

# LEAVING GIRLS BEHIND:

An Analysis of Washington D.C.'s "Empowering Males of Color" Initiative

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## **Acknowledgements**

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## Table of Contents

Introduction and Executive Summary .....	1
Findings and Analysis .....	6
Background of the EMOC Proposal.....	6
The Genesis of EMOC.....	6
Details on EMOC’s Core Components .....	10
Legal Analysis of the EMOC Initiative .....	15
The Applicable Legal Standards .....	15
EMOC Initiatives that Exclude Girls of Color Fail to Satisfy these Standards .....	16
Conclusion and Recommendations .....	21
Table 1: Empowering Males of Color Grant Recipients.....	23
Endnotes .....	25

## Introduction and Executive Summary

Longstanding structural inequities have resulted in significant racial disparities in educational outcomes in the D.C. Public Schools system. Black and Latino students are subjected to disproportionately high rates of school discipline compared to white, non-Latino students, graduate high school at rates far lower than their white counterparts, and are overrepresented in our criminal justice system. It is clear that the DCPS has systematically failed to meet the needs of students of color, and that a significant investment to reduce racial disparities in the District's education system is critically necessary for both boys and girls.<sup>1</sup>

In January 2015, the Office of the Mayor of the District of Columbia and the Office of the Chancellor of the DC Public Schools jointly announced a new \$20 million initiative called "Empowering Males of Color" ("EMOC"). Intended to improve the academic trajectory of young men of color, EMOC involves four principal components: (1) a grant program to schools initially called "Proving What's Possible" (now simply called "Empowering Males of Color Grants") (2) a mentoring and tutoring program called "500 for 500," (3) an effort called "Celebrating Males of Color" aimed at honoring the academic achievements of young men of color, and (4) an all-male public college preparatory school, currently called the "Empowering Males High School," modeled on the Chicago-based Urban Preparatory Academy.<sup>2</sup>

Many community members and organizations, including the ACLU, have welcomed the critically-needed attention and resources EMOC promises to direct toward some of the District's most underserved students.<sup>3</sup> At the same time, however, the Mayor's announcement raised significant questions regarding the potential exclusion of girls and women of color from the programs to be initiated under EMOC. Despite being overlooked in much of the critical investigation that has been focused on the racial achievement gap in education, girls of color suffer from many of the same problems as boys of color, including poverty, a highly racially segregated school system, overpolicing, racial bias, and high incidence of family violence and trauma.<sup>4</sup> Girls of color also face unique obstacles, such as gender-based violence, teen pregnancy, and family obligations that undermine their academic progress.<sup>5</sup> Not surprisingly, girls of color within DCPS also suffer from serious educational disparities in the very areas that EMOC is targeting; on many measures, the gap between girls of color and their white counterparts is just as stark as it is for boys of color compared to their white counterparts. Thus, girls, as well as boys, are in need of the educational benefits the EMOC initiative promises to offer.

Local officials and a number of national and community-based organizations have voiced these concerns, so far without a response from the Mayor or DCPS.<sup>6</sup> In addition, the ACLU raised concerns about the potential impact on gender-non-conforming students, and the process by which the EMOC initiative was proposed, specifically regarding the lack of transparency and community involvement in formulating the components of the initiative and selecting the all-male Urban Prep as a principal partner. The ACLU sought to meet with the Mayor's office and the Chancellor's office to discuss these issues, without success, and presented testimony raising these concerns to the D.C. Council Committee on Education in April 2015.

In light of the many unanswered questions regarding EMOC's formulation and implementation, the ACLU issued a request for public records related to the initiative. The primary focus of our investigation



was whether girls of color would be able to benefit from the educational opportunities EMOC offers. (DCPS initially withheld a large number of documents in response to our FOIA request; most of these were subsequently produced following an appeal to the Executive Office of the Mayor, which concluded that most of the documents that had been withheld were subject to disclosure.)

The following presents a summary and analysis of our findings from all the records that were produced, as well as from other public sources. This memo first discusses the genesis of EMOC and its justifications, followed by a more detailed description of each of its key components. It then provides a brief analysis of some troubling policy issues and legal vulnerabilities in the program that our investigation has revealed, and provides some recommendations to address them.

Our investigation confirms that the concerns raised about EMOC's potential exclusion of girls were warranted: although DCPS has apparently not created formal admissions criteria for *any* of the EMOC components,<sup>7</sup> the majority of the programs to be rolled out appear to be either officially or effectively open only to boys. Yet, based on the documents produced, DCPS will be unable to justify excluding girls of color from any of the programs sponsored under EMOC. In order to fully achieve its goals, DCPS must ensure that the significant opportunities and supports offered by EMOC are available to both boys and girls of color.<sup>8</sup>

## **Summary of EMOC**

There is a desperate need for additional resources and focused attention on addressing the racial achievement gap in DCPS schools. The Mayor and DCPS can and must take urgent steps to fix this system, which is failing too many of its students—and the announcement of the Empowering Males of Color initiative was a promising step. The initiative is targeted at improving the academic trajectory of young men of color, although DCPS has stated that the initiative will be open to boys regardless of race or ethnicity. Unfortunately, however, our findings confirm that many of the programs announced under EMOC will likely be available only to boys, leaving girls of color behind.

The components of EMOC are described briefly below. Although many questions remain unanswered as to the structure of each of EMOC's components and their admissions or eligibility criteria, the documents produced and publicly available sources suggest the following:

- **“EMOC Innovation Grants”** (formerly called “Proving What’s Possible” grants): This component of EMOC is to provide \$5.5 million in funding to school-based programs focusing on family and community engagement, academic support and enrichment, and social and emotional support. DCPS recently released the list of PWP grantees (see Table 1).<sup>9</sup>
  - Eligibility criteria governing participation in specific programs remains unspecified, and only brief descriptions have been made public. Though a few of the funded programs do not specify whether they are open to girls of color, the majority appear to be targeted exclusively at boys.
  - All cover areas in which girls as well as boys of color would clearly benefit—for example, the program at Columbia Heights Education Campus, which includes “expanded trauma

- informed care services” for boys, and the one at Bunker Hill Elementary, which “will introduce art therapy for boys who deal with trauma, loss, or emotional stress.”
- Several target areas in which girls in particular have been traditionally underrepresented, such as STEM and robotics.
  - At least two funded programs incorporate “gender-based” models:
    - One, at Ballou High School, will “create gender-based 9th and 10th grade Academies focused on academics, manhood development, mentoring, leadership, and college readiness.”
    - The grant to the “Empowering Males High School” will provide “single-gender and culturally relevant professional development.”
  - Despite the emphasis on boys of color, DCPS offered no guidance to schools applying for funding on how to structure their proposed programs so as to avoid potential legal problems associated with race- and gender-specific programming.
  - **“500 for 500”/Mentoring through Literacy:** Operated in partnership with local mentoring and literacy organizations, this \$500,000 program focuses on literacy development. Although it is unclear whether girls will technically be eligible to participate in this program, the focus of recruitment efforts has been to enlist men of color as mentors for boys of color.
  - **Celebrating Males of Color:** This component of EMOC (the cost of which is unspecified) centers around a plan to hold awards ceremonies for high-achieving boys of color, in order to highlight the successes of males of color rather than focusing solely on their challenges. Unlike the other components of EMOC, this aspect of the initiative appears to be targeted exclusively at boys of color (i.e. it is not open to all boys regardless of race)
    - The Celebrating Academic Champions program appears to be only for boys of color, and one such event for male students has already taken place at a Marriott Courtyard hotel.
    - The “Honor Roll Luncheons” are intended only for boys of color, though it is not clear if any have yet taken place and if so, what their composition was.
  - **“The Empowering Males High School”:** DCPS has proposed the opening of a new, all-boys school to be located in District Ward 7, at the former Ron Brown Middle School east of the Anacostia River, at a cost of \$1.4 million (plus \$44 million over two years for building renovations).
    - The school was proposed as being modeled upon and operating in partnership with the Chicago-based Urban Preparatory Academy (“Urban Prep”).
    - As of January of 2016, however, no agreement had been reached formalizing the partnership arrangement, and the participation of Urban Prep is now in doubt.
    - Though no formal admissions policy was produced, girls are not eligible to enroll at the Empowering Males High School,<sup>10</sup> and the mission of the school is explicitly aimed at young men of color.

## Findings and Analysis

Although DCPS's focus on addressing the racial achievement gap was a necessary and welcome step, the boys-only structure of each of the programs sponsored under EMOC raises significant legal and policy concerns. Based on the documents produced, DCPS is unlikely to be able to justify the exclusion of girls from any of the sponsored programs, because DCPS's own data lead to the unavoidable conclusion that the racial achievement gap impacts girls as well as boys of color. Nothing in the research DCPS conducted supports offering these educational services, including the new college preparatory high school, only to boys. Moreover, the District's justification for the initiative—improving the academic trajectory of males of color in DCPS in order to address the racial achievement gap—is in tension with its decision to make the initiative open to all boys in the district regardless of race.

Specifically, our findings suggest that:

- The District's own statistics on educational outcomes demonstrate that girls of color (and African American girls, in particular) are faring much worse than white girls, just as boys of color are faring worse than white boys. Indeed, on many of the measures targeted for improvement, the disparities for girls of color are as great or nearly as great as the disparities for boys of color compared to their white counterparts.
- The District does not appear to have considered whether existing opportunities are sufficient to meet the needs of girls of color.
- The District has not considered providing any similar initiative or program targeting girls of color.
- The District does not appear to have considered whether coeducational models, including a coeducational high school, would be effective in addressing the problems it sought to address. (In fact, it considered no other high school as a model besides Urban Prep).
- The literature survey DCPS conducted does not point to single-sex programs as a solution.
  - Though several papers recommend *targeting* boys of color, they do not support excluding at-risk girls, and some explicitly say this should not be done.
  - DCPS did not research whether single-sex schooling is effective in improving educational outcomes.
  - The only article that DCPS considered on the subject of single-sex education that affirmatively advocates for single-sex schooling is based on unproven and legally impermissible stereotypes.
- There is a significant risk that the single-sex programming at the Empowering Males High School as well as several of the programs receiving EMOC grants will be premised upon and perpetuate harmful sex stereotypes about boys and girls.



## Recommendations

Although the Mayor and DCPS are to be commended for focusing their attention on the racial achievement gap and the problems facing boys of color, the exclusion of girls raises troubling legal vulnerabilities for the District that must be addressed. DCPS had no basis to ignore the effects of the racial achievement gap on girls of color, or to exclude girls from any of the educational programs or activities offered under EMOC. In order to fully achieve the goal of addressing the racial achievement gap, DCPS must ensure that the significant opportunities and supports offered by EMOC are available to both boys and girls.

We therefore offer the following recommendations with respect to each of the programs:

- **EMOC/PWP Innovation Grants:** DCPS must provide clear guidance to all programs funded under EMOC/PWP Innovation Grants to ensure that they understand their legal obligations. Should grantees fail to meet the legal requirements for offering programs only to boys, then they should be directed to open programs to girls, and if they fail to do so, funds should be redirected towards gender-neutral programs. DCPS should further eliminate funding for “gender-based” training and “single-gender” academies.
- **“500 for 500”/Mentoring through Literacy:** DCPS should alter its marketing and outreach strategy for the mentorship program to make clear that girls and women are eligible to participate, both as students and mentors, along with boys and men.
- **Celebrating Males of Color:** DCPS must ensure that all future events under the Celebrating Males of Color initiative, including the Celebrating Academic Champions program and the Honor Roll Luncheons, recognize the achievements of *both* boys and girls on an equal basis (and the events should be renamed accordingly, if necessary).
- **“Empowering Males High School”:** DCPS must ensure that girls in DCPS are not denied the educational benefits offered at the new college preparatory Empowering Males High School. Because the school is due to open in 2016, girls must be permitted to apply for the coming school year (which will require reopening the lottery so that girls may apply for any open or, if necessary, newly created spots). Furthermore, DCPS must conduct public communications and marketing efforts aimed at informing the public that girls are eligible to enroll. In short, DCPS should abandon its hasty and poorly planned proposal to format the new school as an all-boys school.

## Findings and Analysis

### Background of the EMOC Proposal

#### The Genesis of EMOC

EMOC was initiated, at least in part, as a response to President Obama's My Brother's Keeper Community Challenge, which then-Mayor Vincent C. Gray accepted at the end of September, 2014.<sup>11</sup> Mayor Gray asked the DC Children and Youth Investment Trust Corporation ("DC Trust")—a non-profit that leverages public funds to raise private money for youth services—to help develop a strategy for the District to address the problems facing boys and men of color.<sup>12</sup> DC Trust worked closely with DCPS on the development and launch of the EMOC initiative.<sup>13</sup>

In 2014, DCPS formed a working group called Bold Efforts for African American Males Success ("BEAMS"), which formulated the proposal for EMOC.<sup>14</sup> According to DCPS:

The Empowering Males of Color initiative was developed through collaboration with a working group of teachers, principals, instructional superintendents, and central office staff to conduct an internal analysis of our academic programming, staffing, policies and other critical areas that ultimately have an impact on student performance. Additionally, the working group has consulted with several panels of concerned community members and some of [the] nation's foremost scholars on the education of African American boys, the achievement gap, developmental psychology, and urban education.<sup>15</sup>

Aside from this description, DCPS has made very little information publicly available about BEAMS or the formulation of the EMOC initiative, citing the Deliberative Process Privilege,<sup>16</sup> and when asked for documents related to consultations with these scholars and community members, DCPS asserted that there were no responsive documents.<sup>17</sup>

#### *EMOC's Launch*

DCPS formally launched EMOC on January 21, 2015 at an event at Ballou High School.<sup>18</sup> DCPS initially announced that it would dedicate \$20 million to the initiative, with the goals of helping boys of color: 1) improve early literacy rates, 2) increase attendance, 3) increase enrollment in Advanced Placement courses, 4) improve graduation rates, 5) increase student satisfaction, 6) increase college acceptance, and 7) prepare for well-paying and rewarding careers.<sup>19</sup>

DCPS announced several initiatives to achieve these goals:

- "Proving What's Possible" Grants, a grants awards program for individual schools (now called "EMOC Innovation Grants");
- "500 for 500"/Mentoring Through Literacy program;<sup>20</sup>
- "Celebrating Males of Color," which includes the "Celebrating Academic Champions Program" and the "Honor Roll Luncheon;"<sup>21</sup>

- A stand-alone single-sex college preparatory school for boys to be operated in partnership with Urban Preparatory Academies (an organization with three public charter high schools for boys in Chicago);
- Provision of cultural competency training to DCPS staff and Head Start teachers, and increased efforts to recruit Black and Latino male teachers.<sup>22</sup>

DCPS announced its plans to evaluate the effectiveness of the EMOC initiative through a new “equity scorecard,”<sup>23</sup> which will measure how males of color improve in early literacy rates, attendance, college readiness, graduation rates, student satisfaction, and meaningful postsecondary activity against the baseline for 2013-2014 in each category.<sup>24</sup> From now on, the regular school statistic presentations that track DCPS’s performance against each of the five Capital Commitment goals will also include a report on males of color in DCPS.<sup>25</sup>

#### *Justifications for EMOC: The Achievement Gap*

The overarching justification for the EMOC initiative was the achievement gap between boys of color and all other students within DCPS. According to Chancellor Kaya Henderson, the initiative was created to ensure that DCPS meets its goals set by its 2010 five-year strategic plan.<sup>26</sup> The plan, which went into effect in 2012, sets out specific improvement goals related to proficiency, graduation rates, school satisfaction, and enrollment.<sup>27</sup> Though DCPS reported rising test scores and student achievement across the board, male students of color were still lagging behind every other student group in educational achievement.<sup>28</sup> Thus, to achieve the goals in its strategic plan and ensure that all students succeed in the DCPS system, DCPS decided it was necessary to target extra resources toward helping males of color.<sup>29</sup>

However, DCPS’s own statistics suggest that girls as well as boys of color—and particularly African American girls—suffer from poor outcomes when compared to their white counterparts. African American girls and boys are among the lowest-performing cohorts on almost every measure, and both are clearly in desperate need of additional support. For example:

- Regarding high school graduation rates, Black and Hispanic boys fare the worst (currently at 48% and 57% respectively) compared to their white counterparts (at 82%). Black and Hispanic girls are not far ahead (at 62% and 66% respectively). White girls’ rates of high school graduation are the highest, at 91%.<sup>30</sup>
- Black girls make up the second highest percentage of suspensions (35% of suspended students) after Black boys (58%)—the second largest of any other cohort by race and gender, including Hispanic boys (4%) or girls (2%).<sup>31</sup>
- Although DCPS did not perform this calculation, these same numbers show that Black girls are suspended at approximately 6 times the rate of their white counterparts,<sup>32</sup> while the rate for Black Boys is approximately 10 times the rate of their white counterparts, Hispanic boys is 3 times the rate, and Hispanic girls is 1.5 times the rate. Black girls thus make up the second highest rate of suspensions by percentage of the population.

