

ANNUAL
REPORT
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DC Office of the
Ombudsman
for Public Education





EXECUTIVE SUMMARY

The Office of the Ombudsman for Public Education experienced continued growth in contacts in the beginning half of the school year. During distance learning, however, the Office experienced a decline in call volume for the remainder of the school year. In School Year (SY) 2019-20, the Office processed the second highest number of cases since its inception. The conversion rate (61%) in SY 2019-20 is higher than the previous school year.

The data presented in this annual report shows similar trends reported in SY 2018-19. Communication and Engagement, Bullying/Student Safety, and Special Education/Disability remain the top three topics. Approximately 50 percent of the students that the Office opened cases for are students with disabilities. The Office received complaints from all eight wards. Most of the complaints were from residents of Wards 5, 7, and 8.

The Office undertook several initiatives to support families this school year. The Office partnered with SchoolTalk to facilitate community circles for families with differently abled children. Families came together and discussed a variety of topics, such as the highs and lows of distance learning, the intersectionality of racism and special education while building a supportive network. We also provided families with resources to build their emotional vocabulary and have difficult conversations with their children. Finally, the Office proactively sought feedback from families during distance learning. The Office surveyed families of students receiving special education services that we had worked with in the past two years.

Since in-person family engagement has been restricted, the Office expanded its digital contact with families by distributing newsletters containing resources and information. We also improved our social media presence on Facebook, Twitter, and Instagram.

The Office developed three mid-year recommendations in SY 2019-20—(1) require the transfer of 504 Plans when students transition to a new school; (2) develop a plan for digitizing archived student records; and (3) revise of DCPS's "Determining If K-12 Students Need Special Education" policy. a

In this report, the office is making three new recommendations specific to special education. The first recommendation is to apply a holistic approach to special education, specifically when the student's disability is classified under the Other Health Impairment category. The second recommendation relates to delayed special education eligibility determinations during distance learning. We recommend three solutions: (1) expand access to parent trainings to families who suspect their student might have a disability; (2) increase the use of Independent Educational Evaluations; and (3) develop, improve, and use Response to Intervention as an interim resource pending evaluation.

ANNUAL REPORT

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**OFFICE OF THE OMBUDSMAN
FOR PUBLIC EDUCATION**

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LETTER FROM THE OFFICE OF THE OMBUDSMAN FOR PUBLIC EDUCATION



October 1, 2020

To: District of Columbia State Board of Education

This school year has been unlike any I could have imagined. A global pandemic sent children away from school buildings. Too many families are experiencing unemployment and deteriorating physical and mental wellness. In the best-case scenario, families feel overwhelmed from juggling employment responsibilities without childcare and social isolation.

Just as communities accepted the realities of managing a pandemic another crisis arose to the forefront. Racism and discrimination against Black people are embedded in the history of our nation. The repeated recordings of the murders of Black people by the hands of racist zealots—both with uniforms and without—unleashed the anguish of Black Americans. People protested, organized and rallied for equality for all and the acknowledgement that Black Lives Matter.

The pandemic continues just as the fight for equality continues. Amid these challenges, the Office of the Ombudsman for Public Education continues to serve as a resource for schools and families in conflict. Almost immediately, we transitioned our office to full-time telework and remain as committed as ever to doing the work. Despite the surprises that have arisen and the bumps along the way, I am proud of our efficiency and nimbleness. None of us knows the future. But I do know that whatever comes our way, the Office will continue to embrace the unexpected and pivot as necessary to serve all District residents.

Thank you for allowing me to serve.

Warmly,

A handwritten signature in black ink that reads "Serena M. Hayes". The signature is written in a cursive, flowing style.

Serena M. Hayes

SECTION I

ABOUT

OUR TEAM

[Full-time Staff]

- Serena M. Hayes, Ombudsman for Public Education
- Ryvell D. Fitzpatrick, Assistant Ombudsman for Public Education
- Crystal Williams, Assistant Ombudsman for Public Education (started March 2020)
- Stephanie Arias, Program Associate

[Fellows and Interns]

- Rachel Taylor, Bijon Lane, Stephan Mogar, Daraja Carroll, and Anthony Macklin

WHAT IS AN OMBUDSMAN?

The word “ombudsman” is derived from a Swedish word meaning “entrusted person” or “grievance representative.” The word has come to denote a trusted agent who looks after the interests of a group. In the United States, numerous public ombudsman offices have been created—through legislative, executive, or judicial authorization—as independent agencies that monitor the delivery of services for certain populations. However, there are only a few jurisdictions with independent ombudsman’s offices for public education, although the number is growing.

The Office of the Ombudsman for Public Education is an independent, impartial office that helps parents and students resolve school complaints individually and collectively, transforming problems into solutions that compel systemic progress for all public education in D.C. As established by law, the Ombudsman’s mission is to be a “single office” that coordinates “transparency and accountability” by helping D.C. families navigate the five education agencies that govern and operate the public schools in D.C. The D.C. Public Education Reform Amendment Act (PERAA) laid out responsibilities for the Office of the Ombudsman that includes reaching out to parents and residents; serving as a vehicle for communication; receiving complaints and concerns, determining the validity of complaints and concerns and developing a response; identifying systemic concerns using a database; making recommendations based on observed patterns; and issuing annual reports.

OUR MISSION

The purpose of the Office of the Ombudsman for Public Education is to serve as an external, neutral resource for current and prospective public school students and their parents or guardians in the resolution of complaints and concerns regarding public education in a way that, in the opinion of the Office, furthers the students' best interests.

OUR VISION

The vision of the Office of the Ombudsman for Public Education is to provide quality conflict resolution services to families eligible to attend public schools in the District of Columbia and reduce barriers to accessing public education. The vision is to eliminate barriers to accessing public education for every eligible student in D.C. We envision a D.C. where everyone has access and choice to receive quality public education.

OUR PROCESS

Once the Office is contacted by a stakeholder, the following steps occur:

1. **Screening** – Verify that the complaint is within the Office's jurisdiction;
2. **Intake** – Ask the stakeholder a series of questions that are recorded in our database;
3. **Investigation/Examination** – Contact the other stakeholders, i.e. school or Local Education Agency (LEA), involved to acquire supplemental information;
4. **Research** – When the Office does not already have an answer to a question, conduct research;
5. **Conflict Resolution and Solutions** – The Office might offer the stakeholder(s) any of the options that follow: information (including referrals), coaching, shuttled diplomacy, attendance and/or facilitation of a meeting, mediation;
6. **Close Case** – After resolution is achieved, the case is closed. A resolution can be reached at any point throughout the process.

SECTION II

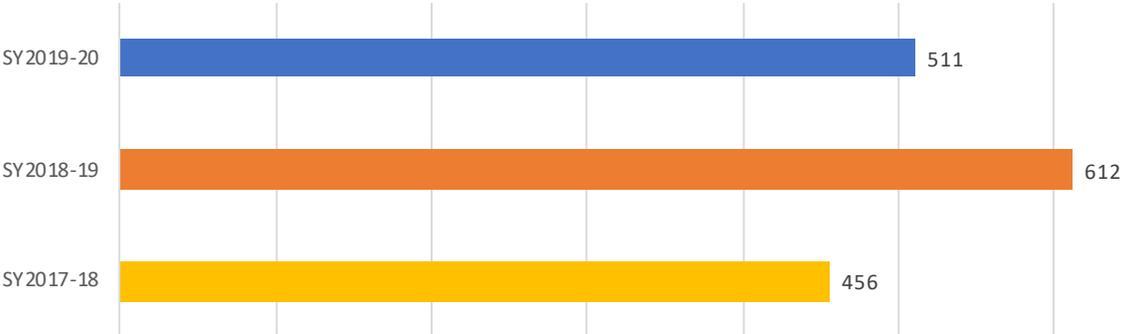
DATA

Each year, the Office of the Ombudsman reports amalgamated data collected through case management. The Office exists to assist in the resolution of disputes but also to document challenges that families and schools experience. We use the amalgamated data to highlight patterns that remain challenging with our public education systems.

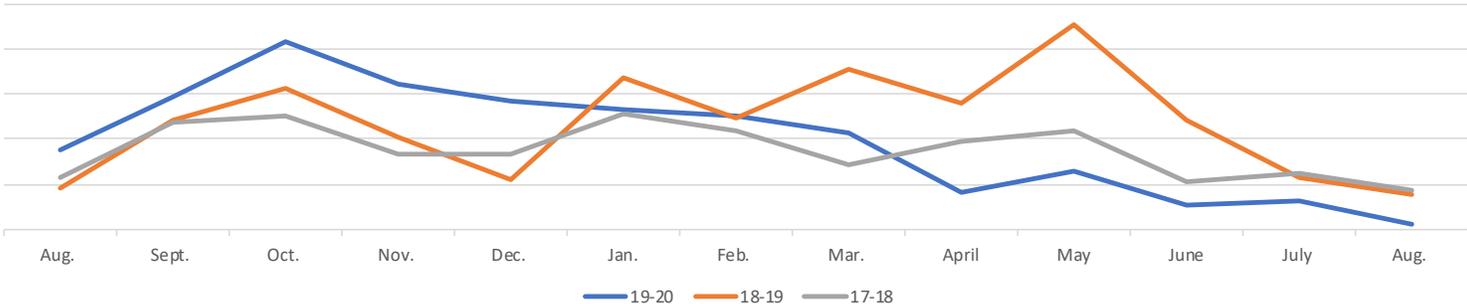
CONTACTS AND CASES

In SY 2019-20, we received 839 contacts from stakeholders. For the first time since SY 2016-17, this Office experienced a decline in contacts. The Year-to-Year Comparison graph below demonstrates the decrease in contacts from the prior school year. The month-to-month graph that follows shows the decline in contacts after schools shifted to remote learning due to COVID-19. Although overall, the Office experienced a decline in contacts for the SY 2019-20, the data from the beginning of the school year reflected a continued increase from the previous school year. Additionally, we improved our conversion rate (61%).

