

A PLACE FOR EVERY STUDENT: MANAGING MOVEMENT ALONG THE SPECIAL EDUCATION CONTINUUM IN D.C.

A Report for the Building Pathways to LRE Project

September 2016

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DC Appleseed Center for Law and Justice solves problems affecting the daily lives of those who live and work in the National Capital area. As our region responds to the continuing challenges of a changing economy, DC Appleseed's collaborative approach to addressing problems is more important than ever. The financial support we receive is multiplied many times over by thousands of hours of donated pro bono time. We work with volunteer attorneys, business leaders, and community experts to identify pressing challenges, conduct research and analysis, make specific recommendations for reform, and implement effective solutions.

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Foreword

When SchoolTalk, DC Appleseed and the District of Columbia Association for Special Education (DCASE) were asked by the Court to take on this project, the acting Deputy Mayor for Education spoke with us about the need for a shared vision of Least Restrictive Environment (LRE) for Washington, D.C., that emphasized two principles: 1) the appropriate placement of an individual student with disabilities might be anywhere on a broad spectrum from full inclusion to non-public placements, and 2) the definition of LRE for a specific student is not fixed, but will need to be continually reevaluated as individual needs change over time. The development of this vision was undertaken in two phases. The first phase was a research and consultation process, culminating in this report by DC Appleseed. The second phase of the Building Pathways to LRE project was to leverage the insights from the DC Appleseed report and work with stakeholders to create practical tools and guidance for schools and families in navigating transitions to more or less restrictive environments.

Over the past decade, the Washington, D.C., education landscape has undergone significant transformations that include the creation of a state level agency, the growth of the public charter school sector, and major reforms to the District of Columbia Public Schools (DCPS). The education community has been challenged to create quality options for students with disabilities and to address the barriers to accessing those options. The DC Appleseed project team has put together a report that helps us understand how far our city has come, explores best practices in providing access to LRE, and provides recommendations for additional positive steps moving forward.

In the second phase of the project, SchoolTalk held a series of workshops that included stakeholders from all three sectors (DCPS, PCS, and non-public schools) to collaboratively explore the decision-making process for determining if a change in placement is needed to meet the needs of a specific student, finding a new placement, and setting the student up for success in a new school. A guide for parents and educators along with a companion planning tool will be available soon.

I believe that *A Place for Every Student: Managing Movement along the Special Education Continuum in D.C.* along with the forthcoming guide and planning tool, will contribute to moving D.C. closer to the shared vision of D.C. students with disabilities thriving in placements that are right for them and successfully transitioning to new placements when appropriate. Many thanks to the DC Appleseed team for all their hard work.

Leila Peterson
Executive Director
SchoolTalk, Inc.

GLOSSARY OF ACRONYMS

AIR – American Institutes of Research

CIEP – Central IEP

COA – Certificate of Approval

CRPE – Center for Reinventing Public Education

DC CAS – DC Comprehensive Assessment System, a battery of annual tests

DCASE – District of Columbia Association for Special Education

DCPS – District of Columbia Public Schools

DESSE – Division of Elementary, Secondary and Specialized Education, OSSE

DME – Deputy Mayor for Education

ED – U.S. Department of Education

DPS – Denver Public Schools

ESEA – Elementary and Secondary Education Act (ESEA) and

FARM – Free and reduced price meals

FAPE – Free and appropriate public education

FCPS – Fairfax County Public Schools

HOD – Hearing Officer Decisions

IDEA – Individuals with Disabilities Education Act

IEP – Individualized Education Program

JRS – Justification for Removal Statement

LAUSD – Los Angeles Unified School District

LEA – Local Education Agency

LRE – Least Restrictive Environment

M-A Liaison – Multi-Agency Services Liaison

MCPS – Montgomery County Public School District

NAEP – National Assessment of Educational Progress

NAS – National Academy of Sciences

NCLB – No Child Left Behind (NCLB) policies

OSI – Office of Specialized Instruction

OSEP – Office of Special Education Programs

OSSE – Office of the State Superintendent of Education

PARCC – Partnership for Assessment and Readiness Careers

PASU – Placement and Assessment Services Unit

PBIS – Positive Behavioral Interventions and Support

PCSB – Public Charter School Board

PERRA – Public Education Reform Amendment Act

PGCPS – Prince George’s County Public Schools

P-S Liaison – Procedural Support Liaison

RDA – Results Driven Accountability

RICA – John L. Gildner Regional Institute for Children and Adolescents

SEA – State Education Agency

SEDS – Special Education Data System

SEIP – Special Education Instructional Specialist

SELPA – Special Education Local Plan Area

UPSFF – Uniform Per Student Funding Formula



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EXECUTIVE SUMMARY

While the District should celebrate its very real advances in its educational system, the purpose of this report is to shine a light on the experience of District students with disabilities through a very specific lens created by the Individuals with Disabilities Education Act (IDEA): the right of students with disabilities to receive an “appropriate” education in the Least Restrictive Environment (LRE) relative to their particular needs.

Introduction

Public education in the District of Columbia has come a long way from the crises of the 1990s and the challenges leading to the mayoral takeover in 2007. It’s easy to forget that it wasn’t so long ago that the District’s public schools did not open reliably on the first scheduled day of school each year; teachers didn’t always get regular paychecks; no one had an accurate count of how many students were enrolled or how many employees were on the DCPS payroll; and students couldn’t always access the classes they needed to graduate. Now there are data systems that track students across classes, schools and sectors. The District’s Office of the State Superintendent of Education provides policy guidance across the public and public charter school sectors, a Public Charter School Board sets standards for the oversight of all public charter schools, and a Deputy Mayor for Education helps ensure that the various parts of the system are communicating effectively. The federal Department of Education has raised the District’s status as an Elementary and Secondary Education Act (ESEA) grantee so that it is no longer “high risk.” Building the system to where it is has taken focus, drive, and many hours of labor by numerous individuals.

At the same time, most would agree that D.C. schools, including public and public charter, still have a long way to go in providing consistent, equitable and effective education for all students. Alongside pockets of excellence are pockets of mediocrity and weakness. Low-income students and students of color have not seen improvements in performance of the type or at the rate of their socioeconomically advantaged peers. And among the students that still fare poorly under the District’s current educational system are those with disabilities, whose standardized test scores and graduation rates are a fraction of those of their non-disabled peers. While the District should celebrate its very real advances in its educational system, the purpose of this report is to shine a light on the experience of District students with disabilities through a very specific lens created by the Individuals with Disabilities Education Act (IDEA): the right of students with disabilities to receive an “appropriate” education in the Least Restrictive Environment (LRE) relative to their particular needs.¹

¹ Restrictive in this sense refers to the degree to which students with disabilities have access to and participate in educational activities alongside students without disabilities.

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The ideal under IDEA is for every Local Education Agency (LEA) to have the capacity to serve every student in or close to their local school, regardless of disability status. In practice, because some students have health, learning and/or social-emotional needs that cannot be met effectively in a general education setting, LEAs rely on a continuum of placements for students that includes specialized public programs and non-public schools. Historically, compared to other jurisdictions, the District has relied disproportionately on non-public schools to serve students with disabilities. Efforts to bring the District closer in line with national rates of non-public placements—and scale back the costs of tuition for and transportation to non-public placements—have resulted recently in targeted reductions in the non-public school population. The District has used strategies to reduce the numbers including returning students from the non-public schools back to public LEAs, facilitating school completion for non-public school students, and reducing the flow of students to non-publics by more rigorously monitoring LEA efforts to meet student needs before outplacement is processed. The targeted reductions in outplacements, in turn, produced a backlash from families and advocates concerned that the public system did not have the capacity to appropriately serve the students who were losing or were no longer eligible for a non-public seat.

School transitions can be difficult; they require additional coordination and communication among disparate entities that may or may not be accustomed to working together. Some of these transitions, such as from elementary to middle school, or middle to high school are routine and at least somewhat predictable. The District's systems for managing less routine transitions such as for students with disabilities moving between public, public charter and non-public schools, have not kept up with the need, and stakeholders have historically engaged in more finger-pointing than collaborating.

In light of these circumstances, DC Appleseed undertook an investigation of the system by which such student transitions occur. Based on this investigation, DC Appleseed makes recommendations for shoring up a system that will support students with disabilities as their needs—and potentially their educational placements—change over the course of their educational careers. Though this project began with a focus on transitions from non-public to public placements, it soon became clear that transitions into non-publics can dramatically

influence the process for making transitions back. Therefore, the recommendations in this report include recommendations incorporating movement in both directions along the restrictiveness continuum.

Sections of the Report

This report contains five chapters and two appendices on local and legal history. The first chapter is an introduction that includes essential background information on special education, including the origins of the report in the termination of the *Petties v. District of Columbia* class action, the key Supreme Court decision that influences placement decisions, and the specific questions that the DC Appleseed project team set out to answer. Those questions include:

- What are the major current and historical factors that influence the transition of students with disabilities between public and non-public settings?
- What processes and policies are in place to support the transition of students with disabilities between public and non-public settings, and how do they align with best practices?
- What are the concerns that parents, students, and schools have about the transition of students from non-public to public placements?

The first chapter also describes the research methodology that, because of the limited public data available at the level of detail necessary for this analysis, relies heavily on interviews with stakeholders and experts.

Chapter 2 contains a brief history of the relevant background events, most importantly the 2011 decision to reduce by half the number of District students being educated in non-public schools. The implementation of this policy aligned with—as well as produced—positive changes in terms of the District getting a firm handle on the roster of students enrolled in non-public schools, developing strategies to more closely monitor those students, and ensuring students had access to the courses they needed to graduate. But the push to reduce the number of students placed in non-public schools also created stressors for the public system and exacerbated friction between the public and non-public sectors as well as exposed gaps in the transition process.

Beginning with Chapter 3, the report turns to current placement options for D.C. students, best practices

locally and nationally, and policy recommendations. Among the findings, research revealed that:

1. The low legal standard in the District for what constitutes an appropriate education for students with disabilities contributes substantially to conflicts over special education placements.
2. The uneven quality of both public/public charter and non-public schools, and the lack of data by which to evaluate special education schools and programs, contributes to mistrust among the key stakeholders involved in transitioning students, including both families and school personnel.
3. The District does not have adequate institutional structures and supports in place to facilitate effective student transitions.

Chapter 4 describes best practices nationally and locally for determining and managing transitions among placements for students with disabilities. The project team explored other jurisdictions in the United States with robust charter school sectors to better understand the relationship between traditional and charter schools in providing services to students with disabilities. Locally, the team sought to understand how jurisdictions that rely on some of the same non-public schools to which

the District sends students—namely Montgomery and Prince George’s Counties in Maryland; and Fairfax County in Virginia—managed transitions into and out of those schools.

Chapter 4 also includes an analysis of how courts around the country have applied the Supreme Court’s decision in *Rowley* to support better outcomes for students with disabilities.

Chapter 5 includes twelve recommendations for ways that the District can (1) reduce its historic reliance on non-public schools for serving students with disabilities; (2) develop structures and policies to facilitate movement in and out of public and non-public schools to support student needs as they change over time; and (3) improve accountability to produce better outcomes for all students with disabilities. Some of these recommendations address underlying problems in the environment where special education decisions are routinely being made, while others recommend specific changes that would improve the management and success of placement transitions. Together these recommendations propose a blueprint for building a stronger, more fluid continuum of appropriate placements to serve District students with disabilities.

The recommendations are:

-
1. The Council should enact legislation specifically defining an “appropriate” education in the District as one that requires significant learning and meaningful benefit, taking into consideration the individual child’s potential for educational growth.
 2. D.C.’s Systemic Improvement Plan (a new requirement of the federal Department of Education) should address special education student achievement in the context of graduation rates, the achievement metric chosen by the District.
 3. The Office of the State Superintendent of Education should further disaggregate, and make public, school performance and proficiency data by IDEA environment and disability categories.
 4. Educational leaders in the District should emphasize and clarify the role of the non-publics as an essential part of the special education continuum, while continuing to build capacity in the public sector.
 5. The Office of the State Superintendent of Education should modify or supplement the Certificate of Approval review process to hold non-publics accountable for agreed-upon student outcomes.
 6. The Mayor should dedicate funding to the Special Education Enhancement Fund to build special education capacity in the public and public charter schools in the Fiscal Year 2018 budget and all subsequent budgets.

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7. The Public Charter School Board should continue to support charter schools in building a continuum of options, so that inclusive schools can function optimally and charter students with greater needs can remain in the public system.
8. Education officials at the Office of the State Superintendent of Education, DC Public Schools, the Public Charter School Board and charter Local Education Agencies (LEAs) should continue and extend trust building efforts to include non-public schools and parents, and should commit resources to targeted trust-building strategies.
9. Office of the State Superintendent of Education, DC Public Schools, Charter LEAs and non-public schools should continue to develop a common language and common tools to increase transparency and reduce conflict in Least Restrictive Environment (LRE) transitions.
10. The District should build (and fund) institutional structures to support successful transitions within the State Board of Education's Office of the Student Advocate, the Office of the State Superintendent of Education, the Public Charter School Board and the Office of the Deputy Mayor for Education. The necessary functions are: transition assistance and support; proactive guidance at key transition periods; accountability for the appropriate management of transitions; and institutionalization of public and public-charter collaboration strategies.
11. DC Public Schools and charter LEAs should ensure that the role of the LEA representative for students in non-public placements includes oversight of student progress as well as LRE transition information, monitoring and support. The Public Charter School Board should hold charter LEAs accountable for fulfilling their LEA responsibilities for students in non-public schools, and the Office of the State Superintendent of Education should continue to provide training, set standards, and consider forming a community of practice for these individuals.
12. The Office of the State Superintendent of Education should clarify and, if necessary, revise policies to support gradual transitions, including transportation, attendance and associated funding.

Conclusion

There has been progress on many fronts in the education of students in the District, including those with disabilities, and many individuals and institutions have contributed to those improvements. Indeed, for nearly every finding and recommendation included in this report, progress has already been made, either in terms of beginning a conversation or actually implementing change. We applaud the progress and encourage it to continue because there is still a long way to go. The District needs to develop a more systematic overall strategy for moving students to more and less restrictive environments, and it also needs to consider how better defining an "appropriate" education can help the District reach its LRE goals. It furthermore needs to move beyond its former overreliance on non-public schools to a system that includes non-public schools as part of a carefully conceived continuum of services for District students with disabilities serving as both short- and longterm placements, depending on the child. This report makes recommendations for meeting these needs. We look forward to working with policy makers and special education stakeholders in addressing them. ■



Chapter 1: Introduction

The federal Individuals with Disabilities Education Act of 1975 (IDEA) guarantees students with disabilities a “free and appropriate public education” (FAPE) in the “least restrictive environment” (LRE) consistent with their learning needs.² IDEA assumes that each jurisdiction will need a continuum of different environments to meet the disparate needs of children with disabilities, including highly specialized settings for children with the most intensive needs. To the extent that more specialized environments provide students with disabilities less access to non-disabled peers, these environments are considered more “restrictive.” When a public school district (Local Education Agency or LEA) does not have an appropriate learning environment available for a student with a disability, it must pay for the student to attend a school outside the LEA, whether part of another LEA or a specialized private (non-public) school.³

Along with every other jurisdiction in the country, the District of Columbia (the District or D.C.) faces the challenge of enabling a diverse group of students of differing backgrounds, abilities and disabilities to reach grade-level standards at essentially the same pace, a complex undertaking under the best of circumstances. IDEA ensures that students with disabilities benefit appropriately from these efforts. The U.S. Department

of Education (ED) has promulgated regulations and timelines pursuant to IDEA; these rules govern identification, assessment, progress monitoring, parental involvement, transportation and dispute resolution for children with disabilities. The District, like other jurisdictions, dedicates significant resources to service delivery, compliance, oversight, and resolving conflicts among schools and parents over childrens’ educational needs.⁴

Purpose of This Report

This report is a product of the resolution of the *Petties v. District of Columbia*⁵ class action, and is part of the Building Pathways to LRE project. *Petties* was initiated by a group of parents in 1995 to address complaints that the District was not making timely or full payments for tuition to the non-public schools where DCPS students had been placed or for related services in the public schools, and was not providing reliable transportation to students requiring such services, as required under IDEA. In 2012, when *Petties* was resolving, the special master in the case approached several special education stakeholders, including DC Appleseed, SchoolTalk, and the DC Association for Special Education (DCASE),

² 20 USC. § 1401.

³ In most jurisdictions, the LEA has responsibility for paying non-public tuition costs. In the District of Columbia, those costs are paid by the Office of the State Superintendent of Education (OSSE).

⁴ Throughout this report, the term “parents” includes grandparents, other family members, other persons having custody of a child or paid parental designees.

⁵ *Petties v. District of Columbia*, 881 F. Supp. 63 (D.D.C. 1995). See Appendix 2 for additional information.

seeking recommendations for the use of Court Registry Funds. DC Appleseed and SchoolTalk recommended that the funds be used to address the ongoing difficulties experienced by families of students identified for transition from non-public schools back into public schools. Following negotiations with counsel for the parties, the special master presented a proposal to the court to address these concerns, which the court approved. The proposal designated SchoolTalk as the fiscal agent to manage the Court Registry funds, and D.C. Appleseed as a partner to undertake project activities.

The Building Pathways to LRE project, which resulted from those negotiations, consists of two parts: Task 1, this report, is a needs assessment that describes the continuum of placement options for D.C. students with disabilities, the structures and supports in place to manage movement among placements, and recommendations for improving outcomes for students who require a move to a more restrictive or less restrictive environment to receive an appropriate education; and Task 2, a collaborative process among special education stakeholders to develop specific tools and procedures to address needs identified in this report.

In this report, therefore, we seek to build on the important work accomplished by those who strove to resolve Petties and to help ensure that the LRE continuum functions responsively and effectively for District students. Responsive and effective functioning includes:

- A robust spectrum of public placement options in both DCPS and public charter schools;
- Smooth, timely, well-supported transitions both into and out of non-public schools, so that students can access the environment most appropriate to their changing needs over the course of their educational careers; and
- Stakeholders with relationships of trust, and a shared understanding of LRE and “appropriate” placement, since those concepts govern placement options and decisions.

Report Methodology

This report represents more than three years of research and writing by a project team of staff and partners from DC Appleseed, DLA Piper LLP (US), and Reed Smith LLP, as well as DC Appleseed board members, individual

volunteer attorneys, special education consultants (including Education Counsel), and law student interns.

The research process included:

- Survey of non-public schools that serve D.C. students, consisting of collection of data from DCASE member schools on their student populations, including districts of origin, ratio of public to private-pay students, lengths of stay, and number of annual transfers to less restrictive environments.
- Review of current District policies and practices, including public policy documents from governing agencies regarding special education students, programs and procedures, particularly those that involve movement among DCPS, public charter schools and non-public schools.
- Individual and group interviews with more than 40 stakeholders, including parents; public, public charter and non-public school administrators; education advocates; government officials and policy makers; and national experts on special education.
- Review of publicly available data on District student placement and outcomes, including historical documents posted on U.S. Department of Education’s (ED) IDEEdata.org, data shared with the DC Council by District agencies for performance hearings, and data available on the website of the Office of the State Superintendent of Education (OSSE). Because of the limited data available publicly at the necessary level of specificity, however, this report relies heavily on interviews and other qualitative, nonstatistical methods of analysis.
- Review of best practices from other states and school districts, including detailed information about (i) neighboring school districts and their relationships with the non-public schools that also serve District students and (ii) strategies used to deliver special education services by several school districts across the nation with robust charter sectors serving a large proportion of area students.
- Review of key reports, including two particularly relevant reports released while this research was ongoing: Quality Review of Special Education Service Delivery in District of Columbia Public Schools and Charter Schools: American Institutes for Research Final Study Report (March 2013);

and An Evaluation of the Public Schools of the District of Columbia: Reform in a Changing Landscape by the National Research Council (June 2015).

Team members also participated in collaborative problem-solving sessions, which were facilitated by SchoolTalk and included representatives from DCPS, the Public Charter School Board (PCSB) and DCASE, as well as individual charter schools and non-public schools.

Finally, we invited a number of stakeholders to review this report and provide input prior to public release. Those stakeholders included representatives from the Office of the Deputy Mayor for Education, OSSE, DCPS, the PCSB, and Children’s Law Center, as well as others. We appreciate the input provided by these community leaders, but accept full responsibility for the content of the report.

Background

The Individuals with Disabilities Education Act and the Meaning of “Free Appropriate Public Education” for Students with Disabilities

Congress passed the IDEA in 1975 to ensure that children with disabilities had the opportunity to receive an appropriate education. To qualify for federal funding under the Act, a state must demonstrate that it has a policy in effect that “assures all handicapped children the right to a free appropriate education.”⁶ IDEA requires school districts to teach children with disabilities in the least restrictive environment possible. Under IDEA, “restrictiveness” refers specifically to the degree to which children with disabilities have access to their non-disabled peers, not the extent to which behavior or movement within a school setting is regulated. An education is “appropriate” only if it is provided in the LRE for that student, with any services and supports necessary.

A child should be placed in a school that specializes in serving children with disabilities or that serves only children with disabilities only when the child’s disability is so significant that he or she cannot derive satisfactory educational benefit from the general

education environment, even with appropriate services and supports. Among the factors that courts have considered in determining whether a child can be “satisfactorily educated” in general education are:

1. The reasonable efforts made by the school district to accommodate the child in the regular classroom.
2. The educational benefits available to the child in a regular classroom, with appropriate aids and services, as compared to the benefits provided in a special education class.
3. The possible negative effects of the inclusion of the child on the education of other students in the class.⁷

The free and appropriate public education (FAPE) mandated under IDEA must be tailored to the child’s special needs by means of an “Individualized Education Program” (IEP), revised annually by a team that includes the child’s general and/or special education teachers, parents, an individual who can interpret evaluation results, and, under some circumstances, the student. Under IDEA, the IEP must contain:

- a. A statement of the child’s present levels of educational performance.
- b. A statement of annual goals for the child, including short-term instructional objectives.
- c. A statement of the specific educational services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs.
- d. The projected date for initiation and anticipated duration of these services.
- e. Appropriate, objective criteria and evaluation procedures and schedules for determining, at least annually, whether instructional objectives are being achieved. 20 USC. § 1401(19).

IDEA provides little practical guidance as to what constitutes an “appropriate” education. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court rejected the argument that IDEA requires services

⁶ 20 USC. §1412(1).

⁷ *Oberti v. Board of Educ.*, 995 F.2d 1204 (3d Cir. 1993).

sufficient to maximize each child's potential. Instead, according to the Court an appropriate education under IDEA is one that provides "personalized instruction ... with sufficient supportive services to permit the child to benefit from the instruction."⁸ The Court also found that IDEA does not guarantee any particular educational outcome. However, where children with special needs are being educated in regular classrooms, the Court held that "the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit."⁹

Accountability Under IDEA

U.S. Department of Education

ED is responsible for oversight of IDEA, including administering funds and monitoring each state's compliance with the law. In addition to administering IDEA formula grants to states, the Office of Special Education Programs (OSEP) at ED makes grants to institutions of higher education and other nonprofit organizations to support research, demonstrations, technical assistance, dissemination of best practices, technology and personnel development, and parent training and information centers. Beyond providing guidance on IDEA implementation and disseminating research, ED also publishes data on national and state IDEA implementation on its website, www.IDEAdata.org.

