



NYCLU
NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

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

before

**THE NEW YORK CITY COUNCIL
EDUCATION COMMITTEE**

on

**THE DEPARTMENT OF EDUCATION'S SUSPENSIONS PRACTICES
AND DATA REPORTING**

November 30, 2011

The New York Civil Liberties Union (NYCLU) submits the following testimony to raise concerns about the Department of Education's (DOE) increasing reliance on suspensions to handle student misbehavior, and the DOE's reluctance to implement proven alternatives to zero tolerance discipline. We also submit recommendations for the City Council to improve reporting of data on student suspensions under the recently enacted Student Safety Act, and recommendations for the Department of Education to reduce its reliance on suspensions as a disciplinary tool.

In the 1990's, federal, state and local policymakers began to mandate that schools respond to student misconduct through suspensions and arrests. These zero tolerance policies first focused on situations involving drug or gun possession, but soon expanded to all types of student misbehavior. As a result, schools began to increasingly rely on student suspensions and even referrals to the juvenile and criminal justice systems to handle disciplinary problems, including for non-dangerous and non-criminal offenses.¹ This growth took place despite data

¹ 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*

that indicated that violence in the schools was actually decreasing, and despite the growing evidence of the ineffectiveness and harmful impact of student suspensions and arrests on the entire school community.

Similar to the national trend, and often serving as a model for the nation, New York City schools have increased their reliance on zero tolerance to maintain safety in schools. As a result, New York City schools are now patrolled on a daily basis by the fifth largest police force in the nation. Moreover, the number of suspensions handed down on an annual basis has more than doubled under Mayor Bloomberg. Black boys have faced the brunt of both of these practices.

While an orderly and safe classroom is vital for an adequate learning environment for both children and educators, the goal of a safe school should not be synonymous with stacking the halls with police personnel and excessive punishments. On the contrary, the goal of safety should complement and enhance the overarching purpose of a school, which is to provide all students with a quality education. Yet this right is all too often threatened by overzealous policies that rely on gut reactions rather than evidence-driven solutions.

I. Suspensions Harm the School Climate and Student Achievement

Studies by the NAACP Legal Defense and Educational Fund and, more recently, the Council of State Governments have demonstrated the link between exclusionary discipline and students' failure to achieve academically and to graduate.² A study reported in the *Journal of School Psychology* suggested that students who are suspended from school are 26 percent more likely to be involved with the criminal justice system than their peers. Further, research emphatically does not support the belief that suspending problem students improves their behavior. A study by the American Psychological Association found that students who are

Tolerance Task Force (2006); NAACP Legal Defense and Education Fund, *Dismantling the School to Prison Pipeline* (2007).

² NAACP Legal Defense and Education Fund, *Dismantling the School to Prison Pipeline* (2007); Council of State Governments Justice Center and Texas A&M University Public Policy Research Center, *Breaking Schools Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (July 2011).

suspended are highly likely to be suspended again, debunking the myth that suspensions are an effective deterrent from problem behavior³ (for example, in New York City, about 25 percent of students who served a suspension from 1999-2009 were suspended more than once in the same school year⁴).

Researchers at Indiana University determined that a school's adherence to zero tolerance discipline is second only to poverty as a predictor of students' poor performance on standardized tests.⁵ Their study also found that administrators in zero tolerance schools spend a disproportionate amount of their time on discipline issues, as compared with academics and other school needs.⁶

Finally, data from school districts around the country shows that zero tolerance is applied in a discriminatory manner. Black and Latino students and students with disabilities are far more likely to be suspended than their peers. Male students are also more likely to serve suspensions than female students.

I. Suspensions in New York City Continue to be at Record Levels, with a Disproportionate Impact on Black Children, Students with Special Needs, and Male Students

Earlier this year, the NYCLU and the Student Safety Coalition issued a report analyzing 10 years of student suspensions in New York City schools. This analysis, along with the data recently released under the Student Safety Act, demonstrate how adherence to zero tolerance policies and punitive, exclusionary discipline in New York City schools have resulted in record-high numbers of student suspensions and in a practice that disproportionately targets black students, student with disabilities, and male students.

³ Russell Skiba, et al. *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, American Psychological Association Council of Representatives (Aug. 9, 2006).

⁴ NYCLU, *Education Interrupted: The Growing Use of Suspensions in New York City's Public Schools* (Jan. 2011).

⁵ Russell Skiba, et al., *id.* See also, Russell Skiba and M. Karega Rausch, "Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness," in Everson and Weinstein (eds), *Handbook of Classroom Management: Research, Practice, and Contemporary Issues* (Lawrence Erlbaum Associates, 2006).

⁶ *Id.*

From 2002 to today, the number of student suspensions per year has more than doubled in New York City schools. In the 2002-2003 school year, the first year under mayoral control of schools, students served 31,879 suspensions. By the 2010-2011 school year, students had served 73,441 suspensions, an increase of 130 percent.

Long-term (superintendent's) suspensions continue to be at their highest levels, accounting for approximately 21 percent of all suspensions. In the 2002-2003 school year, students served 8,510 long term suspensions. By the 2010-2011 school year, students served 15,055 long term suspensions. Though the recent report under the Student Safety Act does not provide enough information to determine the average length of time students are spending outside of the classroom, past analysis by the NYCLU revealed that the average length of suspensions in 2010 was 25 days.

