

Testimony Before the Council of the District of Columbia

Committee on Human Services

**Public Hearing:
Performance Oversight Hearing
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Good morning Chairperson Nadeau and Members of the Committee on Human Services. My name is Stephanie McClellan, and I am the co-founder and Deputy Director of DC KinCare Alliance. Our mission is to support the legal, financial, and related service needs of relative caregivers who step up to raise DC children in their extended families in times of crisis when the children's parents are not able to care for them due to mental health and substance use disorders, incarceration, death, abuse and neglect, and/or deportation. DC KinCare Alliance is a member of the Fair Budget Coalition, and we support budget priorities and policies that alleviate poverty in the District of Columbia.

A. DC's Grandparent Caregiver Program

When we testified at this hearing last year, we discussed the critical role of the Grandparent Caregiver Program (GCP) to keep our most vulnerable children raised by relative caregivers out of poverty. At that time, there was a waiting list of 46 families.¹ Today, more than a year later, the waiting list has increased to 53 families²—purportedly due to lack of funds—yet CFSA had enough money in FY 2020 for the Mayor to repurpose more than two million dollars of CFSA's budget to pay for MPD overtime. It would have taken less than half that amount to clear the GCP waitlist.

When we testified two years ago in support of the Close Relative Caregiver Program (CRCP), it was in part, to stop the unfairness of supporting vulnerable DC children raised by a great-aunt or grandmother, but not a similarly situated child raised by an aunt or older sister or brother. We thank this committee and the entire DC Council for seeing the injustice and righting that wrong. Today in DC, we again have the same injustice in reverse. If a DC child is being raised by an aunt or an older sister or brother, there is money available through the

¹ CFSA Oversight Responses FY 2019-2021, Question No. 80.d., *available at* <https://dccouncil.us/wp-content/uploads/2020/02/cfsa20.pdf>.

² CFSA Oversight Responses FY 2020-2021, Question No. 73.d., *available at* dccouncil.us/wp-content/uploads/2021/02/FY20-21-CFSA-Pre-Hearing-Responses_FINAL.pdf.

CRCP to help that child but, if a similarly situated child is being raised by a great-aunt or grandmother, that child is out of luck. We are counting on this Committee and the DC Council to fully fund the GCP, whether or not the Mayor includes adequate funding in her budget.

B. DC's Kinship Navigator Program

Federal law defines kinship navigator programs as programs “to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families are served.”³ Federal law further requires kinship navigator programs, among other things, to be:

planned and operated in consultation with kinship caregivers and organizations representing them; establish information and referral systems that link (via toll-free access) kinship caregivers, kinship support group facilitators, and kinship service providers to . . . each other; provide outreach to kinship care families, including by establishing, distributing, and updating a kinship care website, or other relevant guides or outreach materials. . . .⁴

Unfortunately, although CFSA received more than \$400,000 in federal kinship navigator funding in FYs 2019 and 2020,⁵ it does none of these things. First, DC KinCare Alliance is the sole organization in DC serving only relative caregivers; however, neither we nor our clients have been consulted by CFSA regarding the establishment and operation of its Kinship Navigator Program. Second, CFSA has no kinship-navigator specific helpline, website, or resource guide. Last year, CFSA represented that its Kinship Navigator Program

³ 42 U.S.C. § 627(a)(1).

⁴ *Id.*

⁵ CFSA Oversight Responses FY 2019-2021, Question No. 82.e., available at <https://dccouncil.us/wp-content/uploads/2020/02/cfsa20.pdf>. There is also federal funding available for kinship navigator programs in FY 2021, as well as pandemic reimbursement of program expenses from April 4, 2020 through September 30, 2021, but we do not know if DC has already received or intends to receive these funds.

had a “helpline” number of 866-326-5461 or 866-FAM-KIN1.⁶ Yet, that telephone number is not answered “Kinship Navigator Program helpline” but rather “CFSA,” and the office that answers the phone is that of the Close Relative Caregiver Program. While CFSA also represented that it purchased “ a web-based directory to link kinship caregivers to resources, called “NOWPOW,”⁷ relative caregivers do not have access to it. It is only accessible by entering a dc.gov e-mail with a user ID and password.⁸ We understand CFSA uses NOWPOW to track referrals of community partner organizations with its Family First Success Centers, although our understanding is that many referrals are made directly—outside of the NOWPOW software. Further, the Success Centers are not tailored specifically to kinship families, but all families within each Center’s reach, which necessarily excludes relative caregivers of DC children who do not live in DC. The end result is that neither we nor our clients know what services or supports the CFSA Kinship Navigator Program provides, if any, or what the eligibility criteria is for obtaining them.

