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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 (Intro. No. 442)**

**December 16, 2010**

The New York Civil Liberties Union respectfully submits the following testimony in support of Int. 442, also known as “the Student Safety Act.”

With 48,000 members and eight offices, the New York Civil Liberties Union is one of the leading defenders of civil liberties and civil rights in New York State. For many years as part of our dedication to protecting the right to a quality education for all of New York City’s children, we have worked to understand and respond to the impact of school safety and disciplinary practices on New York City’s students. We strongly support passage of the Student Safety Act because it will allow advocates and policymakers to better study safety and discipline practices, and determine whether such practices needlessly push young people out of school and into the juvenile justice and criminal justice systems.

The Student Safety represents an important first step toward creating safer schools that treat all children in a dignified and respectful manner. The legislation will provide the City Council regular access to data that is vital to monitoring the fairness and efficacy of the city’s

school safety and discipline system, and whether students of color and students with special needs disproportionately face the brunt of this system.

Safety is, of course, a vital component of a successful school environment. But equally vital is the right of a child—even a child who misbehaves—to be secure in uninterrupted enrollment at her school, and to know that the adults at the school will treat her with dignity and respect. Therefore, we wholeheartedly support the passage of this bill, and emphasize the need for a commitment from the City Council to enforce its mandates.

## **I. Overview of School Safety and Disciplinary Practices**

### **a. *The Rise of Police in Schools***

In 1998, Mayor Rudolph Giuliani and the Board of Education entered into an agreement that transferred school safety responsibilities to the NYPD. The transfer was accomplished through a compromise: the Giuliani administration promised that the number of police personnel in the schools would not increase.<sup>1</sup> The transfer also complemented Mayor Giuliani's philosophy of policing. Throughout his tenure, Mayor Giuliani subscribed to the theory that law-and-order could be best established by aggressively enforcing minor offenses.<sup>2</sup> His philosophy was imported from the streets into New York City schools, where children today can be, and have been, subjected to criminal punishments for minor infractions such as horseplay or writing on a desk.

Since the transfer in 1998, and despite the promises made at the time, the school safety division of the NYPD has grown by 64 percent to 5,200 personnel and is now, standing alone,

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<sup>1</sup> Lynette Holloway, "Board Votes to Give Police Control Over School Security," *The New York Times*, 17 Sept. 1998. Available at <http://www.nytimes.com/1998/09/17/nyregion/board-votes-to-give-police-control-over-school-security.html>, last Accessed 19 Nov. 2010; Timothy Williams, "NYC Turns School Security Over to Police," *Associated Press*, 17 Sept. 1998.

<sup>2</sup> Academy of Achievement, "New York's Pillar of Strength," 3 May 2003. Available at <http://www.achievement.org/autodoc/page/giu0int-1>, Last Accessed 19 Nov. 2010.

the fifth largest police force in the nation.<sup>3</sup> There are more officers in the School Safety Division than the Housing and Transit bureaus combined, and far more police personnel than guidance counselors in the schools. School security costs approximately 300 million dollars annually, yet it is essentially the only area of the Mayor's budget that did not see severe cuts this year.

Since the transfer of school safety responsibilities to the NYPD, schoolchildren have faced arrest and criminal sanctions for schoolyard misbehavior that should be handled by educators, and not the police. For example, in February 2010, 12-year-old Alexa Gonzalez, a 7<sup>th</sup>-grader in Queens, made national news when she was handcuffed, arrested, and “perp-walked” past her classmates for writing “I love my friends Abby and Faith” on her desk with an erasable marker.<sup>4</sup> In May 2010, nine-year-old Jaheim Williams, who weighs 70-pounds, was handcuffed for hours after school safety officers<sup>5</sup> broke up a scuffle with another student during lunch at his Brooklyn elementary school. The boy's mother found him handcuffed, crying, and having an asthma attack when she arrived at the school.<sup>6</sup> Also in May of this year, twin 8<sup>th</sup>-grade girls in Brooklyn were shackled to desks for two hours after one of them attempted to bring sweetened juice into school. The girl protested when her principal tried to take the juice away, and was tackled by five school safety officers. None of these students has been charged with a crime,

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<sup>3</sup> American Civil Liberties Union and New York Civil Liberties Union, “Criminalizing the Classroom: The Over-Policing of New York City Schools” (2007); Annenberg Institute for School Reform, *Make the Road New York*, and New York Civil Liberties Union, “Safety with Dignity: Alternatives to the Over-Policing of Schools” (2009).

