

## **Committee on Education**

### **In re: Performance Oversight Hearings for the Education Committee: Office of the State Superintendent of Education, DC Public Schools, DC Public Charter Schools, and the Deputy Mayor for Education**

Testimony of Bridgette Stumpf, Network for Victim Recovery of DC's Executive Director

February 28, 2020

Thank you Chairman Grosso, other Committee members, and staff for your commitment to the safety of DC students. Founded in May 2012, the Network for Victim Recovery of DC (NVRDC) has provided holistic services to over 4,000 crime victims, including free legal representation, advocacy, and case management. In addition to wraparound services, NVRDC also runs the advocacy portion of the District's 24-hour sexual assault crisis response project for adults seeking a sexual assault forensic medical exam. In 2018, NVRDC testified in support of the School Safety Omnibus Amendment Act of 2018 ("School Safety Act")<sup>1</sup> and the Council's efforts to prevent and address sexual harassment and sexual violence in our schools. Based on our experience providing legal services to crime victims in the District, including representing and assisting student-survivors at DC's colleges, universities, and high-schools, we join the DC Coalition for Domestic Violence (DCCADV) and other service providers in voicing our concerns about the proposed sexual harassment policy for DC Public Schools.<sup>2</sup> We acknowledge that the Office of State Superintendent of Education's (OSSE) model policy intends to protect DC's students; however, good intentions aside, this policy fails to acknowledge the best practices in educational

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<sup>1</sup> DC Code § 38-951.01, et seq.

<sup>2</sup> As noted by DCCADV, we do not want our concerns to overshadow our appreciation for the Office of State Superintendent of Education's (OSSE) prompt response to the School Safety Act and its convening of stakeholder meetings with key partners, which included local community-based experts. We're grateful for OSSE's efforts to collaborate with advocates, since collaboration is a crucial component of creating a successful policy that addresses interdisciplinary concerns.

response to sexual violence, including the incorporation of trauma-informed methods, and omits the recommendations made by community providers and experts in the subject matter.

**I. Requiring Mandatory Reporting to the DC Metropolitan Police Department and the DC Child and Family Services Agency Risks Re-Traumatizing Survivors and Falls Outside of Best Practices for Sexual Violence Responses.**

NVRDC shares many of the same concerns highlighted by DCCADV and other DC service providers in regards to OSSE’s model policy.<sup>3</sup> In particular, NVRDC strongly opposes the policy’s mandatory referral of reports of dating violence, sexual assault, or sexual harassment to the DC Metropolitan Police Department (MPD).<sup>4</sup> Our objections are founded on both our extensive experience with representing and assisting student-survivors under Title IX of the Education Amendments of 1972 (“Title IX”)<sup>5</sup> and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”)<sup>6</sup>, and on our experience providing thousands of sexual assault survivors with trauma-informed services that are sensitive to potential triggers for re-traumatization.

Under Title IX and the Clery Act, schools are mandated to inform survivors of all of their options after an instance of sexual violence—which includes the option *not* to report to the police.<sup>7</sup> In fact, under the Clery Act, colleges and universities that automatically refer instances of sexual

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<sup>3</sup> Office of the State Superintendent of Education, Model Policy to Prevent and Address Student on Student Acts of Sexual Harassment, Sexual Assault, and Dating Violence, <https://osse.dc.gov/page/school-safety-omnibus-amendment-act-2018-ssoaa>. (accessed February 3, 2020).

<sup>4</sup> While this testimony focuses on our concerns about the police, we want to also take the opportunity to commend OSSE for the inclusion of social media conduct in the scope of its policy. Given the prevalence of social media in students’ lives, omitting online harassment in a policy significantly impairs a school’s ability to respond to the full spectrum of harassment behavior. Office of the State Superintendent of Education, Model Policy to Prevent and Address Student on Student Acts of Sexual Harassment, Sexual Assault, and Dating Violence, pg. 3, <https://osse.dc.gov/page/school-safety-omnibus-amendment-act-2018-ssoaa>. (accessed February 3, 2020).

<sup>5</sup> 20 US Code §§ 1681, *et seq.*

<sup>6</sup> Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092.

<sup>7</sup> Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092, p. 62761, <https://www.govinfo.gov/content/pkg/FR-2014-10-20/pdf/2014-24284.pdf#page=33>.

violence to local law enforcement could face fines for depriving a survivor of their options.<sup>8</sup> Unlike the survivor-centered approach taken by Clery, the OSSE model policy mandates the following:

Schools *shall always* contact the Metropolitan Police Department (MPD) at 911 or the Child and Family Services Agency (CFSA) hotline at (202) 671-SAFE if they are uncertain about how to proceed with a situation, including if the school is unsure whether a situation rises to the level of criminal or mandatory reporting requirements under District or federal law.<sup>9</sup>

Not only does this policy fail to mention informing a student of their rights and options or offering information on confidential resources, it seemingly encourages schools to default to automatically notifying police and conflating their reporting reporting duties under Title IX and mandatory reporting laws. There needs to be more nuance; schools and employees need to understand their different reporting duties and know which circumstances may not require law enforcement notification<sup>10</sup>—this is especially important for students who may not wish to engage with police in the first place.

