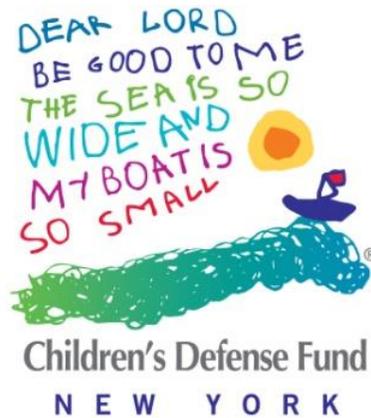


Public Hearing on Proposed Revisions to the Citywide Standards of Intervention and Discipline Measures

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Testimony of The Children's Defense Fund – New York

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The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF - New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice. As part of our advocacy efforts, we launched the CDF Cradle to Prison Pipeline® Campaign, a national call to action to stop the funneling of children, especially living in poverty and children of color, down life paths that often lead to arrest, conviction, and incarceration.

We would like to thank the Department of Education for this opportunity to submit testimony pertaining to proposed revisions to the Citywide Standards of Intervention and Discipline Measures.

Overview

The Department of Education and the City of New York have recently taken important steps to advance the safety and dignity of New York City's students. CDF-NY specifically applauds:

- The City's establishment of a School Climate Leadership Team, and commitment to a collaborative and thorough evaluation of discipline reforms;
- The addition to the progressive ladder of alternative supports and guidance interventions in the discipline code of Collaborative Problem Solving and restorative approaches like restorative circles and formal restorative conferences;
- The addition of provisions in the discipline code regarding the dissemination of the Discipline Code to parents;
- The addition of information about restorative and peer mediation support for students transitioning back to school from suspension.

We believe these efforts are important steps toward building safe and supportive school climates, eliminating discipline disparities and setting all young people up for success. CDF-NY urges the City of New York and Department of Education to optimize the impact of these efforts by taking further action to foster fairer, safer, and more supportive schools for all students as it finalizes the 2014-2015 discipline code. Specifically, we respectfully request that the DOE:

- Eliminate the practice of suspending students for minor misbehavior under infractions A22 & B21, "defying or disobeying authority."
- Explicitly require, rather than encourage, the use of interventions other than suspension where no threat is made to the safety of others.
- Provide system-wide training and support for school staff on restorative practices, collaborative problem solving, de-escalation skills, cultural responsiveness, the impact of trauma on behavior, and other guidance interventions included in the progressive ladder of alternative supports.

CDF-NY is a member of the Dignity in Schools Campaign - New York (DSC-NY), a citywide coalition of students, parents, advocates, educators and lawyers calling for positive, school-wide approaches to discipline that improve the school environment, reduce conflict and increase learning. Our testimony reflects several priorities of DSC-NY.

Ample research demonstrates that out-of-school suspensions do not correct or improve student behavior.¹ Rather, restorative practices and other guidance interventions and inclusionary responses to student behavior address student behavior directly and avoid exclusion from classroom instruction. As time spent learning in classrooms is one of the surest and most consistent indicators of academic achievement, CDF-NY and DSC-NY have consistently called on the DOE and the Mayor to reduce classroom removals and suspensions overall; support schools in providing alternative, restorative responses to student behavior; and eliminate suspensions for minor, subjective offenses like “defying or disobeying authority.”

Eliminate Infractions A22 & B21 from the Discipline Code

Racial disparities in suspensions are far more likely to be found in minor subjective offense categories like “defying or disobeying authority.”² Disparate issuance of suspensions for subjective offenses results in disparately frequent removal from school for students of color - exacerbating racial inequity in educational opportunity. In New York City, black students made up only 26 percent of enrolled students but received 53 percent of all school suspensions during the 2013-14 school year. Seventeen percent of all suspensions were issued under B21 for a subjective, range of minor behaviors.

The effects of racial disparities in school discipline are felt by society as a whole. Excluding students from school for disciplinary reasons is directly related to lower attendance rates and increased course failures, and can set students on a path of disengagement from school that will keep them from receiving a high school diploma. A Johns Hopkins study tracking all ninth graders throughout high school and post-graduation in Florida found that being suspended just one time in grade nine was associated with an increased risk for dropping out from 16% to 32%.³ In Texas, a study that tracked middle school students for six years found that being removed on disciplinary grounds for a subjective, discretionary violation was associated with a nearly threefold increase in the likelihood of being in contact with the juvenile justice system the following year.⁴ Policies and practices that perpetuate negative outcomes disproportionately for students of color and students with disabilities must be eliminated and replaced with more restorative, race-neutral policies to stop the cradle to prison pipeline in its tracks.

