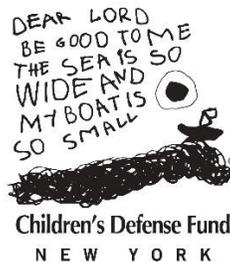Testimony of the Children's Defense Fund – New York
Before the Committee on Education

"Oversight - Bullying, Harassment and Discrimination in NYC Schools –
Protecting LGBT and Other Vulnerable Students"

New York City Council
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The Children's Defense Fund - New York (CDF-NY) respectfully submits the following testimony regarding "Bullying, Harassment and Discrimination in NYC Schools – Protecting LGBT and Other Vulnerable Students." Thank you to Chair Dromm and to the members and staff of the City Council Committee on Education for this opportunity to testify.

The Children's Defense Fund's 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. CDF-NY's unique approach to improving conditions for children combines research, public education, policy development, community organizing and statewide advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice. Through CDF's Cradle to Prison Pipeline® Campaign – a national initiative to stop the funneling of thousands of children, especially poor children and children of color 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 City schools with social and emotional supports that encourage a positive school climate.

Overview

CDF-NY's efforts to promote alternatives to addressing harm in schools and restrict justice system responses to student behavior gives us a unique perspective on bullying, harassment, and discrimination. Our position on punitive disciplinary practices is that they are not in the best interest of students, their safety, or their continued school engagement, and do little to get to the root of how and why students may target one another. We support holistic, restorative solutions to bullying, harassment, and discrimination that include a focus on school culture and climate, professional development of educators, preventative education, and public reporting.

We understand that this oversight hearing intends to seek clarity on the August 2016 report of the State Attorney General addressing the reporting of bullying incidents as mandated by the Dignity for All Students Act (DASA). The study found that about 71% of schools did not report any incidents of bullying for the year 2013-2014, suggesting "both substantial underreporting of material incidents of harassment and discrimination by schools in New York State, along with a significant level of confusion or uncertainty as to how to classify those incidents that are reported."[1] Our testimony focuses on the intent of incident reporting – to foster schools that preserve the dignity of students – and asks to what end reporting should be prioritized in reaching that goal. A proactive plan for creating welcoming, restorative school cultures is one that extends beyond counting or eliminating overt acts of harm, and addresses the role of school culture in discouraging or disincentivizing bullying, harassment, and discrimination.

Bullying, Harassment, and Discrimination

We recognize that the dominant understanding of bullying does not acknowledge how societal power relations, including oppression based on race, class, age, gender, ability, sexual orientation, and so on, enter the learning environment and support acts of bullying, and we argue that the problem of bullying extends beyond overt, reportable harassing behavior. To achieve sustainable change, school interventions must take on the task of shifting cultural norms alongside any bullying intervention efforts.

Reporting as a Priority

Conversations about creating safe schools are often narrowly focused on eliminating individual acts of bullying and harassment that target vulnerable populations. The success of school interventions is typically evaluated by measuring the frequency of reported bullying behaviors or student perceptions of safety even though the reduction of bullying is a measurable outcome that merely regulates violence

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[1] Rider, L. R., and Rosado, L.M. (2016). Re: Dignity for All Students Act: Results of Statewide School District Survey and Guidance on Implementation. New York: New York State Education Department and New York State Office of the Attorney General. Retrieved from https://ag.ny.gov/sites/default/files/dasa_-_dear_colleague_letter_oag-sed_guidance_document.pdf.

rather than addresses it.[2] When we rely on reporting as an indicator of a safe or inclusive school, we fail to account for the diversity of ways bullying, harassment, and discrimination presents themselves in schools, including: discipline practices that punish or exclude; inadequate curriculum and low expectations for students; a lack of community participation in school decision-making; a shortage in appropriate support such as guidance counselors or social workers; and a reliance on law enforcement tactics to control student behavior.

