



Beyond Bullying

How Hostile School Climate Perpetuates the School-to-Prison Pipeline for LGBT Youth

By Preston Mitchum and Aisha C. Moodie-Mills February 2014

Center for American Progress



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Introduction and summary

School discipline policies have been under heightened scrutiny by the U.S. Department of Education because of the disparate impact they have on students of color. Data released last spring by the Office for Civil Rights, or OCR, revealed that rigid school discipline policies—which lead to suspensions and expulsions of students for even the most minor offenses—perpetuate a school-to-prison pipeline that disproportionately criminalizes students of color and students with disabilities.¹

Last month, the U.S. Department of Education released “Guiding Principles: A Resource Guide For Improving School Climate and Discipline,” the first time federal agencies have offered legal guidelines to address and reduce racial discrimination and disproportionality in schools.² This guidance makes tremendous strides in reporting on the stark racial disparities in school discipline, however, missing from this groundbreaking work are lesbian, gay, bisexual, and transgender, or LGBT, youth—who are also disproportionately affected by harsh school discipline policies—due to the dearth of data to illuminate their experiences.

All too often, LGBT youth are pushed out of the classroom as a result of a hostile school climate. When an LGBT youth is tormented in school by classmates and is emotionally or physically harmed, or even worse, driven to suicide, the news media rightly shines a spotlight on the situation. And while bullying grabs the headlines, as it should, it is only a portion of the story when it comes to LGBT youth feeling unwelcome and less than safe in school.

To be certain, peer-on-peer bullying is an important factor that influences school climate and has been linked to poor health, well-being, and educational outcomes.³ But research suggests that harsh school discipline policies also degrade the overall school experience and cycle LGBT youth and students of color into the juvenile justice system at alarming rates. The role that overly harsh school discipline policies and adults in schools play in setting school climate is often overlooked. School discipline policies and the application of those rules set the tone for the school environment and shape the experiences for students of color and LGBT youth.

Studies suggest that the actions (or inactions) of adults in schools associated with school climate—issues that go beyond bullying—have the potential to derail youth, particularly LGBT youth, and push them into a cycle of unfair criminalization that has lifelong consequences:

- LGBT youth, particularly gender-nonconforming girls, are up to three times more likely to experience harsh disciplinary treatment by school administrators than their non-LGB counterparts.⁴
- As with racial disparities in school discipline, higher rates of punishment do not correlate with higher rates of misbehavior among LGBT youth.⁵
- LGBT youth are overrepresented in the juvenile justice system; they make up just 5 percent to 7 percent of the overall youth population, but represent 15 percent of those in the juvenile justice system.⁶
- LGBT youth report significant distrust of school administrators and do not believe that school officials do enough to foster safe and welcoming school climates.⁷

Safe and welcoming school climates are essential to achieving positive educational outcomes for all youth, especially students of color and LGBT youth who often face harassment, bias, and discrimination at school based on their race, sexual orientation, and gender identity or expression. In this report, we examine the disparate impact of harsh school discipline and the policing of schools on students of color and LGBT youth, as well as the role that adults in schools play in perpetuating hostile school climates for those youth. Furthermore, we explain why it is important that discipline policies are fair and supportive, rather than punitive and criminalizing, and foster healthy learning environments in which all students can excel.

The school-to-prison pipeline defined

The cycle of pushing youth out of schools and into the juvenile and criminal justice system is commonly known as the school-to-prison pipeline. Today, an unprecedented number of youth are suspended, expelled, arrested, or detained by law enforcement as a result of excessive school discipline policies that hand down severe punishments for what are often relatively minor offenses. Each year, more than 3 million of America's students are suspended at least once, and more than 100,000 students are expelled as a result of misguided zero-tolerance policies that enforce rigid and often extreme penalties on students who violate school codes, even minor offenses.⁸

When Cedrico Green was in eighth grade, he was put on probation by a youth court judge for fighting in school. After that incident, numerous subsequent school offenses were deemed a probation violation—from wearing the wrong color socks to talking back to a teacher—and the consequence was a return to juvenile detention. Cedrico cannot remember how many times he returned to juvenile detention, but guessed that it was at least 30 times—time when he was not in school and therefore fell behind in his schoolwork and subsequently failed several classes, even though he said he liked school.⁹

Zero-tolerance policies had noble beginnings and were originally enacted to promote school safety in the wake of highly publicized incidents of school violence, including mass shootings, gang violence, and drug-related situations.¹⁰ In an effort to protect students from one another, schools systematically replaced their traditional discipline practices with the punitive tools of the criminal justice system to the point where many schools now outsource typical disciplinary management to police officers who patrol the halls. School districts across the country have increased the number of police officers on middle school and high school campuses and employ military-style security tactics as part of a so-called “get tough” approach to misbehavior.¹¹ Zero-tolerance policies demand harsh and hasty

punishments as a response to what are often trivial and nonviolent disciplinary infractions and they result in the overcriminalization of youth in schools.¹²

School safety should certainly be a top priority for all schools, but these types of heavy-handed interventions are problematic for two reasons. First, the hyper-focus on student behavior positions this problem as the greatest threat to school climate and risks misplacing the responsibility of classroom management on students instead of on school administrators where it rightfully belongs. Second, there is little evidence that zero-tolerance policies and policing tactics succeed at making schools safe, or result in a significant decrease in student misconduct.¹³

Instead, what we do know is that overly punitive disciplinary measures do more to degrade overall school climate, erode educational outcomes, and funnel young people into the juvenile justice system at alarming rates than they do to keep them safe.¹⁴ What's more, these policies siphon greater numbers of black youth and LGBT youth of color into the school-to-prison pipeline. In Florida, for example, black students are 21 percent of Florida youth but make up an astounding 46 percent of all school-related referrals to law enforcement.¹⁵ The majority of arrests of all Florida public school students—67 percent—were for dress code violations, schoolyard fights, talking back to authority, and minor acts of insubordination.¹⁶ Unfortunately, Florida is not alone when it comes to racial disparities in student suspensions, expulsions, and arrests.

