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Testimony Before the District of Columbia Council
Committee on Education
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Good morning Councilmember Grosso and members of the Committee. My name is Renee Murphy. I am a supervising attorney in the policy team at 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.

Thank you very much for the opportunity to testify about the Office of the State Superintendent of Education (OSSE) budget. First, a thank you that the *Enhanced Special Education Services Amendment Act of 2014* ("the ESESA") is fully funded in the Mayor's Proposed Budget. OSSE worked to ensure full implementation of three reforms, one in the Strong Start/Early Intervention Program and two in public schools, which will provide services to more children with disabilities and provide them earlier and faster. Thanks also go to you, Councilmember Grosso and to the Committee staff, for your strong oversight, and to Councilmembers Allen and Robert White for your support. Your collective efforts over the last few years made this investment in the future of infants, toddlers, and children with disabilities possible.

We focus our testimony today first on the implementation of the ESESA, including its start date. We highlight the need for additional funding for the Special Education Enhancement Fund to increase the capacity of schools to meet the needs of

children with disabilities and to restore cuts in the Mayor's proposals. We also discuss concerns about OSSE Division of Transportation budget that call into question whether special education transportation can continue to improve. Lastly, we ask the full DC Council to robustly fund supports to meet the needs of children who are being excluded from school or who are disconnected from school, such as Restorative Justice, Community Schools, and funding the *Student Fair Access to School Act*.

Strong Start/DC Early Intervention Program Expansion

As a member of the Bainum Birth to Three Policy Alliance, we are thrilled that the Budget finally expands OSSE's Strong Start/DC Early Intervention Program. More infants and toddlers with developmental delays will receive services from OSSE's Strong Start/DC Early Intervention Program, because the program will now expand to help children with a 25% delay in one area of development.² Strong Start/DCEIP evaluates the needs of infants and toddlers with developmental delays and provides services to children at home or in child care centers. This teaches parents and other caregivers how to improve the child's development themselves. The expanded eligibility will help children at a time when services are most effective, and catch many children up to peers before starting school.³ We are pleased to see in OSSE's responses to the Committee's Budget Oversight questions that funds are sufficient to start the early intervention expansion on July 1, 2018.⁴ We hope the Committee will be able to

use that response to revise the *Budget Support Act* about the Early Intervention expansion to state that it is effective July 1, 2018.

Special Education Evaluation and Post-Secondary Transition Reforms

In addition, students with disabilities in all public schools in DC will get services faster and will be able to start planning for their futures earlier. They will get services faster because students will have their initial evaluations completed within sixty days.⁵ Those evaluations are the key first step toward identifying and then delivering services tailored to the child's disability. Sixty days is half the time allowed by current law and is in line with jurisdictions across the country. The Mayor's budget also ensures that students and teachers will create transition plans toward successful life after high school in their Individualized Education Programs (IEPs) at age 14.⁶ Beginning to plan when students are choosing high schools, and dedicating more years to planning for college and/or career will help "set youth up for success."⁷ The monetary investment for the ESESA is included in the Universal Per Student Funding Formula,⁸ ensuring that schools will have needed resources every year. We are thrilled to finally see the funding for these reforms in the budget.

We continue to believe that the implementation date for these reforms should also be July 1, 2018 in the *Fiscal Year 2019 Budget Support Act (BSA)*, for three reasons. Starting July 1, 2018 will implement the reforms at the start of the school year. Second, the earlier implementation date will allow 14 and 15 year old youths with disabilities to

access pre-employment transition services (PETS) this summer.⁹ Federal rules about the *Workforce Innovation and Opportunity Act* (WIOA) funding for PETS, housed in the Rehabilitation Services Administration, are clear that funds start at the age the District requires transition plans in the IEP.¹⁰ A July 1 start date will allow younger youth to get supports during this year's Marion Barry Summer Youth Employment Program. Third, public schools will have the funding necessary for a July 1 start. In addition to the FY18 SEEF Formula Grants for the implementation,¹¹ LEAs receive funding for the school year starting in July rather than in October, which will provide the additional funds in the per pupil formula.¹² OSSE states in its responses to this Committee that "the District is confident that implementation can begin July 1, 2018."¹³ With these facts, we hope that the Committee can get the CFO's office to agree that no reprogramming in FY18 is necessary to revise the provisions removing the "subject to appropriations" language to have the reforms start on July 1, 2018 in the final BSA.

