TWO WRONGS DON'T MAKE A RIGHT:

Why Zero Tolerance is Not the Solution to Bullying

BULLYING +
ZERO TOLERANCE
≠
SAFE SCHOOLS

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Advancement Project
Alliance for Educational Justice
gsanetwork

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The **Alliance for Educational Justice (AEJ)** is a national alliance of youth organizing and intergenerational groups working for educational justice. AEJ aims to bring grassroots groups together to bring about changes in federal education policy, build a national infrastructure for the education justice sector, and build the capacity of our organizations and our youth leaders to sustain and grow the progressive movement over the long haul. AEJ's current campaigns focus on ending the school to prison pipeline by increasing funding for community and youth led solutions to improving school culture, an end to school closings in low income communities of color, and we are building a movement towards the creation of a National Student Bill of Rights. See www.allianceforeducationaljustice.org for more information.

Gay-Straight Alliance Network (GSA Network) is a national youth leadership organization that empowers youth activists to fight homophobia and transphobia in schools by training student leaders and supporting student-led Gay-Straight Alliance clubs throughout the country. In California alone, GSA Network has brought GSA clubs to 56% of public high schools, impacting more than 1.1 million students at 880 schools. GSA Network's youth advocates have played a key role in changing laws and policies that impact youth at the local and state level. GSA Network operates the National Association of GSA Networks, which unites 37 statewide networks of GSA clubs throughout the country. GSA Network is also the founder of the Make It Better Project, which aims to stop bullying and prevent suicide. See www.gsanetwork.org for more information.

Photos courtesy of GSA Network

INTRODUCTION

What responsibility do policymakers have to respond to the bullying and harassment of students in school?

How can schools better meet the needs of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students?

How can we ensure that schools are safe spaces for all students?

Fortunately, following a long, ignoble history of systemic failures to address the bullying and harassment of students, particularly LGBTQ students, these questions are now being considered far more than ever before. It seems that many lawmakers have been sensitized to the harms caused by bullying, harassment, and hostile school climates, and have responded with an unprecedented surge in policy and legislative activity. While the need to address this deeply harmful school behavior is undoubtedly urgent, the unfortunate trend has been to respond to bullying and harassment by referring so-called "bullies" to the police or using other harsh, "zero-tolerance" disciplinary measures that exclude students from school.

INTRODUCTION

This policy trend is remarkably similar to what happened as concerns over school safety escalated in the 1990s and early 2000s, particularly after high-profile school shootings like the one at Columbine High School. The response in many schools throughout the country was to rely more heavily on law enforcement agencies and the use of zero-tolerance measures. As has been well-documented, these policies and practices have failed to produce safer or more effective schools,[1] but have produced a variety of other harmful outcomes, including:

- Unnecessary use of school-based arrests and juvenile court citations;[2]
- Overuse and misuse of out-of-school suspensions, expulsions, and transfers to alternative disciplinary schools/programs;[3]
- Excessive use of metal detectors, surveillance cameras, Tasers, and other aggressive security measures;[4] and
- Overly-aggressive school security and law enforcement officials.[5]

This dangerous cocktail of policies and practices – often called the "School-to-Prison Pipeline" – has led to huge numbers of students being "pushed out" of school and criminalized across the country. The effects have been so devastating for these students, their families, and entire communities that numerous community-led efforts to dismantle the Pipeline and end the overly-harsh discipline of students have sprung up across the country within the last several years.[6]

Nevertheless, the same policies are now being widely used in response to the growing national concern over bullying. While there is no question that student-on-student harassment that goes unaddressed is a grave threat to the well-being of many youth, the threat posed to students by the over-reliance on police and zero-tolerance measures is just as great. Indeed, they share many of the same outcomes. Both produce severe psychological, emotional, and academic trauma in their victims.[7] Both create hostile, alienating school environments that affect other students and staff alike. Both have dramatic systemic effects, including worsening academic achievement and decreasing graduation rates.[8] Indeed, the often-devastating impact of bullying is strikingly similar to the harm caused by the mistreatment, harassment, and even violence suffered by students as a result of the many excessively harsh school disciplinary policies and practices currently in use throughout the country.

Thus, while the efforts to punish bullying harshly and even address it criminally are well-intentioned, they are nevertheless misguided (with some limited exceptions[9]) in that they reinforce the School-to-Prison Pipeline and the excessive involvement of law enforcement in the lives of students. The zero-tolerance approach simply will not solve the grave problem of bullying and harassment of students, but it will cause substantial additional harm, including for the very students it is intended to protect.[10] All young people, both LGBTQ and non-LGBTQ, will suffer if we fail to see that the zero-tolerance approach is a form of bullying, not a solution to it. All students should feel safe, supported, and protected from violence, bullying, and mistreatment, whether it is from other students, the adults charged with educating them, or broader institutional forces.

BULLYING & THE SAFE SCHOOLS MOVEMENT

Bullying is aggressive behavior that is intentional, involves an imbalance in power or strength, and is typically repeated over time.[11] It can take on many forms, such as hitting and punching (physical bullying), teasing and name-calling (verbal bullying), intimidation using gestures or social exclusion (nonverbal or emotional bullying), and online harassment (cyber-bullying).[12] Students face bullying and harassment for a wide variety of reasons, including how they look, how they choose to dress and express themselves, whether they have a disability, their size, their socioeconomic status, their ethnic heritage, their immigration status, their sexual orientation, their gender identity or expression, their religious beliefs, and even the activities they like or the type of music they listen to. Bullying affects students of every race, ethnicity, religion, sexual orientation, gender, and class. In fact, researchers estimate that in the United States, nearly 30% of students are either the victims of bullying, bully others, or both, within a given year.[13] A majority of students say they have experienced some form of school bullying during their school years.[14] Yet LGBTQ students are particularly affected by this behavior. In fact, over 8 out of 10 LGBTQ youth report being verbally harassed about their sexual orientation at school, and 6 out of 10 report feeling unsafe in school. [15]

