

The Price of Power:
Civil Liberties and Civil Rights
Under Mayoral Control of
New York City's Schools



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

Acknowledgments

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SUMMARY OF FINDINGS AND RECOMMENDATIONS

The following report examines the New York Civil Liberties Union’s experiences working on civil rights and civil liberties matters in the schools over the past seven years, and draws lessons from those experiences to suggest ways to improve New York City’s school governance system. The analysis is based on obstacles the NYCLU has faced in its work on significant public policy issues that affect the safety, wellbeing and constitutional rights of millions of students and parents, and tens of thousands of school employees.

While the goals of the 2002 mayoral control legislation were laudable, Mayor Michael Bloomberg and Chancellor Joel Klein have demonstrated an alarmingly expansive interpretation of their powers, and new problems have replaced the old ones. Government transparency has been a scarce commodity under mayoral control, and the Department of Education (DOE) has operated like a tightly controlled bunker that excludes outsiders, including parents and city lawmakers, from most meaningful participation.

Whether it approves extending mayoral control or not, the State Legislature must create additional legally-mandated mechanisms to ensure checks and balances, public input and transparency in government. New York City schools must not continue to operate through unchecked executive authority, excessive secrecy, and blocks to public participation and oversight. Therefore, the NYCLU recommends that the State Legislature:

► **Clearly delineate the position of the DOE within the existing structure of city government.**

The DOE cannot continue to operate as its own autonomous agency, even if mayoral control is extended. The DOE takes the position that it is not a “city agency” and is therefore not bound by laws that govern the conduct of city agencies. This allows the DOE to escape laws governing the authority of the Independent Budget Office, the legislative authority of the City Council and the investigatory powers of the public advocate and comptroller. The State Legislature must clarify that the DOE is a city agency subject to the City Administrative Procedures Act and other laws that provide for agency transparency and oversight. Moreover, the State Legislature must clarify that the City Council has jurisdiction over non-curriculum education matters, such as school safety and military recruitment policies.

► **Increase public oversight by an empowered board of education.**

While the NYCLU does not take a position on whether to extend the mayor’s authority to appoint the chancellor and a majority of the Panel for Educational Policy (PEP), it is in the interest of students, parents and educators to have an empowered panel that debates education policy matters. We recommend that the State Legislature put in place mechanisms to ensure meaningful debate and decisionmaking regardless of whether mayoral control is renewed. The Education Law should be strengthened to pose an affirmative obligation on the chancellor to submit for PEP approval all new citywide policies and practices that are related to educational achievement and student performance. The chancellor must be prohibited from executing such policies and practices without PEP approval. The authority to appoint members to the PEP should be distributed among all citywide elected officials, who like the mayor have a stake in education matters, and to the city’s legislative body. Priority should be given to appointing members with a background in education and to individuals who attended a New York City public school or who have children in the city’s public education system. In order to avoid undue influence on panel members and to encourage thoughtful debate on the PEP, panel members should serve fixed terms, and while the mayor may continue to have sole appointing authority over the schools chancellor who will continue to act as the chief executor of education policies, the PEP should vote for its own chair who will be provided with a stipend and staff.

► **Strengthen the parental voice in policymaking.**

The Community District Education Councils (CECs) and citywide councils must be given responsibilities and authority that ensure parental involvement in the setting of school education policies. The CECs' and citywide councils' authority should be expanded to include approval of district school safety plans, the opening and closing of schools and other district-specific policies.

► **Bring school safety practices in line with education policy.**

The NYPD plays a unique and expansive role in the city's education system. At the same time that the number of police personnel in the schools has increased to a whopping 5,200 agents, the ability of educators to oversee school safety and student discipline has decreased. Principals complain that they are unable to control the conduct of School Safety Agents and are limited in their ability to strike the right balance between school security and a supportive educational environment. Therefore, NYPD personnel who work in schools must be subject to oversight by educators who have an expertise in maintaining a nurturing school environment. The New York State Education Department and the DOE must be granted clear authority to investigate and oversee all school safety practices, including the activities of NYPD personnel in city schools.

► **Institute practices to allow for public engagement in the decisionmaking process.**

The DOE must abide by basic requirements of open government in the policymaking process. All Chancellor's Regulations must be subject to a public comment period. The PEP must also open its policymaking and adjudication process to the public, and ensure that the public is welcomed at its meetings and informed of its activities.

► **Mandate transparency of data.**

The DOE must end its practice of withholding from the public raw data on student performance, student safety and the education budget, and the DOE must meet its statutory obligation to provide the public with access to records. In order to allow for an independent assessment of the DOE's data, the Independent Budget Office must be provided with statutory authority to report on the DOE's performance, as it does on other city agencies.

► **Create a DOE inspector general.**

In order to promote the integrity and effectiveness of the DOE, the State Legislature should create an Office of Inspector General within the DOE to conduct independent audits and investigations into DOE practices. The inspector general will investigate systemic problems that impact the educational environment and will not be responsible for investigating individual acts of fraud and corruption by employees (the responsibility of the special commissioner of investigations). The duration of the appointment of the inspector general should be fixed and last longer than the mayor's term.

► **Allow the law to sunset again in seven years.**

The debate over the appropriate school governance structure for New York City has led to passionate discussions among policymakers and the public and a renewed interest in city schools and the people who run them. The State Legislature should ensure that whichever system it chooses for New York City, such a system expires in seven years, thus allowing for a continuous public debate.

I. INTRODUCTION

In 2002, the New York State Legislature authorized New York City to experiment with a mayoral control system of school governance. The legislation consolidated policy-setting and operational management of the school system into the office of the mayor and removed most of the authority of the Board of Education.

