

**Testimony before the District of Columbia Council  
Committee on the Judiciary and Public Safety  
Child Support Services Division of the Office of Attorney General  
Agency Performance Oversight Hearing  
Fiscal Year 2013-2014**

**Vanessa Batters-Thompson, Staff Attorney, Bread for the City  
Ashley McDowell, Staff Attorney, Legal Aid Society of the District of Columbia**

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The Legal Aid Society of the District of Columbia<sup>1</sup> and Bread for the City<sup>2</sup> provide this testimony to the Committee on the Judiciary and Public Safety to share several of our concerns about the Child Support Services Division (“CSSD”) of the Office of the Attorney General (“OAG”). Specifically, our testimony will address the agency’s lack of transparency regarding its recent employment initiative, and what our clients have experienced in terms of its consistent opposition to the granting of court-ordered paternity tests in many child support cases.

Legal Aid and Bread for the City have significant experience litigating with and against attorneys from OAG/ CSSD. Both organizations have long represented custodial and noncustodial parents in child support cases in the District of Columbia. Starting in 2011, Legal Aid and Bread for the City received Access to Justice grants from the D.C. Bar Foundation to fund a joint Child Support Community Legal Services Project. Through this Project, we offer court-based legal services at the Paternity and Child Support (“P&S”) Branch of the D.C. Superior Court. Five days per week, attorneys from Legal Aid and Bread for the City provide legal information, advice, and same-day temporary representation to custodial and non-custodial parents in their paternity and child support cases. We also represent custodial and non-custodial parents in the Domestic Relations Branch and Domestic Violence Unit of the Court, in which OAG/CSSD is often involved in the child support part of the case.

As a result to our longstanding commitment to representing litigants with child support cases and our ongoing presence at the District’s Superior Court, we are intimately familiar with the performance challenges currently facing OAG/CSSD, which initiates the vast majority of cases in the P&S Branch. Although we frequently oppose OAG/CSSD in the courtroom, we

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 80 plus years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following four priority areas: consumer, family law, housing, and public benefits. Legal Aid also handles appellate cases in the D.C. Court of Appeals. More information about Legal Aid and its work can be found on our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

<sup>2</sup> Bread for the City, founded in the mid-1970s, provides vulnerable residents of Washington, D.C. with free comprehensive services, including food, clothing, medical care, and legal and social services, in an atmosphere of dignity and respect. Bread for the City’s Legal Clinic provides representation in the following areas: family law, housing, and public benefits.

unreservedly share CSSD's goal of helping reduce poverty among District children and families. We believe the OAG/CSSD's paralegal and attorney staffing has improved within recent years such that litigants in court are treated with more respect. We testify today to share our concerns about CSSD in hopes of seeking further improvement in the agency's functioning and helping CSSD reach this goal.

Improving the administration of the District's child support program benefits both families and the District government. Given the current economic climate, families' need for increased income from child support is especially acute. At the same time, a sluggish economic recovery has made it more difficult for noncustodial parents to pay child support. If CSSD improves its operations to ensure that fair, accurate orders are established and enforced, parents who pay child support will be more likely to comply and more families will receive the support that they need, allowing them to become self-sufficient and reduce their reliance on public benefits. Additionally, this will inject more money into the District economy, helping all District residents. We hope that our testimony will start a dialogue with OAG/CSSD, the Council, and other stakeholders to ensure that the District's children receive the support that they need.

**OAG/CSSD must provide more data to the public regarding its Non-Custodial Parent Employment Program and why its contract with a highly regarded employment vendor was not renewed.**

Bread for the City and Legal Aid strongly support the laudable goal of helping noncustodial parents gain employment. Non-custodial parent employment is one of the best predictors of child support collections. In 2012, 72% of child support collected nationwide was through wage-withholding.<sup>3</sup> Because employment is essential to getting families the support they need, the federal Office of Child Support Enforcement encourages local child support agencies to provide employment services and incentives to non-custodial parents.<sup>4</sup>

Aided by federal child support incentive funds, OAG/CSSD entered into a contract with Educational Data Systems, Inc. ("EDSI") in 2012 to provide employment services to non-custodial parents with D.C. child support cases. However, our understanding is that OAG/CSSD will not renew its contract with EDSI because EDSI failed to meet OAG/CSSD's expectations. Unfortunately, OAG/CSSD has not publicly shared detailed information regarding the contract and any performance data that could be used to evaluate why this program did not work. It is important for District families who need child support to understand what went wrong and what lessons can be learned. The agency's reluctance to facilitate open access to information regarding its Non-Custodial Parent Employment Program requires substantial oversight by this Committee.

