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District of Columbia

*Assessing Foster Care and Family Services in the District of Columbia: Challenges and
Solutions*

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Good afternoon, Chairman Akaka, Senator Voinovich, and members of the U.S. Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. Thank you for the opportunity to testify today. I am Judith Sandalow, the executive director of Children’s Law Center (CLC),¹ the largest non-profit legal services organization in the District of Columbia and the only such organization devoted to a full spectrum of children’s legal services. Every year, CLC represents 1,200 low-income children and families, including 500 children in foster care and several hundred foster parents and relatives of children in foster care.

Any serious discussion of fixing DC’s child welfare system – and assessing its capacity to ensure that children leave foster care to legally permanent homes – begins with a review of its capacity to prevent abuse and neglect, and continues through several critical moments of a child’s involvement in the child welfare system. At the beginning – before courts and lawyers are involved – the District government is charged with preventing abuse and neglect so that children’s permanent relationships with their birth families never need be disturbed. The Child and Family Services Agency (CFSA) is charged with deciding whether to remove a child and file a case in court or whether a child can remain safely at home with prevention services. Once a child is in foster care, the entire foster care system must ensure her needs are met. Research shows that children do better when they live with extended family, and when child welfare agencies ensure their well-being is protected. When a child remains in foster care and it is clear that she cannot return home, the system must work to move the child to a new, legally permanent home, so the child can receive the same benefits that stable families provide for other children.

¹ Children’s Law Center envisions a future for the District of Columbia in which every child has a safe home, a meaningful education and a healthy mind and body. We work toward this vision by providing free legal services to 1,200 children and families each year and by using the knowledge we gain from representing our clients to advocate for changes in the law. Children’s Law Center is the largest non-profit legal services organization in the District of Columbia and the only organization providing comprehensive representation to children.

There is good news to report about the District's progress at some of these stages. But, unfortunately, at each step deep problems remain, and these problems lead to the large number of District children who are growing up in foster care. In short, too little abuse and neglect is prevented, too many removal decisions are made poorly, too few foster children live with kin, the placement array for children in foster care is limited, efforts to ensure children's well-being while in care are too weak, and permanency occurs too infrequently.

Federal legislation passed in 2008, the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), has provided some assistance in improving long-standing problems. I will use my testimony both to describe the District of Columbia's implementation of Fostering Connections and to note those areas where better federal agency guidance would help the District improve.

I. Preventing Child Abuse and Neglect

Child abuse and neglect is a tremendous problem in the District of Columbia. In 2007 (the year with the most recent public data based on reports to the federal government), CFSA determined that 2,757 children were victims of abuse or neglect.² This number has remained stubbornly high for several years³ and likely underestimates the true extent of abuse and neglect because many cases are never reported. In a city with about 115,000 children, this is an incredibly disturbing statistic.

The harm that abuse and neglect causes children, by itself, demands strong efforts to prevent it. It also has a direct link to CFSA's ability to care for its foster children and to find legally permanent homes for them because the large numbers of abused and neglected children puts

² U.S. Department of Health and Human Services, Administration for Children and Youth, Children's Bureau, *Child Maltreatment 2007* at 33 (2009), <http://www.acf.hhs.gov/programs/cb/pubs/cm07/cm07.pdf>.

³ CFSA found 2759 children to be victims of abuse or neglect in 2006, and 2840 in 2005. *Child Maltreatment 2006* at 34 (2008), <http://www.acf.hhs.gov/programs/cb/pubs/cm06/cm06.pdf>; *Child Maltreatment 2005* at 16 (2007), <http://www.acf.hhs.gov/programs/cb/pubs/cm05/cm05.pdf>.

tremendous strain on the District's foster care system. The District has a limited supply of foster homes, specialized services, funding, and everything else that foster children need. A system overstressed by too many instances of abuse and neglect is not a system that will serve foster children well. Therefore, to protect children from abuse and neglect and, secondarily, to prevent abuse and neglect from overburdening the foster care system, a strong prevention plan is essential.

To its credit, in 2006, CFSA called for a "prevention plan that is comprehensive, adequately resourced, and that determines the appropriate level and mix of services to address the District's prevention needs."⁴ A truly comprehensive plan would require the involvement of several government agencies, including the Departments of Health and Mental Health and the DC Public Schools. It would also require the participation of businesses, non-profits and individuals. For this reason, its development and implementation must be led at the Mayoral level, not by CFSA. Unfortunately, four years later, the District still lacks a plan of this detail. We continue to urge the District government to develop a plan with sufficient details and resources to match the scope of the need.

If the District chooses to pursue such a prevention plan, it will have several proven programs from which to choose. For instance, home visiting programs for parents at high risk of abusing their young children can cut abuse and neglect nearly in half⁵ and save \$5.70 for every dollar spent.⁶ Even in difficult financial times, the District cannot afford to not invest in such programs.

