

**The E-Accountability Foundation
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January 24, 2007

**CONSTITUTIONAL ISSUES AND RACIAL DISCRIMINATION BY THE NYC BOE
IN THE SUSPENSION PROCESS**

There is something very wrong with the NYC policy of suspending kids, and City Council members are not solving the problem by holding hearings. Not one member of NYC Council has come through with any strategy for making changes to the throwing away of black and minority children from their schools in a suspension process that is blatantly unfair and discriminatory.

Over the past 3 years, ParentAdvocates in NYC have assisted parents more than 90 suspension hearings. In the Manhattan and Brooklyn Suspension Hearings, we have never seen a white face.

The children are falsely accused by anyone and summarily given random sentences that fill up the "rubber rooms" for children: the "Twilight Centers" or 'Second Opportunity Schools' that are anything but. Kids of all ages and abilities are jammed together into one room, where a person – seldom a teacher – wanders in and out – in, when a visitor or new child shows up with his/her parent; out the rest of the time. No homework or testing is allowed or brought to the newest garbage, the child who is sent to these forgotten locations.

The Director of the Manhattan Suspension Hearing Office, Shirley Rowe, should be fired immediately, and all the Hearing Officers replaced immediately. I know all of them, and not one works to help a child. Ms. Rowe has never allowed a parent the right to subpoena a teacher or witness. Parents are not given the transcripts of the hearings unless they demand it, and any appeal is never approved. If the child who is suspended has an IEP or special needs, this is ignored or denied entry into the proceedings.

In other words, if you are black, you almost certainly will not graduate on time or at all, and will not have a clean record. Principals go after anyone, and the Hearing Officers take their orders from the Principals. "Proving" wrong-doing is as simple as making a telephone call from the Principal to the EIC, and a suspension packet is generated and sent to the child's home. The child is guilty, immediately.

Below are two of the 90 cases we have worked on:

Suspension Case #1

Two African-American 14-year-old girls were standing outside of the program office at Sheepshead Bay HS in Brooklyn, talking, when suddenly a hulking white man by the name of Kenneth Jacobs came flying out of the office, grabbed one girl, T, by the neck, ripped open her blouse, beat her chest and neck, and tried to push her into the stairwell, out of the eye of the video on the hallway where they were standing. T's friend, A, tried to stop him, and he grabbed the backpack of T and ran into the office, to get out of the eye of the video.

The girls ran after him, and he continued to beat up T, in front of the office workers. A again tried to stop him (even though she is 1/20th his size), and he picked her up and threw her against a desk, hurting her hip (she is a dancer). She saw a small pink plastic ruler on the desk (she was now on the floor) and saw Jacobs coming towards her, so she threw the ruler at him. It grazed his

forehead, enraging him, and he was about to beat her when the security guards stopped him. An ambulance was called, and both girls were taken to the hospital. The mothers were called. T's mother took pictures of her daughter's bruises and her torn shirt, for the suspension hearing (both girls were suspended for beating up Mr. Jacobs, according to the Principal).

A was arrested and taken from the hospital to the precinct for arraignment and booking. Her charge: assault and battery of Mr. Jacobs. The mother took the hospital records home, and I was asked to do the suspension hearing. The Brooklyn suspension office did not want to go forward with the hearing once I presented the video, so the person in charge of the office started screaming at me that I had to get out or she would have me arrested for speaking with parents. We called her later that afternoon, and asked for her by name, "Ms. Rampersand", and she told the person calling (not me, but someone that works with parentadvocates) that there was no one there by that name. Her name was...Miss...Smith.

Legal Aid did the suspension hearing, and during the hearing the video was shown. The Hearing Officer said that she did not see anything such as Mr. Jacobs hitting anyone, and everyone that saw that was mistaken. Both girls were suspended for a year. I went to Brooklyn Supreme Court and was able to see Jacob's file, 2 inches thick, with assault and battery as well as aggravated harassment charges. The police refused to take a complaint from either parent about Jacobs, saying they were just making it up in retaliation for his complaint against the two girls, which was that they beat him up (no proof whatsoever, no hospital visit). The question of how the two girls got so injured was never answered, except that Jacobs had to defend himself against them. We played the video at the suspension hearing and it was decided by the Hearing Officer that Jacobs was not doing anything harmful to the girls. I appealed to the Chancellor, he denied the appeal.

The DA's office went after A all the way to the Court, where the prosecutor demanded A's mom make a deal for A to spend 3 weeks at a rehabilitation center in Westchester, or else risk prison. She called me and was hysterical (I was at another hearing) and asked me what she should do. I told her to be strong and say "no deal", and that Jacobs would not appear and would not press charges. At the very last minute, A's mom took a deep breath, and did what I suggested, that they go to trial, and the DA walked up to the judge and told her, "Your honor, we are dropping the charges, Mr. Jacobs will not appear."

Last I heard Mr. Jacobs was still working at Sheepshead Bay. I helped A get into a private school, while T's mom went along with the year suspension, afraid of the BOE if she didn't comply.

Betsy

The trouble with this is proving what happened. Hearsay becomes the prevailing evidence, and the Suspension Office suspends the child that they are told to suspend, by the BOE, and not the child that necessarily did the crime.

Suspension Case #2

A girl at a District 4 school came to the school on Tuesday January 17, 2006, with her mother, who accused 7th grade student JT of cutting her daughter's coat on Friday, January 13, after school, off school property. On the 17th, there was an ELA exam from 9-11AM. JT, a good kid, was taking his ELA exam at the time, so when the exam was over at 11AM he was called to the Principal's office, where he was questioned by the police. He knew nothing about the coat, never had been in trouble, never had possession of a box cutter (the school scans every day) and denied ever doing anything to this girl. He was arrested anyway. On the way to the police station he was met by his mom, a very involved woman who got him into the school with his IEP (he is in special ed) and was an advocate for ACS. The mother of the girl accusing JT said that she would not press charges if JT's mom paid for her coat, \$150.00. JT's mom agreed, just to stop the arrest process. JT was suspended, and his mom just wanted him back in school, so she agreed to declare no contest, but changed her mind because JT was innocent and the girl just wanted to be paid for the coat, with only a rip in the sleeve. We were called by JT's mom to do the suspension hearing.

It was clear at the hearing that the Hearing Officer was intent on substantiating the suspension of JT. I asked the girl about the cutting incident and the Hearing Officer stopped me, saying that the questions were not relevant, when the girl got to version 5. I thought JT had an easy "not guilty" and said so in my closing argument.

The Hearing Officer found him guilty of cutting the coat on January 17, at 10AM, in the school, while he was sitting in his classroom taking his ELA exam. The charge is 100% false, but the BOE does not like anyone proving them wrong. The boy, JT, was suspended for a year, despite his innocence. We scheduled immediately a Manifestation Determination Review, and at this meeting it was decided that his actions had nothing to do with his disability because HE DIDN'T COMMIT THE CRIME". BOE Rose DePinto and Les Matuk never answered my appeal, and sent JT to the Door, a place that admitted having no services for him. He stopped going to school, and last I heard, his mother didn't know where he was, and the Door never promoted him or tried to give him his services.

I scheduled an Impartial Hearing and the Hearing Officer would not allow any information of the incident or the suspension, and told JT's mother not to sit near him (she is African American and he is white). He would not allow any evidence to be presented or any testimony that proved JT's innocence, and was openly hostile to both JT and his mom. We complained to Denise Washington, who told us to go to her boss, Kathleen Grimm. We did, in writing. Grimm never responded, and never takes calls. The charge that JT cut a coat off school grounds while at the same time sitting in his ELA test in the classroom, remained.

Both the Suspension office and the Impartial Hearing Office refused to give the mom any subpoenas to bring in the AP who spoke with JT and said that he was innocent, and this was outrageous. Both said that his testimony was "irrelevant" to the proceeding.

That's why this policy of accusing kids of incidents off school property cannot continue - it furthers the prejudice that already exists in the hearings against minority/special education children.

Betsy Combier



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**TESTIMONY OF DONNA LIEBERMAN
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION**

before

**THE NEW YORK CITY COUNCIL COMMITTEES ON EDUCATION AND
CIVIL RIGHTS REGARDING THE IMPACT OF SUSPENSIONS ON
STUDENTS' EDUCATION RIGHTS**

January 23, 2008

Council Member Jackson and members of the City Council's Education and Civil Rights Committees: My name is Donna Lieberman, and I appear before you today on behalf of the New York Civil Liberties Union ("NYCLU") and its 48,000 members statewide. Since 1951, the NYCLU has been the state's leading advocate on behalf of New Yorkers' civil rights and civil liberties.

In March 2007, the NYCLU released a report on the impact of DOE and NYPD disciplinary and safety policies on the educational environment in the schools. The report examined the origins and the consequences of the city's aggressive policing operation in the schools, and provided analyses of the results of a broad student survey performed by the NYCLU and profiles of individual students whose experiences illuminate the problems with policing in schools. The report included numerous stories of instances in which school and police personnel meted out harsh punishment in situations that should have been resolved through counseling, conflict mediation, and similar supportive

methods. The report included an analysis of student suspension practices, and found that the length and duration of student suspensions had increased significantly, under circumstances where school officials were failing to adhere to their obligation to provide suspended students with alternative educational services that were real and meaningful.

Students and teachers are entitled to a safe educational environment that is conducive to both teaching and learning. A school's authority to suspend a student plays an important role in securing such an environment. Yet too often suspensions also serve as a quick fix for student disciplinary problems that demand a more supportive response. In the long term, many student suspensions hamper, rather than improve student safety. Such suspensions impact students long after the suspension has been served.

I testify today to urge the City Council to closely examine suspension practices in the city's public schools and to create mechanisms for greater accountability and oversight of school disciplinary practices, including suspensions. As my testimony will indicate, student suspensions play a pivotal role in perpetuating the "School to Prison Pipeline," both nationally and in New York City. It is time for the City Council to stem the flow of students into the criminal justice system, and support corrective measures, such as those contained in the Student Safety Act.¹

Suspensions Perpetuate the School to Prison Pipeline

The School to Prison Pipeline describes local, state and federal education and public safety policies that operate to push students out of school and into the criminal

¹ During the last Education Committee hearing on school disciplinary policies, held on October 10, 2007, we recommended for the City Council to introduce the Student Safety Act. Despite widespread support among the committee members, the City Council is yet to introduce this important piece of legislation.

justice system. This system disproportionately impacts youth of color and youth with disabilities. Inequities in areas such as school discipline, policing practices, and high-stakes testing contribute to the pipeline.

The School to Prison Pipeline operates directly and indirectly. Schools directly send students into the pipeline through zero tolerance policies that involve the police in minor incidents, which too often lead to arrests, juvenile detention referrals, and even incarceration. Schools indirectly push students into the criminal justice system by excluding them from school through suspension, expulsion, discouragement and high stakes testing requirements.

