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**TESTIMONY OF DONNA LIEBERMAN, UDI OFER, AND JOHANNA MILLER  
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION**

**before**

**THE NEW YORK CITY COUNCIL  
EDUCATION, PUBLIC SAFETY AND JUVENILE JUSTICE COMMITTEES**

**on**

**THE STUDENT SAFETY ACT (Introduction 816-a)**

**November 10, 2009**

The New York Civil Liberties Union respectfully submits the following testimony in support of Int. 816-a, the Student Safety Act.

With more than 48,000 members, the New York Civil Liberties Union is the foremost defender of civil liberties and civil rights in New York State. For several years, as part of our dedication to protecting youth and students' rights, we have worked to understand and dismantle the School to Prison Pipeline in New York City.

The Pipeline is a term used by advocates to describe the means by which at-risk students are pushed out of safe educational environments and often end up in the juvenile justice and criminal justice systems. This is a nationwide phenomenon that affects thousands of students

each year and contributes to the achievement gap, high drop-out rates, and high rates of incarceration.<sup>1</sup> There is evidence, both national and local, suggesting that the pipeline affects black and Latino students and students with disabilities at alarmingly disproportionate rates. The Student Safety Act will give the City Council access to data that will confirm or dispel this evidence—data that is vital to measuring the fairness and continued efficacy of the current school safety paradigm. We wholeheartedly support the enactment of this bill, and emphasize the need for a commitment from the Council to enforce its mandates.

### **The School to Prison Pipeline**

As a member of the Student Safety Coalition, the NYCLU has closely studied the causes and effects of the pipeline in New York City. Our work has revealed that an overreliance on law enforcement to enforce discipline and the use of de facto zero tolerance policies to remove students from the classroom contribute significantly to the pipeline. Classroom removals, arrests, court referrals, suspensions, handcuffing, and aggressive policing are often overreactions to ordinary adolescent behavior. And every day spent outside the learning environment reduces the chances of success for our children.<sup>2</sup> Varying approaches to discipline and policing result in inconsistent educational opportunities among schools and neighborhoods—a difference that is heavily pronounced along racial and socio-economic lines.<sup>3</sup> While the majority of school safety agents do a good job under challenging circumstances, the NYCLU has received too many stories from students, parents and teachers about children being wrongfully searched, handcuffed, arrested and even physically assaulted by police personnel in schools. As a result, childrens' right to an education in a non-discriminatory school system is being jeopardized.

The state of school safety in New York City is illustrative of national trends in education. Over the past decade, fear of school violence, shrinking education budgets, and pressure to raise test scores has lead to an increased police presence in schools, an overreliance on exclusionary

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<sup>1</sup> See, e.g., National Center for Schools and Communities, *Policing as Education Policy* (2006); American Academy of Pediatrics, *Out-of-School Suspension and Expulsion* (2003); American Psychological Association, *Zero Tolerance Task Force* (2006); NAACP Legal Defense and Education Fund, *Dismantling the School to Prison Pipeline* (2007).

<sup>2</sup> NAACP Legal Defense and Education Fund, *Dismantling the School to Prison Pipeline* (2007).

<sup>3</sup> Id.

discipline, and a tendency to refer disruptive or challenging students to the police and the courts.<sup>4</sup> Schools rarely have the resources to explore the reasons for student misbehavior or offer students a meaningful chance to make things right. As the largest school district in the country, New York City has the opportunity to set an example by enacting the Student Safety Act. By refusing to tolerate the pipeline locally, we will be taking a national stand for students.

Access to data on student arrests, suspensions, and other punitive discipline practices is the first step in understanding and stopping the effects of the pipeline. The Student Safety Act will allow the DOE and NYPD to better evaluate the effectiveness of school safety practices. More importantly, it will allow legislators and the public to work towards creating safe, peaceful schools where all children feel welcomed and nurtured.

### **Unanswered Questions**

In 2006, the NYCLU conducted a study of school safety practices, the results of which were published in the report *Criminalizing the Classroom: the Over-Policing of New York City Schools*. We reported our findings to the City Council in October 2007 as five issues. Today, these same five issues comprise the heart of the school safety debate:

1. **Inadequate Training of SSAs:** Police officers and school safety agents are trained to utilize aggressive street policing tactics that are inappropriate for schools. Neither SSAs nor police officers in the school safety division undergo adequate training on the uniqueness of the school environment, the developmental needs of children and adolescents, or the requirements of working with students with disabilities. This disrupts the sanctity of the learning environment and too often leads to mistrust, hostility, unnecessary punishments, and violations of the constitution and federal laws.<sup>5</sup> Further it may expose SSAs and the City to legal liability. Adequate training is needed to ensure that the school environment is functional and safe for all parties.