II. Ongoing Problems with CFSA's Removal Decisions

Child welfare work must recognize that removing children from their homes – even abusive or neglectful homes – is an inherently traumatizing action. This trauma is often avoidable because in

⁴ District of Columbia Government, Child and Family Services Agency, The Assessment of District Programs to Prevent Child Abuse and Neglect at 7 (2006), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/canprevent_final.pdf.

⁵ Nurse-Family Partnership, Research Evidence, <http://www.nursefamilypartnership.org/content/index.cfm?fuseaction=showContent&contentID=4&navID=4>.

⁶ Rand Corporation, Early Childhood Interventions: Proven Results, Future Promise, summary at xxvi, www.rand.org/pubs/monographs/MG34.

most situations children can stay safely with their families – even when their families are struggling.⁷ These traumatic removals should only occur as a last resort, when prevention and support services are unable to prevent children from being harmed in their homes. CFSA has taken some steps in recent years to avoid separating children from their families unnecessarily, in particular holding “family team meetings” to achieve resolutions that do not require removal or court intervention.

Still, our lawyers represent too many children whom CFSA should never have removed. The good news is that in many – but not all – of these cases, CFSA realizes its mistake and returns children home fairly quickly. But the trauma caused by the unnecessary removal cannot be erased and the diversion of resources is harmful.

A child being quickly returned after a removal is often a sign that the removal was unnecessary. CFSA data shows that quick returns after removal are common. In recent years, anywhere from one fifth to one third or more of all children that CFSA removes return home within four months, and most of these children return home in less than one month.⁸ Most situations that

⁷ Indeed, nationally, about three times as many children were deemed to have been maltreated as were removed from their homes. U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, *Child Maltreatment 2007* at 24, 79 (2009) (noting child welfare agencies determined 794,000 children were victims of abuse or neglect but removed only 269,000 from their homes), <http://www.acf.hhs.gov/programs/cb/pubs/cm07/cm07.pdf>. The hundreds of thousands of maltreated children were left in their homes precisely because they could remain safely with their families and because the harm of removing them was unnecessary.

⁸ In FY 2009, 221 children left foster care in less than four months, and 123 in less than one month – compared with only 661 children who entered foster care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2009 Annual Report at 30, 34 (2010), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/reports_and_assessments/2009_apr_final.pdf. In percentage terms, 18.6 percent of all children removed were returned in less than one month, and 33.4 percent of all children removed were returned in less than four months. That is, more than a third of children who entered care left care in less than four months, and nearly one-fifth of all children brought into care left in less than one month. In FY 2008, 204 children left foster care in less than four months, and 134 in less than one month – compared with only 765 children who entered foster care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2008 Annual Report at 28, 31 (2009), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/fy_2008_annual_public_report.pdf. In percentage terms, 17.5 percent of all children removed were returned in less than one month, and 26.7 percent were returned in less than four months. In FY 2007, 179 children left foster care in less than four months of entry, and 119 in less than one month – compared with 632 children who entered foster care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2007 Annual Report at 19, 22 (2008), [http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/final_mayor_annual_report_2007\[1\].pdf](http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/final_mayor_annual_report_2007[1].pdf). In percentage terms, 18.8 percent of all children removed were returned in less than one month, and 28.3 percent were returned in less than four months. In FY 2006, 237 children left foster care in less than four months, and 96 in less than one month –

are severe enough to warrant removing a child are not situations that can be resolved this quickly. One month – and even four months – is too short of a time to address chronic abuse or neglect and the complex substance abuse, untreated mental health conditions, and other problems that frequently accompany it. Four months is the time it takes for a neglect trial and disposition to occur,⁹ not the time it takes to address complex family needs. The mere fact that more than a quarter of all CFSA cases involve children leaving foster care in that time period suggests a significant problem that both traumatizes many children and diverts resources away from strengthening the family and toward the cost of foster care.

CLC's experience corroborates this conclusion. More than one-fifth of our child clients' cases close within four months, with the largest cluster of cases closing within 10 days. The vast majority of these cases involve children who never should have been removed from their families. These children would have been better served if CFSA had left them in their home and provided services. By removing them unnecessarily, CFSA both traumatized the children by the unnecessary separation and poisoned its relationship with the family, limiting its ability to help the family address whatever real problems may remain. In many cases, we can help rectify these errors by working to reunify children quickly. But in some cases, children who never should have been removed from home languish in foster care unnecessarily.

We know how hard a job CFSA has – erring on the side of not removing children can be just as harmful as erring on the side of removing children. But the degree of difficulty is no reason

compared with 686 children who entered foster care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2006 Annual Report at 17, 20 (2007), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/annual_public_report_2006.pdf. In percentage terms, 14.0 percent of all children removed were returned in less than one month, and 34.5 percent were returned in less than four months.

⁹ Under D.C. law, trials must occur within 45 days of the child's "entry into foster care," which is defined as 60 days following the date on which CFSA removed the child. D.C. Code §§ 16-2301(28), 16-2316.01(b)(1). In other words, a trial must occur within 105 days of when CFSA removes a child. A dispositional hearing must occur within 15 days of the completion of a trial. D.C. Code § 16-2316.01(b)(3). Trial and disposition, therefore, occur within 120 days of removal.

not to be forthright about current challenges. CFSA must take strong and deliberative action, including improved training of child protective services workers and supervisors, to improve its child removal and court petitioning decision making.