Suspensions, often the first stop along the pipeline, play a crucial role in pushing students from the school system and into the criminal justice system. Research shows a clear correlation between suspensions and both low achievement and dropping out of school altogether.² Such research also demonstrates a link between dropping out of school and incarceration later in life. Specifically, students who have been suspended are three times more likely to drop out by the 10th grade than students who have never been suspended.³ Dropping out in turn triples the likelihood that a person will be incarcerated later in life.⁴ In fact, in 1997, 68 percent of state prison inmates were school dropouts.⁵

² Goertz, M.E., Pollack, J.M. & Rock, D.A. (196). Who drops out of high school and why?: Findings from a national study. Teachers College Record, 87, 357-73, available at <http://www.tcrecord.org/Content.asp?ContentId=688>.

³ Ibid.

⁴ Coalition for Juvenile Justice. *Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention*. 2001 Annual Report, available at www.juvjustice.org/media/resources/resource_122.pdf.

⁵ Ogletree, Charles J. Testimony: Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools. House of Representatives Judiciary Committee. October 16, 2007. Available at <http://chhi.podconsulting.net/assets/documents/news/Final%20Jena%20Testimony.pdf>.

Despite the poor outcomes associated with suspensions, schools across the nation have seen an explosion in the number of suspensions and expulsions, mainly due to zero tolerance policies that rely heavily on harsh disciplinary practices. Originally meant to address only the most serious violent behavior, zero tolerance policies now too often target normal, non-violent behavior, even though schools nationwide continue to benefit from a fourteen year steady decrease in violent and non-violent crime in public schools.⁶

In 2006, the American Psychological Association found that zero tolerance policies have been ineffective in reducing violence in schools and have instead increased disciplinary problems and dropout rates in middle schools and high schools, as well as the number of referrals to the juvenile justice system for minor infractions once handled by educators in the schools.⁷ The report also found that zero tolerance policies have led to an over-representation of students of color in school discipline processes.

The national racial disparities in school discipline are indeed profound. Nationwide, black students are 2.6 times more likely to be suspended than white students.⁸ Black students, who make up only 17 percent of the nation's student population, account for 36 percent of out of school suspensions and 31 percent of expulsions.⁹ This disparity has been on the rise during the recent ascendancy of zero tolerance, with 6 percent of black students and 3 percent of white students being suspended at least once in 1973 compared to 14 percent of blacks and 5 percent of whites

⁶ *Zero Tolerance and School Discipline*. The Civil Rights Project, available at http://www.civilrightsproject.ucla.edu/resources/civilrights_brief/discipline.php.

⁷ Skiba, Russell et al. *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*. APA Zero Tolerance Task Force, 2006. Available at www.apa.org/ed/cpse/zttfreport.pdf.

⁸ Ogletree, Charles J. *Testimony: Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools*. House of Representatives Judiciary Committee. October 16, 2007. Available at <http://chhi.podconsulting.net/assets/documents/news/Final%20Jena%20Testimony.pdf>.

⁹ *Elementary and Secondary School Survey 2002*. Office of Civil Rights, U.S. Department of Education.

in 2003.¹⁰ Black students with learning disabilities are even more vulnerable to both suspension and incarceration. They are three times more likely than white students with learning disabilities to be removed from school and four times more likely to be placed in a correctional institution.¹¹ Our nation's over-reliance on suspensions and other exclusions from school continues to limit the futures of our most vulnerable youth – students of color, low income students, and students with special needs.

NYC's Education System: De Facto Zero Tolerance Policies that Push Certain Populations Out of School

Despite the range of options available for disciplinary action outlined in the Discipline Code, students in New York City's public schools are being routinely subjected to the harshest available option: long term suspension. Superintendent suspensions increased by 76 percent between 2000 and 2005, jumping from 8,567 to 15,090 a year.¹² In addition to formal suspensions – both superintendent's and principals – students are also subject to removal from class by a teacher –teacher suspensions – which can result in significant loss of class time.

New York City is also part of the trend of increased racial disparities with respect to suspension practices. The 2001 suspension rate for City schools was 8.3 percent for black students and 4.8 percent for Latino students, compared to only 2.5 percent for white students.¹³ The over reliance on suspensions at Impact Schools, largely attended by low

¹⁰ Ogletree, Charles J. Testimony: Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools. House of Representatives Judiciary Committee. October 16, 2007. Available at <http://chhi.podconsulting.net/assets/documents/news/Final%20Jena%20Testimony.pdf>.

¹¹ Wald, Johanna and Daniel Losen (May 2003). *Defining and redirecting a School-to-Prison Pipeline*, p. 3. Available at www.ytfg.org/documents/BeyondtheTunnelProblemBriefingPaper2Nov2005fin.pdf.

¹² NYC DOE Statistics.

¹³ Eskenazi, Michael, Gillian Eddins and John M. Beam. *Equity of Exclusion: The Dynamics of Resources, Demographics, and Behavior in the New York City Public Schools*. Fordham University: National Center

income students of color, further exacerbates the racial disparity in our city's school discipline practices. Average suspensions at Impact Schools increased by 22.4 percent in the first year of the program, compared to a citywide increase of only 2.7 percent.¹⁴ The eagerness with which struggling – or “Spotlight” – students at these schools are suspended or transferred to alternative programs is of equal cause for concern.

The quality of education at the City's suspension sites – or Alternative Learning Centers – are also of serious concern. We have received reports of inappropriate or non-existent learning materials, overcrowding, and lack of supervision at these placements. It is not surprising that these sites have an attendance rate of less than 35 percent or that students sent to these placements often drop out of school altogether.

The City's Second Opportunity Schools for students suspended for a year also merit a second look. Although some of these schools are exemplary in their support of at risk students, many are simply sites at which to warehouse struggling students until they are “counseled out” – i.e. encouraged to enroll in an alternative or GED program – or simply drop out. Some students return to their original school and face suspension after suspension without access to support services until they, too, are forced to attend an alternative program or drop out of school altogether. As I mentioned previously, dropping out of school is a major predictor of future incarceration. By suspending our students en masse, we are pushing more and more young people out of school and towards prison.

for Schools and Communities. October 2003. Available at <http://www.ncscatfordham.org/binarydata/files/EQUITYOREXCLUSION.pdf>.

¹⁴ National Economic and Social Rights Initiative (2007). *Deprived of Dignity: Degrading Treatment and Abusive Discipline in New York City and Los Angeles Public Schools*, p. 20.

The Need for the Student Safety Act

There is a vital need in New York City for raw data on school disciplinary practices. Education Law §2802 mandates specific reporting to the commissioner on disciplinary issues, including the age and grade of the student involved, and the location and type of incident. This law also requires information on any disciplinary action taken, including out of school suspension, involuntary transfer to an alternative placement, in-school suspension, referral to the juvenile justice system and the duration of the disciplinary action.

Currently, this data is not publicly available, even to advocates who have made repeated requests—both informally and formally—for this information. The New York State School Report Cards for New York City specifically exclude in-school suspensions, and count repeat suspensions of individual students only once. The report cards also do not provide information about the reasons for the suspensions, the duration of each suspension, and information on the students who face suspensions.

Moreover, these report cards include the number of students who transferred to GED programs and those who dropped out, but not those who transferred to other alternative programs or never returned from an Alternative Learning Center or Second Opportunity School. New York City's Annual School Report Supplements purport to track transfers to other schools as well as drop outs through the broad category of "leavers," defined as "students who left school for any reason."

The difference between a student who is suspended three times in one year for disruptive behavior in Math class, but does not receive support services – or tutoring in Math! – at her Alternative Learning Center and is finally counseled to enroll in a GED

program, and a student who drops out of her own volition is extremely important. As we work to find ways to support all of our students, we must be cognizant of this difference and the number of students to which it applies. To fully understand and address the impact of New York City's over-reliance on suspensions, public access to consistent, reliable data on suspensions and other exclusions from school is essential.

The Student Safety Act makes the data necessary for reforming our disciplinary system publicly available. Passage of this bill will give the needed access to data on all types of suspensions and expulsions broken down by school, student race, gender, age, and special education status, as well as the duration of the exclusion. The bill also mandates a description of each incident that led to the disciplinary action. In addition, the bill requires reporting on all students who have left any Department of Education school, whether due to dropping out or transfer to an alternative school, GED program or detention facility as well as their race, gender, age and special education status. This information will be essential as we attempt to address the educational outcomes of students who are currently lost in the system, either between schools or out of school.

Like you, we are principally concerned with ensuring the success of all New York City students. Improved access to data and increased scrutiny of our school disciplinary system will only expand the educational opportunities of our students.



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE CHANCELLOR

52 Chambers Street – New York, NY 10007

Testimony of Elayna Konstan Chief Executive Officer Office of School and Youth Development

Student Suspensions
Committees on Education, Civil Rights and Juvenile Justice
January 23, 2008

Good morning Chair Jackson, Chair Seabrook, Chair Gonzalez and members of the Education, Civil Rights, and Juvenile Justice committees. My name is Elayna Konstan, and I am the Chief Executive Officer of the Office of School and Youth Development. Thank you for the opportunity to appear before you today to update you on the progress of our work on student discipline. I come before you today as an educator who has served in the New York City public schools over the last thirty three years as a special education teacher, an Assistant Principal for Special Education, the Manager of Clinical Services for the Manhattan high schools, the Director of Instruction for Alternative high schools and a Deputy Superintendent. I also come before you as a graduate of the New York City public schools and as the parent of a son who attended the city's public schools as well.

From both personal and professional experience, I know that safe and orderly schools are the foundation of student achievement. Every morning approximately 1.1 million children enter over 1400 of our city's public schools. Spread throughout the five boroughs, they make up the largest and most culturally diverse public school system in the world. The population of children we serve is not static. We enroll new students into the City's public schools every single school day. They come to us from all over our own country and from all over the world. Each brings unique strengths and talents and life experiences. They come to get an education from some of the most dedicated teachers and school leaders to be found anywhere in the field of education.

Regardless of its size, the theme upon which it may be focused, or the neighborhood in which it is located, each of our schools shares a common goal –to educate children in a safe environment that fosters their academic, physical, social and emotional growth. To achieve this goal requires a focus on the total school community by the total school community. Without a safe and supportive school environment, effective teaching and learning cannot take place.

Safety is the responsibility of all members of a school community. A safe and supportive school requires a coordinated, team approach based on a fundamental understanding that order and security in a school is inextricably linked to instructional best practices, effective classroom management, developmentally appropriate guidance support, meaningful student engagement, and fair and consistent enforcement of the Citywide Standards of Discipline and Intervention Measures, commonly called the Discipline Code.

The Citywide Discipline Code provides all members of the school community – students, staff and parents- with the standards of behavior which students are expected to live up to and the consequences if these standards are not met. Divided into two sections, the first of which applies to students in grades K- 5 and the second to students in grades 6 to 12, the Code provides a comprehensive description of unacceptable behaviors which are categorized from Level 1- insubordinate behaviors to Level 5 seriously dangerous or violent behavior.

