

May 11, 2011

Submitted Via Electronic Mail to bryan.williams@ed.gov

Kevin Jennings
Assistant Deputy Secretary for Safe and Drug-Free Schools
U.S. Department of Education
400 Maryland Avenue, SW
Potomac Center Plaza, Room 10120
Washington, DC 20202-6450

Re: Comments on Office of Safe and Drug-Free Schools' Funding Priorities,
Requirements, and Definitions

Dear Mr. Jennings:

The National Women's Law Center (the Center) appreciates the opportunity to comment on the funding priorities, requirements, and definitions under the Safe and Supportive Schools Program (the SSS Program), set forth by the Department of Education's Office of Safe and Drug-Free Schools (the Department). The Center is a nonprofit organization that has worked since 1972 to expand the possibilities for women and girls in the areas of education and employment, family economic security, and health. Most relevant to these comments, the Center is a strong advocate for safe, healthy, and successful schools for girls, including schools that protect girls from bullying and harassment and that apply positive, evidence-based discipline approaches to all students equally.

The Center offers the following comments for the Department's consideration:

I. The Department should require data collection on school environment and school engagement, as well as school safety, to ensure that states can access the range of programmatic interventions in light of those data.

Under the draft priorities, the Department proposes to use SSS Program grants for broadly defined "programmatic interventions," including programs that reduce not only violence and drug use but also harassment and bullying, and programs that "enable[] school communities to manage student behaviors effectively while lowering suspensions and expulsions."¹ The Center applauds the Department's recognition that grantees must go beyond a one-size-fits-all approach

¹ Department of Education, Office of Safe and Drug-Free Schools, Notice of Proposed Priorities, Requirements, and Definitions, 76 Fed. Reg. 19,980, 19,983 (Apr. 11, 2011).

to creating safe and healthy schools. The Center also welcomes the Department's more holistic focus on school safety and health, as evidenced by the Department's comprehensive definition of programmatic interventions.

But it is also important that the proposed measurement system for the SSS Program sufficiently encourage states, districts, and schools to utilize the full array of programmatic interventions to which they should have access. Under the proposal, grantees are to "identify and implement programmatic interventions . . . in identified schools that respond to needs identified through the analysis of data collected through the measurement system."² As part of that measurement system, state grantees would be required to collect survey data on "conditions of learning,"³ a term defined to include "at a minimum, school safety," and which "*may include* school environment and school engagement."⁴

Without collecting data on "school environment"—defined to include the fairness and adequacy of disciplinary procedures, the academic environment, and student health supports and services available—and "school engagement"—defined to include the quality of school relationships, such as relationships between and among administrators, teachers, parents, and students—grantees will not be able to adopt interventions that respond to problems in these areas, many of which contribute to a lack of school safety and a school climate that is not conducive to learning. The Center, therefore, urges the Department to define "conditions of learning" to include not only school safety factors but also school engagement and school environment factors, thus making data collection in these areas an absolute priority for grantees. At a minimum, the Center urges the Department to make the collection of data in these areas a competitive preference priority, as the Department did in the 2010 SSS Program application.⁵

II. The Department should define "incident data" to include data on incidents of bullying and harassment.

Under the SSS Program, the Department proposes that the measurement system include not only survey data but also "incident data." The proposed definition of "incident data" is data "including, but not limited to, truancy rates; the frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions; and the incidence and prevalence of drug use and violence by students in schools."⁶ Grantees are to use this incident data to create "school safety scores" and to identify the appropriate programmatic

² *Id.*

³ *Id.* at 19,982.

⁴ *Id.* (emphasis added).

⁵ Office of Safe and Drug-Free Schools; Overview Information; Safe and Supportive Schools; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010, 75 Fed. Reg. 39,504, 39,505 (July 9, 2010).

⁶ 76 Fed. Reg. at 19,983.

interventions to implement in their schools. To appropriately gauge school climate, however, schools must also evaluate data on incidents of bullying and harassment.⁷

Given the devastating effects of bullying and harassment on student success and school climate, the Center recommends that the Department define “incident data” to include incidents of bullying and harassment. These data should be disaggregated at least by sex, race or ethnicity, and disability status and, where the group size is sufficiently large, capable of cross-tabulation. At a minimum, the Department should make the inclusion in measurement systems of bullying and harassment incident data a competitive preference priority for grantees.