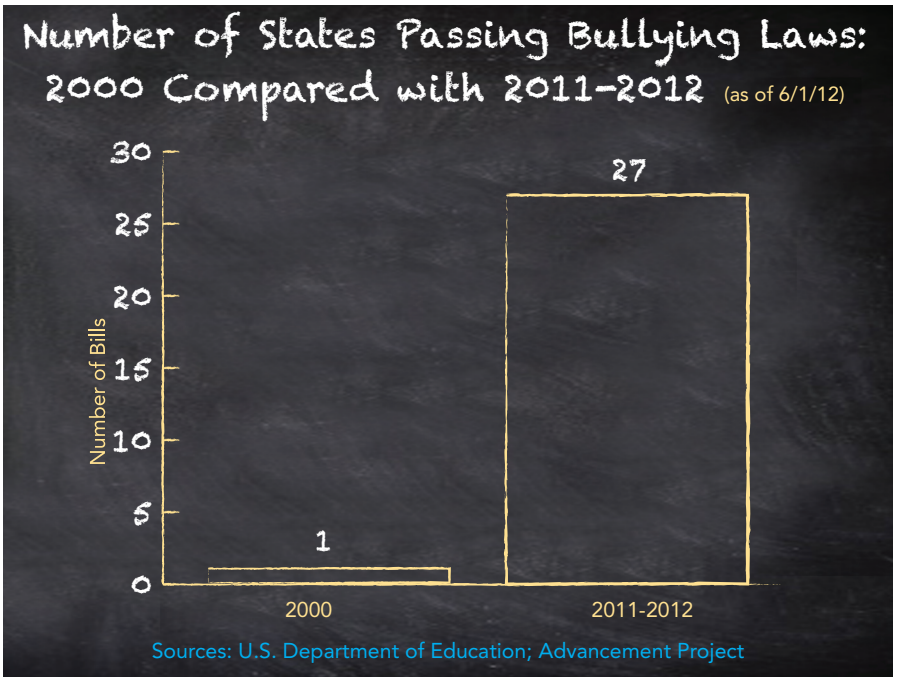
For all students, bullying can lead to:

- **Academic Difficulties.** Bullying distracts students from the most important part of their school experience – their education. Students who face bullying and harassment are more likely to see their GPAs and other indicators of academic success drop.[16]
- **Truancy.** For victims of bullying who are not supported by their school, regularly skipping classes or entire school days out of fear can become a survival mechanism.[17]
- **Acting Out.** Frustrated with the lack of support from peers and educators, students who face harassment and bullying may act out in class or on school grounds.[18]
- **Self-Defense.** Students who are bullied and do not have access to supportive services or safe interventions often find that fighting back is their only option. Victims of bullying may turn to physically defending themselves against bullies, carrying weapons, and other survival tactics that endanger the school community.[19] As a result, all students are at greater risk of physical harm, while the victims of bullying are more vulnerable to being suspended, expelled, or even arrested.
- **Psychological Trauma and Mental Health Consequences.** Students who face bullying and harassment are at greater risk of suffering from depression, loneliness, anxiety, low self-esteem, and suicidal thoughts.[20]
- **Dropping Out or Being Pushed Out of School.** A safe and nurturing school climate is vital to retaining students in schools. Bullied students who are deprived of that environment are at higher risk of dropping out or, in many cases, being pushed out of school by unsupportive students and adults.[21]

In the late 1980s, student groups known as Gay-Straight Alliance Clubs began to form in response to the profoundly negative impact that bullying has on individual students as well as overall school culture. As these student groups proliferated in high schools across the country in the mid- and late-1990s, the Safe Schools Movement emerged as a school-based organizing and advocacy effort for LGBTQ student justice. Since that time, youth advocates and their allies have sought to create safe spaces for LGBTQ students and secure greater protections for bullied and harassed students, particularly through the implementation of non-discrimination and anti-harassment policies covering actual or perceived sexual orientation, gender identity, and gender expression. As a result of these inspiring efforts, other innovative advocacy projects such as the "It Gets Better"[22] and "Make it Better"[23] campaigns, and the sharply increased public attention on bullying nationally, policymakers have begun taking notice, and taking action, in far greater numbers.

For example, the Obama administration has hosted two national conferences on bullying and launched www.stopbullying.gov.[24] The U.S. Department of Education provided guidance to school districts reminding them that failure to effectively deal with bullying in their schools could be considered a violation of civil rights law.[25]

There are also multiple pieces of legislation pending in Congress,[26] and state lawmakers are addressing the issue with unusual swiftness. In fact, 21 states passed new legislation or updated existing legislation to address bullying in 2010 (compared to one in the year 2000).[27] 23 states signed anti-bullying bills into law in 2011, and an additional four have already addressed the issue in 2012.[28]



However, as will be discussed below, while the intentions behind all of these initiatives have been admirable, the same cannot be said for all of their content. Indeed, the rapid response of many policymakers has unfortunately produced too many policy changes that fail to address the deeper issues around bullying and are likely to create more problems than they solve. [29]

ZERO TOLERANCE & THE MOVEMENT TO END THE SCHOOL-TO-PRISON PIPELINE

As an outgrowth of the War on Drugs and other "tough-on-crime" strategies that have produced an extraordinary increase in the number of incarcerated Americans over the last 25 years,[30] there has been a dramatic shift in school discipline policies and practices in recent years.[31] Within many communities, educators have deemphasized traditional school-based disciplinary interventions while greatly expanding their use of zero-tolerance disciplinary approaches that exclude students from their schools through out-of-school suspensions, expulsions, and referrals to alternative schools or programs.[32] At the same time, many schools have become over-reliant on police and juvenile courts to handle school disruptions that should be handled within school settings. And while the original intent of these policies and practices was to address serious threats to school safety – such as the rare student who carries a dangerous weapon or sells drugs within a school – the reality is that the vast majority of these extreme punishments are imposed for behaviors that do not pose a serious threat to school safety, such as classroom disruptions, skipping school, minor fights, and dress code violations.

