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**Testimony before the Office of the State  
Superintendent of Education,  
Department of Special Education**

**Regulation and Policies Regarding Early Intervention Services**

**October 13, 2009**

**Sharra E. Greer**  
**Policy Director**  
**Children's Law Center**



Good evening and thank you for the opportunity to testify. My name is Sharra E. Greer. I am the Policy Director of Children's Law Center<sup>1</sup> 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. My organization has represented many parents seeking special education services for their children including young children who are eligible for Part C Early Intervention services.

For many years, the District has struggled to provide comprehensive assessments and services to our young children. I am extremely pleased that since the Infants and Toddlers with Disabilities Division (ITDD) became a part of OSSE (in April 2008) considerable attention has been given to improving the District's Early Intervention program. I applaud OSSE for swiftly promulgating long overdue regulations and for issuing several related policies which bring necessary clarity to many issues surrounding Early Intervention. I will focus my comments tonight on the Early Intervention Services Regulations, the Comprehensive Child Find System Policy and the Early Childhood Transition Policy. Overall, the regulation and policies are a huge step forward for District's children and families. I do, however, have some specific suggestions for improvement.

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<sup>1</sup> 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.

## Early Intervention Services Regulations - District of Columbia Municipal Regulations Title 5, Chapter A32

Throughout the regulation references are made to the child’s “parent” and at times the term “legal guardian” is also used. For children in the custody of the Child and Families Services Agency (CFSA), the Early Intervention Program (Program) must carefully determine who is the “parent” within the meaning of federal and District special education law.

District special education regulations note that each Local Education Agency should appoint a surrogate parent when a parent cannot be identified, the parent’s whereabouts are unknown or, when needed, if the child is a ward of the District.<sup>2</sup> Many children who are in the custody of CFSA may be in need of early intervention services and for each child there must be a determination made as to whether his or her birth parent or foster parent is the education decision maker or whether a surrogate must be designated.<sup>3</sup> If a surrogate is necessary, Program staff must make a prompt referral to OSSE’s Education Surrogate Parent Program. Children involved with CFSA often move frequently and therefore ongoing attention must be paid to this issue. The Program must work closely with CFSA to identify the proper education decision maker and ensure these children receive prompt early intervention referrals, evaluations, assessments and services.

To make it clearer we suggest the term “parent” be added explicitly<sup>4</sup> to the Definition section at the end of this regulation and that it be defined, based on the federal language<sup>5</sup>, as follows:

- A. natural, adoptive, or foster parent of a child;
- B. a guardian;

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<sup>2</sup> 5 D.C.M.R. § 3022.1

<sup>3</sup> Importantly, a CFSA social worker can never be the child’s educational decision maker and should not be allowed to make decisions or sign IFSPs.

<sup>4</sup> The federal definition is incorporated by reference into the regulation, A3299, which references 20 U.S.C. §1414. We suggest that A3299 be changed to cite the definition section of the IDEA, 20 U.S.C. §1401.

<sup>5</sup> 20 U.S.C. §1401 (23)

- C. an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- D. an individual assigned by OSSE to be a surrogate parent.

It is imperative that OSSE track data relating to its Early Intervention Program so that useful information regarding the numbers of children served, their diagnoses, service provision and outcomes can be evaluated. These regulations should explicitly call for such data tracking to occur and note that when such aggregated information is studied or released that all names and individually identifying information is first redacted or removed. We suggest a new section be added with the following language:

1. The Program shall design and maintain a confidential system to track key information about the Early Intervention Program including:
  - a) the number of children served;
  - b) the ages of the children served;
  - c) the diagnoses of the children served;
  - d) the type and frequency of the services provided;
  - e) the outcome of the services (e.g: did the child continue to need services the following year? Did the severity of the child's needs lessen? Did the child receive services in the Part B program?)
2. The Program shall issue an annual public report on the Early Intervention Program to detail the item enumerated in (1). This report will not contain any individually identifying information about the child, parent and service providers such as names or addresses.