The goals of the mayoral control legislation were ambitious and commendable—building transparency and accountability into a vast school system, removing obstacles to innovation, and allowing the people of New York to evaluate their mayor based on the successes of their students. Unfortunately, under mayoral control, Mayor Bloomberg and his DOE have taken an alarmingly expansive view of their authority and a host of new problems have replaced the old ones. The mayor and DOE routinely proclaim themselves outside of city statutes, acts of the City Council and even the City Charter. With no meaningful oversight body to act as a check, the mayor is free to run the school system as an unaccountable extension of the executive branch. And it is difficult to imagine a body less transparent than the DOE: the requirements of the Freedom of Information Law are ignored when inconvenient, and claims of student improvement ring hollow because raw data is concealed from public view.

As the legislature considers whether to renew mayoral control, it will certainly consider the DOE's statistics on graduation rates, Regents diplomas, drop-outs and other key indicators. Without the raw data that underlies those statistics, however, it is impossible to judge whether the administration is telling the full story. For example, the DOE reports its four-year graduation rate is 52 percent. But as much as 21 percent of ninth graders leave high school before graduating and are not counted as dropping out.¹ Without the raw data, it is impossible to know if the city's graduation rate is accurate. That is why the NYCLU is asking the State Legislature to consider other crucial aspects of mayoral control: reduced transparency, unchecked executive power and blocks to public participation and oversight. While the NYCLU does not take a position on whether to renew mayoral control, it is clear that a school system without sunlight or oversight cannot properly serve its students, parents and teachers.

Too much of the current debate about New York City's school governance structure has focused on whether "mayoral control" is good or bad. Yet there is no single definition of mayoral control. While the State Legislature has created a system of "mayoral control" in which the mayor has sole authority to appoint the schools chancellor and board of education, other cities define mayoral control differently: In Baltimore, the system of "mayoral control" provides for a school board whose members are jointly appointed by the governor and mayor, while the schools' chief executive officer is appointed by the school board. In Philadelphia, the governor appoints three members out of the five-member school board, and the rest are appointed by the mayor.

When debating whether to renew mayoral control, we encourage state policymakers to avoid the distraction over terminology and concentrate on how our school governance system operates. Regardless of what we call it, does the current form of school governance invite abuse of power? Does it embrace democratic principles? Is it the best system to educate, prepare and protect our youth?

This report examines the NYCLU's experiences working on civil rights and civil liberties matters in the schools under mayoral control, and draws lessons from those experiences to suggest ways of improving the school governance structure. Part II documents the DOE's failure to abide by basic principles of open government, to the detriment of the public's ability to remain well-informed of government operations. Part III explains the DOE's embrace of unilateral executive authority and disdain for shared decisionmaking, open

government laws, the City Council and the local board of education and parent councils. It includes an example of the governance vacuum in school safety matters caused by the current mayoral control system. Part IV concludes with a set of recommendations for the State Legislature to adopt to put in place clear limits on executive authority and mandates for transparency, accountability and oversight.

The current regime of mayoral control is incompatible with a safe, effective and equitable educational environment. The legislature must address the lack of checks and balances under the mayor's reign and the legislative loopholes that have allowed a secretive and unaccountable DOE to flourish.

II. SECRECY AND LACK OF TRANSPARENCY

Proponents of mayoral control argue it is a system based on accountability—voters who do not approve of the mayor's handling of the schools have the opportunity every four years to express their dissatisfaction at the polls. For that presumption to be tested fairly, though, voters must have access to accurate, unbiased information. A well-informed public makes better decisions, and to be well-informed the public needs access to government data and operations. The principle of open government is inseparable from American democracy.

Unfortunately, government transparency has been a scarce commodity under mayoral control. Extracting the most basic information from the DOE, such as budget figures or data on student suspensions, is a needlessly onerous chore that even public officials and lawyers have difficulty accomplishing. Instead of embracing openness, the DOE hides its decision-making and operations from public view, carefully managing the disclosure of information and cherry-picking statistics and data that cast its policies in the most positive light. It's a smart public relations move but lousy public policy.

Mayor Bloomberg claims to embrace transparency. In April 2009, Bloomberg said that he “never understood governments that don't put out all the information, good and bad. The public owns the information.”² Yet, the Bloomberg administration consistently violates both the spirit and laws of transparency by stalling and denying requests for access to public records regarding the public school system.

For more than four years, the NYCLU has tried to engage the Bloomberg administration on three key civil rights issues within the public schools: aggressive policing, unchecked military recruitment and bias-based harassment. On each issue, the DOE has resisted requests for public information and records.

The DOE's unwillingness to share information about its school safety policies and practices, which affect more than 1 million public school students, borders on the absurd. In June 2006, the NYCLU filed a Freedom of Information Law (FOIL) request with the DOE for documents related to a number of school safety programs and tactics. State law requires government agencies to respond to records requests within five business days, if only to acknowledge receipt of the request and set an approximate date for granting or denying it. The DOE didn't respond to the NYCLU's June 2006 FOIL request until January 2009—more than two-and-a-half years after receiving it. Why it took so long to respond is unclear; the DOE's letter only inquired whether the NYCLU still wanted the requested records. The NYCLU responded affirmatively. It has not heard back from the DOE on the matter.³

The long-lost FOIL covered numerous areas crucial to understanding the extent of police activity in the schools. Whether this request was ignored deliberately or through sloppiness, the 25-month interval between

submission and response highlights the DOE's astonishing disregard for the public's right to information. It is an extreme example, but not the only instance of the Bloomberg administration's reluctance to share records about its school practices.

