



Advocates for Children of New York

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Comments on the New York City Department of Education's Proposed Changes to Chancellor's Regulations A-831 and A-832

Thank you for the opportunity to comment on proposed changes to Chancellor's Regulations A-831 ("CR A-831") and A-832 ("CR A-832"), addressing student-to-student sexual harassment and discrimination, harassment, intimidation, and bullying, respectively. For almost 50 years, Advocates for Children of New York ("AFC") has worked to ensure access to a high-quality education for New York students who face barriers to academic success, focusing on students of color and from low-income backgrounds. Each year, AFC receives numerous calls on our Helpline from parents of children involved in an incident of discrimination, harassment, intimidation, bullying, or sexual harassment. Our attorneys and advocates work with families and schools to help students receive the support they need to remain in school.

We are pleased that the New York City Department of Education ("DOE") is proposing some changes to these Chancellor's Regulations that reflect the recommendations that AFC and many of the students, parents, and advocates with whom we work have recommended for years. Several proposed revisions will help the DOE create more supportive and inclusive school communities by making these regulations clearer, more supportive of all students, and more responsive to students' needs in the digital age. Some notable changes in these regulations that we support include:

- Offering support to all students involved in behavior prohibited under these regulations, including targeted students, accused students, and observing students;
- Providing more detail on how to report, investigate, and address complaints;
- Using gender-neutral language;
- Listing examples of the kinds of behavior that may constitute discrimination, harassment, intimidation, bullying, or sexual harassment, including examples that are more reflective of students' social interactions in the digital era;
- Adding that discrimination, harassment, intimidation, bullying, or sexual harassment may include a series of incidents, in conformance with state law and regulations; and
- In CR A-831, designating a Sexual Harassment Prevention Liaison.

Recommendations

In addition to our support for some of the proposed changes to Chancellor's Regulations A-831 and A-832, we strongly encourage the DOE to adopt the following recommendations in the finalized regulations: 1) eliminate mandated reporting to the



Advocates for Children of New York

Protecting every child's right to learn

police and encourage use of the discipline code; 2) offer more guidance on how to develop suggested interventions, including Individual Support Plans (“ISPs”); 3) clarify new notice requirements; 4) emphasize approaches to prevent discrimination, harassment, intimidation, bullying, and sexual harassment and capitalize on existing resources within the DOE; 5) encourage the use of restorative practices to address discrimination, harassment, intimidation, bullying, and sexual harassment; and 6) change the term “victim” to “target.”

1. Eliminate Mandated Reporting to the Police and Encourage Use of the Discipline Code

We strongly recommend that the DOE remove from both CR A-831 and CR A-832 the provision requiring principals/designees to contact the police to report alleged student behavior that principals/designees believe constitutes criminal activity. This provision is vague, overly broad, overly burdensome, unnecessary, harmful to students, harmful to school climate, and conflicts with the city’s school climate reform package announced by the Mayor and the Chancellor in June. Furthermore, removing this requirement will not prevent school staff from appropriately contacting the police in an emergency.

Mandating school staff to contact the police for any alleged behavior they think may be criminal places an undue burden on school staff to determine whether alleged behavior is criminal. Additionally, the mandate requires school staff to contact the police solely based on allegations without any investigation or substantiation. Because school staff cannot be expected to know criminal law and the mandate requires school staff to report alleged behavior, this mandate encourages over-reporting of behavior to the police. School staff who are unsure whether behavior is criminal may report behavior to the police solely to comply with the Chancellor’s Regulations. School staff who believe alleged behavior is criminal – even if they do not know if the student engaged in the behavior – may report behavior to the police solely to comply with the Chancellor’s Regulations.

Furthermore, this mandate harms students by promoting police involvement in a huge swath of student behavior that schools can and should address through the discipline code. As provided in CR A-831 III.D. and CR A-832 III.C., where students’ behavior violates the discipline code, schools must follow the discipline code to gauge an appropriate response. The discipline code provides a range of responses, as well as supports and interventions, including comprehensive guidance to help schools address difficult behavior in a way that helps students learn from their experiences.



