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May 14, 2018

VIA U.S. MAIL & EMAIL: osse@dc.gov
Ms. Hanseul Kang
DC State Superintendent of Education
Office of the State Superintendent of Education
1050 First Street, NE
Washington, DC 20002

Dear Superintendent Kang:

I write in response to your office's May 2018 Report on Residency Investigation at Duke Ellington School of the Arts, issued Friday. Because of OSSE's oversight role and the financial strings OSSE holds, Ellington officials may feel limited in their ability to formally respond. As an Ellington parent, however, I have no such constraints. My family's own residency issues have never been in dispute, and I have no personal stake here. But the story of what OSSE is doing to other Ellington families, and Ellington as an institution, is a story that should be told.

Not long ago, some of us learned at an Ellington meeting that this current school year had been highly unusual at Ellington. Investigators from OSSE, we heard, had visited the school almost daily, interrupting Ellington's office routines, and insisting that administrators obtain more information from the students. Rumors circulated that this felt like Ellington was being targeted by OSSE. As a Caucasian, I will confess that I initially downplayed these concerns. I was aware from press reports that your office was conducting a residency fraud audit, and I assumed that other schools were being similarly inconvenienced by your ongoing investigation.

But now we know these rumors were true. Your own Report has confirmed it. Duke Ellington School of the Arts was apparently *singled out* by OSSE and subjected to special scrutiny that no other school in the entire DCPS system faced. Coming on the heels of this largely African-American arts school's return to a campus in a Georgetown community that has not always welcomed it, this targeting of Ellington raises a variety of concerns. And those concerns are only exacerbated by other revelations now revealed in the Report and highlighted below. Ellington's institutional reputation has been unfairly attacked, and many of our students' families have been unfairly maligned, through an OSSE process that has generally operated in the dark, and often in violation of basic civil rights that our school and its members deserved.

Let me start with the Report's remarkable admission that "OSSE *took custody* of 570 student files and launched a further investigation, *above and beyond the annual audit process, specifically into the school.*" In *addition to* Ellington's targeting, then, a seizure of files occurred without any court order, or finding of probable cause, by OSSE on its own. OSSE just removed every one of our children's 2017-18 residency files, apparently treating Ellington administrators, some with decades of service, as if they were suspected criminals who might destroy evidence.

Once you obtained these files, further violations occurred. Your Report now claims that certain files "appeared" to be falsified (your Report never actually claims they were), but *also* says OSSE investigated even "[a]pparently sufficient documents." What this means, of course, is that OSSE investigated even families whose documents were entirely in order, apparently without any reasonable suspicion to believe wrongdoing had occurred. There is no indication in the Report, and no reason to believe, that this was done at any other DCPS school. Indeed, one can only conclude from your Report that *every single family at Ellington became the subject of an investigation into residency fraud, regardless of whether they had done anything wrong or even suspicious.* It was apparently enough that a student was at Ellington. Rather than exploring DCPS's 90 schools equally, seeking wrongdoers citywide, OSSE focused its limited resources on Ellington, and then proceeded within our school on a *guilty-until-proven-innocent* approach.

The only analogy that comes to mind is of a security "checkpoint," here established by OSSE inside of Ellington, as if it were a high-crime area peddling guns, rather than education. And unlike those oft-criticized checkpoints, where brief encounters will end once identifications are returned, here all our students' identifications were kept by OSSE, so that it could then conduct *further investigations on apparently every single Ellington family in secret* – including on my own family as one of the other 350 families OSSE says it later "cleared."

This heavy-handed approach is in no way justified by the number of families OSSE now says it flagged. Ends do not justify the means to override civil rights. And even if they could, your stated numbers appear highly suspect, and also often fail to tell the complete story. Indeed, OSSE's own Report itself acknowledges that it "anticipates" that the "total number of [even so-called] confirmed non-residents could potentially decline" once "due process" is afforded.

