DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF
EDUCATION

APPENDIX A

August 30, 2017

Dear Colleague,

You may have seen media coverage of the U.S. Court of Appeals for the District of Columbia decision to uphold the lower court's decision related to the *D.L. v. District of Columbia*[1] special education litigation. Originally initiated in 2005, *D.L. v. District of Columbia* relates to the alleged failure of the District to identify and serve 3 to 5-year-old children with disabilities, including children transitioning from early intervention services provided in accordance with Part C of the Individuals with Disabilities Education Act (IDEA) to special education and related services in accordance with IDEA Part B. As we work together to ensure that the District continues to improve special education services for District of Columbia preschool children, I am writing to provide information regarding LEA responsibilities for ensuring adequate child find practices and other aspects salient to the *D.L. v. District of Columbia* case, and to provide a number of reminders regarding current practices.

The District has made tremendous progress in serving children with disabilities, including preschool children. This progress has been acknowledged both by the court and the US Department of Education (USED) Office of Special Education Programs (OSEP). Specifically, OSEP recognized significant improvements in the District's rates of timely transition from IDEA Part C to IDEA Part B, which moved from 8 percent in Federal Fiscal Year 2008 to 98 percent in 2015. As a result, OSEP released the District from mandated increased oversight and data reporting related to this area. In addition, the District's Part B evaluation timeliness rates have trended between 90 to 95 percent for the last several years.[2] This year, the OSEP's IDEA Part B performance rating for DC changed for the first time, from "needs intervention" to "needs assistance". This is an incredible milestone which demonstrates the city's continued progress, progress that has been made through your continued, diligent efforts to serve children with disabilities well.

At the same time, even with this progress, there is an outstanding issue of whether 1) the systemic changes the District has made that impact 3 through 5 year olds are sustainable, and 2) whether we are adequately identifying enough children ages 3 through 5 currently through existing child find efforts.

For these and other reasons, the court in *D.L. v. District of Columbia* has asked the District to take additional steps to accelerate continued improvements in the location and identification of children aged three through five ("preschool children"), who may be children with disabilities. To this end,

[1] *D.L. v. The District of Columbia* (Case No. 1:05-cv-01437), 860 F.3d 713 (D.C. Cir. 2017)
[2] For more information on the District's performance in relation to IDEA, please visit OSSE's Special Education Data and Reports.

beginning in school year 2017-18, there will be additional efforts to ensure continuous improvements, such as:

- Additional data review and reporting;
- Enhanced training regarding child find obligations and activities; and
- Increased communications to clarify LEA responsibilities around the identification, evaluation, determination of eligibility, and provision of services to preschool children with disabilities.

Data Review and Reporting

As part of OSSE's general system of supervision under IDEA, OSSE annually reviews and reports on the following metrics related to children aged 3 through 5:

- Percent of children aged 3 through 5 with IEPs attending: A. Regular early childhood program and receiving the majority of special education and related services in the regular early childhood program; and B. Separate special education class, separate school or residential facility. (IDEA Part B Indicator 6 – Preschool Environments)
- Percent of preschool children aged 3 through 5 with IEPs who demonstrate improved: A. Positive social-emotional skills (including social relationships); B. Acquisition and use of knowledge and skills (including early language/communication and early literacy); and C. Use of appropriate behaviors to meet their needs. (IDEA Part B Indicator 7 – Child Outcome Summary)
- Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The District of Columbia established timeline for evaluations is 120 days from referral to eligibility determination. (IDEA Part B Indicator 11 – Child Find)
- Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthday. (IDEA Part B Indicator 12 – Early Childhood Transition)
- The percentage of toddlers with disabilities exiting Part C with timely transition planning for whom OSSE has:
    A. Developed an individualized family service plan (IFSP) with transition steps and services at least 90 days, and at the discretion of all parties, not more than nine months, prior to the toddler's third birthday;
    B. Notified (consistent with any opt-out policy adopted by the State) the State education agency (SEA) and the local education agency (LEA) where the toddler resides at least 90 days prior to the toddler's third birthday for toddlers potentially eligible for Part B preschool services; and
    C. Conducted the transition conference held with the approval of the family at least 90 days, and at the discretion of all parties, not more than nine months, prior to the toddler's third birthday for toddlers potentially eligible for Part B preschool services. (IDEA Part C Indicator 8 – Effective General Supervision Part C / Effective Transition).

