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**Written Testimony of Commissioner Dr. Betty A. Rosa
New York State Education Department
Senate Education and New York City Education Committees Hearing on School Discipline
May 3, 2023**

Good afternoon, Chairs Mayer and Liu, Senator Jackson and members of the Senate Committees on Education and New York City Education. I am Dr. Betty A. Rosa, and I am New York's Commissioner of Education. I am pleased to be here today to testify on behalf of the Board of Regents and the Department. I am joined by Angelique Johnson-Dingle, Deputy Commissioner for P-12 Instructional Support, and Kathleen DeCataldo, Assistant Commissioner for Student Support Services.

In its Every Student Succeeds Act (ESSA) plan, the Board of Regents committed to minimizing punitive exclusionary practices to align with the ESSA mandate to create State and district-level plans to avoid “the overuse of discipline practices that remove students from the classroom” (20 USC §§ 6311 [g] [1] [c] [ii], 6312 [b] [11]). New York State's approved plan recognized several goals for school districts, such as “reduc[ing] the overuse of punitive and exclusionary responses to student misbehavior.”¹ In a January 2019 resolution, the Board of Regents “reaffirm[ed] its commitment to ensuring that all students have equitable access to learning opportunities in safe and supportive school environments free from discrimination, harassment, and bias including reducing dependence on exclusionary school discipline and increasing equity in education for all students.”²

The pandemic has caused significant trauma to everyone – including school staff, students and their parents. However, for some students the pandemic caused more significant trauma - food and housing insecurity, isolation, family loss of income, loss of parents/caretakers and other family members. In New York City, it is reported that approximately 8,600 children lost a parent or caregiver due to COVID.³ Traumatic experiences can affect all aspects of learning and can create further difficulties, including with peer and adult relationships and also negatively affect a student's ability to regulate their emotions, behavior and attention, sometimes resulting in responses such as aggressive behaviors or inattentiveness in the classroom.⁴ However, with support from caring, trusted adults, children can overcome the effects of trauma and thrive.⁵

Strong relationships between teachers and students greatly affects students' connectedness to school, which is linked to positive student outcomes, including fewer behavioral problems and better academic

¹ New York State Department of Education, ESSA Plan (Jan. 12, 2018), <https://www.nysed.gov/sites/default/files/programs/essa/nys-essa-plan.pdf>

² New York State Board of Regents, Resolution (January 14, 2019), https://www.regents.nysed.gov/common/regents/files/Resolution_0.pdf

³ Khan, F. (2022). 1 in every 200 nyc children have lost a parent or caregiver to covid. That's twice the national rate. *The City*. <https://www.thecity.nyc/2022/4/20/23033998/1-in-every-200-children-nyc-lost-parent-covid-twice-national-rate>

⁴ Cole, S., Greenwald O'Brien, J., Gadd, G., Ristuccia, J., Wallace, L. & Gregory, M. (2005). *Helping Traumatized Children Learn*. www.traumasensitiveschools.org

⁵ Cantor, P. (2021). A new purpose for education. *All Children Thriving*. <https://www.aft.org/ae/fall2021/cantor>

outcomes, and can be a protective factor against other adversities.⁶ School connectedness, meaning a student’s sense of belonging and feeling valued and respected in the school community, is tied to positive educational achievement, and emotional wellbeing and is a protective factor against, e.g., behavioral problems and poor mental health. Not surprisingly, school connectedness is adversely affected by exclusionary school discipline.⁷

Exclusionary school discipline is an adult response to student behavior that includes removal or exclusion from the classroom or school environment. The use of exclusionary school discipline is intended to address student misbehavior and conduct violations. It is embodied within “zero tolerance” approaches to promoting school safety.⁸

In August 2019, the Department’s Office of Student Support Services reconvened a group of key stakeholders - the Safe Schools Task Force - to explore a broad range of issues related to school safety in our state.

In April 2021, in response to multiple tragedies that exposed continuing racial inequities and led to widespread civil unrest, the Task Force considered how to address structural inequities and bias in the application of exclusionary school discipline and disciplinary practices.

