading to youth being hauled into PINS court for truancy and youth in either delinquency or PINS court facing increasing sanctions and loss of liberty. We focus our testimony not just on students in the juvenile justice system, but also those in Child and Family Services Agency (CFSA) custody and Department of Behavioral Health (DBH) and Health Care Services for Children with Special Needs (HSCSN) psychiatric residential treatment placements,³ because there are very similar problems in the education of youth being placed by all of these government agencies. We focus on three areas of problems:

- High mobility between schools and system-caused loss of the school community of origin during and after detention at Youth Services Center;
- Failures of the LEAs to have procedures that work to automatically identify, locate, and evaluate children who are in intensive placements;
- Particularly egregious problems for youth placed in Psychiatric Residential Treatment Facilities (PRTFs) from DYRS, PINS, DBH, CFSA,

and HSCSN, resulting in interrupted learning and stalled progress towards graduation.

System-caused School Changes During and after YSC

The complex system of school choice and the way that the education agencies have structured education at DYRS facilities results in some students, who are detained, losing their connections to school of origin. The school at YSC is run by DCPS and is considered a school separate from other DCPS and public charter schools, so many students are un-enrolled from their original schools upon entry at YSC. Changed enrollment is done *without the knowledge or consent of the parent*.⁴ It is our understanding that OSSE's database system for students with disabilities causes some of the school enrollment switches, so the teachers at YSC can see each student's Individualized Education Program (IEP).

The enrollment change is a problem because some students are not allowed to return to the original school of enrollment after release. For students in public charter schools (PCS), the special education data access change results in transferring the student into DCPS. PCS schools decide whether to allow a student back based on unknown criteria, which allows arbitrary or discriminatory decisions. For youth who are attending out-of-boundary DCPS schools, without a strong advocate or lawyer, the youth is un-enrolled from that school.⁵ Students have no guarantee that they will be

allowed to return to the PCS or out-of-boundary DCPS school after any detention at YSC, once they are un-enrolled.

In addition, historically, in our experience, DYRS placements in group homes/family reunification homes also resulted in youth changing schools. Staff from the facilities would enroll the youth in the local DCPS school regardless of expected length of stay, so that students would move schools multiple times if they went home or moved to a different facility. This year, our clients have not had to change schools, but the homes have not had enough drivers to get students to and from their schools on time. One driver is taking students to multiple schools, and since most schools start at the same time, some students in the transport are late. Some of the schools that our clients go to, for example YouthBuild and Cesar Chavez, require on time attendance. Our youth clients will likely be forced to move schools, if the transportation infrastructure problem is not fixed. DYRS and OSSE should work together to solve this transportation problem, since OSSE has a Division of Transportation that could be leveraged. In the alternative, CFSA, PCS, and DCPS have found vendors to provide transportation in some situations. DYRS family reunification homes could consult them for solutions.

Not only does detention at YSC cause some youth to change schools, resulting in lost connections to teachers, staff, and friends, it also has consequences on confidentiality. Report cards from YSC say "YSC," which violates the student's right to

confidentiality about involvement in the PINS or juvenile delinquency system. DCPS should issue report cards from the child's local school, to preserve confidentiality.

Forced school moves also delay special education services. When a youth begins in a new school after being at YSC or when moved between foster homes or group homes, even when transferring from one DCPS school to another, the youth's evaluations for special education services are often delayed. DCPS staff argue that they need to get to know the student, even though information exists from past schools.⁶ The fact that DC LEAs have 120 days to complete evaluations is a major reason that youth in CFSA or DYRS custody never get identified for an IEP. Schools have so long to finish evaluations that the youth will be moved again before they are started or completed. For that reason, and others discussed below, we urge the Committee to continue ensuring that the *Enhanced Special Education Services Act* reform for the shorter evaluation deadline is funded. We urge this Committee to go further, with new legislation to shorten the evaluation deadline to 30 days for youth in crisis as evidenced by involvement with the Court, DYRS, CFSA, or with DBH or HSCSN psychiatric residential treatment placement.

Failures to Identify Youth in High Needs Placements as Disabled in School

Secondly, the LEAs in DC do not have a process that is working to identify children with high levels of needs that are in other systems. Shockingly, many youth who are acutely and chronically psychosocially ill, needing hospitalization or

residential care, do not already have IEPs to help them get treatment in school. For youth who are sent to psychiatric hospitals or Psychiatric Residential Treatment Facilities (PRTF) by the court, DYRS, or CFSA, it indicates an extreme medical necessity. Both CFSA and DYRS look at PRTF as a last resort. DCPS could easily track and evaluate these youth while in high needs placements, specifically in psychiatric hospitalization or while in placement in psychiatric residential treatment.⁷ Each LEA, especially DCPS, should be notified when a youth needs high level psychiatric care, as part of the system to find and evaluate all children who may have disabilities (called Child Find) that the *Individuals with Disabilities Education Act* (IDEA) requires. Yet DCPS has no procedure to always start a special education evaluation for these children and youth.