The DOE thwarted the NYCLU's June 23, 2008 request for records involving student suspensions and expulsions—information necessary to understand the effect school safety policies have in pushing children from the school system to the criminal justice system—for 10 months. The FOIL statute provides a 20-day period for producing responsive records. The DOE flat-out denied most of the initial request as well as two subsequent administrative appeals. In April 2009, the NYCLU began receiving some responsive records—including those it was initially denied. However, at the time of this report's publication, the DOE has only partially responded to the request. The NYCLU has been told it is likely that portions of its request will not be made available.

The NYCLU was denied requests to observe the mayor's roving metal detector program—a shock-and-awe-style program where armed police officers descend on schools at random and set up temporary metal detectors. NYCLU staff members were threatened with arrest for attempting to observe the police operation from a public sidewalk. (The roving metal detectors cause such extensive delays for many students entering their schools that they stay home rather than waste one or two periods standing in line; substantial numbers of children lose entire school days through this program.)

Moreover, since the NYPD now maintains control over many school safety practices, the DOE has attempted to shield itself from responsibility over tracking and monitoring such practices as the use of metal detectors, arrests in schools and police-student interactions. The NYCLU filed a FOIL request with the NYPD on March 26, 2008 for records of students being transferred to emergency room psychiatric wards. We filed the request after Denis Rivera, a 5-year-old kindergarten student, was handcuffed and sent to a psychiatric ward after throwing a temper tantrum. That FOIL request was denied. The NYCLU filed an administrative appeal of that denial. After the NYPD did not respond, the NYCLU filed an Article 78 petition in State Supreme Court to compel the Department to turnover the records. As of this writing, the lawsuit is pending.

The NYCLU is not alone in its struggles to obtain public records from the DOE. Parents, advocates and members of the media frequently complain about the DOE's refusal to provide them information.

While the DOE has dutifully handed over students' information to military recruiters, it has resisted the NYCLU's efforts to obtain public records on military recruitment in the schools. The NYCLU filed a FOIL request on Nov. 8, 2008, seeking all records relating or referring to military recruitment of high school students dating from the 2003-2004 school year to the present. In a Nov. 25 letter, the DOE acknowledged the request and set itself a Jan. 30, 2009 deadline for delivering its response. On Jan. 30, 2009, the DOE sent the NYCLU a letter indicating that it did not have any documents responsive to the request. It extended its self-imposed deadline to March 6, 2009. On that date, the DOE sent the NYCLU just a handful of documents that answered only a portion of one of the 25 categories of records requested. Once again, the DOE extended its self-imposed deadline, this time to April 3, 2009. As of our publication deadline, the DOE has provided no additional documents, nor an updated deadline by which the NYCLU can expect to receive them.

The DOE's persistent stalling stands in marked contrast to the response of the U.S. Coast Guard, the U.S. Navy and the U.S. Air Force, all of which have provided much more complete responses than the DOE's paltry effort. These branches of the military as well as the U.S. Army have all consistently met self-imposed deadlines and those of the Freedom of Information statute.

The DOE characteristically stalled an Oct. 2, 2008 request for records concerning its trainings on bias-based harassment, discrimination and bullying. As of May 2009, the NYCLU is still waiting for the DOE to provide fully responsive records.

The NYCLU is not alone in its struggles to obtain public records from the DOE. Parents and advocates frequently complain of the DOE's refusal to provide them information. Citizens Union of the City of New York, an independent, nonpartisan organization that promotes good government, has reported that it commonly fields complaints from parents and teachers about the DOE's tight grip information.⁴ Advocates for Children of New York, a nonprofit organization that works to secure public education services for vulnerable families, waited two years for the DOE to turn over data on the academic progress of English language learners.⁵ It only received the information after threatening to sue. The president of the lower Manhattan parents' council said she cannot obtain basic information, such as curriculum plans, plans for adding schools and details on gifted and talented programs.⁶

Even other city officials struggle to penetrate the DOE's cloak of secrecy. Public Advocate Betsy Gotbaum, the city's second-highest ranking elected official, has spoken out about the difficulty accessing unfiltered information from the DOE. In response to complaints from parents, educators and public officials that the DOE was too focused on standardized tests, Gotbaum asked the city's Independent Budget Office (IBO) in the fall of 2008 to review spending associated with the DOE's Accountability Initiative, a program designed to track performance of the city's public schools. The IBO's findings, released Nov. 14, 2008, showed that the DOE planned to spend more than \$352.2 million on the initiative from the 2007 fiscal year through the 2009 fiscal year.⁷ Gotbaum said obtaining the budget figures from the DOE was difficult, even for someone with her office and authority.⁸

III. UNILATERAL EXECUTIVE AUTHORITY AND LACK OF SHARED DECISIONMAKING

It is fair to say that where the decentralized system may have failed for a lack of cohesiveness, the mayoral control system has drifted dangerously far in the other direction. Today's governance system is no more accountable and far less approachable than before. What was a sprawling and inconsistent management scheme across the five boroughs is now a staggering consolidation of power. What was a vast web of offices and agents located on neighborhood streets and in local schools is now a tightly controlled bunker that excludes outsiders—parents, students, educators, advocates, the media and even the City Council—from most meaningful participation.

Mayor Bloomberg has argued that shared decisionmaking will lead to inefficiency in education policy-setting. His argument fails for two reasons: (1) Checks and balances are essential to American democracy. They prevent the executive branch of government from becoming too powerful and exploiting its authority by running an autocratic government. (2) Shared decisionmaking improves schools. Education policy is extremely complex, and to hear only one point of view on complicated policy issues yields narrow public policy decisions. More voices leads to better policies.

The DOE: not subject to open government laws?

