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June 7, 2019

Dr. Lewis Ferebee
Chancellor
DC Public Schools
1200 First Street NE
Washington DC, 20002

RE: COMMENTS ON POLICY AND PROCEDURES FOR SEXUAL MISCONDUCT AND SEX-BASED DISCRIMINATION AGAINST STUDENTS

Dear Dr. Ferebee,

I am writing on behalf of the DC Coalition Against Domestic Violence (DCCADV, the Coalition) in response to DC Public Schools (DCPS) request for public comments on the draft policy and procedures regarding Sexual Misconduct and Sex-Based Discrimination Against Students. DCCADV is the federally-recognized statewide coalition of domestic violence programs, organizations, and individuals organized to ensure the elimination of domestic violence in the District of Columbia. We're grateful that DCPS moved swiftly to draft policy and make it available for public comment. However, we believe the proposed policy fails to meet the standards set forth by the School Safety Omnibus Act (School Safety Act). Like our partners at [Children's Law Center](#), DCCADV and our member programs have concerns about DCPS's proposed policy and procedures.

The Coalition worked collectively with our member programs and community partners, in support of the School Safety Act. The passage of the School Safety Act has the potential to place the District at the forefront in responding to and preventing dating violence¹ and sexual assault in schools. As Federal guidance surrounding Title IX is shifting in dramatic and potentially devastating ways, it's more important than ever for DCPS to have its own effective policies around dating violence, sexual assault, and sexual harassment. Regardless of the nationwide trends, the District can and should still act as a positive example and national model in how schools should effectively and compassionately handle these traumatic events, including dating violence.

However, the proposed policy minimizes the harmful impact of dating violence in schools. In addition, the proposed policy provides vague details and misses the mark on prevention and

¹ Dating violence is the use of physical, sexual, verbal, emotional, or electronic abuse by a person to harm, threaten, intimidate, or control another person in a relationship of a romantic or intimate nature, regardless of whether that relationship is continuing or has concluded. Also may be defined by the terms "adolescent relationship abuse," "adolescent dating abuse" and "teen dating violence."

education. Furthermore, the draft guidance lacks clarity around critical elements of the reporting and investigation process. Addressing dating violence in schools is essential in allowing children and young adults to further their education. If dating violence is unaddressed, youth will be put at risk for further victimization. Dating violence will not only affect survivors during their time at school, but throughout the rest of their lifetimes. Therefore the need for policies, prevention, appropriate responses, and available services to address dating violence and other abusive behavior is paramount.

1) THE PROPOSED POLICY AND PROCEDURES SHOULD EXPLICITLY IDENTIFY DATING VIOLENCE AS A PROHIBITED BEHAVIOR

Dating violence continues to be a major concern for youth in DC. Too many young people are impacted by sexual misconduct each day, and this behavior is often committed by a close peer. One in three adolescents in the U.S. is a victim of physical, sexual, emotional or verbal abuse from a dating partner, a figure that far exceeds rates of other types of youth violence.² Here in DC, a quarter of all middle and high school students (24%) reported experiencing violence by someone they were dating or going out with in the past year.³

Students who experience this type of violence or misconduct already face many barriers in coming forward and talking about what they have experienced and what they need to recover from abuse. In order to eliminate these barriers and reduce the stigma associated with experiencing and reporting misconduct, it is vital that school communities accurately name and identify the experiences that students face.

Unfortunately, the proposed policy fails to take this necessary step. While we know that a quarter of students in DC are experiencing a wide range of abusive behaviors from a dating partner, the provided policy only mentions dating and intimate partner violence in one sentence, and categorizes it as an offense that “may” constitute sexual misconduct.

Local 2017 Youth Risk Behavior Surveillance (YRBS) data also shows that experiencing dating violence was associated with a significantly increased likelihood of middle and high school students missing school because they felt unsafe, and with an increased likelihood of high school students receiving lower grades in school. Dating violence also has a significant and lasting impact on youth mental health; the YRBS study found that among youth in DC, experiencing dating and sexual violence was associated with a significantly increased likelihood of suicidal ideation and suicide attempts.⁴

Instead of effectuating the School Safety Act’s purpose of establishing policies that address peer-to-peer dating violence and keeping students safe from abuse, the proposed misconduct

² Davis, Antoinette, MPH. 2008. Interpersonal and Physical Dating Violence among Teens. The National Council on Crime and Delinquency Focus. Available at http://www.nccd-crc.org/nccd/pubs/2008_focus_teen_dating_violence.pdf.