Advocates for Children of New York

Protecting every child's right to learn

Such a mandate also directly contrasts with the policy recently announced by the Mayor to reduce the role of police in student interactions and reverse the longstanding racial disparities in school-based policing. Indeed, Black and Hispanic students represent about 90% of arrests and summonses in schools – and face double punishment by law enforcement and school disciplinarians, as well as potentially devastating collateral consequences from police and court involvement (e.g., education, immigration, housing, employment). The Chancellor's Regulations should be revised to reflect the city's commitment to addressing these inequities by shifting away from policing students and towards the use of social-emotional learning and restorative practices.

The harm to students from mandating police contact for any alleged behavior they think may be criminal is real. AFC assisted a student who was criminalized and suspended for engaging in consensual same-sex sexual activity in school with another student who alleged that the behavior was not consensual. In addition to issuing a superintendent's suspension, the school immediately called the police after receiving the reported allegation. The school informed AFC that they were required to contact the police without investigating the incident thoroughly. School staff informed AFC that their "hands were tied" because of the alleged sexual assault even though they thought the sexual activity was likely consensual. Police arrested the student, brought her to the precinct, and gave her a juvenile report and a family court appearance ticket. The student was subject to a family court investigation and then placed on probation for three months – even though the allegations were determined to be unfounded and no charges were filed. The suspension and court involvement left the student feeling alienated, and she transferred to a different school.

We recommend that the DOE amend the Chancellor's Regulations in a way that is consistent with state law requiring both notification to the police in certain situations and implementation of "measured, balanced and age-appropriate responses to instances of harassment, bullying or discrimination by students, with remedies and procedures following a progressive model that make appropriate use of intervention, discipline and education."¹ We urge the DOE to modify the Chancellor's Regulations to reflect state law and the city's current school climate policy by revising CR A-831 II.R. and CR A-832 II.L. as follows:

¹ N.Y. Educ. Law § 13(4) (requiring every school district to create policies, procedures, and guidelines that include "the development of measured, balanced and age-appropriate responses to instances of harassment, bullying or discrimination by students, with remedies and procedures following a progressive model that make appropriate use of intervention, discipline and education, vary in method according to the nature of the behavior, the developmental age of the student and the student's history of problem behaviors").



Advocates for Children of New York

Protecting every child's right to learn

~~Where the principal/designee believes that the alleged conduct constitutes criminal activity, they must contact the police. The principal/designee may consult with their Senior Field Counsel and/or the Borough/Citywide Office, Director of Student Services. If the allegations involve violent behavior causing serious injury (e.g., forcible sexual activity), the principal/designee must consult OSYD if the principal/designee is considering calling the police. Nothing precludes the principal/designee from contacting the police in an emergency.~~

2. Change the Term “Victim” to “Target”

We recommend changing the term “victim” to “target” in the Chancellor’s Regulations, as well as the discipline code and DOE databases. Referring to a student as a “victim” is disempowering. Additionally, the term “target” better reflects the fluid roles that students may occupy in the incidents these regulations address. It also promotes more effective responses as it encourages schools to offer support to all students involved. For example, a student who is a “target” in an incident may have engaged in discriminatory, harassing, intimidating, bullying, or sexually harassing behavior towards the accused student or another student in a previous incident. Similarly, a student who is accused of discrimination, harassment, intimidation, bullying, or sexual harassment may have previously been the target of that behavior in the past. Sometimes, after an investigation, a school may determine that the reported target of an incident played a different role altogether. Additionally, the word “victim” sends a message that the behavior of a student accused of or targeted by bullying or harassment cannot change and disregards the way that other factors, such as trauma histories, undiagnosed or untreated mental illness, peer influence, or school climate may contribute to a student’s behavior. The term “target” encourages schools to better understand students’ perspectives.