In a 2011 national investigation of racial disproportionality in school discipline, black students were two to three times more likely to face school-based referrals for behavioral concerns than their white counterparts for the same or similar behavior.¹⁷ These referrals often lead to suspensions, expulsions, and arrests, which deny students critical classroom instruction time and drive down grades.¹⁸ The disparate treatment of black and Latino students is often rooted in school administrator and police officer bias. And there can be no question that prison-like school climates exacerbate problems for students of color. In fact, the presence of law enforcement in schools results in five times the disorderly conduct arrests than in schools that do not have police officers patrolling the hallways.¹⁹

Yet hidden among these data are countless LGBT youth who are also disparately impacted by school discipline policies and are disproportionately cycled through the school-to-prison pipeline. As with black and Latino students, harsh school climates push LGBT youth out of schools and into the hands of law enforcement, but little attention has been given to their experiences.

Research shows that even though LGBT youth make up between 5 percent and 7 percent of the overall youth population, they represent 15 percent of those in the juvenile justice system, and the vast majority of these youth are black and Latino.²⁰ The high rates of arrests and detainment of LGBT youth cannot be explained by a greater frequency of delinquent behavior, as studies show that LGBT youth are punished more harshly than their heterosexual counterparts when committing comparable offenses.²¹

Hostile school climates push students out of schools

Studies show that school climate has a profound impact on the mental, physical, and emotional health of LGBT students and is a crucial factor in pushing these students out of school and into the juvenile justice system.²² In “Two Wrongs Don’t Make A Right,” a 2012 report by Advancement Project, the Alliance for Educational Justice, and the Gay-Straight Alliance, or GSA, Network, the authors review evidence that hostile school climates result in lower academic scores, psychological trauma, diminished self-worth, acting out due to frustration or embarrassment, and dropping out of school altogether.²³

Hostile school climate perpetuates higher rates of truancy, absenteeism, and dropping out for LGBT youth, heightening the risk of arrest for those students already particularly susceptible.²⁴ Far too often, LGBT youth are forced to decide between attending schools with hostile climates and the likelihood of being harassed, or skipping school and possibly facing truancy charges. The National School Climate Survey conducted biannually by the Gay, Lesbian & Straight Education Network, or GLSEN, remains one of the few studies to examine the experiences of LGBT students nationally. GLSEN reports that 32.7 percent of LGBT students missed school in the “past month” because they did not feel safe, compared to the national average of 4.5 percent for all students.²⁵ As a result of missing school to avoid being tormented, LGBT youth have a greater risk of facing truancy charges and ultimately ending up in the juvenile justice system.

In Los Angeles, for example, students previously received tickets for truancy violations and faced fines of up to \$250, which with penalties and fees could cost more than \$800 just for one ticket.²⁶ Although unresolved truancy violations can lead to court sanctions, they are not a deterrent to missing school as studies show that involving students in the juvenile justice system actually makes it more likely they will never come back to school.²⁷ A first-time arrest in high school, for example, doubles the likelihood that a student will drop out. What’s more, when students must appear in court, the likelihood of dropping out nearly quadruples.²⁸ Los Angeles recently decided to reform its truancy laws because the previous system was more focused on the courtroom instead of the classroom.²⁹

Hostile school climates also rob LGBT youth of critical learning and classroom time. When factoring in multiple traits such as race, sexual orientation, and gender identity, it should come as no surprise that suspension rates of black LGBT students are high, which in turn leads to poor academic outcomes. The damaging effects of a hostile school climate are further highlighted in the report, “Shared Differences,” which found that black LGBT students who are harassed typically earn a grade-point average a half-point lower than students who do not experience harassment in school.³⁰ Add to this social geometry the latest Census data revealing that only 40 percent of black same-sex couples report completing some level of postsecondary education, compared to 67 percent of white same-sex couples.³¹ These data points suggest that while all LGBT-identified people may experience similar inequities in the educational environment based on sexual orientation or gender identity, there are unique factors exacerbating those inequities and holding back the educational attainment of black LGBT people.

The evidence of hostile school climates, school push-out, and the criminalization of LGBT students of color may help explain these differences.

Examining factors beyond bullying that contribute to hostile school climates

For the most part, much of the focus has been on peer-on-peer bullying when it comes to school climate, but it encompasses so much more than that. Although some of this discussion rightfully highlights bullying as part of the hostile school climate analysis, we must also consider how dress codes, unenumerated policies, lack of LGBT resources, and zero-tolerance policies feed the school-to-prison pipeline.

Peer-on-peer bullying

“My mom [told the judge that I was gay]. She told him I wouldn’t go to school and I got kicked out. [But the problem was] I was getting harassed at school. My probation officer lied and said it wasn’t as bad [at school] as it was.”³²

– Andrew, a 17-year-old Latino gay male in an Equity Project focus group,
May 4, 2008

Like many LGBT youth, Andrew encountered verbal and physical harassment at school from his classmates. Tired of the harassment, Andrew eventually stopped attending school, which led to school resource officers enforcing truancy and other disciplinary actions against him. School should have been a safe space for Andrew to learn and thrive, but instead the hostile school climate and rigid truancy policies ultimately pushed him out.