Task Force members met numerous times between April 2021 and Fall 2022 to hear from practitioners and experts in the areas of school discipline research to understand the negative impacts of exclusionary school discipline on student outcomes, state and nationwide trends in discipline, discipline reform efforts and to share perspectives about changes that New York state should implement to address a systemic and punitive system that exists in New York state laws, policies and culture. To fully understand the problem, the Safe Schools Task Force engaged a nationally recognized expert on education policy, Kristen Harper, Vice President for Public Policy and Engagement at Child Trends, the nation's leading nonprofit research organization focused exclusively on improving the lives and prospects of children, youth, and their families.

Child Trends provided the Task Force with an analysis of the United States Department of Education Civil Rights Data Collection (CDRC) that revealed the disheartening evidence that in New York, school district’s reliance on exclusionary discipline had barely decreased from school year 2011 through school year 2016. Based on data submitted by schools to the CDRC for the 2016-17 school year, on average, in New York, 23 days of instruction were lost due to Out of School Suspensions per 100 students. Even more concerning was the large disparities in the number of days lost when the data are disaggregated by race/ethnicity where Black students lost 47 days of instruction due to Out of School Suspensions, Native American/Alaskan Native 32 days and Hispanic students, 24 days per 100

⁶ Monahan, K. C., Oesterle, S., & Hawkins, J., D. (2010). Predictors and consequences of school connectedness: the case for prevention. *The Prevention Researcher* 17(3).

https://link.gale.com/apps/doc/A259750109/HRCA?u=nysl_oweb&sid=googleScholar&xid=b63c04a0

⁷ Graham, L.J., Gillett-Swan, J., Killingly, C., & Van Bergen, P. (2022). Does it matter if students (dis)like school? Associations between school liking, teacher and school connectedness, and exclusionary discipline. *Frontiers in Psychology*, 13. <https://doi.org/10.3389/fpsyg.2022.825036>

⁸ Boccanfuso, C., & Kuhfeld, M. (2011). Multiple responses, promising results: evidence-based, nonpunitive alternatives to zero tolerance. *Child Trends*. <https://www.childtrends.org/publications/multiple-responses-promising-results-evidence-based-nonpunitive-alternatives-to-zero-tolerance>

students.⁹ The data indicated a pervasive pattern of disparity in exclusionary discipline in New York State, with Black students facing significantly higher rates of both in-school and out-of-school suspensions. Further the data show Black boys with disabilities are suspended at more than twice the rate of any other demographic, and Black students missing nearly three times as many school days as white students due to the use of Out of School Suspension (or OSS).¹⁰

A preliminary report “*Investigating Potential Correlates with In-and Out-of-School Suspensions in New York State Public Middle, Junior-Senior High, and High Schools*” (2022), which reviewed and analyzed data submitted to the Department from New York State Schools for school years 2012-2013 to 2018-2019, revealed similar disparities in in-school and out-of-school suspension for Black students, with the largest racial disproportionality appearing in middle school.¹¹

Child Trends staff also presented an overview of the current research regarding the harmful effects of exclusionary school discipline on educational and social outcomes for young people. When students are suspended, for example, they are more likely to drop out of school and have subsequent involvement with the juvenile justice system; they are also less likely to enroll in postsecondary education.¹² High rates of suspension have long-lasting impacts on student success, with frequent out-of-school suspensions predicting low academic achievement, course completion, and attendance.¹³ While many studies focus on out-of-school suspension, removal from the classroom (e.g., in-school suspensions), too, results in lower grade point averages and an increased risk of dropout.¹⁴

Exclusionary discipline does not accomplish what schools are seeking to achieve - the evidence is weak at best that suspensions prevent future misbehavior and given recent advances in brain science,

⁹ Ryberg, R., Her, S., Temkin, D., & Harper, K. (2021). Despite reductions since 2011-12, black students and students with disabilities remain more likely to experience suspension. *Child Trends*. <https://www.childtrends.org/publications/despite-reductions-black-students-and-students-with-disabilities-remain-more-likely-to-experience-suspension>; Ryberg, R. (2021, October 29). School Discipline in New York, 2011-2017 [Presentation]. New York State Education Department Safe Schools Task Force.

¹⁰ Ryberg, R. (2021, October 29). School Discipline in New York, 2011-2017 [Presentation]. New York State Education Department Safe Schools Task Force.