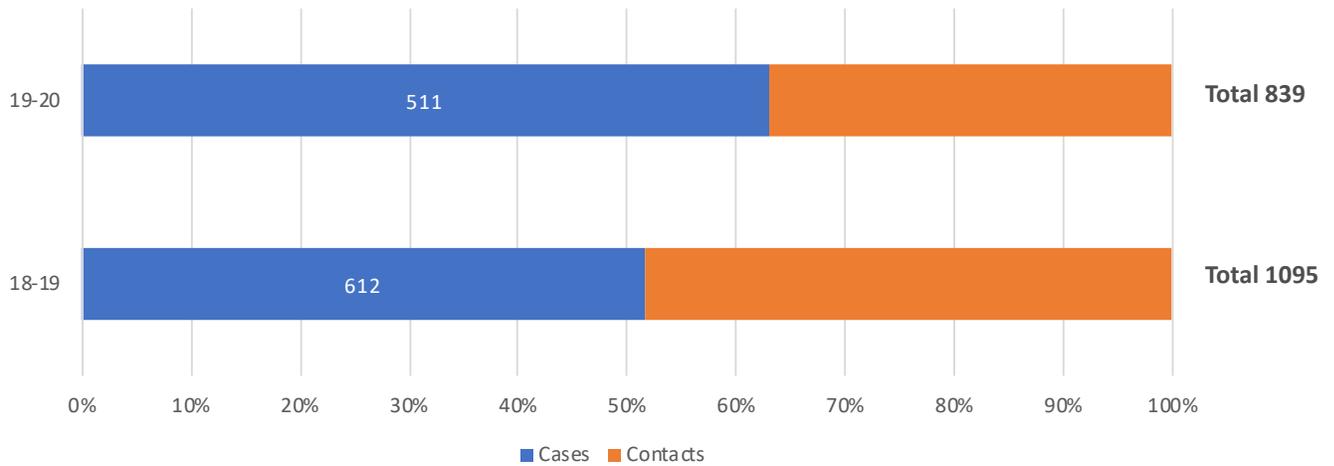
Cases: Year-to-Year Comparison



Cases by Month



Conversion Rate

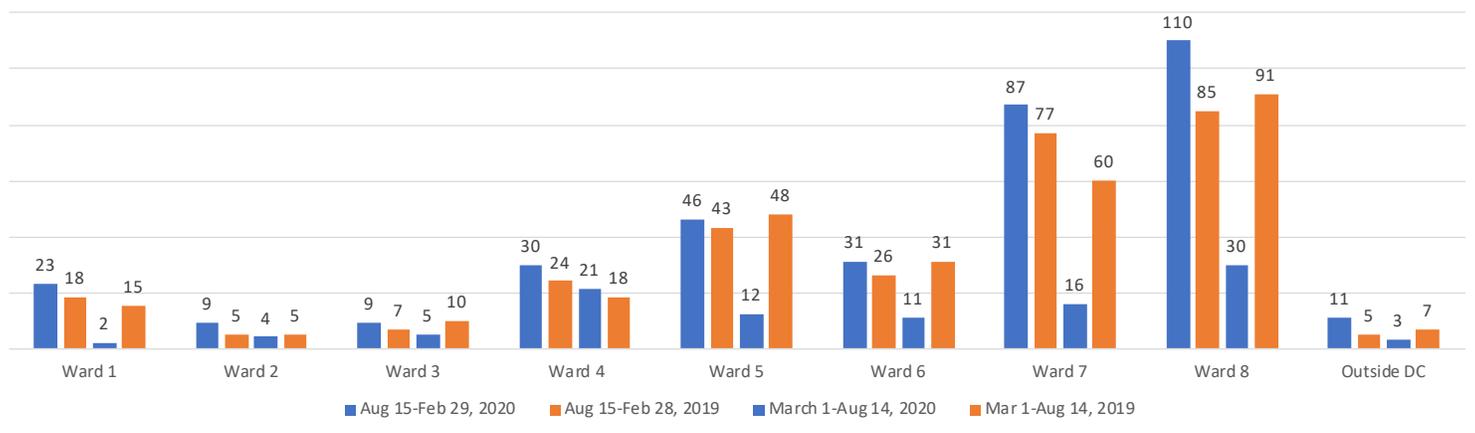


CASES BY WARD BEFORE AND DURING DISTANCE LEARNING

In SY 2019-20, we opened cases for stakeholders in all eight wards. Most of the families were residents of Wards 5, 7, and 8. This data is typical given that most families in the District reside within these three wards.

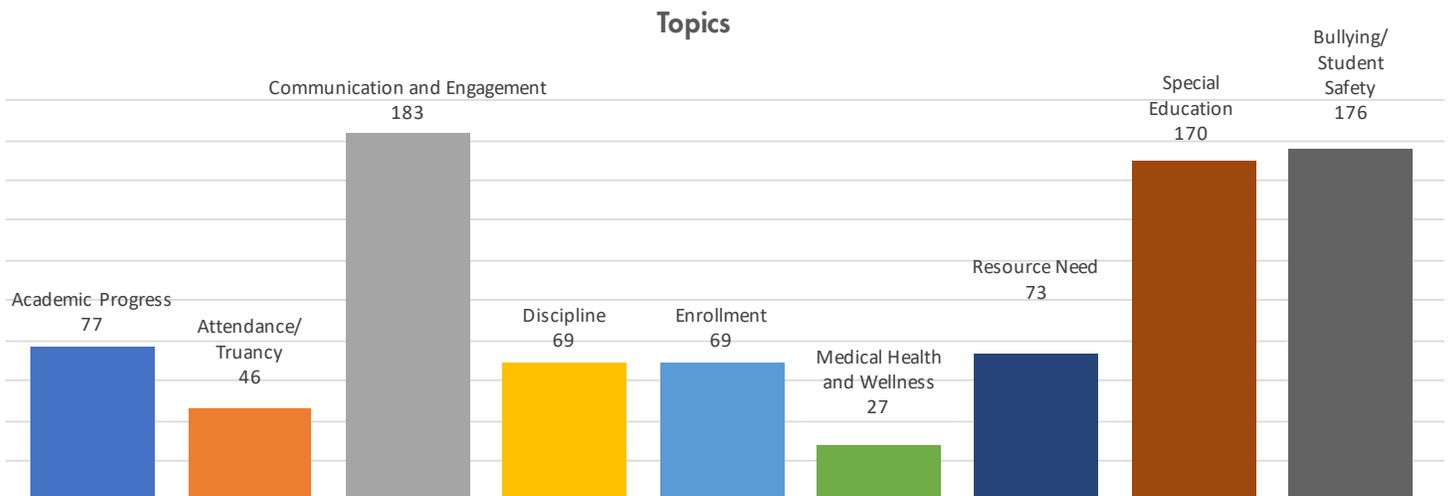
For the last two years, the Office has tracked data by students' ward of residence. This year, we have continued that practice. When analyzing data trends, we decided to partition the data into two distinct time periods—one before distance learning and the second during distance learning. Many families were impacted by the pandemic and continue to experience residual effects such as job loss or furloughs, unstable housing conditions, and a loss of childcare. We wanted to know which wards showed the greatest decrease in calls since distance learning began in comparison to last year's data. The graph below reveals that we received fewer calls from seven wards. In Ward 4, we experienced a slight increase in cases during distance learning.

