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**Testimony Before the Committee on the Judiciary and Public Safety,
Council of the District of Columbia**

For the July 11, 2019 Public Hearing on:

B23-0039 - Special Education Rights of Youth Defendants Amendment Act of 2019

Thank you, Council Chairman Mendelson, Judiciary and Public Safety Committee Chairman Allen, and all Councilmembers for this opportunity to testify. I am Kaitlin Banner, Deputy Legal Director from the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and Ward 6 resident, and I am here today to urge you to pass the Special Education Rights of Youth Defendants Amendment Act.

The Special Education Rights of Youth Defendants Amendment Act is particularly relevant to the work of the Committee because of our commitment to redressing racial injustice in the District. It will appoint education attorneys to represent primarily Black and Brown young people with disabilities who are caught up in an unjust criminal legal system. Without access to attorneys to fight for their right to an education, these young people are at risk of long periods of incarceration, homelessness or housing instability, and income instability. If we do not pass this Act, we as a city risk furthering racial inequality in the District.

The District of Columbia is a city characterized by racial inequity. By every measure, there are profound racial disparities that disadvantage people of color. Involvement with the criminal legal system is a major driver of inequality in the District of Columbia. The District has a high rate of incarceration that disproportionately affects African American men, women and families. Ninety percent of the District's prison population is African American and only four per cent is white despite that the City is almost half white and half Black.² The District has one of the highest rates of incarceration in the nation.³

Most young people involved in this profoundly unequal criminal justice system do not have a high school diploma or credential like a GED when they enter the system.⁴ System-involved young people

¹ The Washington Lawyers' Committee was founded in 1968 to address civil rights violations, racial injustice and poverty-related issues in our community through litigation and other advocacy. The Committee has a long history of working to address discrimination in housing, employment, criminal justice, education, public accommodation and against persons with disabilities. We work closely with the private bar to bring litigation and pursue policy initiatives.

² District of Columbia Custodial Population Study: Seeking Alignment between Evidence Based Practices and Jail Based Reentry Services, Justice Research and Statistical Association, (September 2017), <https://www.jrsa.org/pubs/reports/jrsa-dc-custodial-pop-study-9-2017.pdf>.

³ Bureau of Justice Statistics, Correctional Populations in the United States. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5177>

⁴ Students in the Care of the District of Columbia Working Group Recommendations (July 2018), 19.

experience higher rates of special education needs, trauma, and mental health issues.⁵ Homelessness, poverty, and unaddressed trauma and mental health issues are rampant, in part because of the failures of our education and public health systems.

The District's education system is broken, and, particularly for students of color with disabilities, is failing to provide the free and appropriate public education promised under federal law. We know the Council is well-aware of our concerns around the budget shortfall and the misuse of at-risk funds; today we want to highlight three other areas of education policy that lead to poor outcomes and put students with disabilities at risk of being entangled in the criminal legal system. First, many students who are eligible for special education are not identified as students with disabilities in a timely matter.⁶ These students are often unable to access the curriculum, become frustrated or disengaged from school, and are likely to be pushed out and never graduate with a high school diploma. Second, students receiving special education services are not given appropriate IEPs (individualized education plans) and placements, and, as their progress reports show, fail to make meaningful progress towards their goals. This is partially reflected in the abysmal graduation rates and PARCC scores for students with disabilities.⁷ Third, students in DC are pushed into a school to prison pipeline; aggressive school discipline and school policing practices disproportionately deprive students of color and students with disability of their education.⁸

While they are incarcerated, these young people face more significant educational burdens. Young people in DC are either provided programming by the Department of Youth Rehabilitation Services, the Youth Services Center, the Department of Corrections, or the Federal Bureau of Prisons. All of these facilities have challenges in serving students with disabilities.⁹ DC prisoners with disabilities who are

⁵ Students in the Care of the District of Columbia Working Group Recommendations (July 2018), 19. (National studies show that "on average, more than 80% of all youth entering juvenile justice systems present with at least one.").

⁶ See, for example, *DL vs. District of Columbia*, a case challenging the District's failure to identify and evaluate students as young as 3 years old for special education. Many of the students we are talking about today were failed by the District's policies when they were very young children. *DL v. District of Columbia*, 109 F. Supp. 3d 12 (D.D.C. 2015).

⁷ In 2018, only 5.7% of students with disabilities achieved a 4+ on the English Language Arts PARCC and 6.4% achieved a 4+ on the Math PARCC. DC's 2018 PARCC Results, available at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2018%20PARCC%20Results%20Release%20%28Aug.%2016%2C%202018%29.pdf. In 2017-2018, the four-year graduation rate for students with disabilities was 48.8%. Office for the State Superintendent for Education 2017-18 Adjusted Cohort Graduation Rate, available at <https://osse.dc.gov/publication/2017-18-adjusted-cohort-graduation-rate>.