¹¹ *Recommendations for Reducing Disparities in and Reforming School Discipline in New York State* (2022). <https://www.regents.nysed.gov/sites/regents/files/P-12%20-%20Recommendations%20for%20ATT%20-%20Recommendations%20for%20Reducing%20Disparities%20in%20and%20Reforming%20School%20Discipline%20in%20New%20York%20State.pdf>

¹² Losen, D. J., & Martinez, T. E. (2013). Out of school and off track: The overuse of suspension in American middle and high schools. The Center for Civil Rights Remedies at UCLA’s Civil Rights Project, <https://escholarship.org/uc/item/8pd0s08z>; Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P., & Booth, E. A. (2011). Breaking schools’ rules: A statewide study of how school discipline relates to students’ success and juvenile justice involvement. Council of State Governments Justice Center. http://knowledgecenter.csg.org/drupal/system/files/Breaking_School_Rules.pdf; Balfanz, R., Byrnes, V., & Fox, J. H. (2015). Sent home and put off track: The antecedents, disproportionalities, and consequences of being suspended in the 9th grade. In D. Losen (Ed.), *Closing the school discipline gap: Equitable remedies for excessive exclusion* (pp. 17–30). Teachers College Press.; Rosenbaum, J. (2020). Educational and criminal justice outcomes 12 years after school suspension. *Youth & Society*, 52(4), 515-547.

¹³ Chu, E.M., & Ready, D.D. (2018). Exclusion and urban public high schools: short- and long-term consequences of school suspensions. *American Journal of Education*, 124, 479-509; Noltemeyer, A.L., Ward, R.M., & McLoughlin, C. (2015). Relationship between school suspension and student outcomes: a meta-analysis. *School Psychology Review*, 44(2), 224-240.

¹⁴ Cholewa, B., Hull, M.F., Babcock, C.R., Smith, A.D. (2018). Predictors and academic outcomes associated with in-school suspension. *School Psychology Quarterly*, 33(2), 191-199.

adolescent brains are not sufficiently developed to weigh adverse consequences before acting.¹⁵ The research also indicates that the use of suspension is associated with less safety and poor student-to-student relationships.

A multi-tiered system of support (MTSS), however, ensures an accessible, high-quality learning environment for all students while serving to identify students who are at-risk or in need of targeted or intensive intervention as early as possible. Through effective use of data and teaming strategies, staff can identify those who need support and use evidence-based interventions to address these concerns. School-based interventions (e.g., academic supports, counseling, mentoring, and skills training) can all be coordinated through the implementation of school-wide positive behavioral interventions and supports or SW-PBIS and are considered effective alternatives to suspension.¹⁶ SW-PBIS training and implementation are correlated with reductions in overall office discipline referrals and suspensions, as well as improvements in student behavior at the elementary and secondary levels.¹⁷

Social-emotional learning embedded in subject area curriculum, teaching practices, school climate, discipline policies, and adult practice shows positive effects on outcomes for students, including reduced emotional distress, improved engagement, and improved academic achievement.¹⁸ School-wide restorative practices can be used to build community, strengthen relationships, and manage conflict or harm. The use of a circle process is central to restorative practices, as are accountability and the adoption of shared values and respect for, and relationships within, the community. Implementing restorative practices school-wide with fidelity can lead to reductions in the rate of office discipline referrals and suspension.¹⁹

¹⁵ Teen Brain: Behavior, Problem Solving, and Decision Making (2017). *American Academy of Child and Adolescent Psychiatry*. https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx; Massar M. M., McIntosh K., & Eliason B. M. (2015). Do out-of-school suspensions prevent further exclusionary discipline? PBIS evaluation brief. Eugene, OR: OSEP Center on Positive Behavioral Interventions and Supports; Steinberg L., Dahl R., Keating D., Kupfer D. J., Masten A. S., & Pine D. S. (2015). The study of developmental psychopathology in adolescence: Integrating affective neuroscience with the study of context. *Developmental Psychopathology: Volume Two: Developmental Neuroscience, Second Edition*. (D. Cicchetti & D. J. Cohen, Ed.) <https://doi.org/10.1002/9780470939390.ch18>

¹⁶ Valdebenito, S., Eisner, M., Farrington, D.P., Ttofi, M.M., & Sutherland, A. (2019). What can we do to reduce disciplinary school exclusion? A systematic review and meta-analysis. *Journal of Experimental Criminology*, 15, 253-287.