DC needs to have legally required procedures so that system-involved students who do not yet have IEPs get those IEPs quickly. Funding the reform from the *Enhanced Special Education Services Act of 2014* that shortens the deadline for evaluations to 60 days is only a first step. To truly help youth in the DYRS, PINS, foster care, and mental health PRTF systems, DC law should further expedite special education evaluations for these youth. They often have an urgent need for special education services. It is not unusual for students in these systems to be years behind grade level or have significant mental health needs. Without school-based services, children often further destabilize or have trouble reunifying with family. In addition, as discussed above, frequent

placement moves delay or deny special education services. DC law needs to require that their evaluations be completed within 30 days and their eligibility for special education be determined within an additional 15 days.

Interrupted Education of Youth in PRTF and Transitioning Home

Youth with significant mental health, behavioral health, or substance abuse disorders sometimes need Psychiatric Residential Treatment Facility (PRTF) or Residential Treatment Center (RTC) placements. Unfortunately, there are no such placements in the District. Multiple government systems send children far from their homes for treatment, including DYRS, CFSA, DBH, and Medicaid Managed Care Organizations (MCOs) like HSCSN.⁸ While we appreciate that distance makes it harder for the DC agencies to closely follow what is happening with the youth, we find that DCPS neglects the education of children in PRTF. For example, one of our clients, Mary,⁹ recently returned from a CFSA PRTF placement. No one ensured that her PRTF received her education records, so the PRTF had her repeat 9th grade. DCPS refused to evaluate her for special education during her time in PRTF despite her clear emotional disabilities and despite federal guidance about the IDEA stating that DCPS retains Child Find responsibility for this DC resident placed in PRTF. DCPS did not monitor her education or ensure that her records came to her DC school, so Mary is now repeating 9th grade for the third time. Even worse is that Mary is on a path to lose yet

another year of learning, because DCPS will take four months, almost half of this school year, to evaluate her for the special education services that will finally help her learn.

DCPS does not consistently ensure that youth placed in PRTFs by the various government systems will be making progress towards graduation. At the outset, DCPS needs to be making sure that the PRTFs get copies of education records, such as course lists, transcripts, report cards, and special education records. Because DCPS does not, youth are not placed in the same courses when they move, which is disorienting and harms their progress towards graduation. In addition, the course of study in other states is different than DC's requirements for diploma, particularly in mathematics and history. With no DCPS person involved in making sure the class schedule aligns with DC's required courses for a diploma or making a plan for how the student will take DC required courses that are not generally offered in that PRTF, PRTFs place students in classes that will not result in DC credits needed to help the student graduate¹⁰ or place them in GED classes where they also will gain no credits. Even if we advocate for students and have DCPS approve a schedule on an ad hoc basis, we have had students later lose hope, when another DCPS official does not award promised credit. DCPS and PCS need to monitor and intervene to help youth in PRTF get the right courses and credits.

DC's education agencies do not ensure that children with disabilities in PRTFs through other systems are receiving appropriate services. For PRTFs through CFSA,

DBH, and HSCSN, DCPS has refused to evaluate while the youth is in that placement. Thus, when the student without an existing IEP returns from hospitalization or PRTF, the student goes to a regular high school with no plan of supports. DCPS waits to do the evaluation until the child is attending a DCPS school, often taking the full 120 days allowed in current DC special education law. The DC Council needs make it clear that DCPS must evaluate and identify students while they are in PRTFs, so that they are set up with services when they return.

In addition, DCPS does not ensure that the PRTF has the youth's evaluation and IEP records for students with already-identified disabilities, nor does it monitor the education of youth with IEPs when placed by the other systems. When a student's education is closely monitored, the student can have appropriate updated evaluations, such as Functional Behavior Assessments or assessments of current reading, math, and writing, completed so that the IEP is tailored to the student's current needs. If DCPS appropriately monitored students in PRTFs, they would be aware of evaluations that the PRTF conducted and promptly update the child's services and programming. For example, in a recent case where a child is at Cumberland Hospital's PRTF,¹¹ new evaluations revealed for the first time that the child is intellectually disabled. DCPS has refused to monitor that child's education and so has no idea that the child's IEP is now inappropriate. DCPS should be planning for the child to enter a program for children with intellectual disabilities upon return, but is not.

