

Accessing Services for Students with Disabilities in DC Public Schools



A Report of the
District of Columbia Advisory Committee to the
U.S. Commission on Civil Rights

December 2024

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The District of Columbia Advisory Committee would like to thank the panelists, stakeholders, and community members for their contributions to this study.

Letter of Transmittal

The District of Columbia Advisory Committee (Committee) to the U.S. Commission on Civil Rights submits this report regarding access to special education and related transportation services in the District of Columbia. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the District of Columbia. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on August 15, 2023; November 21, 2023; March 20, 2024; May 2, 2024; and May 7, 2024. The Committee also held a hybrid videoconference/in person briefing on May 10, 2024. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil rights concerns. This report is intended to focus on civil rights concerns regarding special education services in DC public schools. Specifically, the Committee sought to examine if discrimination based on race, gender, national origin, and disability status is occurring and, if so, how this can be effectively remedied. While additional important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

District of Columbia Advisory Committee to the U.S. Commission on Civil Rights

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Statement from the Chair

Parents and caregivers are graced with the opportunity and primary responsibility to protect, nurture, and guide their children. Teachers play an additional vital role in shaping a child's education and development. Together, they form a partnership that builds a strong, holistic foundation for lifelong growth, exploration, and learning. In particular, this partnership is especially critical for students requiring access to special education services.

To that end, there exists a responsibility and privilege to exhaust measures in support of parents and teachers by providing critical education services and resources to all students. Under the current law, this includes an individualized education program; free appropriate public education in the least restrictive environment; and appropriate evaluations and procedural safeguards such as due process hearings—all encapsulated in parent/caregiver partnership with teachers. The Committee intends that the recommendations put forth in this report are considered by the U.S. Commission on Civil Rights and relevant stakeholders in fulfilling the purpose of existing laws

Wayne Heard

Chair, District of Columbia Advisory Committee

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Overview

On May 18, 2023, the District of Columbia Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study regarding access to special education and related transportation services in the District of Columbia. The focus of the Committee’s inquiry was to examine access to special education services and related transportation services in DC. From a civil rights perspective, the Committee sought to consider if discrimination based on race, gender, national origin, and disability status is occurring, and, if so, how this can be effectively remedied.

As part of this inquiry the Committee heard testimony via videoconference held on August 15, 2023; November 21, 2023; March 20, 2024; May 2, 2024; and May 7, 2024. The Committee also held a hybrid videoconference/in person briefing on May 10, 2024.¹ The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. The Committee’s invitations to provide testimony for this study were declined by the following agencies: U.S. Department of Education/Office for Civil Rights; the United States Children’s Bureau; the District of Columbia Public Schools Division of Specialized Instruction; the State Board of Education of the District of Columbia/Office of the Ombudsman for Public Education/DC Special Education Hub. Multiple attempts to secure a speaker from the DC Council were also unsuccessful.

The report begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report focuses on accessing special education services and related transportation services in DC. While other important topics may have surfaced throughout the Committee’s inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the

¹ Meeting records and transcripts are available in Appendix.

Briefing before the DC Advisory Committee to the U.S. Commission on Civil Rights, August 15, 2023, (web-based), Transcript (hereinafter cited as “August 15, 2023 Speaker Meeting”).

Briefing before the DC Advisory Committee to the U.S. Commission on Civil Rights, November 21, 2023, (web-based), Transcript (hereinafter cited as “November 21, 2023 Briefing I”).

Briefing before the DC Advisory Committee to the U.S. Commission on Civil Rights, March 20, 2024 (web-based), Transcript (hereinafter cited as “March 20, 2024 Briefing II”).

Briefing before the DC Advisory Committee to the U.S. Commission on Civil Rights, May 2, 2024, (web-based), Transcript (hereinafter cited as “May 2, 2024 Briefing III”).

Briefing before the DC Advisory Committee to the U.S. Commission on Civil Rights, May 2, 2024, (web-based), Transcript (hereinafter cited as “May 7, 2024 Briefing IV”).

Briefing before the DC Advisory Committee to the U.S. Commission on Civil Rights, May 2, 2024, (web-based and in person), Transcript (hereinafter cited as “May 10, 2024 Briefing V”).

recommendations included within it were adopted unanimously by the Committee on November 21, 2024.²

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts who have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to use their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals who are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of background, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully

² See Appendix for Committee Member Statements.

understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Study Background

The Committee decided to study special education access in DC due to concerns raised in anecdotes and articles³ indicating that Office of the State Superintendent of Education (OSSE) may overly rely on administrative complaints and lawsuits (also known as due process complaints) in apportioning special education and related transportation services within the District of Columbia, and that this may cause a discriminatory impact based on race, ethnicity, gender, and disability on the allocation of special education resources in the District. The Committee was also concerned that marginalized and at-risk DC communities with less access to attorneys and funds to file lawsuits and mount due process challenges, could be significantly harmed by this approach, and that this could cause a disparate impact based on the protected classes mentioned above.

Data shows that the District of Columbia has historically received significantly more complaints per 10,000 students in the special education area (Individuals with Disabilities Education Act, aka IDEA, Part B) than any other state or territory in the United States.⁴ The District of Columbia also has by far the highest rate nationally of due process complaints resolved without a hearing nationally, which could be indicative of a concern that a “sue and settle” approach is indicated by this data,⁵ which is itself a barrier to entry and favors those who can afford attorneys.⁶ To ensure equitable and sufficient provision of special education resources, it is

³ See, e.g., Feinstein, Andrew A.; Kule-Korgood, Michele; and Tulman, Joseph B.; Are There Too Many Due Process Cases? An Examination of Jurisdictions With Relatively High Rates of Special Education Hearings, *University of the District of Columbia Law Review*, Vol. 18, Issue 2, Article 6 (Spring 2015) and MacFarlane, Scott; Leslie, Katie; Piper, Jeff; and Jones, Steve; DC Parents Describe Annual ‘Fight’ Securing Special Education Services, NBC 4 Washington, September 2, 2021 (updated on September 3, 2021), at:

<https://www.nbcwashington.com/news/local/dc-parents-describe-annual-fight-securing-special-education-services/2791302/>.

⁴ See *OSEP’s Annual Reports to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA)*, U.S. Department of Education. For example, the 43rd Annual Report in 2021 indicated a rate of 245 per 10,000 in DC, which was the highest rate nationally, compared to 4 per 1000 in Virginia and 29 per 1000 in Maryland, see pp. 194-95, at: <https://files.eric.ed.gov/fulltext/ED616723.pdf>. Although New York has recently had more complaints per capita with DC coming in a close second, historically DC has almost always had the highest rate. Further, even in the most recent report from the U.S. Department of Education, DC had the highest rate of due process complaints per 10,000 students resolved from 2020-21, exceeding New York. See 45th Annual Report to Congress on the Implementation of the IDEA, 2023, Exhibit 83, pp. 232-33, available at <https://sites.ed.gov/idea/files/45th-arc-for-idea.pdf>.

⁵ Blaeuer Testimony, March 20, 202 Briefing, pp. 13-14.

⁶ See 45th Annual Report to Congress on the Implementation of the IDEA, 2023, Exhibit 83, pp. 232-33, available at <https://sites.ed.gov/idea/files/45th-arc-for-idea.pdf> (based on data from 2020-21, DC was at 69 per 10,000 students with NY next at 49 per 10,000 students).

important that OSSE generally provide such services and supports in the first instance, rather than following a complaint where access may not be equitable. The extensive reliance on due process hearings is something that deserves study and attention to see if this is causing a disparate impact and whether this situation can be remedied for DC students and their families.

In addition, the Committee was concerned about how the reliance on due process complaints can impact students in vulnerable situations, particularly those in foster care. For children in foster care, instability and the lack of a parent or other consistent guardian may affect access to a free and appropriate education under the Individuals with Disabilities Education Act. The District of Columbia public schools' apparent reliance on administrative complaints to adjudicate special education students may limit the educational opportunities afforded to foster children, since foster children may have a very limited ability to sue the school district.

Finally, the Committee was concerned by criticism regarding transportation services for students with disabilities.⁷ Transportation services are a necessary component of special education, as many students with disabilities need significant supports, structures, and routines to get to school and be productive. If transportation is not sufficient, this can severely impact a student being able to obtain the full benefit of special education. Moreover, a concern about equity is present because underserved communities are more likely to rely on public transportation.⁸ According to the 2020 Census, over 80% of Wards 7 and 8 residents identify as Black or African American.⁹ In data from 2021, over half of the 3,400 students receiving transportation for special education services live in Wards 7 and 8.¹⁰

Findings

In keeping with our duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,¹¹ the DC Advisory Committee submits the following findings to the Commission regarding accessing special education services and related transportation services in DC. This report seeks to highlight the most salient civil

⁷ See, e.g., Henry, John; *Weeks later, DC's school bus delays persist*, WUSA 9, January 30, 2023, at: <https://www.wusa9.com/article/news/education/dc-school-bus-delays-students-special-needs/65-fdbcf559-82ce-407c-9978-b856fd2fc00c>.

⁸ See, e.g., Campbell, Sierra; *D.C. Must Meet Students' Transportation Needs to Ensure Educational Equity*, Georgetown Journal on Poverty Law & Policy, February 23, 2023, at: <https://www.law.georgetown.edu/poverty-journal/blog/d-c-must-meet-students-transportation-needs-to-ensure-educational-equity/>.

⁹ Table 3. District of Columbia Population by Ward by Race and Hispanic or Latino Origin: 2010* and 2020; <https://planning.dc.gov/publication/2020-census-information-and-data>.

¹⁰ DC Office of the State School Superintendent of Education (OSSE), Responses to Fiscal Year 2021 Performance Oversight Questions 286 (2022), <https://dccouncil.gov/wp-content/uploads/2022/10/osseresponses.pdf#page285>.

¹¹ 45 C.F.R. § 703.2

rights themes as they emerged from the Committee’s inquiry. The complete meeting transcripts and written testimony received are included in the Appendix for further reference.

Special Education Background

The Civil Rights Movement of the 1960s laid the groundwork for civil rights for individuals with disabilities. One of these statutes is Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against people with disabilities and any programs receiving federal funds.¹² Landmark court cases include *P.A.R.C. v. Commonwealth of Pennsylvania*, 334 F. Supp. 279 (E.D. PA 1972), in which the District Court for the Eastern District of Pennsylvania enjoined Pennsylvania from denying children up to 21 years of age admission to a public school program ‘appropriate to his learning capacities,’ or denying a student from having their educational status changed without being given the opportunity for a due process hearing, and *Mills v. Board of Education*, 348 F. Supp. 866 (D.D.C. 1972), in which school-age children sought an injunction that they had been denied their constitutional right to due process when they were denied placement in a public educational program for long periods of time due to alleged disabilities.¹³ These events led to the establishment of the Education for All Handicapped Children Act in 1975, which is now known as the Individuals with Disabilities Education Act (IDEA).¹⁴

The IDEA mandates that any state or public agency receiving federal funds must ensure that every child with a disability in their state has the right to a free appropriate public education and related services in the least restrictive environment.¹⁵ Since the states, territories, and the District of Columbia receive federal funding, they have an obligation to provide children with disabilities a public education that is both appropriate and free.¹⁶

To receive special education services in DC, a student must generally be subject to an Individualized Educational Plan (IEP), the contents of which are critical to determining the services, accommodations, and supports that a student in special education receives. An IEP team is typically comprised of the parents/guardians/caregivers,¹⁷ the student’s special education teacher, the student where appropriate, and other school representatives and professionals providing services and supports at the school..¹⁸ The goal is to make decisions by consensus,

¹² Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794; Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 5.

¹³ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 6; “The Right of Education.” *Disability Justice*. Accessed May 13, 2024. <https://disabilityjustice.org/right-to-education/>.

¹⁴ Individuals With Disabilities Education Act, 20 U.S.C. § 1400 (2004); Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 6.

¹⁵ *Ibid.*

¹⁶ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 6.

¹⁷ In this report, the terms “parent” and “family member” are used to refer to individuals who provide care to a student, and includes those who are guardians or caregivers for that student.

¹⁸ *See, generally* [Sec. 300.321 IEP Team - Individuals with Disabilities Education Act.](#)

however, in situations where there is a disagreement between the parents and the school as to what is best for the student, the parents may contest the school's decision through requesting a due process hearing¹⁹ before a neutral adjudicator.²⁰

Since IDEA was last reauthorized in 2004, there have been changes in technology and an increase in a need for transportation.²¹ States submit information on 17 indicators on February 1st each year to the US Department of Education's Office of Special Education Programs (OSEP).²² DC is monitored every 5 years,²³ and submits its fiscal year grant application with stated priorities for federal funding during a process which includes 30 days for public comment.²⁴ Individuals can file both a complaint and due process at the Office of Civil Rights, which has investigative authority, while OSEP does not.²⁵

The Office of the State Superintendent of Education (OSSE) for the District of Columbia serves approximately 94,575 students in public schools and public charter schools, with 15.1 percent of these students receiving special education services.²⁶ OSSE serves as DC's state education agency.²⁷ Maria Blaeuer, Director of Programs and Outreach with Advocates for Justice and Education, Inc. in Washington DC, noted that state obligations were managed for many years by District of Columbia Public Schools (DCPS), but the creation of OSSE around 2014 led to real improvement in governance and hope around its accountability metrics.²⁸

At the outset of the Committee's study in 2022, enrollment by race and ethnicity for OSSE students based on self-identification was 64% African American/Black (Non-Hispanic), 18.9% Hispanic/Latino (any race), 12.5% White (Non-Hispanic), 1.4% Asian, 2.9% Two or More Races, less than 1% Native American/Alaska Native, less than 1% Pacific Islander/ Native Hawaiian.²⁹ Also, 45.6% of students were identified as at-risk by OSSE based on various socio-economic factors, which includes foster care status.³⁰

Special Education Service Provision

¹⁹ See, [Updated Due Process Hearing One-Pager.pdf \(dc.gov\)](#).