3. Clarify New Notice Requirements

We support the DOE’s proposed revisions to CR A-831 and CR 8-32 that require schools to provide written notice of the results of investigation into complaints of discrimination, harassment, intimidation, bullying, or sexual harassment and, where allegations are substantiated, to discuss the incident, any follow-up action, and the availability of interventions and supports. At AFC, we have worked with many concerned and frustrated parents and students who never found out what steps – if any – the DOE took to address their complaint of discrimination, harassment, intimidation,



Advocates for Children of New York

Protecting every child's right to learn

bullying, or sexual harassment to a school. Clear communication between schools and families is critical to partnering effectively to address these difficult interactions.

However, we are concerned that schools may misconstrue the new notice requirements in these regulations as satisfying disciplinary notice requirements where students may be subject to removal from school. We are concerned that schools may misinterpret the new notice requirements in CR A-831 III.E. and CR A-832 III.E. as a substitute for appropriate notice of disciplinary action. It is critical that families receive proper notice of, and the opportunity to exercise, their due process rights related to suspension.

Therefore, we recommend clarifying in CR A-831 III.E. and CR A-832 III.E. – in accordance with state law, CR A-443, and the discipline code – that any student subject to exclusionary discipline is entitled to due process. The DOE should make explicit that a school's written notice of the results of an investigation under these regulations is not a substitute for the due process notice required to impose exclusionary discipline. We also recommend that the DOE require schools to offer to discuss the incident, any follow-up action, and the availability of interventions, rather than requiring families to contact the school to request such a meeting. We recommend that the DOE revise CR A-831 III.E. and CR A-832 III.E. as follows:

The principal/designee must advise the parent(s) of the alleged ~~victim target~~ and the parent(s) of the accused student in writing whether any allegations are substantiated and whether the conduct constitutes a violation of this regulation. If any of the allegations are substantiated, this notice must also ~~advise the~~ offer for school staff to meet with the students and their parents to contact the school to discuss the incident and any follow-up action and the availability of interventions and supports for their child, where applicable. This notice is not a substitute for due process notice required when a student is or may be subject to suspension, in which case the Discipline Code and Chancellor's Regulation A-443 must be followed in addition. Parents must be advised within ten (10) school days of receipt of the report, absent extenuating circumstances. If a decision was made not to notify the parents of the alleged ~~victim target~~ as set forth in Section II.K, such parents shall also not be advised of the information set forth in this paragraph.

4. Offer, But Not Mandate, Supports and Interventions, Including Individual Support Plans (“ISPs”), and Provide More Guidance on How to Develop Them

We support changes to these regulations that encourage schools to provide students with supports and interventions, such as ISPs, in response to discrimination, harassment, intimidation, bullying, or sexual harassment. Academic and social-



Advocates for Children of New York

Protecting every child's right to learn

emotional supports and interventions can be critical for all students involved in such incidents. An ISP is a welcome new suggested strategy to address students' needs. However, for supports and interventions to be effective, schools must work with students and their families, and some students and families may not want an offered support or an ISP, even after an allegation has been substantiated.

We are particularly concerned that for students with disabilities, the recommendations in an ISP may amount to a change in program. Under the Individuals with Disabilities Education Act ("IDEA"), schools must hold an Individualized Education Program ("IEP") meeting when considering a change in a student with a disability's program or placement. Thus, while the DOE should certainly offer to develop and implement an ISP for any student who has been involved in an incident of discrimination, harassment, intimidation, bullying, or sexual harassment – particularly a substantiated one – an ISP or other specific supports and interventions should never be required for any student. Indeed, for students with disabilities, changing support may require the recommendation of an IEP team.²

Accordingly, we recommend that the DOE revise CR A-831 IV.B. and CR A-832 IV.B. as follows:

Development of an individual support plan (the school must offer to work with the family to an individual support plan must be developed and implemented an individual support plan for a student who has been the victim target of two one or more substantiated violations of this regulation in the same school year and/or a student who has been found to have violated this regulation two one or more times in the same school year. If the school is considering developing an individual support plan with the family of a student with a disability, and the individual support plan may change the student's program, the DOE must hold an IEP meeting.)