When a youth is ready to leave a PRTF and transition back to DC, DCPS's lack of engagement causes tremendous problems for services and for credit accrual.¹²

Returning from the structure of a PRTF out of state, back home to the community—or for many youth in DYRS or CFSA care to new foster home or group home placements—is a difficult adjustment. Youth need to have supports in place in the community, including in school. Without those wrap-around services from their first day home, many children and youth destabilize. Some require re-hospitalization or a move to yet another foster or group home. DCPS's failure to monitor and involve itself in the education of these youth further destabilizes them upon return to DC. Youth do not have updated evaluations and current IEPs that will be used in the school when the youth returns.

DCPS also does not ensure that the youth gets appropriate credits or class schedules upon return. Part of credit and class problem is that DCPS does not request and follow up to get records and transcripts for the PRTF transition.¹³ Advocates and parents have found it incredibly difficult to get transcripts from PRTFs, not being the education agency. DCPS will not award credits based on a report card, so many youth cannot receive any credit for work done in PRTF. Even if we can get a transcript, it may not award partial credit that the youth deserves. Or, a youth may not be able to continue a course in the DC school in the middle of the school year, leaving them with only part of a credit or no credit for hard work while in residential. In addition, youth

struggle to get appointments with counselors to have them do the transcript analysis and award credits, and lack a process to dispute when DCPS or the PCS does not match up comparable classes for DC credits. DC's LEAs should be able to flexibly award credits to these youth who are mobile at the behest of other systems. The LEAs should have processes to ensure youth demonstrate mastery or can take Credit Recovery or summer school to finish partial credits and move towards graduation.

Recommendations for Change in the Law

Because of all the concerns discussed above and by allies about how education systems fail youth in the care and control of juvenile justice, PINS, child welfare/neglect, and mental health systems, we have the following recommendations for legal reform:

- DC law should require that a youth's original school keep the child on the rolls while the child is at YSC and allow the child to return to that school upon release.
- DC law should set a deadline that a student's records must be at his or her new school (whether YSC, DCPS, PCS, hospital, or PRTF) within five days of move.
- DC law should require a new DC school to request transcripts within two days and follow up until received, for foster children, homeless students, students returning from hospitalizations, detention, or residential treatment.

- DC law should require LEAs to award partial credits, accept comparable-enough classes, and as another option, give credits for demonstration of mastery, e.g., via report cards or portfolios, to allow flexibility for youth who are transferring between schools because of DYRS, CFSA, DBH, or Medicaid mental health system moves.
- LEAs for these students should be required to issue a transcript, incorporating the transcript, report card marks, and credits from the prior LEA, within one week of the student enrolling and within one week of receiving new report card or transcript records.
- LEAs should be required by DC law to have a timely, unbiased, formalized review process for parents and students to challenge the classification or denial of transfer credits.
- Youth who have been at Youth Services Center (YSC) should have report cards and transcripts from their home school, rather than a reference to YSC that violates confidentiality.
- DC law should clearly require DCPS to monitor the education of students placed in PRTFs and residential treatment centers, no matter which system placed the youth. Monitoring should include sending educational records to the facility, reviewing class offerings and schedules, ensuring students are in classes that will move the student towards graduation and offering an online

- solution if not, gathering data from teachers, evaluating students in need of initial evaluation or new assessments, ensuring that IEPs are implemented, ensuring that IEPs and Behavior Intervention Plans are updated, getting report cards, getting transcripts, and reviewing transcripts for DC credits.
- DC law should state that psychiatric hospitalization or beginning the process of placement in a PRTF, no matter which system is placing the child, constitutes a referral for special education evaluation. This will spur the LEAs to create the mechanisms needed to “Child Find” students who are in Psychiatric Institute of Washington or Children’s National Medical Center psychiatric wards or who are in the process of PRTF placement by CFSA, DYRS, DBH, or a Medicaid MCO.
 - DC law should require that the child’s LEA must ensure that any necessary evaluations and determination of whether a child has a disability are completed while a child or youth is placed in PRTF, no matter what state the PRTF is in.
 - DC should fund and fully enact the *Enhanced Special Education Services Act of 2014*.
 - DC law should require LEAs to evaluate and determine special education eligibility for students in CFSA custody, DYRS custody, in psychiatric

hospitalization and in process or placed at PRTF within 30 days and provide special education services within 15 days of eligibility.

Conclusion

Thank you for the opportunity to submit this testimony. We look forward to working with the Committee on all of our recommended changes to DC law, including the opportunity to be part of any Task Force or Working Group. We are also happy to answer any questions.

