Dignity Now:
The Campaign to Stop Bullying and Bias-Based Harassment in New York City Schools

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I. INTRODUCTION:

Bullies 'killed' my girl, was the headline after 12-year-old Maria Herrera hanged herself last April in her bedroom closet.[1]

Her mother, Mercedes, says Maria endured constant, cruel harassment from classmates at PS 72 in Brooklyn, where she was in the sixth grade.

"One of the students cut my daughter's hair," she told the *New York Post* the day of her daughter's wake. "They used to call her names. She would come home crying."

Mercedes reportedly complained more than 20 times to teachers and school officials about the persistent bullying but they did nothing to stop it. She believes her daughter committed suicide to escape the bullies.

Maria's case is severe, but not an isolated incident. Bullying and harassment happen every day in schools across the country, and unfortunately, too little is done to stop it or to give educators and school administrators the tools they need to prevent it from occurring in the first place. There is a tendency to regard schoolyard bullying and harassment as facts of life, which intensifies the problem. Research shows that bullying is most pervasive in schools where teachers and students are indifferent to or accept bullying behavior, and where rules against bullying are not consistently enforced.[2]

On Oct. 26, 2006, Abdulla Mohammed was bound and gagged with tape and locked in a closet where two classmates battered him with racial and ethnic slurs for about eight minutes.

It happened in his fourth grade classroom at Ryder Elementary School in Brooklyn. It happened with a substitute teacher present.

Abdullah, who was nine years old at the time of the assault, was born in Yemen. His assailants shouted slurs to the effect of "go back to your country, we don't want you here."

The incident only ended after another classmate asked the substitute teacher to intervene. It left Abdulla, a quiet child, emotionally and mentally scarred.

New York City has taken some promising steps to address this problem, but unfortunately, these efforts have not met their full potential. In 2004, the New York City Council passed the Dignity in All Schools Act (DASA), which requires school officials to record and track harassment incidents and publish an annual statistical summary of all cases, allowing educators to address persistent problems. It also requires all teachers, administrators and school staff to receive regular training on how to prevent and respond to harassment.

Unfortunately, Mayor Michael Bloomberg opposed the legislation and vetoed it when it passed, arguing that harassment is already prohibited and that the legislation exceeded the Council's authority. Despite the Council's override of the mayor's veto, the administration has refused to enforce the law for more than four years.[3] The ensuing stalemate has preserved the status quo and stymied important steps to make schools safe and comfortable for all students. Only recently, under pressure from a number of afflicted students and community groups, has the Department of Education (DOE) taken steps to address this severe problem—while still refusing to fully implement DASA's requirements.

This white paper first provides a summary and legal analysis of existing federal, state and New York City laws that already provide some degree of protection for students against bullying and harassment. It then

tells the story of the process that led to the enactment, veto and failure on the part of the mayor and DOE to implement DASA. Finally, the report analyzes the recent Chancellor's Regulation aimed at preventing bullying and harassment, and concludes that it falls short of fully protecting New York City's youth. Throughout the report, first-hand accounts of students demonstrate the consequences of bullying and harassment in our schools. The stories of the students profiled here, and the countless untold stories, should serve as a wake-up call to elected leaders and public school officials that more must be done to protect our youth in schools. Our elected leaders have a moral and legal obligation to ensure a safe and healthy learning environment. Until meaningful action is taken, elected leaders both at the state and local levels fail to meet these obligations. As these stories demonstrate, youth suffer terribly as a consequence.

Ashanta Woodley, 15, sees classmates being harassed everyday. Often the bullies aim their barbs at her.

"They call me a lot of names, like fat or fat ass," said Ashanta, a 10th grade student at a Prospect Heights High School in Brooklyn. The taunts hurt and distract Ashanta from her schoolwork.

"It's like everybody is judging you either by your skin or by how you look, they find something to bother you with, and it's annoying," she said. "Sometimes when I keep focusing on it, I slip away from my schoolwork so I get low grades."

II. BACKGROUND:

Bullying and Its Impact

Bullying is a form of harassment at school in which individuals or groups of tormentors prey on a student's characteristics, such as their race, ethnicity, religion, physical appearance, school performance or sexual orientation. Pervasive harassment and bullying make schools hostile places, undermining students' ability to flourish. Students who are routinely harassed and bullied often struggle to develop the self-confidence and social skills needed to succeed in life.[4] They become more likely to skip school or perform poorly in class. Bullied and harassed students are more likely to engage in high-risk behaviors, such as drinking alcohol, smoking cigarettes and fighting.[5] In the most serious cases, students become violent, contemplate suicide or worse, as demonstrated by Maria Herrera's heartbreaking story.

By the Numbers: Statistics

The problem is not confined to schools with any particular demographic. It occurs everywhere and at all grade levels, though it is most common among middle and high school students.

According to a recent report by the Gay, Lesbian and Straight Education Network, half of nearly 1,600 public school principals surveyed throughout the nation deemed student harassment to be a serious problem in their schools.[6]

► Principals identified harassment as a more serious problem than peer pressure to experiment

with drugs or alcohol.[7]

► In 2005, more than one-in-four 12- to 18-year old students reported being bullied at school, according to a survey by the National Center for Education Statistics.[8]

► According to GLSEN's school climate survey, 90 percent of LGBT students reported being verbally harassed (e.g., called names or threatened) at school because of perceived or actual appearance, gender, sexual orientation, gender expression, race/ethnicity, disability or religion, compared with 62 percent of non-LGBT students.[9]

► In one study, for every student who identified as gay, lesbian, bisexual or transgender who reported being harassed, four straight-identified students said they were the targets of anti-gay harassment.[10]

Bullying in New York State

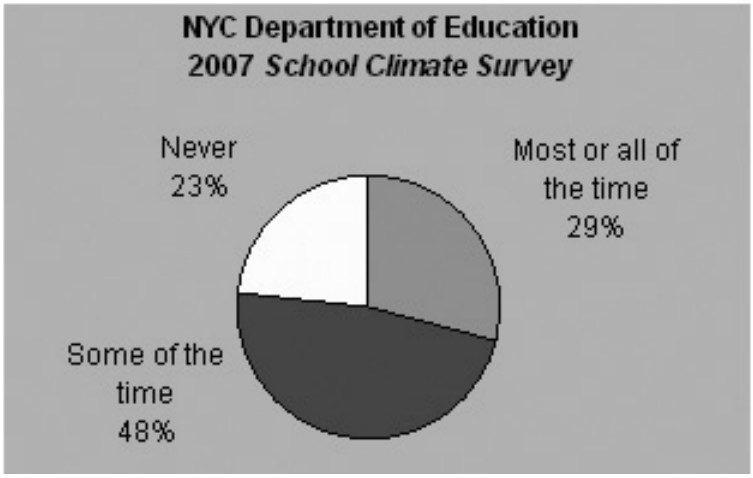
Bullying and harassment are just as much of a problem in New York State as they are across the rest of the nation. A 2005 survey of New York State students performed by Harris Interactive found:

