



Empire Justice Center

Telesca Center for Justice
One West Main Street, Suite 200 ♦ Rochester, NY 14614
Phone 585.454.4060 ♦ Fax 585.454.2518
www.empirejustice.org

Joint Legislative Public Hearings on the 2019-20 Executive Budget Proposal Education

February 7, 2019

**Prepared by:
Sujata Ramaiah, J.D., Hanna S. Cohn Equal Justice Fellow**

INTRODUCTION

Good Afternoon, my name is Sujata Ramaiah and I am the Hannah S. Cohn Equal Justice Fellow in the Rochester office of Empire Justice Center. I thank you for the opportunity to testify today. My testimony will primarily address Governor Cuomo's proposal to amend the New York State Human Rights Law (ELFA Part S) to once again provide protections to public school students.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip. Empire Justice Center advocates for low-income New Yorkers using litigation, policy advocacy, and community education as tools to improve the lives of our clients and communities.

Empire Justice is committed to engaging in a broad range of issues related to advancing equitable access to education for young New Yorkers. We have advocated for students with disabilities, students of color, transgender and gender nonconforming students, and students with multicultural backgrounds in a variety of forums including individual and class action legal representation and legislative and administrative advocacy. We know through our work that each group faces unique challenges in accessing education in New York State. However, there are some universal steps that can be taken that will advance equity for all students regardless of who they are or where they attend school. Providing public school students with the same protections that private school students enjoy under the Human Rights Law is clearly one of those steps.

Through my testimony today, Empire Justice Center urges the Legislature to:

1. Support the Governor's proposal to amend the Human Rights Law to Equally Protect Public and Private School Students (S.1506/A.2006 Part S),
2. Ensure Children Have Equal Access to Justice
 - Allow families to recover attorney's fees in cases where negligence in addressing harassment leads to the exclusion of students based on their protected status.
 - Broaden the group of protected classes to include categories in which youth are more likely to fall.

BACKGROUND

In June 2012, the New York State Court of Appeals ruled that the Division of Human Rights did not have jurisdiction over public schools because of its interpretation of the Real Property Tax Law. The impact of this holding in *North Syracuse Central School District v. New York State Division of Human Rights* meant that the state's Human Rights Law long applied to all public schools, now only protected a very limited number of children who attended private, non-parochial schools.

In July 2012, only a few weeks later after the *North Syracuse Central School District* case was decided, the Dignity for All Students Act went into effect. The Dignity for All Students Act (“DASA”) proclaims “it is the policy of the state to afford all students in public schools an environment free from discrimination and harassment,” recognizing that discrimination and harassment impinge upon a student’s ability to learn and a school’s ability to teach. Parents and students are encouraged to report incidents of harassment, bullying, or discrimination, and school employees are required to do so. Upon receiving these reports, principals or superintendents or their designees are required to investigate the claims. If the investigation shows harassment, bullying, or discrimination occurred, the school official must promptly take actions reasonably calculated to end the harassment, bullying, or discrimination and work towards improving the school’s climate. This is all with the end goals of ensuring all children have equitable access to a safe learning environment and that schools develop a common culture of acceptance.

However, DASA was intended to work *in concert* with the state’s Human Right law and was never intended to supplant it. As a result of the lack of Human Right Law protections for these youth, the promise of DASA has never been fully realized. Specifically, when public school officials neglect to carry out investigations, fail to properly investigate, or ignore the consequences of unaddressed bullying when disciplinary events follow, parents and students are left with no recourse because DASA has no private right of action. In effect, this allows the school harassment, bullying, or discrimination of our children to remain unchecked because the consequences are toothless. We all hear the tragic and all too frequent news stories about hopeless children who resort to self-harm or suicide and significant harm to others when schools repeatedly fail to investigate or respond to this conduct and parents who feel powerless in getting the school district to stop it. Having the Human Rights Law again available in these cases would allow parents and students to move to the next step in remedying issues rather than hitting a brick wall - a wall that private school parents and students do not face.

As an education legal fellow, currently the only advice and counsel I can give parents of children facing harassment, bullying, or discrimination is to file a DASA complaint **and hope the school handles the investigation properly**. This is because state and federal discrimination litigation is lengthy and the burden of litigating is high – often higher than students can afford to prove. Furthermore, as evidenced by the changing tides of federal politics and how very real the ongoing threat is to the well-being of marginalized populations, federal school discrimination actions are not a meaningful alternative. Today’s federal education discourse consists of diminishing protections for LGBTQ students, students with disabilities, and survivors of sexual assault – but New York’s education discourse can embrace and protect students of all stripes.

In fact, from my experience representing students at long-term suspension hearings, school districts actively discourage students and parents from discussing any facts or behaviors relating to other students, citing the federal Family Education Rights and Privacy Act. This

means that when unaddressed harassment or discrimination precipitates student misconduct (e.g., harassment for weeks that result in a physical altercation on school grounds), school districts deem these facts irrelevant. With the crucial context provided by the stories of harassment and discrimination lost, students from marginalized populations have no meaningful chance to tell their side of the story before being suspended from school.

The combined result of the way current laws and school district practices interact leaves public school students facing harassment or discrimination on the basis of protected statuses without a meaningful chance to enforce their rights.

RECOMMENDATIONS:

1) Amend the Human Rights Law to Equally Protect Public and Private School Students

Empire Justice Center has long supported amending the Human Rights Law to provide the same protections to public school students as enjoyed by private school students. To this end, Empire Justice Center recommends amending the Executive Law to specifically define “educational institution” in a way that includes both public and private non-parochial schools and hold all educational institutions equally accountable for permitting unlawful discriminatory harassment.