²⁰ The OSSE website indicates that in addition to due process hearings, that alternative dispute resolution in the form of mediation (see [Updated Mediation One-Pager.pdf \(dc.gov\)](#)) or a facilitated meeting ([Updated Facilitated Resolution One-Pager.pdf \(dc.gov\)](#)) are available as well.

²¹ Walters Testimony, May 2, 2024 Briefing III, p. 3.

²² Ibid.

²³ Ibid.

²⁴ Walters Testimony, May 2, 2024 Briefing III, p. 6. The FY 2024 DC grant application for federal funding was submitted 5/22/2024.

²⁵ Walters Testimony, May 2, 2024 Briefing III, p. 14

²⁶ See, Quick Stats: Public Schools in the District of Columbia, at: <https://osse.dc.gov/page/data-and-reports-0>.

²⁷ OSSE Written Comment, June 10, 2024, at 2; Blaeuer Testimony, August 15, 2023 Speaker Meeting, pp. 3-4.

²⁸ Blaeuer Testimony, August 15, 2023 Speaker Meeting, pp. 3-4.

²⁹ See, Quick Stats: Public Schools in the District of Columbia, at: <https://osse.dc.gov/page/data-and-reports-0>.

³⁰ Ibid.

In the District, students with disabilities receive special education services through the IEP as mandated by IDEA, or they may have a 504 plan, or they may not have any plan at all.³¹ The families of these students must go through either the Office of Civil Rights or the court system in order to enforce their rights under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA).³²

Local Educational Agencies (LEAs) provide special education services to students related to their IEPs, with specialized instruction and related services provided in the least restrictive environment.³³ Transportation to and from school and within school settings, along with transportation equipment such as adapted buses, lifts, and ramps, are all considered a related service when it is required to assist a child with a disability in accessing education services.³⁴

OSSE provides guidance to LEAs on eligibility requirements for transportation services, and monitors LEAs on adherence to this guidance.³⁵ IEP teams, made of up LEA representatives, school staff, related service providers, and families, make decisions about eligibility for transportation.³⁶ OSSE does not have statutory jurisdiction or enforcement authority for LEA policies, practices, and procedures; allocation of special education resources; or training about access to special education services.³⁷ These areas are covered by other DC government agencies or individual LEAs.³⁸

The District has a high concentration of local educational agencies, with approximately 60 charter schools, in a compact geographic region compared to most other areas in the country.³⁹ In the District, roughly half of the students enroll in DCPS, while the remaining half attend charter schools, which are considered “freestanding” LEAs.⁴⁰ Only Louisiana, which is a 100% charter school district, has a higher concentration of charter school enrollment in the country.⁴¹ The local educational agencies vary greatly in composition, ranging from very small at perhaps solely a middle school to an entire elementary, middle, and high school, and they are required to adhere to the same legal obligations as larger school districts.⁴²

³¹ Blaeuer Testimony, August 15, 2023 Speaker Meeting, p. 4.

³² Ibid.

³³ 20 U.S.C. § 1400, et seq.; OSSE Written Comment, June 10, 2024, at 1.

³⁴ 30 C.F.R. § 300.34(a); OSSE Written Comment, June 10, 2024, at 1-2.

³⁵ OSSE Written Comment, June 10, 2024, at 2.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Blaeuer Testimony, August 15, 2023 Speaker Meeting, p. 3.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

Although half of the District’s students are in charter schools, OSSE does not have the authority to mandate the hiring of credentialed teachers in the public charter school sector.⁴³ As a result, students with disabilities in the charter sector may encounter difficulties in accessing certified teachers, as no requirement exists beyond a basic background check for teaching special education.⁴⁴ Ms. Blauer noted that OSSE should possess the authority to regulate many aspects within local educational agencies that they currently do not recognize as falling under their purview.⁴⁵

Finding I: Students in DCPS are not receiving early and appropriate identification of disabilities, which is critical for students who need access to special education services.

There is a prevalent issue of under-identifying children with disabilities in an early stage and over-identifying them in a later stage, highlighting a notable lack of commitment towards early identification of students with disabilities.⁴⁶ Andrew Feinstein, Attorney at Feinstein Education Law Group and Adjunct Professor of Special Education at Central Connecticut State University, shared that there is a significant shortage of qualified staff nationwide, coupled with a negative perception of teachers, specifically those in special education.⁴⁷

Elizabeth Mitchell, a member of the public, offered remarks at the May 7, 2024 public forum regarding her experience accessing special education for her son with autism.⁴⁸ Ms. Mitchell highlighted the challenges of accurate and appropriate identification for the Committee when her son started presenting with more aggressive behaviors in class starting in first grade: “...you have to be at a school that's going to tell you that these things are going on. And half the time I'm finding, especially with my son's behavior, they didn't know how to talk to me about it. ... They didn't have training to even deal with that...our schools are not equipped to handle these behavior issues...there are systems in place that are keeping them from being able to evaluate them...teachers do not have the power to trigger the evaluation process.”⁴⁹

Another barrier to appropriate identification and communication with parents is English language proficiency. Ms. Blauer noted that it is a “tremendous problem for a lot of our families to have basic language access and decent treatment in receiving that language access.”⁵⁰

Alexandra Simbana, a member of the public who shared comments during the Committee’s May 10, 2024 briefing, noted, “we're fighting now against the argument that our children are not Spanish dominant. When last year, the argument was that they didn't speak enough English to

⁴³ Ibid., pp. 4-5.

⁴⁴ Ibid.

⁴⁵ Ibid., p. 5.

⁴⁶ Ibid.

⁴⁷ Feinstein Testimony, November 21, 2023 Briefing I, pp. 4-5.

⁴⁸ Mitchell Testimony, May 7, 2024 Briefing IV, pp. 3-4.

⁴⁹ Ibid., p. 19.

⁵⁰ Blauer Testimony, August 15, 2023 Speaker Meeting, p. 8.

properly communicate with their teachers. So making the challenge to keep connected to our cultural language and our cultural opportunities for our children is a challenge that I have highlighted previously as expressed by other parents to both OSSE, My School DC [the lottery for the District’s public school options], and DCPS. And the response is always, well, this is a one-off situation. This is unique. But these unique situations continue to pop up. And now that I myself am expressing it, I am highlighting it again. I think for any child, but especially for children with special needs, to be able to feel heard, be seen in their full capacity, is very important.”⁵¹

Finding II: Acceptance of low academic achievement for students who use special education services perpetuates the “soft bigotry of low expectations”⁵² and violates IDEA principles that promote success from school to employment.

Although the IDEA has been effective in integrating students with disabilities into public school education, it has not addressed the issue of the achievement gap.⁵³ Mr. Feinstein and Michele Kule-Korgood, Attorney at Kule-Korgood & Associates, P.C., both shared their concerns about low expectations facing students with disabilities.⁵⁴ Ms. Kule-Korgood noted that students who struggle academically are often placed in special education, and this placement is often accompanied by a belief that these students are incapable of success.⁵⁵ She said that the combination of “a self-fulfilling prophecy and the soft bigotry of low expectations” has resulted in children achieving exactly what is expected of them.⁵⁶

The District lacks a centralized data system “for tracking student progress.”⁵⁷ The District experiences a remarkably significant rate of student mobility, which is complicated by the lack of agreement among the local educational agencies regarding academic standards.⁵⁸ In the District, students with disabilities are performing significantly below grade levels, and there is a lack of importance placed on ensuring accountability for the progress of students with disabilities.⁵⁹ The National Assessment of Educational Progress (NAEP) data on DC’s reading and math proficiency highlights the need for further action.⁶⁰ The recent nationally comparative assessments reveal that only 20% of fourth-grade students with disabilities achieved a basic or higher score in reading, and only 24% of fourth-grade students with disabilities were proficient

⁵¹ Simbana Testimony, May 10, 2024 Briefing V, pp. 33-34.

⁵² Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 7.

⁵³ Feinstein Testimony, November 21, 2023 Briefing I, p. 4.

⁵⁴ Feinstein Testimony, November 21, 2023 Briefing I, pp. 4-5; Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 7.

⁵⁵ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 7.

⁵⁶ Ibid.

⁵⁷ Blaeuer Testimony, August 15, 2023 Speaker Meeting, pp. 5-6.

⁵⁸ Ibid.

⁵⁹ Ibid., p. 6.

⁶⁰ Almazan Testimony, November 21, 2023 Briefing I, p. 10.

in math.⁶¹ The proficiency rates for eighth-grade students with disabilities are even lower, with only 22% demonstrating proficiency in reading and just 14% in math.⁶²

Ms. Blauer noted that although approximately 90% of children with disabilities should be at or above grade level, only about 14% of children with disabilities are at or above grade level.⁶³ Further, only 4% of students with disabilities, who have more than one risk factor identified such as living in poverty, relying on food stamps or Temporary Assistance for Needy Families (TANF), or having an incarcerated parent, are at or above grade level.⁶⁴

The graduation rate for students with disabilities in the District is strikingly low compared to their non-disabled peers.⁶⁵ The state board of education has established exceptionally high graduation standards, the most rigorous in the country, creating distinct hurdles for many students with disabilities.⁶⁶ Ms. Kule-Korgood noted that accountability systems tend to focus on easily accessible data, such as graduation rates, but ideally, they would prioritize data such as proficiency and state assessments, annual IEP goal achievement percentages, and children's progress towards their IEP goals each year.⁶⁷ It has become apparent that students transition from elementary school to middle school without adequate preparation and without equal access to school choice as their fellow students.⁶⁸

Finding III: When educational institutions fail to recognize disability or implement a student's IEP, they deny the student's access to education which constitutes a civil rights violation.⁶⁹

Ms. Blauer stressed that the District has not taken the initiative to assist “families with remedies when” they fail to provide services.⁷⁰ She highlighted for the Committee: “...if you recognize that it's a big deal that you didn't provide a child with maybe their IEP-ordered special education or speech services...[or] proactively go offer them an independent way to make up those services somewhere else.... It is shifting the burden to the parent and to the private sector...the government is essentially contracting out their obligation there, but it's [about] communicating to the family that you take this seriously, that you think the service is important, and that you made a mistake.”⁷¹

⁶¹ Almazan Testimony, November 21, 2023 Briefing I, p. 10.

⁶² Ibid.

⁶³ Blauer Testimony, August 15, 2023 Speaker Meeting, p. 7.

⁶⁴ Ibid.

⁶⁵ Ibid., p. 14.

⁶⁶ Ibid.

⁶⁷ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 23.

⁶⁸ Blauer Testimony, August 15, 2023 Speaker Meeting, p. 15.

⁶⁹ Ibid., p. 6.

⁷⁰ Ibid.

⁷¹ Ibid.

A failure to implement a student’s IEP is a violation of the IDEA and would constitute a civil rights violation.⁷²

Funding

Finding IV: Chronic underfunding of special education services is a major underlying reason for the issues students with disabilities are experiencing in DC.

Panelists agreed that the federal government’s failure to provide the promised funding since IDEA was enacted is a major reason that the intended objectives of special education have not been met.⁷³ In 1975, Congress passed the IDEA and promised to allocate 40% of federal funding to states that agreed to follow the IDEA.⁷⁴ However, the funding received from the federal government has varied between 14% and 18% over the years.⁷⁵ The school districts are left to handle a massive shortfall as a result.⁷⁶ Each year, a bill is introduced in Congress to ensure full funding for the IDEA.⁷⁷

The District employs a funding model that allocates funds per student depending on the level of need or services that each student requires.⁷⁸ The majority of the funds are sourced from local dollars, although federal dollars are also allocated from Title I and IDEA funds.⁷⁹ Kathy Zeisel, Director of Special Legal Projects, Children’s Law Center, explained that in the District, the Mayor proposes the budget, the DC Council does the appropriation, and Congress approves it.⁸⁰ Ms. Zeisel described the budget for the Committee: “There’s two parts of the DC budget. This year DC’s local budget is \$21 billion. And that’s local tax dollars and local sources of dollars. And then, DC operates essentially as a state, like any other state, there’s federal money that flows, for instance for special education, for Medicaid reimbursement and so forth. But the 21 billion core dollars is through local revenue and that’s appropriated by DC Council.”⁸¹

OSSE disburses funds in cases where local educational agencies determine a student does not require a non-public placement, however, certain students are eligible to receive supplementary government funding available through Medicaid, the mental health system, or other child-serving systems.⁸² Many students face obstacles such as needing skilled nursing care and managing

⁷² Individuals With Disabilities Education Act, 20 U.S.C. § 1400 (2004).

⁷³ Almazan Testimony, November 21, 2023 Briefing I, pp. 15-16; Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 15; Feinstein Testimony, November 21, 2023 Briefing I, pp. 4-5.

⁷⁴ Almazan Testimony, November 21, 2023 Briefing I, pp. 15-16.

⁷⁵ Ibid.

⁷⁶ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 15.

⁷⁷ Almazan Testimony, November 21, 2023 Briefing I, pp. 15-16.

⁷⁸ Blaeuer Testimony, August 15, 2023 Speaker Meeting, p. 8.

⁷⁹ Ibid.

⁸⁰ Zeisel Testimony, May 10, 2024 Briefing V, pp. 26-27.

⁸¹ Ibid., p. 27.