Not only have the consequences for student behavior become more severe, the atmosphere within many schools has been poisoned by the overuse of these "get-tough" measures as well. Metal detectors and surveillance cameras have proliferated, while school police and security forces regularly employ aggressive enforcement tactics on students.[33] In fact, the intimidation, harassment, brutality, and other misconduct of some school police and security officers have turned many schools into hostile environments for the students they are supposed to be serving.[34]

These misguided disciplinary approaches have created a School-to-Prison Pipeline, endangering educational opportunities and making dropout and incarceration far more likely for millions of children and youth across

the country. Students as young as five-years-old, of all races, ethnicities, and socioeconomic statuses have been thrust into the Pipeline by disciplinary methods that prioritize senseless and unjust consequences, student exclusion, and justice-system intervention over students' right to an education. Nevertheless, it continues to fall hardest on students of color, students with disabilities, and LGBTQ youth.[35]

The effects of these overly-aggressive policies and practices are remarkably similar to the effects of student-on-student bullying, including:

- **Academic Difficulties.** Students who are not in class are, of course, not doing much learning. Thus, students subjected to harsh disciplinary measures that exclude them from school tend to fall behind academically.[36]
- **Truancy.** Students who face harsh discipline often feel alienated from their schools, resulting in more absenteeism.[37]
- **Acting Out.** Students punished by zero-tolerance measures often fall behind their peers due to lost learning time. As a result, they often become frustrated or embarrassed that they are not at their peers' level, and proceed to disrupt class.[38]
- **Self-Defense.** Students who feel oppressed by toxic school climates often respond with verbal outbursts, defiance of authority, violence, or simply skipping school.[39] These defense mechanisms are also frequently punished with additional zero-tolerance measures, creating a destructive downward spiral.
- **Psychological Trauma and Mental Health Consequences.** The almost prison-like conditions endured by many students can have deep psychological effects.[40] Additionally, unjust disciplinary consequences are frequently traumatizing for young people, leading to public humiliation, diminished self-worth, and distrust of school officials.[41] They also often trigger a cycle of disengagement from schools, where students become less trusting and more resentful of their teachers, losing the "connectedness" that is such a critical component of academic success.[42] As youth become more alienated, they also become more likely to engage in risky behaviors, violence, and alcohol and substance abuse.[43]
- **Dropping Out or Being Pushed Out of School.** Zero-tolerance discipline sends a clear message to students that they are not valued; unfortunately, that message has gotten through to far too many students who have been pushed out of school by unnecessarily severe disciplinary measures.[44]

To make matters worse, the zero-tolerance approach has failed to even achieve its stated purpose: to make schools safer and more effective.[45] Instead, zero-tolerance practices have harmed school improvement efforts while also wasting valuable resources.[46]

The School-to-Prison Pipeline has wreaked havoc in communities across the country, leading to a groundswell of grassroots advocacy to implement school disciplinary practices that are proven to promote academic success, improve school safety, and save taxpayer resources. In response to the chorus of voices calling for change, many school districts and state legislatures have begun to take action to address student pushout and unhealthy

learning environments.[47] At the federal level, the Departments of Education and Justice have embarked on a joint Supportive School Discipline Initiative,[48] and Congress has begun to devote more attention to disciplinary concerns.[49]

This recent activity does provide hope that policymakers will begin treating education as a right for all young people, not as a privilege that can be easily taken away by zero-tolerance measures. But in the meantime, these ineffective and counter-productive disciplinary measures continue putting countless students on a path to incarceration.

MOVEMENTS IN CONFLICT?

The movements to address bullying and the School-to-Prison Pipeline have much in common: both are intended to address severe harms to youth that too often go unnoticed; both seek to lessen the alienation and pushout of students; both aim to create healthier schools and communities; and both are being led by affected youth and parents. These two grassroots movements are doing vitally important work to ensure that the health, well-being, and educational opportunities of all young people are protected. Nevertheless, these well-intentioned efforts have inadvertently come into conflict, especially within the last two years.

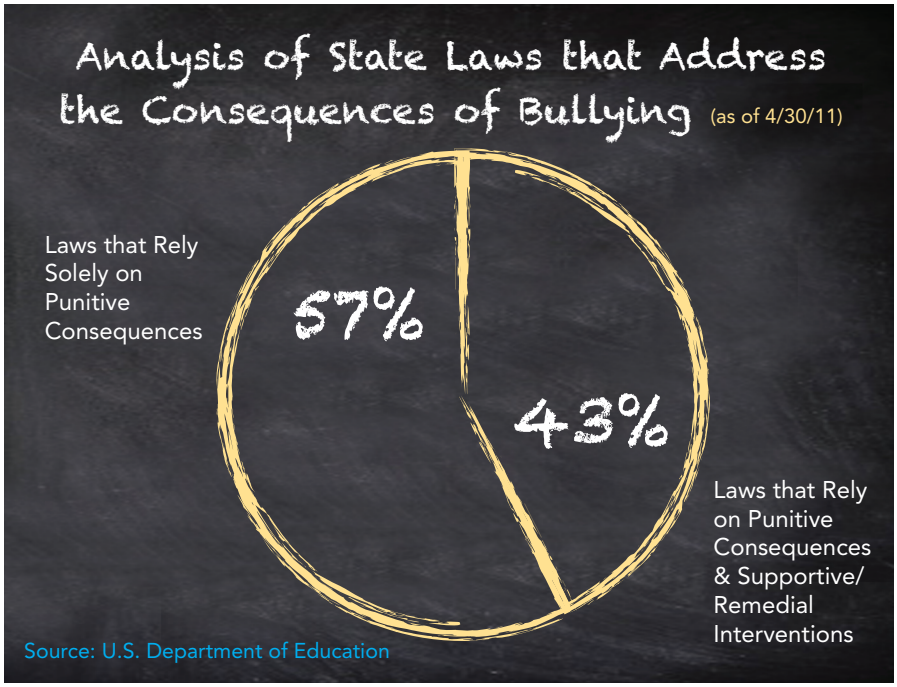
One of the causes of the School-to-Prison Pipeline is that, within many schools, the definition and understanding of discipline has changed. Before the explosion in zero-tolerance approaches (and still today in the schools that did not adopt the get-tough philosophy), discipline was viewed as part of the role of educators in teaching behavior, and there were dozens of preventive strategies and interventions used to assist students in their learning. Interventions that excluded students from school for days, weeks, or months at a time were far more rare, and police intervention was virtually unheard of (as it still is, at some schools).