III. Failure to Place Children with Family Members

Nationally, more and more foster children live with family members in “kinship care.” Kinship care facilitates more frequent parent-child visitation,¹⁰ increases foster children’s placement stability, reduces the time children spend in foster care, reduces the risk of abuse or neglect by a foster parent or group home¹¹ and enhances the likelihood that children will be placed with siblings¹² – all of which lead to better outcomes for children. In the District of Columbia, kinship care placements are three or four times as stable as placements in non-kinship foster homes.¹³ Living in kinship foster care makes a child more than 30 percent more likely to leave foster care to a permanent family, rather than growing up in foster care.¹⁴

Recognizing the value of kinship care, Fostering Connections included several provisions designed to support more kinship care placements. In particular, Congress required state foster care agencies to notify all adult relatives when a child has been removed and inform relatives of their

¹⁰ Robert M. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 Minn. L. Rev. 637, 658 (1999).

¹¹ Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes, *Marc A. Winokur, et al.*, 89 Families in Society: Journal of Contemporary Social Services 338 (2008), <http://www.familiesinsociety.org/New/Teleconf/081007Winokur/89-3Winokur.pdf>.

¹² Richard P. Barth, *et al. Kinship Care and Nonkinship Foster Care: Informing the New Debate*, in *Child Protection: Using Research to Improve Policy and Practice* at 187 (Ron Haskins *et al.* eds. 2007).

¹³ Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2009 Annual Report at 37 (2010), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/reports_and_assessments/2009_apr_final.pdf. In FY 2009, the ratio of placement disruptions to placements was 0.17 to 1 for kinship placements and 0.57 to 1 for nonkinship foster care – that is, kinship placements were about three and a half times more stable than regular foster homes. *Id.* In FY 2008, the ratio of placement disruptions to placements was 0.64 to 1 for non-kinship foster care and 0.17 to 1 for kinship care. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2008 Annual Report, at 34 (2009), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/fy_2008_annual_public_report.pdf. In FY 2007, 1919 children lived in non-kinship foster care and had 1227 placement disruptions – a ratio of 0.64 to 1 – while 662 children lived in kinship care and had 101 disruptions – a ratio of 0.15 to 1. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2007 Annual Report, at 25 (2008), [http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/final_mayor_annual_report_2007\[1\].pdf](http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/final_mayor_annual_report_2007[1].pdf).

¹⁴ Mary Eschelbach Hansen & Josh Gupta-Kagan, *Extending and Expanding Adoption and Guardianship Subsidies for Children and Youth in the District of Columbia Foster Care System: Fiscal Impact Analysis* at 9, Table 1 (2009).

opportunity to become kinship caregivers.¹⁵ To make kinship placements easier bureaucratically, Congress also permitted states to waive foster care licensing rules for relatives when those rules do not directly relate to a child's safety.¹⁶

We give CFSA credit for setting a goal of placing children with kin – a recent CFSA document explains, for instance, “that children’s emotional and psychological needs are best met when placed with kin” and that doing so “is the Agency’s primary objective.”¹⁷ CFSA also issued a new policy and an administrative issuance in December recognizing the federal requirement to notify adult relatives within 30 days of removal and providing instructions on how to locate relatives.¹⁸ CFSA, however, still has significant work to do to embrace the tools provided by Fostering Connections and increase placement with kin. DC is far behind the national average of 24% of foster children live with kin.¹⁹ At the end of FY 2009, only 322 of 2143 foster children – or 15% – lived in kinship foster care.²⁰ We are additionally concerned that the Agency appears to have dropped any goals regarding kinship placements from its performance plan. After failing to meet the goal set out in its FY 2009 performance plan, CFSA’s FY 2010 performance plan is silent on kinship placements.²¹

¹⁵ Pub. L. 110-351, § 103, *codified at* 42 U.S.C. § 471(a)(29).

¹⁶ Pub. L. 110-351, § 104, *codified at* 42 U.S.C. § 471(a)(10).

¹⁷ Government of the District of Columbia, Child and Family Services Agency, 2009 Needs Assessment at 38, http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/reports_and_assessments/2009_needs_assessment_final_document.pdf (2010).

¹⁸ CFSA, Policy: Diligent Search, December 1, 2009, http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/policymanualpdffiles/policies/program_diligent_search_%28final%29.pdf. CFSA Administrative Issuance 09-26, Notice of Removal to Adult Relatives of Children and Youth Entering Foster Care, http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/policymanualpdffiles/ais/ai_notice_of_removal_to_adult_relatives_of_children_and_youth_entering_foster_care_final.pdf.

¹⁹ U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, *The AFCARS Report: Preliminary FY 2008 Estimates as of October 2009*, at 1, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report16.pdf.

