

May 16, 2023

To: Mauro Morales, Staff Director  
U.S. Commission on Civil Rights

Thru: Davis Mussatt, Supervisory Director  
Regional Programs Unit

Fr: Ivy L. Davis, Director **ILD**  
Eastern Regional Office

RE: Approval Request – District of Columbia Project Proposal  
Accessing Services for Students with Disabilities in DC Public Schools

Attached for your review and approval is the DC Committee's civil rights project proposal.

## **Jurisdiction**

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and is authorized by statute to study and collect information concerning legal developments constituting discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The Commission has established 56 advisory committees in each state; the District of Columbia; Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and U.S. Virgin Islands that are authorized to advise the Commission about civil rights issues in their jurisdictions consistent with the Commission's jurisdiction.

There are a number of federal laws that prohibit such discrimination, and are important to this civil rights project, including:

- Section 1 of the 14th Amendment to the U.S. Constitution prohibits any state from denying "to any person within its jurisdiction the equal protection of the laws." This encompasses a prohibition on discrimination on the basis of race and sex, including sexual orientation and gender identity.
- The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education. Discrimination

on the basis of sexual orientation and gender identity are encompassed in the Act's prohibition of sex discrimination.

- The Equal Educational Opportunity Act of 1974 prohibits discrimination, including segregation, in schools on the basis of race, color, and national origin, and requires SEAs and LEAs to take action to overcome barriers to students' equal participation.
- The Individuals with Disabilities Education Act provides children with disabilities with the right to a free appropriate public education tailored to their individual needs.
- Section 504 of the Rehabilitation Act and the American with Disabilities Act, which both prohibit discrimination on the basis of disability.
- 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.<sup>1</sup> This law was updated in the Every Student Succeeds Act of 2015.<sup>2</sup>
- The Social Security Act, specifically the John H. Chafee Foster Care Program for Successful Transition to Adulthood<sup>3</sup>, provides current and former foster children who are aging out of the child welfare system access to education and job training benefits.
- District of Columbia laws and regulations are relevant as well, including the D.C. Human Rights Act, D.C. Public Education Reform Amendment Act of 2007, and the D.C. Bill of Rights for Children and Youth in Foster Care.

## Background

The District of Columbia Advisory Committee (Advisory Committee, D.C. Committee) will study access to special education and related transportation services in the District of Columbia to determine if D.C. public school policies, practices and procedures related to such access discriminate because of race/ethnicity,<sup>4</sup> gender, disability, or other protected class status, including in the administration of justice.

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.<sup>5</sup> Enrollment by race and ethnicity for OSSE students based on self-identification is 64% African American/Black (Non-Hispanic), 18.9%

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<sup>1</sup> P.L. 110-351, at: <https://www.govinfo.gov/content/pkg/PLAW-110publ351/pdf/PLAW-110publ351.pdf>.

<sup>2</sup> P.L. 114-95.

<sup>3</sup> P.L. 115-123.

<sup>4</sup> As used in this proposal, race/ethnicity is shorthand for race, color, and national origin.

<sup>5</sup> See, Quick Stats: Public Schools in the District of Columbia, at: <https://osse.dc.gov/page/data-and-reports-0>.

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.<sup>6</sup> Also, 45.6% of students are identified as at-risk by OSSE based on various socio-economic factors, which includes foster care status.<sup>7</sup>

To receive special education services in D.C., a student must generally be subject to an Individualized Educational Plan (IEP) under the Individuals with Disabilities Education Act (IDEA). As stated by the U.S. Department of Education, the IDEA “is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.”<sup>8</sup>

The contents of the IEP are critical to determining the services, accommodations, and supports that a student in special education receives. An IEP team comprised of the parents/guardians/caregivers, the student’s special education teacher, the student where appropriate, and other school representatives and professionals providing services and supports at the school typically make up the IEP team.<sup>9</sup> The goal is to make decisions by consensus. In situations where there is a disagreement between the parents/guardians/caregivers and the school as to what is best for the student, the parents/guardians/caregivers may contest the school’s decision through requesting a due process hearing<sup>10</sup> before a neutral adjudicator.<sup>11</sup>

The D.C. Advisory Committee is concerned by anecdotes and articles<sup>12</sup> indicating that 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 is also concerned that marginalized and at-risk D.C. 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

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> See, *About IDEA*, U.S. Department of Education, at: [About IDEA - Individuals with Disabilities Education Act](#).

<sup>9</sup> See, generally [Sec. 300.321 IEP Team - Individuals with Disabilities Education Act](#).

<sup>10</sup> See, [Updated Due Process Hearing One-Pager.pdf \(dc.gov\)](#).