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<sup>4</sup> American Academy of Pediatrics, *Out-of-School Suspension and Expulsion* (2003). Available at [www.pediatrics.org/cgi/content/full/112/5/1206](http://www.pediatrics.org/cgi/content/full/112/5/1206).

<sup>5</sup> The Individuals with Disabilities Education Act (IDEA) provides protections to students with special needs, including protections against removals from the learning environment. Arrests, classroom removals, and long-term suspensions can violate this statute. 20 U.S.C.A. §§1415(k) (2009).

2. **Unclear Role for SSAs:** The Memorandum of Understanding that serves as the governing document for school safety does not adequately explain or define SSAs' roles in schools.<sup>6</sup> In 1998, Mayor Guiliani and the Board of Education invited the NYPD to take over the struggling school safety force. The transfer came with promises that school safety agents would not have the power to make arrests, and amidst concerns about their role in the school. Unfortunately, the mayor and the board failed to address those concerns by creating a meaningful governing document.

The result is that the boundaries of SSA's authority are too murky, inconsistent from school to school, and too often ignored altogether. We have received reports of SSAs seizing students' lunches, hats and cell phones, kicking students out of school, and not permitting students physical access to the school building before or after school—even where the students have permission or are required to attend school at those times. This unclear role is harmful to children and to SSAs as well. For instance, the NYPD maintains that SSAs are not to be first responders every time there is a disruptive student<sup>7</sup>, but SSAs are called upon to enforce discipline in far too many instances, a fact that is not contemplated by the discipline code or the MOU.

3. **Unclear Relationship Between SSAs and Schools:** Because SSAs report to the NYPD, many administrators feel that they have no authority to influence their activities. As a result, their integration into the school community is often limited and is troublingly inconsistent between schools. In addition, SSAs generally do not participate in in-service trainings with other school employees, including anti-bias-based harassment and sensitivity trainings, which may make them less well equipped to effectively work with a diverse student body.<sup>8</sup> While SSAs at many schools are fully integrated into the

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<sup>6</sup> Until a few months ago, it was understood-- and had been unequivocally stated on the record by Deputy Chancellor Kathleen Grimm-- that the MOU had expired in 2002. In fact, Mayor Bloomberg and Chancellor Klein renewed the agreement (without NYPD representatives present) in 2003. The fact that the Deputy Chancellor was not aware that this basic governance document was in effect four years after it was renewed, and that the NYPD was not even party to the renewal, is powerfully symbolic of the ad hoc approach the DOE has taken to school safety, and the lack of meaningful communications between it and the NYPD.

<sup>7</sup> NYPD School Safety, *NYPD, UFT meet on safety problems in schools*, April 1, 2009. Available at <http://blogs.myspace.com/nypdssd>

<sup>8</sup> In a 2009 conversation with advocates, Brian Ellner, DOE Senior Counselor for Community Affairs, stated that, because SSAs are NYPD employees, DOE could not commit to including them when it handed out materials on

educational environment and respect the needs and rights of students, this is not the case at every school. Additional training, and a strong policy of integration and inclusion, is necessary to ensure that students at each school are treated with dignity and respect. Moreover, it must be made clear that principals are in charge of discipline and safety in their schools.

4. **Metal Detectors:** In 2006, the NYPD and the DOE created a program now known as “roving metal detectors” which brought temporary metal detectors to middle and high schools around the City. All schools are subject to the roving metal detector program and students and teachers usually have no advance warning. The chaos and confusion that occurs when the metal detectors arrive causes students to miss classes and exams, and can result in the illegal confiscation of non-contraband student property such as school supplies, food, and electronic devices.<sup>9</sup> The roving metal detector program is a flashpoint of conflict that wastes enormous amounts of classroom time, results in high rates of absenteeism, and causes a rift in the sanctity of the learning environment.