DC KinCare Alliance provides a robust, fully-functioning kinship navigator program on a shoestring budget of small grants and individual donations. We have a well publicized and accessible helpline, website and resource guide (both on-line and print versions) for relative caregivers to learn about legal and financial resources available to them. In addition to providing legal representation in court, we help relative caregivers with accessing hard to

⁶ CFSA Oversight Responses FY 2019-2021, Question No. 82.a., *available at* <https://dccouncil.us/wp-content/uploads/2020/02/cfsa20.pdf>.

⁷ CFSA Oversight Responses FY 2019-2021, Question Nos. 7 and 82.a., *available at* <https://dccouncil.us/wp-content/uploads/2020/02/cfsa20.pdf> .

⁸ <http://nowpow.cfsa.dc.gov/>. To be sure there was not an accessible kinship-specific website or webpage, a Google search was conducted on February 24, 2021 for the term “DC Kinship Navigator.” It did not identify CFSA’s Kinship Navigator Program. An additional search was conducted on CFSA’s website with the term “kinship navigator” in the search bar. Again, there was no result for CFSA’s Kinship Navigator Program.

obtain resources, such as food, clothing, furniture,⁹ and technology, as well as rental, utility, unemployment, and housing voucher assistance. Our Relative Caregiver Community Advisory Board, consisting of 18 relative caregivers raising 23 DC children, works in tandem with us to identify unmet needs and devise ways to address them. Significantly, our Board members regularly report that if we had not told them about and helped them obtain services, they never would have known about or been able to access them.

C. Ombudsperson for Children

A critical protection for children in DC will be the independent Ombudsperson for Children that: conforms to nationally recognized standards; mediates, investigates and advocates for DC children; and is not beholden to the agencies it oversees. We thank the DC Council for recognizing this need and for overriding the Mayor's veto of the Office of the Ombudsperson for Children Establishment Amendment Act of 2020. But the fight is not over. If there is to be a fully functioning Office of the Ombudsperson for Children at all, it will be up to the DC Council to make sure it has an appropriate budget to do its essential work.

D. Kinship Diversion (also known as Hidden Foster Care)

One of the issues the new Ombudsperson will face is kinship diversion (also known as hidden foster care). This occurs when CFSA determines that there is abuse or neglect of a child and the child can not remain safely at home with their parents, even with the provision of services. But, rather than follow both federal and DC law requiring removal of the child to foster care—preferably with a relative who has received an expedited temporary kinship foster care license—CFSA diverts the child to live with the relative, without providing the

⁹ DC KinCare Alliance recently partnered with Washington Womenade and So What Else to conduct a same-day donate and deliver furniture pilot project. Over just 2 weekends, we successfully distributed 79 pieces of furniture to DC and Maryland kinship families in need.

legally required due process, services or supports, including foster care maintenance payments. DC KinCare Alliance has filed federal lawsuits on behalf of kinship families who have been harmed by this illegal and discriminatory practice.¹⁰

In July 2020, CFSA issued a policy entitled “Diversion Process at Investigations,”¹¹ which defines diversion and purports to record and track its numbers. On page 1 of the policy, CFSA defines diversion as: “Rather than placing the child in foster care, CFSA will partner with the child’s parent to plan for the child to be safely cared for by a relative or another identified caregiver.” The accompanying footnote explains that a diversion “identifies who will assume physical care of the child.” The policy further explains the diversion determination process as follows: “When a child and their family comes to the attention of CFSA through a hotline report of abuse and neglect, the investigative social worker must conduct an assessment to determine if: (1) the child(ren)/youth is in imminent danger, which would result in a removal, and (2) if the child(ren)/youth can remain safe in the community with an identified caretaker.”

Accordingly, diversion as defined and practiced by CFSA involves the determination by CFSA that the parent cannot care for the child in his or her home because of abuse or neglect, ***and*** that the child must physically live somewhere other than the parent’s home to ensure the child’s safety. The only difference between foster care and diversion is that DC files a petition to remove and place a child in a foster care case, but removes and places the child without court involvement in a diversion case.

¹⁰ *K.H. et al. v. D.C.*, No. 19-3124 (D.C.D.C. filed Oct. 18, 2019); *S.K. et al. v. D.C.*, No. 20-00753 (D.C.D.C. filed March 17, 2020).