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<sup>3</sup> OFFICE OF CHILD SUPPORT ENFORCEMENT, FY2012 PRELIMINARY REPORT. ( Aug. 15, 2013), *available at* <http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report>.

<sup>4</sup> OFFICE OF CHILD SUPPORT ENFORCEMENT, IMPROVING OUTCOMES THROUGH EMPLOYMENT PROGRAMS, (August 2012) *available at* [http://www.acf.hhs.gov/sites/default/files/ocse/improving\\_outcomes\\_through\\_employment\\_programs.pdf](http://www.acf.hhs.gov/sites/default/files/ocse/improving_outcomes_through_employment_programs.pdf).

EDSI is a nationally recognized workforce development program, with experience working for the Pennsylvania Bureau of Child Support Enforcement, as well as D.C. Superior Court's Fathering Court. EDSI was chosen as a provider by OAG/CSSD because of its strong performance in other child support contracts and because EDSI has ties with local employers.<sup>5</sup> According to OAG/CSSD's website, the joint program with EDSI would fulfil a range of goals:

The program will provide participants employment-related services, including but not limited to in-depth assessments, referrals to job training programs, job placement programs, and career counseling programs. The Non-Custodial Program will also refer participants to other services including but not limited to parenting time classes, drug abuse counseling, and alcohol abuse counseling as needed.<sup>6</sup>

OAG/CSSD advertised that participants could enroll in the Non-Custodial Parent Employment Program through a referral from the court or by going to OAG/CSSD's office.

OAG/CSSD's partnership with EDSI formally began in August 2012. Concurrently, the Presiding Judge of the Family Court at D.C. Superior Court formed a working group of court personnel, agency professionals and advocates to examine the issue of child support and non-custodial parent employment. During meetings of the working group, OAG/CSSD staff made it clear that the EDSI program was not performing as expected. At a July 2013 meeting of the working group, OAG/CSSD reported it had stopped making referrals to EDSI. Additionally, it indicated that EDSI's contract ends in March 2014, and OAG/CSSD has no plans to renew its contract with EDSI or replace them with another vendor.

Despite urging from members of the working group, OAG/CSSD has not publicly released an evaluation of its Non-Custodial Parent Employment Program. Much could be learned from an audit of the Non-Custodial Parent Employment Program's data, as well as a review of any performance measures associated with the program. Further, as EDSI has a proven track record of success with other child support programs, it is unclear why the D.C. program did not succeed. Accordingly, it may be useful to debrief EDSI regarding any challenges it faced implementing the program. This information could inform the development of future OAG/CSSD employment programs, as well as the other numerous workforce development programs throughout the District.

We urge the Committee on the Judiciary and Public Safety to exercise its oversight authority to investigate the failure of the contract between OAG/CSSD and EDSI and to make public appropriate data regarding the Non-Custodial Parent Employment Program. In addition, the Committee should ensure that proper performance measures are in place to measure the effectiveness of OAG/CSSD's FY 2014 Performance Plan, a Plan outlining the launch of yet

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<sup>5</sup> GOVERNMENT OF THE DISTRICT OF COLUMBIA, OFFICE OF THE ATTORNEY GENERAL, CHILD SUPPORT SERVICES DIVISION, NON-CUSTODIAL EMPLOYMENT PROGRAM, *available at* <http://cssd.dc.gov/sites/default/files/dc/sites/cssd/publication/attachments/Non-Custodial%20Parent%20Employment%20Program%20Brochure.pdf>.

