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**TESTIMONY OF DONNA LIEBERMAN  
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION**

**before**

**NEW YORK ASSEMBLY STANDING COMMITTEE ON EDUCATION**

**March 20, 2009**

Assemblywoman Nolan and members of the Standing Committee on Education: My name is Donna Lieberman, and I appear before you today on behalf of the New York Civil Liberties Union and its 48,000 members statewide. Since 1951, the NYCLU has been the state's leading advocate on behalf of New Yorkers' civil rights and civil liberties.

We join other advocates today in urging the legislature to emphasize basic democratic principles like transparency, accountability, and public oversight when evaluating and adjusting the current school governance system. Today I'd like to talk specifically about an aspect of mayoral control that hasn't been at the forefront of the debate, but where the NYCLU has a unique perspective: students' civil rights and liberties. There are three areas of current education policy that illustrate the current system's failure to protect students' rights: police in schools, military recruitment, and bias-based harassment.

## **Police in Schools**

Over the past two years, the NYCLU has become deeply involved in the issue of over-reliance on police to enforce discipline in New York's schools. As a result, we've become familiar with a school system where street policing tactics rule over reasoned decision making and alternatives to punitive discipline. It's a system where students can be divided into two worlds based on whether their school has a metal detector or not. In one world, an offense such as bringing a cell phone to school results in detention or a parent-teacher conference. In the other, it can result in a court summons, a suspension, or even an arrest. The overall effect is to drive marginalized and vulnerable students into the streets, and ultimately, the prison system.

In 1998, Mayor Giuliani transferred school security responsibilities from the Board of Education to the NYPD, amidst promises that school safety agents would not have the power to arrest students.<sup>1</sup> Since the transfer, the handling of minor disciplinary matters has often resulted in explosive confrontations with police personnel, followed by arrests, court summonses, extended suspensions, and even jail time for students as young as kindergarten.<sup>2</sup> Consider the case of Chelsea Fraser, a 13-year-old girl who was arrested and handcuffed for writing the word "okay" on her desk. Or five-year-old Dennis Rivera, a special needs student who was handcuffed and taken to a mental hospital for throwing a tantrum in his kindergarten class. Or Mark Federman, the highly-regarded principal of East Side Community High School in Manhattan, who was arrested for pleading with the police not to escort a handcuffed honor roll student out of the school's front door in front of her classmates.<sup>3</sup>

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<sup>1</sup> Associated Press, *Board of Ed Approves NYPD School Safety Plan*, September 16, 1998.

<sup>2</sup> See New York Civil Liberties Union and American Civil Liberties Union, "Criminalizing the Classroom: the Over-Policing of New York City Schools," March 2007. See also Bob Herbert, *School to Prison Pipeline*, THE NEW YORK TIMES, June 9, 2007.

<sup>3</sup> Jennifer Medina, *Police Arrest a Student, Then Her Principal, Too*, THE NEW YORK TIMES, October 10, 2007.

Mayor Bloomberg inherited Mayor Giuliani's decision to put police personnel into the schools. He made the choice to import Giuliani's brand of zero tolerance policing into our classrooms and hallways. Under Bloomberg's control, we've seen the rapid expansion of the NYPD school safety division, both in its size and its responsibilities in the schools. The school police division is currently more than 5,200 strong and the fifth largest police force in the country – larger than that of Washington DC, Boston, Detroit, or Las Vegas. Since 1998, the number of school safety agents has grown by 64 percent, while the total student enrollment has declined. Likewise, the school safety budget, paid for out of DOE funds, has grown by 65 percent just since 2002 – the year mayoral control began.

In schools with metal detectors, which now represent nearly a quarter of all high schools in the city, the students are disproportionately poor, black and Latino, and are more often confronted by the police for “non-criminal” incidents such as skipping class or talking back than students at other schools. These police confrontations lead to a higher number of suspensions and arrests in the city's neediest schools, which in turn push an alarming number of vulnerable students into the juvenile justice system. In a school without metal detectors, bringing a cell phone or ipod to school might be punished by detention; but in a school with permanent metal detectors it is likely to escalate into a police incident, a court summons or an arrest.

### **Military Recruitment**

Another area of education policy that has demonstrated the mayor's contempt for student rights is military recruitment. Under the No Child Left Behind Act, schools are required to give military recruiters access to their students' personal information, and access to the students themselves equal to that given to college and job recruiters. While federal law preempts the city

from taking decisive action against military recruitment, some large urban school districts have taken a strong stance on student privacy, and have acted within the confines of the statute to protect their students from aggressive recruiters. In contrast, the DOE has made recruiters' jobs easier in some cases, and in others has simply abdicated responsibility for students' privacy. On this issue, the DOE has demonstrated its unwillingness to hear parents' and students' concerns.

For many years, the DOE almost completely ignored the presence and activities of recruiters in high schools. There has never been an adequate forum for submitting complaints about recruiter behavior; the DOE admits it has no idea which schools are administering the military eligibility exam; and there has been no standardization in the federally-required opt-out process that allows students to keep their personal information private. Then, in fall 2008, longstanding DOE policy was abruptly changed to allow for wholesale disclosure of student information to the military from the central DOE. In previous years, recruiters had to visit each school to obtain student information, a system where principals and teachers could ensure that only students who wanted the military to contact them would have their information shared. The DOE changed this policy without a public hearing or a public notice and comment period, as required by the City Administrative Procedures Act.