Bullying is intentional aggressive behavior that is typically repeated over a period of time.³³ It can be physical, verbal, or emotional, and it can be a personal encounter or it can occur online, which is more commonly referred to as cyberbullying. Students encounter bullying for a variety of reasons, including race, ethnicity, religion, physical appearance, income levels, and based on actual or perceived sexual orientation and gender identity or expression.³⁴

Many LGBT youth encounter peer-on-peer harassment in school. GLSEN has recorded the unique challenges facing LGBT students, including bullying, expulsion, and distrust of school administrators, among others. According to the 2011 National School Climate Survey, 63.5 percent of LGBT students felt unsafe at school because of their sexual orientation and 43.9 percent because of their gender expression, and for good reason.³⁵ An alarming 85 percent of LGBT students report experiencing harassment because of their sexual orientation or gender identity, with 20 percent reporting being physically attacked.³⁶ What's worse, when LGBT students do experience bullying from peers, adult school personnel often fail to intervene. More troubling, some of these adults, instead of assisting, directly engage in antagonizing LGBT youth.³⁷ According to a study by the Advocates for Children, or AFC, 47 percent of LGBT students reported being called offensive names by teachers and 23.5 percent have had security guards refer to them in a derogatory manner.³⁸

Peer-on-peer bullying can lead to dangerous consequences for youth, especially students of color and LGBT youth. Studies consistently show that verbal and physical harassment based on sexual orientation or gender identity is associated with a higher prevalence of alcohol and inhalant use, smoking, drunk driving, violence, depression, suicide attempts, isolation, as well as truancy and lower grades.³⁹ Ultimately, many LGBT youth drop out of school to avoid a hostile school climate, which puts them at heightened risk of coming in contact with the juvenile justice system.⁴⁰ Surely unaddressed peer-on-peer harassment threatens the safety of students, however, referring so-called "bullies" to law enforcement is not an effective solution because it has not shown to reduce the incidence of bullying.⁴¹ Instead, policymakers and school administrators should implement restorative justice programs (discussed below), reduce police presence in schools, and promote positive behavioral interventions and supports. What's more, suspending bullies is not an effective solution because all students need more robust education, not punishments that remove them from the classroom, or worse, lead to incarceration. Also, LGBT youth who are the victims of bullying are often labeled as perpetrators and unfairly punished for defending themselves. Therefore, blanket policies that label youth as bullies without taking into account the circumstances under which the bullying occurs fail to address the root causes of the problem: in this case, the harassment of LGBT students based on their sexual orientation and gender identity or expression.

Another sad reality is that for many LGBT youth, schools are often the only reprieve they have from a hostile home life. Yet too often schools are far from welcoming for many LGBT youth, despite research illustrating that schools are some

of the safest places for youth overall.⁴² GLSEN reports that LGBT students have low levels of confidence in school administrators and personnel, and as a result, many do not report incidences of harassment because they fear the situation will become worse or that nothing will be done to alleviate the torment.⁴³ In fact, one-third of LGBT youth who do report bullying said that school officials failed to address the harassment.⁴⁴ As a result, harassment against LGBT youth goes unreported because the fear is they will be blamed for “standing out” and causing the disturbance, and in the end being the ones punished.

Dress codes and monitoring of student behavior

In 2010, a groundbreaking study using data from the National Longitudinal Study of Adolescent Health revealed that lesbian, gay, and bisexual, or LGB, youth—and gender-nonconforming girls in particular—are more likely to experience harsh disciplinary treatment by school administrators than their gender-conforming heterosexual counterparts.⁴⁵ The study also found that LGB youth faced harsher punishments by school authorities than their heterosexual peers for similar offenses. Importantly, these differences were not explained by greater engagement in illegal or transgressive behaviors by LGB youth.⁴⁶ The authors assessed six outcomes: school expulsion, police stops, juvenile arrest, juvenile conviction, adult arrest, and adult conviction of LGB and heterosexual youth and determined that LGB youth suffer disproportionately in school and criminal justice sanctions. The study observed similar trends for juvenile arrests and convictions and school-based arrests and expulsions, and found that LGB youth were between 1.25 times and 3 times more likely to face criminal sanctions for similar offenses than their heterosexual counterparts.⁴⁷

This study suggests that rigid school policies have the adverse effect of overpenalizing and overcriminalizing LGB youth because of their sexual orientation and gender identity or expression. Take, for example, school dress code policies that penalize students whose attire does not conform to traditional gender stereotypes. According to a recent GLSEN study, 14.1 percent of students felt constricted by school policies that limited permissible clothing based on gender.⁴⁸ Students specifically mentioned examples of male students not being allowed to wear feminine clothing and, to a lesser extent, female students not being permitted to wear masculine attire.⁴⁹ Not only does this make for a hostile school climate, but it also prohibits self-identity and expression.

