

Testimony before the District of Columbia Council
Committee of the Whole
March 5, 2010

Performance Oversight Hearing
Office of the State Superintendent of Education

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Good morning Chairman Gray and members of the Council. My name is Judith Sandalow. I am the Executive Director of the 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 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 appreciate the opportunity to testify today about the performance of the Office of the State Superintendent of Education (OSSE). OSSE has made significant progress since its inception two years ago in fulfilling its role to set statewide policies and provide support and accountability for all public education in DC. I want to focus my testimony today on three areas. First, OSSE's work revising rules and regulations and my concerns with the implementation of the important rules regarding least restrictive environment and inclusion. Second, OSSE's work beginning to build a functioning Early Intervention program. And lastly, school stability for foster children.

New Regulations and Rules Regarding Least Restrictive Environment and Inclusion

In the past year, OSSE has promulgated many regulations in an effort to come into compliance with federal law, to clarify District policies and to provide uniformity between the District's local educational agencies (LEAs). In the past year, my organization has provided comments on many sets of regulations. On several occasions, our comments were incorporated into the final regulations and we appreciated OSSE's thoughtful process and willingness to involve advocates.

¹ Children's Law Center works to give every child in the District of Columbia a safe home, meaningful education and healthy life. As the largest nonprofit legal services provider in the District, our 70-person staff partners with hundreds of pro bono attorneys to serve 1,200 at-risk children each year. Applying the knowledge gained from this direct representation, we advocate for changes in the city's laws, policies and programs. For more information, visit www.childrenslawcenter.org.

OSSE stands out as a model of transparency and community inclusion and collaboration. In particular, we appreciate Tami Lewis, OSSE's Assistant Superintendent for Special Education, and her ongoing willingness to engage in productive conversations. Working with and incorporating input from advocates has led to better rules and guidance for the LEAs that we believe will lead to better outcomes for children. In some instances we believe that this collaborative process has avoided litigation which helps children get more appropriate services without the long delays that often come with litigation and leads to cost savings to the District.

Implementation of the new rules will take work. OSSE needs to continue to provide oversight, education and technical support to the LEAs to ensure they understand the new regulations and properly implement them. One area where proper implementation is particularly important is appropriate placement of children with special education needs.

Federal law requires, and we support, OSSE's goal of requiring LEAs to educate disabled students in their local schools with their non-disabled peers to the maximum extent appropriate. At the same time, not all children are able to succeed in a general education classroom. For these children, it remains critical that OSSE ensure that the LEAs develop a full continuum of placements, ranging from inclusion classes in local schools to separate special education schools for the most severely disabled children.

We are concerned with the frequency at which the desire to move children to a least restrictive environment places children in classrooms without adequate supports. We find that some school staff insists on placing children in classrooms that do not contain the supports the children clearly need because the school staff incorrectly believe that they are legally required to place children with their general education peers. OSSE must also ensure LEAs are not pressured to place or maintain children in inclusion settings when it is inappropriate. OSSE's oversight, training and technical assistance to LEAs will be key for the new guidance to lead to successful practice.

We are also concerned that the problems we see will be exacerbated by the pressure to return children from nonpublic special education placements to District public schools. We certainly support reducing DC's nonpublic placements. Our clients would be better served if they did not have to take long bus rides into Maryland or Virginia for school every day, and those placements are very expensive. However, those placements are critical for the District's most disabled children. At this point there are not sufficient special education resources within DC public and charter schools to meet their needs. To return them to neighborhood schools that are not equipped to meet their needs sets them up to fail – and we have seen this happen to several students.

In short, OSSE is responsible for ensuring that children are appropriately placed. OSSE must work with the LEAs, especially DC Public Schools, to continue to expand DC's placement continuum. While the placement options are being expanded OSSE must also ensure that a child is not returned from a nonpublic school or moved from a more restrictive public environment without ensuring that the placement can support the child's needs and is an environment within which she can succeed.

Early Intervention – IDEA Part C

The renewed attention that is being paid to the DC Early Intervention Program (Individuals with Disabilities Education Act Part C) is an important and welcome development. For many years, the District has struggled to provide comprehensive assessments and services to our young children. We were pleased that the program, formerly known as the Infant and Toddlers with Disabilities Division, became part of OSSE in April 2008. Since moving to OSSE the program has begun to improve. For example, under federal law, the District's Early Intervention program is required to have an Interagency Coordinating Council. For many years this Council has been inactive. OSSE was able to getting the Council up and running this winter.

Similarly, in the past the program simply didn't collect data about the children it served so it is unable to answer even the most basic questions about the number of children it served with various diagnoses and the services those children received. We are relieved to learn the program has now started to collect such data and look forward to more robust reports in future years.

Much work still needs to be done for DC to have a good Early Intervention program. We are concerned that the program has set its goals too low for FY10. The goals are all set as *point* one percent (.1%) greater than the FY09 targets.² We know the District can serve our youngest children better than .1% improvement per year and urge the program to set more ambitious targets.