⁸² Blaeuer Testimony, August 15, 2023 Speaker Meeting, p. 11.

behavior issues.⁸³ Catherine Decker, Director of Student Services, St. Coletta of Greater Washington, noted for the Committee that accessing available services can be daunting, time-consuming, and complex for parents and guardians working to understand the networks of providers and required paperwork, with actual service delivery post-approval sometimes being delayed due to provider availability or funding constraints.⁸⁴

In response to a question from the Committee about one important policy change to consider, Michele L. Gray, Senior Manager, Equity and Access, DC Public Charter School Board, suggested that "[t]he answer is to make sure there's parity in funding to make sure that every student, regardless of whether they have a disability or not, regardless of whether they are designated at risk or not, has a quality...teacher who is supported by quality professional development with high quality materials. And that should be across the board. And what I have seen is that there is no parity in funding in [regards] to school quality and improvement between overall school improvement and the quality of special education programming."⁸⁵ In response to the same question, Patrick Wolf, PhD, Distinguished Professor of Education Policy and the 21st Century Endowed Chair in School Choice in the Department of Education Reform, University of Arkansas College of Education and Health Professions, recommended increasing support for public charter schools as options for students with disabilities,⁸⁶ noting expanding charter school access for students with disabilities provides parents local options and student opportunities to thrive.⁸⁷

Ms. Simbana recommended the Committee consider supporting the Schools First in Budgeting Act, noting that it "should hold all schools, all DCPS public schools, to the same budget amount as they had the previous year. It has been this Mayor's choice to forego following that law. But we see on the school level through local school advisory teams that help inform the local school budgets, that when those funds are in flux and we have to go back and fight every year for those programs, for that additional money, the students lose out on consistency of teachers...So, as a recommendation, [it] would be great if the District could follow that law and make sure that all of our schools are equally equipped to accept all students and have them properly funded no matter where they are in the District."⁸⁸

⁸³ Decker Testimony, May 10, 2024 Briefing V, p. 16.

⁸⁴ Ibid.

⁸⁵ Gray Testimony, May 2, 2024 Briefing III, p. 21.

⁸⁶ Wolf Testimony, May 10, 2024 Briefing V, p. 12; 14.

⁸⁷ Ibid., p. 14.

⁸⁸ Simbana Testimony, May 10, 2024 Briefing V, p. 34.

Finding V: Issues with funding are creating challenges for the schools that provide special education services in DC.

Amy Warden, Principal, St. Coletta of Greater Washington, shared information relating to funding struggles at one of the District’s providers for specialized services, St. Coletta of Greater Washington. St. Coletta was a non-public school primarily serving students from DC before the Mayor at the time invited the school to convert to a charter school to expand the capacity to serve more students within the District.⁸⁹ The shift from non-public to charter school status brought insufficient funding to meet the diverse needs of their students, including medical, behavioral, related services, and specialized staff requirements.⁹⁰ An agreement relating to gap funding was developed between the Mayor and St. Coletta prior to when OSSE was created, however, OSSE later pulled the agreed-upon gap funding, causing St. Coletta to operate in a deficit of a million and a half dollars each year, impacting the school’s ability to provide appropriate special education services.⁹¹ Failing to provide adequate support to local institutions that currently provide specialized services could result in DC students needing to travel long distances to other providers, or losing access to those services altogether⁹².

Mr. Feinstein noted that besides addressing insufficient funding from the federal government regarding IDEA, reviewing resource allocation and cost-saving measures and providing resources and granting decision-making authority to local administrators could lead to significant savings.⁹³ He also noted that early identification and intervention of needs for children between the ages of three and six could result in overall cost savings in the long run, as they may no longer need further services following the early interventions.⁹⁴

Ms. Gray echoed the recommendations regarding sufficient funding for programs, but also highlighted the need to address workforce development issues, including staffing, professional development trainings, and staffing structures to increase the available workforce for special education services within the schools.⁹⁵ Scott Michael Robertson, PhD, Senior Policy Advisor, Office of Disability Employment Policy, U.S. Department of Labor, agreed, highlighting a need for workforce training for special educators, occupational therapists, speech language pathologists and related professions, along with professional development through continuous

⁸⁹ Warden Testimony, May 10, 2024 Briefing V, p. 27.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² The D.C. Advisory Committee visited St. Coletta on September 26, 2023, and were impressed by the dedicated faculty and staff and the excellent facilities.

⁹³ Feinstein Testimony, November 21, 2023 Briefing I, p. 15.

⁹⁴ Ibid.

⁹⁵ Gray Testimony, May 2, 2024 Briefing III, p. 25.

learning opportunities for general educators, including physical education and art educators, to help understand and help address significant developmental and intellectual disabilities.⁹⁶

Maddlyn Sivilli, MsEd, Director of Programs, CASA for Children of DC, agreed with Ms. Gray and Dr. Robertson that a focus on workforce development and staffing structures could be helpful.⁹⁷ Ms. Sivilli elevated the issue around in-house staffing capacity for foster youth, where a voucher for finding service providers is an extra step/barrier: “if that's included in an IEP, the school either needs to provide that service or provide essentially a voucher for that service to be found elsewhere. And when that service is not available at the school, that provides a unique challenge for foster youth, because, suddenly, this is an added step, that you have to figure out. You have to find a private provider. That private provider does not have to accept that voucher from that school. They can say no, they can turn the youth down. You then have to determine transportation, which is a big challenge for youth in foster care. They don't have someone who can necessarily bring them across town at whatever time. So having those special services professionals at the schools, especially, not just schools having the opportunity to provide the vouchers is really important for youth involved in the court system.”⁹⁸

Finding VI: There are diverging views on vouchers for students with disabilities. Some experts conclude that vouchers will expand educational choice and will help align students to schools best equipped to address their specific needs. Other experts believe that concerns over the potential loss of IDEA benefits and due process protections outweigh those potential benefits. We believe that vouchers should be viewed as one of many administrative and policy tools at the disposal of lawmakers to meet the challenges identified in this report.

The Committee heard different opinions from panelists regarding the use of vouchers or scholarships to address the funding shortfalls impacting special education services in DC. In favor of vouchers and scholarships, Dr. Wolf shared that increasing the appropriation for the DC Opportunity Scholarship (OSP) programs would increase schooling options for students with disabilities, helping parents customize their child’s education.⁹⁹ He noted that this would make schooling more accessible for students with special needs by offering a variety of educational options, including options closer to or even at home.¹⁰⁰ He also noted that updating the OSP from a tuition voucher program to an Education Savings Account (ESA) program would benefit students with disabilities.¹⁰¹ Unlike vouchers limited to private school tuition and fees, ESAs

⁹⁶ Robertson Testimony, May 2, 2024 Briefing III, p. 25.

⁹⁷ Gray Testimony, May 2, 2024 Briefing III, p. 25; Robertson Testimony, May 2, 2024 Briefing III, p. 25; Sivilli Testimony, May 2, 2024 Briefing III, p. 26.

⁹⁸ Sivilli Testimony, May 2, 2024 Briefing III, p. 26.

⁹⁹ Wolf Testimony, May 10, 2024 Briefing V, p. 12.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., p. 13.

work like flexible healthcare spending accounts.¹⁰² Parents control allocated funds, which can be used for “private school tuition, tutoring, educational technology, curriculum, therapies, and transportation.”¹⁰³

Ms. Zeisel disagreed, highlighting that private schools cost far more at \$70,000 than what the OSP covers at about \$10,000 currently.¹⁰⁴ She noted that these scholarships are typically directed to schools that do not offer special education services, so choosing to use these scholarships for private schooling means giving up access to special education services.¹⁰⁵

In response, Dr. Wolf noted that “some of the high resource private schools in the District are not able to provide access through the scholarship program to kids with moderate to severe disabilities in the District. And that's where...a change to an ESA program with generous funding that is weighted by severity of student disability, like the Florida Program...would be a game changer and would open up a lot more opportunities for folks.”¹⁰⁶

The National Coalition for Public Education notes “IDEA ensures that students with disabilities are provided with a Free Appropriate Public Education (FAPE) tailored to their individual needs. Students who leave the public schools with a voucher forfeit many of the protections provided to students under IDEA because they are considered parentally placed in private schools. Students accepting vouchers would not necessarily receive all the services listed on the IEP that they currently receive in their public school. Also, when members of the IEP team, which includes parents, cannot agree on the services that a child should receive, the parents have the right to raise their concerns with a hearing officer and ultimately to take the school district to court if necessary. Students who are parentally placed in a private school through a voucher do not have these due process protections.” The NCPE further references “the final US Department of Education report on the Washington, DC voucher program showed that a main reason why students didn't use a voucher offered to them was that they were unable to find a participating school with services for their learning or physical disability or other special needs. Indeed, 21.6% of parents who rejected a voucher that was offered to their child did so because the school lacked the special needs services that their child needed, and, 12.3% of the parents who accepted a voucher for their child but then left the program cited a lack of special needs services at the school they had chosen.”¹⁰⁷

Selene Almazan, Legal Director at Council of Parent Attorneys and Advocates, Inc., noted there is also a lack of data on the number of children with disabilities who transition back to public

¹⁰² Wolf Testimony, May 10, 2024 Briefing V, p. 13.

¹⁰³ Ibid.

¹⁰⁴ Zeisel Testimony, May 10, 2024 Briefing V, p. 22; 31.

¹⁰⁵ Ibid., p. 22.

¹⁰⁶ Wolf Testimony, May 10, 2024 Briefing V, p. 23.

¹⁰⁷ National Coalition for Public Education, Vouchers Do Not Adequately Serve Students with Disabilities. <https://www.ncpecoalition.org/students-with-disabilities>.

schools from voucher programs, homeschooling, or religious schools.¹⁰⁸ Understanding the reasons behind these transitions is important.¹⁰⁹ She shared that the National Council on Disability examined the matter of vouchers and showed that if a student transitions out of the public school system for an educational savings account or a voucher, the student will lose all their IDEA rights.¹¹⁰ Leaving for an educational savings account or a voucher also means the parent of the child no longer has access to due process.¹¹¹ For example, parents in Florida who rely on the McKay Scholarship no longer have the right to due process.¹¹² She noted that the rights to Section 504 may or may not be applicable, depending on whether the private school accepts federal funding.¹¹³ However, unlike Section 8 housing funding, which does not affect federal anti-discrimination rights, the use of voucher money does affect the rights under IDEA.¹¹⁴

In response to a question whether a scholarship program could help dissatisfied families exit public schools without pursuing due process complaints, Katlin Banner, Deputy Legal Director, Washington Lawyers' Committee for Civil Rights and Urban Affairs, noted that "with the right resources and support that the public school system can serve these students."¹¹⁵ Ms. Banner explained, "creating scholarship programs that siphon off a small portion of those students divides the money in a way that is inefficient and is not going to serve students with highest needs."¹¹⁶ She noted that focusing on private scholarships or other educational spending accounts to address current concerns would result in students becoming isolated, segregated, or put into residential settings against the goals of the ADA and IDEA, assumes that there are private providers that are available to provide high quality services, which may not be the case, and can be challenging to access for people who are low income, have low literacy, low English proficiency, or are people with disabilities themselves.¹¹⁷

Dr. Wolf responded to concerns about vouchers, noting: "With district-run public schools, the accountability system is very government-heavy and procedure-heavy with some accountability provided by the voice of parents. With choice systems, it kind of reverses that. It doesn't eliminate the government-style accountability and government oversight entirely, but it just puts a heavier foot on parents and parent choices as the accountability mechanism. And as long as

¹⁰⁸ Almazan Testimony, November 21, 2023 Briefing I, p. 17.

¹⁰⁹ Ibid.

¹¹⁰ Ibid., pp. 18-19.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Banner Testimony, May 10, 2024 Briefing V, p. 29.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

resources move with the child, that creates an incentive system where the provider has a strong incentive to satisfy the parent and serve the child well or the resources leave.”¹¹⁸

Referring to existing programs across the country, Dr. Wolf noted, “It’s true that the Arizona program is the most light touch in terms of government regulations, but the West Virginia model is very different. It’s a lot like the model for the marketplace for health insurance under the Affordable Care Act. Basically, the State Department of Education for West Virginia, that’s the provider of educational services to students. They pre-vet them and determine which providers are in a position to effectively provide services. And all providers have to abide by the U.S. Civil Rights Statute, so they cannot discriminate in providing their services based on race, ethnicity, religion, disability.”¹¹⁹ He stressed that parents are choosing these programs because they want a good school, appropriate special education services, and don’t like the disability label.¹²⁰

Dispute Resolution

Finding VII: DC’s dispute resolution system places the burden of accessing special education services on students and their families.

The Individuals with Disabilities Act (IDEA) allows parents to file complaints about unsatisfactory educational services through three different systems:¹²¹

¹¹⁸ Wolf Testimony, May 10, 2024 Briefing V, p. 24.

¹¹⁹ Ibid.

¹²⁰ Wolf Testimony, May 10, 2024 Briefing V, p. 25.

¹²¹ Feinstein Testimony, November 21, 2023 Briefing I, p. 2; Almazan Testimony, November 21, 2023 Briefing I, p. 10; Blaeuer Testimony, March 20, 2024 Briefing II, p. 14.

Dispute Resolution

- ▶ If a parent believes the public agency has violated a requirement of the IDEA, you have the following options available to resolve the matter:
 - 1) the right to file a State complaint pursuant to 34 C.F.R. §§ 300.151-153;
 - 2) the right to request mediation pursuant to 34 C.F.R. § 300.506;
 - 3) the right to file a due process complaint to request a due process hearing to resolve disagreements regarding your child’s educational program pursuant to 34 C.F.R. §§ 300.507-300.516. For more information about the dispute resolution options that are available to resolve matters specifically relating to the provision of FAPE and protection of the procedural safeguards and parental rights afforded under IDEA, you may wish to visit the State’s website.