- Both Black girls and boys are absent at more than twice the rate of their white counterparts, missing an average of 22 days per year, greater than any other cohort. Hispanic boys miss 14 days per year, and Hispanic girls miss 13 days per year.
- Black boys' and girls' attendance rates are equal, at 87%, as are the rates for Hispanic boys and girls, at 92%. Attendance rate for white boys and girls is 95%.<sup>33</sup>
- While Black boys enroll in AP courses at the lowest rate in DCPS (15%), the enrollment of Black girls is also low (24%), and below the rate for other cohorts including Hispanic boys (31%) and girls (37%).<sup>34</sup> The rates for white boys and girls are 61% and 65%, respectively. The enrollment rate for Black girls is thus the second lowest of any cohort by race/gender.
- Black boys and girls in DCPS have virtually indistinguishable Pass Rates on AP exams (both around 13%), as do Hispanic boys and girls (both around 38%), compared to the rate for white boys and girls of around 73% and 76%, respectively.<sup>35</sup>
- The Math Proficiency Rates for Black girls, at 45%, are well below those of their white counterparts, at 93%. Black boys are at 37% and white boys at 91%. Hispanic Boys are at 55%, and Hispanic girls at 61%. Black girls are thus the second from the bottom in terms of math proficiency by race and gender.<sup>36</sup>
- Black girls' school satisfaction rate is equal to that of Black boys' (76%), which is the lowest of any other cohort. Hispanic girls are at 84%, and Hispanic boys at 82%. White girls are at 93%, and white boys at 91%.<sup>37</sup>

While the statistics cited certainly demonstrate an alarming achievement gap overall, the gap is more significant in terms of race than it is in terms of sex<sup>38</sup>—a fact that DCPS acknowledges in some of its analyses of its own data. For example, in a data presentation prepared by the DCPS Office of Data and Strategy in connection with the announcement of EMOC, DCPS states:

It is clear by looking at outcomes like test scores and graduation rates that **both race and gender taken together** are strongly correlated with educational outcomes. On the other hand, for attendance and suspensions, **race, not gender**, is more strongly correlated with outcomes. That said, it is clear from our data that in order to accelerate student achievement in DCPS, we need to provide targeted and differentiated supports for our young men of color.<sup>39</sup>

Despite such acknowledgements that the racial achievement gap extends across gender, DCPS continues to gloss over or ignore the common problems facing boys and girls of color. For example, in a communication with the Attorney General attempting to justify the program, Chancellor Henderson states (correctly) that “black and Hispanic boys are the lowest-achieving racial sub-groups in reading on the DC CAS,” but then goes on to state that “Black boys have the lowest in-seat attendance rates of any racial subgroup”—when in fact Black girls miss *the exact same number of days and have the same attendance rate*. She further emphasizes that, “Only 15% of all black boys are enrolled in advanced placement courses, compared to 24% of black girls and 61% of white boys”—but omits the fact that Black girls' enrollment rates are *below* those of Latino boys (31%), and significantly below white girls (65%). And she states that “Black boys have the lowest satisfaction rates with school”—when, in fact, Black girls' rates *are identical* to those of Black boys', and are *below* those of Latino boys' and well below those of white girls.<sup>40</sup> Similarly, a BEAMS document listing “Demographics and Challenges”

includes a host of measures on which Black boys are falling behind, most of which do not include data points for Black girls' outcomes.<sup>41</sup>

In the District's attempts to justify targeting educational improvements at boys of color, DCPS has—in some cases literally—ignored the experiences of girls of color, and Black girls in particular. This failure to confront outcome measures for Black girls obscures the fact that they are, on many measures, faring just as poorly as their brothers when compared to white students. Indeed, where the data produced by DCPS were broken down by sex and race, they demonstrate that on many of the goals EMOC explicitly targets for improvement, girls of color (particularly Black girls) are equally in need of additional support. Therefore, to take district data at face value would necessitate offering additional educational opportunities to both Black boys and girls, rather than solely to boys.

Yet there is no evidence that the District considered including girls in this initiative, nor is there evidence that it has considered doing so following the program's launch. Furthermore, at least as of January, 2016, there was no discussion of creating a parallel initiative for girls.

### *The District's Survey of the Literature*

In formulating its plans for EMOC, DCPS conducted a relatively extensive literature review focused on policy recommendations for overcoming the obstacles confronting African American males. Although there are some limitations on the conclusions we can draw from the documents DCPS produced,<sup>42</sup> we can offer a few general observations:

- The District's survey of the literature appears to have focused on the problems confronting boys of color, rather than looking at the racial achievement gap overall/across gender. No articles included a focus on problems facing girls of color.
- With a few exceptions, most of the documents produced were not published in peer-reviewed publications,<sup>43</sup> but rather constitute policy recommendations by think tanks or foundations.<sup>44</sup>
- The documents produced do not generally recommend offering programs only to boys, nor recommend single-sex education as a solution.
  - Many emphasize reforms without regard to sex/gender.<sup>45</sup>
  - Though numerous articles recommend *targeting* boys of color,<sup>46</sup> they do not support *excluding* at-risk girls, and some explicitly state that gender-neutral responses are preferable.<sup>47</sup>
  - In many instances, in making the case for interventions aimed at boys of color, the articles rely on data that apply to both boys and girls of color (i.e. that are not disaggregated by sex).<sup>48</sup>
- The District does not appear to have conducted any specific analysis or evaluation of the effectiveness of single-sex schooling prior to formulating the plan for an all-boys' high school, and there is no valid evidence in the documents it did produce supporting the founding of an all-boys school.
  - The only article in the literature produced that affirmatively advocates for single-sex education is based on unproven and legally impermissible stereotypes about boys' and



girls' purportedly different brains, development, and learning styles.<sup>49</sup> As discussed further below, this educational philosophy has been widely criticized as "pseudoscience" that is based on "weak, unsupported and cherry-picked evidence."<sup>50</sup>

- The District does not appear to have considered whether coeducational models would be effective in addressing the problems it sought to address.

In sum, the District's survey of existing literature started from the premise that boys of color were the sole group worthy of focused attention, and as a consequence, failed to assess the situation facing girls of color. Moreover, the district apparently failed to consider whether it was necessary to offer the opportunities contemplated under EMOC only to boys in order to achieve its goals. There was no consideration of whether coeducational or equal access models would be effective, and no evidence in the literature supporting sex-exclusive programming. And there was no consideration of whether an all-boys school would be particularly effective, as the efficacy of single-sex education apparently was not among the topics explored by the District. When these omissions are identified, it becomes clear that the District's own survey of the existing literature does not support the institution of an all-boys school or the exclusion of girls from the other educational support services EMOC will provide.

## **Details on EMOC's Core Components**

### *EMOC Innovation Grants/Proving What's Possible Program*

The "EMOC Innovation Grants," previously called the Proving What's Possible (PWP) program, is the most robustly funded of the core EMOC programs, with DC Education Fund setting aside \$5.5 million for the grants to be issued in the middle of the 2015-2016 school year.<sup>51</sup> A modification of an existing grant program that was previously not restricted to boys of color,<sup>52</sup> EMOC Innovation Grants will now align with the EMOC initiative by funding "two-year grants that are used to develop initiatives that improve educational outcomes for Black and Latino Boys."<sup>53</sup> Chancellor Henderson stated that recipients would be evaluated based on the school's "ability to improve outcomes for males of color and narrow the performance gap between males of color and other students."<sup>54</sup> The request for proposals ("RFP") instructed that applicant schools' projects should focus on Family & Community Engagement, Academic Enhancement/Enrichment, and Social & Emotional Support.<sup>55</sup> Key metrics for evaluation will focus on student attendance, suspension rates, satisfaction, academic performance, and family and community engagement.<sup>56</sup>

It is significant that documents produced regarding the PWP grants, including the RFP, contained no guidelines whatsoever on how applicants should structure their proposed programs so as to remain in compliance with Title IX and other applicable laws prohibiting sex discrimination in education.<sup>57</sup> This lack of guidance, coupled with the shift in emphasis for these grants toward improving outcomes for males of color rather than low performing students generally, raised the risk that schools would introduce programs that unlawfully excluded girls.

It is now apparent that these concerns were well-founded. Awardees of the grants were announced in January, 2016<sup>58</sup> (See Table 1); only brief descriptions were made public, and actual eligibility criteria governing participation in particular programs remained unspecified.<sup>59</sup> However, based on the descriptions provided, it appears that the majority of these programs will be open only to boys of

color, while a few are framed in gender neutral terms so it is unclear whether the programs will be available to girls as well. All of the programs explicitly targeting only boys cover areas in which girls as well as boys of color would clearly benefit—for example, the program at Columbia Heights Education Campus, which includes “expanded trauma-informed care services,” and the one at Bunker Hill Elementary, which “will introduce art therapy for boys who deal with trauma, loss, or emotional stress.” Several programs target areas in which girls in particular have been traditionally underrepresented, such as STEM and robotics.

Of particular concern is the fact that at least two of the programs incorporate “gender-based” models: One, at Ballou High School, will “create gender-based 9th and 10th grade Academies focused on academics, manhood development, mentoring, leadership, and college readiness.” The grant to the “Empowering Males High School” will provide “single-gender and culturally relevant professional development.” Although the meanings of “gender-based” and “single-gender” are not specified, this terminology suggests that these models will incorporate gender-based stereotypes about the typical development, interests, and learning styles of boys that are commonly used to justify single-sex education programs across the United States.<sup>60</sup> Under this theory, girls and boys are taught using radically different methods based upon presumptions about “hard-wired” differences between the sexes.<sup>61</sup> However, experts across numerous disciplines have widely debunked this theory as being based on junk science, and concluded that there is no evidence that sex-based differences require boys and girls to be taught using different methods.<sup>62</sup> This theory overlooks both the well-documented overlap in the abilities of males and females, which dwarfs any average gender differences, as well as the potentially harmful impacts of employing teaching methods premised on such average differences—particularly on gender-nonconforming youth.<sup>63</sup>

#### *“500 for 500”/Mentoring through Literacy*

The “500 for 500” mentoring program appears to be part of a larger effort by DCPS to increase literacy rates among its struggling students, but unlike the other components of that effort,<sup>64</sup> it is focused specifically on addressing the gap in reading proficiency rates for boys of color. According to DCPS data, males of color as a cohort are struggling to reach grade level reading proficiency before the start of the fourth grade, which “is a significant indicator of future success in school and life.”<sup>65</sup> To address these problems, DCPS has partnered with Reading Partners, Inc., Literacy Lab, 100 Black Men of DC, Mentors, Inc., and others to recruit and train males of color to mentor boys of color in DC public schools.<sup>66</sup> Recruitment began in January 2014, and a pilot program was slated to start in a few schools by April 2015.<sup>67</sup>

Although there is some chance the mentoring program may technically be open to girls as well as boys, the program’s goal and all of its current marketing efforts appear to be specifically targeted at boys of color.<sup>68</sup> For example, the Executive Office of the Mayor issued a press release on the launch of the EMOC initiative explicitly stating that DCPS was recruiting mentors to serve “males of color throughout the city[.]”<sup>69</sup> An employee of DCPS also sent out an e-mail stating that “the goal of the program is to recruit 500 mentors of color to support 500 of our boys.”<sup>70</sup> Similarly, DCPS documents and public statements almost exclusively reference efforts to recruit males of color as mentors, although the Mayor has announced that she, herself, will be volunteering as a mentor.<sup>71</sup>

### *Celebrating Males of Color*

DCPS also introduced two specific programs to celebrate successful male students of color: “Celebrating Academic Champions,” and an “Honor Roll Luncheon”; these represent an effort to highlight the successes of males of color, instead of focusing solely on their challenges.<sup>72</sup>

Modeled after college football signing day, Celebrating Academic Champions was designed to celebrate and honor the accomplishments of DCPS’s graduating seniors who are pursuing education beyond high school.<sup>73</sup> DCPS produced very little information regarding the Celebrating Academic Champions program at all, and none as to when the program will begin, whether it will be exclusive to boys, or any other criteria that will be used to select students.

It appears that at least one of these events may already have taken place: On June 12, 2015, DCPS held its first-ever “Emerging Male Scholars Recognition Ceremony,”<sup>74</sup> which celebrated nineteen senior boys of color from Anacostia and Ballou high schools who had been accepted to college.<sup>75</sup> Although it was not explicitly stated, this program would appear to correspond with the description of the Celebrating Academic Champions program. The event, held at a Courtyard by Marriott, featured motivational speeches from DCPS graduates and culminated with each student receiving an achievement award and a career-themed gift bag.<sup>76</sup> The press release related to the event, which appears to be the only information about the program that was made public, states that the ceremony “is a signature feature of DCPS’ Empowering Males of Color (EMOC) initiative launched earlier this year.”<sup>77</sup> From the records produced and the information DCPS has made public, it has not held an equivalent recognition ceremony to celebrate girls of color on the basis of their acceptance into a post-secondary program.