¹¹ CFSA Administrative Issuance 20-1, “Diversion Process at Investigations,” July 13, 2020, available at <https://cfsa.dc.gov/publication/ai-diversion-process-investigations>.

Regarding tracking diversion, the policy indicates that diversions are recorded and tracked by month. However, it does not require tracking of the most important information about diverted children -- *their outcomes following a diversion*, such as: how long children stay in a diversion arrangement; whether they return home and when; what services they receive; whether they are subject to future abuse or neglect; and whether they are ultimately removed to foster care.

There are many reasons why diversion as practiced by CFSA is problematic. First, as the policy provides, a decision to divert is initially made by a CPS social worker. Once this decision is made, CFSA *may* discuss the plan for the child to live with the relative with the parent and relative and *may* obtain the consent of the parent to do so. However, in some cases, parental consent is not ever obtained, raising serious constitutional concerns.¹² While CFSA references its Safety Plan Policy in its Diversion Policy, it is clear that it does not follow its requirements of having a written plan that a competent parent must execute, and that the plan be time limited and last no longer than 30 days. In our experience working with more than 350 kinship families, we have seen diversions where there is no parental consent or parents do not have the capacity to consent. Parents of diverted children often grapple with serious and pervasive mental health or substance use issues, and the family is well-known to CFSA. Yet, CFSA involvement never stops the cycle of abuse; rather, the child is maintained in an unsafe home or diverted over and over again to live with different relatives. We have also seen diversion *after* the child previously had been removed to kinship foster care, reunified with the parent, and then the parental abuse or neglect started all over again.

¹² “The state is limiting one of the most precious substantive liberty rights recognized by the Constitution—that of parents to the care, custody, and control of their children—and the reciprocal right of children to live with their parents.” Josh Gupta-Kagan, *America’s Hidden Foster Care System*, Stan. L. Rev. 841 at 843 (2020), available at <https://review.law.stanford.edu/wp-content/uploads/sites/3/2020/04/Gupta-Kagan-72-Stan.-L.-Rev.-841.pdf>.

From our first-hand observations of CFSA's diversion discussions with families and from the many accounts relayed to us by our clients, both the parent and the relative are coerced into agreeing to the diversion or safety plan for the child to live with the relative. The parent is coerced because they are told that if they do not agree, the child will go into foster care and it will be difficult to ever get the child back. In this situation, the parent is not in a position to freely consent to anything.¹³ CFSA has all the power and is effectively making the decision alone.

The caregiver is coerced because they are told that if they do not agree, the child will go into foster care with a stranger. The caregiver is never told that they would be the first choice for placement if the child were to be formally removed, nor is the caregiver told that they would receive a foster care payment to help care for the child. If the caregiver somehow knows to ask about kinship foster care, they are told that it is not available or that they may not qualify and that it could take a long time. They are not told that there is a fast track licensing process for kin and that all non-safety related requirements can be waived under DC regulations.

The second reason CFSA's diversion policy and practice is problematic is because it fails to grant any legal rights to the person who is taking the child into their home. In this regard, the caregiver is rarely provided with any documents needed to care for the child, such as the child's birth certificate, social security card, Medicaid card, or vaccination records. These things are needed to apply for benefits, get medical care for the child, and enroll the child in school. Additionally, a diversion arrangement does not grant legal custody to the caregiver nor is it legally enforceable. Accordingly, the parent could come get the child at

¹³ *Id.* at 866.

any time, or the caregiver could return the child to the parent even if the parent is still not safe.¹⁴

The third reason why CFSA's diversion policy and practice is troubling is that, by definition, the child is going to live informally with a relative *instead of* foster care. Foster care provides an important check on the power of CFSA to remove a child from a parent because parents and the child are appointed lawyers to represent them and a judge determines if there is sufficient evidence to warrant removal. With diversion, there is no check on the power of the agency.¹⁵ Foster care also furnishes services and supports that are not available through diversion. A parent will receive services to address the problem that led to the separation from their child and to assist with the goal of reunification.¹⁶ The licensed caregiver and the child will receive services like respite care and transportation to school and foster care maintenance payments that ameliorate the impact of poverty.¹⁷

The purpose of foster care is permanency, either through reunification with a parent or guardianship or adoption with the caregiver. Diversion provides none of these pathways, as children are diverted multiple times or stay with relatives informally for months, years, or even until they become adults. While CFSA may follow up for a short period (typically, no more than a month), CFSA will close its investigation even if the plan is not working, and leave the caregiver to figure out how to care for the child long-term. If a caregiver tells CFSA that they can no longer care for the child because of all of the hurdles to do so, CFSA will threaten the caregiver with a neglect case. In other words, once CFSA closes its case, it will not get reinvented to help stabilize the family unless a new allegation of abuse or neglect is

¹⁴ *Id.* at 882.

