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Introduction

Good morning, Chairman Grosso and members of the Committee. My name is Renee Murphy. I am the Supervising Attorney in the policy team of Children's Law Center¹ and a resident of the District. I am testifying today 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 more than 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. Nearly all the children we represent attend DC public schools – whether traditional public schools or charter schools.

I am pleased to testify today regarding performance of the Office of the Deputy Mayor for Education. As the Committee knows, the Deputy Mayor's role is to oversee the District-wide education strategy and manage interagency coordination. Deputy Mayor Niles and her team have shown an ability to bring together diverse leaders in several areas, especially the creation of the Out of School Time office over the last year. In addition to overseeing and coordinating with the Office of the State Superintendent of Education (OSSE), Department of Parks and Recreation (DPR), the DC Public Schools (DCPS), the DC Public Charter School Board (PCSB), 66 Public Charter School Local Education Agencies (LEAs),² and the State Board of Education (SBOE), the Deputy Mayor has a wide array of projects and tasks, including supporting the implementation and management of the Kids Ride Free program and the Adult Learner transportation

(which allows students to ride for free on Metrobus, the DC Circulator, and Metrorail within the District) and coordinating a Safe Passage needs assessment and resource mapping with the Deputy Mayor for Public Safety and Justice.³

I will focus my testimony today on two areas where the District needs the Deputy Mayor to focus her visionary leadership to create and drive long-term planning and improvement across LEAs and agencies: special education and early intervention for children with disabilities and school engagement.

SPECIAL EDUCATION AND EARLY INTERVENTION

Children with disabilities need a visionary leader in the District to change their trajectories in education and life, and the Deputy Mayor for Education should be that leader. Children and youth with disabilities are encountering the most challenges to success, by every available metric about student troubles in school, student achievements, and outcomes: disproportionate suspension and expulsion,⁴ PARCC test achievement gap in reading and math, lack of progress on the PARCC,⁵ graduation gap,⁶ and eventual employment gap.⁷

Behind the statistics are children and parents. At Children's Law Center, we receive calls every day from parents who are worried that their children are not learning to read, not learning math, being sent home instead of getting help with their emotional needs, and not going to be prepared for adulthood. For many of the children, the truth is that they are not making meaningful progress and are many years

behind. Too many of the children we see in middle and high school are still only able to read and do math at early elementary levels, and their teachers and school leadership do not seem to know how to help. Some of them have never been diagnosed with a disability, despite how obvious the child's severe needs are and, at times, despite the parent asking for special education. Other children are in special education, just not receiving the services they need to make progress.

Children with disabilities are full of promise just like other children, in fact the vast majority have average range intelligence.⁸ We as a District can and should expect that they learn on grade level with their peers. Deputy Mayor Niles can lead with that lens of expectation by implementing best practices from the special education reform legislation of 2014 and by leading a grand vision and plan for children with disabilities.

Implement the Special Education Law Reforms

One concrete step that the Deputy Mayor for Education can take right now, to be the leader that children with disabilities in the District need, is to ensure funding in the Mayor's proposed Fiscal Year 2019 budget to implement the *Enhanced Special Education Services Act of 2014*, (ESESA).⁹ Those reforms are:

- Start post-secondary transition services earlier, at age 14¹⁰
- Evaluate children for disability and their needs faster, within 60 days¹¹
- Expand infant and toddler early intervention services to children with 25% delay¹²

- Sustainably fund the partnership and innovation fund called the Special Education Enhancement Fund¹³

We thank you, Chairman Grosso, and this Committee for your leadership on implementation of the reforms. OSSE has been getting schools ready and getting the Strong Start program for infants and toddlers ready, which we can see in the Reports that this Committee required as a way to push implementation.¹⁴ OSSE released over \$3,500,000 as formula grants to LEAs to help them prepare for faster evaluations and earlier transition planning. Because of Federal law, that investment of local dollars must continue after this year,¹⁵ so we believe that part of the cost of this reform is now committed. Once the District funds these best practices, children will benefit from receiving services earlier, and schools will benefit from children catching up with earlier interventions. Executive branch leaders have stated that they expect these reforms to go into effect July 2018.¹⁶ To keep that commitment, these reforms must be funded in the Fiscal Year 2019 proposed budget with a clear budget narrative.