Cases by Student Ward: Pre/Post Distance Learning



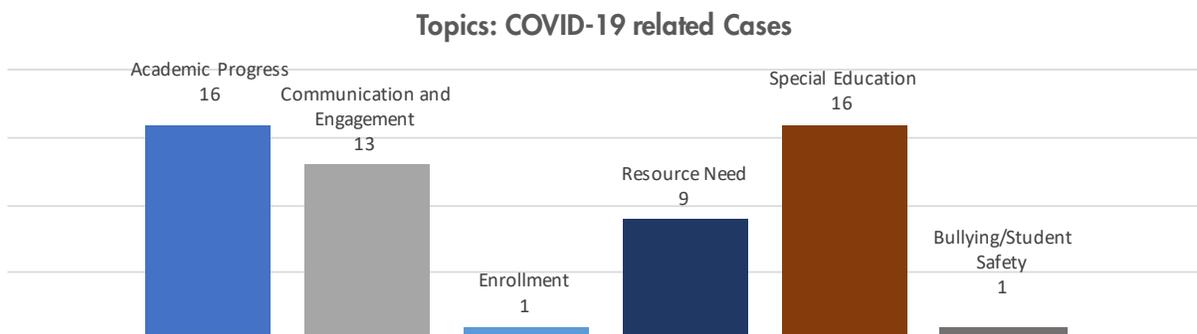
CASE TOPICS

Once a case is opened, the case is categorized and assigned by topic. A case may involve more than one topic. In those situations, we identify each applicable topic. For example, where a family brings allegations of bullying and shares that they previously spoke with the school administration but there was no response, the topics would be identified as Bullying/Student Safety and Communication and Engagement. The case would be assigned to the Bullying/Student Safety assistant ombudsman. Consistent with last year, the largest topics are Communication and Engagement, Bullying/Student Safety, and Special Education. Communication and Engagement was the most frequent topic. However, Communication and Engagement was also identified as a secondary issue, rather than the primary reason for the contact. Communication and Engagement complaints rarely arose as a single-issue topic.



COVID-19

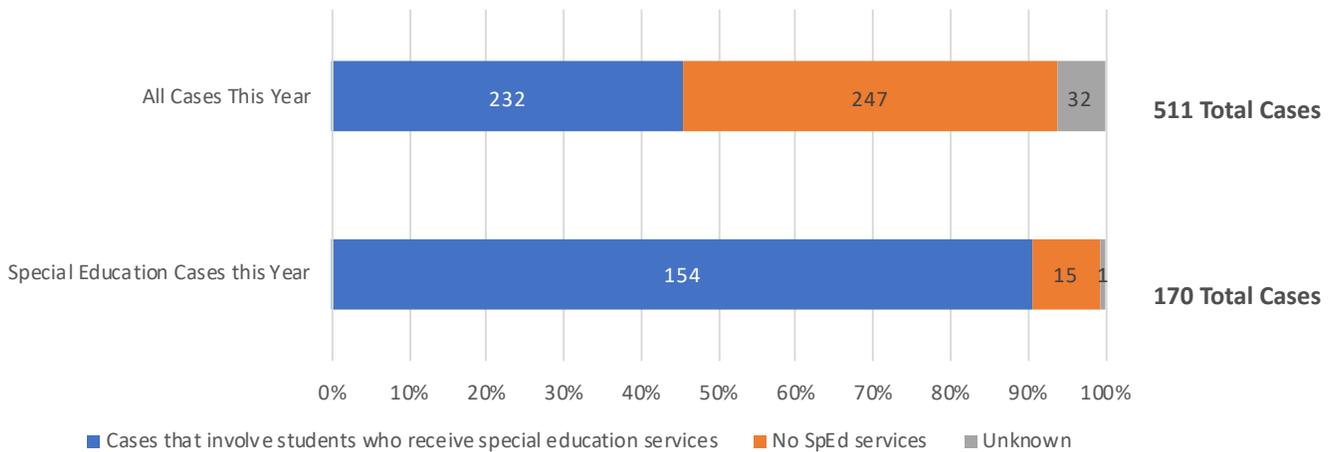
In response to the COVID-19 crisis, the Office added a data point to capture whether a case was COVID-19 related. We received cases that were related to COVID-19. The topics included Academic Progress, Communication and Engagement, Enrollment, Resource Need, Special Education, and Bullying/Student Safety. While Bullying/Student Safety remains the second highest case topic for the year, there were very few Bullying/Student Safety cases during distance learning. As apparent from the graph below, most families contacted our office concerning challenges with academic progress and special education. A few families contacted the Office with requests for resource needs, such as access to technology.



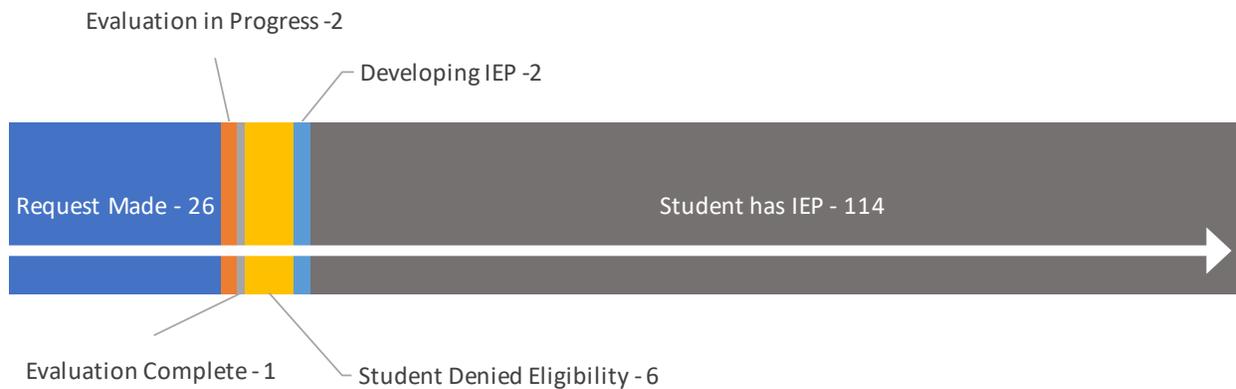
SPECIAL EDUCATION DATA

One hundred seventy of the cases we managed this year were classified under Special Education/ Disability.³ These are cases involving issues that prevent a student from accessing public education due to their diagnosed or suspected disability. Like last school year, slightly less than half of all of the students who contacted our office were students with disabilities.

Special Education Cases



Point of Breakdown



Most of the special education complaints involved conflict after the student had obtained an Individualized Education Program (IEP). These post-initial IEP development concerns often pertained to one of the following issues: behavior/discipline, implementation of IEP, problems with the IEP, placement/location of service, transportation, or safety.

For example, we handled a case where a family had concerns with the implementation of their student's IEP. The parents believed the student was not receiving all of the services outlined in the IEP. The parent also believed the IEP itself was ineffective. We scheduled and facilitated an IEP

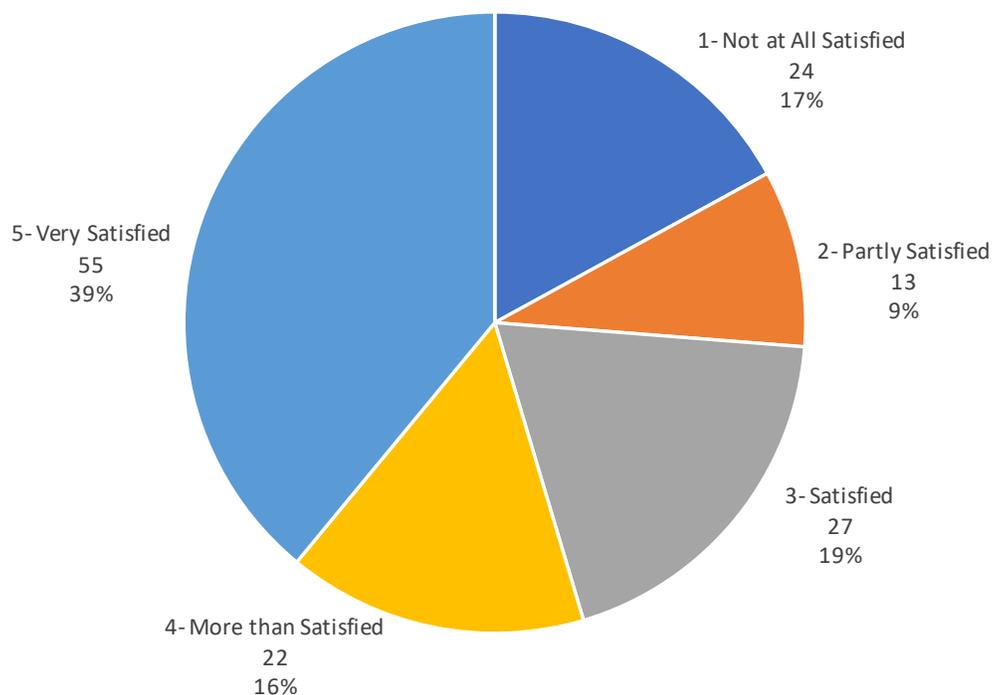
meeting. The family and the school decided to change the student’s least restrictive environment. A month after the meeting, the family shared that the student was receiving all services and doing very well in the new classroom.

Our cases do not always result with the IEP team and parents (who are included in the team) agreeing. We worked with a family who contacted our office after receiving their student’s amended IEP in the mail. The parents had not received notice of the IEP meeting and had numerous questions about the IEP. Ultimately, the parents were concerned that their student was not progressing academically. The parents believed that the IEP was not being followed. After several meetings with the IEP team, the school acknowledged that services were not delivered consistently. The student’s hours were increased. However, the school also stated that they were unable to implement any additional hours, as the special education team was overextended.

