Dear Chancellor Banks:

The NYCLU has received multiple reports from students in the New York City Public School system facing bullying, harassment, and disciplinary sanctions for making statements, and attending and organizing protests in support of Palestine. We are concerned that New York City Public Schools (NYCPS) is not doing enough to protect students’ rights to ask questions, form opinions, and make their voices heard in school on critical current events.

It is the role of public schools to not only provide students with an academic education, but also an education in engaged citizenship, critical thinking, and exercising their rights in a democracy. A student’s right to protest exists even when teachers, administrators, and city officials disagree with their beliefs.

NYCPS’s own policy on freedom of expression and person affirms the right to “express opinions, support causes, organize and demonstrate peacefully and responsibly.” Additionally, NYCPS has an obligation to follow Education Law §3214 and its own regulations including: the Discipline Code, the Progressive Ladder of Support and Disciplinary Practices, and the NYPD-DOE MOU, when considering disciplinary actions against a student. As Chancellor, you must use your authority to ensure that schools are following these rules and regulations.

Of particular concern is the use of long-term suspensions. Several students have reported to us excessively long suspensions for conduct that is non-violent or that occurred off-campus, including conduct that is categorized as a Level 4 or below in the Discipline Code. For example, we counseled one student facing 10 or more days of suspension for the content of a protest sign. This is not consistent with the Discipline Code, which permits a range of discipline alternatives, nor is it reflective of NYC Public School’s progressive approach to responding to student behavior.

We are additionally concerned that some students may be treated more harshly for protesting or speaking out. Having analyzed NYC student discipline and arrest data for more than a decade, we know that student’s (perceived and actual) race, religion, neighborhood, the number of school safety officers assigned to their school, and the biases of principals and teachers all affect whether they are disciplined and the impact that discipline will have on them.

The reported increased presence of law enforcement in some schools contributes to the possibility of unfair treatment, as students of color are significantly more likely to face police surveillance, investigation, and arrest than white students. This is particularly true when the conduct at issue is subjectively defined, such as engaging in disruptive behavior or making excessive noise.
Additionally, the NYPD has a well-documented history of escalating peaceful demonstrations to unsafe ones, by harassing, threatening, and using force against demonstrators. We urge you to exercise your authority to ensure that students participating in demonstrations at or near school are not subjected to police abuse. This can ensure student protests are a learning experience, and not an undue risk to young people.

Your public statements following the protests at Hillcrest High School referred to the protests as a “teachable moment.” We agree. Suspending students is not teaching them. We believe teachers and administrators feel that they’re under tremendous public pressure to punish students severely, and they need to hear from you that this is not the right approach.

On October 10, you took the affirmative step of issuing a public condemnation of the attacks in Israel. On November 8, you emailed school faculty and staff a warning about exercising their personal free speech rights in a way that may disrupt the school environment. While both messages are inside the bounds of First Amendment law, when read together, we are concerned they could have a chilling effect on both students and teachers’ expressive rights in support of Palestine, or even questioning the actions of the Israeli government. We urge you to take affirmative steps to ensure that students who wish to speak on or participate in demonstrations related to the ongoing conflict can safely exercise their First Amendment rights.

Fear of reprisal or of saying the wrong thing is likely stopping many teachers from engaging in discussions of current events inside the classroom. But students want and need those spaces to have access to accurate information, to inquire, and to learn how to respectfully disagree in a pluralistic society. NYCPS should steer educators toward materials and training modules to support them in facilitating hard conversations with confidence, fairness, and empathy.

We are deeply divided as a society. Instead of deepening the divide, NYCPS must help students and educators bridge it. This includes making it clear that students should not be punished for expressing unpopular opinions and ensuring that students demonstrating peacefully are not threatened by school safety agents.

Thank you for your attention to this important issue.

Sincerely,

Johanna E. Miller, Esq.
Director, Education Policy Center

Camara Stokes Hudson
Education Counsel

Cc: Daniel Weisberg, First Deputy Chancellor
Mark Rampersant, NYCPS Chief of Safety and Prevention Partnerships