► 36 percent of New York students reported that bullying, name calling and harassment is a serious problem in school.[11]

► 55 percent of LGBT respondents reported that they were bullied or harassed at least sometimes because of the way they expressed their gender.[12]

► 33 percent reported that students were frequently harassed because they are or were perceived to be lesbian, gay or bisexual (while 5 percent identified as being so).[13]

► 14 percent of students reported being physically harassed based on their physical appearance; 7 percent were physically harassed because of their race or ethnicity.[14]



Percentage of sixth-12th grade students who reported seeing students "threaten or bully other students at school"

► A majority (57 percent) of students who experienced harassment or assault at school did not report it to a teacher, principal or other school staff. Of those who did report harassment, only 38 percent reported that immediate action was taken by school staff to address the situation.[15]

The New York City Department of Education's School Environment Survey Report for 2006-07 also reflects widespread harassment and bullying in the schools. According to the survey, 76 percent of sixth to 12th grade students reported seeing students "threaten or bully other students at school."[16] Nearly half the students surveyed said bullying happened "some of the time," and an additional 29 percent say it happens most or all of the time.[17]

Existing Legal Protections Against Harassment and Bullying

A patchwork of federal, state and local legal protections are currently available to help address harassment and discrimination in schools. These provisions offer victimized students important legal recourse, but they have proven insufficient to address the scope of student harassment and bullying, or to provide a meaningful prevention strategy. More must be done locally and statewide to *prevent* harassment and bullying and to protect the right of students to attend safe, supportive schools.

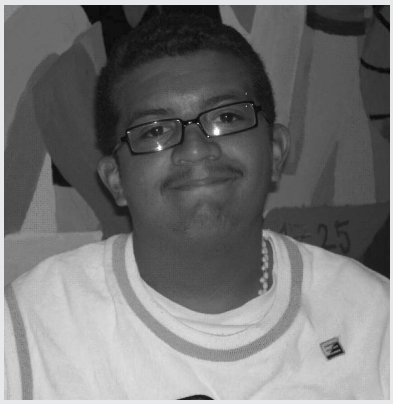
What follows is a non-exhaustive list of existing federal, state and local legal protections against harassment and discrimination for students in public schools. It concludes with a brief discussion of why these protections need strengthening.

Federal Protections

Equal Protection Clause of the 14th Amendment: A public school has a duty to treat all students equally. Therefore, a school must treat harassment of black, Muslim, Latino, lesbian, gay, bisexual or transgender students the same way it treats harassment of all other students, and the school may not selectively ignore or fail to adequately stop one particular form of harassment.[18]

Title VI of the Civil Rights Act of 1964: Any school, program or activity receiving federal financial assistance—virtually all schools[19]—must prohibit discrimination based on race, color and national origin.[20] When students suffer harassment and discrimination due to their race, color or national origin, a school must act to prevent that harassment or be subject to liability.[21]

Title IX of the Education Amendments of 1972:[22] Like Title VI, Title IX applies to virtually all schools[23] and requires them to take appropriate action to address sexual harassment and discrimination based on sex, gender identity and expression, and sexual orientation,[24] when such "conduct is pervasive, severe and objectively offensive — to the point that it denies the victim equal access to educational benefits."[25] Title IX has been interpreted to prohibit harassment of students not conforming to stereotypical gender norms and harassment of students because of their sexual orientation.[26]



Jose Santiago, 19, cannot escape harassment. It follows him from school to school. He treats it as a fact of life.

"If you're gay, people don't have to know. But if they find out, they pick on you," said Jose, a student at Morris Academy in the Bronx. "I've been bullied since I was a little kid."

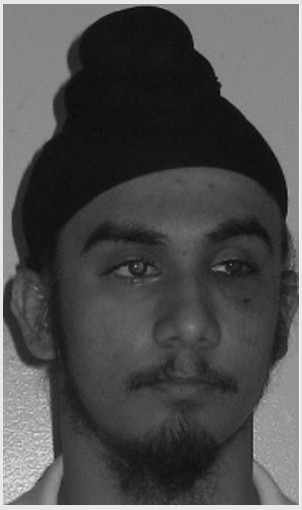
Jose has been jumped and beaten at school. Older students would spread rumors about him and bombard him with sexually suggestive taunts. He has received numerous safety transfers in hopes of finding a safe, respectful learning environment. But everywhere he goes, his sexual orientation triggers abuse and bias.

State Protections

New York State Human Rights Law (NYHRL):[27] The NYHRL explicitly prohibits discrimination, including harassment, in schools based on age, race, creed, color, national origin, sexual orientation, military status, sex or marital status. While categories such as gender identity and expression are not explicitly included in the NYHRL,[28] courts have found that it covers those areas.[29] Similarly, the **New York State Civil Rights Law** prohibits dis-

crimination and harassment based on the categories covered under the NYHRL and provides small monetary compensation for victims of such harassment and discrimination.[30] The NYHRL clearly applies in all public and many private schools around the state, though certain school districts have recently challenged that application.[31]

New York State Education Law and Commissioner's Regulations: Under state education law,[32] as amended by the Safe Schools Against Violence in Education Act (SAVE),[33] the New York State commissioner of education is required to and has promulgated regulations to create a system for the annual reporting of violent incidents in schools.[34] Such incidents include, among other things, "intimidation through the use of epithets or slurs involving race, ethnicity, national origin, religion, religious practices, gender, sexual orientation, age or disability that substantially disrupts the educational process."[35]



Jagmohan Singh Premi had his cheekbone fractured in class—the result of a vicious blow from a classmate. The attacker had a key wedged between his knuckles. Following the punch, he tugged Jagmohan's beard and struck him in the chest—all for no good reason, and all as a teacher watched helplessly.

The attacker had made a pastime of harassing Jagmohan, a shy young man of the Sikh faith. He would mock Jagmohan's stutter and call him "dirty" and "a terrorist" during their English as a second language class at Richmond Hill High School in Queens. He would pull Jagmohan's jacket over his head and throw things at the Sikh student.