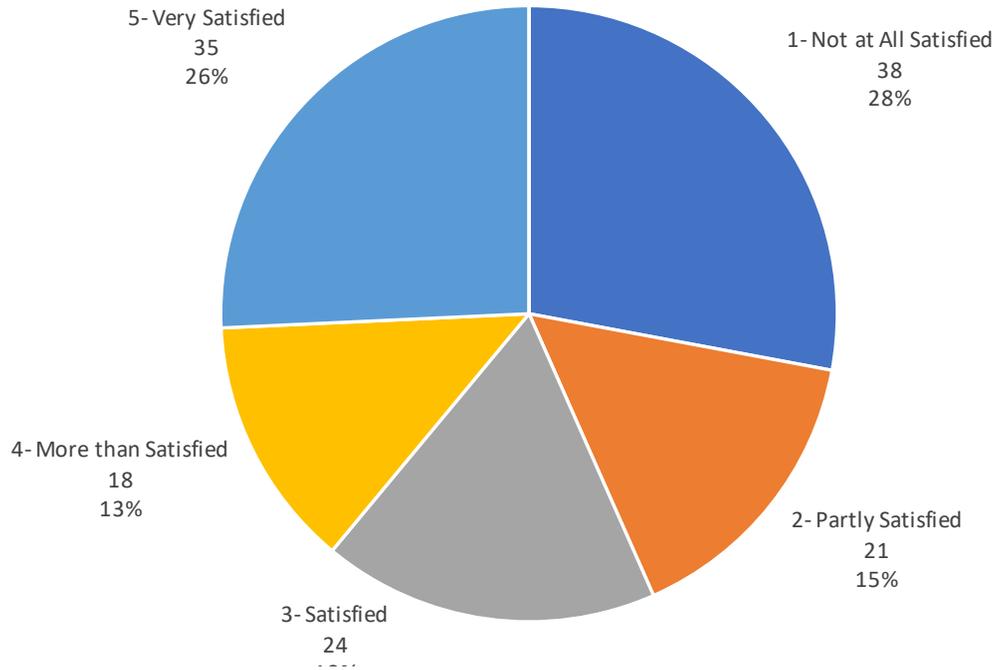
SPECIAL EDUCATION DURING DISTANCE LEARNING

When crisis hits, often our most vulnerable populations are impacted the hardest. When distance learning began, we were concerned about all children. Our experience with the challenges faced by children with disabilities during in-person learning made us particularly concerned with how their needs were being met during distance learning. To gather information about their experiences during distance learning, we conducted a survey⁴ issued only to families that we had opened cases for over the past two years. For the purpose of this annual report, we highlight three questions asked of families in the survey. The survey asks families about satisfaction with the communication with their student’s special education teacher, satisfaction with IEP implementation, and the likelihood of seeking compensatory services once in-person learning resumes. These graphs summarize the results from each of the three key questions asked.

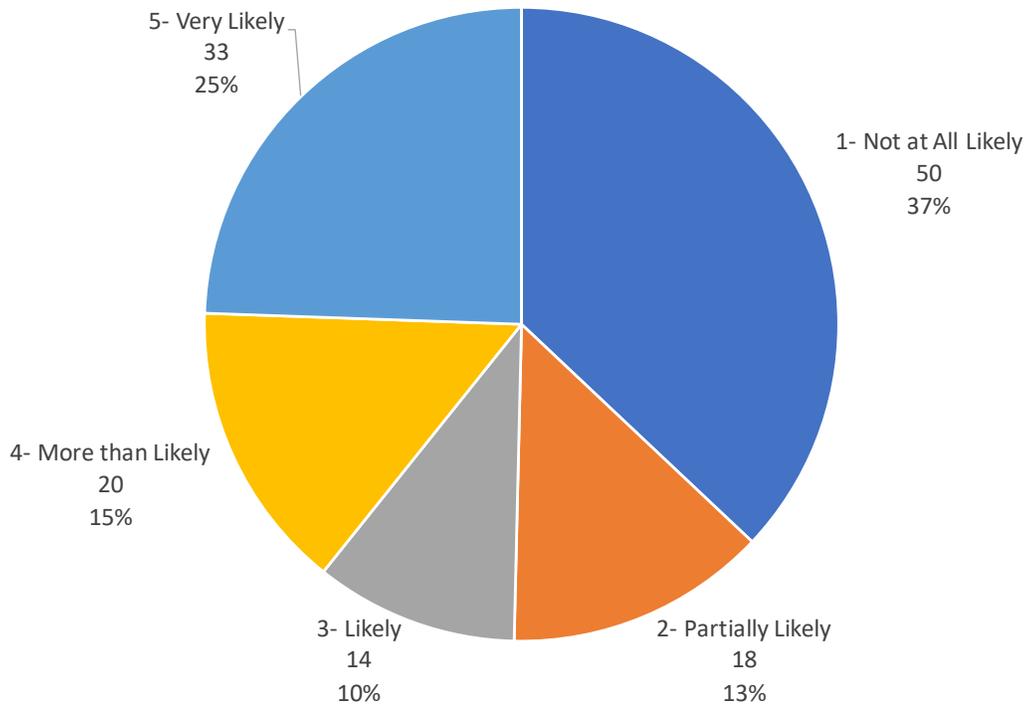
Parent Satisfaction with Communication



Satisfaction with School's Implementation of IEP during Distance Learning



Likelihood of Requesting Compensatory Education

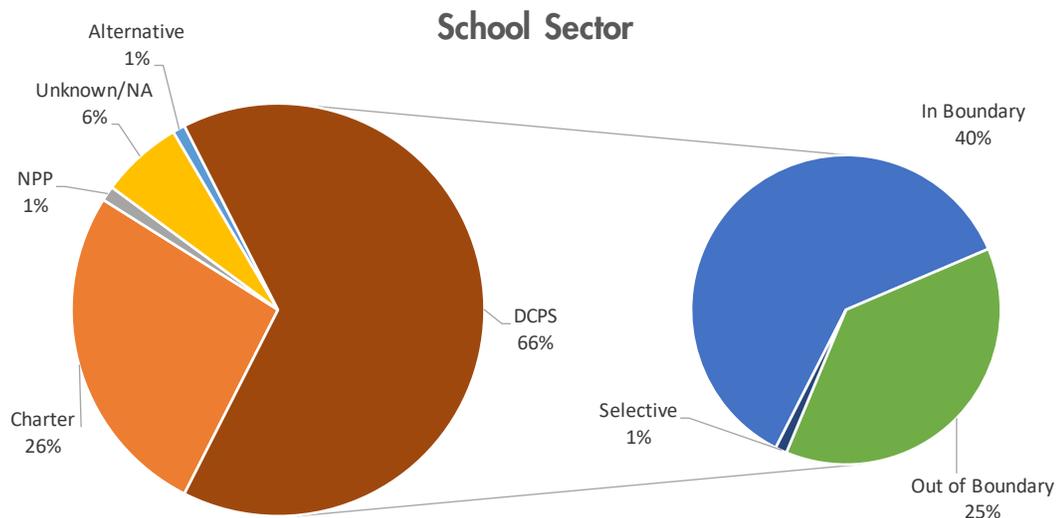


Fifty-five percent of the families we spoke with were either very satisfied or more than satisfied with communication from special education instructors. Concerning IEP implementation during distance learning, there was an even split on the opposite ends of the spectrum with slightly more families being less than satisfied with the implementation. Roughly 18 percent of families reported being satisfied with implementation. For the purpose of this survey, “satisfaction” served as the neutral response option. Some of the families that selected the neutral option also explained that they were happy with the school’s efforts but that scheduling did not allow for mobility and their children were overscheduled. These parents reported being overwhelmed managing communications and needing behavioral support for their student during distance learning.

Finally, concerning the likelihood of families seeking compensatory services after distance learning—most families reported they did not intend to seek compensatory services. While fewer families indicated they were likely to seek compensatory services, there was no pattern between satisfaction with communication during COVID-19 and the likelihood of seeking compensatory services. Families indicating that they were either “More than Satisfied” or “Very Satisfied” with IEP implementation were most likely to indicate that they had no intention of seeking compensatory education services. However, “Partially Satisfied” or “Not at All Satisfied” with IEP implementation was not a determining factor regarding the families’ contemplation of seeking compensatory education services. Overall, families seemed understanding of the unprecedented situation. While overwhelmed by the responsibilities of educating their students, especially while juggling work responsibilities, most families expressed patience and were willing to wait and see how regression was addressed after school resumed. It is difficult to predict when the grace that families have extended during distance learning will expire, especially given that few likely anticipated that distance learning would continue for as long as it has.