Black students continue to serve more than half of all suspensions (52 percent in 2010-2011), despite making up about 30 percent of the student population. The average number of black students suspended per school was four and a half times greater than the average number of non-black or Latino students suspended per school (24 vs. 5). Students with special needs, who represent approximately 15 percent of all students, serve more than 30 percent of suspensions (31 percent in 2010-2011). Moreover, among the 557 schools in the recently released DOE data for which we have numerical values available, 65 percent of suspensions were of male students even though male students make up roughly half of the school system's population. Finally, according to the unredacted data released under the Student Safety Act, schools with a majority of students from low-income families dish out, on average, one-and-a-half times as many suspensions as other schools.

II. Recommendations for Improved Reporting and Practices

As the City Council is aware, the DOE's student discipline report is almost entirely redacted. In fact, less than 1 percent of the cells in the provided spreadsheets are unredacted, leaving gaping holes in the available picture of student discipline. Fewer than 500 of the City's

1,500 schools have any reported data whatsoever. While the NYCLU acknowledges and respects the DOE's adherence to federal student privacy protections, these redactions go far beyond what is required under FERPA.⁷ Therefore, we urge the City Council to amend city law to require the Department of Education to:

- **Report aggregate citywide totals for each category of suspensions currently reported under the Student Safety Act.** The reporting by the DOE currently does not include the citywide totals for reporting categories currently mandated under city law, making it virtually impossible for the public and policymakers to evaluate citywide trends in suspension practices. For example, the DOE does not report the number of students who were suspended citywide for each infraction listed in the discipline code, or the citywide totals for the number of suspended students in each race/ethnicity category, or the total number of students with special needs who are suspended. The public knows some of this information only because it was included in a DOE news release that accompanied the release of the data.

Federal privacy laws do not prohibit the DOE from reporting such aggregate totals, and city law should be amended to mandate such reporting. While individual schools may not meet the minimum cell size for disclosure of each infraction, it is unlikely that citywide totals would fall below that threshold.

- **Report aggregate suspension totals for each school where such totals exceed the cell size of nine.** Where a particular school has more than nine total suspensions, the DOE should provide that total. For example, the DOE should report data on the total number of suspensions in a particular school, principal and superintendent combined, if they are greater than nine.

Schools impose discipline based on the Citywide Standards of Discipline and Intervention, the Code of Conduct for all public schools, and the increase in student suspensions

⁷ Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99.

is likely reflective of changes to the New York City discipline code. The discipline code has emphasized zero tolerance discipline for various misbehaviors, from the minor to the serious. At its peak in the 2007-2010 school years, the Discipline Code mandated a suspension for 29 of 63 listed infractions, a 107 percent increase from the 14 identified when Mayor Bloomberg took control of the schools.

In recent years, tireless work from the advocacy community (including the Student Safety Coalition and Dignity in Schools Campaign) have lead to important (yet incremental) changes to the discipline code. This school year, there are 15 zero tolerance infractions for elementary school children, and 17 for high school, though exclusionary discipline is still a discretionary punishment for nearly all infractions. Other minor changes have begun to make the Discipline Code a more flexible document. Assuming school officials will adhere to the new Discipline Code, we expect that suspensions should significantly decrease this year, for the first time since 2001.

Yet the Discipline Code remains extremely limited when it comes to embracing the necessary practices for creating a positive school climate. Therefore, we recommend that the DOE:

- **Mandate positive interventions prior to suspensions.** While the DOE has trained many of its employees in positive disciplinary tactics, the emphasis on punitive discipline remains strong in both policy documents and the attitudes of central DOE personnel. Educators are rarely furnished with effective alternative tools to reduce suspensions and address conflict in ways that improve the school environment and student outcomes. Except when a suspension is required by law, it should not be mandated. The DOE should require that positive alternatives—such as intervention by guidance counselors, conflict resolution or mediation services, or parent-teacher conferences—be attempted before resorting to a suspension.
- **Implement and fund positive school-wide approaches to discipline, such as restorative justice practices and positive behavior interventions and supports**

(PBIS). This should be done beginning with neighborhoods and specific schools with the highest rates of suspensions and arrests.

Conclusion

In its first reporting period, the Student Safety Act has increased transparency around the discipline of public school students, permitting the public to analyze the pitfalls of zero tolerance discipline in a way never before available. We commend the Council for its leadership enacting this law, and the DOE for complying with its mandates in a timely manner, and going beyond the call of the statute to provide key statistics not explicitly required by the law. We look forward to continuing to collaborate with the DOE on improving the Discipline Code and hope that the changes already made will result in fewer suspensions next year.

Yet there remains a long road ahead. Student suspensions are at an all-time high. Schools are disproportionately removing black students and students with special needs from their classrooms for minor infractions. We urge the Council to explore ways to ensure that positive discipline and school climate reforms are given the same emphasis in New York's schools as suspensions and arrests for misbehavior. Moreover, we urge the City Council to amend city law to give the public better access to data on discipline practices in schools. The DOE's overuse of redactions obscures the real picture of discipline in schools.

We look forward to working with the DOE and the City Council to ensure that all our students are given a fair chance, and our educators are given the right tools to create safe, supportive schools.