New York City Protections

New York City Human Rights Law: This law, which applies in all city schools,[36] prohibits discrimination and harassment based on an individual's actual or perceived age, race, creed, color, national origin, gender (including actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth),[37] disability, marital status, partnership status, sexual orientation, or alienage or citizenship.[38]

"For too long the powers that be have turned the other way to this phenomenon, which we know and which they know has existed. For too long too many people in charge, or supposedly in charge of our schools … have viewed this as a phenomena of growing up, as something we can do nothing about and, therefore, we have to accept it. They have viewed it as such clearly by their inaction and by their omission."

–City Councilman Alan Gerson

New York City DASA: The New York City Dignity in All Schools Act (DASA) mandates a public reporting requirement and a school reporting mechanism. As discussed in the following section, those efforts have never been fully undertaken, leaving city students vulnerable and unsafe.

Analysis: Why Existing Provisions Fall Short

The patchwork of laws and regulations discussed above provide students who face harassment or discrimination in New York's schools with important legal recourse. But it is clear that too many students *still* suffer harassment and bullying. The current laws do not provide schools with the tools and resources necessary to combat systemic harassment and bullying.

Many of the protections outlined above, such as Title VI and Title IX, merely create liability for schools

after the fact for having allowed harassment to occur and continue unchecked. Different provisions protect different categories of individuals, and provide for different remedies and enforcement procedures, leading to an inconsistent approach. While victimized students clearly need a way to address these problems when they arise, our education policy should give school administrators and staff the tools they need to recognize harassment and bullying and eliminate it *before* it becomes a serious problem. School officials must have the ability to offer counseling and mediation services to both the victim and the harasser. Educators and parents must be able to utilize appropriate disciplinary measures for those who perpetrate harassment, but also be able to prevent it in the first place. Such a proactive approach would diminish the need for lawsuits, saving school districts money in the long run.

Moreover, existing reporting requirements are inadequate to ensure full accountability, and leave policymakers and the public without a full understanding of the scope of the problem. Most such initiatives, like the reporting requirements currently in effect at the city and state level, are embodied in regulations, rather than codified in law, and as such, are subject to change at any time, especially with changes in administration. They also fail to adequately address the scope of the problem. For example, the state regulation does not require school districts to create procedures for data collection, which has led to inconsistent practices, or require collection of data concerning harassment based on gender identity and expression.

Anna Maria Thomas, a veteran teacher at Brooklyn High School of the Arts, realized the depth of the bias-based harassment at her school after bumping into a student on the street. She hadn't seen the young man in school for a while and asked if anything was wrong.

The student, who is gay, told her that he dropped out of school after repeatedly being beaten up in the locker room.

"Like a lot of people, I had thought the fighting in the locker room was just boys being boys," she said. "But then I realized that they were attacks on youngsters who were gay or perceived as gay, and nothing was being done about it."

Thomas testified at a public hearing when the City Council was considering DASA. She recalled the testimony of an Asian student who'd been harassed and physically assaulted simply for getting good grades.

"Imagine being bullied because you're considered bright and you work hard," she said. She believes the training DASA requires would equip teachers to recognize, stop and prevent bias-based harassment. She says the law's reporting requirements would help to hold educators accountable for harassment occurring in their schools.

"Some people seem to believe that bullying and teasing are just part of growing up," she said. "If that's true, then it's a part of growing up that we could do without."

III. A REMEDY FOR NEW YORK CITY: THE DIGNITY IN ALL SCHOOLS ACT

DASA's Overwhelming Support from City Council, Education Experts and Advocates

DASA is intended to provide accountability, training and prevention around bullying to New York City public school children. This section describes the process by which DASA was enacted, vetoed and reaffirmed by the City Council, and the steps that have been taken since to address bias-based harassment in New York City schools.

A report released by the Sikh Coalition in April 2008 found that more than half of Sikh students in the city's public schools have been harassed because of their religion or national origin.

DASA was first considered by the City Council's Education Committee on Oct. 7, 2003.[39] It received overwhelming support from council members, education experts, parents, students and advocates. Councilwoman Eva Moskowitz, the Education Committee chairwoman and a former educator, heralded DASA as an important means of tracking and monitoring incidents of harassment and bullying in schools; establishing training and support for school staff dealing with these incidents; and helping to establish a learning environment where "[n]o student [would] be afraid to go to school for fear of being bullied or harassed."[40]

DOE representatives[41] opposed DASA at the hearing, arguing that the issue would be better addressed by state anti-bullying legislation that was under consideration in Albany,[42] and that existing laws and regulations already adequately protected city students.[43] During the testimony, a DOE representative was unable to state with certainty whether or not materials distributed to teachers and students stated that harassment based on gender identity or gender expression is prohibited,[44] but acknowledged that the system of tracking incidents of harassment and bullying in the schools was inadequate for determining the scope of the problem.[45]

Before the Vote

On April 26, 2004, the Education Committee held its second hearing regarding DASA, at which council members again blasted the DOE for failing to protect students from bullying and harassment.[46] Councilman Alan Gerson, the lead sponsor of DASA, stated: "For too long the powers that be have turned the other way to this phenomenon, which we know and which they know has existed. For too long too many people in charge, or supposedly in charge of our schools … have viewed this as a phenomena of growing up, as something we can do nothing about and, therefore, we have to accept it. They have viewed it as such clearly by their inaction and by their omission."[47] A variety of advocacy groups, elected officials and members of the public also presented testimony in favor of the measure.[48]

"I have to watch my back every time I go to school. Sometimes I don't even go to school for that reason, or I go really late so no one knows if I'm coming to school. Sometimes in class, I don't focus because I have to watch my back."

– Jose Santiago, 19, Bronx

The DOE reiterated its opposition to the legislation for the reasons stated at the October hearing, and also asserted that DASA would be inappropriate on jurisdictional grounds, as outside of the City Council's authority.[49] The agency concluded by labeling the "proposed state and city legislation" as "symbolic legislation with unfunded mandates and substantial liability."[50]

"There is no excuse for not taking action to protect our children in the city while we wait around for Albany to take action."