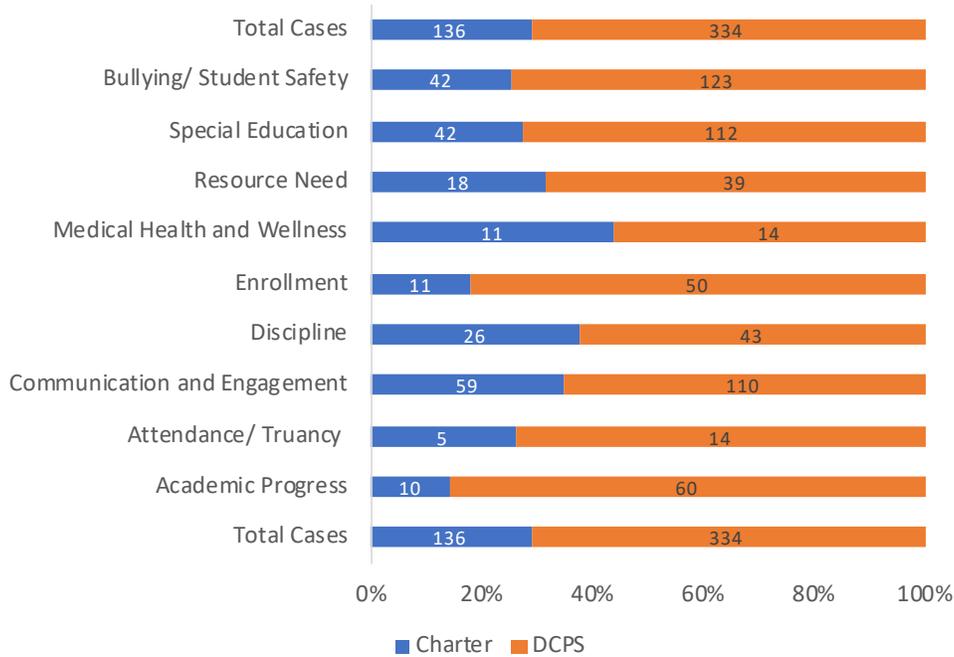
SCHOOL SECTOR

Our Office managed cases across sectors (both public schools and public charter schools). About two-thirds of our cases involved public schools and about a quarter of our cases involved a public charter school. This division is typical.



Earlier we explained the overall topic areas of the cases the Office handled. However, topics slightly differ when separated by sector. Ideally because two-thirds of the cases involved a public school, each topic area should be split between the sectors in a similar fashion. Enrollment and Academic Progress cases involved disproportionately high percentage of public schools. In the public charter sector, we experienced disproportionately higher cases involving Medical Health and Wellness, as well as Discipline.

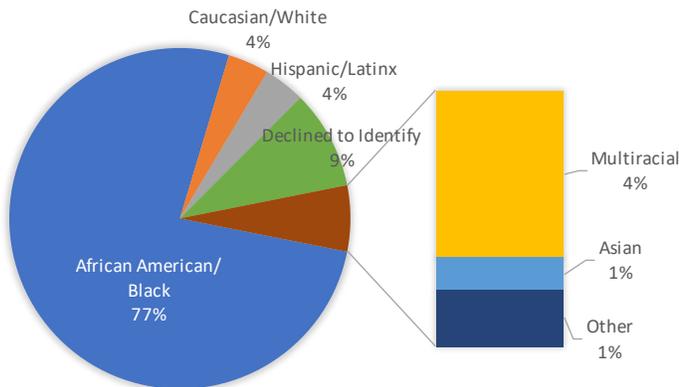
Topics by Sector



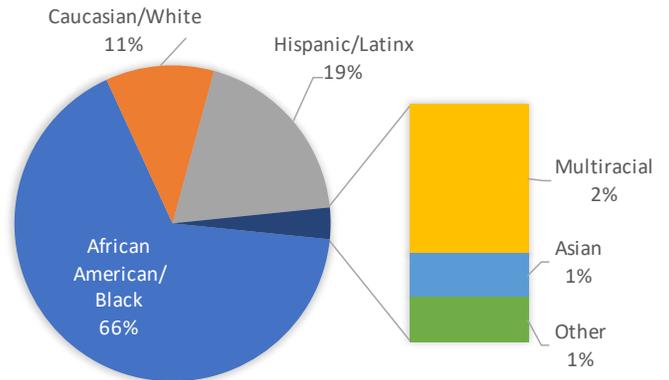
CASES BY STUDENT RACE

Consistent with previous annual reports, our casework involved majority African American/Black students, 77 percent. This is expected given that 70 percent of students in D.C. identify as African-American. Note: We do not require callers to identify their race. Nine percent of parents declined to identify their student’s race.

Student Race



Student Race* (D.C.)

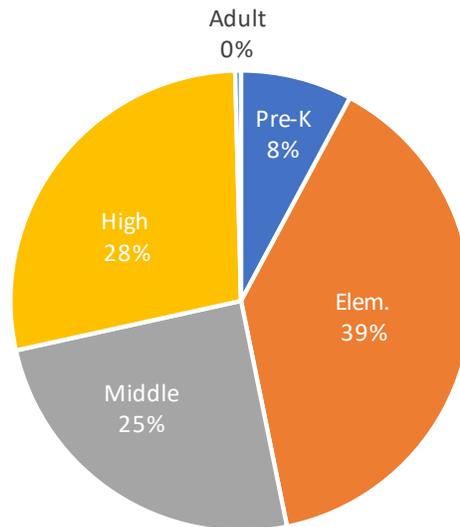


*<https://osse.dc.gov/page/data-and-reports-0>

GRADE BAND DATA

Thirty-nine percent of our cases involved elementary schools. High schools represented 28 percent of our cases. Middle schools represented 25 percent.

Overall Grade Bands

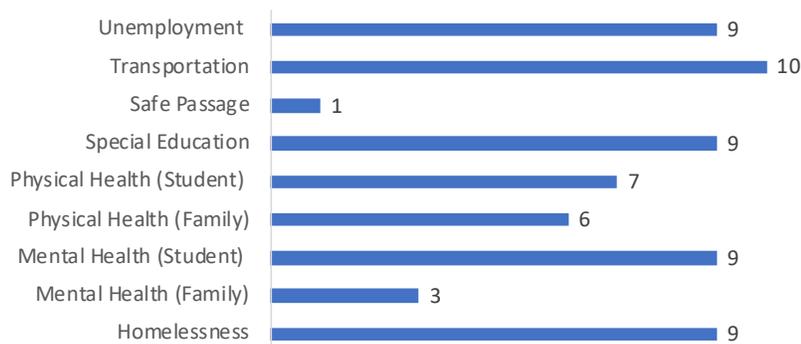


ATTEND MEDIATIONS

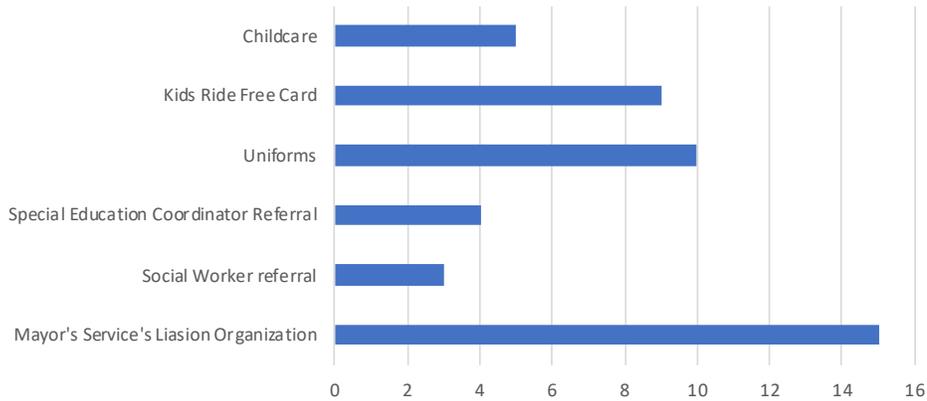
During this school year, the Office partnered with the Office of the Attorney General to provide mediation services as an intervention for families of students who were experiencing issues with school attendance. The goals of those mediations were to discuss the barriers preventing the students from attending school regularly, to connect the families with resources to help decrease or remove those barriers, and to develop plans for successful attendance for the next 90 days.

We served 26 families in that capacity. When discussing the factors that prevented the students from successful school attendance, a third of the families revealed their struggles with homelessness; a third discussed issues with employment; a third shared issues with the student's mental health; and a third shared concerns with special education. Transportation was the most common barrier discussed. This is true despite most families living within walking distance from the school. In some cases, transportation became a barrier because there were multiple children in the family attending different schools located in the opposite direction. In other cases, transportation was a barrier because the parent's physical health condition restricted the parent's mobility and the child was too young to walk to-and-from school independently. On average, each family shared about three barriers that impacted school attendance.

ATTEND Barriers



ATTEND Resource Needs



When discussing families' needs, most families wanted to be connected with the Mayor's Services Liaison Office. There, parents received assistance with food, furniture, housing, employment, uniforms, or other needs. On average, each family expressed two resources they needed to increase the likelihood of successful school attendance.