For each infraction, the Code provides a range of permissible disciplinary responses and intervention measures which may be used when students engage in troublesome behavior. There are no easy answers and no quick fixes for the myriad reasons why children engage in inappropriate behavior. Because each child is a unique individual, the type of formal intervention that occurs when a student is disruptive depends on multiple factors. These factors include the child's age, maturity, previous disciplinary record, the nature of the prior misconduct, the number of prior instances of misconduct and the disciplinary measures imposed for such misconduct, the student's Individualized Education Program-if applicable, and the circumstances surrounding the incident. All these factors are considered when deciding the appropriate disciplinary and intervention measures to take with a child.

For each infraction, the Code addresses two simultaneous goals – holding students accountable for their behavior by providing a range of permissible disciplinary responses and intervention measures and turning the behavioral incident into an opportunity for student growth and learning by providing a range of guidance interventions schools may use to address student behavior. Over the last two years we have provided a range of professional development opportunities designed to enhance the connection between behavioral expectations and student support. It is this union of accountability and student support that we believe is already having a positive impact.

School reporting of behavioral incidents is consistent. Comparing the number of Level 3, 4 and 5 behavior incidents reported this year to the same time period last year, we have had 49 additional incidents. These 38,829 incidents involved a total of 35,775 students, approximately 3% of all students in our schools. Clearly, the overwhelming majority of our students behave appropriately in school. It is equally clear that interventions and supports provided to students who are disruptive have an impact on their future behavior. Of these 35,775 students 76.7% were involved in one incident only. The number of students involved in two incidents drops to 14.6%, in three incidents- 4.8%, in four incidents 1.8%. Recidivism is low. In comparison to last year, this year to date we are seeing a reduction in the citywide number of the most serious Level 5 incidents by 17.6%, a reduction in the number of principal's suspensions by 4.2%, and a reduction in the number of superintendent's suspensions by 9.4%.

The incidents cited above represent Level 3 behaviors for which a student could receive various disciplinary responses, including a principal's suspension or a superintendent's suspension, Level 4 behaviors for which a student must minimally receive a principal's suspension and Level 5 behaviors for which a student must receive a superintendent's suspension. Of the students suspended this year, 64.9% have been suspended once, 10.3% twice, 2.9% three times, 1.2% four or more times. When we look at our incident data, it is also clear that for more than 30% of the students involved, intervention measures other than a suspension are the more appropriate disciplinary response.

Less than 2% of our 1.1 million students (20,497) have received a principal's suspension. Of students receiving a principal's suspension, 83.8% have been suspended only once. Approximately one half of 1 % of our students (6,405) has received a superintendent's suspension. Of these students, 91.8% have been suspended only once. Again, recidivism is low.

While the vast majority of our students never get suspended, we must provide a meaningful and supportive learning environment for the small percentage of students who do. To address the needs of suspended students, secondary school students who receive a superintendent's suspension of up to 90 days are assigned to one of the newly designed Alternate Learning Centers located throughout the five boroughs. The Alternate Learning Centers or ALCs are supervised by a borough principal. Each is staffed by a full time supervisor, guidance counselor, core content area teachers, a special education teacher and an educational paraprofessional. Students at an ALC receive instruction appropriate to their grade so that they continue to progress academically. Each ALC's schedule is structured to include a daily advisory period that focuses on promoting each student's social and emotional growth. At either 30 or 60 days, depending on the length of the student's suspension, each child's academic advancement and social/emotional growth is reviewed for possible early reinstatement to her or his home school. The goal of each ALC is to continue the student's education while also working to reduce recidivism and return students to their home

schools better able to live up to the behavioral standards of our schools.

We are committed to providing all students with a safe, supportive school climate and culture in which to learn and grow. We are equally committed to addressing the needs of students who exhibit challenging behaviors. We will continue to ensure that all the systems and procedures that promote order, appropriate behavior, a supportive school climate and culture, and safety in our schools are in place, and we will continue to build the capacity of school staff to address student behavior through prevention and intervention strategies and to provide children with the supportive services they may need to meet the challenges in their lives.

~~I would be happy to answer your questions.~~ However, as the Committee is aware, there is ongoing litigation that may overlap with the subject of this hearing. Because of this, I am here today with Michael Best, General Counsel to the Department.

FOR THE RECORD

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The girls ran after him, and he continued to beat up T, in front of the office workers. A again tried to stop him (even though she is 1/20th his size), and he picked her up and threw her against a desk, hurting her hip (she is a dancer). She saw a small pink plastic ruler on the desk (she was now on the floor) and saw Jacobs coming towards her, so she threw the ruler at him. It grazed his

forehead, enraging him, and he was about to beat her when the security guards stopped him. An ambulance was called, and both girls were taken to the hospital. The mothers were called. T's mother took pictures of her daughter's bruises and her torn shirt, for the suspension hearing (both girls were suspended for beating up Mr. Jacobs, according to the Principal).

A was arrested and taken from the hospital to the precinct for arraignment and booking. Her charge: assault and battery of Mr. Jacobs. The mother took the hospital records home, and I was asked to do the suspension hearing. The Brooklyn suspension office did not want to go forward with the hearing once I presented the video, so the person in charge of the office started screaming at me that I had to get out or she would have me arrested for speaking with parents. We called her later that afternoon, and asked for her by name, "Ms. Rampersand", and she told the person calling (not me, but someone that works with parentadvocates) that there was no one there by that name. Her name was...Miss...Smith.

Legal Aid did the suspension hearing, and during the hearing the video was shown. The Hearing Officer said that she did not see anything such as Mr. Jacobs hitting anyone, and everyone that saw that was mistaken. Both girls were suspended for a year. I went to Brooklyn Supreme Court and was able to see Jacob's file, 2 inches thick, with assault and battery as well as aggravated harassment charges. The police refused to take a complaint from either parent about Jacobs, saying they were just making it up in retaliation for his complaint against the two girls, which was that they beat him up (no proof whatsoever, no hospital visit). The question of how the two girls got so injured was never answered, except that Jacobs had to defend himself against them. We played the video at the suspension hearing and it was decided by the Hearing Officer that Jacobs was not doing anything harmful to the girls. I appealed to the Chancellor, he denied the appeal.

The DA's office went after A all the way to the Court, where the prosecutor demanded A's mom make a deal for A to spend 3 weeks at a rehabilitation center in Westchester, or else risk prison. She called me and was hysterical (I was at another hearing) and asked me what she should do. I told her to be strong and say "no deal", and that Jacobs would not appear and would not press charges. At the very last minute, A's mom took a deep breath, and did what I suggested, that they go to trial, and the DA walked up to the judge and told her, "Your honor, we are dropping the charges, Mr. Jacobs will not appear."

Last I heard Mr. Jacobs was still working at Sheepshead Bay. I helped A get into a private school, while T's mom went along with the year suspension, afraid of the BOE if she didn't comply.

Betsy

The trouble with this is proving what happened. Hearsay becomes the prevailing evidence, and the Suspension Office suspends the child that they are told to suspend, by the BOE, and not the child that necessarily did the crime.

Suspension Case #2

A girl at a District 4 school came to the school on Tuesday January 17, 2006, with her mother, who accused 7th grade student JT of cutting her daughter's coat on Friday, January 13, after school, off school property. On the 17th, there was an ELA exam from 9-11AM. JT, a good kid, was taking his ELA exam at the time, so when the exam was over at 11AM he was called to the Principal's office, where he was questioned by the police. He knew nothing about the coat, never had been in trouble, never had possession of a box cutter (the school scans every day) and denied ever doing anything to this girl. He was arrested anyway. On the way to the police station he was met by his mom, a very involved woman who got him into the school with his IEP (he is in special ed) and was an advocate for ACS. The mother of the girl accusing JT said that she would not press charges if JT's mom paid for her coat, \$150.00. JT's mom agreed, just to stop the arrest process. JT was suspended, and his mom just wanted him back in school, so she agreed to declare no contest, but changed her mind because JT was innocent and the girl just wanted to be paid for the coat, with only a rip in the sleeve. We were called by JT's mom to do the suspension hearing.

It was clear at the hearing that the Hearing Officer was intent on substantiating the suspension of JT. I asked the girl about the cutting incident and the Hearing Officer stopped me, saying that the questions were not relevant, when the girl got to version 5. I thought JT had an easy "not guilty" and said so in my closing argument.

The Hearing Officer found him guilty of cutting the coat on January 17, at 10AM, in the school, while he was sitting in his classroom taking his ELA exam. The charge is 100% false, but the BOE does not like anyone proving them wrong. The boy, JT, was suspended for a year, despite his innocence. We scheduled immediately a Manifestation Determination Review, and at this meeting it was decided that his actions had nothing to do with his disability because HE DIDN'T COMMIT THE CRIME". BOE Rose DePinto and Les Matuk never answered my appeal, and sent JT to the Door, a place that admitted having no services for him. He stopped going to school, and last I heard, his mother didn't know where he was, and the Door never promoted him or tried to give him his services.

I scheduled an Impartial Hearing and the Hearing Officer would not allow any information of the incident or the suspension, and told JT's mother not to sit near him (she is African American and he is white). He would not allow any evidence to be presented or any testimony that proved JT's innocence, and was openly hostile to both JT and his mom. We complained to Denise Washington, who told us to go to her boss, Kathleen Grimm. We did, in writing. Grimm never responded, and never takes calls. The charge that JT cut a coat off school grounds while at the same time sitting in his ELA test in the classroom, remained.

Both the Suspension office and the Impartial Hearing Office refused to give the mom any subpoenas to bring in the AP who spoke with JT and said that he was innocent, and this was outrageous. Both said that his testimony was "irrelevant" to the proceeding.

That's why this policy of accusing kids of incidents off school property cannot continue - it furthers the prejudice that already exists in the hearings against minority/special education children.

Betsy Combier

Testimony
of
Sterling Roberson
Safety Director
United Federation of Teachers
to the
Joint hearing on Student Suspensions
of the
City Council's Education,
Civil Rights and Juvenile Justice Committees

January 23, 2008

My name is Sterling Roberson. I am the school safety director for the United Federation of Teachers. Thank you, Chairmen Jackson, Seabrook and Chairwoman Gonzalez for soliciting the union's views on school suspension policies and what they really look like in our schools.

In developing a sound school suspension policy—one that neither ignores actual school disruptions nor rushes to judgment and further victimizes at risk children—we don't have to re-invent the wheel. The UFT testified on school safety at a Feb. 8, 2005 education committee hearing, and many of the suggestions we made at that hearing were incorporated in the Sept. 2007 "Citywide Standards of Discipline and Intervention Measures," otherwise known as the schools' "Discipline Code and Bill of Student Rights and Responsibilities, K-12."