Given that ISPs are a new addition to these regulations, and the DOE has not published a sample ISP, we are concerned that schools will struggle to develop ISPs without additional resources, direction, and support. We recommend that the DOE provide guidance to students, families, and schools to help them more effectively understand and use this new resource. To that end, we recommend adding the following language:

² We recognize that the DOE may have proposed revisions to CR A-831 and CR A-832 mandating ISPs for students with two or more substantiated allegations of incidents in response to a settlement agreement. *See Doe #1 by Parent #1 v. New York City Dep't of Educ.*, No. 16CV1684NGGRLM, 2018 WL 3637962 (E.D.N.Y. July 31, 2018). However, the IDEA trumps any conflicting provisions in the settlement.



Advocates for Children of New York

Protecting every child's right to learn

- CR A-832 IV.B.: “A principal, school staff member, or parent may request support in drafting and implementing an individual support plan from their Borough/Citywide Office director of student services.”
- CR A-831 IV.B.: “A principal, school staff member, or parent may request support in drafting and implementing an individual support plan from their Borough/Citywide Office director of student services or Title IX coordinator.”

We also recommend that the DOE consult with stakeholders to develop an ISP template, attach a sample ISP to these regulations, and post a sample ISP on the DOE's website. If appropriately developed, an ISP may be a helpful strategy to address these incidents.

In the Follow-up Action section of the regulations, we also recommend that the DOE list other important supports and interventions in response to discrimination, harassment, intimidation, bullying, or sexual harassment. For example, a Functional Behavioral Assessment (“FBA”)/Behavioral Intervention Plan (“BIP”), Positive Behavioral Interventions and Supports (“PBIS”), an IEP meeting, or community service may be appropriate responses. We recommend revising CR A-831 IV.B. and CR A-832 IV.B. as follows:

- Referral to the school social worker, guidance counselor, psychologist, or other appropriate school staff, or referral to community-based agencies, for counseling, support, community service, and/or education or mental health services;
- A Functional Behavioral Assessment (“FBA”)/Behavioral Intervention Plan (“BIP”), Positive Behavioral Interventions and Supports (“PBIS”), and/or an IEP meeting.

5. Emphasize Approaches to Prevent Discrimination, Harassment, Intimidation, Bullying, and Sexual Harassment and Capitalize on Existing Resources Within the DOE

We commend the DOE for investing in reforms that will help students feel safer in school, including citywide restorative practices, social-emotional learning, and more school social workers. We recommend that the proposed regulations reflect these approaches by emphasizing the use of restorative practices and social-emotional learning to prevent and address discrimination, bullying, intimidation, harassment, and



Advocates for Children of New York

Protecting every child's right to learn

sexual harassment. Through the use of restorative practices and social-emotional learning, students learn how to build relationships with each other and staff, communicate effectively, empathize, problem solve, and resolve conflicts to prevent problems before they start, and prevent others from escalating.

These approaches, as well as curricular strategies such as culturally responsive education and comprehensive sexual health education, bolster students' sense of inclusion and safety and create a positive school climate. Culturally responsive education uses educational strategies that leverage aspects of students' identities to celebrate students, promote cross-cultural connection, and help all students feel valued and develop empathy.³ We are pleased that the DOE recently adopted a policy on culturally responsive-sustaining education and would like to see this work reflected in the regulation. Comprehensive sexual education provides students with developmentally appropriate and medically accurate information on a broad range of topics related to sexuality.⁴ Teaching comprehensive sexual education is an effective, evidence-based way to empower students with the information and communication and decision-making skills they need to make healthy choices and to create a culture of consent.⁵

³See New York City Coalition for Education Justice, *Chronically Absent: the Exclusion of People of Color from the NYC Elementary School Curriculum* (2019), <http://www.nyccej.org/wp-content/uploads/2019/02/reportCEJ-Chronically-Absent-FINAL.pdf> (describing how culturally responsive education contributes to a healthy school climate for all students); Girls for Gender Equity, *The School Girls Deserve*, 8 (2017), https://www.ggenyc.org/wp-content/uploads/2017/11/GGE_school_girls_deserveDRAFT6FINALWEB.pdf (recommending investment in culturally responsive education).