<sup>4</sup> Rachel Monahan, “Queens girl Alexa Gonzalez hauled out of school in handcuffs after getting caught doodling on desk,” *New York Daily News*, 4 Feb. 2010. Available at [http://www.nydailynews.com/ny\\_local/education/2010/02/05/2010-02-05\\_cuffed\\_for\\_doodling\\_on\\_a\\_desk.html](http://www.nydailynews.com/ny_local/education/2010/02/05/2010-02-05_cuffed_for_doodling_on_a_desk.html).

<sup>5</sup> The NYPD and DOE currently refer to these police personnel as “school safety agents.” School safety officers, however, was what they were called at the time of the transfer, including in the Memorandum of Understanding that authorized the transfer. This term more accurately captures the scope of their powers and responsibilities as peace officers and it is the term used throughout this testimony.

<sup>6</sup> Ben Chapman, “School Safety Officers treated Brooklyn 9-year-old ‘like a criminal’ by handcuffing him, mom says,” *New York Daily News*, 12 May 2010. Available at [http://www.nydailynews.com/ny\\_local/brooklyn/2010/05/12/2010-05-12\\_school\\_safety\\_officers\\_treated\\_brooklyn\\_9yearold\\_like\\_a\\_criminal\\_by\\_handcuffing\\_.html](http://www.nydailynews.com/ny_local/brooklyn/2010/05/12/2010-05-12_school_safety_officers_treated_brooklyn_9yearold_like_a_criminal_by_handcuffing_.html), Last Accessed 14 Dec. 2010

even though they were shackled and handled like arrestees. The family reached out to the NYCLU for assistance, and we continue to help them.

**b. *An Increasing Reliance on Suspensions***

In New York City schools, a growing reliance on suspensions as the main disciplinary tool compromises tens of thousands of student's educational rights. The number of suspensions in New York City has grown at an alarming rate over the last decade: One out of every 14 students was suspended in 2008-2009. The average length of a superintendent's suspension is more than a month—a punishment that would be considered an expulsion in most other states. And black students and students with disabilities are suspended at much higher rates than other students. Schools suspend students for more and more behaviors, from kissing to using swear words.

In early 2010, a Staten Island fourth-grader was nearly suspended for bringing a Lego toy gun the size of a quarter into school. The student reported to media outlets that his principal told him “a gun is a gun.”<sup>7</sup> After intense media attention the school decided not to suspend him. Earlier this year, the NYCLU worked with a Brooklyn 8<sup>th</sup>-grader who was suspended for writing an essay in English class that was deemed inappropriate by her principal. The school failed to follow any of the due process requirements for suspending the student, and school personnel advised the student's mother not to send her to the school she was assigned to while suspended because it was in a “bad neighborhood.” As a result, the student received no instruction while she was suspended, in clear violation of state law.

**II. The Student Safety Act**

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<sup>7</sup> Matthew Lysiak and Larry McShane, “School principal Evelyn Mastroianni apologizes to Patrick Timoney's mom for tiny toy gun bust,” *New York Daily News* 5 Feb. 2010. Available at [http://www.nydailynews.com/ny\\_local/education/2010/02/05/2010-02-05\\_si\\_principal\\_i\\_blew\\_toy\\_gun\\_flap.html](http://www.nydailynews.com/ny_local/education/2010/02/05/2010-02-05_si_principal_i_blew_toy_gun_flap.html), Last Accessed 19 Nov. 2010.

Passage of the Student Safety Act is a necessary first step for New York City to evaluate the fairness and effectiveness of its school safety and discipline policies. The legislation provides a detailed framework for the reporting of discipline and police practices in schools. It will require the DOE to submit an annual report on student discipline that shows the number of students subjected to a suspension during the school year and the number of suspension-related school transfers.

In addition to this annual report, the bill will require bi-annual reports on the discipline of students that break down the number of suspensions citywide by month. About 30 percent of suspensions occur in just two months of each school year: March and June. Breaking down discipline by month should encourage the DOE to monitor trends in school discipline and develop proactive alternatives to suspension to reduce the number of students taken out of schools during busy months.

Finally, the bill will require the NYPD to provide the council a quarterly report detailing the activity of its personnel in city schools. The quarterly report will show the number of students arrested and issued summonses, and it will detail non-criminal incidents involving NYPD personnel. This will be the only law in the nation that is specifically designed to monitor the activities of police in schools.

All of the information in the reports will be disaggregated by key demographic factors—the age and grade level, race, gender, and special education and English language learner status for each student—making this one of the most comprehensive school discipline transparency statutes in the country. This demographic information is of particular importance because studies of New York City suspensions show that black students and students with special needs are suspended at much higher rates than their peers. Black students in New York City are also more

likely to be suspended for subjective infractions, like insubordination, than their white peers. Continued monitoring of discipline data must include these factors to ensure that students are disciplined in a non-discriminatory way.