Yet over the last several years—and due in significant part to the easy political appeal of harsh disciplinary approaches[50]—the techniques designed to teach better or more appropriate behavior, and address the root causes of disciplinary issues, have become far less common. There has been a severe narrowing in policymakers' understanding of the approaches available to address disciplinary matters. Thus, when policymakers are asked, or required, to address concerns over bullying, there has been a tendency to place far too much emphasis on the same strategies that have created the School-to-Prison Pipeline: out-of-school suspensions, expulsions, referrals to alternative disciplinary schools/programs, and even going so far as to arrest and prosecute students for behavior that would best be addressed within schools. As a result, within this flurry of policymaking over the last two years, many efforts to address bullying have collided with efforts to reform unnecessarily harsh school discipline.

Indeed, there has been a striking trend toward the use of harsh punishments to address bullying and harassment. For example:

- According to the U.S. Department of Education, of the 42 states with bullying laws that address the consequences of bullying, 57% of them (24 states) rely solely on punitive measures. [51]

- The other 18 states include more references to supportive or remedial interventions, but there is nevertheless a trend toward the inclusion of new punishments for bullying in these states.[52]



- Of the 40 states that provide their school districts with model bullying policies and guidance that address the consequences of bullying, 16 of them refer only to punitive measures.[53]
- Once again, many of the policies from the other 24 states rely excessively on harsh disciplinary consequences.[54]
- In a study of school district policies by the U.S. Department of Education, 50% of the sample studied relied exclusively on punitive measures to address bullying.[55]

Many of the anti-bullying policies, particularly those passed in the last two years, rely on or mirror the harshest school discipline policies enacted post-Columbine (which themselves mirrored some of the harshest criminal justice policies implemented in the 1980s and 1990s).[56] But perhaps the most striking trend in these new laws and policies is the expanded role for law enforcement in addressing student behavior.[57] While historically this responsibility fell almost exclusively to schools, there is now a strong tendency toward treating bullying as criminal conduct that should be handled through the criminal justice system.[58] For example:

- Fifteen states have passed bullying laws that include procedures for imposing criminal sanctions for bullying behavior.[59]
- Over one-half of the districts studied by the U.S. Department of Education outline procedures for reporting bullying offenses to law enforcement.[60]
- In many places, law enforcement has become the first resource to turn to in even the most minor incident of bullying. For example, numerous states have passed laws requiring that bullying behaviors be reported to law enforcement.[61] In New Jersey, students are encouraged to report their classmates to a Crime Stoppers hotline for alleged bullying.[62]
- Eight states have created new crimes, or modified existing ones, to include bullying behaviors.[63] For example, Idaho has created the crime of “harassment, intimidation, or bullying” against students.[64]

The trend is clear: states and districts are becoming just as reliant on overly-harsh responses for bullying and harassment as they are for other student disciplinary matters. As a result, much of the progress realized by the School-to-Prison Pipeline movement in eliminating the over-reliance on these ineffective and counter-productive practices is either being jeopardized or actively eroded.

HARSH RESPONSES TO BULLYING & THE EXPANSION OF THE SCHOOL-TO-PRISON PIPELINE

This emphasis on out-of-school suspensions, expulsions, alternative placements, and the criminalization of youth to address bullying is profoundly misguided. Just as the zero-tolerance philosophy has failed to make schools safer and more effective, so too will it fail to adequately address bullying because it:

- Subjects huge numbers of youth to very severe punishments;
- Does not address the root causes of bullying and stop the bullying cycle by teaching appropriate behavior;
- Casts such a wide behavioral net that it ends up harming those students it is supposed to protect; and
- Contributes to the deterioration of learning environments and the alienation of students.

Not only were the penalties for bullying increased in many of these recently-enacted laws and policies, the definition of bullying was also substantially broadened.[65] Because data shows that most youth experience bullying directly – meaning a substantial number of youth are committing acts defined as "bullying"[66] – a massive number of children and youth are at greater risk of entering the School-to-Prison Pipeline as a result of this policymaking trend. While the actions of some young people may necessitate temporary removal from school or an alternative placement, most will not. Thus, just as zero-tolerance for other disciplinary matters has led to severe punishments for vast amounts of developmentally normal behavior, so too can we expect these new bullying laws and policies to catch far too many students in their net.

Additionally, there is no reason to expect that this harsh approach will achieve its desired outcomes. Zero-tolerance measures are a mere stopgap that fails to teach the offending students why their behavior is inappropriate or harmful and how they can improve it. So-called "bullies" are, of course, youth themselves, and are thus struggling with their own insecurities – about their intelligence, social skills, physical attractiveness, attraction to others, gender expression, etc. – and are often just learning to understand themselves and the world around them. They are themselves frequently victims of messages of intolerance, hostility, and hate at home, at school, and from the media.

Bullying interventions that rely on exclusion or justice-system intervention miss critical opportunities to respond to these acute needs, break down these harmful behavioral patterns, and help teach misguided youth the social and emotional skills they will need to stop bullying and ultimately grow up to be healthy, mature, and responsible adults. Zero-tolerance responses also squander the opportunity to create healthier, more inclusive,

and more productive learning environments. Instead, just as with other student disciplinary matters, harsh responses to bullying usually only make matters worse, and create new problems, by putting the "bully" on a fast track toward dropping out and winding up in jail.

Indeed, zero-tolerance responses can actually have the unintended effects of strengthening a bully's resolve and further victimizing the recipient of his or her aggression. And where harsh responses are the norm, or even a regular practice, there can be a "chilling effect" on teachers and other adults even reporting bullying because of the fear that the consequences will be more severe than is appropriate.