How good is the Discipline Code? It's a good set of standards. It's extremely detailed regarding the types of infractions that must be addressed, the interventions needed and the actual suspension prescribed. What is in question—and what we believe is the single largest problem regarding suspensions—is the DOE's failure to comply with its own existing student removal process, as required by state law. In other words, teachers today do have the right to remove students from their classes, and the procedures are both fair and clearly defined in the discipline code and the chancellor's regulations. So the existence of a system-wide student removal policy is not in question. What is missing is a school-specific student-removal policy and communicating its requirements to students and staff.

What's problematic is the lack of citywide implementation, enforcement and training for staff and students. When we recently surveyed our members, we found that most had no idea about what to do when a student is disruptive. We found that more than 400 schools – despite being required to do so by state legislation and chancellor's regulations— never adopted a school specific policy for student removal. What does that mean? It means that if Student X, for example, commits infraction Y, neither the teacher in the classroom nor the student committing the infraction have a clue about what to do and what should happen

And when principals or district superintendents don't back up teachers, then students come to believe there are no consequences for disruptions, often making removals the only recourse a teacher has. Remember, there are

hundreds of schools that do not have a school specific student removal processes.

Following last spring's school reorganization, the UFT instructed its members to be sure to pose a series of hard questions to newly empowered principles, including "how do you plan to enforce the school discipline code, including suspensions and establishing a SAVE room as required by state law?"

Another citywide problem is that suspension from class truly ought to be the last remedy, not the first. There are ample early warning signs and ample indication of what interventions disruptive children need; all of which are covered in the Citywide Standards. Yet look what the schools have to work with. There are no guidance counselors assigned to K-5 schools. Permit me to repeat this fact. Guidance counselors are not mandated in K-5 schools. It is left up to the principal to decide to allocate money from their budget for a counselor. Does this make any sense?

Furthermore, there are too few guidance counselors, social workers and school psychologists in the upper grades. There is often no place for a child to cool out and frequently no provision for a professional to sit down with a kid. We need more guidance and intervention services, not less.

We also need to better operationalize the interventions the DOE acknowledges are necessary. As per the discipline code, the possible guidance interventions recommended for Level 1 (Insubordinate Behaviors) incidents for middle and high school students calls for: parent outreach; intervention by counseling staff; guidance conferences; individual and/or group counseling; peer mediation; mentoring program; conflict resolution; development of an individual behavior contract; short-term behavioral progress reports; referral to a pupil personnel team and/or a community based organization; community service; or referral (if appropriate) to a substance abuse counseling service.

That's an excellent list of interventions, but it's only useful if the list is put into play. Our experience with the DOE is that in the main the Standards are not followed.

The Standards also call for alternate learning instructional spaces, a key recommendation the UFT made in calling for "adequately funding

alternative instruction for suspended students at off-campus sites, so they are not allowed to fall through the safety net.” This is clearly stated in the SAVE legislation. This year the DOE focused on developing alternate learning centers for junior and high school students who are removed from their home school for a significant period of time. We applaud the DOE for supplying the resources and structure for the alternate learning centers and we are closely monitoring the effectiveness of this approach.

However, all of the other students who are removed from classes and/or schools are shortchanged because the resources within the schools have not been dedicated to provide alternate learning spaces where instruction can continue and guidance intervention services can be provided. You may wonder what happens to these students. We can document that the majority of these students sit in the general office, the guidance counselor’s office, the dean’s office or any other administrative office available. Wherever they are, they are not receiving instruction or guidance intervention as they are entitled to under the Save legislation

One of the issues I expect the Council will be interested in is whether there is a racial or ethnic or class imbalance in suspensions. While there is anecdotal evidence suggesting that inner-city kids are more frequently subjected to suspensions, there are also anecdotes suggesting teachers bend over backwards to accommodate disruptive children with difficult home lives. The DOE unfortunately has refused to share its data with the UFT, so we cannot on whether racial or disparities in suspensions even exist.

We’ve asked before, and we continue to ask, that the DOE operate transparently. Education statistics are the public’s property, not the province of an agency.

Why are we shortchanging our children with the most needs by denying them mandated services and proper instruction while placing them in oversized classes, which we know are a prime motivator of classroom disruptions. This is a solvable problem with resources, commitment and collaboration. The state law, the chancellor’s regulations and the discipline code cover it all. What we need from the DOE is their commitment to COLLABORATE, to implement these regulations and to ensure that each and every principal is held accountable for complying with the mandates.

Thank you.

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Testimony of
Advocates for Children of New York
to the
Joint Oversight Hearing
of the City Council
Education and Civil Rights Committees
on
Student Suspensions

Wednesday, January 23, 2008

Advocates for Children of New York

Testimony at City Council Oversight Hearing on Student Suspensions

January 23, 2008

Good morning. My name is Jennifer Barnett, and I am a litigation attorney at Advocates for Children of New York (AFC). I want to thank Chairperson Jackson and Chairperson Seabrook and the Committees on Education and Civil Rights for convening this hearing and for the opportunity to testify on the issue of Student Suspensions.

AFC is a non-profit advocacy organization whose mission for over 35 years has been to ensure equal educational opportunities and quality education for children in the New York City public school system. AFC works extensively in the field of student discipline. At AFC, we represent students at suspension hearings and regularly field phone calls from parents of suspended students on our Jill Chaifetz Education Helpline, which operates with the generous support of the City Council. In 2002, we initiated *E.B., et al. v. New York City Board of Education, et al.*, a class action lawsuit against the Department of Education involving discipline of special education students.

My testimony today will focus on two main topics. First, I will describe a pressing problem AFC has identified as a leading contributor to the high number of special education suspensions taking place in our city. And second, I will provide an overview of the allegations contained in *E.B. v. New York City Board of Education*. Due to current activity in that case, at this time I cannot discuss the issues in that case in great detail.

Pressing Problem Leading to High Volume of Special Education Suspensions

In New York City, special education students are suspended at disproportionately higher rates than their general education counterparts.

One factor that we believe contributes to this discrepancy is the absence of quality programs and services for students who have behavioral difficulties. Very few schools in the city are properly equipped to educate this vulnerable population. When these students come to AFC, we typically are unable to find an appropriate public program for them. Indeed, it is difficult to find a good private program for such students. As a result, these students become trapped in a cycle between ever-changing home schools and suspension sites, none of which meet their needs.

The Department of Education must begin to meet its obligation to provide high quality programs for all students, including students with behavioral difficulties. For example, the Department should move aggressively to implement positive behavior intervention and support systems in all schools. The Department also needs to fulfill legal mandates to conduct individualized functional behavior assessments and implement targeted behavior intervention plans to address problem behaviors in individual students. Finally, the Department must stop placing students with challenging behaviors in segregated classrooms that fail to address their needs for academic stimulation and support.

In short, the Department must begin to establish programs that meet the academic, social/emotional, and behavioral needs of these students so that these students learn to manage their behavior and achieve academic success instead of cycling from school to suspension site and back again until they eventually drop out.

E.B., et al. v. New York City Board of Education, et al.

In July of 2003, Plaintiffs, through Advocates for Children, filed their third Amended Complaint in *E.B., et al. v. New York City Board of Education, et al.* This Complaint – which is available on our website, www.advocatesforchildren.org - was filed on behalf of all students with disabilities aged 3 – 21 who have been, or will be, excluded from school in violation of federal and state law. The exclusions referred to in the complaint are not limited solely to suspensions, which are a grave concern, but also include expulsions, transfers, discharges, and other informal exclusions. For the purposes of today's hearing, I will limit my comments to the allegations relating to formal suspensions.

Through their complaint, Plaintiffs allege that the Department of Education systematically fails to follow proper suspension procedures as dictated by both federal and state law for the suspension of special education students. Such procedures include, among other things, proper and timely notice of the suspension and the corresponding hearings and conferences, timely suspension hearings, and timely and properly conducted manifestation determination reviews. Plaintiffs further allege that the Department of Education fails to provide students with disabilities on suspension a Free Appropriate

Public Education, again required by both state and federal law. As a result, our plaintiffs have been improperly removed from their home schools and have missed days, weeks and months of educational services.

For example, E.B., a student with an emotional disturbance, was suspended from school in the Spring of 2001 when he was just six years old. His mother was never given notice of his suspension and, while on suspension, he did not receive any educational services.

A second named plaintiff, I.P., was 16 when the lawsuit was filed. He had a learning disability and was supposed to receive SETTS, or Special Education Teacher Support Services. In March, 2003, after being accused of a suspendable offense, he was assigned to two different alternative placements, neither of which provided any instruction.

Because of departmental restructurings, the Department of Education's management of the suspension system is slightly different today than it was when this case was first filed. Nonetheless, many of the issues that gave rise to the complaint have not yet been resolved and the litigation is ongoing.

Conclusion

As previously discussed, there is a dearth of quality programs in New York City equipped to work with students with behavioral difficulties. Until this lack of programs

is resolved, the unacceptable gap in the rates of special education and general education suspensions will not close. Thank you.

TESTIMONY

The Council of the City of New York

Committee on Civil Rights
Larry B. Seabrook, Chair

Committee on Education
Robert Jackson, Chair

“Oversight: Student Suspensions”

January 23, 2008
New York, New York

Prepared by
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Good morning. I am Donna Henken, staff attorney in the Legal Aid Society's Manhattan Criminal Defense office. I work in the Adolescent Intervention and Diversion Project, where we represent adolescents aged 13 to 18 who are prosecuted in the adult criminal courts. With me is Jessica Jones, paralegal in Legal Aid's Manhattan Juvenile Rights office. Ms. Jones works in the Providing Education Assistance to Kids project, which focuses on education advocacy for children charged with juvenile delinquency in the Family Court. I submit this testimony on behalf of the Legal Aid Society, and thank Chairmen Jackson and Seabrook and the Committees on Education and Civil Rights for inviting our thoughts on school suspensions in New York City. We applaud the Council for tackling this important subject, and look forward to the valuable contributions that we are sure the Committee will make in this area of vital concern to our City's children and their families.

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 29,000 children, of whom almost 90% were clients in child protective proceedings. The Society's Criminal Defense Practice handled some 225,000 clients last year. We often represent students who are suspended from school. Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies. In addition to

representing many thousands of children each year in trial and appellate courts, Legal Aid also pursues impact litigation and other law reform initiatives on behalf of our clients.

Legal Aid continues to be deeply concerned about the over-policing of New York City's public schools, about which we testified at the City Council's October 10, 2007 hearing on school safety. Similarly, we continue to see the harmful impact of the harsh and pervasive punishment of suspending and expelling students from school, when in the vast majority of cases, less drastic approaches surely would have led to better outcomes for the students and the community.

Today we would like to call attention to the effect of current New York City Department of Education (DOE) policies and practices of school discipline that are too punitive and thus not productive. Additionally, these practices have effectively transferred the traditional school function of mediating disputes and conflicts to the police department and central school officials who do not have daily contact with and knowledge of the individual students. These practices impact negatively the quality of educational services provided to the students of New York City. We will focus primarily on five areas of concern:

- (1) Students are often unnecessarily suspended for minor offenses.
- (2) The suspension alternative education sites that children are required to attend after they are suspended fail to provide adequate academic instruction, homework and supportive services,
- (3) Due process rights of suspended students are compromised in the current system.
- (4) School suspensions disproportionately impact children of color.