<sup>6</sup> Press Release, Office of the Attorney General, Child Support Services Division, CSSD Announces Non-Custodial Parent (NCP) Employment Program (July 24, 2012), *available at* <http://cssd.dc.gov/release/cssd-announces-non-custodial-parent-ncp-employment-program>.

another new non-custodial parent program to create a database of at least 50 community partners to be used by OAG/CSSD staff for referral purposes.

We are also concerned that this new FY 2014 performance goal appears to be a significant step back from the agency's prior goal of providing comprehensive services to help child support obligors obtain employment. With more information and analysis, we hope this Committee will encourage OAG/CSSD to pursue a vigorous non-custodial parent employment assistance program, based on lessons learned from its experience with EDSI. We believe this will result in the collection of more child support needed by so many District families.

Recommendation:

- The Committee on the Judiciary and Public Safety should set a hearing to review the OAG/CSSD's Non-Custodial Parent Employment Program developed in collaboration with EDSI.

**OAG/CSSD's policy of almost blanket opposition to requests for genetic testing after an Acknowledgment of Paternity has been signed is contrary to District law and adversely impacts the District families they serve.**

We remain concerned that OAG/CSSD continues to oppose paternity challenges in virtually every case where an Acknowledgment of Paternity has been signed, even when (1) parents were not provided with required statutory notices and protections mandated by District and federal law before signing, (2) putative fathers were lied to about the probability of their paternity, (3) both the mother and putative father want genetic testing, and/or (4) DNA testing conclusively proves that the putative father is not actually the biological father. OAG/CSSD's reliance on this hard-line position diverts resources from the agency's goal of establishing paternity and setting accurate support orders for District families, and it prevents many children from knowing or having relationships with their biological family.

Generally, in order to establish a child support order, paternity must first be determined for a child's father. In the District, unmarried parents can establish the father's paternity of a child by going to court to request DNA testing or by signing a legal form called an Acknowledgment of Paternity at the hospital or Vital Records. The Acknowledgement of Paternity was created by federal and D.C. law to provide unmarried biological parents with an efficient means of legally recognizing the relationship between a father and child.

To safeguard the Acknowledgment of Paternity process and ensure that the system is not abused, federal and D.C. law include procedural requirements that must be followed for parents to validly execute an Acknowledgment of Paternity. Parents must be under oath. They must also be given written and oral notice of the alternatives to, legal consequences of, and rights and responsibilities that arise from the Acknowledgment.<sup>7</sup> When these requirements are not followed, Bread for the City and Legal Aid take the legal position that the Acknowledgment is invalid. We believe it should not be used to establish paternity or require a putative father to pay

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<sup>7</sup> D.C. Code § 16-909.01.

child support if a party wants genetic testing or has obtained private genetic testing conclusively showing the man is not the biological father. Indeed, Maryland law provides that a declaration of paternity in an order can be modified or set aside if a genetic test establishes that the individual named in the order is not the biological father.<sup>8</sup> Additionally, in Maryland, the law states that the court shall order paternity testing if requested by either party or the government.<sup>9</sup>

Based on the experience of parties served by the Child Support Community Legal Services Project over the past several years, it appears that too often, hospital or Vital Records staff fail to provide statutorily mandated notices. The many parents we have met through the Project report that they were not told that they could obtain DNA testing prior to signing an Acknowledgement of Paternity at the hospital or at Vital Records. Bread for the City and Legal Aid attorneys have also seen how the cost of paternity testing, outside of the court process, can be a significant barrier for parties. For example, reliable genetic testing through a private company, such as Fairfax Identity Laboratories, costs about approximately \$450.

Problems arise when parties sign an Acknowledgement of Paternity without understanding the significance of the document or their right to not sign it. In many cases, “fathers” express understandable concerns about paternity, often because the mother has recently revealed that another man could be the child’s father, or the parties have obtained a private genetic test that shows that putative father is not the child’s biological father. Parties seek relief and assistance from the court to clarify and resolve these extremely personal and complicated matters. Often, their main request is to have the court order a genetic test to determine paternity once and for all. In our experience, OAG/CSSD opposes almost all requests for genetic testing if a father has previously signed an Acknowledgment—even when it is clear that the parties were not given the proper notices and warnings at the hospital or at Vital Records, and in instances when the mother was unsure or lied about the identity of the child’s father.