The DOE is one of the most secretive and autonomous agencies in the city. It has repeatedly taken the position that it is answerable to no one but the chancellor and mayor, including existing city statutes and the

City Council. It has denied or ignored requests made under the Freedom of Information Law, and claimed that it is not subject to other government statutes providing for transparency and oversight.

For example, when pressed to submit a new Chancellor’s Regulation to the 30-day public notice and comment period required by the City Administrative Procedures Act (CAPA), the DOE maintained it was not subject to the Act. Indeed, Chancellor’s Regulations are not subjected to public hearing or comment and, with the almost-guaranteed approval of the PEP (if they ever go before the panel), rarely receive meaningful public scrutiny.

CAPA is a local statute with counterparts at the state (which the DOE is not subject to) and federal levels intended to assure public oversight of agencies with rulemaking power. Since these agencies are not comprised of elected officials, their ability to enact rules that affect the public must be subject to some other form of public oversight. This is provided for through mandated 30- or 45-day public notice and comment periods before a new rule or regulation can take effect.

The DOE ignores requests made under the Freedom of Information Law, and claims it is not subject to open government statutes.

CAPA defines a city agency as any “official or entity who is acting (1) under the direction of one or more [elected or appointed] officers” provided for in the City Charter. The DOE and the chancellor act under the direction of the mayor, yet the DOE claims it is not a city agency and therefore exempt from the notice and comment provisions of CAPA. As currently implemented, therefore, mayoral control represents a governing structure unrestrained by such open government laws and deeply at odds with values of transparent and publicly accountable government. Even the NYPD is subject to CAPA. In 2007, for example, it opened proposed changes to parade permit regulations to public comments, and public participation affected the outcome of the regulations.

The DOE has exploited the education law to push its power to the extreme, and to ensure it does not answer to the City Council or the voters of New York—even if the mayor contends that voters will judge him on the education system. While it is true that mayoral control is a creature of state law, state lawmakers did not envision that education policies in New York City would be subject to no local oversight. The danger in this type of unilateral power to democratic values, public faith in government and to individual students was demonstrated vividly during the battle over the Dignity in All Schools Act.

DOE’s flouting of laws enacted by the City Council

A dramatic example of the DOE’s disregard for city law and resistance to any check on its authority is its refusal to enforce the Dignity in All Schools Act (DASA), legislation that seeks to protect students in the city’s public schools from bias-based harassment, bullying and discrimination.

Harassment and bullying is a persistent and serious problem in the city’s schools. According to the DOE’s School Environment Survey Report for 2006-07, 76 percent of sixth to 12th grade students reported seeing students “threaten or bully other students at school.”⁹ Students who are harassed and bullied often struggle to develop self-confidence and social skills.¹⁰ They become more likely to skip school or perform poorly in class.¹¹

Advocates and education experts proposed DASA as a solution to bias-based harassment in the schools. DASA would protect students and school staff against harassment and bullying by other students and staff based on actual or perceived race, color, nationality, ethnicity, religion, disability, sex, gender identity and expression,

family composition, economic circumstance, physical characteristics, medical conditions or school performance. It would require all students, teachers and staff to receive regular training to properly address harassment and discrimination at school. Regular presentations to students would discourage bias-based harassment and bullying. The DOE would be required to record and track reported incidents by type of harassment and school where it occurred. That data would be compiled into an annual summary to be published on the DOE's website and included in each school's annual report card. Each reported incident would be monitored to ensure proper follow up.

The City Council's Education Committee held its initial hearing on DASA on Oct. 7, 2003. At the hearing, the bill received broad support from lawmakers, education experts and student advocates.¹² The DOE stood out in its opposition. DOE representatives criticized DASA, arguing that existing laws and regulations already protected the city's students and that the Council had no legal authority to regulate the DOE.¹³ Nonetheless, a DOE representative was unable to state whether materials the DOE distributed to teachers and students made clear that harassment based on gender identity or gender expression is prohibited.¹⁴ The DOE representative also acknowledged that the DOE's system of tracking harassment and bullying incidents was inadequate to determine the scope of the problem.¹⁵

Though passed twice by the City Council, the DOE has ignored the Dignity in All Schools Act, a law educators and advocates praised for addressing bias-based harassment and bullying in public schools. The DOE had to be subpoenaed by the City Council before it would explain why it was ignoring the statute.

On April 6, 2004, the City Council's Education Committee issued a report endorsing DASA and held a second hearing on the bill. At the hearing, the DOE reiterated its opposition. Several students delivered heart-breaking testimony about their experiences being bullied and harassed at school. The DOE representatives left the hearing before the students spoke.¹⁶

The Council passed DASA on June 28, 2004 by a 45-3 vote. On July 20, 2008, Mayor Bloomberg vetoed the bill, which he had dismissed as "silly."¹⁷ In his veto message, the mayor argued that DASA exceeded the Council's jurisdiction. He said school safety and discipline are regulated by state law, the commissioner of education's regulations and the schools chancellor. The mayor claimed that DASA "is inconsistent with state law that authorizes and directs the chancellor to adopt and implement policies to prevent harassment—which the chancellor has done." Yet DASA does not contain policies that would conflict with state law; therefore both can co-exist.

By a vote of 45-3 on Sept. 9, 2004, the Council overrode the mayor's veto. Since then, Mayor Bloomberg and Chancellor Klein have simply ignored the Council's vote, refusing to follow the law or challenge it in court.