Like violence, non-violent bullying and harassment can have detrimental emotional and academic impacts on students and significantly impair the school environment. For example, in a study by the American Association of University Women (AAUW) on sexual harassment among students in grades 8 to 11, 23 percent of all students who reported being sexually harassed said they felt afraid or scared, and 5 percent reported that it made them doubt whether they were capable of graduating from high school.⁸ A larger share of girls than boys who were exposed to sexual harassment reported feeling that way.⁹ Harassment in school can also lead victims of such conduct to avoid school altogether, to find it difficult to study, and to reduce participation in school or school activities.¹⁰

Unfortunately, harassment and bullying are widespread problems in our nation’s schools. For example, according to data from the School Crime Supplement to the National Crime Victimization Survey, 32 percent of all students (33 percent of girls and 30 percent of boys) aged 12 to 18 reported being bullied at school in 2007.¹¹ Shockingly, seven percent of those who reported being bullied said that the conduct occurred “almost every day.”¹² And the AAUW study, which addressed sexual harassment,¹³ found that 81 percent of students in grades 8

⁷ The proposed definition of “school safety” enumerates bullying and harassment separately from violence, so we do not understand bullying and harassment to be included in the definition of “violence” for purposes of this Notice. *See id.*

⁸ AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, HOSTILE HALLWAYS: BULLYING, TEASING, AND SEXUAL HARASSMENT IN SCHOOL 33 (2001), *available at* <http://www.aauw.org/learn/research/upload/hostilehallways.pdf>.

⁹ *Id.*

¹⁰ *See, e.g., id.* at 37 (noting that girls who experienced sexual harassment were more likely than boys to report that, as a result of the harassment, they did not want to go to school, stopped talking as much in class, changed their seat in class to get away from someone, stayed home from school or cut class, found it hard to study, or avoided the person who bothered or harassed them); VICKI NISHIOKA ET AL., STUDENT-REPORTED OVERT AND RELATIONAL AGGRESSION AND VICTIMIZATION IN GRADES 3-8, at 1 (2011), *available at* http://educationnorthwest.org/webfm_send/1127 (discussing existing research regarding the effects of bullying on educational participation more generally).

¹¹ SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010, at 43 (2010), *available at* <http://nces.ed.gov/pubs2011/2011002.pdf>.

¹² *Id.* at 44.

¹³ AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, *supra* n.8, at 46.

through 11 (83 percent of girls and 79 percent of boys) reported that they had experienced sexual harassment often, occasionally, or rarely during their schooling.¹⁴

Including bullying and harassment incident data in school measurement systems would not increase the administrative burden on schools. Beginning with the 2011-12 school year, all schools and districts already will be reporting data for the Department's Civil Rights Data Collection survey (CRDC), which includes data on incidents of harassment and bullying, the number of students subjected to harassment and bullying, and the number of students disciplined for harassment and bullying.¹⁵ The CRDC requires schools to report this information disaggregated by the student's sex, race, and disability status.¹⁶ So requiring states and districts to include these data in the "incident data" portion of their measurement systems will not create a significant new burden for schools and doing so is critical to the proper identification of interventions that will succeed in creating a safe and healthy school climate.

III. The Department should incorporate the use of exclusionary discipline practices and the disproportionate application of these practices to vulnerable groups of students into the definitions of "school environment" and "incident data."

The Department proposes to define the term "school environment" to cover "the school setting relating to the physical plant, the fairness and adequacy of disciplinary procedures, the academic environment, and student health, including the physical and mental health supports and services."¹⁷ As noted above, it also proposes to define "incident data" in a way that focuses on truancy, violence, and drug use, including suspensions and expulsions stemming from such offenses.¹⁸

The Center recommends that the Department add to the definition of "school environment" the rates at which schools use exclusionary discipline practices and their disproportionate use among certain subgroups of students, disaggregated at a minimum by sex, race or ethnicity, and disability status, and where the group size is sufficiently large, capable of cross-tabulation. Likewise, the Center recommends that the Department require grantees to include within the definition of "incident data" reports of exclusionary discipline practices and their disproportionate use among vulnerable student subgroups. Data on exclusionary discipline practices must include the following categories: corporal punishment, in-school suspension, out-of-school suspension, expulsion with educational services, expulsion without educational services, expulsion under zero tolerance policies, school-based arrest, referral to law enforcement, referral to an alternative school for disciplinary purposes, issuance of a truancy or

¹⁴ *Id.* at 20-21.

