

February 7, 2022

Christina Grant, Ph.D.  
Acting State Superintendent of Education  
Office of the State Superintendent of Education  
1050 1<sup>st</sup> Street, NE  
Washington, DC 20002

***Re: Barriers for Non-Parent Caregivers to Access the DC Child Care Subsidy***

Dear Dr. Grant,

On behalf of DC's non-parent caregivers and the children they raise, we have identified burdensome and unnecessary barriers for these caregivers to access the DC child care subsidy (CCS). Specifically, OSSE's current practices exclude children from CCS eligibility because their caregivers are unable to show an accepted legal relationship between themselves and the children they are raising. For the reasons set forth below, we request that OSSE explicitly include children being raised by non-parent caregivers who are acting *in loco parentis* as eligible for CCS.

**Purposes of the CCS**

OSSE's federally-funded CCS program allows caregivers to continue to attend work, complete school or vocational programs, or search for jobs if they are not already employed. CCS payments allow caregivers to pursue these goals when they might otherwise be obligated to devote time to child care responsibilities. Without these payments, caregivers are restricted in the opportunities they can pursue.

Studies have found that the receipt of CCS payments correlates with increased earnings and work duration, and reduced child care related work disruptions.<sup>1</sup> Studies also have shown a positive correlation between CCS payments and educational attainment by mothers with young children.<sup>2</sup>

The benefits of CCS extend not only to caregivers, but to children too. A 2019 study found that young children enrolled in licensed, subsidized child care centers, or home-based arrangements,

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<sup>1</sup> Robert Wood Johnson Foundation. (2020). "Child Care Subsidies: Supporting Work and Child Development for Health Families," HEALTHAFFAIRS, pg. 2, available at <https://www.healthaffairs.org/doi/10.1377/hpb20200327.116465/full>

<sup>2</sup> *Id.*

demonstrated higher reading and math scores in third grade, as well as fewer absences in junior high school when compared to children who were not in subsidized child care.<sup>3</sup>

### **Federal CCS Legal Requirements**

Applicable federal regulations set forth eligibility criteria for CCS as follows: “the child shall . . . reside with a parent or parents who are working or attending a job training or educational program.”<sup>4</sup> The regulations define “parent” as “a parent by blood, marriage, or adoption and also means a legal guardian, *or other person standing in loco parentis*.”<sup>5</sup> (*emphasis added*). Accordingly, caregivers who are acting *in loco parentis* to a child are eligible to receive CCS payments under federal law.

### **DC CCS Legal Requirements**

Section 200.1(b) of the DC CCS regulations provide that a child is eligible for CCS if, among other things, they “reside with a parent(s), guardian(s), *or adult with legal relationship to the child*.”<sup>6</sup> (*emphasis added*). Similarly, Section 200.3 of the OSSE Manual,<sup>7</sup> provides that a CCS applicant must have “a valid legal relationship to the child (such as parent, guardian, custodian, foster parent, or TANF payee).” While these provisions appear to provide flexibility, Section 300.3 of the OSSE Manual prescribes that the legal relationship requirement can *only* be proven by providing specific documentation, which significantly limits eligibility of children raised by non-parent caregivers, as described below:

- An original birth certificate showing the legal relationship
  - Non-parent caregivers are typically not listed on birth certificates, which are oftentimes difficult and expensive to obtain
- Hospital record of birth
  - This requirement is limited to infants under 6, and would not show a legal relationship between a child and a non-parent caregiver
- An adoption or custody order with a finalization date, issued by a court
  - The court procedures required to obtain adoption and custody orders are lengthy and expensive

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<sup>3</sup> Johnson, A.D., Zononi, W. (2019). “Child Care Subsidy Use and Children’s Outcomes in Middle School,” *Sage Publications*, Vol. 5, No. 4, pg. 1-19, doi:10.1177/2332858419884540, available at <https://journals.sagepub.com/doi/pdf/10.1177/2332858419884540>.

<sup>4</sup> 45 C.F.R. § 98.20(a)(3)(i). (*emphasis added*).

<sup>5</sup> 45 C.F.R. 98.2. Black’s Law Dictionary defines *in loco parentis* as “in the place of a parent’ instead of a parent; charged, factitiously, with a parent’s rights, duties, and responsibilities.” Black’s Law Dictionary, *What is IN LOCO PARENTIS?*, available at <https://thelawdictionary.org/in-loco-parentis/>.