In July 2014, ED announced a new Results Driven Accountability (RDA) framework for oversight of special education programs. This new framework includes review of educational outcomes as indicators of compliance with IDEA. ED is moving toward requiring actual

progress toward substantive goals, rather than simple compliance with IDEA timelines and protocols. States will be required to submit Performance Improvement Plans to demonstrate how they intend to "move the needle" on selected special education indicators. In light of this shift by ED, the District has chosen to focus its improvement plan on the metric of graduation rates.¹⁰

For several years, ED has designated the District a "high risk grantee" under IDEA due to its "low level of compliance" across several categories. This designation resulted in mandatory technical assistance and review from ED, and a 2009 withholding penalty comprising 20% of federal funding. These earlier reviews were based entirely on IDEA's procedural requirements. Based on Fiscal Year 2014 data, ED designated the District of Columbia as one of three jurisdictions that "need intervention" to meet higher, more substantive RDA accountability standards. D.C. has the dubious distinction of receiving the "needs intervention" determination for 10 consecutive years, longer than any other jurisdiction in the country.¹¹ These reviews, plus the requirements imposed as the result of two class action,¹² have served as a road map for OSSE and its partners in their efforts to meet the federal standards.

Role of the Office of the State Superintendent of Education (OSSE)

In the District, OSSE sets policies, provides resources and support to LEAs, and measures accountability for all public education. As a part of a broad school reform movement, the District created OSSE in 2007 as the State Education Agency (SEA) for DCPS and charter LEAs, to address the challenges created by introducing multiple charter LEAs into what had previously been a single school district.¹³ OSSE is responsible for ensuring

⁸ *Rowley*, 458 U.S. at 189.

⁹ *Id.* at 207, n.28.

¹⁰ For its "State Identified Measurable Result" the District proposes to increase the rate of graduation with a regular diploma for all students with disabilities, with a focus on students who attend a high school that has a graduation rate of less than 50% for students with disabilities, and is in Focus or Priority school status under the ESEA Flexibility waiver accountability system. District of Columbia Part B State Systemic Improvement Plan (SSIP) Theory of Action. Available on the Web at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/SSIP%20Theory%20of%20Action%20Attachment.pdf>.

¹¹ OSEP has four levels of determination that it applies separately to assessments of state performance in both parts B&C of IDEA: 1. Meets the requirements and purposes of IDEA; 2. Needs assistance in implementing the requirements of IDEA; 3. Needs intervention in implementing the requirements of IDEA; or 4. Needs substantial intervention in implementing the requirements of IDEA. OSEP has never applied the "needs substantial intervention" determination. While the District was determined to "meet the requirements" for Part C, it shares the "needs intervention determination" with Nevada (one year) and Bureau of Indian Education (five consecutive years). U.S. Department of Education, State Determinations Fact Sheet June 2016. Available on the Web at <https://www2.ed.gov/fund/data/report/idea/ideafactsheet-determinations-2016.pdf>.

¹² See Appendix 1 for information on *Blackman-Jones* and *Petties*.

¹³ See DC Appleseed, *Reforming the DC Board of Education: A Building Block for Better Public Schools* (1999), Appendix V: Functions That the District Should Consider Placing Outside the DC Public School System (DCPS).¹⁴ *Id.* at 207, n.28.

compliance with IDEA and for providing transportation to school for eligible District children with IEPs, among other responsibilities.

OSSE's Division of Elementary, Secondary, and Specialized Education (DESSE) is responsible for: (i) developing and promulgating state policy governing special education, (ii) monitoring LEAs for compliance with IDEA and other regulations and court-ordered consent decrees, (iii) allocating and administering IDEA grant funds to LEAs and other public agencies, (iv) providing training and technical assistance to LEAs, and (v) investigating and resolving state complaints relating to special education. OSSE is also responsible for (i) regulating non-public placements, including setting and/or approving rates for non-public schools, (ii) processing and paying invoices from non-public schools, (iii) monitoring the quality of non-public schools serving District children, (iv) taking corrective action against schools not meeting District standards, and (v) issuing Certificates of Approval (COA) to non-public special education schools.

Responsibilities of Local Education Agencies (LEAs)

Each LEA—either a school district or an independent charter school organization—is responsible for IDEA compliance in its own schools and for its students who are placed elsewhere. Each LEA must provide a continuum of environments in which to serve students with disabilities based on their IEPs. The “least restrictive” (or most inclusive, in other words) environment available for any student is a full-time general education setting (with supports and accommodations available) in the LEA. Non-public special education day schools, homebound instruction, and residential facilities constitute the most restrictive end of the spectrum. Students may move up or down the continuum as they require (or cease to require) more specialized or intensive services, such as part-time or full-time placement in special education settings apart from general education peers.

Under federal and local law and policy, the authority to make or change placement decisions lies exclusively with the IEP team.¹⁴ Because the public system maintains

responsibility for providing a free, appropriate public education under IDEA, the LEA (or, in the District, the State Education Agency) is responsible for paying tuition and other services if a student must be placed in a more restrictive environment to derive meaningful benefit from his or her education.

An LEA's responsibility for IDEA compliance includes maintaining and adhering to IEP goals and services, as well as ensuring that students with special needs are placed appropriately on the LRE continuum. This responsibility continues whether the student is attending school in the LEA or has been placed in a more restrictive environment in another facility. While some jurisdictions have a single LEA to execute these responsibilities, the District of Columbia has 63 such entities, including DCPS and the charter schools. DCPS functions as a single LEA for students within its 111 public schools, but nearly half of the District's students are enrolled in independent public charter schools, which function as their own LEAs. There are 114 charter schools operated by 62 LEAs in the District.

Disputes Regarding Special Education

Although IDEA contemplates that IEP teams will make decisions collaboratively, it provides a variety of dispute resolution mechanisms, and state and local jurisdictions are free to offer additional dispute prevention and resolution opportunities. In the District, OSSE is responsible for administering the formal dispute

Each LEA—either a school district or an independent charter school organization – is responsible for IDEA compliance in its own schools and for its students who are placed elsewhere. Each LEA must provide a continuum of environments in which to serve students with disabilities based on their IEPs.

¹⁴ OSSE's Policies and Procedures for Placement Review, Revised (Jan. 5, 2010) clearly states that the OSSE placement review specialist “will provide a recommendation regarding placement, indicating whether the placement into a more restrictive environment is ‘warranted’ or ‘not warranted.’ A recommendation of ‘not warranted’ does not negate the IEP team’s placement decision nor prevent the child from being placed. The IEP team, and not the OSSE DSE placement review specialist, will determine whether the needs of the child can be met in the current LRE with additional supports, or if the child’s needs require a more restrictive placement” (p. 4).

resolution options IDEA requires. These options include a state complaint process and a due process complaint process. Parties filing due process complaints must have access to mediation before a scheduled hearing occurs. Many jurisdictions offer pre-complaint mediation as well, an option that OSSE is currently testing. A complainant may use either process to address a specific child's situation, and the state complaint process can also be used to raise concerns about issues facing a number of students or an entire system.¹⁵

In the District, parents may also access dispute resolution services through the Office of the Ombudsman for Public Education within the DC State Board of Education. The Office of the Ombudsman was created to facilitate objective handling of issues such as resolution, discipline and academic progress, but was unfunded and vacant from 2010 to 2014. The Ombudsman partners with students and families to help resolve questions, concerns and complaints involving DCPS and charter schools. The newly created Office of the Student Advocate, also housed within the DC State Board of Education, is another resource for families. Established to provide information to families about school enrollment and services, the Office of the Student Advocate will also represent students in disputes before the Office of the Ombudsman. Given the newness of the Ombudsman and Student Advocate offices, their roles and responsibilities are likely to continue to evolve. For example, although the legislation creating the Office of the Student Advocate provides for Parent Centers, current funding covers personnel only.¹⁶

Implementing LRE Policies in the District

Under IDEA, students with disabilities must be educated in the LRE in which they can get a free, appropriate education, meaning that they should be

educated alongside their non-disabled peers in a manner consistent with their ability to benefit. ED collects data on the placement of students with disabilities in different educational environments, including those who spend (i) 80% or more of their time in general education settings, (ii) between 40%–79% of their time in general education settings, (iii) less than 40% of their time in general education settings, and (iv) all of their time in alternative placements, including specialized non-public schools. The relative nature of the phrase “least restrictive” means that each child's IEP team must determine the least restrictive environment in which that child can derive appropriate educational benefit.

In the District, OSSE has defined the LRE continuum as follows, from least to most restrictive:¹⁷

- a. Full Time General Education Setting with Supports/Modifications within the LEA;
- b. General Education Setting with Supports/Modifications and Access to a Special Education Setting within the LEA;
- c. Special Education Setting with Limited Access to the General Education Setting within the LEA;
- d. Full Time Special Education Setting with No Access to the General Education Setting within the LEA;
- e. Special Education Day School Separate from the LEA (Non-Public School);
- f. Homebound Instruction;
- g. Residential Treatment Facility;
- h. Instruction in Hospital.

The goal, per OSSE's graphic of the continuum,¹⁸ is to place students in more restrictive settings “only as far as

¹⁵ Among the differences between the two procedures: Due process complaints typically require an attorney or advocate while state complaints typically do not; in state complaints, OSSE is responsible for conducting an independent investigation of allegations and making a recommendation for resolution; due process complaints involve a hearing officer, who hears the positions of both the complainant and respondent, and then issues a legally binding decision; OSSE administers the District's due process hearing system through the Office of Dispute Resolution, in a reporting line separate from the DESSE; the State Complaint Office is located within DESSE; the timeline for issuing a decision on a state complaint is 60 days; the timeline for a decision on a due process complaint is approximately 75 days.

¹⁶ In addition to the state-sponsored resources, the District also has a federally designated, IDEA-funded Parent Training and Information Center: Associates for Justice and Education (AJE). AJE provides support, education, and direct legal representation for families with children with disabilities. [www.aje-dc.org](http://aje-dc.org).

¹⁷ Least Restrictive Environment (LRE) Toolkit. Available on the Web at <http://osse.dc.gov/publication/nonpublic-toolkit>.

¹⁸ *Id.*, p. 1.

Student Placements and Transitions: Accountability and Responsibilities within the District's Special Education System

Legal Authority

Role of Each Entity



necessary” and to move them to less restrictive settings “as quickly as possible.”¹⁹

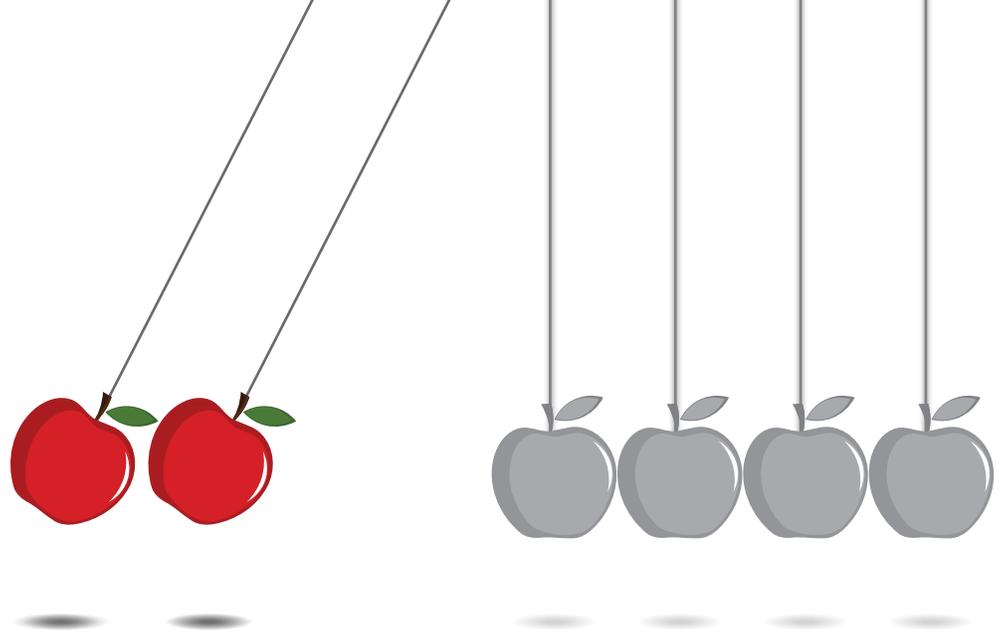
Different perspectives on the continuum and the meaning of movement up and down in restrictiveness can yield different and often-competing interpretations of the meaning of LRE. LRE requirements in general have pushed public schools across the nation, including in the District, to develop strategies to include students with disabilities in general education settings more effectively. Currently, most students with disabilities in the District spend 80% or more of their time in general education classrooms.²⁰ Successful inclusion requires ensuring that students of all abilities and learning styles can learn and succeed at school. OSSE has promoted best practices for District schools,²¹ including co-teaching, Positive Behavioral Interventions and Support (PBIS), differentiated learning, and Universal Design for Learning. ■

Currently, most students with disabilities in the District spend 80% or more of their time in general education classrooms.

¹⁹ *Id.*, p. 1.

²⁰ OSSE’s FFY2013 Annual Performance Report, Part B, reports that in 2014 (the last year for which public data is available), 53% of students with IEPs were in general education settings for 80% or more of the school day. See <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/FFY%202013%20Annual%20Performance%20Report%20-%20Part%20B.pdf>, page 33.

²¹ See LRE Toolkit



Chapter 2: Research Findings

Transitions Between Public and Non-Public Schools in the District

Efforts at school improvement have been ongoing in the District for at least two decades, but they accelerated in 2007 with the passage of the Public Education Reform Amendment Act (PERAA), and the subsequent passage, in 2014, of three special education reform acts (see Appendix 1). The project team explored how these efforts in the District—including oversight, availability and access to a continuum of quality options, and the ability of students to move to another environment as needs change—have impacted the ability of DC students with disabilities to be served in the least restrictive environment possible.

The “Appropriate” Standard

Perhaps the greatest challenge to fulfilling the promise of LRE in the District arises from the vast difference between what parents expect for their children and what the law requires schools to provide. While parents understandably want what is best for their child, school systems are required by law to provide only what is “appropriate.” The court framed this distinction in one case by observing that parents want a “Cadillac” but public schools are not required to provide one.²²

IDEA provides no substantive definition of appropriate, and the U.S. Supreme Court, in *Rowley*, did little to flesh out the meaning. The Court required only that an IEP be “reasonably calculated” to enable a child to receive “educational benefits.”²³ (1982). The reasonableness calculation is measured by whether a student makes progress, and the standard for progress is more than de minimis, i.e., not trivial.²⁴ In construing this standard, federal courts in the District have focused more on process: whether the IEP was developed with reason, and—whether the child experienced sufficient educational benefits from it. This has left the meaning of “educational benefits” undefined. Cases applying *Rowley* have focused more on what IDEA does not require than on what it does. As such, the courts have done little to flesh out what constitutes

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²² See *K.S. v. District of Columbia*, 962 F. Supp. 2d 216, 225 (D.D.C. 2013).

²³ *Rowley*, 458 US 176, 207.

²⁴ *KS*, 962 F. Supp. 2d 216, 221 (D.D.C. 2013) (citing *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. ex rel. Barry F.*, 118 F.3d 245, 248 (5th Cir. 1997)).

For many stakeholders, non-public placements signified a failure of the public system to do its job, rather than determination of a legitimate and useful option on a well-defined continuum.

an appropriate education or an educational benefit. Without a substantive standard, schools in the District have focused on whether IEPs are reasonably calculated to provide benefit and not whether students actually make progress.

In researching this report, we learned that in local practice the low educational benefits standard has been watered down even further. District parents reported that they have been told by LEA representatives in IEP meetings that their child is receiving an appropriate

education as long as the IEP is being implemented, even when the child has made no progress. In effect, local schools are not held accountable for the student actually deriving any substantive benefit. This standard has left many parents frustrated and angry over their children's lack of social-emotional and/or academic progress.

In contrast, federal courts in a majority of circuits have construed *Rowley* to require that, for an education to be appropriate, it must provide "significant learning" and confer "meaningful benefit . . . gauged in relation to the child's potential." This is a higher threshold than de minimis.²⁵ Though many teachers and other professionals at local LEAs hold themselves to this higher standard, the District's legal standard for what is appropriate is, in fact, very low, and offers little protection to families unsatisfied with their children's educational progress.

Meeting the LRE Standard

A review of whether a given student is currently in the "least restrictive environment" relative to his or her needs is a standard part of an annual IEP meeting. Under IDEA, each student must be educated with his or her non-disabled peers to the greatest extent possible consistent with the student's individual needs. While IEP teams may struggle to balance all students' needs in

keeping with their legal rights, the chosen environment for each student should confer meaningful educational benefit, even if that means limiting proximity to non-disabled peers. In practice, this balancing act between LRE and benefits can produce conflict, some of it necessary and productive, but often not.

While a family with financial means can choose to reject a public placement if the parents feel it does not confer sufficient educational benefit and select a private school at their own expense, the vast majority of students in D.C.'s public and public charter schools do not have that choice. Thus, the low standard for appropriateness under IDEA has a disproportionate impact on low-income students with disabilities, and has led to mistrust between families and schools.

Reducing Reliance on Non-Public Schools for Special Education Services in the District

For many years, particularly during the financial and education crises of the 1990s, DCPS had difficulty meeting basic IDEA standards, and students with disabilities did not receive basic services on a timely basis, including assessments to determine whether they had disabilities and how those disabilities impacted their ability to learn.²⁶ Many families filed formal complaints and, through due process hearings, received publicly supported placements at non-public special education schools. At the same time, the placements obtained through hearings were not indicative of either the student's level of disability or his or her inability to function successfully in a general education environment. Rather, placements were primarily indicative of the District's failure to evaluate students and provide legally required services, leaving hearing officers with no alternative except to order non-public school placement. Thus, for many stakeholders, non-public placements signified a failure of the public system to do its job, rather than determination of a legitimate and useful option on a well-defined continuum. And the larger the numbers of non-public placements, the larger the extent of the perceived public failure.

In addition, non-public placements tended to be permanent. According to non-public school

²⁵ See *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182–85 (3d Cir. 1988).

²⁶ Prior to the passage of the School Reform Act of 1995 and the subsequent build-out of the Public Charter School sector, DCPS was the only LEA in D.C. and was responsible for all special education students.

representatives, DCPS did not carefully monitor students placed in non-public schools at public expense and rarely pushed to bring them back into the public system. The system came to treat special education status and the learning challenges that students faced as static; placement was, therefore, static as well. Further, parents came to see the special education due process system as the primary arbiter of student need, as evidenced not only by the extraordinary number of due process hearings, but also by the families who were reportedly advised by trusted teachers and administrators that they needed to file a due process complaint to obtain necessary services even when the school and family agreed on what the student needed.²⁷ During that period of crisis in the 1990s, many families came to see a child's assignment to a more restrictive environment as a ticket out of the public schools and the only genuine opportunity for the student to receive an effective education.²⁸ Many families detested the adversarial nature of the due process system, which, like many other parts of the special education system, was unreliable and poorly organized. They also regretted the distance their students had to travel to attend school, along with the unreliability of the transportation system designed to get them there.²⁹ Nonetheless, non-public placement was, for many, a preferred outcome. Some parents were, and still are, willing to have their children experience less access to non-disabled peers in exchange for a private school environment.

In his March 2011 State of the District speech, then-Mayor Vincent Gray announced his goal to halve the number of District students with disabilities in non-public school placements. While this was a laudable effort to move the District closer to the national average in terms of the percentage of students placed in non-public schools, as a practical matter the target was not based on analysis of the specific students then in non-public placements or the public schools' capacity to effectively implement their IEPs.

The goal also reflected fiscal reality. In the spring of 2011 (budget season Fiscal Year 2012), the District faced a budget shortfall of close to \$325 million, of which \$241 million was attributable to the projected cost of non-public tuition and transportation for Fiscal Year 2012.³⁰ Indeed, reducing the non-public tuition budget by half, with the corresponding reductions in related transportation, would produce significant savings. Unfortunately, this fed into an existing narrative that District special education decisions were driven almost exclusively by money.

Mayor Gray was not the first District leader to try to address this strain on the budget. Under Mayor Fenty's administration (2007–2011), school officials announced efforts to "reintegrate" students from non-public schools back into the public system. The officials argued that the District was violating the civil rights of these students by educating them in more restrictive environments than necessary and the violation needed to be corrected. Some saw the civil rights argument as a disingenuous effort to cover up what they believed to be the true argument: the need to reduce special education costs. Both arguments have validity; the District spent hundreds of millions of dollars on non-public tuition and transportation, a disproportionately high education expense during a particularly difficult economic cycle, and placing students in excessively restrictive environments does violate their rights under IDEA.

Many families in the District accused DCPS of acting out of financial interests.³¹ They were probably not aware, however, that individual LEAs in the District neither pay nor receive a financial reprieve from placing students in non-public schools or returning them to their campuses. But this reality was further obscured by the administration's decision in 2011 to financially reward LEAs for effectively retaining students or returning them from non-public placements.³² OSSE intended that savings from its non-public tuition budget would be

²⁷ *A Time for Action*. See pages 24–32. Available on the Web at http://www.dcapleaseed.com/wp-content/uploads/2013/08/Special_Ed_Rprt.pdf.

²⁸ *Ibid.*

²⁹ Transportation was a central issue in the *Petties* lawsuit.

³⁰ Memo, May 12, 2011, Council Chairman Kwame Brown to Members of the Council of the District of Columbia: Report and Recommendations of the Committee of the Whole on the Fiscal Year 2012 Budget for Agencies Under Its Purview. Available on the Web at http://decouncil.us/files/user_uploads/budget/fy12budget_finalreport_cow.pdf.

³¹ DCPS was the LEA for over 90% of the students in non-public placements, and therefore, charter schools had a negligible role in serving as an LEA for special education students.

used to enhance special education capacity in the public schools, but the optics were damaging.

Implementation of the non-public placement reduction initiative was built on four complementary strategies: reducing new referrals to non-public placements through improvements in early intervention; facilitating school completion or graduation for students nearing the end of their secondary education; cleaning the data on students enrolled in non-public schools to eliminate duplication; and transitioning students who were deemed ready for less restrictive environments back into public settings. At its height, the number of District students in private placements was 2,200–2,500; as a result of these actions, this number has since dropped below 1,000.³³

Improving Early Identification and Intervention

Early intervention (IDEA Part C) is an important component of the IDEA-mandated improvements in services to children with disabilities. Mayor Gray saw early intervention as a longer term strategy to stem the flow of students into special education and thus reduce reliance on non-public schools. A 2013 OSSE report found significant improvements in early intervention services and, for the first time, in 2016 OSEP has determined that the District “meets requirements” for IDEA Part C (based on Fiscal Year 2014 data).³⁴

Both the Strong Start program (ages 0–3) and Early Stages diagnostic center (ages 3–5) have reached increasing numbers of children in the past several years. One of the biggest changes is due to occur in 2017, based on the Enhanced Special Education Services Act of 2014, in which the DC Council directed that

children who are 25% delayed in one area will be eligible for expanded services, rather than only children who are 50% delayed in one area or 25% delayed in two. This should increase the number of children eligible for services by approximately 1,200 per year and provide an opportunity for children with significant, but less severe, disabilities to receive support at a younger age.³⁵ As of now, however, the shift in eligibility has not been funded and the 2017 legislative deadline is unlikely to be met.

Meanwhile, the number of referrals to Strong Start and Early Stages continues to grow. This is a particularly important issue for special education because research has demonstrated that early interventions are more effective: Children who receive these services are less likely to require special education services later in their educational careers, and are, therefore, less likely to require non-public placement.³⁶

Improving Graduation and School Completion Rates

In addition to improving the early intervention process, Mayor Gray’s policy directive to reduce non-public placements also highlighted the need to improve graduation and school completion rates. A DCPS review of the courses offered at non-public high schools led to improved understanding of the alignment—or lack thereof—between non-public offerings and DCPS graduation requirements. This enabled DCPS to help students who were close to graduation but were not at a school in which they could earn the credits they needed, or who were uncertain which classes would help them finish.³⁷ DCPS’s success in this area led to the following outcomes from 2011 to 2014: 427 students in non-public placements graduated with a DCPS diploma, another 141 received certificates of IEP completion, and

³² Achieving Success in the Least Restrictive Environment: Capitalizing on the District of Columbia’s Accomplishments. This PowerPoint presentation, with contact information for Kieran Bowen, Senior Financial Analyst, describes five categories of award criteria, including LEAs with 0, 1 or 2 referrals for outplacement, and LEAs with the highest number of students returned from outplacement. The awards ranged from \$15,000 to \$300,000.