⁴Comprehensive sexual education encompasses a broad range of topics related to sexuality, including puberty, reproductive health, interpersonal relationships, body image, harassment, stigma and discrimination, intimate partner violence, gender norms, gender identity, and sexual orientation. See American Public Health Association, *Sexuality Education as a Part of Comprehensive Health Education Program in K to 12 Schools*, Policy Number 20143 (2014), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2015/01/23/09/37/sexuality-education-as-part-of-a-comprehensive-health-education-program-in-k-to-12-schools> (supporting CSE programming as an evidence-based way to help students become healthy adults). See also, e.g., American College of Obstetricians and Gynecologists, *Comprehensive Sexuality Education Committee Opinion*, Number 678 (2018), <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Adolescent-Health-Care/Comprehensive-Sexuality-Education?IsMobileSet=false> (affirming that evidences shows that CSE promotes healthy outcomes); American Academy of Pediatrics, *Sexuality Education for Children and Adults*, 138 *Pediatrics* 2, e20161348 (2016), <https://pediatrics.aappublications.org/content/pediatrics/138/2/e20161348.full.pdf> (recommending the use of CSE in school).

⁵ See Girls for Gender Equity, *The Schools that Girls Deserve*, 16 (2017), https://www.ggenyc.org/wp-content/uploads/2017/11/GGE_school_girls_deserveDRAFT6FINALWEB.pdf.



Advocates for Children of New York

Protecting every child's right to learn

We recommend that the DOE emphasize and connect these approaches, supports, and strategies to preventing bullying, intimidation, harassment, and sexual harassment in these regulations. First, to underscore the importance of prevention, and training in prevention, we suggest retitling CR A-831 V. and CR A-832 V. to read: “Prevention, Notification/Training, and Notification.” Second, to make sure that these resources are promoted within the regulations, we recommend adding language as follows:

- CR A-832 V.E.6: Promoting a safe and supportive school climate, including incorporating restorative practices, social emotional learning, and culturally responsive-sustaining education ~~the concepts~~ into classroom activities.
- CR A-831 V.F.: Each principal/designee must ensure in addition to the school training set forth in Section V.D. that all students are provided with developmentally-appropriate comprehensive sexual health education and the SHP liaison completes the SHP mandated training developed by OSYD.

These Chancellor's Regulations should also offer a way for school staff to request trainings or support from specific DOE staff and offices to prevent and address bullying incidents. We recommend the following additional language:

CR A-831 V.: “H. Any school staff member may request training on preventing and addressing sexual harassment from their Borough/Citywide Office director of student services or Title IX coordinator.”

CR-A 832 V.: “H. Any school staff member may request training on preventing and addressing discrimination, harassment, intimidation, or bullying from their Borough/Citywide Office director of student services. Training topics may include social emotional learning and restorative practices.”

6. Encourage Approaches to Address Discrimination, Harassment, Intimidation, Bullying, and Sexual Harassment

We recommend revising both regulations to allow for and encourage the use of restorative practices to address discrimination, harassment, intimidation, bullying, and sexual harassment, when all students involved consent. The Chancellor's Regulations should make clear that restorative practices can prevent and address these behaviors by fostering understanding and relationships between community members with different



Advocates for Children of New York

Protecting every child's right to learn

identities, backgrounds, and points of view. Indeed, punitive school responses may cause problem behaviors to increase rather than diminish.⁶

