



April 21, 2015

Mayor Muriel Bowser
Executive Office of the Mayor
1350 Pennsylvania Avenue, NW
Washington, DC 20004

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

Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Hon. Phil Mendelson
Hon. Vincent Orange
Hon. Anita Bonds
Hon. David Grosso
Hon. Elissa Silverman
Hon. Brianne Nadeau
Hon. Jack Evans
Hon. Mary M. Cheh
Hon. Kenyan McDuffie
Hon. Charles Allen
Hon. Yvette Alexander

Re: Empowering Males of Color

Dear Mayor Bowser, Chancellor Henderson, and Council members,

On behalf of the National Coalition for Women and Girls in Education (NCWGE), a nonprofit coalition of more than 40 organizations dedicated to improving educational opportunities for women and girls, we are writing to express concerns with the exclusion of girls from the District of Columbia Public Schools' (DCPS) Empowering Males of Color (EMC) initiative as well as a paid internship program recently announced by Mayor Bowser as part of the DC Boys and Men of Color Initiative (BMOC) in which DCPS is participating. We generally applaud the infusion of funds into DCPS and your focus on the needs of children of color, and recognize the critical need to identify and address the particular challenges faced by minority boys. At the same time, we are deeply disappointed that both programs appear to exclude girls from receiving the benefits they promise to offer. These are poor policy decisions, and ones which likely violate Washington, D.C.'s Human Rights Act of 1977, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and the Equal Protection Clause of the United States Constitution.

Empowering Males of Color

The DCPS Data

Empowering Males of Color will include funding for school-based literacy initiatives for Black

and Hispanic boys, mentoring for Black and Hispanic boys, and the creation of an entirely new all-boys school. There appear to be no plans to include girls in any of these programs.

The publicly available DCPS data presentation used to justify the EMC initiatives¹ demonstrates that girls of color as well as boys of color need the interventions of these initiatives. According to the data:

- Reading proficiency rates for Black girls in DCPS are virtually identical to those for Hispanic boys, yet Hispanic boys and not Black girls will be eligible to participate.
- Math proficiency rates for Black girls are well below those of Hispanic boys.
- While the gap between the performance of Black children (and, similarly, Hispanic children) and White children on the DIBELS measures of the acquisition of early reading skills widens as the students age, the differences between Black boys and Black girls (or between Hispanic boys and Hispanic girls) is tiny in comparison to the racial gap. Indeed, over time, the gap between the DIBELS scores of Black girls and White girls increases more than does the gap between Black boys and White boys.
- While Black boys enroll in AP courses at the lowest rate in DCPS, the enrollment of Black girls is also woefully low, and well below the rate for Hispanic boys.
- Black girls and Black boys in DCPS have virtually indistinguishable pass rates on AP exams, as do Hispanic girls and Hispanic boys.
- Black and Hispanic girls graduate at rates well below that for White girls.
- Black boys and Black girls are equally absent from school and at rates greater than for any other cohort.

The inescapable conclusion from DCPS's own data is that girls of color, as a group, are in as dire need of educational interventions as are boys of color. As boys and girls of color are growing up in the same neighborhoods and the same households, this conclusion is not surprising.

The Inefficacy of Single-Sex Education

Research has shown that single-sex educational environments are not superior to coeducational environments for boys of color – or for any children. Boys of color can succeed in coed schools – and they can fail in single-sex schools. The factors that make a school successful are independent of its status as coed or single-sex. As Pedro Noguera has written, “There is no magic to be found in merely separating boys of color from their peers”²

Last year, the American Psychological Association published a National Science Foundation-funded meta-analysis of more than 1.6 million students' performance, showing that when proper controls are used, the purported benefits of single-sex education are only illusory.³ Every

¹ District of Columbia Public Schools, Office of Data and Strategy, *Empowering Males of Color Data Presentation – January 2015*, DCPS, available at <http://dcps.dc.gov/DCPS/Files/downloads/ABOUT%20DCPS/DCPS%20Data/Empowering%20Males%20of%20Color%20Data%20Presentation.pdf>.

² Pedro Noguera, *Saving Black and Latino Boys*, Education Week, October 2, 2013, available at http://www.edweek.org/ew/articles/2012/02/03/kappan_noguera.html.

