

Via email: Kaya.henderson@dc.gov

December 27, 2013

Chancellor Kaya Henderson
District of Columbia Public Schools
1200 First Street, NE
Washington, DC 20002

Re: Comments on the new Section 2405 (Student Grievance Procedure) of Subtitle B (District of Columbia Public Schools), Title 5 (Education) of the DCMR.

Dear Chancellor Henderson:

Thank you for the opportunity to comment on the proposed rulemaking that was published in the DC Register on November 29, 2013 regarding the Student Grievance Procedures for DC Public School (DCPS). I am submitting these comments on behalf of Children's Law Center (CLC),¹ which serves over 2,500 low-income children in the District of Columbia each year. The majority of the children that we represent attend DCPS. Our comments are based on our experience representing these children and families.

We appreciate DCPS's intent to protect students from discrimination and harassment. The proposed regulations provide an excellent framework for resolving complaints informally, but do not provide sufficient legal protection for students whose complaints cannot be resolved informally and who thus must file formal grievances. In our work, we have found that students and their families strongly desire to have a positive relationship with their schools. When a student, parent, or caregiver has a concern about an issue at school, many times the concern will be alleviated if the family believes that school officials have heard their worry and taken steps to appropriately resolve the situation and ensure that it will not be repeated.

For more serious disputes, especially where civil rights may have been violated, grievance procedures should be straightforward, impartial, and transparent. At a minimum, procedures should uphold the basic rights of procedural due process. In our comments below, we suggest revisions that we believe are necessary in order to make the Student Grievance Procedures fair and accessible to all DCPS students and their families.

Grievance Procedures

The proposed grievance procedures fail to guarantee many important procedural due process rights, some of which are specifically required by federal law and the guidance of the Department of Education's Office of Civil Rights.² Specifically, the grievance procedures omit the right to adequate notice, the right to an impartial hearing, the right to call witnesses on the student's behalf, the right to cross-examination of witnesses, the right to respond to allegations against the student, the right to a free audio transcript of the proceedings, and the right to a

meaningful opportunity to appeal. The omission of these elements of due process would create proceedings that would not be fair to students or their families. The following recommendations seek to address these deficiencies.

Statute of Limitations

The proposed procedures hinder students' and families' ability to seek relief by creating an unnecessarily restrictive deadline. The requirement in § 2405.4(e) that the formal grievance procedures must be initiated within forty-five days of an incident may bar students from bringing meritorious grievances. Students may not immediately inform their parents of incidents and both students and parents may not know that they have the right to a grievance. Students and parents may also need some time to seek legal representation. While we understand that extending the timeline for seeking relief may increase the burden on DCPS, as schools may be required to investigate incidents that happened some time in the past, we believe that this burden is outweighed by the importance of ensuring that students and parents have access to justice. Accordingly, we propose that these procedures adopt the two-year statute of limitations from the Individuals with Disabilities Act (IDEA).

Specifically, we recommend changing the language of § 2405.4(e) as follows:

Formal grievances must be filed within ~~forty-five (45) two years~~ of the incident or circumstance being grieved. ~~or ten (10) calendar days of the completion of the informal process, if any, whichever is longer.~~³

Content of Written Grievance

The scope of the proposed procedures is broad. These procedures were written to address violations of five federal laws and the District of Columbia Humans Rights Law, as well as denials of adequate educational opportunity, the denial or abridgement of rights, the subjection of a student to arbitrary or unreasonable regulation, procedure, or standard of conduct, the denial of participation in any school activity, situations of bullying or harassment, including sexual harassment, and "any other violation of a right granted by law that does not have a specific grievance procedure or hearing process provided in this title." (§ 2405.1-2405.2)

Given the breadth of the harms that the procedures aim to address, the information required for the written grievance, listed in § 2405.4(f)(1-7), is unsuitably narrow. We request that the section be amended to include the following language:

§ 2405.4(f)(3): The type of bullying, harassment, **discrimination, or other harm** that was involved in the incident;

§ 2405.4(f)(4): The identity of the person(s) who committed the alleged acts of **bullying, harassment, discrimination, or other harm;**

§ 2405.4(f)(5): If the alleged **bullying**, harassment, **discrimination**, or **other harm** was directed towards other person(s), the identities of such persons;