The New York State Education Department and the New York State Attorney General published joint guidance and model training materials to help schools comply with the Dignity for All Students Act (“DASA”).⁷ Recognizing that restorative practices help students improve their behavior, the model materials include training tools for schools to implement DASA that list restorative practices as appropriate supports to end bullying, harassment, and discrimination.⁸ Furthermore, other districts use restorative practices to address these behaviors.⁹ For example, Berkeley Unified School District adopted a policy that “encourages the use of restorative justice and alternative resolutions in lieu of expulsion hearings, even in the most serious cases including cases of sexual assault and sexual battery.”¹⁰ The school board recognized that: “Restorative justice is, in many cases, more likely to repair harm to complainant(s) and likely to be less traumatic to complainant(s) than an adversarial expulsion hearing.”¹¹ A national leader in restorative justice has explained that restorative justice provides an option for complainants “to receive healing and vindication in the face [of] the harms suffered.”¹² Research also indicates the effective use of restorative practices in schools to address bullying.¹³

⁶ See Trevor Fronius et al., WestEd Justice & Prevention Research Center, Restorative Justice in U.S. Schools: An Updated Research Review 1-3, 17 (2019), <https://www.wested.org/wp-content/uploads/2019/04/resource-restorative-justice-in-u-s-schools-an-updated-research-review.pdf>.

⁷ See Press Release: “A.G. Schneiderman And State Education Commissioner Elia Release Guidance And Model Materials To Help School Districts Comply With The Dignity For All Students Act,” Aug. 31, 2016, <https://ag.ny.gov/press-release/ag-schneiderman-and-state-education-commissioner-elia-releaseguidance-and-model>.

⁸ See New York State Education Department and New York State Center for School Safety, Dignity for All Students Act, Requirements for Schools (Tool for training school employees), 21 (2016), https://ag.ny.gov/sites/default/files/dasa_training_materials_final_-_8.30.16.pdf.

⁹ See Violence Prevention: Bully Prevention, OAKLAND UNIFIED SCHOOL DISTRICT, <https://www.ousd.org/Page/1158> (Last modified April 20, 2018).

¹⁰ Berkeley Unified School District Board of Education, Board Policy (“BP”) 5144.3, Administrative Regulation (“AR”) 5144.3, Expulsion, (last visited July 25, 2019), <https://www.berkeleyschools.net/schoolboard/policies/>.

¹¹ *Id.*

¹² See Letter from Sujatha Baliga (sbaliga@impactjustice.org), Director, Restorative Justice Project, Vice President, Impact Research, to Berkeley Unified School District, undated (letter on file with Advocates for Children). There are striking results: “In a study of participating crime victims in Alameda County, including sexual harm victims, over 98% of victims said that they would participate in a RJ process again.” *Id.*

¹³ See, e.g., Center for Safe Schools, Clemson Institute on Family and Neighborhood Life, & Highmark Foundation, Integrating Bullying Prevention and Restorative Practices in Schools: Considerations for Practitioners and Policymakers (2014), <http://www.safeschools.info/content/BPRPWhitePaper2014.pdf>



Advocates for Children of New York

Protecting every child's right to learn

Given the ample support for offering restorative practices to address discrimination, harassment, intimidation, bullying, and sexual harassment, when all students involved consent, we recommend the following modifications to CR A-831 IV.B. and CR A-832 IV.B:

~~Neither mediation nor conflict resolution is under any circumstances an appropriate intervention for bullying or intimidation.~~ Restorative practices, including mediation and conflict resolution, may only be used for conduct that violates this regulation if all students involved provide informed consent.

(suggesting ways restorative practices and bullying prevention can be used in tandem); Morrison, B., Bullying and victimization in schools: A restorative justice approach, Trends and Issues in Crime and Criminal Justice, 219 (2002), <https://aic.gov.au/publications/tandi/tandi219> (concluding that restorative justice approaches can be effective in addressing bullying in schools by incorporating a range of processes for maintaining healthy relationships, including community building, conflict resolution, and shame management).