Additional Funding for Special Education Capacity Needs to be Added, Not Cut

Unfortunately, we are concerned that funding for another key reform from the 2014 special education acts, the Special Education Enhancement Fund, is being cut. The Special Education Enhancement Fund was established in the *Special Education Quality Improvement Act of 2014*,¹⁴ to improve capacity within schools and ensure that as enrollment in nonpublic special education schools decreased, the funds "saved" would go to schools rather than the general budget. As students with more significant needs

stay in public schools, that funding is necessary to accelerate progress and meet the needs of children with disabilities in DCPS and public charter schools (PCS).

Improving special education capacity is essential, because DC's children with special needs continue to have abysmal academic performance and post-graduation outcomes and slow progress in proficiency. Only 33% of graduated DCPS students with disabilities are enrolled in any post-secondary school or training or employed within one year.¹⁵ The Partnership for Assessment of Readiness for College and Careers (PARCC) proficiency scores of students with disabilities are barely less bleak than a year ago, a scant one percent improvement. Six percent are proficient in English/Language Arts (ELA) and seven percent in Math, compared to 31% ELA and 27% Math for students not in special education.¹⁶

The Enhancement Fund funding is for DCPS and PCS partnerships with experts from specialized schools; collaborations amongst schools to pool resources, create programs, and share expertise; and specialized programs for overage youth.¹⁷ Last summer, when OSSE created the first competitive grant for these funds, demand exceeded the ability to fund all the grant applications from LEAs and partners.¹⁸ OSSE received over 40 statements of intent to apply, about 20 completed grant applications, but was only able to fund six projects.¹⁹ These project proposals were possibilities for innovation and success for students. For that reason, we and members of the Special

Education Advocacy Coalition, such as DC Appleseed, have been asking for increased investment in the Enhancement Fund.

Rather than increased investment, the Mayor's Proposal in the *Fiscal Year 2018 Revised Local Budget Temporary Adjustment Act of 2018* will reduce funding in the Special Education Enhancement Fund in FY19 by \$2,500,000 by taking that money from the Nonpublic Schools Tuition budget this year. The Mayor is also proposing to reduce the FY19 Nonpublic Schools Budget by \$3,021,000, so that reduction of funding that would have gone into the Enhancement Fund is being made permanent.²⁰ That means that schools need matching investment in the Budget into the Enhancement Fund so that funding to better serve students with disabilities in our public schools is not diverted to other non-educational purposes.²¹ We ask that the Council revise the *Fiscal Year 2018 Revised Local Budget Temporary Adjustment Act of 2018* to restore this cut. We also ask that the Council include an ongoing investment in the Special Education Enhancement Fund of \$3,000,000 in the FY19 Budget to replace what is being reduced elsewhere.

Funding for Special Education Transportation Needs to be Preserved

We have some concern about the OSSE Division of Transportation (OSSE-DOT) budget to provide special education transportation. These services are crucial for our clients' success. Without them, many medically fragile and complex children would not be able to get to school safely or even be able to get to school at all.

OSSE-DOT has made great strides, but continues to work hard on its struggles with retaining staff in a competitive industry.²² OSSE recognizes this problem has spillover effects on colleagues who sometimes have to double routes and that children and families experience high turnover of staff, and has a plan with the DC Infrastructure Academy to fill vacancies.²³ Thus, we urge the Council to preserve funding for all positions for OSSE-DOT, even if they appear vacant. In addition, we have concern that the OSSE-DOT Budget may end up in a budget pressure, because Local Funds are being reduced \$2,202,000 from FY18, while OSSE-DOT has union-contract-related increases in personnel cost, and projected billing to Medicaid is unrealistic to fill the gap.²⁴ We also have concern about the amount of funding slated for removal in the *Mayor's Fiscal Year 2018 Revised Local Budget Temporary Adjustment Act of 2018*.

We also wanted to recommend preserving the capital budget for OSSE-DOT. We are not experts in the cost of construction planning, but understand that the OSSE-DOT W Street Terminal will be a positive investment that should reduce future costs on bus maintenance. It's our understanding that this project and other terminal repairs have been postponed in past budgets, so the funding is needed. We also understand the 5th Street Terminal façade needs repair for the safety of workers.

Additionally, while OSSE-DOT made great strides, there are still improvements to be made, including transportation to partial-day inclusion, transportation to

extracurricular activities, and limiting bus rides to 60 minutes each way.²⁵ Without necessary resources, OSSE-DOT has little chance of maintaining level of services and making these improvements.

Supports to Keep Children in School and Meet Diverse Needs Should be Increased

Reducing exclusionary discipline and increasing supports available in schools should be a priority in the Budget. As many testified about in the public hearing for the *Student Fair Access to School Act*, we have a suspension crisis in the District. African-American and Latinx children are suspended at dramatically higher rates than other children.²⁶ So are children with disabilities,²⁷ children in foster care, children living in poverty and children who are homeless.²⁸ Robust funding, staffing, and other supports are necessary for the students, who face the largest academic achievement gaps,²⁹ large disparities in suspension and expulsion,³⁰ and big challenges to school attendance and completion. Instead of figuring out what children need to learn, we are excluding them from school and depriving them of fair access to an education. Meeting the needs of children who are being excluded from school should be a priority for increased funding.