**"IT IS NOT BEYOND OUR POWER TO CREATE
A WORLD IN WHICH ALL CHILDREN HAVE
ACCESS TO A GOOD EDUCATION."**

NELSON MANDELA

SECTION III

RECOMMENDATIONS

MID-YEAR RECOMMENDATIONS

A. **Require the transfer of Section 504 Plans as students transfer schools within the District.**

Under the Rehabilitation Act of 1973, students with disabilities are eligible to receive accommodations to more closely align their access to public education to that of their peers.⁵ The accommodation plan authorized under the Act is commonly called a 504 Plan. 504 Plans are distinct from Individualized Education Programs for students with disabilities that have a significant educational impact.⁶ Under the current educational landscape, 504 Plans do not travel with students as they transfer between schools. Often a student receiving appropriate accommodations in one school setting experiences academic success. However, after transferring to a different school, that student might experience regression, failing grades, discipline concerns, directly as a result of the school being unaware of the student's disability and of the past accommodations that enabled the student to succeed. Parents are often confused, as they frequently report being unaware that the plan did not transfer. When parents are unable to advocate for their children, the loss of accommodations when transferring between schools can result in a student with a disability falling through the cracks. The legal support for allowing the transfer of records is already embedded within Office of Special Education Programs requirements. The Office of the State Superintendent for Public Education specifies the timeline for schools to respond to records requests from the receiving school.⁷ The records request must include whether the student has been identified as a child with a disability.⁸ If the student has been identified as a child with a disability, appropriate documentation must also be included in the records request.⁹ We believe that requiring 504 Plans to transfer with students as they transfer to different schools within the District would improve the District's ability to provide a Free and Appropriate Public Education to all students, minimize the risk of disrupting student academic progress due to interrupted accommodations, and improve communication between parents and schools specifically when the nature of the complaint is the failure to provide accommodations under a 504 Plan from a previous school.

B. **Digitization of Student Records**

The Office receives complaints from adults who graduated from the District public school systems. These alumni contact our office in search of student records documenting their graduation or transcripts. Our office worked with a student who was applying for college enrollment. The student graduated from high school in the late 1990s. When she contacted

the high school she graduated from, she was informed that it no longer had records prior to 2008. The student contacted our office for assistance. When our office contacted DCPS, the only record that was found was a graduation list the year the student had graduated. DCPS generated a letter for the student verifying graduation. Unfortunately, the letter was insufficient because the student needed to provide the enrolling university with the specific courses that she had completed in high school. Experiences like this alumna are common. Other cases that we have experienced resulted in harsher consequences. In at least one instance, an alumna had a job offer rescinded because her educational records could not be located.

We have received calls from families and students with similar requests. Whether the student or graduate is in need of their educational records because they are working to obtain a state identification card, obtain or maintain employment, or similar to the student discussed above, trying to enroll in an institution of higher learning, this is a problem that should not exist in the District. Most people in search of their educational records rely on accurate record keeping by public school systems because they do not have a college degree. The challenge presents an equity issue for city residents, where those who have had access to higher education do not rely on accurate record keeping at the high school level. Where a student has earned a high school diploma from a District of Columbia school, there should be no issue obtaining the student's educational records. And, yet, for too many, the problem persists. Our recommendation is for Local Education Agencies (LEAs) to develop a plan to digitize student records.

C. Response to Intervention Training and Policy Revision

Response to Intervention (RtI) is a systematic, multi-tiered teaching approach that allows teachers to differentiate learning instruction based upon student need. Various LEAs throughout the District, including District of Columbia Public Schools (DCPS), utilize this innovative system. Thousands of students benefit from this research-based intervention's implementation and are provided the supports they need to make meaningful academic and behavioral growth. However, our office has witnessed a concerning trend that might be preventing students with more extensive needs from accessing the services they need. In several cases, RtI was used to delay or deny a timely initial evaluation for children suspected of having a disability. Parents were incorrectly told that RtI must occur before their child could be evaluated for a disability, and thus consider eligibility for special education and related services.

When our office communicated with schools, we were often told the same information from school administrators. When we inquired about the process for determining special education eligibility, school administrators frequently misstated the law and specified that special education evaluations transpired after RtI. We decided to research DCPS policy on the issue. We located the "Determining If K-12 Students Need Special Education" policy publicized on the DCPS's website.¹⁰ The policy outlines the steps for special education beginning with a referral. However, steps two and three are problematic. Step Two suggests that families contact the student's school and meet with the Response to Intervention (RtI) team to identify the challenges and supports that might be beneficial to the student.¹¹ Step Three states:

"If you do not think the RtI supports are meeting your child's needs, you can discuss this with the RtI Support team to request a special education evaluation for your child. Once you make this request or if the school decides that its strategies have been exhausted, you will be contacted by your school's special education point of contact. . . to discuss the evaluation process for Special Education."¹²

Read together, the implication is that RtI supports must begin before a special education evaluation. This policy and practice is in direct contradiction to guidance issued from the

Department of Education's Office of Special Education Programs (OSEP), stating: "The use of RtI strategies cannot be used to delay or deny the provision of a full and individual evaluation...to a child suspected of having a disability."¹³ Our recommendation is for DCPS to rewrite the policy such that it conforms with OSEP guidance and clearly indicates that initiating or exhausting RtI supports is not a prerequisite for special education evaluation. Additional training for teachers and administrators clarifying the revised policy is recommended.

D. Holistic Approach to Educational Needs

The classification of Other Health Impairment often coincides with academic progress challenges. In conversations with schools we have observed significant variations both within and between LEAs on how students suspected of having a disability classified under "Other Health Impairment"¹⁴ are handled. Some special education coordinators explain that when a student is suspected of having Attention Deficit Hyperactive Disorder (ADHD), the coordinator does not communicate that information to the family. Instead, the coordinator might convey that the student is having attention challenges, is easily distracted, and/or is a distraction to peers. A referral for evaluation is made, and if the parents consent, the evaluation is conducted. If the IEP team determines that the student is a qualifying student with a disability, then either an IEP or 504 Plan is developed for the student. The evaluation in this circumstance is called a Psycho-Educational Evaluation¹⁵—separate and distinct from a NeuroPsychological Evaluation¹⁶. ADHD and similar conditions are medical diagnosis. Special education coordinators are not medical professionals and are unauthorized to provide a medical diagnosis.¹⁷

Parents are often uninformed that a medical evaluation might be necessary or even helpful to improve the student's academic performance. Some schools have reported that during the eligibility determination meeting they might inform parents that they may wish to discuss the evaluation with the student's pediatrician. Often parents in this situation feel confused. They experience that their child is struggling academically—typically in at least one academic area—in math, reading, and/or writing. These parents might express that their children have strong oral communication skills, but that those skills are not reflected in their student's academic performance. When these parents come to our office, they often have no idea that there might be a medical diagnosis associated with their student's educational disability classification. Too often, these families have not contacted a medical professional. As a result, these parents lack information to make informed decisions and apply a holistic approach that considers treatment in addition to the accommodations and individualized instruction that their student's may qualify to receive.

To address this problem, we recommend that LEAs develop language with the assistance of Office of the State Superintendent of Education (OSSE) that explains the limitations of the Psycho-Educational evaluation and explain the types of disabilities that children are often diagnosed with when they fall under the "Other Health Impairment" disability classification. These resources should be developed in collaboration with medical professionals to better help parents understand that IEPs do not preclude the need for medical treatment when appropriate.

E. COVID-19: Special Education Eligibility Determinations

The District of Columbia has an obligation to ensure that all children, birth through 21 years old, with special needs who might require intervention are located, identified, and evaluated in order to be in compliance with the Individuals with Disabilities Education Act (IDEA).¹⁸ The eligibility process begins with a referral, also known as a request, for an initial evaluation from a variety of sources, including parents, LEA or school staff, pediatricians or

health care providers.¹⁹ Once the referral process begins, schools are subject to specific timelines to make an eligibility determination.²⁰ LEAs are responsible for making reasonable efforts to obtain parental consent for initial evaluation within 30 calendar days of referral and complete an eligibility determination within 60 calendar days of obtaining parental consent.²¹

Following the completed evaluation, the multidisciplinary team²² meets to analyze all existing data. These data consist of a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the student, including information provided by the parent. Appropriate documentation includes: evidence of parent input and at least one other data source, such as aptitude and achievement test, teacher recommendations or observations, child's physical condition, child's background, adaptive behavior, informal assessments, and progress reports.²³ If a child is found eligible to receive special education services, an IEP must be finalized and implemented within 30 days.²⁴

The Office of the State Superintendent of Education released "IDEA, Part B Provision of FAPE Frequently Asked Questions."²⁵ In response to a question concerning the procedural timeline for LEA completion of initial evaluations delayed because of COVID-19, OSSE wrote: "LEAs should make attempts to meet IDEA procedural timelines to the greatest extent possible, and to reach agreements with parents on extension of procedural timelines where possible."²⁶

The guidance continues:

"OSSE, however, recognizes LEAs will experience an unprecedented volume of workload related to IDEA compliance and updates to student programming upon return to normal operations, and this volume may begin during the phased reopening of D.C. schools. LEAs should resume all activities delayed by circumstances related to the public health emergency as soon as possible. As part of recovery planning efforts, LEAs should identify delays due to student unavailability and impossibility and consider on a student-by-student basis a reasonable timeline for completion of the required activity.... In doing so, LEAs should consider the availability of student data, student-level recovery planning, and LEA-wide recovery planning activities. LEAs should communicate anticipated timeframes for completion of delayed procedural activities to families."²⁷

OSSE's guidance does not change the legal requirements of the IDEA. The guidance balances the reality of families and schools' experiences and sets forth a framework for schools to manage the unprecedented volume of evaluations due (or overdue).