³³ “Judge dismisses 18-year-old special education lawsuit, giving control to school,” *Washington Post*, December 14, 2014, Michael Alison Chandler citing Mayor Vincent Gray. This includes the 642 graduates referred to above, and an unknown number eliminated through data cleanup. Data provided courtesy of DCPS, October 2015.

³⁴ FFY 2013 Part C State Performance Plan/Annual Performance Report. Available on the Web at: <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/FFY%202013%20Annual%20Performance%20Report%20%20Part%20C.pdf>. And, Office of Special Education and Rehabilitation Services 2016 Determination Letter and District Of Columbia 2016 Part C Results Driven Accountability Matrix. Available on the web at <http://www2.ed.gov/fund/data/report/idea/partcspap/allyears.html>.

³⁵ DC Law 20-0195, Effective from Mar 10, 2015, Enhanced Special Education Services Act of 2014.

³⁶ The Importance of Early Intervention, Fact Sheet, by National Early Childhood Technical Assistance Center, citing the final report of the National Early Intervention Longitudinal Study (NEILS) by K. Hebbeler et al. (2007). Available on the web at <http://ectacenter.org/~pdfs/pubs/importanceofearlyintervention.pdf>.

³⁷ This strategy was called “curriculum alignment” and ultimately resulted in greater numbers of students leaving non-public placements through school completion than were transferred to other schools.

74 graduated with a diploma from a non-public school. These 642 children represented about 25% of the DC students aged 16 through 21 in non-public schools during that period.³⁸ None of the interviews conducted by our project team revealed problems or difficulties among the schools or families in this arena. Some interviewees were concerned that students with moderate to severe disabilities graduated when they were younger than age 21 and should have continued to receive IDEA services for which they were still eligible until age 21.

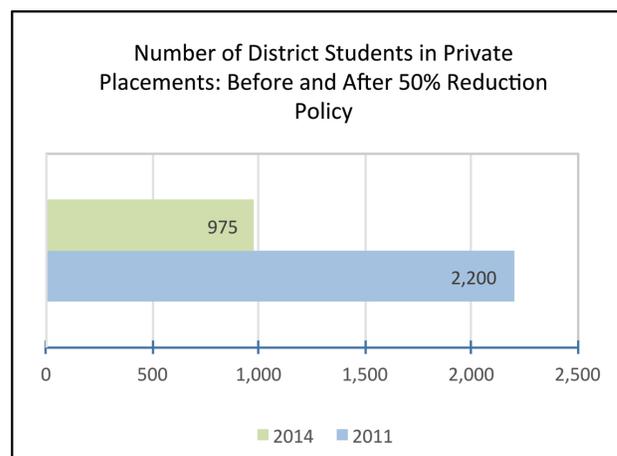
Improving Record Keeping and Data Collection

By the time Mayor Gray instituted the non-public placement reduction goal, poor record keeping had inflated the numbers of students actually in non-public placements. Because neither OSSE nor DCPS had a centralized roster and instead relied on each non-public school to report which students were enrolled, some students were reported as enrolled by more than one school. For example, a student on one school’s list who was enrolled but “chronically truant” might actually be attending another school, and would thus show up on both school rosters. The non-public schools continued to list students on their rosters because, under IDEA, the LEA must change a student’s placement via the IEP process before a school can disenroll a student, and LEAs were not following this protocol. DCPS took steps to ensure that it consistently implemented OSSE’s truancy policy, undertook a biannual roster validation process to ensure students were physically attending, and added a registrar to ensure a single point of entry and exit that DCPS could easily track. Cleaning up the data saved money and led to a better understanding of who was attending non-public schools. There were, however, ramifications for the relationships among stakeholders. The data discrepancies reinforced a public system perception that non-public schools were untrustworthy, and that some were possibly taking advantage of the District’s weaknesses by inflating their enrollment numbers to increase their revenues. Conversely, non-public schools felt the District failed to follow a lawful process and then blamed their failure on the non-public schools.

Identifying Students Ready for Transition to Less Restrictive Environments

As part of its efforts to achieve a 50% reduction in non-public placements, DCPS sought to identify students enrolled in non-public schools who might be ready to return to public placements. DCPS staff reported that DCPS reviewed IEPs, grades, reports from progress monitors, and other data to generate a list of students they considered ready for a less restrictive environment.³⁹ Others we spoke to suggested that DCPS focused on certain non-public schools whose programs DCPS believed were not adding particular value, and on students at those schools who could be assigned to public schools where DCPS had or was building capacity.

DCPS at times asked non-public schools to identify a certain number of students ready to transition, but, according to non-public school representatives, provided no information about how it arrived at the number. Moreover, the stated number seemed to bear little or no relationship to the schools’ own evaluation of the number of students, if any, ready to transition to a less restrictive environment at a public school. In some instances, DCPS gave non-public schools a list of students identified by DCPS as transfer candidates and asked for the school’s opinion of their readiness. Later, the schools discovered that DCPS had actually finalized the list without input from the non-public schools or parents. Other schools were told that DCPS had identified transfer candidates, but did not want to release actual student names to the non-public school



³⁸ <http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#bccee>.

³⁹ Progress monitors serve as representatives of DCPS for students attending non-public schools. For more information about the role of progress monitors, see below: DCPS Non-Public Unit and Progress Monitors.

administrators. DCPS and the non-public schools struggled to find ways to work together; long-standing mistrust was a significant obstacle.

Even for the students who might have been ready for a change, the timing of the proposed transitions created its own problems. DCPS was rapidly trying to increase its capacity to serve students with full-time special education requirements during this period, but it did not yet have all of the pieces in place for each program before the IEP reviews for the transitioning students took place. There were no answers yet for many of the questions an IEP team would reasonably ask about a proposed new setting. For example, experts agree that an IEP team considering a new placement should have

information about class size, support in non-academic settings, student-teacher ratios, disabilities of others in the class, training/certification of teachers, and delivery of related services. When the teacher has not yet been hired, the class has not yet been constituted, and the school has not previously offered this particular type of full-time special education setting, many of these reasonable concerns have no answers.

The push to reduce non-public placements thus inadvertently created a “Catch-22” situation for DCPS. DCPS needed to convince parents to place their children in the programs it wanted to create, but those programs did not yet exist. LRE placements were proposed, but no one could

provide parents or the non-public schools details about the classrooms and services available at the proposed schools. The fact that DCPS persisted in recommending placement changes for students without detailed information about the settings to which they were going suggested to parents and non-public school staff that DCPS did not share their understanding of what is

important for a successful LRE transition. This further undermined DCPS’s credibility and parents’ confidence.

As the number of classrooms to serve full-time special education students at DCPS has grown and the programs have become more established, this particular issue has abated. But it exposes the importance of a shared understanding of the criteria meaningful to assess transition-readiness and the appropriateness of a particular setting. Indeed, one important step toward building a shared understanding came with the passage of the 2014 Special Education Student Rights Act, under which prospective parents must be allowed timely access to observe the proposed service location for their children.⁴⁰

One important step toward building a shared understanding came with the passage of the 2014 Special Education Student Rights Act, under which prospective parents must be allowed timely access to observe the proposed service location for their children.

Changes to Regulation and Oversight in the D.C. Special Education System

D.C. has a unique educational structure arising out of its small size and unique relationship to the federal government. Until 2007, DCPS was both the District’s largest LEA and its State Education Agency (SEA). As SEA, it had responsibility for oversight of federal funds, including IDEA compliance and dispute resolution, as discussed above. In addition to the conflict of interest created by its responsibility to monitor its own use of federal funds, the presence of federally authorized charter schools, over which the District’s legal authority was not entirely clear, created additional challenges for DCPS in the management of special education. Public Education Reform Amendment Act (PERAA), the structural reform legislation of 2007, helped to change that, with the creation of OSSE to take on systemic oversight and management of dispute resolution. In the decade since PERAA, the roles and relationships among the District’s educational institutions have continued to evolve and improve, with increasing clarity and effectiveness overall.

Creation of the Office of the State Superintendent of Education (OSSE)

OSSE is now an important piece of the complex special education structure, responsible for the delivery of special education services to all eligible students in the District. OSSE is a relatively new agency and occupies a complicated and difficult spot. While some of its roles

⁴⁰ DC Law 20-0194.

are quite clear (e.g., collecting data and reporting to ED), others are evolving, such as the recent agreement between OSSE and the Public Charter School Board over monitoring special education service delivery at charter schools. At times, though, the issue of charter school independence makes it difficult for OSSE to fulfill even its clearest roles. As the *Washington Post* wrote on the appointment of former State Secretary of Education Jesús Aguirre:

Established by the same 2007 law that ushered in mayoral control of the schools, OSSE has been plagued by high staff turnover and has often struggled to find its footing. Charter-school advocates have pushed back against its attempts to craft citywide policies on discipline and other issues, arguing that charters are not subject to such regulation.⁴¹

The National Academy of Sciences (NAS) echoed these observations in the June 2015 draft of its evaluation of District school reform.⁴² Perhaps because the DCPS Chancellor received support for major changes directly from the Mayor, while the charter sector opposed most state oversight, OSSE has worked to find the balance between support and accountability that the District needs. While divergences of opinion among DCPS and the charter sector over the best use of OSSE's resources and authority still occur,⁴³ tensions have abated significantly with the relatively long tenure of the Assistant Superintendent of Elementary, Secondary and Specialized Education, Amy Maisterra; and DCPS's former Chief Operating Officer, Nathaniel Savio Beers; and the support of the current Deputy Mayor for Education, Jennifer Niles.

When OSSE took over special education oversight from DCPS in 2007, it needed to generate many policies from scratch. It learned to tread carefully, given the prior involvement of both DCPS and the charter sector in this arena. Because of the differences between charter and DCPS governance, OSSE was challenged to implement a system-wide approach to accountability for, and programmatic improvement in, special education. OSSE's early skepticism as to the charter schools' ability to deliver special education can be seen in a variety of those early policies, including the original decision to implement oversight and provide input into all charter school outplacement decisions, and only later to those of DCPS.⁴⁴ At the same time, OSSE has sometimes been reluctant to publicly criticize specific charter LEAs for their shortcomings, instead treating all charter LEAs as a single body.⁴⁵

In its 2013 report, commissioned by OSSE, the American Institutes of Research (AIR)⁴⁶ recommended that OSSE implement system supports to improve special education services in the District. While neither their research nor ours included a representative sample of schools from which to draw conclusions, their concerns echo those our project team heard in interviews for this report. For example, AIR cites the perception that OSSE overemphasizes compliance with process, rather than content and performance, and suggests that this negatively influences the type and quality of the support OSSE provides to schools.⁴⁷

OSSE has made resources available to promote consistent practices across LEAs, including policy guidance, professional development, and curriculum support, but use of these resources is optional and

⁴¹ Emma Brown, Jesús Aguirre to be D.C.'s new state superintendent for education, *Washington Post*, Sept. 10, 2013.

⁴² An Evaluation of the Public Schools of the District of Columbia: Reform in a Changing Landscape. Committee for the Five-Year (2009–2013) Summative Evaluation of the District of Columbia's Public Schools. National Research Council of the National Academies (June 3, 2015)

⁴³ Comments received for this report manifest some of those collegial yet substantive philosophical differences, with representatives for the charter sector voicing the strongest resistance to recommendations for mandates on LEAs.

⁴⁴ For more information about the outplacement oversight policy, see below: Charter School Oversight by OSSE.

⁴⁵ See, for example, the release of the first year PARCC data. While a spreadsheet posted on the OSSE website does include individual school data, the data analysis represents charter schools as a "sector" in comparison to DCPS. The media reports typically merely echo the aggregated results. This process serves to mask variation between schools within DCPS and among the charter schools, and makes it harder for the public to understand how the sectors truly work. See Partnership for Assessment and Readiness for College and Careers High School Results. Available on the Web at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2015%20District%20of%20Columbia%20PARCC%20High%20School%20Results.pdf>.

⁴⁶ Summary Memorandum: Quality Review of Special Education Service Delivery in District of Columbia Public Schools and Charter Schools, American Institute for Research Final Study Report, 11/5/2013.

⁴⁷ Ibid.

variable across DCPS and the charter sector. Students in D.C. are highly mobile, moving frequently among the sectors. OSSE has invested in ensuring that all D.C. LEAs are properly using the Special Education Data System (SEDS), to support compliance with IDEA, and significantly, to ensure that IEP and related service information follows students as they move among schools. Despite complaints about various functions of SEDS, the system is a huge improvement over previous iterations. Still, frequent movement creates challenges that SEDS cannot in itself resolve. IEP information alone does not inform a new school what works for a student, awareness of an IEP is not always a guarantee of immediate or accurate implementation. Many schools still depend on parents to report that their enrolling student has disabilities or suspected disabilities and to provide documentation. In its 2014 policy, OSSE articulated guidelines and timelines for LEAs to share IEP information for students who transfer within the District, but the mechanism relies on individual contacts, rather than automation, so implementation is by nature uneven.⁴⁸

Charter School Oversight by OSSE

In January 2010, OSSE revised its policies to take a more active role in reviewing requests for student outplacement. The process, initially applied exclusively to charter schools and only later to DCPS, requires that a charter school (i) notify OSSE that it is considering an outplacement, (ii) submit a Justification for Removal Statement (JRS) to OSSE, and (iii) permit OSSE to review the LEA's efforts to serve the student in the public setting. Ultimately, OSSE's role is limited to deeming the outplacement warranted or unwarranted, since only the IEP team can decide a student's placement needs. Although many attorneys and advocates describe OSSE's process as unhelpful—they believe it causes delays and additional labor and is insufficiently family-centered—this may arise because OSSE is not brought into the process until the IEP team has formulated its

recommendations. When the process was conceived, the intent was that OSSE staff would be consulted earlier in the decision-making process. OSSE's involvement has in fact helped reduce the number of referrals from charter schools to non-public schools. To the extent that this means students get the services and support they need in their schools of choice, the result is positive. To the extent that it delays or discourages placement of students who require a more restrictive environment to perform to the extent of their abilities, it warrants review.

Changes in the Oversight Process for Non-Public Schools

OSSE implemented the Certificate of Approval (COA) process as a basic form of quality control for non-public schools that accept District funds. The process provides clear guidance to non-public schools on matters such as documenting and handling attendance, truancy, and behavior problems. The process, created through District legislation passed in 2006,⁴⁹ serves as the basis by which a non-public school becomes eligible for tuition payments from the District for students referred through IDEA.⁵⁰ Schools are regularly monitored for compliance with a basic set of standards, including some oversight of IDEA compliance, with much attention devoted to protecting students with disabilities from overly harsh disciplinary practices.⁵¹ This oversight of disciplinary requirements led to the closing of one non-public school for use of unsupervised isolation and particularly dangerous forms of physical restraint. The process has helped to protect students with disabilities from dangerous environments and to streamline administration of tuition and other payments, as well as to correct noncompliance issues under IDEA and District regulations.

There are, however, limitations. The only quality measures that OSSE reviews on a regular basis are teacher licensing and the existence (though not the quality) of quarterly IEP progress reports—emphasizing

⁴⁸ Individualized Education Program (IEP) Implementation for Transfer Students Policy, Dec. 17, 2014. Available at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/IEP%20Implementation%20for%20Transfer%20Students%20Policy%20%2812-17-14%29.pdf>.

⁴⁹ See *Placement of Students with Disabilities in Non-public Schools Amendment Act of 2006 (DC Law L16-0269)*.

⁵⁰ Children and youth in the District can be referred to non-COA schools at public expense through other government systems, such as juvenile justice, behavioral health, and child welfare. Some of these schools, selected for reasons such as student safety or therapeutic programming, do not necessarily comply with IDEA or the District's education and graduation standards. This disconnect is beyond the scope of this report but merits attention, given the challenges that these students often face upon return to District public schools.

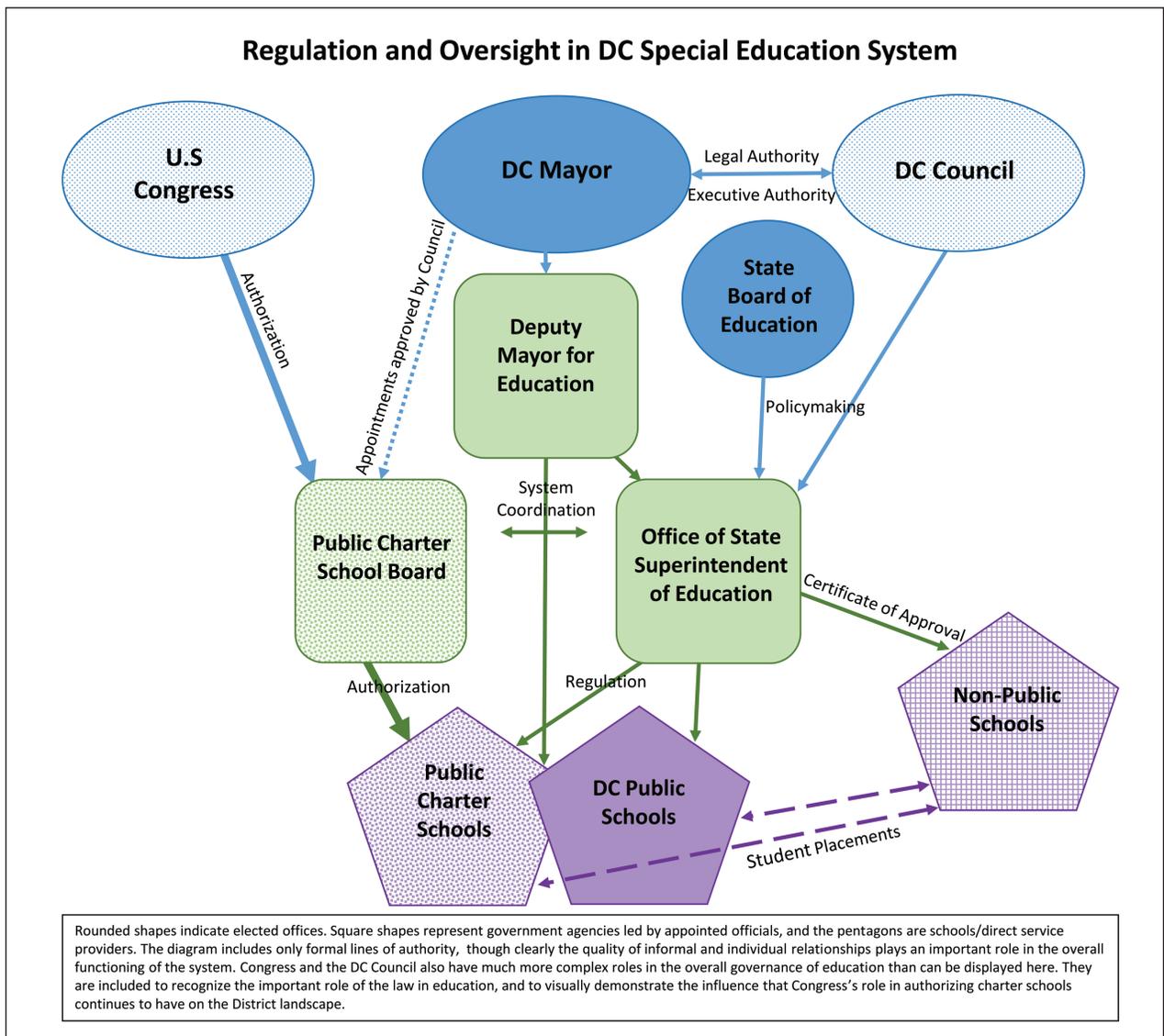
⁵¹ Of 22 criteria for which schools are monitored, 16 are related to disciplinary practices. See the COA monitoring tool at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Approved%20Appendix%20H%20-%20OSSE%20Nonpublic%20Monitoring%20Tool%20SY2015-16%20Final%20090215.pdf>.

process over content or performance. In interviews for this report, we frequently heard from DCPS Office of Special Instruction (OSI) staff about the non-public schools' focus on procedural accountability, which is consistent with the overall compliance focus of OSSE in terms of IDEA monitoring.

The current COA process does not provide specific qualitative information that would be useful for the LEAs in monitoring non-public schools that serve their students. Representatives for DCPS suggested they would like to see the following data collected on the non-public schools⁵²:

- OSSE Certificate of Approval (COA) Status
- Alignment with DC Teaching and Learning framework and DCPS graduation requirements

- Responsiveness to data requests
- Handling and documentation of incidents
- Consistent attendance reporting and responsiveness to student truancy
- Observations of instructional quality by progress monitors
- More thorough documentation in the Special Education Data System (SEDS)
- Related Service documentation and progress reporting
- Appropriate support for transitions to less restrictive environments
- Adherence to annual testing guidelines for DCPS students



⁵² It should be noted that representatives from OSSE indicate that most of this information is available upon request. Other information is available on OSSE's website, including some that is available on the School Profiles that were added to LearnDC in SY14–15.

In School Year 2015–2016, OSSE introduced some methodological changes to the non-public monitoring process with the goal of creating a “more robust, comprehensive, coordinated, targeted, and longitudinal monitoring process,” with increased opportunity to improve both LEA and non-public practices.⁵³ Further collaboration with both LEAs and non-public schools is essential to making sure this process is as useful as possible and that appropriate supplementary information is also made available.

LEA Roles and Responsibilities for Students in Non-Public Placements

As noted above, the LEA—the school district or independent charter school organization in which the student is enrolled—is responsible for IDEA compliance in its own schools and for its students who are placed in more restrictive environments. Prior to the 2007 passage of PERAA, there was little or no oversight of D.C. students in non-public schools.

DCPS Non-Public Unit and Progress Monitors

Restructuring DCPS under Mayor Fenty’s administration included creating the Non-Public Unit, which filled the LEA role for DCPS students in non-public schools. The Non-Public Unit assigned progress monitors to each non-public school to work with non-public schools, parents, and students to monitor attendance and IEP compliance. This was particularly important because, until 2012, a charter student was required to change his or her LEA to DCPS once the IEP team decided upon a non-public placement; although DCPS serves approximately half of all District students from preschool through Grade 12, it was the LEA for over 90% of those in non-public schools. Therefore, more students had access to DCPS resources and progress monitoring. Before introduction of progress monitors, non-public schools and others had criticized DCPS for giving up responsibility for students with disabilities once they were placed in non-public settings, which led to, among other problems, the belief that non-public placements were permanent. There were frequently no LEA representatives at IEP meetings, there was little monitoring of the delivery of required services, and students were not protected when schools used

inappropriate discipline methods. Progress monitors provided more consistent participation by DCPS in the ongoing education of its outplaced students.

Some challenges with the progress monitor role were exposed in the context of the non-public reduction strategy. Specifically, progress monitors were not authorized nor expected to bring knowledge to the IEP team of the public school options available to transitioning students. Further, they played no role in coordinating the communication between the receiving and sending schools as do LEA representatives in other school districts. These challenges were coupled with high turnover among the progress monitor staff and, in some cases, insufficient special education experience. In our interviews, non-public school representatives and parents recommended that progress monitors receive more training and information about how to prepare students to transition back to public placements, including specifics about the programming for students with disabilities in DCPS. In 2015, DCPS restructured these positions, bringing them in-house as employees of DCPS rather than using a contractor. While the change corresponded with reduced numbers of progress monitors, it also created the opportunity for better integration of progress monitors within the special education system at DCPS.