¹⁷ Bradshaw, C. P., Mitchell, M. M., & Leaf, P. J. (2010). Examining the effects of schoolwide positive behavioral interventions and supports on student outcomes results from a randomized controlled effectiveness trial in elementary schools. *Journal of Positive Behavior Interventions*, 12, 133-148; Flannery, K.B., Fenning, P., McGrath Kato, M., & McIntosh, K. (2014). Effects of school-wide positive behavioral interventions and supports and fidelity of implementation on problem behavior in high schools. *School Psychology Quarterly*, 29(2), 111-124.

¹⁸ Durlak, J.A., Weissberg, R.P., Dymnicki, A.B., Taylor, R.D., & Schellinger, K.B. (2011). The impact of enhancing students' social and emotional learning: a meta-analysis of school-based universal interventions. *Child Development*, 82(1), 405-432; Taylor, R.D., Oberle, E., Durlak, J.A., & Weissberg, R.P. (2017). Promoting positive youth development through school-based social and emotional learning interventions: a meta-analysis of follow-up effects. *Child Development*, 88(4), p. 1156-1171; Sklad, M., Diekstra, R., De Ritter, M., Ben, J., Gravesteyn, C. (2012). Effectiveness of school-based universal social, emotional, and behavioral programs: Do they enhance students' development in the area of skill, behavior, and adjustment? *Psychology in the School*, 49(9), p. 892-909.

¹⁹ Anyon, Y., Gregory, A., Stone, S. I., Farrar, J., Jenson, J. M., McQueen, J., Simmons, J. (2016). Restorative interventions and school discipline sanctions in a large urban school district. *American Education Research Journal*, 53, 1663-1697.

For example, as opposed to a zero tolerance automatic suspension for a student caught vaping on school property, a restorative intervention may include viewing a series of videos regarding the effects and dangers of vaping, writing a reflective essay with a series of restorative questions to be answered, such as:

- How/why did you start?
- Do you think you could quit right now if you wanted to? Do you want to? Why or why not?
- How did these videos make you feel? Explain the emotions you felt while watching them.
- Has this changed your mind about vaping at all? Why or why not?
- Is there anything that anyone can do to help you?

There could also be an assignment to create an anti-vaping poster or a slide deck presentation on the dangers of vaping to be used to educate younger students. This response encourages the student to learn about why the school prohibits vaping, reflect on their actions and also gives the student an opportunity to give back to the school community by creating something that can be shared with other students.

With the data and research as a backdrop, the taskforce reviewed New York’s current discipline laws and regulations as well as actions other states had taken to revise their discipline policy and law. The Task Force recommendations aimed to address the identified disparities, minimize the use of exclusionary discipline, and promote alternative strategies. The recommendations seek to minimize the use of exclusionary discipline for all students and promote alternative tools that can be used at the discretion of local administrators. The goal was to equip local administrators and districts with the means to respond to student behavior and keep schools safe without resorting to practices that have a significant negative impact on students’ access and opportunity.

The Safe Schools Task Force recommendations included amending the New York State Education Law to reframe the punitive model of discipline to a system of proactive, developmentally appropriate, culturally responsive, positive, and supportive practices that allow children to learn from their mistakes – essentially a paradigm shift from a culture of punishment to one which seeks to identify the root causes of student misbehavior, provide appropriate supports to allow students to remain in the classroom and help students learn from their mistakes.

The Task Force recommendations include significant professional development, in-service training and certification requirements for administrators, teachers, counselors and aides and changes in teacher and other school staff preparation programs to appropriately prepare educators to work with all students. Topics should include family and community engagement; culturally responsive and sustaining education; creating welcoming and affirming environments through classroom management; de-escalation; community building and social emotional learning; restorative practices; and collaborative problem solving, preventing and addressing bullying, harassment, and discrimination. These critical practices cannot be achieved without directed, permanent funding to develop and deliver training and preparation in creating culturally responsive, welcoming classrooms and schools and effective school discipline. Providing adequate staffing, training, ongoing technical assistance, and resources at the school level will ensure their success.