Walters Slides, May 2, 2024 Briefing III, at 6

Each state must have a state complaint process.¹²² Complaints can trigger monitoring by OSEP outside of regular state performance reporting and data review.¹²³

1. State Complaint System: If families believe there has been a violation of the law, they can file a State Complaint.¹²⁴ The number of individuals using the complaint system relating to a violation of the law in the District is still relatively low; however, there has been a surge from 1.4% from the 2010-2011 school year to 9.8% in the 2021-2022 school year.¹²⁵
2. Mediation: Mediation is a voluntary process that requires the agreement of both parties, and can prevent antagonism between parents and the school, unlike the consequences of a due process filing.¹²⁶ Approximately 30% of disputes nationally go through mediation.¹²⁷ From 2021 to 2022, the proportion of mediation users in the District decreased from 24% to 12%.¹²⁸ Some states, including Connecticut, California, Illinois, Maine, Massachusetts,

¹²² Feinstein Testimony, November 21, 2023 Briefing I, p. 2.

¹²³ Walters Testimony, May 2, 2024 Briefing III, p. 7.

¹²⁴ 34 C.F.R. §§ 300.151-153; Feinstein Testimony, November 21, 2023 Briefing I, p. 2; OSSE Written Comment, June 10, 2024, at 2.

¹²⁵ Feinstein Testimony, November 21, 2023 Briefing I, p. 3.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

and Rhode Island, direct half of all disputes to mediation.¹²⁹ However, Mr. Feinstein noted, in many states, there has been limited availability and poor quality of trained, impartial mediators, which poses a barrier to successful mediation.¹³⁰ Over the past ten years in the District, the number of non-due process cases settled through mediation has been three times higher than the number of due process cases settled.¹³¹

3. Due process: Due process is a system that grants parents in a school district the right to an impartial hearing when they cannot agree on the services their child with a disability should receive or when they believe their child is not being educated properly.¹³² Most due process cases handle issues related to eligibility for services, programming within the schools, and placement.¹³³ The few remaining cases are typically expedited hearings specifically addressing matters related to interim alternative placements, termination of services, and discipline.¹³⁴ Due process complaints can be filed by either party in many jurisdictions, but it is parents who file the majority of these complaints in the United States.¹³⁵ Due process hearings under the IDEA serves as a highly effective tool to encourage districts to adhere to the law.¹³⁶ Decisions relating to due process hearings may be appealed to the U.S. District Court of the District of Columbia.¹³⁷

OSSE Parent Liaisons provide support to families in identifying which dispute resolution option, or other informal resolution option, may be most appropriate for their specific concerns.¹³⁸ In partnership with the Office of the Ombudsman for Education’s Special Education Hub, OSSE offers families support in navigating the District’s special education landscape.¹³⁹ Another resource for families is Advocates for Justice in Education, which is a federally funded parent training and technical assistance center which offers free legal and advocacy support to families.¹⁴⁰

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 6.

¹³³ Feinstein Testimony, November 21, 2023 Briefing I, p. 3.

¹³⁴ Ibid.

¹³⁵ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 6.

¹³⁶ Ibid.

¹³⁷ OSSE Written Comment, June 10, 2024, at 2.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ OSSE Written Comment, June 10, 2024, at 2. Due process complaints and appeals to the District Court often require a lawyer to effectively present a case. This may lead to more affluent communities who can afford attorneys both having more access to special education funds and support (as well as having more financial resources to have students attend private school if the public school is not providing a free, appropriate public education. These are not contingency-type cases so typically a significant amount of money is required to prosecute a case unless a nonprofit legal aid organization takes the case pro bono. The expense associated with these cases combined with more barriers to access to attorneys and the justice system for underserved communities can result in students with disabilities from underserved communities not getting the resources and supports they need.

Finding VIII: The District of Columbia’s high rate of due process complaints warrants serious attention to explore why families are suing for services they are entitled to.

The District of Columbia has consistently had the first or second highest rate of due process complaints among states and federal territories for its school public system in the special education area for many years.¹⁴¹ The District of Columbia, New York, and Puerto Rico have a much higher incidence of due process cases compared to the rest of the country.¹⁴² The national ratio is 50 due process hearings for every expedited hearing, but the ratio in the District is 17 to 1, showing a much higher prevalence of disciplinary disputes compared to the rest of the nation.¹⁴³

The number of due process complaints per 10,000 students in the District has dropped dramatically over the past 12 years (although it started at an extremely high rate), with a slight increase in the previous year or two, while the number of due process complaints per capita nationwide has been steadily rising.¹⁴⁴ In its report relating to 2011-2012, the US Department of Education noted 805 due process complaints per 10,000 students served compared to the national average of 26 due process complaints per 10,000 students served.¹⁴⁵ In 2018-2019, DC reported 245 due process complaints per 10,000 children served compared to the national average of 30,¹⁴⁶ and in 2020-2021, the latest data available from the US Department of Education, there

¹⁴¹ Feinstein Testimony, November 21, 2023 Briefing I, p. 3; Blaeuer Testimony, August 15, 2023 Speaker Meeting, p. 10; See, e.g., Feinstein, Andrew A.; Kule-Korgood, Michele; and Tulman, Joseph B.; Are There Too Many Due Process Cases? An Examination of Jurisdictions With Relatively High Rates of Special Education Hearings, *University of the District of Columbia Law Review*, Vol. 18, Issue 2, Article 6 (Spring 2015); See *OSEP’s Annual Reports to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA)*, U.S. Department of Education. For example, the 43rd Annual Report in 2021 indicated a rate of 245 due process complaints per 10,000 in DC, which was the highest rate nationally, compared to 4 per 1000 in Virginia and 29 per 1000 in Maryland, see pp. 194-96, at: <https://files.eric.ed.gov/fulltext/ED616723.pdf>; See *OSEP’s 45th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA)*, U.S. Department of Education, <https://sites.ed.gov/idea/files/45th-arc-for-idea.pdf>.

¹⁴² Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 7.

¹⁴³ Feinstein Testimony, November 21, 2023 Briefing I, p. 3.

¹⁴⁴ *Ibid.*

¹⁴⁵ See *OSEP’s 36th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA)*, U.S. Department of Education: In 2011–12, there were 26 due process complaints per 10,000 children and students ages 3

through 21 served under IDEA, Part B, in the 52 states (“All states”) for which data were available. The ratio was larger than 50 due process complaints per 10,000 children and students in only the following four of the 52 states: the District of Columbia (805 per 10,000 children and students), Puerto Rico (138 per 10,000 children and students), New York (135 per 10,000 children and students), and Hawaii (54 per 10,000 children and students). In contrast, the ratio was no larger than 1 per 10,000 children and students in Nebraska, North Dakota, Oklahoma, South Carolina, and Utah.

¹⁴⁶ See *OSEP’s Annual Reports to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA)*, U.S. Department of Education. For example, the 43rd Annual Report in 2021 indicated a rate of 245 due process complaints per 10,000 in DC, which was the highest rate nationally, compared to 4 per 1000 in Virginia and

were 127 due process complaints per 10,000 children served compared to a national average of 33.¹⁴⁷ Ms. Blauer noted that the District has significantly improved over time with dealing with student complaints around IDEA and developing a functional student hearing office, as the current number of due process cases is still high, but no longer continues to surpass the combined number of complaints filed in the entire country.¹⁴⁸

An important consideration regarding information on the high number of due process complaints is that no data is currently available in DC that provides information on the settlements given to families when there is no hearing; for example, whether parents obtained what they wanted, or whether they settled because it was going to be too expensive to continue.¹⁴⁹ However, Maryland does post information relating to hearing decisions on a public website.¹⁵⁰ Without knowing the precise reason for the settlement, Ms. Zeisel observed, “I have found over the years that the charter schools are much more likely to settle than DCPS.”¹⁵¹

Finding IX: The District of Columbia public schools’ reliance on due process complaints to determine and provide required services under IDEA has a disparate impact on protected classes; students from households with less ability to issue due process complaints may be routinely denied services that are required to be provided under federal law.

It is not uncommon for families of students with disabilities to be recommended to pursue legal action against the school system when confronted with challenges or disagreements.¹⁵² Ms. Blauer notes that families are left to look into enforcement of the law and have created their own version of a legal resource with parents who have law degrees themselves trying to address

29 per 1000 in Maryland, see pp. 194-96, at: <https://files.eric.ed.gov/fulltext/ED616723.pdf>. In 2018–19, there were 30 due process complaints per 10,000 children and students ages 3 through 21 served under IDEA, Part B, in the 52 States (“All States”) for which data were available. The ratios in the individual States ranged from 1 to 245 per 10,000 children and students served. The ratio was larger than 170 due process complaints for every 10,000 children and students served in the following three States: the District of Columbia (245 per 10,000 children and students), New York (190 per 10,000 children and students), and Puerto Rico (171 per 10,000 children and students). In contrast, the ratio was no larger than 1 for every 10,000 children and students served in the following eight States: Idaho, Kansas, Minnesota, Nebraska, North Dakota, Oklahoma, South Dakota, and Utah.

¹⁴⁷ See *OSEP’s 45th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA)*, U.S. Department of Education: In 2020–21, there were 33 due process complaints per 10,000 children and students ages 3 through 21 served under IDEA, Part B, in the 52 States (“All States”) for which data were available. The ratios in the individual States ranged from 0.4 to 274 per 10,000 children and students served. The ratio was larger than 100 due process complaints for every 10,000 children and students served in the following two States: New York (274 per 10,000 children and students) and the District of Columbia (127 per 10,000 children and students). In contrast, the ratio was no larger than 1 for every 10,000 children and students served in the following 10 States: Alaska, Kansas, Kentucky, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin, <https://sites.ed.gov/idea/files/45th-arc-for-idea.pdf>, pp. 193-195.

¹⁴⁸ Blauer Testimony, August 15, 2023 Speaker Meeting, p. 10.

¹⁴⁹ Almazan Testimony, November 21, 2023 Briefing I, p. 13.

¹⁵⁰ *Ibid.*, p. 13-14.

¹⁵¹ Zeisel Testimony, May 10, 2024 Briefing V, p. 20.

¹⁵² Blauer Testimony, August 15, 2023 Speaker Meeting, p. 9.

the issues that are raised: “The parents bar and people like me operate unfortunately like a compliance arm. We are doing essentially what the Office of the State Superintendent should be doing. We are demanding compliance with the law and a level of accountability.”¹⁵³ The Office of the Attorney General represents DCPS in disputes, which Ms. Blaeuer said reduces incentives within DCPS to actively comply with the law and avoid litigation.¹⁵⁴ In contrast to the DCPS, the charter sector is not represented by the Office of Attorney General, and instead encounters a significant financial disincentive to engage in litigation due to the need to self-fund.¹⁵⁵

Speakers shared multiple opinions relating to the reason for the high number of due process cases in DC. Ms. Kule-Korgood noted that due process cases increase when more affordable or free representation becomes available.¹⁵⁶ Ms. Kule-Korgood noted, “When children with disabilities are mandated to receive certain services on their IEPs and those services are simply not provided due to a lack of providers, we tend to see an enormous number of due process complaints.”¹⁵⁷ She also noted that “[t]he lack of “authority to recommend the full panoply of services and placements” specified in IDEA causes many of these cases.¹⁵⁸ She stressed that it would be helpful to better understand what due process complaints are about and what caused them in the first place, in order to proactively address common issues before they rise to the level of a needing a due process complaint.¹⁵⁹

Ms. Banner noted, “I don’t think the Committee or the Commission should take the lesson that these problems don’t exist in other places because they don’t have as many due process complaints.”¹⁶⁰ Indeed, her colleague, Ms. Zeisel, suggested that the relatively large parent bar that exists in DC due to the low quality of services in the District might be a reason for the high rate of due process complaints locally.¹⁶¹ Ms. Zeisel shared, “[j]ust the volume of lawyers and experts and people to lean on here is much higher, so it’s much easier to build a parent bar [in DC] than it is in a state with a lot more rural community where it’s very hard to put that up.”¹⁶²

Ms. Gray shared, “I can't think of a reason why...a school would intentionally keep services from a student. ... I think sometimes it's about that evidence that either the school doesn't see and then that's when the parents says, ‘Well, if you don't see the evidence, I'm going to get an

¹⁵³ Ibid.

¹⁵⁴ Ibid., p. 10.

¹⁵⁵ Ibid.

¹⁵⁶ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 8.

¹⁵⁷ Ibid.

¹⁵⁸ Kule-Korgood Testimony, November 21, 2023 Briefing I, p. 14.

¹⁵⁹ Ibid., p. 16.

¹⁶⁰ Banner Testimony, May 10, 2024 Briefing V, p. 21.

¹⁶¹ Zeisel Testimony, May 10, 2024 Briefing V, p. 21.

