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Testimony Before the District of Columbia Council
Committee on Education & Committee of the Whole
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Introduction

Good morning Chairman Mendelson, Chairperson Grosso, and members of the Committees. My name is Danielle Robinette. I am a Policy Attorney at Children's Law Center.¹ 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. Our largest program is representing children in foster care. We currently represent slightly less than half the children in foster care.

Children's Law Center supports the Education and Credit Continuity Amendment Act of 2020 and its efforts to address educational barriers faced by Students in the Care of DC. Students in Care include foster youth and youth in Department of Youth Rehabilitation Services (DYRS) or Department of Corrections (DOC) custody. I am going to focus my testimony today on the importance of the bill for foster children. I know many of the other organizations today will highlight the need for this bill for other Students in Care.

Placement instability is a chronic issue for foster youth. As a result, Students in Care move frequently – between foster homes in and outside of DC, to psychiatric residential treatment facility (PRTF), to residential treatment centers (RTC), or other out-of-state alternatives. These moves can also result in a change in school. When Students in

Care move between schools or facilities, they often lose most, if not all, of the credits that they earned at their previous school. This credit loss has a direct impact on students' ability to stay on grade and with their peers. In addition, in a recent study of this credits issue, researches noted that "there are real psychological consequences. Depression, anxiety, anger at the system that manifests itself in different ways. It is both traumatic in their experience by also in making them feel silenced."² These psychological consequences contribute to school disengagement and ultimately are linked to the abysmal graduation rates among Students in Care.

Inadequacies Under the Current System

Currently, the education of Students in Care is governed by a series of Memoranda of Agreement (MOAs) between different networks of government agencies. However, this patchwork of agreements continues to fail Students in Care. In practice, we have seen that the MOAs are not followed, are not enforceable, and are met with institutional resistance to their implementation. However, even if these agreements were followed and enforced with fidelity, there are gaps in the patchwork that fail to address the real-life scenarios that Student in Care face every day.

Students Placed in Residential Treatment Facilities

The MOAs cover a number of agency responsibilities while a student is educated in a PRTF or RTC. However, the agreements demonstrate a number of gaps in addressing the transition of students back to the District. For foster youth, the relevant MOA requires

that that DC Public Schools (DCPS) “convene a meeting to ensure an appropriate educational placement is identified prior to the student’s discharge.” Even if this requirement were met, and in our experience, it is often not, the MOA does not ensure that anyone is responsible for enrolling the youth in the identified appropriate placement. For students exiting a PRTF or RTC, it is rare that they will transition back to a traditional public school. Most of these students will require a therapeutic placement or a nonpublic day school. For many such facilities, applications must come from the student’s current Local Education Agency (LEA). Per the relevant MOA, DCPS is the LEA for foster youth in residential treatment facilities.³ Unfortunately, DCPS does not always accept or fulfill its obligation to process the application. As a result, students discharged from PRTFs or RTCs frequently wait weeks or months before getting the educational services that they need.

Once a student has finally been placed in a school, without exception in our cases, students lose credits during the transition between schools. This credit loss has lasting negative effects on the academic and behavioral health outcomes of these students. For example, a twelve-year-old client spent 22 months in a PRTF. Per the relevant MOA, DCPS was responsible for monitoring her education while she was placed at an out-of-state facility. Despite DCPS’s participation in several transition planning meetings during the six months prior to the student’s discharge, DCPS failed to establish an appropriate school placement for the student. This student’s Individualized Education Program (IEP)

required a therapeutic day school and applications to these schools *must* be submitted by DCPS. The student's GAL submitted specific requests and offers of assistance to DCPS; however, DCPS did not timely submit the application and this student was without a school placement of any kind for almost two (2) months. During this time of uncertainty, the deprivation of educational and behavioral health services contributed to the child's destabilization. She suffered several mental health crises which ultimately resulted in a stay at a psychiatric hospital. Despite DCPS's agreed-upon obligations,⁴ the relevant MOA does not include any sort of enforceability mechanism by which the student or the GAL could hold DCPS accountable for their inaction.

Another client, fifteen years old, was placed in a PRTF by the Office of the State Superintendent of Education (OSSE) to provide the intensive level of care required by his IEP. After eight (8) months, the facility determined that they could not meet his needs. As the student's LEA, DCPS was given four (4) months' notice that transfer to a new PRTF was required. Despite their attendance at several transition planning meetings in addition to regular updates from the student's GAL and parent, DCPS failed to identify a new treatment facility for this student prior to his discharge. As a result, he returned to the District with no school placement in the midst of a public health crisis. He was out of school for months. Despite DCPS's monitoring responsibilities under the MOA, the student's psycho-educational evaluations were not updated while he was placed at his previous PRTF. This prevented his acceptance into a new facility. As he did not transition

into any form of educational program, he has not been able to transfer his completed coursework and received zero credits for the 2019-2020 school year, losing an entire year of high school. In fact, this student was not enrolled in any sort of school until he was finally admitted to a new PRTF earlier this month – missing a total of five (5) months of instruction.