<sup>6</sup> 5-A DCMR § 201.1(b).

<sup>7</sup> OSSE, *Eligibility Determinations for Subsidized Child Care Policy Manual*.

- *This option specifies that a notarized letter from a parent or guardian turning the child over to a caregiver will be insufficient to fulfill the documentation requirement*<sup>8</sup>
- A referral from a DC government agency that verifies the legal relationship
  - This will not be helpful if the legal relationship is not acceptable to OSSE (i.e. an *in loco parentis* relationship)
- Documentation from a federal or DC entity proving the applicant’s legal relationship to the child, including receiving benefits on behalf of the child, such as documentation of receipt of TANF payments on behalf of the child
  - TANF benefits can take months to obtain for non-parent caregivers due to onerous bureaucratic hurdles and lengthy timeframes
  - TANF eligibility is restricted to a blood relationship between the caregiver and the child

The documentation options listed above effectively exclude from eligibility those children being cared for by individuals acting *in loco parentis* to the children. Correspondingly, in our experience, CCS workers consistently tell non-parent caregivers that they must obtain a court custody order to be eligible for CCS benefits.

**Excluding *In Loco Parentis* from CCS Eligibility Is Not Required By Applicable Law or Regulations**

DC’s exclusion from CCS eligibility of an individual acting *in loco parentis* is not required by Federal law or applicable DC CCS regulations. In addition, OSSE’s own Manual includes the word “custodian” as a person who is eligible to apply for CCS. Custodian is defined in D.C. Code § 16-2301 as “a person or agency, other than a parent or legal guardian: (A) to whom the legal custody of a child has been granted by the order of a court; (B) **who is acting *in loco parentis***; or (C) who is a daycare provider or an employee of a residential facility, in the case of an abused or neglected child.” (**emphasis added**). Moreover, DC regulations recognize that an *in loco parentis* relationship is sufficient for the purpose of a non-parent caregiver proving a child’s residence for enrolling a child in school as follows:<sup>9</sup>

A minor student’s *bona fide* residence in DC may be based upon that of another primary caregiver if:

- (a) the student resides with the other primary caregiver;
- (b) the other primary caregiver provides both
  - (1) care or control; and
  - (2) substantial support for the student; and
- (c) the student’s parents, guardians, or custodians have abandoned the child; or

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<sup>8</sup> Refusing to accept a notarized letter, also known as a Custodial Power of Attorney, constitutes discrimination on the basis of familial status under the DC Human Rights Act. D.C. Code § 2-1401.01 *et seq.*

<sup>9</sup> 5A DCMR § 5005.

(d) the student's parents, guardians, or custodians are unable to provide both care or control, and substantial support due to adverse consequences such as serious family hardship.<sup>10</sup>

The following terms are defined as they relate to the above listed criteria:

- *Support* is defined as “exercising primary responsibility to provide the child with financial resources for the child’s livelihood.”
- *Care* is defined as “exercising primary responsibility to provide the child with guidance, maintenance, and physical care,” which are each defined as follows:
  - *Guidance* is participation in the responsibility for the child’s development on a daily basis. Such participation includes, but is not limited to, attending school conferences, disciplining the child, participating in decisions concerning the child’s well-being, and being involved in the child’s extracurricular activities;
  - *Maintenance* is providing necessities such as food, clothing, and shelter; and
  - *Physical care* is providing continuous care for the child by performing tasks required in the child’s daily life. Such tasks include, but are not limited to, bathing, feeding, dressing, assuring medical attention will be received by the child, preparing meals, supervising the child’s activities, and assisting with other physical care needs.<sup>11</sup>

The non-parent caregiver can establish their role as primary caregiver to the child through one of the following types of documentation:

- (a) previous school records indicating that the student is in the care of the caregiver;
- (b) immunization or medical records indicating that the student is in the care of the caregiver;
- (c) proof that the caregiver receives public or medical benefits on behalf of the student;
- (d) a signed statement, sworn under penalty of perjury, that he or she is the primary caregiver for the student; or
- (e) an attestation from a legal, medical, or social service professional attesting to the caregiver’s status relevant to the student.<sup>12</sup>

All of the above requirements, which form the essence of an *in loco parentis* relationship, are met if a non-parent caregiver completes OSSE’s Other Primary Caregiver (OPC) Form (attached). This Form is regularly used when a non-parent caregiver enrolls a child in school. It should also be accepted for purposes of enrollment of a child in the CCS program.