¹⁶² Ibid.

attorney or an advocate or what have you to show you the evidence to prove that you're not doing what you need to do for my child.”¹⁶³

Answering the same question regarding the potential explanation for the high number of due process complaints, Alecia Walters, EdD, Education Program Specialist, Office of Special Education Programs, U.S. Department of Education, noted, “IDEA services should not be based upon funding. ... We understand there may be financial concerns, however, that was not the intent of the law. That wasn't the statute, that wasn't the guidance that we have released.... You are responsible to ensure your general supervision responsibility to identify and correct non-compliance, to look at your state performance report and analyze those numbers and make changes to look at your determination and self-assess reach.”¹⁶⁴

Dr. Walters continued, “[f]rom the federal level, ... what I'm hearing in regards to parents are being told to sue. I need to take it back to our leadership. ... in three years, we have not been hearing from a lot of DC parents. ... I was state lead for a very large state, where I would receive like 20 calls per day. I've even been the state lead for a small territory. I've worked with Americans Samoa and Micronesia, and I've probably received more calls from them than my team is telling me we have received from DC over the last three years. ... This is something we'd have to follow up on because, yes, you have your due process rights, but it shouldn't be a step in the process to receive individualized education services. There's nothing in the statute that states that.”¹⁶⁵

Regarding how to decrease the high due process rates in DC, Dr. Robertson suggested looking into “continuous quality improvement and continuous monitoring, and gathering more data from the interested parties as far as the family members, students with disabilities themselves, other allies in the system, and trying to just find out more regularly in terms of what is happening on the ground. And having more resources there I think would be really helpful and beneficial, and I think that's something that could be noted as far as on the approach here to address those concerns. They do sound like pretty significant concerns, but I think we just have to learn more about it to help with enhancing and refining the solution.”¹⁶⁶ Dr. Robertson also recommended adopting what other states have done to address due process complain issues in their urban spaces in order to understand models that could potentially work well in DC.¹⁶⁷

¹⁶³ Gray Testimony, May 2, 2024 Briefing III, p. 23.

¹⁶⁴ Walters Testimony, May 2, 2024 Briefing III, p. 23.

¹⁶⁵ Walters Testimony, May 2, 2024 Briefing III, p. 24. Dr. Walters noted that OSEP's customer service team has received very few complaints from parents/guardians/caregivers in DC in the last three years, none of which were related to transportation. They have only received 24 calls from parents between 1/21/21-5/2/24.¹⁶⁵

¹⁶⁶ Robertson Testimony, May 2, 2024 Briefing III, pp. 24-25.

¹⁶⁷ Ibid.

Finding X: Access to counsel is critical for increasing successful due process outcomes for children who need special education services.

In Connecticut and Massachusetts, when parents are represented by counsel, they win roughly 40% of cases, while when they are not represented, they win less than 5% of cases.¹⁶⁸ Typically, a parent requires an external expert’s opinion to succeed in a due process hearing regarding appropriateness.¹⁶⁹ Despite the existence of some legal aid and clinical lawyers for low-income parents, the number is insufficient to meet the demand.¹⁷⁰ Further, almost no experts involved are available for free or at a low cost.¹⁷¹ Mr. Feinstein noted that “what this means is that the IDE[A] has a pervasive structural bias against parents with limited income and that in a way translates to latent structural racism.”¹⁷² He shared that the reason for the prevalence of expensive confrontational due process hearings in jurisdictions like New York, District of Columbia, and Puerto Rico is the refusal of school officials to work collaboratively with parents in resolving disputes.¹⁷³ In certain cases, he noted, “school districts failed to send representatives to mediation or resolution sessions,” resulting in a missed opportunity to negotiate a settlement.¹⁷⁴

Ms. Decker noted, “Filing a due process complaint demands a comprehensive grasp of special education law, access to legal counsel, time and financial resources, all of which may be scarce for parents, guardians who are displaced, facing poverty or perhaps have disabilities themselves. This process also might pose an additional challenge for individuals who do not primarily speak English.”¹⁷⁵

The Children's Law Center assists Black and Brown, low-income families to access non-public schools through litigation. However, the options are limited compared to families who can afford tuition upfront and then sue for reimbursement.¹⁷⁶ Private schools often do not accept students as prospective placements, meaning that families cannot litigate to secure a placement unless they can afford to pay tuition upfront.¹⁷⁷ These schools prioritize students whose parents can pay, making litigation necessary to seek reimbursement for tuition payments.¹⁷⁸ As a result, low-income students may not have a litigation pathway to gain admission unless a referral is sent by the school agreeing to their need.¹⁷⁹

¹⁶⁸ Feinstein Testimony, November 21, 2023 Briefing I, p. 4.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Decker Testimony, May 10, 2024 Briefing V, p. 17.

¹⁷⁶ Zeisel Testimony, May 10, 2024 Briefing V, p. 22.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

Mr. Feinstein noted, “I think the IDEA was originally intended to be a do it yourself statute where parents could secure relief directly, but it's become an incredibly complicated tangle of legal restrictions, many of which operate against parents. And so legal counsel and well-trained advocates are crucial to get the benefits of the law.”¹⁸⁰

Finding XI: Creative, innovative, and data-based strategies for ensuring special education service provision and compliance are needed in order to reduce the need for due process complaints to resolve issues.

Ms. Griswold, a former special education teacher in the DC Public Schools, noted that litigation often was the only productive solution for receiving assistance, and she often recommended Children’s Law Center as an employee herself “because I knew it was the only way that families would get the support that they needed.”¹⁸¹ She continued, “oftentimes, litigation was the only result that came forth in producing something that would be helpful to the young person. And then on an equity scale, the families that I’ve worked with who have parents as lawyers and live in certain quadrants of the city, have been successful in their litigation whereas families I worked in schools in both Wards five and eight did not continue with litigation because of the process and because of the time commitment. The requiring for having work off. And then the just the lack of resourcing around how to support someone through that process.”¹⁸² She noted, “There were always staff shortages at each school setting she experienced, children weren’t receiving services because of a lack of providers despite multiple streams of funding.”¹⁸³

In light of the current environment of suing to gain access to entitled services, the Committee was eager to hear about potential alternatives to explore. Ms. Kule-Korgood shared information about one option that New York has used: “NY’s dual enrollment provision requires school districts to furnish special education and related services to NYS students with disabilities who are enrolled in private schools. In other words, a student can be enrolled in a private school for their primary education, and simultaneously “enrolled” in a public school for purposes of receiving special education services. Those services are not necessarily provided on the grounds of the private school (though in some cases, they are).”¹⁸⁴

Connecticut passed legislation preventing retaliation against teachers for speaking on behalf of youth who need services.¹⁸⁵ Mr. Feinstein noted, however, that “it's more than just fear of retaliation. It's that we've got to create an ethos within the school system that teachers, related service providers, school administrators, see it as their duty, see it as their moral obligation to

¹⁸⁰ Feinstein Testimony, November 21, 2023 Briefing I, p. 4.

¹⁸¹ Griswold Testimony, May 10, 2024 Briefing V, p. 33.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Kule-Korgood Written Statement, Nov. 11, 2024, at 1; referring to NY Education Law Sec. 3602-c, <https://www.nysenate.gov/legislation/laws/EDN/3602-C>.

¹⁸⁵ Feinstein Testimony, November 21, 2023 Briefing I, pp. 17-18, Conn. Gen. Stat. § 10-76d(i).

seek the appropriate services for students with disabilities, particularly those who do not have parents out there fighting for them.”¹⁸⁶

St. Coletta of Greater Washington has a lower rate of due process complaints compared to the District.¹⁸⁷ Ms. Warden shared their approach to resolving issues, which includes building relationships with families to more effectively communicate needs early and clearly, using data to guide decisions, and tailoring decisions to each student rather than using a one-size fits all approach.¹⁸⁸

Exploring monitoring and oversight strategies could also be helpful in reducing due process complaints. Ms. Gray provided strategies the DC Public Charter Schools use to monitor for equity and quality: The Annual School Performance Index Report and Evaluation System, or, ASPIRE, and the Special Education Audit and Monitoring Policy, or SEAMP, and their Mystery Caller Initiative.¹⁸⁹ ASPIRE looks at academic achievement, attendance, and re-enrollment,¹⁹⁰ SEAMP looks at disproportionate out-of-school suspensions, disproportionate mid-year withdrawal rates, disproportionate re-enrollment rates, and poor results in a special education quality site review,¹⁹¹ and the Mystery Caller initiative uses the mystery shopper model in which DC PCSB volunteers and outside contractors pose as family representatives to inquire about special education programming and enrollment processes during the enrollment season.¹⁹² The DC PCSB also collaborates with OSSE to align oversight and support efforts.¹⁹³

Ms. Simbana, recommended DCPS allow outside providers to come in to schools and offer services as a way to alleviate the strain of inadequate in-house services.¹⁹⁴ She also noted that an active parent union, of sorts, would help parents be heard and work together towards proactive, non-litigative solutions.¹⁹⁵ She noted, “[w]e have reached out to the Office of Student Advocate, to OSSE directly, to DCPS. Some students are in charter schools. We reached out to the Office of the Ombudsman. And always the answer is that this is a unique situation. That, well, we can't look for overall solutions because of privacy and families do want to work together to help improve this situation for all. It would be great to have a place where we can actually be heard and, like the busing issue, that got movement once parents united together. But that's such an extreme situation that it had to reach a certain level for it to go to lawsuits. There should be

¹⁸⁶ Ibid., p. 18.

¹⁸⁷ Warden Testimony, May 10, 2024 Briefing V, p. 18.

¹⁸⁸ Ibid.

¹⁸⁹ Gray Testimony, May 2, 2024 Briefing III, pp. 7-9.

¹⁹⁰ Ibid., p. 7.

¹⁹¹ Ibid., p. 8.

¹⁹² Ibid., p. 9.

¹⁹³ Ibid., pp. 9-10.

¹⁹⁴ Simbana Testimony, May 10, 2024 Briefing V, p. 33.

¹⁹⁵ Ibid., p. 34.

solution oriented avenues that can avoid lawsuits and help solve these problems ahead of time.”¹⁹⁶

Foster Care

OSSE has a memorandum of agreement with the DC Child and Family Services Agency (CFSA) and the District of Columbia Public Schools to ensure students in foster care receive education, which also includes services for students placed in out of state placements by CFSA.¹⁹⁷ This agreement clarifies each agency’s responsibilities and ensures students are monitored according to federal and local laws and regulations.¹⁹⁸ OSSE also partnered with CFSA to develop non-regulatory guidance to assist LEAs in providing educational stability for foster care students with disabilities, which has been posted to OSSE’s website and shared with foster care contacts.¹⁹⁹

Finding XII: Foster youth with special education needs are more likely to drop out of school and less likely to graduate high school than their peers without special education needs.

Ms. Sivilli noted that, compared to the general population, foster youth are three times more likely to be involved in special education,²⁰⁰ more likely to drop out of school,²⁰¹ and less likely to graduate high school.²⁰² Inadequate funding and services for special education raises the risk of academic failure for foster youth.²⁰³ Foster youth with special education needs are particularly at risk of negative education experiences, as adults aren’t always aware the child is in foster care, leading to impactful knowledge gaps in a child’s service provision team.²⁰⁴ Court-involved foster youth face challenges that include inconsistent placements, healthy social-emotional connections, and a history of trauma.²⁰⁵ By design, school personnel, including teachers, are not informed when a youth is court-involved, compounding issues in access to and continuity of special education services.²⁰⁶

¹⁹⁶ Ibid.

¹⁹⁷ OSSE Written Comment, June 10, 2024, at 4.

¹⁹⁸ Ibid.

¹⁹⁹ OSSE Written Comment, June 10, 2024, at 4; *See* Office of the State Superintendent of Education & Child and Family Services, District of Columbia Non- Regulatory Guidance: Elementary and Secondary Education Act (ESEA) Provisions Regarding Educational Stability for Children in Foster Care, Office of the State Superintendent of Education and Child and Family Services Agency (2016), <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/ESSA%20Foster%20Care%20Provision%20Guidance.pdf>.

²⁰⁰ Sivilli Testimony, May 2, 2024 Briefing III, p. 10.

²⁰¹ Sivilli Testimony, May 2, 2024 Briefing III, p. 11; U.S. Department of Education, Students in Foster Care, at: <https://www2.ed.gov/about/inits/ed/foster-care/index.html>.

²⁰² Sivilli Testimony, May 2, 2024 Briefing III, p. 11.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid., p. 10.

²⁰⁶ Ibid., p. 10.

According to the DC government, there are 577 children in foster care in FY2023.²⁰⁷ The U.S. Department of Health and Human Services reported that nationally there were 391,000 children in foster care as of September 30, 2021.²⁰⁸ Approximately 15% of public school students receive special education services nationally and in DC, however, 40% of foster youth receive special education services nationally and in DC, according to CASA DC’s internal data collection of youth in the district.²⁰⁹ In school year 2022-2023, approximately 15,000 DCPS students received special education services, and approximately 6,000 were also in foster care.²¹⁰

Finding XIII: Children entitled to special education services who are also in foster care require additional considerations to ensure access and continuity of services.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 amended the Social Security Act to require states to ensure the educational stability of children in foster care.²¹¹ This law was updated in the Every Student Succeeds Act of 2015.²¹² Foster youth are supposed to receive access to special education services through a court-appointed education attorney, however, Ms. Sivilli noted that high attorney workload and the attorney’s proficiency in special education services specifically are important questions to consider when reviewing concerns about access to special education services for foster youth.²¹³ Importantly, many professionals supporting foster youth are not also specialists in accessing special education services.²¹⁴ Ms. Sivilli shared, “I have found solutions to not having adequate services by not going a legal route. So can we work within the school system and get this resolved? Whereas I wonder if by going the legal route, it’s potentially because we don’t have people within the system that can solve that issue.”²¹⁵

While a child is in foster care, their parent remains the parent for purposes of pursuing special education services unless they are unable to fulfill their role, at which point a surrogate is assigned to advocate for the child’s interests.²¹⁶ When this happens, there may be inherent disagreements between a foster child’s school preferences and a surrogate’s perception of the child’s best educational environment.²¹⁷ The issue is compounded when there is a lack of good

²⁰⁷ DC Child and Family Services, Total Children and Families Served in Foster Care, at: <https://cfsadashboard.dc.gov/page/total-children-and-families-served-foster-care> (March 15, 2023).

²⁰⁸ U.S. Department of Health and Human Services, Administration for Children and Families, *Trends in Foster Care and Adoption: FY 2012 – 2021*.