2) Ensure Children Have Equal Access to Justice

The NYS Division of Human Rights, which was intentionally designed to be friendly to represented and *pro se* litigants alike, is the most appropriate forum for public school students facing harassment and discrimination. However, it should come as no surprise that many children and families do not have the financial means to address school-based discrimination with the benefit of legal counsel. We are apprehensive of the potential chilling effect that the lack of accountability in public schools – those institutions charged with inculcating our youth with American ideals – will have on much-needed community discussions on diversity and inclusion.

Additionally, the Human Rights Law already awards attorney’s fees to prevailing plaintiffs in cases involving matters of high public importance, such as housing discrimination and sex discrimination in credit or employment. Ensuring safe and nondiscriminatory schools where children can form into healthy and productive adults is of such great public importance that it, too, warrants ensuring equal access to justice through an attorney’s fee provision.

While some have expressed concern that including these cases back within the Division of Human Rights’ jurisdiction would place significant burdens on that system, the statistics simply do not bear those concerns out. Between 2004 and 2010, a time when public schools were covered by the Human Rights Law, student discrimination cases made up less than 2% of the Division on Human Rights caseload. Furthermore, with DASA in place to address to serve as a

potential stop gap, it is even more unlikely that there will be a flood of cases overburdening the Division of Human Rights.

STUDENT STORIES: Public school students deserve safe and supportive school environments in which to learn.

The following examples illustrate why it is so important for New York to correct close to a decade of shutting public school students off from the protections enjoyed by their more moneyed peers attending private schools. Names have been changed to protect student identities.

Jimena Vasquez

In spring 2018, Jimena was assigned, wrote, and presented a poem for her English Language Arts class. In this poem, she shared her experiences as a person with a multicultural background, including the difficulties she faces as a minority student in her district. Leading up to this moment, Jimena had faced bullying on the basis of her racial identity for several years; and some of those bullies were in her English class. Shortly after Jimena shared her poem in class, someone submitted a false report to the school Principal alleging that Jimena had attacked her bullies in the hallway, and Jimena was subsequently recommended for a long-term suspension.

At her long-term suspension hearing, the school produced *no* evidence to support its claim that Jimena had started any sort of physical altercation and the hearing officer recommended dropping all charges against Jimena. However, after the superintendent rejected the hearing officer's recommendation, Jimena was suspended for 45 days through the end of the school year. While on suspension, Jimena received her core course instruction via two hours of tutoring per school day – the bare minimum required under state law – isolated from her peers.

Her mother reported to us that Jimena's school historically suspended her when she stood up for herself. A pattern of unaddressed discrimination has tarnished Jimena's educational experience and **without the ability to file a claim under New York's Human Rights Law**, she was left with little recourse to address the racial harassment and discrimination she suffered.

Giovanni Prince and Harper Brown

Giovanni and Harper are both transgender students who attend the same school district. In addition to experiencing harassment based on their gender identities and gender expressions, both students faced discriminatory hurdles to getting the credits they need to graduate. Specifically, in lieu of the few weeks their gym classes were in swimming instruction, they requested to work out in the school's weight room – an option that understandably felt safer for them. In both instances, the school was very resistant to make these simple

accommodations for Giovanni and Harper and instead insisted on subjecting them to unsafe and uncomfortable situations. Because Physical Education is a required course for graduation, Giovanni and Harper had to bend to the school's will in order to progress towards their high school diplomas.

Beyond the school's own discriminatory treatment of these transgender students, they faced repeated harassment and discrimination at the hands of their classmates. In response to this pattern of bullying, one of these students attempted suicide and the other experienced severe social anxiety. Harper was suspended for involvement in a physical altercation with a bully. These students faced a pattern of unaddressed harassment and discrimination that tarnished their educational experiences. Tragically, **without access to the Human Rights Law**, both Giovanni and Harper were left with little recourse to address the gender identity- and expression-based harassment and discrimination they suffered.

Yasmina Turin

Yasmina is a survivor of child sexual abuse and her mother reports that Yasmina is being bullied in retaliation to her reporting her sexual violence. Shortly after the abuse became public, male students in Yasmina's homeroom harassed her on the issue; it took her mother months of pleading the change Yasmina's homeroom. Now, her bullies have begun spreading rumors about her sexual orientation throughout the school and claiming that Yasmina lied about her sexual abuse. Yasmina's mom requested that the school do *something* to prevent further harassment, but the school simply told Yasmina "to be nicer" and maybe the bullies would leave her alone. At no point did school officials inform Yasmina's mom about DASA and, as a result, her mom never filed a DASA complaint.

Since the assault two years ago, Yasmina's grades have been slipping. Rather than wrapping its arms around this harmed child, her school allowed a pattern of unaddressed harassment to tarnish her educational experience. **If public schools were protected under the Human Rights Law, Yasmina would have had the ability to file a complaint and seek a remedy under the law.**

WE CAN DO MORE FOR OUR CHILDREN: Provide realistic protections for today's students and ensure all children have safe and supportive spaces to learn.

Empire Justice Center urges the Legislature to wholeheartedly support re-instating the inclusion of public schools under the Human Rights Law (S.1506/A.2006 Part S), strengthening it and making it more accessible to financially challenged families by allowing for attorney's fees.

Thank you once again for the opportunity to testify today. Please feel free to contact me at should you have any questions.

Sujata Ramaiah, J.D.

sramaiah@empirejustice.org

(585) 295-5814