OSSE's review process has been consistently opaque, with input and questions from Ellington's administrators disregarded. As but one example of this, the new Report's list of 164 students as "deemed" non-residents stands in stark contrast to the far smaller numbers the Report admits "OSSE published in January 2018" – which had noted only "74 identified non-residents at Duke Ellington School of the Arts." After that list of 74 was provided to Ellington early this year, many of these 74 students were discovered to have been "rejected" for hyper-technical reasons, such as the filing of a DC power bill that had preceded (rather than post-dated, and thus verified) payments. Ultimately, Ellington appealed OSSE's determinations on all but 19 of these students, providing additional documentation. And even as to the 19 students for whom no formal appeals were filed, additional information came available on 17 of those students, which Ellington asked OSSE to consider. No response to these appeals or requests was ever received.

Instead, on Friday we all suddenly learned of your latest Report, in which OSSE's non-compliance number at Ellington had somehow jumped to 164, based on some new, never-

specified “further” investigations by OSSE. As with the original 74, OSSE made no attempts to consult with Ellington in an attempt to verify that its information was in fact correct before OSSE issued its Report to much media fanfare – with a *Washington Post* story released Friday morning, just before Mayor Bowser, who appointed you, came on Kojo Nnamdi’s radio show.

The manner in which OSSE’s latest process unfolded would be comical if it were not so cruel. Even now, Ellington’s administrators *still do not have the names of the 164 (not 74) students* OSSE’s Report deemed non-residents who are ineligible for admission to Ellington next year. Nor has Ellington been given the list of 56 additional students that OSSE says “remain under investigation.” At the same time that Ellington is presently accepting registrations from students for the coming school year, under DCPS guidelines, *it has no idea who is “ineligible”*.

Even worse, OSSE’s letters to these families, not only instructing them that they cannot return to Ellington next year, but further advising them that they have now been referred to the DC Attorney General’s office for possible legal action under the False Claims Act (which has treble damages) or worse, was received in the mail by many such parents *before* OSSE’s Report was released on Friday. On Thursday afternoon, Ellington’s staff began receiving frantic phone calls from its parents, *with no idea of what was even going on, and no way to viably respond*.

Well over half of our Ellington students receive school lunches. Many come from stressed families and backgrounds of powerlessness. These families lack resources to respond, and are scared. OSSE’s actions, taken with no attempt to interface with Ellington beforehand on how this process (even if implemented) should roll out, flies in the face of your Report’s description of OSSE fulfilling its important role in “protecting vulnerable populations.”

The fact that OSSE has suddenly, unexpectedly expanded its numbers so vastly at this late stage will surely strain Ellington’s ability to manage its 2018-19 school year. As the Report notes, OSSE’s review began in October. By January, it had listed 74 non-compliant students. Ellington worked to adapt to that development. Appeals were filed, with Ellington hoping that number might go down, but with Ellington conducting its annual audition process in February taking into account the possibilities that might arise from a loss of up to 74 students.

Now, OSSE is suddenly saying Ellington’s student losses will be more than twice that maximum, and may rise to more than three times this number, with up to 220 (164 + 56) students potentially excluded from admissions next year. With its auditions now completed more than two months ago, how can Ellington plausibly react now to this dramatic change in its potential student population (and even worse, its related per-student funds), when OSSE had never once hinted that its January numbers might later increase, much less double or triple? Ellington is an audition-based program. Its students are not fungible; your actions, for example, might now force Ellington to have to try to suddenly find a new piccolo player on short notice. Even if Ellington could replace so many students, in all its specified areas, before school begins, it cannot possibly do so without potentially compromising the quality of the program it provides. It is hard to imagine a process OSSE could have adopted to undermine Ellington’s mission more.

The effects on Ellington families will be even more damaging. If the status quo remains, fully 164 (and perhaps as many as 220) students will apparently be kicked out, with high school

experiences interrupted and dreams and friends left behind at the end of this year, and no clear path on where they will land. Worse, Ellington continues to believe many of these students *are in fact D.C. residents* (as the previous, never-answered appeals argued), but with these students now essentially rendered *stateless* by OSSE, with no idea of what may lie ahead. On top of this burden which OSSE dropped on literally hundreds of Ellington students (many from fragile backgrounds) is OSSE's further threat of possible legal action. Many of these families, who struggle in their daily lives but want more for their kids, are now terrified. OSSE's position is particularly unfair when OSSE *itself* admits reversals are possible once due process is afforded.

