



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
Ph: 212.607.3300
Fax: 212.607.3329
www.nyclu.org

**TESTIMONY OF STEFANIE COYLE
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION**

Before

THE ASSEMBLY STANDING COMMITTEE ON EDUCATION

On

SCHOOL HEALTH, MENTAL HEALTH, AND PHYSICAL EDUCATION

October 23, 2018

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony on School Health, Mental Health, and Physical Education. We would like to thank the Assembly Standing Committee on Education for giving the NYCLU the opportunity to provide testimony today on this important topic.

I. INTRODUCTION

The NYCLU, the state affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with nine offices across New York state and more than 210,000 members and supporters. The NYCLU’s mission is to defend and promote the fundamental principles, rights, and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. Protecting and expanding students’ rights is a core component of our mission, and through our Youth and Students’ Rights program the NYCLU advocates for positive school climate and equitable access to quality education for all students.

As part of our longstanding commitment to protect the right to a quality education for all children, we have spent over a decade advocating for schools to prevent and address harassment, bullying, and discrimination. Our work has included legislative campaigns in support of the statewide Dignity For All Students Act (“DASA”) and its local counterpart (“Local Law 42”), advocacy on behalf of individual targets of bias-based harassment, and ongoing participation on the State Education Department’s Dignity Act Implementation Task Force. We serve on the New York City Mayor’s Leadership Team on School Climate and Discipline and we work regularly with individual educators and young people, including more than 100 members of our Teen Activist Project. Our work to reform school discipline affords us a unique perspective on the provision of mental health supports and development of a positive school climate.

The NYCLU has also advocated for the New York State Education Department to require sexuality education and for it to adopt comprehensive sexual education standards that are medically accurate, age-appropriate, inclusive to all, including LGBTQ students, and address issues of consent and healthy relationships. We co-lead a statewide coalition to improve sexuality education in New York State and are part of the Sexuality Education Alliance of New York City.

II. THE NEED FOR MENTAL HEALTH SERVICES IN NEW YORK SCHOOLS

Students across New York State must have access to high quality mental health services at school and a safe and supportive school climate. The majority of mental illnesses first emerge during adolescence and are most effectively treated during this period.¹ One in 5 youth will develop mental health difficulties eventually warranting a diagnosis² and 1 in 10 youth will be impacted significantly enough by their mental health difficulties that they will require additional supports.³ Almost half of these youth will drop out of school.⁴

¹ Giedd, J. N., Keshavan, M., & Paus, T., *Why do many psychiatric disorders emerge during adolescence?*, Nature Reviews. Neuroscience, 2008, available at <http://doi.org/10.1038/nrn2513>.

² Mental Health by the Numbers, National Alliance on Mental Illness, <https://www.nami.org/Learn-More/Mental-Health-By-the-Numbers>.

³ Stagman, S. & Cooper, J., *Children’s Mental Health: What Every Policymaker Should Know*, National Center for Children in Poverty, 2010, available at http://www.nccp.org/publications/pdf/text_929.pdf.

⁴ *Id.*

Approximately 75% to 80% of youth in need of mental health services do not receive them.⁵ Of those who do receive assistance, the vast majority - approximately 70% to 80% of youth - receive their mental health services in schools.⁶

A. LACK OF MENTAL HEALTH PROFESSIONALS IN NEW YORK

Despite these alarming statistics, there are many schools without enough trained mental health staff across the state. According to the 2015-2016 Civil Rights Data Collection⁷, New York State has a 1:357 ratio of students to school counselors and a 1:773 ratio of students to social workers. Currently, one in ten students in NYC public schools is homeless, yet, for every 1,660 homeless students, there is only one social worker.⁸ These ratios are well above those recommended by the associations for each respective profession.⁹ Further, 36 million children nationwide are enrolled in schools that do not meet this recommended 250:1 ratio of counselors to students.¹⁰

The NYCLU recently supported a resolution in the New York City Council that calls on the New York City Department of Education “to provide one full-time guidance counselor and social worker for every 250 students and to ensure that all schools have at least one full-time guidance counselor or social worker.”¹¹ We encourage the Assembly to pass a resolution similar to that in New York City to require NYSED to decrease these ratios statewide.