Likewise, permanent metal detectors are often the location of negative interactions between students and SSAs. Students and teachers too often report emotional and physical harassment by SSAs occurring at “scanning,” often sparked by something as minor as the zippers on a student’s coat. The DOE’s own data shows that the vast majority of items confiscated at metal detector scanning are not weapons or “dangerous instruments.”<sup>10</sup> Further, in schools with permanent metal detectors, SSA’s are more likely to be involved in “non-criminal incidents” than at other schools.<sup>11</sup>

Metal detectors should not be viewed as the first—or only—option to keep schools safe, but as a last resort. Further, their use should be temporary, as schools explore more

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bias-based harassment to all other professional and non-professional personnel in the schools. Bias-based harassment is an issue of great importance in the schools, as it has the potential to severely disrupt a students’ education and is a violation of Chancellor’s Regulation A-832. The lack of clarity surrounding DOE’s ability to include police officers assigned to work in schools in a training on this issue contributes to SSAs’ lack of integration into the school community and could result in increased harassment of students.

<sup>9</sup> NYCLU, *Criminalizing the Classroom*, March 2007

<sup>10</sup> New York Civil Liberties Union, *Criminalizing the Classroom: The Over-Policing of New York City Schools*, p.19 (March 2007).

<sup>11</sup> *Id.*

effective and lasting means of maintaining safety, such as restorative justice practices. Metal detectors represent a breach in the sanctity of the school environment, and too often contribute to unnecessary conflicts between students and police. We believe that staff, students, and parents should be able to make the decision to add or remove a metal detector from their school in a collaborative way, with annual reviews of the efficacy of the devices and their effects on the school environment. Further, there must be citywide standards to set and control the sensitivity of the devices.

5. **Inadequate Complaint Mechanism:** Students and parents have no meaningful way to complain about the abusive practices of SSAs or police in schools. This is particularly true for undocumented immigrants and other populations who are uncomfortable contacting the police department. While this issue will not be addressed by the passage of the Student Safety Act, it is important to acknowledge that the Internal Affairs process can be intimidating and inappropriate for victims of police misconduct, which likely results in underreporting of incidents.

Since 2007, these core issues have remained unaddressed despite the tireless work of youth organizers, activists, parents, and educators. This is in large part due to a lack of transparency and accountability surrounding the school safety program, from both the DOE and the NYPD.

Advocates, lawmakers and the public face an uphill battle getting answers regarding the operations and effects of school safety practices. The lack of raw data, statistics, and information about student safety and discipline hinders our ability to address basic questions about the operation of the pipeline in New York, and ultimately, our ability to protect students' rights.

There is compelling evidence that school safety is an area where youth of color and those with disabilities are further distanced from their peers. This is not necessarily the result of the actions or beliefs of individual agents so much as the planning, strategies, and policies of the NYPD and DOE. Our research shows that permanent metal detectors, and correspondingly, the heaviest concentrations of police personnel, are in schools that serve high and disproportionate

populations of black and Latino youth, primarily from low-income households.<sup>12</sup> In those schools, police are more likely to become involved in non-criminal incidents than in other schools—in fact, in schools with permanent metal detectors, nearly 80% of police-involved incidents were classified as non-criminal.<sup>13</sup>

Unfortunately, data on routine police-student interactions is nearly impossible to obtain through the Freedom of Information Law. The NYPD consistently ignores or unreasonably delays FOIL requests. The NYCLU has at least four outstanding FOIL requests with the NYPD that are past the statutory deadline for a response—one of which has been outstanding for a year. These are requests for basic information on student arrests, Internal Affairs Bureau complaints, the administration of and basic statistics about the truancy program, and the use of “Velcro handcuffs” on young children in Queens<sup>14</sup>, among other matters. Anecdotally, the NYCLU receives a disturbing number of reports of SSAs physically and emotionally abusing students, and using handcuffs and other restraints on students of all ages for common misbehavior. Unfortunately, we cannot gauge the scope of this issue, its impact, or its veracity because the NYPD has failed or refused to disclose any information on the subject. The reporting mandated by the Student Safety Act will protect students from abuse of power, and will protect SSAs from unfounded allegations of misconduct.