DCPS also announced plans to hold quarterly luncheons to recognize the academic achievements of males of color in grades 9-12, called the “Honor Roll Luncheon.”<sup>78</sup> The plan called for DC public schools to be grouped into cohorts depending on the number of students on the honor roll, and each cohort will participate in two out of the four luncheons per year.<sup>79</sup> This program may not be limited to just the males of color who made the honor roll, but may also celebrate Black and Latino male students who have made significant improvements over time.<sup>80</sup>

In January 2015, DCPS staff sent a request to all DCPS high school principals requesting that they identify the Black and Latino male students at their schools who earned honor roll or better status so that they could estimate how many students would be eligible.<sup>81</sup> There was no similar request for the number of female students of color on honor roll. However, DCPS did announce in June 2015, at around the same time as the “Celebrating Academic Champions” event, that it had held a “Scholars’ Luncheon” celebrating seniors from every DCPS high school with top grades, best athletic skill, or most improved grades.<sup>82</sup> This event was not limited to boys of color, and appears to be the continuation of a program that has taken place for several years and that is not connected with EMOC.<sup>83</sup> The documents do not make clear whether any of these Honor Roll Luncheons were actually held during the end of the 2014-15 school year, and no records were produced suggesting that either the Honor Roll Luncheon or any further Celebrating Males of Color events have since taken place.<sup>84</sup>

### *The “Empowering Males High School”*

The final component EMOC is DCPS’s plan to open a college preparatory, all-boys high school located in Ward 7, east of the Anacostia River. The school is currently called the “Empowering Males High School.”<sup>85</sup>

DCPS’s stated justification for founding the all-boys school echoes the justification for the EMOC program overall, but is focused specifically on increasing high school as well as college graduation rates.<sup>86</sup> Slated to begin operating in the fall of 2016,<sup>87</sup> the school was originally proposed as a “ground up, brand-spanking-new school,”<sup>88</sup> but the proposal has since been modified to entail the renovation of a vacant DCPS school building at the location of the former Ron Brown Middle School. In addition to \$44 million allocated over two years to the rehabilitation of the building,<sup>89</sup> DCPS plans to allocate \$1.4 million to the project, which will serve approximately 150-200 students in its first year.<sup>90</sup> The school will not be a charter school,<sup>91</sup> but according to Henderson, was conceived as being structured as a “partnership school,” a model that provides the school’s leadership “as many autonomies and flexibilities as they need to make it work the way they’ve made it work in Chicago.”<sup>92</sup>

The school is to be modeled on, and was originally conceived as operating in partnership with, the Chicago-based Urban Prep (although that relationship had not been formalized as of December, 2015).<sup>93</sup> Urban Prep’s mission is focused on ensuring that students graduate high school and earn a college degree, in response “to the urgent need to reverse abysmal graduation and college completion rates among young men, particularly African-American males.”<sup>94</sup> Its model includes an 8-hour school day,<sup>95</sup> a requirement that students participate in community service and two activities (such as sports teams, or clubs) per year;<sup>96</sup> opportunities to visit college campuses and field trips to help students gain experience beyond the classroom;<sup>97</sup> a Freshman Academy for its incoming ninth grade students to help them transition from middle school to high school;<sup>98</sup> and an alumni program to ensure that students have the resources they need to graduate college<sup>99</sup> as well as a Fellows Program to help their college-graduate alumni enter the work-force by inviting them back to join the staff of Urban Prep.<sup>100</sup>

DCPS produced few documents related to the selection of Urban Prep as a partner or model for the new high school.<sup>101</sup> Records related to evaluations of other schools or programs simply do not exist: DCPS does not appear to have considered *any other school* prior to Urban Prep’s selection as a partner/model, much less conducted a competitive bidding process, or to have solicited or received any formal proposal from Urban Prep. A DCPS employee responding to an inquiry from the Mayor’s office confirmed that DCPS did not undertake a national search but rather was approached by Urban Prep officials who were looking to expand outside of Chicago.<sup>102</sup> Chancellor Henderson told a slightly different story during the announcement of the EMOC initiative: Tim King was one of Chancellor Henderson’s mentors in college and after hearing about Urban Prep, Chancellor Henderson went to visit the school, and was impressed.<sup>103</sup> She invited Tim King and his team to come to D.C. in the hopes of convincing them to expand there.<sup>104</sup>

In addition to raising obvious concerns about good government, DCPS’s apparent failure to consider alternatives and assess their probable comparative efficacy is significant from a legal standpoint. It demonstrates DCPS’s failure to conduct any assessment whatsoever of whether the all-boys model of Urban Prep would be more effective than a coeducational model, or even whether a coeducational school could achieve the same results. In fact, the few statistics that DCPS did collect regarding Urban

Prep's success record cast further doubt on its selection as a model: according to data from its three existing schools in Chicago, outcomes on measures including college readiness and reading and math proficiency were actually well below state averages, and even its vaunted graduation rate was only above the state average at one of the two locations from which a class had graduated.<sup>105</sup> DCPS appears to have taken no steps to meaningfully assess whether using the all-boys Urban Prep as a model would be an effective means to achieve its goals—an assessment which, as discussed in the next section, is legally required.

Moreover, there are significant issues regarding the school's admissions policy. The DCPS website suggests that the school will be open to all young men city-wide, apparently regardless of their race or ethnicity.<sup>106</sup> Students will be admitted upon application via the My School DC common lottery system.<sup>107</sup> As discussed in detail in the next section, this proposed race-blind admissions policy is in obvious tension with DCPS's intended goals for the school—addressing disproportionately low graduation rates for boys of color. At the same time, it raises the question of how the exclusion of Black and Latina girls can possibly be justified, when white boys, who are graduating at much higher rates, will be permitted to apply.

Despite the lack of a formal agreement between DCPS and Urban Prep, Tim King was given considerable input into the selection of the school's principal in June, 2015, apparently casting the deciding vote between two top candidates.<sup>108</sup> However, the process of contract negotiations quickly ran into difficulties, and appears to have come to a halt entirely as of September 2, 2015.<sup>109</sup> As a result, the continued participation of Urban Prep's management in the operations of the school is currently in doubt. However, regardless of the formal relationship or Urban Prep's ultimate involvement, there is no evidence that DCPS has abandoned its initial plan to use Urban Prep as a model.

The adoption of Urban Prep's model raises the concern that the new school's educational philosophy will incorporate unsupported generalizations about boys' learning styles. Urban Prep's Program Manual and other promotional materials explicitly state that the school's "tailored curriculum is based on the developmental stages and learning styles of boys as well as the unique challenges facing them."<sup>110</sup>

At the EMOC announcement, Tim King initially attempted to distance Urban Prep from the philosophy that there are gender-based learning differences,<sup>111</sup> but went on to state:

[T]he biggest advantage of a single gender school, whether it be an all-boys school or an all-girls school is that you are able to have a laser focus on the type of student or the population you're serving, and in doing so can create a curriculum and an environment that more closely meets the needs of the student population. And we've accomplished that at Urban Prep over the course of the eight years we've been open, because, frankly, we can get to know our students, understand what their needs are and then tailor a curriculum and a program that really really focuses on them.<sup>112</sup>

Neither King nor the Urban Prep manual explain how boys' developmental stages and learning styles differ from those of girls, how Urban Prep tailors its curriculum specifically for boys, or why the same goals could not be accomplished in a coeducational school.



DCPS appears to have adopted the assumptions underlying Urban Prep's philosophy, emphasizing in its justification for the school the need "to provide targeted and differentiated supports for our young men of color."<sup>113</sup> And, as discussed above, the concern that the school may incorporate sex stereotypes is heightened by the recent award of funding to the new high school for "single-gender" professional development—a term that is commonly used to describe teacher training focused on gender-differentiated instructional methods.<sup>114</sup>

### **Legal Analysis of the EMOC Initiative**

The ACLU's investigation suggests that the concerns that were raised about EMOC's implementation were warranted. The majority of the programs to be rolled out under EMOC, including the all-boys school, appear to be open only to boys. Yet it is unlikely, based on the documents produced, that DCPS will be able to justify the exclusion of girls from any of the programs sponsored under EMOC. The racial achievement gap impacts girls as well as boys of color—a fact that DCPS simply has no basis to ignore. And there can be no question that a significant number of girls of color would benefit from the educational opportunities that EMOC promises. The construction of EMOC in a gender-exclusive format therefore fails to address a significant dimension of the problems facing the school system, rendering it not only ill-advised as a matter of policy but also vulnerable as a matter of law.

#### **The Applicable Legal Standards**

In general, public schools are permitted to focus on race- and gender-based disparities in educational outcomes and to attempt to craft remedies that will address those disparities.<sup>115</sup> The parameters of what steps schools are permitted to take are highly contested, as recent battles over affirmative action in school admissions demonstrate.<sup>116</sup> However, it is clear that under *Brown v. Board of Education*<sup>117</sup> and the cases that have followed, schools must be wary of solutions that *exclude* students on the basis of race or sex<sup>118</sup> (as contrasted with remedial measures such as race-conscious admissions that aim to increase participation of traditionally underrepresented and historically disadvantaged groups).

Under the Equal Protection Clause of the U.S. Constitution, public schools are prohibited from operating educational activities or programs that exclude members of one sex unless they have an "exceedingly persuasive justification" for that structure, and the single-sex structure must be substantially related to the achievement of that objective.<sup>119</sup> Moreover, sex-exclusive programs may not be based on "overbroad generalizations about the different talents, capacities, or preferences" of men and women.<sup>120</sup> It is therefore impermissible to establish unique educational opportunities only for members of one sex based on generalizations about how men or women (or boys or girls) perform as a group; instead, the government must ensure that individual students who would benefit from the opportunities offered are not excluded because of their sex.<sup>121</sup>

Based on these principles, the exclusion of girls and women from all-male public schools—including those aimed at addressing racial inequities—have been found unconstitutional.<sup>122</sup> As one court emphasized in striking down all-male academies in Detroit, "[t]here 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.”<sup>123</sup>

Title IX, the federal statute that prohibits sex discrimination in publicly funded educational institutions, prohibits school districts from carrying out educational programs or activities (which would cover all of the programs currently proposed under EMOC)<sup>124</sup> separately on the basis of sex.<sup>125</sup> Within coeducational schools or other settings, schools and districts that receive federal funds may operate single-sex programs or activities only under certain narrow circumstances.<sup>126</sup> Such programs or activities must be completely voluntary, justified by specific, identified objectives, and exist alongside a substantially equal coeducational option.<sup>127</sup> Districts must develop the justification for single-sex programs or activities prior to implementation, and should attempt to institute other initiatives in a coeducational setting and evaluate their effectiveness before doing so in a single-sex setting.<sup>128</sup> Finally, they must establish the relationship between the single-sex activity and their intended goals using either data from other schools that are comparable in size and demographics, controlling for other variables, or other high-quality evidence.<sup>129</sup> Once established, such programs are prohibited from perpetuating sex stereotypes, in accordance with constitutional standards.<sup>130</sup>

The above requirements under Title IX apply to programs and activities within *coeducational* schools that separate or exclude students based on sex. However, Title IX also contains an exemption that permits *single-sex* public schools to exist. Notwithstanding this exemption, school districts instituting single-sex schools are required to ensure that students excluded from a single-sex school have a coeducational or single-sex option that provides substantially equal opportunities.<sup>131</sup> A rigorous inquiry is required to assess whether available alternatives are truly “substantially equal.”<sup>132</sup> And districts operating a single-sex school are still required to comply with the constitutional requirement to demonstrate that the exclusion of girls is substantially related to achieving an extremely important goal.<sup>133</sup>

In addition to these federal laws, D.C.’s Human Rights Act (HRA)<sup>134</sup> extends broad protection against discrimination by District schools “for any reason other than that of individual merit,”<sup>135</sup> by providing that schools may not “deny, restrict, abridge or condition the use of . . . programs or facilities to any qualified person” on account of sex.<sup>136</sup>

### **EMOC Initiatives that Exclude Girls of Color Fail to Satisfy these Standards**

Any EMOC initiative that excludes girls would almost certainly fail to meet the foregoing legal requirements. Although addressing the educational crisis facing boys of color undoubtedly represents a critically important goal, there can be little doubt that girls of color are also in crisis, and DCPS has no valid basis for ignoring their needs.

As detailed above, DCPS’s own statistics make clear that on many of the measures presented by the District as justification for EMOC, racial disparities in educational outcomes are as significant, or nearly as significant, for female students as they are for male students. Indeed, as a group, Black girls fall well below Hispanic boys on many of these measures. Instead of grappling with these facts, DCPS ignored or glossed over them. Because the achievement gap in the district is more strongly correlated with race than it is with sex, DCPS will be unable to show that excluding girls of color from participation in

programs aimed at closing the racial achievement gap are “substantially related” to achieving their goals—on the contrary, offering additional support services to girls of color would be just as likely to contribute to closing the gap on those measures.<sup>137</sup>

Likewise, the literature survey that DCPS conducted apparently focused solely on the issues facing boys of color and failed to examine the problems confronting girls of color—practically determining the sex-exclusive nature of the proposed solutions at the outset. As critics have pointed out, failure by educational policymakers to consider “[t]hat girls of color might be doing worse than boys of color or than white girls or white boys . . . helps to construct the belief that males of color must be more deserving of targeted . . . attention.”<sup>138</sup> Yet the survey did not include any valid evidence showing that the particular programs proposed (e.g. mentoring, awards ceremonies, etc.) would be more effective if they were conducted separately on the basis of sex or were open only to boys. Nor is there evidence that the District even considered whether a gender-neutral model would achieve its goals—although District documents make clear that it has implemented some programs in coeducational schools that it considers successful in improving student outcomes.<sup>139</sup> Thus, as even the District’s Attorney General has conceded, the exclusion of girls from these programs is not necessary to achieve the goals DCPS has set for EMOC.<sup>140</sup>

In addition, some of the assumptions underlying the EMOC initiative and the educational model the District has embraced raise significant questions about sex stereotyping. The EMOC initiative overall, as well as several of its core components (in particular, the EMOC Innovation Grants for “gender-based” academies, the “single-gender” training at the Empowering Males High School, and the very model for the high school itself), are premised to a greater or lesser degree on the assumption that those boys, as a group, have different educational needs than girls of color. Although public schools are free to create programs or implement teaching strategies tailored to *individuals* with particular learning styles or developmental needs, they cannot employ generalizations like these to deny girls or women access to unique educational opportunities.<sup>141</sup> There is also a significant risk that single-sex educational programs adopting this philosophy will perpetuate traditional sex stereotypes by perpetuating rigid gender norms in single-sex classrooms.

These risks are borne out by education research.<sup>142</sup> For example, in their recent study of single-sex schools, Edward Fergus, Pedro Noguera, and Margary Martin found that many of the schools, in attempting to help boys of color redefine their notion of “manhood,” had adopted a “traditional approach to gender socialization [that] proved to be problematic.”<sup>143</sup> These single-sex schools—despite their best intentions—emphasized a “notion of masculinity that . . . reflected fairly traditional notions of gender. The young men were being socialized to take on traditional male roles in the context of work, family, and interpersonal relationships. . . . In some cases, it was clear that the schools were simply reproducing the status quo.” The study’s findings also highlight the particularly harmful impact on boys who did not meet traditional expectations about gender or sexual orientation.<sup>144</sup> It is precisely this type of gender-norm reinforcement that Title IX and the Constitution are intended to guard against, making this aspect of the justification for—and implementation of—EMOC particularly vulnerable from a legal standpoint.