¹⁵ *Id.* at 875.

¹⁶ *Id.* at 878.

¹⁷ *Id.* at 880.

called into the hotline, which is when the “safety plan” has already failed. The reason we find out about diversion is invariably because something has gone wrong. CFSA treats abused and neglected children like hot potatoes; they do not want to be responsible for vulnerable children in need of protection.

In 2001 and 2004, the DC Council acknowledged these problems with diversion, known at the time as “temporary third party placements,” when it revoked CFSA’s authority to engage in them from the Child Abuse and Neglect Act.¹⁸ This revocation was in response to changes in federal laws and requests from the *LaShawn* court monitor. CFSA has decided to flout the DC Council’s intent to eliminate these arrangements by calling them by another name -- diversions.

DC KinCare Alliance requested information from CFSA about its new diversion policy through FOIA. We wanted to know how many children had been diverted to date. At first we were told that no children have been diverted. A month later, we were told that one child was diverted back in July of 2020. The truth is that DC KinCare Alliance has personal experience with at least four other families who have experienced diversion since the new policy was issued. It is clear that CFSA has not been properly tracking diversions, although it is unclear why this is the case – whether the staff are not properly trained on how to track diversion or whether there is a data integrity problem.

The District of Columbia has a much lower rate of foster care placement with kinship caregivers than the national average of 32%.¹⁹ CFSA stated in its oversight responses that DC’s rate is 28%,²⁰ and it was in FY 2020, but DC’s rate in the first quarter of FY 2021 went

¹⁸ Child and Family Services Agency Establishment Amendment Act of 2000, Pub. L. 13-277 (Apr. 2001); Child in Need of Protection Amendment Act of 2004, Pub. L. 15-531 (Apr. 2005).

¹⁹ Children’s Bureau, *Foster Care Statistics 2018*, available at <https://www.childwelfare.gov/pubPDFs/foster.pdf>.

²⁰ CFSA Oversight Responses FY 2020-2021, Question No. 69.a., available at www.dccouncil.us/wp-content/uploads/2021/02/FY20-21-CFSA-Pre-Hearing-Responses_FINAL.pdf.

down to 26%.²¹ CFSA claims its low rate is because many DC families identify Maryland caregivers and Maryland cannot waive the non-safety related licensing requirements that DC can; but if that were true, Maryland would also have a low kinship placement rate.

Maryland's kinship placement rate is 40%.²² The real reason DC continues to lag behind year after year is because of diversion.

The vast majority of families involved with CFSA are Black, live in Wards 7 and 8, are poor, and have lower levels of education. This results in a concerning power imbalance between the agency and the families they are tasked to serve. CFSA takes advantage of this power imbalance to deny kinship families much needed economic benefits to which they are entitled. We ask the DC Council to take this opportunity to review CFSA's recent diversion policy and long time practices, which only serve to exacerbate existing inequalities—the very definition of systemic racism.

E. Child Fatalities and Near Fatalities

Another area the Ombudsperson for Children will need to tackle is determining how many children die or suffer from near fatalities as a result of abuse or neglect in DC each year.²³ Stunningly, we do not have answers to these critical questions because it is not anyone's job to collect or make publicly available *any data* on near fatalities, and the data provided in public reports on fatalities is not provided in a way that would assist the DC Council to ensure all steps are being taking to prevent child maltreatment deaths. As a result, we cannot answer any of the following questions:

What is the number of DC children who die from maltreatment each year, and is that number going up or down?

²¹ CFSA Data DashBoard at <https://cfsadashboard.dc.gov/node/1435526>.

²² <https://datacenter.kidscount.org/data/tables/6247-children-in-foster-care-by-placement-type#detailed/2/22/false/37,871,870,573,869,36,868,867,133,38/2622,2621,2623,2620,2625,2624,2626/12994,12995>.

²³ Near Fataility is defined as “a child in serious or critical medical condition as a result of child abuse, neglect, or maltreatment, as certified by a physician.” DC Code § 4-1303.31(6).

