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Via email: dcpsregs@dc.gov

July 20, 2018

Ebony Govan
DCPS
1200 First St NE, 10th floor
Washington, DC 20002

Re: Comments on proposed Regulations and Policies on Grading, Student Promotion, Graduation Requirements, and Attendance and Truancy

Dear Ms. Govan:

Thank you for the opportunity to comment on the proposed policies and regulations that were published in the DCPS website and then in the DC Register on June 29, 2018 regarding Grading, Student Promotion, Graduation Requirements, and Attendance and Truancy. I am submitting these comments on behalf of Children's Law Center (CLC).¹ 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. We represent children and youth in DC's foster care system, many of whom move in and out of DCPS schools. We also represent families of children with disabilities. Our comments are based on our experiences advocating with and for these children and families.

We are submitting comments because DCPS's proposed policies and regulations deeply affect the futures of the students we advocate for. We strongly agree with DCPS's decision to remove the automatic grade reductions and automatic failures for 10 or 15 days of absence. The change is good policy because many children have unexcused absences for a variety of reasons that are complex or not in their control.² However, we have other recommendations for improvements in the regulations and policies that will help the most vulnerable DCPS students.

First, mobile youth in foster care are more likely to lose hope and drop out when their past class work is not recognized. The policy for High School Grading and

Graduation needs to include more provisions that award partial credits to students, like youth in foster care, who are involuntarily moved between schools or Local Education Agencies (LEAs). Secondly, changes in policy are necessary to better identify children with disabilities and better address the needs of children with identified disabilities who are struggling with achievement or attendance. In addition, DCPS should create a unified appeals process for these Grading, Promotion, and Attendance decisions that provides due process and recognizes that appeals must occur over the summer.

High School Grading and Graduation Policies Need to Award More Credit to Students that the Government is Moving

Many children in foster care and the juvenile justice system fall behind in school and in credits because of school moves. These moves are not the students' fault. When the systems move them in the middle of classes or semesters, the previous school district rarely, if ever, creates an exit transcript with partial credits. Then DCPS does not give students any credit for work they have completed and grades they have previously received on assignments in their classes. They become frustrated, hopeless, and more likely to drop out of school as a result. DCPS's policies about awarding credit, partial credit, and alternative ways of showing past learning need to be reformed so that these students can continue on the path to graduation. Although DCPS describes having made some changes in these policies to help these students, the policies still unnecessarily leave students in foster care with high barriers to credits.

DCPS needs to ensure that students like children in foster care or in the custody of the government through the juvenile justice system are not penalized for their school mobility in any way. If they have done work in classes in the past school, DCPS should create a system to award partial credit for that work, as recommended by recent Working Group on Education of Students in the Care of the District. Partial credits and recognition of grades received and work completed in other school districts are vital. The proposed policy will continue to fuel frustration and lost hope, because students who must move in the middle of courses are expected to do make up work rather than receiving credit for past passing grades. This is treating them like they were not attending school at all and must "make up" work that they completed at the other school. In addition, when students in foster care move schools it is usually tied to a placement change. The student is dealing with trauma, loss, and life disruption that make additional make up work extremely difficult to do at the same time that the student is healing and dealing with transitions. For all those reasons, 5-A DCMR § 2202.8 needs to be reformed, and the High School Grading Policy and Graduation

Policy need corresponding changes for students in foster care or the juvenile justice system:

- The Grading and Graduation Requirements policies needs to be updated to say that partial credits can be awarded *by DCPS* for prior grades on work or report cards or with evidence of prior course work completed (such as past papers, tests, or portfolio). Students need DCPS to recognize more than “course work credits received by the student prior to transfer into” because of challenges that students in government care face getting exit grades and credits from past schools.
- In addition and in the alternative, DCPS needs to create a system by which a youth can demonstrate competency in past parts of a course (e.g, an exam, a portfolio, testing out of units of Credit Recovery course). Students should not have to do make up work for the sake of make up work.
- In the High School Grading Policy, if DCPS does not create a partial credit award system, whether the student enters before or after 50% of the class time has passed should not matter. Passing grades from the student’s past courses need to be recognized and factored in. DCPS should match the student’s most similar course from the past school to new enrolled courses. Past grades in that most-similar past class need to lessen the load of any make up work assigned. This change would recognize that youth in foster care and juvenile justice are in the middle of difficult personal transitions, and a heavy load of make up work is an inappropriate additional stress.