In addition to the lack of justification for the exclusion of girls at the outset, there are significant doubts as to whether DCPS would be able to meet Title IX’s other legal requirements for carrying out programs

separately on the basis of sex—such as ensuring the availability of substantially equal coeducational (or single-sex) alternatives.

Furthermore, the DC HRA prohibits the provision of *any* of the educational programs offered under EMOC only to males or the establishment of a single-sex public school like the “Empowering Males High School.” Such sex-exclusive programming would clearly “deny, restrict, abridge or condition the use of ... programs or facilities to any qualified person” on account of sex.<sup>145</sup>

Because the parameters for each component of EMOC are slightly different, the application of the Constitution, Title IX and the DC HRA to each will be discussed in more detail below.

#### *EMOC Innovation Grants/Proving What’s Possible Grants*

While it remains unclear what the technical eligibility criteria will be for many of the grants awarded, the majority (12) appear to be open only to boys of color, while the remainder may or may not be gender-neutral. (See Table 1). Assuming that at least some of the programs will, as suggested by their descriptions, in fact exclude girls, the justification for excluding girls remains unknown because the project proposals on which the awards were based have not yet been provided or made public.<sup>146</sup> Because the justification for single-sex programming would be specific to each program, each would have to be evaluated separately based on its own facts.

Several clear legal concerns nonetheless emerge from the description of the grantees alone. First, it is difficult to imagine that grant recipients would be able to articulate an adequate justification for offering programs only to boys in fields such as STEM, where girls traditionally lag behind boys in outcomes and face numerous barriers to equal participation and opportunity.<sup>147</sup> Similarly, several of the programs focus on challenges that are common to boys and girls of color, such as trauma and the impact of gang violence. While girls and boys may experience these problems in unique ways that call for a more individualized response, there is no basis for excluding girls entirely from accessing services aimed at addressing them. Any such programs that exclude girls would thus be on shaky ground as a matter of satisfying constitutional requirements.

Furthermore, as discussed above, the inclusion of “gender-based” models, such as the “gender-based” academies at Ballou High School and the grant to the “Empowering Males High School” for “single-gender” professional development, are of particular concern because their description as “gender-based” and “single-gender” suggests that these models are likely to incorporate gender-based stereotypes about the typical development, interests, and learning styles of boys. As discussed above, such generalizations are troubling from a policy standpoint and legally impermissible as a basis for the exclusion of girls from public educational programming.<sup>148</sup>

Finally, there is no indication from either the documents produced to date or from publicly available information that DCPS, much less any grantee, has considered whether substantially equal alternatives are available to girls in the schools where these programs will be operating—and it seems unlikely that such alternatives in fact exist.

These significant flaws in the execution of the grants resulted from the lack of guidance DCPS provided to applicant schools on their legal obligations, and creates a serious legal vulnerability for many or most of them that the District must now ensure is corrected.

### *"500 for 500"/Mentoring Through Literacy*

Although some questions remain as to whether the mentoring opportunities available under the "500 for 500" mentoring program will technically be available to girls, the program's goals and DCPS's outreach and marketing efforts connected with it make it unlikely that girls will apply, strongly suggesting that it will be *effectively* available only to boys.

Although the racial achievement gap in reading is slightly greater for boys than it is for girls, a significant number of girls would benefit from literacy mentorship, and but for their sex, would be considered eligible based on the criteria otherwise used for boys. DCPS does not appear to have considered whether a program targeting both girls and boys would advance its goals of improving literacy rates, or examined whether substantially equal mentoring opportunities currently exist for all students who are behind in reading.

Finally, the program's exclusively male orientation sends the message that girls who are struggling academically are less worthy than boys of the additional support offered by mentorship. This is not a message DCPS should be sending its students. Accordingly, the failure to extend these mentorship opportunities to girls would likely violate both the Constitution and Title IX, as well as the DC HRA.

### *Celebrating Males of Color:*

The shift in emphasis embodied by the Celebrating Males of Color initiative—away from a "deficit" model to a focus on the resilience of students who overcome challenges— is a welcome one. But while celebrating the achievements of at-risk students is a laudable goal, DCPS has provided no justification for providing these ceremonial events *only to boys of color* and excluding girls of color. As described above, the Celebrating Academic Champions luncheon held on June 12, 2015, was open only to boys of color, and no comparable event was held celebrating girls of color who were accepted to college. DCPS had no evidence that holding such an event only for boys would in fact achieve the goals of narrowing the racial achievement gap in literacy or boosting high school or college graduation rates. On the contrary, the exclusion of girls may *undermine* those goals by sending the deeply troubling message that girls' achievements are literally less worthy of recognition within DCPS than those of boys. Accordingly, it likely violated both Title IX and the Constitution, as well as the DC HRA.

More narrowly tailored solutions could easily achieve the goals of honoring the successes of students from at-risk populations. For example, DCPS could simply open the event up to *all* students who meet specific benchmarks, or could adopt criteria that are neutral as to both race and gender, as is true of the existing "Scholars Luncheons" program.

### *The Empowering Males High School*

While questions remain as to whether girls will in practice be able to benefit from some of the other components of EMOC, it is evident that girls are not eligible to apply to the new high school.

DCPS's plan for the school fails to satisfy constitutional standards because the justification for excluding girls from the opportunities offered by the school is inadequate. To begin with, the justification of improving the graduation rate for boys of color is not reflected in the admissions policy of the school, which is open to all boys regardless of their race or educational record. In practice, this means that Black and Latina girls have not been permitted to apply, despite their relatively low graduation rates compared to those of white girls, while white boys have been allowed to apply.



Moreover, as explained above, the model on which the school is based relies on the assumption that boys of color (in general) have specific “developmental stages and learning styles,” and thus need “targeted and differential” support that is “tailored” to their needs. This assumption cannot serve as the basis for the exclusion of girls from the many unique educational opportunities offered by this elite college preparatory school.<sup>149</sup> The provision of an “EMOC Innovation Grant” for “single-gender” professional development heightens the concern that the school will implement instructional models based on sex stereotypes, which would be prohibited by both the Constitution and Title IX.<sup>150</sup>

DCPS’s basis for selecting *any* single-sex school as a model is also on exceedingly weak ground. DCPS did not conduct a review of the available literature on whether a single-sex school would be an effective model for improving educational outcomes, or consider whether coeducational models could be as effective. In fact, mounting research has cast significant doubt on claims that single-sex education is an effective intervention.<sup>151</sup> For example, a 2014 meta-analysis of 184 studies on the outcomes of single-sex education found that when factors such as study design and selection bias are properly controlled for, there is no statistically significant difference between outcomes for students at single-sex and coeducational institutions.<sup>152</sup> The authors further found that there was insufficient evidence supporting the common claim that single-sex education has particular advantages for African-American and Latino male students.<sup>153</sup> This lack of evidence has led leading scholars on education for boys of color to caution that single-sex schooling is not a “magic bullet,” and to counsel against its adoption in urban school districts.<sup>154</sup>

Nor is there evidence in the records produced that DCPS considered whether a substantially equal coeducational or single sex alternative school exists for girls. Despite Chancellor Henderson’s rote assurances after the announcement of EMOC that the new high school’s program would be substantially equal to existing application-based high schools available to both sexes,<sup>155</sup> several significant differences between the new high school and existing DCPS schools are already clear. For example, the schools identified to date as comparators all have a minimum GPA and test score requirement,<sup>156</sup> while the Empowering Males High School will admit any student by lottery, regardless of credentials.<sup>157</sup> DCPS’s merit-based high schools therefore cannot be considered “substantially equal alternatives”—they will only be open to the top-performing students, and not all girls in the District regardless of their academic record. Another significant factor is the school’s slated location east of the Anacostia River,<sup>158</sup> while the other admission-based schools available to girls are nearly all located in Northwest Washington. And if the school continues to be modeled on Urban Prep, then it will offer educational benefits that differ substantially from those of other schools,<sup>159</sup> including the extended school day, mentoring, lower student-to-teacher ratio, and substantial educational supports both before and after graduation.<sup>160</sup> Thus, it appears clear that the new Empowering Males High School will offer several unique opportunities that are not otherwise available within the DCPS system in either a single-sex or coeducational setting.

DCPS therefore had insufficient evidence supporting its decision to create an all-boys school to satisfy the Constitution or the DC HRL, nor had it met its obligations under Title IX to ensure that a substantially equal educational opportunity is available to girls.

## Conclusion and Recommendations

There can be no doubt that severe racial disparities in educational outcomes exist in Washington DC. The ACLU supports solutions that will address those disparities, and welcomes DCPS's significant investment in reducing them. It is also clear that African-American boys are faring particularly poorly in the DC Public School system, and that the system's failure to meet the needs of these students is a crisis that merits significant attention from DCPS.

However, DCPS erred in examining only one half of the picture—focusing exclusively on the situation for boys of color, and failing to address the problems facing girls of color. The District's own data show that Black and Latina female students are also faring poorly compared to their white counterparts, and share many of the same challenges as their male peers. This failure to ensure equal opportunity for girls of color, or even to consider their needs, makes little sense from a fairness standpoint, and creates significant legal vulnerability for EMOC's programs.

Moreover, there is very real risk that the exclusion of girls from EMOC's core components will result in the perpetuation of sex stereotypes. The lack of evidence of efficacy and risk of negative outcomes has led leading scholars on interventions for boys of color to caution: "[A]dvocates of single-sex education would ... do well to learn from the mistakes of past reforms and continue to search for ways to solve the large and complex problems they have chosen to address rather than to simply embrace single-sex education as a panacea."<sup>161</sup>

Thus, although the Mayor and DCPS are to be commended for focusing their attention on the educational disparities facing boys of color, there is no justification for ignoring the problems facing girls of color, or for offering solutions from which only boys stand to benefit. Many aspects of EMOC are promising, and girls of color are equally deserving of the opportunities they offer.

The straightforward response to these legal and policy concerns is to ensure that girls of color are immediately made eligible for participation in all of the opportunities provided under EMOC.<sup>162</sup> This will require a change in direction for DCPS, but one that is in most cases relatively simple to execute—especially if it is accomplished swiftly.

With respect to each of the specific programs:

- **EMOC Innovation Grants:** DCPS must ensure that funded programs comply with the Constitution, Title IX and DC HRL, and provide clear guidance to all applicants to ensure that they structure their programs and formulate eligibility criteria accordingly.
  - Funded programs must be closely examined to determine whether they meet the numerous requirements for establishing sex separate programming, including whether there is an adequate justification and remedial purpose for the sex separation, whether there is evidence of sex stereotyping, and whether a comparable coeducational alternative exists.
  - Should programs fail to meet these requirements, grantees should be directed to open those programs to girls of color, and if they fail to do so, funds should be redirected towards gender-neutral programs.

- “Gender-based” professional development and/or pedagogical models must be eliminated.
- **The “500 for 500”/Mentoring Through Literacy program:** DCPS must alter its marketing and outreach strategy to make clear that participation is non-discriminatory, as to both students and mentors.
- **The Celebrating Males of Color initiative:** DCPS must ensure that all future events under this Initiative, including the Celebrating Academic Champions program and the Honor Roll Luncheons, celebrate the achievements of both girls and boys on an equal basis (and change the titles of the events accordingly). This could be accomplished by making the events open to both girls and boys of color, or by using eligibility criteria related to benchmarks for achievement that are associated with risk but neutral as to sex and race.
- **Empowering Males High School:** DCPS must ensure that girls of color are not denied equal opportunity to access the benefits promised by the new college preparatory high school. The lack of an existing substantially equal educational opportunity, and the logistical improbability of creating a parallel high school for girls in Anacostia to be available on the same time frame as the boys’ school, which is due to open in September 2016, means that girls who wish to attend the Empowering Males High School must be permitted to enroll for the coming school year. This will require reopening the DCPS lottery for that school, or permitting applications to be submitted outside of the regular process. Because spots should not be taken from boys who have already applied and been offered placement at the school, DCPS must permit girls to fill any open spots, and if necessary, create additional spots (and be prepared to dedicate additional resources as needed). In order to ensure meaningful access, DCPS’s public communications and marketing efforts should explicitly encourage girls as well as boys to apply. But in order to truly remedy the current inequity in opportunity, DCPS should go farther and revisit the decision to offer an all-boy’s school at all. That decision, which was taken in this case without adequate deliberation, public input, or research into efficacy, was legally unsupportable and should be abandoned.

DCPS and Mayor Bowser’s effort to address systemic inequalities and reduce racial disparities through EMOC is laudable. But even as we celebrate these goals, we must insist that girls of color who are also at risk are not left behind. In order to truly promote racial justice, *all* students, regardless of their sex, should have access to the benefits EMOC promises for our communities.

**Table 1: Empowering Males of Color Grant Recipients**

<u>Program Location</u>	<u>Amount</u>	<u>Description</u>	<u>Open to...</u>
<b>Columbia Heights Education Campus (CHEC)</b>	\$225,000	CHEC will create a multipronged initiative that includes expanded trauma-informed care services, gang and violence prevention sessions, mentoring, and a unified approach to bonding for males of color.	<b>Boys of color</b>
<b>Eastern High School</b>	\$207,120	Eastern High School will create a multipronged initiative for boys in grades 11-12 that includes mentoring, book publishing with Reach, Inc., and domestic and international travel for service.	<b>Boys only</b>
<b>Patterson Elementary School</b>	\$202,130	Patterson Elementary School will align academic programming in arts, culture, and technology to support numeracy and critical thinking for boys in grades 2-5.	<b>Boys only</b>
<b>Tyler Elementary School</b>	\$191,876	Tyler Elementary School will introduce a STEAM-focused curriculum and afterschool academy, mentoring, and parent resources targeting fathers.	<b>Unspecified</b>
<b>Drew Elementary School</b>	\$183,096	Drew Elementary School will create a multipronged initiative that includes mentorships, character education, social and emotional development, and increased family engagement	<b>Unspecified</b>
<b>Stanton Elementary School</b>	\$156,330	Stanton Elementary School will create a Boys Institute of Stanton for boys in grades 3-5, focusing on academic enrichment and interventions.	<b>Boys only</b>
<b>Ballou High School</b>	\$150,000	Ballou High School will create gender-based 9th and 10th grade academies focused on academics, manhood development, mentoring, leadership, and college readiness.	<b>Boys only (?)</b> <i>Gender-based</i>
<b>Aiton Elementary School</b>	\$125,000	Aiton Elementary School will develop a blended-learning academy for boys in grades 3-5, which will also include mentoring and experiential and service learning.	<b>Boys only</b>

*Leaving Girls Behind: An Analysis of Washington D.C.'s EMOC Initiative*

<u>Program Location</u>	<u>Amount</u>	<u>Description</u>	<u>Open to...</u>
<b>Bunker Hill Elementary School</b>	\$35,000	Bunker Hill Elementary School in partnership with George Washington's Art Therapy Graduate Program, will introduce art therapy for boys who deal with trauma, loss, or emotional stress.	<b>Boys only</b>
<b>Empowering Males High School</b>	\$35,000	Empowering Males High School will provide single-gender and culturally relevant professional development for the staff of this new school, opening in School Year 2016-2017.	<b>Boys only</b> <i>Gender based</i>
<b>Truesdell Education Campus</b>	\$34,384	Truesdell Education Campus will create the Elite Scholars Program to bolster academic and social experiences for boys in grades PK3–8.	<b>Boys only</b>
<b>Ballou STAY High School</b>	\$32,741	Ballou STAY High School will create a multipronged approach that will develop music and multimedia production for students, increase student engagement, and launch certificate programs in partnership with Roosevelt STAY High School.	<b>Unspecified</b>
<b>Noyes Elementary School</b>	\$32,289	Noyes Elementary School will create a robotics team for a cohort of boys in grades 3-5 with a tutoring and mentoring component through collaboration with McKinley Technology High School.	<b>Boys only</b>
<b>Orr Elementary School</b>	\$29,400	Orr Elementary School will create the Pride of Southeast program for boys in grades 1-2 to develop strategies for conflict resolution and positive peer interactions, while also promoting pride in self, school, and others.	<b>Boys only</b>
<b>Van Ness Elementary School</b>	\$16,506	Van Ness Elementary School will implement Conscious Discipline to create positive school culture.	<b>Unspecified</b>
<b>Deal Middle School</b>	\$13,800	Deal Middle School will create a summer program focused on developing student leadership and academic skills.	<b>Unspecified</b>



## ENDNOTES

<sup>1</sup> See, e.g., Office of the State Superintendent of Education & Government of the District of Columbia, *2015 District of Columbia Partnership for Assessment of Readiness for College and Careers (PARCC) 3rd-8th Grade Results*, at 12, 19 (Nov. 30, 2015), [http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/OSSE%20PARCC%203-8%20ReleasePresentation\\_finalv14.pdf](http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/OSSE%20PARCC%203-8%20ReleasePresentation_finalv14.pdf) (listing rates of students performing at or above expectations in English Language proficiency at 17% and 21% for Black and Hispanic students respectively, compared to 79% for white students, and in math at 17% and 22%, compared to 70% for white students) [hereinafter PARCC 3<sup>rd</sup>-8<sup>th</sup> Grade Results].