This is true even when both parents are requesting genetic testing. In one case, a mother and putative father signed an Acknowledgement of Paternity at the District’s Vital Records Office. The parties were not given the statutorily required notices about the Acknowledgement of Paternity, but they signed anyway. A few years later, the father obtained a private genetic test that showed him that he was not the child’s father. When he was brought into court on a child support case, he produced the genetic test results, and assumed that OAG/CSSD would not seek child support from him. The mother came to court and agreed that it was possible that another man was her child’s father and stated that she did not oppose a court-ordered genetic test. Despite the glaring evidence that the putative father was not the biological father, the Office of the Attorney General argued aggressively against a challenge to the Acknowledgement of Paternity and against the parties’ request for a court-ordered genetic test. The court eventually ordered genetic testing, and when the test conclusively demonstrated that the putative father was not the child’s biological father, the court ended efforts to seek child support against the non-biological father, which allowed the mother to pursue the child’s actual father for support.

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<sup>8</sup> Md. FAMILY LAW Code Ann. § 5-1038.

<sup>9</sup> Md. FAMILY LAW Code Ann. § 5-1029.

Unfortunately, even after court-ordered DNA testing proves that the man in question is not the child's father, OAG/CSSD remains inflexible. For example, OAG/CSSD has taken the position that a man is legally obligated to pay child support even when genetic testing shows conclusively that he is not the biological father and a court has denied that individual custody or visitation rights based on that genetic testing.

Recent developments suggest that OAG/CSSD has recognized the importance of genetic testing in establishing accurate parentage for children in the District. In its FY 2013 Performance Plan, CSSD discussed an initiative to provide Acknowledgements of Paternity and free paternity tests to parents in various locations throughout the city, called "Roll Your Way into a Free DNA."<sup>10</sup> The agency's goal was to establish paternity in 90% of out-of-wedlock births in the District. Although OAG's FY 2013 Performance Accountability Report states that the Initiative was "fully achieved," it appears that the agency held only two (2) outreach events in 2013 and only twenty (20) people received DNA tests through the program.<sup>11</sup>

CSSD's opposition in these cases diverts resources that could be used to assist custodial parents in finding actual biological parents and obtaining child support from those who have a legal and moral obligation to provide for their children. CSSD's position puts the executed Acknowledgement of Paternity – no matter what the circumstances – above all, to the detriment of citizens of the District.

#### Recommendations:

- The District should offer free or low-cost genetic testing to low-income individuals at hospitals or at Vital Records prior to presenting them with an Acknowledgement of Paternity.
- The laws governing paternity establishment in the District are admittedly complex. The Council should prioritize legislative reform to simplify and streamline the District's paternity laws, thereby making them more accessible to District residents. Bread for the City and Legal Aid would welcome the opportunity to work with the Council and CSSD to craft legislation that clarifies the law.

## **CONCLUSION**

OAG/CSSD serves a critical role: to take the action necessary to establish and enforce fair and accurate child support orders for the District's children. The agency's success and efficiency is especially important when so many District families face economic insecurity. We want to support policies and programs that will allow OAG/CSSD to fulfill its mandate effectively. We believe that Council oversight is necessary to ensure that OAG/CSSD makes

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<sup>10</sup> OFFICE OF THE ATTORNEY GENERAL FY 2013 PERFORMANCE PLAN (MARCH 2013) available at <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG13.pdf>

<sup>11</sup> OFFICE OF THE ATTORNEY GENERAL FY 2013 PERFORMANCE ACCOUNTABILITY REPORT (JANUARY 2014) available at [http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG\\_FY13PAR.pdf](http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/OAG_FY13PAR.pdf)

improvements over the next year and remains accountable to the citizens of the District. We ask the Chair to consider scheduling a stand-alone hearing to address OAG/CSSD's performance. We hope to continue to work with OAG/CSSD and the Council to provide the District's children with the support that they need and deserve.