

Testimony of Judy Berman, Deputy Director, DC Appleseed

DC Council Committee on Education

Roundtable on the State of Special Education Services in the DC traditional and public charter schools and the "OSSE Enhanced Special Education Services Act of 2014: Implementation Report to the Council of the District of Columbia" report

November 20, 2017

Good Afternoon Chairman Grosso and members of the Committee. I am Judy Berman, Deputy Director of the DC Appleseed Center for Law and Justice. Thank you for the opportunity to testify today.

DC Appleseed is a non-profit public interest organization dedicated to solving policy problems affecting DC residents, including lack of voting rights, the health of the Anacostia River, and low literacy. We have also been engaged in Special Education issues since 2003 when, at the request of the then Superintendent of Schools, we wrote a report on the District's heavy reliance on due process hearings to resolve special education disputes. More recently, we published a report on the continuum of settings available to students in need of special education services, and efforts by the District to reduce reliance on non-public special education school placements. At issue is the capacity of DC's traditional and public charter schools to serve students with a full range of special education needs.

I'm testifying today because the crisis in special education continues. There have been improvements in the technical assistance and support that OSSE provides to LEAs, as noted in the October 1, 2017 Implementation Report on the Enhanced Special Education Services Act of 2014, and there have even been some incremental improvements in student outcomes based on PARCC scores. Everyone who has contributed to those improvements should be proud and we should be appreciative.

But we're here, in part, because overall PARCC scores for students in special education indicate that only 7% are meeting proficiency standards in English Language Arts and only 6% in Math. Children with disabilities are represented in the lowest level of proficiency on the PARCC at more the twice the rate of students without disabilities. More than 11,000 students with disabilities are not meeting expectations. Further, more than 50% of students with disabilities are not graduating – and even those who are can't read or do math. With fewer than 2 in 5 adults with disabilities in DC working full-time, we are abandoning these students to a lifetime of poverty and struggle. And our question is, where is the accountability?

## **Special Education Reform**

In 2014, the Council passed several important reforms to our special education system. Those reforms include: change in initiation of secondary transition planning from age 16 to age 14, reduced initial evaluation timeline from 120 days to 60 days, expansion of early intervention eligibility. These provisions have not yet been afforded the weight of law – in two cases not because they are not being implemented by most of District LEAs, but because of a bureaucratic sleight of hand (i.e., language in the law that makes them contingent on funding) that buys the District time, and leaves students and families with no recourse to protect their rights. Further, it delays the application of federal funds through Title IV of the Workforce Innovation and Opportunity Act (WIOA) to secondary transition services for 14 and 15 year old students.

I'd like to focus this morning on two areas related to the 2014 reforms, specifically, the expansion of eligibility for early intervention services from a 50% delay in one developmental area or 25% delay in two developmental areas to a 25% delay in a single area, and the use of the recently implemented Special Education Enhancement Fund (SEEF).

### *Early Intervention*

As part of the Bainum Foundation's Birth to Three Policy Alliance, and the Special Education Coalition through Children's Law Center, we urge the Mayor to fully fund the expansion of early intervention services as indicated in the Enhanced Special Education Services Act of 2014, and for the Council to press for a revised Fiscal Impact Statement (FIS) that would make this action viable. These services capture a vital window of opportunity to prevent children from requiring special education services when they reach school age. Children living at or below 100% of poverty are more than twice as likely to be at high risk for developmental delays (19 percent) as their peers living at more than 200% of poverty (seven percent) (Child Trends Databank). If they receive timely and appropriate services, more than half will catch up to their typically developing peers (National Early Intervention Longitudinal Study).

We should be moving as quickly as possible toward full implementation, given the challenges children face when they start school already behind their peers.