Additionally, harsh responses to bullying can actually wind up harming the very students they are intended to protect. For example, by reinforcing the zero-tolerance approach and expanding the definition of "bullying," these new laws and policies put victims of bullying, and particularly LGBTQ youth, at heightened risk. In fact, the self-preservation techniques used by many LGBTQ youth in response to harassment have led them to become victims of this zero-tolerance approach.[67] Indeed, many students identified as "bullies" have previously been the victims of bullying, and vice versa.[68] Moreover, the use of harsh disciplinary actions typically leads to increased reporting, which has inadvertently "outed" many LGBTQ youth to their parents or peers, and can be both traumatic and dangerous for these young people.[69]

Another major flaw in the use of harsh disciplinary responses for bullying is that this approach is based on the premise that "bullies" are "bad apples" that need to be removed in order for schools to be safe. However, as the School-to-Prison Pipeline movement has taught us, the get-tough approach to weeding out students perceived as dangerous or disruptive – the so-called "bad kids" – is actually deeply harmful to everyone in a school. When anti-bullying efforts lead to zero tolerance and police involvement in schools, they only add to the oppression and alienation that students within those schools experience. That, in turn, will only lead to more hostile, and less healthy, school environments in which the relationships between students and adults are worsened, students dread even going to school, and the very behaviors we hope to avoid – violence, disruptions, harassment, bullying – are more likely to occur. In other words, the use of zero-tolerance measures to address bullying merely reinforces and perpetuates a downward spiral of excessive punishments, adult-youth conflict, and deterioration of school climates. Thus, unless policymakers are mindful of the systemic effects of their bullying interventions, they will create school environments that are less inclusive, less nurturing and, ultimately, less safe.

In short, while this push to "get tough" on bullies was intended to protect victims, and especially LGBTQ youth, it will instead have the opposite effect, and needlessly harm countless young people, sending both LGBTQ and non-LGBTQ youth into the School-to-Prison Pipeline.

CREATING SAFE, HEALTHY SCHOOLS FOR ALL YOUTH

The critical deficiency in the zero-tolerance approach to addressing bullying is that it fails to recognize that the concern over bullying is, at its core, the same concern that exists about harsh school discipline—namely, the widespread systemic failures to address the hostile and alienating learning environments that put all young people at risk. In far too many places, it has been, and continues to be, acceptable to treat young people as if they were disposable, either through systemic inaction around bullying or by using zero tolerance to push them out of school or criminalize them. Thus, instead of zero tolerance being a solution to bullying, they are instead both symptoms of the same problem.

While there is no question that we must address the bullying and harassment of students, we must resist the urge to rely on exclusionary or criminal consequences unless they are absolutely necessary. Resorting to these measures will almost always be inadequate and counter-productive, and simply will not create the safe schools we all want. If we stay on this path, we will only reinforce or expand the hostile school environments that have been created and reinforced in the misguided pursuit of school safety.

CREATING SAFE, HEALTHY SCHOOLS FOR ALL YOUTH

We must also recognize that to create truly safe and healthy schools for youth, the need to address institutional policies and adult-on-student behavior is just as urgent as the need to address student-on-student behavior. In other words, we must focus on creating systemic solutions to the issues that continue to jeopardize the health and education of so many youth, and we must fully integrate our efforts to address bullying and harassment with the elimination of the School-to-Prison Pipeline.

We must recognize that all young people have a right to an education, and need ample opportunities to grow and learn from their mistakes. Instead of schools that are too quick to push out and criminalize children and youth, we must instead create schools that are more nurturing, supportive, and inclusive, and in which any student-on-student misconduct is addressed productively and in developmentally-appropriate ways. These are the schools that every student deserves, every parent hopes for, and every educator wants to work in. And they are within our reach.

RECOMMENDATIONS

What follows are recommendations for action at the federal, state, and local levels to promote the creation of safe and healthy schools where bullying is dealt with comprehensively and appropriately and the School-to-Prison Pipeline is eliminated.

U.S. DEPARTMENT OF EDUCATION

1. Issue policy guidance and model policies in which it is made clear to school districts that: (a) bullying interventions that exclude offending students from school are only appropriate in severe cases, or when all other alternatives have been exhausted; and (b) the use of arrests and referrals to the juvenile justice system are only appropriate for bullying offenses where there has been a weapon or serious injury involved.

2. Modify criteria on existing grant programs to provide additional resources to states and districts working to create safe and healthy schools by: (a) addressing the overuse of exclusionary discipline and justice-system intervention, racial disparities within school discipline, and bullying through comprehensive initiatives; and (b) ensure that no departmental grant program or initiative is working at cross-purposes with these efforts.

3. Include sexual orientation and gender identity among the categories by which school discipline data collected by the Department is disaggregated.

U.S. DEPARTMENT OF JUSTICE

1. Issue policy guidance and model policies to law enforcement agencies that work with school systems, making it clear that while they may have a role in identifying, investigating, and responding to severe incidents of bullying, the use of arrests and referrals to the juvenile justice system are only appropriate where there has been a weapon or serious injury involved.

2. Modify criteria on existing grant programs to provide additional resources to juvenile courts and law enforcement agencies working collaboratively with school systems to: (a) address the overuse of justice-system intervention, racial disparities within school-based arrests and juvenile court referrals, and bullying through comprehensive initiatives; and (b) ensure that no departmental grant program or initiative is working at cross-purposes with these efforts.

CONGRESS

1. Pass the Student Non-Discrimination Act, which would change federal law to prohibit discrimination against any public school student on the basis of actual or perceived sexual orientation or gender identity,[70] and the Safe Schools Improvement Act, which will improve bullying prevention and intervention efforts at the school and district level.[71]

2. Provide grants to states for targeted investments in districts and schools for the creation of healthier and more supportive learning environments through: the implementation of alternatives to harsh discipline and justice-system intervention, such as restorative justice; training and professional development for teachers, administrators, support staff, and police and security officers; hiring additional guidance counselors, school psychologists, school social workers, and school nurses; facilitating reentry and re-enrollment of students returning from expulsion and justice-system placements; addressing disparities affecting students of color, LGBTQ students, and students with disabilities in the use of exclusionary discipline and justice-system intervention; and comprehensive bullying prevention and intervention programs, including LGBTQ-inclusive curricula. See the National Campaign for Quality Education's "Youth SUCCESS Act"[72] for more information.

3. Create a discretionary grant program to fund the creation of local or regional councils comprised of parents, students, and representatives from school systems, law enforcement agencies, juvenile courts, social services agencies, and non-profit community organizations that would be charged with developing and implementing comprehensive strategies to dismantle the School-to-Prison Pipeline and improve graduation rates in their community. Additionally, the councils should be charged with examining whether a reallocation of public resources across agencies would better maximize students' educational opportunities, create healthier and more productive school climates, and reduce the criminalization of youth. See the Youth SUCCESS Act[73] for more information.