Throughout the regulation there is mention of providing parents with advance written notification, but there is no explanation of how the notices are to be written or how the Program

will communicate with parents who are illiterate or have a native language other than English.<sup>6</sup> We suggest that the more robust notice requirement used in Section A3215.4(b) be used throughout the regulation.<sup>7</sup>

In addition to the above general comments, I have some comments which are specific to various sections of the regulations:

**A3202.2 and A3202.3:** The Program's central directory of early intervention services should also include a list of what health insurance each provider accepts. We encourage OSSE to use the process of creating and annually updating this directory as an opportunity to assess the number of service providers available and where gaps exist. OSSE should pay special attention to the needs of low-income children and ensure there are adequate providers who accept Medicaid for all early intervention services. If there are inadequate providers, OSSE should work closely with the Department of Health Care Finance to discuss Medicaid rates and other related issues.

**A3205.7:** The evaluation and assessment should also include a review of any independent evaluations that the child has previously had.

**A3207.9:** The list of attendees at the transition meeting should include the full list of persons enumerated in Section A3206.5.

**A3208.2:** A child who is in CFSA custody, but is living in a foster home or other placement outside of DC, should also be considered a resident and therefore eligible to receive Part C Early Intervention Services from the District.

**A3208.3:** The regulation states that "consistent with federal regulations, 34 C.F.R. §303.16, a child is eligible for...early intervention services if the child:

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<sup>6</sup> See e.g. §§ A3206.2, A2311.10

<sup>7</sup> That section states that notice shall be: 1) Written in language understandable to the general public; 2) Provided in the native language of the parents, unless it is clearly not feasible to do so; 3) If the native language or other mode of communication of the parent is not a written language, the Program shall take steps to ensure that the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication as appropriate.

- (a) Demonstrates a developmental delay at 3.0 standard deviations or 50 percent delay, in one or more of the following areas...”

This regulation, however, does not reflect the federal regulation which states that a child is considered to need early intervention services if they “experience developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas...” and does not mention the 3.0 standard deviation or 50 percent delay. Additionally, the requirement of being “3.0 standard deviations” delayed seems inconsistent with the District’s own special education regulations (5 D.C.M.R. §3001) which define developmental delay for children three through seven years of age as “at least two standard deviations below the mean.” We urge that OSSE adopt a standard of “a developmental delay at 2.0 standard deviations or 25 percent delay, ...” to be more in line with the special education regulations and other jurisdictions, including Maryland and Virginia.<sup>8</sup>

**A3208.5:** All children, regardless of insurance type, should be referred to their pediatrician for related services if they do not qualify for Part C services. Additionally, parents of ineligible children should be given the Program’s directory of service providers as many of these services, if deemed medically necessary by the provider, can be accessed through insurance regardless of Part C eligibility.

**A3209:** In the financial eligibility section, the regulations should state that for children in the custody of CFSA there is no parent financial contribution. The financial circumstances of foster parents should not be assessed. Additionally, the regulation should be changed to state that parents with a combined adjusted gross income of **three hundred percent (300%)** of the Federal Poverty Level (FPL) will be required to contribute the cost of services, rather than parents with incomes

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<sup>8</sup> Under IDEA Part C, states may set their own eligibility criteria. States have set a variety of quantitative and qualitative measures to do so. 35 states, including Maryland and Virginia, have set their percentage delayed criteria at a higher level than the District (meaning children with less severe delays are eligible for Early Intervention Services). The majority of these states use a 25% delay standard while several others set it at 30% or 33%. Several other states do not set a quantitative standard, but rather condition eligibility solely on clinical opinion. See: Shackelford, Jo, *State and Jurisdictional Eligibility Definitions for Infants and Toddlers with Disabilities Under IDEA*, National Early Childhood Technical Assistance Center, Issue 21 (July 2006).

over 200%. *DC Healthy Families*, DC's Children's Health Insurance Program (CHIP), extends Medicaid coverage to children under 19 and their caregivers in families who make up to 300% of FPL. DC's Early Intervention contribution scale should be consistent with our Medicaid program.

