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## REPORT ON LEGISLATION BY THE COMMITTEE ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS COUNCIL ON CHILDREN COMMITTEE ON SEX AND LAW<sup>1</sup>

A.3661-C S.1987-B M. of A. O'Donnell Senator Duane

AN ACT to be known as the "Dignity for All Students Act" to amend the New York Education Law to prohibit harassment and discrimination against students in school, including but not limited to harassment and discrimination based on actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity and expression) and sex.

## THIS BILL IS APPROVED

The New York City Bar Association (the "Association"), founded in 1870, is a private, non-profit organization of more than 23,000 attorneys, judges and law professors, and is one of the oldest bar associations in the United States. The Association's Committee on Lesbian, Gay, Bisexual and Transgender ("LGBT") Rights regularly addresses legal and policy issues on a local, state and national level affecting lesbians, gay men, bisexuals and transgendered persons. The Council on Children is a diverse group of legal professionals representing eight City Bar committees and working on behalf of children. The Committee on Sex and Law addresses issues relating to the effect of the factor of gender in the formulation and operation of law and social policy. The Committees write to express their strong and continued support for the "Dignity for All Students Act" ("DASA").

The purpose of this bill is to enhance students' ability to learn and meet high academic standards, which is compromised by incidents of discrimination or harassment, including bullying, taunting, or intimidation.

The proposed legislation will amend the Education Law to authorize the Commissioner of Education to establish policies and procedures to afford all students in public schools an environment free of harassment and discrimination. The legislation (i) protects students from harassment and discrimination that unreasonably and substantially interfere with their performance, opportunities, or well-being; (ii) establishes minimum suspension periods for those students who repeatedly disrupt the educational process or substantially interfere with the teacher's authority over the classroom; and (iii) requires reporting of incidents of bullying and harassment. The legislation exempts private, religious, and denominational educational institutions. Finally, in order to provide a sufficient amount of time to implement the new

policies, and in response to current economic conditions, the bill has been amended to take effect on July 1, 2012.

Schools are places where students should concentrate on learning and personal growth, not on avoiding harassment, taunting or violence. Yet student harassment and bullying are a growing epidemic in our schools. In 2005, according to a survey by the National Center for Education Statistics and the Bureau of Justice Statistics, over one-in-four 12- to 18-year old students (28 percent) reported being bullied at school. Moreover, half of nearly 1,600 public school principals surveyed throughout the nation deemed harassment of students to be a serious problem in their schools. More principals identified harassment as a serious problem than peer pressure to experiment with drugs or alcohol, racial or ethnic differences, or other disciplinary issues.

This problem can be particularly acute for students who identify, or are perceived, as lesbian, gay, bisexual or transgender ("LGBT"). A 2007 survey on "school climate" conducted on behalf of the Gay, Lesbian and Straight Education Network showed an even higher incidence of harassment for LGBT youth, with nearly nine-tenths of students (86 percent) reporting being verbally harassed (e.g., called names or threatened) at school because of their sexual orientation, and two-thirds (66%) reporting harassment because of their gender expression.<sup>5</sup> For such students, who already suffer from disproportionate rates of depression and suicide, 6 this type of targeting can be devastating.

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

- More than one-third (33%) of New York students reported that bullying, name calling and harassment is a serious problem in school.
- 57% of respondents reported that students were bullied or harassed at least sometimes because of the way they expressed their gender.
- 52% reported that students were harassed because they were or were perceived to be lesbian, gay, or bisexual (while 5% identified as being so) and 24% reported these behaviors occurred often or very often.
- 10% of students reported being physically harassed or assaulted based on their physical appearance, 8% because of race or ethnicity.
- A majority (68%) of students who experienced harassment or assault at school did not report it to a teacher, principal or other school staff. Of those that did report, only 37% reported that immediate action was taken by school staff to address the situation.

Similarly, the New York City Department of Education's School Environment Survey Report for 2006-07 reflects widespread harassment and bullying in New York City's schools. According to the survey, 76 percent of sixth to 12<sup>th</sup> grade students reported seeing students "threaten or bully other students at school." 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.

In addition to New York City, other localities, including Albany, Buffalo, East Hampton, Huevelton, Rochester, Saratoga Springs and Yonkers, have instituted anti-harassment measures

for their public schools that are inclusive of sexual orientation. However, the New York City law is not currently being fully enforced, <sup>10</sup> and there is no comprehensive statewide protection from bias-based harassment in schools under New York State law.