Attendance, Grading, and Promotion Policies Need to Better Meet the Needs of Children with Possible or Identified Disabilities

Many of the children we work with miss school or do not meet course standards for reasons because they are in the care of the government or have disability or health needs. The experiences of the children we know reflect what national research shows about truancy³ – missing school has many root causes, including unmet mental and physical health needs, learning disabilities, academic difficulties, family factors, school climate issues, improper class placement, and others. Difficulty passing classes also has a variety of root causes, including identified and unidentified learning disabilities and mental health concerns. Policies about grading and promotion, especially for children in foster care or with disabilities need ensure that these root causes will be evaluated and addressed by DCPS.

Attendance Issues are a Red Flag for Unmet Disability Needs that the Policies Must Address

Our experience supports the research: we have found that unmet special education needs are a key cause of truancy and chronic absence from class. Many youth are unfortunately years behind in reading, writing, and math, but they are either not identified for special education or their special education services are too minimal to meet their needs for individualized help. These students cannot keep up in class and experience stigma and lower self-esteem for it. At times these students cope with those feelings by avoiding class, where they feel like failures. Under Federal law, public schools have affirmative responsibility to find and identify students who may have disabilities and revise the IEPs of those students with changing educational needs. Not attending class is a behavior, and Federal disability law requires schools to examine and positive behavior interventions for students with behaviors that interfere with learning. We recommend that the following be incorporated in to the policies to meet these obligations:

- *For a student in special education, not attending school or not attending classes should trigger a re-evaluation including a Functional Behavior Assessment and an IEP revision.* Under special education laws, schools must meet the unique needs of each student with a disability. Schools are also required to revise the child's Individualized Education Program (IEP) when the child has new or changed needs.⁴ When a student is unable to get to school or class, this is a red flag that something has changed and the student's educational needs should be re-assessed. Because this is a behavior, a Functional Behavior Assessment should be conducted to tailor a plan to get the student back in class. Unfortunately parents are often told by LEAs that their child must start attending classes before he or she will be re-evaluated. This fails to address the underlying problem for students who have disengaged because they are unable to learn with the current level or type of special education services. DCPS policy should state that not attending school or class for five days must not only trigger a Student Support Team (SST) meeting, but also trigger a re-evaluation of the student and a meeting to revise the IEP with new strategies to meet the child's needs. One way to do this would be to include the IEP team in the school-based attendance intervention SST meeting.
- *For a student not yet eligible for special education, chronic truancy should trigger an evaluation for special education.* Truancy is often a symptom of a serious underlying problem: that a child is years behind in school or that the student has serious unmet mental health needs. Many students we meet are in middle and high school, but read at mid-elementary school levels, and they are not getting the special instruction needed to teach them to read and help them in their

classes. Schools tell parents and students that the school can do nothing until the child is consistently attending class, which is not true. DCPS has a legal obligation, colloquially called “Child Find,” to locate and evaluate students who are not attending school.⁵ Evaluations for learning and emotional disabilities can, and should, be performed for children who are having difficulty attending school. DCPS should change its policy to require the school to refer for an evaluation to determine whether the student has special education needs once the student is referred to the SST, unless the school knows that the barrier for that student is a specific home or community factor.

- *The SST process and Warning letters in both the Grading Policy and the Truancy and Attendance Policy should include written information to parents about their right to request special education evaluation or request an IEP meeting for supportive services. The state of Oregon has an exemplar policy of notifying parents about special education as part of their absenteeism protocols. See ORS § 339.080.*

Poor Grades are also a Red Flag for Unmet Disability Needs

National researchers estimate that about 9% of students have unidentified and unaddressed learning disabilities or attention issues, which does not include other disabilities that go unidentified as well.⁶ Children’s Law Center works with children who have not passed classes, fall further and further behind grade level achievement each year, and have never been considered for special education evaluation. DCPS needs to make policy changes so that these children do not continue falling through the cracks.

