



## Testimony for the New York City Council Committee on Public Safety Oversight Hearing on NYPD's Gang Takedown Efforts June 13, 2018

Good Afternoon. My name is Charlotte Pope and I am the Youth Justice Policy Associate with the Children's Defense Fund-New York (CDF-NY). 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 a moral start in life, and successful passage to adulthood with the help of caring families and communities. Through CDF's Cradle to Prison Pipeline® Campaign—a national initiative to stop the funneling of children down life paths that often lead to arrest, conviction and incarceration—CDF-NY works to replace punitive school discipline and safety policies in New York schools with social and emotional supports that encourage a positive school climate.

Thank you to Chair Richards, and to the members and staff of the City Council Committee on Public Safety for the opportunity to testify today.

### Introduction

Our testimony intends to highlight the ways that intersections between current gang policing, school policing, and school discipline threatens to push more young people of color out of City schools and into the justice system. During the Council's 2014 hearing on the NYPD's Operation Crew Cut, the NYPD testified about groups of people "linked either by their residence or by the schools they attend which we refer to as crews."<sup>1</sup> In a presentation released by the NYPD more recently, crews are defined as "a group of people associated or classed together."<sup>2</sup> There is little public transparency around who is or can be considered a possible crew or gang member, and who will thereby be subjected to targeted surveillance and heightened policing. Gang databases in particular raise significant questions around violations of youth privacy, due process, lack of accountability, and racial disparities.<sup>3</sup> As of August 30, 2013, the NYPD's Gang Database included over 20,000 people, where about 30% were under 18 years of age when they were added.<sup>4</sup> We are concerned that the labeling of young people as so-called gang or crew members serves as pretext for intensive policing of young people, which in turn exacerbates school pushout and the school to prison pipeline.

As an active member of the Dignity in Schools Campaign New York, a coalition in large part organized by youth, CDF-NY understands that justice system responses to student behaviors in school do not address the underlying conditions that lead to the unwelcome behaviors, and those measures cannot be relied on to support long-term solutions.<sup>5</sup> Research, including one ethnographic study in schools across New York City<sup>6</sup> and another in the Bronx specifically<sup>7</sup>, has found that intense policing and surveillance methods lead students to distrust and avoid school officials – instead of instilling a greater sense of safety, students feel a heightened

<sup>1</sup> See *Oversight: The NYPD's Operation Crew Cut and Crime Reduction Strategies for NYCHA* (2014, April 28). Hearing Transcript page 63. Available at <http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=304831&GUID=66D6AF49-65A7-4AA8-851E-DA8755D55FED&Options=&Search=>.

<sup>2</sup> Speri, A. (2018, June 11). New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio. *The Intercept*. Available at <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

<sup>3</sup> National Juvenile Justice Network. (2016). *Safeguarding the Confidentiality of Youth in the Justice System: Recommendations and Resources*. Available at [http://www.njjn.org/uploads/policy-platforms/Juv-confidentiality\\_safeguards-recommendations\\_8.1.16\\_FINAL.pdf](http://www.njjn.org/uploads/policy-platforms/Juv-confidentiality_safeguards-recommendations_8.1.16_FINAL.pdf).

<sup>4</sup> Howell, K.B. (2015). *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*. 5 Univ. Denver Crim. Law Rev. 1. Available at [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1067&context=cl\\_pubs](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1067&context=cl_pubs).

<sup>5</sup> Kupchik, A. (2009). Things are Tough All Over: Race, Ethnicity, Class and School Discipline. *Punishment and Society*, 11: 291-302.

<sup>6</sup> Weiss, J. (2008). Under the Radar: School Surveillance and Youth Resistance. PhD thesis. City University of New York.

<sup>7</sup> Weiss, J. (2010). Scan This: Examining Student Resistance to School Surveillance. In *Schools Under Surveillance: Cultures of Control in Public Education*. Eds. Torin Monahan & Rodolfo D. Torres.

sense of “danger and disillusion.”<sup>8</sup> Research on the school-to-prison pipeline describes how the introduction of police officers to schools leads to a “net widening” effect,<sup>9</sup> disrupts the schooling process and students’ educational trajectories,<sup>10</sup> and has had a disproportionately harmful impact on students of color,<sup>11</sup> who are more likely to be arrested at school for behaving in the same ways as their peers.<sup>12</sup> Yet school criminalization continues as new research finds either no correlation with safety or an inverse one.<sup>13</sup> We are especially concerned by the lack of public transparency around the information sharing that arises from the relationship between the NYPD and the Department of Education (DOE) and the coordinated surveillance of young people in school.