²⁰ Government of the District of Columbia, Child and Family Services Agency, 2009 Needs Assessment at 31 (noting 2143 children were in foster care as of Sept. 30, 2009) & 40 (noting 322 children in kinship foster care).

²¹ CFSA in its 2009 performance plan set a goal of increasing the percentage of children in kinship care to 20% in FY 2009, 22% in FY 2010, and 25% in FY 2011. CFSA FY 2009 Performance Plan at 2, 4, <http://capstat.oca.dc.gov/Pdf.aspx?pdf=http://capstat.oca.dc.gov/docs/fy09/CFSA.pdf>. The 2010 plan is silent on

CFSA should begin to address this problem with better implementation of the tools Congress provided through Fostering Connections. First, CFSA should implement a policy or regulation regarding flexibility for issuing foster care licenses to kin, as Fostering Connections permits. Making clear what licensing rules CFSA will waive for kin would remove a key barrier to kin placement. Many relatives are dissuaded from becoming kinship caregivers by the complex licensing process. Second, CFSA should more aggressively identify potential kinship placements. All too often, CLC attorneys identify kin of whom CFSA is not aware – in a better functioning system, CFSA social workers would know of kin before our attorneys do. Hopefully, the new policies issued in December will help; however, effective implementation is essential. CFSA must focus on its internal practice and create an expectation that all social workers make concerted outreach to relatives throughout a child’s stay in foster care and especially when a child first enters foster care.

IV. Inadequate Focus on Well-being While in Foster Care

Children’s well-being is essential to positive permanency outcomes. If a child is experiencing emotional difficulty and displaying behavioral problems, any permanency option will be more difficult to achieve. It is therefore a foster care agency’s job to help children heal from the abuse or neglect they have suffered and from the trauma of separation from their families so that they can handle the emotionally fraught challenges posed by reunifying with their family or creating a new legally permanent family.

a. School stability

A foster child’s well-being encompasses many different factors – such as their mental health, educational achievement and the continuity of their relationships with siblings. I will focus on one factor that Congress emphasized in Fostering Connections and on which CFSA, unfortunately, has

this goal. CFSA FY 2010 Performance Plan,
<http://capstat.oca.dc.gov/Pdf.aspx?pdf=http://capstat.oca.dc.gov/docs/fy10/CFSA.pdf>.

much room for improvement – foster children’s success at school and, in particular, their ability and even legal right to have school stability.

School stability is essential to foster children’s academic success. Youths who had even one fewer school placement change per year were almost twice as likely to graduate high school.²² In contrast, multiple school placement changes add up to years of lost educational growth.²³ As one scholar concluded, “Perhaps the single most important thing that each of us can do to improve the educational outcomes for foster children is to ensure that their school placement remains stable.”²⁴

Congress included several provisions in Fostering Connections designed to help more foster children have school stability. Fostering Connections requires state foster care agencies to have case plans that “ensur[e] the educational stability of the child while in foster care.”²⁵ Fostering Connections also provides federal funding for “reasonable travel” from a child’s foster care placement to his school.²⁶

Unfortunately, CFSA has not implemented these provisions effectively and foster children are still denied their right to school stability. CFSA did propose legislation that was passed on an emergency basis in December 2009 to change the District’s definition of “case plan” to include the Fostering Connections requirements.²⁷ CFSA has just begun to implement this new law – but that implementation suffers from limited resources to transport children from foster placements to their

²² Casey Family Programs, *Educating Children in Foster Care: The McKinney Vento and No Child Left Behind Acts*, at 5 (2007).

²³ National Working Group on Foster Care and Education, *Educational Outcomes for Children and Youth in Foster and Out-of-Home Care* (2006).

²⁴ Casey Family Programs, *A Road Map for Learning: Improving Educational Outcomes in Foster Care*, at 9 (2004) (quoting Heybach, L. and Winter W., *Improving educational services for foster children: An Advocates Guide* (1999)).

²⁵ Pub. L. 110-351, § 204(a)(1), *codified at* 42 U.S.C. § 475(1)(G).

²⁶ Pub. L. 110-351, § 204(a)(2), *codified at* 42 U.S.C. § 475(4)(A).

²⁷ D.C. Act 18-298, enacted as temporary legislation, incorporated the language from the federal law into D.C. Code § 1301.02(3)’s definition of a “case plan.” <http://www.dccouncil.us/lims/legislation.aspx?LegNo=B18-0578&Description=%22PREVENTION+OF+CHILD+ABUSE+AND+NEGLECT+TEMPORARY+AMENDMENT+ACT+OF+2010%22.%0d%0a+&ID=23485>. Permanent legislation with identical provisions is now pending. Bill 18-579, <http://www.dccouncil.us/lims/legislation.aspx?LegNo=B18-0579&Description=%22PREVENTION+OF+CHILD+ABUSE+AND+NEGLECT+AMENDMENT+ACT+OF+2009%22.&ID=23486>.

schools. CFSA has exacerbated this problem by not taking effective advantage of federal financial assistance to transport children from their foster placements to their schools. To make a commitment to school stability CFSA needs to adequately fund transportation to keep children in their school of origin. We are unaware of CFSA requesting any specific reimbursements for foster care maintenance payments made available to assist with school stability by Fostering Connections and these funds were not included in CFSA's FY 2010 budget. Similarly, we are unaware of CFSA requesting any Title IV-E "administrative costs" funding for school transportation.²⁸ With increasingly limited local funds, CFSA needs to maximize the federal dollars to support its efforts.