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<sup>10</sup> *Id.* at 5005.2.

<sup>11</sup> *Id.* at 5099.

<sup>12</sup> *Id.* at 5005.3.

## **Conclusion**

OSSE should broaden access to the CCS by explicitly including *in loco parentis* as one of the legal relationships eligible for CCS, and OSSE should accept its OPC Form for this purpose. Doing so is consistent with the overarching purposes of the CCS program, as well as with existing Federal and DC child care and school enrollment regulations. **A minor change to the OSSE Manual as it pertains to CCS is all that would be required.**

By increasing access to CCS, DC's children from low-income families headed by non-parent caregivers acting *in loco parentis* will benefit in the same way as families headed by biological parents or legal guardians. This is because non-parent caregivers acting *in loco parentis* face the same challenges in balancing work and caregiving as parents and legal guardians. Moreover, all children have the same needs for safe spaces while their caregivers are working. This is true whether they are biologically related to their caregivers or not, and whether a court has formalized their relationship or not. It is time for OSSE to foster inclusivity and recognize these families before and after school – not just during it.

We would like to meet with you to discuss how we can work together to ensure that non-parent caregivers of DC children are able to fully access the CCS.

Sincerely,

Rochanda Hiligh-Thomas  
Executive Director  
Advocates for Justice and Education

Allison Miles-Lee  
Managing Attorney  
Bread for the City

Arika Adams  
Executive Director  
CASA for Children of DC

Judith Sandalow  
Executive Director  
Children's Law Center

Marie Cohen  
Child Advocate  
Child Welfare Monitor

Marla Spindel  
Executive Director  
DC KinCare Alliance

Sara Tennen  
Executive Director  
DC Volunteer Lawyers Project

Jennifer Mezey  
Deputy Legal Director  
Legal Aid of the District of Columbia

Rhonda Cunningham Holmes  
Executive Director  
Legal Counsel for the Elderly

cc: Committee of the Whole, The DC Council



# Other Primary Caregiver (OPC) Form – 2021-22 School Year

Use this form to verify that the enrolling student is under the care of "Other Primary Caregiver." School officials should only collect this form if the person enrolling the student is NOT the parent, legal guardian, or court appointed custodian of the student and whose parent, custodian, or guardian is unable to supply such care and support due to serious family hardship.

## Step One: Determine if you are an Other Primary Caregiver.

An "Other Primary Caregiver" is a person other than a parent or court-appointed custodian or guardian who is the primary provider of care or control and support to a student who resides with him or her, and whose parent, custodian, or guardian is unable to supply such care and support due to serious family hardship. Other Primary Caregivers must establish DC residency as required on the DC Residency Verification Form, in addition to establishing his/her status as an "Other Primary Caregiver." See reverse for definition of care or control and substantial support.

## Step Two: Provide information about your Other Primary Caregiver status.

<b>Student First Name:</b>	<b>Student Last Name:</b>	
<b>OPC First Name:</b>	<b>OPC Last Name:</b>	
<b>OPC Address:</b>		
<b>City:</b>	<b>State:</b>	<b>ZIP:</b>
<b>Relationship to enrolling student:</b>	<b>Date student started residing with OPC:</b>	
<b>Verify Other Primary Caregiver status (check any that apply):</b>		
<input type="checkbox"/> I provide care or control for the enrolling student <input type="checkbox"/> Enrolling student resides with me, the other primary caregiver		
<input type="checkbox"/> I provide substantial support for the enrolling student		

## Step Three: Provide information about the parent/legal guardian.

<b>Full Name of Parent/Legal Guardian:</b>			
<b>Address of Parent/Legal Guardian:</b>			
<b>City:</b>	<b>State:</b>	<b>ZIP:</b>	<b>Phone:</b>
<b>The parent or legal guardian is unable to provide primary care and substantial support because of the following serious family hardship (check any that apply):</b>			
<input type="checkbox"/> he/she has an active military assignment <input type="checkbox"/> he/she is incarcerated			
<input type="checkbox"/> he/she suffers from a serious illness <input type="checkbox"/> he/she does not live with the child due to neglect and/or abuse			
<input type="checkbox"/> he/she is deceased <input type="checkbox"/> he/she has abandoned the child			
<input type="checkbox"/> he/she is experiencing loss of habitability <input type="checkbox"/> he/she is unavailable due to deportation			

## Step Four: Confirmation of Other Primary Caregiver Status.

By signing below, I swear and attest that I am the Other Primary Caregiver and the parent, custodian, or guardian is unable to supply such care and support because of a **serious family hardship**. I further accept that all provisions set forth in "Step Three: Certification of Residency Requirements" on the DC Residency Verification Form are incorporated and merged herein.