Concerned about DOE inaction, the City Council's Education Committee held an oversight hearing on March 28, 2005. The DOE refused to testify at the hearing.¹⁸ In response, committee members voted two days later to exercise its seldom used subpoena power to compel the DOE to testify.¹⁹

After the subpoenas were issued, DOE representatives attended an April 5, 2005 committee hearing where they confirmed that no steps were being taken to follow the law and repeated the argument that the statute is illegal.²⁰

The DOE did little to address bias-based harassment over the ensuing years until in 2007, under pressure from LGBT community groups and advocates, it initiated a series of training sessions for teachers and staff

called “Respect for All.” These voluntary training sessions fall far short of the mandatory, regular, system-wide training DASA prescribes. The DOE sent principals letters asking them to assign two or three teachers and a guidance counselor to participate in Respect for All training. By April 2008, fewer than 1,100 teachers—just over 1 percent of the 80,000 teachers working in the public school system—had participated in the training.²¹

While these trainings were a small step toward addressing bias-based harassment of LGBT students, bullies continued to victimize children in schools across the city. A pair of vicious attacks against Sikh students in city high schools intensified pressure on the DOE to do more to prevent harassment and bullying. In May 2007, Harpal Singh Vacher, a freshman at Newtown High School in Elmhurst, had his waist-length hair forcefully cut by another student. In accordance with the Sikh religion, his hair had never been cut.²² About a year later, Jagmohan Singh Premi, a Sikh student at Richmond Hill High School in Queens, had his cheekbone broken in class—the result of a vicious blow from a classmate who had a key wedged between his knuckles. The attacker had been harassing Jagmohan in their English as a second language class, calling him “dirty” and a “terrorist.”²³

Under pressure from a number of afflicted students and community groups, the DOE took steps to address bias-based harassment and bullying—while still refusing to fully implement DASA. On Sept. 3, 2008 the DOE issued Chancellor’s Regulation A-832, which prohibits student-to-student harassment and bullying in schools. In sharp contrast to the open process that preceded DASA’s passage, the DOE sought minimal public input before issuing the regulation. It did not hold hearings or solicit public comment. Near the end of the drafting process, a small group of organizations was selected to review a semi-final copy of the regulation. The group was given 48 hours to review the draft and submit comments. Few, if any, of its suggestions are reflected in the regulation.

The regulation marked an important step forward in protecting students, but it falls significantly short of full enforcement of the law in several key respects:

- ▶ DASA prohibits bias based harassment by any person on school premises or at a school function, but the DOE regulation governs student-to-student harassment only. The new regulation does not cover bias-based harassment by school administrators, teachers, School Safety Agents and other individuals.
- ▶ DASA requires annual reporting, including in a school’s report card, of information on the number and nature of bias-based incidents broken down by school, district, borough and grade level. Such information is supposed to be published on the DOE’s web site. But the DOE regulation includes no public reporting requirements.
- ▶ DASA is very specific in its requirement of trainings on a regular basis for all staff to discourage development of harassment. But the DOE regulation is vague and does not detail what sort of annual trainings will be mandated. This is a key provision, since in order to change the environment in the schools, all staff and students must be trained in recognizing and preventing bias-based harassment. Preliminary evidence suggests that very few individuals in the city’s 1,400 schools have been trained.
- ▶ DASA includes a definition of bias-based harassment that would discipline students appropriately and not lead to over-reliance on punitive measures in order to address minor school disciplinary problems. But the DOE regulation is so broad that it could lead to punitive measures against students rather than a focus on creating a more nurturing and respectful environment.

These omissions raise serious questions about whether the regulation will equip teachers and administra-

tors to effectively address bias-based harassment and bullying. Moreover, Mayor Bloomberg’s refusal to follow city law and his unwillingness to engage in an open dialogue about bias-based harassment and bullying are an affront to the democratic process that does little to foster nurturing learning environments in the city’s schools or protect students from bullies. Unfortunately, they also are characteristic of his autocratic approach to governing the public schools.

DOE manipulates and ignores city board of education

The 2002 mayoral control law created two main vehicles to afford the public a role in education policy-making. Unfortunately, Mayor Bloomberg and Chancellor Klein have largely ignored or circumvented the legislatively created bodies meant to ensure parental and public involvement in education.

Under the mayoral control system, the PEP replaced the old Board of Education.²⁴ Its official duties, according to §2590-g of the Education Law, are to “advise the chancellor on matters of policy affecting the welfare of the city school district and its pupils” by “approv[ing] standards, policies, objectives and regulations proposed by the chancellor directly related to educational achievement and student performance.”

Unfortunately, the PEP has become a glorified rubber stamp. The bulk of its members are patronage appointees. Seven of 13 members plus the chancellor are picked by the mayor and can have their appointments revoked by him without notice or cause. Most bring with them no experience in the education field, nor do they have the resources to become experts—the mayoral control legislation stripped former Board of Education members not only of their salaries, offices and job security, but of their budgets and support staffs. Most of the panel members’ children attend or attended private schools or schools in other states.²⁵

Seven of 13 PEP members are picked by the mayor and can have their appointments revoked by him without notice or cause. Most bring with them no experience in the education field.

The stacked deck nature of the panel was dramatically demonstrated in 2004 over a vote on so-called social promotion, the practice of advancing students to the next grade level when test scores or other measurements show they may not be academically prepared. Social promotion and its alternative—holding those students back—is a complicated issue that education experts debate vigorously. But when Mayor Bloomberg decided to take it on, it became the catalyst for a display of his unilateral authority and disdain for any meaningful public oversight. The night before the PEP was to vote on the issue, Bloomberg revoked the appointments of two panel members who had indicated they would vote against his position and replaced them with appointees who would support his cause. That week, *The New York Times* called his actions “an extraordinary display of unvarnished mayoral power.”²⁶

The PEP’s accessibility to the public is also limited at best. In 2002, Bloomberg was quoted in *The New York Times* saying “I do not expect to see their names—ever—in the press answering a question either on the record or off the record,”²⁷ indicating that his appointees to the panel were not to have any public role. His wish appears to have come true—the average parent would have trouble talking to PEP members or finding out what happens at their monthly meetings. There are no phone numbers or email addresses available for individual PEP members on the DOE website, and since the law forbids giving them DOE office space,²⁸ they cannot be easily reached by parents or students. Moreover, on the DOE’s website, the most recent agenda posted for a PEP meeting is from September 2007, and the most recent meeting minutes are from April 2008.²⁹

Stacking the PEP with appointees who can be removed without cause or notice is worse than having no

public board at all—it creates the illusion of checks and accountability while in reality it creates a system of unbridled mayoral authority.

