



**Proposed Special Education Regulations and Policies of the  
Office of the State Superintendent of Education**

**Testimony of Sharra E. Greer  
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Good evening and thank you for the opportunity to testify regarding several regulations and policies proposed by the Office of the State Superintendent of Education. I am Sharra Greer, the Policy Director at the Children’s Law Center.<sup>1</sup> Our seventy person staff represents more than 1,000 low-income children and families in the District of Columbia every year. Our clients and their children include many children with the most significant needs – those students who most need OSSE to successfully reform the District’s special education system. My testimony is based on our experience representing these children in early childhood programs, DCPS schools, and public charter schools.

We have already submitted formal written comments to the proposed regulations governing dispute resolution meetings<sup>2</sup> and due process timelines and charter schools’ special education obligations<sup>3</sup> (and the latter comments are applicable<sup>3</sup> to OSSE’s revised policies and procedures for placement reviews). This evening, we submitted via email detailed written comments on OSSE’s proposed initial evaluation/reevaluation<sup>4</sup> and related services policies.<sup>5</sup>

I will focus my testimony on three principles that overlap all of our comments: (1) OSSE must ensure meaningful participation by parents in core special education decisions; (2) OSSE should use all the authority at its disposal to ensure compliance by local education agencies (LEAs); and (3) OSSE must ensure that its regulations and policies comply with federal and District law.

**1) OSSE regulations and policies must ensure meaningful participation by parents in special education decision making.**

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<sup>1</sup> The Children’s Law Center is the largest civil legal services organization in the District of Columbia and the only organization providing comprehensive representation to children. The 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 1,000 children and families each year and by using the knowledge we gain from representing our clients to advocate for changes in the law.

<sup>2</sup> See Attachment A.

<sup>3</sup> See Attachment B.

<sup>4</sup> See Attachment C.

<sup>5</sup> See Attachment D.

Meaningful parental participation ensures that IEP teams have all information necessary to make the best decisions for children and that special education decisions are made collaboratively. The IDEA requires parents to have the ability to participate in core decisions, including the development of detailed IEPs and decisions about what school children will attend. OSSE's proposed policies and regulations recognize this important principle. There are several ways, however, that the policies and regulations can be improved.

First, the proposed regulations governing dispute resolution meetings miss an opportunity to ensure that this relatively new procedure actually enables parents to resolve disputes amicably. Schools frequently fail to arrange resolution meetings until one or two days prior to the deadline for holding them and fail to collaborate with parents to identify the relevant IEP team members who should attend. We urge OSSE to require LEAs to make sufficient efforts to arrange resolution meetings – and thus make the resolution process meaningful for parents.

We also suggest that OSSE revise the dispute resolution regulations to permit the resolution process to continue past 30 days without tolling the 45-day due process hearing timeline. When 30 days pass and parents and school staff are working effectively to resolve a due process complaint, the parties should be able to continue to seek a resolution without parents having to forego their right to a due process hearing held on the specified timeline. As proposed, the regulations would force parents to choose between continuing the dispute resolution process and asserting their right to a prompt hearing. Many will choose the latter, increasing the litigiousness of these disputes unnecessarily.

The proposed regulations governing charter schools' special education obligations and the revised policies and procedures for placement review can also be improved. The proposed regulation and the placement review policy attempt to distinguish a child's "placement" – which is undeniably determined by an IEP team – from a child's "location" – which OSSE seeks to

determine unilaterally. We urge that the decision of where the child will attend school is properly part of the placement decision and should include the parents. The regulations should be revised to reflect this. Parents, through their role on an IEP team, should participate in decisions regarding what school their children will attend – both under federal and District law, and as a matter of sound policy. Where a child attends school is a crucial element of any special education decision. In our experience, different school placements considered by OSSE or DCPS officials will vary considerably: they offer different services, have different locations, and align with individual students' needs in different ways. They rarely represent identical programs that are equally appropriate for students.

Excluding parents from these decisions will prevent parents from sharing important information that can impact a placement decision. Considerations ought to include all of a child's unique needs, including, for example, the precise clinical service that will best help a child learn, neighborhood rivalries or gang issues that may render a particular placement dangerous, and geographic locations that facilitate (or hinder) parental involvement in the child's education. Excluding parents also undermines the collaborative IEP process and creates unnecessary friction.