The federal government can assist in these efforts by revising problematic guidance issued in late 2008. That guidance limits federal school stability transportation assistance to a much narrower set of cases than Congress intended. Congress's language covers transporting children to schools in which they were "enrolled at the time of placement,"²⁹ and Congress did not limit this provision to a child's first placement or any other type of placement. But the 2008 guidance limits the available federal assistance to transportation a child was attending prior to the child's "placement in foster care."³⁰ Those three little words – "in foster care" – contradict the plain language of the statute and Congress's intent by limiting federal assistance to transportation to prevent possible disruptions caused by the child's removal into foster care. But school stability matters throughout a foster care case. If a foster child shifts to his foster home's neighborhood school and thrives there, then he should be able to continue attending that school even if that foster placement disrupts.

We urge members of the Committee to raise this issue. We are optimistic that if the new administration focuses on this issue, it will remove this restriction on school stability funding.

²⁸ U.S. Dep't of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Welfare Policy Manual section 8.1B Question 27,

http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/questDetail.jsp?QAId=1803.

²⁹ Pub. L. 110-351, § 204(a)(2), *codified at* 42 U.S.C. § 475(4)(A).

³⁰ ACYF-CB-PI-08-05, at 8, http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0805.pdf.

b. Foster parent recruiting and retention

An essential element of foster children’s well-being is their living arrangement while in foster care. To ensure that each foster child has the best placement possible, CFSA needs to have an adequate array of foster placements. A critical mass of placements will permit CFSA to match each individual foster child with an appropriate home. Especially for children with a particularly high level of need, the right placement can mean the difference between thriving in the community or living in an institution. For children who cannot reunify with their birth families, the most likely people to become adoptive parents or permanent guardians are the foster parents who have cared for them and with whom the children have bonded – so the better CFSA can match children with foster homes, the better the chances that CFSA can find a permanent home. CFSA has acknowledged this by adopting a “first placement – best placement” approach.

CFSA has made some recent progress in this area. The total number of foster homes has increased³¹ and the number of foster children sent to live in “residential treatment centers” – mental institutions for youth – has decreased.³² The frequency of placement disruptions from non-kinship foster homes has improved, but is still far too high – there are still more than five placement disruptions for every 10 placements.³³ Too many of our child clients still bounce from foster home to foster home. CFSA still struggles to make appropriate placements, has an inadequate array of placements and fails to provide adequate support and services to foster parents.

³¹ Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2009 Annual Report at 16-17 (2010), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/reports_and_assessments/2009_apr_final.pdf.

³² *Dixon v. Fenty*, No. 74-285, Court Monitor’s January 2010 Report at 33 (noting decline in the number of foster children in residential facilities from 132 in 2006 to 88 in January 2010).

³³ The ratio of placement disruptions to non-kinship foster placements was 0.57 to 1 in FY 2009. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2009 Annual Report at 37 (2010), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/reports_and_assessments/2009_apr_final.pdf. That ratio decreased from 0.64 to 1 in FY 2008. Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2008 Annual Report, at 34 (2009), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/fy_2008_annual_public_report.pdf.

CFSA needs to expand its the range of placements, particularly for high needs children. Recently CFSA significantly reduced the amount of money it provides private agencies for board and care payments to therapeutic foster families. We are concerned that this will lead to disruption and further limit the number of foster families who can accept children with the most complex needs. Our child clients with the greatest needs require an adult to whom they can turn at all times – when they have a mental health crisis or an incident at school, for example – and who is not constrained by work obligations. In our experience, these clients do best when placed in homes with one stay-at-home parent, and the best way to increase the number of such placements is to pay a higher subsidy for a particular category of foster parents who can serve high-needs children. Such subsidies may be expensive – but they will lead to results that are better for children and more affordable for the government than the alternative – group home placements or residential treatment center institutionalization.

CFSA also needs to provide better support to its foster parents or continue to struggle with retention. Foster parents continue to report that adequate services and supports are not being provided to the children in their care – and the failure to do so affects both the well-being of children and retention of foster families.³⁴ Even simple information, such as Medicaid numbers, Medicaid cards and placement packets are not being provided.³⁵

A recent study by the Center for the Study of Social Policy found for more than one third of children, foster parents did not receive the required placement packet when a child was placed in their home. These placement packets include basic information about the child’s history and

³⁴ Assessment of the District of Columbia’s Child Welfare System Practices to Support Children Who Enter, Re-enter or are Re-placed While in Foster Care, Center for the Study of Social Policy, 23 (November 2009).