<sup>2</sup> See generally DCPS, *Empowering Males of Color an Initiative to Support Black & Latino Males*, Public Announcement at Ballou SHS (Jan. 21, 2014) (on file with author) [ACLU DCPS 7–33] [hereinafter *Public Announcement at Ballou SHS*]. Unless otherwise indicated, all sources referenced herein were produced in response to a Freedom of Information Act request by the ACLU of the Nation's Capital. The documents are on file with the ACLU and available upon request. For ease of reference, they are referred to, in brackets, by a "Bates stamp" number designated by the ACLU and grouped based on when they were produced. Where a public source is available, a parallel citation is provided.

<sup>3</sup> See, e.g., Letter to Mayor Muriel Bowser from Monica Hopkins-Maxwell, Executive Director, American Civil Liberties Union, Feb. 23, 2015, <http://aclu-nca.org/sites/default/files/docs/Letter%20to%20Mayor%20Bowser%20%5B2.23.2015%5D.pdf> (applauding the Bowser administration "for seeking to identify and implement effective strategies to enhance the student experience, increase achievement, and prepare males of color for college, careers, and life beyond DC Public Schools"); National Women's Law Center, Testimony of Fatima Goss Graves Before the Council of the District of Columbia, Apr. 23, 2015, [http://nwlc.org/wp-content/uploads/2015/08/fgg\\_testimony\\_letterhead\\_dc\\_emoc\\_4.34.15.pdf](http://nwlc.org/wp-content/uploads/2015/08/fgg_testimony_letterhead_dc_emoc_4.34.15.pdf) ("The important data analysis conducted by the District highlights the educational needs of boys of color, and we applaud the District for recognizing that there must be a more targeted effort to address the needs of its Black and Latino students.").

<sup>4</sup> See Kimberlé Crenshaw, *Black Girls Matter: Pushed Out, Over Policed, and Under Protected*, African American Policy Forum (2015), [http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54dcc1ece4b001c03e323448/1423753708557/AAPF\\_BlackGirlsMatterReport.pdf](http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54dcc1ece4b001c03e323448/1423753708557/AAPF_BlackGirlsMatterReport.pdf) [hereinafter Crenshaw, *Black Girls Matter*]; Leticia Smith-Evans et al., NAACP Legal Defense and Educational Fund, Inc. & Nat'l Women's Law Center, *Unlocking Opportunity for African American Girls* (2014), [http://www.naacpldf.org/files/publications/Unlocking%20Opportunity%20for%20African%20American%20Girls\\_0.pdf](http://www.naacpldf.org/files/publications/Unlocking%20Opportunity%20for%20African%20American%20Girls_0.pdf) [hereinafter Smith-Evans et al., *Unlocking Opportunity for African American Girls*]; Joan Williams, *My Sister's Keeper: The Importance of Addressing African-American Girls' Opportunity Gaps*, Loyola U. of Chicago J. of Early Educ. L. & Policy (2014), <http://www.luc.edu/media/lucedu/law/centers/childlaw/earlyeducation/2014studentpapers/Williams.pdf>; C. Malloy, *What About the Girls? Exploring the Academic, Emotional, and Social Mindset of Black Girls in 5th grade* (2015) (Unpublished PhD. dissertation, Proquest Dissertations), [https://scholarworks.calstate.edu/bitstream/handle/10211.3/147699/Malloy\\_csueastbay\\_1548E\\_10073.pdf?sequence=1](https://scholarworks.calstate.edu/bitstream/handle/10211.3/147699/Malloy_csueastbay_1548E_10073.pdf?sequence=1); Venus E. Evans-Winters & Jennifer Esposito, *Other Peoples Daughters: Critical Race Feminism and Black Girls' Education*, 24 Educational Foundations 11-24 (2010), <http://files.eric.ed.gov/fulltext/EJ885912.pdf>; Monique W. Morris, *Education and the Caged Bird: Black Girls, School Pushout and the Juvenile Court School*, 22

Poverty and Race 14513 (2013),

[http://www.prrac.org/full\\_text.php?text\\_id=1464&item\\_id=14513&newsletter\\_id=132&header=Education&kc=1](http://www.prrac.org/full_text.php?text_id=1464&item_id=14513&newsletter_id=132&header=Education&kc=1); Monique W. Morris, *Pushout: The Criminalization of Black Girls in Schools* (2016); Nikki Jones, *Between Good and Ghetto: African American Girls and Inner-City Violence* (2009); Carla Shedd, *Unequal City: Race, Schools, and Perceptions of Injustice* (2015).

<sup>5</sup> See generally Crenshaw, *Black Girls Matter*, *supra* note 4; Smith- Evans et al., *Unlocking Opportunity for African American Girls*, *supra* note 4, at 13, 27, 29, 39, 40, 54.

<sup>6</sup> See Michael Alison Chandler & Mike DeBonis, *Cheh Challenges Legality of Henderson's Minority Male School Initiative*, Washington Post, Feb. 9, 2015, [https://www.washingtonpost.com/local/education/mary-cheh-challenges-legality-of-chancellors-minority-male-initiative/2015/02/09/6619e650-b0b2-11e4-827f-93f454140e2b\\_story.html](https://www.washingtonpost.com/local/education/mary-cheh-challenges-legality-of-chancellors-minority-male-initiative/2015/02/09/6619e650-b0b2-11e4-827f-93f454140e2b_story.html); Natalie Wexler, *DCPS Wants to Focus on Boys of Color, But Some Say That's Unfair and Illegal*, Greater Washington (Feb. 26, 2015), <http://greatergreaterwashington.org/post/25903/dcps-wants-to-focus-on-boys-of-color-but-some-say-thats-unfair-and-illegal/>; National Women's Law Center, Testimony of Fatima Goss Graves Before the Council of the District of Columbia, Apr. 23, 2015, [http://nwlc.org/wp-content/uploads/2015/08/fgg\\_testimony\\_letterhead\\_dc\\_emoc\\_4.34.15.pdf](http://nwlc.org/wp-content/uploads/2015/08/fgg_testimony_letterhead_dc_emoc_4.34.15.pdf); Letter to Karl Racine, Attorney General, from Councilmember Mary M. Cheh, Feb. 9, 2015, <http://apps.washingtonpost.com/g/documents/local/councilmember-chehs-letter-to-attorney-general-karl-racine/1405/?125>; Letter to Mayor Muriel Bowser from Monica Hopkins-Maxwell, Executive Director, ACLU-NCA, Feb. 23, 2015, <http://aclu-nca.org/sites/default/files/docs/Letter%20to%20Mayor%20Bowser%20%5B2.23.2015%5D.pdf>. At a Town Hall meeting on April 20, 2015, organized by the African American Policy Forum and co-sponsored by numerous community organizations, several panels of girls of color themselves also testified as to the critical problems they faced in the DC Public Schools and the pressing need for additional resources. See Global Women's Institute, *Breaking the Silence: A Town Hall Hearing on Girls of Color in DC*, <http://globalwomensinstitute.gwu.edu/breaking-silence-dc-town-hall-girls-color-dc-public-schools>.

<sup>7</sup> No formal admissions or eligibility criteria were produced in response to ACLU's FOIA requests. *See infra*, note 59.

<sup>8</sup> See Edward Fergus, Pedro Noguera, & Margary Martin, *Schooling for Resilience* 5, 197 (2014) [hereinafter Fergus, Noguera & Martin, *Schooling for Resilience*] (cautioning that single-sex education “should not be held up as a panacea,” and concluding that “[w]hile it is clear that something must be done to address the pervasive failure among Black and Latino males in American public schools, it is not clear that this is the intervention that will solve the broad array of problems they face”); Pedro Noguera, *Responding to the Challenges Confronting Black and Latino Males: The Role of Public Policy in Countering the ‘Crisis’ and Promoting Success*, in *A Call for Change: Providing Solutions for Black Male Achievement* 10 (Houghton Mifflin Harcourt 2012) (recommending focusing interventions “on need rather than race or gender identity” rather than exclusively targeting Black and Latino boys).

<sup>9</sup> See District of Columbia Public Schools, *EMOC Innovation Grants*, <http://dcps.dc.gov/page/emoc-innovation-grants> (last visited Mar. 7, 2016); See also DCPS, *DC Public Schools Awards Nearly \$1.7 Million to Schools in Empowering Males of Color Innovation Grants* (Jan. 27, 2016), <http://dcps.dc.gov/release/dc-public-schools-awards-schools-empowering-males-color-innovation-grants>.

<sup>10</sup> See District of Columbia Public Schools, *Empowering Males High School*, <http://dcps.dc.gov/node/1129726> (last visited Mar. 7, 2016) [hereinafter *Empowering Males High School*]; My School DC, *Empowering Males High*

School, <http://www.myschooldc.org/schools/profile/390/> (last visited Mar. 7, 2016) (referring to the “all boys high school”).

<sup>11</sup> Press Release, *DC Children and Youth Investment Trust Corp., The Trust Commends Mayor Gray for Accepting President Obama’s “My Brother’s Keeper Community Challenge”* (Oct. 3, 2014), <http://dctrust.org/the-trust-commends-mayor-gray-for-accepting-president-obamas-my-brothers-keeper-community-challenge/>.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., email from [redacted] to Robert W. Simmons, III, Chief of Innovation and Research at DC Public Schools (Mar. 3, 2015, 13:54 EST) [ACLU DCPS 743]; Email from Ed. N. Davies, Executive Director, DC Trust to Kaya Henderson, DCPS (Feb. 5, 2015, 11:21 EST) [ACLU DCPS 431]; Email from DC Trust (via Twitter) to Robert Simmons, DCPS (Feb. 9, 2015, 12:01 EST) [ACLU DCPS 569] Email from E. Bomani Johnson, DC Trust, to Robert Simmons, DCPS (Jan. 29, 2015, 10:30 EST) [ACLU DCPS 575].

<sup>14</sup> See DCPS, *Year 1 Strategy: Bold Efforts for African American Male Success* (n.d.) in Kim Cherry, *B.E.A.M.S.: Bold Efforts for African American Male Success* (independent study report) (Aug. 5, 2015), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiYv83yqcjKAhVW22MKHe-ZARAQFggcMAA&url=http%3A%2F%2Fkimcherry.weebly.com%2Fuploads%2F1%2F8%2F2%2F1%2F18215799%2Fk.cherry\\_internship\\_report.docx&usg=AFQjCNH0vI7rRg3gw5cDRpojYx6x6qZldw&sig2=0oBpDegU2KK49h6VIC67lw&bvm=bv.112766941,d.cGc](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiYv83yqcjKAhVW22MKHe-ZARAQFggcMAA&url=http%3A%2F%2Fkimcherry.weebly.com%2Fuploads%2F1%2F8%2F2%2F1%2F18215799%2Fk.cherry_internship_report.docx&usg=AFQjCNH0vI7rRg3gw5cDRpojYx6x6qZldw&sig2=0oBpDegU2KK49h6VIC67lw&bvm=bv.112766941,d.cGc); *BEAMS Thought Partners* (undated, author unknown) [ACLU DCPS FOIA Appeal 105-112] [hereinafter *Bold Efforts for African American Male Success*].

<sup>15</sup> DCPS, *Empowering Males of Color* [ACLU DCPS 56] [hereinafter DCPS, *Empowering Males of Color*].

<sup>16</sup> Deliberative process privilege is an exemption from the freedom of information law allowing agencies to withhold documents related to the process by which policy is formulated. See D.C. Code § 2-534 (4) (exempting material “which would not be available by law to a party other than a public body in litigation with the public body”); See also *Fraternal Order of Police v. D.C.*, 79 A.3d 347, 354 (D.C. 2013) (deliberative process privilege encompasses advisory opinions, recommendations and deliberations that comprise the governmental decision-making process).

<sup>17</sup> See Letter from Eboni J. Govan, Att’y Advisor/FOIA Officer, DCPS, to Jennifer Wedekind, Staff Att’y and Special Projects Counsel (June 19, 2015) [ACLU DCPS 453]; Letter from Eboni J. Govan, Att’y Advisor/FOIA Officer, DCPS, to Jennifer Wedekind, Staff Att’y and Special Projects Counsel (October 26, 2015) [ACLU DCPS FOIA Appeal 1-3].

<sup>18</sup> Email from DCPS to [list redacted] (Jan. 21, 2015, 15:52 EST) [ACLU DCPS 245]; OCTDC’s channel, *Mayor Bowser and Chancellor Henderson Announce Empowering Males of Color Initiative*, YouTube (Jan. 21, 2015) (at minute 15:27), <https://www.youtube.com/watch?v=t2FBPRsZ30k> [hereinafter *EMOC Announcement*].

<sup>19</sup> DCPS, *Empowering Males of Color in DCPS* [ACLU DCPS 52] [hereinafter *EMOC in DCPS*].

<sup>20</sup> *Public Announcement at Ballou SHS*, *supra* note 2 [ACLU DCPS 23–25].

<sup>21</sup> DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 59-60].