²⁰⁹ Sivilli Testimony, May 2, 2024 Briefing III, p. 10.

²¹⁰ Ibid.

²¹¹ Pub. L. No. 110-351, 122 STAT. 3949.

²¹² Pub. L. No. 114-95, 129 STAT. 1802.

²¹³ Sivilli Testimony, May 2, 2024 Briefing III, p. 20.

²¹⁴ Ibid., p. 11.

²¹⁵ Ibid., p. 20.

²¹⁶ Almazan Testimony, November 21, 2023 Briefing I, p. 17.

²¹⁷ Ibid.

counsel for foster children with special education needs.²¹⁸ CASA DC works to address these issues by providing advocacy and mentorship to court-involved youth for the duration of the youth's involvement with the court through volunteers who are appointed by the court and work on a one-to-one basis.²¹⁹

In response to a question about whether students have stability in staying in their school when they have a placement transition, Ms. Sivilli said that context can matter: "So I know that a lot of our youth do receive transportation services. And the schools, yes, if a youth changes placement, they are supposed to be maintaining their school, and that does happen. However, some of our youth are moved pretty far away. You can be in different corners of DC. And so, suddenly, to have a fifth grader waking up and getting on the bus at 6:00 AM, and traveling two hours each way isn't feasible. So while yes, that is important, there becomes a question of logistics of feasibility. So that's happening."²²⁰ She noted that the IEP does follow the student, but there can be questions about whether it is being transferred in a timely manner, going to the right contacts, and whether the new school has the tools to implement services.²²¹

Transportation

Only students with IEPs or 504 plans are provided with education-related transportation in the District.²²² OSSE has the obligation to provide transportation to students with disabilities, which has been a long-standing issue in DC.²²³ Only the state education agency (OSSE) provides transportation services, not the local educational agencies.²²⁴ As with all District agencies and services, the DC Council allocates funding for transportation services, as approved by the Mayor and the House of Representatives.²²⁵ OSSE oversees the implementation and provision of transportation services.²²⁶

OSSE notes that it currently has sufficient buses, drivers, and bus aides "to meet the transportation needs of students in special education in a fair and equitable manner for all District residents."²²⁷ OSSE provided the following information relating to OSSE bussing and staffing:

²¹⁸ Ibid.

²¹⁹ Sivilli Testimony, May 2, 2024 Briefing III, p. 10.

²²⁰ Ibid., p. 28.

²²¹ Ibid.

²²² Blaeuer Testimony, March 20, 2024 Briefing II, p. 2.

²²³ Ibid., p. 4.

²²⁴ Ibid.

²²⁵ OSSE Written Comment, June 10, 2024, at 3.

²²⁶ Blaeuer Testimony, August 15, 2023 Speaker Meeting, p. 4; Blaeuer Testimony, March 20, 2024 Briefing II, p. 8.

²²⁷ OSSE Written Comment, June 10, 2024, at 3.

Sufficient Bus Availability

OSSE currently has 647 school buses. OSSE's current student ridership demand requires approximately 550 routes. The current fleet level is sufficient to meet current service demand.

Sufficient Staff Availability

Student transportation staffing has been, and continues to be, a regional and national problem since the onset of the COVID-19 pandemic. The District is in stiff competition for a specialized and shrinking workforce with our neighbors in Maryland and Virginia. As explained below, OSSE has been working to address staffing shortages by improving transportation staff recruitment efforts, decreasing service demand placed on OSSE transportation employees, and increasing the efficacy of current OSSE transportation employees.

OSSE has provided signing bonuses for new hires and partnered with other District agencies to expand the pipeline of potential drivers. For example, OSSE collaborated with the District's Department of Motor Vehicles to send out notice of an OSSE transportation staff hiring fair to more than 4,500 active Commercial Driver License (CDL) holders. Additionally, OSSE is building the pipeline of District CDL-holders through a partnership with the District of Columbia Infrastructure Academy.

To decrease the number of OSSE transportation staff required, and to increase route efficiency, OSSE has increased the use of private route operators. In School Year 2022- 2023, OSSE contracted with six private route vendors. In advance of School Year 2023- 2024, OSSE contracted with eight private route vendors. Additionally, OSSE launched a new program this spring enabling any family who currently utilizes OSSE transportation services to opt into a \$400 monthly subsidy from OSSE to cover the cost of self- transporting their student to school. As of April 2024, approximately 180 families self- transported their students. As of January 2023, OSSE transported 29 students using private contractors; as of March 2024, that number was more than 300.

OSSE implemented targeted incentives to increase the effectiveness of currently employed staff. At the start of School Year 2022-2023, OSSE piloted an attendance incentive program that provided individual drivers and attendants with financial bonuses for perfect attendance. OSSE renewed this pilot program for School Year 2023-24.

Collectively, these efforts allow OSSE to maintain equitable student transportation service delivery. The current staffing level is sufficient to meet current service demand. OSSE has, and will continue, to meet the transportation needs of students in special education within DC.²²⁸

Finding XIV: The District of Columbia’s current transportation system for special education poses a significant burden on DC students and families. Long delays, unreliable schedules, and lax oversight causes significant harm for students, including suffering violence, and has a disparate impact on households that cannot provide their own transportation for students when the DC transportation system fails.

Since IDEA was last reauthorized in 2004, there have been changes in technology and an increase in a need for transportation.²²⁹ In DC, if a parent has a complaint regarding transportation services, they can file a complaint to OSSE, can request mediation, and can file a due process hearing.²³⁰ As a result of previous legal action regarding safe and dependable transportation,²³¹ the court closely supervised and monitored OSSE’s transportation services.²³²

Ms. Blauer noted that the current transportation system for children with special needs is overburdened and insufficient.²³³ Ms. Banner shared that the district’s transportation is “unsafe, unreliable, and inappropriate to meet the needs of the district’s students.”²³⁴ Students are relocating across the city to access programs due to unequal access. The unequal lottery access for students with disabilities deprives them and their families of “the ability to select educational locations and placements” like their non-disabled peers.²³⁵ The District’s out of jurisdiction placement rates are among the highest in the country, and requires transportation to students attending schools in Virginia and Maryland.²³⁶

On May 7, 2024, a class action lawsuit was filed against OSSE for “failing to provide safe, reliable, and effective transportation to and from schools,”²³⁷ issues which were also previously

²²⁸ OSSE Written Comment, June 10, 2024, at 3-4.

²²⁹ Walters Testimony, May 2, 2024 Briefing III, p. 3.

²³⁰ *Ibid.*, p. 6.

²³¹ *Petties v. District of Columbia*, 881 F. Supp. 63 (D.D.C. 1995); *Petties v. DC* litigation was a class action lawsuit regarding safe and dependable transportation for special education students in the District, *Petties v. D.C.*, 1:95-cv-00148 (District of Columbia 1995):

<https://clearinghouse.net/case/9879/#::~:~:text=The%20court%20issued%20its%20preliminary,from%20a%20private%20third%20party>; Blauer Testimony, August 15, 2023 Speaker Meeting, p. 4.

²³² Blauer Testimony, March 20, 2024 Briefing II, p. 10.

²³³ Blauer Testimony, August 15, 2023 Speaker Meeting, p. 12.

²³⁴ Banner Testimony, May 10, 2024 Briefing V, p. 10.

²³⁵ Blauer Testimony, August 15, 2023 Speaker Meeting, pp. 11-12.

²³⁶ Blauer Testimony, March 20, 2024 Briefing II, pp. 2-3.

²³⁷ Banner Testimony, May 10, 2024 Briefing V, p. 10.

addressed in *Petties v. DC*.²³⁸ In 2014, after extensive court supervision required by *Petties v. DC*²³⁹ was resolved, ride times were 60-90 minutes and DC was required to get children to school about 94% on time.²⁴⁰ Almost immediately after the case ended, similar issues returned, and children didn't return to school for days to weeks at a time while OSSE attempted to fix routing problems.²⁴¹

Ms. Zeisel shared that buses are now either late or not arriving at all and there is a lack of appropriate staffing for safe rides, including nurses that some students need for safe transport.²⁴² Additionally, students are arriving too late or not arriving for services and missing them, and are arriving home soiled, hungry, and thirsty.²⁴³ She noted families need to have buses arriving on time both at home and at school, with a predictable schedule, throughout which parents have accurate and timely communication about their child's whereabouts.²⁴⁴

Current transportation issues include appropriate technology to capture ridership – other school districts use tablets or phones, while DC still uses pen and paper.²⁴⁵ DC is in charge of setting its own measures of success, and shifted its own metrics to track on-time arrivals to whether the bus left the terminal on time, which does not relate to when buses are actually arriving in the morning or evening.²⁴⁶ The consequences of inadequate transportation and communication include missed learning time, missing appointments for related services like physical and occupational therapy, paying for Ubers to transport children, and families self-driving children when possible.²⁴⁷

OSSE has set a wide timeframe for their definition of on-time.²⁴⁸ Prior to 2020, it was expected to take approximately 75 minutes for a child to commute from home to school in DC. If the bus arrived at the school within 75 minutes, it was considered an on-time ride.²⁴⁹ OSSE has extended the time limit for distances between six and 15 miles from 75 to 105 minutes, and they have now allotted a 2-hour window for getting students to school.²⁵⁰ The ride time for distances longer than 15 miles is 190 minutes, which is a 75-minute increase.²⁵¹ These ride times are critical to consider for children with special education needs. They are uniquely vulnerable in situations

²³⁸ *Petties v. District of Columbia*, 881 F. Supp. 63 (D.D.C. 1995); Zeisel Testimony, May 10, 2024 Briefing V, p. 7.

²³⁹ *Supra* note 232.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ Banner Testimony, May 10, 2024 Briefing V, p. 11.

²⁴⁵ Zeisel Testimony, May 10, 2024 Briefing V, pp. 7-8.

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*, p. 8.

²⁴⁸ Blaeuer Testimony, March 20, 2024 Briefing II, p. 9.

²⁴⁹ *Ibid.*, p. 10.

²⁵⁰ *Ibid.*, pp. 10-11.

²⁵¹ *Ibid.*, p. 11.

where they cannot be located and potentially communicate their needs – children arrive at school or home distraught and unable to learn when there are transportation failures.²⁵²

Ms. Banner shared recommendations with the Committee relating to recommendations that have been proposed to help address the current issues: GPS tracking for buses; practice for tracking and analyzing ride data to adjust routes to spot and address problems; parent communication system; sufficient staffing numbers and expertise including nurses, aides, terminal staff; an appropriate fleet to ensure wheelchair accommodations; air conditioning for students sensitive to changes in body temperature; policies and practices to ensure both employees and contractors know how to work with individuals with disabilities.²⁵³ Regarding staffing for transportation, Ms. Blaeuer noted that other jurisdictions have used contracts with private vendors or have developed contracts that allow for hiring non-CDL licensed drivers in order to meet the current need.²⁵⁴

Ms. Banner and Ms. Zeisel noted that they represent five families who are experiencing ongoing transportation failures, and have also “asked the court to certify a class action so that we can seek relief on behalf of the more than 4,000 students who rely on district transportation every day.”²⁵⁵ Ms. Banner noted, “[w]e also alleged that the [D]istrict's failures to provide safe and reliable transportation violates Section 504 of the Rehabilitation Act,²⁵⁶ the Americans with Disabilities Act²⁵⁷ and the DC Human Rights Act.²⁵⁸ These statutes broadly prohibit discrimination against people with disabilities and taken together impose on the [D]istrict a series of affirmative legal obligations to create policies ensuring the provision of education to students with disabilities. Indeed, Congress enacted the ADA²⁵⁹ to provide a clear and comprehensive mandate to eliminate discrimination against people with disabilities and to provide strong and consistent standards for identifying and addressing such discrimination. By systematically failing to run a transportation system that can deliver safe, reliable, and appropriate transportation, the district is denying them an equal opportunity to participate in and benefit from district's education and unnecessarily segregating them from their peers.”²⁶⁰

Schools are often blamed for transportation disruptions despite having little control over the provision of services and lacking the financial and personnel resources to offer alternatives.²⁶¹

Ms. Decker echoed the barriers they have noticed relating to transportation for their students at

²⁵² Zeisel Testimony, May 10, 2024 Briefing V, pp. 7-8.

²⁵³ Banner Testimony, May 10, 2024 Briefing V, pp. 11-12.

²⁵⁴ Blaeuer Testimony, March 20, 2024 Briefing II, p. 9.

²⁵⁵ Banner Testimony, May 10, 2024 Briefing V, p. 10.

²⁵⁶ 29 U.S.C. § 794.

²⁵⁷ 42 U.S.C. § 12101.

²⁵⁸ D.C. Code §§ 2-1401.01 – 2-1401.06.

²⁵⁹ *Supra* note 258.

²⁶⁰ *Ibid.*, p. 11.

²⁶¹ Decker Testimony, May 10, 2024 Briefing V, p. 16.