³⁵ *Id.* at 17.

medical and behavioral needs.³⁶ It is difficult and frustrating and can even be harmful to care for a child without the basic information necessary to make good decisions.

To improve legal permanency and stability CFSA must do a better job of recruiting and retaining a diverse array of family-based placements.

c. Placement of teens

Placement of teens is a particular challenge. In 2009, 56% of children in the District's foster care system were ages 13- 21.³⁷ Youth who age out of foster care are at much higher risk than other young adults for many troubling outcomes, such as substance abuse, homelessness, dropping out of school, incarceration, teen pregnancy, unemployment and using public benefits.³⁸ CFSA must both do a better job of recruiting foster homes for teenagers and adapting to the reality that a traditional foster home and goals of adoption and guardianship are not realistic for some youth.

A special focus is required on recruiting and retaining an adequate array of foster homes for teenagers. Fostering a teenager is very different from fostering a young child, the recruitment, training and support of these foster parents must look very different.

CFSA also needs to find ways to support the connections older youth have outside the child welfare system. Whether an older youth "ages out" of care or finds a legally permanent new home, it is important to respect and strengthen the relationships that exist outside the formal system. Frequently, our teenager clients have family members with whom they are connected and with whom they are likely to live when they turn 21. Indeed, CFSA's examination of APPLA cases found what those of us working directly with these youth already knew – that most of these youth already have a lifelong connection with some adult, but their relationship with that adult may not neatly fall

³⁶ *Id.*

³⁷ Government of the District of Columbia, Child and Family Services Agency, Fiscal Year 2009 Annual Report at 29 (2010), http://cfssa.dc.gov/cfssa/frames.asp?doc=/cfssa/lib/cfssa/reports_and_assessments/2009_apr_final.pdf.

³⁸ Ruth Massinga & Peter J. Pecora, *Providing Better Opportunities for Older Children in the Child Welfare System*, *The Future of Children*, Vol. 14, No. 1, 151, 153, 154 (Winter 2004)

into one of the boxes marked “legal permanency.” Sometimes these adults are not able or willing to become licensed foster parents. While these family members may not be perfect caregivers, they are often the people closest to the teenager and best able to provide a loving home and a sense of family – something no group home or independent living program can provide. Moreover, they are often the person with whom everyone in the case acknowledges the young adult is going to live when he or she leaves CFSA custody – they are even listed as “lifelong connections” on CFSA “youth transition plan” forms. CFSA should recognize the role of the adults in their lives and design a system in which these youth can live with the adults who will be their lifelong connections. To make such a system work, CFSA would need to provide some modest financial support as well as supplemental coaching in areas in which these adults are not fully capable of helping the youth build the necessary life skills.

V. Legal Permanency

I know that the Committee is particularly concerned with the District of Columbia’s track record of moving children from foster care to legally permanent families. CLC expertise in this area comes from representing 500 children in abuse and neglect cases and several hundred caregivers of foster children every year.³⁹ I want to focus first on two steps the federal government can take to help the District move more children to legally permanent homes, then address the District’s recent performance and some long-standing challenges and solutions to those challenges.

- a. The federal government can help by providing all of the guardianship assistance promised by Fostering Connections

The District of Columbia deserves credit for being one of the first jurisdictions to create the legal option of guardianship in 2001.⁴⁰ CLC is proud to have played a role in drafting the District’s

³⁹ Through its Family Permanency Project, Children’s Law Center provides free counsel to foster parents and relatives seeking to provide legally permanent homes to DC’s foster care. Lawyers from more than 70 area law firms receive training and mentoring from CLC and, in turn, donate more than \$7 million in free legal services to these families.

⁴⁰ D.C. Code § 16-2381 *et seq.*

guardianship legislation that has enabled hundreds of children to leave foster care to permanent families.

The federal government now recognizes the value of guardianship, placing relative guardianship in federal law through Fostering Connections and providing federal funding to support guardianship subsidies.⁴¹ Just one month ago, the Department of Health and Human Services reversed a previous decision and issued new guidance making Fostering Connections funds available for guardianships entered into before Fostering Connections took effect. CFSA may now obtain federal support for guardianships finalized prior to Fostering Connections.⁴² We trust that CFSA will begin doing so promptly.

Additional federal guidance that ensures a broad definition of relative guardianship would also improve permanency outcomes for children. Fostering Connections provides federal financial support for guardianship subsidies for children living with “relatives,”⁴³ but does not define the term “relative.” HHS has not yet offered any clarifying regulations or guidance for this term. The definition matters because many of our clients have family members with whom they are very close but who might not qualify under a restrictive definition of “relative.” A step-grandparent, the father or paternal relative of a child’s half-sibling, or a godparent all lack a formal connection by blood or marriage, but can nonetheless have a familial relationship. The same federal financial support should be available for children living with these family members as for children living with grandparents.

Congressional support for guidance defining the term “relatives” broadly – ideally as broadly as District law defines it⁴⁴ – would help move children into legally permanent homes.

b. Recent increases in adoption numbers

⁴¹ Pub. L. 110-351, § 101, *codified at* 42 U.S.C. §§ 671(a)(28), 673(d).