DOE’s disregard for the authority of local parent councils

The other main avenue for public participation in the school system—CECs, the Citywide Council on High Schools and the Citywide Council on Special Education—are likewise largely powerless.

The 32 CECs and the two citywide councils are the successors to the former community boards that were responsible for the school districts that comprise the School District of the City of New York. The CECs each have 12 members, 11 of whom may vote. Nine are parents whose children attend school under the jurisdiction of the community district (and who must be elected by the president, vice president and treasurer of the PTA), two who are appointed by the borough presidents corresponding to the district in which the CEC is located, and one non-voting student member.³⁰

“This appears to be a part of a general pattern on the part of the Department of Education to give us lip service, to say ‘we want parental input,’ but when it comes down to it they restrict our ability to have influence.”

— Paul Mondesire,
District 3 CEC Member

Shortly after mayoral control began, the mayor announced he would dissolve the community school districts that made up the New York City public school system and fire all 32 superintendents. The intent was to replace them with 10 superdistricts known as Regions, and replace the local school boards with watered-down parent committees.³¹ Parents, advocates and other groups were concerned that the changes would leave schools and families without local support and advocacy. Representatives of the teachers’ and principals’ unions were outraged, expressing their concerns that the mayor was “stripping away everyone else’s voice in public education.”³²

The Education Law clearly did not permit the mayor to eliminate community school districts or change the role of the superintendents.³³ Assemblyman Steve Sanders, an architect of the mayoral control law, said at the time “[t]here is a growing and deepening anger with the way the mayor has moved forward.”³⁴ A group of legislators at the state, city and federal level even filed a lawsuit to try to block Mayor Bloomberg’s plan. The settlement of that lawsuit led to New York’s current convoluted system, with the DOE’s 10 Regions overseeing the 32 community superintendents, and 32 CECs, essentially responsible only for maintaining zoning lines for elementary and middle school attendance.³⁵

The CECs have no executive or administrative powers,³⁶ but are tasked with “providing input” to the chancellor and the PEP on district relevant matters³⁷ and assisting individual schools directly if they are in need of leadership.³⁸ Under the current law, a CEC’s main responsibility is to “promote achievement of educational standards and objectives relating to the instruction of students.”³⁹

When Chancellor Klein announced the restricted roles of the CECs in January 2005, parents were outraged. Paul Mondesire, a member of the council for District 3, said: “This appears to be a part of a general pattern on the part of the Department of Education to give us lip service, to say ‘we want parental input,’ but when it comes down to it they restrict our ability to have influence.”⁴⁰

The DOE treats the CECs in the same manner that it treats the PEP—with disdain. An important illustration is the recent action by the DOE to change the attendance lines in several districts without seeking the approval of, or even consulting with, local CECs.

On March 24, 2009, the NYCLU and the United Federation of Teachers brought a lawsuit on behalf of public school parents and CEC members against the DOE for violating the state education law that required CEC approval of attendance zone changes. The lawsuit argued that when the DOE unilaterally announced plans to close P.S. 194 and P.S. 241 in Harlem and P.S. 150 in the Ocean Hill-Brownsville neighborhood of Brooklyn, leaving those zones empty of neighborhood schools, it effectively changed attendance lines without community approval. The lawsuit centered on the decision-making role of parents in policies that impact their children, and the DOE's disregard for the law which requires their involvement.

Approximately one week after the lawsuit was filed, the DOE decided to change course and keep the three schools open. It announced its decision not by responding to the lawsuit in court or by informing, plaintiffs, parents or local CECs, but through a press release.

The DOE did not admit its wrongdoing. In fact, its representatives claimed in the press that the NYCLU's lawsuit, designed to promote democratic decision-making, actually inhibited parental rights since some parents wanted to close the three schools. What the DOE failed to inform those parents is that it not only ignored its legal obligations, but by acting unilaterally it denied parents a voice twofold—they were denied the right to decide if the schools should close, and if they should, what schools should be brought in to replace them.

No formal governance structure overseeing police activities in schools

The current mayoral control system has undermined the effectiveness of interagency collaboration, leaving a large governance vacuum on school safety matters, and preventing a meaningful debate on school discipline practices.

In 1998, the Board of Education transferred responsibilities over school safety matters—including the training and employment of School Safety Agents—to the NYPD. A memorandum of understanding (MOU) detailed the governance structure of this new interagency approach to school safety, including the relationship between the DOE and the Police Department, as well as standards by which police personnel and educators must abide when engaging in actions that may impact the educational environment of the schools.⁴¹

Under Mayor Bloomberg's watch, the MOU expired and hundreds of millions of dollars have been spent to increase police presence in the schools, with no input from parents, students or the public. The DOE takes the position that because of mayoral control, there is no requirement for a new agreement that details the school safety governance structure. In other words, thousands of police personnel with the authority to stop, search and arrest students will continue to patrol city schools with little oversight or clarity about their role in the schools and with little to no accountability to the DOE or school principals.