Timeframe for Response to the Grievant

In cases of denial of rights, discrimination, harassment, or bullying of youth, time is of the essence. Children may be excluded from educational or extracurricular activities or suffering harm while the investigation is ongoing. The proposed grievance procedure allows DCPS to delay resolving a grievance indefinitely. To prevent an undue delay during the formal grievance procedure, we recommend that § 2405.4(i) be revised as follows:

The written response shall be provided within ten (10) school days of the receipt of the ~~written~~ **formal** grievance; the parties should be notified if the investigation will take longer, including the reasons for the delay and the anticipated time frame, **which under no circumstances may be longer than thirty (30) calendar days.**”

Impartial Hearing

The grievance procedures do not give students or their families the right to an impartial hearing, even though federal law requires schools to provide an impartial hearing for alleged violations of Section 504. Because the Chancellor or her designee would appoint the members of the proposed grievance review panel, these individuals are not disinterested parties.⁴ The proposed grievance procedures also fail to provide an opportunity for participation by the student’s parent or guardian and representation by counsel, even though those rights are guaranteed by Section 504.

To address the need for an impartial hearing, we recommend that § 2405.4(m) be revised in the following manner:

If the grievant is not satisfied with the response or the Instructional Superintendent or other designee is unable to achieve an adequate resolution, either the grievant or the Instructional Superintendent, or other designee may, within ten (10) calendar days of the written response, request that the grievance be brought before ~~a grievance review panel~~ **an impartial hearing officer** to ensure appropriate and fair resolution of the grievance. ~~The panel shall be comprised of three (3) persons appointed by the Chancellor or designee, and may include the Section 504 Coordinator, the Title IX Coordinator, individuals from the DCPS Office of Compliance, Office of the General Counsel, other Instructional Superintendents or school officials, and other disinterested persons with training and knowledge about the issues raised by the grievance.~~

To this end, we recommend the inclusion of a new section, perhaps following § 2405.4(m), with the following language to protect the rights of the student and his or her family throughout the proceedings:

Each student, parent, or guardian appearing before the hearing officer shall be afforded the following safeguards in connection with the hearing held pursuant to this section:

- (a) The right to be represented by counsel or other representative of the student, parent, or guardian's choice;**
- (b) The right to cross-examine any witness testifying for the school system;**
- (c) The right to call witnesses on the student's behalf and to present other evidence in support of the appeal, including the right to call employees of the school system to appear as witnesses in the student's behalf; and**
- (d) The right of access to all relevant records in the student's file.**

Additionally, all testimony shall be given under oath or affirmation administered by the hearing officer.

Transparency

Additional protections to promote transparency and ensure fairness to all parties are necessary. Specifically, written documentation made by a DCPS employee during an informal procedure according to § 2405.4(b) should be made available to the student, parent, or caregiver if they later decide to pursue the formal grievance procedure.

To that end, we suggest that the following language be included in 2405.4(c):

Written documentation made by DCPS during the informal procedure should be made available to the student, parent, or caregiver if the family later decides to pursue the formal grievance procedure.

We also believe that the procedures must include a provision guaranteeing that an electronic recording will be made of the impartial hearing. We recommend the addition of the following section:

An electronic recording of the hearing shall be made. Each student, parent, or guardian appearing before the hearing officer shall have the right to a free copy of the recording made of the hearing.

Furthermore, in the interest of promoting transparency and accountability, we recommend that DCPS report annually on the number of informal and formal grievances that they receive, broken down by category. The following language should be added after section 2405.9:

DCPS shall make publicly available the number of formal and informal grievances received on an annual basis, disaggregated by type of grievance (formal and informal) as well as by the category of complaint.

Right to Appeal

Students and their parents or caregivers deserve a meaningful opportunity to appeal a decision.⁵ We are concerned that the proposed procedures currently allow the Instructional Superintendent, after the impartial hearing process, to make the final decision for the school system, with no right of the student, parent, or guardian to challenge that decision. A right to appeal is not meaningful if it does not allow the student or parent to appeal to an entity outside the agency that made the decision.

Accessibility Concerns

The proposed Student Grievance procedures lack safeguards to protect the ability of all students and their families to access the procedures. First, the procedures fail to require that DCPS provide public notice of the procedures to students and their families. Second, the procedures do not include protections to help low-literacy or non-English-speaking families initiate the formal grievance procedures.

