



**Applying the Dignity for All Students Act to Nonpublic Schools
(Bill S.3180-Hoylman-Sigal/A.1829-Jean-Pierre)**

Memorandum of Opposition

Bill S.3180-Hoylman-Sigal/A.1829-Jean-Pierre would apply the Dignity for All Students Act (DASA) to nonpublic schools.¹ While DASA includes several provisions that address bullying and school safety, it would also empower the New York State Education Department to investigate complaints at nonpublic schools and would require such schools to engage in data collection and reporting. Furthermore, DASA contains provisions regarding gender and sexuality that are problematic for religious schools. In essence, this bill could force many of New York's religious schools to choose between violating the law, violating their own beliefs, and closing their doors. This set of options is unacceptable, and this bill must not become law.

On September 13, 2010, Gov. David Paterson signed DASA into law as Chapter 482 of the Laws of 2010. DASA requires public schools to collect and report information on instances of bullying, discrimination, and harassment. In addition, DASA bans discrimination and harassment against public school students on the basis of several criteria, including "sexual orientation" and "gender identity or expression." In 2015, the New York State Education Department (NYSED) issued a document entitled "Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students."² After summarizing the relevant provisions of DASA and other laws, this guidance document provided public school districts with "examples of ways in which school officials have responded to situations involving gender-segregated activities or spaces." It also advised public school districts to: (a) use names and pronouns consistent with "transgender" students' stated gender identities; (b) allow "transgender" students to

¹ This memorandum of opposition has been updated and amended. It is current as of May 30, 2023.

² See https://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf, last accessed May 30, 2023.

participate in in opposite-sex gym classes; and (c) “eliminate” any “gender-based policies, rules, and practices” that “do not serve a clear pedagogical purpose,” as such policies “can have the effect of marginalizing, stigmatizing, stereotyping and excluding students.”

In February 2018, then-Attorney General Eric Schneiderman and then-Education Commissioner MaryEllen Elia issued a letter to school districts affirming “school districts’ independent duties, under New York State law, to protect their transgender students and ensure those students’ equal access to all school resources and programming.”³

Section 17 of DASA reads: “Nothing in this article shall apply to private, religious or denominational educational institutions.” Bill S.3180-Hoylman-Sigal/A.1829-Jean-Pierre would repeal this exemption. In so doing, this bill would subject nonpublic schools to intrusive data collection and reporting requirements. It would also require religious schools across New York to affirm and accommodate the stated sexual orientations and gender identities of their students.

This legislation is deeply problematic. First of all, the bill’s sponsors have not demonstrated—or made any effort to demonstrate—that New York’s nonpublic schools are struggling with bullying-related problems that require the state’s intervention. The sponsor memorandum offers only a vague assertion that bullying, discrimination, and harassment occur at nonpublic schools, along with the shocking and disturbing claim that “students at private schools, including religious schools, can and have been bullied to the point of such despair that they kill themselves.” No factual basis is provided to support these contentions.

Second, the bill’s sponsors have left a key question unanswered. That question is: Has DASA helped curb bullying, discrimination, and harassment in New York’s public schools? Is the law working? Before the Legislature extends DASA and its mandates to nonpublic schools, it must first examine whether the law is fulfilling its stated purpose.

Third, applying DASA to nonpublic schools would allow nonpublic school students to complain of discrimination to the New York State Education Department (NYSED), and would empower NYSED to investigate such schools for noncompliance. As stated above, the bill would also subject nonpublic schools to data collection and reporting requirements. In recent years, New York’s nonpublic schools have waged a time-consuming and costly battle to avoid state government overreach in the form of “substantial equivalency” rules. It is unfortunate that the sponsors of this bill evidently wish to spark another conflict with nonpublic schools. If this bill passes, conflict will be unavoidable—especially given that nothing in the legislation includes funding to enable nonpublic schools to comply with DASA. Accordingly, it would be wise for the Legislature to decline the sponsors’ invitation to extend DASA to nonpublic schools.

³ See <https://www.nysed.gov/sites/default/files/nysed-oag-joint-guidance-letter-2-28-18.pdf>, last accessed May 30, 2023.

Fourth, many of New York’s nonpublic schools have faith-based identities. These religious schools, including Christian schools, educate tens of thousands of New York students each year. Based on the state’s interpretation of DASA, it is quite likely that the state would interpret the proposed legislation to require religious schools to refer to “transgender” students using opposite-sex names and pronouns, to grant “transgender” students access to opposite-sex restrooms and locker rooms, and to allow “transgender” students to compete in opposite-sex sporting events. In the name of nondiscrimination, the state might even pressure religious schools to condone student sexual conduct that is deemed immoral within their respective faith traditions. Schools whose religious tenets forbid homosexual behavior and “transgender” behavior should not be required to adopt controversial policies and practices that violate their own beliefs, or to engage in speech that contradicts those beliefs. Furthermore, any attempt by the state to override the faith-based tenets of religious schools would raise serious constitutional concerns.

As a Christian organization, New Yorkers for Constitutional Freedoms wholeheartedly believes that no students should be subjected to violence or mistreatment of any kind, whether inside or outside of school. However, we object to the extreme and intrusive provisions of this proposed legislation. To protect religious liberty, and to protect nonpublic schools from unnecessary government interference, Bill S.3180-Hoylman-Sigal/A.1829-Jean-Pierre must be rejected.