Council Member Peter Vallone Jr., chair of the City Council's Public Safety Committee and a strong ally of the NYPD, was shocked to learn about the lack of an official governance structure regulating police activities in the schools:

[O]ur teachers, our principals, our NYPD officers, School Safety Agents... they need something in writing to tell them how to act. They're the ones that are brought up on charges based on how they act. And that can't be something that fluctuates based on daily meetings. That has to be in writing and there has to be some sort of formal written agreement. There was one; it wasn't extended for some reason. ...

You know, this sounds like that situation where you have two agencies, co-equal, who don't have a written protocol as to how to interact with each other. You know, for example, you said, [Deputy Chancellor] Grimm, that the principal was in charge of safety until the crime was committed, which then changed to an immediate arrest is required, and then [NYPD] Chief Secreto said an injury makes a crime, which is not true. There [are] attempted assaults, there are also all sorts of crimes that are not injuries, so right here we've got a lot of confusion going on in this antiseptic atmosphere of a [City Council] chambers. I can imagine what happens when there is an assault in a crowded hallway of a school.⁴²

With no clear written policy defining the relationship between School Safety Agents and the larger school community, their treatment of students varies widely. In many schools, students report positive working relationships with School Safety Agents. However, in schools with a significant police presence, School Safety Agents end up enforcing school rules such as cell phone and ipod bans that have nothing to do with crime, let alone violence, and even the most prosaic daily interactions can explode into misunderstandings, power struggles and violence. When this happens, students suffer the consequences: suspensions, expulsions, physical injuries and even arrests.

During testimony before the City Council, Ernest Logan, president of the Council of School Supervisors and Administrators, which represents the city's public school principals, acknowledged the dangerous governance vacuum that exists in matters pertaining to school safety:

Many of you have said that you have heard confusion here today at the City Council when people were asking questions about the DOE and the Police Department. Well, if you have confusion here at the City Council, imagine the confusion in 1,400 schools of how this is supposed to work.

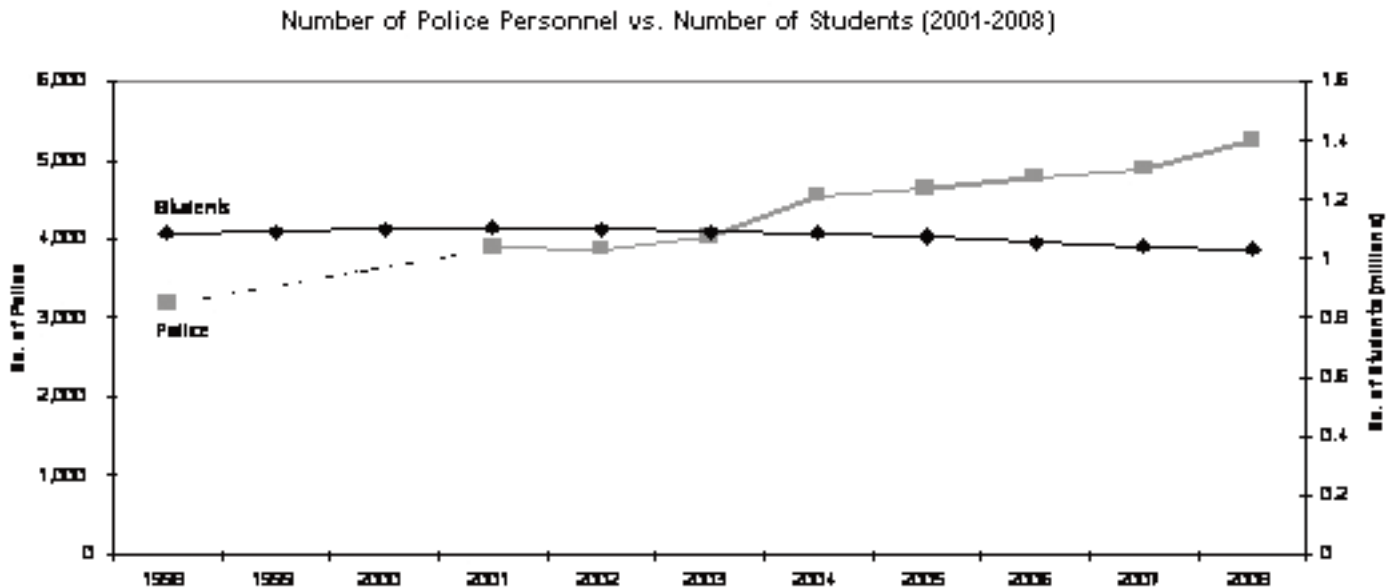
... Every incident is unique, but I am truly troubled by the fact that we are criminalizing our children. ... I know there is a principal of a school, two second graders playing in the school yard. The game gets heated, Johnny hits Michael, Michael winds up with a bloody nose, the School Safety Agent observed that. Is that a crime? Are we now going to arrest the child who hit the other kid with the bloody nose? I don't think so.⁴³

As clarity around the role of police personnel in schools has grown hazy, the number of School Safety Agents patrolling the schools increased by 64 percent, from 3,200 in 1998 to 5,246 in 2008. The police force in New York City schools is now the fifth largest police force in the country. Houston, with a population of 2.2 million people, has fewer police personnel patrolling its streets than the hallways of New York City's public schools do. Not surprisingly, the school safety budget has increased by 65 percent since the advent of mayoral control, representing an additional \$88 million spent on police personnel each school year. The dramatic increase in the budget and number of police personnel occurred despite a decrease in the student population by approximately 70,000 during that same period.

