

November 19, 2015

Office of Human Rights
Office of the General Counsel
441 4th Street, NW, Suite 570N
Washington, DC 20001

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

To Whom it May Concern:

Thank you for the opportunity to comment on the proposed rulemaking that was published in the DC Register on October 23, 2015 regarding Youth Bullying Prevention in the District of Columbia. I am submitting these comments on behalf of Children's Law Center (CLC),¹ which fights so every DC child can grow up with a loving family, good health and a quality education. With 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 8 children in DC's poorest neighborhoods – more than 5,000 children and families each year. 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 bullying incidents. 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.”² 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 5B-2405). The DCPS Student Grievance Procedures apply in many circumstances, including “[w]here a [DCPS] student is a victim of bullying or harassment”. (DCMR 5B-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 not satisfied 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 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, the proposed regulations should be amended to include a new section, 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.³

Cyberbullying & Off-Site Bullying

Cyberbullying presents many challenges for caregivers, parents, educators, and adults who work with youth. Section 1502.4 of the proposed regulations provides guidelines for when cyberbullying falls under a covered entity’s bullying prevention policy. Under § 1502.5, 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 § 1502.4.” Linking cyberbullying 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 § 1502.5, taken together with § 1502.6, could be read to cover cyberbullying from any location, the regulations should explicitly state that cyberbullying falls under a covered entity’s bullying prevention policy if the cyberbullying occurs outside of a covered entity but “creates a hostile environment at the covered entity for the target or witness of bullying or interferes with a youth’s ability to participate at the covered entity.” Additionally, cyberbullying should fall under the covered entity’s prevention policy if youth are acquainted through the covered entity, regardless of the origin of the cyberbullying messages or electronic actions. The location of where the electronic messages were sent should not be the sole criterion for whether the covered entity’s bullying prevention policy applies.

We propose the following edits to §1502.5:

Each covered entity’s bullying prevention policy shall apply to cyberbullying sent from or to someone at a location listed in §1502.4, whether or not the communications device

is owned or leased by the covered entity. **Each covered entity's bullying prevention policy shall also apply to cyberbullying sent from or to someone acquainted through the covered entity, regardless of the location of the sender or receiver, if the cyberbullying creates a hostile environment at the covered entity for the target or witness of bullying or interferes with a youth's ability to participate at the covered entity.** Cyberbullying is defined as any bullying done through electronic means which meets the definition in §1502.1, including, but not limited to, social media, electronic mail (email), texting or tweeting.

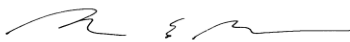
Additionally, to clarify and ensure that each covered entity's bullying prevention policy covers all forms of bullying done outside of a covered entity, but that creates a hostile environment at the covered entity for the target or witness of bullying or interferes with a youth's ability to participate at the covered entity, we propose the following edits to §1502.6:

Bullying which ~~occurs on-site, but~~ involves off-site activities, is prohibited if it creates a hostile environment at the covered entity for the target or witness of bullying or interferes with a youth's ability to participate at the covered entity.

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

¹ Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to be the voice for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone. With 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 8 children in DC's poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

² D.C. Code §§ 2-1535.01-.09.

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