

October 7, 2008

Raymond Kelly
Commissioner
New York City Police Department
1 Police Plaza
New York, New York 10038

Re: Arrests of Children Younger Than 16

Dear Commissioner Kelly:

We are writing regarding what appears to be the unlawful practice of arresting schoolchildren younger than 16 in the New York City public schools for non-criminal violations. Such arrests --- which involve taking children out of schools in handcuffs and transporting them to the police precinct for booking --- appear to be in direct violation of the Family Court Act and case law from the New York Court of Appeals.

Section 305.2 of the Family Court Act permits an officer to take a child younger than 16 into custody without a warrant only "in cases in which he [or she] may arrest a person for a crime under Article 140 of the Criminal Procedure law." The Court of Appeals recently confirmed that this provision means that the "warrantless arrest of a juvenile is authorized only in cases where an adult could be arrested 'for a crime.'" *Victor M.*, 9 N.Y.3d 84, 87 (2007). A "crime," as defined by the New York Penal Law, includes misdemeanors and felonies, and not mere violations such as loitering and trespass. N.Y. Penal Law § 10.00[6]. Thus, the Family Court Act prohibits NYPD personnel from taking schoolchildren younger than 16 out of their classrooms or their schools, handcuffing them, and hauling them to the precinct for non-criminal violations. The provision rests upon the sound policy that relatively minor infractions committed by children should not result in the physical and traumatic intervention of an arrest but should, instead, be subjected to less aggressive and more supportive interventions.

Yet, over the past 18 months, the NYCLU and ACLU received anecdotal reports that children younger than 16 were being arrested at school and booked at the precinct for behavior that does not even rise to the level of a misdemeanor. Consequently, in October 2007, we filed a Freedom of Information Law request seeking the numbers and types of arrests of children younger than 16 on public school grounds. The data disclosed by the NYPD in response to our

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FOIL confirms many instances in which children younger than 16 have been taken out of school and down to the precinct for non-criminal violations. Specifically, the data reveals that between 2005 and 2007, approximately 300 children younger than 16 were arrested by NYPD personnel for committing non-criminal violations in school or on school grounds.¹ For example, in one case, an eleven year old was arrested at school and taken to the precinct and charged with a trespassing violation. A copy of our FOIL request and our analysis of the NYPD's data are enclosed.


The number of such arrests suggests that NYPD personnel are either unaware of the legal mandate imposed by New York law or are deliberately ignoring it. If we are wrong in our understanding of this situation and in our belief that NYPD officers are repeatedly violating New York law, please explain to us why we are in error. If we are not wrong in our understanding of this situation, we ask that you immediately issue a directive informing all NYPD personnel in public schools of the prohibitions set forth in Section 305.2 of the Family Court Act, and that you take steps to ensure enforcement of this provision.

Section 305.2 of the Family Court Act and the 2007 Court of Appeals decision in *Victor M.* do not leave school officials powerless to address misbehavior and disruptive conduct by children within the schools. School officials retain the authority to discipline students, to report misbehavior to parents, and to engage in a range of interventions to address student misconduct. But New York law prohibits treating minor infractions committed by young people as criminal conduct and using the aggressive tactic of arrest and detention by police personnel in response to such infractions. Because this issue raises deep concerns and because we believe children are being illegally arrested, we ask that you address this matter expeditiously and respond to this letter within 10 days. We seek here the prompt administrative resolution of this matter rather than a more costly and time-consuming approach of litigation.

Thank you for your attention to this matter.

Sincerely,


Arthur Eisenberg
NYCLU Legal Director


Catherine Kim
ACLU Staff Attorney

cc: Chancellor Joel Klein, New York City Department of Education
Chief Douglas Ziegler, New York Police Department Community Affairs
Chief James Secreto, New York Police Department School Safety Division
Robin Greenfield, Deputy Counsel, New York City Department of Education
Thomas Doepfner, Assistant Deputy Commissioner, Legal Matters, New York Police Department

¹ Our understanding is that these data are limited to the number of children who were arrested and taken to the police precinct. They do not include the unknown number of children who were handcuffed by officers at school or otherwise taken into custody, but not formally arrested.