**2) OSSE regulations and policies should make full use of regulatory tools to help LEAs improve special education services and to hold LEAs accountable for doing so.**

The reform necessary to improve the District's special education system requires OSSE's creative use of all its regulatory authority. OSSE should revise several areas of the proposed regulations and policies to use its authority to demand solutions to serious problems.

First, we urge OSSE to strengthen its related services policy provisions regarding canceled services sessions. Our clients frequently experience sessions being canceled causing them to lose the intended benefits of those services and undermining the IEP process that called for those services. We urge OSSE to remove confusing language in its draft policies suggesting that LEAs do not

always need to arrange for missed sessions to be rescheduled. OSSE should also require LEAs to notify parents when related service sessions are missed so that parents can help resolve problems early.

Second, we recommend OSSE provide assistance to small LEAs that lack the resources to provide a free appropriate public education (FAPE) to students with the most severe special needs. Federal law provides that OSSE can determine if a LEA cannot provide FAPE and, in such cases, OSSE can provide special education and related services directly. Utilizing our proposed revision, OSSE would retain the discretion to determine when LEAs are truly unable to meet a child's needs and thus prevent charter LEAs from avoiding their special education responsibilities.

Without this change, OSSE's commendable efforts to enforce special education laws at charter schools will lead to unintended consequences for students with the most severe disabilities. LEA charters lack the critical mass of students to develop a full continuum of special education services. Imposing the cost of providing all services on small LEAs will cause significant financial distress, and the fear of such distress may lead many LEAs to find ways to avoid accepting students with special needs or to push those students out by repeated disciplinary sanctions, encouraging parents to look elsewhere, or by other means. LEA charters will also have an incentive to reduce the level of services provided to individual students. To prevent these outcomes, we urge OSSE to adopt our recommendation to permit LEAs to petition OSSE to provide necessary services that the LEA cannot provide, as federal law envisions.

### **3) OSSE regulations and policy must follow federal and District law.**

Legal compliance will reduce the number of due process complaints, help the District emerge from class action litigation, engender greater trust among parents and lead to better IEPs for children. OSSE's proposed regulations and policies largely comply with federal and District law.

There are a few areas, however, where we have significant concerns.

I have already discussed our concern that OSSE's having unilateral authority to choose between different school placement options conflicts with the responsibility legally granted to IEP teams. Other areas in which the proposed regulations and policies don't comport with federal and local law:

- In OSSE's proposed Initial Evaluation and Reevaluation Policy ("Evaluation Policy) the definition of the term "eligibility" states that "a child may not be determined to be a child with a disability if the team determines the child did not receive appropriate instruction in reading [or] math [or has] limited English proficiency." Evaluation Policy at 3. Federal law bars eligibility when "the *determinant factor*" is the "lack of appropriate instruction or limited English proficiency." 34 C.F.R. § 300.306(b). A child who has not received appropriate instruction or has limited English proficiency may still be determined to be a child with a disability as long the lack of instruction or English proficiency is not the determinant factor for that determination. As written, the policy would inappropriately bar from special education *all* children who have not received appropriate instruction or have limited English proficiency. We urge OSSE to include in the definition this important qualifier.
- The Evaluation Policy as proposed requires that in order to qualify as a child with multiple disabilities "the child must meet all of the criteria associated with the disability from at least two groups." Evaluation Policy at 24. Federal law defines "multiple disabilities" more broadly to include *any* combination of impairments that all must be addressed to appropriately educate the child. 34 C.F.R. § 300.8(c)(7). We strongly urge that the policy be modified to comply with the federal regulations and remove the requirement that a child must have a disability from more than one "group" in order to qualify as multiply disabled.
- The Evaluation Policy as written provides that the IEP team "makes the determination whether the child is suspected to be a child with a disability or not" and may refuse to

evaluate the child if the team believes that he or she is not a child with a disability.

Evaluation Policy at 12. This part of the process as described violates Federal and local laws. Once an IEP team has received a referral, the team must conduct a timely initial evaluation. 5 D.C.M.R. § 3005.2. We urge that the policy be revised to clarify that IEP teams may not refuse to evaluate a child who has been referred for an initial evaluation.

As I stated earlier, my written comments have additional detailed suggestions and recommendations. I thank you for the opportunity to testify and for considering our comments.