– Kevin Jennings, GLSEN

Representatives of several state legislators testified that contrary to the DOE's position, the city should not wait for the State Legislature to act.[51] And numerous council members, including current Speaker Christine Quinn, as well as members of the public, pointed out inconsistency in the DOE's position that the reporting obligations would be burdensome, even as it simultaneously stated support of similar state legislation.[52] As Kevin Jennings, a representative of the Gay, Lesbian and Straight Education Network (GLSEN), put it: "There is no excuse for not taking action to protect our children in the city while we wait around for Albany to take action."[53]

Finally, students gave testimony about their experiences with bullying and harassment, which were similar to the stories described throughout this report. For example, Bo Li and Andy Zhou, students at John Bowne High School in Queens, testified about being repeatedly harassed and beaten up at school because they are Asian.[54] At the hearing, Zhou still had stitches in his forehead from a cut sustained while being assaulted by a fellow student outside the school's cafeteria.[55] Li testified that school administrators and security had reacted slowly during the fight and were hesitant to call an ambulance for Zhou, whose face was covered in blood.[56] "Now we are afraid to go to school," Li said through an interpreter. "We are afraid that one day we might be killed by them. You never know."[57] Unfortunately, DOE representatives left the hearing before the students spoke.[58]

The Education Committee unanimously approved DASA,[59] and the full Council passed it on June 28, 2004,[60] by a 45-3 vote.[61] At the time, then-Council Speaker Gifford Miller stated:

> We ask repeatedly for the Department of Education to institute a clear uniform policy on bullying and harassment in the schools. We all know that there is bullying and harassment in our schools, and this Council does not think that it can legislate that behavior away. What we do believe is that it is incumbent upon the Department of Education to have the clear uniform policy and to track where there are incidents and how to respond to them.[62]

On June 28, 2004, the Council sent DASA to Mayor Bloomberg.[63]

Mayor Bloomberg's Veto and the Council's Override

On July 20, 2004, Mayor Bloomberg vetoed DASA, stating:

- ► Enacting DASA exceeded the Council's jurisdiction because safety and discipline are "extensively regulated" by state law, the state commissioner on education's regulations and the schools chancellor.
- ► New York courts have limited the Council's jurisdiction on "matters that are 'strictly educational or pedagogic.'"
- ► DASA "is inconsistent with state law that authorizes and directs the chancellor to adopt and implement policies to prevent harassment—which the chancellor has done."

"I didn't feel comfortable in class, and I think that if you have experiences and you see discrimination it affects the way you work and the way you live in school. I never felt completely comfortable with myself in the classroom."

– Renee, 18, Jackson Heights, Queens

At a hearing on Sept. 9, 2004, the Education Committee began the process of overriding the veto.[64] During the hearing, Councilman Oliver Koppell stated that "the mayor's veto of this particular legislation is almost inexplicable."[65]

Councilman Leroy Comrie testified:

> I know for a fact that one of the reasons why the administration doesn't want to adopt this bill is that it would triple the amount of reporting of incidents that are happening in the system now … and it's something that I know for a fact, that they've been encouraging principals not to report incidents, to suppress problems of harassment, to not deal with the bullying and intimidation that's going on in schools, and with schools becoming more diverse in their population. … It's important that we give parents a real option to protect their children by making this reporting clear and visible.[66]

An hour-and-a-half later, the full Council met and voted 44-3 to override the mayor's veto.[67] The legislation instructed that the local law take effect 180 days after its enactment.[68]

The Oversight Hearing

Following reports from advocates that the DOE was ignoring DASA, the Education Committee conducted an oversight hearing on March 28, 2005.[69] The committee asked the DOE to testify about its implementation of the law. The DOE refused to testify. Instead, it sent a letter to the committee stating:

> The Council acted beyond its jurisdiction in passing DASA and overriding the mayor's veto, as several sections of the state education law preempt the Council as a body from dictating the policies set forth in DASA. ... The administration does not implement illegal statutes, and therefore has no comment on this oversight topic. DOE will not be attending this oversight hearing.[70]

The City Council was forced to exercise its seldom-used subpoena power to compel a DOE official to testify about its refusal to enforce the new law. Councilman Koppell, a former New York State attorney general said, "[The DOE is] declaring their contempt not only for this Council but their contempt for the rule of law."[71] Pursuant to subpoenas issued to DOE, on April 5, 2005, the committee finally heard the testimony of Rose Albanese-DePinto, DOE senior counselor for school intervention and development; Connie Cuttle, DOE director of student engagement; and Michael Best, DOE general counsel.[72] Under questioning by Chairwoman Moskowitz, Albanese-DePinto said that the DOE had not established any "policies or guidelines designed to create an environment for each school that is free from harassment" though DASA requires it to do so.[73] She also testified that the DOE had not made any changes to the Code of Conduct, provided any regular training or student presentations, or taken any other steps to enforce DASA.[74]

> "It really took a toll on me, I started acting out. I was cutting school and eventually got kicked out of school … People don't realize how harassment affects people's lives."
>
> – Craig, 18, Bronx

Best testified that the DOE was not implementing DASA because it viewed the legislation as illegal.[75] He echoed the DOE's previous testimony and the mayor's veto message, stating that the DOE believed DASA to be unlawful for several reasons, including its belief that State Education Law preempts DASA[76] and that only the chancellor may create the Code of Conduct and determine its final content.[77] Council members expressed frustration that the DOE was refusing to implement DASA without even seeking relief from its obligations for enforcement in the court system.[78]

The 2007 "Respect for All" Trainings

In 2007, under pressure from community groups and advocates, the DOE began a series of trainings called "Respect for All." This initiative, which began three years after DASA's passage, was focused specifically on bullying and harassment against LGBT students and those perceived to be LGBT. The two-day trainings were a collaborative effort of five organizations: the Anti-Defamation League, GLSEN, Morningside Center for Teaching Social Responsibility, Operation Respect and Youth Enrichment Services at the LGBT Center.

> In the 2007-2008 school year Respect for All trainings involved about 300 schools and only 1,053 teachers, about 1 percent of the 80,000 teachers working in the public school system.

At the heart of DASA is the belief that training all school staff and providing them with the tools necessary to combat harassment and bullying would help to rid schools of this systemic problem. By contrast, the Respect for All trainings were voluntary,[79] raising serious questions about the real impact of the program. During the 2007-2008 school year, under the Respect for All Program, only 1,053 teachers and staff were trained; about 1 percent of the total number of school teachers in the New York City public school system.[80]

IV. A Step in the Right Direction: Chancellor's Regulation A-832

On Sept. 3, 2008, four years after the enactment of DASA, DOE officials, joined by Chancellor Klein and City Council Speaker Quinn, introduced Chancellor's Regulation A-832 to prohibit harassment and bullying in city schools, proclaiming that "bullying and harassment impede our students' ability to learn."[81]

> "Once in a blue moon I cry … because I feel that it's not right to be bullied or harassed, and I should be able to go around my school without people trying to fight me or trying to label me."
>
> – Richard, 12, Bronx

The new regulation followed two high-profile attacks on Sikh students in Queens and pressure from a number of community groups.[82] Unlike DASA, the regulation was created with little public input. Despite the DOE's testimony that the Council was powerless to implement DASA without holding a public hearing, the DOE itself failed to hold a hearing or allow for public comment before introducing the regulation. At the very end of the drafting process, a small group of organizations selected by the DOE was invited to review a semi-final copy of the new regulation. The group was given 48 hours to respond to the draft regulation. Few, if any, of the group's concerns were addressed in the final draft.