¹ Children’s Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to be the voice for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

² Farn, A. & Adams, J. (2016). *Education and interagency collaboration: A lifeline for justice-involved youth*. Washington, DC: Center for Juvenile Justice Reform, Georgetown University McCourt School of Public Policy, Page 4. Accessed 10/17/17 at <http://cjjr.georgetown.edu/wp-content/uploads/2016/08/Lifeline-for-Justice-Involved-Youth-August-2016.pdf>

³ Most youth in DC who need PRTF must go through a review process with DBH that includes multiple agencies, in order to get placed in the PRTF. If CFSA or DYRS want Medicaid to pay for the PRTF, they utilize the DBH process. However, in our experience, some HSCSN enrollees are determined eligible by HSCSN outside that DBH process. See Psychiatric Residential Treatment Facility (PRTF) Medical Necessity Determination Process, DBH Policy 200.7, accessed 10/17/17 at

<https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/200.7%20TL-263.pdf>

⁴ Some youth might be at YSC later in a case after commitment to DYRS, but many are there before ever going to Court and before commitment to the care of DYRS, so the parents hold all rights.

⁵ In one case last year, a parent and student were asked to un-enroll from a selective citywide high school, because the school was concerned that the child’s absences while at YSC were negatively affecting their attendance numbers. Although the school was promising that the student could re-enroll on release, there would be no recourse if the school later reneged, so with our counsel the family did not un-enroll the youth.

⁶ For students already identified as having disabilities, they may need re-evaluations completed about new needs or unmet needs that lead to system involvement. These re-evaluations are also delayed by school switches.

⁷ We acknowledge that there are health privacy issues and HIPAA protections of health information, but those can be overcome. The process would just need to include a request for the parent to share information with DCPS or the PCS that the child is in psychiatric hospital or starting the PRTF process, in order to start a process to get the child services in school. Based on our experience, we believe most parents would consent in cases in which a child has a high level of psychiatric needs, if they knew that only the fact of psychiatric treatment (not ALL the records and details) would be shared and it was explained why.

⁸ An LEA can also meet a child's needs for PRTF through the IDEA, as residential treatment can be required as a child's appropriate special education services. DCPS will monitor the education of students that it places in PRTF via the child's IEP. We do not discuss this process here, although sometimes youth who need residential treatment services for their education end up placed in PRTF through one of the other systems because of restrictions on the LEA placement options. OSSE approves the PRTFs that are available through the IDEA system, and many PRTFs are not willing to get Certificates of Approval (COA) from OSSE. When a child needs a PRTF that is not on OSSE's COA list, because a youth specific needs for a certain modality of therapy or expertise in a particular trauma history, for example, DC law currently requires the parent to prove in a Due Process Hearing that no program on the COA list could meet the student's needs, before the Hearing Officer can place the student in the PRTF that meets the student's needs. Proving a negative in a Due Process Hearing is extremely time consuming and difficult, because hearing officers want testimony from every single other placement on the OSSE list. For that reason, parents, systems, and advocates will pursue PRTF placement in a different way. DC law should be changed to allow IDEA placements for students with rare needs in specialized school or PRTF placements that are not on OSSE's list, without the parent having to prove a negative.

⁹ Names and some details are altered to protect confidentiality.

¹⁰ Many courses become elective credits when DCPS looks at them. Students only need 3.5 elective credits to graduate, so large numbers of electives do not move a student towards graduation. See <https://dcps.dc.gov/graduation>

¹¹ To further explain the discussion in endnote 8 above, Cumberland Hospital is an example of a program that does not have a COA for an IDEA placement, but a child can be placed there through the other systems and HSCSN. Cumberland Hospital is a rare place that can treat medical (such as diabetes or severe obesity) and behavioral needs, relatively locally. In addition, the Sheppard Pratt system of hospitals, partial hospitalization services, and PRTF placements (Jefferson and Mann) in Maryland also do not have COAs, nor do the partial hospitalization programs at Adventist Rockville, INOVA, or Fairfax Hospital. If the child could have been placed through the IDEA process at any of these, then DCPS would have monitored the child's education.

¹² All the problems described here about DCPS failures to monitor educational progress and needs and plan for services for return to DC also apply to children and youth placed in foster homes in Maryland by CFSA. DCPS has been refusing to actively monitor the education of students in Maryland foster homes for several years, related to a MOA with OSSE and CFSA that may be a violation of IDEA and that we believe is a disservice to children in CFSA custody placed in Maryland foster homes.

¹³ These problems with record transfer, course continuity, counselor appointments, credit analysis, and credit accrual also occur to children moved around by CFSA between Maryland and DC foster homes.