Asante Cotman, a 17-year-old junior at Charles City High School in Charles City County, Virginia, was suspended for three days after refusing an order from a school official to take off a pair of high heels he was wearing. “I’m not advertising. I’m being myself,” said Cotman. “I want to be able to be a regular student. A gay regular student that attends CCHS.”⁵⁰

Strict clothing designations force students to conform to gender stereotypes and unfairly penalize gender-nonconforming students for wearing clothing that would otherwise be acceptable. Transgender students are especially affected by the biased application of dress code policies that suppress their true gender identity. Certainly, school officials should reduce distractions that thwart learning in school, but gender-based dress codes reinforce harmful stereotypes and perpetuate bias against LGB and gender-nonconforming youth.⁵¹

Research also suggests that school administrators and security officers exhibit bias in the application of other school policies, often holding LGBT youth to more restrictive standards of conduct than their peers. For instance, intimate affection among LGB students is often treated differently than the same behavior among their heterosexual counterparts. As Yvette, a 16-year-old Latina lesbian from an Equity Project focus group recounted, “[School security] is so disrespectful; I can’t even put my arm around my girl. They say it’s not appropriate, but the boys are all nasty and rub up on the girls and the security say nothing.”⁵²

Such biased application of school policy contributes to the hostile school climate for LGBT youth; therefore, it is not surprising that many LGBT youth distrust and lack confidence in school administrators.

Unenumerated policies

While the goal of any safe school legislation is to protect all students, we know that creating protected classes of students is critical for LGBT students because of the heightened experience of peer-on-peer and adult-on-youth bullying. Despite the increased rates of bullying against LGBT students, evidence suggests that administrators are less likely to punish bullies who target LGBT students.⁵³ The lack of responses could be linked to prejudice, or due to the lack of enumeration

that leaves a broad interpretation for what is and is not bullying. Without protected classes for bullying or harassment in school policies, LGBT students are rendered invisible and left vulnerable.

The best way to effectively respond to bullying in school policy is to enumerate categories of students that must be protected—based on heightened vulnerability and disparate impact—such as students of color and LGBT youth.⁵⁴ Consider the enumerated school policy below, as referenced in a fact sheet produced by GLSEN, which specifically protects students based on “sexual orientation and gender identity or expression.”

“Bullying means any gesture or written, verbal or physical act that takes place on school property, bus or off-site location where school activities are taking place, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic or association with a person or group with one or more of the actual or perceived characteristics.”⁵⁵

Despite the disparate impact of bullying on LGBT students, many legislators, school officials, and community members are hesitant to pass enumerated bullying policies because they believe enumeration provides “special privileges.”⁵⁶ Enumeration, however, is critical in protecting all students as research shows that teachers are more likely to intervene to prevent incidents of bullying in a school when an enumerated policy is in place.⁵⁷ Applying a federal enumeration standard not only protects all students, but also speaks to the disproportionate bullying of LGBT students and will reduce hostile school climates through improved intervention. While most states have enacted legislation to combat bullying, very few states have categorized LGBT students as a protected class.⁵⁸ But if laws and policies are to be effectively implemented, history recognizes that enumeration is vital. In *Romer v. Evans*, for example, the U.S. Supreme Court noted, “enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply.”⁵⁹ Enumerated anti-bullying policies reduce the role of personal bias in decision making around bullying intervention.

As of 2012, all but two states, Montana and South Dakota,⁶⁰ enacted legislation requiring school districts to adopt policies regarding bullying, which would undoubtedly help make schools safer for all youth, especially students of color, students with disabilities, and LGBT youth. But because there is no federal definition of what constitutes bullying, a patchwork of interpretations of bullying that usually does not cover students based on sexual orientation and gender identity or expression has resulted.⁶¹ This inconsistency could change with the passage of the Safe Schools Improvement Act, or SSIA, and the Student Non-Discrimination Act, or SNDA.⁶²

Given the heightened vulnerability and disparate impact faced by students of color and LGBT youth, it is important that policies specifically acknowledge them as protected classes. As such, enacting enumerated state and federal policies will go a long way toward ensuring safe, supportive, and affirming school environments for all youth, especially LGBT youth of color.

Proposed federal education laws relevant to LGBTQ students⁶³

H.R. 2262 and S. 3739, the Safe Schools Improvement Act

The Safe Schools Improvement Act requires each school and district that receives Safe and Drug-Free Schools and Communities Act funding to implement a comprehensive anti-bullying and anti-harassment policy that enumerates categories of protection, including “a student’s actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity or religion.” The SSIA also encourages schools and districts to implement effective prevention strategies and professional development for school personnel aimed at effectively addressing bullying and harassment in their schools. This law would also require states and districts to include harassment data in their statewide reporting of bullying.

H.R. 4530 and S. 3390, the Student Non-Discrimination Act

The Student Non-Discrimination Act was modeled after Title IX and would provide protections and recourse to students targeted for discrimination based on their actual or perceived sexual orientation or gender identity. SNDA would provide federal protections similar to those designed to prevent discrimination based on race, color, national origin, sex, disability, or age, helping to ensure that students who are or who are perceived to be LGBT would have access to a quality education free from discrimination.⁶⁴

Lack of access to LGBT resources

Teachers and administrators work hard to create safe school environments, but because of the lack of role models and resources, students who are LGBT or perceived to be LGBT continue to face a grim reality.⁶⁵ Through inclusive policies such as providing LGBT resources in schools—web access that allows students to search LGBT-inclusive websites, for example—a welcoming environment for students, including students of color and LGBT youth, can be developed.⁶⁶

One way to improve the amount of LGBT resources for students is by allowing Gay-Straight Alliances, or GSAs—student-led organizations to make schools more inclusive and accepting for LGBT youth—to be active on campus. GSAs educate students on the importance of supporting LGBT students and contribute to increasing safe and welcoming school environments.⁶⁷ Having GSAs on campus:

- Sends a message that biased language and harassment will not be tolerated by peers and administrators
- Helps students identify supportive school staff, which has a positive impact on academic achievement and educational outcomes
- Makes school more accessible to LGBT students by contributing to a more positive and less hostile school environment⁶⁸

Despite research illustrating the need for GSAs, many students lack access to them and other similar student organizations that provide support to LGBT students and their allies.⁶⁹ For black LGBT students, particularly those in schools where the student population is predominately black, the obstacles to support and acceptance are even more formidable since these students are less likely to attend schools that have affirming programs such as GSAs.⁷⁰ The lack of GSAs in predominately black communities could be attributed to the mainstream depiction of LGBT issues as “white issues” or even to the silencing of black people who also identify as LGBT. Either way, GSAs could provide an affirming school climate for black LGBT students and help these youth graduate from high school.