Charter School Oversight of Non-Public Placements

As of 2012, charter LEAs continue to serve as the LEA for their students requiring outplacement and must work directly with non-public schools to ensure that IEPs are implemented and course and graduation requirements met. This was a new role for charter schools, as well as new terrain for the non-public schools. Some of the complaints once directed at DCPS are now aimed at charter schools, for example, providing a low level of engagement with the non-public schools. Because there is no charter-school Office of Specialized Instruction to take on these responsibilities and create economies of scale, it can be difficult for individual charter schools to commit resources to this role and monitor non-public schools in person. According to the non-public administrators we spoke to, much of the direct communication with the charter LEAs takes place by phone, if it occurs at all.

⁵³ Slide Deck for the Revised Non-Public School Monitoring Process Webinar on August 26, 2015. Available on the web at <http://osse.dc.gov/sites/default/files/dc/sites/osse/documents/2015-16%20Revised%20NP%20Monitoring%20Process%20Training%20Final%20Slides%20-%20082615.pdf>.

OSSE and PCSB continue to work with charter schools to address their changing roles in the special education sector, as well as the logistical challenges of managing different schools' requirements and expectations. The Special Education Cooperative, a non-profit membership organization of charter schools in the District, plays an important role in helping charter LEAs meet their special education responsibilities, with technical assistance and support, as well as shared service opportunities for member schools. Among the changes for the charter sector to manage, in addition to taking on non-public monitoring, charter schools will soon be able to give enrollment preference to students with disabilities. With the assurance of a sufficient population of students with disabilities, charter schools will be more willing to make the investment required to support the development of specialized programming.

Movement of Students

Decision-Making About Transition-Readiness

In our research and analysis, we uncovered several lessons stakeholders have learned from decades of policy change and evolution of practice, including the 2011 policy to halve non-public enrollment. Both non-public schools and parents recommend that LEAs increase transparency about what transition-readiness criteria they are applying and why individual students are chosen for transition to LRE.

Beginning in 2008, in order to ensure a robust decision-making process around movement both up and down the special education placement continuum, OSSE introduced a Justification for Removal Statement form by which a charter school would notify OSSE of the school's intention to change a student's placement to a non-public school.⁵⁴ The form requires that the charter school articulate a plan for an eventual transition back to a public setting. Former OSSE personnel and special education attorneys reported that the responses were mostly pro forma. In addition, non-public schools routinely reassess and rewrite IEPs for new students,

and those IEPs may not include steps designed to help return the student to a public setting. Some personnel at DCPS believe that some non-public schools are tailoring students' IEPs to their own programs, thereby guaranteeing that students will never be considered ready to transfer back to a public setting.

In the beginning of the 2014–15 school year, the transition-readiness process at DCPS was revised to include non-public school input into a District data system ("OCTO Quick-base"). Non-public schools were asked to rank students on a scale of one to five on their readiness to transition, with five being absolutely ready. DCPS then entered its own data and used the total data set to generate recommendations. Most of the non-public schools found the additional data process burdensome, but preferred it to the prior process, where they felt DCPS neither sought nor valued their input. Some non-public school staff, however, reported that they did not hear anything further about OCTO Quick-base after entering their data.

Accessing Public Options Across Different Sectors

DCPS and charter schools offer a wide array of resources to serve a variety of students, but there has been no formal mechanism to ensure that students with disabilities access the most appropriate of the public options available. There is no systematic way to help identify an appropriate DCPS placement for a student who cannot be effectively served by a charter school. Charters are limited by enrollment regulations from accepting students except by lottery. Parents

Both non-public schools and parents recommend that LEAs increase transparency about what transition readiness criteria they are applying and why individual students are chosen for transition to LRE.

⁵⁴ This process was later introduced for DCPS as well. Non-regulatory Guidance to the Policies and Procedures for Placement Review, revised. April 9, 2010. Available on the Web at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Policies%20and%20Procedures%20for%20Placement%20Review%20Guidance%20%E2%80%93%20Revised%20April%202010.pdf>.

must therefore choose the LEA they believe will best serve their child, gain a spot through the random lottery system, and, if the placement fails, pursue a non-public placement.⁵⁵

In 2014, D.C. launched the My School DC common lottery, which allows parents to apply via a single website to almost all charter schools, as well as DCPS's out-of-boundary schools, selective schools and preschools. This has simplified the application process significantly and has helped all participants navigate the waiting lists and other challenges of enrollment in a complex public system. It has also eliminated any opportunity for an individual school to discriminate against students with disabilities. Unfortunately, even this process does not address the unique choices facing students with disabilities or students transferring back from non-public schools.

Students transferring back into the public system from a non-public school are limited in their choices. They

have a right to return to the LEA they left, whether charter or DCPS, unless they have aged out (i.e., completed the highest grade that the school offers), which can happen with charter schools that offer only elementary and/or middle school grades. If students age out, they are automatically transferred to DCPS's roster unless the parent entered the lottery during the spring of the prior year, when a decision to transfer may not yet have been made. However, their

newly assigned DCPS or charter schools may or may not be equipped to fulfill the terms of their IEPs and their new placements may be subject to review. This sets up a potential conflict between the prior IEP team's assessment of whether the student is able to return to a public or charter school and the new school's own assessment of whether it can appropriately serve the student.

In addition, many charter schools believe that they must demonstrate that they are unable to serve a student

with a disability before the student can be approved for a non-public placement. Some charter schools have thus asked newly enrolled students coming from non-public schools to attend the charter school long enough to determine whether the new placement is appropriate. In other words, rather than carefully planning for an intentional and successful transition for a student whom the IEP team has found ready for LRE, a student may be required to go through a trial transition, whatever that may entail.

Partial Transitions

In a gradual or partial transition, a student temporarily spends part of his or her day in their current setting and part in the proposed setting. This gives the student an opportunity to experience new challenges while having a familiar place to process those challenges and work on the skills necessary to succeed. Teachers and support staff communicate and identify issues that must be addressed before the transition becomes complete and permanent. Occasionally such a trial will fail, and the student will demonstrate that he or she is not ready for the new environment or needs more time; because the student preserves the non-public connection, there is less wasted time and frustration for all involved.

While gradual transitions are routine in other jurisdictions, non-public school staff were often uncertain whether District policies allowed or supported these practices (e.g., whether a student could receive transportation services to and from more than one school). As a result, very few District students have been able to access this opportunity, and then only under very limited circumstances, such as participating in an after-school sports team. OSSE reports that transportation can, in fact, be provided if the service is included in a student's IEP. However, transportation is only one factor. Strong communication between the two schools is essential, as is clarity on funding, responsibility for IEP implementation, and parental communication. For the District to effectively implement this practice, therefore, it must develop additional policies and protocols.

Atmosphere of Mistrust

The District's non-public reduction policy was implemented in a long-lived atmosphere of mistrust

While gradual transitions are routine in other jurisdictions, ... very few District students have been able to access this opportunity...

⁵⁵ The current system allows limited preferences for siblings and children of faculty. Special education reform legislation introduced the option of providing a special education preference for schools that want to create a program and need a better way to ensure that program slots are filled.

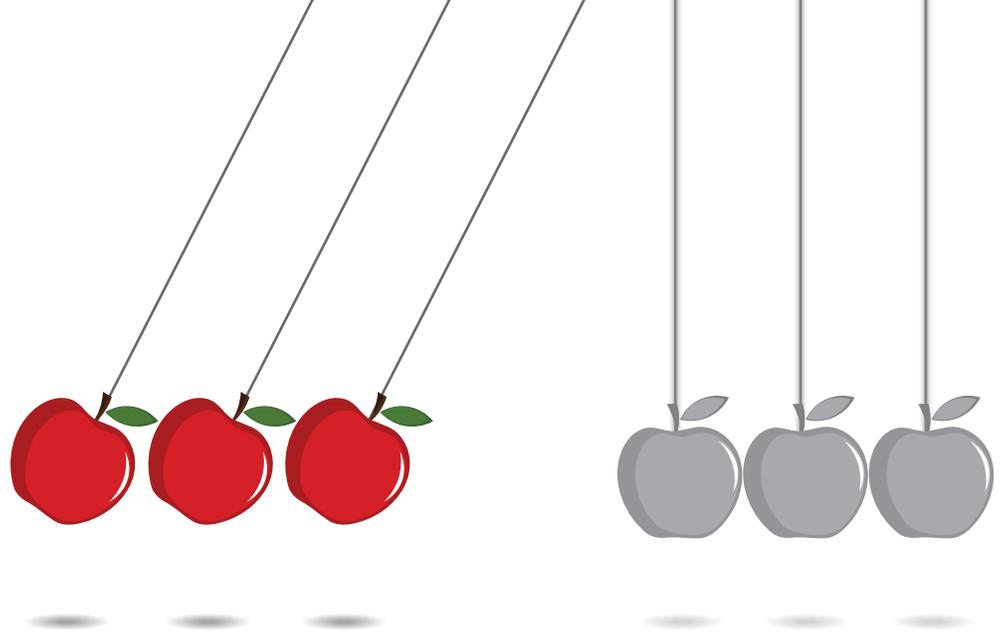
among special education stakeholders. Many parents of children with special needs, especially those who relied on formal complaint procedures to secure appropriate services, still do not trust DCPS. Many came to distrust the charter schools as well, in part because they had historically enrolled a disproportionately low number of students with disabilities, despite the fact that numbers now show near parity between DCPS and the charter sector as a whole.⁵⁶ Parents and non-public school representatives we interviewed almost unanimously felt that DCPS transferred students from non-public schools back to DCPS for financial reasons, rather than the best interests of the students. By the same token, some DCPS representatives believe that non-public schools want to retain District students with disabilities for financial reasons, even if the students are ready for a less restrictive environment.

This atmosphere of mistrust is nothing new. Indeed, the 2003 report by DC Appleseed and DLA Piper, *A Time for Action*, found among parents “a widespread perception that DCPS is indifferent to parental concerns,” coupled with “the predominant view within DCPS that parents and their attorneys are taking advantage of the system.”⁵⁷ While many families and educators have since had experiences that would belie these perceptions, others continue to feel that families and schools are on opposing sides of a significant divide around the education of students with disabilities. Taking steps to address the mistrust directly is essential to supporting successful LRE transitions going forward. ■

Taking steps to address the mistrust directly is essential to supporting successful LRE transitions going forward.

⁵⁶ While the District’s Charter Schools currently enroll 12% of students with disabilities compared to 14% at DCPS, 43% of Charter School students with the most severe disabilities (Level 4) are enrolled in only two charter LEAs. At the same time, Charter LEAs enroll more Level 3 students than DCPS schools. A report from the Center for Reinventing Public Education suggests that lower enrollment of students with disabilities in charter schools is a complex issue: “In both Denver and New York City, we found the lower special education enrollment rates are mainly a function of parents choosing to enroll their students elsewhere, but charter schools are also less likely to identify students as needing special education services. We saw no evidence that students with special needs are more likely to leave charter schools. In fact, they are often more likely to stay in charter schools once enrolled.” Bethany Gross and Robin Lake, December 2014: *Special Education in Charter Schools: What We’ve Learned and What We Still Need to Know*. Available on the Web at: <http://www.crpe.org/sites/default/files/crpe-special-education-in-charter-schools-what-learned-what-we-still-need-to-know.pdf>.

⁵⁷ *A Time for Action*, at 32.



Chapter 3: Research Findings

Current Continuum of Placement Options for D.C. Students with Disabilities—Overall, DCPS, Charter, and Non-Public

Concern about the quality of special education services at District schools is at the core of most disputes over LRE. Many stakeholders told the DC Appleseed project team that the quality of programming at the LEA impacts the ability of the non-public school to prepare a student for success. DCPS has made some important gains in terms of the quality and consistency of its special education programs, and some charters are providing excellent services, but school quality remains decidedly uneven for students with and without disabilities.

DCPS has made some important gains in terms of the quality and consistency of its special education programs, and some charters are providing excellent services, but school quality remains decidedly uneven for students with and without disabilities.

Given the performance of students with disabilities in District public and public charter schools, it is thus not surprising that non-public schools report District parents are more resistant to transition their children back to public schools than parents in surrounding suburban jurisdictions, where confidence

in the public schools tends to be higher. Non-public schools also have more reservations about the ability of

the District's public schools to provide necessary services and otherwise support a transition to LRE. Inequities in the quality of District public schools underlie virtually all discussions of school improvement in the District, and these discussions are more fraught because the District is a racially segregated city.

Uneven Quality of Non-Public Schools Serving the District

Non-public schools serving the District have been largely exempt from the data reporting and standardized testing that have become ubiquitous in the education environment. Despite the introduction of the Certificate of Approval (COA) and rate-setting process in 2006, which limited the number of schools serving District students, questionable practices allegedly continued at some non-public schools. In addition to the COA process, DCASE, created using seed money from the Petties Court Registry, was an attempt to increase consistency among non-public special education schools serving District students with disabilities. DCASE serves as a leadership and advocacy body in negotiations with the District, and also as an informal source of accountability among member schools.

OSSE recently began to post non-public school profiles on the LearnDC website. These profiles include the types of disabilities the programs are designed to accommodate, location, size, instructional hours, alignment with District curriculum standards, and other

key information. In addition, the profiles report how many District students have been enrolled, how many have graduated and the average age of the graduates. They also include self-reported disciplinary incident information, such as the number of in- and out-of-school suspensions, the number of incidents involving use of restraints or isolation, and the number of times students left the school by ambulance or in the company of police. Though these profiles will never substitute—nor are they intended to substitute—for due diligence on the part of a parent or IEP team seeking an appropriate student placement, they are an important resource. DC Appleseed applauds OSSE and DCASE for working together to make this valuable information available and encourages OSSE to continue to add information (such as staff ratios) to these profiles and make them searchable.

There is still a need, however, for data that answers questions like these: Which disability types does the non-public school serve most successfully? How does student performance on standardized tests compare with students with similar disabilities in the public system? What is the school’s track record of successfully transitioning students back into public schools (and with which school districts is it most successful)? How many graduates go directly to college or the workforce, and how do these outcomes compare with the public system? The information provided in the online school profiles is a step in the right direction, but additional information is still necessary for families and IEP team members to make the best placement decisions. In the absence of hard data, they are left with anecdotal reports, impressions and, if they are lucky, an experienced advocate to help guide their decisions as to whether to seek to place their child in a particular non-public school. Many experts—even individuals who formerly worked in the non-public sector—are skeptical that all non-public schools add real value to the education of students with disabilities. Most non-public schools do regularly confer with the LEAs on individual IEPs, but data regarding overall quality and performance of non-public schools are largely unavailable.

Data from Non-Public Schools on LRE Transitions

Because of the historic tension between the non-public and public school sectors in the District and

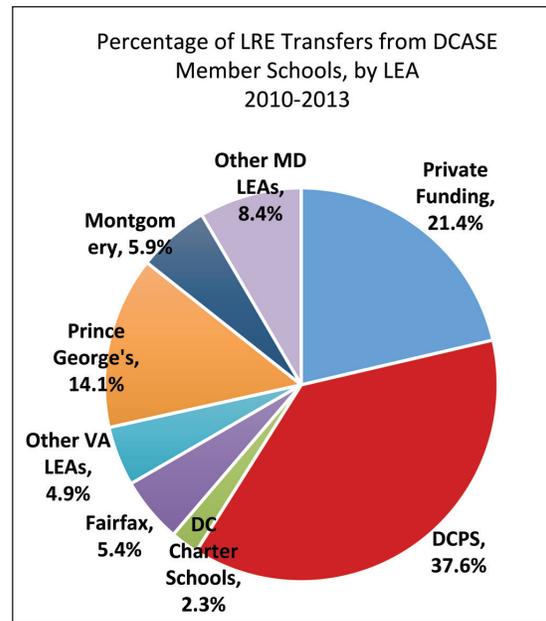
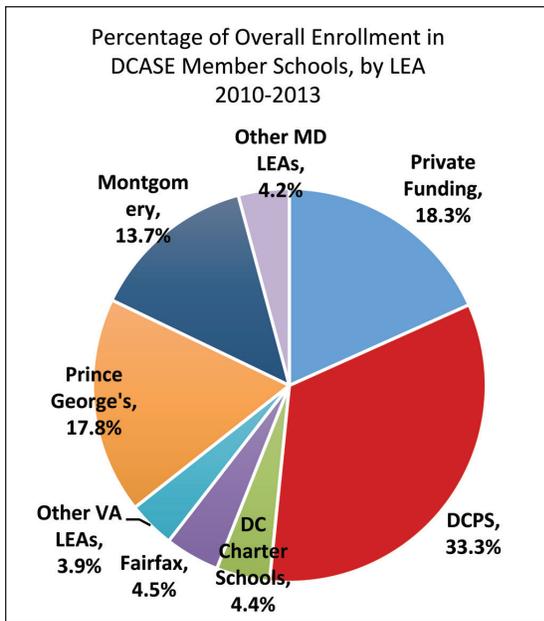
concerns that non-public schools were inappropriately retaining DCPS students once they were placed, DCASE and DC Appleseed partnered in 2014 to collect data on LRE transitions from the non-public schools that serve District students with disabilities.⁵⁸ The main research question was whether non-public schools actively transition students back to their home public schools, and whether non-public schools retain students from the District at higher rates than students from elsewhere in the region. We learned that while there were differences among non-public schools in the rates at which they transferred students to less restrictive environments, they did not appear to retain students from the District at any increased rate. And we learned that there were differences in the rates at which different jurisdictions transferred students out of non-publics, but again, District students were not retained at greater rates than others. Indeed, District students during the period we studied had the highest rate of LRE transitions among the jurisdictions that contract with DCASE schools.

The data did reveal a phenomenon, however, that warrants further exploration: more D.C. students transition from one non-public school to another non-public school—rather than returning to their public schools—than students from any other local jurisdiction. Thus, while non-publics were not retaining D.C. students, and indeed, the rate of movement of D.C. students out of non-public schools was relatively high, they were not sending them back to D.C. public or public charter schools at that same high rate. This suggests that the problem of the relatively lower rate of non-public schools transitioning students back to D.C. public and

Data regarding overall quality and performance of non-public schools are largely unavailable.

More DC students transition from one non-public school to another non-public school—rather than returning to their public schools—than students from any other local jurisdiction.

⁵⁸ For the purposes of the research, we recognized a continuum of restrictiveness within the non-public sector. Therefore, the research did not limit “LRE transitions” to those that involved a return to a public setting.



public charter schools is not about non-publics retaining them longer than students from other districts, but about subsequent placement (i.e., where D.C. students go when they are ready to transition).

The Data

Thirty-eight percent of the 2,211 total students from all districts enrolled in DCASE member schools are from the District, by far the largest proportion of students in the non-public schools studied. Of the District's students, 80% are now placed by DCPS, while 20% are placed by charter schools. The high percentage of students from the District can be explained in part by the conditions of DCASE membership: these are, by definition, the schools that serve students in the District. The school populations, however, range from 100% District-funded students (97% DCPS and 3% charter) to as low as 12% District-funded.

The District's rate of transferring students with disabilities from non-public schools to less restrictive environments is thus in line with, or greater than, the surrounding counties using the same non-public schools.

Maryland students are a majority at some of the schools, and Virginia students comprise a majority (63%) at one school. Two of the schools receive their largest group of students from privately funded sources.

District students represented the highest percentage of the transfers from non-public schools to a less restrictive environment occurring between 2010 and 2013, with about 40% of all DCASE school transfers. (DCPS made up 37.6% and District charter schools made up 2.3% of transfers.) This suggests that the District was transitioning students out at a slightly higher rate than it was transferring them in, which was one of the goals of Mayor Gray's 2011 policy. Students funded by Prince George's County, Maryland, made up nearly 18% of enrolled non-public school students and 14.1% of total transfers. Montgomery County, Maryland claimed 13.7% of enrollment but less than 6% of LRE transfers. Fairfax County, Virginia, accounted for only 4.5% of the population at these same schools and 5.4% of LRE transfers. These numbers indicate that both Fairfax County and the District are transferring out a slightly higher proportion of students than they are sending in, and Montgomery and Prince George's Counties are transferring out a lower proportion of students than they are sending in.

The District's rate of transferring students with disabilities from non-public schools to less restrictive environments

is thus in line with, or greater than, the surrounding counties using the same non-public schools. We conclude from this that, despite the tensions that non-public schools reported in working with the District and vice versa, non-public schools are not actively retaining District students.

The research also shows, however, that, of the District students who transferred out of non-public schools, more than half went to other non-public schools or traditional private schools.⁵⁹ In other words, students left non-public schools, but a majority did not transition to public schools. Does this mean that they were not well-matched with the original non-public school? Or did they get what they could from one school but were still not ready to benefit from a public setting? Or did DCPS and charter schools lack appropriate capacity to serve these students? Would greater use of partial or gradual transitions change the story? It is not clear from the data why this type of transition has occurred with such high frequency among DCPS students. Of the other area school districts, only Prince George's County transferred more students from these non-public schools to other non-public schools than back into its public schools.

The data also show that some schools demonstrate a strong propensity to transfer students to less restrictive environments.⁶⁰ Some transfer more or less in proportion with their share of the population, while others seem to transfer far fewer students relative to their populations. This in itself is not grounds for either approbation or censure. Further analysis would reveal whether the schools with low transfer numbers served a particularly challenging population that would be most difficult to serve in public school, prepared students with disabilities to return to a public setting less well, or did not provide accurate numbers in response to our survey. For example, perhaps the schools with lower transfer numbers are more specialized and serve students that other non-public schools are unprepared to accept. There are also no data indicating how well the students perform at the schools to which they transfer, whether

public or non-public. The data that were collected, therefore, while not conclusive, point toward a number of questions that would benefit from further analysis as the District considers the role of non-public schools as part of the special education continuum.

Additional research and analysis, as well as more standardized information reporting from the non-public schools, would allow District parents and educators to make better-informed decisions about where to send students in need of a more restrictive setting and to compare performance before and after transitions. Although the COA process provides for minimum quality and safety standards, it is insufficient to ensure that District students are likely to benefit from a particular placement. It will always remain the duty of the IEP team and LEA to assess and determine the best fit for an individual student, but OSSE has an important role to play in setting a research agenda as well as deciding what additional information should be publicly reported and creating a more data-driven regulatory process.

Challenges at DCPS Schools

Despite improvements in recent years, the performance of DCPS students in special education is alarming, both absolutely and relative to students in other large cities. Results from the former standard assessment test known as DC CAS (DC Comprehensive Assessment System) suggests that, on average, District students with disabilities achieve proficiency in reading and math at about 30–40% the rate of their non-disabled peers.⁶¹ The numbers for high school students with disabilities at non-selective high school are as low as 0% reading proficiency at Ballou High School, to a high of 29% at Eastern High School.⁶² The first round

District students with disabilities achieve proficiency in reading and math at about 30–40% the rate of their non-disabled peers.