<sup>22</sup> *Public Announcement at Ballou SHS*, *supra* note 2 [ACLU DCPS 26]. DCPS announced that it will be working with the Center for Culturally Responsive Teaching and Learning, and the Fellowship for Race & Equity in Education (FREE) to provide these trainings. See *The Kojo Nnamdi Show: Improving the Outlook for Male Minority Students*, WAMU 88.5 NPR (Feb. 9, 2015, 12:30 EST),

[http://thekojonnamdishow.org/audio/#/shows/2015-02-09/improving\\_the\\_outlook\\_for\\_male\\_minority\\_students/87512/@24:00](http://thekojonnamdishow.org/audio/#/shows/2015-02-09/improving_the_outlook_for_male_minority_students/87512/@24:00). DCPS is also collaborating with the

National Center on Cultural and Linguistic Responsiveness (NCCLR) to train teachers to deliver effective Head Start programming specifically to African American young boys. See DCPS, Office of Innovation and Research, *SY14-15 Operations Plan & Key Initiatives* [ACLU DCPS 50] [hereinafter *SY14-15 Operations Plan*]. The pilot program was to launch in the school year of 2014-2015, and will be extended in 2015 to focus on Latino boys and American Indian and Alaskan Native boys. *Memorandum of Understanding* from Kaya Henderson, DCPS Chancellor [ACLU DCPS 205]. Because the cultural competency training component does not raise legal issues, we do not focus on it here.

<sup>23</sup> DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 60].

<sup>24</sup> *Public Announcement at Ballou SHS*, *supra* note 2 [ACLU DCPS 27].

<sup>25</sup> DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 60].

<sup>26</sup> *EMOC Announcement*, *supra* note 18 (at minute 15:27).

<sup>27</sup> See DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 55]; DCPS, *A Capital Commitment - DCPS Strategic Plan 3–53* (Apr. 1, 2012), <http://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS-Capital-Commitment-Strategic-Plan-April-2012.pdf>. Specifically, under the plan, by 2017 DCPS aims to have: 1) at least seventy percent of its students proficient in reading and math; 2) the forty lowest performing schools increase proficiency rates by forty percentage points; 3) at least seventy-five percent of the entering freshman graduate from high school in four years; 4) ninety percent of students say they are satisfied with their school; and 5) seen an increase in DCPS's enrollment over the five previous years. *Id.*

<sup>28</sup> *EMOC Announcement*, *supra* note 18 (at minute 15:35); DCPS, Office of Innovation and Research, *Empowering Males of Color (EMOC): Strategic Plan 3* (Jan. 2015) [ACLU DCPS FOIA Appeal 36]; DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 55]; DC Public Education Fund, *Empowering Males of Color* [ACLU DCPS 106] [hereinafter DC Public Education Fund, *Empowering Males of Color*]; DCPS, *BEAMS Committee Meeting—May 16, 2014* [ACLU DCPS FOIA Appeal 31] [hereinafter *BEAMS Committee Meeting*]; *Bold Efforts for African American Male Success*, *supra* note 14.

<sup>29</sup> See, e.g., DCPS, *Empowering Males of Color*, *supra* note 15 (Listing goals to improve achievement, invest in 40 lowest-performing schools, increase graduation rate, improve student satisfaction, and increase enrollment, and stating: “While these goals are ambitious and attainable, it is very clear that we will not be successful in achieving our goals by 2017 without a much more concentrated and targeted effort to support our males of color”); see also sources cited *supra* note 28.

<sup>30</sup> DCPS Office of Data and Strategy, *Empowering Males of Color Data Presentation – January 2015*, at 19 [ACLU DCPS 92], <http://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Empowering%20Males%20of%20Color%20Data%20Presentation.pptx> [hereinafter *EMOC Data Presentation*]; see also PARCC 3<sup>rd</sup>-8<sup>th</sup> Grade Results, *supra* note 1.

<sup>31</sup> *EMOC Data Presentation*, *supra* note 30, at 13.

<sup>32</sup> This ratio is an estimation to demonstrate the disproportionate suspension rate of Black girls. Given that DCPS reports that no white girls were actually suspended, the rate calculation assumes a 1% suspension rate for white girls.

<sup>33</sup> *EMOC Data Presentation*, *supra* note 30, at 12 [ACLU DCPS 85].

<sup>34</sup> Compare the AP enrollment rate of Latino boys (at 31%) with the AP enrollment rate of Black girls (at 24%). *Id.* at 16-17 [ACLU DCPS 89-90].

<sup>35</sup> *Id.* at 18 [ACLU DCPS 91].

<sup>36</sup> *Id.* at 9 [ACLU DCPS 82].

<sup>37</sup> *Id.* at 15 [ACLU DCPS 88].

<sup>38</sup> See Monica Hopkins-Maxwell, *Testimony on behalf of the American Civil Liberties Union of the Nation's Capital* 4 (Apr. 23, 2015) [ACLU DCPS 450-451].

<sup>39</sup> *EMOC Data Presentation*, *supra* note 30, at 2 [ACLU DCPS 75] (emphasis in original).

<sup>40</sup> See Memorandum from Kaya Henderson, Chancellor, DCPS, to Karl Racine, Att'y Gen., D.C. (Feb. 12, 2015) [ACLU DCPS FOIA Appeal 27-28].

<sup>41</sup> *BEAMS Committee Meeting*, *supra* note 28 [ACLU DCPS FOIA Appeal 31].

<sup>42</sup> DCPS initially refused to produce documents responsive to our request for research that formed the basis for the EMOC proposal, but later agreed to produce them after the ACLU appealed that decision to the Executive Office of the Mayor. The documents DCPS ultimately produced do not make clear when or by whom this review was conducted (though it is likely that it was by BEAMS members and/or other District personnel), when or to what extent any of the documents were read or relied upon by DCPS, or to what extent they contributed to the formation of EMOC or any of its components.

<sup>43</sup> For an overview of the purpose and benefits of peer review, *see, e.g.*, Robin Eisner et al., Columbia Center for New Media Teaching and Learning, *Responsible Conduct of Research, Responsible Authorship and Peer Review*, Ch. IV., [http://ccnmtl.columbia.edu/projects/rcr/rcr\\_authorship/foundation/index.html#4](http://ccnmtl.columbia.edu/projects/rcr/rcr_authorship/foundation/index.html#4) (last visited Mar. 7, 2016).

<sup>44</sup> *See, e.g.*, Seema Shah & Grace Sato, The Foundation Center, *Building a Beloved Community* [ACLU DCPS FOIA Appeal 118-89]; Council of Great City Schools, *A Call for Change: Providing Solutions for Black Male Achievement* (Dec. 2012) [ACLU DCPS FOIA Appeal 190-335] [hereinafter Council of Great City Schools, *A Call for Change* 2012]; Schott Foundation for Public Education, *The Urgency of Now, The Schott 50-State Report on Public Education and Black Males 2012* [ACLU DCPS FOIA Appeal 720-775] [hereinafter *The Schott 50-State Report*]; John Michael Lee, Jr., The College Board Advocacy and Policy Center, *The Educational Experience of Young Men of Color: A Review of Research, Pathways and Progress* (2011) [ACLU DCPS FOIA Appeal 791-886] [hereinafter *The Educational Experience of Young Men of Color*]; Ivory A. Toldson, Congressional Black Caucus Foundation, Center for Policy Analysis and Research, *Breaking Barriers 2: Plotting the Path Away from Juvenile Detention and Toward Academic Success for School-age African American Males* [ACLU DCPS FOIA Appeal 1144-1233] [hereinafter Toldson, *Breaking Barriers* 2].

<sup>45</sup> *See, e.g.*, *Beating the Odds Study Highlights* (n.d., author unknown) (discussing findings from interviews with leadership at 12 schools "selected for making strong gains in literacy despite serving lower-income



populations—none of which focus on males only) [hereinafter *Beating the Odds Study Highlights*]; Council of Great City Schools, *A Call for Change 2012*, *supra* note 44, at 8-15 [ACLU DCPS FOIA Appeal 195-98] (listing numerous gender-neutral proposals and specifically noting that “[r]ather than designing interventions that are exclusively targeted at Black and Latino males, in many cases it will be beneficial to focus policies based on need rather than race or gender identity”); *The Schott 50-State Report*, *supra* note 44, at 49 [ACLU DCPS FOIA Appeal 770]; Toldson, *Breaking Barriers 2*, *supra* note 44, at 4-5 [ACLU DCPS FOIA Appeal 1144, 1150-51].

<sup>46</sup> See, e.g., Council of Great City Schools, *A Call for Change 2012*, *supra* note 44 [ACLU DCPS FOIA Appeal 372, 390].

<sup>47</sup> See, e.g., Council of Great City Schools, *A Call for Change 2012*, *supra* note 44, at 8-15 [ACLU DCPS FOIA Appeal 195-198] (listing numerous gender-neutral policy proposals and specifically noting that recent research shows that “separating boys of color into schools that serve them exclusively is no panacea,” and cautioning that “[r]ather than designing interventions that are exclusively targeted at Black and Latino males, in many cases it will be beneficial to focus policies based on need rather than race or gender identity”); *The Educational Experience of Young Men of Color*, *supra* note 44, at 22 [ACLU DCPS FOIA Appeal 814] (noting that Pedro Noguera has argued against “framing educational problems first and foremost in terms of race and gender” because that might “distort the issues, lead to ineffective solutions and result in greater marginalization”).

<sup>48</sup> See, e.g., Council of Great City Schools, *A Call for Change 2012*, *supra* note 44, at 2 [ACLU DCPS FOIA Appeal 384] (noting data are not always disaggregated by gender and race and proposing improvements in tracking disaggregated data); *id.* at 101 [ACLU DCPS FOIA Appeal 483] (promoting disaggregation of data); cf. Heidi Hartmann, et al., Institute for Women’s Policy Research, *Toward our Children’s Keeper: A Data-Driven Analysis of the Interim Report of the My Brother’s Keeper Initiative Shows the Shared Fate of Boys and Girls of Color* (2015), <http://www.iwpr.org/publications/pubs/toward-our-childrens-keeper-a-data-driven-analysis-of-the-interim-report-of-the-my-brothers-keeper-initiative> [hereinafter IWPR, *Toward our Children’s Keeper*].

<sup>49</sup> See Kathy Piechura-Couture et al., *The Boy Factor: Can Single-Gender Classes Reduce the Over-Representation of Boys In Special Education*, 47 *College Student Journal* 235, 236 [ACLU DCPS FOIA Appeal 782] (“The rationale for single-gender education is based on the belief that there are inherent biological differences between males and females and these differences might manifest themselves in classroom behavior and have implications for pedagogical practices.”). Piechura-Couture claims, for example, that “there are fundamental differences how boys and girls see and hear” and that “the male and female autonomic nervous systems respond differently to stress.” *Id.* at 236 [ACLU DCPS FOIA Appeal 783].

<sup>50</sup> Diane Halpern et al., *The Pseudoscience of Single-Sex Schooling*, 333 *Science* 1706, 1707 (2011) [hereinafter Halpern, *Pseudoscience*].

<sup>51</sup> DC Public Education Fund, *Empowering Males of Color*, *supra* note 28 [ACLU DCPS 108]; Chancellor Kaya Henderson, Testimony Before the Committee on Education (Apr. 28, 2015), <http://dcps.dc.gov/release/chancellors-testimony-dcps-fy16-budget-hearing>.

<sup>52</sup> See Press Release, DCPS, *Mayor Gray, Chancellor Henderson Announce the Winners of \$10 million in Proving What is Possible Grants* (June 14, 2012), <http://dcps.dc.gov/release/mayor-gray-chancellor-henderson-announce-winners-10-million-proving-what-possible-grants>. For example, DCPS did produce one contract awarded to an organization called Reading Partners, for the period from August 2014 through June 2015 (possibly awarded pursuant to the previously existing grant program); that program is not explicitly gender specific but is instead aimed at providing literacy tutoring to students reading six months or more below grade



level. See DCPS, *Blanket Purchase Agreement No. GAGA-2014-0065 With Reading Partners* [ACLU DCPS 64-70] [hereinafter *Blanket Purchase Agreement*].

<sup>53</sup> See DCPS, *EMOC Proving What's Possible Grants: Background Information* [ACLU DCPS 72] [hereinafter DCPS, *Proving What's Possible Grants*].

<sup>54</sup> See Letter from Kaya Henderson, Chancellor, DCPS, to Karl Racine, Att'y Gen., D.C. at 6 (Feb. 13, 2015), <https://s3.amazonaws.com/s3.documentcloud.org/documents/1698174/minority-school-oag-opinion.pdf> [hereinafter *Letter to AG Racine from Chancellor Henderson*].

<sup>55</sup> DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 59]; DCPS, *Request for Proposals* (February 2015) [ACLU DCPS FOIA Appeal 8-17]. DCPS stated that it would give priority to schools that follow three guidelines: 1) use DCPS's new Equity Scorecard to determine the best way to address the challenges facing their Black and Latino male youths; 2) use a consortium approach across multiple schools to address the challenges of Black and Latino male students; and 3) conduct community engagement forums to seek input from interested parties, including parents and families, before developing their final proposal application. *Id.*

<sup>56</sup> DCPS, *Proving What's Possible Grants*, *supra* note 53 [ACLU DCPS 73].

<sup>57</sup> The District did produce a list of standard contract provisions, which includes a general provision prohibiting discrimination [ACLU DCPS 512-13]. However, the RPF provided no guidance on how recipients of PWP/EMOC Innovation Grants should structure programs aimed at improving outcomes for males of color without violating laws prohibiting discrimination. See DCPS, *Empowering Males of Color (EMOC) Innovation Grant Application, School Year 2015-16* (undated) (Feb. 26 DCPS FOIA Response, Attachment A, at 000007).

<sup>58</sup> These are summarized in Table 1; See also DCPS, *DC Public Schools Awards Nearly \$1.7 Million to Schools in Empowering Males of Color Innovation Grants* (Jan. 27, 2016), <http://dcps.dc.gov/release/dc-public-schools-awards-schools-empowering-males-color-innovation-grants>.

<sup>59</sup> See Letter from Eboni J. Govan, Att'y Advisor/FOIA Officer, D.C. Pub. Schs., to Anna Belkin, ACLU Paralegal (Feb. 26, 2016) [hereinafter Govan, *DCPS Feb. 26, 2016 FOIA Response Letter*] (responding that DCPS has no further documents responsive to request for "documents reflecting the eligibility and/or admission criteria for existing or planned education programs created or anticipated to receive funding pursuant to the Empowering Males of Color initiative," despite having produced no admissions or eligibility criteria in response to the ACLU's original FOIA request).

<sup>60</sup> See Galen Sherwin & Christina Brandt-Young, ACLU, *Preliminary Findings of ACLU "Teach Kids, Not Stereotypes" Campaign* 3-5 (August 20, 2012), [https://www.aclu.org/files/assets/doe\\_ocr\\_report2\\_0.pdf](https://www.aclu.org/files/assets/doe_ocr_report2_0.pdf) [hereinafter *ACLU Teach Kids, Not Stereotypes Report*].

<sup>61</sup> See *id.* at 6. For an example of this pedagogical theory, see, e.g. Nina B. Hollis Institute for Educational Reform, Stetson University, *Single-Gender Education: A Handbook for Teachers and Principals*, [http://www.stetson.edu/artsci/education/hollis-institute/media/GenderManualFinal\[1\].pdf](http://www.stetson.edu/artsci/education/hollis-institute/media/GenderManualFinal[1].pdf) (last visited Mar. 7, 2016).

