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September 17, 2015

Colleen Rathgeb  
Director of Policy and Planning  
Office of Head Start  
Department of Health and Human Services  
1250 Maryland Avenue, SW  
Washington, DC 20024

*Re: Proposed Head Start Performance Standards*

Dear Ms. Rathgeb,

On behalf of the Education Law Center (ELC) and the parents, students and community organizations with whom we work, we submit the following comments on the proposed revisions to the “Head Start Performance Standards,” set out at 80 Fed. Reg. 35430 (June 19, 2015). In the recommendations below, we support the proposed regulations’ efforts to reduce the use of suspensions and expulsions. We also provide suggestions on how to offer more concrete guidance on serving and meeting the needs of young children experiencing homelessness and children in foster care.

ELC is a nonprofit legal advocacy and educational organization dedicated to ensuring that all of Pennsylvania’s children have access to quality public education, beginning at birth. For four decades, ELC has used traditional legal representation, administrative and legislative advocacy, community education and strategic engagement to promote academic success and positive life outcomes for all children in Pennsylvania.

## **RECOMMENDATIONS**

### **Reducing the Use of Exclusionary Discipline Practices**

ELC strongly supports the limitations of suspensions and prohibition of expulsions. The Department’s important commitment to ensuring access to early education and decreasing unnecessary and unfair exclusions is reflected in Section 1302.17 “Suspension and expulsion.” These measures are encouraging, particularly in light of recent data from the Department of Education showing that while African-American boys make up 18% of preschool enrollment, they make up 48% of preschoolers suspended more than once. Expulsion and suspension have significant negative effects on the development and learning of all children, particularly our youngest students.

The Head Start proposed regulations clearly work towards reaching the goals laid out in the Department of Education's *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* including creating a positive climate with a focus on prevention, ensuring fairness equity, and continuous improvement. Further, ELC supports the use of evidence-based practices including engaging mental health consultants, collaborating with parents, and utilizing community resources as required by paragraph (a). Lastly, ELC supports the prohibition on unenrollments in paragraph (b)(1) and the requirement of appropriate interventions and supports in paragraph (b)(2).

The proposed revisions state clearly, as appropriate, that the entity responsible for IDEA implementation must be involved in the child's program planning at Head Start. The Standards would better align with state and federal law if it also required Head Start programs to consider its own responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) and/or the Americans With Disabilities Act (ADA), as well as other child protection statutes, regulations or ordinances.

These considerations apply to the entire Standards. Here, we propose the following new language specifically as it relates to the discipline of a child with disabilities: *Head Start programs must comply with all of the legal requirements governing the discipline of a child related to their disability, including the implementation of reasonable modifications to policies, practices, or procedures that will ensure that they are not suspended or expelled because of disability-related behaviors.*

### **Prioritizing Children in Foster Care & Children Experiencing Homelessness**

ELC strongly supports the proposed regulations' attention to ensuring that Head Start programs meet the unique needs of children experiencing homelessness. Many children experiencing homelessness are currently unable to access Head Start programs. Even with existing regulations prioritizing children experiencing homelessness, individual programs often struggle with competing compliance mandates and fail to put this requirement into effect.

Additionally, the Head Start regulations need to prioritize children in foster care by extending them priority status. Children under age 1 represent the largest group of children to enter the foster care system each year and over 28% of the children in foster care are under age 5. Many of the infants, toddlers and preschoolers who enter the child welfare system have already been exposed to poverty, substance abuse, and parental neglect and abuse. Compared to other children living in poverty, young children in foster care are far more likely to be impacted by trauma, exhibit developmental delays, and need access to high-quality early learning opportunities. The Act places a high value on outreach and services to families involved in the child welfare system. *See* 45 CFR 1340.41 (a)(vi-vii). However, additional measures are needed to expand access to vital Head Start programs for this acutely vulnerable population.

The following recommendations ensure that Head Start programs have practical guidance on how to serve children experiencing homelessness and children in foster care.

### **1. Eliminate barriers for children in foster care.**

The Head Start regulations need to prioritize children in foster care and remove barriers to their enrollment and participation. We strongly urge the elimination of the current practice of penalizing programs when children move out. This practice actively discourages the inclusion of children in foster care (who are often highly mobile) in these high-quality learning programs.

Instead, the regulations should promote their inclusion by requiring Head Start agencies to:

- a) implement policies and procedures to collaborate with child welfare agencies to ensure that children are identified and prioritized for enrollment; and
- b) allow children in foster care to immediately apply to, enroll in, and attend Head Start programs even without required documents, such as proof of residency, immunization and other medical records, birth certificates, and other documents, as long as these documents are obtained within a reasonable time frame.