### School Policing

During the May 14, 2018 Executive Budget hearing on Public Safety, the NYPD testified that the School Safety Division would be bringing the Neighborhood Coordination Officer (NCO) “philosophy” to schools starting in September in the Bronx and moving citywide after that, remarking that neighborhood policing has “enhanced” the relationship between the patrol officers and the school safety agents.<sup>14</sup> Within the NCO role, as written in the patrol guide, is to “Visit schools frequently and confer with school principals and school safety agents at public schools regarding problematic conditions, violent crime, and gang/crew activity.”<sup>15</sup> We are concerned by the prospect of increased inter-agency discussions, especially given the arbitrary criteria relied on for gang designation. According to the City’s response to a FOIL request from 2014, a person can be certified as an “Identified Gang Member” and entered into the NYPD database when:

1. The person admits to membership during debriefing OR
2. Through the course of an investigation an individual is reasonably believed to belong to a gang and is identified as such by two independent sources (Ex. Pct. Personnel, Intel, School Safety, Dept. of Correction, or Outside Agency)... OR
3. Meets any two below mentioned criteria
  - a. Known gang Location
  - b. Scars/Tattoos Associated w/ Gangs
  - c. Gang Related Documents
  - d. Colors Associated w/ Gangs
  - e. Association w/ Known Gang members
  - f. Hand Signs Associated with Gangs

This process for designating people – including youth of any age – as a so called “Identified Gang Member” relies on information from school safety, as well as “outside agency” sources, which presumably includes the DOE. Indeed, the DOE has testified that one of the intended goals of the transfer of school safety to the NYPD was to allow the DOE “to share intelligence related to events that occur during the school day that are presumed to be gang-related.”<sup>16</sup>

CDF-NY has long been concerned by the depth of “intelligence” sharing institutionalized by the transfer of school safety to the NYPD. In the context of this hearing, we understand that the gang label itself permits and encourages even more aggressive and broader police intrusion into the lives of young people in and out of

<sup>8</sup> Brooks, K., Schiraldi, V., and Ziedenberg, J. (2000). School House Hype: Two Years Later. *Justice Policy Institute & Children’s Law Center, Inc.* Available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/school\\_house\\_hype.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/school_house_hype.pdf).

<sup>9</sup> Devin, D.N., and Gottfredson, D.C. (2018). The Roles of Police Officers in Schools: Effects on the Recording and Reporting of Crime. *Youth Violence and Juvenile Justice*, 16(2): 208-223.

<sup>10</sup> Justice Policy Institute. (2011). Education Under Arrests: The Case Against Police in Schools. Washington, DC: Author. Available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf).

<sup>11</sup> Sussman, A. (2012). Learning in Lockdown: School Police, Race, and the Limits of Law. *UCLA Law Review*, 59: 788-849.

<sup>12</sup> Katayoon, M. (2011). Students of the Mass Incarceration Nation. *Howard Law Journal*, 54(2): 343-395

<sup>13</sup> Adams, A.T. (2000). The Status of School Discipline and Violence, 567 ANNALS AM. ACAD. POL. & SOC. SCI. 140; Am. Psychological Ass’n Zero Tolerance Task Force. (2008). Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations, 63 AM. PSYCHOL. 852, 853–54.

<sup>14</sup> See *Executive Budget Hearings – Public Safety*. Video 1:17:00. Available at [http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=605546&GUID=C594C5EC-2D7A-40A2-B04F-982C393B43EC&Options=info&Search=](http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=605546&GUID=C594C5EC-2D7A-40A2-B04F-982C393B43EC&Options=info&Search=982C393B43EC&Options=info&Search=)

<sup>15</sup> See *Patrol Guide: Neighborhood Coordination Officer*. Page 80. Available at [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf).

<sup>16</sup> See *Oversight – Youth Gang Recruitment* (2001, January 25). Hearing Transcript page 31. Available at <http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=71668&GUID=987E52BE-DA18-424B-83D1-553053E5F961&Options=info&Search=gang>

school.<sup>17</sup> The use of the gang narrative dehumanizes the targets of policing – both those who are labeled as crew members and for those who associate with or have friendships with alleged crew members. Because police contact, stops, arrests, prosecution, and imprisonment are all factors that discourage and impede meaningful participation in school,<sup>18</sup> we urge the Council to prioritize divestment from the intensive policing of youth and instead invest in community responses and supports to alleviate the material conditions that may lead to vulnerability or violence.