We also work with children who are in special education but the services are not meeting their needs. They similarly fail classes year after year. The majority of students with disabilities are of average intelligence and can learn the grade level curriculum, so additional steps need to be taken to ensure that IEPs are revised when students are not proficient in their classes. New or changed services should be used, rather than having low expectations that students with disabilities will never be proficient. We recommend the following policy changes to help address these unmet needs:

- The Grading Policy should state that teachers who have any suspicion of disability must refer the child for special education evaluation, not the SST process only. It is a violation of DCPS’s Child Find obligation to send all students who are failing classes to the SST when immediate special education evaluation is appropriate for some of them. In 2016, the U.S. Department of Education reminded grantees, including DCPS, that intervention strategies cannot be used to delay or deny evaluation of students suspected of having a disability.

- Progress Reports (included in the Grading Policy) about students who are not proficient must include information about the parent's right to request special education evaluation and how the parent can make that request.
- For students with disabilities, DCPS should ensure that Progress Reports with non-passing grades include information about the parent's right to request an IEP review and revision meeting for changes that will help the child achieve proficiency.
- The Promotion Policy should indicate that a decision to retain a child should trigger a referral to the special education team to consider an evaluation.
- For students with disabilities, the previous provision that the principal must work with a student's IEP team about retention decisions should be returned to the policy, to ensure that the child's rights to appropriate education and meaningful parental participation are protected. *See* 34 CFR § 300.327. The age-appropriateness of the classroom is an explicit factor that must be considered when placing a child with a disability, and placement is an IEP team decision. *See* 34 CFR § 300.116(e).
- The Promotion Policy discusses a comprehensive review when a second retention is indicated by grades. The comprehensive review should include an automatic trigger to start the special education evaluation if the student is not identified with disabilities, and parent consent for evaluation should be immediately sought as part of this DCPS Policy.
- For students with identified disabilities, the retention-related comprehensive review should be an IEP team meeting with the purpose of starting a re-evaluation about what needs are not being met, revising the IEP to accelerate the child's progress, and discussing appropriate placement.
- The Special Considerations section in the Promotion regulations and policy need to be clear that the circumstance that a child's IEP would have different content standards for passing the grade is rare. Students with disabilities are entitled to access the general curriculum, even in separate classes, and this DCPS Policy should not perpetuate the low expectations many people hold about all children in special education.
- If DCPS is serious about re-imagining summer school in elementary and middle grades, so that it is designed for re-evaluation of promotion rather than enrichment, DCPS's policies and practices need to ensure that summer school includes and meets the needs of children with disabilities. For many years, we and other advocates for students with disabilities have been concerned that DCPS summer school fails to include the special education and related services that students need in order to learn and access the general curriculum.

The Appeals Process Needs to be Unified so it is Better Understood, Ensure Access to Evidence, and Include that Appeals are Heard over the Summer

Decisions about grades and promotion or retention are extremely important because the impact a whole year of a student's life, but they are also time sensitive. If a child is going to be required to attend summer school or is to be retained, but the student or parent have facts that the decisions were incorrect, DCPS needs to ensure that the appeal process occurs quickly enough to change the impact of the decision. If a child or parent needs to challenge an end of the year grade or retention decision, waiting 3 school days to send to an Appeals panel (2103.9), then 10 school days to hold a hearing (2103.12), then 10 more school days to issue the written decision (2103.16), would prolong the process over a month into the following school year. These new deadlines extend the hearing date and decision into the next school year, undermining meaningful appeal. The student would be held back and not start in next grade before they have a chance to be heard.

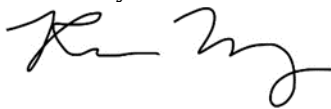
In addition, procedures for the appeal that are overly confusing, do not allow access to evidence, or do not provide a neutral decision maker who will review all the evidence undermine due process of law and meaningful review. The regulations about appeals of grades or retentions because of absence versus other reasons unnecessarily and wastefully create two different processes. If a student's retention or grade is for a mix of reasons, the regulations indicate that two different appeals must be filed. One to the principal and one to the Instructional Superintendent, and then to different hearing panels and to different second-level decision makers. The regulations do not answer what would happen if the two processes came to different results for the same grade or student promotion. Luckily, such problems are easily solved by one unified appeals process. Regarding evidence, DCPS often holds records, not generally transmitted to parents, that can establish a valid excused absence from school or class. At times there are DCPS employees that can verify past events. In our experience, attendance at school-related activities or at evaluations in the school is sometimes not recorded correctly in the system. The student and parent must be assured access to records before the hearing and to have witnesses, to have a meaningful opportunity to appeal.