While OSSE and DCPS may not be subject to the Clery Act,<sup>11</sup> there is no reason why the District’s youth should be deprived of options available to older survivors following an instance of sexual violence. Sexual violence is predicated on a person trying to exert power and control over another. Perhaps one of the most triggering things one can do to a survivor is to subsequently

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<sup>8</sup> Penalties for non-compliance with the Clery Act include fines up to \$35k per violation and loss of eligibility for federal student aid programs.

<sup>9</sup> Office of the State Superintendent of Education, *Model Policy to Prevent and Address Student on Student Acts of Sexual Harassment, Sexual Assault, and Dating Violence*, pg. 3, <https://osse.dc.gov/page/school-safety-omnibus-amendment-act-2018-ssoaa>. (accessed February 3, 2020) (emphasis added).

<sup>10</sup> Furthermore, by erring on the side of calling MPD and CFSA when schools are in doubt about their responsibilities, they are shifting the onus of their own training to law enforcement and adding a significant burden on those agencies and their resources. MPD and CFSA should not be responsible for ensuring that schools know their reporting duties.

<sup>11</sup> However, many DC schools are subject to Title IX. “All public-school districts are covered by Title IX because they receive some federal financial assistance and operate education programs. All public colleges and universities and virtually all private colleges and universities are covered because they receive such assistance by participating in federal student aid programs. There are some private schools that do not receive any federal assistance, and Title IX does not apply to them.” U.S. Department of Education, Office of Civil Rights, *Sex Discrimination: Frequently Asked Questions*, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html>.

deprive them of their bodily autonomy and the ability to choose what happens to them following an assault.<sup>12</sup> It is understandable that one's first instinct when informed of an instance of sexual violence involving a youth is to involve police, as that intervention seemingly would create an additional level of safety for the survivor; however, police involvement can cause unintended and harmful consequences when it goes against what a survivor wants or is prepared for.<sup>13</sup> Like their adult counterparts, many student-survivors, in the District have a myriad of reasons for not feeling comfortable with interacting with police.<sup>14</sup> Some survivors may come from communities that have a history of oppression and violence perpetrated against them by law enforcement, some may fear immigration consequences, other survivors may have prior negative contacts with the criminal justice system, etc. Taking away a survivor's control by forcing them into a system increases the likelihood the survivor will be re-traumatized, and decreases the chances the survivor will reach out for resources and support.<sup>15</sup>

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<sup>12</sup> Dean J. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 Wayne L Rev 7, 10 (1987) (predicting that "victim perceptions of helplessness and lack of control are maximized by raising the expectation that a right of participation exists, the victim electing to exercise that right, and then being denied that right").

<sup>13</sup> Know Your IX and the National Alliance to End Sexual Violence (NAESV) conducted an online survey in March 2015 to gauge survivors' beliefs about the criminal justice system, victim autonomy, and reporting. Almost 90% of survivors said that campus victims should retain the right to choose whether and to whom to report. Eighty-eight percent (88%) said that, were campuses required to turn rape reports over to the police (without survivors' consent), they believe fewer victims would report to anyone at all. Seventy-two percent (72%) were concerned that such requirements would lead to survivors being "forced to participate in the criminal justice system / go to trial." Know Your IX, *Resisting Mandatory Police Referral Efforts*, Know Your IX, <https://www.knowyourix.org/issues/resisting-mandatory-police-referral-efforts/> (Accessed 2/24/20).

<sup>14</sup> "Reasons minor survivors may not wish to disclose or report to authorities include shame, self-blame for the assault, fear of being blamed particularly if they were doing something illegal or against parental rules at the time of the assault, fear that they will bring disruption by child protective services or law enforcement to their families particularly if those families are struggling already in some way, concern that they will unduly upset their parents, and concern that they will be ostracized from their peer group which is of paramount importance to them at this age." Elisabeth Olds, SAVRAA Independent Expert Consultant, Evaluation of the Sexual Assault Victims' Rights Amendment Act (SAVRAA) Task Force Recommendations for DC Youth, <https://dccouncil.us/wp-content/uploads/2017/05/Binder86.pdf> (Nov. 4 2016).