<sup>62</sup> See Halpern, *Pseudoscience*, *supra* note 50, at 1706-07; Pahlke, Hyde & Allison, *The Effects of Single-Sex Compared with Coeducational Schooling on Students' Performance and Attitudes: A Meta-Analysis*, 140 *Psychological Bulletin* 1042-1072, 1064 (2014), <https://www.apa.org/pubs/journals/releases/bul-a0035740.pdf>; *ACLU Teach Kids, Not Stereotypes Report*, *supra* note 60, at 3-5.

<sup>63</sup> See Halpern, *Pseudoscience*, *supra* note 50 at 1706-07; Lise Eliot, *Pink Brain, Blue Brain* 12 (2009); Michael Kimmel, *Don't Segregate Boys and Girls in Classrooms*, CNN.com, Feb. 3, 2014, <http://www.cnn.com/2013/08/09/opinion/kimmel-single-sex-classes/> [hereinafter Kimmel, *Don't Segregate Boys and Girls in Classrooms*].

<sup>64</sup> For example, DCPS has already partnered with Reading Partners to place mentors in fifteen different public schools throughout the D.C. region targeting students (both male and female) who are at least six months behind in reading proficiency. See email from Karen Gardner, Executive Director Washington, DC, Reading Partners, to Muriel Bowser, DC Mayor (Jan. 23, 2015, 11:14 EST) [ACLU DCPS 603]; *Blanket Purchase Agreement*, *supra* note 52 [ACLU DCPS 64]. DCPS has also launched a Summer Literacy Program as another part of the EMOC initiative aimed at countering summer learning loss; the program has already begun, and appears to be open to both to both boys and girls. See Press Release, *DCPS, DCPS Kicks Off Summer of Learning and Exploration* (June 10, 2015), <http://dcps.dc.gov/release/dcps-kicks-summer-learning-and-exploration> (mentioning that a summer learning program under the EMOC initiative has begun, is open to both sexes, and designed to combat summer learning loss); see also DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 56].

<sup>65</sup> DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 56].

<sup>66</sup> See *SY14-15 Operations Plan*, *supra* note 22 [ACLU DCPS 50].

<sup>67</sup> *Id.* The documents produced to date do not make clear whether this program has begun operating yet, though the DCPS website has information on how to sign up as a mentor.

<sup>68</sup> See *id.*; DCPS, *Volunteer as a Mentor to Young Males of Color*, <http://dcps.dc.gov/node/1007332> (last visited Mar. 7, 2016) (“We call on every man and woman who is willing and capable to step up and volunteer as a mentor to a male student of color, guiding them with an emphasis on literacy.”).

<sup>69</sup> Mayor Bowser partnered with DCPS to launch the EMOC initiative. See Press Release, Executive Office of the Mayor, *Mayor Bowser and DCPS Launch Bold, New Initiative to Empower Males of Color* (Jan. 21, 2015), <http://mayor.dc.gov/release/mayor-bowser-and-dcps-launch-bold-new-initiative-empower-males-color>.

<sup>70</sup> Email from Najla Hussein, Director, Community Partnership, DCPS Office of the Chancellor, to Mark Hecker, Executive Director, Reach Inc. (Jan. 15, 2015 23:26 EST) [ACLU DCPS 339–40].

<sup>71</sup> See, e.g., *See EMOC Announcement*, *supra* note 18 (at minute 43:45) (“We are calling on African American and Latino men specifically to step up as mentors.”); *SY14-15 Operations Plan*, *supra* note 22 [ACLU DCPS 50] (“DCPS needs firm and unwavering support from dedicated men.”); DCPS, *Empowerment Services for Males of Color*, <http://dcps.dc.gov/service/empowerment-services-males-color> (last visited Mar. 7, 2016) (“We call on every man who is willing and capable to step up and volunteer as a mentor to a male student of color, guiding them with an emphasis on literacy.”). But see DCPS, *Volunteer as a Mentor to Young Males of Color*, <http://dcps.dc.gov/node/1007332> (“We call on every man *and woman* who is willing and capable to step up and volunteer as a mentor to a male student of color, guiding them with an emphasis on literacy.”) (last visited Mar. 7, 2016); Michael A. Chandler, *D.C. Schools Are Recruiting 500 Tutors to Mentor Minority Boys*, The Washington Post, Sept. 29, 2015, [https://www.washingtonpost.com/local/education/dc-schools-are-recruiting-500-tutors-to-mentor-minority-boys/2015/09/29/e10b5ed0-6600-11e5-9ef3-fde182507eac\\_story.html](https://www.washingtonpost.com/local/education/dc-schools-are-recruiting-500-tutors-to-mentor-minority-boys/2015/09/29/e10b5ed0-6600-11e5-9ef3-fde182507eac_story.html) (reporting that Mayor Bowser is participating as a mentor).

<sup>72</sup> DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 60].

<sup>73</sup> See *id.*; *EMOC in DCPS*, *supra* note 19 [ACLU DCPS 53].

<sup>74</sup> Press Release, DCPS, *DC Public Schools Honors College-Bound Seniors at Emerging Male Scholars Ceremony* (June 12, 2015), <http://dcps.dc.gov/release/dc-public-schools-honors-college-bound-seniors-emerging-male-scholars-ceremony>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> DCPS, *Empowering Males of Color*, *supra* note 15 [ACLU DCPS 60].

<sup>79</sup> *Id.*

<sup>80</sup> Email from Kaya Henderson, Chancellor, DCPS, to Kathy Hollinger, Storyboard DC (Jan. 21, 2015 14:01 EST) [ACLU DCPS 254].

<sup>81</sup> See email from Merita Carter, DCPS, to Simone Boone, DCPS et al. (Jan. 23, 2015 18:19 EST) [ACLU DCPS 601].

<sup>82</sup> Press Release, DCPS, *Chancellor Kaya Henderson Hosts Third-Annual Scholars Luncheon to Honor Top Seniors* (June 15, 2015), <http://dcps.dc.gov/release/chancellor-kaya-henderson-hosts-third-annual-scholars-luncheon-honor-top-seniors>.

<sup>83</sup> See *id.* See also Emma Brown, *Chancellor Kaya Henderson Honors Top D.C. Graduates, Hopes to Start Tradition*, Wash. Post (June 18, 2013), [https://www.washingtonpost.com/local/education/chancellor-honors-top-dc-graduates-hopes-to-start-tradition/2013/06/18/5c3eb986-d845-11e2-a016-92547bf094cc\\_story.html](https://www.washingtonpost.com/local/education/chancellor-honors-top-dc-graduates-hopes-to-start-tradition/2013/06/18/5c3eb986-d845-11e2-a016-92547bf094cc_story.html).

<sup>84</sup> See Govan, *DCPS Feb. 26, 2016 FOIA Response Letter*, *supra* note 59 (stating that DCPS has no further documents in response to request for records related to the Honor Roll Luncheons or the Celebrating Academic Champions programs).

<sup>85</sup> News reports now suggest that the name of the school may subsequently be changed. See Christina Sturdivant, *Meet the Principal Who Will Lead D.C.'s Only All-Boys Public High School*, DCist Jan. 5, 2016 ("It is currently called the Empowering Males High School, but the community will later decide on a name, mascot, and school colors, according to DCPS spokesperson Michelle Lerner."), [http://dcist.com/2016/01/principal\\_at\\_dcs\\_first\\_all-boys\\_hig.php](http://dcist.com/2016/01/principal_at_dcs_first_all-boys_hig.php).

<sup>86</sup> DCPS, *Empowering Males of Color*, *supra* note 15 ("Far too many males of color in DCPS have graduation rates significantly lower than their peers. . . . our goal is to provide a targeted, proven, high-impact support that will ensure students attending this school will not only graduate from high school but also college.") [ACLU DCPS 59].

<sup>87</sup> *SY14-15 Operations Plan*, *supra* note 22 [ACLU DCPS 50]; *EMOC Announcement*, *supra* note 18 (at minute 24:15).

<sup>88</sup> See *EMOC Announcement*, *supra* note 18 (at minute 48:00).

<sup>89</sup> See Council of the District of Columbia, *Committee of the Whole Committee Report, FY 2016-2021 Capital Budget Request by Owner Agency, By Project 6* (78 of PDF), <http://lims.dccouncil.us/Download/33642/B21-0157-CommitteeReport1.pdf>.

<sup>90</sup> DC Public Education Fund, *Empowering Males of Color*, *supra* note 28 [ACLU DCPS 106]; DC Public Education Fund, *DRAFT Urban Prep Budget for 1.4 M* (Feb. 19, 2015) [ACLU DCPS FOIA Appeal 18]; Perry Stein, *First-Time*

*Principal will Lead D.C.'s First all-Male Public High School*, Washington Post, Jan. 10, 2016, [https://www.washingtonpost.com/local/education/first-time-principal-will-lead-dcs-first-all-male-public-high-school/2016/01/10/cb338742-b55e-11e5-a842-0feb51d1d124\\_story.html](https://www.washingtonpost.com/local/education/first-time-principal-will-lead-dcs-first-all-male-public-high-school/2016/01/10/cb338742-b55e-11e5-a842-0feb51d1d124_story.html) [hereinafter Stein, *First Time Principal*].

<sup>91</sup> *EMOC Announcement*, *supra* note 18 (at minute 50:40).

<sup>92</sup> *Id.* The proposed relationship between DCPS and Urban Prep under the “partnership school” model is elaborated in two documents provided to Urban Prep in August of 2015. See DCPS, Untitled Document (n.d.) [DCPS Resp. to Dec. 1, 2015 FOIA, Att. B at 2-4]; DCPS, Office of School innovation, *Negotiated Contract for Goods and/or Services, Management Operations and Instructional Program Consulting Services [redacted]* (n.d.) [DCPS Resp. to Dec. 1, 2015 FOIA, Emails for Release at 39-69].

<sup>93</sup> As of the time of publication of this report, the nature of the partnership with Urban Prep is uncertain: the documents produced and recent news reports suggest that as of January 2016, no contract had yet been signed between DCPS and Urban Prep, and that the parties were “distancing themselves from each other.” Stein, *First Time Principal*, *supra* note 90. See also Govan, *DCPS Feb. 26, 2016 FOIA Response Letter*, *supra* note 59 (responding to requests seeking “proposals, plans, agreements and/or understandings between DCPS and Tim King [or] Urban Prep Academies” that it had no responsive documents as of December 1, 2016); *infra*, notes 108, 109 (detailing breakdown in negotiations between Urban Prep and DCPS).

<sup>94</sup> Urban Prep Academies, *Schools Program Manual FY 2014-2015* [ACLU DCPS 139] [hereinafter UPA, *Schools Program Manual FY 2014-2015*].

<sup>95</sup> *Id.* [ACLU DCPS 141].

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Urban Prep Academies, Untitled Document (n.d.) [ACLU DCPS 110].

<sup>99</sup> Urban Prep Academies, *UP Overview Prepared for DCPS* [ACLU DCPS 136].

<sup>100</sup> *Id.* at 2 [ACLU DCPS 137].

<sup>101</sup> DCPS initially provided only a few basic records, and then when ACLU followed up, refused to disclose anything further, citing the deliberative process privilege. When DCPS was subsequently ordered to produce those records, it turned out that they were limited to similar basic information about the school. See Letter from Eboni J. Govan, Att’y Advisor/FOIA Officer, D.C. Pub. Schs., to Jennifer Wedekind, Staff Att’y and Special Projects Counsel, ACLU 2 (Apr. 30, 2015) [ACLU DCPS 2].

<sup>102</sup> Email from Billy Kearney, Deputy Chief, Office of Innovation and Research at D.C. Pub. Schs. to Tina Fletcher, Manager, Community Engagement, D.C. Pub. Schs., Re: All boys College Prep (Feb. 25, 2015 15:03 EST) [ACLU DCPS 380].

<sup>103</sup> *EMOC Announcement*, *supra* note 18 (at minute 34:30).

<sup>104</sup> *Id.*

<sup>105</sup> See DCPS Office of the Chief of Schools (Untitled, n.d.) [ACLU DCPS FOIA Appeal 21-22]. In the same report prepared by the DCPS Office of the Chief of Schools, it was reported that during 2014, Urban Prep’s college

readiness rates were 28%, 20%, and 9% at UP's three campuses, compared to the state average of 46%. Reading proficiency rates were 38%, 39% and 38% compared to the state average of 56%, and math proficiency was 26%, 18%, and 38% compared to the state average of 52%. The graduation rates from the two school locations whose students had reached graduation age were 91%, and 77%, compared to a state average of 86%. While these statistics have changed somewhat, students are still performing below district and statewide rates, demonstrating that the school is still a far cry from the turnaround model it purported to be. *See, e.g., Illinois Report Card 2014-15, Urban Prep Chtr Acad Bronzeville HS*, <http://www.illinoisreportcard.com/School.aspx?schoolid=15016299025016C>; *Illinois At-A-Glance Report Card, Urban Prep Chtr Acad Englewood HS*, *id.* Urban Prep has also faced criticism for having a high rate of drop-out or transfer prior to graduation, suggesting that students who do not excel are pushed out prior to their senior year. *See* Chris Lehmann, *Urban Prep and The Whole Story*, March 14, 2010, <http://practicaltheory.org/blog/2010/03/14/urban-prep-and-the-whole-story/>; Halpern, *Pseudoscience*, *supra* note 50, at 1706.

<sup>106</sup> *Empowering Males High School*, *supra* note 10 ("The school is open to all young men in Washington, DC. In School Year 2016-2017, the school will service 9th grade and add a grade each year.").

<sup>107</sup> *See Letter to AG Racine from Chancellor Henderson*, *supra* note 54, at 4, 6; Email from Katie Aiello-Howard, Chief Operating Officer, D.C. Ed. Fund to Jessica Rauch, Executive Director, D.C. Ed. Fund, et al. (March 3, 2015 12:17 EST) [ACLU DCPS 356]; Stein, *First Time Principal*, *supra* note 90.

<sup>108</sup> *See* email correspondence between Tim King, Founder & CEO, Urban Prep Academies and Kaya Henderson, Chancellor, D.C. Pub. Schs. (Jun. 16–Jun. 29, 2015) [DCPS Resp. to Dec. 1, 2015 FOIA, Emails for Release at 3-5].

<sup>109</sup> *See* Email from Kaya Henderson, Chancellor, D.C. Pub. Schs. to Tim King re, Founder & CEO, Urban Prep Academies, re "Checking in," (Aug. 3, 2015, 19:25 EST) [DCPS Resp. to Dec. 1, 2015 FOIA, Emails for Release at 70] ("It sounds like your team and my team have hit some snags in trying to finalize an agreement."). The email continues, in relevant part,

... I don't want you to think that we're on the same old janky school district that you typically run from. I just didn't put the right people on the job to get this done quickly. My commitment to UP is as strong as it was on day 1, and we'll make sure that this doesn't happen again. ... We've convinced the city to build a brand spanking new school for you without so much as a piece of paper between us, so we're even more financially exposed than you are. But we'll deliver and so will you, just like we do every other time.