Pervasive harassment and bullying make schools hostile places, undermining students' ability to flourish. Students who are routinely harassed and bullied are more likely to skip school or perform poorly in class; in some cases, students are unable to cope with school altogether and drop out. They are also more likely to engage in high-risk behaviors, like drinking alcohol, smoking and fighting. In the most serious cases, students become violent, contemplate suicide or worse, as illustrated through the heartbreaking tale of 12-year-old Maria Herrera, who committed suicide after bullies repeatedly harassed and assaulted her and school administrators did nothing to stop it. 13

The committees believe strongly that students should not be prevented by bullying and harassment from obtaining a quality education, or from reaching their full potential. Prevention mechanisms should be put in place immediately, including anti-harassment training programs for students, teachers and administrators; assistance should be provided to students who face harassment and bullying; and reporting mechanisms should be implemented to elucidate the scope of the problem. This legislation would accomplish these important goals. Moreover, it does so in a manner that is respectful of the First Amendment. The content-neutral definition of harassment adequately protects First Amendment speech by requiring any speech-based harassment to unreasonably and substantially interfere with a student's performance, opportunities, or well-being. We therefore call upon the New York State legislature and governor to enact this proposed legislation.

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<sup>&</sup>lt;sup>1</sup> This report has been revised and reissued to reflect amendments to the legislation.

<sup>&</sup>lt;sup>2</sup> United States Dep't of Educ., Nat'l Ctr. for Educ. Statistics & United States Dep't of Justice, Bureau of Justice Statistics, *Indicators of School Crime and Safety*: 2007, http://nces.ed.gov/pubs2008/2008021.pdf.

<sup>&</sup>lt;sup>3</sup> See Gay, Lesbian, & Straight Educ. Network & Nat'l Assoc. of Secondary School Principals, *The Principal's Perspective: School Safety, Bullying and Harassment: A Survey of Public School Principals* (2007), http://www.glsen.org/binary-data/GLSEN\_ATTACHMENTS/file/000/001/1167-2.pdf.

<sup>4</sup> *Id.* 

<sup>&</sup>lt;sup>5</sup> Joseph G. Kosciw et al., Gay, Lesbian, & Straight Educ. Network, *The 2007 National School Climate Survey* (2007), http://www.glsen.org/binary-data/GLSEN\_ATTACHMENTS/file/000/001/1290-1.pdf.

<sup>9</sup> *Id*.

<sup>12</sup> *Id.*.

<sup>&</sup>lt;sup>6</sup> A 1998 study based on nationally representative data found that youth who report attractions to, or relationships with, persons of the same sex were more than twice as likely as their heterosexual counterparts to attempt suicide. See Stephen T. Russell & Kara Joyner, Adolescent Sexual Orientation and Suicide Risk: Evidence From a National Study, 91 Am. J. Pub. Health 1276, 1278 (2001).

<sup>&</sup>lt;sup>7</sup> Gay, Lesbian, & Straight Education Network, From Teasing to Torment: A Profile of School Climate in New York (2005), http://www.glsen.org/binary-data/GLSEN ATTACHMENTS/file/500-1.pdf.

New York City Dep't of Educ., Learning Environment Survey Rep't, 2007. http://schools.nyc.gov/NR/rdonlyres/3C9B6404-D3C3-49D7-8FA8-36AC191BC328/25283/SurveyReport Citywide.pdf.

<sup>&</sup>lt;sup>10</sup> Following passage of the NYC law in 2004, DOE officials testified that they would not implement it because they believed it exceeded the authority of the City Council. See Mar. 28, 2005 Transcript of the Minutes of the New York City Council Committee on Education 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 Transcript of the Minutes of the Committee on Education 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"). Moreover, although DOE promulgated antibullying regulations in September 2008 (see NYC Chancellor's Reg. A-832), those regulations do not mention the NYC law, do not purport to fully implement the NYC law and, in fact, do not cover everything that the NYC law requires.

<sup>&</sup>lt;sup>11</sup> T.R Nansel et al., Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment, 16 JAMA 2094 (2001).

<sup>&</sup>lt;sup>13</sup> Larry Celona & Jennifer Fermino, Bullies Killed my Girl: Harassed 6th-Grader Hanged Herself, New York Post, April 14, 2008.