### School Discipline

The practice of stationing police in school hallways and cafeterias often leads to police responding to and enforcing school disciplinary matters.<sup>19</sup> As one glimpse of this, during the 2016-2017 school year there were 3,261 total suspensions resulting from incidents where NYPD was contacted.<sup>20</sup>

The DOE’s Student Code of Conduct has two distinct infractions that mention “gangs,” outlined below.

Discipline Code Infraction	Harshes Response	
B26 Engaging in gang-related behavior (e.g., wearing or displaying gang apparel and/or accessories, writing graffiti, making gestures or signs)*	6-10 day suspension; if there is substantial damage to property requiring extensive repair - suspension for 60-90 days	
B55 Engaging in threatening, dangerous or violent behavior that is gang-related*	Expulsion	
*NOTE: In determining whether the behavior is gang-related, school officials may consult with the Office of Safety and Youth Development’s Gang Unit		
	Suspensions in SY 2016-2017	Suspensions in SY 2015-2016
B26 Engaging in gang-related behavior <sup>21</sup>	50+	55+
B55 Engaging in threatening, dangerous or violent behavior that is gang-related	72	111

Infraction B55 is overbroad, sweeping up too many behaviors – “threatening” behavior, “dangerous” behavior, and then “violent” behavior – and potentially resulting in the harshest and least productive consequence for youth – expulsion. Further, there is inconsistency within the code with regard to penalties. A comparable infraction, B37, or “threatening violence,” carries a maximum punishment of a 60-90 day suspension. We are concerned that the gang label is being employed by the Code in order to heighten the suppression of young people, despite research that “getting tough” does not make communities safer but will only increase racial and ethnic disparities as they inevitably target Black and Latinx youth.<sup>22</sup>

The wearing of accessories deemed by school administration as so called gang-related is itself a punishable behavior that can be responded to with a 10 day suspension from school. However, disciplinary responses to “wearing or displaying gang apparel and/or accessories” or “making gestures or signs” creates the misimpression that gestures alone indicate affiliation and that gang affiliation alone is a proxy for violence.

<sup>17</sup> Howell, K.B. (2011). *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention*. St. Thomas Law Review, 23. Available at <http://stthomaslawreview.org/articles/v23/4/howell.pdf>.

<sup>18</sup> Kirk, D.S. and Sampson, R.J. (2013). *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*. *Sociology of Education* 88(1): 36-62. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4192649/>; Hirschfield, P. (2009). *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*. *Sociology of Education* 82(4). Available at <http://journals.sagepub.com/doi/10.1177/003804070908200404>

<sup>19</sup> American Civil Liberties Union. (2017). *Bullies in Blue: The Origins and Consequences of School Policing*. Available at [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_bullies\\_in\\_blue\\_4\\_11\\_17\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf).

<sup>20</sup> See “NYPD Contacts that resulted in suspensions” <http://schools.nyc.gov/community/city/publicaffairs/Reports.htm>

<sup>21</sup> The plus sign indicates that some information has been redacted and the number is an underestimate.

<sup>22</sup> The Charles Hamilton Houston Institute for Race and Justice, Harvard Law School. (2008). *No More Children Left Behind Bars: A Briefing on Young Gang Violence and Juvenile Crime Prevention*. Available at [https://bobbyscott.house.gov/sites/bobbyscott.house.gov/files/migrated/uploads/no\\_more\\_children\\_left\\_behind\\_bars.pdf](https://bobbyscott.house.gov/sites/bobbyscott.house.gov/files/migrated/uploads/no_more_children_left_behind_bars.pdf).

Infractions B26 and B55 contain the note “In determining whether the behavior is gang-related, school officials may consult with the Office of Safety and Youth Development’s Gang Unit.” There is little public transparency around the Gang Prevention & Intervention Unit (GPIU) of the Office of Safety and Youth Development, what a school consultation with the office entails, or how a determination of gang affiliation is made.

Without this information, it is not clear how school administrators working with youth are making punishment decisions. Our concern is that these gang definitions, particularly gang definitions that criminalize by dress code, are written in ways that would heighten the policing of youth of color regardless of their behavior and, at the same time, grow the collateral consequences of a suspension to include being listed in the NYPD’s gang database.