Nonetheless, increasing the number of GSAs will not solve the problem of the lack of access to LGBT-related resources. According to “Out Online: The Experiences of LGBT Youth on the Internet,” a report by GLSEN that examines the experiences of LGBT youth online, 62 percent of LGBT youth have used

the Internet to connect with other LGBT people in the past year.⁷¹ Moreover, 50 percent of LGBT youth reported having at least one personal relationship with an online friend.⁷² Although LGBT youth face obstacles both in-person and online, the Internet can be a safe space for these youth to develop healthy communication and foster nurturing relationships. Therefore, public and private schools should permit students to have online access to LGBT information so they can feel accepted and affirmed.

In recent years, however, advances in technology—designed to broaden and enrich student access to new materials—has ironically restricted the ability to access viewpoint-neutral resources such as LGBT information.⁷³ Oftentimes, this is because public school libraries use web-filtering software that categorizes LGBT information as pornographic or otherwise sexually explicit.⁷⁴ Blocking websites, with no indicator of them containing sexually explicit material, gives the impression that being LGBT is something that is unwelcome. Given the evidence of psychological distress among LGBT youth related to stigma, limited resources to this group of students may further stigmatize LGBT youth and subsequently worsen the school climate.⁷⁵

In addition to providing LGBT-inclusive resources, policymakers, community leaders, and school administrators must create a warm environment by allowing students to discuss themselves openly and freely. Two states, California and Tennessee, have taken varying approaches to addressing school climate for vulnerable students.

California attempted to enhance inclusivity in its schools by passing the FAIR Education Act in 2011. This act amended the education code in California to require schools to incorporate history lessons and current events related to and featuring people with disabilities and LGBT people into social studies classes.⁷⁶ The act integrates LGBT people—and LGBT youth—into current materials with the intent of improving school climate for these students.

In Tennessee, lawmakers have taken the opposite approach. The state's Classroom Protection Act—more popularly known as the “Don't Say Gay” bill—worsens the school climate for LGBT youth in Tennessee. One of the more objectionable sections of the bill, which was first introduced in 2011, states that “at grade levels pre-K through eight (pre-K-8), any such classroom instruction, course materials or other informational resources that are inconsistent with natural human reproduction shall be classified as inappropriate for the intended student audience

and, therefore, shall be prohibited.”⁷⁷ In essence, the bill would prohibit a teacher from discussing anything related to homosexuality since it does not fall within the “natural human reproduction” category. Fortunately, the bill, which passed the Tennessee Senate, died in the House. But the “Don’t Say Gay” bill has been reintroduced, and what’s more, a new caveat was added: teachers would be required to tell parents when students are—or suspecting of being—gay.⁷⁸

The Tennessee law, if enacted, would make the school climate more hostile for LGBT youth because it silences discussion of LGBT people, while the law in California opens dialogue and allows LGBT youth to share their lived experiences. LGBT youth often face alienation and abandonment, and frequently use school as a place of security—a safe haven to escape bias and prejudice. But laws such as the one proposed in Tennessee removes from schools the ability to be those needed safe havens.

In sum, LGBT youth face harassment and hostile environments in school from peer-on-peer and adult-on-youth bullying, unfairly administered school discipline policies, and a lack of culturally specific resources. As a result of this hostile environment, LGBT youth often avoid going to school, thus increasing the likelihood of them being on the streets, which in turn often leads to involvement with the criminal justice system.

Along with the addressing the harm caused by unsafe and unwelcoming school climates, it is essential to also address the disparate application of harsh school discipline policies on students of color and LGBT youth. We next examine how harsh school discipline policies serve to criminalize youth.

Harsh school discipline policies criminalize youth

While it is clear that overly strict school discipline policies can affect all students, it is youth of color, LGBT youth, and particularly LGBT youth of color who suffer harsher consequences under these policies. Coupled with unsafe and hostile school climates, harsh discipline policies lead to an array of poor outcomes for youth, including suspensions, expulsions, and arrests. These outcomes disproportionately criminalize LGBT youth of color.

Zero-tolerance policies and the policing of students

In the past few years, there has been a dramatic shift from traditional school-based disciplinary methods to harsh zero-tolerance school discipline policies and increased police presence in schools.⁷⁹ Multiple school tragedies, including the high-profile incidents at Columbine High School (1999), Virginia Tech (2007), and Sandy Hook Elementary School (2012), have contributed to the increase of police presence in schools and on campuses. Although the initial purpose was to improve school safety for students, increasing the number of school resource officers has consequently led to more arrests and the overcriminalization of students of color and LGBT youth.

In fact, school discipline policies and the juvenile justice system have become so inextricably linked that law enforcement is increasingly enlisted to manage issues that were once handled by school administrators.⁸⁰ This outsourcing of school discipline has significant consequences for students of color and LGBT youth. A greater police presence can create a prison-like school climate that is unwelcoming to youth, particularly those who already report feeling unsafe and unsupported in their schools. As a result, these youth are likely to avoid school, thus contributing to the high rates of truancy, which suggest that the “get tough” approaches intended to curtail violence actually push the youth that they aim to protect out of school.