³ Office of the State Superintendent of Education (OSSE). (2017). 2017 Youth Risk Behavior Study Survey Results: District of Columbia (Including Charter Schools) High School Survey. OSSE: Washington, DC.

⁴ Supra 3

policy diminishes the importance and impact of dating violence. Devoting so little attention to these prevalent behaviors, the policy actually makes it less likely that students who experience dating violence will recognize and report such misconduct.

Not addressing dating violence fully within the proposed policy may have extremely dangerous consequences for survivors of dating violence. Every relationship differs, but what is most common within all abusive relationships is the varying tactics used by abusers to gain and maintain power and control over the survivor. When these dynamics of power and control go unaddressed and/or are minimized, there is always the threat of escalating violence and increased risk of lethality. As a recent study found, of the adolescents killed by their current or former intimate partner, 90% of the victims were female, and their average age was around 17 years old. Too often people assume that intimate partner violence among youth is less serious than it is among adults. This new study highlights what advocates have always known: dating violence can lead to death at any age.⁵

Reporting dating violence and abuse is always hard, and the proposed policy would further discourage students from coming forward to ask their schools for help. Students often choose not to report for fear of reprisal, because they believe their abuse was not important enough, or because they think that no one would do anything to help.⁶ Only 33% of teens who were in a violent relationship ever told anyone about the abuse.⁷ Further, some students—especially students of color, undocumented students,⁸ LGBTQ students,⁹ and students with disabilities—are less likely than their peers to report dating violence and sexual assault due to a perceived lack of believability, increased risk of being subjected to criminalization, and/or disciplinary action. Survivors of color may not want to report to the police and add to the criminalization of men and boys of color. For these students, schools are often the only avenue for relief.

DCPS should be unequivocal in its policy that any form of dating violence, including psychological, emotional, and verbal abuse should be prohibited. There should be no confusion for students that they have the right to report dating violence. However, as drafted, these types of abuse may not be considered violations of sexual misconduct. The current narrow view of dating violence included in the policy might deter students from reporting the act, or waiting to report until abuse has worsened. The proposed rules discourage students and peers from intervening early when they witness unhealthy and potentially abusive behaviors in relationships. The proposed policy should recognize and support survivors who are experiencing dating violence, not make reporting more difficult.

⁵ Adhia A, Kernic MA, Hemenway D, Vavilala MS, Rivara FP. Intimate Partner Homicide of Adolescents. *JAMA Pediatr.* Published online April 15, 2019;173(6):571–577. doi:10.1001/jamapediatrics.2019.0621

⁶ RAINN, *Campus Sexual Violence: Statistics*, <https://www.rainn.org/statistics/campus-sexual-violence>.

⁷ Liz Claiborne Inc., conducted by Teenage Research Unlimited, (February 2005)

⁸ See Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, NY TIMES (April 30, 2017), <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?mcubz=3>.

⁹ National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey: Executive Summary 12* (Dec. 2016) [hereinafter *2015 U.S. Transgender Survey*], available at <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf>.

In addition, the proposed policy needs to more fully address other abusive behaviors like cyberbullying and stalking. Both these behaviors are often interconnected with sexual misconduct and dating violence. While stalking alone might not seem severe to begin with, it is a consistent predictor of lethality. For example, stalking preceded the attack in 85% of cases where someone attempted to murder their intimate partner.¹⁰ However, the proposed policy does not take incidents of stalking seriously. Minimizing and ignoring this behavior might discourage school staff from reporting it. The draft also fails to include a definition of “reasonable person.” We urge DCPS to include a definition under the *Key Terms and Definitions* section, and we have attached additional documentation with a recommended definition.

2) THE PROPOSED POLICY MISSES THE MARK ON ENSURING COMPREHENSIVE PREVENTION AND EDUCATION TO STUDENTS.