⁸ The OSSE 2017-2018 State of School Discipline found that Black children in DC are 5 times more likely to receive an out-of-school suspension than their white peers. Students who were at-risk and in special education also had a higher likelihood of being suspended. Office of the State Superintendent for Education, State of School Discipline 2017-18 School Year, available at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2017-18%20School%20Year%20Discipline%20Report.pdf.

⁹ Students in the Care of the District of Columbia Working Group Recommendations (July 2018), 26.

placed in the Bureau of Prisons are particularly burdened by their lack of access to education. The Bureau of Prisons does not offer young people the opportunity to earn a high school diploma, despite the fact that students with disabilities are entitled under the Individuals with Disabilities Act to do so. The Bureau of Prisons does not offer any special education instruction or related services, and in fact takes the position that they are not required to follow the IDEA for DC prisoners in their custody.¹⁰ Then, parole decisions are often contingent on a person's ability to participate in classes or other programming, successfully work in the prison, or receive a GED. These can be insurmountable tasks for individuals with disabilities who need – and are entitled to – accommodations and programming to support their education. When individuals do not have strong advocates to secure these services, they often languish in prison and are denied parole because of their disabilities.¹¹

People in DC who are released from incarceration – many of these the same young people who were pushed out of school in the first place and then denied services while incarcerated – then face significant barriers to finding housing and meaningful employment that pays a living wage. Although there are many factors that hold up these barriers – including discriminatory tenant screening policies and barriers to employment for individuals with criminal records – the lack of a meaningful education and a high school diploma or GED makes it particularly hard for returning citizens to reintegrate.

The Special Education Rights of Youth Defendant Amendment Act is targeted legislation that will open up opportunities for youth defendants to receive an appropriate education. Although young people involved in the criminal justice system may have been pushed out of school, students with disabilities are entitled to remain in high school, working toward a diploma and receiving supports until the semester in which they turn 22. In our experience, young people are hungry for the opportunity to receive the quality education that they deserve. By providing education representation for court involved young people, the DC Council can repair some of the harm caused by the city's educational neglect and provide support so that these young people receive the education to which they are entitled. This access to education can help keep young people in the community, open up educational opportunities while they are incarcerated, and provide them with a base of knowledge and skills to help them reintegrate into the community.

¹⁰ Students in the Care of the District of Columbia Working Group Recommendations (July 2018), 12. (“Under IDEA, young people eligible for special education prior to conviction and sentenced to an adult facility are entitled to their IDEA rights, including a path to a high school diploma, even when incarcerated. According to the BOP participant in the Working Group, all sentenced individuals have access to General Education Development (“GED”) services if they do not have a high school diploma. However, admittance criteria bar many students from participating in BOP’s GED programs, and waitlists for admittance are lengthy. Further, BOP’s position has been that IDEA applies only to state agencies, so it is not required by law to provide special education and related services to incarcerated D.C. young adults in its custody”).

¹¹ The Committee, for example, represents a D.C. prisoner who is unable to access GED classes because of his severe mental health and intellectual disabilities, and he does not score high enough on parole assessments to earn parole, despite being statutorily eligible.

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Education representation is critical for ensuring access to education for court-involved young people. I can attest to this from personal experience: from 2010 – 2012, I represented DC system-involved and incarcerated young people to advocate for their special education rights. I saw first-hand how education representation helped clients gain access to services that allowed them to learn to read, to receive needed therapy, and to graduate with a high school diploma. Education attorneys serve multiple purposes: they can ensure that a young person can access educational opportunities whether in the community or while incarcerated; they can inform the court of a young person's specific needs and the programs available to meet those needs both in the community and in secure settings; and they can work with the court and relevant parties to develop individualized terms of release that allow a young person to participate in educational opportunities while complying with Court Services and Offender Supervision Agency's (CSOSA) mandates. This results in a significant expansion of options available to the court when assessing the best options for the young person. The court is better able to understand why the person may not be in school, what mental health issues the person struggles with, and what services are available in the community.

The District has in fact long understood the importance of education representation and was the first (and only) jurisdiction to appoint education attorneys in the Family Court Division. These attorneys play critical roles in the outcome of cases in the Family Court Division, yet young people involved in the Criminal Court Division do not have such a benefit, even though they exhibit the same (if not heightened) needs. This bill will remedy that.

We suggest that the Council incorporate the following changes to strengthen its impact and fulfil its intentions:

1. Young people who are suspected of having a disability should be included in the class of defendants eligible for a special education attorney appointment.
2. Appointed special education attorneys should represent the education and disability rights and needs of the defendant.

We join with School Justice Project and other allies and urge the DC Council to pass the Special Education Rights of Youth Defendants Amendment Act of 2019 because it provides critical support to young people of color with disabilities that have long been neglected by both our schools and our criminal legal system.