RECOMMENDATIONS

STATE LEGISLATURES

1. Pass comprehensive legislation that: (a) focuses on effectively responding to incidents of bullying by addressing school climate and using age-appropriate responses and interventions that provide education, support, and remediation, rather than relying on exclusionary measures and referrals to law enforcement; (b) prohibits discrimination against any public school student on the basis of actual or perceived sexual orientation, gender identity, or gender expression; (c) limits the use of out-of-school suspensions lasting longer than five days, expulsions, disciplinary referrals to alternative schools/programs, arrests, and referrals to the justice system to conduct that poses a serious, ongoing threat to school safety; (d) prohibits the exclusion of students from school for more than five days in a given school year absent a significant showing of necessity made at a formal hearing governed by strong due process protections for students and parents/guardians; (e) requires districts to develop and implement a plan to address disparities affecting students of color, LGBTQ students, and students with disabilities in the use of exclusionary discipline and justice-system intervention; (f) creates a public reporting system on the issuance of out-of-school suspensions, expulsions, disciplinary referrals to alternative schools/programs, arrests, and referrals to the justice system, disaggregated by offense, race/ethnicity, gender, sexual orientation, age, grade, school, disability, and disposition; (g) creates school-administered, state-funded surveys to gauge school climate for all students, including LGBTQ youth;[74] and (h) creates an accountability structure under which violations of the above can result in remedial action, including heightened monitoring, technical assistance, and financial penalties.

2. Create state-level equivalents to #2 and #3 in the recommendations for Congress above.

SCHOOLS AND SCHOOL DISTRICTS

1. Convene a working group of stakeholders within the community – including parents, students, teachers, principals, and other community members – to develop and implement policies and practices that:

    a. Address bullying by: (i) requiring that educators effectively intervene to prevent bullying; (ii) requiring reporting of bullying to appropriate school officials and a prompt, thorough investigation; (iii) emphasizing age-appropriate responses and interventions that focus on education, support, and remediation rather than on exclusionary measures and referral to law enforcement; and (iv) requiring professional development around bullying for all staff members.

    b. Create safe spaces for LGBTQ youth by: (i) establishing and publicizing an anti-harassment policy that specifically includes actual or perceived sexual orientation, gender identity, and gender expression; (ii) training staff to intervene when they hear slurs or negative comments based on sexual orientation or gender non-conformity; (iii) supporting the establishment of Gay-Straight Alliances or similar clubs; (iv) ensuring that students know where to go for information and support related to sexual orientation, gender identity, and gender expression; and (v) implementing curriculum that includes LGBT people and information about sexual orientation and gender identity.[75]

c Address the overuse of zero-tolerance measures by: (i) limiting the use of expulsions, disciplinary transfers to alternative schools/programs, referrals to law enforcement, and school-based arrests to conduct that poses a serious, ongoing threat to the safety of students and staff; (ii) limiting the use of out-of-school suspensions to serious misconduct or when other interventions have been unsuccessful in addressing repeated low-level misconduct; (iii) prohibiting the exclusion of students from school for more than five days in a given school year absent a significant showing of necessity made at a formal hearing governed by strong due process protections for students and parents/guardians; (iv) encouraging the use of alternatives to exclusionary practices and referrals to law enforcement; (v) targeting disparities affecting students of color, LGBTQ students, and students with disabilities in school discipline; and (vi) strengthening the protection of parents'/guardians' and students' due process rights during all disciplinary proceedings and placements.

2 Reallocate funding dedicated to school police, security officers, metal detectors, and surveillance cameras toward more guidance counselors, social workers, psychologists, and nurses who are available to address students' academic, behavioral, and mental health issues.

3 Implement alternative practices, such as restorative justice and social emotional learning, in all schools.

4 Implement a district-wide training program for all school administrators, teachers, police and security officers, school staff, and expulsion hearing officers on: the mental health challenges, strains, and duress endured by students of color, LGBTQ, low-income youth, and all other students who face bullying and harassment; the adverse consequences of exclusion from school; effective classroom management techniques; adolescent development and relationship-building; conflict resolution, restorative justice, and other disciplinary alternatives; and student engagement through challenging and culturally relevant curricula. Additionally, all students should have access to non-biased mental health services, have their right to privacy respected, and not have their parents notified for issues related to students' sexual orientation and gender identity.

5 Implement an accountability structure under which school officials are held responsible for: (a) reducing the use of out-of-school suspensions, expulsions, disciplinary transfers to alternative schools/programs, referrals to law enforcement, and school-based arrests; (b) addressing disparities affecting students of color, LGBTQ students, and students with disabilities in school discipline measures.

6 Clarify the roles and responsibilities of law enforcement in school through a memorandum of understanding that limits school-based arrests and justice-system referrals to conduct that poses a serious, ongoing threat to the safety of students or staff.

7 Create a public reporting system for school discipline data, including referrals to law enforcement and school-based arrests, disaggregated by offense, age, gender, sexual orientation, grade, race/ethnicity, disability, school, teacher/school staff, and disposition. Data should also be used within the district to track program success, identify areas of improvement, and develop alternative programs tailored to the disciplinary issues that exist.

ENDNOTES

[1] *E.g.,* American Psychological Association, *Are Zero Tolerance Policies Effective in Schools?* 853-4 (December 2008), http://www.apa.org/pubs/info/reports/zero-tolerance.pdf; Advancement Project, *Test, Punish, and Pushout*, 5, 15-17 (March 2010), http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf.

[2] *Test, Punish, and Pushout*, supra note 1, at 18-19.

[3] *Id.* at 20-24.

[4] *Id.* at 16-17.

[5] *Id.*; Advancement Project & Youth United for Change, *Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison* 8, 13 (January 2011), http://www.advancementproject.org/digital-library/publications/zero-tolerance-in-philadelphia-denying-educational-opportunities-and-cr; Advancement Project & Power U, T*elling it Like it is: Youth Speak Out on the School to Prison Pipeline* (August 2011), http://www.advancementproject.org/digital-library/publications/telling-it-like-it-is-youth-speak-out-on-the-school-to-prison-pipelin-0.