St. Coletta. She noted that their students face significant disruptions when transportation issues arise, especially when they cannot ride the bus to school, as there are few alternative options available, noting “[a] student on a ventilator cannot simply hop into an Uber or access transportation.”²⁶² She shared that families of students who thrive on routine may struggle to transport their child to school when the bus fails to arrive without encountering significant behavioral challenges.²⁶³ Additionally, some students who could ride in a car may lack access to one and find ride-share options too expensive to use.²⁶⁴ Further, foster care students entitled to continued education may lose access to OSSE DOT transportation services once they are adopted.²⁶⁵

Emily Griswold, a former DCPS special education teacher of 10 years, shared that she knows two colleagues who left teaching due to the transportation issue specifically, due to staying at school until 7 pm at night for buses to show up, and subsequently being unable to attend to what they might have needed in their personal lives.²⁶⁶

There are already efforts underway to address some of the identified problems. OSSE recently introduced a program where eligible families can receive \$400 per month to support self-transportation of students.²⁶⁷ Regarding legal obligations, Ms. Zeisel said, “Parents and caregivers should not have to provide the services because OSSE is failing at their legal responsibilities. OSSE currently implements reimbursement programs and a parent stipend program offering parents only \$400 a month to drive the children to school themselves. Parents sometimes take advantage of these programs because they feel they have to, so we should not have a system where we allow OSSE to [abdicate] the responsibility to operate a functioning transportation system and pass that on to parents.”²⁶⁸

Many families find \$400 a month insufficient, particularly if their children are enrolled in schools in Maryland or Virginia.²⁶⁹ While transportation reimbursement may work for certain families, it does not address the systemic issue of failing to provide transportation services students are entitled to, as it transfers the burden of logistical and paperwork demands onto the families.²⁷⁰ Ms. Blaeuer shared, “...the families I do know who are taking advantage of it are reporting a three and four month delay...”²⁷¹ There are additional concerns about reimbursements for transportation incorrectly being coded as income, adversely impacting some

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Griswold Testimony, May 10, 2024 Briefing V, p. 32.

²⁶⁷ Blaeuer Testimony, March 20, 2024 Briefing II, p. 5.

²⁶⁸ Zeisel Testimony, May 10, 2024 Briefing V, p. 9.

²⁶⁹ Blaeuer Testimony, March 20, 2024 Briefing II, pp. 5-6.

²⁷⁰ Ibid., p. 11.

²⁷¹ Ibid., p. 12.

families who are dependent on public benefits, including Medicaid.”²⁷² Although some families were able to have this issue retracted and fixed, Ms. Blaeuer noted that some families may not have known about this issue and its potential impact on their child’s eligibility for public services, and may not have sought to have the issue remedied.²⁷³

OSSE has developed a texting program to notify parents about bus delays, but it has been very unreliable, and it only recently became somewhat language accessible.²⁷⁴ OSSE now provides updates online regarding the number of delayed buses and the routes that are experiencing delays or not being serviced for the day, however, accuracy of the data is still a problem.²⁷⁵ The District has invested heavily in modernizing its data system, but the transition has been problematic, causing a disproportionate impact on OSSE’s transportation operations.²⁷⁶

OSSE has been developing an app for approximately five years that enables families to monitor the location of their students and the bus. It has undergone three pilot tests with various vendors.²⁷⁷ Ms. Blaeuer noted that if families could check their phones to see the real-time bus arrival information, they might be more understanding about a late bus.²⁷⁸ This would allow parents to plan their schedules instead of waiting outside for the required half-hour timeframe.²⁷⁹ Ms. Blaeuer also noted additional progress in the area of safety on the buses: OSSE is looking into installing cameras which would be significant progress because there are numerous non-verbal children on the bus who are unable to report an incident.²⁸⁰

Finding XV: Families are left to navigate and cover gaps in transportation services they are entitled to.

Parents of these students who have been failed by DC’s transportation system have experienced disruptions in different areas of their lives, such as their work schedules and their ability to tend to their children’s needs.²⁸¹ Navigating the process to obtain bus pickups for a child is, in practice, extremely arduous.²⁸² Filing a state complaint about transportation is challenging because many families are hesitant to request OSSE’s investigation as part of the process, which is quite long, lasting a total of ninety days.²⁸³

²⁷² Ibid., p. 12.

²⁷³ Ibid., p. 16.

²⁷⁴ Ibid., p. 7.

²⁷⁵ Ibid.

²⁷⁶ Ibid., p. 11.

²⁷⁷ Ibid., p. 8.

²⁷⁸ Ibid., p. 9.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Blaeuer Testimony, August 15, 2023 Speaker Meeting, p. 12.

²⁸² Ibid., p. 4.

²⁸³ Blaeuer Testimony, March 20, 2024 Briefing II, p. 14.

In the District, there is a school choice policy where a child's school could potentially be located across town, however, without reliable transportation, students with disabilities cannot access school choice in a meaningful way as the burden falls to the parent to provide transportation to schools that may be outside of their immediate community.²⁸⁴ Ms. Blauer noted, "In the space in the District, we talk a lot about where schools are and where kids they're commuting to, and that's important to think about and talk about. But we also need to think about and talk about the push and pull of why that is happening. And sometimes that is happening because there are not good choices in your community. And sometimes that is happening because the District has deliberately underinvested and your student cannot be served close to home, which now means that they have to take transportation to get to school."²⁸⁵

There is a lack of awareness among families regarding available resources, and not all families can afford private transportation or rely on Uber until OSSE improves.²⁸⁶ When transportation issues arise, parents may receive reimbursement for their travel expenses, either at the federal rate or at the Uber rate.²⁸⁷ Parents can only potentially receive a remedy if they choose to take legal action and switch to private transportation, or if they advocate for private transportation at the IEP level.²⁸⁸ Many parents support the idea of a class action because few families have the ability to advocate or hire a lawyer for better results.²⁸⁹

Ms. Blauer shared a quote from Nadia Roberts, Intake Specialist at Advocates for Justice and Education, Inc., speaking as a family member sharing her experiences with accessing transportation services: "Even when you win at hearing, the relief you receive doesn't even begin to cover what you actually lost when the bus doesn't arrive on time. You're still out lost wages. The reimbursement rate is not adequate to cover what you spend rearranging your morning, the cost of alternative transportation, and the time you spend doing all of this because you can't count on OSSE to provide transportation. It's like even when you win, you still lose."²⁹⁰

Despite being reimbursed for driving her son to school because the bus didn't come, her son didn't receive compensatory education. She also didn't get compensated for the hours she missed at work.²⁹¹ As an intake coordinator at Advocates for Justice and Education, Ms. Roberts at least weekly refers families to organizations like First Shift Justice when they have faced negative employment actions due to these transportation issues for their children.²⁹²

²⁸⁴ Ibid., pp. 7-8.

²⁸⁵ Blauer Testimony, August 15, 2023 Speaker Meeting, p. 12.

²⁸⁶ Blauer Testimony, March 20, 2024 Briefing II, p. 15.

²⁸⁷ Ibid., p. 14.

²⁸⁸ Ibid.

²⁸⁹ Ibid., p. 15.

²⁹⁰ Blauer Testimony, March 20, 2024 Briefing II, p. 3.

²⁹¹ Ibid.

²⁹² Ibid.

Finding XVI: There are severe intersectional impacts of transportation-related concerns.

There is a disparate impact of transportation-related failures based on race and socio-economic status, as well as disability of the parent.²⁹³ Ms. Blaeuer shared, “[d]isproportionately students with disabilities live in Ward seven and eight. [Ward] five has also got a little bit of disproportionality there too. And we know that disproportionately students of color, particularly if they have an...emotional disturbance classification, are in more restrictive settings. And we know more restrictive settings are less likely to be close to you...we've got more kids from Ward seven and eight going further, and we also have fewer kids exiting special education period, particularly if they are of color.”²⁹⁴

Ms. Blaeuer noted that recent arrivals and non-English speaking families particularly struggle with language access with OSSE’s services.²⁹⁵ She notes OSSE is “working on it, but the text updates, the information has not always been language accessible. That's been an issue. Their demand for a social security number and not explaining that there are alternative numbers you can provide, if you're not someone with a social security number yet, or an alternative form of identification, have been a problem for the reimbursement and the stipend.”²⁹⁶

The ability of a parent who has a disability themselves to access many of the programs students are entitled to is also sometimes limited.²⁹⁷ She notes, “we see the disparate impact is really around customer service, and what you think is acceptable, and what you think is an okay way to talk to a family who calls, what this family should expect.”²⁹⁸ Highlighting the lack of respect for families who inquire about assistance, Ms. Blaeuer shared with the Committee: “I want to be very clear, there are kind, good, smart, generous, very hardworking people working at OSSE, who I have a lot of respect for, and I don't know if it's burnout or just catch[ing] them on the wrong day. I'm often appalled at how some of my non-English speaking families or families of color, who because of the neighborhood they're in, there's an assumption made about them, because of their housing, how they're spoken to when they attempt to raise these concerns.”²⁹⁹

Parent testimonials regarding transportation

Ms. Roberts offered remarks at the Committee’s March 20, 2024 briefing regarding her experience as a family member with accessing transportation services and an Intake Specialist at Advocates for Justice and Education. Ms. Roberts explained that a bus delay can create a challenging morning for the family with a child with a disability as it disrupts their routine. Her

²⁹³ Ibid., p. 17.

²⁹⁴ Ibid., p. 21.

²⁹⁵ Blaeuer Testimony, March 20, 2024 Briefing II, p. 17.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

work starts at 9:00 a.m., so she needs to reorganize things to ensure her child’s school drop-off and her punctual arrival at work, if feasible.³⁰⁰ When the bus is delayed, her first step is to check if it will arrive at all so that she can plan accordingly.³⁰¹ When she wants to make a complaint, she contacts OSSE, where she waits on hold for at least 20 to 40 minutes, or potentially even longer, and still may not have a complaint resolved.³⁰² On a weekly basis as an Intake Specialist, Ms. Roberts hears from families who are encountering the problem of buses not appearing.³⁰³ In order to file a due process complaint, Ms. Roberts had to retain an attorney and take about two weeks off work.³⁰⁴ The stated timeframe for resolving complaints is 60 to 90 days, but in practice, the timeframe is more typically 90-120 days, and may not resolve the basic issue of the bus arriving or not.³⁰⁵

Ms. Mitchell noted that her son has autism, which is fairly common yet there were no available schools in DC that could take him, so he attended school in Baltimore,³⁰⁶ which led to personal travel to and from Baltimore that she still has not been reimbursed for,³⁰⁷ along with extremely long travel times without advance notice or alternative plans from OSSE to safely transport her child. She noted, “[w]e had a day where my son was on the bus just coming back from Baltimore for over four hours because something happened to the original bus. They had to double up the route. They never let us know. If I had known, I would’ve said, listen, keep him there. I’ll come drive up.”³⁰⁸

Ms. Mitchell shared a deeply concerning experience regarding her son’s safety while on the bus:

“[My child] was bullied by another student on the bus. This was something that went on and we didn’t actually find out about it until someone at school witnessed an event. So one of the people at his school actually witnessed the other child hit him, and at that point, because the school had seen it, they told us what was going on. I reached out to OSSE several times to try and figure out what was happening, didn’t get a response... This was 2022 and 2023... My son doesn’t always communicate totally clearly so it was difficult for me to figure out is he really getting hit? Is he really getting bullied? What’s the experience? Because I’m hearing different things from him.

³⁰⁰ Roberts Testimony, March 20, 2024 Briefing II, p. 4.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Roberts Testimony, March 20, 2024 Briefing II, p. 6.

³⁰⁴ Ibid., p. 4.

³⁰⁵ Blaeuer Testimony, March 20, 2024 Briefing II, pp. 4-5; Roberts Testimony, March 20, 2024 Briefing II, pp. 4-5.

³⁰⁶ Mitchell Testimony, May 7, 2024 Briefing IV, p. 13.

³⁰⁷ Ibid., p. 4.

³⁰⁸ Mitchell Testimony, May 7, 2024 Briefing IV, pp. 4-5.

He was in a fragile state because of having to be on the bus for so long. So I reached out. I asked the attendant if he could sit in a different place away from this child, but the child kept kind of trying to engage him, trying to hit him. The kid would have good days or bad days. Eventually though, I witnessed an interaction and it broke my heart. He was going to school. He was getting on the bus to go to school. This is 5:30 in the morning because in order for them to get pick up all these kids and get him to school by eight, they had to start the route at 5:15.

So I just remember it was very dark outside. It was pitch black. The lights and the bus are on, and I see my child go on the bus and I see this kid just punch him in the stomach and I see my child crumple and just start crying, and the lights just went off and the bus took off. I had no opportunity to go comfort my child. I couldn't tell what had happened. I couldn't do anything, so I was shattered. I went inside. I immediately emailed the head of OSSE DOT. I emailed the school. I emailed everybody because I just needed to know that he was okay. I texted the mother who was at the next stop to say, "Look, I just saw this child punch my son. Can you check?"

And I was very lucky because she actually has to get on the bus and strap her child in. So she's actually allowed to come on the bus. So she was able to about a half hour later, text me and say, "I checked up on him. He's okay. He was wiped off his tears. He's okay, he's doing well." But it was just a really harrowing experience to just see this thing happen to your child in front of you in real time, have the bus take off and then email everybody and just have no communication about it. No one responded. Each time I talked to OSSE about it, they said they couldn't give me details. It was months before they finally actually came up with an action plan. The school was more than willing to work with the attendance and the driver to come up with a behavior plan.

No one was talking about taking any children off the bus, just figuring out how to get them on the bus and be more safe. And eventually he had another altercation where the school witnessed it and they removed the student from the bus.

But this hadn't been shared with anyone on the bus, including the student who was removed from the bus. So on Tuesday, when that student was returning to school, my child gets on the bus, this other student isn't on the bus, and then the mother is frantically texting all of us to be like, the bus never came.