Again, how is this consistent OSSE's stated goal of "protecting vulnerable populations"? Indeed, even those whom OSSE finds in full compliance appear to be at risk. Your Report notes, for example, that new policies for out-of-state residents paying tuition are still being developed by OSSE and will be announced on June 30. This year, those families experienced real problems with your new payment portal, and we recently heard rumors OSSE may even require out-of-state parents to pay *full tuition in advance* next year, an unfair burden that would surely cripple many of our families' ability to attend Ellington. Here too, OSSE continues to operate in the dark, wholly unwilling to share its plans. Fears about what OSSE may ultimately implement could force still more Ellington students to have to give up their dream of an arts education, and to scramble to find a new school home elsewhere on short notice because the rules have changed.

Finally, let me address your Report's conclusion that there was a "lack of oversight and internal controls" at Ellington. Because the full story behind that issue is omitted in your Report.

Here is what's missing: For *each* of the *past 5 years*, OSSE itself audited – and *cleared* – all of Ellington's students. Ellington *in each of those years* received 100% of its funding that was tied to school compliance with residency requirements, based on OSSE's own audits. It is difficult to understand how OSSE can now say Ellington was supposed to know that its "internal controls" were inadequate to satisfy OSSE, when OSSE itself had signed off as it did – including on the D.C. residency of many of the same students that OSSE is now saying are non-compliant.

Of course, this is also what the DC Inspector General had reported just last month. In his OIG Final Report No. 17-1-16GA, found online at <https://oig.dc.gov/release/dc-public-schools-and-office-state-superintendent-education-district-lacked-control>, the Inspector General said it had examined 67 earlier cases where OSSE had "identified parents/guardians who fraudulently claimed D.C. residency," but it noted how OSSE had never reported those cases to the Attorney General for enforcement, and more importantly, "OSSE also failed to notify DCPS and DCPCS of these non-resident cases, which limited the school systems' ability to proactively identify similar cases." Yet your current report now seeks to shift all this blame onto Ellington anyway.

The real truth here, from where I sit, is that once OSSE was challenged as having inadequate residency controls itself, criticized (for example) for having only one investigator for all 90 DC schools, it sought another party to scapegoat, and decided to focus on Ellington. A target was basically placed on every Ellington student's back. Innocent families like my own were apparently "investigated" for "fraud," without any basis whatsoever. And *every* Ellington family received scrutiny far above what every other DC school family apparently received.

I have a story to share. Recently, I traveled as a chaperone on a field trip with 39 Duke Ellington students, to the opening of the new Memorial to Peace and Justice and the Legacy Museum in Montgomery, Alabama. It was a personally moving, eye-opening experience for me. The Memorial, sponsored by the Equal Justice Initiative, identifies for the first time all of the instances of racial lynchings, in so many American counties, while the Museum then traces the history of socially-accepted disrespect that African-Americans have endured in our country for too long, and the legacy that has continued from slavery through lynchings and Jim Crow laws to our current issues such as the mass incarceration that still disproportionately impacts people of color, often based on disparities in arrests and prosecutions that our society simply tolerates.

While there is no mass incarceration arising from these latest events (at least not yet, despite your referrals to the Attorney General and Inspector General), there *has* been a similar demonization of this predominately African-American school, and worse (as your own Report *admits*) a clear *mass investigation* – a *targeting* of *all* Ellington students, and apparently *only* Ellington students. OSSE issued a separate Report, focused exclusively on Ellington alone. It is past time for such targeting to end. And it is also noteworthy here that your Report ominously describes as a part of its “action plan” a broader proposal that *goes far beyond* mere enrollment and residency changes – namely, a planned “[r]eview of [Ellington’s] governance structure and operating agreement.” This looks like a wider attempt, coming immediately after the passing of Ellington’s founder, to revisit Ellington’s “agreement with DCPS dating back to 2000.” I hope and trust DC’s leaders will see this for what it is, and work to preserve wherever possible the essential independence that Peggy Cooper Cafritz fought to establish for Ellington.