(5) The broad range of alternatives to suspension which are outlined in the School Disciplinary Code -- including conflict resolution, mentoring programs, and group and individual counseling -- are rarely if ever used.

Students are often unnecessarily suspended for minor offenses.

We believe that the lack of appropriate training and supervision for the more than 5000 School Safety Agents in the city's public schools, and the use of metal detectors and roving scanners, contributes to this problem.

There are two types of suspensions used by the NYC DOE: principal's suspensions and superintendent's suspensions. Principal's suspensions last for up to five days, and there is no limit on how many times a principal may suspend a student over the course of an academic year. A recent example of the misuse of a principal's suspension comes from our practice:

- Legal Aid represents John¹, a 13-year-old boy who had never received a superintendent's suspension before. John was suspended for pushing the Assistant Principal after the Assistant Principal grabbed his arm and pushed him away. The school gave the student a principal's suspension pending approval of a superintendent's suspension; this violates DOE regulation because it constitutes a double punishment for the same offense. (A-443III.B.3(i).) Further, upon approval of the superintendent suspension, the school did not notify the suspension hearing office that the school had already given John a principal's suspension. In violation of John's due process rights, the hearing was then scheduled for more than five school days after the original suspension. (A-443III.B.3(n).) John's mother risked losing her job if she took time off from work to attend a hearing, so she was unable to complain to the hearing officer of these due process violations. To make matters worse, even after John served his entire suspension, the school told John's mother to keep her son at the suspension site pending the outcome of his Family Court proceeding. The school has no authority to do this, and should have reinstated John in his regular school.

¹ The examples in this testimony involve real children, but we have changed their names to protect their privacy.

The Chancellor's regulations enumerate many specific infractions for which a superintendent's suspension must be imposed, such as using a weapon to inflict injury or selling illegal drugs. The regulations also provide that a superintendent's suspension should be sought when the student's behavior "presents a clear and present danger to the student, other students or school personnel or which is so disruptive as to prevent the orderly operation of the school." (A-443III.B.3) In reality, however, superintendent's suspensions are often imposed for much lesser infractions by students. The Discipline Code allows for superintendent's suspensions in any number of circumstances, including something as minor as throwing a piece of chalk. We regularly see young people who are suspended for minor infractions. For example, last year we represented a teenage girl who received a superintendent's suspension for having a hand grip strengthener in her school locker. The school said that this was a weapon, despite there being no evidence that it had ever been used in such a manner. The school never appeared at the suspension hearing and the charges were dismissed. Nevertheless, as with all suspensions, the charges remain permanently on her school record and she was not allowed to attend her school for several days.

- Last week, Legal Aid staff met a new client who was recently arrested after a conflict created by five School Safety Agents. Jenny is 14 years old and she had just left her school at the end of the day and was walking away from the school with three of her classmates. Once across the street from the school, one of Jenny's classmates stopped to tie her shoe before they continued walking. As she was tying her shoe, the four girls were approached by two SSAs who aggressively told them all to "keep moving!" One of the girls said out loud to her friends that she hated SSAs because of that kind of treatment. The SSA misunderstood what she said and replied, "Oh you **hit** SSAs, huh?" and then three other SSA's gathered around the girls. The girls then tried to leave or "keep moving", but one of the SSAs demanded to see the IDs for each of the girls and wanted to bring all of them back inside the school building. The girls refused and began walking home. An SSA grabbed one of the girls from

behind by pulling on her book bag which was strapped to her shoulders. A struggle ensued and that girl was thrown to the ground by the SSA. The other SSAs got involved in restraining the girl on the ground. Two of the girls were trying to help their friend up off the ground, and the last girl was thrown to the ground by an SSA and restrained.

In the end, two of the girls were arrested and one was suspended. Our client now is charged in Family Court with juvenile delinquency for "Obstructing Governmental Administration." The arrests and suspension that resulted from those events across the street from the school were entirely unnecessary. The entire incident could have and should have been avoided, rather than escalated to the point of arrest and exclusion from school.

The DOE Provides Little or No Academic Instruction During Suspensions

Although the law requires that education not be interrupted during a suspension, children who are suspended from school in New York City receive little or no academic instruction during their suspensions. This results in children falling far behind in their coursework, causing some students to have to repeat an entire grade the following year. Some students become so frustrated at this unnecessary and illegal interruption in their education, that they drop out of school altogether. According to the Department of Education's own regulations, a student who is suspended from school "may not be penalized academically during the suspension or removal period. . . . [S]tudents must be provided with alternative instruction, which includes, but is not limited to, class work and homework assignments. The instruction must provide the student with an opportunity to continue to earn academic credit and must be appropriate to the individual needs of the student." (Reg. A-443 III.B.1)

Unfortunately, our experience demonstrates that these regulations are rarely followed. In fact, suspended students usually receive little or no schoolwork at all. Despite the presence of fax machines at all the suspension sites, the students' work rarely, if ever arrives from the suspending school. Our clients regularly report that they sit at

suspension sites with nothing to do. They often are provided with “worksheets” by the suspension sites – handouts for them to work on while at the suspension site that bear no relation to the work being done at their suspending school, and which are certainly not “appropriate to the individual needs of the student.” And although the suspending school is required to send the students’ homework to the suspension site, this procedure is routinely disregarded, even when schools are ordered to do so by hearing officers.

Moreover, although the regulations provide that children are not to be penalized academically because of a suspension, those same regulations fail to provide even a minimal opportunity for most of these students to keep up with their schoolwork. For example, the regulations specifically state that, while awaiting his or her superintendent’s suspension hearing, a high school student is only entitled to two hours per day of instruction. It is inconceivable that a high school student could maintain his or her academic progress with only two hours of instruction per day. Moreover, most or all of the suspension sites do not have labs required to obtain credit for high school science classes. Rather than helping these students to progress academically while addressing the behavioral issues that led to the suspension, DOE practice frustrates students who are academically motivated and further alienates those who are not.

Special Education Students Do Not Receive Appropriate and Mandated Coursework or Services During Suspensions

Nor are special education students adequately served by the current system. For these students, who have Individualized Educational Plans (IEPs) that specify services necessary to ensure their academic success, a suspension means a disruption of services. These students are rarely, if ever, placed at sites that provide all of their IEP-mandated

services; instead, an interim service plan is written for the suspension site so that it can be tailored to what the site offers, rather than what the student actually needs.

In addition to a hearing for superintendent suspensions, special education students are entitled to a Manifestation Determination Review (MDR) meeting to determine whether the alleged behavior which led to the suspension is a direct result of the child's disability or the failure to implement the IEP. The MDR meeting is held ten school days after the date of the suspension hearing. At the MDR, the IEP team should determine whether the student is in need of transportation and complete the necessary waiver. In many cases, the IEP team is unfamiliar with the transportation waiver process, but even when waivers are filled out, we find that special education students do not receive transportation to and from the suspension sites until at least a week after the MDR determination. Often, setting up the transportation is further delayed in cases where students are new recipients of transportation, students need to be completely re-routed, or the IEP team is not in full agreement regarding the receipt of transportation. Thus, students may be inhibited from attending school based on transportation alone.

- One of our clients, David, is a 14-year-old Spanish-speaking student with mild mental retardation. Because of his developmental delays, he is not able to travel alone. Prior to his suspension, he had been attending a school one block from his home. Pending his suspension hearing, the DOE assigned him to a site forty-five minutes away. When our office tried to arrange busing, the Office of Pupil Transportation stated they had no reference number for the suspension site and could not process the request. David's mother eventually decided that she had to quit her job in order to transport him to and from the suspension site.

Due Process Rights of Suspended Students are Compromised

Although the regulations provide that suspension hearings are supposed to occur within five days, they frequently do not. Because parents seeking assistance have so few

options, they are often constrained to request an adjournment while they seek help. Further, the process fails to accommodate parents, some of whom may risk losing a job by having to spend an entire day traveling and waiting for DOE personnel. The hearings are usually scheduled for 8:30 a.m.. More often than not, school administrators do not appear until after 10:00.. On more than one occasion, a school principal has had to be called to come to the hearing after a family waited for hours.

Additionally, many parents report that the school officials, who do not want to have to prepare for and attend a hearing, urge them to waive the student's right to a hearing and plead no contest. These discussions are, by nature, coercive. The school officials falsely represent that the student will be better served if he or she chooses not to have the hearing. These representations are made despite the fact that the superintendent has the ultimate power to render a decision and the school's recommendation concerning the outcome is simply that—a recommendation. As a result, in the vast majority of cases, students waive their due process rights, thereby losing the opportunity to tell their side of the story, and obtaining a more favorable outcome.

School Suspensions in NYC Disproportionately Impact Children of Color

The vast majority of students who are impacted by the harsh punishment of suspension in New York City are children of color. For example, in recent months, of the 63 students requiring assistance from Legal Aid's Providing Educational Assistance to Kids project in Manhattan, 39 children were African-American, 23 children were Hispanic, and 1 child was Asian. While some of these cases involved school transfers, the majority of the cases were school suspensions.

Emerging professional opinion and qualitative findings suggest that the disproportionate discipline of students of color may be due to lack of teacher preparation in classroom management or cultural competence. Although there is less data available, students with disabilities, especially those with emotional and behavioral disorders, also appear to be suspended and expelled at rates disproportionate to their representation in the population. (See, *Are Zero Tolerance Policies Effective? An Evidentiary Review and Recommendations*, American Psychological Association, Zero Tolerance Task Force, February 1, 2006.)

The Many Alternatives to Suspension Outlined in the School Discipline Code are Rarely Used

We have repeatedly seen teachers and school administrators fail to address conflict at the local school level. The time that is taken to fill out paperwork and attend a suspension hearing, could be used to resolve the conflict on site with greater satisfaction and long-term results for school safety and for the student. The DOE's increase in principal autonomy appears to create an opportunity to return some of the behavioral control functions to the school instead of ceding it to a central location where people lack direct day-to-day knowledge of the children involved, and we hope that the DOE will take advantage of this opportunity.

Recommendations

1. The drastic measure of suspension should only be used in the most egregious cases. Alternatives to suspension in the form of social services, mediation, mentoring and counseling should be applied and expanded.

2. When children are suspended from school, they should receive immediately the instruction and services to which they are entitled. The DOE must provide complete academic instruction and appropriate services to students during suspensions.
3. Due process in suspension hearings must be strengthened and guaranteed.
4. Training, supervision and accountability of School Safety Agents must be enhanced, and responsibility for school safety should be transferred from the New York Police Department to the Department of Education.
5. The City should conduct research into the causes of the disproportionate impact of school suspension and expulsion on children of color and children with disabilities in New York City, and should institute policies to remedy this tragic situation.