DC needs the Deputy Mayor for Education to Lead a Comprehensive Needs Assessment and Comprehensive Plan for Children with Disabilities

Capacity within all public schools in DC to provide effective, appropriate education for students with disabilities remains a key issue that needs a District leader. A visionary leader can inspire and rally resources such as research partnerships, sharing of practices that are working, need and supply analysis, and system coordination and planning. Disappointingly, the Deputy Mayor for Education has not

taken on a leadership or visionary role for special education students, having no initiatives, collaborative projects, or programs in the last year.¹⁷ The Office of the State Superintendent for Education (OSSE) plays an important role in oversight and ensuring compliance with Federal special education law, but those responsibilities make it difficult for OSSE to be the visionary, outcome-focused leader on special education.

The outcome-driven leader would bring together the city to work on a comprehensive assessment and plan so that school and child-serving programs have the capacity to meet the needs of all students. Students with disabilities have a great variety of different strengths and needs, so the IDEA requires that each LEA offer an array of services and settings, from fully-inclusive general education with necessary supports, to pull-out smaller groups in the school, to specialized separate schools. Some children who would be considered “in inclusion” need fully co-taught classrooms providing specialized instruction in all areas. Some children need intensive evidence-based reading instruction focused on their specific weaknesses in very small groups in order to learn to read. Some children cannot function in the noise and bustle of a mainstream school building, even within a self-contained classroom.

It is not possible to provide a full accounting of the gaps in DC school programming for special education students because we do not have a comprehensive list of the programs (by programs, we mean both inclusive and more intensive, including details about the staffing and interventions and practices utilized) currently

available. Nor do we have comprehensive analysis of the needs of DC's special education students or of what schools need to help them make meaningful progress and achieve proficiency. Nor do we have comprehensive analysis about what has been tried and either worked or not worked for different sub-groups of children with disabilities. DCPS and PCS likely have internal data about the progress, or lack thereof, of students in different amounts of inclusion, pull-out specialized instruction, and their own full-time special education classrooms.¹⁸ That data is not available to the public, nor is it being analyzed in a comprehensive way across sectors, which would help inform and build effective services throughout DC schools.

Related to these in-school concerns is, in our twenty years of experience, a poor-to-nonexistent supply of out of school time programming that can support children with intensive disabilities, provide learning opportunities for low-income children who need disability-related academic remediation, or provide additional therapeutic time because of disabilities. Also related is a lack of special education supports in summer school and credit recovery.¹⁹ Another related issue is a lack of coordination for adequate summer youth employment opportunities that will consciously include and accommodate youth with disabilities in the process from before application to on-the-job experience. We, as a District, need the Deputy Mayor to lead all public schools, OSSE, and interagency coordination with the out of school time programming, Department of Disability Services, Department of Employment Services, and

Department of Behavioral Health in an overarching needs assessment and comprehensive plan to accelerate the progress and improve the outcomes of children with disabilities.

SCHOOL ENGAGEMENT

Truancy/Chronic Absenteeism

As we have stated for many years, if our students are not in class, none of our education reforms in the District matter. Despite some improvements in previous years, more than one in four students in the 2016-2017 school year were chronically absent—an increase from the previous school year.²⁰ That is one in four students who missed more than 10% of vital instructional time.²¹

One concern is that this statistic mixes students who are totally absent with students who are chronically tardy or in the building missing classes, because of the OSSE regulation defining absent as missing 20% of the day or more, referred to as the “80/20 rule.”²² We also note that the figure includes students who have been suspended from school and students in both sectors who have been suspended without documentation, from such practices as “Do Not Admit” lists or calls to parents to come get children in the middle of the day.²³ In our experience, DCPS and PCS schools use undocumented suspensions at about equal frequency.

The Deputy Mayor has taken important steps this past year to coordinate cross-sector actions to increase school engagement and reduce truancy and chronic

absenteeism through her leadership of the Every Day Counts! Task Force. The Deputy Mayor via the Task Force released a new strategic plan, which included a public education campaign with the goal of changing attendance behavior on a larger scale.²⁴ While we hope this initiative is successful, we know that educating students and families on the importance of going to school and providing incentives is not enough to solve the pervasive absenteeism issue we have in the District.

Students miss school for many reasons, and addressing those barriers must be made a priority. The District has gathered some data about causes of truancy in DC. For example, DCPS reported that in SY2016-2017, the following were listed as persistent barriers to students' regular school attendance in Student Support Team (SST) notes: academic concerns, health, transportation, family issues, clothing, day care, "parentified" minors and executive life management issues.²⁵ Some schools, both DCPS and charter, are working to address many of these barriers, but their efforts are mostly siloed. Individual schools cannot solve this problem on their own. Therefore, we urge the Deputy Mayor to coordinate and facilitate a much larger scale effort to help address these barriers so that for students in all schools, every day will count.