[6] *See, e.g., Test, Punish, and Pushout*, supra note 1, at 34-42; Advancement Project, Stop the Schoolhouse to Jailhouse Track, http://stopschoolstojails.org/.

[7] *Id.*;Collaborative for Academic, Social, and Emotional Learning (CASEL), *Social and Emotional Learning and Bullying Prevention* 4 (2011), http://casel.org/wp-content/uploads/2011/04/SEL-and-Bullying-Prevention-2009.pdf.

[8] *Test, Punish, and Pushout*, supra note 1; Gay, Lesbian, and Straight Education Network (GLSEN), 2009 School Climate Survey 45-51 (Sept. 14 2010), http://www.glsen.org/cgi-bin/iowa/all/news/record/2624.html; *Zero Tolerance in Philadelphia, supra* note 5, at 11.

[9] *E.g.*, incidents involving weapons or serious injuries.

[10] For an excellent example of how that can occur, see http://www.youtube.com/watch?v=xHbKu-2p1WA.

[11] U.S. Department of Health and Human Services, StopBullying.Gov, *Bullying Definition*, http://www.stopbullying.gov/what-is-bullying/definition/index.html.

[12] U.S. Department of Health and Human Services, StopBullying.Gov, *What We Know About Bullying*, http://www.stopbullying.gov/community/tip_sheets/about_bullying.pdf.

[13] Nansel, T. R., Overpeck, M., Pilla, R. S., Ruan, W. J., Simons-Morton, B., & Scheidt, P., *Bullying behaviors among U.S. youth: Prevalence and association with psychosocial adjustment*, Journal of the American Medical Association 285, 2096 (2001), http://pdba.georgetown.edu/Security/citizensecurity/eeuu/documents/bullying.pdf.

[14] Public Broadcasting Service (PBS), *This Emotional Life: What is Bullying?* (2011), http://www.pbs.org/thisemotionallife/topic/bullying/what-bullying.

[15] GLSEN, *supra* note 8, at 25, 21.

[16] This can be especially problematic for LGBTQ students. For example, 30% of LGBTQ students skipped at least one day of school in the last month and their GPA's are half a grade lower when they were more frequently harassed by peers and adults. *Id*. at xvi, 16; Nirvi Shah, *Study Finds Bullying Takes an Academic Toll on Students*, Education Week (Aug. 31, 2011), http://www.edweek.org/ew/articles/2011/08/23/02bully.h31.html.

[17] GLSEN, *supra* note 8, at 23.

[18] Gastic, Billie, *School Truancy and the Disciplinary Problems of Bullying Victims*, Educational Review 60:4, 398-399 (2008).

[19] Carney, A.G., & Merrell, K.W., *Bullying in Schools: Perspectives on Understanding and Preventing an International Problem*, School Psychology International 22, 368 (2001); see also, e.g., MSNBC.com, *Bullied Teen Student who Fired Stun Gun is Expelled*, (May 8, 2012), http://usnews.msnbc.msn.com/_news/2012/05/08/11600211-bullied-gay-student-who-fired-stun-gun-is-expelled.

[20] CASEL, *supra* note 7; Boyle, D.J, *Youth Bullying: Incidence, Impact, and Interventions*, Journal of the New Jersey Psychological Association, 55(3), 9 (2005), http://www.umdnj.edu/vinjweb/publications/articles/bullying.pdf; Mary Elizabeth Dallas, *Bullying May Raise Risk of Suicidal Thoughts* Medline Plus, (March 2, 2012), http://www.nlm.nih.gov/medlineplus/news/fullstory_122538.html.

[21] Lambda Legal, *Facts: Gay and Lesbian Youth in Schools*, http://data.lambdalegal.org/pdf/158.pdf; Debra J. Pepler & Wendy Craig, *Making a Difference in Bullying* 8 (April 2000), http://casel.org/wp-content/uploads/2011/04/Craig_Pepler_2000_REPORT_Making_a_Difference_in_Bullying.pdf.

[22] It Gets Better Project, http://www.itgetsbetter.org/.

[23] Make it Better Project, http://www.makeitbetterproject.org/.

[24] Jarrett, Valerie, *Ending Bullying in our Schools and Communities*, The White House (April 20, 2012), http://www.whitehouse.gov/blog/2012/04/20/ending-bullying-our-schools-communities.

[25] Letter from Russlynn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education to Colleagues (October 26, 2010), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html.

[26] S. 506, H.R. 1648, 112th Cong. (2011). The Safe Schools Improvement Act requires the implementation of anti-bullying policies. S. 555, H.R. 998, 112th Cong. (2011). The Student Non-Discrimination Act (SNDA) will give LGBT students the federal right to be free from discrimination, harassment and bullying based on a student's actual or perceived sexual orientation or gender identity.

[27] U.S. Department of Education, *Analysis of State Bullying Laws and Policies* xi, 79 (2011), http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf.

[28] The following states all passed legislation that addressed bullying in 2011: AR, AZ, CA, CO, CT, HI, IL, IN, MD, MI, MO, MS, ND, NJ, NM, NV, RI, TN, TX, UT, VA, VT, and WV. ME, OH, SD, and VT have passed legislation as of June 5, 2012. Additionally, legislation in LA recently passed both houses and is awaiting the signature of the governor.

[29] *E.g.,* Gastic*, supra* note 18.

[30] Pew Charitable Trust, *Public Safety, Public Spending: Forecasting America's Prison Population* (June 2007): http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State-based_policy/PSPP_prison_projections_0207.pdf.

[31] *Test, Punish, and Pushout, supra* note 1.

[32] *Id*.

[33] *Id*. at 15-16.

[34] See, e.g., *Zero Tolerance in Philadelphia, supra* note 5.

[35] Advancement Project, Education Law Center, et.al., *Federal Policy, Reauthorization of ESEA and the School-to-Prison Program* (March 2011), http://www.advancementproject.org/digital-library/publications/federal-policy-esea-reauthorization-and-the-school-to-prison-pipeline; Goodhue, David, *Study: Gay Teens More Likely to Receive School Discipline*, All Headline News, (Dec. 6 2010) (citing: Himmelstein, Kathryn E. W., Brückner, Hannah, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study* (Sept. 13, 2010)).

[36] Justice Center: The Council of State Governments, *Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (July 2011), http://justicecenter.csg.org/resources/juveniles.