Research indicates that long-term exposure to prevention training is key to preventing dating and sexual violence.¹¹ Prevention education can reduce the prevalence of sexual harassment and dating violence, inform students of their legal rights following violence, and help survivors access critical resources. Yet, this policy fails to fully address prevention education, a crucial component of helping school communities reduce the stigma around reporting sexual and dating violence. In order for students, and DCPS staff, to report misconduct, it is first necessary for them to recognize what they experience in the context of healthy, unhealthy, or abusive behaviors.

The goal of prevention education is to stop misconduct or violence before it begins. During their time in DCPS, young people should be learning the skills they need to form positive, healthy relationships with others. It is therefore an ideal time to promote healthy relationships and prevent patterns of misconduct or violence that can last into adulthood. Prevention education is a critical component of recognizing and reporting misconduct but it is mentioned only in passing in the proposed policy. While section “C” of the policy is titled *Prevention and Education*, none of the protocols detailed in that section are truly primary prevention measures.

It is not enough to educate students about what behaviors constitute misconduct; instead, it is vital to educate both students and staff about the full spectrum of interpersonal behaviors and discuss resources available to them when they are confronted with healthy, unhealthy, and abusive experiences. The School Safety Act tasked schools to raise the bar around prevention education as is encouraged by Campus SaVE¹², by mandating age-appropriate instruction on healthy relationships and consent. We recommend DCPS embrace a more robust inclusion of

¹⁰ SPARC, Stalking and Intimate Partner Violence Fact Sheet.

¹¹ Carmody, M., Evans, S., Krogh, C., Flood, M., Heenan, M., & Ovenden, G. (2009). Framing best practice: National Standards for the primary prevention of sexual assault through education, National Sexual Assault Prevention Education Project for NASASV. University of Western Sydney, Australia

¹² Under the 2013 Violence Against Women Reauthorization Act amendments to the Clery Act (also known as Campus SaVE), institutions of higher education are required to provide ongoing prevention and awareness education to all incoming students and employees. While Campus SaVE does not extend its mandate to K-12 schools, states and school jurisdictions can and

these concepts within its policy. In order to be effective, prevention education programming in schools must be evidence-informed, culturally responsive, and inclusive.

Best practices for prevention education include:

- Be provided to all school community members, including students, faculty, and staff at least **once every six months**;
- Be evidence-informed, medically accurate, and regularly evaluated to ensure consistency with contemporary best practices;
- Be conducted in-person;
- Be inclusive of LGBTQ and disabled people and clearly explain that all community members, including LGBTQ and disabled students, who experience and/or report dating violence, sexual assault, sexual harassment, or stalking have the same rights under school policy and applicable laws as other survivors;
- Include concepts of healthy relationships, such as helping youth explore what they deserve to expect in an intimate relationship, such as trust, support, respect, shared responsibility, honesty, accountability, negotiation, fairness, communication and equality;
- Skills for safely expressing challenging and/or confusing emotions;
- Skills for effective communication; including defining, communicating, and respecting personal boundaries;
- Include bystander intervention and how to support a friend who is experiencing sexual violence, dating violence or electronic abuse, or other harassing behavior;
- Include conflict resolution;
- Creative social marketing/public education activities and events that are developed and led by youth to educate and engage their peers, school community, and parents/caregivers.
- Create an educational campaign featuring a variety of activities within a specific time period such as National Teen Dating Violence Awareness and Prevention Month, usually observed in February; Sexual Assault Awareness Month, usually observed in April; and Domestic Violence Awareness Month, usually observed in October.
- Include programming that helps students identify behavior that constitutes gender-based harassment, including dating and domestic abuse, stalking, and sexual violence (and including childhood sexual abuse). This curriculum should include age-appropriate and evidence-informed information about relevant topics

Successful prevention programs rely on multiple exposures to the topic. We urge DCPS to think about the use of multiple prevention strategies, in addition to broad universal prevention education and classroom instruction. Schools can and should do more than simply address dating and sexual violence in its aftermath. By including this type of education in the policy, DCPS can better help students and all school communities become proactive in recognizing and reporting misconduct.

should apply a higher standard. Ongoing prevention education within in DCPS schools will establish us a national leader in prevention education.

