



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

2007 AUG -9 A 2:40

HAEDA B. MIHALTSES
DIRECTOR OF INTERGOVERNMENTAL AFFAIRS

August 9, 2007

Mr. Michael McSweeney
First Deputy City Clerk
Municipal Building
New York, NY 10007

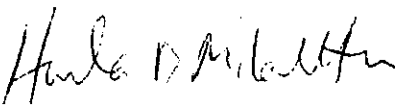
Dear Mr. McSweeney:

Transmitted herewith is the bill disapproved by the Mayor. The bill is as follows:

Introductory Number 351-A

A local law to amend the administrative code of the city New York, in relation to allowing schoolchildren to carry cellular phones to and from school.

Sincerely,


Haeda B. Mihaltses

cc: Honorable Christine C. Quinn



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Mr. Michael McSweeney
First Deputy City Clerk
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Dear Mr. McSweeney:

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 351-A, which states that a parent or guardian has the right to provide a student with a cellular telephone for any lawful use en route to and from school, and prohibits any person from "interfering with such right or use." The bill also authorizes aggrieved persons to seek equitable relief in any court of competent jurisdiction.

This bill was adopted in response to provisions of the Chancellor's Regulations and the Discipline Code which prohibit students from possessing cellular telephones, beepers and other communication devices on school property unless the principal has granted an exemption for medical reasons. As the New York Supreme Court recognized earlier this year when it decided Price v. New York City Board of Education, upholding the policy against constitutional and statutory challenges, it was adopted pursuant to the Chancellor's duty under Education Law §2801 to adopt uniform rules to regulate discipline in the schools. The policy neither prevents a parent from providing a cellular telephone to his or her child, nor interferes with any student's use of such a telephone en route to and from school. Thus, the legislation, on its face, seems to serve no purpose.

To the extent the real purpose of the bill may be to require the Chancellor to modify a valid policy adopted pursuant to his authority under the State Education Law, it is an invalid attempt at imposing the Council's views on how the public schools should be managed. If effective within such schools, it would require that the Chancellor either rescind the ban on possession of cellular telephones within public schools and saddle teachers with the burden of policing their use, or divert precious resources to provide storage for such devices. These impacts would seriously undermine the Chancellor's efforts to promote learning, and mire school personnel in administrative difficulties.

The prohibition in Chancellor's Regulation A-412 and the Discipline Code serves important pedagogical purposes of eliminating distractions from the learning environment, preventing cheating, and promoting order and safety in the schools. Cellular telephones not only disrupt the learning process when they are used during class time, but also have been employed within school premises to summon friends for fights, engage in drug dealing, make prank calls, and take illicit photographs that harm individuals' privacy. The Chancellor's policy is an appropriate and effective means for addressing these problems.

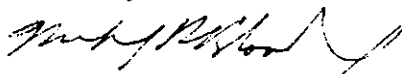
Intro. No. 351-A, if it did apply within the public schools, would effectively compel the Chancellor to devote funding, space, equipment and staff to providing a means for students to store their cellular telephones outside the classroom, or require teachers to devote their attention to ensuring that cellular telephones are not being used during class time, taking their focus away from instruction. The New York Supreme Court recognized the burdens associated with these alternatives to the existing policy:

Any enforcement system focusing on use, rather than possession, requires teachers, rather than only security personnel at the school door, to observe and enforce the ban and become involved in confronting students and punishment decisions, in detriment of their pedagogical mission, both by reducing their time teaching and by increasing their perception as an adversary to students. Further, it is not inappropriate to conclude that a use ban may be more disruptive than a possession ban. Under a use ban, cell phones will be carried by teenagers and tweens (and maybe even younger children) whose self control may not be perfectly formed. DOE therefore had a rational basis to project that a possession ban would lead to less distraction and disturbance to the educational mission of the school. [The alternative of] having schools designate a person to collect cell phones at the door, keep track of them and deliver them to the students as they leave, adds a salary and administrative burden which would divert scarce funds from other educational priorities, to say nothing of new liabilities for lost or broken phones while in the custody of the school.

The determination to ban cellular telephones from school property, so as to ensure a safe and stable learning environment for all students, is a matter entrusted by State law to the discretion of the Chancellor, and beyond the Council's purview. Administrations of non-public schools should continue to have the authority to adopt similar policies if they so choose. The decision implicates their professional judgment on how best to ensure the safety of students, avoid disruptions in the classroom, improve educational achievement, and allocate limited resources. This is not an appropriate matter for local legislation.