<sup>15</sup> See Campbell, R., and Raja, S. Secondary Victimization of Rape Victims: Insights from Mental Health Professionals Who Treat Survivors of Violence. *Violence and Victims*, V. (1999) 14 (3); White House Task Force to Protect Students from Sexual Assault, Considerations for School District Sexual Misconduct Policies, Department of Justice, Sept. 2016 (<https://www.justice.gov/archives/ovw/page/file/900716/download>. (accessed February 3,

Empowering students to identify their own priorities and safety needs following an incident of sexual violence will create an atmosphere in which student-survivors are more likely to consent to reporting, more likely to seek out resources and support, and less likely to feel re-traumatized.<sup>16</sup> Schools that provide clear, transparent and, most importantly, multiple reporting options for survivors have seen an increase in their reporting rates.<sup>17</sup> Schools in the District should not be pipelines into the criminal justice system for any student—this includes survivors. Schools should be places where students can feel safe; schools are, after all, many students’ home away from home. For that reason, the emphasis should be in continuing to provide a safe and supportive environment where a student can continue their education in the aftermath of an assault. This means providing supportive services and accommodations, as seen under Title IX, like academic support, locker changes, mental health and disability services, no contact orders, and rescheduling classes. Without focusing on the tools a student needs to succeed following sexual violence, students’ academic performance could be negatively affected, and may even result in a student dropping out.<sup>18</sup>

## **II. Delays in School Investigations Risk Compromising the Safety of Students and Shifting a School’s Duty to Investigate to Law Enforcement.**

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2020)(“If victims don’t have a confidential place to go, or think a school will launch a full-scale investigation against their wishes, many will stay silent.”)

<sup>16</sup> “Victims who feel that they have been treated fairly and afforded their rights tend to experience less secondary victimization, and they have greater respect for and satisfaction with the justice system.” Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims’ Mental Health*, 23 *J. of Traumatic Stress* 182, 182 Footnote 13 (2010).

<sup>17</sup> White House Task Force to Protect Students from Sexual Assault, *Considerations for School District Sexual Misconduct Policies*, Department of Justice, Sept. 2016 (<https://www.justice.gov/archives/ovw/page/file/900716/download>). (accessed February 3, 2020).

<sup>18</sup> Sex-based harassment causes real emotional, psychological, and economic damage to students. Feeling unsafe at school correlates with declining academic performance, skipping school, and dropping out. American Association of University Women (AAUW), *Crossing the Line: Sexual Harassment at School*, p. 20, <https://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf> (accessed on 2/26/20).

The model policy claims that schools “shall not delay their investigation while the MPD investigation occurs”<sup>19</sup> but immediately also indicates that schools “shall refrain from interviewing any involved parties until after MPD has conducted its interviews.”<sup>20</sup> Logic follows that by refraining from interviewing involved parties (an often necessary step in an investigation), the schools are inevitably delaying their investigations until MPD completed their processes, which can often take months, if not years to conclude. A stalemate in the school investigation could negatively impact the safety, well-being, and educational experiences of the parties involved, and when that negative impact last months of years, it could result to large educational consequences down the road.

The current policy’s language is confusing, offers little guidance to on the appropriate timing of investigations, shifts the onus (once again) to law enforcement, instead of focusing on the survivor’s needs. Students cannot expect prompt or timely dispositions of their complaints if schools can simply use the vagueness of this policy to shift their investigative responsibilities to other agencies.

### **III. The Model Policy Regarding Students’ Access to Sexual Assault Advocates, Sexual Assault Youth Advocates, and Attorneys Should be More Explicit and Specific.**

In addressing the presence of sexual assault advocates in school proceedings, the OSSE policy states the following:

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<sup>19</sup> Office of the State Superintendent of Education, Model Policy to Prevent and Address Student on Student Acts of Sexual Harassment, Sexual Assault, and Dating Violence, pg.6, <https://osse.dc.gov/page/school-safety-omnibus-amendment-act-2018-ssoaa>. (accessed February 3, 2020).

<sup>20</sup> Office of the State Superintendent of Education, Model Policy to Prevent and Address Student on Student Acts of Sexual Harassment, Sexual Assault, and Dating Violence, pg.6, <https://osse.dc.gov/page/school-safety-omnibus-amendment-act-2018-ssoaa>. (accessed February 3, 2020).