**Other Primary Caregiver SIGN HERE:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### SCHOOL OFFICIAL USE ONLY Complete the area below to confirm school verification of other primary caregiver status.

I reviewed the Other Primary Caregiver status as specified above and the OPC meets all three criteria and that the parent or legal guardian is unable to provide primary care and substantial support due to serious family hardship. In addition, the above identified Other Primary Caregiver provided one of the following documents to verify OPC status:

- |  |   |
|--|---|
| <input type="checkbox"/> Sworn Statement                       | <input type="checkbox"/> Unexpired official documentation from the federal government or the Government of the District of Columbia |
| <input type="checkbox"/> Records from the previous school year | <input type="checkbox"/> Attestation for Other Primary Caregiver  |
| <input type="checkbox"/> Immunization or medical records       |   |

I certify, under the penalties of perjury, that I have personally reviewed all the documents presented and affirm that the information represented above is true to the best of my knowledge, information, and belief. I also affirm that all supporting documentation to this form will be retained by the school and made available to OSSE, external auditors, and other agencies, including but not limited, to the DC Office of the Inspector General and the DC Office of the Attorney General, upon request.

**School Official Name (print):** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Other Primary Caregiver must submit one of the documents identified below to verify the other primary caregiver status.**

<b>Methods</b>	<ul style="list-style-type: none"> <li>• <b>A completed and signed sworn statement</b> indicating that he/she is the primary caregiver for the student.</li> <li>• <b>Records from the previous school year</b> indicating that the student is in the care of the caregiver, including, but not limited to, a signed report card.</li> <li>• <b>Immunization or medical records</b> issued within the last 12 months immediately preceding the school’s review of the residency documentation, indicating that the student is in the care of the caregiver.</li> <li>• <b>Unexpired official documentation from the federal government or the Government of the District of Columbia</b> with an issue date within the last 12 months immediately preceding the school’s review of residency documentation, indicating that the caregiver receives public or medical benefits on behalf of the student, including, but not limited to, Supplemental Security Income annual benefits notification or TANF verification of income notice or recertification approval letter.</li> <li>• <b>An attestation for Other Primary Caregiver completed and signed by a legal, medical or social service professional</b> attesting to the caregiver’s status relevant to the student and issued within the last 12 months immediately preceding the school’s review of residency documentation.</li> </ul>
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**Am I an Other Primary Caregiver?**

5-A DCMR § 5099 states that an Other Primary Caregiver (OPC) is a person, other than the enrolling student’s parent or court appointed custodian or guardian. The enrolling student must *reside* with the OPC and the OPC *must provide the student with guidance, maintenance, physical care and support*. In addition, **the student’s parents, guardians, or custodians are unable to provide the student primary care and substantial support due to serious family hardship**. If you do not provide guidance, maintenance, and physical care, and the student’s parents, guardians, or custodians do not suffer from a serious family hardship, you do not qualify as an Other Primary Caregiver. Do you provide the following items in the table below?

<b>Support</b>	When the OPC is exercising <i>primary</i> responsibility to provide the child with financial resources for the child’s livelihood.
<b>Guidance</b>	When the OPC participates in the responsibility for the child’s development on a daily basis: <ul style="list-style-type: none"> <li>• Attending school conferences</li> <li>• Disciplining the child</li> <li>• Participating in decisions concerning the child’s well-being</li> <li>• Involvement in the child’s extracurricular activities</li> </ul>
<b>Maintenance</b>	When the OPC is providing necessities: <ul style="list-style-type: none"> <li>• Food</li> <li>• Clothing</li> <li>• Shelter</li> </ul>
<b>Physical care</b>	When the OPC is providing continuous care for the child by performing tasks required in the child’s daily life: <ul style="list-style-type: none"> <li>• Bathing</li> <li>• Feeding</li> <li>• Dressing</li> <li>• Assuring medical attention will be received by the child</li> <li>• Preparing meals</li> <li>• Supervising the child’s activities</li> <li>• Assisting with other physical care needs</li> </ul>