Beginning this year, OSSE will be reporting to the Court[3] the following data points, which are similar but not identical to a number of the indicators described above:

- Percent of children aged three through five[4] who are enrolled in special education and related services under Part B or extended Part C services. A child is considered "enrolled" by the Court on the date he or she began receiving:
    - All of the special education and related services identified in his or her IEP, or
    - All of the services identified in his or her extended IFSP, including the required educational component.
- Percent of children aged three through five referred for Part B services who receive a timely eligibility determination.
    - An eligibility determination is considered timely if it is completed within the period of time then-prescribed by federal and local law, currently 120 days from the date of referral.
    - The date of referral is defined as the date on which a written or oral request for assessment of a child aged three through five is received. District of Columbia law requires the LEA to document oral referrals in writing within three (3) business days of receipt.[5] *Please note the following:*
        - *For the purpose of reporting to the Court, the referral may be made by a parent or a non-parent such as a pediatricians or an LEA employee.*
- The rates of smooth and effective transition by the student's third birthday for students transitioning from IDEA Part C to IDEA Part B services.
    - A transition is considered "smooth and effective" if (1) the transition begins no less than 90 days prior to the child's third birthday; (2) the child is provided with an IEP listing the services that are to be provided and both the type of placement and a specific location for services by the child's third birthday; (3) there is no disruption in services between IDEA Part C and IDEA Part B services (that is, all special education and related services in the child's IEP must commence by the child's third birthday); and (4) IDEA Part B personnel are involved in the transition process. Please note the following:
    - For the purpose of reporting to the Court, the District may report that there was no disruption in services as long as:
        - all of the child's special education services begin on the child's third birthday or, if that is a weekend or holiday, on the first school day after the child's third

[3] The first report is due to the court September 1, 2017.
[4] The enrollment percentage is required to be calculated by dividing the number of three through five year old children enrolled in an LEA by the total number of three through five year old children in the District, as reported in the most recent annual census estimate prepared by the U.S. Census Bureau's Population Estimates Program, except in the years for which the decennial census results are issued, in which case the enrollment percentage should be calculated by dividing the number of preschool children enrolled by the decennial census results.
[5] D.C. Code § 38-2561.02(a)(3)

birthday (which, in the case of a child whose birthday falls during the summer and qualifies for extended school year (ESY) services, will be ESY services), and

- all related services should begin within 14 days of the child's third birthday (unless that period is within the summer and the child does not qualify for ESY services, in which case within 14 days of the first day of school after the summer).

Child Find for Preschool Aged Children

The Court is requiring the District to ensure that at least 8.5% of children aged of three through five, who reside in or are wards of the District, are "enrolled" (as defined above) in special education and related services. OSSE currently conducts regular review and follow-up to examine policies, practices, and procedures for LEAs whose special education identification rates fall below the established 8.5% threshold. OSSE will conduct additional desktop reviews of all LEA child find policies, including examining procedures regarding regular screenings of preschool students. OSSE will also conduct desktop data reviews to identify LEAs that may need enhanced technical assistance around child find and service delivery for children aged three through five.

"Child find" is a set of policies, procedures, and public awareness activities designed to locate, identify, and evaluate children who may require special education and related services. Each LEA must have policies and procedures in effect to ensure that all children with disabilities in need of special education and related services, regardless of severity of disability, are identified, located, and evaluated. This requirement includes:

- Children enrolled in the LEA;
- For the District of Columbia Public Schools (DCPS), children residing in the District who are not enrolled in an LEA, including children attending private schools, children who are homeschooled, children who are highly mobile, children who are homeless, children who are in the custody of the DC Child and Family Services Agency (CFSA), youth who are committed to the DC Department of Youth Rehabilitation Services (DYRS), and children who are suspected of having a disability even if they are advancing grade to grade; and
- For DCPS, children who attend private schools located in the District even if the children do not reside in the District.