In addition, the Deputy Mayor, along with OSSE, should help tackle the problem that attendance data continues to be inaccurate, and that those inaccuracies have serious consequences for children and families. Again, in our experience, undocumented suspensions and other incorrect records occur with equal frequency in both DCPS and

PCS schools. Inaccuracies entangle parents and children in traumatic investigations or court proceedings,²⁶ including criminal prosecutions of parents.²⁷ For example, we have had clients referred to CFSA when the parent had turned in medical excuse notes for children with regular, standing medical appointments for life-saving treatments. Even with a lawyer intervening, many schools do not change the inaccurate records for months. Now we are hearing about students facing automatic failures in classes that they have attended, but the records are inaccurate or reflect application of the OSSE regulation that states that a student is absent for the whole day if the child has missed 20% or more of the school day. For some of our clients, the news that they will have to repeat classes that they have attended and passed is so demoralizing that we fear they will drop out of school. Students, teachers, and parents need to have a robust process to appeal and resolve problems with attendance records, with a neutral decision maker. As a leader outside of particular schools, the Deputy Mayor could help lead a quick process to establish the infrastructure and put in place such a truly neutral and impartial party to solve attendance record problems.

School Discipline

One significant barrier to attendance is actively counteracting the Every Day Counts! Campaign's messaging that attending school every day is critical to student success—exclusionary discipline. As we testified just a few weeks ago, we have a suspension crisis in the District. It is a crisis because the statistics reveal that suspension

is being used in a discriminatory fashion. African-American and Latinx children are suspended at dramatically higher rates than other children.²⁸ So are children with disabilities,²⁹ children in foster care, children living in poverty and children who are homeless.³⁰ It is a crisis because instead of figuring out what children need to be successful and learning, we are excluding them from class and depriving them of fair access to an education. But, the suspension crisis is not new. Students, parents, advocates and teachers have been calling for reform for years. And, although some good work has been done by some schools, children are still being suspended at extremely high rates.

The data from OSSE shows that 7.4% of students were suspended out of school in SY2016-2017.³¹ Unfortunately that data is not reliable. Some schools have dishonestly lowered their suspensions numbers with practices such as “Do Not Admit” lists and other off-the-books suspensions, instead marking students with unexcused absences.³² Even using the flawed data provided to OSSE, suspension numbers have stopped going down and still remain at crisis levels. There was almost no reduction in the number or percentage of students suspended in SY2015-2016 and 2016-2017—and almost one in 15 children were suspended from school as least once.³³ In fact, the data shows that more students received multiple suspensions in SY2016-2017 than the school year before, suggesting that the first suspension as an effort to address the underlying cause of the suspension was less successful.

This is a problem that can be solved, which is why Children’s Law Center supports the *Student Fair Access to School Act of 2017*. However, in addition to passing the bill, resources must be invested in this effort. We urge the Deputy Mayor to play an essential role in ensuring full funding and staffing in the schools to implement, with fidelity, solutions to problem behavior rather than out-of-school exclusion.

CONCLUSION

Thank you for the opportunity to testify, and I welcome 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 advocate 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 more than 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 Source: OpenData DC PCSB, Facts and Figures Report, <https://data.dcpccb.org/stories/s/g9zq-zkq5>

³ DME FY17 Performance Oversight Responses, Q2.

⁴ Students with disabilities were 2.45 times more likely to be suspended than students without disabilities in school year 2016-17. Students with disabilities were 1.75 times more likely to be suspended multiple times. Calculation by Children’s Law Center based on data from OSSE (2017). *State of Discipline: 2016-17 School Year*, p. 34.

⁵ Results of the recent PARCC scores show the percentage of each of the following groups to be proficient in English/Language Arts (ELA) and Math: Students with Disabilities (6.3%ELA/6.9%Math); At-Risk (15.8%ELA/14.2%Math); Economically Disadvantaged (21.4%ELA/19.0%Math); Black (22%ELA/18.6%Math); and Hispanic (28.9%ELA/26.0%Math). See, OSSE (2017). *2017 DC PARCC Results*, p.16-17. Retrieved from

https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2017%20PARCC%20State%20Results%20Public%20Presentation_updated%20Sept.%2027%2C%202017_0.pdf There has been some progress in lifting children out of Level 1 on the PARCC, but 58% of children with disabilities are at still at that lowest score level in ELA, compared to only 25% of all students. Forty-seven percent (47%) of children with disabilities are still at that lowest level in math, compared to only 21% of all students. Calculated from OSSE’s 2016-17 PARCC and MSAA Performance Results, for All grades and All ELA and Mathematics, data file accessed November 17, 2017 at

https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Detailed%202017%20PARCC%20and%20MSAA%20Performance_0.xlsx.