Thank you for the opportunity to speak about these important topics. We will be happy to answer any questions that the Chairs and Committee members have.

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**TESTIMONY OF DONNA LIEBERMAN
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION**

before

**THE NEW YORK CITY COUNCIL COMMITTEES ON EDUCATION AND
CIVIL RIGHTS REGARDING THE IMPACT OF SUSPENSIONS ON
STUDENTS' EDUCATION RIGHTS**

January 23, 2008

Council Member Jackson and members of the City Council's Education and Civil Rights Committees: My name is Donna Lieberman, and I appear before you today on behalf of the New York Civil Liberties Union ("NYCLU") and its 48,000 members statewide. Since 1951, the NYCLU has been the state's leading advocate on behalf of New Yorkers' civil rights and civil liberties.

In March 2007, the NYCLU released a report on the impact of DOE and NYPD disciplinary and safety policies on the educational environment in the schools. The report examined the origins and the consequences of the city's aggressive policing operation in the schools, and provided analyses of the results of a broad student survey performed by the NYCLU and profiles of individual students whose experiences illuminate the problems with policing in schools. The report included numerous stories of instances in which school and police personnel meted out harsh punishment in situations that should have been resolved through counseling, conflict mediation, and similar supportive

methods. The report included an analysis of student suspension practices, and found that the length and duration of student suspensions had increased significantly, under circumstances where school officials were failing to adhere to their obligation to provide suspended students with alternative educational services that were real and meaningful.

Students and teachers are entitled to a safe educational environment that is conducive to both teaching and learning. A school's authority to suspend a student plays an important role in securing such an environment. Yet too often suspensions also serve as a quick fix for student disciplinary problems that demand a more supportive response. In the long term, many student suspensions hamper, rather than improve student safety. Such suspensions impact students long after the suspension has been served.

I testify today to urge the City Council to closely examine suspension practices in the city's public schools and to create mechanisms for greater accountability and oversight of school disciplinary practices, including suspensions. As my testimony will indicate, student suspensions play a pivotal role in perpetuating the "School to Prison Pipeline," both nationally and in New York City. It is time for the City Council to stem the flow of students into the criminal justice system, and support corrective measures, such as those contained in the Student Safety Act.¹

Suspensions Perpetuate the School to Prison Pipeline

The School to Prison Pipeline describes local, state and federal education and public safety policies that operate to push students out of school and into the criminal

¹ During the last Education Committee hearing on school disciplinary policies, held on October 10, 2007, we recommended for the City Council to introduce the Student Safety Act. Despite widespread support among the committee members, the City Council is yet to introduce this important piece of legislation.

justice system. This system disproportionately impacts youth of color and youth with disabilities. Inequities in areas such as school discipline, policing practices, and high-stakes testing contribute to the pipeline.

The School to Prison Pipeline operates directly and indirectly. Schools directly send students into the pipeline through zero tolerance policies that involve the police in minor incidents, which too often lead to arrests, juvenile detention referrals, and even incarceration. Schools indirectly push students into the criminal justice system by excluding them from school through suspension, expulsion, discouragement and high stakes testing requirements.

Suspensions, often the first stop along the pipeline, play a crucial role in pushing students from the school system and into the criminal justice system. Research shows a clear correlation between suspensions and both low achievement and dropping out of school altogether.² Such research also demonstrates a link between dropping out of school and incarceration later in life. Specifically, students who have been suspended are three times more likely to drop out by the 10th grade than students who have never been suspended.³ Dropping out in turn triples the likelihood that a person will be incarcerated later in life.⁴ In fact, in 1997, 68 percent of state prison inmates were school dropouts.⁵

² Goertz, M.E., Pollack, J.M. & Rock, D.A. (196). Who drops out of high school and why?: Findings from a national study. Teachers College Record, 87, 357-73, available at <http://www.tcrecord.org/Content.asp?ContentId=688>.

³ Ibid.

⁴ Coalition for Juvenile Justice. *Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention*. 2001 Annual Report, available at www.juvjustice.org/media/resources/resource_122.pdf.

⁵ Ogletree, Charles J. Testimony: Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools. House of Representatives Judiciary Committee. October 16, 2007. Available at <http://chhi.podconsulting.net/assets/documents/news/Final%20Jena%20Testimony.pdf>.

Despite the poor outcomes associated with suspensions, schools across the nation have seen an explosion in the number of suspensions and expulsions, mainly due to zero tolerance policies that rely heavily on harsh disciplinary practices. Originally meant to address only the most serious violent behavior, zero tolerance policies now too often target normal, non-violent behavior, even though schools nationwide continue to benefit from a fourteen year steady decrease in violent and non-violent crime in public schools.⁶

In 2006, the American Psychological Association found that zero tolerance policies have been ineffective in reducing violence in schools and have instead increased disciplinary problems and dropout rates in middle schools and high schools, as well as the number of referrals to the juvenile justice system for minor infractions once handled by educators in the schools.⁷ The report also found that zero tolerance policies have led to an over-representation of students of color in school discipline processes.

The national racial disparities in school discipline are indeed profound. Nationwide, black students are 2.6 times more likely to be suspended than white students.⁸ Black students, who make up only 17 percent of the nation's student population, account for 36 percent of out of school suspensions and 31 percent of expulsions.⁹ This disparity has been on the rise during the recent ascendancy of zero tolerance, with 6 percent of black students and 3 percent of white students being suspended at least once in 1973 compared to 14 percent of blacks and 5 percent of whites

⁶ *Zero Tolerance and School Discipline*. The Civil Rights Project, available at http://www.civilrightsproject.ucla.edu/resources/civilrights_brief/discipline.php.

⁷ Skiba, Russell et al. *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*. APA Zero Tolerance Task Force, 2006. Available at www.apa.org/ed/cpse/zttfreport.pdf.

⁸ Ogletree, Charles J. *Testimony: Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools*. House of Representatives Judiciary Committee. October 16, 2007. Available at <http://chhi.podconsulting.net/assets/documents/news/Final%20Jena%20Testimony.pdf>.

⁹ *Elementary and Secondary School Survey 2002*. Office of Civil Rights, U.S. Department of Education.

in 2003.¹⁰ Black students with learning disabilities are even more vulnerable to both suspension and incarceration. They are three times more likely than white students with learning disabilities to be removed from school and four times more likely to be placed in a correctional institution.¹¹ Our nation's over-reliance on suspensions and other exclusions from school continues to limit the futures of our most vulnerable youth – students of color, low income students, and students with special needs.

NYC's Education System: De Facto Zero Tolerance Policies that Push Certain Populations Out of School

Despite the range of options available for disciplinary action outlined in the Discipline Code, students in New York City's public schools are being routinely subjected to the harshest available option: long term suspension. Superintendent suspensions increased by 76 percent between 2000 and 2005, jumping from 8,567 to 15,090 a year.¹² In addition to formal suspensions – both superintendent's and principals – students are also subject to removal from class by a teacher –teacher suspensions – which can result in significant loss of class time.

New York City is also part of the trend of increased racial disparities with respect to suspension practices. The 2001 suspension rate for City schools was 8.3 percent for black students and 4.8 percent for Latino students, compared to only 2.5 percent for white students.¹³ The over reliance on suspensions at Impact Schools, largely attended by low

¹⁰ Ogletree, Charles J. Testimony: Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools. House of Representatives Judiciary Committee. October 16, 2007. Available at <http://chhi.podconsulting.net/assets/documents/news/Final%20Jena%20Testimony.pdf>.

¹¹ Wald, Johanna and Daniel Losen (May 2003). *Defining and redirecting a School-to-Prison Pipeline*, p. 3. Available at www.ytfg.org/documents/BeyondtheTunnelProblemBriefingPaper2Nov2005fin.pdf.

¹² NYC DOE Statistics.

¹³ Eskenazi, Michael, Gillian Eddins and John M. Beam. *Equity of Exclusion: The Dynamics of Resources, Demographics, and Behavior in the New York City Public Schools*. Fordham University: National Center

income students of color, further exacerbates the racial disparity in our city's school discipline practices. Average suspensions at Impact Schools increased by 22.4 percent in the first year of the program, compared to a citywide increase of only 2.7 percent.¹⁴ The eagerness with which struggling – or “Spotlight” – students at these schools are suspended or transferred to alternative programs is of equal cause for concern.

The quality of education at the City's suspension sites – or Alternative Learning Centers – are also of serious concern. We have received reports of inappropriate or non-existent learning materials, overcrowding, and lack of supervision at these placements. It is not surprising that these sites have an attendance rate of less than 35 percent or that students sent to these placements often drop out of school altogether.

The City's Second Opportunity Schools for students suspended for a year also merit a second look. Although some of these schools are exemplary in their support of at risk students, many are simply sites at which to warehouse struggling students until they are “counseled out” – i.e. encouraged to enroll in an alternative or GED program – or simply drop out. Some students return to their original school and face suspension after suspension without access to support services until they, too, are forced to attend an alternative program or drop out of school altogether. As I mentioned previously, dropping out of school is a major predictor of future incarceration. By suspending our students en masse, we are pushing more and more young people out of school and towards prison.

for Schools and Communities. October 2003. Available at <http://www.ncscatfordham.org/binarydata/files/EQUITYOREXCLUSION.pdf>.

¹⁴ National Economic and Social Rights Initiative (2007). *Deprived of Dignity: Degrading Treatment and Abusive Discipline in New York City and Los Angeles Public Schools*, p. 20.

The Need for the Student Safety Act

There is a vital need in New York City for raw data on school disciplinary practices. Education Law §2802 mandates specific reporting to the commissioner on disciplinary issues, including the age and grade of the student involved, and the location and type of incident. This law also requires information on any disciplinary action taken, including out of school suspension, involuntary transfer to an alternative placement, in-school suspension, referral to the juvenile justice system and the duration of the disciplinary action.

Currently, this data is not publicly available, even to advocates who have made repeated requests—both informally and formally—for this information. The New York State School Report Cards for New York City specifically exclude in-school suspensions, and count repeat suspensions of individual students only once. The report cards also do not provide information about the reasons for the suspensions, the duration of each suspension, and information on the students who face suspensions.

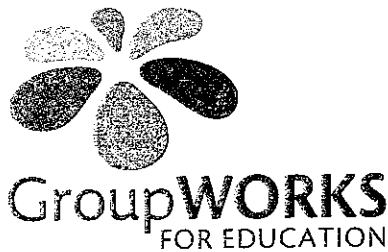
Moreover, these report cards include the number of students who transferred to GED programs and those who dropped out, but not those who transferred to other alternative programs or never returned from an Alternative Learning Center or Second Opportunity School. New York City's Annual School Report Supplements purport to track transfers to other schools as well as drop outs through the broad category of "leavers," defined as "students who left school for any reason."