3) CONCERNS AROUND REPORTING PROCEDURES AND PROTECTIONS

We believe the *Reporting Procedures and Protections* section needs additional clarity around responsible staff and mandatory reporting requirements, the determination of interim measures, and confidentiality.

a) Responsible Staff & Mandated Reporting

The policy fails to provide guidance or cross-reference mandated reporting guidelines that exist in the DC Code and other laws. While the policy details next steps for an internal DCPS response, additional guidance should be included to support staff reading this document in understanding their full professional mandated reporting requirements. Time should be dedicated within staff training to addressing the role of staff in receiving reports of abusive behavior and actions, handling disclosures of abuse, and the appropriate response and next steps of their reporting requirements.

Additionally, the policy directs staff to take immediate steps after receiving a report, including providing students with resources on supports and services. As national best practices recommend, it's important that these resources and supports include both on-campus and off-campus resources.

b) Determination of Interim Measures

Under Title IX, schools must provide the survivor with academic accommodations and notify survivors of options for interim measures regardless of the survivors' decision to report to law enforcement or use of the school's grievance policy. When reasonable, schools must accommodate a survivor to remedy a hostile environment on a school's campus. Additionally accommodations or safety measures for a survivor should be voluntary. The student may choose to decline or rescind any accommodation at any time by notifying the Title IX coordinator.

The proposed policy must make it clear that the burden of accommodations or safety measures should not be solely placed on the survivor, as this may be seen as a violation of Title IX. For example, a school should not require a survivor to change their class schedule in order to avoid the perpetrator. DCPS has a history of failing to provide reasonable accommodations to student survivors.¹³ Supportive measures and accommodations are important and ensure students can remain engaged in their education. Yet, without providing additional clarity, under the proposed policy, the school could force the transfer of the survivor over that of the perpetrator. This would result in the survivor being forced to leave all of their friends and teachers, change their classes, and commute long distances to another school solely because they experienced misconduct. Forcing a measure on a survivor of assault further isolates that survivor and puts additional academic and social burdens on them, while the perpetrator is able to remain at the same school with minimal interruption in academics while an investigation occurs.

¹³ Dvorak, Petula. "After an alleged rape at a D.C. high school, was a 16-Year-Old girl treated fairly?" Washington Post, 29 Jan. 2018

Additionally, per the retaliation section of the policy, it should be made clear that a survivor shall not be subject to any retribution or disciplinary action for such decision to report, and shall not lose the right to request and receive future reasonable accommodations.

We also would recommend explicitly highlighting the need for confidentiality throughout the interim measures process. Knowledge and discussion of requests for accommodation must be limited to those school employees actively involved in the process. If the accommodation affects the survivor only and the alleged perpetrator's rights are not impacted, there is no need for the alleged perpetrator to be notified of the request or the outcome of a minor accommodation, such as a locker change, for example. Our additional thoughts about confidentiality in the proposed policy can be found in subsection (d) below.

c) Staff Training

Under the proposed policy, all school employees have a duty to respond when they suspect or become aware of an incident of sexual or dating violence; they will need training and support in order to be able to meet these requirements quickly and effectively. Additionally, per the School Safety Act, staff is required to receive training, thus requirements for staff training should be included within the DCPS policy.

Responding to dating violence, sexual assault, and other forms of misconduct is complicated, and requires a different set of skills than what DCPS staff members often need and utilize to fulfill their daily roles in a school environment. In order to be able to effectively accept and make reports of sexual misconduct, staff training is required on receiving disclosures of misconduct or abuse, supporting student survivors in the moment and throughout the investigation process, and making reports in a way that complies with the policy and upholds student safety and confidentiality. Including a more comprehensive staff training plan in the proposed policy will ensure that staff at all schools can build skills, feel confident in their roles as reporters, and be better supports for students who have been mistreated. Furthermore, staff tasked with handling the reports and investigation of misconduct should receive annual training to ensure compliance with the DCPS policy and other relevant local and federal laws. We recommend that the policy reflect these critical components of staff training in some capacity to ensure accountability and transparency.

In developing staff training and implementing a robust sexual misconduct policy, it will also be important to collaborate with local subject matter experts from the community. Local dating and sexual violence experts are familiar with both the needs of young survivors of violence and best practices for responding to and making reports of violence. Schools can and should utilize community experts to support the development of curricula and partner with community-based organizations to conduct trainings and workshops throughout the school year. They will be valuable resources in enhancing the capacity of DCPS staff and students to recognize, report, and respond to sexual misconduct and dating violence in a way that prioritizes student safety.