We have seen the immediate impacts that the pandemic has had on families of students in need of evaluations. Presently, an abnormally high number of our cases are with students whose evaluations have been latent due to the inability to complete them in person. Therefore, resulting in a delay in receiving special education supports should the student qualify. For example, our office oversaw a case where the student had finally completed the referral process along with the consent to evaluate, but due to the pandemic, the process halted. They were unable to have the data support of schoolwide and statewide assessments as well as classroom assessments. This family was understanding of the pandemic's impacts and agreed to continue with assessments when the school re-opened.

Our office has been able to offer incremental supports to some families who have expressed a need for their child to receive additional special education supports. For example, a concerned mother sought our support when she noticed her son, who had an IEP, was not receptive to distance learning and was met with challenges. She initially wanted her child to receive compensatory education and re-evaluation. Our office in collaboration with the school, helped the child receive Extended School Year (ESY) supports in addition to documented team consensus on the child's need for re-evaluation as soon as it is deemed permissible.

RECOMMENDATIONS

In contemplating recommendations about special education determinations, we considered the tools that schools already have at their disposal. Albeit, in some of the applications described below, schools would apply traditional tools in non-traditional ways. The recommendations we propose include:

ONE Expanding access to parent trainings that might be included as a related service in Individualized Education Program²⁸ to families who suspect that their student might have a disability;

TWO As schools plan for the unprecedented increase in special education evaluations, knowing that realistically, it will be difficult for schools to comply with the IDEA evaluation timelines, IEP teams should examine the data already at their disposal, including informal data, to determine if a formal evaluation is needed prior to determining that the student has a disability and meets IDEA requirements. If the IEP team decides that additional data is needed to comply with IDEA, then the IEP team should consider how soon said student needs to be evaluated. Additionally, the IEP team should consider what supports might otherwise be available to the student to assist the student's needs in the interim. Where the supports available would be severely insufficient, students should be permitted to obtain an independent evaluation. The IDEA gives parents the right to an Independent Education Evaluation (IEE) administered at public expense when a parent disputes the results of the school's evaluation.²⁹ This process could allow children whose evaluations have been delayed the opportunity to have an evaluation completed by private providers; and

THREE Lastly, we recommend schools improve RtI, specifically using the resources that are already available as Tier III interventions for students who are awaiting evaluation. In this way, RtI would serve as a part of the recovery plan as schools transition to in-person learning. It is important to note that this recommendation is not for schools to use RtI to justify delayed evaluation. However, RtI can be used as an interim resource for students who have already been identified as needing evaluation and await said evaluation.

SECTION IV

THE GAPS AND QUESTIONS THAT REMAIN

By the time of publication of this annual report, the school year will be in full swing. Most schools in the District are preparing to continue virtual instruction at least for the first term. In preparation for the new school year, schools have processed the lessons learned from the spring. Parents have received schedules for virtual learning including increased class instruction. Terminology such as synchronist versus asynchronist learning have become common household vocabulary. The message is clear—despite the resumption of virtual learning, schools are expected to provide instruction and students are expected to engage. In preparation for virtual school re-opening, OSSE released guidance in July, for LEAs on serving students with disabilities during periods or remote or blended learning.³⁰

Included within the guidance is OSSE’s response to frequently asked questions concerning IDEA, Part B Provision of FAPE. OSSE addresses specific questions about how to best support instruction for students with disabilities during distance learning, how to address limitations and the impossibility of meeting each student’s IEP needs during distance learning, and how to mitigate regression for all students, including students with disabilities. The guidance appears to maintain its tone and echo instruction for LEAs to continue to provide FAPE to students with disabilities by delivering services to the greatest extent possible.³¹ The guidance also stipulates that schools are required to follow IEPs.

Throughout OSSE’s guidance, there are references to continuing to uphold the requirements of IDEA, while also easing expectations and considering safety, health, and wellness, as LEAs determine the extent to which IDEA compliance can be met during the pandemic, as reflected by the use of terms and phrases such as “to the greatest extent possible” and “making every effort.”³² The language guides that schools are not absolved of their responsibilities under the IDEA while understanding that the nature of the pandemic necessitates flexibility for LEAs to do the best they can. IEP services can be provided in a “different manner” than during in-person learning, and there are some services that might not be provided at all. As a result, the services and efforts made by LEAs are drastically different across the District.³³ But more importantly, there is an implicit recognition that there are certain students with disabilities who will never be able to have their needs met through distance learning modalities.

When schools were forced to implement distance learning because of the pandemic, many states reported a sharp decline in special education complaints. The Office of the Ombudsman experienced a similar decline. As discussed above, when we connected with families to learn about their experiences with distance learning, many families were flexible with schools. There was an understanding that the crisis did not afford schools time for preparation. There was also the assumption that distance learning would be short term. Whether the additional measures that schools have implemented to improve the distance learning experience in SY 2020-21 will meet

the expectations of families of students with disabilities is yet to be seen. As distance learning resumes this fall and LEAs begin to hold themselves to pre-COVID expectations for non-disabled peers, there remains the question of when expectations to deliver accessible and effective instruction to students with disabilities will be required without caveats.

As distance learning resumes there remains a question of how long parents of children with disabilities will remain flexible. For any student with an IEP whose needs are unmet during distance learning, the guidance sets forth options for mitigating regression and compensatory services. LEAs are to submit recovery plans that detail how they intend to address learning loss during distance learning. These school-wide plans will assist in assessing student need and resource supports for all children, including children with disabilities. When normal school operations resume, LEAs will have to make individual considerations for each student with an IEP to determine whether a student is due compensatory services. Even with the regression mitigation plans and compensatory services, there are certain populations who might be unable to access these options for remedy. One notable population are older students who “age-out” of public education eligibility before being able to take advantage of remedies afforded younger, eligible students when schools do reopen.

In our casework, we have witnessed numerous LEAs make broad-based decisions that were not individualized as required by IDEA to either withhold evaluations, remove dedicated aides, and otherwise fail to provide related services. The unfortunate truth is that for many students, schools had no realistic alternative given the type of evaluations needed, or the inability to fund dedicated aides, and the ability to provide a related service (such as occupational therapy) virtually. However, there were other instances where no actual effort was made to consider a creative alternative, to provide a thorough explanation for a decision, or to even hold an eligibility determination meeting and make a decision as a team whether to put an evaluation on hold. Crisis does not eliminate responsibility. While there are many students who cannot be served adequately during distance learning, there is still a lot of room for improvement in how we serve students with disabilities that would benefit from robust and accessible distance learning. It is our obligation to ensure that students with disabilities are served during distance learning. Most likely there will be no student who is made 100 percent whole—disability notwithstanding—after distance learning ends and normal in-person instruction resumes. But if we fail to adequately try to meet our responsibilities, it will be the courts that decide how badly we failed, and the children who are left to suffer from our mistakes. Let this not be our story.

APPENDIX I

WORK SUMMARY FOR THE SCHOOL YEAR 2019-2020

Contacts received: **839**

Cases handled: **508**

Cases pending as of August 15, 2020: **27**

Cases examined and resolved informally: **266**

Cases examined and handled through a formal process: **92**

Cases dismissed as unfounded: **11**

Cases where recommendations were made: **100**

APPENDIX II

DEFINITION OF TOPICS

ACADEMIC PROGRESS

Issues involving student grades, credits, transcripts, and curriculum that impact learning and/or appropriate matriculation.

ENROLLMENT

Issues preventing students from properly registering for school.

COMMUNICATION AND ENGAGEMENT

Issues preventing a student from accessing their education due to real or perceived breakdowns in the ability of parties to share information appropriately. Concerns about staff and staff behavior fall into this category.

SPECIAL EDUCATION / DISABILITY

Issues preventing a student from accessing their education due to a student's diagnosed or suspected disability.

RESOURCE NEED

Issues related to a lack of goods, services, or information that impacts student learning or ability to attend school regularly.

STUDENT SAFETY/ BULLYING

Issues in which a student feels harassed or targeted for negative actions by another member of the school community. This includes the legal definition, a family member's impressions, and sexual assault. Concerns about negative interactions between students fall into this category.