⁴² ACYF-CBPI-10-01 (Feb. 18, 2010).

⁴³ 42 U.S.C. §§ 671(a)(28), 673(d).

⁴⁴ D.C. Code § 4-1301.02(12) & (14).

We are delighted to see recent increases in the number of adoptions of DC foster children, an increase of about 25 in from 2008 to 2009.⁴⁵ Considered historically, however, the 2009 figures are in line with an historical downward trend in the number of adoptions and guardianships.⁴⁶ Moreover, Dr. Gerald has explained that much of the recent increase was from removing administrative barriers such as CFSA social workers completing final adoption reports more quickly.⁴⁷ Making the bureaucracy move more efficiently is a significant accomplishment, but it does not resolve the deeper challenges that prevent foster children from becoming part of legally permanent families.

c. The District must address deeper barriers to adoption and guardianship

The District now needs to address the deeper problems that have left far too many children growing up in foster care. Three of these issues deserve special mention today.

i. Adoption and guardianship subsidy barriers

Existing District law governing adoption and guardianship subsidies impose specific barriers to adoption and guardianship. Both adoption and guardianship subsidies currently end when a child turns 18.⁴⁸ This contrasts with District law which permits children to remain in foster care – and

⁴⁵ District of Columbia Government, Child and Family Services Agency, A Priceless Gift for District Children: Home: CFSA Meets Goal of 125 Adoptions in 2009.

⁴⁶ CFSA finalized 125 adoptions in calendar year 2009⁴⁶ as compared with 160 in fiscal year 2007 and 186 in fiscal year 2006. See District of Columbia Government, Child and Family Services Agency, A Priceless Gift for District Children: Home: CFSA Meets Goal of 125 Adoptions in 2009. District of Columbia Government, Child and Family Services Agency, Fiscal Year 2007 Annual Report at 23 (2008), [http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/final_mayor_annual_report_2007\[1\].pdf](http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/final_mayor_annual_report_2007[1].pdf). District of Columbia Government, Child and Family Services Agency, Fiscal Year 2006 Annual Report at 21 (2007), http://cfsa.dc.gov/cfsa/frames.asp?doc=/cfsa/lib/cfsa/pdf/annual_public_report_2006.pdf. See also Mary Eschelbach Hansen & Josh Gupta-Kagan, Extending and Expanding Adoption and Guardianship Subsidies for Children and Youth in the District of Columbia Foster Care System: Fiscal Impact Analysis at 12-13 (2009). Reviewing adoption and guardianship data from 2004 through 2008, Professor Hansen projected that 194 adoptions and guardianships would occur in 2009. CFSA reports 125 adoptions and 77 guardianships in 2009 – a total of 202, barely above Professor Hansen’s projection. District of Columbia Government, Child and Family Services Agency, A Priceless Gift for District Children: Home: CFSA Meets Goal of 125 Adoptions in 2009.

⁴⁷ Dr. Gerald shared this information at a meeting of community stakeholders in late 2009.

⁴⁸ D.C. Code §§ 4-301(e) (adoption) & 16-2399(d) (guardianship).

foster parents to continue receiving foster care subsidies – until they turn 21.⁴⁹ This disparity leads foster parents, especially foster parents of older youth, to keep children in foster care and not seek adoption or guardianship. Few 18 year olds are truly financially independent of their families and many foster children face additional challenges. Foster children, for example, have disproportionately high rates of educational delays, mental illness, and special needs.⁵⁰

In addition, current law does not provide good options for children who want to live with their foster parents while maintaining birth family connections. Some children, especially older children, understand that they are better off living with foster parents rather than their birth families. But they maintain significant contact with and their identity remains tied to their birth families. Foster parents who become guardians give foster children permanency without severing the legal tie to the birth family – thus presenting a legal option to serve these children’s best interests. But DC law does not currently allow guardianship subsidies to non-kinship foster parents, effectively closing off this option to many children.⁵¹

The good news is that the District is on the verge of removing these two barriers to permanency. CLC teamed with CFSA and American University Professor Mary Eschelbach Hansen to study the impact removing these subsidy barriers would have. Professor Hansen’s analysis, using data from CFSA, projects that removing these barriers to adoption and guardianship will lead to dramatic improvements in the number of adoptions.⁵² The District’s Chief Financial Officer – whose fiscal impact studies are the District equivalent to the Congressional Budget Office – has

⁴⁹ D.C. Code § 16-2303. Similarly district law provides that a parent’s child support obligations continue until age 21. *Butler v. Butler*, 496 A.2d 621 (D.C. 1985).

⁵⁰ Peter Pecora *et al.*, *Improving family foster care: Findings from the Northwest Foster Care Alumni Study* 32-34, <http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm>; Mary Bruce Webb *et al.*, *Addressing the Educational Needs of Children in Child Welfare Services*, in *Child Protection: Using Research to Improve Policy and Practice* 253 (2007).

