

Via email: [Jewell.little@dc.gov](mailto:Jewell.little@dc.gov)

October 17, 2014

Ms. Jewell Little  
Office of Human Rights  
Office of the General Counsel  
441 4<sup>th</sup> Street, NW, Suite 570N  
Washington, DC 20001

Re: Comments on the new Chapter 15 (Youth Bullying Prevention) of Title 4 (Human Rights and Relations) of the DCMR.

Dear Ms. Little:

Thank you for the opportunity to comment on the proposed rulemaking that was published in the DC Register on September 19, 2014 regarding Youth Bullying Prevention in the District of Columbia. I am submitting these comments on behalf of Children's Law Center (CLC).<sup>1</sup> In the last year, CLC provided services to more than 5,000 low-income children and families, with a focus on abused and neglected children and on those with special health and education needs. Our comments are based on our experience representing these children and families.

Children's Law Center appreciates the District's efforts to protect students from bullying throughout the city. We support the overarching framework of the Youth Bullying Prevention Act of 2012, which promotes a multi-tiered, public health response to bullying, accounting for the mental health needs of both the student being bullied and the student who is bullying.

### **Appeals**

Students and their caregivers deserve the opportunity to meaningfully appeal a decision about a bullying incident. The Youth Bullying Prevention Act of 2012 mandates that each covered entity adopt "an appeal process... for a person accused of bullying or a person who is the target of bullying who is not satisfied with the outcome of the initial investigation."<sup>2</sup> The proposed Youth Bullying Prevention regulations accordingly require each covered entity to have an appeals process. If a party is unhappy with the results of an initial investigation, the regulations state at § 1506.2 that "[t]he secondary investigation shall be conducted by an employee who has a higher-level authority in the covered entity than the one who conducted the investigation and who was not involved in the initial investigation."

We are concerned that this language is inconsistent with the District of Columbia Public Schools' (DCPS) Student Grievance Procedures (DCMR 5E-2405). The DCPS Student Grievance Procedures apply in many circumstances, including "[w]here a [DCPS] student is a victim of bullying or harassment." (5E-2405.2(e)). Unfortunately, the Student Grievance

Procedures' appeal framework allows for a circular process, where the person who initially investigates the complaint may be the same person to issue a final decision to a written grievance, even after multiple "appeals." Specifically, under the DCPS Student Grievance Procedures, it is possible that a grievant who is unhappy with the initial decision of a DCPS Instructional Superintendent could first appeal to a designee of the Chancellor, and then make a second appeal to a panel of DCPS officials chosen by the Chancellor, who would then present a report back to the Instructional Superintendent, who would make the final decision. This appeal process for DCPS students does not guarantee that the secondary investigation be completed by a higher-level employee who was not involved in the initial investigation, as required by the proposed regulations in § 1506.2.

Additionally, the Youth Bullying Prevention regulations require at § 1506.4 that the higher-level employee notify the party in writing "of the party's ability to seek additional redress under the District of Columbia Human Rights Act." Although the DCPS Student Grievance Procedures allow that a grievant "may also file a complaint directly with the District of Columbia Commission on Human Rights" (*see* §§ 2405.5(h) and 2405.4(q)), the DCPS Student Grievance Procedures do not require that the party be notified of that option in writing.

Because the proposed Youth Bullying Prevention regulations conflict with existing regulations regarding appeals for instances of bullying in District of Columbia Public Schools, the proposed regulations should be amended to include a new section, perhaps prior to § 1506.1, stating that:

**The appeals procedures set forth in this section shall supersede any existing appeals procedures for youth bullying already existing in the DCMR.<sup>3</sup>**

## **Cyberbullying**

### *Definition and Application*

Cyberbullying presents many challenges for caregivers, parents, educators, and adults who work with youth. Although cyberbullying is defined in § 1599.1,<sup>4</sup> other sections of the proposed regulations refer to "electronic communications" without defining electronic communications or distinguishing such communications from cyberbullying.

We recommend eliminating the term "electronic communications" and replacing it with "cyberbullying," which encompasses all bullying done through electronic means.

Currently, under § 1502.4, cyberbullying only falls under a covered entity's bullying prevention policy if the electronic communication was "sent to or from someone at a location listed in § 1502.3." Linking a bullying prevention policy to the location where the electronic communication was sent is anachronistic and unnecessarily burdensome to families, who will be forced to prove that a youth sent a particular message or communication from a particular location.

Although § 1502.4, taken together with § 1502.5, could be read to cover bullying (including cyberbullying) from any location, the regulations should explicitly state that cyberbullying falls under a covered entity's bullying prevention policy if the cyberbullying "creates a hostile environment at the covered entity for the target or witness, impedes or interferes with a youth's ability to participate at the covered entity, or materially and substantially disrupts the orderly operation in the covered entity." Additionally, cyberbullying and other types of bullying should fall under the covered entity's prevention policy if youth are acquainted through the covered entity, regardless a youth's location while cyberbullying. We are concerned about situations where children are acquainted through a covered agency but the bullying takes place solely or away from the physical location of the agency.

As such, we advise the following edits to § 1502.4:

Each covered entity's bullying prevention policy shall apply to ~~electronic communications~~ **cyberbullying** sent from or to someone at a location listed in § 1502.3, whether or not the communications device is owned or leased by the covered entity. **Cyberbullying and bullying also shall fall under the covered entity's bullying prevention policy if the youth are acquainted through the covered entity, or if the cyberbullying or bullying leads to any of the scenarios enumerated in § 1502.5.**

### **Reporting Requirements of Educational Institutions**

Bullying due to discrimination against certain classes of individuals is particularly damaging to institutions and communities. To protect against such discrimination, we believe it behooves the District of Columbia to track incidents of bullying connected to discrimination. This should not create an additional burden on educational institutions, as they are already required to provide such data to the federal government.

Accordingly, we propose the following edits to § 1511.1:

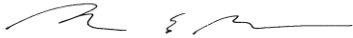
Each educational institution shall report to OHR by September 15 of each year the aggregate number of incidents of bullying, retaliation, and other violations of the bullying prevention policy at the educational institution during the prior school year (including the prior summer term), a brief description of each of each such incident (as required by § 1504.7) and the results of the investigation of the incident.; **In its report, each educational institution shall disaggregate, by protected class, the number of incidents of bullying, retaliation, and other violations of the bullying prevention policy that are based on a protected class under the DC Human Rights Act.**

### **Conclusion**

Bullying is a public health concern that affects many youth in the District of Columbia. Caregivers, educators, and adults who work with youth are often confounded by how to respond appropriately to a bullying incident. We urge the Office of Human Rights to adopt the

recommendations above to clarify the appropriate response by covered entities to incidents of bullying.

Respectfully,



Sharra E. Greer  
Policy Director

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<sup>1</sup> 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](http://www.childrenslawcenter.org).

<sup>2</sup> D.C. Code §§ 2-1535.01-.09.

<sup>3</sup> **Bold** indicates proposed additions and ~~striketrough~~ indicates proposed deletions.

<sup>4</sup> Per § 1599.1, cyberbullying is “any bullying done through electronic means including, but not limited to the Internet, electronic mail (email), texting or ‘tweeting.’”