### **III. Next Steps for Policymakers**

It is important that the City Council recognize that the Student Safety Act on its own will not fix the problems associated with zero-tolerance discipline or police in schools, or end the discriminatory impact of discipline on certain groups of students. Access to this data is a first step, and the Council must be prepared to mandate compliance with the law, and to react quickly and appropriately to data that indicates infringements on students' rights, and to the policies behind them.

Here are some of the additional steps that policymakers should take to ensure that children are not needlessly suspended or arrested in schools:

1. The City Council should investigate the school safety governance structure that currently exists in the form of an MOU between the DOE and the NYPD. The current MOU provides no guidance to school safety officers or school employees regarding the scope of each of their duties. For example, the MOU fails to provide answers to tough questions such as when does horseplay rise to the level of a misdemeanor assault, or how best to make our schools safer without threatening their educational environment.

A new MOU must be adopted that mandates additional training for SSOs to ensure that students are not wrongfully arrested in school and that ensures that students at each school are treated with dignity and respect. Moreover, it must be made clear to

SSOs that principals are in charge of discipline and safety in their schools. Principals have rehabilitative or pedagogical goals in mind when deciding how to deal with student misbehavior—police personnel working in environments where teaching and learning are paramount goals must be cognizant and respectful of that decision.

2. The original version of the Student Safety Act included a provision that would have expanded the jurisdiction of the Civilian Complaint Review Board to accept complaints against school safety officers. The draft of the legislation being considered today does not include such a provision. Therefore, while the NYCLU strongly supports passage of the Student safety Act, we also encourage the City Council to consider fixing the current deficiencies within the CCRB and its structure and expanding its jurisdiction to include complaints against schools safety officers.

The City Council established the current structure of the CCRB before the NYPD took over school safety responsibilities. Therefore, the statute did not address directly whether the CCRB’s jurisdiction included school safety officers, and the Bloomberg administration has taken the position that school safety officers do not fall under the jurisdiction of the CCRB. Therefore, when families want to file complaints against abusive school safety officers—which, according to the NYPD, they do about 1,200 times a year even though it’s hard to find out how to file a complaint—they have to file the complaint with the NYPD’s internal affairs division.

The original version of the bill would have granted families the right to file complaints against abusive school safety officers with the CCRB, which is better equipped to accept complaints from New Yorkers. The City Council should give serious consideration to this proposal. School safety officers stop, frisk, search, handcuff and arrest students. Therefore, students should have the same rights to file complaints against police activities in the schools as they do about police activities on the street. We hope the City Council will revisit this issue in the very near future.

3. Additionally, the original version of the bill contained a provision that would have reported discharge information about students who were suspended in school. A “discharge” is someone who leaves the school system without being counted as a dropout or a graduate. When they leave the system, that student is deducted from the denominator of the graduation rate calculation, thus inflating the graduation rate. There are numerous legitimate reasons for counting a student as a discharge (for example, the student moved out of the state). But the NYCLU is concerned that kids who are repeatedly suspended or are arrested end up leaving the school system and are wrongfully counted as discharges. The City Council should study this issue.
4. Finally, the original version of the bill called for arrest data to be disaggregated by school. While under the current version of the Student Safety Act the City Council will receive suspension data by school, the arrest and summons data will be broken down by NYPD patrol borough (there are eight patrol boroughs in New York City). We hope that the City Council will fight for reporting of arrest data by school so that

policymakers may be better informed on which schools may have a disproportionately high arrest rate.

#### **IV. Alternative Models**

There are effective means of enforcing school rules without resorting to the exclusion of misbehaving students from their school. Alternative discipline models like positive behavioral interventions and supports, restorative justice and conflict resolution have been proven to work, and to reduce recidivism rates much more effectively than suspensions and arrests. School discipline should be designed to foster students' social and emotional growth, and to incorporate teaching and learning into all aspects of students' time at school.

In 2009 the NYCLU, Annenberg Institute for School Reform, and Make the Road New York released a report documenting the successes of six New York City public high schools in maintaining safe, nurturing educational environments without using metal detectors, aggressive policing and harsh disciplinary policies. The report explored the approaches to security and discipline favored by these six successful schools, which serve "at-risk" student populations, similar to schools with some of the harshest discipline policies.

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 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; 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 City 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 but often exists in the shadows. By providing this data to policymakers and the public, the Student Safety Act will facilitate 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' rights and educational opportunities. It will allow for sophisticated analysis of longitudinal trends in school safety—a necessary ingredient in any policy area.

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.