



**New York State Assembly Standing Committee on Education  
School Health, Metal Health, and Physical Education**

October 23, 2018

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. 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 youth justice.

We would like to thank the New York State Assembly Committee on Education for this opportunity to submit testimony regarding school health, mental health, and physical education.

**School Climate**

As the Assembly considers best practices to meet student's health and mental health needs, it is vital that you ensure there is continued funding to help school districts improve school climate and safety. This week marks the 9<sup>th</sup> annual week of action against school pushout, a national effort carried out by the Dignity in Schools Campaign, a coalition of organizations dedicated to ending the school-to-prison pipeline. As an active member of the New York chapter of the Dignity in Schools Campaign, a coalition in large part organized by youth, CDF-NY understands that harsh and exclusionary 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 student wellbeing or long-term solutions to conflict.<sup>1</sup> CDF-NY seeks to foster safe and supportive schools through measures that provide professional development to school staff, get to the source of student disengagement from school, and prevent and address conflict in ways that preserve the dignity and well-being of all students, school staff, and their communities.

*Harsh and Exclusionary Processes in New York's Schools*

We understand that students who experience measures like arrests, summonses, and school suspensions are more likely to experience low achievement, grade retention, negative attitudes toward school, and leave school before graduation.<sup>2</sup> These measures often lead to students with unmet needs, including mental health needs, to be removed from school without attention paid to the circumstances and context in which behaviors occur. We encourage the state to continue to invest in alternatives to exclusion by promoting the implementation of restorative practices and expanding the Supportive Schools Grant Program to help school districts improve school climate.

The evidence against punitive approaches like suspensions and arrests in schools is overwhelming – not only do they not work to reduce the behavior for which they are intended, but they further isolate and alienate young people who need support and tools to effectively manage conflict. In one ethnographic study in schools across New York City<sup>3</sup> and another in the Bronx specifically<sup>4</sup>, researchers 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 sense of “danger and disillusion.”<sup>5</sup> Growing research on the school-to-prison pipeline describes how the introduction of police officers to schools leads to a “net widening” effect,<sup>6</sup> disrupts the schooling process and students’ educational trajectories,<sup>7</sup> and has had a disproportionately harmful impact on students of color,<sup>8</sup> who are more likely to be arrested at school for behaving in the same ways as their peers.<sup>9</sup> Yet the criminalization of young people in school continues as new inquiries find either no correlation with safety or an inverse one.<sup>10</sup>

Preliminary analysis of the 2015-2016 national civil rights data shows that New York students lost 686,000 days of instruction due to school suspensions. This equates to 3,800+ school years and over 4 million hours of school. According to the 2013-2014 state estimations, Black students statewide were 1.25 times more likely to be arrested in school and 4.76 times more likely to be referred to law enforcement while in school. According to the 2015-2016 data, these disparities are consistent across districts:

*As compared to white students, the following chart reflects times more likely Black students will experience each of three exclusionary responses:*

	In-School Suspensions	Out-of-School Suspensions	Referrals to Law Enforcement
Buffalo	N/A	2.97	3.35
Rochester	1.83	1.79	N/A
Yonkers	N/A	4.38	4.80
Syracuse	2.05	2.05	2.60
Brentwood	2.00	1.12	N/A
Sachem Central	3.67	3.39	N/A
Newburgh	4.73	3.72	N/A
Greece Central	3.70	4.04	N/A
Wappingers Central	1.99	3.50	N/A
New Rochelle	3.56	4.04	N/A

In New York City, responding to children in crisis represents a significant portion of the school interventions carried out by School Safety Agents and police officers. During the 2017-2018 school year the NYPD reported 11,009 total interventions in schools, of those 32 percent were child in crisis interventions in which the student in emotional distress was taken to a hospital for psychological evaluation. Of the 3,547 incidents, 95 percent of these interventions involved students of color, also comprising 95 percent of the 280 students handcuffed by the NYPD during this type of intervention.<sup>11</sup> Importantly, this category does not include students in emotional crisis who are arrested or issued a criminal court summons.