Notwithstanding the flawed process, the regulation is an important step forward. It prohibits harassment based on a student's actual or perceived race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation or disability. It establishes a process for filing and investigating complaints of bias-based harassment, and it requires distribution of information to students and parents annually on the new regulation. The regulation creates a standard form for reporting incidents and designates one staff member within every school to receive complaints.

Nonetheless, Chancellor's Regulation A-832 falls short of full enforcement of DASA in several respects. First, DASA prohibits bias-based harassment by any person on school premises or at a school function.

By contrast, the Chancellor's Regulation governs student-to-student harassment only. The new regulation does not cover harassment by school administrators, school safety agents, teachers or other individuals.

Second, DASA prohibits harassment based on a broader set of factors than the Chancellor's Regulation. The regulation covers many of the categories of factors that antidiscrimination provisions routinely include: actual or perceived race, color, creed, ethnicity, citizenship/immigration, religion, gender, gender identity and expression, sexual orientation, and disability. DASA goes further, including a student's actual or perceived religious practice, family composition or circumstance, economic circumstance, physical characteristic, medical condition, and school performance, as well as "any other characteristic or reason that has or would reasonably have the effect of substantially interfering with a student's educational performance."[83] DASA thus offers much broader protection than the Chancellor's Regulation.

Third, DASA requires annual reporting—including in a school's report card—of information on the number and nature of bias-based incidents broken down by school, district, borough and grade level. Such information is supposed to be published on the DOE's website. According to those present at the press conference held by the mayor and chancellor announcing the regulation, the mayor announced that public reporting would occur. However, the regulation includes no explicit public reporting requirements.

> "Harassment is something that I see regularly, almost daily in school. People say 'that faggot' or 'that gay guy,' things like that, all the time."
>
> – Robert, 15, Bronx

Fourth, DASA is very specific in its requirement of trainings on a regular basis for *all* staff to discourage development of harassment. But the Chancellor's Regulation is vague and does not detail whether the annual trainings will be mandated, or who will be required or requested to attend. This is a key distinction. In order to change the environment in the schools, all staff and students must be trained in recognizing and preventing bias-based harassment.

> "[A kid who] was supposed to graduate with me, he left … I don't really know what happened to him … They would punch him into the walls, spit on him. During class they would say all these names, throw paper, just say the most horrible things. If it was me I would have died."
>
> – Douglass, 20, Queens

Finally, DASA includes a definition of bias-based harassment that appropriately balanced the proscription of bias-based harassment with freedom of student speech and expression protected under the First Amendment.[84] DASA prohibits conduct or verbal threats, taunting, intimidation or abuse that "unreasonably and substantially" interfere with a student's educational performance or opportunity.[85] By contrast, the Chancellor's Regulation prohibits written, verbal or physical acts that create a "hostile, offensive or intimidating school environment" or "otherwise adversely affect[] a student's educational opportunities."[86] This definition of harassment is overbroad and could infringe on First Amendment speech, with the potential effect of punishing the same students that the regulation seeks to protect, such as students who express an unpopular point of view.[87]

Many open questions remain, including whether the promised public reporting of incidents will occur, what percentage of staff will receive training, and whether parents and students will be informed of the regulation and the procedures for filing a complaint. The NYCLU and a coalition of community groups have filed a series of Freedom of Information Law requests seeking information on the implementation of the Chancellor's Regulation and conducted a survey of students' experiences. As of the date of publication of this report, results of the survey are being released and will soon be available online at www.nyclu.org. Results of the FOIL are currently being compiled and analyzed.

It is clear that the Council's efforts to address student harassment and bullying were stymied by an uncooperative administration, largely on grounds of preemption—the argument that such legislation is reserved for the state and cannot be implemented locally. What was finally put in place through the Chancellor's Regulation appears to be at best an incomplete, voluntary system that does not ensure standards of accountability or a level of training that is adequate to prevent harassment. Advocates fear that these measures will fall short, leaving too many teachers and administrators ill-equipped to address and prevent harassment, and too many students at the mercy of bullies.

V. RECOMMENDATIONS

Chancellor's Regulation A-832 is an empty promise unless it is fully implemented throughout the public school system. Full implementation is only the first step toward preventing bullying and bias-based harassment in the city's schools. If the regulation is to provide students the highest level of protection, then the DOE must expand and strengthen it. This will not involve drastic measures. A few simple revisions would go a long way toward fulfilling the regulation's potential to create respectful, inclusive and safe environments in all city schools.

Additionally, the DOE must create systems for evaluating the regulation's effectiveness and tracking incidents of bullying and harassment. Results of these evaluations and data on bullying and harassment incidents must be disclosed to the public regularly.

We recommend the following to the New York City Department of Education:

Fully implement Chancellor's Regulation A-832

The DOE must allocate sufficient resources to fully implement Chancellor's Regulation A-832 in every public school. The DOE must ensure that all school staff and security officers are properly trained, annually, on the regulation so they can execute it in their schools. It should establish an audit process to evaluate schools' progress in complying with the regulation.

Moreover, Respect for All posters, brochures and other materials must be easily accessible and prominently displayed for all students. These materials must be designated as "critical communications" under Chancellor's Regulation A-633, thus requiring translation into the eight most commonly spoken languages among the city's public school students. These translations must be posted and distributed along with the English version in all schools.

Expand the regulation to include school safety agent-, teacher- and staff-to-student bias-based harassment

Currently, the regulation only covers student-to-student bias-based harassment. As the results of the survey released in conjunction with this report show, many instances of harassment concern incidents perpetrated by school staff, rather than student-on-student harassment. The regulation should therefore be expanded to include bias-based harassment perpetrated by educators, school staff and school safety agents.

Clarify and expand the regulation's student and staff training requirements

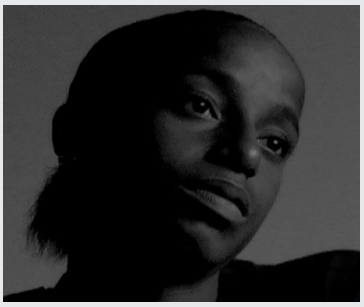
Regular and effective training on diversity issues and on identifying and responding to bias-based harassment is critical to creating a respectful and inclusive culture in the city's schools.