Out-of-State Foster Placements

These gaps in the MOAs are not limited to students in therapeutic placements. Approximately half of DC's foster youth are placed in Maryland.⁵ While these youth are entitled to remain in their DC public school, a substantial number move to a Maryland school they and their educational decision maker decide are better suited for them. Under the MOA for foster youth, OSSE is required to ensure that the student receives a Free and Appropriate Public Education (FAPE) while placed out of state, but there is no obligation to ensure that coursework completed out of state is transferable or appropriately credited if or when that student returns to a DC school. Notably, the relevant MOA only requires DCPS to conduct a transcript evaluation for high-school-aged students who return from RTCs, PRTFs, and nonpublic day schools – it has no similar obligation for students returning from a Maryland or other out-of-state school. Time and time again, we see students return from a Maryland foster placement to find that DC schools will not award them credit for coursework completed out of state. In the few cases when a school decides

to award credit, they often only award general elective credits that do not fulfill the student's graduation requirements.

Highly Mobile Students

Foster youth are highly mobile, both within the District and between neighboring jurisdictions. These highly mobile Students in Care also face a number of barriers to receiving credit for completed coursework. Gaps in the MOAs – including the lack of a uniform procedure for credit evaluations, the lack of a standard or rubric by which transcripts are to be evaluated, the lack of a requirement to award partial credits, and the failure to apply transfer credits to graduation requirements – are felt often and pervasively by highly mobile students. As a result, we often see these students forced to repeat courses that they have passed again and again. For example, we had a twenty-year old client who was a high school senior. While in foster care, he attended 3 comprehensive high schools, 2 non-public schools in Maryland, and 2 opportunity academies. He was made to repeat multiple courses because, with each school transfer, several completed classes were credited as general electives, rather than as the relevant course equivalent. Most notably, he has taken and passed Spanish 1 three times.

The credit loss issue confronted by this client has been compounded by the MOA's requirement that only transfers from PRFTs, RTCs, or non-public day schools trigger the requirement that a transcript evaluation be conducted. For this student, only two (2) of his six (6) school changes required the LEA to conduct an evaluation. The student's GAL

has made repeated requests for DCPS to audit all of his transcripts in order to apply his completed coursework toward his graduation requirements. However, neither the student nor the GAL has ever been provided with an explanation of how or why credits have been accounted for with each school change. This lack of a uniform and transparent process for transcript evaluations increases the feeling of futility that so often leads to disengagement by Students in Care. It is for these reasons that the MOAs have proven to be an inadequate system of governance for the education of Students in Care.

The Need for a Legislative Solution

In order to remove the administrative barriers and to support the District's most vulnerable students, a legislative fix is necessary. First, the lack of a uniform procedure for transcript evaluations leads to arbitrary decisions regarding how coursework is to be credited. The proposed legislation addresses this concern by requiring that LEAs produce course catalogues that would serve as a rubric by which evaluators could interpret and apply credits. The bill also requires that partial credits be available for students who change schools in the middle of a school year. Finally, the legislation would require that transferred credits be applied to the nearest course equivalent, rather than noted as a general elective that does not fulfill the student's graduation requirements. Cumulatively, the implementation of these changes would address the systemic credits issues faced by Students in Care by creating a process that is predictable and uniformly applied.

The issues faced by Students in the Care of DC are not unique. Other jurisdictions face similar issues. A recent study from the Juvenile Law Center found that “the systemic problems that prevent youth from receiving academic credit for completed work can only be addressed through significant systemic reforms.”⁶ The legislative requirements included in the Education Credit Continuity Amendment Act of 2020 are consistent with the recommendations of the Juvenile Law Center’s report.⁷ Specifically, Title I of the bill requires the creation of the infrastructure necessary to facilitate smoother transitions when Students in Care change schools. This includes the formalization of roles dedicated to coordinating educational transitions⁸ and a requirement of inter-agency cooperation to facilitate the transmission of records⁹ that are required for students to enroll in a new school.