The Legislature should work with the State University of New York and the City College of New York to ensure that there is an adequate pipeline of talented mental health professionals to work in New York schools. New York needs more people to do the important work of supporting our students’ mental health needs and the State should provide incentives for individuals to be certified here in New York.

⁵ *Id.*

⁶ School Mental Health Services in the United States (2006), National Association of State Directors of Special Education, http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/180_a75a2595-fb39-4f38-ac15-46b4d9bc45b6.pdf

⁷ 2015-2016 Civil Rights Data Collection, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html>.

⁸ Eliza Shapiro, “Homelessness in New York Public Schools is at a Record High: 114,659,” The New York Times, Oct. 15, 2018, <https://www.nytimes.com/2018/10/15/nyregion/homeless-students-nyc-schools-record.html>.

⁹ The American School Counselor Association recommends a 1:250 ratio. <https://www.schoolcounselor.org/press>. The National Association for Social Workers recommends a ratio of 1:250, but when a social worker is providing services to students with extensive needs, it recommends a ratio of 1:50.

<https://www.socialworkers.org/News/News-Releases/ID/1633/NASW-Highlights-the-Growing-Need-for-School-Social-Workers-to-Prevent-School-Violence>.

¹⁰ Daniel Losen and Amir Whitaker, *11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools*, The Center for Civil Rights Remedies at The Civil Rights Project and the American Civil Liberties Union, available at <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/race-discipline-and-safety-us-public-schools?redirect=schooldiscipline>.

¹¹ New York City Council Resolution 0514-2018, Councilmember Mark Treyger, Sept. 12, 2018, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3673471&GUID=9D5FFAF9-315E-4FB0-8348-AD5D9797F6B9>.

B. MENTAL HEALTH AND THE SCHOOL TO PRISON PIPELINE

School counselors and social workers are an important part of the school community in addressing mental health and school climate issues before they escalate. However, as we speak, school safety agents outnumber guidance counselors and social workers by more than 1,000 in New York City.¹² There are also nearly 80,000 children in New York schools who attend schools with no counselors, but with law enforcement officers.¹³ This allocation of resources sends a clear message about the state's priorities. Nationwide, there are 27,000 sworn law enforcement officers but only 23,000 social workers in public schools.¹⁴ In addition, during the 2015-2016 school year more than 10 million children across the country attended schools that reported having school resource officers but no social workers.¹⁵

The Substance Abuse and Mental Health Services Administration reports that between 50-70% of youth in the juvenile justice system met the criteria for a mental health disorder.¹⁶ However, instead of treatment and interventions at school, many of these youth are being funneled into the school to prison pipeline. Children in elementary and preschools with mental health issues are more likely to have issues at school, be absent, and be suspended or expelled, than children with other disabilities. In fact, preschool children who are African American with mental health problems are three to five times more likely to be expelled than their Latino, white, or Asian peers.¹⁷

The New York Police Department reported that there were 1,089 children in crisis incidents during the 2nd Quarter of 2018.¹⁸ Children in crisis refers to incidents where a student “displaying signs of emotional distress” is removed from the classroom and taken to a hospital for a psychological evaluation.¹⁹ All students, particularly those with mental health concerns, should be supported at school by trained mental health professionals, not law enforcement officers.

¹² There are currently 4,173 guidance counselors and social workers in NYC DOE schools. New York City DOE, Report on Guidance Counselors Pursuant to Local Law 56 of 2014, February 15, 2018, *available at* http://infohub.nyced.org/docs/default-source/default-document-library/guidancecounselorreportandsummaryfeb_2018_final.docx?sfvrsn=d565ade9_2. There are approximately 5,200 school safety agents. “Briefing Paper and Committee Report of the Governmental Affairs and Human Services Divisions, Committee on Public Safety, and Committee on Education, Oversight: School Emergency Preparedness and Safety,” Sept. 20, 2018, *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3647058&GUID=BD91FC72-FB66-4F47-9DCC-C744DBD384FD&Options=&Search=>.