By building this collaboration with local experts into the policy itself, DCPS can help ensure that each school community is well positioned to partner and collaborate with the community experts that best suite their unique needs.

d) Ensuring Confidentiality

Confidentiality is one of the most important factors in a survivor’s decision to seek support or make a report of dating violence or sexual violence. The lack of trust in adults and professionals is a barrier for schools to overcome in order to implement effective prevention and intervention programs. We recommend that the proposed policy elevate the issue of confidentiality and provide additional guidance to school employees to ensure student confidentiality is protected to the fullest extent possible.

Parental involvement in the lives of teens experiencing dating violence is preferred, and we encourage schools to work together with students experiencing dating violence to find ways of involving parents in ensuring their children’s safety. We know when students report abuse, the majority of students will choose to involve their parents – staff should be urged to support students in developing a plan for such disclosure, including meeting with students and parents as necessary. DCPS should include additional guidance around the need to disclose reports to a student’s parent or guardian. To the extent possible, the ultimate decision of whether or not to notify a student’s parent should belong with the student.

While many students will choose to notify their parents, we also know that there are some situations in which a disclosure to a student’s parent can potentially threaten the student’s health or safety (for example if a student identifies as LGBTQ but is not out to their family, notifying a parent of misconduct perpetrated against the student by a dating partner of the same gender would out the student to their family and potentially put the student at risk). To address these situations, we recommend that DCPS include a provision in the proposed policy to address potential threats to the student’s safety during parental notification. The policy should provide additional guidance and developmentally appropriate protocols for informing parents or guardians about sexual misconduct and dating violence. DCPS already provides similar guidance within its *Transgender and Gender-Nonconforming Guidance*, and should provide explicit guidance in this sexual misconduct policy as well.

4) CONCERNS AROUND INVESTIGATIONS AND REMEDIES

Under federal guidelines, schools are required to have a reasonably prompt timeframe to investigate and offer resolution. The Title IX guidance issued by the Obama administration recommended that schools finish investigations within 60 days, and prohibited schools from delaying a Title IX investigation just because there was an ongoing criminal investigation. We believe that a 10 school day window is not enough to ensure an equitable process that allows both parties time to adequately respond to reports of misconduct. As DCPS requires parental consent to question students and potentially the use of a grievance panel, 10 school days is simply not sufficient time to meet these requirements and provide a just, equitable investigation for all students involved. All investigations of misconduct should be taken

seriously, and schools and students should be afforded the time to access support to ensure that a fair and equitable process can occur. We encourage DCPS to follow the national best practice and set a timeframe that will better support a fair and equitable process.

5) DEFINITIONS AND ADDITIONAL KEY TERMS

Attached to our public comment is a glossary of terms that we believe should be included within the policy to provide needed context for staff. Additionally, we believe there are numerous terms that the policy should cross-reference to ensure the procedures are meeting standards set forth by local and federal law. We encourage DCPS to utilize these resources as they revise the sexual misconduct policy after public feedback.

CONCLUSION

To adequately address violence, dating violence interventions in DC public schools must balance the safety concerns and educational needs of both survivors and perpetrators. We recognize that DCPS and all schools in DC have historically been under resourced to provide comprehensive consent and healthy relationship education to students, and sufficient training on the response to dating and sexual violence for staff. As such, the full implementation of a comprehensive sexual misconduct policy is a significant undertaking for DCPS. We commend DCPS for moving quickly to develop a policy and make it available for public comment. We believe that with meaningful and sustained partnership with local dating violence experts, parents, and youth leaders, our communities public schools will gain the resources they need to fully develop a consistent and survivor-centered response to both dating and sexual violence, and will effectively enhance their violence prevention efforts. As the District's domestic violence coalition, DCCADV and our member programs have extensive experience providing training and technical assistance around youth dating violence and are available to work with DCPS to make improvements, strengthen this policy, and best support students who have experienced misconduct and violence. We believe that with meaningful collaboration DCPS can create a policy that will be a model for the rest of the country.

Thank you for considering these comments and concerns. We know that we all share the same goal of improving the safety of students. If you have any questions about these comments, please feel free to contact Andrea Gleaves at (202) 597-5761 or at agleaves@dccadv.org.

Sincerely,



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Enclosures: Glossary of Key Terms