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EXECUTIVE DIRECTOR
Judith Sandalow

Testimony before the
District of Columbia Council
Committee on Health and
Committee on Human Services

Public hearing on the Jacks-Fogle Family Preservation Case Coordination
Act of 2009

Judith Sandalow
Executive Director
Children's Law Center



Good morning Chairmen Catania and Wells and members of the Health and Human Services committees. Thank you for the opportunity to testify. My name is Judith Sandalow. I am the Executive Director of Children’s Law Center¹ and a resident of the District. I am testifying today on behalf of Children’s Law Center, which is 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 1,200 low-income children and families, focusing on children who have been abused and neglected and children with special health and educational needs.

I wholeheartedly agree with the goal of the Jacks-Fogle Family Preservation Case Coordination Act of 2009 (“bill”) – to improve the provision, administration and management of government benefits and services to support families in crisis. I, however, do not agree that this it is the right approach to achieve this goal. I believe this is a misguided effort that in its current form will actually hurt children. There are many more critical and helpful ways to accomplish the bills’ goal of helping families in crisis. My biggest concern is that the bill diverts resources from the provision of desperately needed services – at a time of economic crisis when we are cutting services – to an expensive new bureaucracy and technology. I am also deeply concerned that as drafted the program proposed in the bill will not help, but further alienate, at-risk families and push them away from needed resources rather than engaging and assisting them.

In January 2008, soon after we learned about the tragic deaths of the Jacks-Fogle children, I testified before the Council about the many changes needed in the District’s child welfare system. I outlined several key things the District could do to save lives, prevent neglect and keep families together, including: improving mental health and substance abuse services; expanding home visit programs to families with young children; improving wrap-around services and evidenced-based therapies that let

¹ Children’s Law Center envisions a future for the District of Columbia in which every child has a safe home, a meaningful education and a healthy mind and body. We work toward this vision by providing free legal services to 1,200 children and families each year and by using the knowledge we gain from representing our clients to advocate for changes in the law. Children’s Law Center is the largest non-profit legal services organization in the District of Columbia and the only organization providing comprehensive representation to children.

children live safely at home; and recognizing the connection between child safety and child poverty and working to alleviate poverty. Unfortunately, none of these recommendations are in the bill in front of you today. Neither are any of the dozens of recommendations in the Office of the Inspector General's ("OIG") lengthy and detailed report on the Jacks-Fogle crisis.² The OIG examined the 20 government agencies and private non-profit organizations contracting with the District who had contact with the Jacks-Fogle family during their years here. The report offered dozens of recommendations for ways to improve our service delivery system so that families are less likely to fall through the cracks.

The bill before you does not address the underlying systemic problems and lack of services which led to the Jacks-Fogle tragedy. The OIG's report was full of examples where agency staff did not follow their own policies and procedures. While coordination of services and interagency work is certainly important, it will not be effective until each agency is doing its own job thoroughly. It is unclear how the new bureaucracy created by the proposed program will help.

Rather than proceed with the creation of the proposed program, I would urge that this Council focus on ensuring the problems identified by the OIG are addressed. Further, to truly develop an information sharing system that will help families, the Council should follow the example of other jurisdictions and create an interagency task force that includes consumers and advocates. The task force should be given a deadline by which it reports back to the Council with specific recommendations about how to create a system that meets the needs of all the agencies and the consumers.

If you are inclined to pass some legislation that involves a shared database of information, revisions must be made to this bill.³ A main concern about the bill is its lack of specificity and clarity. We have met with many advocates, Council staff, Department of Human Services Director Clarence Carter, and several agencies' staff and everyone seems to have his or her own interpretation of the bill and what it

² Government of the District of Columbia, Office of the Inspector General, *Report of Special Evaluation: Interactions Between An At-Risk Family, District Agencies and Other Service Providers (2005-2008)*, April 2009.

³ Attached and incorporated into this testimony are specific suggested changes to the bill that would effectuate our proposed revisions and other technical suggestions.

will and will not do. While not everything can be spelled out in statute, the vagueness of and inconsistency within this bill is troubling. There are important policy decisions that the Council should make and not the Executive after the fact. Several key things should be clarified or altered to ensure this bill does not harm children and families.