Requests to the DOE for information on school safety and discipline have been subject to similar delays and non-responses. A request made on behalf of the Student Safety Coalition for information on student suspensions and discharges—the information which will be regularly reported under the Student Safety Act—was delayed by the DOE for almost a year, and then only a partial response was ever furnished. In a series of letters and conversations with the DOE regarding this request, it became apparent that the Department’s record-keeping in this area has been inconsistent over the past ten years, and the agency is unable to furnish complete and accurate data on student suspensions pre-dating 2005. This precluded the Coalition from conducting an accurate study of student suspensions before and after the installation of the NYPD in schools and the mayoral control laws.

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<sup>12</sup> Id. at 20

<sup>13</sup> Id.

<sup>14</sup> The NYPD announced a pilot program of using Velcro restraints on elementary students in the Queens North precinct in February 2009.

Further, the DOE has told us it does not capture or report records of police-student interactions in schools. This willful ignorance may result in inappropriate, and potentially unconstitutional, behavior in the schools. Last year, the NYCLU alone received calls from dozens of parents complaining that their children had been wrongfully handcuffed, arrested, or ticketed for behavior that occurred inside their school or on the way to school. And yet the DOE would have knowledge only of those few incidents that make their way into the media, because it does not analyze those interactions or provide a mechanism for parents or students to complain about the actions of school safety agents.

Finally, the school safety division has grown by 65% in the past six years, despite the fact that student enrollment is at its lowest point in over a decade. The number of personnel policing New York’s one million students is staggering—5, 246 officers and agents according to the NYPD. The cost of this police force is \$221 million dollars. For perspective, the City of Dallas, Texas, which has 300,000 more citizens than New York has students, employs just 3,500 police officers. Further, the Department of Education employs just over 3,000 guidance counselors—choosing instead to deal with students through the criminal justice system.<sup>15</sup> Without a real analysis of the efficacy of SSAs’ activities in schools—or even what those activities are—this continued expense, and any additional expansion of the division, is unjustifiable.

### **Alternatives to the Pipeline**

This summer, the NYCLU, along with the Annenberg Institute for School Reform and Make the Road New York, released a report on six successful schools in New York City. These schools serve student populations with the same at-risk demographics as the “worst” schools in the City. Some of them accept transfer students, students who have difficulty succeeding in traditional school environments, or who have been victims of the pipeline at their previous schools. None of the schools in the study use metal detector scanning, all have very low suspension rates, and all boast higher graduation and attendance rates. Importantly, violence and criminal incidents in these schools are at remarkably low levels.

Our report examined the methods employed by the administrators and teachers at these schools and found important similarities among them. Student behavior is addressed through

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<sup>15</sup> Based on data provided by the United Federation of Teachers (UFT)

conflict resolution, peer juries, or fairness committees; students are given a voice in school rules, which increases their understanding of the functions of those rules; school safety agents are members of the school community, participating in regular meetings with staff and administrators; principals are empowered to make the best decisions for their unique school communities; and the schools rely on ingrained cultures of trust, communication, and respect. These schools show that real-world alternatives exist to solve student discipline problems. All members of the Council received a copy of the report earlier this year. Additional copies can be obtained by contacting the NYCLU. We urge the Council to consider our findings as proven methods to reduce conflict and increase student success.

## **Conclusion**

The Student Safety Act will promote vital transparency in an area of education policy that can have devastating effects on students. By providing this data to policymakers and the public, the Student Safety Act will lead to more informed decision-making on school safety issues, and will allow the public and legislators to conduct a serious analysis of the impact of school safety practices on students' educational opportunities. It will also allow for a sophisticated analysis of trends in school safety—a necessary ingredient in any policy area.

Studies have demonstrated repeatedly that zero tolerance discipline and police referrals are used disproportionately against male students of color and students with disabilities.<sup>16</sup> Youth of color tend to receive harsher punishments than white students for the same offenses.<sup>17</sup> It is important that the Council and the public have access to data that explains what infractions students are being suspended or arrested for, whether particular demographic characteristics affect a student's punishment, whether some schools suspend students at higher rates, and whether interactions at metal detector scanning result in conflicts between students and SSAs.

We urge the Council to pass the Student Safety Act immediately, commit to enforcing its mandates, and conduct serious reviews of the information provided to ensure that every student has an equal opportunity to succeed. New York City students deserve a school system that respects their needs, their individuality, and most importantly, their rights as human beings.

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<sup>16</sup> See, e.g., Russel Skiba and M. Karega Rausch, *Zero Tolerance, Suspension and Expulsion: Questions of Equity and Effectiveness* (2006).

<sup>17</sup> Id.