⁶ Only 53.7% of youth with disabilities graduated within four years, compared to 72.4% overall. See OSSE (2017). *2016-17 School Year Public ACGR Rates, Subgroup Rates* page. Retrieved from <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2016-17%20School%20Year%20Public%20ACGR%20Rates.xlsx>. Reported graduation rates have improved, but the dismal proficiency rates of eighth grade and high school students with disabilities raise questions about whether students are being passed along.

⁷ Indicator 14 from the 2015-16 school year, the most recent audited data that OSSE submitted to the Federal government. See, OSSE (Spring 2017) *IDEA Part B Annual Performance Report to the Public Federal Fiscal Year 2015*, accessed November 17, 2017 at <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/FFY%202015%20APR%20Report%20to%20the%20Public.pdf>

⁸ The overwhelming majority of students with disabilities can achieve a high school diploma. See, Thurlow, M. E. (2011). *Meeting the Needs of Special Education Students: Recommendations for the Race to the Top Consortia and States*. Minneapolis, MN: National Center on Education Outcomes.

⁹ See, *Enhanced Special Education Services Act of 2014— DC Act 20-487*.

¹⁰ Under federal special education law, schools are obligated to develop “transition plans” for special education students between ages 16 and 22 years old to help them prepare for life after high school. Recognizing the importance of these transition activities, the *Enhanced Special Education Services Act of 2014* lowers the age at which transition planning must begin to age 14. This change was to be effective July 2016, but a small amount of funding was not included in OSSE’s last budget.

¹¹ Specifically, once funded, the *Enhanced Special Education Services Act of 2014* requires LEAs to evaluate and diagnose students within two months rather than more than a semester. Currently, schools have 120 days to complete the evaluation, the longest timeline in the nation. The impact that faster diagnosis and thus faster services will have on students cannot be understated.

¹² In DC, too many babies and toddlers have unaddressed developmental delays and as a result start school behind. The good news is that 46 percent of children who get early intervention services completely catch up and several years later they are still doing as well as peers, according to national research. See, Hebbeler, K., Spiker, D., Bailey, D., Scarborough, A., Mallik, S., Simeonsson, R., & Singer, M. (2007). *Early intervention for infants & toddlers with disabilities and their families: Participants, services, and outcomes. Final report of the National Early Intervention Longitudinal Study (NEILS)*, https://www.sri.com/sites/default/files/publications/neils_finalreport_200702.pdf. Under the *Enhanced Special Education Services Act of 2014*, children who are 25% delayed in one area of development would have become eligible for DC EIP in July 2017, if expansion had been funded. This reform would finally bring DC’s eligibility in line with most states.

¹³ The *Special Education Quality Improvement Act of 2014* established a Special Education Enhancement Fund (SEEF). The SEEF is to provide additional funding for capacity expansions, including partnerships, collaborations, satellite classrooms for specific high-needs students, joint training, and development of programs for overage youth with intensive special education needs.

¹⁴ OSSE. (October 2017). *Enhanced Special Education Services Act of 2014 Implementation Report to the Council of the District of Columbia*. Accessed November 17, 2017 at <http://lims.dccouncil.us/Download/38971/RC22-0094-Introduction.pdf>; OSSE. (October 1, 2017). *Report on Implementation of Strong Start Quarter 4*. Accessed November 20, 2017 at <http://lims.dccouncil.us/Download/39048/RC22-0097-Introduction.pdf>

¹⁵ See OSSE’s FAQs, about Federal Maintenance of Effort requirements in relation to the SEEF grants. https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/SEEF%20Formula%20Grant%20FAQs.pdf, p.5.

¹⁶ For example, see OSSE's *LEA Look Forward Newsletter: January 3-9, 2018*. Retrieved from <https://us4.campaign-archive.com/?e=&u=8d76b5a43735fbd6449d7cf3&id=f203b77bc4>

¹⁷ DME FY17 Performance Oversight Responses, Q5.

¹⁸ Comments of Kerri Larkin, DCPS Deputy Chief, Specialized Instruction, at Special Education Attorney Roundtable meeting, October 19, 2016.

¹⁹ See our testimony from this Committee's November 20, 2017 Public Roundtable on The State of Special Education Services in the DC traditional and public charter schools and the "OSSE Enhanced Special Education Services Act of 2014: Implementation Report to the Council of the District of Columbia" report, p. 15-16.

²⁰ OSSE (2017). *District of Columbia Attendance Report SY 2016-17*, p. 11.

²¹ *Id.* "Chronic absence" is defined as being absent – either excused or unexcused – for more than 10% of instructional days a student was enrolled across all schools and sectors in a given school year. 5-A DCMR § 2199.1.