Most fundamentally, individuals must be asked for their consent before their data becomes part of the joint database system. Many low-income individuals are already loathe to seek government services and are distrustful of government workers. Sensitive personal information shared without consent is likely to anger and alienate at-risk families jeopardizing whatever fragile trust or relationship they have with service providers. Violation of this trust will lead families to disengage from the very services that can help them. For the same reason, it is also important that families be invited to opt-in to the program – rather than be forced into it. The bill should require that families consent to the convening of an interagency team and be assured that if they do not consent to sharing their data or convening a meeting, there are no negative consequences. A system that purports to be “person-centered” must empower individuals and give them choices.

It is unclear why DC Public Schools (DCPS) and the Office of the State Superintendent of Education (OSSE) are considered agencies included in this program. DCPS and OSSE are educational, not human services, agencies. Both agencies are already required to report risk factors to other human services agencies covered by the bill. Truancy information is reported to the Department of Youth Rehabilitation Services (DYRS) and if a risk factor is present presumably DYRS would flag it for the database. Abuse and neglect reports are made to the Child and Family Services Agency (CFSA) for investigation and substantiation. DCPS and OSSE do not have any other information relevant for this system. I recommend DCPS and OSSE be removed from the scope of the bill. However, if they remain in the bill, not only as the correct policy choice, but also to avoid violation of federal law and potential loss of federal

funds the bill must be amended to ask for consent from parents before any protected educational records are shared in the combined database systems.⁴

To ensure that data is used for the limited purpose intended, the bill must place limits on the amount of information entered into the database and clearly define who can view the data. I propose basic information and existence of a relationship with an agency be entered into the database. I further suggest the only ones granted access are the Department of Human Services (DHS) Case Coordinators, rather than all agency staff or the 1500 people contemplated in the bill's Fiscal Impact Statement.

Who can contact families identified as being at-risk due to multiple flags in the system must also be clarified. The bill contemplates that the DHS Case Coordinators will contact a family identified as being at-risk due to multiple flags in the system. Many families will be extremely upset if a stranger who knows a great deal of sensitive, personal information about them calls them and informs them that an emergency meeting is being held to discuss their family. Imagine how any of us would feel if we answered our phone and were greeted by a stranger who knew all about us. Most of us would hang up the phone immediately. I recommend that an individual agency case worker who has an existing relationship with the family be the one to place the initial call. When multiple flags arise and DHS decides to get involved in a case, the DHS Case Coordinator should reach out to the individual caseworkers assigned to the family and assign the person who has the strongest relationship with the family to contact them and explain the Case Coordinator Interagency Team (CCIT) process to the family. Families are much more likely to respond positively to someone with whom they have a pre-existing, trusting relationship.

⁴ The lack of consent regarding educational information violates the federal Family Educational Records Privacy Act (FERPA). The bill requires routine, non-emergency disclosure of protected educational records. FERPA, in contrast, requires all educational agencies receiving federal funds to comply with its regulations of students' privacy rights as a condition of receiving those funds. 20 U.S.C. §1232g(a). Absent a case-specific emergency triggering the exception, "there is no specific exception to the written consent requirement in FERPA that permits the disclosure of personally identifiable information from students' educational records to non-education State agencies 73 Fed. Reg. 74806, 72838."

The legislation also defines the term “risk factor” too broadly. The current definition – “circumstances that when combined may indicate the existence of an emergency or crisis situation in which the health or safety of an individual or family is at risk” – will lead to over identification and sweep thousands of people into the new system. Every child in the custody of CFSA is inherently at risk. Will they all be entered into the new database? If thousands of families are flagged in the system, the system will be flooded and it’s unlikely the DHS Case Coordinators will be able to provide any meaningful service. The definition of risk factor should also list several things which may *not* be considered risk factors, including:

- The mere fact that the individual or family lacks income or assets, or their eligibility or ineligibility for any means-tested government benefits;
- The mere fact that an individual has a confirmed or suspected medical or mental health condition, or physical, mental or emotional disability;
- The mere fact that one’s child has been removed from his or her custody.

In summary, for the proposed program to avoid disengaging at-risk families and pushing them away from services the bill must be changed. 1) Individuals and families must consent to their data being part of the joint database system and to the convening of an interagency team. 2) The program must be voluntary if it is to be person centered. If individuals and families do not consent to sharing their data or convening a meeting, there must be no negative consequences. 3) To protect privacy only Department of Human Services (DHS) case coordinators should be allowed to view the data. 4) To further protect privacy and encourage engagement, the amount of information entered into the database must be limited. 5) An agency caseworker who already knows the family must contact them and offer the assistance of the interagency team, rather than an unknown DHS caseworker. 6) “Risk factor” should be defined in a way that does not lead to over identification and sweep thousands of people into the new system.

Thank you for the opportunity to testify.