The school shall also provide access to the school for sexual assault victim advocates or sexual assault youth victim advocates, *who may be present during the MPD interview*, consistent with DC Official Code § 23-1908 and the Sexual Assault Victims' Rights Amendment Act of 2019.<sup>21</sup>

Under the District's Sexual Assault Victims' Rights Amendment Act of 2019,<sup>22</sup> survivors have the right to have their sexual assault advocates or sexual assault youth advocates present at *any* interview with a District agency employee, not just interviews with MPD, as long as it relates to their sexual assault. For this reason, the OSSE policy should reflect a student-survivor's right to have their advocate present with them during any interview with a District agency employee, which would necessarily include interviews with anyone employed by DCPS. As referenced earlier, it is crucial for survivors to have access to specialized and confidential supportive resources such as advocates, who can empower and assist survivors through navigating their reporting options.<sup>23</sup>

Furthermore, this policy fails to mention that survivors should be notified of their option to retain and attorney, and notified of their ability to have their attorney present during any and all interviews, even if the school is permitted to limit the extent of their participation.

#### **IV. The Policy Fails to Include Off-Campus, Non-Governmental Resources.**

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<sup>21</sup> Office of the State Superintendent of Education, Model Policy to Prevent and Address Student on Student Acts of Sexual Harassment, Sexual Assault, and Dating Violence, pg.7-8, <https://osse.dc.gov/page/school-safety-omnibus-amendment-act-2018-ssaaa>. (accessed February 3, 2020).

<sup>22</sup> The list of legal protections for reporting students on page 10 on the policy fails to mention the Sexual Assault Victims' Rights Amendment Act of 2019.

<sup>23</sup> The report of the Sexual Assault Victims' Rights Amendment Act Independent Expert Consultant, Elisabeth Olds, highlights the importance of a confidential advocate for youths. <https://dccouncil.us/wp-content/uploads/2017/05/Binder86.pdf>

The section on “Resources for Affected Students and Families”<sup>24</sup> fails to include a list of available local and confidential service providers, and zero information about accessing a medical forensic exam following a sexual assault.<sup>25</sup> While it is helpful to provide the contact information for the DC Victim Hotline and other governmental resources, as has been stressed throughout this testimony, it is crucial that survivors that do not feel comfortable with law enforcement have awareness of and access to confidential resources that are unaffiliated with the school or government.

#### **V. Transparency in Reporting Sexual Violence Statistics.<sup>26</sup>**

In addition to our aforementioned concerns regarding OSSE’s policy, we additionally bring to the Council’s attention the importance of transparency in school reporting. As an example, we recommend the Council look to the federal Clery Act,<sup>27</sup> which requires colleges and universities that participate in federal financial aid programs to, among other requirements, publish annual reports about crimes that occur on their campuses, plus details on the steps taken to prevent those crimes, and make those reports available to all current and prospective students.<sup>28</sup> This requirement is important for students to be empowered with the knowledge of the goings on in their community,

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<sup>24</sup> Office of the State Superintendent of Education, Model Policy to Prevent and Address Student on Student Acts of Sexual Harassment, Sexual Assault, and Dating Violence, pg.12-13, <https://osse.dc.gov/page/school-safety-omnibus-amendment-act-2018-ssoaa>. (accessed February 3, 2020)

<sup>25</sup> White House Task Force to Protect Students from Sexual Assault, White House Task Force to Protect Students from Sexual Assault, <https://www.justice.gov/archives/ovw/page/file/900716/download> (Sept. 2016)(recommending that school’s list local resources for students to access STD prevention medication, medical forensic exams, advocacy services, etc.)

<sup>26</sup> In this context, we refer to “reporting” to mean for purposes of statistical compilation in a report, not reports to law enforcement.

<sup>27</sup> Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092.

<sup>28</sup> These reports are frequently available on school websites. See Clery Center, The Clery Act, <https://clerycenter.org/policy-resources/the-clery-act/> (last accessed on Feb. 28, 2020).

and whether the school's reports match their impressions of the safety of their educational environment.<sup>29</sup>

Contrary to popular belief, sharing statistics of sexual violence incidents on campus not only increases transparency, trust and accountability between communities and educational institutions, but also assists the school themselves. Without an accurate depiction of each school's successes and areas for growth when it relates to sexual violence responses, schools cannot receive the amount of support and resources necessary to improve upon their methodology and meet legal requirements.

## **VI. Conclusion**

NVRDC thanks you for your time, consideration, and commitment to protecting DC students. We welcome the opportunity to answer any questions you may have.

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<sup>29</sup> Because student impressions of their own safety are as important as schools' reports on crime statistics, we also encourage DC schools to implement campus climate surveys. This type of survey is considered among best practices in school responses to sexual violence. See White House Task Force to Protect Students From Sexual Assault, *The First Report of the White House Task Force to Protect Students From Sexual Assault*, Department of Justice, <https://www.justice.gov/archives/ovw/page/file/905942/download> (April 2014); Know Your IX, Campus Transparency, <https://www.knowyourix.org/statepolicy-playbook/campus-transparency/>.