¹³ 2015-2016 Civil Rights Data Collection, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2015-16.html>.

¹⁴ *See supra* note 10.

¹⁵ *Id.*

¹⁶ Criminal and Juvenile Justice, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/criminal-juvenile-justice>.

¹⁷ *See supra* note 3.

¹⁸ 2nd Quarter 2018 (April 1 – June 30), NYCLU Student Safety Act Reporting, https://www.nyclu.org/sites/default/files/ssa_2018_q2_nyclu.pdf.

¹⁹ NYPD Student Safety Act Reporting Definitions, https://www1.nyc.gov/assets/nypd/downloads/pdf/school_safety/student-safety-act-report-definitions.pdf.

C. MENTAL HEALTH INSTRUCTION

The NYCLU is encouraged that New York now requires mental health instruction in schools²⁰ and is hopeful that all districts will comply with this requirement. With this new requirement, it is critical that teachers are provided professional development to give this important instruction. The Assembly Standing Committee on Education should monitor compliance with this requirement and ensure that teachers are prepared to instruct students about mental health at all grade levels.

III. THE DIGNITY FOR ALL STUDENTS ACT

The New York State Department of Education has a responsibility to ensure that all of its 2.6 million students are safe, welcomed, and successful at each of its more than 4,500 schools. This requires that all adults in the school building, including teachers, administrators, and non-instructional staff be invested in and accountable for contributing to a positive school climate and engaged in finding positive solutions. The climate of a school—healthy or unhealthy—is a team effort. Students’ mental health and wellbeing benefits from a positive school climate.

The Dignity For All Students Act (“DASA”), also known as the Dignity Act, is a framework for improving school climate. This statewide law, which took effect in 2012, was designed to help schools combat bullying, harassment, and discrimination against students by investing in supports, prevention, and training. DASA mandates that each school designate at least one employee as a Dignity Act coordinator, who serves as the point of contact at the school for students who have suffered an incident of bullying, harassment, or discrimination. Each Dignity Act coordinator is required to undergo in-service training to prepare him or her for the position. Despite the protections that DASA is supposed to afford students, schools across the state have fallen down on their responsibilities to faithfully implement the law, harming school communities.

Studies across New York State have shown that Dignity Act coordinators are ill equipped to meet the demands of students in schools around issues of school climate, despite the required training in which they participate. A 2015 study conducted by the Queering Education Research Institute²¹ found that the bulk of the DASA training for coordinators in upstate New York was focused on the legal details of the Dignity Act and procedures to avoid being subject to a lawsuit. The coordinators reported that they were unprepared to proactively create safe and supportive school environments. In fact, those coordinators interviewed did not receive training on the social patterns of harassment, bullying, and discrimination, or strategies for proactively addressing these issues, despite the requirements in the law. Many of the upstate Dignity Act coordinators did not even understand the difference between a proactive and a reactive measure in addressing school climate issues.

In October 2017, the New York State Comptroller’s Office released an audit that assessed the implementation of DASA around the state. The Comptroller’s office found that 75% of the schools surveyed outside of New York City did not post the name and contact information for the

²⁰ See N.Y. Educ. Law § 804; 8 NYCRR § 135.1; 8 NYCRR § 135.3.

²¹ Elizabeth Payne, Ph.D. & Melissa Smith, Ph.D., *Implementing Dignity: New York State’s Dignity for All Students Act Research and Recommendations*, December 2015.

