

February 7, 2022

Andrea Powell, Esquire
General Counsel
DC Housing Authority
1133 North Capitol Street, N.E.
Washington, DC 20002

Re: Barriers for Non-Parent Caregivers Adding Children to Public Housing Vouchers

Dear Ms. Powell,

On behalf of DC's non-parent caregivers and the children they raise, we have identified burdensome and unnecessary barriers for these caregivers to add children to their public housing lease or vouchers. Specifically, the DC Housing Authority's (DCHA's) current practices exclude non-parent caregivers from adding children to their leases or vouchers unless they have a permanent custody order. For the reasons set forth below, we request that DCHA follow its own regulations and comply with DC and federal fair housing laws by accepting other forms of documentation showing the caregiving relationship, and not just permanent custody orders.

Applicable DC Regulations

Section 6117.2 of the DC Municipal Regulations provides that "a family shall notify in writing to DCHA of any additions to their household composition in cases of (1) Persons born to an existing household member; (2) Persons legally adopted by an existing household member; (3) Persons subject to a custodial power of attorney; and (4) Persons who have been added to the household of an existing household member by order of a court of competent jurisdiction including orders of guardianship, conservatorship, and legal custody." It further states that the family will submit "a copy of the appropriate court order, a birth certificate, custodial power of attorney, or other supporting documentation deemed necessary by DCHA within thirty (30) days of the addition to the household composition. . ."

Section 6117.4 of these regulations provides that "DCHA may permit Lessees to add minor children . . . with a care giving relationship to their voucher . . . if appropriate documentation showing the relationship is provided to DCHA." Section 6117.4(b) explains that "***[d]ocumentation shall be sufficient to establish the care giving relationship*** and may include: notarized authorization from the child's legal guardian, school or medical records, public benefit records, and sworn statements from medical, legal, social service professionals, teachers or clergy." (*emphasis added*).

Pursuant to DCHA's own regulations, a permanent custody order is not required to add a child to a DCHA housing voucher. The regulations provide flexibility by allowing the addition of a child to the voucher if the voucher-holder has any type of custody order – not just a permanent custody

order – as well as other types of documentation, such as a Custodial Power of Attorney, or other records that show that the voucher-holder is caring for the child.

Discrimination Under the DC Human Rights Act and Federal Fair Housing Act

Both the DC Human Rights Act and federal Fair Housing Act¹ prohibit discriminatory housing practices based on familial status. 42 U.S.C. § 3604(a)-(e); 24 C.F.R. § 100.60; D.C. Code § 2-1401.01 *et seq.* They define “familial status” as: one or more individuals (who have not attained the age of 18 years) being domiciled with—

- (1) a parent or ***another person having legal custody*** of such individual or individuals; or
- (2) ***the designee of such parent*** or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant ***or is in the process of securing legal custody of any individual who has not attained the age of 18 years.*** (*emphasis added*).

The DC Council and Congress have mandated protection for three types of guardians for minors: parents, legal custodians, and designees of parents or legal custodians. For legal custodians, the statutes do not make any distinction between permanent and temporary legal custodians -- all legal custodians, whether they be permanent or temporary, are protected. The statute also provides protection to persons “in the process of securing legal custody,” thus making it clear that an individual who has filed for custody of a child is protected. Public housing lessees and voucher-holders who are designated by parents or legal custodians as caregivers to a child are also protected under these laws. A Custodial Power of Attorney should therefore be sufficient to add a child to a public housing lease or voucher.²

Conclusion

By requiring non-parent caregivers to provide a permanent custody order to add children to their public housing leases or vouchers, DCHA is violating its own regulations as well as discriminating against these families on the basis of their familial status. DCHA must allow such a lessee or voucher-holder to add children to their household if they have filed for custody, have a temporary custody order, have been legally granted permission to have physical custody of the children pursuant to a Custodial Power of Attorney, or have other documentation showing the caregiving relationship.

¹ The federal Fair Housing Act provides that “any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.” 42 U.S.C. § 3615.

² See *Pickens v Southern Nev. Reg'l. Hous. Auth.* 2015 U.S. Dist. LEXIS 150405, *9 (D.Nev. 2015) (finding that “the housing authority's policy requiring all section 8 recipients to obtain legal guardianship violates federal law because it alters FHA/HUD protections for **designees** that otherwise qualify for familial status”); *Ortega v. Hous. Auth. of Brownsville*, 572 F. Supp. 829, 840 (S.D. Tex. 2008) (finding “the policy of requiring all recipients living with minors to obtain legal guardianship constitutes unlawful discrimination on the basis of familial status against **designees** with written permission to have custody of a minor and violates the FHA and HUD regulations”).

All children have the same needs for safe housing, whether or not they are biologically related to their caregivers, and whether or not a court has formally recognized their relationship. It is time for DCHA to foster inclusivity and permit these caregivers to add children to their public housing leases and vouchers as required by law.

We would like to meet with you to discuss how we can work together to ensure that non-parent caregivers are able to add the children they raise to their public housing leases or vouchers.

Sincerely,

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cc: Councilmember Brianne Nadeau, Chair, Committee on Human Services