Moreover, law enforcement officers charged with policing schools may be ill-equipped to understand and manage the unique issues impacting LGBT youth and, as a result, unfairly criminalize what is otherwise normal adolescent behavior, or they respond in a punitive manner to emotional issues that are best addressed through counseling.

Oftentimes, zero-tolerance policies assign mandatory punishments to violations of school rules, regardless of the context of the behavior.⁸¹ In many cases, the punishment is automatic out-of-school suspension or expulsion.

LGBT youth are particularly vulnerable to harsh punishments that fail to consider whether a student violated school rules in order to defend himself or herself from harassment.⁸² Instead of examining the context surrounding the code violation, zero-tolerance policies presume guilt and then sentence according to that presumption, which may push LGBT youth who protect themselves against aggressors out of school.⁸³

Jewlyes Gutierrez, a 16-year-old transgender student attending Hercules High School in Hercules, California, who claimed that fellow students bullied her for years, was recently charged with misdemeanor battery after getting into a schoolyard fight. Despite video footage capturing the altercation between Gutierrez and three other teenagers, she was the only student to be criminally charged. The other three students involved only received out-of-school suspensions.⁸⁴

Bias by school administrators and security officers is a factor in zero-tolerance and other harsh discipline policies, and LGBT youth like Gutierrez who are charged with a criminal offense after being bullied seem to make the case that these policies are discriminatory. In these cases, school administrators and security officers treat the victim as the aggressor solely based on clothing, physical demeanor, appearance, and factors related to the presumption of guilt but unrelated to real-life scenarios.

Disparate application of discipline policies lead to increased suspensions, expulsions, and arrests

LGBT youth of color are often penalized for minor misbehavior such as violating gender-based dress codes, truancy, excessive tardiness, cell phone use, loitering, or willful defiance.⁸⁵ As would be expected, harsh school discipline policies contribute to high suspension and expulsion rates for all youth, but students of color are particularly susceptible. During the 2009-10 school year, for example, 39 percent of all expulsions were of black students despite this group representing only 18 percent of the student body at sampled schools.⁸⁶ As with other disparities in school suspensions and expulsions, research on student behavior, race, and discipline has found no evidence that this overrepresentation of black youth is from more frequent violations of school policies. The research, however, does consistently suggest that students of color and LGBT youth face harsher sanctions by school personnel when committing similar offenses, even when committing those offenses in self-defense.⁸⁷ And because of this, we can safely assume that LGBT youth of color are also disparately affected.

In 2012, the Office for Civil Rights released data revealing that students of color, particularly black boys, are disproportionately the subjects of harsh school discipline.⁸⁸ Not only does this disparate treatment have a negative impact on student achievement and learning, but these disciplinary measures are the first step toward incarceration for many youth of color.⁸⁹ In the juvenile justice system, blacks comprise two-fifths of all confined youth, while Latinos comprise one-fifth of the confined youth population.⁹⁰ And current harsh discipline practices will only worsen the school-to-prison pipeline for students of color. According to OCR data, black students are 3.5 times more likely to face suspension or expulsion than their white peers—and black students comprise 46 percent of those students who were suspended more than once.⁹¹ Educators and administrators must recognize that suspensions and expulsions from school are predictors of a student's risk of dropping out.

Moreover, there is also a disproportionate risk of experiencing school-based arrests for students of color. The OCR data reveal that 96,000 students were arrested and 242,000 were referred to law enforcement.⁹² And of this number, black and Latino students comprised 70 percent of those arrested or referred to the criminal justice system.⁹³ The disparate application of school discipline policies increases the likelihood that youth of color, particularly black and Latino youth will come into contact with law enforcement at an earlier age.

The use of zero-tolerance policies as a means of increasing safety and minimizing classroom disruption is ineffective, and the disparate application of these policies creates lifelong consequences for students of color and LGBT youth.⁹⁴ Multiple studies reveal that once a student violates a school discipline policy and is suspended or expelled, each subsequent violation increases the chance of juvenile and criminal justice involvement for that student.⁹⁵ To put that statement in context, consider the fact that 46 percent of students with one disciplinary violation came into contact with the juvenile justice system, compared to just 2.4 percent of students with no disciplinary infraction.⁹⁶ What's more, a Texas study revealed that a single suspension or expulsion for an infraction that did not include a weapon nearly tripled the likelihood of a student becoming involved in the juvenile justice system during the next academic year.⁹⁷

As with the reliance on zero-tolerance policies to discipline students, increasing the number of school resource officers, most of whom have little to no training as it pertains to the needs of students of color and LGBT youth, is likely to worsen the school climate by creating an unsuitable learning environment and a greater chance of being arrested.⁹⁸ According to the Justice Policy Institute, schools with designated law enforcement officials actively patrolling the hallways lead to arrest rates close to five times those of comparable schools without such officers.⁹⁹

Because of the negative effects that harsh school policies have on today's youth, some school districts have begun enacting alternatives to such policies. Next we address some of those alternatives in the hope that other districts will authorize similar initiatives in an effort to dismantle the school-to-prison pipeline.

Alternatives to harsh discipline policies

Over the past few years, various approaches to dismantling the school-to-prison pipeline have been adopted by school districts across the country with a focus on offering alternatives to harsh discipline policies. These legal and policy advances—by properly placing education over incarceration and allowing students to stay in the classroom and out of the juvenile justice system—will help all students, especially students of color and LGBT youth. Next we highlight two major federal actions that offer guidance and model policies that should be employed across the country.