The way this process *should* have worked is that first, Ellington never should have been targeted at all (particularly for wider, systemic changes) and second, even where residency issues arose, OSSE should have offered to sit down with each affected student, their parent or guardian, and an Ellington administrator, to see if OSSE’s concerns with “apparently” wrongful paperwork might be resolved, before OSSE essentially branded students as criminals (including many students that OSSE itself had cleared to attend Ellington in previous years), and sent a letter telling them they cannot return to Ellington, with no due process or advice on appeal rights.

Given where we now are, and looking forward, I ask that OSSE provide the following information, as the minimum that I believe we as affected parties have a right to expect:

- I believe that OSSE should produce to Ellington’s administrators *immediately* a list of the 164 students whom OSSE claims it “deemed” to be non-residents, plus a list of the 56 students whom OSSE claims remain under investigation, so that Ellington is not left in the dark and our community can learn of those impacted;
- I believe that OSSE should also produce to Ellington’s administrators *immediately* a copy of its investigative files on each of these students, so that Ellington officials can evaluate whether it believes OSSE’s conclusions are accurate, and can also assist these students, particularly those still under investigation, in recognizing problems that can be fixed within the very short window of time OSSE says it will afford to those students for a supplementation of their records;

- OSSE should *immediately* advise each of these affected families of any appeal rights they possess, plus any free legal resources that may be available (i.e., the *minimum one would expect* from any organization truly committed to “protecting vulnerable populations”); if no such formal appeal process exists, OSSE should agree to submit these cases to a truly independent examiner (not one simply appointed by OSSE, or tied to its guilty-until-proven-innocent paradigm), so that all Ellington students negatively affected by OSSE’s latest Report, and declared ineligible to return to Ellington based on OSSE decisions made in secret, can promptly be afforded due process and a public review of OSSE’s findings and conclusions that they are non-residents ineligible to attend Ellington next year;
- OSSE should make a copy of its investigative file on each Ellington student available to the family upon request, so that all family members can discern the scope of the investigation initiated against them, and any related results; and
- The names of all OSSE investigators and other persons who were responsible for OSSE’s unsigned May 2018 Report should be publicly disclosed.

Reserving all rights, I look forward to hopefully hearing back from you soon.

Sincerely,



Gregory S. Smith

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May 18, 2018

VIA U.S. MAIL & EMAIL: osse@dc.gov
Ms. Hanseul Kang
DC State Superintendent of Education
Office of the State Superintendent of Education
1050 First Street, NE
Washington, DC 20002

Dear Superintendent Kang:

I write to follow up on my letter of May 14, 2018, responding to your office's May 2018 Report on Residency Investigation at Duke Ellington School of the Arts, issued last Friday. Despite my letter and its request for information, I have received no response at all from you.

Worse, I recently learned that, now a full week after your Report, Ellington officials still have not received either your list of its 164 students "deemed" non-residents, or your list of its 56 students still "under investigation," as I had requested. I find it shocking that OSSE refuses to release these lists. Ellington is one of many schools now registering students for next year, and its officials naturally need to know which students you have deemed "ineligible" to return. Your refusal to produce these lists also renders the school incapable of reaching out to any of these families now, including even those on your list of 56 whom OSSE says must supplement their documents immediately. Many of our Ellington families come from vulnerable populations, and naturally may need help. Our school naturally deserves to know which families in our school community are affected, so it can try to help all DC resident families attempt to comply with your paperwork requirements. OSSE's actions violate D.C. Code § 38-306's requirement that "[t]he methods used to determine residency status ... shall be crafted to facilitate rather than hinder school enrollment of eligible students." And your refusal to provide the larger list of 164 students, whose apparently have undisclosed appeal deadlines approaching, smacks of a bad faith effort by OSSE to try to limit such appeals. Such actions are wrong, and no good reason exists for you denying our school these lists. Please produce them to Ellington officials immediately.