Among the listed goals of the GPIU is “Maintain current information and in-house expertise relating to all aspects of gangs and various forms of youth violence.” There is a lack of transparency around what kinds of information sharing are happening between schools and the GPIU as it relates to individual students and adult suspicion, what constitutes “expertise”, and, given concerns around databases, what information is being maintained by the office. Through CDF-NY’s participation on the Mayor’s Leadership Team on School Climate and Discipline’s School Safety Working Group, we sought to amend the Memorandum of Understanding between the NYPD and DOE to contain language that clearly delineates when NYPD personnel can be called in to intervene. One recommendation made in the Leadership Team’s second report was for School Safety personnel responsibilities to be limited to matters where there is a “real and immediate threat of serious physical injury to a member of the school community.”<sup>23</sup> This would help mitigate the many complications inherent to police interventions in school disciplinary matters, by restricting police involvement in student’s lives to situations posing an immediate risk of harm. As of this testimony, it is unclear whether this recommendation will be adopted as part of the final MOU.

As it relates to the Discipline Code, we strongly encourage this Committee to embrace and work to codify the recommendations released by the Dignity in Schools Campaign through their 2012 Model Code of Conduct:<sup>24</sup>

1. School Resource Officers (SROs), security officers, administrators, teachers or other school staff shall not add students to gang databases, provide information to law enforcement who have authority to add students to gang databases, and/or search or work with law enforcement to search municipal databases to find information on students.
2. A community board that includes parents or guardians, youth advocates, students and social service providers shall regularly review all instances in which students are accused of “gang-related” behavior or labeled as being “gang affiliated” by SROs, security officers, teachers or school staff, to ensure that no racial profiling, or other targeting of certain students or groups of students is taking place.
3. School districts shall provide youth suspected of membership or association with neighborhoods increased supports, mentoring and resources – including access to intervention workers or peace-builders – recognizing that youth who are involved in or drawn to the underground economy are most in need of the positive environment and opportunities that schools provide.

### Surveillance Infrastructure

In 2004, City Council passed a bill to increase the installation of cameras in schools by the DOE in conjunction with the NYPD.<sup>25</sup> While the final version of the law did not mandate the installation of video surveillance, it required the DOE to assess all schools by the end of 2006.<sup>26</sup> Following the introduction of the bill, \$120 million was put into the DOE budget in the five year capital plan for the purpose of placing security cameras in schools.<sup>27</sup> By 2008 more than 300 middle and high schools in 130 buildings were set to be equipped with nearly 6,000 cameras belonging to the DOE’s \$120 million Internet Protocol Digital Video Surveillance

<sup>23</sup> The Mayor’s Leadership Team on School Climate and Discipline. (2016). *Maintaining the Momentum: A Plan for Safety and Fairness in Schools*. Available at [http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT\\_Report\\_7-21-16.pdf](http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf).

<sup>24</sup> The Dignity in Schools Campaign. (2012). *A Model Code on Education and Dignity*. Available at [http://dignityinschools.org/wp-content/uploads/2017/10/Model\\_Code\\_2013-1.pdf](http://dignityinschools.org/wp-content/uploads/2017/10/Model_Code_2013-1.pdf).

<sup>25</sup> Local Law of 2004, Council Int. No 0150-2004.

<sup>26</sup> Ayoub, L.H.. (2013). *School Safety in New York City: Policy, Practice, and Programs from 2002 to 2013*. Center for Court Innovation. Available at <https://www.courtinnovation.org/sites/default/files/documents/School%20Safety%20Policy%20Brief.pdf>.

<sup>27</sup> Andreatta, D. (2004, September 16). *Cams for All Schools as Crime Skyrockets*. New York Post. <https://nypost.com/2004/09/16/cams-for-all-schools-as-crime-skyrockets/>.