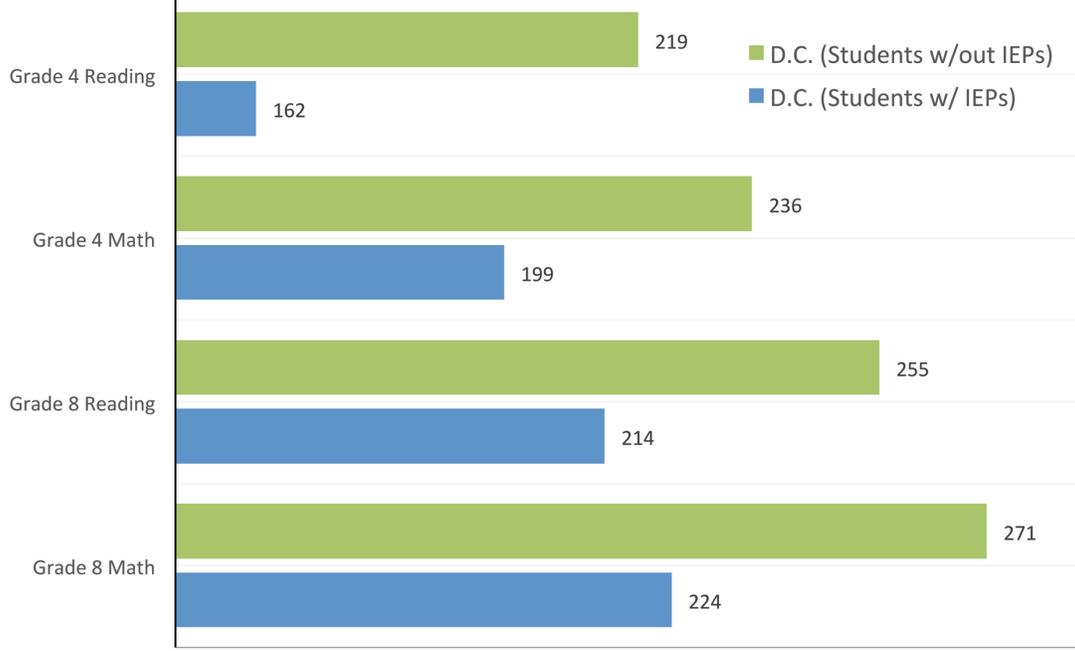
⁵⁹ Movement from one non-public school to another would not be considered an LRE transition for the purposes of federal IDEA reporting. All non-public schools are counted as the same LRE level, but there are variations among the non-public schools in terms of the “restrictiveness” of their programs, including controlling peer-to-peer interactions, number of private-pay, non-disabled students enrolled, and other factors. This is why, for the purpose of this data collection, these were included as LRE transitions.

⁶⁰ This category was not intended to include exits upon reaching terminal grades.

⁶¹ Equity Report analysis SY12-13.

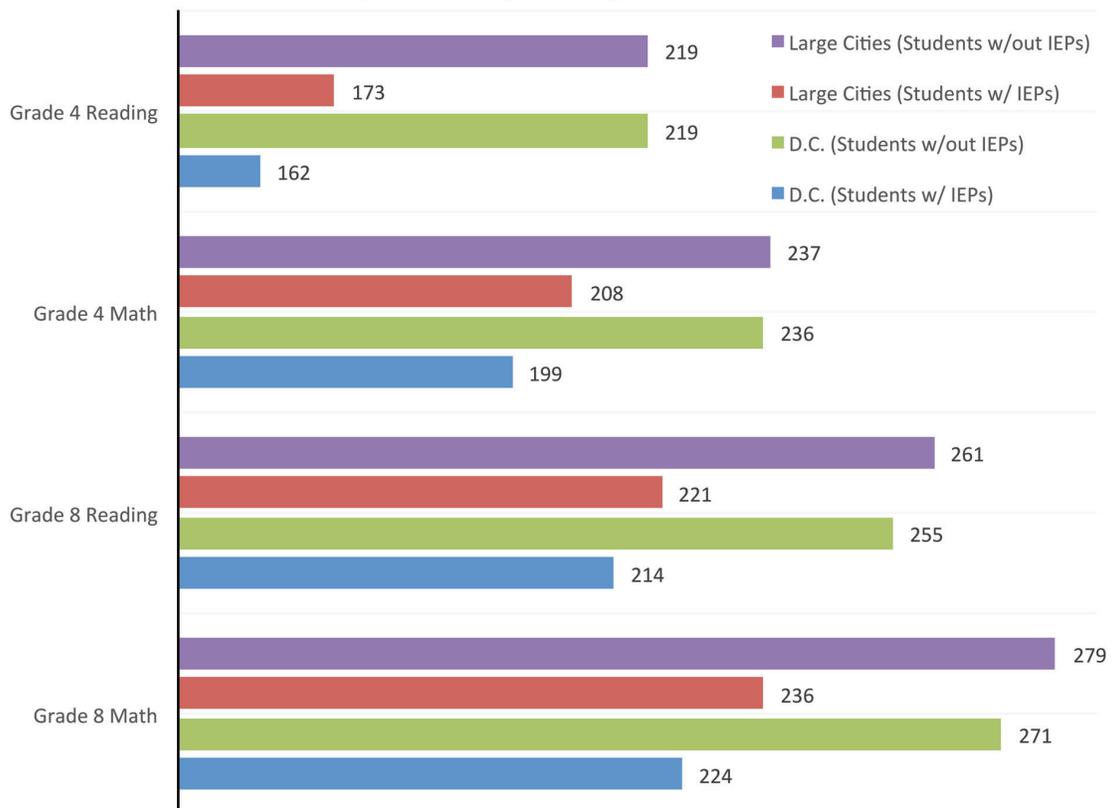
⁶² *Id.*

Comparing D.C. Students with Disabilities and Peers without Disabilities in DC by Average NAEP Scores, 2015



Average Scale Score on National Assessment of Educational Progress, By Category and Grade.

Comparing Students with Disabilities and Peers, in the District and Other Large Cities by Average NAEP Student Scores, 2015



Average Scale Score on National Assessment of Educational Progress, By Category and Grade

of Partnership for Assessment of Readiness for College and Careers (PARCC) testing in D.C. (School Year 2014–15)⁶³ showed only 4% of high school students with IEPs proficient in English, compared to 25% of all students; and only 1% of high school students with IEPs proficient in math, compared to 10% of the total student population. Similarly, students in special education graduate at just over half the rate of their non-disabled peers. (The average graduation rate for non-disabled students, though improving, is also very low.⁶⁴) While some DCPS high schools graduate as many as 79% of their students in special education, others graduate as few as 23%, some of whom are well below grade proficiency in reading and mathematics.⁶⁵ National Assessment of Educational Progress scale scores, which measure skills on reading and math assessments, suggest that the District’s students in special education are performing at lower levels of comprehension than students in other urban districts, and with remarkable disparities between students with and without disabilities. (See accompanying graphs; scores are scaled out of a total of 500.)

In an effort to bring more consistent quality to special education services at neighborhood schools, DCPS’s Division of Specialized Instruction is now overseeing a number of special education classrooms throughout the District, including classrooms for students with behavioral, communication, and cognitive disabilities. DCPS has made considerable efforts to make the staffing, structure and approach of these programs more uniform, and it provides coaching for teachers and other support. DCPS is investing heavily in teacher training on evidence-based literacy interventions and building out programs for Level 2 and 3 special education students, who spend some or most of their time in general education, but rely on designated special education programs.⁶⁶ All of these programs, however, still depend on hiring decisions at the individual school level, as well as other factors that DCPS’s central office cannot fully control, such as budget cycles, pay scales/cost of living, and enrollment. Getting a variety of

teachers or schools to implement a program in the same way is always a challenge, even in carefully researched, documented and monitored programs, which these, generally speaking, are not.

Individual schools may also have special education programs or strategies that are not directly supported by DCPS’s central administration, and there can be tension between the central office’s standards and the individual schools’ plans. Special education approaches created by principals may not be as well-designed or supported as those created by the central office, or they may be far better. There is no comprehensive list of these strategies and no clear standards they must meet. Moreover, there are economic disparities that disproportionately impact certain parts of the District. Advocates and policy makers have often pointed to the challenges faced by schools in Wards 7 and 8, where students are overwhelmingly low-income and effective learning sometimes takes a backseat to other important matters, such as hunger, poor health, and trauma. The District has made efforts to balance resources among schools, such as the addition of “at-risk” funding, but the disparities persist.

Finding the right balance between the central office and local control is a manifestation of many years of struggle to raise overall quality. When DC Appleseed and DLA Piper issued *A Time for Action* in 2003, the lines of authority and the power of principals to provide necessary services for students with disabilities were unclear at best. Efforts to decentralize authority to the school building have met with uneven success. Some principals provide more effective support for inclusion than others, some do better than others at hiring for special education, and some are reluctant to provide access to local professional development opportunities.⁶⁷ Whatever the reasons for the unevenness, data on student performance suggest the District has a long way to go to raise student achievement across the system, and this must be factored into LRE decisions.

⁶³ School Year 2015–16 scores were not available at date of release.

⁶⁴ According to data released by OSSE, the District’s adjusted cohort graduation rate in the 2014–2015 academic year was 64.5%, up from the 2013–2014 academic year rate of 61.4%. Available on the Web at <http://osse.dc.gov/publication/2014-15-adjusted-cohort-graduation-rate> and <http://osse.dc.gov/release/district-releases-hs-graduation-rate-data-2>.

⁶⁵ Ginger Moored, DC Office of Revenue Analysis, March 16, 2015, *District Measured: DC high school graduation rates: how does your school compare?* Available at <http://districtmeasured.com/2015/03/16/d-c-high-school-graduation-rates-how-does-your-school-compare/>.

⁶⁶ For funding purposes, DC categorizes students with disabilities according to the level of service required, with Level 1 requiring the fewest hours of specialized service, and Level 4 the most.

⁶⁷ This is consistent with the findings of the small sample of schools in the American Institutes for Research report.

Challenges with School Choice and Charter Schools

As discussed above, the District's large charter school sector adds yet another layer of complexity to the special education picture. According to the PCSB, the District is home to 114 public charter school campuses operated by 62 nonprofit organizations, located in 103 separate facilities around the District. The quality of schools varies, and some are better equipped to design and deliver special education programs and services than others. Indeed, prior to the many improvements made by PCSB, OSSE, and the charter sector, a 2011 civil rights complaint was filed with the U.S. Department of Justice, claiming that the District's charter sector discriminated against students with disabilities based on their under-representation in the sector. Enrollment has leveled since

then, as pointed out above, and some charter schools have disproportionately high numbers of students with disabilities, even excluding those, like St. Coletta, that were designed for students with severe disabilities. Overall, the District's charter sector demonstrates higher proficiency rates, student growth rates, and graduation rates for students with disabilities than DCPS.⁶⁸

Still, some OSSE staff interviewed for this report suggested that charters are not all sufficiently aware of, nor compliant with, their responsibilities under IDEA.⁶⁹

According to these OSSE staff members, some charters lack "awareness of their responsibilities as LEAs," and are unprepared for "data reporting [and] accountability." In addition, some

charters lack commitment from school leadership to implement best practices. Many charter schools have strict disciplinary codes or stringent academic requirements that make it difficult for some students with disabilities to succeed, thus causing them to opt out, rather than experience failure, suspension, or expulsion.⁷⁰ Several interviewees remarked that the charter school sector is relatively new and therefore lacks the experience and capabilities of other schools.

Further, many parents say they have been led to believe, erroneously, that charter schools cannot or will not accept their child with an IEP. These myths persist although charter schools have a legal obligation to serve any student who is enrolled, regardless of disability status. To address this issue, PCSB began to strictly oversee charter school admission materials in 2011, including websites, to ensure that there was no language that might dissuade a parent with a disabled child from applying. In 2012, PCSB launched a "mystery shopper" program, where its staff called all charter schools posing as parents seeking to enroll a disabled child. The very few schools that provided inappropriate answers to callers' questions were subject to disciplinary action by PCSB. The 2014 introduction of the My School DC common lottery, eliminated whatever ability a school may have had to screen or dissuade a potential applicant from applying.⁷¹ PCSB has also implemented a special education oversight framework to guide and support quality improvement in charter schools and has worked closely with OSSE to clarify roles and responsibilities around IDEA compliance.⁷²

Charter schools face unique challenges serving students with special needs due to school size and structure. Because their enrollment is determined by lottery, with most participating in the common lottery, charter schools do not know until after the lottery how many special needs students they will have. DCPS has similar problems due to the mobility of the student population, but does have some feeder patterns to provide guidance.

Whatever the reasons for the unevenness, data on student performance suggest the District has a long way to go to raise student achievement across the system, and this must be factored into LRE decisions.

⁶⁸ Civil Rights Complaint Against the District of Columbia, May 12, 2011, filed by Bazelon Center for Mental Health Law. Available at <http://www.bazelon.org/LinkClick.aspx?fileticket=ZHsqwTj8U78%3d&tabid=77>; see District Measured available at https://public.tableausoftware.com/views/Four-Year-HighSchoolGraduationRatesinD_C_sPublicSchools2014_/2014graduationrates?:embed=y&:showVizHome=no.

⁶⁹ For funding purposes, DC categorizes students with disabilities according to the level of service required, with Level 1 requiring the fewest hours of specialized service, and Level 4 the most.

⁷⁰ CCE Equity in School Discipline.

⁷¹ For more information about the My School DC lottery, see <http://www.myschooldc.org/>.

⁷² PCSB has developed a Quality Assessment Review that addresses academic performance and behavior management, operations, instruction, and related service delivery in charter schools. See <https://drive.google.com/file/d/0BjXQpCEXCTZZ3BtbnVZNVI0eGc/edit>

The District provides charter schools with a monetary allotment for each student enrolled based on advance estimates, followed by a school audit and confirmed by an annual student audit. Schools receive an additional amount for students with IEPs and are eligible for supplemental, need-based special education funding.⁷³ Charter school personnel do not believe that the supplemental allotment covers the costs of providing services for children with special needs, especially those with the greatest needs. Timing exacerbates cash flow issues as well, since the money must be spent when it is needed, and the schools may not see the revenue for months. Charter schools also reported issues with securing additional funding throughout the academic year as students' needs change or arise, a problem that has been addressed, at least in part, through quarterly payments. In addition, though charter schools do receive facility allotments over and above the UPSFF, funding does not typically allow for smaller classes or additional staff, which would facilitate greater options for students with disabilities within the LEA itself, thus making a non-public placement unnecessary. Non-public schools also report that, once a charter school places a student in a non-public placement, it tends to disengage from the student and fails to monitor the student as required. The monitoring that does occur is mostly by phone, since few charter schools have the capacity and resources to send staff to non-public schools.

Charter schools that specialize in students with disabilities have also been the subject of very visible crises, which fuel public skepticism. In 2013, Options Public Charter School, which predominantly served at-risk middle and high school students, of whom approximately 75% had IEPs, was placed under receivership as a result of a fraud investigation.⁷⁴ Options maximized its revenues using the special-education status of most of its students. For example, one of the contracts that came under fire involved provision of school transportation that, for students without IEPs, would not have been publicly funded. The case called into question PCSB's ability to provide sufficient financial oversight to charter LEAs, given the private nature of charter school governance and the presence of private, for-profit businesses in the charter sector. Following the crisis at Options, PCSB introduced rules to bring greater transparency

to charter school contracts over \$25,000, including opportunities for expanded review to identify conflicts of interest or other red flags, as well as better internal review processes and stricter penalties for charter LEAs' failure to submit timely and accurate reports.

Unlike DCPS, which has recently focused on building separate classrooms for students with special needs, many charter schools gravitate to inclusive learning models for special needs students. With some limited exceptions, charter facilities are not built or purchased with the schools' obligation to provide a continuum of service options in mind. Some have been designed based on an inclusion model, and so, theoretically, do not dedicate any classrooms to students with disabilities. They can thus be unprepared for students whose educational and/or social-emotional needs may require dedicated space. Other charter schools have learned to adjust their core inclusion model to accommodate the needs of all students and to emphasize the importance of collaboration between general educators and special educators. For example, one charter school adopted a policy to place students in non-public schools only when the students' behavior management issues or extremely low cognitive functioning prevent their benefiting from the general program, and even then, only after interventions have been unsuccessful.

Charter schools have had to be creative in order to address the broad continuum of special education needs, given their individual limitations. As mentioned above, with help and guidance from the Special Education Cooperative, charter schools may share certain special education services, such as occupational therapy and vision services. One charter LEA opened a classroom that accepted students in full-time special education from several other charter schools, sharing the cost with the charter schools that placed students there. That program has since closed, but a similar "satellite classroom" program is under development through PCSB.

OSSE and PCSB have recently worked together to better ensure IDEA compliance at charter schools and to improve services, including non-public school monitoring. Previously, schools and families did not know

⁷³ For further details, see Office of the District of Columbia Auditor, Oversight Improvements Must Continue to Ensure Accountability in Use of Public Funds by DC Public Charter Schools, March 17, 2015. See esp. pp 3–4. Available on the Web at <http://dcauditor.org/sites/default/files/DCA162015.pdf>.

⁷⁴ For funding purposes, DC categorizes students with disabilities according to the level of service required, with Level 1 requiring the fewest hours of specialized service, and Level 4 the most.

where to turn for help, for example, with a complaint that IEP services were not being delivered. While written policy covered some areas, there was silence or ambiguity on others.

Summary of Observations on Research Findings

Fulfilling the promise of LRE is never easy, in part because teaching is always a difficult job and the legal standards are not always entirely clear, but also because of local issues that implicate the entire special education system. The District's litigious history has helped many individuals overcome barriers to education, but it has also fostered an environment of defensiveness and opposition in areas where IDEA was designed to foster collaboration and partnership. Thus, while reducing reliance on non-public schools for services that the public system should be providing to students is a valid goal, it must be understood and pursued in the context of these other limiting factors.

The District's litigious history has helped many individuals overcome barriers to education, but it has also fostered an environment of defensiveness and opposition in areas where IDEA was designed to foster collaboration and partnership.

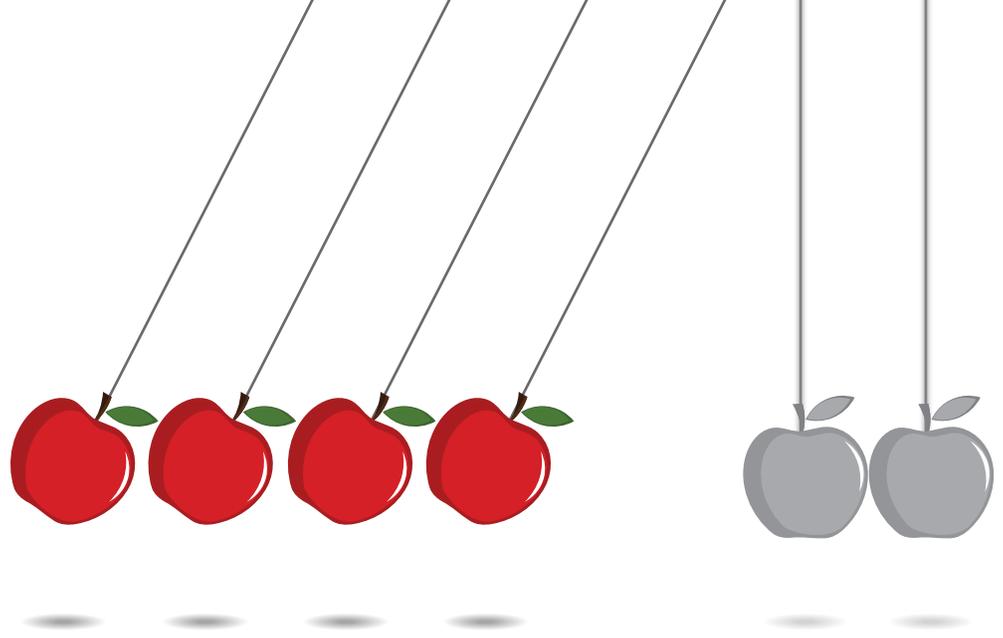
With the successful achievement of the 50% reduction goal, staff at DCPS central office report refocusing attention on keeping students with disabilities in their public placements and measuring their progress, rather than graduating or returning additional students from non-public placements. DCPS is working to ensure that all schools have programs for students who require intensive, but not full-time, special education services. But if the relationship among public schools, non-public schools and parents is going to become less antagonistic and more student-centered, the parties must address all of the issues described above, both those that brought on the non-public placement

reduction policy and the implementation of the policy itself.

Some improvements have been made or are underway, specifically concerning selection criteria, transparency about placement options, and overall instructional capacity. Current Deputy Mayor for Education Jennie Niles has launched a task force to improve cooperation and coordination among charter and traditional public schools.⁷⁵ In addition, recent meetings under the umbrella of the Building Pathways to LRE project produced agreements among charters, DCPS, and non-public schools (i) to create a school touring calendar for staff, and (ii) to resolve reporting limitations in the Special Education Data System (SEDS) that cause underreporting of related-service delivery.

But while some of the points of distrust have been resolved, especially among the District's educational leadership, distrust among other players remains an issue. The strain between the public and non-public systems did not begin with Mayor Gray's 2011 pronouncement, and it did not disappear with Mayor Muriel Bowser's installation in 2015. Nor has it disappeared now that the District has reached the 50% reduction goal. The question is what to do now. ■

⁷⁵ News Release August 19, 2015: DME Launches Cross-Sector Collaboration Task Force. Available on the Web at <http://dme.dc.gov/release/dme-launches-cross-sector-collaboration-task-force>.



Chapter 4: Best Practices

For this report, DC Appleseed’s project team explored best practices nationally and particularly among the District’s neighbors, seeking structures and strategies to meet the challenges related to the movement of students with IEPs among public and non-public schools.⁷⁶ We looked at IDEA and how it has been used to support effective special education programs and practices. We sought information about how our neighbors work with the same non-public schools. Nationally, we looked at school districts with large charter sectors to see how they manage special education placement among traditional, charter, and non-public schools. We also analyzed how courts have filled in the gap left by IDEA in defining an “appropriate” education.

Six important themes emerged from the studies of these other school districts. First, strong relationships between schools and families are essential to successful transitions; indeed, we heard from educators locally and nationally that transitions should not be initiated until parents are on board. Second, a transition must be a managed process, with institutional structures in place to support it. (Other districts have offices and individuals specifically charged with overseeing LRE transitions.) Third, partial or gradual transitions are not only an effective practice, they are the norm among some of our neighbors, and those jurisdictions have instituted policies to support their viability. Fourth, in districts with large charter sectors, deliberate collaboration to address systemic issues is valuable in helping maximize

resources on behalf of children with disabilities. No jurisdiction has found a systemic way to enable students with disabilities to move among local LEAs based on the needs or goals as identified in an IEP, but some have found ways to ensure students with disabilities are well-matched to the schools in which they become enrolled, with schools working together to close gaps in the service continuum. Fifth, in order to maximize the promise of school choice, districts must provide timely support and education to parents about enrollment procedures and options, and must especially provide information specific to programming for students with disabilities. Sixth, the courts in other jurisdictions are aligning IDEA with the national movement toward standards-based education, producing an understanding of “appropriate” consistent with current educational goals. Descriptions of specific jurisdictions and discussion of some noteworthy practices related to these themes follow.

Description of Key Individual School Districts: DC Region

Fairfax County, Virginia Public Schools

The Public Schools of Fairfax County, Virginia (FCPS), have a student population of approximately 187,000, including 25,000 (13%) with IEPs. The school district commits to provide services for high-incidence disabilities (i.e., learning disabilities, emotional disabilities, and other health impairments) in every elementary, middle, secondary, and high school. There are seven

⁷⁶ We talked to representatives from school districts, from non-public schools, and from charter schools, and reviewed publicly available information.

specialized public schools for students with disabilities, including two oriented toward secondary students, and career and technical education. FCPS provides support for students with disabilities and their families through a Parent Resource Center, as well as the Procedural Support Services Program, which houses Procedural Support Liaisons (P-S Liaisons). Each P-S Liaison is assigned to one public high school and the elementary and middle schools that feed into it. P-S Liaisons are usually former special education teachers with a deep and detailed understanding of state and federal special education laws and requirements; they provide guidance to staff, families, and students within the public school setting. For students who need the services of a non-public school, the Multi-Agency Services program coordinates non-public special education services, including arranging and monitoring students' placement in, and transitions to and from, non-public settings. Each student in a non-public setting is assigned to a Multi-Agency Services Liaison (M-A Liaison, or case manager), who works with that student and his or her family and keeps in regular contact with the non-public school about the student. As of 2014, there were seven M-A Liaisons within Multi-Agency Services.