Sincerely,


Gregory S. Smith

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June 6, 2018

VIA U.S. MAIL & EMAIL: dme@dc.gov
Ms. Ahnna Smith
Interim Deputy Mayor for Education
Office of the Deputy Mayor for Education
1350 Pennsylvania Ave. NW, Suite 307
Washington, DC 20004

Dear Deputy Mayor Smith:

I am an attorney representing several families at Duke Ellington School of the Arts. It was recently suggested that I contact you directly, to see if your office might intervene to help resolve certain issues arising from OSSE's recent residency fraud accusations at Duke Ellington.

As you may know, OSSE has now sent – and now withdrawn under threat of restraining orders – two rounds of Notice letters, to certain Ellington families, declaring them non-residents. In addition to these letters' procedural flaws, we believe OSSE's Notice letters falsely accused many innocent Ellington families, with OSSE oddly mailing many such letters *to DC addresses*.

OSSE has charged up to 220 Ellington families with being non-residents. Most never knew they were under investigation, and were never even contacted before OSSE labeled them fraudsters, referred to the Attorney General and threatened them with draconian penalties. When these Ellington families tried to find out why their residency documentation had been rejected, OSSE wouldn't tell them. Even now, OSSE still says it plans to refuse to provide any of its investigation results to Ellington parents upon request, despite 5A DCMR § 5008.6's mandate, and even though such results have historically been provided to others facing this same situation.

Following today's hearing, OSSE says it simply plans to simply re-issue a (now third) round of letters to these same Ellington families – ignoring plain evidence that many appear to have been falsely accused – and once again, *without ever speaking to them*. (How does one even accuse someone of *fraud* without *ever trying to hear from them*?) There is a better way forward, however, and that is why I write to you today. Before OSSE just forces everyone back into litigation mode, by re-issuing Notice letters that will then require parents to file formal requests for review, find lawyers (your side too), and burden administrative law judges with up to 220 hearings, why not sit down informally with us and try to separate the sheep from the goats first?

Ms. Ahnna Smith
June 6, 2018
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We would propose the following alternative:

First, OSSE should produce its list of affected families to Ellington's administration, or if for some reason that list cannot be given to Ellington, to a third party who is then tasked with ensuring that all students on the list truly know that OSSE has deemed them non-residents. We have heard from our parents that several of OSSE's letters were sent to old addresses. The purpose here is simply to be fair: to ensure that all people OSSE charges know they have in fact been charged, so all affected Ellington families have a chance to participate in the step below.

Second, OSSE should temporarily delay issuing another round of Notice letters until the following occurs: OSSE should bring its files to an agreed location for in-person meetings with the affected families (who would also have a right to be present with a school administrator and a lawyer/representative of their choice). OSSE would then show the family its files and/or findings, so each family would then know what the supposed problems are, and then be given 10 days to respond and/or supplement. OSSE would then issue Notice letters only as to those families whose explanations/supplementations fail to satisfy them – i.e., no formal charges (Notice letters) would go out until each family at least gets a chance to be heard first, with OAG also agreeing not to pursue any cases unless OSSE does. If we do this, I anticipate we can knock out half these cases or more, probably very quickly – even within a matter of only a few weeks.

That is how reasonable people should handle this situation, with OSSE simply pausing and listening before pulling a trigger again which will force Ellington families to have to file new administrative appeals, hire lawyers, and bother busy administrative law judges, with fear also hanging over their heads for the next several months. This proposal will benefit OSSE as well, which will not end up before OAH with perhaps hundreds of cases, including a sizeable number of innocent families, and administrative judges then upset to learn that OSSE never even granted those families any chance to be heard, or a peek at its evidence, before charging them with fraud.

I hope you will seriously consider this proposal, and affirmatively encourage OSSE to accept it. At today's hearing, the Court itself suggested mediation (and even brought a mediator into court), but OSSE rejected that. At least from our side, we remain open to this concept or any other, and I am also available personally to discuss this further if you would like to meet or talk. I remain hopeful, and look forward to perhaps entering into a less antagonistic, open path ahead. I now encourage you to intervene in this matter to try to bring this concept to fruition.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory S. Smith", with a stylized flourish above the name.

Gregory S. Smith

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