When searching for solutions to the problem of creating supportive environments for young people, conversations typically fixate on interventions that claim to be able to eliminate bullying in school settings. Public discourse about bullying implies that it is something that can be always be seen, analyzed, reported, and ultimately eliminated.[3] Focusing safe schools efforts on the elimination of recognizable violence means all attention is being paid to individuals and their behavior, and none to the cultural systems that reproduce and permit violence, intimidation, or harassment. Strict attention to statistics and measurable events fails to question why the same groups of students are continually targeted for bullying, harassment, and discrimination. We call on the City to call systemic bullying, including but not limited to the conditions listed above, into question, and invest in whole-school interventions that get to the root of harm.

The New York State Dignity for All Students Act (DASA)

DASA reporting follows two sets of procedures. First, schools are responsible for establishing an accessible system for any member of the school community to report incidents of bullying, harassment, and discrimination, and all school employees must be educated about their obligation to report all known or suspected incidents. Second, school districts are required to compile all incidents relevant to DASA and submit annual reports to the New York State Education Department (NYSED). The purpose of this reporting is not intended to be punitive, but rather to assist NYSED and school districts track patterns of violence and bias. Ideally, this data could assist NYSED and other agencies make decisions about where to target resources and how to design effective, relevant educational interventions.[4]

According to research done by the *Queering Education Research Institute (QuERI)*, teacher-reporters do not know what is reportable and have no clear definitions of "an incident based on gender" or race, or any other category.[5] Unless a verbal slur related to the category was used and witnessed, determining a category of offense often requires an in-depth understanding of the social dynamics within the school - a skill that is not prioritized in DASA teacher trainings.[6] QuERI also argues that schools have no incentive to report accurately, and ultimately reporting anxiety distracts from the proactive approach to bullying that was DASA's legislative intent. It appears as if the focus has turned to record keeping and reporting rather than teaching respect, building stakeholder capacity to prevent harm from happening, and raising awareness amongst all school stakeholders.

DASA in New York City

According to a resource put together by the Dignity Act Task Force, "The Dignity Act's underlying premise is that preventive and non-punitive intervention, in response to incidents of discrimination and/or harassment, is the best way to achieve school environments free from harassment and discrimination."[7] The word "bullying" does not appear in DASA; rather, bullying behavior is a manifestation of the larger problems of discrimination and harassment that DASA seeks to prevent and prohibit.[8] Importantly, the

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[2] Walton, G. (2005). "Bullying widespread:" A critical analysis of research and public discourse on bullying. Journal of School Violence, 4, 91–118.

[3] Ibid.

[4] Dignity Act Task Force. (2012). The New York State Dignity for All Students Act (Dignity Act): A Resource and Promising Practices Guide for School Administrators and Faculty. New York: New York State Education Department. Retrieved from http://www.p12.nysed.gov/dignityact/documents/Dignity_For_All_Students_Act_Guidance.pdf.

[5] Payne, E., and Smith, M. (2015). Implementing Dignity: New York State's Dignity for All Students Act, Research and Recommendations. New York: The Queering Education Research Institute.

[6] Payne, E., and Smith, M. (2015). *Op. Cit.*

[7] Dignity Act Task Force. (2012). *Op. Cit.*

[8] Ibid.

Dignity Act addresses material incidents of harassment and discrimination of students by students, as well as of students *by faculty or staff*. However, here in New York City, the current Citywide Discipline Code only mentions "student-to-student bullying and/or bias-based behavior" and states, "Any student who believes that he/she has been the victim of discrimination, harassment, intimidation, and/or bullying by another student should report the incident to the RFA [Respect for All] liaison(s) or to any other school employee."[9] There is an important disconnect between local and state framing of bullying even as DASA makes it the official policy of New York State that all students in public schools have the right to an education free of discrimination and harassment, and that includes the discrimination and harassment school staff engage in.

Rethinking Bullying

A discourse of bullying that focuses on the individual characteristics of "bullies" and "victims" neglects research that examines issues of hostile school culture, the attitudes and training of school professionals, and the ways implementation of state anti-bullying legislation has failed to give districts and schools the needed tools for success. We must think more complexly about what we can and should do to address harm that happens in schools.

