

NYC City Council Committee on Education Hearing June 18, 2024

To The NYC City Council Committee on Education,

Free to Be Youth Project

The Free to Be Youth Project is dedicated to serving homeless and at-risk lesbian, gay, bisexual, transgender and queer (LGBTQ+) youth. We provide free legal services for individual LGBTQ+ young people up to the age of 24 and systemic advocacy for the LGBTQ+ youth community. The Project is housed at the Urban Justice Center, a non-profit law collective serving New York City's most disenfranchised poverty populations. Since 1994, we have been providing legal services to LGBTQ+ youth and young adults who are low-income, living on the streets, in homeless shelters, in the juvenile justice system or foster care. We regularly travel to drop-in centers where homeless youth congregate to offer direct legal services. We have helped hundreds of LGBTQ+ youth with legal problems like applying for legal immigration status, fighting wrongful denials of disability benefits, changing their names, fighting terminations of their public assistance benefits, overcoming barriers to obtaining safe and stable housing, and being wrongly turned away from our City's homeless shelters.

Disproportionate Impact of Dress Codes on TGNCNBI Students

For many transgender, gender non-conforming, non-binary, and intersex (TGNCNBI) individuals, clothing and personal accessories do not serve as provocative classroom distractions but rather, as crucial forms of gender-affirming care that can be life-saving. Trans youth are 4 to 7 times more likely to experience depression than their cisgender peers,¹ however, engaging in some form of gender affirmation, including dress, has been shown to decrease depression, thoughts of suicide, and self-harm significantly.² DOE school dress codes must be amended to support all students' gender expression and protect students from discriminatory policies.

The New York City Department of Education (DOE) currently grants students the right to choose their clothing and hairstyles unless it "is dangerous, interferes with the teaching and learning process, or violates the DOE's anti-discrimination policy."³ While these policies are intended to establish non-discriminatory protections, biased interpretations of this language have sexualized

¹ Dani Dodge Medlin. "Transgender Youth More Often Diagnosed with Mental Health Conditions." Kaiser Permanente Department of Research & Evaluation, February 21, 2019.

<https://www.kp-scalresearch.org/transgender-youth-more-often-diagnosed-with-mental-health-conditions/>.

² Jaclyn M. W. Hughto, Hamish A. Gunn, Brian A. Rood, and David W. Pantalone, "Social and Medical Gender Affirmation Experiences Are Inversely Associated with Mental Health Problems in a U.S. Non-Probability Sample of Transgender Adults," *Archives of Sexual Behavior* 49, (2020): 2635-2647.

³ "Dress Code Guidelines," *NYC Public Schools*, 2024,

<https://www.schools.nyc.gov/school-life/school-environment/dress-code-guidelines>.

and criminalized students, particularly trans and cis girls, TGNCNBI students, students of color, and low-income students.

TGNCNBI students are vulnerable to implicit and explicit biases from administrators, staff, and their peers from interpretation to implementation. Rather than using gender-neutral language to regulate clothing, a majority of DOE schools explicitly ban pieces of clothing stereotypically associated with femininity, such as “crop tops,” “halter tops,” “short shorts,” “mini skirts,” and “distracting” dress.⁴ Other dress codes in the DOE included terms such as “skimpy” or “suggestive.” This language targets trans and cis girls through the over-policing and hypersexualization of femme gender presentation. Historically, hypersexualization has functioned as a tool of oppression against Black women,⁵ and today Black women disproportionately experience sexual harassment and are more likely to experience victim blaming for their sexual harassment.⁶ While some legislative measures have been taken to protect Black students, the current DOE policy continues to leave room for biased policies that target trans and cis girls, TGNCNBI students, and youth of color.

The 2019 Crown Act amended the Dignity for All Students Act to prohibit the policing of natural hairstyles even if the regulations are described as “race-neutral,” deeming it a form of racial discrimination. Despite this, many schools restrict head coverings, wigs, and “distracting” hairstyles. Most NYC schools had written consequences more severe than the DOE’s guidance.⁷ This is more damaging to Black students, who face a 31% higher likelihood of experiencing a discretionary discipline action than white and Latine students nationally. Black students are also more likely than white students to be suspended for the same first-time violations of discretionary rules, like violating the dress code. The frequent use of subjective and biased language in these dress codes grants school staff discretion in enforcing disciplinary action, thereby leaving Black students more vulnerable to discrimination.⁸

Our Clients

Davina, a Black transgender woman who went to elementary through high school in Brooklyn, witnessed and experienced first-hand racial and gender discrimination due to her school’s dress codes. Her high school’s dress code banned “revealing” clothing, such as spaghetti straps, short shorts, and short skirts. Girls like her curvier sister frequently faced dress code violations and were told to buy larger clothes to fix the “issue,” even though her clothing fit her body appropriately. While administrators took issue with femme-presenting bodies, boys wore what Davina described as nearly see-through tank tops without discipline. However, not all boys were exempt from biased dress codes, as she remembers all Black students being heavily policed in

⁴ Girls for Gender Equity, “Suspending Self-Expression,” January 2020.

⁵ Girls for Gender Equity, “Suspending Self-Expression Part II,” October 2021.

⁶ *Ibid.*

⁷ GGE, “Suspending.”

⁸ GGE, “Suspending Part II.”

their dress; snapback hats, durags, and bonnets were not permitted, the latter two characterized as “sleepwear” by the school.

For Davina, dress codes had a bleak impact on her self-expression as a trans woman. She began her transition after leaving DOE schools, explaining that if she had transitioned in high school and wanted to express her true self, she felt she would have gotten suspended. She wanted to attend school to create opportunities for her future. Still, it was difficult when she could not express her true self and sexualizing narratives of femininity were brought home. When she finally did transition after high school, showing off her body by wearing skirts or other clothing stereotypically associated with femininity was extremely gender-affirming to her; however, these were the articles of clothing that had been sexualized and banned by adult administrators.

Conclusion

In order to rectify this form of racial and gendered discrimination in NY school systems, the Committee on Education must:

- **Establish Gender, Race, and Body Type Neutral Dress Codes**

The DOE must provide comprehensive guidelines for a dress code policy that complies with Title IX of the Federal Education Amendments Act, with specific attention to the inclusion and equity of trans and cis girls, trans and gender-expansive youth, Black students, and body-diverse students.

- **Increased Data Collection on DOE Dress Codes**

While Girls for Gender Equity’s two reports provide detailed insight into the discrimination ingrained in many New York Schools’ dress codes, this research is limited. To fully ensure discrimination does not continue in practice, the DOE must provide substantial data to elucidate the scale of discrimination in New York schools’ dress code policies.

- Each school must provide a comprehensive report on its dress code, including whether the dress code includes disciplinary provisions, and whether its language discriminates according to gender, or has the opportunity to do so in practice despite gender-neutral language
- Each school must provide a report on the disciplinary infractions the school has issued in the previous year based on dress codes including resulting student penalties, student’s birth-assigned gender, current gender identity, racial and ethnic identities, and religious identity

Thank you to the members of this Committee and to Girls for Gender Equity and Trans formative Schools who have been working hard to address the needs of these youth communities. The Free to Be Youth Project stands ready to assist the NYC City Council Committee on Education in any way that we can.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Leipziger". The signature is fluid and cursive, with the first name "Amy" written in a larger, more prominent script than the last name "Leipziger".

Amy Leipziger
Project Director
Free to Be Youth Project, UJC