Collected research finds that aggressive and intrusive school security measures can “produce alienation and mistrust,” decrease “school connectedness,” and impede “a cooperative learning environment by producing hostility and fear.”<sup>12</sup> CDF-NY continues to advocate for alternatives to police responses for student behaviors that can be best remedied through whole-school practices and strategies to build students’ social/emotional skills, repair the harm, and center students in the process.

### *Restorative Justice*

School-based restorative justice is a whole-school approach focused on relationships, reconciliation, and student inclusion in the school community as a means of addressing the significant negative impact of exclusionary discipline.<sup>13</sup> The theory behind restorative practices is to create the conditions where community members resolve conflict or harm together,<sup>14</sup> and prevent unwelcome behavior and subsequent police intervention by facilitating relationship-building, setting clear behavioral expectations, and maintaining a positive school climate.<sup>15</sup> Goals of school-based restorative justice include:<sup>16</sup>

- For all people involved in a conflict, and those in the larger community, to recognize and understand harm and to prevent the reoccurrence of harm without immediately deferring to justice system responses;
- Increasing student wellness, engagement and achievement in school;
- Building staff and school system capacities to support trauma impacted students by increasing knowledge and practice of trauma informed strategies;
- Integrating a cultural and equity lens to reduce disparities in disciplinary actions;
- Skill-building for students, particularly skills relevant to social and emotional learning;
- Heightening adult awareness of young people’s needs, and offer an opportunity for school adults to compassionately learn about the life context of young people.

In New York City, our ultimate goal is for the Department of Education (DOE) to implement restorative justice citywide, focusing on underserved schools, particularly by providing training in restorative practices and funding for schools to hire full-time restorative justice coordinators. To experience the benefits of restorative practices, it must be implemented in a robust way, with a full-time restorative justice coordinator, school-wide training and practice, the leadership of young people and caregivers, and community involvement and buy-in. We urge the state to realign its resources to support schools with the tools and strategies they need to meaningfully engage young people in learning without pushing them into the school-to-prison pipeline.

### *Promoting Safe and Supportive Schools*

CDF-NY believes that all schools need access to models that can positively address student needs and lessen the demand for policing. Unfortunately, efforts to improve the climate of New York schools has been uneven. While some schools are adopting more restorative approaches, without a strategic implementation plan to support student mental health in schools and professional development of all school staff in trauma-informed crisis prevention and de-escalation, many schools are without guidance. The Judge Judith S. Kaye Safe & Supportive Schools Act encourages restorative and trauma-informed practices that keep young people safe and supported, present at school, and on a path towards graduation, while aiming to reduce reliance on exclusionary discipline. This legislation will create strong state policies that support schools in building the skills and capacities of students and adults to constructively resolve conflict, collectively hold each other accountable and create learning environments that value the dignity of everyone.

## **Medicaid in Schools**

In 2014, the federal Center for Medicare and Medicaid Services (CMS) changed its interpretation of what is known as the “Free Care Rule.” Previously schools were not permitted to bill Medicaid for services provided to a student on Medicaid if the same services were provided to all students free of charge. Now CMS permits schools to bill Medicaid for these services, as long as:

- The funds only pay for services provided to students on Medicaid;
- The services are covered by Medicaid;
- The healthcare providers are Medicaid-participating providers;
- The state Medicaid plan governs the rate of reimbursement; and
- Other Medicaid requirements are met.

At this time, New York has yet to change its Medicaid policies to permit schools to bill for additional services pursuant to the new Free Care Rule interpretation. Allowing schools to bill for a greater number of services would allow those communities to draw down more federal funding for health services in schools, thereby freeing up other state and local resources to improve other health services in schools. Accordingly, NYSED should coordinate with DOH to facilitate any necessary state policy changes and federal requests to allow school districts to bill for additional Medicaid services.