For all the foregoing reasons, I hereby disapprove Introductory Number 351-A.

Sincerely,



Michael R. Bloomberg
Mayor

Proposed Int. No. 351-A

By Council Members Fidler, Jackson, Weprin, Katz, Recchia Jr., Stewart, Yassky, Felder, Gentile, James, Gonzalez, Nelson, Vann, Dilan, Comrie, Dickens, Rivera, Addabbo Jr., Arroyo, Avella, Brewer, Foster, Gallagher, Garodnick, Gerson, Gennaro, Gioia, Lappin, Liu, Martinez, McMahon, Mendez, Sears, Vallone Jr., White Jr., Barron, Palma, de Blasio, and The Public Advocate (Ms. Gotbaum)

Eugene

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to allowing schoolchildren to carry cellular phones to and from school.

Be it enacted by the Council as follows:

Section 1. Legislative intent. Cellular phones have proven to be invaluable tools in facilitating communication between schoolchildren and their parents or guardians as such children travel to and from school. The use of such phones allows parents or guardians to ensure their children's safe arrival at school in the morning and back at home at the end of the school day, and enables any children traveling to or from school who become injured or lost, or who find themselves in a remote location or in other dangerous circumstances, to contact their parents or guardians or the police. In addition, such use provides parents and their children with significant peace of mind. It is therefore the Council's intent to allow schoolchildren to carry cellular phones with them to and from school for the purpose of being used outside of school to promote safety and the general welfare.

§2. Title 10 of the administrative code of the city of New York is amended by adding a new section 10-166 to read as follows:

§10-166 Use of cellular telephones by schoolchildren. a. Definitions. For the purposes of this section:

DISAPPROVED

ON THE 4th DAY OF August 2008

[Signature] MAYOR

(1) "Cellular telephone" shall mean any mobile analog, wireless, digital or other similar telephone or communications device, which can be used to access two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 CFR § 20.3.

(2) "School" shall mean any buildings, grounds, facilities, property, or portion thereof under the jurisdiction of the New York city department of education or any non-public school that provides educational instruction to students at or below the twelfth grade level.

(3) "Student" shall mean any person under the age of eighteen enrolled in a school.

b. Any parent or guardian of any student may provide such student with a cellular telephone for any lawful use en route to and from school. No person shall interfere with the provision of such telephone to, or the use of such telephone by, such student.

c. Any person who is aggrieved by interference prohibited by subdivision b of this section shall be entitled to seek equitable relief in any court of competent jurisdiction.

d. Nothing in this section shall be construed to affect or limit the right of any school or law enforcement official to enforce regulations regarding the use of cellular telephones.

§3. This local law shall take effect ninety days after its enactment into law.

I hereby certify that the above bill was passed by the Council of the City of New York on July 23, 2008 receiving the following votes:

Affirmative.....16.....

Negative.....2.....

Not Voting.....0.....

[Signature]

VICTOR L. ROBLES, City Clerk, Clerk of the Council.



The Public Advocate for the City of New York

Betsy Gotbaum

Public Advocate

****FOR IMMEDIATE RELEASE****

September 6, 2007

Contact: John Collins
212.669.4193; 917.496.4587
Release #: 052-2007

Public Advocate Gotbaum: Irresponsible to Ban Cell Phones in School

MANHATTAN – Public Advocate Betsy Gotbaum released the following statement on the administration's irresponsible ban on cell phones in public schools. The City Council is today considering new legislation that will modify the ban on cell phones.

Public Advocate Gotbaum said, "It is irresponsible for the administration to prevent children from bringing their cell phones to school. If the Department of Education did a better job listening to parents, it would easily recognize that their children's safety is their number one concern. Much of a mom's or dad's anxiety can be removed by knowing that, in case of an emergency, their child is a phone call away.

"The use of cell phones in class should continue to be prohibited. However, the administration's rationale for banning phones – including the claim that students use phones to cheat and look at pornography – is ridiculous. Kids figured out how to do these things long before cell phones were invented.

"While the Department of Education tests its pilot program to allow students to store phones in small lockers before entering schools, it should reverse its policy and allow all students to bring phones to school."