DISCIPLINE

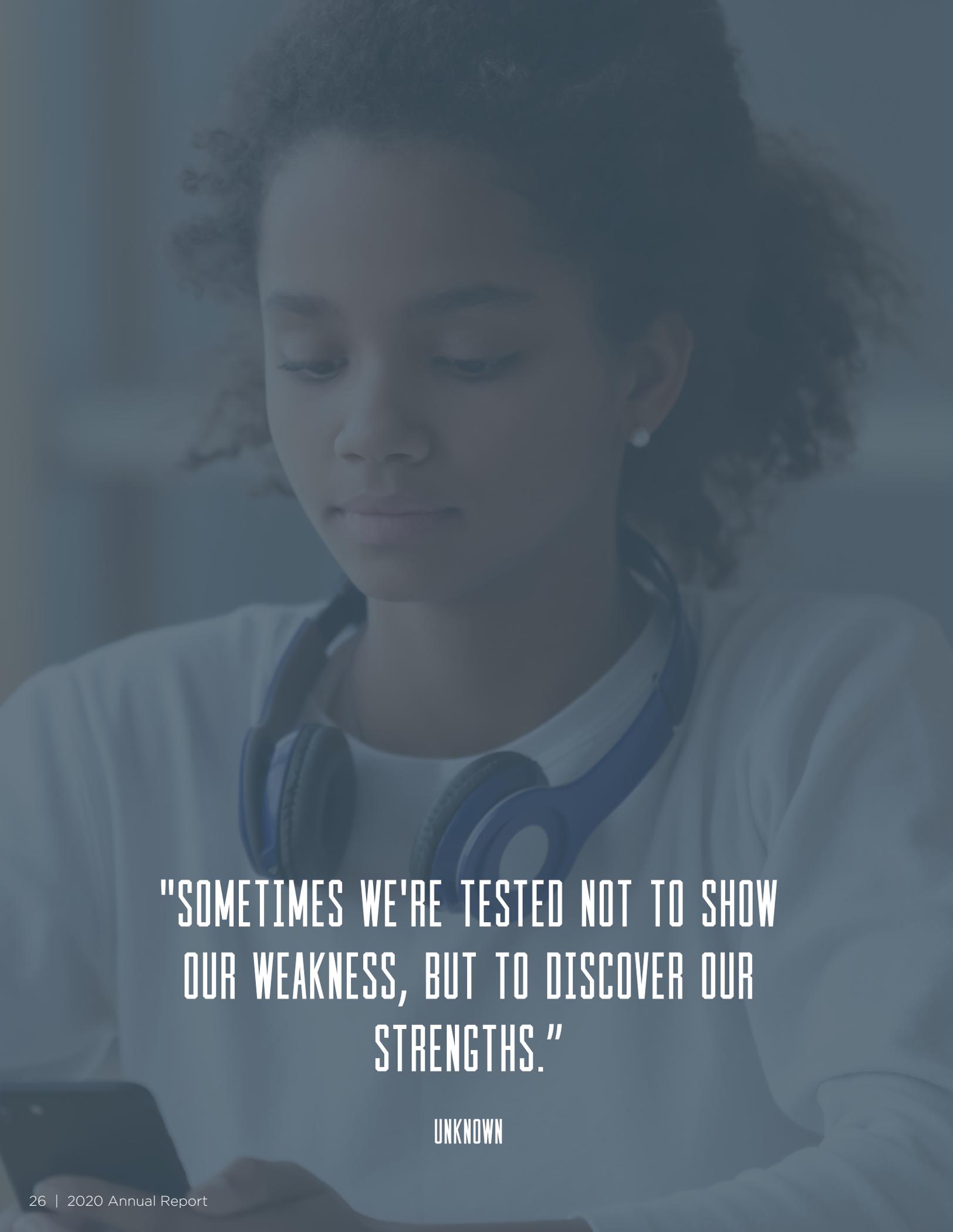
Issues regarding a student who has been temporarily or permanently placed out of school due to a behavior or disciplinary infraction, including but not limited to formal suspensions and expulsions.

ATTENDANCE

Issues related to a student's regular and timely presence in school that impact learning, appropriate matriculation, and/or student welfare.

MEDICAL / HEALTH AND WELLNESS

Issues impacting learning or attendance for students with physical or mental welfare concerns, not caused by a disability.



"SOMETIMES WE'RE TESTED NOT TO SHOW
OUR WEAKNESS, BUT TO DISCOVER OUR
STRENGTHS."

UNKNOWN

ENDNOTES

¹ District of Columbia Public Schools (DCPS), Public Charter School Board (PCSB), Deputy Mayor of Education (DME), Office of the State Superintendent of Education (OSSE), and the D.C. State Board of Education (SBOE).

² “Stakeholder” is used rather than “families” because we also receive contacts from schools and LEAs.

³ There were also 15 cases that involved 504 Plan disputes.

⁴ The complete report is available at <https://sboe.dc.gov/sites/default/files/dc/sites/sboe/SpEd%20Survey%20Report%20September%2028%20%281%29.pdf>

⁵ United States. Department of Health, Education, and Welfare. Office for Civil Rights. Section 504 Of the Rehabilitation Act of 1973: Fact Sheet: Handicapped Persons Rights under Federal Law. Washington: Dept. of Health, Education, and Welfare, Office of the Secretary, Office for Civil Rights, 1978.

⁶ Ibid.

⁷ District of Columbia Office of the State Superintendent of Education. Individualized Education Program (IEP) Implementation for Transfer Students Policy, December 17, 2014. Available at <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/IEP%20Implementation%20for%20Transfer%20Students%20Policy%20%2812-17-14%29.pdf>.

⁸ Ibid.

⁹ Ibid.

¹⁰ District of Columbia Public Schools. “Determining If K-12 Students Need Special Education”. Available at <https://dcps.dc.gov/node/979872>.

¹¹ Ibid.

¹² Ibid.

¹³ United States Department of Education, Office of Special Education and Rehabilitative Services. OSEP 11-07; January 11, 2011. “A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)”. Available at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.doc>.

¹⁴ 34 C.F.R. §300.8(c)(9) “other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that— (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (ii) Adversely affects a child’s educational performance.”

¹⁵ Morin, A. “The School Evaluation Process: What to Expect”. Understood. Available at <https://www.understood.org/en/school-learning/evaluations/evaluation-basics/the-evaluation-process-what-to-expect>.

¹⁶ Tucker, G.C. “Neuropsychological Evaluations: What You Need to Know”. Understood. Available at <https://www.understood.org/en/learning-thinking-differences/treatments-approaches/educational-strategies/neuropsychological-evaluations-what-you-need-to-know>.

¹⁷ Ross-Kidder, K. Ph.D. “Who Can Diagnose LD or ADHD?” Cal Poly. Disability Resource Center. Available at <https://drc.calpoly.edu/content/eligibility/whoCanDiagnose>.

¹⁸ 34 C.F.R. § 300.111(a)(1)(i).

¹⁹ D.C. Code § 38-2561.02(a)(3).

²⁰ D.C. Code § 38-2561.02(a)(2).

²¹ Ibid.

²² Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to—(a) Evaluation of the child in §§303.113 and 303.321(a)(1)(i) and assessments of the child and family in §303.321(a)(1)(ii), may include one individual who is qualified in more than one discipline or profession; and (b) The IFSP Team in §303.340 must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with §303.343(a)(1)(iv)).

²³ 34 C.F.R. § 300.304(b)(i).

²⁴ 34 C.F.R. §300.301(c)

²⁵ “IDEA, Part B Provision of FAPE: Guidance Related to Remote and Blended Learning.” July 21, 2020. Office of the State Superintendent for Public Education. Available at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/COVID-19%20-%20Guidance%20Related%20to%20Distance%20and%20Blended%20Learning%207.20.20.pdf.

²⁶ Ibid.

²⁷ (FN17) Ibid.

²⁸ 34 C.F.R. §300.34 Related services. (a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

²⁹ 34 C.F.R. § 300.502 Independent educational evaluation. “(3) (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question”.

³⁰ “IDEA, Part B Provision of FAPE: Guidance Related to Remote and Blended Learning.” July 21, 2020. Office of the State Superintendent for Public Education. Available at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/COVID-19%20-%20Guidance%20Related%20to%20Distance%20and%20Blended%20Learning%207.20.20.pdf.

³¹ “IDEA, Part B Provision of FAPE: Guidance Related to Remote and Blended Learning.” July 21, 2020. Office of the State Superintendent for Public Education. (“An LEA continues to have the obligation to provide FAPE to a student with a disability during extending closures resulting in distance or blended-learning models arising from a local or national emergency. LEAs should continue to provide, *to the greatest extent possible*, the special education and related services identified in students IEPs (OSEP Guidance A-1). LEAs should provide any needed modifications or alternatives to make the curriculum and services accessible to students with disabilities (See USED Supplemental Fact Sheet p. 2P Guidance A-1). In doing so, LEAs must make decisions that take into *consideration the health, safety, and well-being* of all their students and staff (USED Supplemental Fact Sheet, p.1). LEAs should consider the availability of remote learning materials through multiple modalities (e.g., US Postal Service, electronic format, in-person pick-up, etc.) as part of needed modifications or alternatives to make the curriculum accessible to students with disabilities. LEAs should additionally deploy *flexible options* for students to return to work completed during remote learning. The health, safety and well-being of families and staff should be considered when making these decisions. *Good faith efforts* to employ *equity* and *flexibility* to ensure that students receive distance learning materials will ensure LEAs deliver services to students with disabilities to the greatest extent possible.”) (Emphasis added).

³² Ibid.

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