On January 8th, 2014, the U.S. Departments of Justice and Education created guidance recommendations for schools about the civil rights implications of school discipline disparities.⁵ They outline how school districts are obligated to evaluate whether their policies and practices unnecessarily rely on school

¹ Cornell, D. and Lovegrove, P. (2015) Student Threat Assessment as a Method of Reducing Student Suspensions. In D. J. Losen (Ed.), *Closing the school discipline gap: Research for policymakers*. New York: Teachers College Press.

² Carter, P., Fine, M., & Russell, S., (2014). *Discipline Disparities Series: Overview*. Bloomington, IN: The Equity Project at Indiana University. Available at <http://rtpcollaborative.indiana.edu/briefing-papers/>

³ Balfanz, R., Byrnes, V., & Fox, J. (in press). Sent home and put off-track: The antecedents, disproportionalities, and consequences of being suspended in the ninth grade. In D. J. Losen (Ed.), *Closing the school discipline gap: Research for policymakers*. New York: Teachers College Press.

⁴ Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P. III, & Booth, E. A. (2011). *Breaking schools' rules: A statewide study of how school discipline relates to student's success and juvenile justice involvement*. New York: Council of State Governments Justice Center, and College Station, TX: Texas A&M University. Public Policy Research Institute.

⁵<http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>

exclusion, and whether their disciplinary policies and practices could have an unlawful impact by race.⁶ The U.S. Department of Education has identified three guiding principles for stakeholders to consider as they work to improve school climate and discipline:

1. Create positive climates and focus on prevention;
2. Develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors; and
3. Ensure fairness, equity, and continuous improvement.⁷

Discipline code infractions like A22 and B21 (“defying or disobeying authority”) fail to articulate clear or consistent behavior expectations or consequences to students and families. When issued discriminately they stand directly against notions of fairness and equity. Under the proposed code, principals will be required to seek authorization from the Office of Safety and Youth Development (OSYD) before suspending students for “defying or disobeying authority” (B21/A22). Though a short list of behaviors are explicitly listed as not meriting a suspension under A22 / B21, whether or not OYSD will grant a suspension for these infractions under other circumstances remains unclear to students, families and schools until a determination is made by OYSD.

CDF-NY is concerned that the new requirement endangers efficiency and school transparency. Adding an additional layer of surveillance to the suspension process fails to provide clear, appropriate and consistent expectations and consequences for disruptive behavior, rather it makes them even less clear. Importantly it also diminishes transparency between schools, students and families, and works against the broad aim of positive school climates and restorative practice - to develop educational policies and practices that are recuperative and responsive to the needs of the school community.

A recent district-wide study of Chicago schools found that the quality of teacher-student and teacher-parent relationships was the strongest predictor of a sense of safety in the school building.⁸ NYC’s discipline policy should recognize the significant contribution of student and parent engagement to school disciplinary outcomes by implementing strategies for improving student experiences and connections with school, and eliminating policies that diminish transparency and clear expectations for behavior like the OYSD oversight provisions proposed as part of A22/B21.

New York City has an opportunity to set statewide precedent. In May of 2013, the Los Angeles Unified school board voted to ban suspensions of defiant students, directing officials to use alternative disciplinary practices instead. In September of 2014, California became the first state in the nation to eliminate “willful defiance” suspensions and expulsions for children in grades K-3. In January 2015, the California State Superintendent of Public Instruction announced a dramatic 20 percent drop in the number

⁶ Losen, D.J., Martinez, T.E., & Okelola, V. (2014) Keeping California’s Kids in School: Fewer Students of Color Missing School for Minor Misbehavior. Available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/keeping-californias-kids-in-school/WithChange.pdf>

⁷ Guiding Principles: A Resource Guide for Improving School Climate and Discipline. (2014). U.S. Department of Education. Available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>

⁸Burdick-Will, J. (2013). School Violent Crime and Academic Achievement in Chicago. *Sociology of Education*, 86(4), 343-361.

of students expelled in 2013-14 and a 15.2 percent decline in the number of students suspended. That equates to roughly 50,000 fewer students suspended in 2013-14 than in the previous year.⁹

Eliminating the option to suspend students for “defying / disobeying authority” would reduce suspensions in NYC by almost one-fifth,¹⁰ allow discipline responses to be issued on less subjective basis, and mitigate racial disparities in suspension. For these reasons, **CDF-NY respectfully urges the DOE to reject the proposed changes to A22 and B21 by eliminating these infractions from the discipline code all together this year.**