LEAs also must conduct activities to assist Part C toddlers and families in determining Part B eligibility and transitioning to Part B special education preschool services when appropriate. As part of child find responsibilities, DCPS must conduct public awareness activities to inform parents and the community at large concerning the availability of special education and related services and the methods available to request those services and programs, typically called the referral process.[6] A referral is documentation provided by the child's parent, or other referral source, which clearly states why it is thought that the child may have a disability. Charter LEAs also have child find responsibilities and must similarly ensure

[6] 5-E DCMR 3004

that parents of children enrolled in the LEA are aware of the availability of special education and related services and how to submit a referral. An LEA must accept both oral and written referrals, but must document any oral referral within three (3) business days of receipt.[7] Referral sources may include:

- A child's parent;
- An employee of the child's LEA who has knowledge of the child; or
- A public agency serving the child or the child's family.

In addition to annual monitoring activities already included in its system of general supervision, OSSE will be offering trainings regarding the child find process during school year 2017-2018. All training opportunities will be announced through the LEA Look Forward. OSSE will also be providing an opportunity for LEAs to voluntarily submit their child find policies for review and recommendations on ways to ensure they are compliant and support implementation.

Identification, Evaluation, and Provision of Services

Currently, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within one hundred twenty (120) days from the date that the student was referred for an evaluation or assessment.[8] Parents are an integral part of the special education process, and LEAs are reminded of the importance of and requirements related to ensuring meaningful participation by parents in all IEP team meetings, including meetings to discuss eligibility determinations. LEAs must ensure parents are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place.[9]

As described above, evaluation timeliness is an annual metric reported to the U.S. Department of Education. In the event that an evaluation is not completed within 120 days, OSSE reviews whether the delay was due to actions taken (or not taken) on the part of the LEA ("LEA delay") or the parent ("parental delay").

District of Columbia law requires LEAs to provide parents with "an accessible copy of any evaluation, assessment, report, data chart, or other document that will be discussed" at an IEP, IFSP, or eligibility meeting no fewer than five (5) business days prior to the scheduled meeting.[10] Although there is an

[7] 5-E DCMR 3004.1(b)

[8] 5-E DCMR 3005.2. Please also note that, upon inclusion of the fiscal effect of the subsection in an approved budget and financial plan as certified by the District of Columbia Chief Financial Officer and published in the *District of Columbia Register*, whichever occurs later, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation or assessment. The LEA shall make reasonable efforts to obtain parental consent within thirty (30) days from the date the student is referred for an assessment or evaluation. 5-E DCMR 3005.2(a).

[9] 34 CFR 300.320(a)

[10] DC Code 38-2571.03(3)

exception for meetings scheduled in a shorter time frame,[11] this is expected to be invoked in limited circumstances. Additionally, for the purposes of reporting to the court under *D.L. v. The District of Columbia,* the LEA must have attempted to contact the parent at least three times on three different dates using two or more modalities at least five business days prior to the end of the 120 day evaluation timeline in order for any delay to be considered a *parental delay.*

Please consult OSSE's webpage for additional information on LEA responsibilities regarding child find, the referral process, and parent involvement. Please direct any questions regarding the content of this document to OSSE.DSEPolicy@dc.gov.

OSSE is pleased to see the remarkable progress made in the District related to the identification of children with disabilities and the provision of services to them, and looks forward to working with you to ensure continuous improvement in the District.

Thank you for your efforts to support the education of children in the District of Columbia.

Sincerely,

Dr. Amy Maisterra
Assistant Superintendent
Division of Elementary, Secondary & Specialized Education

[11] DC Code 38-2571.03(3)