¹⁵ Rebecca Fitch, PowerPoint Presentation at the U.S. Department of Education's Conference on Civil Rights and School Discipline: Addressing Disparities to Ensure Equal Educational Opportunity, at 4-5 (Sept. 27, 2010).

¹⁶ *Id.*

¹⁷ 76 Fed. Reg. at 19,983.

¹⁸ *Id.*

law enforcement citation, involuntary school transfer, and any type of informal dismissal for disciplinary reasons.

School disciplinary rates are now the highest they have been in our nation's history. Moreover, schools use exclusionary discipline practices disproportionately against boys and girls of color and students with disabilities. Some girls are especially at risk for unfair discipline. In fact, a recent study of disciplinary practices at middle schools in the 2006-2007 school year found that while Black males were more likely than other groups of students to be suspended from school, Black females had the second highest rate of suspension, exceeding suspension rates of Hispanic or White males.¹⁹ Black females also had the highest percentage point *growth* in suspension rates from 2002 to 2006, higher than the rates for Black males or for Hispanic and White females.²⁰ Moreover, many students are punished excessively for minor infractions. For example, in Alabama, an African-American high school student was sent to an alternative school for "drug use" after taking Motrin for menstrual cramps.²¹ In New York, a twelve-year-old student was taken from school in handcuffs for doodling on her desk in washable marker.²² The collection of data on exclusionary discipline and its disproportionate application will encourage grantees to analyze their own practices and consider other innovative, evidence-based approaches to discipline, such as School-Wide Positive Behavioral Supports and Restorative Justice practices, that facilitate the creation of a successful, safe, and healthy learning environment.

Collecting data on exclusionary discipline practices would not significantly increase the administrative burden on schools. Beginning with the 2011-12 school year, all schools and districts will report data for the Department's Civil Rights Data Collection survey (CRDC) on the use of various exclusionary discipline practices, including referrals to law enforcement and school-related arrests.²³ Moreover, schools could incorporate questions regarding exclusionary discipline into student surveys on conditions for learning, which would be required as part of the SSS Program anyway.

¹⁹ DANIEL J. LOSEN & RUSSELL J. SKIBA, *SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS* 5-7 (2010), *available at* http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf.

²⁰ *Id.* at 7-8.

²¹ ELIZABETH SULLIVAN & DEMEKIA MORGAN, *PUSHED OUT: HARSH DISCIPLINE IN LOUISIANA SCHOOLS DENIES THE RIGHT TO EDUCATION* 15 (2010), *available at* http://www.nesri.org/sites/default/files/Pushed_Out_Report.pdf.

²² Erica Butler, *Queens Student Arrested for Doodling on Desk, Was Hauled off in Handcuffs*, NBCNEWYORK.COM, Feb. 25, 2010, *available at* <http://www.nbcnewyork.com/news/local/Queens-Student-Arrested-for-Doodling-83640982.html>.

²³ Fitch, *supra* n.15, at 3.

IV. The Department should define “persistently lowest-achieving schools” based in part on the achievement of subgroups of students, reported at a minimum by race or ethnicity, sex, and disability status and capable of cross-tabulation.

Another way the Department offers for grantees to identify schools eligible for programmatic interventions, in addition to using criteria that incorporate student survey data and incident data from the measurement system, is by using a list of persistently lowest-achieving schools.”²⁴ The Department proposes to define “persistently lowest-achieving schools” by relying on a school’s performance on academic assessments, as measured by the performance of “all students,” or a secondary school’s overall dropout rates.²⁵

The Center does not support the identification of schools eligible for programmatic intervention by relying exclusively on the list of persistently lowest-achieving schools as defined by the proposal. As a preliminary matter, reliance on a school’s academic assessments alone is insufficient to identify readily those schools most in need of assistance with respect to school safety and health. Student performance is of course a relevant criterion, as a negative school climate affects student educational success, but performance on assessments alone should not define the universe of schools eligible to receive programmatic interventions. The Center urges the Department to require consideration of *both* academic performance *and* the SSS Program’s measurement system, consisting of incident and survey data, to identify schools in need of interventions.

Moreover, the Department should require grantees to consider not only overall student assessment performance, but the performance of subgroups identified in section 1111(b)(3)(C)(xiii) of the Elementary and Secondary Education Act, cross-tabulated to reveal the unique needs of smaller subgroups, such as Black girls. Students may target for harassment and bullying particular groups of students based on protected characteristics, such as sex and/or racial and ethnic minority status. In schools where such targeted harassment is the most serious safety problem, using the academic performance of “all students” is unlikely to be an appropriate proxy for measuring whether school violence or harassment negatively affects the educational success of those students experiencing school violence or harassment.