[37]"Studies have shown a relationship between school climate, student absenteeism and the rate of student suspension." Center for Social and Emotional Education and National School Board Association, *School Climate Guide for District Policymakers and School Leaders* 3 (2009), http://www.schoolclimate.org/climate/documents/dg/district-guide-csee.pdf (citing: Cohen, J,. McCabe, E.M, Michelli, N.M & Pickeral, T., *School Climate: Research, Policy, Teacher Education and Practice*, Teachers College Record, Volume 111: Issue 1: 180-213 (2009), http://www.tcrecord.org/Content.asp?ContentId=15220).

[38] See American Psychological Association, *supra* note 1, at 854; Gastic, supra note 18.

[39] *Test, Punish, and Pushout, supra* note 1; Noguera, Pedro A., *Preventing and Producing Violence: A Critical Analysis of Responses to School Violence*, Harvard Educational Review, Vol. 65 No. 2 (1995).

[40] *Test, Punish, and Pushout, supra* note 1, at 17.

[41] *Id*.

[42] Blum, Robert W., Rhinehart, Peggy Mann, *Reducing the Risk: Connections That Make a Difference in the Lives of Youth* 21-24 (1997), http://www.eric.ed.gov/PDFS/ED412459.pdf.

[43] *Id*.; Washington Post, *Suicide Turns Attention to Fairfax Discipline Procedures* (Feb. 20, 2011), http://www.washingtonpost.com/wp-dyn/content/article/2011/02/19/AR2011021904141.html.

[44] *Test, Punish, and Pushout, supra* note 1; American Psychological Association, supra note 1, at 854; Justice Center, supra note 36.

[45] American Psychological Association, *supra* note 1.

[46] *Test, Punish, and Pushout, supra* note 1, at 17, 24; Voices of Youth in Chicago Education, *Failed Policies, Broken Promises: The True Cost of Zero Tolerance in Chicago* 19-22 (July 2011), http://www.voyceproject.org/sites/default/files/VOYCE%20report%202011.pdf.

[47] *Test, Punish, and Pushout, supra* note 1, at 35-38; see also, e.g., Jennings, Angel, Los Angeles Times, *L.A. City Council Scales Back Truancy Law* (February 23, 2012), http://articles.latimes.com/2012/feb/23/local/la-me-0223-truancy-law-20120223; Padres y Jovenes Unidos, *Jovenes Unidos Win Landmark Discipline Reform for State of Colorado* (May 9, 2012), http://www.padresunidos.org/jovenes-unidos-win-landmark-discipline-reform-state-colorado.

[48] U.S. Department of Education, *Secretary Duncan, Attorney General Holder Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices* (July 21, 2011), http://www.ed.gov/news/press-releases/secretary-duncan-attorney-general-holder-announce-effort-respond-school-prison-p.

[49] *See, e.g.*, Elementary and Secondary Education Reauthorization Act of 2011, 112th Cong. (2011), http://www.help.senate.gov/imo/media/doc/ROM117523.pdf

[50] *Test, Punish, and Pushout, supra* note 1, at 9-12.

[51] *Analysis of State Bullying Laws and Policies, supra* note 27, at 43-44.

[52] *Id*.

[53] *Id*. at 54.

[54] *Id*.

[55] *Id*. at 69.

[56] *Test, Punish, and Pushout, supra* note 1, 9-12; see, e.g., Ga. Code Ann. §20-2-751.4 (requiring any student accused of bullying on three or more occasions to automatically be transferred to an alternative school).

[57] *Analysis of State Bullying Laws and Policies, supra* note 27, at 19.

[58] *Id*. at 19-20.

[59] *Id*. at 39.

[60] *Id*. at 69.

[61] Sacco, D.T., Silbaugh, K., et al., *An Overview of State Anti-Bullying Legislation and Other Related Laws*, 7-8, 34-35 (Feb. 23, 2012), http://cyber.law.harvard.edu/publications/2012/state_anti_bullying_legislation_overview.

[62] See, e.g., NY Times, *Bullying Law Puts New Jersey Schools on the Spot* (August 31, 2011), http://www.nytimes.com/2011/08/31/nyregion/bullying-law-puts-new-jersey-schools-on-spot.html.

[63] Sacco, D.T., Silbaugh, K., et al., *supra* note 61, at 9-10.

[64] *Id*. Code Ann. § 18-917A.

[65] For example, many states now allow singular incidents, rather than a pattern of behavior, to be considered bullying. In addition, the definition has also been expanded in many states to include behavior that occurs online or off of school grounds.

[66] Nansel, *supra* note 13.

[67] Some students have used bullying as a form a deflection while they questioned their own identities; others have fought back in self-defense; e.g. http://www.youtube.com/watch?v=xHbKu-2p1WA, supra note 10; MSNBC.com, *Bullied Teen Student who Fired Stun Gun is Expelled, supra* note 19.

[68] Nansel, *supra* note 13 (6.3% of sixth through tenth graders had played the roles of both bully and victim); see also, e.g., http://www.youtube.com/watch?v=xHbKu-2p1WA, supra note 10.

[69] The National Gay and Lesbian Task Force; *Lesbian, Gay, Bisexual, and Transgender Youth: An Epidemic of Homelessness* (2006), http://www.thetaskforce.org/downloads/HomelessYouth.pdf (According to one study, 50% of gay teens experienced a negative reaction from their parents when they came out and 26% were kicked out of their homes).

[70] S. 555, H.R. 998, 112th Cong. (2011).

[71] S. 506, H.R. 1648, 112th Cong. (2011).

[72] National Campaign for Quality Education, Youth Success Act (May 2011), http://www.nationalcampaignforqualityeducation.org/about/youthsuccessact/.

[73] *Id*.

[74] These surveys should include demographic questions about sexual orientation and gender identity, so our public education and school discipline implementation systems can adequately identify and then address education, dropout, and incarceration disparities.

[75] Russell, S. T., McGuire, J. K., Laub, C, & Manke, E., California Safe Schools Coalition Research Brief #3, *LGBT Student Safety: Steps Schools Can Take* (2006), http://ebookbrowse.com/cssc-research-brief-3-pdf-d60904264.

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