Similarly, the program still has issues that must be resolved regarding funding for services. Providers continue to report up to four month delays in receiving payments for such services as doing evaluations and writing service plans. As we struggle to recruit and retain enough qualified providers to meet the needs of our children, payment delays such as these are unacceptable. In addition, Medicaid may not be being maximized. OSSE needs to ensure that the Early Intervention program is working with the Department of Health Care Finance to ensure Medicaid is paying for all reimbursable services.

School Stability for Foster Children

School stability – avoiding unnecessary changes in the school a child attends, even when the child has an unstable family situation – is essential to children's academic success. It is especially important to many of our clients who are in foster care, whose living arrangements are, by definition, unstable. Foster youths who had even one fewer school placement change per year are almost twice as likely to graduate high school.³ Multiple school placement changes add up to years

² DC Early Intervention Program handouts, Measurable and Rigorous Target: Targets for Infants and Toddlers Exiting in FFY 2009 (2009-10) and FFY 2010 (2010-2011) and Reporting in Feb 2011 and Feb 2012, Interagency Coordinating Council Meeting (January 12, 2010).

³ Casey Family Programs, Educating Children in Foster Care: The McKinney Vento and No Child Left Behind Acts, at 5 (2007).

of lost educational growth.⁴ Yet for years, the default practice in the District has been that placing children in foster care or changing their foster placement also means disrupting their education and enrolling them in a new school.

This issue is relevant to OSSE because it bears the financial burden of the District's historical inability to protect foster children's school stability. About 400 foster children⁵ attend public schools in surrounding counties in Maryland at OSSE expense – more than \$10,000 a year for general education students and up to \$40,000 or more for special education. It would cost less to transport many of these children back to their home schools in the District – especially because there is federal funding available to support some of the cost of transportation.⁶ To change the practice of moving children by default, and to keep more children stable in their DC schools, OSSE and the Child and Family Services Agency (CFSA) must work together on solution and we hope that both agencies will continue this work in the upcoming year.

The Council can help this effort when it considers Bill 18-579, the Prevention of Abuse and Neglect Amendment Act of 2009.⁷ That bill, required by recent changes in federal law, addresses CFSA's planning requirements to improve foster children's school stability. The legislation provides a great opportunity to improve school stability for foster children, and we look forward to working with the Council on that task.

⁴ National Working Group on Foster Care and Education, *Educational Outcomes for Children and Youth in Foster and Out-of-Home Care* (2006).

⁵ OSSE Fall 2008 Enrollment Audit, Attachment 16. <http://osse.dc.gov/seo/cwp/view,a,1222,q,563398.asp>. 245 District children attend general education programs in surrounding public schools and 135 attend special education programs. *Id.* These students constitute about one-third of the District's school-age foster child population; there are about 1200 foster children aged 5-18. CFSA FY 2009 Annual Report at 29, http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/reports_and_assessments/2009_apr_final.pdf.

⁶ 42 U.S.C. § 475(4)(A); U.S. Dep't of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Welfare Policy Manual section 8.1B Question 27, http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/questDetail.jsp?QAid=1803.

⁷ Bill 18-579, <http://www.dccouncil.us/lims/legislation.aspx?LegNo=B18-0579&Description=%22PREVENTION+OF+CHILD+ABUSE+AND+NEGLECT+AMENDMENT+ACT+OF+2009%22.&ID=23486>.

Another piece of school stability is the District’s homeless student services program under the federal McKinney-Vento Homeless Assistance Act run by OSSE. To its credit, OSSE’s McKinney Vento state plan is written to provide coverage to all foster children.⁸ This provides important legal protection to foster children – the right to continue attending their school and to obtain some transportation assistance, such as Metro fare, to get there. Unfortunately, the regulations do not reflect the state plan and thus few people know about this legal protection. The regulations should make clear – as the state plan does – that all foster children are covered.⁹ We know that OSSE is working its way through DC’s state-level education regulations. We urge OSSE to prioritize revisions to the McKinney Vento regulations. Doing so will improve education outcomes for some of the District’s most vulnerable students.

Conclusion

We applaud OSSE for the positive steps they have taken to improve the District education system.

Thank you again for the opportunity to testify. I am happy to answer any questions.

⁸ McKinney-Vento Homeless Assistance Act State Plan at 3, http://www.osse.dc.gov/se0/frames.asp?doc=/seo/lib/seo/mckinney-vento_state_plan_0910.pdf. The state plan defines children “awaiting foster care” (who are covered by McKinney-Vento’s protections) to include all children in foster care who have not yet been placed in a permanent home – that is, all foster children.

⁹ By adding to 5 DCMR 5099 under the definition of “Homeless Children and Youth” section (j) which reads “committed to the legal custody of someone other than a parent pursuant to D.C. Code §2320(a)(3), placed in shelter care pursuant to D.C. Code §16-2312(d)(1)(A), or taken into custody prior to a shelter care hearing pursuant to D.C. Code §16-2312(a)(1).