Dignity Act coordinators in the school and 65% of schools surveyed did not provide the name and contact information for the coordinator to students' parents or guardians, as they are required to do by the Dignity Act.²²

This lack of visibility for Dignity Act Coordinators is not unique to school districts outside of New York City. The City's version of DASA, Respect For All ("RFA")²³, requires that posters displaying the name and contact information for RFA liaisons be posted conspicuously in the school building, that parents be provided with a RFA brochure annually, and that students receive training on RFA by October 31st each year.²⁴ Despite the designation of an RFA liaison at every school, students are unable to accurately identify the RFA liaison at their schools. In a 2017 survey of nearly 300 high school students across 12 different schools conducted by the NYCLU's Teen Activist Project, only 19% of students could correctly identify the RFA liaison for their schools. Eighty-eight percent of students did not know that NYC schools were required to have an RFA liaison and only 63% said that their school had one.²⁵ These numbers are clear evidence that students do not know whom to contact when they encounter acts of bullying, harassment, and discrimination for support and guidance.

DASA requires in-service training for all staff and pre-service training for teachers.²⁶ This comprises six-clock-hours, three of which must be in person; however, this six-hour training is not substantial enough to equip teachers with the skills to proactively address bullying, harassment, and discrimination in the classroom. Further, it does not include any requirement for training on cultural competency, supporting LGBTQ students, or meeting the needs of other vulnerable groups of students, including homeless students.

The Assembly should support the proposed expansion of the DASA pre-service training requirement to include a three-credit-hour undergraduate course. The DASA and school climate training should also include follow-up in-service training with a focus on cultural competence and supporting LGBTQ students.

IV. THE SAFE AND SUPPORTIVE SCHOOLS ACT

Given the issues with the implementation of mental health services and difficulties in establishing a positive school climate, it is important for the Assembly Standing Committee on Education to play an important role in improving schooling for the children of New York State. The Assembly and Senate should pass the Safe and Supportive Schools Act (A3873A/S3036A), sponsored by Assemblywoman and Chair of the Standing Committee on Education, Cathy Nolan. The Safe and Supportive Schools Act would require schools across New York to establish a positive school climate that "promotes and sustains an inclusive, civil and respectful school

²² Implementation of the Dignity for All Students Act, State Education Department, NYS Office of the State Comptroller, Report 2016-S-28, October 2017, available at <http://osc.state.ny.us/audits/allaudits/093018/16s28.pdf>.

²³ Chancellor's Regulation A-832.

²⁴ *Id.*

²⁵ LGBTQ Sex Ed & Safety: A Survey of New York City High School Students, available at https://www.nyclu.org/sites/default/files/field_documents/20170320-nyclu-lgbt-ed-safety-survey.pdf.

²⁶ N.Y. Educ. Law §§ 13-14 (requirements also include pre-service training for school counselors, school psychologists, school social workers, and school administrators); 8 NYCRR § 52.21.

environment” for everyone at the school.²⁷ It would require age-appropriate, graduated and proportionate interventions and discipline that help students develop invaluable skills such as self-management, resilience, self-awareness, and responsible decision-making. The bill would also eliminate the use of suspensions for children in kindergarten through grade three except in the most serious of situations. Finally, it would require the consideration of the use of restorative practices to effectively address student misconduct and clarify and limit the role of law enforcement in schools, among other things. Passing the Safe and Supportive Schools Act would provide critical support for mental health and school climate across the state.

V. COMPREHENSIVE SEXUALITY EDUCATION

New York must require comprehensive sex education in schools. We are failing our communities and perpetuating a climate of sexual harassment and violence by not teaching students about healthy relationships and consent, their bodies, gender identity and sexuality, the importance of delaying sexual activity, and safeguarding against STIs and unintended pregnancy. The need for comprehensive sexuality education in New York State is clear. Currently, the teen pregnancy rate in the Bronx is the highest in the state²⁸ and teens 15-19 across New York represent more than half of all STI cases.²⁹ Every young person in our public school system deserves to learn the skills and knowledge they need for a healthy future and healthy relationships.