Lastly, the appeals provisions for grades and promotion must ensure that students with disabilities have members on the panels who understand their disabilities and their IEPs. For students with disabilities who miss classes because of disability-related assessments or services, or whose medical or other diagnoses are in the process of intervention in the IEP process should have access to special education input in the appeal. For the above reasons, and as explained below, we recommend the following to ensure meaningful, independent review of decisions that change the lives of students:

- Change the deadlines for holding the hearing and for the appeals decision back to business days, not school days. Otherwise appeals will be so delayed that already-executed retentions and already-repeated classes in summer school undermine due process.
- Establish one unified appeals process for grading, retention, and failures/retention due to absences.
- Include members on the Appeals Panel who understand the disability of a student, especially the person who provides behavioral support services or monitors a student's behavior intervention plan: A school psychologist, a school social worker, a special education LEA representative. Without that IEP team involvement, children with disabilities may be penalized for their disabilities.
- Include a right for the student or parent to access records related to the student at least several business days before the hearing and a right to have key witnesses attend. DCPS often holds records that are not transmitted to parents that can establish a valid excused absence, such as evidence of field trips or school activity schedules, or documentation of special education assessments or services that pulled a student out of class. Students and parents need to have access to these records in order to have due process of law about attendance, truancy, grade, and promotion decisions.
- Shorten the deadline for the appeals panel or the principal to communicate the decision of the panel to within 2 business days of the decision. The provision at 2103.16 giving 10 school days after the hearing to communicate a decision from an Appeals Panel is lengthy, when process indicates Panel should be making a decision on the same day as the hearing and immediately send it to the principal.
- Return the right to a neutral, independent second-level review by an independent hearing officer who will review all of the evidence or hold additional hearing. The proposed second-level appeal about attendance failures at section 2103.18 assumes that evidence in the appeal will be documents, but the evidence that needs have independent review will also include statements and testimony. But if there will not be a full hearing with an independent hearing officer in the new regulations, then the first hearing needs to be video recorded so that independent hearing officer can review all of the evidence presented, not just any documentary evidence.

Thank you for the opportunity to submit comments with our concerns and recommendations about DCPS's policies and regulations regarding Grading, Student Promotion, Graduation Requirements, and Attendance and Truancy. We sincerely hope that DCPS will be revising the proposed regulations with a new final rulemaking, to respond to our concerns and those of others who represent students in the care of the government and students with disabilities. We would be happy to work with DCPS on specific revisions to language. I welcome any questions or future discussion, and can be reached at (202) 467-4900 ext. 580 or rmurphy@childrenslawcenter.org.

Sincerely,



Renee Murphy
Supervising Attorney – Policy

Cc: Dr. Amy Maisterra

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 children.

² Generally reported barriers in Student Support Team (SST) notes: academic concerns, health, family issues, clothing, day care, "parentified" students, executive life management issues, and transportation. See DCPS FY16 Performance Oversight Responses, p. 68. Show Up, Stand Out, Year 4 (2015-16) Middle School Program Evaluation Findings; see DCPS FY16 Performance Oversight Responses, Q56 Attachment.

³ Tonisha Jones and Nicholas Lovrich, *Updated Literature Review on Truancy: Key Concepts, Historical Overview, and Research Relating to Promising Practices – with Particular Utility to Washington State* (Center for Children and Youth Justice, June 30, 2011), 10,

<http://www.ccyj.org/uploads/PPO/WSU%20Literature%20Review.pdf>.

⁴ See 34 CFR § 300.324(b).

⁵ See 34 CFR § 300.111.

⁶ <https://www.nclد.org/executive-summary>