The DOE's refusal to protect students from aggressive recruitment did not go unnoticed. Parents, students, advocates and lawmakers gathered on the steps of Tweed Hall in September to protest the change and to speak out against the release of their information. In November, 26 elected officials joined Congressman Charles Rangel in a letter to the DOE, asking the mayor and chancellor to reexamine their positions in this area, and to enact a fully transparent and comprehensive chancellor's regulation to address the problem. To almost no one's surprise, the

DOE ignored the letter for several months, and when it did finally respond, it refused to implement any of Congressman Rangel's suggestions.

### **Bias-Based Harassment and DASA**

Finally, there is the story of the Dignity in All Schools Act (DASA), an issue that brought to light the mayor's belief that the DOE is not bound by laws passed by the City Council. DASA was enacted by the City Council in 2004 in an attempt to prevent and address bias-based harassment and bullying in the school system. It required support systems for bullied students, trainings for school employees, and a reporting mechanism by the DOE to allow the Council to track the incidence of bullying. According to the DOE's own survey, during the 2006-2007 school year, 76 percent of 12<sup>th</sup> graders reported having seen students bully or threaten other students at school.<sup>4</sup> Mayor Bloomberg vetoed DASA, despite stories such as Osama al-Najjar's, a 16-year-old student in Staten Island who attempted suicide after students and teachers incessantly referred to him as Osama bin Laden.

The City Council overrode the veto, but Mayor Bloomberg and Chancellor Klein steadfastly refused to enforce DASA, insisting the City Council could not pass laws affecting the DOE. Their stubborn resistance allowed bias based harassment to continue, and it was only after two high-profile attacks against Sikh students that the DOE reluctantly implemented its own version of DASA—a version watered down far below the law passed by the Council. The DOE's version doesn't require annual reporting of the number of bias-based incidents in schools, and it doesn't mandate training for all staff. The most effective aspect of the chancellor's regulation on

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<sup>4</sup> Report available at [http://schools.nyc.gov/OA/SchoolReports/2006-07/Survey\\_K277.pdf](http://schools.nyc.gov/OA/SchoolReports/2006-07/Survey_K277.pdf).

bias-based harassment may be its mechanism for providing lucrative contracts to the agencies that provide the training.

### **Access to Information**

It's true that our experiences are one-sided—the one voice we haven't been able to engage with on these issues is the DOE's. In fact, the DOE has resisted our meeting invitations, and has stalled our requests for information and records in these three areas for nearly a year. Currently, the NYCLU has five outstanding Freedom of Information Law requests with the DOE and NYPD on issues of school safety, military recruitment, and DASA. Four of those five have been outstanding for 120 days or longer, and we have received no responsive records whatsoever. On the issue of military recruitment, several branches of the military and the Department of Homeland Security have all been more forthcoming with records than our own DOE.

Worst of all, though, our attempts to gather information on school safety practices have been futile. We have been delayed for several months in our quest to seek information about Internal Affairs Bureau investigations of abuse by safety agents. And we have been outright denied access to records of student suspensions, the unlawful arrests of youth 15 and younger, and records relating to the shocking practice of taking students to psych wards without their parents' permission. We were denied requests to observe the mayor's roving metal detector program – a shock-and-awe-style raid where armed police officers descend on schools at random and set up temporary metal detectors – and threatened with arrest for attempting to observe the police operation from a public sidewalk. (The roving metal detectors cause such extensive delays for students entering their schools that many stay home rather than waste half a day standing in

line; substantial numbers of children lose entire school days through this program.) Finally, the NYPD has failed to fully comply with a 2005 City Council law that requires reporting of the number of school safety agents in each of the city's schools.

The legislature can begin to address these issues through the lens of mayoral control. First, the power, autonomy, and sovereignty of the DOE and NYPD must be immediately addressed and corrected. It can no longer operate as a completely anomalous agency, unbound by the laws that govern other government bodies. While the 2002 legislature may have intended for the "Board of Education" to retain similar powers and responsibilities as its predecessor, the past seven years have demonstrated that the current system invites, or at least permits, serious abuse of power. The legislature must specifically affirm that the DOE is subject to all legally binding acts of the New York City Council including the City Administrative Procedures Act.

Second, the new legislation must create a better forum for public input and oversight. This includes creating a strengthened PEP, where parents' and students' concerns can be recognized and addressed even when they differ from the mayor's positions. Future PEP members must have enough independence to make reasoned decisions on the issues without fear of losing their positions.

Finally, the public must have access to DOE data. From test scores, to graduation rates, to arrests in schools, the public has continually been denied access to raw statistical data from the DOE. Even other government agencies, such as the Independent Budget Office (IBO), are not permitted to independently examine DOE's claims of student achievement and reduced crime in schools. The legislature must ensure that in the future, the DOE is subject to meaningful public

oversight in the form of periodic reporting of data, and to independent review by other agencies, such as the IBO.

I hope my testimony has given you an idea of how abstract democratic principles like transparency and balanced power can affect students' lives in a concrete and sometimes frightening way, and that you will consider student safety and privacy when revising the mayoral control statute. The mayor's failure to provide access to basic information on the school system, his refusal to abide by laws passed by the City Council, and his demonstrated disdain for transparency and separation of powers are issues that must be addressed as mayoral control sunsets.