The recommendations of the Task Force report include recommendations to limit suspension of our youngest students, which are not absolute prohibitions, but rather recognize that, in rare circumstances, some students will need to be suspended, due to exigent circumstances or safety concerns. The Task

Force report also recommends limiting the length of long-term suspensions to 20 days per incident unless required by federal Law or, in certain circumstances, permit a school district to seek an extension of the suspension beyond 20 days in connection with a long-term suspension hearing, when it is unsafe for the student to return within the 20-day period.

Throughout its recommendations, the Task Force recognized that systemic reform is not an easy undertaking – at any level – but reflects the belief that as educators, we have a responsibility to ensure that our students are not deprived of an opportunity to learn except in the most egregious of circumstances, and they are provided the supports necessary to be fully engaged in a supportive educational system. Finally, the Safe Schools Task Force Report recognizes that its recommendations are a significant change in practice for many schools. As such, it recommends permanent legislative funding to support schools in hiring appropriate staff and training to implement the changes.

To implement the recommendations of the Safe Schools Task Force, school staff will need professional development and ongoing local and State support to build their capacity to meet and address students’ social, emotional, and behavioral needs. Effective systems and practices include multi-tiered systems of support, restorative practices, and social emotional learning, and require strong engagement with families. Feedback systems – collecting data to measure effectiveness of positive interventions and strategies is critical to sustaining change. The Department continues to advocate for long-term State and local investments to build the capacity of staff and ensure appropriate supports are available to students to enable them to succeed. Educators must be supported through staff preparation programs and through continuing in-service professional development. To finally move toward long-lasting change, permanent directed funding for necessary staff, professional development, and access to supports must be allocated through the State budget process.

Education Law Sections 2801 and 3214, which frame New York State’s school discipline policy, harken back to a different time and era when the effects of trauma, child development and brain science were not understood. The laws contain zero tolerance provisions and language that labels students as violent, disruptive and delinquent. There are no provisions that suggest that a response to student misbehavior could be a positive intervention rather than punishment. Current law fails to provide flexibility to school administrators to craft responses to student conduct that include restorative justice practices, community service or referrals to supportive services that cannot be provided by the school.

The Dignity For All Students Act (the Dignity Act), Article 2 of the Education Law, enacted in 2012, provides a much different framework for responses to bullying, harassment and discrimination in schools. The Dignity Act requires “measured, balanced and age-appropriate responses to instances of student conduct, with responses and procedures following a progressive model that makes appropriate use of intervention, discipline and education, varies in method according to the nature of the student conduct, the developmental age of the student and the student's history of behavioral concerns” and further provides that schools should take prompt actions reasonably calculated to end the student misconduct, prevent recurrence of the behavior and create a more positive school climate and culture. This should be the framework for school response to any student misconduct or disruptive behaviors.

Corporal Punishment, Restraint and Seclusion in Schools

The Department recently proposed amendments of Section 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of

Education Relating to the Prohibition of Corporal Punishment, Aversive Interventions, Prone Restraint and Seclusion; Permitted Use of Timeout and Restraint; and Data Collection to continue its mission to ensure the health and safety of all students. The proposed regulations continue to prohibit the use of corporal punishment and aversive interventions and, consistent with federal guidance, add a prohibition on the use of seclusion. These regulations will also prohibit the use of prone restraint, consistent with the prohibition of prone restraint by all other New York State agencies.

The proposed regulations require districts to use proactive strategies to address behavior concerns, including the use of multi-tiered system of supports, evidenced based practices and de-escalation techniques, and provide for the authorized limited use of timeout only in response to an immediate concern for the physical safety of student or others; prohibit the use of physical restraint in response to the destruction of property unless the property damage would result in imminent harm to the student or others; and provide for the authorized limited use of physical restraint as necessary to prevent imminent danger of serious physical harm of student or others and when used in conjunction with a student with a disability's behavioral intervention plan.