Additionally, as we mentioned earlier, in some schools certain subgroups of students experience disproportionately high rates of excessive or exclusionary discipline, such as suspension, expulsion, school-based arrests, and referrals to law enforcement. In those schools, while the academic performance of “all students” may not reveal a problem, data on the performance of certain subgroups (such as Black boys or Black girls) may reveal a disturbing pattern that needs to be addressed.

²⁴ 76 Fed. Reg. at 19,982.

²⁵ *Id.* at 19,983.

V. The Department should require states to publish the raw data used to produce school safety scores.

The Department's proposed SSS Program plan would not require grantees to publish the raw data used to create school safety scores. In the 2010 grant competition, the Department made clear that "grantees [could] choose to publish survey or incident data to help realize goals, objectives and outcomes," but did not have to do so.²⁶ However, under the proposed SSS Program for 2011, the Department would require only that grantees provide "summar[es]" of the data to "engage school staff and families or guardians in discussions of the results."²⁷

As proposed, grantee summaries to parents and school staff are insufficient to keep the school community informed of relevant school safety issues and to enable members of that community to participate, as they should, in the identification and implementation of successful programmatic interventions. We urge the Department instead to require grantees, consistent with applicable privacy laws, to publish the data used to create school safety scores, a step that is necessary for a truly transparent grant program.

VI. The Department should give a competitive preference priority to grantees that propose to use funds for positive behavioral supports instead of school security officers or safety equipment.

The Center recommends that the Department give a competitive preference priority to applicants that propose to use funds for evidence-based, positive approaches to increasing school safety and improving school climate, such as School-Wide Positive Behavioral Supports and Restorative Justice practices. These practices are proven to reduce school discipline referrals and negative behavioral incidents and improve perceptions of school safety.²⁸ While we know that some grants through the Office of Safe and Drug Free Schools have been used for school security officers or safety equipment in the past, the Center does not believe such funding priorities are the most effective use of SSS Program grants. School safety officers and safety equipment are already funded through other means, and research indicates that the over-policing of our nation's schools may itself disrupt the school environment and lead to student arrests for minor, non-criminal acts, without actually leading to a safer school environment.²⁹ Thus, the

²⁶ See U.S. Department of Education, Safe and Supportive Schools: Frequently Asked Questions, at #9, <http://www2.ed.gov/programs/safesupportiveschools/faq.html> (last visited May 9, 2011).

²⁷ 76 Fed. Reg. at 19,982.

²⁸ See, e.g., Davis Osher, George G. Bear, Jeffrey R. Sprague, & Walter Doyle, *How Can We Improve School Discipline?*, 39 EDUCATIONAL RESEARCHER 48, 50-51 (2010) (discussing the School-wide Positive Behavioral Supports approach and reviewing research on its effectiveness, including reductions in discipline referrals and "antisocial behavior" and improved school safety perceptions, staff affiliation, and organizational health); INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES, IMPROVING SCHOOL CLIMATE: FINDINGS FROM SCHOOLS IMPLEMENTING RESTORATIVE PRACTICES 16-20 (2009), available at http://www.iirp.org/iirpWebsites/web/uploads/article_pdfs/92115_IIRP-Improving-School-Climate.pdf (documenting reductions in discipline referrals and negative student behaviors in schools implementing a Restorative Justice approach).

²⁹ See, e.g., ELIZABETH SULLIVAN & ELIZABETH KEENEY, TEACHERS TALK: SCHOOL CULTURE, SAFETY AND HUMAN RIGHTS 21-29 (2008), available at http://www.nesri.org/sites/default/files/Teachers_

limited SSS Program grants should target grantees that choose to use positive approaches to promote school safety and improve school climate. To reduce school discipline referrals and improve academic outcomes and school safety perceptions, those grantees that propose using funds for both positive approaches and school safety officers or equipment should be required to identify the share of the grant that would go toward each approach.

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Thank you for the opportunity to comment on the proposed funding priorities, requirements, and definitions. We would be happy to discuss our comments further or answer any questions you may have. Please contact Fatima Goss Graves, Vice President for Education and Employment, or Lara Kaufmann, Senior Counsel for Education and Employment, at (202) 588-5180.

Sincerely,



Fatima Goss Graves
Vice President for Education and Employment



Lara Kaufmann
Senior Counsel for Education and Employment