In FCPS, transitions back to public schools often begin when staff in the non-public school identifies a student in a special education program who no longer requires the intensive supports of the non-public school and would be better served by transitioning to his or her local (or base) school. The non-public school personnel communicate this perspective to the appropriate M-A Liaison. An M-A Liaison who agrees the student should begin the transition process then reaches out to the family and others to convene an IEP meeting. The M-A Liaison provides an update to the P-S Liaison assigned to the student's base school and often asks the P-S Liaison to attend the IEP meeting.

If everyone at the IEP meeting agrees that the student should transition back to the base school, the IEP team crafts a specific transition plan that includes input from all parties, including parents and students. Often the student gradually transitions to the base school, for example, by attending a couple of classes there each day. FCPS pays for the transportation to and from the schools, and each school is paid a pro rata share of the cost of the child attending the school. The M-A Liaison continues to work in close contact with the student to make sure the gradual transition goes smoothly.

Montgomery County, Maryland Public Schools

Montgomery County, Maryland, serves 154,000 students in its public schools; close to 11% (approximately 16,500) have IEPs. The Montgomery County Public School district (MCPS) includes five separate special education facilities, including one therapeutic program—the John L. Gildner Regional Institute for Children and Adolescents—that provides both day and residential services and also serves students from other counties. The MCPS Placement and Assessment Services Unit (PASU), which is part of the Department of Special Education Services, coordinates and monitors special education students' placement in non-public school settings. A PASU Placement/Instructional Specialist Case Manager works with each of the non-public schools in which MCPS places students and serves as a point of contact for parents and non-public school students, monitoring student progress in the non-public school, much like DCPS's progress monitors. Case managers, along with non-public school staff, often recognize students who are ready for an “inclusive opportunity” or a transition to public schools.

Depending on the school, the case managers or staff at the non-public school may refer the students to a Central IEP (CIEP) team to consider an inclusive opportunity. The Central IEP team within PASU deals only with students in, or transitioning to or from, non-public placements. The CIEP team conducts annual and periodic review IEP team meetings, reevaluation planning, and reevaluation IEP team meetings of students in non-public schools. Every instructional specialist in the county rotates through the CIEP team. The case managers attend the CIEP meetings, as do the CIEP Chairperson and the parents, as well as the student, where appropriate. If the entire CIEP team agrees that the student should transition to the base school, then the student will begin partial “mainstreaming” at the beginning of the following semester, taking two or three classes at the base school and the rest at the non-public school. During this inclusive opportunity, the non-public school receives all the funding for the student. The public school absorbs the cost of the student for up to three classes at that school. A representative from the non-public school is responsible for monitoring the student throughout the semester; some schools have a dedicated transition coordinator. Often, the public school also has a school counselor and special education teachers who can help ease the transition. At the end of the semester, the IEP team meets to assess the inclusive opportunity. Most of the time, the student

then completely transitions to the public school. In rare cases, this inclusive opportunity may continue for an additional semester.

Prince George's County, Maryland Public Schools

Prince George's County Public Schools (PGCPS) has approximately 127,000 students, of whom over 14,000 (11%) have IEPs. PGCPS has specialized programs throughout the district, including three colocated non-public programs, and "Regional Schools" designed to support students with multiple disabilities in classes with a low student-to-teacher ratio and instruction focused on both academic and functional life skills. PGCPS students account for nearly 20% of the students served by DCASE non-public schools, second in number to the District.

Non-Public Specialists in the Non-Public Office within the PGCPS Special Education Department work with PGCPS students in non-public schools. In conjunction with teachers and staff at those schools, Non-Public Specialists help recognize students who are ready to transition back to their base public schools. They are also responsible for convening IEP meetings to discuss these proposed transitions. If the participants at the IEP meeting agree that the student should transition, the Non-Public Specialists convene a Central IEP (CIEP) meeting with PGCPS's CIEP team. As in Montgomery County, this meeting includes representatives from the base public school and the non-public school, a CIEP representative, the Non-Public Specialist, the parents, the rest of the IEP team, as well as the student, where appropriate. If the transition is deemed appropriate, the CIEP team helps connect the student with public school staff who can provide support. The student often meets with these staff members beforehand and may attend the public school for a day before making the transition. The CIEP team stays apprised of the progress of the transition.

Two or three key staff participate in this transition. First, a Special Education Instructional Specialist (SEIP) from PGCPS's Special Education Department is assigned to each public school in PGCPS. The SEIP monitors students upon their return to the public school setting, acts as a point of communication between the public school and the CIEP team as needed, and holds progress review meetings after the transition. Second, each public school has a caseload provider assigned only to that school. This caseload provider functions in the public school as a special education teacher, and also

helps develop IEPs, attends meetings, and helps students transitioning back. Additionally, a Special Education Chairperson at each public school assists transitioning students. This Chairperson may be the caseload provider for the school, or he or she may be a special education teacher.

Description of Key Individual School Districts: Other US Districts with Large Charter Sectors

Denver, Colorado Public Schools

The city of Denver, Colorado, serves approximately 90,000 students in a combination of traditional and charter schools; over 10% are students with disabilities. Denver is a racially and ethnically diverse community. More than half of the students in Denver Public Schools (DPS) are Hispanic, 22% are white, and 14% are black. Approximately 70% qualify for Free and Reduced Price Lunch, a proxy for low-income status. About 83% of all K-12 students attend traditional schools in Denver, while 17% attend charter schools. In Denver, all charter schools are authorized by DPS, and DPS serves as the LEA for special education purposes for students attending the charter schools. Denver recently transitioned to a common application and lottery system for all district and charter schools. Like D.C., Denver conducts an annual lottery in two waves, which allows for some movement after the first phase.

Because DPS is the authorizer and responsible LEA for special education for charter schools, the relationship and dynamic between the district and the charter schools differ from that in the District. Here, there is a separate charter-authorizing board unrelated to DCPS, and, though a limited number of charter schools are still "dependent" on DCPS for special education, this relationship will terminate in 2017, when all charter LEAs will be exclusively responsible for their own special education services and compliance. In the District, the relationship is complicated by a lack of authority for one LEA (DCPS) to enforce compliance by another (the charter), but Denver public school administrators report that their relationship allows the district to set clear expectations when approving charters. It also allows for collaboration and communication in providing special education services.

In Denver, all students enroll in either their neighborhood schools or other schools of their choice (public, magnet, or charter) through a common application and lottery. DPS sends letters to families of special education

students in transitioning grades (elementary school to middle school and middle school to high school) to inform parents about the application process, how to obtain assistance with the application, and whether there are programs that provide specialized services specific to their child's needs. Support personnel and special education coordinators monitor the families to determine if they need help with their application and the choice process. For special education students accepted to a school other than their neighborhood school, there is an "enrollment meeting" with parents, school representatives, and other members of a typical IEP team to determine whether the school is an appropriate placement according to the IEP (i.e., whether the school has the services recommended in the IEP). If the student has a higher level of need than can be met at the school, the team examines other schools and makes recommendations to the parent. If the parent chooses to enroll in another school with a higher level of service, then DPS facilitates that process, although an IEP team cannot place a student in a charter school. When a special education student opts to apply for a school other than the neighborhood school, DPS always reserves a slot at the neighborhood school until the student actually enrolls in another school.

When a student is placed in a non-public school, a district-level administrator becomes responsible for attending the IEP team meetings and monitoring the placement. The district, as the LEA, is also responsible for funding the non-public placement with special education funds. (The charters each pay a special education fee, approximately \$500 per pupil, toward special education costs.) If a student placed by an IEP team in a non-public placement seeks to move to a less restrictive setting, he or she typically returns to the neighborhood school. However, if the student had previously attended a charter school and wants to return there, the district will typically work with the charter school to reenroll the student, if possible. Charter schools do not hold slots open for

students placed in non-public schools and, unlike the District, are not required to accept them back, but may

agree to do so.

Denver has developed what it calls "center-based" classrooms and programs to meet very specialized needs of some students, such as those with cognitive disabilities, severe disabilities, autism, and certain emotional disabilities. Each of DPS's five regions has a center-based classroom for each of the programs. Some of these classrooms are in charter schools, but a certain portion of those slots remain "district slots" for purposes of placement and the lottery process (i.e., certain slots are not entered into the lottery, but are held for placement through a district IEP team). These are the only slots in the charter schools that can be filled by a district directive.

DPS has been a national leader in public/charter partnerships, and signed a compact in 2010 to become one of a select group of Gates Foundation District-Charter Collaboration Compact cities. The Gates Foundation engaged the Center for Reinventing Public Education (CRPE), a non-partisan education research and policy center based at the University of Washington, to study and support the District-Charter Collaboration Compact cities. In addition to promoting collaboration between district and charter systems generally, CRPE is now in the second year of a two-year study of the effects of unified enrollment systems on school systems, students, and families. CRPE designed the study, which focuses on Denver and New Orleans, to help district and charter school leaders understand the implications, for families and school systems, of enrollment system design decisions, such as allowing schools with preferred student populations, accommodating late enrollees, and supporting policies like parent information systems and transportation plans. Denver has been recognized by CRPE as a "national exemplar."

Los Angeles, California Unified School District

In 1992, California was the second state in the country to pass a charter school authorization law, and Los Angeles opened its first charter schools in 1993. There are currently nearly 1,200 charter schools in California, 287 of them serving the students of the Los Angeles Unified School District (LAUSD).

LAUSD is the second-largest district in the country, with approximately 644,000 students in kindergarten through 12th grade. Approximately 82,000 students (13%) are enrolled in special education programs,

DPS has been a national leader in public/charter partnerships, and signed a compact in 2010 to become one of a select group of Gates Foundation District-Charter Collaboration Compact cities.

including 2300 served in 13 special education schools and another 25,000 students with disabilities served in specialized programs within public or charter schools. The racial and ethnic makeup of LAUSD charter schools suggests a racial and ethnic profile similar to Denver's: approximately 59% Hispanic, 20% white, 11% black, and 10% Asian/Pacific Islander and others, including multiracial students. However, the breakdown of LAUSD overall (73% Hispanic, 10% black, 9% white, and 6% others) suggests that the mix of students in charters in Los Angeles differs from that of the district overall.

LAUSD charter schools enroll over 150,000 students. LAUSD remains the LEA with ultimate responsibility for special education services, but there are varied funding arrangements, depending on which entity is actually providing the special education services.

LAUSD has two charter school classifications: *affiliated* charter schools and *independent* charter schools. Affiliated charters function under the auspices of the LAUSD Board of Education, and the Board typically administers all their finances. LAUSD runs their special education programs and funds all of the costs. Independent charters operate independently of LAUSD in most respects, including finances. Although LAUSD remains the LEA for special education purposes, each independent charter must belong to a Special Education Local Plan Area (SELPA), a regional consortium of local districts and agencies charged with planning and providing high-quality special education services.

Charter schools approved by the Board of Education may choose among three options with regard to special education funding and responsibility: (i) LAUSD may retain the special education funding and remain responsible for the special education services; (ii) LAUSD may retain a portion of the special education funding and let the rest flow to the charter, which provides the programming, with the district covering the expense of non-public placement; or, (iii) all special education funding may flow to the charter, which is responsible for all costs (including all services, due process, and non-public placements). Charters in this last category have formed a consortium to pool some high-need, high-cost services (such as services for autistic students) and have established a "risk pool" that each charter pays into to distribute high costs equitably. The number of students with IEPs served by charters, including students with both high- and low-frequency

disabilities, has gone up since the third option became available in 2011.

LAUSD is the LEA for all students placed in non-public schools by their IEP teams. When a student transitions from a non-public school to a less restrictive setting, the student typically returns to his or her home district school. The family has the option of applying for a charter school for the following year, but the district IEP team cannot place a child in a charter school--not because charter schools are separate LEAs, but because the district does not have authority to require charter schools to accept students. Although charter schools do not tend to send students to non-public schools, LAUSD reported that, if they do, they are not required to hold spaces for those students for the duration of the non-public placements.

LAUSD implements specific practices to facilitate access to charter schools. First, the district sends a letter to the family of each child with a disability, explaining the choice application process and providing a list of the existing charter and magnet schools, including the charter school options for students with disabilities. Second, any student with or without disabilities who is not successful in one school and is interested in attending another school that may be more appropriate, may fill out a form requesting a transfer, as well as the appropriate application, if the school of interest is a charter school. In such cases, the district will help facilitate the paperwork and process, and the charter school, if there is available space, will decide on admission. This process is not specific to students with disabilities and is outside of the IEP team process. Third, in order to prevent charter schools from disproportionately excluding students with disabilities,

“[c]ontent and proficiency standards focus on what students actually learn, not the process by which students learn. In general, special education focuses on the process of providing services to students, not on outcomes. Education standards redirect the inquiry to the effectiveness of the education actually provided to students.”

the district keeps data on individual student movement that allows it to detect such patterns.

Like DPS, LAUSD is a participant in the Gates/CRPE District-Charter Collaboration Compact cities initiative. The participation of Los Angeles schools in the compact initiative emerges from the legacy of difficulties they have faced in working together.⁷⁷ Charter schools in Los Angeles have struggled over access to facilities and resources, much like the charter schools in the District. In addition, the state provides charter school data directly to the charter schools, and some charters have not been cooperative about sharing that data with LAUSD. Despite these and other challenges, LAUSD and Los Angeles's charter schools scored a big victory in the reorganization of the Los Angeles SELPA to allow the three funding options for charter-school participation. This has kept more funding for students with disabilities in the district, while creating more opportunities, and increasing the proportion of students with low-incidence disabilities in charter schools.

Special Education in the Context of Standards-Based Education

Since the Supreme Court decided *Rowley*, in 1982, educational standards have evolved significantly. As a result of standards-based educational reform, state and federal content and proficiency standards set expectations for what all students should know and be able to do, and mandate measures to assess whether students have achieved these expectations. At the federal level, for example, under the No Child Left Behind Act (NCLB), in order to obtain their federal funds, school districts were required to develop plans, in coordination with IDEA requirements, showing that they adopted the state's challenging academic and content standards for all students.⁷⁸ In addition, the District of Columbia, along with nearly every state, has

formally adopted the Common Core State Standards, intended to “focus on core conceptual understandings and procedures,” along with college and workforce readiness skills.⁷⁹ As one commentator observed, these standards “appear to establish clear, uniform standards for a particular level of adequacy for public education for all students, including special education students.”⁸⁰ Education advocates have questioned whether the current emphasis on high expectations for all students—including students with disabilities—can be squared with *Rowley*'s core holding that school districts need only meet the minimalist “some educational benefit” standard.⁸¹ Additionally, standards-based school reform shifts the focus from process to content. As one commentator put it, “[c]ontent and proficiency standards focus on what students actually learn, not the process by which students learn. In general, special education focuses on the process of providing services to students, not on outcomes. Education standards redirect the inquiry to the effectiveness of the education actually provided to students.”⁸² This focus on achievement also seems at odds with the *Rowley* court's finding that the purpose of IDEA is to provide special needs students with access to education, not to evaluate the quality of services students receive once they have access.

When Congress reauthorized IDEA in 1997 and 2004, it did not change the statutory definition of FAPE, but it did include new provisions that arguably raised the “floor of opportunity” for students in special education. For example, in the 1997 reenactment, Congress explicitly mandated that states establish performance goals for children with disabilities.⁸³ Similarly, in the 2004 reenactment, IEP requirements were amended to focus on academic achievement and functional goals designed to prepare students with disabilities not only for employment and independent living, but for “further education.”⁸⁴

⁷⁷ CRPE City Profile.

⁷⁸ No Child Left Behind Act of 2001, 20 USC. §§6301–6777 (2000). See also No Child Left Behind: A Desktop Reference 2002, prepared by the undersecretary of the U.S. Department of Education 2002 at 9-10, 13.

⁷⁹ See, *In the States*, COMMON CORE STATE STANDARDS INITIATIVE, <http://corestandards.org/in-the-states>.

⁸⁰ Maureen A. MacFarlane, The Shifting Floor of Education Opportunity: The Impact of Educational Reform, 41 J.L. Educ. 45, 63 (2012).

⁸¹ See, e.g., Maureen A. MacFarlane, The Shifting Floor of Educational Opportunity: The Impact of Educational Reform on *Rowley*, 41 J.L. Educ. 45 (2012); Michele L. Beatty, Note, Not a Bad Idea: The Increasing Need to Clarify Free Appropriate Public Education Provisions Under the Individuals with Disabilities Act, 46 Suffolk U.L. Rev. 529 (2013); Scott F. Johnson, Reexamining *Rowley*: A New Focus in Special Education Law, 2003 BYU Educ. and L.J. 561 (2003).

⁸² Johnson, Reexamining *Rowley*, 2003 BYU Educ. and L.J. at 575.

⁸³ 20 USC. §1412(a)(16).

⁸⁴ 20 USC. §1400(d).

As a result of the developments since the Rowley decision, many experts now believe that the “meaningful benefit” standard of FAPE—applied by a majority of federal appeals courts—better reflects the purposes of the current IDEA.

Lessons Learned from Other Jurisdictions

Studying other local and national school districts has taught DC Appleseed six key lessons.

1. Strong relationships among and between the schools and families make transitions more successful. The transition process should begin with an effort to build common ground with parents.

The relationships between the schools involved, and between the schools and the family are an important predictor of a transition’s success. The non-public and public schools must trust each other, and there must be open dialogue between the schools and the family. Montgomery County Public Schools work collaboratively with non-public schools to discuss whether students with disabilities are ready to transition. Prince George’s County Public School’s Central IEP Team recognizes that non-public schools should be updated about students who have transitioned, especially (but not exclusively) if there is a problem. And, if a transition has not gone well, a member of the Central IEP team may report back to the previous school and may even ask the school to reenroll the student.

Multiple representatives from non-public schools serving the region have found that IEP meetings with students from Maryland and Virginia are very different from IEP meetings with students from DCPS. Representatives from non-public schools have commented that other school districts communicate more effectively with parents, make opportunities to visit proposed programs a priority, and give parents enough information to understand what the proposed LRE provides and how they believe the student will benefit from the transition. This helps dispel the suspicion common among District families that LRE transitions are all about saving money.

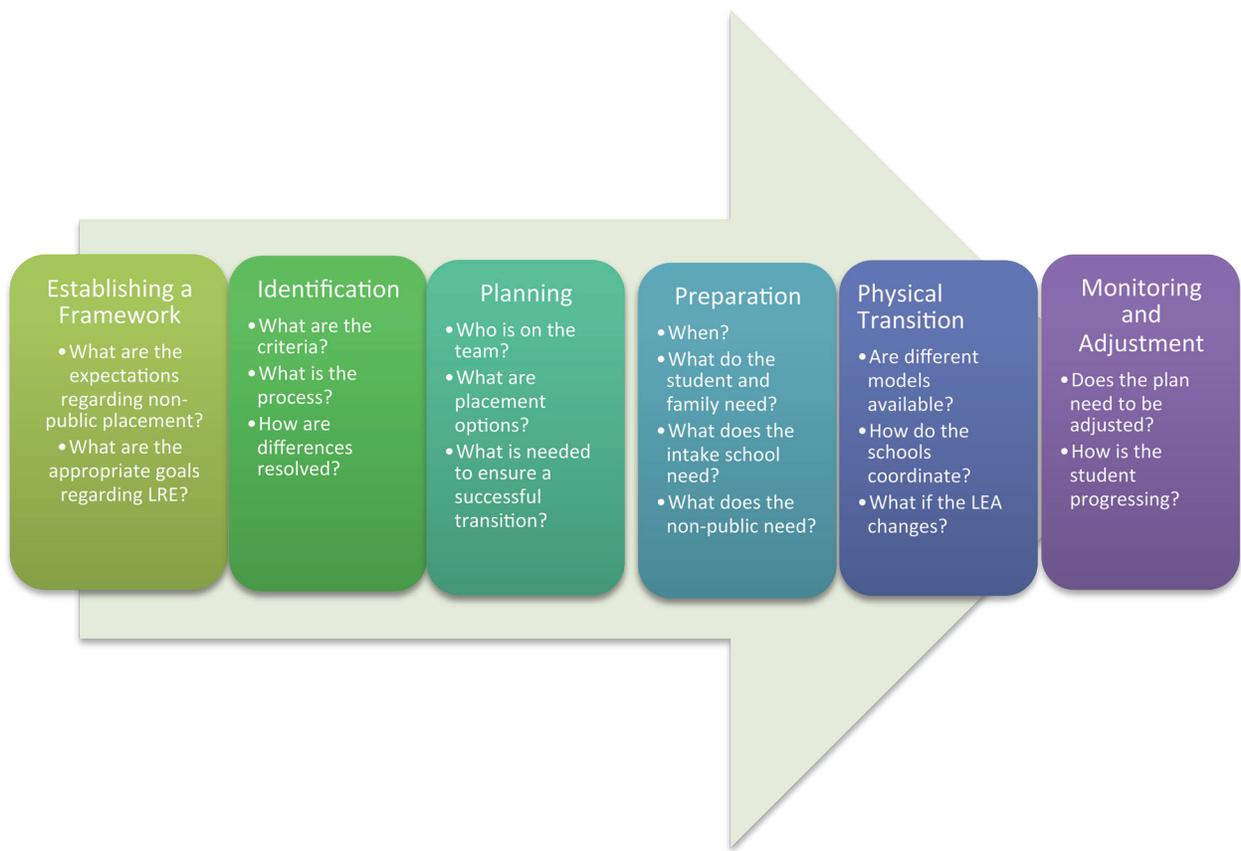
Many school districts have found that, when parents are in favor of a transition, it is more likely to be successful. Indeed, one Virginia district has indicated that it will not move forward with a transition until the parents are on board. This requires the entire IEP team to have respect for, and a good working relationship with, parents. Non-public schools have found that, for parents to be comfortable with the LRE, they must understand what

the proposed alternative provides and the benefits of the transition, and they must be confident that their children will be safe. One representative from a non-public school stressed that families of students with disabilities transferring to or from a non-public should be allowed to tour the new school and visit the school during the school day. A representative from one Maryland district echoed the importance that the parents and students understand the public school environment and schedule, and suggested an orientation in which the student and the parents can meet the staff ahead of time and run through a day’s schedule. In another Maryland county, some successful IEP teams have included a nontraditional member with knowledge about the student’s learning and social skills, such as the student’s doctor or clergyman. Including an optional member on an IEP team can be especially helpful during a period of transition. An additional member of the IEP team can help serve as a liaison and/or mentor to the student, and can provide an additional adult set of eyes to monitor changes in the student or to identify potential problems.

2. Transitions should be a managed process, with institutional structures to support the process.

Local districts have personnel, whether liaisons, progress monitors, or case managers, responsible for ensuring successful transitions. These individuals typically have special education experience, and they stay with assigned students throughout the entire academic year. Their jobs include routine check-ins with the student to ensure the current placement is going smoothly and troubleshooting any problems that might arise. In contrast, in the District, a progress monitor’s responsibility ends when the student leaves the non-public school to which the monitor is assigned.

Other districts also have transition-specific structures that apply to more restrictive or less restrictive transitions. In Prince George’s County, students who transition to LRE are supported by staff members housed within the public school and case managers who work with special education students at multiple schools. In Fairfax County, FCPS liaisons arrange and monitor the transition of students into and out of less restrictive situations. These liaisons become part of IEP teams and, with their knowledge of both the student and the programs, they can match the child’s needs to the right public or non-public school. Additionally, the liaisons are in regular contact with the non-public schools and are available for informal discussions about transition-readiness at any time. The liaison can also be part of the



full IEP team, and continues to take responsibility for communicating with parents as the transition proceeds.