The regulation simply states that each principal must submit "a plan for providing information and training on this regulation and respect for all [sic] to all students and staff annually." This vague language is unclear about the kind of training that will be required, and raises questions as to whether it will be sufficient to create an inclusive, bias-free learning environment in schools.

The DOE should adopt the training requirements as laid out in DASA, which states:

> [T]raining shall be given on regular basis to all pedagogical staff and school safety officers to discourage development of harassment by (a) raising awareness and sensitivity of school employees to potential harassment, and (b) enabling employees to prevent and respond to harassment.[88]

DASA also calls on the DOE to set guidelines for presentations to students dealing with harassment issues. These presentations must be "designed to discourage harassment by raising awareness and sensitivity of pupils regarding potential harassment and fostering empathy and empathetic conduct among students."[89]



Lance Hill, a ninth grade student from Brooklyn, says many of his teachers and peers are indifferent about the pervasive bullying in his school.

"It's the attitude of everybody does it, so it's not a big deal," said Lance. "It's like, it's an everyday thing like you brush your teeth and brush your hair. They're like, 'Well, everybody gets picked on.'"

Lance says he is continually harassed over his sexual orientation. The routine harassment, which includes vicious verbal and physical assaults, makes going to school a frightening experience.

"Sometimes I don't even feel like going to school, I just want to be absent," he said.

"One time I was late to class and I cut school, and it sounds bad that this is what I have to do … but it's what I have to do because I'm scared sometimes. I'm too scared for my life."

Implement a process of transparency, accountability and public reporting

The DOE should create a system of full public reporting of incidents and statistics of bias-based harassment, broken down by school, region and type of harassment. Further, in order for such reports to be complete and accurate, the DOE must thoroughly train its staff and school safety agents on Chancellor's Regulation A-832's requirements to document, investigate and follow up on all incidents of bullying and bias-based harassment.

END NOTES

[1] Larry Celona and Jennifer Fermino, "Bullies Killed my Girl: Harassed 6th-Grader Hanged Herself," *New York Post*, 14 April 2008.

[2] Dan Olewus, Sue Limber and Sharon Mihalic, "Blueprints for Violence Prevention, Book Nine: Bullying Prevention Program" (Boulder, CO: Center for the Study and Prevention of Violence, 1999).

[3] *See Transcript of Hearing of the New York City Council Committee on Education* (Mar. 28, 2005) 5:22-7:2 (recounting letter from New York City Department of Education to committee chair stating its position that "[t]he Council acted beyond its jurisdiction in passing DASA and overriding the Mayor's veto" and that "the Administration does not implement illegal statutes") [hereinafter "Mar. 28, 2005 Tr."].; *Transcript of Hearing of the New York City Council Committee on Education* (Apr. 5, 2005) 9:13-11:4, 13:2-15, 18:8-19:7 (statement of Michael Best, general counsel to the New York City Department of Education, stating that DOE would not implement the law enacted by the Council, as the Department viewed it as "illegal") [hereinafter Apr. 5, 2005 Tr.].

[4] Dan Olewus, *Bullying at School: What We Know and What We Can Do* (Cambridge, MA: Blackwell Publishers, Inc., 1993).

[5] Tonja R. Nansel, et al. "Bullying behaviors among U.S. youth: Prevalence and association with psychosocialadjustment," *Journal of the American Medical Association*, 285(2001) 2094.

[6] *See* Gay, Lesbian, and Straight Education Network & National Association of Secondary School Principals, "The Principal's Perspective: School Safety, Bullying and Harassment: A Survey of Public School Principals," (New York, NY: GLSEN 2008) 5. Available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1167-2.pdf.

[7] Gay, Lesbian, and Straight Education Network, *supra* note 7, at 5.

[8] U.S. Department of Education and U.S. Department of Justice, National Center for Education Statistics and Bureau for Justice Statistics, "Indicators of School Crime and Safety: 2007" (Washington: U.S. Department of Education, 2007), vi. Available at http://nces.ed.gov/pubs2008/2008021.pdf.

[9] Harris Interactive and GLSEN, "From Teasing to Torment: A Profile of School Climate in New York," (New York, NY: GLSEN 2005), 7. Available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/499-1.pdf.

[10] Beth Reis, "Safe Schools Anti-Violence Documentation Project, Third Annual Report" (Seattle: Safe Schools Coalition, 1996) 11.

[11] Harris Interactive and GLSEN, "From Teasing to Torment," *supra* note 9, at 7.

[12] *Id.* at 67.

[13] *Id.* at 7.

[14] *Id.* at 67, 72.

[15] *Id.* at 82, 84.

[16] New York City Department of Education, "NYC Learning Environment Survey," 2007. Available at: http://schools.nyc.gov/NR/rdonlyres/3C9B6404-D3C3-49D7-8FA8-36AC191BC328/25283/SurveyReport_Citywide.pdf

[17] New York City Department of Education, *supra* note 16.

[18] *See, e.g.*, Nabozny v. Podlesky, 92 F.3d 446, 458 (7th Cir. 1996) (holding that school must address gender- and sexual orientation-based harassment as it would address any other harassment).

[19] Title VI applies to an entire school when any program in that school receives federal funding. Silva v. St. Anne Catholic Sch., 595 F. Supp. 2d 1171, 1182 (D. Kan. Jan. 13, 2009).

[20] 42 U.S.C. § 2000d, *et seq.*

[21] *See, e.g.*, Howard v. Feliciano, No. 05-1928 (RLA), 2008 WL 4762089 (D.P.R. Oct. 31, 2008) (upholding a $1 million verdict against a department of education for failing to address race-based harassment against a student).

[22] Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 178 n.2 (2005) ("We interpret Title IX's text to clearly prohibit retaliation for complaints about sex discrimination.").

[23] *See Silva*, 595 F. Supp. 2d at 1181.

[24] United States Department of Education, *Revised Sexual Harassment Guidance: Sexual Harassment by School Employees, Other Student, or Third Parties* (Washington: U.S. Department of Education, 2001), 3. Available at:

http://www.ed.gov/about/offices/list/ocr/docs/shguide.html ("[S]exual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.").

[25] Riccio v. New Haven Bd. of Educ., 467 F. Supp. 2d 219, 227 (D. Conn. Dec. 22, 2006) (citing Davis ex rel. LaShonda D. v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)).

[26] *See Riccio*, 467 F. Supp. 2d at 226 (relying on, *inter alia*, the U.S. Department of Education's Revised Sexual Harassment Guidance).