<sup>11</sup> 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. The availability and sufficiency of these and other forms of alternative dispute resolution will be explored as part of this examination.

<sup>12</sup> 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/>.

could cause a disparate impact based on the protected classes mentioned above.

Data shows that the District of Columbia receives by far 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.<sup>13</sup> To ensure equitable and sufficient provision of special education resources, it is 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<sup>14</sup> and whether this situation can be remedied for D.C. students and their families.

In addition, this report will focus on how the reliance on due process complaints can impact students in vulnerable situations, with a particular focus on foster care. According to the D.C. government, there are 577 children in foster care in FY2023.<sup>15</sup> 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.<sup>16</sup>

Foster children face many challenges in life, including accessing a high-quality education. The Department of Education reports that “children in foster care are at high-risk of dropping out of school.”<sup>17</sup> Academic researchers have reported that foster children are overrepresented in special education.<sup>18</sup> Moreover, researchers and advocates have explained that home transfers, which can occur frequently for some youth in foster care, can lead to school transfer and other disruptions. 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.

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<sup>13</sup> 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>.

<sup>14</sup> This phrase is a legal term of art. There are generally two forms of discrimination recognized in the civil rights area, disparate treatment and disparate impact. Disparate treatment involves intentional discrimination based on protected class status, while disparate impact involves a facially neutral policy or practice that cannot be validated and causes an adverse impact based on protected class status. Disparate impact does not require intent. In this proposal, disparate impact will be referred to as discriminatory impact.

<sup>15</sup> D.C. 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).

<sup>16</sup> U.S. Department of Health and Human Services, Administration for Children and Families, *Trends in Foster Care and Adoption: FY 2012 – 2021*.

<sup>17</sup> U.S. Department of Education, Students in Foster Care, at: <https://www2.ed.gov/about/inits/ed/foster-care/index.html>.

<sup>18</sup> See, e.g., Berardi, Anna; Morton, Brenda M., *Maximizing Academic Success for Foster Care Students: A Trauma-Informed Approach*, at: <https://files.eric.ed.gov/fulltext/EJ1148240.pdf>.

Finally, 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 here because underserved communities are more likely to rely on public transportation.<sup>19</sup> Indeed, this very school year, D.C. has been significantly criticized for failing to sufficiently provide transportation services to students in special education.<sup>20</sup>

## **Purpose, Scope, and Methodology**

This civil rights project will study the provision of special education and related transportation services in public schools in the District of Columbia to determine if discrimination based on race, gender, national origin, and disability status is occurring and, if so, how this can be effectively remedied.

The Committee anticipates having many witnesses from both the public and private sectors, including from all levels of government, as well as civil rights, disability, and parent advocacy organizations, as well as individual parents/guardians/caregivers and students. Hearings will be held monthly, and it is anticipated that at each hearing there will be a panel of at least three witnesses, beginning with statements made by the witnesses, followed by questions from the Committee, comments from the Committee, and comments from the public.

The Committee's examination/review of the D.C. public school policies, practices and procedures regarding access to special education resources and services authorized for students with disabilities in public schools, including public charter schools, will be centered around these areas of review or themes:

1. Describe the types of special education services, including transportation that may be available to students with disabilities.
  - a. Examine eligibility requirements for special education services.
  - b. Describe the process used to determine eligibility and who decides eligibility.
2. Identify and discuss public school policies, practices and procedures that impact access to special education resources and services authorized for students with disabilities in D.C. public schools, including public charter schools.
3. Describe the entire dispute resolution process utilized by OSSE from the initial concern

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<sup>19</sup> 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/>.

<sup>20</sup> 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>.

expressed by parents/guardians/caregivers, through any available informal dispute processes including ombuds services, through the filing of an administrative complaint, through any available mediation or arbitration, through administrative adjudication and administrative appeal, through pursuing litigation in court.

4. Describe the amounts and the process for allocating special education resources in the District of Columbia.
  - a. List the allocated and expended funds by Ward over several years.
  - b. Consider whether such disparities among the D.C. Wards, if any, may be impacted by the District's reliance on adversarial proceedings to resolve access to special education services for students with disabilities.
  - c. Determine how to identify if there are disparities based on race and other protected class bases and whether this data is collected by D.C.
5. Analyze how transportation resources are allocated, including whether there are sufficient buses, drivers, and bus aides to be able to meet the needs of students in special education in D.C. and, if not, whether there is a disparate impact in how those transportation resources are allocated.
6. Examine the barriers, if any, that affect/deny/limit access to special education services for children in foster care.
7. Examine training about access to special education services, including transportation, that is/should be provided to key stakeholders.
  - a. Identify the key stakeholders.
  - b. Discuss the entity that provides/should provide such training.
8. Describe best practices and potential alternatives from other jurisdictions that might inform the D.C. Committee members about:
  - a. Current policies and processes for allocating and providing special education resources.
  - b. Practices/alternative that are equitable, do not discriminate, and ensure sufficient supports and resources for students with disabilities.