**A3218.4:** The regulations regarding the timeline for the mediation, due process and state complaint procedures is confusing. The introductory sentence states that the alleged violation must have occurred not more than *a year* before the date the complaint is received unless a longer period is reasonable due to circumstances in (a) or (b). Section (b) then states that a longer period is reasonable if the complainant is requesting reimbursement or corrective action for a violation that occurred up to *three years* before the date the complaint is received. It is unclear what sort of issue would not fall into (b) and therefore it is unclear when the one year requirement applies.

**A3221.1:** We are supportive of the Program developing a plan to ensure there are sufficient number of qualified and skilled providers of early intervention supports and services. As part of this assessment, we urge the Program to consider how long children must currently wait for appointments with each type of provider, the type of insurance accepted by each provider, and the languages spoken by providers compared to the languages of the families and children seeking services.

A3299: The definition of "developmental delay" needs to be modified. Sections (e) and (f) should be deleted as they are not areas in which a child could demonstrate a delay (as are (a) through (d)), but are alternative standards through which a child can be deemed eligible for early intervention services.

### **Comprehensive Child Find System Policy**

We are pleased that OSSE has published this policy to set forth and clarify its Child Find Activities. Overall, we think it is a very appropriate and useful policy statement. We have a few suggestions for improvement or clarification:

**Obtaining Consent** (page 3): this section should include information about children who are in CFSA custody and discuss the necessity of determining the education decision maker (see comments above).

**Referral** (page 5): While it is ideal if a “primary referral source,” submits a written referral to the DC Early Intervention Program, these individuals should also be allowed to call the Program and make an oral referral. When the Program is notified about a child who a primary referral sources suspects may be eligible for early intervention services, the Child Find Specialist will contact the family and complete a developmental screening questionnaire (as currently described in this policy). Even if a written referral is required, the language of the policy must be changed so that parents are not listed as a “primary referral source.” We assume that the Program does mean to require parents to make a written referral.

**Interagency Coordination** (page 8): We are pleased to see it officially stated that the Part C child find system is a collaborative effort between OSSE and other District agencies. We suggest adding more specificity about *how* OSSE will work with these other agencies. For example, will Early Intervention Program staff do annual training sessions for staff at other relevant agencies?

**Public Awareness** (page 9): It will take a great deal of work by the Program to reach out to the community and regain the trust of primary referral sources. The Program must take an extremely proactive approach to reaching out to primary referral sources (which should include child care providers in addition to hospitals and physicians) and providing them with the necessary training to ensure they properly refer families.

### **Early Childhood Transition Policy**

The transition from Part C to Part B has historically been a very complicated process for families to navigate and the point at which the District lost track of and stopped serving many young children with disabilities. We are extremely pleased that OSSE is focusing on this critical transition

period and publishing this policy to clarify who has responsibility for various activities. We have a few suggestions for improvement or clarification:

**Early Child Transition Process from Part C to Part B** (page 3): This section states that within six months and not less than 90 days before the child turns three, the Part C service coordinator convenes the Transition Conference. With approval from the family, the Local Education Agency (LEA) *must* participate in this meeting. It is quite a difficult task for a parent to figure out if they want their child to receive Part B services within the District of Columbia Public Schools (DCPS) or at a charter school. This process is even more complicated by the fact that not all charter schools offer preschool programs; among those who do, some have elected DCPS as their LEA for purposes of special education and some are their own LEA. Therefore, this policy must state that sometime after the child turns two, but before the Transition Conference, the Part C coordinator must discuss the LEA options with the parent and allow them to visit the various programs. Too often it seems that no one explains the options to the parent until the day of the Transition Conference and then only DCPS is at the meeting and it seems too late to consider any other options.

Also under this section, there is a mistake with the number and headings of the sections on the bottom of page 5 and beginning of page 6. The heading for 4 and 5 are the same and the text for 5 and 6 are the same.

**Non-Eligibility for Part B Services** (page 6): This section should note that if parents wish to contest the determination that a child is ineligible for Part B services that they may do so and should refer parents to the appropriate due process and complaint procedures.

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