³ Erin Pahlke, Janet Shibley Hyde & Carlie M. Allison, *The Effects of Single-Sex Compared With Coeducational Schooling on Students' Performance and Attitudes: A Meta-Analysis*, 140 *Psychological Bulletin* 1042 (2014)

individual learns somewhat differently, but a child's sex does not determine those differences. Assertions by some advocates for single-sex education that boys and girls learn differently are unsupported and nothing other than pseudoscience.⁴

Even DCPS's choice of partner for its new school has not demonstrated that single sex education produces better results. Urban Prep has touted its 100% college-acceptance rate for its senior boys, but a review of the data for Urban Prep's flagship school reveals, among other things, that only 20% of its seniors were considered college-ready based on their ACT scores; that it typically takes five years for students to graduate from Urban Prep; that its graduation rate is below that of the rest of Chicago; and that its students' Prairie State Achievement Test scores are well below the rest of students in other Chicago schools.⁵ Urban Prep Englewood does not publish its Post-Secondary Enrollment rate to allow us to determine what percent of its seniors actually enroll in college even though that data is supposed to be included on the school's Illinois Report Card page.

The Law

While a detailed analysis of the law is beyond the scope of this letter, any of the programs proposed under this initiative— the mentoring and literacy program, the funding initiative, and the new prep school – would likely violate federal and D.C. law should they exclude girls. In our opinion, Attorney General Racine's recent opinion letter concluding to the contrary fails to accurately analyze the District data and misunderstands the law. There is no equivalent program being contemplated for the equally needy girls of color in DCPS. But, more importantly, there is no adequate reason to establish any such program on a single-sex basis.

The D.C. Human Rights Act created an absolute prohibition on single-sex public schools and sex separation within coeducational public schools.

It is an unlawful discriminatory practice, subject to [inapplicable exceptions] for an educational institution:

(1) To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon... sex...⁶

If the District is seeking to help its most at-risk students, the data indicate that there are many girls who would qualify for interventions such as mentoring and literacy programs. And there are girls who are failing in their existing schools who could potentially thrive as well as any boys in

(analyzing existing studies and concluding that once study design is accounted for, single-sex education is not shown to lead to improvements in educational outcomes).

⁴ Diane Halpern, *et al.*, *The Pseudoscience of Single-Sex Schooling*, 333 Science 1706 (2011) (discussing existing research and concluding that single-sex education is "deeply misguided, and often justified by weak, cherry-picked, or misconstrued scientific claims rather than by valid scientific evidence")

⁵ Illinois Report Card 2013-2014, Urban Prep Chtr Acad Englewood HS (9-12), *at* <http://www.illinoisreportcard.com/School.aspx?source=Trends&source2=ReadyforCollegeCourseWork&Schoolid=15016299025010C>; Edward Hayes, *The Urban Prep Charter School Myth is Yet Another Chicago Public Schools Deception*, *The Examiner*, July 18, 2010, *available at* <http://www.examiner.com/article/the-urban-prep-charter-school-myth-is-yet-another-chicago-public-schools-deception>.

⁶ D.C. Code § 2-1402.41.

a prep school type environment of high academic expectations. Thus, exclusion of girls from the EMC interventions would fly in the face of the District Code.

As DCPS is well aware, Title IX of the Education Amendments of 1972⁷ generally prohibits sex discrimination in education institutions receiving federal funds.⁸ Excluding girls from mentoring and literacy programs would clearly run afoul of Title IX and federal agency implementing regulations. For example, USDA, which provides DCPS with funds for school meals, prohibits all single-sex programs in coed schools.⁹ Title IX regulations tolerate them in only limited circumstances, which would not be satisfied by the proposed DCPS initiatives. Among other things, any single-sex program offered in a coed school has to be offered on a coeducational basis as well.¹⁰ Thus, as a threshold matter, both mentoring and new literacy interventions also would have to be provided to both girls and boys in a mixed sex setting.

While admissions to single-sex high schools are exempt from the coverage of Title IX, it is clear that DCPS is obligated to provide a comparable school to girls either on a single-sex or coeducational basis.¹¹

The exclusion of single-sex schools admission policies from Title IX does not exclude those policies from scrutiny under the Equal Protection Clause of the United States Constitution. In interpreting the Equal Protection Clause, the Supreme Court has set an extremely high bar for justifying any sex-based classification by any governmental entity – including single-sex schools.¹² In striking down single-sex admissions policies at Mississippi University for Women’s School of Nursing and Virginia Military Institute, the Supreme Court has made it clear that a governmental sex-based classification has to be supported by an “exceedingly persuasive justification” and the single-sex nature of the program must be substantially related to the achievement of that justification. Given the DCPS data, there is simply no legitimate justification – let alone one that satisfies Constitutional standards – for excluding girls from mentoring and literacy programs or the new prep school. As DCPS’s own data show, girls of color need these supports as well. And, as discussed above, there is no valid evidence that boys will perform better in single-sex programs.

In 1991, the Detroit School Board attempted to establish all-male academies to address the high dropout and homicide rates for African American males. In enjoining the creation of these

⁷ 20 U.S.C. § 1681(a).

