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**Testimony Before the Council of the District of Columbia
Committee on Human Services**

**Public Hearing:
Performance Oversight Hearing
District of Columbia Housing Authority
February 24, 2022**

**Stephanie McClellan
Deputy Director, DC KinCare Alliance**

Good morning, Chairperson Nadeau and Members of the Committee on Human Services. My name is Stephanie McClellan and I am the Deputy Director of DC KinCare Alliance. I am pleased to testify today regarding the administration of the District of Columbia Housing Authority (DCHA) as it relates to adding children to the households of caregivers with DCHA leases or housing vouchers.

The mission of DC KinCare Alliance is to support the legal, financial, and related service needs of relative caregivers who step up to raise 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 the only organization in DC focused solely on serving relative caregivers raising DC's at-risk children.

Here in D.C., 9,000 children are living in the care of relatives with no parent present at a rate that is double the national average.¹ These relatives are primarily Black women who live in Wards 7 and 8. They often live at the economic margins of our society, even before they are called upon to raise a relative child. Many also report a significant disability.

The children who come into their care often have serious mental health or medical needs and suffer from trauma. These relative caregivers need financial help and stable housing to raise these children. However, the established systems are set up for traditional families, not kinship families, resulting in severe barriers to access benefits by relative caregivers.

One area where this occurs is with respect to adding children to DCHA leases and vouchers. On a regular basis, clients come to us for help with adding children to their public housing leases or vouchers. Typically, they have been told by their assigned DCHA caseworker that they must have a

¹ The Annie E. Casey Foundation, *Kids Count Data Center*, "Children in kinship care in District of Columbia," available at <https://datacenter.kidscount.org/data/tables/7172-children-in-kinship-care?loc=10&loct=3#detailed/3/any/true/1687,1652,1564,1491,1443,1218,1049,995/any/14207,14208>.

permanent custody order to add children to their households, and they ask us to help them obtain one. However, a permanent custody order is not required by applicable DC regulations and, requiring one is in violation of the DC Human Rights Act and the federal Fair Housing Act. Moreover, obtaining a permanent custody order can take years, so requiring one causes housing instability for low-income caregivers of color.

First, DCHA regulations specifically provide that a custody order may be used to show that children are living with the caregiver for purposes of adding them to the voucher, but the regulations do not require that the custody order be permanent. DC Municipal Regulations § 6117.2. Further, DCHA regulations specifically require DCHA to accept the following additional types of documentation to establish the caregiving relationship: “notarized authorization from the child's legal guardian (often referred to as a Custodial Power of Attorney), school or medical records, public benefit records, and sworn statements from medical, legal, social service professionals, teachers or clergy.” DC Municipal Regulations § 6117.4(b).

Second, both the DC Human Rights Act and federal Fair Housing Act² 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.* The term familial status is means anyone living with a child who has legal custody of that child, is a designee of the person with legal custody, or is in the process of obtaining legal custody. 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 statutes also provide protection to persons “in the

² 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.

process of securing legal custody,” making it clear that even an individual who has just 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 so a Custodial Power of Attorney should be sufficient to add a child to a public housing lease or voucher.

* * *

We recently submitted a letter with other advocates to DCHA raising these concerns, and that letter is attached. 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. DCHA staff should be trained on applicable laws and regulations so they are not relaying improper information to caregivers and discriminating against them. We would be pleased to be a resource to DCHA for any such training.

I am happy to answer any questions.

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,

Rochanda Hiligh-Thomas
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cc: Councilmember Brianne Nadeau, Chair, Committee on Human Services