OSSE can and does provide support for alternatives to suspension and meeting the needs of the whole child, with funding and assistance provided in strategies like Restorative Justice and Community Schools. Unfortunately, the FY19 Budget provides no additional funding for Restorative Justice, reduces \$100,000 from Community

Schools funding,³¹ and includes no dedicated funding for trauma-informed schools as envisioned in the *Fair Access Act*. Demand is there. As noted in their responses to this Committee's FY19 budget questions, in addition to their initial Cohorts of schools, OSSE established a supplemental technical assistance program to better prepare schools to implement Restorative Justice school-wide and received applications from 46 schools for the upcoming 2018-2019 school year.³² The funding needs to be increased to support further reductions in exclusionary discipline. District students need the Council to increase funding in OSSE's Budget for expanded Restorative Justice, Community Schools, and trauma-informed schools, and commit funding for the *Student Fair Access to School Act*.

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 Children are currently eligible if they have a serious 50% delay in one developmental area, 25% delay in two areas of development, or have a qualifying condition with high probability of developmental delay (such as extreme prematurity or Down Syndrome). See 5-A DCMR § 3108.3

³ 46% of infants and toddlers with developmental delays who receive early intervention services catch up and need no special education services. National Early Childhood Technical Assistance Center. (June 2001), *The Outcomes of Early Intervention for Infants and Toddlers with Disabilities and their Families*, available at <http://www.nectac.org/~pdfs/pubs/outcomesofearlyintervention.pdf>. National research shows that the majority of children receiving early intervention services catch up in at least one developmental area by the time they reach preschool. Early Childhood Technical Assistance Center. (July 2015). *Child Outcomes Highlights for FFY 2013: Outcomes for Children Served through IDEA's Early Childhood Programs*.

⁴ OSSE Responses to FY19 Budget Oversight Questions, April 13, 2018, page 20 of 42.

⁵ The *Enhanced Special Education Services Act of 2014* requires LEAs to evaluate a student with a suspected disability within 60 days. Evaluation must be done within 60 days of parent consent and 90 days of

referral, giving schools no more than 30 days to secure parent consent. (DC Act 20-487). Currently, schools have 120 days to complete the evaluation.

⁶ Under federal law, specifically, the Individuals with Disabilities Education Improvement Act (IDEA), schools must develop “transition plans” for special education students between ages 16 and 22 years old to help them prepare for life after high school. Transition plans are intended to prepare students for independent living, employment, and further education. 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.

⁷ Guest Blog by two youth advocates in the DC Voices of Change Peer Network, accessible here: <https://www.dcfpi.org/all/guest-blog-setting-peers-success/>

⁸ The Special Education Compliance (referred to as Blackman Jones Compliance in some documents) weight was increased to .099, totaling \$4,200,000 investment in DCPS and PCS local funding. See the Proposed *Fiscal Year 2019 Budget Support Act of 2018*, Title IV, Subtitle A, Section 4002(c), at line 679.

⁹ The proposed language in the Mayor’s Budget Support Act does not specify any start date, simply removing the current lead-in language “Beginning July 1, 2016, or upon funding....” We also note that proposed Budget Support Act partially removes the subject to appropriations language from the section about evaluating in 60 days, repealing DC Code § 38-2561.02(a)(2)(B), but not removing the lead-in at subsection (a)(2)(A). The final Budget Support Act will need to repeal the lead-in language at DC Code § 38-2561.02(a)(2)(A) “Beginning July 1, 2017, or upon funding, whichever occurs later,” in order to be clear that subsection is no longer contingent “upon funding.”

¹⁰ <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/transition-of-students-and-youth-with-disabilities-from-school-to-postsecondary-education-and-employment.pdf>, slide 8. It matters, because RSA is allowed to provide PETS to students who have IEP transition plans without individual applications, giving more flexibility than traditional RSA work-related supports.

¹¹ OSSE gave out FY18 funds to support the reform as Formula Grants from the Special Education Enhancement Fund, which LEAs can still use. OSSE has been getting schools ready for July 1 as the start, with clear communications over the last year. See, e.g., OSSE. *LEA Look Forward* for January 3-9, 2018.