[27] N.Y. Exec. Law §§ 290-301 (Consol. 2009).

[28] The NYCLU, the New York City Bar Association, and many other groups support the statewide Dignity for All Students Act (state DASA), which, like NYC DASA will explicitly cover gender identity and expression, as well as the Gender Expression Non-Discrimination Act (GENDA), which will add gender identity and expression to the list of categories covered by the NYHRL. *See* DASA, A.3661/S.1987, 232nd Sess., Reg. Sess. (introduced Jan. 28 & Feb. 10, 2009, respectively); GENDA, A.5710/S.2406 232nd Sess., Reg. Sess. (introduced Feb. 19, 2009). The New York State Assembly has passed state DASA repeatedly over the past several years with overwhelming bipartisan support. *See* A.3496, 230th Sess., Reg. Sess. (introduced Jan. 26, 2007) (vote on Feb. 27, 2008 of 116 yes to 9 no). Also, in 2008, the Assembly overwhelmingly passed GENDA in a 102-to-33 bipartisan vote. *See* A.6584, 230th Sess., Reg. Sess. (introduced March 14, 2007).

[29] *See, e.g.*, Maffei v. Kolaeton Indus., Inc., 164 Misc. 2d 547 (Sup. Ct. N.Y. County 1995) (holding that transgender people are covered by gender and disability non-discrimination laws); *see also* Rentos v. Oce-Office Sys., No. 95 CIV. 7908 LAP, 1996 WL 737215 (S.D.N.Y. Dec. 24, 1996) (holding that transgender employee stated a viable claim of sex discrimination under the Human Rights Laws).

[30] New York Civil Rights Law provides: No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability ... be subjected to any discrimination in his or her civil rights, or to any harassment . . . by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

N.Y. Civ. Rights Law § 40-c (Consol. 2009); *see also id.* § 40-d (providing a penalty of between $100 and $500 for violations of § 40-c).

[31] *See, e.g.*, E. Meadow Union Free Sch. Dist. v. New York State Div. of Human Rights, 2007 N.Y. Misc. LEXIS 6004 (N.Y. Sup. Ct. 2007) (on appeal to Second Department).

[32] N.Y. Educ. Law § 1, *et seq.* (Consol. 2009).

[33] 2000 N.Y. Laws 181; *see also* The State Education Department, *Report to the Governor and Legislature, Safe Schools Against Violence in Education Act* (Albany, NY: New York Education Department, 2004). Available at http://www.emsc.nysed.gov/irts/vadir/2008/2004report.pdf.

[34] *See* 8 N.Y.C.R.R. § 100.2(gg).

[35] 8 N.Y.C.R.R. § 100.2(gg)(1)(vi)(j).

[36] N.Y.C. Admin. Code § 8-102(8).

[37] N.Y.C. Admin. Code § 8-102(23).

[38] N.Y.C. Admin. Code § 8-107.

[39] *Transcript of Hearing of the New York City Council Committee on Education* (Oct. 7, 2003) 10:6-8 [hereinafter Oct. 7, 2003 Tr.] (on file with the NYCLU). DASA was originally numbered Intro. 418-A at the October 7, 2003 Hearing. *Id.* at 4:8-9. However, DASA was subsequently numbered Intro. 118-A because it was reintroduced in 2004 during a subsequent legislative session. New York City Council Human Services Division, Committee on Education, "Local Law: The Dignity for All Students Act," 26 Apr. 2004. Available at http://www.nyccouncil.info/issues/report_act.cfm?mtfile=T2004-1018.

[40] Council Member Eva Moskowitz, press release: Dignity for All Schools Act Provides Safer Learning Environments in City Schools, 28 June 2004.

[41] Oct. 7, 2003 Tr. at 3:3-8, 15:20-23 (testimony of Ben Tucker, the chief executive of DOE's Office of School Safety and Planning, and Steve Allenger, DOE's executive director of Intergovernmental Affairs, on behalf of DOE).

[42] Oct. 7, 2003 Tr. at 46:18-47:13. A DOE representative also testified that DOE supported the New York State version of DASA and were working with New York State Senator Tom Duane on getting that law passed. However, Senator Duane

testified at the hearing that he had never heard from DOE regarding the bill. *See* Oct. 7, 2003 Tr. at 141:10-144:10.

[43] Oct. 7, 2003 Tr. at 18:3-19:19. The DOE also raised three principal objections to the legislation: One, they testified that laws and rules governing harassment and bullying in New York City schools already existed. Second, they testified that enacting DASA was outside of the Council's jurisdiction because it was up to the New York State Legislature to enact a state DASA law first. Third, they testified that implementation of DASA would be difficult because principals already had too many responsibilities. *See* Oct. 7, 2003 Tr. at 20:22-21:24, 65:11-15, 44:2-45:9. However, under questioning by Councilwoman Quinn, the DOE representative stated that he did not know who would be more appropriate to enforce DASA other than principals. Oct. 7, 2003 Tr. at 44:2-45:9.

[44] Oct. 7, 2003 Tr. at 35:12-37:16.

[45] Oct. 7, 2003 Tr. at 26:7-34:10, 41:9-17, 54:7-25.

[46] *See Transcript of Hearing of the New York City Council Committee on Education* (April 26, 2004) at 3:10-5:2. [hereinafter "Apr. 26, 2004 Tr."] (on file with the NYCLU). Council members Eva Moskowitz, Leroy Comrie, Bill DeBlasio, Helen Foster, Robert Jackson, Oliver Koppell, John Liu, David Yassky, Christine Quinn, Alan Gerson, and Speaker Gifford Miller were present at the hearing.

[47] Apr. 26, 2004 Tr. at 9:3-13.

[48] The hearing included testimony from groups and individuals including: United Federation of Teachers; the Hetrick-Martin Institute; the Gay, Lesbian and Straight Education Network; the New York City Comptroller's Office; and representatives from the offices of Assemblyman Richard Gottfried, Assemblyman Steve Sanders and State Senator Thomas Duane.

[49] Apr. 26, 2004 Tr. at 47:9-12.

[50] Apr. 26, 2004 Tr. at 21:3-18.

[51] Apr. 26, 2004 Tr. at 129:14-15, 130:5, 132:7-13.

[52] Apr. 26, 2004 Tr. at 55:11-17; 56:7-8.

[53] Apr. 26, 2004 Tr. at 70:8-22.

[54] Apr. 26, 2004 Tr. at 106:22-25, 108:22-24.

[55] Apr. 26, 2004 Tr. at 113:20-22.