(IPDVS) system.<sup>28</sup> One research study from 2008 found that enhanced surveillance added to students' experiences of being "monitored," "feared," "contained," and "harassed" all in the name of safety and protection.<sup>29</sup> A report published nearly ten years later found the same results – students are deeply aware that the persistent advancement of surveillance measures inside their schools has ill-intended consequences on them and their education.<sup>30</sup> Further, there is no clear evidence to support the argument that punitive policies result in safer learning environments. At the same time, research consistently finds that students who report high levels of school attachment have higher proportional odds of reporting feeling more safe.<sup>31</sup> Creating an atmosphere of community and interconnectedness is a prevention strategy that has long proven itself to be a meaningful tool for improving a variety of academic and behavioral outcomes.<sup>32</sup>

In addition to the issue of questionable effectiveness in promoting school safety, we are also concerned about youth privacy. The Council's response to the FY2019 Preliminary Budget included the recommendation to spend \$100 million on camera security systems (Internet Protocol Digital Video Surveillance) in schools.<sup>33</sup> When the question of the NYPD's support for camera security systems was raised during the May 14 Executive Budget hearing, the NYPD responded, "We are very favorable on the installation of cameras we think they are very effective at helping us monitor what's going on inside of schools", while noting that "Currently though we only have access to the cameras from the inside the school location. We highly recommend that we have remote access to that." CDF-NY is deeply concerned by such recommendations.

As the Legal Defense Fund and Center for Constitutional Rights point out, people presumed to be gang or crew affiliated already face heightened police surveillance, increased probability of police encounters, and for some, the threat of deportation.<sup>34</sup> New school security infrastructure will surely expand the intensive policing of people already experiencing surveillance, especially young people with a gang/crew label. In an article published in 2008, the DOE claimed that while facial recognition software is not being used, the capacity for future installation is there.<sup>35</sup> There is currently no effective oversight to limit the extent of surveillance or information collected relating to targeted youth. Operation Crew Cut's approach has been described as one that "melds intelligence gathered by officers on the street with online postings" and "seeks to exploit the online postings of suspected members and their digital connections."<sup>36</sup> Growing the NYPD's and the School Safety Division's capacity to watch already targeted students does not address the conditions that make group affiliations helpful to young people.

## Conclusion

CDF-NY believes that all city schools need access to models, such as restorative justice practices and collaborative problem solving, that can positively address student needs and lessen the demand for policing and surveillance. Steps towards a positive school climate will come from alternatives to police responses, including training and support for educators and investments in school staff such as mental health workers or restorative practitioners.

Thank you again for this opportunity to testify.

<sup>28</sup> Winston, A. (2008, January 21). *What Do Cameras Cure? System Gets Own Scrutiny*. City Limits. Available at <https://citylimits.org/2008/01/21/what-do-cameras-cure-system-gets-own-scrutiny/>.

<sup>29</sup> Weiss, J. (2008) Under the Radar: School Surveillance and Youth Resistance. PhD thesis. City University of New York.

<sup>30</sup> Center for Popular Democracy and the Urban Youth Collaborative. (2017). *The \$746 Million a Year School-to-Prison Pipeline: The Ineffective, Discriminatory, and Costly Process of Criminalizing New York City Students*. Available at [http://populardemocracy.org/sites/default/files/STPP\\_layout\\_web\\_final.pdf](http://populardemocracy.org/sites/default/files/STPP_layout_web_final.pdf).

<sup>31</sup> Connell, N.M. (2018). Fear of Crime at School: Understanding Student Perceptions of Safety as Function of Historical Context. *Youth Violence and Juvenile Justice*, 16(2): 124-136.

<sup>32</sup> Connell, N.M. (2018). Fear of Crime at School: Understanding Student Perceptions of Safety as Function of Historical Context. *Youth Violence and Juvenile Justice*, 16(2): 124-136.

<sup>33</sup> See *The New York City Council's Response to the Fiscal 2019 Preliminary Budget and Fiscal 2018 Preliminary Mayor's Management Report*. Available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/04/The-Fiscal-2019-Preliminary-Budget-Response.pdf>.

<sup>34</sup> See *Re: Public Hearings on the New York City Police Department's Gang Policing Practices*. Available at [https://www.scribd.com/document/370966169/2018-02-05-city-council-letter-for-gang-database-hearing-final?secret\\_password=o7iqOJWTwagV1D2X388I#fullscreen&from\\_embed](https://www.scribd.com/document/370966169/2018-02-05-city-council-letter-for-gang-database-hearing-final?secret_password=o7iqOJWTwagV1D2X388I#fullscreen&from_embed).

<sup>35</sup> Winston, A. (2008, January 21). *Op.Cit.*

<sup>36</sup> Goldstein, J., and Goodman, J.D. (2013, September 18). *Frisking Tactic Yields to a Focus on Youth Gangs*. The New York Times. Available at <https://www.nytimes.com/2013/09/19/nyregion/frisking-tactic-yields-to-a-focus-on-youth-gangs.html>.