Title II of the bill focuses on procedural changes that will accommodate the unique needs of Students in Care. Specifically, this section seeks to address the issue of credit loss that occurs when a school refuses to award partial credits. When a student’s placement at a PRTF or in a juvenile justice facility is less than a full school year, the student’s new school is unlikely to award any credit for the coursework completed at the temporary placement. As such, the coursework that the student completed is not credited toward graduation and a student will have to repeat a course that they have already taken and passed. By requiring that LEAs grant credit in half- or quarter-increments and that

the credit be applied to the nearest applicable graduation requirement,¹⁰ this section of the bill ensures that students in care are not made to repeat courses again and again.

The Council, through its establishment of the Students in the Care of DC Coordinating Committee, has acknowledged that Students in Care have unique needs that require unique solutions. Specifically, in addition to the creation of the coordinating committee, the Students in Care Working Group recommended a number of legislative solutions that would improve educational outcomes for Students in Care.¹¹ This Act would not only create the infrastructure to support Students in Care but would also establish a system of accountability that has long been lacking under the MOAs. Currently, the MOAs provide for dispute resolution between the agencies party to the agreements, but do not provide any means of private enforcement for parents who feel that an agency is not fulfilling their requirement under the relevant MOA. Cumulatively, this legislation offers improvements to infrastructure and accountability that will ensure that DC's most vulnerable students are not further marginalized by processes that are difficult-to-navigate and largely inequitable.

The pandemic has already disrupted so much of education for students across the District. Moreover, for students with special educational needs and students in juvenile justice placements, the transition to virtual instruction has been particularly difficult, increasing the disruption to their education. The loss of credits suffered by Students in Care has been thoroughly researched by educational advocates¹² and the Council's own

Students in the Care of DC Working Group.¹³ The problem and the need are clear, and this legislation reflects the hard work that we must do to ensure that Students in Care do not lose credit for their hard work in the classroom.

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 Juvenile Law Center, et al., *Credit Overdue: How States Can Mitigate Academic Credit Transfer Problems for Youth in the Juvenile Justice System*, 14 (October 8, 2020), available at https://www.splcenter.org/sites/default/files/credit_overdue.pdf (hereinafter cited as “*Credit Overdue*”)

³ See “Memorandum of Agreement (MOA) Between The Office of the State Superintendent of Education (OSSE), The District of Columbia Public Schools (DCPS), And The District of Columbia Child and Family Services Agency (CFSA) Related to the Provision of Specialized Education Services for Children and Youth in care and custody of the Child and Family Services Agency,” (hereinafter cited as “MOA for Youth in CFSA Care”), at § V.A, 2017, available at https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/MOA%20for%20Education%20Services%20for%20Children%20and%20Youth%20Committed%20to%20the%20Child%20and%20Family%20Services%20Agency%20%28CFSA%29_0.pdf

⁴ See MOA for Youth in CFSA, at § V.A.5.

⁵ Compare the average number of youth in foster care in FY19 (946), see CFSA Data Dashboard, Total Children and Families Served in Foster Care, available at <https://cfsadashboard.dc.gov/page/total-children-and-families-served-foster-care>, with the Total Unique Children Placed with NCCF in FY19 (537), see Brenda Donald, Child and Family Services Agency, “Responses to Hearing Questions: Performance Oversight Hearing Fiscal Year 2019-2020,” Q86a, pg. 223, available at <https://dccouncil.us/wp-content/uploads/2020/02/cfsa20.pdf>

⁶ Juvenile Law Center, et al., *Credit Overdue*, at 21.

⁷ The proposed legislation is in line not only with the recommendations made in the Juvenile Law Center Report, but also with a number of other jurisdictions that have implemented legislative fixes to address the credit loss issue for Students in Care.⁷ For example, Virginia has passed legislation that formalizes the transition teams and plans⁷ as well as language that implements the timely and accurate transfer of records and student enrollment.⁷

⁸ See Juvenile Law Center, et al., *Credit Overdue*, at 25-26.

⁹ See *id.*, at 26-27.

¹⁰ See *id.*, at 28-29.

¹¹ See Students in the Care of the District of Columbia Working Group Recommendations, at 37-39, (July 18, 2018), available at <https://www.scribd.com/document/384151747/Students-in-the-Care-of-the-District-of-Columbia-Working-Group-Recommendations-July-18-2018>

¹² See generally Juvenile Law Center, et al., *Credit Overdue*.

¹³ See generally *Students in the Care of the District of Columbia Working Group Recommendations* (July 18, 2018), available at <https://www.scribd.com/document/384151747/Students-in-the-Care-of-the-District-of-Columbia-Working-Group-Recommendations-July-18-2018>