The difference between a student who is suspended three times in one year for disruptive behavior in Math class, but does not receive support services – or tutoring in Math! – at her Alternative Learning Center and is finally counseled to enroll in a GED

program, and a student who drops out of her own volition is extremely important. As we work to find ways to support all of our students, we must be cognizant of this difference and the number of students to which it applies. To fully understand and address the impact of New York City's over-reliance on suspensions, public access to consistent, reliable data on suspensions and other exclusions from school is essential.

The Student Safety Act makes the data necessary for reforming our disciplinary system publicly available. Passage of this bill will give the needed access to data on all types of suspensions and expulsions broken down by school, student race, gender, age, and special education status, as well as the duration of the exclusion. The bill also mandates a description of each incident that led to the disciplinary action. In addition, the bill requires reporting on all students who have left any Department of Education school, whether due to dropping out or transfer to an alternative school, GED program or detention facility as well as their race, gender, age and special education status. This information will be essential as we attempt to address the educational outcomes of students who are currently lost in the system, either between schools or out of school.

Like you, we are principally concerned with ensuring the success of all New York City students. Improved access to data and increased scrutiny of our school disciplinary system will only expand the educational opportunities of our students.



REMARKS BY GroupWORKS FOR EDUCATION AT THE NY CITY COUNCIL
EDUCATION COMMITTEE HEARING ON STUDENT SUSPENSIONS
January 25, 2008 in Chambers @ City Hall, New York City

Thank you Council Members Jackson, Gonzalez and Seabrook for convening this hearing. I am Dr. Toby Chuah Feinson, the director of Group WORKS for Education, a not-for-profit organization that I founded 6 years ago. My appearance is fueled by our direct experiences with six high schools with high rates of student suspension and by the contents of the brilliant 2006 City Council report of the Governmental Affairs Division and Committees on Education and Juvenile Justice titled "The Role of Education Officials and Staff in Identifying Early Indicators of Juvenile Delinquency and in Diverting Juveniles from the Juvenile Justice System". That report clearly maps out the strong connection between school suspensions, eventual dropping out of school and incarceration. We would like to assist the Council in finding more life affirming roads for our at-risk students to travel.

GroupWORKS developed from lessons learned during my 20 years as a NYC public high school teacher and Director of a program called Second Chance, a pre-suspension program for students at South Shore HS who were a year behind in credits and who were well known to the Dean of the school. Additional lessons were learned later on as a teacher and guidance and social work coordinator in the DOE Outreach Program for 16-21 year olds who had dropped out of school but who were being retrieved through an in-depth intervention that addressed academic, social, emotional and occupational needs.

From my first day of teaching I took an interest in and developed a fondness for students who had a tendency to get thrown out of classes and school. They puzzled me, fascinated me and challenged me and I would ask them to help me understand what it was about school that they worked so hard to get thrown out. Sometimes the answer was "me" and in time, when I learned that much of what they had to say was about what and who I represented as well as about my flaws (which they were quick and eager to point out in public), I developed an interest in what there was about me that got them to want to leave. They had a lot to say on the matter and I learned more from them about myself and about adolescent struggles in an urban city school setting than from any teacher education course I had taken in college. I am forever indebted to these youngsters.

I want to briefly share with you five of the primary lessons learned from my students and how these lessons have shaped the programs that GroupWORKS offers:

1. Learning, as life, takes place in groups whether it be in the classroom, school yard, lunchroom, gymnasium. School life is in groups and those effective in groups are effective in life. GroupWORKS programs are designed to develop the capacity of students and their educators to function effectively and respond constructively and respectfully to diversity in their school, family and community groups.

2. Groups are a cost-effective way to strengthen the interpersonal and resiliency skills of students and their educators.

3. What is not expressed in words will find an outlet in symptoms such as acting out, dropping out and provocative behaviors between children and adults. Our groups focus on helping children and their educators put into words the intense feelings stimulated when teaching and learning in school groups and develop mature language with which to communicate their wants, needs and disappointments.

4. Interventions are needed throughout the school year. Our group interventions surpass any canned curriculum driven approach in its immediacy, intensity and connection to the real lives of the group participants. We follow the curriculum provided by the ongoing interactions of the group members, both students and staff. Another lesson learned is that people demonstrate in our groups the very issues that are causing difficulty for them outside the group and this provides us with a real-time opportunity to intervene and use the group as an instrument of change.

5. As a teacher I noticed the disproportionate numbers of Black and Latino students who are suspended. GroupWORKS follows a principle in psychology called Miller's Law. Miller's Law says that children do what they do for very good reasons, reasons which we may not initially understand. The main reason is that they desperately want to be understood. Out of an innate survival instinct, children will repeat the behavior, however outrageous, out of desperation to be understood. As they fail to make themselves understood, they try progressively more intense and egregious methods. Amazingly, once understood, the behavior changes and dialogue opens up.

Given the disproportionate Black and Latino students that would show up in my classes, I began to wonder: "What does their referral to my pre-suspension classes tell me about an unspoken dynamic in the school at large?" "What is it that Black and Latino students are saying to us and their educators that my unconscious biases prevent me from interpreting correctly?" And "What might be the unconscious biases of the students that interfere with their correctly interpreting my communications and those of their teachers and school staff?"

“What are the resiliency skills needed by adolescents to withstand the stresses of learning and living in school groups, and what are the resiliency skills needed by their educators to withstand the stresses of teaching and counseling in school groups?” “What impact does the diversity of life experience and culture have on teacher-student, counselor-student and on student-student relationships?”

GroupWORKS has devised two programs to address these questions and we will be presenting them in an initiative to the Council titled An Initiative to Keep Pre-Suspension Public High School Students In School and Out of the Juvenile Justice System. Our focus is on prevention rather than on detention in suspension centers or prison.

Our first program is the Co-Leadership Project. Our facilitators, all mental health clinicians with certification in group leadership and training in child and adolescent development, trauma work and in undoing racism, will co-lead classroom and counseling groups on site with teachers and counselors. The elegance of this model is that it provides direct services to students while building the group leadership skills of educators who learn hands-on and under the guidance and supervision of our facilitators. Since 2001 we have worked in 50 schools and serviced approximately 840 students a year. Our initiative will focus on six high schools with the highest numbers of suspended students and will provide resiliency skill building groups for students who are a year behind in credits and have multiple records of disciplinary referrals. We believe these students are trying to be understood and responded to and have not been so thus far.

The skills we work on building in these co-led groups are:

- Emotional Regulation: the ability to have choices about responses to different situations; not getting stuck in any one feeling.
- Impulse Control: the ability to delay gratification and act in ways that are helpful to you and others in the group.
- Optimism: the belief that things can change for the better. Having hope for the future and a belief that you can control the direction of your life.
- Causal Analysis: the ability to accurately identify the causes of problems. What is the student's explanatory style? Me-not me. Always-not always. Everything-not everything. Is student a Me-Always-Everything (I am doing poorly in school because I don't spend enough time doing my homework, I am a bad child) or a Me-Not Always-Not Everything (I am doing poorly in school right now because I have not been studying lately).
- Empathy: the ability to read other people's cues to their psychological and emotional states.

- Self-Efficacy: our sense that we are effective in the world, can solve the problems we are likely to experience and our faith in our ability to succeed.
- Reaching Out: the ability to not be ruled by negative anticipation of the future and catastrophic thinking; the ability to not act on worst-case fears.

Our second program is titled Resilient Educators Support and Training Groups or REST Groups. Since 2001 we have trained approximately 300 counselors and teachers in Manhattan, Staten Island and Brooklyn. Teachers and counselors have opportunities in our ongoing REST Groups to present anecdotes of challenging students and classes they are working with. They are provided with the group leadership and resiliency building skills to work with the students and classes they find most challenging. Under our initiative, we will invite the teachers and counselors of students participating in our co-led group to attend these ongoing sessions. The REST Groups focus on classroom group dynamics, the teacher's role as classroom group leader, strengthening the teacher's and counselor's resiliency skills, on understanding their responses to their students' verbal and nonverbal communications and on understanding and responding to the maturational and developmental needs of the referred students in their classes. Teachers and counselors present current dilemmas with at-risk students and classes and bring anecdotes to analyze and evaluate. The REST Groups will help develop in staff members:

- opportunities to reflect on their relationships with individual students and classes to discover personal triggers and biases that lead to unproductive interactions.
- models of team building and approaches to attend to academic development concurrently with the social and emotional development of their referred students.
- an understanding of adolescent development and the adolescent mind and ways to understand adolescent verbal and nonverbal communications.
- effective strategies for responding to classroom dynamics that take a class off task.
- constructive uses of aggression; emotional insulation; understanding of induced feelings and immediacy, a process of focusing on what is going on NOW in the teacher-student relationship.



Council of School Supervisors & Administrators, New York City

New York State Federation of School Administrators
Local 1 American Federation of School Administrators, AFL-CIO

TESTIMONY OF

THE COUNCIL OF
SCHOOL SUPERVISORS
AND ADMINISTRATORS

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JANUARY 23, 2008

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Good morning Chairman Jackson, distinguished members of the committee and respected colleagues: My name is Ernest Logan and I am the President of the *Council of School Supervisors and Administrators* (CSA). CSA represents over 5,600 leaders who work for the Department of Education, as well as 400 Day Care Directors and over 8,000 retirees.

I want to thank each of you for your continued advocacy and support for public education.

I also appreciate this opportunity to speak with you today about the subject of student suspensions. In my testimony, I will briefly discuss the suspension process and some of the issues that school administrators are facing, as well as a few of our ideas on how to improve the process.

Suspensions should be the very last resort, used only once we have exhausted all other interventions and disciplinary responses. The exceptions, of course, are criminal acts that require immediate action.

Principals and other administrators are constantly looking for ways to reduce student suspension rates and to better engage students through proactive and preventive approaches. The negative effects of suspending a student, both on the individual and the school community, are always undesirable.

There are areas where modifications to the policies and procedures presently in place would better support the daily efforts of our school leaders. More than anything else, Principals, APs and EAs want to ensure that our schools are safe and orderly environments that facilitate quality teaching and learning.

PROCESS & HEARINGS

The *Citywide Standards of Discipline and Intervention Measures* (The Discipline Code and Bill of Student Rights and Responsibilities) is basically a good document. It establishes clear standards of behavior and provides a comprehensive description of unacceptable behavior which can lead to a suspension. The Discipline Code also quite properly takes into account the following: student's age, maturity, and previous disciplinary record.

Each level of infraction contains a minimum to a maximum range of possible disciplinary responses that may be imposed. According to the document, "Whenever possible and appropriate, prior to imposing such penalties, school officials should exhaust less severe disciplinary responses."

According to the Discipline Code students can be removed from a classroom from 1-4 days by a teacher (with the Principal's approval) for substantially disrupting the education process, and will be sent to a location within the school. Students may also receive a Principal's Suspension, which can last from 1-5 days, when a student's behavior presents a clear and present danger of physical injury to the student, other students or school personnel, or prevents the orderly operation of classes or other school activities. The Principal refers to the Code of Discipline to determine the level/severity of the infraction. Suspended students must be provided with alternative instruction including homework and class work.