In 2012, the NYCLU published a report entitled “Birds, Bees and Bias” that examined the provision of sexuality education and the materials used by school districts across the state. We found that lessons on reproductive anatomy and basic functions were often inaccurate and incomplete. Moral overtones and shame-based messages regarding sexuality, abstinence, pregnancy and teen parenting strongly pervaded instructional materials in all the districts. These materials, unlike medically-accurate, opinion-neutral information, risk alienating students from otherwise valuable prevention lessons. Many students did not learn the full range of methods for preventing pregnancy or sexually transmitted infections and lesbian, gay, bisexual, transgender and questioning (LGBTQ) students were largely stigmatized or ignored entirely in health education classrooms.³⁰

Now more than ever it is important that sexuality instruction include topics such as consent, bodily autonomy, healthy relationships, and access to health services, and it must be inclusive of all students including LGBTQ students and those with disabilities. In the era of #metoo, it is critical for all students to be fully informed and knowledgeable about healthy relationships and sexual health.

²⁷ The Safe and Supportive Schools Act, Proposed Bill A-3873A, C. Nolan Sponsor, https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03873&term=2017&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y.

²⁸ New York City Comptroller, *Healthy Relationships: A Plan For Improving Health and Sexual Education in New York City Schools*, September 14, 2017, available at <https://comptroller.nyc.gov/reports/healthy-relationships-a-plan-for-improving-health-and-sexual-education-in-new-york-city-schools/>.

²⁹ New York State Youth Sexual Health Plan 2018, NYS Department of Health, available at https://www.health.ny.gov/community/youth/development/docs/nys_youth_sexual_health_plan.pdf.

³⁰ *Birds, Bees and Bias: How Absent Sex Ed Standards Fail New York’s Students*, NYCLU, September 2012, available at https://www.nyclu.org/sites/default/files/publications/NYCLU_SexEd_report.pdf.

The NYCLU believes that comprehensive sexuality education is a critical component of health education for students in New York State. We want to thank Assemblywoman Nolan for her leadership on this issue in New York State and for her introduction of Assembly Bill A10517, which would require medically accurate sexuality instruction in grades K-12. We appreciate that in addition to mandating sexuality education, this bill would require learning standards and provide model curricula. The NYCLU believes this bill can be strengthened through the inclusion of a specific timeline for the approval of the resources by the Board of Regents and the removal of the student opt-out provision. It is critical that all students in New York receive this important instruction.

The Legislature should pass a bill, similar to that proposed by Assemblywoman Nolan, that mandates comprehensive sexuality education for all students in grades kindergarten through 12. This instruction should be age-appropriate, medically accurate, inclusive of LGBTQ youth, and includes the topics of consent and healthy relationships. The standards and curriculum should also reflect the National Sexuality Education Standards (NSES). All students in New York deserve access to high-quality sexuality education.

VI. RECOMMENDATIONS

The NYCLU has the following recommendations for the Assembly Standing Committee on Education:

1. Pass a resolution (similar to that in New York City) to require NYSED to decrease the ratio of students to counselors and social workers across the state and provide funding to supplement the number of guidance counselors and social workers in New York schools.
2. Work with the State University of New York and the City College of New York to ensure that there is an adequate pipeline of talented mental health professionals to work in New York schools.
3. Ensure that teachers are provided adequate professional development to meet the mandates of the new mental health instruction requirements.
4. Expand pre-service training requirement in DASA beyond the six-clock hour requirement to include a three-credit-hour undergraduate course and should include follow-up in-service training with a focus on cultural competence and supporting LGBTQ students.
5. Pass the Safe and Supportive Schools Act (A3873A/S3036A), sponsored by Assemblywoman and Chair of the Standing Committee on Education, Cathy Nolan.
6. Require New York schools to teach comprehensive sexuality education that is age-appropriate, medically accurate, inclusive of LGBTQ youth, and includes the topics of consent and healthy relationships.

VII. CONCLUSION

We thank the New York State Assembly's Standing Committee on Education for considering this testimony and look forward to working together to promote mental health and comprehensive sexuality education for all students in New York.