The above graphic, designed by the Building Pathways to LRE Project Team under the leadership of SchoolTalk, shows the steps and questions that must be addressed in a well-designed transition:

3. Partial or gradual transitions are often effective.

Representatives from non-public schools and other local districts stressed the value of a slow, structured transition, with close monitoring, as a “test run.” Nearby school districts have had success with this strategy.

Fairfax and Montgomery Counties both employ gradual transitions. A student may start by taking one class in the public school and then slowly increase the number of classes. Montgomery County students spend an entire semester participating in an “inclusive opportunity” transition process. A specialized public school representative from Montgomery County stated that slow transitions with logical progressions are the most successful. The transition process should start by reducing the assistance the student gets in the non-public school before he or she has any relationship with the public school.

4. It pays to invest in cross-sector collaboration.

Both DPS and LAUSD have worked to identify goals and facilitate collaboration between traditional and charter public schools. Los Angeles, in particular, lost special education resources when independent charter schools sought more supportive SELPAs outside of Los Angeles. Restructuring the Los Angeles SELPA has allowed the district to secure more resources for students in special education while increasing programming options and improving relationships. The restructuring also allowed for a jointly held fund for the charters to draw on to improve their special education offerings. While the specific situation of the District does not align with California’s resource distribution structure, the collaborative approach to problem-solving could be helpful.

Collaboration of this kind is essential. Research on special education in the charter sector shows that the disproportionately low representation of special education students in charter schools nationwide is not entirely a result of exclusionary enrollment practices. Instead, it arises from both parental choice and the tendency of many charters to identify students for special education at lower rates.⁸⁵ Parental choice is influenced by the availability and accuracy of

information concerning charter schools' responsibility to serve students with disabilities, and a scarcity of enough information to decide whether a particular charter school would be a good fit. The same research showed that students with disabilities who do enroll in charter schools are just as likely, and in some cases more likely, to stay enrolled in the school. These findings suggest that the charter sector is an untapped resource for students with disabilities, and that districts benefit from collaborative efforts—like the unified lottery—that improve student access to all available options.

5. School districts should support parents and educate them about school choice.

Among the districts researched, we found the best results where charter schools notify parents about the charter application process, assist parents with the application process itself, and identify particular charter schools that might be appropriate placements. Charter schools are often their own LEAs, or, as in Los Angeles, have LEA-like status, so most school districts do not have the authority to assign a child, previously in a non-public school, to a charter school or to require the charter school to accept the student. Almost all school districts have discovered that there is no easy way to move among LEAs or into charter schools without running afoul of enrollment regulations or encroaching on charter autonomy.

In many school districts, charter schools help facilitate transitions back to the charter school, even though they are not required to hold slots open. In Denver, for example, charters do not have to hold a spot open, but the district will typically work with the charter school to reenroll the student in the same school. Denver also holds an “enrollment meeting” for a student with disabilities entering a school other than his or her local public school. If the meeting results in a need to change schools (i.e., the particular school cannot meet the student’s level of need), the District will facilitate the enrollment process, including helping the family identify and gain admittance to a school that can meet the student’s needs.

Many school districts work with parents to help facilitate access to charter schools. For example, the Denver Public School District sends letters to families of special education students in transitioning grades about the

application process, assistance available in working through the process, and particular programs that provide specialized services. Support personnel or special education coordinators monitor the process to determine which families need help with the application and the choice process. In the LAUSD, the district sends a letter to each family of a child with a disability, explaining the application process with a list of the existing charters and magnet schools. As in the District, LAUSD charter schools have had disproportionately low enrollment of students with disabilities, especially low-incidence disabilities. Both Los Angeles and the District are steadily correcting those imbalances.

Some school districts have exceptions to the rules for transferring from one school to another, including in and out of charter schools. These exceptions generally apply to all students, rather than specifically to students with disabilities, and the exceptions operate independently from the IEP team process. Los Angeles has what it calls “opportunity transfers,” allowing a student who is not successful in one school to transfer to another school. In New Orleans’s Recovery School District of Louisiana, another district with a large charter sector, students cannot transfer from one school to another during the school year unless they meet the eligibility criteria for a “hardship transfer.” Such a transfer will be granted only if the student can document safety concerns, such as bullying, medical issues, or childcare hardship. Additionally, however, that school district has a “principal-to-principal transfer” process, in which a student may transfer if the sending school principal, the enrolling school principal, and the parents all agree that such a transfer should occur.

6. To reduce disputes and create a smoother pathway in and out of non-public settings, parents and schools

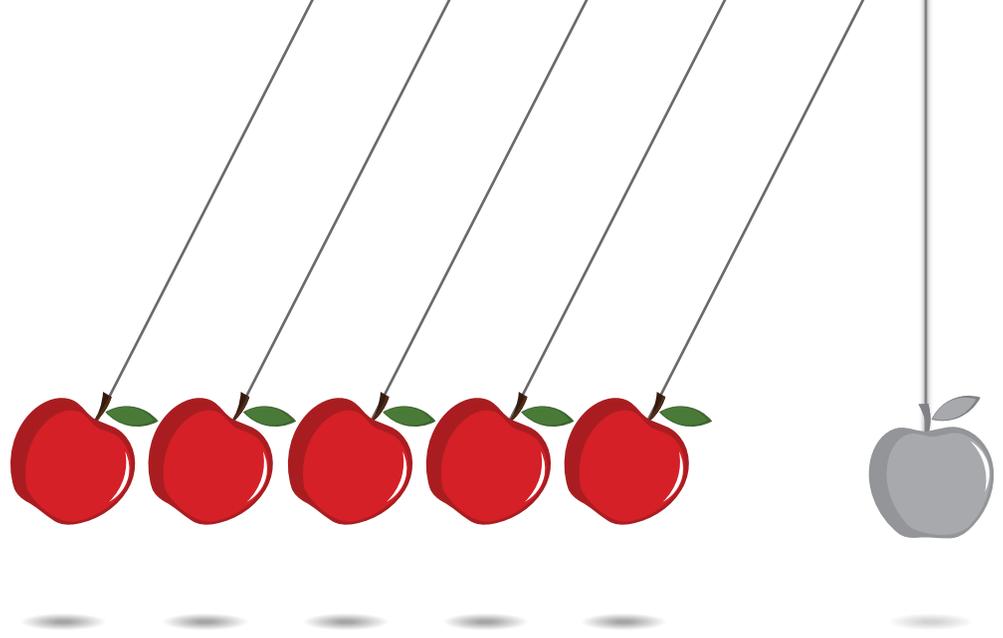
These findings suggest that the charter sector is an untapped resource for students with disabilities, and that districts benefit from collaborative efforts – like the unified lottery – that improve student access to all available options.

⁸⁵ Gross, B. and Lake, R. Special Education in Charter Schools: What We’ve Learned and What We Still Need to Know. Center for Reinventing Public Education, December 2014. Available at <http://www.crpe.org/sites/default/files/crpe-special-education-in-charter-schools-what-learned-what-we-still-need-to-know.pdf>.

should all understand what constitutes an appropriate education under *Rowley*.

Following the Supreme Court’s guidance, a majority of federal courts of appeals have held that an “appropriate” education under IDEA requires more than simply the provision of some educational benefit. The courts have held that, under IDEA, an IEP must provide “significant learning” and confer “meaningful benefit...gauged in relation to the child’s potential.” In some jurisdictions, courts have also looked to state constitutions for support for a more demanding standard of appropriateness. Many state supreme courts have held that their constitutions require the state to provide all students with an “adequate” education. These standards are then incorporated into the state’s definition of FAPE because IDEA mandates that an appropriate education must meet state standards.

If OSSE, DCPS, charter LEAs, and other stakeholders, including the DC Council, could more fully integrate these best practices into the District’s complex environment and the transition process, transitions to both more and less restrictive environments would more often lead to success for students with disabilities. ■



Chapter 5: Recommendations

Based on our research and review of best practices locally and nationwide, and in light of current circumstances in the District, DC Appleseed’s project team has arrived at the following recommendations. In some of these recommendations we address underlying problems in the environment where most special education decisions are made; in others, on specific changes to improve the management and success of placement transitions, including LRE transitions. With the first seven recommendations, we have focused on improving special education options for District students with disabilities generally, while, with the remaining five, we recommend specific improvements for transitioning students to and from placements along the educational continuum.

1. The Council should define an “appropriate” education in the District as one that requires significant learning and meaningful benefit, taking into consideration each individual child’s potential for educational growth.

Parents want what is best for their children, but the school system is legally required to provide what is “appropriate.” There are bound to be conflicts between parents and schools as they wrestle with these concepts and expectations. Until the District adopts a standard that takes into consideration actual outcomes, however, those conflicts will exacerbate mistrust. This recommendation is consistent with the current direction of the U.S. Department of Education in its enforcement of IDEA: Going forward, states will be expected to show not just compliance with timelines and other procedures, but measurable improvements in outcomes for students with disabilities. Results have finally become as important

as process. It should be explicitly recognized as such in the District.

The Supreme Court’s decision in *Rowley* is currently applied in the District to support a process. The question is whether the IEP is “reasonably calculated to enable the child to receive educational benefit,” not whether the child actually achieves any meaningful benefit. DC Appleseed proposes placing the accountability back on the IEP team to assess whether the child is making real progress toward his or her goals. If not, the team must identify what needs to change—the IEP, its implementation, or both—to ensure that the child makes progress. It should no longer be sufficient to check boxes indicating that services have been delivered, and yet see no meaningful progress toward IEP goals. A child’s education is not appropriate unless it provides significant learning and benefits consistent with his or her potential.

In the District, courts have rendered the expectation of an appropriate education nearly meaningless by focusing on what is not appropriate, rather than on what is. De minimis progress on IEP goals has been sufficient for a school to be found to provide an appropriate education. This places parents and schools much further apart than they should be.

Defining the meaning of appropriate is not a panacea, but it would be a step in the right direction, consistent with the goal of improving outcomes for all District students. The District is unlikely to improve either the level of trust between parents and schools or student performance until it articulates an outcome-based

standard for appropriateness. The District can build a shared—and enforceable—understanding of what constitutes an “appropriate” education by formally including in the DC Code language from the Second, Third, Fourth, Fifth, Sixth and Ninth Circuit courts’ of appeals interpretation of *Rowley*, and putting it into operation through regulation.

2. In its Systemic Improvement Plan (a new requirement of ED), the District should address special education student achievement in the context of graduation rates, the outcomes metric chosen by OSSE.

ED’s IDEA compliance rules now require that each state prepare a Systemic Improvement Plan to advance educational performance. This change is part of a plan to move away from process (i.e., mere procedural compliance with the IDEA) and toward a system focused on content to recognize and realize the intent of the federal law: ensuring that each student with disabilities receives a meaningful education, not just a timely IEP meeting. The Assistant Superintendent for Elementary, Secondary, and Specialized Education at OSSE has indicated that the District’s first Systemic Improvement Plan is focused on raising graduation rates for students with disabilities. DC Appleaseed agrees with this focus on graduation rates, as long as the goal is increasing academic proficiency in students with disabilities, and not just preventing dropouts. Students who can’t read by third grade, for example, are much more likely to drop out.⁸⁶ For African-American males, in particular, grades in school had the strongest association with drop-out outcomes.⁸⁷ The Plan should focus on addressing the cause of the high dropout rate, rather than the rate itself. The Plan should also meaningfully address students who will receive Certificates of Completion and support the rights of students to receive educational benefits through the age of 21.

3. Separate school performance and proficiency data – and make it public – by IDEA environment and disability categories.

To reach the systemic improvement goals of improving graduation rates, OSSE needs to consider how best to collect the data necessary to formulate those systemic changes. OSSE’s Division of Assessment, Accountability and Research has been making tremendous strides in collecting data and making a variety of reports available to the stakeholder community. However, special education performance/proficiency data organized by the environment in which the student is being educated (e.g., 80% or more time in general education versus full-time special education classrooms) and disability category are not yet available. Without that data, the District cannot compare students’ performance in general and specialized public and non-public settings, or determine where it needs additional internal or external capacity to serve students with certain kinds of disabilities. It is possible that some LEAs are collecting this data but cannot make it public because the small size of their samples would compromise privacy. Nonetheless, OSSE should require this level of data collection, organized by disability type, age of exit, and exit document (diploma or certificate), as well as by demographics. Good data on what is working and not working is essential to helping students with disabilities graduate and to meeting the District’s improvement goals.⁸⁸

4. Emphasize and clarify the role of non-public schools as an essential part of the special education continuum, while continuing to build capacity in the public sector.

The District’s educational policy makers need to agree on the role the non-public schools should fill, both short- and long-term, and continue to build capacity within the public system accordingly. Though each student’s placement will continue to be determined by an IEP team, LEAs should be encouraged to fill specific needs and gaps in public services, using good data about incidence and existing capacity and the best information available on promising practices. The recent effort by the Public School Charter Board (PCSB) to create satellite classrooms for Level 3 and 4 charter

⁸⁶ “Academic success, as defined by high school graduation, can be predicted with reasonable accuracy by knowing someone’s reading skill at the end of grade 3 (for reviews, see Slavin et al., 1994). A person who is not at least a modestly skilled reader by the end of third grade is quite unlikely to graduate from high school.” Preventing Reading Difficulties in Young Children (1998). Catherine E. Snow, M. Susan Burns, and Peg Griffin, Editors; Committee on the Prevention of Reading Difficulties in Young Children; Board on Behavioral, Cognitive, and Sensory Sciences; Division of Behavioral and Social Sciences and Education; National Research Council. On the Web at <http://www.nap.edu/catalog/6023/preventing-reading-difficulties-in-young-children>.

⁸⁷ Faircloth, Toldson and Lucio (2014). Decreasing Dropout Rates for Minority Male Youth with Disabilities from Culturally and Ethnically Diverse Backgrounds. On the Web at <http://www.ndpc-sd.org/documents/EDC-2014-monograph-book.pdf>.

⁸⁸ A Literature Map of Dropout Prevention Interventions for Students with Disabilities (Wilkins and Huckabee, 2014).

school students with severe behavioral problems and academic difficulties is an excellent example of how this should work in practice. (See Recommendation 7.) The non-public schools have supported, and can continue to support, capacity-building within the public system through related-service agreements, training and technical assistance, and colocation of programs. By recognizing the particular value that non-public schools can add, the District can better address the great variety of needs its students bring to their education. It will also help focus the District's attention on those areas where it should add and improve services, and those where it is unlikely to provide appropriate placements. Even a large LEA like DCPS cannot successfully find an appropriate place for every student, much less the smaller charter LEAs. The District needs to bring greater clarity to this reality.

5. Modify or supplement the Certificate of Approval (COA) review process to hold non-public schools accountable for agreed-upon student outcomes.

As noted, the COA system is focused on disciplinary practices and basic compliance with the process, with little reporting of outcomes or assessment of quality. Through a collaborative process, DCPS, PCSB, DCASE, and OSSE should agree on what information they should use to measure the effectiveness of non-public schools, whether that involves negotiating targets appropriate to the population served by the schools or using the same measures they apply to public schools and designating appropriate comparative data. They should collect this information as part of the COA review and use it according to agreed-upon terms. Determining what information should be collected and reported should be based on what parents and the LEA need to know about the school at which they are considering placing a student.

The legislative intent behind the creation of the COA process clearly points to concerns about quality as well as cost. OSSE should adjust its monitoring process to include additional qualitative components, so that parents and LEAs can trust that a non-public school that meets COA requirements has demonstrated a minimum level of educational quality and not merely basic safety or procedural expectations. This will not relieve LEAs or parents from conducting their own due diligence to ensure that a non-public school is a good match for a particular student or that it meets a particular school's

graduation requirements beyond those required by the State Board of Education. It does mean, however, that, in addition to the data currently posted on Learn DC, OSSE will become the repository for accessible data that stakeholders can use in determining how effectively a non-public school educates students with disabilities. This kind of accountability and transparency will help build trust between DCASE schools and the broader educational community in the District and, by providing IEP teams with better guidance prior to initial enrollment, may also help reduce the movement of students between non-public schools.

6. Dedicate funding to the Special Education Enhancement Fund to build special education capacity in DCPS and the public charter schools in the Fiscal Year 2018 budget and all subsequent budgets.

In Title II of the Special Education Quality Improvement Act of 2014, DC created a Special Education Enhancement Fund as part of a set of measures to address the "state of crisis" in special education in the District.⁸⁹ The fund is meant to ensure that any funds remaining in the non-public tuition budget at the end of each year are dedicated to building special education capacity in the District. However, the purposes listed in the legislation are far too important to be funded by leftovers. Money saved in the non-public tuition budget should not be the primary source of capacity-building funds. Instead, the Special Education Enhancement Fund should receive regular appropriations to support such strategies and activities as:

- a. Reimbursement to LEAs for necessary student services not funded through the Uniform Per Student Funding Formula (UPSFF);
- b. A Special Ed Consortium (a project of DCASE to make personnel from area non-public schools available to provide specific services and/or build

By recognizing the particular value that non-public schools can add, the District can better address the great variety of needs its students bring to their education

⁸⁹ B20-0275 DC Council Committee on Education.

capacity at public schools), or other partnerships with area non-public schools or universities, such as the Teachers College Inclusive Classrooms Project, which seeks to increase the capacity of public schools to serve students with disabilities;

- c. Collaboration among Charter LEAs to develop special education capacity through joint training, administration and instruction, including the satellite classroom currently under development through the Public Charter School Board, or the shared services model of the Special Education Cooperative;
- d. Colocation projects that bring the expertise of non-public schools to District neighborhoods; and

e. Staff enhancements to ensure sufficient numbers of teachers to provide co-teachers for inclusive classrooms.

The Mayor and the DC Council should dedicate funding to the Special Education Enhancement Fund in the Fiscal Year 2018 budget and all subsequent budgets, and OSSE should ensure that regulations governing the fund include the above strategies as “capacity expansions.”

7. The Public Charter School Board should continue to help charter schools build a continuum of options, so that inclusive schools can function optimally and charter students

with the highest needs can remain in the public system.

DC Applesseed endorses the effort, spearheaded by PCSB in partnership with charter LEAs, to build satellite classrooms to serve charter students with severe behavioral challenges who are also struggling academically. We believe this a very promising initiative, given its thoughtful and deliberate design, the identification and targeting of a specific set of needs that charter schools are having difficulty meeting, the commitment to thoughtful transitions in and out of the program, and the proposed use of the classrooms

as teaching sites for special and general education teachers. We hope this is the first of many such efforts to give charter-school students with more complex disabilities increased options to have their needs met in public settings.

In the following recommendations, we suggest the adoption of supportive practices that allow for short - and/or long-term placement of students in non-public schools and strong support for transitions back to public schools.

8. Education officials at OSSE, DCPS, PCSB, and charter LEAs should continue their trust-building efforts and extend them to include non-public schools and parents, committing resources to targeted trust-building strategies.

Trust-building requires the deliberate dedication of resources to the four constituent components of trust: sincerity, reliability, competence, and care. The District has improved in some of these areas, especially internally, but work remains to be done in all of them. If parents and stakeholders do not believe that the institution and its people are sincere, reliable, and caring about the valuable individuals entrusted to it every day, it matters little how much programs and services improve.

- a. The District has invested in new dispute-prevention and resolution resources, including the Office of the Public Education Ombudsman, the Office of the Student Advocate, mediation (a new pilot), and IEP Meeting Facilitation (another pilot). While these resources need more time to establish themselves, they represent an important step in demonstrating that the District as a whole cares about parents and children and is sincerely committed to increasing transparency, reducing adversarial encounters, and improving communication between families and schools. DC Applesseed applauds the support the DCPS Office of General Counsel (OGC), among others, is giving to these efforts, because these additional opportunities to prevent and resolve disputes mean that the OGC will see fewer complaints requiring adjudication by a hearing officer. The resources for these dispute resolution options are necessarily limited, so we recommend that special attention be given to decision points around more or less restrictive environments, e.g., making IEP

If parents and stakeholders do not believe that the institution and its people are sincere, reliable, and caring about the valuable individuals entrusted to it every day, it matters little how much programs and services improve.

facilitation available for IEP meetings at which such transitions are being actively considered.

- b. DCPS and charter schools must remove obstacles to services for students whose needs are appropriately and sufficiently documented by their IEP teams. Failure to do so undermines the sincerity of the commitment to provide students with disabilities the services and support they need to benefit from their education. One such obstacle is the requirement that one-on-one aide assignments be reviewed every 90 days. While such an approach might be appropriate for a student undergoing a difficult transition, or when an aide is being considered as a final attempt to enable a student to remain in a particular school, it is not appropriate across the board. The 90-day review becomes a signal of mistrust of the IEP team, and a burden on the parents, who may already struggle with whether to entrust their child to the public schools.

Some at DCPS believe that IEP teams inflate service needs and team recommendations should therefore be more standardized, such as through the use of a service matrix, which defines the hours of service recommended for a particular need. DCPS should be very careful that such a tool is not used as a “one-size-fits-all” mechanism. The hours of service a student needs depends, in part, on the other challenges in his or her environment and his or her “ability to benefit.” Especially when the need to recover trust is so great, LEA policy makers must factor in the impact their decisions will have on expressions (and perceptions) of sincerity, competence, reliability, and care.

- c. The District should establish cross-jurisdictional IEP observation/training opportunities with area non-public schools that serve Maryland and Virginia students. Many stakeholders and experts interviewed for this report remarked on the difference in tone and experience working with the District as compared to other local jurisdictions. It would be beneficial if DCPS and charter school staff, as well as local attorneys who work in education, had opportunities to observe other professionals working in the same environments to understand how they are able to accomplish their goals with less friction. If the observations of IEP meetings uncover policies, practices, or techniques that would benefit a broader group of stakeholders (including parents and/or school

personnel), these should be developed into broader training opportunities.

9. OSSE, DCPS, Charter LEAs, and non-public schools should continue to develop a common language and common tools to increase mutual understanding and transparency and reduce conflict in LRE transitions.

OSSE has developed an LRE Toolkit to help stakeholders understand and apply the IDEA standard to their current practices. Schools continue to need support, however, as to the practical application of some of these materials. OSSE should convene a task force with public, non-public, and parent representation to develop a framework for decision-making about when a student is ready to transition to a different educational environment and a set of tools that IEP teams can use for consideration of student readiness. (SchoolTalk, through its Building Pathways to LRE project, has already begun this work.)

In addition, OSSE should create a template for the Non-Public Toolkit transition guidance that lists transition-related tasks and timelines for completion. OSSE should disseminate standards for levels of service and clarify what rules LEAs can set for IEP teams. Because of student mobility, schools are frequently called upon to implement IEPs written for other settings. Nonetheless, no LEA should be allowed to designate levels of services or set review requirements that unilaterally limit services available to students with high needs.

OSSE should also disseminate a template, ideally accessible through the Special Education Data System, that outlines a planning framework for student movement from a non-public to a less restrictive setting. Meaningful plans for returning students to a public setting at the time of outplacement have not been generated, despite the inclusion of such a requirement on OSSE’s Justification for Removal Statement. LEAs and IEP teams need to define goals for students moving to non-public schools if they expect the non-public schools to address the students’ barriers to success in the public system. OSSE should provide LEAs and IEP teams with a template on how to put together a plan for a student’s eventual move to a less restrictive placement, whether that consists of transition from a non-public school to a public school, or from full-time to decreasing specialized services within a public school building. Transitions to more restrictive environments often occur in the context of a crisis, and long-term goals can be pushed aside in the rush to

fulfill immediate needs. A template with a clear set of questions and guidance on how best to take advantage of the opportunity created by a more restrictive placement will help pave the way for more successful short-term outcomes and greater likelihood of a successful LRE transition at an appropriate point in the student’s career. This template can be used to reinforce important principles in the development of IEPs, such as a focus

on a child’s needs, not on the services or environment of a particular school.