²² Absence is a full or partial day when the students is not in scheduled periods of instruction. Partial day absence is missing at least 20% of the instructional hours of the day, which is deemed a full school day when absence is unexcused. Present is defined as in class 80% of the day or more. 5-A DCMR § 2199.1. *See also*, Perry Stein, Is D.C.'s '80/20' attendance rule unfair to students?, WASH POST (December 29, 2017). Retrieved from https://www.washingtonpost.com/local/education/is-dcs-8020-attendance-rule-unfair-to-students/2017/12/29/b328d8ba-e517-11e7-833f-155031558ff4_story.html?utm_term=.e5f72df5a074

²³ Emma Brown and Alejandra Matos, Some D.C. high schools are reporting only a fraction of suspension, WASH POST (July 17, 2017). Retrieved from https://www.washingtonpost.com/local/education/some-dc-high-schools-reported-only-a-small-fraction-of-suspensions/2017/07/17/045c387e-5762-11e7-ba90-f5875b7d1876_story.html?nid&utm_term=.a4ea63e9fdcf

²⁴ DME FY17 Performance Oversight Responses, Q6 Attachment.

²⁵ DCPS FY17 Performance Oversight Responses, Q50e.

²⁶ Requirements for referrals to CFSA and Court Social Services Division of the Family Court at D.C. Code § 38-208(c)(1)(A) and § 38-208(c)(1)(B). Year after year, nearly all children referred to CFSA for educational neglect were either screened out (never investigated because CFSA did not suspect neglect) or have been found to be unsubstantiated. In SY2013-2014, 96% of case referrals were unsubstantiated; *see* CFSA FY14 Performance Oversight Responses, Q22. In SY2014-2015, 97% of case referrals were unsubstantiated; *see* CFSA FY15 Performance Oversight Responses, Q29. In SY2015-2016, 97% of case referrals were unsubstantiated; *see* CFSA FY16 Performance Oversight Responses, Q14.

²⁷ D.C. Code § 38-203(d) states that the parent, guardian or other person who has custody/control of the student who is absent from school without a valid excuse shall be guilty of a misdemeanor. D.C. Code § 38-203(e) states that any person convicted of failure to keep a minor in regular school attendance may be fined not less than \$100 or imprisoned for not more than 5 days, or both for each offense.

²⁸ African-American students in DC are 7.7 times more likely to be given out of school suspensions than White students, when controlling for at-risk status, economic disadvantage, disability, gender and other risk factors. *See* OSSE (2017). *State of Discipline: 2016-17 School Year*, p. 25-26. 94.4% of District students who were suspended more than once are African-American, although they are only 67.8% of public school students. *Id.*, p. 30. The disparity for Latinx children is also great: they are 2.8 times more likely to be suspended than White children. *Id.*, p. 29.

²⁹ Students with disabilities were 2.45 times more likely to be suspended than students without disabilities in school year 2016-17. Students with disabilities were 1.75 times more likely to be suspended multiple times. Calculation by Children's Law Center based on data from OSSE (2017). *State of Discipline: 2016-17 School Year*, p. 34.

³⁰ Students who are considered at-risk were 2.7 times more likely to be suspended, homeless students were 2.5 times more likely to be suspended, and children in foster care because of past abuse or neglect were 2.9 times more likely to be suspended. At risk status includes children who receive TANF or SNAP benefits, children in foster care, children who are homeless, and youth in high school who are overage for their grade. Children’s Law Center calculated these risk ratios from the data on page 40 and 43 of OSSE’s 2017 *State of Discipline* Report.

³¹ See Every Student Every Day Coalition Report (2014). *District Discipline: The Overuse of School Suspensions and Expulsion in the District of Columbia*. See also, OSSE (2017). *State of Discipline: 2016-17 School Year*.

³² Emma Brown and Alejandra Matos, Some D.C. high schools are reporting only a fraction of suspension, WASH POST (July 17, 2017). Retrieved from https://www.washingtonpost.com/local/education/some-dc-high-schools-reported-only-a-small-fraction-of-suspensions/2017/07/17/045c387e-5762-11e7-ba90-f5875b7d1876_story.html?nid&utm_term=.a4ea63e9fdcf

³³ In SY2015-16, 7,324 students (7.8 percent of the total population) were suspended 12,695 times. See, OSSE (2016). *State of Discipline: 2015-2016 School Year*, p. 10-11. In SY2016-17, 7,181 students (7.4 percent of the total population) were suspended 12,897 times. See, OSSE (2017). *State of Discipline: 2016-17 School Year*, p. 11 and p. 21.