### **2. Clarify how children should receive priority status on waiting lists.**

There are multiple states that have successfully prioritized students for Head Start. Waiting lists are a key tool for ensuring this important access. The proposed regulations should clearly articulate which groups are to receive priority status in the waiting list rankings. ELC strongly supports that children experiencing homelessness, children involved in the foster care system, and children with disabilities should be given priority.

Accordingly, the regulations should be amended so that §1302.14(c) states:

*Waiting lists:* A program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria. Along with other populations identified in the community needs assessment, this ranking should prioritize children experiencing homelessness, children who are in foster care, and children who are eligible for special education and related services, or early intervention services.

### **3. Require reserved slots proportionate to program size.**

Head Start programs should be *required* to reserve slots for children experiencing homelessness and children in foster care without penalty. The regulation's permissive guidance is a positive step, but must go further. Without an explicit requirement, we are not confident that individual programs will reserve these slots.

Head Start programs should also be required to reserve more than one slot for children who are experiencing homelessness or children in foster care. Rather, the number of reserved slots should be relative to the size of the Head Start program. Instead of permitting a large Head Start program to reserve only one slot for these priority children, each program should be required to reserve at least 1% of their funded enrollment slots for children experiencing

homelessness or children in foster care. For smaller programs, this 1% requirement should not fall below the one slot minimum. Thus, programs should reserve at least 1% of slots or one slot, whichever is greater, for children experiencing homelessness or children in foster care.

Accordingly, §1302.15(c) should be amended to state:

*Reserved Slots.* If a program determines from the community assessment there are families experiencing homelessness in the area or children in foster care that could benefit from services, the program ~~may~~ must reserve at least 1 percent of a program's funded enrollment slots, but no less than one ~~or more~~ enrollment slots for pregnant women and children experiencing homelessness and children in foster care, when a vacancy occurs. No more than 3 percent of a program's funded enrollment slots may be reserved. If the reserved enrollment slot is not filled within 30 days, the enrollment slot becomes vacant and then must be filled within 30 days in accordance with paragraph (a) of this section.

#### **4. Require separate waiting lists for priority reserved slots.**

Programs with reserved slots should be required to maintain a separate waitlist exclusively for children experiencing homelessness and children in foster care. When a reserved slot becomes vacant, children on this list should be given priority to fill the opened slot.

Accordingly, §1302.15(c) should be further amended to state:

*Reserved Slots.* If a program determines from the community assessment there are families experiencing homelessness in the area or children in foster care that could benefit from services, the program ~~may~~ must reserve at least 1 percent of a program's funded enrollment slots, but no less than one ~~or more~~ enrollment slots for pregnant women and children experiencing homelessness and children in foster care, when a vacancy occurs. No more than 3 percent of a program's funded enrollment slots may be reserved. The program should maintain a separate waiting list of children experiencing homelessness and children in foster care who are eligible to fill these reserved slots, and should use this list to fill reserved slots when they become vacant. If the reserved enrollment slot is not filled within 30 days, the enrollment slot becomes vacant and then must be filled within 30 days in accordance with paragraph (a) of this section.

#### **5. Require transportation for children experiencing homelessness.**

Transportation is a major barrier for families experiencing homelessness. Head Start programs should be required to provide or arrange for transportation for children experiencing homelessness. Encouraging programs to provide transportation is a positive step, but we know when transportation is merely encouraged and not required, it often goes unprovided.

Fostering Connections Act provides an important example. Unlike the McKinney-Vento Act, Fostering Connections does not require that students in foster care be transported to school.

As a result, school-age students in foster care under Fostering Connections are much less likely to receive transportation to school than students who are experiencing homelessness and covered by McKinney-Vento.

The proposed regulations should follow the precedent set by the McKinney-Vento Act, and require Head Start programs to provide or arrange transportation for children experiencing homelessness. If transportation cannot be required, the program must provide for the child to receive the program in their home or other living setting.

Therefore, §1302.16(c)(2) should state:

If a child experiencing homelessness is unable to attend classes regularly because the family does not have transportation to and from the program facility, the program must utilize community resources, ~~where possible~~, to provide or arrange transportation for the child, or provide for the child to receive the program in their home or other living setting.

### **Promoting Engagement of Parents with Limited English Proficiency**

ELC applauds the regulations' efforts to promote inclusion and full participation of English language learners in Head Start programs. Parents of these children frequently also have limited English proficiency. The regulations should require translation and interpretation services when requested, and as required by statute, to promote increased engagement of parents with limited English proficiency.

Thank you for the opportunity to comment.

Respectfully Submitted,

Education Law Center

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