[https://us4.campaign-archive.com/?e=&u=8d76b5a43735fdb6449d7cf3&id=f203b77bc4#\[Mandatory\]%20Secondary%20Transition%20Training%20for%20LEAs](https://us4.campaign-archive.com/?e=&u=8d76b5a43735fdb6449d7cf3&id=f203b77bc4#[Mandatory]%20Secondary%20Transition%20Training%20for%20LEAs)

¹² See <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2017-18%20UPSFF%20Payment%20Letter.pdf>

¹³ OSSE Responses to FY19 Budget Oversight Questions, April 13, 2018, page 22.

¹⁴ See, *Special Education Quality Improvement Act of 2014*, DC Act 20-0488.

¹⁵ Indicator 14 from the 2015-16 school year, the most recent audited data that OSSE submitted to the Federal government. 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>

¹⁶ 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. DC scores on the National Assessment of Educational Progress, administered in 2015, are very similar, with about 4-6% of students with disabilities “proficient” (compared to 25% of non-disabled students) and 73-83% Below Basic in Reading (compared to about 40% of non-disabled students.)

https://www.nationsreportcard.gov/reading_math_2015/files/2015_Results_Appendix_Reading.pdf

¹⁷ *Id.*

¹⁸ While we do not argue that every application was worthy of funding, since we have no direct knowledge of content, the large number indicates need and appetite in the schools for additional special education funding for these types of partnerships, collaborations, and innovations.

¹⁹ Conversation with Dr. Amy Maisterra, Assistant Superintendent at OSSE, and her team on November 15, 2017.

²⁰ Nonpublic Tuition FY19 Budget Local Funds line, page D-82.

²¹ Although it is difficult to tell exactly how much funding is for special education, because other OSSE State-level funding for special education is within the K12 Systems and Supports lines, mixed with other local and Federal funds and activities, the concept of Maintenance of Effort (MOE) is also implicated here. The IDEA Part B (Special Education) requires that States maintain the same level of expenditures on special education from year to year, or risk the Department of Education taking back Federal IDEA Part B grants in an equal amount. This reduction of about \$3M and the \$2M reduction discussed below in OSSE-DOT (because Medicaid reimbursement does not count for MOE), as well as the millions of dollars reduced from Nonpublic Tuition over the last eight years that did not go into the Enhancement Fund or other special education, raise questions about whether the District is meeting MOE.

²² See OSSE Responses to FY19 Budget Oversight Questions, April 13, 2018, Q5 at page 8 of 42.

²³ Conversations with OSSE DOT leadership, notes on file with the author. OSSE Responses to FY19 Budget Oversight Questions, April 13, 2018, Q5.

²⁴ In our conversations with Gretchen Brumley, director of OSSE-DOT, \$10,000,000 is a high but realistic projected Medicaid billing to support the ongoing transportation budget. There are several factors that make \$12,000,000 unrealistic. Now that some payment and settlement issues with previous Medicaid settlements have been resolved, they do not expect as high of settlements. In addition, the timing of Medicaid reimbursement is partially in the control of the LEA as they bill for related services in the IEP that match the transportation date (and Medicaid only pays for transportation on those school days).

²⁵ Children's Law Center described each of these in detail in our OSSE Agency Performance Oversight testimony.

²⁶ 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.

https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2016-17%20School%20Year%20Discipline%20Report.pdf 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.

²⁷ 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.

²⁸ 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.

²⁹ Six percent of students with disabilities are proficient in English/Language Arts (ELA) and seven percent in Math, compared to 31% ELA and 27% Math for students not in special education. 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](https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Detailed%202017%20PARCC%20and%20MSAA%20Performance%200.xlsx). DC scores on the National Assessment of Educational Progress, administered in 2015, are very similar, with about 4-6% of students with disabilities “proficient” (compared to 25% of non-disabled students) and 73-83% Below Basic in Reading (compared to about 40% of non-disabled students.)

https://www.nationsreportcard.gov/reading_math_2015/files/2015_Results_Appendix_Reading.pdf

³⁰ Students with disabilities were 2.45 times more likely to be suspended than students without disabilities in school year 2016-17. Calculation by Children’s Law Center based on data from OSSE (2017). *State of Discipline: 2016-17 School Year*, p. 34. Students identified as homeless were suspended at a rate 2.27 times that of students not identified as homeless. See SY2016-17 Discipline Report, at 39-42. Students in CFSA care were suspended at a rate 2.49 times that of students not in CFSA care. OSSE (2018). *State of Discipline: 2015-16 School Year*, at 22-23.

³¹ We understand that carryover from previous grant years is slated to fill the gap so that all 8 Community Schools can continue even without this \$100,000, but it is still a cut. Notes from conversation with OSSE Asst. General Counsel Tiffany Oates on file.

³² OSSE FY19 Budget Oversight Responses, Q20d.