[56] Apr. 26, 2004 Tr. at 108:10-21, 109:20-22, 111:2-8.

[57] Apr. 26, 2004 Tr. at 108:24-25-109:2-3.

[58] Apr. 26, 2004 Tr. at 127:19-21.

[59] Apr. 26, 2004 Tr. at 75:21-78:13, 82:24-83:2. The vote took place before all of the testimony discussed above was given, apparently because some of the members of the Education Committee had to leave the April 2004 Hearing prior to its conclusion to attend other hearings, and Councilwoman Moskowitz wanted to ensure to ensure that the Education Committee had quorum to vote on DASA.

[60] Legislation Details for Int. 0188-2004. Available at:
http://www.nyccouncil.info/html/legislation/legislation_details.cfm?ID=Int 0188-2004&TYPE=all&YEAR=2006&SPONSORS=YES&REPORTS=YES&HISTORY=YES.

[61] *See Transcript of Hearing of the New York City Council* (June 28, 2004) at 94:8-9:20-21 [hereinafter "June 28, 2004 Tr."] (on file with the NYCLU).

[62] June 28, 2004 Tr. at 40:16-25.

[63] Legislation Details for Int. 0188-2004, *supra* note 60.

[64]*See Transcript of Hearing of the New York City Council* (Sept. 9, 2004) at 25:8-26:13 [hereinafter "Sept. 9, 2004 Tr."] (on file with the NYCLU).

[65] *Transcript of Hearing of the New York City Council Committee on Education* (Sept. 9, 2004) at 3:24-25 [hereinafter "Sept. 9, 2004 Ed. Tr."] (on file with the NYCLU).

[66] Sept. 9, 2004 Ed. Tr. at 6:2-19.

[67] Sept. 9, 2004 Tr. at 52:2-4.

[68] Int. No. 188-A §10-137(4), New York City Council 2004 Sess. (NY 2004).

[69] *Transcript of Hearing of the New York City Council Committee on Education* (Mar. 28, 2005) at 4:22-5:7 [hereinafter

"Mar. 28, 2005 Tr."] (on file with the NYCLU). Council members Eva Moskowitz, Leroy Comrie, Robert Jackson, Oliver Koppell, John Liu, Domenic Recchia, Alan Gerson and Christine Quinn were present at the hearing.

[70] Mar. 28, 2005 Tr. at 5:4-21.

[71] David M. Herszenhorn, "Council Subpoenas Official in Battle with Mayor," *The New York Times* 21 Mar. 2005.

[72] *Transcript of Hearing of the New York City Council Committee on Education* (Apr. 5, 2005) at 1:3-9 [hereinafter Apr. 5, 2005 Tr.] (on file with the NYCLU). Council members Eva Moskowitz, Leroy Comrie, Bill DeBlasio, Helen Foster, Robert Jackson, Oliver Koppell, John Liu, David Yassky, Alan Gerson, Christine Quinn and Melinda Katz were present at the hearing.

[73] Apr. 5, 2005 Tr. 6:25-7:24.

[74] Apr. 5, 2005 Tr. 8:5-9:12.

[75] *See* Mar. 28, 2005 Tr. at 4:22-5:7 (recounting letter from New York City Department of Education to committee chair stating its position that "[t]he Council acted beyond its jurisdiction in passing DASA and overriding the Mayor's veto" and that "the Administration does not implement illegal statutes"); Apr. 5, 2005 Tr. at 9:13-11:4, 13:2-15, 18:8-19:7 (testimony of Michael Best, General Counsel to the New York City Department of Education, stating that DOE would not implement the law enacted by the Council, as the Department viewed it as "illegal").

[76] Apr. 5, 2005 Tr. at 9:13-11:4; 18:8-19:7. According to Mr. Best, section 2801 of the State Education Law is part of the SAVE legislation passed by the State Legislature, which "set[s] forth that the Commissioner of Education is responsible for promulgating regulations regarding the reporting of violent and disruptive incidents in the schools." April 5, 2005 Tr. at 10:6-24, 16:21-25.

[77] Apr. 5, 2005 Tr. at 13:2-15.

[78] Apr. 5, 2005 Tr. at 31:20-33:13.

[79] DASA states that "training *shall* be given on a regular basis to all pedagogical staff and school safety officers." N.Y.C. Admin. Code §10-137(c)(2) (Consol. 2009) (emphasis added). By contrast, letters sent in 2008 to Manhattan principals from the Office of Youth Development state that each school serving 500 students or more was *requested* to send three teachers and a school counselor. Schools serving fewer than 500 students were *asked* to send a team of two teachers and a counselor. Memorandum to Principals from New York City Department of Education, Office of Youth Development (N.D.) (on file with NYCLU).

[80] Natacha Beaufils, Department of Education, email to NYCLU Public Policy Counsel Johanna Miller, Feb. 11, 2009 (on file with NYCLU).

[81] New York City Department of Education, Regulation of the Chancellor A-832. Available at http://docs.nycenet.edu/docushare/dsweb/Get/Document-315/A-832%20%209-3-08%20Final.pdf.

[82] The Sikh community has documented that it is highly vulnerable to harassment, especially in schools. According to a report by the Sikh Coalition, over half of all Sikh students report being bullied or harassed. That number jumps to 65 percent when looking at Queens Sikh students. The Sikh Coalition, "Making Our Voices Heard: A Civil Rights Agenda For New York City's Sikhs" (New York, NY: The Sikh Coalition 2008) 9. Available at http://www.sikhcoalition.org/RaisingOurVoicesReport.pdf.

[83] N.Y.C. Admin. Code §10-137(a)(3) (Consol. 2009).

[84] *See* Tinker v. Des Moines, 393 U.S. 503 (1969) (holding that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate").

[85] N.Y.C. Admin. Code §10-137(a)(3) (Consol. 2009).

[86] Chancellor's Regulation A-832, *supra* note 81.

[87] In one recent example of how First Amendment-protected speech might be deemed sufficient to penalize a student under the definition of harassment in the Chancellor's Regulation, Heathyre Farnham, a 10th grade student, was sent home from her Tioga County high school for wearing a pro-LGBT message on her T-shirt. The shirt read, "gay? fine by me." The school district argued that her wearing the T-shirt created a hostile environment for other students. *See* New York Civil Liberties Union, "School District Affirms Student Speech Rights After 10th Grader Punished for 'gay? fine by me' T-Shirt" (New York, NY: NYCLU December 6, 2007). Available at http://www.nyclu.org/node/1524.

[88] N.Y.C. Admin. Code §10-137(c)(2).

[89] *Id.*