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OPINION

## Marla Spindel and Stephanie McClellan: Dear Mayor Bowser, please stop the discriminatory practice of hidden foster care that hurts DC's Black children and families

By Commentary

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When the DC Child and Family Services Agency (CFSA) touts its supposed success in reducing the number of children in foster care, it fails to mention that it has accomplished this through a practice that jeopardizes the safety of DC's abused and neglected children and tramples on their rights and those of their families. This practice, known as kinship diversion, occurs when a child welfare agency separates children from their parents without judicial oversight, informally places the children with relatives, and fails to license them as foster parents. Child and family advocates also refer to this practice as "hidden foster care," since no one knows how many children live in these situations or what happens to them. Typically, once a child is placed in this way, the agency closes its case; leaves the children and family without financial support, services or other resources; and conducts no follow-up to ensure the safety or security of the child.

At DC KinCare Alliance, we have seen firsthand the detrimental effects of this practice that disproportionately impacts DC's low-income Black families and children and deepens racial inequities – the definition of systemic racism. As a legal services organization whose mission is to represent relative caregivers who step up in times of crisis to raise DC's at-risk children, we have joined with law firm partner Ropes & Gray LLP to file six federal lawsuits on behalf of 20 adult and child plaintiffs challenging CFSA's illegal and discriminatory practice of hidden foster care. Recently, a North Carolina jury awarded millions in damages to a father and daughter separated through hidden foster care.



*Marla Spindel is executive director of DC KinCare Alliance.*

According to DC policy, CFSA engages in this practice of diversion when it determines an abused or neglected child "is in imminent danger, which would result in a removal," and "can remain safe in the community with an identified caretaker." In other words, CFSA decides that the situation in the child's home is so dire that the child cannot safely stay there and must live somewhere else.

From our experience representing relative caregivers, CFSA often uses hidden foster care when there are long-standing, unaddressed concerns about the parents' ability to care for their children due to, for example, untreated mental health or substance use disorders. When CFSA makes the above determinations, instead of "placing the child in foster care, CFSA will partner with the child's parent to plan for the child to be safely cared for by a relative or another identified caregiver."



As explained by CFSA director Brenda Donald at a recent DC Council oversight hearing, once “the child is safe with the relative ... the child is no longer in harm’s way” and does not need to be placed in foster care. Accordingly, “there’s no legal rationale for us to bring a child into foster care so that we can pay their relatives. ... Morally and ethically, that’s not something we would do.”

*Stephanie McClellan is deputy director of DC KinCare Alliance.*

In practice, however, there is no real partnership with the family. CFSA uses its significant power over families to pressure parents to “agree” to allow their child to live informally with a relative by threatening that the child will otherwise go into foster care and that it will be difficult for them to ever get their child back. CFSA does not explain that the goal of foster care is safe parent-child reunification. The agency also tells relatives, who are mostly low-income Black grandmothers, that the child will “go into the system” if they do not agree to take the child. This implies that the child would have to go into foster care with a stranger. CFSA never explains that the relative could be licensed as a kinship foster parent and receive critical support to help meet the child’s basic needs.

Even more importantly, when a child is diverted to live with a relative in hidden foster care, the child is not miraculously safe or out of harm’s way. The risks in the parental home have not been addressed, and the relative has the child but not the legal right to make decisions for the child or keep the child safe. The parents, who have received no help with the problems that caused the unsafe situation, can take the child home at any time and often do. And then the cycle of abuse or neglect begins again.

There is no stability, as there is no plan for how long the child will live with the relative or what must happen in order for the child and parents to be safely reunited. The family is just left to fend for itself. Often, as a result of the increased financial burden of raising a child they did not expect, relative caregivers fall behind in paying their bills and become at risk of homelessness. In this way, the practice perpetuates racial inequities by taking resources away from already under-resourced communities of color.

This is one reason child welfare agencies are required by law to follow rigorous procedures when separating children from their parents, including a judicial determination approving the separation; a plan of care for the child; services for the parents to address their problems; lawyers for the child and parents at no cost; and a foster care subsidy to help pay for the child’s essential needs. In contrast, there is no procedure for a parent, child or relative to challenge the agency’s decision to place a child in hidden foster care because it is purposefully devised to avoid court or administrative oversight.

There is no moral or ethical justification for CFSA to flout the law and discriminate against relative caregivers by depriving them — and the children they raise — of the financial support and other resources that foster parents and children receive under the same circumstances.

Indeed, research shows that the foster care subsidy likely plays an important role in reducing their risk of poverty.

CFSA must stop its illegal practice of hidden foster care, which undermines the safety, stability and well-being of DC's Black children, the rights of Black parents, and the heroic work of Black grandmothers and other relatives.

*Marla Spindel* – a recipient of the Child Welfare League of America's 2020 Champion for Children Award – is executive director of DC KinCare Alliance; *Stephanie McClellan* is the organization's deputy director.

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