In order to prevent and respond to the many ways bullying, harassment, and discrimination show up in schools, we believe that there needs to be a coordinated approach that incorporates structural changes, policy reforms, and intensive, restorative supports. This September, the New York City Police Department (NYPD) released data, pursuant to the Student Safety Act amendments passed last year, illustrating the need for the City to address significant racial disparities in students arrested, issued summonses, and handcuffed in school. In that data, we see that Black and Latino youth represent 68 percent of the DOE's student population, but account for 93 percent of all police interactions in schools. Of the 321 arrests and 487 handcuffing events in the second quarter of 2016, students as young as nine were arrested in school, and students as young as 7 were restrained. Racial disparities are mirrored in reported suspensions across New York City public schools, where Black students represented 53 percent of the 44,636 suspensions in school year 2014-2015, while representing 26 percent of the student population. Although school staff across the city regularly utilize suspension to maintain a safe learning environment and to influence future behavior, there is no systematic evidence that suspension accomplishes these goals. In such situations, lost instruction time brought on by classroom removals and suspensions can accumulate, making it harder for students to keep up with their peers in coursework and contributing to students' disengagement from schooling.

In an increasing number of schools, educators and communities are working to implement evidence-based strategies, like restorative justice, that reduce the demand for exclusionary discipline and police intervention. Restorative practices have the capacity to transform the culture of discipline in NYC schools from one of exclusion to one focused on valuing learning diversity and meeting the needs of youth. It is our hope that the Council continue dialogue with the DOE on the value of sustainable investment in restorative justice in schools and ending disparities in school pushout.

Recommendations

Provide High-Quality, Targeted Professional Development

We support investments that increase professional development that will empower educators to take on the responsibility of creating affirming environments for all students, as we believe that inclusive classrooms play a role in reducing school conflict. Effectively addressing the issue of discrimination and bias in schools requires knowledgeable educators who are able to assess what social identity based harassment is, understand how their schools privilege some identities over others, and intervene in the daily harassment experienced by students.

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[9] New York City Department of Education. (2015). Citywide Behavioral Expectations to Support Student Learning: Student Intervention and Discipline Code and Bill of Student Rights and Responsibilities, K-12. New York, NY: Author. Retrieved from http://schools.nyc.gov/NR/rdonlyres/CD69C859-524C-43E1-AF25-C49543974BBF/0/DiscCodebookletApril2015FINAL.pdf.

To improve the effectiveness of anti-bullying, non-discrimination and other school policies intended to maintain schools as safe and supportive of all students, schools can create ongoing initiatives to assess whether policy implementation is equitable and aligns with their intended purposes. While a school may develop a strong "anti-bullying" policy intended to prevent bullying by sanctioning "bullies," its policy may inadvertently lead to the use of its corresponding discipline policy to sanction students who defend themselves against ongoing harassment. Disproportionate discipline and related differential treatment may be the result of school staff or teachers who are untrained, ill-equipped, or unavailable to appropriately address bullying and harassment.[10] Studies show that without staff development, teacher responses to school policies in support of vulnerable students and understanding of their obligation to enforcement of these policies varies based upon their own personal history and beliefs.[11] Through recognition, prevention, and intervention schools can become safer, more supportive, more equitable, and, ultimately more engaging spaces for all.

Invest in Restorative Responses to Bullying, Harassment, and Discrimination

Particularly in light of the disproportionate impact that severe disciplinary actions have on students of color, students with disabilities, and LGBTQ/GNC students, we strongly oppose anti-discrimination policies and trainings that emphasize increased punishment and criminal sanctions as the remedy for bias-based harassment. We believe that disciplinary responses to bias-based incidents in school must address the root causes of discriminatory incidents.[12] All too often, zero-tolerance policies mean student misbehavior is met with exclusionary discipline with little to no time dedicated to working with the student to help them understand the harm and the impact of their actions on others.