## **School-Based Health Centers**

There are currently 255 school-based health centers (SBHCs) operating statewide, with nearly 100 operating outside of NYC. SBHCs serve a disproportionate number of uninsured children. At least twelve percent of the children served by SBHCs are uninsured, even though the state uninsured rate is 2%. SBHCs provide primary care, dental, and mental health services in medically underserved areas. Nearly 1 in 5 SBHCs operate in rural areas. Services are provided on-site in schools to every student regardless of whether the students have health insurance. SBHCs prevent unnecessary hospitalizations, reduce emergency room visits, improve school attendance, and avoid lost workdays for parents. Studies show SBHCs improve child health outcomes and save the state money.

Unfortunately, growth in the number of SBHCs in recent years has been limited, even though medically underserved areas persist. Unreliable state and local funding present the greatest challenge to expansion of SBHCs. Many SBHCs rely on state grant funding to provide mental health services, dental services, and perform other important public health functions. However, this funding has been cut in recent years. Last year the Assembly had to restore nearly \$4 million in cuts from the executive budget. Accordingly, the Assembly should continue to explore sustainable funding options for SBHCs, as well as work with NYSED to identify federal grant opportunities which may be used to support SBHCs.

## **Expand Access to After School Meals**

Only 6.5% of low-income students in New York have access to after-school meals through the Child and Adult Care Food Program (CACFP). This means New York is foregoing millions of dollars in federal assistance at the expense of hungry children, who are not at their best during the school day. CDF-NY encourages the Assembly and NYSED to explore programming options

that will result in more children served in after-school meal programs, and greater utilization of federal funding available under the CACFP.

After school meal services are particularly important to students in the neediest communities. In a CDF-NY survey of NYC school principals in communities with high poverty rates, half of the principals indicated a desire to provide after school meals, but felt they lacked sufficient knowledge or resources to do so. Accordingly, technical assistance for school principals and school districts interested in expanding school meal services is needed.

We again thank the New York State Assembly Committee on Education for holding this hearing on best practices to continue to support students' wellbeing. If you have any questions, please contact us.

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<sup>1</sup> Kupchik, A. (2009). Things are Tough All Over: Race, Ethnicity, Class and School Discipline. *Punishment and Society*, 11: 291-302.

<sup>2</sup> Armour, M. (2016). Restorative Practices: Righting the Wrongs of Exclusionary School Discipline. University of Richmond Law Review, 50(3):999.

<sup>3</sup> Weiss, J. (2008) Under the Radar: School Surveillance and Youth Resistance. PhD thesis. City University of New York.

<sup>4</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.

<sup>5</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>6</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>7</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>8</sup> Sussman, A. (2012). Learning in Lockdown: School Police, Race, and the Limits of Law. *UCLA Law Review*, 59: 788-849.

<sup>9</sup> Katayoon, M. (2011). Students of the Mass Incarceration Nation. *Howard Law Journal*, 54(2): 343-395

<sup>10</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>11</sup> Student Safety Act data is available at <https://infohub.nyced.org/reports-and-policies/government/intergovernmental-affairs/suspension-reports>.

<sup>12</sup> Beger, R.R. (2003). The "Worst of Both Worlds": School Security and the Disappearing Fourth Amendment Rights of Students. *Criminal Justice Review*, 28: 338-40.

<sup>13</sup> Haft, W. (2000). More Than Zero, The Cost of Zero Tolerance and the Case for Restorative Justice in Schools. *Denver University Law Review*, 77: 795.

<sup>14</sup> Karp, D., and Clear, T.R. (2000). Community Justice: A Conceptual Framework. In C.M. Friel (Ed.), *Boundaries Changes in Criminal Justice Organizations*, vol. 2. (pp. 323-368). Washington, DC: National Institute of Justice.

<sup>15</sup> Osher, D., Bear, G.G., Sprague, J.R., and Doyle, W. (2010). How Can We Improve School Discipline? *Educational Researcher*, 39(1): 48-58.

<sup>16</sup> Stinchcomb, J. B., Bazemore, G., & Riestenberg, N. (2006). Beyond zero tolerance: restoring justice in secondary schools. *Youth Violence & Juvenile Justice*, 4(2), 123-147.