⁸ District of Columbia Public Schools, *DCPS Notice of Non-Discrimination and Other Non-Discriminatory Provisions*, at <http://dcps.dc.gov/DCPS/DCPS+Notice+of+Non-Discrimination+and+Other+Non-Discriminatory+Provisions>. Indeed, just eighteen months ago DCPS entered into an agreement with the United States Department of Education (ED) regarding the District’s failure to comply with its obligation to treat boys and girls equitably with regards to athletic opportunities. *See* Agreement resolving OCR Case 11-12-1457, dated September 26, 2013.

⁹ 7 C.F.R. § 15a.34 (“A [USDA funding] recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis...”).

¹⁰ 34 C.F.R. § 106.34(b)(1)(iv); *see also* Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities 11, at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

¹¹ 34 C.F.R. § 106.34(c)(3).

¹² *Mississippi U. for Women v. Hogan*, 458 U.S. 718 (1982); *United States v. Virginia*, 518 U.S. 515 (1996) *Accord Doe v. Vermilion Parish School Board*, 421 Fed. Appx. 366, 372 (5th Cir. 2011) (heightened scrutiny applies to sex separation in public schools).

schools, the District Court said that the academies likely run afoul of the Equal Protection Clause of the United States Constitution and observed:

None of these findings meet the defendant's burden of showing how the exclusion of females from the Academies is necessary to combat unemployment, dropout and homicide rates among urban males. There is no evidence that the educational system is failing urban males because females attend schools with males. In fact, the educational system is also failing females.¹³

As in Detroit in 1991, DCPS has a school system with boys AND girls of color in crisis, and there is consequently no greater justification for establishing an all-male school today than there was then.

Boys and Men of Color Internships

Mayor Bowser's recent announcement of 100 paid internships and mentorships for selected boys also raises serious legal and policy concerns. According to the press release,¹⁴ these internships will only be available to the young men who read President Obama's book *The Audacity of Hope* this winter.

The mere fact that only DCPS boys, and no DCPS girls, were invited to read *The Audacity of Hope* is itself problematic. DCPS should not have extended this opportunity – as well as the opportunity to meet the Mayor and help shape her policy – only to boys.

The next step in Mayor Bowser's program, providing paying jobs only to these boys, runs afoul of a host of federal and local laws. DCPS may not participate either as an employer or as a facilitator of these internships if they are restricted to boys. To do so would violate DCPS's obligations under Title IX,¹⁵ Title VII of the Civil Rights Act of 1964¹⁶ and the HRA. Under these provisions, employment opportunities may not be restricted to one sex.

Two other public partners were announced: the Executive Office of the Mayor itself and the Department of Employment Services. Both are obligated by Title VII and the HRA not to restrict their hiring practices on the basis of sex. Consequently, neither the Mayor nor the DES may offer internships or assist others in offering internships on the basis of sex.

Private employers in the District that choose to offer these paid internships only to males will also likely find themselves in violation of Title VII and the HRA. Nonetheless, because the Mayor and DCPS are sponsoring the initiatives, the employers may not be aware of these legal

¹³ *Garrett v. Bd. of Ed.*, 775 F. Supp. 1004, 1010 (E.D. Mich. 1991).

¹⁴ Executive Office of the Mayor, Mayor Bowser Announces Partnership to Create Year-Long Internships for 100 Participants in the Boys and Men of Color Initiative (March 31, 2015), at <http://mayor.dc.gov/release/mayor-bowser-announces-partnership-create-year-long-internships-100-participants-boys-and>.

¹⁵ 34 C.F.R. § 106.38 (“A recipient which assists any agency, organization or person in making employment available to any of its students: . . . [s]hall assure itself that such employment is made available without discrimination on the basis of sex.”).

¹⁶ 42 U.S.C. § 2000e *et seq.*

issues and will not be pleased if they find themselves subject of an EEOC charge or HRA complaint as the result of their participation.

It is ironic that one of the few announced private partners for the internships is Enlightened, Inc., a technology consulting company. Despite the abundant evidence that girls are under-represented in tech sector jobs, only boys will be offered these important internships. The exclusion of girls is neither justified or justifiable.

* * *

In sum, DCPS's own data demonstrate that DCPS's female students of color need the educational interventions proposed for the EMC initiatives and the paid internship assistance of BMOC as much as its male students do. Providing those interventions – whether directly or indirectly – only to boys would likely violate multiple laws. We encourage the DCPS to spend EMC's \$20 million on interventions targeting the most at-risk students in its schools using sex-neutral standards such as low attendance, truancy, or test scores. The achievement gap is real and in critical need of attention, but it applies to students of color of both sexes—not just to boys. Because sex is simply not an appropriate proxy for addressing the needs of “at risk” students, any remedial programs aimed at addressing this gap – including the EMC initiatives and the paid internship program – must be open to girls as well as boys.

Sincerely,



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cc: Jennifer C. Niles, Deputy Mayor for Education
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Hanseul Kang, State Superintendent of Education