Require Suspension Alternatives

Research shows that suspension tends to be used for a wide range of behaviors, including infractions such as disrespect, attendance problems, and general classroom disruption.¹¹ Serious infractions, for which the DOE requires a school to suspend, account for only 1.3 percent of reported suspensions.¹² This means that for all other suspensions issued, a series of non-exclusionary responses were allowable to address the alleged infraction by a student rather than suspension. DSC-NY urge the DOE to ensure that suspensions are only used for the most serious infractions, and not for behaviors for which alternatives are available. **CDF-NY urges the DOE to explicitly require, rather than encourage, the use of interventions other than suspension where no threat is made to the safety of others.**

Optimize Commitments to Restorative Practice

Restorative practices necessitate systematic changes in how educators think about the role of discipline. **CDF-NY strongly supports the DOE’s increased investment in progressive discipline and inclusion of restorative practices and collaborative problem solving in the Discipline Code progressive ladder of alternative supports. We urge the DOE to accompany these efforts with appropriate training for teachers and staff to ensure implementation integrity.**

To optimize the commitments that the DOE has already made to this end, we encourage the DOE, Administration and Mayoral Leadership Team to consider the recommendations of two public school systems that have historically invested in district-wide restorative discipline. A longitudinal study (2008 to 2013) of restorative justice implementation in Denver Public Schools(DPS) found that the systemic implementation of restorative practices at the school and district levels, coupled with the reform of discipline policies, can play a key role in addressing disproportionality in discipline outcomes.¹³ By adopting a comprehensive continuum model, DPS was able to reduce racial disparities in school discipline every year for each racial group, even in the earliest stages of implementation. Current

⁹ State Schools Chief Tom Torlakson Reports Significant Drops in Suspensions and Expulsions for Second Year in a Row. California DOE News Release. Available at <http://www.cde.ca.gov/nr/ne/yr15/yr15rel5.asp>

¹⁰ Suspension Data Fact Sheet 2013-2014. NYCLU. Available at http://www.nyclu.org/files/ssa_suspension_factsheet_2013-2014_edit.pdf

¹¹ Gregory, A., & Weinstein, R.S. (2008). The discipline gap and African Americans: Defiance or cooperation in the high school classroom. *Journal of Social Psychology*, 46, 455-475

¹² NYCLU IBID

¹³ Gonzalez, T. (2015). Socializing schools: Addressing racial disparities in discipline through restorative justice. In D. J. Losen (Ed.), *Closing the school discipline gap: Research for policymakers*. New York: Teachers College Press.

Superintendent Tom Boasberg now regularly points to these reforms as primary causes of DPS's significant improvement in attendance and graduation rates in recent years.¹⁴

The Oakland Unified School district serves over 45,000 students, one third African American, and voluntarily went into agreement with Office of Civil Rights in 2012 to reduce disproportionality for African American students.¹⁵ Of 86 public schools, 24 utilize Whole School Restorative Justice or Peer Restorative Justice programs.¹⁶ In the 2013-14 school year, 3,631 students participated in community circles, 1,978 participated in harm/conflict circles, 6,321 students participated in peer community building circles, and 2,109 participated in peer harm/conflict mediations. Over the past three years suspensions have declined significantly - the most significant decline has been for African American students suspended for disruption/willful defiance, down from 1,050 to 630.¹⁷

We are honored to serve on the Mayor's School Climate Leadership Team and look forward to collaborating with the DOE to support the development of an infrastructure of support for school staff, students and families to utilize restorative practices and enhance school climate.

Conclusion

Dignity, quality education, and participation in our schools are critical to eliminating the cradle to prison pipeline. NYC has the opportunity to transition its school system away from inequity and exclusion to a restorative model that aligns with youth development principles and transforms school culture. We thank you for your work to achieve this goal.

CDF-NY is eager to work with you to implement a new discipline code for NYC students and their communities. Thank you for carefully considering our testimony.

¹⁴ Lessons in Racial Justice and Movement Building: Dismantling the School-to-Prison Pipeline in Colorado and Nationally. Available at http://b.3cdn.net/advancement/ad2cf09c7de156e4d2_b9m6i8ubh.pdf

¹⁵ Restorative Justice in Oakland Schools: Implementation and impacts. Prepared for the Office for Civil Rights U.S. Department of Education. September 2014. Available at <http://www.ousd.k12.ca.us/cms/lib07/CA01001176/Centricity/Domain/134/OUSD-RJ%20Report%20revised%20Final.pdf>

¹⁶ Oakland IBID

¹⁷ Oakland IBID