Eventually, she came to blame us for the student being taken off the bus, which we had nothing to do with that choice, but it just really could not have been handled in a worse way. The bullying went on way longer than it needed to. There could have been behavior interventions, there could have been all sorts of different things. OSSE and the school could have worked together to really prevent a lot of what happened. And also just the communicating of that really, it never should have gotten to that level.”³⁰⁹

Ms. Mitchell also described parents’ fears in raising issues with OSSE due to fear of retaliation of losing their placement and services, noting that the Committee likely would not be hearing from many individuals due to the fear of losing access to the bus entirely.³¹⁰ She noted that her family’s experiences have been shared by many others, including consistent issues with misinformation for bus location and timing, issues with the parent call center not having the tools they need to contact buses directly, driver shortages, and attempts by parent advocates to improve technology issues that are still not solved.³¹¹ She said, “...we've been asking for a long time for an app because other neighboring jurisdictions have apps. And they keep telling us they got an app and it didn't work. We even piloted it for them and they decided it didn't work. It was at least a start for us. And we brought them three apps. We're like, these apps work well, they're tested. Other parents and other jurisdictions are using them, other buses are using them. They do not have the privacy concerns that you have. We've really tried to bring them solutions and seeing them just, I don't understand why there's this stalemate.”³¹² The stalemate does not apply when complaints are posted publicly to social media, however, as she noted: “The best place I found to complain and get things actually done was Twitter. If I got on Twitter and I publicly shamed them, I heard from someone within the day. Otherwise, nothing, crickets.”³¹³

Despite being a lawyer familiar with Medicaid forms and other paperwork, Ms. Mitchell has struggled with OSSE’s “indecipherable” forms regarding reimbursement,³¹⁴ and highlighted the challenges for those who do not have the same educational background who urgently need assistance.³¹⁵ She noted, “I'm helping a mother who literally can't afford her rent anymore because she spends so much time waiting for the bus for her children. She's about to be evicted. She doesn't have a car. She does not have the option of driving her son. Her son's school is Lafayette. She lives in Ward One. There's no easy way for her to get her son to Lafayette. There's no public transportation...I've had to help her file things, report things. You really do need extra

³⁰⁹ Ibid., pp. 5-7.

³¹⁰ Ibid., pp. 8-9.

³¹¹ Ibid., pp. 17-18.

³¹² Ibid., p. 17.

³¹³ Ibid., p. 10.

³¹⁴ Ibid., p. 9.

³¹⁵ Ibid., pp. 10-11.

help. It feels very inaccessible even to someone with my level of education and background. And I would say this has been at least a part-time job for me for the past two years.”³¹⁶

Ms. Zeisel offered remarks at the May 10, 2023 public forum regarding parent experiences accessing special education and related transportation services in the District of Columbia:

Crystal Robinson is the legal guardian of her nephew who is autistic. He's in a full-time special education classroom in VCPS. He needs that structure and routine. When things are even a few minutes off schedule, it can take up to four hours to get him back into his daily routine, and so when the bus is late, his day is derailed from the start. She goes to work very early and often had to pay for an Uber for her adult son to get him to school and get an Uber for her adult son to get back home. He missed many hours of instruction and other services at school because his transportation was so late and because of what she had to do.³¹⁷

Veronica Guerrero had to purchase a car to get her child to school because the bus was so unreliable. She ended up driving almost four hours a day back and forth to get him to school because the bus was so late and almost worse, he got home so late that his afternoon service providers for ABA and PT stopped giving him services because he missed so many sessions. Some days he was only an hour late. Some days he was several hours late, and when she would call the parent call center, they couldn't tell her where he was. To add insult to injury, any communication they did send her was in English, even though she only speaks and reads Spanish, and they know that from all of her documentation, and she always requests an interpreter when she calls OSSE.”³¹⁸ Materials are provided in English to Ms. Guerrero despite her stated need for Spanish.³¹⁹

Joanne McCrae also had to purchase a car after spending a significant amount of money on Ubers, almost \$80 a day to get her child back and forth to school, because of the lack of reliable transportation. She had to make really hard financial choices both she and Ms. Guerrero did. She was ending up spending 40 minutes a day driving him in that car, but she had no other option if she wanted her child to get to school reliably. Just in the spring of 2023, he was late to school 88 times because of OSSE transportation.³²⁰

³¹⁶ Ibid.

³¹⁷ Zeisel Testimony, May 10, 2024 Briefing V, p. 8.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Ibid.

Marcia Cannon Clark, got in trouble at work because how often she was arriving late to bring her daughter to school when the bus didn't arrive on time and her daughter only attended school three days a week because related to her disability. The days the bus did come, her daughter often couldn't board because her daughter rides in a wheelchair and there's only room on the bus for one child to ride in a wheelchair, but there was two children routed on the bus to ride in a wheelchair, so if her daughter was the second child to ride, she couldn't ride.³²¹

Elizabeth Daggett's son has epilepsy and Christianson Syndrome, a genetic disorder, which prevents him from telling if he is thirsty or hungry, he's not toilet trained. His bus rarely arrives on time in the morning, so she usually has to drive him in order to ensure his medication administration is on time, and when he arrives home late in the afternoon, it's very problematic because he's not able to tell if he's dehydrated or hungry, and he often arrives home soiled. She ends up driving him most days.³²²

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.³²³ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

Students with disabilities should be able to receive full services and supports at a school of their choice in a manner that is convenient and reasonable.

- 1. The U.S. Commission on Civil Rights should issue the following recommendations to the Congress and the President:**
 - a. Fully fund the Individuals with Disabilities Education Act (IDEA).
 1. This would include funding for research to explore potential solutions to address current issues that are impacting students with

³²¹ Ibid., p. 9.

³²² Ibid.

³²³ 45 C.F.R. § 703.2 (2018).

disabilities and their access to a Free Appropriate Public Education (FAPE).

- b. Congress - Expand Family and Medical Leave Act (FMLA) to include IEP meetings and related events to provide services for students with disabilities as paid leave for parents and caregivers.
 - i. President - Consider issuance of an Executive Order for this provision to immediately apply to federal government employees and contractors.
- c. President - Consider issuance of an Executive Order directing agencies to create or expand grants and services to allow for innovative fleet management and transportation for students or schools or transportation organizations that serve students with disabilities.
 - i. President - Create an interagency workgroup led by the Office of Federal Contract Compliance Programs (OFCCP) to lead the implementation of the aforementioned Executive Order.
- d. Ensure civil rights protections via federal funding for public schools, public charter schools, and private schools.
 - i. Require strict adherence to Federal Civil Rights Protections for any school or school system that receives federal funding, regardless of the school being a public school, public charter school, or private school.
 - I. This would require robust language to retain and protect the parent or caregiver's right to filing a due process complaint against any school that receives federal funding, regardless of the school being a public school, public charter school, or private school. Thusly, this would necessitate that school or private organization willing to accept public funding or 'vouchers' publicly 'opt-in' to compliance with all Federal law including students retaining due process rights.
 - ii. Dedicated funding for certified special education teacher support, including continuing training and continuing education.
- e. Designate a dedicated tax or funding source to address equitable availability of special education and related transportation services. Revenues from the aforementioned should be earmarked exclusively for this purpose and could be allocated to research, disability services funds, etc.

- i. Example - A mandated portion of fines collected on first or second offenses violating the Americans with Disabilities Act (ADA).
 - ii. Example - A mandated portion of punitive damages awarded in ADA lawsuits.
- f. Create legislation to mandate named local government entities (DC Mayor, DC Council, OSSE, and DCPS) to align on strategy for effective, efficient, and timely implementation of recommendations.
- g. Mandate the U.S. Department of Education to:
 - i. Develop programming to increase data collection and analysis on best practices and successful/failed implementations across states and jurisdictions, with emphasis on the impact of provider shortages and transportation provisions in urban vs. rural jurisdictions.
 - ii. Examine whether lack of sufficient funding is placing exorbitant pressure on school systems to deny legitimate requests for special education services, resulting in higher due process complaint rates.
 - iii. Examine whether the laws related to special education are adapting to societal needs and demands and explore how different agencies measure their effectiveness.
 - iv. Consider opening investigations into jurisdictions with extraordinarily high due process complaint rates to determine why this is occurring and the disparate impact (if any) caused by this.

2. The U.S. Commission on Civil Rights should issue the following recommendations to the DC Mayor and DC Council:

Potential revenue sources should be linked to current laws or activities that impact the experiences of those with disabilities. Additional ideas to consider include:

- a. Designate a dedicated tax or funding source to address equitable availability of special education and related transportation services in the District of Columbia school system. Revenues from the aforementioned could be allocated to research, disability services funds, etc. Ensure that revenues generated through tickets, fines, or punitive measures are collected and allocated equitably. The Council should thoroughly examine the potential discriminatory impacts of these policies to promote fairness in their implementation and administration.

- i. Revenue generated from tickets for parking in dedicated handicapped parking spaces without the requisite documentation.
 - ii. A mandated portion of fines collected on offenses violating District of Columbia human rights and/or disabilities laws.
 - iii. A mandated portion of punitive damages awarded in ADA-equivalent lawsuits.
- b. Designate a dedicated funding source for Child and Family Services Agency to assist students with disabilities who are residents of the District of Columbia in foster homes and attending public schools in their jurisdiction.
 - i. Appoint a specific public official who is responsible for ensuring students in foster care are receiving a Free Appropriate Public Education (FAPE) along with adequate transportation and related services, with that public official able to bring due process complaints on behalf of students in foster care.
- c. Plan for all schools (public schools, charter schools, private schools, and adult charter schools) to be equipped with mixed-use facilities that can be used to support students with disabilities with services such as occupational therapy, speech therapy, etc.
- d. To address the shortage of special education educators and staff, the DC Mayor and DC Council should explore eliminating state and local income taxes on overtime and provide extra pay for District of Columbia Public School and District of Columbia Public Charter School teachers to provide services for students with disabilities.
 - i. Any time spent by a DCPS or DC Public Charter School teacher outside of traditional working hours (i.e., an evening or a Saturday) would not be subject to state and local income taxes and these teachers would receive extra overtime pay for these hours.
 - ii. This would include attending IEP meetings and subsidizing for time spent waiting on transportation services for students.
- e. Consider financial barriers and rights for parents and guardians that prevent them from attending IEP meetings by creating a similar subsidy as 2(d) for parents and

caregivers who must miss work to advocate for or provide additional services for their students with disabilities, such as attending IEP meetings or time spent waiting on transportation services for students.

- f. Direct the Office of the State Superintendent of Education (OSSE) and District of Columbia Public School System (DCPS) to:
 - i. Create and maintain a transportation tracking system that allows families to see where a school bus is and expected arrival in real time.
 1. This would include real time notifications of delays and updates on route deviations.
 2. This system should be continuously improving, with the ultimate goal of providing clear, concise, and transparent communication between the school/drivers and parents/caregivers.
 - ii. Hire/appoint additional DCPS certified aids as transportation assistants on buses.
 1. The aids would also serve as a point of contact for parents for bus delays, updates on route deviations, etc.
 - iii. Explore transportation solutions used by other jurisdictions that could work to alleviate transportation issues in DC.³²⁴ Drivers should be vetted and must have care-giver experience. The service should provide GPS location information and schedule updates.
 - iv. Provide parents with options such as scholarships or education savings accounts that do not require them to file a due process complaint to seek a different school placement for their child(ren).
 - v. DC Council should hold a hearing with OSSE and DCPS to attend and respond to the recommendations outlined in this report.

³²⁴ Potential models to explore include a [grant program](#) in Arizona, including [different models to solve different school transportation problems](#). [One of the grantees](#) specifically provides transportation services for students with autism. Additionally, for example, there are companies that provide transportation services across the country by partnering with school districts with a specific focus on [serving special education students](#) and [foster children and children experiencing homelessness](#).

- vi. Fully fund and expand public school options (such as St. Coletta) and any other public options need to be fully funded and expanded as an opportunity for students needing extensive special education services.
 - 1. Where there are capacity issues, state and local entities should work to provide additional capacity. DC needs to avoid the situation where filing a due process complaint or a lawsuit becomes a de facto prerequisite to being prioritized for these services.
- vii. Create auditing and data analysis surrounding existing IEP processes, denial of services, due process complaints, and fund allocation per special education student by Ward.
 - 1. This should address if students are being denied services that they should have received, if due process complaints are directly linked to students finally receiving necessary services, and if there is a disparate impact on students in particular Ward(s).
- viii. Review the ombuds student advocate system to ensure it is fully accessible to families to help proactively address issues and avoid the need for due process complaints.
- ix. Consider providing publicly funded counsel to represent students and families in due process hearings and subsequent litigation.
- x. Review the ombuds student advocate system to ensure it is fully accessible to families to help proactively address issues and avoid the need for due process complaints.
- xi. Establish an organization or entity that ensures agencies that support students with special education needs, including students in foster care, work together to create a strategic framework for annual budgets.
- xii. Consider providing publicly-funded counsel to represent students and families in due process hearings and subsequent litigation

3. The U.S. Commission on Civil Rights should issue the following recommendation to OSSE and DCPS:

- a. OSSE and DCPS should make efforts to reduce the number of due process complaints significantly further and collect specific data to inform their decisions more effectively.
- b. OSSE and DCPS should audit individual IEP processes to see whether students are being denied services they should have received absent a due process complaint.
- c. OSSE and DCPS should not invite lawsuits or due process complaints and then settle the matters prehearing in a manner that makes a complaint or lawsuit a barrier to receipt of services. Instead, OSSE and DCPS should grant the requested supports or services in the first instance.
- d. OSSE and DCPS should study the amount of funds being expended per special education student on special education and related transportation services by Ward to ensure there are not disparate impacts.
- e. OSSE should create a transportation system that allows families to know where the bus is and when it is coming similar to what DC provides for its public bus transportation system.

Appendix

Materials related to this study can be found here:

<https://usccr.box.com/s/g1qbeill11xqqau42hn1ibw3d7vuhfxh>

A. Briefing materials

- a. Transcript
- b. Agenda
- c. Minutes
- d. Slides

B. Written Testimony

C. Committee Member Statements

**District of Columbia Advisory Committee to the
United States Commission on Civil Rights**



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