#### Likely Questions:

Below are general questions that will likely be asked of the invited subject-matter experts during the panel briefings.

1. Data/Information:
  - a. What federal/state/local entities collect and report data/information that will assist the

Committee in its review, i.e., specifically on the types of special education services, including transportation, and the amount of resources allocated for special education and special education transportation-related services?

Please separately list:

- i. Government data/information sources—please provide related complete reference, including URL address, if available.
- ii. Non-government data/information sources— please provide related complete reference, including URL address, if available.
- b. Is there data/information currently **not** required to be collected/reported that would more accurately determine the types and amounts of resource allocations for each protected class status? Please describe.
- c. What data exists as to whether there is a disparity in the allocation of special education and related transportation resources in the District of Columbia based on protected class status?
- d. What data exists as to the legal costs assumed by OSSE and D.C. public schools associated with administrative complaints and litigation?
- e. Have any statistical analyses been done relating to special education and transportation resources/funds as to whether there is discrimination in allocation based on protected class status?

2. Process/Procedure:

- a. What is the current process for obtaining/challenging special education and transportation-related services determinations in D.C. for children with disabilities?

Specifically:

- i. Are parents/guardians/caregivers currently notified on the types of special education services, including transportation-related services that may be available to D.C. public school students with disabilities and do they have access to sufficient information and training in these areas?
- ii. Is there a D.C. office/official that provides information to parents, guardians or caregivers seeking special education services, including transportation-related services?
- iii. Before submitting a complaint to an administrative law judge or judicial determination, may parents/guardians/caregivers request that a mediator or ombudsperson hear and potentially help resolve concerns about the school-system's decision regarding special education services, including transportation-related, that will be provided to students with disabilities.
- iv. Upon request, are advocates currently assigned to assist parents/guardians/caregivers

seeking special education and related transportation services and, if not, would this be helpful in ensuring the full protection of civil rights in this area?

iv. Are D.C. school official determinations about special education services reviewed and approved by counsel, before given to parents/guardians/caregivers?

v. Is the D.C. school system required to be represented by counsel before an administrative law judge and in a judicial proceeding that challenges/appeals D.C. special education service(s) determinations?

b. What D.C. government official(s) determines the special education services that will be provided to children with disabilities?

c. Describe the process for challenging/appealing those decisions?

### 3. Foster Care Barriers-Challenges:

a. Describe the barriers, if any, that limit/prevent foster parents from accessing special education services for children with disabilities that are in their care?

i. Are there federal foster care policies that have a discriminatory impact in this area? Please explain.

ii. Are there steps that D.C. officials have taken or can take to eliminate such discrimination?

iii. Are the steps that the District has taken or can take ensure that foster parents have the authority to: (a) access such needs, (b) submit legal challenges/lawsuits on behalf of those children in their care that require special education services?

iv. Are there steps that the District has taken or can take to ensure that children who age-out of foster care obtain needed special education and other services, including housing, so that they may receive those services?

### 4. Equitable Resource Allocations:

a. Describe different ways equity can be assessed and measured including by race/ethnicity, gender, Ward, by extent of supports needed, and other possible ways.

### 5. Training

a. Address necessary trainings to ensure that any systemic discrimination issues that are identified are remedied.

### 6. Other Questions

a. Is there an explanation for the District's higher rate of submitting special



- education services claims to administrative and law courts than other states/jurisdictions?
- b. What can be done from a policy or systemic perspective to reduce this rate?
  - c. Why do other jurisdictions have lower rates, and why do nearby jurisdictions like Virginia and Maryland have substantially lower rates?
  - d. Does the District provide parent/guardian/caregiver advocates or publicly funded attorneys to help those responsible for care of students with disabilities to effectively invoke the complaint process at each level?
  - e. Does the District conduct tests/analyses/audits to identify and address systemic disparities in the allocation of special education and transportation-related resources as part of its efforts to eliminate discrimination?
  - f. What are the adverse consequences on those students with disabilities who receive inadequate special education and transportation-related services and whose parents/guardians/caregivers do not invoke the administrative complaint process or file a lawsuit?
  - g. Does the District conduct periodic reviews to revise, as needed, its guidance/regulations to avoid future violations of applicable laws in this area?
  - h. Does the District rely on the adversarial process in allocating special education services, including transportation-related services, and if so, does this cause further discrimination, especially for students in need of those services in marginalized/at-risk communities, including students in foster care?

