

Testimony of Walter Smith, Executive Director
DC Appleseed Center for Law and Justice

A Public Hearing on the
"District of Columbia Public Education
Reform Amendment Act of 2007"

Councilmember Vincent Gray, Chair
Committee of the Whole

January 30, 2007

Good morning Chairman Gray, and members of the Council. My name is Walter Smith and I am the Executive Director of DC Appleseed. Thank you for the opportunity to testify today on this issue of great importance to the residents of the District of Columbia.

DC Appleseed has been studying issues of school governance in the District of Columbia since the late 1990's. We have looked closely at school board composition and roles, and state versus local responsibilities. We have also examined ways to improve the District's strategies for meeting the needs of students eligible for special education services. We have not, however, examined the impact of mayoral takeovers of urban school districts and therefore will not directly address whether such a takeover would improve academic achievement in the District. Nonetheless, there are elements of the proposed legislation that can have a significant impact on student achievement, and we would like to draw the Council's attention to these.

Transfer of SEA Functions to the State Education Office

The bill under consideration calls for the transfer of state-level (SEA) educational functions to the State Education Office. Specifically, Section 303(a)(1) of the bill provides that the State Education Office will "serve as the state education agency, and perform the functions of a state education agency, for the District of Columbia under applicable federal law, including but not limited to grant-making, oversight, and State educational agency functions for standards, assessment, and federal accountability requirements for elementary and secondary education." We have some specific concerns about this.

We have written and previously testified – most recently in November 2006 – in support of the transfer of certain state functions out of the District of Columbia Public Schools. There are two primary reasons for this:

1. Allowing the school district to focus its attention on those activities most directly related to educating DCPS students; and
2. Eliminating conflicts of interest.

While there is certain to be upheaval during an initial transition period, ultimately the students of the District's public schools will benefit from the transfer of functions from

DCPS to an independent state level office. The reason is that DCPS is currently responsible for a variety of matters that do not directly relate to the education of its students. While these matters are no doubt essential, they are either tangential to the everyday functioning of the schools, the management of school personnel, and the quality of instruction that takes place, or they are serving needs of schools and students that are independent of DCPS.

In addition, the current structure contains inherent conflicts of interest insofar as DCPS both competes for and allocates the District's federal education dollars. Regardless of internal administrative structure, there is simply no firewall sufficient to eliminate the conflict when the same entity determines the criteria for and relies upon the funds it competes for against other Local Education Agencies (LEAs), notably, in the District's case, the public charter schools. This has nothing to do with the integrity of any individuals involved. It is structural and inherent and needs to be corrected. Similarly, monitoring responsibilities both for itself and the charter schools with which it competes for students cannot be accomplished without the shadow of conflict. If the District's public schools are to be held accountable to both District and Federal standards, our monitoring and funding systems must be independent of any particular LEA. For this reason, we support the transfer of these functions out of DCPS.

Our concern, however, is that the conflict of interest issue is not resolved by the current bill. While moving these functions to a state office separate from DCPS is a step in the right direction, insofar as the Mayor would be the executive responsible for both the State Education Office and DCPS, the conflict is largely transferred from the Superintendent's Office to the Mayor's.

We propose that, in order to mitigate this conflict of interest, the State Board of Education should be charged with oversight of the distribution of federal funds to all District schools, compliance monitoring with No Child Left Behind, and any other matter where DCPS's interests are in potential conflict with the District's other LEAs.

In our view, the transfer of functions, along with the designation of the State Board as the entity responsible for oversight of functions that generate a conflict of interest would be best for all District students.

Planning the Transfer of Functions

The education reform proposal includes a 90-day window for planning these transfers. Specifically, section 308a-c of the bill provides for the submission, "within 90 days of enactment of this title, ...to the Mayor for approval a detailed transition plan for the transfer to take place not later than October 1, 2007, of all of the functions and responsibilities designated for transfer for the Public Education State-Level Functions and State Education Agency Functions and Responsibilities Designation Amendment Act of 2007." We support this process in principle but would urge caution in reference to the deadline.

Should this bill pass, or should the Congress act on its bill, we would strongly encourage those responsible for developing plans for the transfer of functions to be as detailed and thorough as possible to ensure a minimum of disruption for the students and teachers at the local schools. The federal funding function, in particular, is complex, with different programs operating on different calendars and funding proposal cycles beginning long before their calendar deadlines. All operations must be fully accounted for throughout the transition period, and we encourage the Council to do what is in its power, including staggering the transfer of functions, or even delaying implementation if necessary, to ensure that proper plans are in place for a seamless transfer.

Special Education

Among the functions that are potentially subject to transfer to a new Department of Education under the current reform proposal is Special Education. Section 110(d)(2) calls on the Department to report to the Mayor and the Council on the status of “the implementation of the recommendations adopted by the Board of Education pursuant to the resolution Adopting the Recommendations of the Ad Hoc Committee on Special Education White Paper and Other Recommendations to Improve the Delivery of Special Education Services within the District of Columbia Public Schools, effective March 13, 2006.” We support this with the following additions.

As you probably know, DC Appleseed has published a report on Special Education, specifically on the grievance process which relies heavily on due process hearings over other forms of dispute resolution. This report is referenced in the White Paper as an authoritative source on the subject of DCPS’s mediation program. The White Paper states that “the Ad Hoc Committee did not focus on this aspect of the special education referral process [i.e. mediation] because of the tremendous work that the DC Appleseed Center for Law and Justice completed in September, 2003” (page 13). The relevant recommendations, however, were not included in the subsequent Board resolution.

We believe that District parents and guardians of special education-eligible students need a mediation program that is independent of DCPS. In order for mediation to be effective, it must be neutral in both fact and appearance. Most parents who have reached the stage of due process with DCPS have little reason to believe that a service provided by DCPS to resolve the dispute will be neutral, regardless of whether the program is based in the State rather than the local division of DCPS.

Mediation continues to be underutilized in the District to resolve special education disputes. Only a handful of mediations are conducted each year, compared to approximately three thousand due process hearings. This is wasteful of time, resources, and the good will of the community. At the direction of the Board of Education in Resolution SR06-31, DC Appleseed has been working with the DCPS General Counsel’s Office and the State Enforcement and Investigation Division to review our mediation recommendations in light of the current state of the dispute resolution system, and to present to the Board of Education a plan for implementation. Regardless of who maintains responsibility for this process, we strongly urge the Council, the Board of

Education, the Mayor, the Superintendent and the General Counsel to push for and support an outside, independent mediation program to resolve special education disputes.

In addition, as directed by the same Board resolution SR06-31, and consistent with the recommendations from our report referred to in the White Paper, DC Appleseed is working closely with DCPS's Office of Academic Services to support the training of DCPS personnel and the creation of a pilot program in dispute prevention and early intervention. This is another area that we encourage the Council and others to take very seriously. DCPS has problems with special education service provision that need to be addressed, but it also has very serious problems with the way it communicates with families and fails to address legitimate concerns as they arise. The over-reliance on the due process system squanders resources that could be better used in providing services to students, and forces schools and families into adversarial rather than collaborative relationships. It also causes delays in services that result in lower student achievement in both the short and long terms. We hope that these two areas – mediation, and dispute prevention and early intervention – will remain high on the education agenda as the process of change moves forward. They are essential to a well-functioning special education system which is key to improving education in the District overall.

Thank you for allowing us to testify and to comment on certain provisions of the legislation that we think will improve the academic achievement of DC students.