*Id.* King responds by acknowledging the "holdup," and explains:

Sometimes, as your email implies, we've been asked to provide one thing and then when we submit it, we're told you need something different (which we then submit only to discover that that's not what's needed any more). A very big chunk of your and my teams' time has been and continues to be spent on this project. I know neither of us want to see any of this effort go to waste, so I agree with you: LET'S GET IT DONE!

Email from Tim King, Founder & CEO, Urban Prep Academies to Kaya Henderson, Chancellor, D.C. Pub. Schs. re "RE: Checking in," (Aug. 13, 2015, 13:14 EST) [DCPS Resp. to Dec. 1, 2015 FOIA, Emails for Release at 75]. DCPS then provided King with additional documents, including a model "Partnership Agreement," an MOU for a proposed \$45,000 planning grant, and an initial budget and proposal outlining the responsibilities and proposed budget allocations between DCPS and Urban Prep. *See* DCPS, *Urban Prep Agreement Framework Matrix* (n.d.) [DCPS Resp. to Dec. 1, 2015 FOIA, Att. B, at 2-4]; emails from John Davis, Chief of Schools, D.C. Pub. Schs. to Tim



King, Founder & CEO, Urban Prep Academies, re “*Meeting Follow-up*,” (Aug. 27, 2014 8:31 EST & Sept. 2, 2014 8:39 EST) [DCPS Resp. to Dec. 1, 2015 FOIA, Attachment C at 1, 6-9, 10, 17-38, 39-69]; email from Kaya Henderson, Chancellor, D.C. Pub. Schs. to Tim King, Founder & CEO, Urban Prep Academies re “Contract for Urban Prep” (Aug. 20, 2015 11:05 EST) [DCPS Resp. to Dec. 1, 2015 FOIA, Emails for Release at 71]. The two teams met at the end of August. See email from John Davis, Chief of Schools, D.C. Pub. Schs. to Tim King, Founder & CEO, Urban Prep Academies re “*Meeting Follow-up*,” (Aug. 27, 2014 8:31 EST) [DCPS Resp. to Dec. 1, 2015 FOIA, Attachment C at 10] (referencing meeting “last week”). However, these agreements had not been finalized as of December 1. See Govan, *DCPS Feb. 26, 2016 FOIA Response Letter*, *supra* note 59. All written correspondence between DCPS and Urban Prep ceased in early September.

<sup>110</sup> UPA *Schools Program Manual FY 2014-2015*, *supra* note 94.

<sup>111</sup> *EMOC Announcement*, *supra* note 18 (at minute 49:30) (stating: “There are a lot of folks out there who believe in this, what’s called, brain research that says that boys and girls learn differently. [W]e don’t happen, at Urban Prep, to be strong proponents of this idea. We think that children learn and the best way to educate them is to provide them with an education or a structure that meets their needs.”).

<sup>112</sup> *Id.*

<sup>113</sup> *EMOC Data Presentation*, *supra* note 30 at 2 [ACLU DCPS 75].

<sup>114</sup> See *supra* note 60 and accompanying text.

<sup>115</sup> See 34 C.F.R. 106.3(b) (“[A] recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex.”)

<sup>116</sup> See, e.g., *Fisher v. Univ. of Texas*, 771 F.3d 274 (5th Cir. 2014), *cert. granted* 135 S. Ct. 2888 (June 29, 2015).

<sup>117</sup> 347 U.S. 483 (1954).

<sup>118</sup> See U.S. Department of Justice, Civil Rights Division & U.S. Dep’t Of Education, Office for Civil Rights, *Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education* (2011), <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-pse-201111.pdf>; U.S. Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* 3, <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf> (Dec. 1, 2014) [hereinafter *ED Q&A*] (advising recipients to attempt gender-neutral strategies prior to offering them in a single-sex setting in order to demonstrate substantial relationship test has been met).

<sup>119</sup> *United States v. Virginia*, 518 U.S. 515, 540–542 (1996); *Doe v. Vermilion Parish Sch. Bd.*, 421 Fed. Appx 336, 372 (5th Cir. 2011).

<sup>120</sup> *Virginia*, 518 U.S. at 533.

<sup>121</sup> *Id.* at 545.

<sup>122</sup> See *Garrett v. Board of Education*, 775 F. Supp. 1004, (E.D. Mich. 1991) (holding unconstitutional male-only academies aimed at reducing unemployment, homicide rates, and drop-out rates for young men of color).

<sup>123</sup> *Id.* at 1008.

<sup>124</sup> See *ED Q&A*, *supra* note 118 (“The [requirements] apply to single-sex classes and activities whether they are provided directly by a school district or school or through another entity.”).



<sup>125</sup> See 34 C.F.R. § 106.34(a).

<sup>126</sup> *Id.* §106.34(b); See also *Brief Amicus Curiae of U.S. Departments of Justice and Education Supporting Appellants, Doe v. Vermilion Parish Sch. Bd.*, No. 10-30378, at 12 (5th Cir., Jun. 4, 2010), [http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/vermillion\\_brief.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/vermillion_brief.pdf) (“Recognizing that the use of single-sex classes is an exception to the generally accepted use of coeducational classes in public education, and that the use of gender to differentiate between individuals has a history of discriminatory use, ED’s regulations, issued in 2006, generally prohibit a recipient from establishing single-sex classes. The regulations provide for an exception in limited circumstances and only when the recipient meets all of the requirements of the regulations.”).

<sup>127</sup> *Id.* See also *Doe v. Wood County Bd. of Educ.*, 888 F. Supp. 2d 771, 776-77 (S.D.W.V. 2012) (granting preliminary injunction against sex separation within coeducational school for failure to comply with ED regulation).

<sup>128</sup> See *ED Q&A*, *supra* note 118, at 9.

<sup>129</sup> See *ED Q&A*, *supra* note 118, at 8-11.

<sup>130</sup> See 34 C.F.R. 106.34(b)(4); *ED Q&A*, *supra* note 118, at 21.

<sup>131</sup> 34 C.F.R. § 106.34(c).

<sup>132</sup> See *ED Q&A*, *supra* note 118, at 18 (discussing substantial equality factors under 106.34(b)).

<sup>133</sup> *Virginia*, 518 U.S. at 533.

<sup>134</sup> D.C. Code § 2-1402.41 *et seq.*

<sup>135</sup> D.C. Code § 2-1401.01.

<sup>136</sup> *Save our Sch. -Se. & Ne. v. Dist. of Columbia Bd. of Educ.*, No. 04-01500, 2006 WL 1827654, at \*13 (D.D.C. July 3, 2006).

<sup>137</sup> See *Garrett*, 775 F. Supp. at 1008.

<sup>138</sup> *IWPF, Toward our Children’s Keeper*, *supra* note 48 at V.

<sup>139</sup> See *Beating the Odds Study Highlights*, *supra* note 45, at 12 (n.d., author unknown) (discussing findings from interviews with leadership at 12 schools “selected for making strong gains in literacy despite serving lower-income populations—none of which focus on males only”); Michael Alison Chandler, *Report Offers Case Study of Turnaround at J.C. Nalle Elementary in the District*, *Wash. Post*, Apr. 15, 2015, [http://www.washingtonpost.com/local/education/report-offers-case-study-of-turnaround-at-jc-nalle-elementary-in-the-district/2015/04/15/fb6a9960-e2ef-11e4-81ea-0649268f729e\\_story.html](http://www.washingtonpost.com/local/education/report-offers-case-study-of-turnaround-at-jc-nalle-elementary-in-the-district/2015/04/15/fb6a9960-e2ef-11e4-81ea-0649268f729e_story.html).

<sup>140</sup> See Letter from Karl Racine, Att’y Gen., D.C., to Mary M. Cheh, Councilmember, D.C. (Mar. 30, 2015), at 4, <https://assets.documentcloud.org/documents/1698174/minority-school-oag-opinion.pdf> (opining that the initiative was in compliance with the law, but noting that the tutoring and awards components of EMOC “could, resources-dependent [*sic*], presumably be expanded to include girls without sacrificing their character or effectiveness”).

<sup>141</sup> *Virginia*, 518 U.S. at 541-42, 545 (“State actors controlling gates to opportunity ... may not exclude qualified individuals based on fixed notions concerning the roles and abilities of males and females.” (internal citations omitted)). As discussed above, professional development modules commonly employed in single-sex classrooms and schools frequently rely on such sex-based stereotypes. See *supra* note 60 and accompanying text.

<sup>142</sup> See, e.g., Halpern, *Pseudoscience*, *supra* note 50 at 1706-07 (“There is no well-designed research showing that single-sex ... education improves students’ academic performance, but there is evidence that sex segregation increases gender stereotyping and legitimizes institutional sexism.”); Rebecca S. Bigler et al., *Analysis and Evaluation of the Rationales for Single-Sex Schooling*, in 47 *Advances in Child Development and Behavior* 247-49, 251-52 (Lynn S. Liben & Rebecca S. Bigler, eds., 2014) (discussing evidence showing that single-sex classrooms can lead to increased gender salience, stereotype threat and sex stereotyping); Amanda Datnow et al., *Is Single Gender Schooling Viable in the Public Sector: Lessons from California’s Pilot Program* 39-44 (May 20, 2001) (describing how gender-based methods employed in single-sex classrooms in California led to increased sex-role stereotyping); Kimmel, *Don’t Segregate Boys and Girls in Classrooms*, *supra* note 63 (discussing harmful effects of sex stereotypes in single-sex classrooms on boys as well as girls).

<sup>143</sup> Fergus, Noguera & Martin, *Schooling for Resilience*, *supra* note 8, at 156.

<sup>144</sup> *Id.* at 158.

<sup>145</sup> D.C. Code § 2-1402.53. Although a separate provision of the Human Rights Code allows for plans designed to “effectuate remedial or corrective action in response to past discriminatory practices...,” DCPS has given no indication that it considers this initiative to fall under the affirmative action rubric of the HRA, and as far as we know DCPS does not claim that male students in general—to whom EMOC programs are open regardless of their race—have suffered from discrimination. To the extent that DCPS were to attempt to justify the Initiative based on present and past *race* discrimination, girls of color are equally subject to such discrimination. Moreover, if DCPS does consider the Initiative to be affirmative action, the HRA requires that a plan be submitted to the Office of Human Rights for approval. *Id.* There is no indication that DCPS has done so.

<sup>146</sup> The ACLU has sought documents related to the grants awarded in a third FOIA request which is still pending as of the date of this publication. See Letter to Eboni J. Govan from Galen Sherwin, Senior Staff Att’y, ACLU Women’s Rights Project and Arthur Spitzer, Legal Director, ACLU-NCA, March 28, 2016.

<sup>147</sup> See Catherine Hill, Ph.D. et al., AAUW, *Why so Few? Women in Science, Technology, Engineering, and Mathematics* (2010), <http://www.aauw.org/files/2013/02/Why-So-Few-Women-in-Science-Technology-Engineering-and-Mathematics.pdf>.

<sup>148</sup> See *ACLU Teach Kids, Not Stereotypes Report*, *supra* notes 60-63, 142-44 and accompanying text.

<sup>149</sup> *United States v. Virginia*, 518 U.S. 515, 519, 534 (1996).

<sup>150</sup> *Id.* at 541-42; *ED Q&A*, *supra* note 118, at 21.

<sup>151</sup> Halpern, *Pseudoscience*, *supra* note 50, at 1706.

<sup>152</sup> Pahlke, Hyde & Allison, *The Effects of Single-Sex Compared with Coeducational Schooling on Students’ Performance and Attitudes: A Meta-Analysis*, 140 *Psychological Bulletin* 1042-1072, 1064-1065 (2014), <https://www.apa.org/pubs/journals/releases/bul-a0035740.pdf> (finding that the individual studies that purport to show substantial advantages for single-sex education used “inadequate methods,” and that “when studies using better methods are examined ..., they show little or no advantage for SS [single-sex] schooling”).

<sup>153</sup> *Id.* at 1065 (concluding that there were “insufficient numbers of controlled studies conducted with ethnic minority youth” to support the conclusion that single-sex education improved outcomes, and that even uncontrolled studies “fail to find substantial advantages of SS schooling for African Americans and Latinos”).

<sup>154</sup> Pedro Noguera, *Saving Black and Latino Boys*, Education Week, October 2, 2013, [http://www.edweek.org/ew/articles/2012/02/03/kappan\\_noguera.html](http://www.edweek.org/ew/articles/2012/02/03/kappan_noguera.html); see also Fergus, Noguera & Martin, *Schooling for Resilience*, *supra* note 8, at 5, 203 (noting lack of evidence of consistent benefits in single-sex schools, and concluding that advocates “would ... do well to learn from the mistakes of past reforms and continue to search for ways to solve the large and complex problems they have chosen to address rather than to simply embrace single-sex education as a panacea”).

<sup>155</sup> *Letter to AG Racine from Chancellor Henderson*, *supra* note 54, at 4.

<sup>156</sup> See DCPS, *My School DC Lottery and Enrollment Policy Handbook 31-32* (Dec. 14, 2015), <http://dcps.dc.gov/publication/my-school-dc-lottery-and-enrollment-policy-handbook>.

<sup>157</sup> See *supra* notes 10 & 106 and accompanying text.

<sup>158</sup> See Michael Alison Chandler, *D.C. Schools to Invest \$20 Million in Efforts to Help Black and Latino Male Students*, Wash. Post, Jan. 21, 2015, [http://www.washingtonpost.com/local/education/dc-schools-to-invest-20-million-in-efforts-to-help-black-and-latino-male-students/2015/01/21/27450ca8-a19d-11e4-903f-9f2faf7cd9fe\\_story.html](http://www.washingtonpost.com/local/education/dc-schools-to-invest-20-million-in-efforts-to-help-black-and-latino-male-students/2015/01/21/27450ca8-a19d-11e4-903f-9f2faf7cd9fe_story.html). Geographic accessibility is one of the many factors to consider in the “substantially equal” analysis. See 34 C.F.R. § 106.34 (c).

<sup>159</sup> Stein, *First Time Principal*, *supra* note 90.

<sup>160</sup> For example, one of the leading selective public D.C. High Schools, Benjamin Banneker Academic High School, offers its students some programs similar to those at Urban Prep, but has no program equivalent to Urban Prep’s Alumni Program or Fellows Program. See *About Us*, Benjamin Banneker Academic High School, [benjaminbanneker.k12.dc.us/about\\_bbahs.html](http://benjaminbanneker.k12.dc.us/about_bbahs.html) (last visited Mar. 7, 2016).

<sup>161</sup> See Fergus, Noguera & Martin, *Schooling for Resilience*, *supra* note 8, at 203.

<sup>162</sup> Examples of more gender-inclusive approaches already exist, including the SPARK Partnership in San Francisco; although it is not yet clear whether all of its programs will be carried out on a coeducational basis or some will be sex-exclusive, the inclusive framework is promising. See *SPARK\* SF Public Schools*, My Brother and Sister’s Keeper, <http://sparksfpublicschools.com/my-brother-and-sisters-keeper> (last visited Mar. 7, 2016).