Supportive School Discipline Initiative

In 2011, Education Secretary Arne Duncan announced the launch of the Supportive School Discipline Initiative, or SSDI, a collaborative effort between the Department of Education and the Department of Justice, which aims to dismantle the school-to-prison pipeline. The creation of the initiative was in direct response to the dismal findings of the Department of Education's Civil Rights Data Collection effort, which revealed a significant disparate impact in school discipline policies that funnels black students and students with special needs into the juvenile justice system. The purpose of SSDI is twofold: to equip schools with alternatives to exclusionary discipline such as positive behavioral interventions and supports; and to encourage a new emphasis on reducing disproportionalities among vulnerable students to limit their contact with the juvenile justice system.

The initiative has conducted a number of community information-gathering sessions and it administers collaborative research on school discipline in conjunction with the Council of State of Governments through their School Discipline Consensus Project.¹⁰⁰ SSDI also aims to be as LGBT-inclusive as possible. As such, it takes into account the findings of the report, "Breaking School Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement,"¹⁰¹ which chronicles the disparate application of school discipline when it comes to students of color, students with disabilities, and LGBT youth.¹⁰²

Because of the work of the initiative, the Department of Education released the first federal guidance on school climate and discipline in January.¹⁰³ A key recommendation of the guidance is that school officials use law enforcement only as a last resort to addressing behavioral concerns.¹⁰⁴

While the guidance is wide-ranging in addressing the disparate impact of school discipline on black boys—which will surely go a long way to improve school climate for all youth—it falls short of purposefully referencing and including LGBT youth due to the fact that comprehensive data on the experiences of these youth are limited.

Jurisdictional responses to school discipline

In the 2011-12 academic year, the Department of Justice, or DOJ, reported 1,062 school-related arrests in Broward County, Florida—the highest number of school-based arrests in the state.¹⁰⁵ Of these arrests, 71 percent were for misdemeanor offenses.¹⁰⁶ As a way of dismantling the problematic school-to-prison pipeline, a number of school districts and law enforcement agencies in a number of states, including Florida, have entered into joint agreements to ending school-based arrests for minor misbehavior.¹⁰⁷

In light of the disturbing DOJ numbers concerning school-related arrests in Broward County, the Florida legislature instructed school districts to only use zero-tolerance policies as a mechanism of last resort, especially for students committing minor offenses. Florida statute 1006.13, enacted in 2013, states that “zero-tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances.”¹⁰⁸ According to these collaborative agreements, law enforcement would be summoned only for serious violations of school policy—a student bringing a weapon to school, for example—and seldom for trivial infractions.

What’s more, the joint agreement between school districts and law enforcement agencies does not mean students receive minimal punishment. Surely students who misbehave should be held accountable for their actions, however, alternative discipline policies emphasize positive behavioral supports from school officials rather than overly punitive measures that push youth out of schools.¹⁰⁹

Fortunately, Florida is not alone in seeking alternatives to harsh school discipline policies. In 2013, the Department of Justice, jointly with the Meridian Public

School District in Meridian, Mississippi, filed a consent decree to address racial discrimination in student discipline in nearby school districts.¹¹⁰ During the DOJ's investigation of the district's discipline policies, it found that students of color, particularly black students, received harsher punishments than white students for comparable behavior.¹¹¹ In essence, the consent decree prohibits school districts—and representatives who enforce school policies within those districts—from enacting policies that have disparate affects based on race.

What's more, similar to the Broward County collaborative agreement, the consent decree limits exclusionary discipline such as suspension and expulsion, and prohibits exclusionary discipline for minor misbehavior.¹¹² The Meridian, Mississippi, consent decree allows school districts to have safe and supportive school climates because they prevent school officials from outsourcing typical disciplinary procedures that would ordinarily involve school administrators.¹¹³

Let's turn now to a number of practical policy recommendations that will go a long way toward understanding the experiences of LGBT youth, improving the overall school climate for LGBT youth, and dismantling the school-to-prison pipeline.

Recommendations

Increase data collection

Research shows that schools too often fail students of color and LGBT youth by funneling them into the juvenile justice and criminal justice systems at alarming rates. But there continues to be a dearth of data to quantify the unique experiences of these youth in schools, and much of that data is anecdotal. We need more data to fully understand the impact of school discipline on LGBT youth in order to help inform policymakers, administrators, and school districts on how to improve school climate for LGBT students and dismantle the school-to-prison pipeline.¹¹⁴

The Department of Education's Office for Civil Rights should work to include the experiences of LGBT youth with school discipline policies in its Civil Rights Data Collection, or CRDC, measure. The department plans to expand the measure to collect data on incidences of bullying that are based on sexual orientation and or gender identity. Unfortunately, there is no federal measure that quantifies LGBT youth experiences in schools beyond bullying. The agency should work in collaboration with external researchers to identify appropriate survey questions and measures that would help shed light on the entirety of the school experience for LGBT youth.

Furthermore, academic and policy research institutions should explore ways to collect more school discipline data that are inclusive of LGBT youth. GLSEN's research has become foundational to quantifying LGBT youth's experiences with school climate, and additional research on school discipline will similarly help drive policy reforms.

Enumerate anti-bullying policies

As discussed above, generic anti-bullying policies that do not enumerate the characteristics of those who are vulnerable fall flat in addressing bullying or improving school climates related to LGBT youth. As such, it is important to include sexual

orientation and gender identity alongside race, ethnicity, disability, and other protected classes to limit bias in the application of anti-bullying policies. While almost every state has some anti-bullying measure on its books, most do not explicitly include LGBT youth. The consequence of this oversight is that these students often lack recourse when bullied in schools, which forces some of these victims to stop attending school altogether to avoid harassment.