What is the number of children who suffer a near fatality from maltreatment each year, and is that number going up or down?

Is CFSA doing its most important job of protecting DC children from death and near fatalities?

The Child Fatality Review Committee (CFRC) is required to issue an Annual Report of Findings and Recommendations to the public every year.²⁴ However, each CFRC Report reviews deaths over multiple years and does not include statistical information broken down by the year in which the deaths occurred. There is no way to identify the number of child deaths due to maltreatment by the year in which they occur. CFSA issues its own annual internal Child Fatality Review Reports, but again, the cases reviewed range over a number of years so it is impossible to tell how many children die from maltreatment in any particular year. For example, CFSA asserts in its 14th Annual Child Fatality Review Report that there were no fatal abuse homicides in 2018 among children known to CFSA within the preceding five years;²⁵ however, it is impossible to be confident in this assertion since a significant portion of child fatalities that occurred in 2018 were not reviewed by CFSA that same year.²⁶ It is difficult to believe that of the four homicides of infants and children age five years and younger reported by the Office of the Chief Medical Examiner for 2018,²⁷ not one of them was the result of fatal abuse in families known to CFSA.

²⁴ D.C. Code § 4-1371.09(f).

²⁵ District of Columbia Child and Family Services Agency 14th Annual Child Fatality Review Report titled *Child Fatalities: Statistics, Observations and Recommendations 2018* at pp. 1-2, available at [Statistics, Analyses, and Recommendations \(dc.gov\)](#).

²⁶ These statistics clearly do not include two-year old Aceyson “Ace” Ahmad who was beaten to death on April 17, 2018 or one-year old Carter Sanders who was beaten to death on May 16, 2018 or six-month old Brooklynn Hill-Davis who was scalded to death on September 5, 2018, all of whom may or may not have been known to CFSA. <https://washingtoncitypaper.com/article/180828/to-escape-court-oversight-dcs-child-welfare-system-is-cutting-corners/>.

²⁷ District of Columbia Office of the Chief Medical Examiner 2018 Annual Report, published December 31, 2019 at p. 44, available at [OCME 2018 Annual Report.pdf \(dc.gov\)](#).

We wanted to see if there were any fatal abuse homicides in 2018 among child deaths reviewed by CFSA in last year's 15th Annual Child Fatality Review Report, but we could not—not because CFSA did not review any child fatalities that occurred in 2018 in 2019—they did, ten of them, but because CFSA did not include statistical data or analysis for those deaths in its report at all.²⁸ CFSA only included information about thirteen deaths that occurred in 2019. Frighteningly, of the thirteen child deaths that occurred in 2019 and that were also reviewed in 2019, three of them were abuse and neglect homicides.²⁹ In other words, it looks like the number of child deaths due to abuse and neglect among children known to CFSA is going up—a lot—from zero in 2018 to three in 2019. Unless this Council demands better information from CFSA, we will never know the true numbers of child maltreatment deaths each year because CFSA is refusing to release the data for the deaths it reviewed in 2019 for preceding years, including the ten deaths that occurred in 2018 and the seven deaths in 2017.

Does a child's death really matter less based on whether their death is reviewed in December or January of a particular year? Does the Council want to know if any of the ten child deaths that occurred in 2018 or seven child deaths that occurred in 2017, but not reviewed by CFSA until 2019, were a result of child maltreatment? Does the Council want the next CFSA Child Fatality Review Report to provide information on 2019 deaths that occurred in 2019 but were not reviewed by CFSA until 2020?

It looks like child maltreatment deaths are going up because CFSA has narrowed the front door so much that they are keeping children out of foster care who are literally dying to

²⁸ District of Columbia Child and Family Services Agency 15th Annual Child Fatality Review Report titled *Child Fatalities: Statistics, Observations and Recommendations 2019* at p. 1, available at [2019 Annual Child Fatality Review Report vF - 11.19.20 \(dc.gov\)](#).

²⁹ *Id.* at p. 3.

come in. The way to find out for sure is to require CFSA to amend its 2019 Child Fatality Review Report to include all the omitted cases from prior years and, moving forward, to prepare its annual Child Fatality Reports based on all child fatalities reviewed by CFSA during that year. In conclusion, CFSA's new reporting practice arbitrarily deprives policy makers and the public of critical information to evaluate how well CFSA is carrying out its mission to protect DC's children and, if not remedied, the validity and utility of the data will become more flawed each year.

Thank you for the opportunity to testify today. I am happy to answer any questions.