## **Conducting the Review**

The Committee will conduct a series of two-hour panel briefings. In the first 30 minutes, each panelist (subject-matter expert, expert) will make an opening statement of from six to 10 minutes long. Through questions and answers, the remaining 90 minutes will be a *conversation* between the experts and members. Questions may be directed to a specific panelist or the panel, as a whole. However, to ensure a rich conversation, the Committee Chair will recognize all panelists who wish to respond to the question(s).

## **Potential Subject-Matter Experts and Entities**

Like the Commission, its advisory committees rely on third party experts to inform and educate members when conducting its civil rights examinations. The D.C. Committee will gather data, documents, and statements from a broad cross-section of subject-matter experts and conduct public hearings to receive testimony from invited experts. To ensure a balance of presentations, the invited subject-matter experts may include federal/D.C. government officials, national/D.C. academicians/researchers, representatives from advocacy/civil rights/community-based

organizations and think tanks group, and persons impacted by the DC public school policies, practices and procedures being reviewed (aka *real people*).

The subject-matter experts will inform the D.C. Committee regarding access to special education and transportation-related services in the District, including barriers to such services such as the high rate of administrative complaints and lawsuits in the District. The experts will also advise on whether there are sufficient funds and resources to meet the need for special education and transportation-related services in the District and whether such funds and resources are allocated in a manner that is equitable and does not cause disparities based on protected class. Experts will also offer suggestions/recommendations to eliminate/reduce such disparities.

The Committee will ask experts who can provide data and information that are both national (National Perspective) and DC-specific (DC perspective), including:

### **Special-Education – General**

#### National Perspective:

- Government: Catherine Lhamon, Assistant Secretary, U.S. Department of Education Office of Civil Rights.
- Non-Profit: John Eisenberg, Executive Director, National Association of State Directors of Special Education.
- Non-Profit: Selene Almazan, Legal Director, Council of Parent Attorneys and Advocates (COPA).

#### DC Perspective:

- Government: Bren Elliott, Chief of School Improvements and Supports, DC Public Schools.
- Non-Profit: Rochanda Hiligh-Thomas, Executive Director, Advocates for Justice and Education (COPA), Parent Training and Information Center for DC.

### **Special Education – Foster Care**

#### National Perspective:

- Government: Aysha E. Schomburg, Commissioner, U.S. Department of Health and Human Services Children's Bureau.
- Non Profit: Rebecca Louve Yao, Executive Director, National Foster Youth Institute.

#### DC Perspective:

- Government: Robert L. Matthews, Director DC Child and Family Services Agency.
- Non-Profit: Arika Adams, Executive Director, CASA (Court Appointed Special Advocates) for Children of DC.

### **Special Education – Transportation**

#### National Perspective:

- Government: Katherine Neas, Deputy Assistant Secretary, U.S. Department of Education for Special Education and Rehabilitative Services.
- Non-Profit: Marlene Sallo, Executive Director, National Disability Rights Network.

#### DC Perspective:

- Government: Michael Riley, Director of Student Transportation, DC Office of the State Superintendent of Public Education.

--Non-Profit: Maria Blaeuer, Director of Programs and Outreach, Advocates for Justice and Education, Parent Training and Information Center for DC.

## Outcomes

Based on the documents collected and the record generated by the briefings, the Committee will submit a report to the Commission about what it learned, including findings and recommendations. The report will be posted to the Commission website: [www.usccr.gov](http://www.usccr.gov). It will help inform public discussion by D.C. policy makers and other stakeholders of this most important civil rights topic. The Committee also anticipates post-publication activities, including presenting the report at a Commission Business Meeting, submitting an op-ed to the Washington Post about the importance of this civil rights topic and describing the report if invited to speak before D.C. government officials, and at conferences and forums to inform the public discussion of this important civil rights issue.

## Milestones/Timelines

The Committee proposes to perform the following tasks and set projected dates:

Actions/Tasks	Date
- Submit Project Proposal to Staff Director	May 2023
- Organize & Conduct Panel Briefings	TBD
- Complete Panel Briefings	TBD
- Working Draft Report Submitted/Reviewed by Committee	TBD
- Committee Votes to Submit Draft Report to OGC	TBD
- LSR** is returned to & reviewed by Committee	TBD
- Report Submitted to Staff Director of Publication	TBD
- Post-Report Publication Activities	TBD