⁵¹ D.C. Code § 16-2399(b)(3).

⁵² Mary Eschelbach Hansen & Josh Gupta-Kagan, *Extending and Expanding Adoption and Guardianship Subsidies for Children and Youth in the District of Columbia Foster Care System: Fiscal Impact Analysis* (2009).

concluded that by moving children out of foster care, these subsidy changes will result in \$3.9 million in savings over the next four years.⁵³

As a result of this work, the DC Council held a hearing on March 4, 2010 on the Adoption Reform Amendment Act, which includes provisions extending adoption and guardianship subsidies to age 21 and expanding guardianship subsidies to include non-kin. We are pleased that these provisions have broad support in the community – including from CFSA, foster parents, and other children’s advocates. We are optimistic that these provisions will pass quickly and look forward to these statutory changes and the new adoptions and guardianships that will result.

ii. Kinship placements need dramatic improvement.

Second, CFSA must improve its record of kinship placements. District of Columbia children in kinship care are more than 30 percent more likely to leave foster care to a permanent family than children living in other placements.⁵⁴ Yet far too few District foster children live with kin. To achieve a dramatic increase in positive permanency outcomes, CFSA must first improve its poor record of kinship placements, as I discussed earlier.

iii. CFSA’s pursuit of legal permanency must not unduly sacrifice children’s stability

While it is generally better for children to leave foster care for legally permanent families than to remain in foster care, there are times when it is not in a child’s best interest. Let me provide an example:

A CLC lawyer is the guardian *ad litem* for two foster children who have been in foster care for more than five years. These siblings are among the lucky ones – they have lived in the same foster home for their entire stay in foster care. They both want to remain exactly where they are,

⁵³ Natwar M. Gandhi, Chief Financial Officer, Fiscal Impact Statement, Adoption and Guardianship Expansion Act of 2009, http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/B18-453_.pdf.

⁵⁴ Mary Eschelbach Hansen & Josh Gupta-Kagan, Extending and Expanding Adoption and Guardianship Subsidies for Children and Youth in the District of Columbia Foster Care System: Fiscal Impact Analysis at 9, Table 1 (2009). This conclusion rests on five years of CFSA data analyzed by American University Professor Mary Eschelbach Hansen.

with the family that they have come to know as their own, while maintaining a relationship with their birth family, especially their mother. Their foster parents want to raise them, but are hesitant to adopt. The foster parents are concerned about the significant medical costs for one child's chronic medical condition and steep mental health costs stemming from both children's severe abuse and neglect. The ideal result for these children would be for CFSA to guarantee that these children will have access to the same medical and mental health care after adoption as they receive while they are in foster care. Then, the children could keep the stability that they currently have with this loving family as well as the certainty that comes with legal permanence. However, if CFSA is not able to guarantee this result, then these children's well-being is best served by the stability of their current family without legal permanence.

CLC has fought to keep these children where they want to be – in their stable foster home. If these barriers to permanency remain, we will advocate for them to remain with their foster parents in long term foster care with a permanency goal of “Another Planned Permanent Living Arrangement,” or APPLA. To provide stability, maintain the continuity of placement and recognize the reality that these children have formed a lifelong connection with this family means this is the right goal for these children. To seek any other goal means ripping them from the home they have known for more than five years and placing them with strangers, an unnecessarily harmful and even cruel result.

We all hope that children will maintain the stability and continuity that comes from long-lasting, strong attachments with foster and kinship parents. Legal permanence through adoption and guardianship is usually the final step in cementing these relationships. Providing the support to foster and kinship families that allow them to move from stable homes to legally permanent homes is the right way to reach higher adoption and guardianship targets. However, if pursuit of higher

adoption and guardianship numbers involves disrupting these bonds and ignoring the individual needs of a child, then children are ill-served and reaching numerical targets should not be celebrated.

Foster care law explicitly recognizes the appropriateness of APPLA to protect lifelong connections that will not become adoption or guardianship. Federal regulations recognize that cases like the one I describe present “compelling circumstances” which justify a goal of APPLA.⁵⁵ Legal permanency and continuity are often the same thing – but not always. In looking at outcomes and metrics it is hard, if not impossible, to capture the nuances of the best interests of each child. I fear that a focus on increasing the number of adoptions and guardianships may lose the nuance that foster care law – and foster children themselves – require. I trust that we will be able to work with our colleagues at the Agency and on the Court to find the right result for each individual child and not merely try to increase certain outcome measures.

CONCLUSION

The District’s foster care system faces serious, complex, and deeply rooted challenges. The good news, however, is that with concerted focus and cooperation between different entities, we can make significant progress. The best example is the pending legislation – developed between CLC, CFSA and the Council – to extend and expand adoption and guardianship subsidies and thus help hundreds more children leave foster care to permanent families. I look forward to future successes and to this Committee playing a constructive role in helping achieve them. Thank you again for the opportunity to testify.

⁵⁵ 45 C.F.R. § 1356.21(h)(3).