



CHAIRMAN MENDELSON

2021 JAN 13 PM 4: 51

MURIEL BOWSER
MAYOR

January 13, 2021

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

I am vetoing Bill 23-437, the “Office of the Ombudsperson for Children Establishment Amendment Act of 2020”. I understand and share the Council’s goal of protecting the District’s children and ensuring they are receiving the best services possible from District agencies. However, because Bill 23-437 violates the Home Rule Act and therefore cannot lawfully be implemented, and because the bill will create a duplicative, overly broad, and costly administrative structure, I must veto it.

Under the bill, the Council attempts to establish a District government agency that carries out executive branch functions, but has a director that is appointed by, and subject to termination by, the Council. This structure has no analog in the District or federal government because it is a violation of the constitutional principle of separation of powers, which is embedded in the Home Rule Act.

My staff has previously shared with Council the litany of concerns that the Office of the Attorney General (OAG) raised regarding the bill, where it concluded that major provisions of the legislation are legally insufficient if exercised by the Office. These provisions include, but are not limited to, the Ombudsperson’s role of receiving and investigating complaints involving internal, ongoing, deliberative decisions regarding CFSA and CFSA personnel, engaging in complaint mediation, investigating virtually any action or decision CFSA takes that the Ombudsperson finds objectionable, even if the action or decision is not final, facilitating interagency coordination and communication, and commenting on policies, procedures, training, and strategies of CFSA. An agency headed by a legislative appointee simply cannot carry out these types of roles that insert it into ongoing agency operations and intrude into the essential executive functions of the agency.

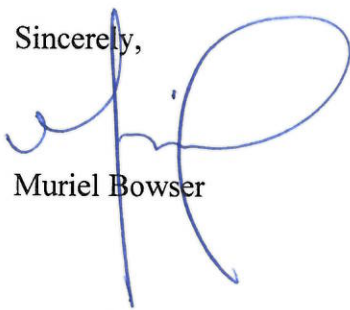
OAG also identified additional provisions of the bill that may be legally insufficient, including the Ombudsperson’s ability to log directly into CFSA’s case management system, to conduct a warrantless search, and to award attorney’s fees. However, given the overall structure of the bill,

even if these provisions were addressed, the main elements of the bill would continue to be problematic.

Beyond the legal insufficiencies within the bill, the bill is a bad idea from a policy perspective. CFSA currently has an internal Ombudsperson who receives an average of 120 complaints, concerns, and inquires annually. Unlike DCPS' Chief Integrity Officer whose stakeholders include over 50,000 public school students, the call volume to CFSA's internal Ombudsperson would not support or justify the cost and level of staffing and oversight proposed by this Bill, which the Chief Financial Officer (CFO) has cited at \$577,000 in fiscal year 2021 and \$3 million over the financial plan. The definitions of "CFSA child," and "CFSA Constituent" are so broad they could include almost any child in the District, regardless of whether the child has had any contact with CFSA, and any member of the public, regardless of their relationship to the child. Further, the definition of "Records" includes any and all records of any agency (except for the few excluded entities), and does not carve out any exceptions for records prohibited from disclosure by District or federal law, attorney-client privilege, etc. This could result in unprecedented interference in the lives and privacy of District residents.

For the reasons stated above, I am vetoing Bill 23-437.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Muriel Bowser', with a large, stylized loop at the end.

Muriel Bowser