### *Special Education Enhancement Fund*

The, "Special Education Quality Improvement Act of 2014," Sec. 3, creates a Special Education Enhancement Fund (SEEF). The SEEF was created out of a moment in the District's education history after the Mayor had issued a directive to reduce non-public special education placements by half (2011). While for many years, non-public tuition expenses routinely exceeded their annual budget, that pattern began to reverse. As DCPS cleaned up its non-public

data system, and vigorously sought out students whom they believed could successfully return to the public schools, the number of DC students enrolled in non-public schools dropped from approximately 2200 in 2011 to 975 by 2014. The number has since dropped below 700.

Many parents, student advocates and some LEAs were concerned that the District lacked the capacity to serve these students appropriately, and DCPS received some bad press when parents spoke out about the manner in which these changes were being implemented. With this dynamic at play, the Council voted that “any excess funds remaining in the operating budget for the non-public tuition paper agency at the end of each fiscal year” would be dedicated to a fund to help the public schools better serve students with disabilities.

The SEEF has two named purposes: to reimburse schools that have demonstrated they have incurred costs associated with providing special education services above that for which the school was budgeted as part of the Uniform per Student Funding Formula allocation; and to support special education capacity expansions. Because no resources had been dedicated to the SEEF, we were pleased to learn late in 2016 that OSSE intended to release a competitive grant in Spring 2017 with as much as \$3m. We were especially pleased to see the funding allocated because Blackman-Jones funds that had been supporting capacity building were no longer available.

We were disappointed to discover, as described in the October 1, 2017 implementation report, that OSSE used most of the allocated funds (approximately \$3.5m) as formula funds “to support the transition to the new requirements,” specifically, the unfunded provisions around secondary transition age and evaluation timelines. This does not constitute “enhancement;” in many cases it constitutes remediation: necessary work, but not what this fund was intended for. The report also indicates that formula funds are meant to be used by the LEAs to help OSSE calculate the funding necessary to remove the fiscal contingencies on the law.

These strategies not only violate the spirit of the law in terms of what constitutes an “enhancement,” they simply delay accountability since many if not most LEAs are already implementing the change in age and the reduced evaluation timeline. They benefit the school system at the expense of the students since these reforms become, in effect, optional. Indeed, OSSE is not even keeping track of the implementation because these provisions are not yet law.

I think it could be argued, at minimum, that the SEEF formula funds should satisfy the \$155,000 FIS for the secondary transition changes. They should also reduce the FIS for the evaluation timeline changes which, as Children’s Law Center has documented, significantly overstate the amount of funding necessary.

\$1.5m of the SEEF was competitively granted, and the recipients mostly described true “enhancements.” This, too, however, was disappointing. One purpose of this fund, as

described in the law, is to support “special education capacity expansions” through “partnerships between non-publics and public schools.” The programs supported by this fund should include “joint professional development and training opportunities, [and] joint agreements” to provide services. We supported this provision because it encouraged collaboration between non-public and public schools. These collaborations are opportunities for non-public and public schools to learn from one another, and can lead to innovations and better services for all students with disabilities, including – and this was the focus of our report, *A Place for Every Student: Managing Movement Along the Special Education Continuum in DC* -- during periods immediately preceding and following an LRE transition.

None of the funded projects included partnership with non-public schools. While we lack good data on the performance of area non-public schools in terms of academic outcomes, one area where several schools far outperform DC’s public options is secondary transition, if not in the documentation of it then in the delivery of services. Since this is such a high priority, why are these partnerships not a higher priority? Non-public schools can also increase evaluation capacity. There is expertise in abundance at these schools, and the District is not taking advantage of it, even with funds that have been designated for this purpose. That hurts our students, especially those who may need to move into or out of a non-public setting.

## **Conclusion**

Enhancement of special education capacity is too important to be addressed with “leftovers” in the budget. On this, we fully agree with OSSE’s assessment of the SEEF in the Implementation Report, that “to provide more sustainable funding, steady appropriations could be needed.” We are graduating intelligent, capable students with disabilities without the tools they need to be high-functioning, independent, employed adults. This needs to be addressed with urgency, and with greater accountability for outcomes.