Research demonstrates that students experiencing bullying feel safest when teacher-student relationships are strongest.[13] Restorative justice as an approach to improving the learning environment and student behavior is based on three core principles: repairing harm, involving stakeholders, and transforming community relationships.[14] Restorative practices are predicated on the positive relationships that students and adults have with one another.[15] According to a resource put together by the Dignity Act Task Force, "Understanding discipline as a "teachable moment" is fundamental to a positive approach to discipline."[16] A whole-school approach to restorative justice is designed to promote a sense of belonging, to cultivate awareness and consideration of others, and to ensure respectful democratic participation of all members of the community.[17] Building a strong community for all school stakeholders requires more than temporary offerings of professional development for individual school staff, and is key to fostering a sense of connectedness among students and promoting actual and perceived safety in schools. More systemic, high quality supports with an intentional focus on relationships and early intervention would produce better and more equitable outcomes than exclusionary discipline practices and polices like suspensions, and in-school summonses and arrests. We are hopeful that the Council will continue to join us in calling for a long term, strategic approach to coordinated and resourced restorative justice implementation in NYC schools.

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[10] Snapp, S.D., and Russell, S.T. (2016). Discipline Disparities for LGBTQ Youth: Challenges that Perpetuate Disparities and Strategies to Overcome Them. In R.J. Skiba, K. Mediratta, and M.K. Rausch (Eds.), *Inequality in School Discipline* (pp. 207-223). New York: Palgrave Macmillan.

[11] Anagnostopoulos, D., Buchanan, N., Pereira, C. and Lichty, L.F. (2009). School Staff Responses to Gender-Based Bullying as Moral Interpretation: An Exploratory Study. *Educational Policy, 23*(4):519-553.

[12] Walton, G. (2005). "Bullying widespread:" A critical analysis of research and public discourse on bullying. Journal of School Violence, 4, 91–118.

[13] Losen, D.J., and Haynes, L. (2016). Eliminating Excessive and Disparate School Discipline: A Review of Research and Policy Reform. In R.J. Skiba et al. (eds.), *Inequality in School Discipline.* Bloomington, IN: The Equity Project, Indiana University.

[14] Macready, T. (2009). Learning social responsibility in schools: A restorative practice. *Educational Psychology in Practice, 25*, 211-220.

[15] Smith, D., Fisher, D., and Frey, N. (2015). *Better than Carrots or Sticks: Restorative Practices for Positive Classroom Management.* Alexandria, VA: ASCD.

[16] Dignity Act Task Force. (2012). *Op. Cit.*

[17] Boyes-Watson, C. & Pranis, K. (2015). *Circle Forward: Building a Restorative School Community.* St. Paul, MN: Living Justice Press.

Conclusion

We encourage the city to move toward preventative, proactive solutions to bullying, harassment, and discrimination that focus on improving school culture and climate and limit surveillance, policing, and the criminalization of student behavior. Behavior management is ineffective if it is done without also coming to understand how the school culture is contributing to students' definitions of normal ways to interact with their peers.[18] To avoid endlessly removing students from the classroom environment for bullying, schools must seek long-term solutions, including educational approaches, to creating safer school environments.[19]

We are grateful to the Council, the Administration and the Department of Education for their commitment to decreasing the issuance of suspensions, arrests and summonses in New York City public schools. However, more work must be done to eradicate the disproportionate impact of exclusionary discipline on students of color and students with disabilities. Through increased transparency, solution-oriented collaboration and the targeted provision of services and supports to our schools, we can ensure all students can access the respectful and inclusive learning environments they need to experience a meaningful education.

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[18] Walton, G. (2005). *Op. Cit.*

[19] Annenberg Institute for School Reform, Make the Road New York, and New York Civil Liberties Union. (2009). Safety with Dignity: Alternatives to the Overpolicing of Schools. New York, NY: Authors. Retrieved from http://www.nyclu.org/files/Safety_with_Dignity.pdf. *See also* Steinberg, M.P., Allensworth, E., and Johnson, D.W. (2011). Student and Teacher Safety in Chicago Public Schools: The Roles of Community Context and School Social Organization. Chicago, IL: University of Chicago Urban Education Institute. Retrieved from http://consortium.uchicago.edu/downloads/8499safety_in_cps.pdf.