If the infraction is more severe, it is necessary for the Principal to seek permission from the Community Superintendent for a "Superintendent's Suspension," which can exceed 5 days.

Prior to a Principal's Suspension there is a meeting at the school with the parent, student and witnesses. For Superintendent's Suspensions, the same parties report to a Hearing Office and await the findings of the Hearing Officer. A student who receives a Superintendent's Suspension must be provided with the opportunity for a hearing at which the student may present evidence and witnesses on his/her behalf and to question the school's witnesses.

If the school proves the charges and the suspension is upheld, the Chief Executive Officer of the Office of School and Youth Development, or another designee of the Chancellor or the Community Superintendent may impose a variety of decisions, ranging from continued suspension for a period of 6-10 school days all the way to transfers or expulsion.

Suspending a student is the last thing administrators want to do, but suspensions *are* a fact of life in our schools. Those who have to deal with them run up against issues with the process and the logistics from time to time. These are the issues that we must focus on to improve the system.

Principals and Assistant Principals have told us that there is confusion as to who really authorizes superintendent suspensions. Apparently in some areas, those responsibilities are being handled by the Integrated Service Centers, rather than Superintendents. We do not believe that such a crucial responsibility of Community Superintendents should be delegated.

Furthermore, some Principals are taking issue with the wait time at the hearing sites, and the additional wait time for approving suspensions. Consider these three recent comments by administrators:

"Hearings at the superintendent's level of suspension require the dean who is presenting the school's case to be present at the hearing site for almost always an entire school day, thereby depriving the school of the dean's services in maintaining order and discipline in the building. In addition, staff members who are witnesses are also out of the building for an entire school day, thereby depriving the other students of instruction by their regular teacher and costing the

school the cost of the per diem sub. Numerous times parents fail to appear at the hearing without notifying the suspension site, or they come without a translator when one is needed. The parent is accommodated by having the hearing rescheduled which requires the dean and witnesses to be out of the building on a subsequent day with additional costs incurred by the school to hire a substitute for the teacher who is attending the hearing."

"The current procedures are working. However, there need to be more hearing offices, thereby resulting in there not being a loss of staff for a whole day while at a hearing. For some schools, site locations are advantageous, while for others it is not, due to the distance. The process as a whole is time consuming and needs to be streamlined. Communication between the school and the hearing office needs to be improved and less adversarial."

"Wait time at the 95th Street site in Canarsie is incredible. They need to be more efficient in terms of scheduling these meetings."

CSA members across the city are taking issue with the fact that students accused of committing offenses serious enough to warrant a Superintendent's suspension stay in the school where infractions possibly occurred until their hearings. One Principal explained the problem with this:

"During a superintendent's suspension, we are unable to remove a student from the building during the investigation and as we await approval of the suspension. This creates an unsafe situation in the building and sends a bad message to the other students. It also demoralizes the teachers. Often, even after a long suspension for a serious and "personal" offense (such as) hitting a teacher, the student may be returned to the school - bad message to students, worse for school morale."

PLACEMENTS

For Principal's Suspensions, the placement can be "in-house" or at the "paired school." For Superintendent's Suspensions, the Hearing Officer makes the determination of placement.

While SAVE legislation was designed so that schools could dedicate space to refocus students, the reality is that many schools are overcrowded and this is a burden. Consider these comments from a Principal in Queens:

"We are currently being asked to create "SAVE Rooms" with no space, no additional resources & no available personnel. We are forced to use IEP teachers, Guidance Counselors, etc. to monitor these disruptive students."

In order to be effective, this legislation requires additional funding to cover personnel and administrative costs incurred by the paired schools. Some schools are forced to assign paid "coverages" so that the SAVE room is staffed and suspended or removed students are supervised and taught. Administrators also feel in-house suspensions are not as effective as they were designed to be:

"Now that students remain at their home school for principal suspensions, they do not take it as seriously as when they had to report to a suspension site. Families know that the child will still be in his or her regular school and the suspension has lost some of its impact."

"Elementary students who are suspended should be sent to separate off-school sites, similar to the Intermediate and High School sites."

When a student is suspended, he or she must feel that their action merited removal to a different site. If we were to permit "business as usual," there would be no consequence for the infraction.

Further, some Principals have taken issue with placements to other sites that are not necessarily age or ability appropriate. Consider this comment we recently received:

"At any given time we could have several children in our school from different schools. Some children, based on outcome of suspension, are here for long periods of time. It disrupts our school and our programs. Many of these children hurt our children. Our parents are very upset with this process as well. There should be separate off site centers for elementary school students that are on suspension to go to, like in the Intermediate and High Schools."

Along those lines, however, there are – as always – exceptions to the rules. Students that commit Level 4 and 5 infractions (Dangerous/Seriously Dangerous or Violent Behavior) that also have an IEP must have a Manifestation Determination Review (MDR) conference following the suspension hearing. If the infraction is found to be a manifestation of the student's disability, then they are typically re-instated to their school immediately. These types of situations warrant revisiting and possibly reevaluating IEPs, especially in cases where there has been violent behavior.

LOGISTICS & FOLLOW-THROUGH

Unfortunately, when a suspended student arrives at a receiving school, they are often unprepared, with no books, and no emergency contact numbers. Furthermore, it is not clear which school is responsible for tracking the student's attendance.

Intermediate and High School students who are on "long-term" suspensions are attending ALCs (Alternate Learning Centers). The general sentiment seems to be that these sites are well organized, adequately staffed and include all the books necessary to follow the curriculum. However, we also have heard complaints that there is no help for parents at some of these sites. Ideally, a parent advocate should be on site to welcome and assist the parent to help facilitate the process.

We have received several reports about complications with getting students to a paired school or ALC. For example, in situations where the suspended child walks to his or her school and now needs a bus pass (temporarily) to and from the paired school, schools have reported not being able to secure a pass because the child's address doesn't warrant one.

REPORTING

A major area of concern is a fair and equitable reporting system for suspendable offenses. Some CSA members have been fearful that "over-reporting" suspensions will negatively impact the "rating" of a school. We must avoid stigmatizing schools that have been forthright in their reporting.

CLOSING

Let me leave you with a few closing thoughts. We feel very strongly that the "Prevention and Intervention" section of the Discipline Code is particularly important for everyone

who works within the DoE. As such, we should focus on being proactive. As stated in this section, "Through the use of intervention and prevention strategies that engage students and give them a clear sense of purpose, school staffs must facilitate students' academic and social-emotional growth and assist them in following school rules and policies."

I believe very strongly that every adult who comes in contact with a student should serve as a role model. This includes parents, supervisors, teachers, aides, secretaries, school safety agents, custodial staff, bus drivers, matrons, lunchroom staff, etc. etc. If we are all striving for the success of our children by working together, it will positively impact each child.

The issue of "Student Suspensions" is more complex than merely aligning consequences to infractions. It requires that the entire school community unite behind the precepts of acceptable student behavior. We need to do all in our power to create policies and procedures in our schools that contribute to facilitating teaching and learning. By taking a proactive and preventive approach, we should be able to reduce the number of student suspensions. In doing so, we must ensure that the reporting process will be fair, equitable, transparent and non-stigmatizing.

As you can see, our school leaders are not only involved in the teaching and learning of all students. There are other important facets of the job that sometimes go unnoticed. Creating a nurturing school environment that is safe and orderly continues to be paramount to all of us. We at CSA are prepared to work with you to ensure that our suspension of students is based on a sound policy that is purposeful and appropriate.

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CSA's Recommendations to Improve the DoE's Student Suspension Policy

- Suspensions should be the very last resort, used only once we have exhausted all other interventions and disciplinary responses. The exceptions, of course, are criminal acts that require immediate action.
- We strongly advocate that the DoE add additional staff and resources to improve wait time and efficiency for hearings, and improve the turn-around time for approving suspensions. Better use of email to communicate with Principals would help the process.
- In the most egregious cases, it is necessary to streamline the process for involuntary transfers. If the response is not quick enough, a violent student is permitted back to his or her school and continues his or her unacceptable behavior with impunity.
- When a student is suspended, he or she must feel that their inappropriate action merited removal to a different site.
- If a suspension site is deemed inappropriate, the Principal should be able to appeal to the Superintendent for a more appropriate setting.
- If a student assaults a staff member, he or she should automatically be suspended to another school. These suspensions should be closely monitored so the receiving school will be able to send one of its suspended students to the sending (paired) school.
- Receiving schools should not become "dumping grounds" for students who are suspended. The issue of overcrowding must be taken into account by creating additional sites.

- Better protocols should be established so that the sending schools can share the materials that are needed for the student to receive instruction at the receiving school. We also believe a simple written report should document the student's progress while at the receiving school. This would then be sent to the home school *prior* to the student's return.
- There is often no help for parents at some of the Alternative Learning Centers. Ideally, a parent advocate should be on site to welcome and assist the parent to help facilitate the process. Parents are our natural partners in the process. We must continually keep them informed (at the school level) about policies and procedures. More parenting workshops should be provided city-wide by the Office of Parent Engagement to better orient parents about the Discipline Code and appropriate student behavior in school.
- Where possible, students should be sent to sites that are within their borough. If necessary, additional sites should be created in "high need" locations. Emergency bus passes should also be available to facilitate student suspensions.
- By keeping the repeat offenders with us, they are not really "feeling" punished. We need to remove them, even if for only three to five days to another site. With this new system it is far too difficult to get to that level of an outside suspension, so we need local sites designated for persistently disruptive students.
- We must avoid stigmatizing schools that have been forthright in their reporting. The DOE must communicate to Principals in a way that fosters an honest, accurate and transparent reporting system. While there are clear protocols in place for reporting suspendable offenses vis a vis the Discipline Code, the DoE must communicate to all Principals in a manner that encourages an honest, accurate and transparent reporting system. Schools should not be penalized for "doing the right thing".
- Prevention and intervention are critical. "Through the use of intervention and prevention strategies that engage students and give them a clear sense of purpose, school staffs must facilitate students' academic and social-emotional growth and assist them in following school rules and policies."
- Students that commit Level 4 and 5 infractions (Dangerous/Seriously Dangerous or Violent Behavior) that also have an IEP, currently must have a Manifestation

Determination Review (MDR) conference following the suspension hearing. If the infraction is found to be a manifestation of the student's disability, then they are typically re-instated to their school immediately. These types of situations warrant revisiting and possibly reevaluating IEPs, especially in cases where there has been violent behavior.

- In order to be preventative, guidance interventions must play a pivotal role in promoting positive students' behavior. Student support services for all students should be available before, during and after school, throughout the school year. Each school's Pupil Personnel Team should take an active role in providing intervention strategies either directly with students, or through the training of teachers. We agree that "When used consistently and appropriately, these interventions can be a tool to lower student recidivism and can contribute to a more positive learning environment."