The District, like the surrounding jurisdictions, needs to put structures in place to facilitate and support student movement between non-public and public schools, as well as transitions between public schools.

10. The District should build (and fund) institutional structures to support successful transitions within the State Board of Education’s Office of the Student Advocate, the Office of the State Superintendent of Education, the Public Charter School Board, and the Office of the Deputy Mayor for Education.

The necessary functions are: transition assistance and support; proactive guidance at key transition periods; accountability

for the appropriate management of transitions; and institutionalization of public and public-charter collaboration strategies.

The District, like the surrounding jurisdictions, needs to put structures in place to facilitate and support student movement between non-public and public schools, as well as transitions between public schools. It is possible that better support for initial decision-making could reduce movement in the long term. Where these structures are located on the District’s organizational chart can be resolved later, as long as they are housed where parents are likely to seek the support they need and trust that the support is grounded in the best interest of the students, rather than in upholding the system.

a. Transition Assistance and Support, and Proactive Guidance at Key Transition Periods

Transition assistance, placement consultation, and proactive guidance are key functions that a central body should fulfill. The relatively new Office of the Student Advocate should be considered for these functions.

Staff should be made available whenever there is a transition to a more or less restrictive environment. The assistance office should be informed when an IEP team decides upon such a transition; staff from the office should be available to anyone involved in the transition—including school personnel—to provide support and informal accountability; and staff should advocate from the student’s perspective to ensure that necessary communication takes place, that promised resources are available, and that protocols are followed. This will require additional staff and non-personnel resources.

The District should also provide a Special Education Placement Advisory Panel that parents can consult when seeking a placement for their child within the public system, just as wealthier parents might pay for an educational consultant. This panel would have no authority to make placement decisions and should not be required to participate in dispute settlement proceedings, but should be prepared to advise any parent requesting assistance on available enrollment options for a student with special needs, including DCPS and charter LEAs.

Intensive outreach to parents of students with IEPs, especially in non-public schools and especially when a non-public student ages out of a charter LEA, but also at standard transition points (from pre-K to kindergarten, elementary to middle, middle to high school) is essential to help parents understand the lottery system and how it might impact their child. In addition to individual advocacy on behalf of students, whatever agency fulfills this function should report to the Office of the Ombudsman when patterns of noncompliance or failures to follow protocol emerge.

b. Accountability for Managing Transitions

Because student transfers are so common, OSSE and PCSB should work together to develop accountability strategies for LEAs managing transitions of special education students between schools. OSSE’s IEP Implementation for Transfer Students is an important policy document, and implementing it will be a challenge, but schools must be held accountable. OSSE plans to address this issue in the context of a mobility task force, part of the State System Improvement Plan for the Department of Education, and we look forward to the release of this important measure.

The current non-public placement review policy needs to reduce redundancies, waiting time, and rigidities that prevent the best outcomes. The parties to this process—LEAs, parents, students and their advocates,

and OSSE/PCSB—have all complained about the implementation of the policy, suggesting that it is time for review. For example, OSSE policy states that it requires a 30-day notice before any meeting at which a change in placement is being considered, but most schools do not notify OSSE and request the review meeting until IEP team members and others involved in the student’s education have engaged in much discussion about change in placement. OSSE implemented this requirement to allow time to provide support in implementing strategies that might obviate an outplacement, but stakeholders instead experience OSSE involvement as an unnecessary delay. This is especially true because OSSE does not have authority to determine placement: it can only issue an opinion that the proposed outplacement is “warranted” or “unwarranted,” something on which the IEP team has already deliberated.

However, OSSE is authorized to determine where the student will be placed. Student advocates have complained that OSSE selects the first school to accept the student, rather than pursuing the IEP team’s first choice. OSSE, on the other hand, maintains that its staff typically looks at three sites and considers parental input before making a selection. DC Appleseed recommends that IEP teams be permitted to rank their choices, and that a student be placed at the highest-ranked school that accepts him or her. We also recommend that a working group of LEA representatives, public interest special education attorneys, and OSSE staff review the policy and develop strategies to ensure that implementation better serves stakeholders’ legitimate concerns.

In addition, many transitions occur with limited opportunity for extensive planning, such as those following releases from incarceration. Abrupt, poorly planned transitions are more likely to lead to student failure. OSSE should consider which LEAs bear the brunt of these unplanned transitions, and help put support structures like transition coordinators into place. It should also recognize the challenges that students face during these hurried transitions and help mitigate the problems created by limited planning time. For example, students with special education needs who transition to a new school near the end of a term or during exams—times not conducive to full participation and learning—should be placed at public or non-public schools that can best accommodate mid-term enrollments and can ensure that students do not lose educational progress. OSSE should also explore further the question of why students

are moving among non-public schools at such a high rate, and ensure that students are getting sufficient support during those transitions as well.

c. Improved Collaboration Between Public and Public Charter School Systems

The District should consider developing a public-charter “compact” to facilitate collaboration across systems to serve students with special needs. The District has come a long way in managing relationships among its many LEAs. The combined lottery, for example, was a significant advance for both schools and families, and Equity Reports enable stakeholders to compare schools across sectors on meaningful metrics, such as exclusionary discipline. In addition, the new task force established to improve cooperation across education sectors creates an opportunity to address school planning and other factors that contribute to high student mobility in the District. In order to build on this opportunity and ensure that students and families get the most benefit from the District’s unique educational environment, DC Appleseed recommends that DME work with the CRPE to create such a compact. CRPE has worked with cities throughout the country to build collaborations between the public and public charter sectors. The District should commit to CRPE’s compact process and metrics and work toward a system of shared excellence, especially for students with disabilities.

11. DCPS and charter LEAs should ensure that the LEA representative for students in non-public placements is responsible for oversight of student progress as well as LRE transition information, monitoring, and support. PCSB should hold Charter LEAs accountable for fulfilling their LEA responsibilities for students in non-public schools, and OSSE should continue to provide training and set standards and should consider forming a community of practice for these individuals.

In other districts, progress monitors or their equivalents serve an integrated function in the transition process, including managing transition communications. DCPS progress monitors should be fully integrated into the LRE team. Charter schools should consider pooling resources to support one or more dedicated progress monitors, because the role requires on-site visits and

Abrupt, poorly planned transitions are more likely to lead to student failure.

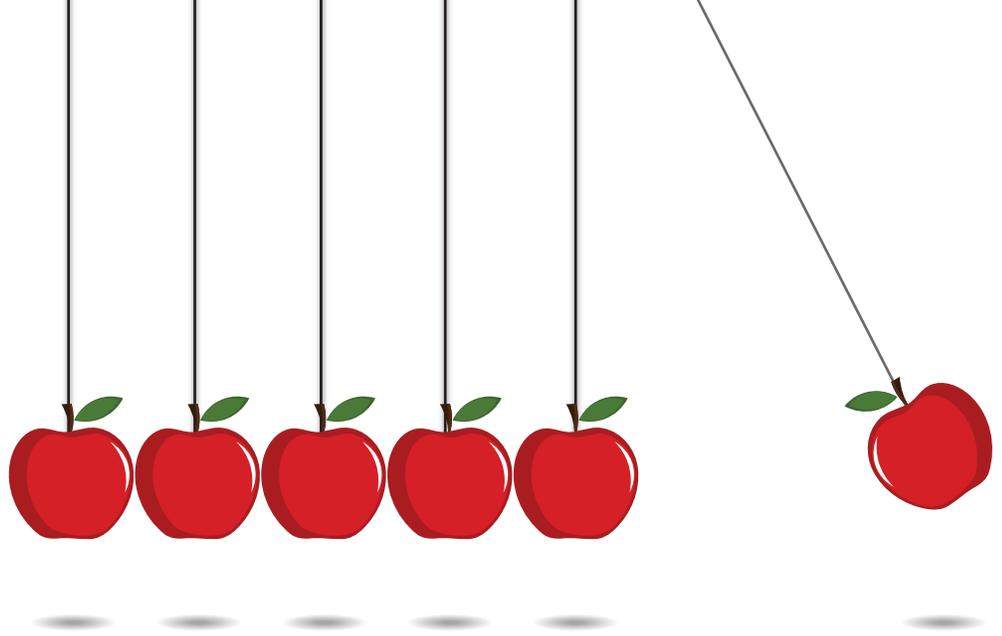
regular engagement, which can be difficult for school-based staff.

The District should expand the role of its progress monitors to include transition services. DCPS should ensure that all progress monitors have sufficient expertise to provide meaningful contributions to the IEP team, and should train and empower them to recommend appropriate public programs, to facilitate student and parent visits to proposed new environments, and to manage communications between sending and receiving schools.

All charter schools need to adequately monitor students in non-public schools. Because any given charter school has so few students in non-public schools at any given time, it can be difficult for some to dedicate the staff time required to engage as actively as necessary with the non-public school. On-site visits for one or two students spread across the region can be prohibitively expensive and time-consuming, but active engagement is essential for students to succeed and return to a public setting. OSSE and PCSB should provide clear expectations to charter schools for non-public school monitoring and engagement, and consider organizing a Community of Practice to share effective strategies across the system. As with DCPS progress monitors, charter school progress monitors should be expected to help facilitate and manage transitions to the public sector.

12. OSSE should clarify and, if necessary, revise policies to support gradual transitions, including transportation, attendance, and associated funding.

Partial mainstreaming, or gradual transitions, can allow students to acclimate to new, less restrictive settings while still getting support from the settings where they have been successful. To ensure that District students have access to these opportunities, OSSE should clarify and, if necessary, revise special education transportation rules that restrict partial mainstreaming or gradual transitions, such as the single point of pick-up and drop-off. OSSE should also set policy to govern how funds will be allocated between participating schools during gradual transitions and how attendance will be monitored and documented. We further recommend that OSSE issue a statement clarifying for LEAs and non-public schools how gradual transitions will be managed administratively, so that all students who can benefit from them have access to these important opportunities. ■



Conclusion

The opportunity to review the District’s policies on placements and transitions has led us to several recommendations about potentially more effective strategies for movement of students in special education to more and less restrictive environments. It has also revealed a need to examine what an “appropriate education” means in this context, and how the District can move beyond its overreliance on non-public schools to a healthier relationship that includes non-public schools as part of a carefully conceived continuum of services for District students with disabilities. There has been substantial progress in the District on many of these important issues but more remains to be done. DC Appleseed and our project team very much appreciate the cooperation we received from District policy makers and stakeholders in formulating these recommendations, and look forward to collaborating to improve outcomes for District students with disabilities. ■

Appendix 1

Evolution of Special Education Policy and Performance in the District

The District of Columbia School Reform Act of 1995 and the Creation of Public Charter Schools

The U.S. Congress passed the District of Columbia School Reform Act of 1995 as a response to the “deplorable” conditions of the District’s schools at that time. In this legislation, Congress directed the DCPS Superintendent to develop a plan by which DCPS would become “a world-class education system that prepares students for lifetime learning in the 21st century and which is on a par with the best education systems of other cities, States, and nations.” Congress also authorized the operation of public charter schools in the District and established the PCSB.

The charter sector has grown rapidly; while offering alternatives to the troubled traditional public school system, it has resulted in a complicated system of school governance. A Control Board maintained oversight of DCPS until 2000, but, by 2005, District schools were still among the lowest performing in the country, with frequent turnover in leadership and poor test scores notwithstanding high expenditures. At that time, about one DCPS student in five was in special education. Because of DCPS’s historical inability to serve students with disabilities and overall parental mistrust of the system, nearly one-third of all students in special education were in non-public schools. As a result, a full quarter of DCPS’s budget was spent on tuition and transportation to non-public schools.

Public Education Reform Amendment Act (2007)

In 2007, Mayor Adrian Fenty introduced the Public Education Reform Amendment Act (PERAA), which the DC Council passed and Congress approved. The law was designed to facilitate swifter and more dramatic reform of the underperforming DCPS system. Under this legislation, a Deputy Mayor for Education was appointed to implement the mayor’s vision for public education, and DCPS was removed from the purview of the DC Board of Education. The former post of Superintendent became the Chancellor of Schools, who served directly under the mayor. PCSB became the sole chartering entity for charter schools. The Office of the Ombudsman for Public Education was created to enhance communication between parents and government agencies, track and respond to complaints, and make recommendations for improving service delivery. An independent review of the effectiveness of the reforms was mandatory after five years.

This system has remained fundamentally intact under the subsequent administrations of Mayor Vincent Gray and current Mayor Muriel Bowser. One significant change, however, has recently been made to the reporting structure. The Chancellor of DCPS originally reported directly to the mayor, while the State Superintendent of Education reported to the Deputy Mayor for Education. Now both the Chancellor and the State Superintendent report to the Deputy Mayor for Education. This change has produced a more coherent approach to system-building, and has improved collaboration and information sharing.

APPENDIX 1

Evaluation of PERAA

The District engaged the National Research Council (NRC) to conduct an evaluation of the structural reforms under PERAA. In its initial report, issued in draft on June 3, 2015, NRC found some improvements, but cited persistent gaps in learning opportunities, academic outcomes and oversight, including, significantly, lower proficiency and graduation rates among special education students than students in the general population.⁹⁰ It attempted to separate the “mayoral takeover” from other activities that have produced improvements, and thus the report may not account for all of the efforts undertaken since 2007, including those attributable to the resources dedicated to addressing *Petties v. District of Columbia* and *Blackman v. District of Columbia*. We are concerned, however, that NAS identified the poor performance of students in special education as an ongoing challenge that did not respond to the change in governance, which suggests that additional efforts are required to improve content and performance, rather than just process.

Dismissal of Two Class Actions Related to DC Special Education

After nearly two decades of monitoring arising from two class action, *Blackman-Jones* and *Petties*, the U.S. District Court for the District of Columbia recently dismissed both cases and terminated the monitoring. Plaintiffs in these two lawsuits had originally relied on procedural and administrative violations by DCPS to claim denial of a free appropriate public education. The *Blackman-Jones* plaintiffs charged that the District failed to provide due process hearings and to issue and implement Hearing Officer Decisions on a timely basis when complaints were resolved through due process hearings. The plaintiffs in *Petties* claimed that the District failed to timely pay tuition to non-public schools where DCPS students were placed, failed to pay providers for services rendered to students with disabilities in the public schools, and failed to provide reliable transportation for students to attend the schools in which they had been placed.⁹¹

In 2011, Judge Paul L. Friedman dismissed the *Blackman-Jones* portion of the *Blackman-Jones* case. *Petties* followed in 2012, when the District was able to demonstrate that it had instituted a reliable administrative system for paying non-public school tuition and could reliably manage the special education transportation system. The *Jones* portion of *Blackman-Jones* was dismissed in December 2014, terminating court monitoring of the D.C. special education system.

DC Council Passed Three New Special Education Acts in 2014

In 2014, the DC Council unanimously passed three significant pieces of legislation, marking further progress toward a responsive, functional, and compliant system in the District: the Special Education Student Rights Act of 2014, the Enhanced Special Education Services Act of 2014, and the Special Education Quality Improvement Act of 2014. This package of legislation was designed to build on DC’s success in meeting its procedural obligations under IDEA, and would have been unrealistic just a few years ago, when the relationships, policies, and governing structures were insufficient to address the issues.

In the Special Education Student Rights Act of 2014, the DC Council sought to empower families throughout the IEP process and in due process complaint hearings. Among other provisions, parents must receive prior written notice of a proposed change of service location, stating the reason, providing documentation, and including contact information for parental assistance. (This alleviates confusion over procedural differences between changing placements and changing locations, the former of which always required parental notification while the latter did not.)

⁹⁰ National Research Council. *An Evaluation of the Public Schools of the District of Columbia: Reform in a Changing Landscape*. Washington, DC: The National Academies Press, 2015. doi:10.17226/21743.

⁹¹ For additional information about the *Petties* and *Blackman-Jones* cases, see Appendix 2.

The law also ensures parents access to current or proposed locations, so that they can understand the specific factors and practices that could influence their child's ability to benefit from a particular setting. Additionally, the legislation shifts the burden of proof as to the appropriateness of student placements to the LEA in due process hearings, and allows parents to recover the cost of expert witness compensation along with attorneys' fees when they succeed in a complaint. These changes to the current standards alleviate some of the barriers to due process for low-income families and address issues that are particularly relevant to transitions, either from non-public to public settings or within the public system.

With the Enhanced Special Education Services Act, the District expanded access to, and effectiveness of, services for students with disabilities by (i) initiating transition planning at age 14 (rather than 16), (ii) reducing the time allowed from referral for student evaluations to execution from 120 to 60 days, and (iii) lowering eligibility thresholds for certain services. Tuition payments to non-public schools located in the District must also be adequate compared to the rates the District pays to non-public schools in surrounding jurisdictions, to ensure that a continuum of special education services remains available within the District. Reducing such a barrier to non-public schools operating in the District has benefits for both students and the government. In addition to potentially reducing transportation time and costs, proximity of non-public schools to District public schools can help facilitate practices like partial-day placements, giving students in transition an opportunity to move from a non-public to a public school in a safe, gradual, and well-monitored way.⁹² Under another provision, OSSE must set regulatory standards for special education transportation.

Finally, under the Special Education Quality Improvement Act, resources and mechanisms became available to further improve services. The statute creates an optional special education preference for charter school lotteries, so that charter schools can invest in capacity with increased certainty that they will enroll sufficient students. By August 2017, all charter schools will constitute their own LEA for special education purposes, and the LEA will have both the authority and accountability for effective implementation of IDEA. The Ombudsman for Public Education is now responsible for investigating patterns of problems at individual schools, including visiting schools, reporting findings, and issuing recommendations. The legislation also creates a Special Education Fund, where moneys from budgeted and unused non-public tuition funds and other contributions can be aggregated to support "special education capacity expansions" through partnerships between non-public and public schools, as well as joint professional development and training opportunities. These collaborations are opportunities for non-public and public schools to learn from one another, leading to innovations and better services for all students with disabilities.

⁹² These are discussed in the section on best practices, Chapter 5.

Appendix 2

***Blackman-Jones* and *Petties*: Class Actions that helped shape DC's Special Education System**

Substantial changes to special education in DC were made based on the outcomes of two lawsuits. As a result of *Petties v. District of Columbia*⁹³ and *Blackman v. District of Columbia*⁹⁴, special education in Washington D.C. was under court orders to make sweeping changes and eliminate deficiencies within the special education system. This appendix will provide a brief overview of *Petties* and *Blackman* including the consent decrees imposed by the court and the impact these two cases had on special education in Washington, D.C.

Petties v. District of Columbia

In 1995, a class action against District of Columbia Public Schools (DCPS) was filed on behalf of children with disabilities enrolled in these schools. The plaintiffs in ***Petties*** argued that DCPS had violated the Individual with Disabilities Education Act (IDEA) by failing to make on-time payments to third-party providers, including non-public schools and related service providers, and thus risked the ability of children with disabilities to receive the services they were entitled to under the law. The judge ordered a preliminary injunction and ordered DCPS to make all payments immediately. Notwithstanding the court order, DCPS continued to fall behind on payments for special education services. As the court went back and forth with the plaintiffs to demand DCPS follow the court orders, another issue within the special education system was added to the *Petties* case. In addition to failing to make timely payments, the transportation system was also found to be ineffective and unreliable, which jeopardized the ability of children with disabilities to receive proper services. The court imposed fines against DCPS regarding payment delays and forced the school district to overhaul its transportation system.

For the next 17 years DCPS (and later OSSE as the State Education Agency) would be under court orders to make timely payments and improve transportation for children with disabilities. As part of the court orders, DCPS consented to the use of a structured payment system to ensure all providers were paid according to a specific schedule that would prevent a disruption in the services provided to children. However, in 2002, the court found that the lack of payment for two providers would put 151 special education students in jeopardy of not receiving needed services. The court found DCPS in contempt and issued another preliminary injunction.⁹⁵

⁹³ *Petties v. District of Columbia*, 881 F. Supp. 63 (D.D.C. 1995).

⁹⁴ *Blackman v. District of Columbia*, 454 F. Supp. 2d 1 (D.D.C. 2006).

⁹⁵ *Petties v. District of Columbia*, 238 F. Supp. 2d 88 (D.D.C. 2002).

Improvements to the transportation system also faced many roadblocks and setbacks. In 2003, the court appointed a transportation administrator as part of the consent decree to improve the transportation system for students whose IEPs included transportation services. The transportation administrator had broad power to oversee the entire transportation department in an effort to increase the reliability of service and timeliness of picking up and returning students to their families.⁹⁶ In 2010, the court issued a transportation order that would have allowed OSSE's Division of Transportation (DOT) to resume control of the transportation system. However, multiple reports issued under the guidance of the supervising court master found DOT unprepared for that role.⁹⁷

By 2012, however, transportation performance had improved sufficiently that the judge agreed to allow OSSE to control the transportation system. In addition, with payments being made consistently and timely and the District complying with established rules for setting the rates and resolving payment disputes, the court terminated the *Petties* suit.⁹⁸

Blackman v. District of Columbia

In addition to problems with payments and transportation, DCPS became embroiled in another class action as a result of overdue due process hearings and failure to implement settlement decisions from hearing officers within the required timelines. In *Blackman*, two suits were combined and the court certified the class action forming two subclasses: *Blackman* and *Jones*. Plaintiffs in the *Blackman* class argued that their request for an impartial due process hearing was overdue and continued delays would cause irrevocable harm to their children, while plaintiffs in the *Jones* class were denied a free and appropriate education because of the DCPS's refusal to implement the determination of hearing officers or failure to implement specific provisions contained within the child's IEP.⁹⁹

After the court certified the class, plaintiffs motion for summary judgment was granted, finding no genuine issue of material fact in dispute. The plaintiffs relied upon reports from the Department of Education Office of Special Education Programs (OSEP) that found DCPS to be out of compliance with IDEA since 1980.¹⁰⁰ In 1988 DCPS entered into a compliance agreement with OSEP. However, the court did not find that this agreement could effectively silence plaintiffs' claims because the agreement lacked immediate relief specific to the individual members of the class.¹⁰¹ In 1999, the court determined that the District was unable to resolve the requests for injunctive relief and appointed a special master to assist the court in ensuring compliance.¹⁰² The court tasked the special master with presiding over settlement agreements and providing the court with progress reports and recommendations when disputes arose.

In 2006, the plaintiffs and DCPS filed a consent decree to the court that outlined the provisions required to end the litigation. DCPS was given strict time limits regarding eliminating the backlog of overdue hearing requests and agreed to a plan for ensuring that future requests would be handled in a timely manner. In 2011, after DCPS eliminated 90% of the backlog, the *Blackman* portion of the case was dismissed. Finally, in 2014, the judge ordered the *Jones* portion of the case dismissed, agreeing with the Court Monitor that the requirements established in the 2006 consent decree had been met.

⁹⁶ Consent order Appointing Transportation Receiver at 1-14, *Petties v. District of Columbia*, 238 F. Supp. 2d 88 (2002) No. 1:95-cv-00148-PLF.

⁹⁷ Bill Turque, Special Ed bus service stays under court supervision, *Washington Post*, Nov. 17, 2011.

⁹⁸ Emma Brown, Judge says he will dismiss long-running *Petties* case, giving final approval to D.C. control of special-ed buses, *Washington Post* Dec. 10, 2012.

⁹⁹ *Blackman v. District of Columbia*, 1998 U.S. Dist. LEXIS 23920 (D.D.C. May 13, 1998).

¹⁰⁰ *Blackman v. District of Columbia*, 1998 U.S. Dist. LEXIS 23889 (D.D.C. June 3, 1998).

¹⁰¹ *Id.* at 53.

¹⁰² *Blackman v. District of Columbia*, 185 F.R.D. 4 (D.D.C. 1999).

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