The proposed regulations also:

- require schools to adopt a written policy that establishes administrative practices and procedures regarding the use of timeout and physical restraint and provide the minimum requirements for what is to be included in such policy and procedures. The written policy must be made public and posted on the school's website if one exists;
- add annual training requirements for all school staff members who interact with students regarding school board policies and procedures related to corporal punishment, aversive interventions, seclusion, timeout, and physical restraint and further require additional training for all school staff members who may monitor timeout and/or implement physical restraint on evidence-based, positive and proactive strategies and crisis intervention procedures, and safe physical intervention and de-escalation techniques; and
- do not require schools to use timeout or physical restraint but establish guidelines for when and how timeout and physical restraint may be utilized and add documentation and reporting requirements relating to the use of timeout and physical restraint and codify the same day notification following the use of timeout or physical restraint to parents of students with disabilities required under Chapter 516 of the Laws of 2022 and expand that notification to apply to parents of all students.

Following the 60-day public comment period and any required public hearing, it is anticipated that the proposed amendment will be presented to the Board for permanent adoption at the July 2023 meeting. If adopted at the July 2023 meeting, the proposed amendment will become effective as a permanent rule on August 2, 2023.

Next Steps for the NYS Education Department

The Department is currently working on resources for schools, including a web-based Data Toolkit resource with embedded tools and external resources to inform school discipline data collection, analysis, and decision-making with relevant tools and strategies for reducing the use of exclusionary

practices and addressing disproportionality. This includes a series of implementation briefs that will provide clear implementation steps and resources to support schools in topic areas such as exploring strengths and needs through self-assessment; establishing a vision for safe schools and equitable, supportive discipline; building buy-in and navigating the change process; and evaluating progress and adjusting course.

Alternative Discipline Grant Program

The New York State 2019-20 Enacted Budget first provided a \$3 million appropriation which has been continued in each subsequent Enacted Budget. Appropriations currently total \$12 million in funding for the 2023-2026 Alternative Discipline Grant program that will increase school districts' development and implementation of alternative approaches to student discipline. Grant awards will be prioritized for high-needs school districts, or those having high levels of student suspensions or exclusions.

To understand the timelines of this grant program, the first year the funds were available was the first year of the pandemic. In the winter of 2021, the Department sent a list of schools determined by NYSED to be eligible for the funds, based upon criteria determined by the Department to the Division of Budget (DOB). Despite numerous requests, DOB never approved the proposed distribution of funds. The Department then determined to utilize a Request for Proposal (RFP) process to distribute these important funds. The draft RFP is currently with DOB seeking approval to post.

The goal of the grant program is to increase school districts' implementation of evidence-based or research-supported promising practices that shift school-based discipline implementation from exclusionary punitive models and towards equity-driven, proactive, and supportive approaches, including, but not limited to, restorative practices, therapeutic crisis intervention, staff training on alternative discipline and implicit bias, and trauma-informed education. Implementing these alternative approaches is intended to result in a reduction of the number of suspended students and begin to address disproportionality in the suspension rates of students of color.

The grant will run for 3 years from December 1, 2023 - November 30, 2026 with a possible year 1 planning year.

School Climate Improvement Grants

The New York State 2022-23 Enacted Budget provided a \$2 million appropriation to create the 2023-24 School Climate Improvement Grant program that will increase school districts' development and implementation of pilot programs creating and enhancing positive school climate. Awards will be prioritized for high-needs school districts, or those having high levels of student suspensions or exclusions. Holistic needs of students will be met using proven models and/or innovative approaches including establishing or increasing the number of, staff monitored "calming" (aka "chill", "sensory", "peace", "de-escalation" or "wellness") spaces and rooms to provide students with opportunities to de-escalate as method to reduce the use of or avoid exclusionary discipline, including sensory furnishings and materials and increasing the number of staff trained in de-escalation, conflict resolution, social emotional learning and other approved techniques to enable them to provide effective support to students who utilize or are referred to these spaces.

Conclusion

New York State is at a crossroads. The health, safety, and well-being of the children and adults in our schools is paramount. Educational equity must be at the forefront of our policies and practices. The Department recognizes that one size does not fit all. New York is a large state, in population and size. While it is important to provide districts with guidelines and policies, it is important as well to give them appropriate flexibility to develop creative solutions to their unique challenges. We will only succeed through our collective effort to build the essential supports that schools need to create school environments that are warm, welcoming and where students feel respected, that they belong and are able to learn and thrive.