Notice of Grievance Procedures

DCPS should provide notice to students and their families about the existence of the student grievance procedures. The proposed procedures do not indicate how students and parents or caregivers will be informed about the procedures. Currently, there is no information about the existence of grievance procedures in the DCPS Parent Handbook. We suggest that information about both the informal and formal procedures be made available in both the DCPS Parent Handbook and in the DCPS Bullying Prevention Policy. Providing notice of the student grievance procedures in both locations will make students and their families aware that there are procedures to bring grievances to the attention of DCPS officials. The proposed procedures should be amended to include a new section, perhaps prior to § 2405.4(a), stating that:

A copy of the Student Grievance Procedures shall be made available to parents and students through the DCPS Parent Handbook and the DCPS Bullying Prevention Policy. DCPS will also publish the Student Grievance Procedures in catalogs, webpages, and all other publications in which school districts normally include grievance procedures.

Guidance to Students and Families

DCPS should also make the procedures accessible to families who have low-literacy or lack English language capabilities. The proposed procedures require that a written grievance be submitted in order to trigger a formal process (*see* § 2405.4(e)). This requisite places an undue burden on families who may have low literacy or for whom English is not their native language. The lack of an oral option is a roadblock that could prevent students from accessing the protections of formal grievance procedures.

We recommend that the first two sentences of § 2405.4(e) be revised accordingly:

A grievant who is dissatisfied with the outcome of -- or chooses not to use -- the informal process, may file a **formal** grievance with the principal or other responsible school official **in writing or orally. If the request is made orally, the principal or other responsible school official shall make a record of the request.**

In addition, all instances where the proposed procedures refer to “written grievance” should be revised to state “formal grievance,” in order to reflect a formal grievance that can be filed either in writing or orally.

DCPS should provide the names of organizations or individuals in the District of Columbia that can provide advocacy assistance to families. The new educational ombudsman should be considered a resource for families who are unable to secure outside representation. DCPS should also disseminate a list of Frequently Asked Questions (FAQs) to students and their families in order to clarify points of confusion about the procedures.

We recommend the creation of a new section, stating:

DCPS shall make available the names of organizations or individuals in the District of Columbia that can provide advocacy assistance to families. The Office of the Ombudsman for Public Education shall be empowered to assist students and families in navigating the Student Grievance Procedures. DCPS shall also disseminate a list of Frequently Asked Questions (FAQs) regarding the Student Grievance Procedures to provide further guidance to students and their families.

Conclusion

Grievance procedures provide a forum for students and their families who feel that their rights have been violated within their school. Procedures that promote fairness, transparency, and accountability strengthen ties between school officials and the members of the community that they serve. To ensure that grievances are addressed in a timely and just manner, I urge DCPS to adopt the recommendations above.

Respectfully,



Sharra E. Greer
Policy Director

¹ Children's Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. We are the largest provider of free legal services in the District and the only to focus on children. Our 80-person staff partners with local pro bono attorneys to serve more than 2,500 at-risk children each year. We use this expertise to advocate for changes in the District's laws, policies and programs. Learn more at www.childrenslawcenter.org.

² See 34 C.F.R. § 104.36 for the procedural requirements for a dispute under Section 504 of the Rehabilitation Act of 1973 ("A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement."). In addition, the District of Columbia Public Schools are required to establish grievance procedures that "incorporate appropriate due process standards" including:

- (a) Adequate notice of the procedures, including with whom the grievances should be filed;
- (b) The adequate, reliable, and impartial investigation of grievances, including the opportunity to present witness information and other information and to rebut any evidence presented by the opposing party;
- (c) Designated and reasonably prompt timeframes for the major stages of the grievance process;
- (d) Notice to the parties of the outcome of each stage of the grievance process;
- (e) An opportunity to appeal the findings and remedy; and
- (f) The prohibition of retaliation against any individual who files a grievance or participates in a grievance process." See *OCR Complaint No. 11-12-1133*.

³ **Bold** indicates proposed additions and ~~striketrough~~ indicates proposed deletions.

⁴ We are particularly concerned by the suggestion to place the Office of the General Counsel on the grievance review panel. The Office of General Counsel is, by definition, an interested party of DCPS.

⁵ See *OCR Complaint No. 11-12-1133* ("Specifically, the procedures will include: . . . An opportunity to appeal the findings and remedy.").