Congress should pass the Safe Schools Improvement Act and the Student Non-Discrimination Act to ensure that school climates are welcoming for LGBT youth. Improving school climate will keep schools safe and also reduce the truancy and dropout rates that make these youth susceptible to coming into contact with the juvenile justice and criminal justice system.

Promote positive behavioral interventions and supports¹¹⁵

The teaching of social and emotional learning practices such as Restorative Justice and Positive Behavior Intervention and Supports to addressing wrongdoing and harmful behavior will enable students to develop a stronger sense of empathy and compassion for each other, as well as their teachers.¹¹⁶ In addition, these behavior support approaches help get to the root causes of misbehavior and/or conflict and greatly lessen the chance that students who have serious behavioral problems will be ignored, thereby improving their chances of getting the support and understanding needed to bring them back into the school community rather than push them into the juvenile justice system.

Despite its impetus in special education law, Positive Behavioral Interventions and Supports, or PBIS, is a general education initiative in which positive interventions are used to accomplish behavioral change.¹¹⁷ The implementation of PBIS requires adopting evidence-based behavioral interventions that improve academic and social behavior outcomes for all students.¹¹⁸ Since every school has unique characteristics that shape its school climate, a one-size-fits-all approach to discipline—zero tolerance, for example—is not effective. Instead, PBIS strategically designs tactics tailored for each learning environment so that all students can excel.¹¹⁹

What's more, PBIS ensures that students are actively involved in the beginning of the process as opposed to when they are being punished. If effectively implemented, PBIS's emphasis on reaffirming positive behavior as opposed to punishing trivial transgressions will go a long way in producing positive outcomes for students and helping schools fulfill their missions.

Legislation such as the Restorative Justice in Schools Act and the Positive Behavior for Safe and Effective Schools Act both direct federal support for training school officials and teachers in these best practices. In addition, the Successful, Safe, and Healthy Students Act would use school data on bullying, harassment, and discipline to target support for implementing these best practices.

Increase access to LGBT information and resources

LGBT people exist, they are a part of our communities, and they attend schools. Ignoring this fact is in many ways a hostile act that isolates LGBT youth, renders them invisible, and invalidates their humanity. Schools that set policies designed to avoid, ignore, or otherwise omit education and factual, age-appropriate information about—and supports for—LGBT people perpetuate school climates that are unwelcoming to LGBT youth and signal that their peers are justified in devaluing them as well.

It is critical that schools create an open and affirming climate where all youth can learn and develop. Access to groups such as GSA networks; factual information about LGBT people; and websites that provide LGBT support networks, information, and news all enrich the learning experience and should be made readily accessible within schools.

Decrease the presence of police in schools

The outsourcing of school discipline to law enforcement is a key driver of the school-to-prison pipeline. As discussed above, significant policy reforms are needed to ensure that age-appropriate student behavior and nonviolent, minor school disruptions are not criminalized.

Simply put, the response to school-based trauma should not be the ramped-up policing of schools and the accompanying knee-jerk deployment of huge numbers of school resource officers. There is little evidence that police presence in schools keeps students safe; in fact, several of the schools that have experienced tragic shootings such as Columbine High School had school resource officers present. Furthermore, harsh policing of schools combined with zero-tolerance policies can create a prison-like environment that degrades school climate, making for a hostile environment for all youth, but especially for LGBT youth and youth of color.

The grave reality of recent deadly school shootings has prompted needed gun control policy proposals from the Obama administration as well as several states and local governments.¹²⁰ The provisions mentioned by the Obama administration emphasize a focus on mental health resources but do continue to allow federal funding to be used at the discretion of school districts to employ school resource officers. Short of removing police officers from schools, we recommend strict standards of conduct and cultural competency training of any police officers working in schools as way to reduce the risk that their presence will erode the overall school climate, or worse, result in an increased amount of unwarranted student arrests.

Include LGBT youth in school discipline reform

All efforts to improve school climate and reform school discipline should be fully inclusive of all vulnerable and disproportionately impacted youth, especially LGBT youth. Enumerated policies that denote sexual orientation and gender identity among the protected classes will go a long way in ensuring that these students are not left out of school security and anti-bullying policy. It is also important that the Supportive School Discipline Initiative continue its collaborative, LGBT-inclusive research and update its guidance over time to also address issues impacting LGBT youth.

Conclusion

The school-to-prison pipeline is a widespread and disturbing national trend that paves the way for youth, particularly students of color and LGBT youth, to spend less time in school, more time on the streets, and have a higher likelihood of entering into the juvenile justice and criminal justice systems. While safe and welcoming school environments are the ultimate goal, we must recognize that exploring other factors beyond peer-on-peer bullying that contribute to a hostile school climate is essential. Safe and affirming spaces for students of color and LGBT youth must be created to decrease school push-out. Moreover, policymakers, community leaders, and school administrators must ensure that discipline policies are fair and supportive, rather than punitive, criminalizing, and unevenly applied. Suspensions and expulsions come with enormous costs, and if employed haphazardly, students of color and LGBT youth are at risk of being pipelined into the juvenile justice system. Improving school climate requires a fundamental shift in the tools that adults in schools use to foster the social and emotional development of youth, as well as manage discipline issues. Making these changes, however, it is critical to creating healthy learning environments in which all students can excel.

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