Along with the increase in the number of police personnel in the schools, superintendent suspensions—out-of-school suspensions of students for longer than five days—have increased from 8,567 in 2000 to 15,090 in 2004. These numbers indicate a significant change in school safety policy, considering the decrease in the school population during that period.

The DOE has made other school safety policy decisions without public or legislative input. In January 2004, City officials introduced—without meaningful consultation with families, students, community leaders or educators—the “Impact Schools” initiative. A joint NYPD-DOE effort, this initiative originally targeted 12

schools with high levels of reported crime for heightened policing with a goal of creating safe school environments. The initiative, which has included dozens of schools at various times, doubles the number of police personnel permanently assigned to targeted schools, and institutes a zero-tolerance policy for infractions listed in the New York City Discipline Code.⁴⁵



Note: Police personnel data were not available for 1999 and 2000.

Sources: Annual Mayor's Management Reports, correspondence with NYPD, City Council hearings, and news articles.

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In another escalation of police activity, on April 13, 2006, Mayor Bloomberg unveiled a program that subjects all junior high and high school students to NYPD-deployed “roving” metal detectors.⁴⁶ The deployment of metal detectors and their associated police personnel is unannounced, designed to catch students by surprise in an effort to reduce the number of weapons in the school. It requires students at targeted schools to submit not only to metal detector scans but also to police searches and other policing activity. The program caused chaos and lost instructional time as soon as it began, each morning transforming an ordinary school into a massive police encampment with dozens of police vehicles, as many as 60 School Safety Agents and NYPD officers, and long lines of students waiting to pass through the detectors to get to class. Parents have formed email chains warning other parents not to send their children to school on days when the roving metal detectors are there.

The combination of overly aggressive police tactics in schools and a lack of oversight and regulation has resulted in students being handcuffed and arrested for minor non-criminal violations, pushing them out of classrooms and into the juvenile and criminal justice systems, what civil rights advocates call the School to Prison Pipeline. For example, in March 2007, School Safety Agents handcuffed and arrested 13-year-old Chelsea Fraser in front of her classmates at her Dyker Heights school. Her crime? Days earlier she had written the word “okay” on her desk.⁴⁷ In January 2008, Denis Rivera, a 5-year-old kindergarten student at P.S. 81 in Queens, threw a temper tantrum and was subsequently handcuffed and hauled off to a psychiatric ward by School Safety Agents.⁴⁸

These are not isolated incidents. New York City now has the unfortunate distinction of being a leader in utilizing police street tactics in schools, relying on police personnel to enforce day-to-day discipline.⁴⁹ Pre-mayoral control, the introduction of the NYPD into the schools led to vigorous debates between the Board of Edu-

cation and the mayor. Post-mayoral control, Mayor Bloomberg has dramatically increased police presence and programs in the schools, and has done so with unprecedented secrecy and unilateral maneuvering. Most astonishingly, he has done so with reckless disregard for the impact on the educational environment and students' rights, and has allowed thousands of police personnel to patrol school hallways with no formal governance structure in place to regulate their activities.

Disregard for public's repeated requests to regulate military recruitment activities in schools

The federal No Child Left Behind Act of 2001 (NCLB) requires the nation's public high schools to open their doors to military recruiters and provide the armed services with students' personal directory information.⁵⁰ The law exposes tens of thousands of New York City students to aggressive military recruiters.

It is the responsibility of Mayor Bloomberg and the DOE to protect parents' and students' privacy from aggressive military recruiters and to ensure that students are capable of making informed decisions regarding military service, within the requirements of NCLB. Yet the mayor and the DOE have failed to meet these responsibilities, demonstrating a familiar disregard for the concerns of parents, students and educators and an unwillingness to even engage in public dialogue about military recruitment in the city's schools. Moreover, Mayor Bloomberg has demonstrated a deliberate indifference to the problem by refusing to adopt formal policies regulating the activities of military recruiters in the schools.

Whether or not to enlist in the military is a life-changing decision. While a military career may be an excellent option for some, school systems should equip students to make informed decisions on military service. They should provide accurate information about the advantages and disadvantages of enlistment and inform students about the range of options outside of the military, including college or job training programs. They should protect students and parents from aggressive recruiting tactics, such as cold calls to students' homes, untenable promises by recruiters and use of class time to promote military careers.

In New York City, parents must submit an opt-out form to have their children's information withheld from the military for recruitment purposes. If an opt-out form is not submitted, then the school assumes a parent's consent to turn over contact information to military recruiters. The minimal privacy protections afforded by this policy fail if parents do not receive the opt-out form, which evidence suggests is too often the case. In the spring of 2007, the NYCLU and Manhattan Borough President Scott M. Stringer surveyed 1,000 students from 45 schools frequently visited by military recruiters. Most students surveyed said they either did not receive an opt-out form or didn't recall receiving a form. The survey also left the impression that the DOE is doing little to regulate military recruiting at city high schools or inform students of their rights and options regarding military recruitment.⁵¹

Anecdotal reports from students further suggest that the DOE allows military recruiters to roam freely in the city's high schools. Romy Chowdhury, who graduated from Thomas Edison High School in Queens in 2007, said pairs of military recruiters frequently patrolled the school's hallways handing out bags, balls, cups and other goodies. "At one point it got pretty intense—during one month I'd see the recruiters twice or even three times a week on the first floor walking around and talking with students," Chowdhury said. "I was like, why are you always here? I hardly ever saw any college recruiters; I remember seeing recruiters from CUNY maybe one or two times. I saw Marines in their full uniforms walking around the school constantly."⁵²

Adana Austin, who graduated in 2008 from Lafayette High School in Brooklyn, said by the start of her senior year, she had never spoken to a college recruiter in her school. She said military recruiters were a constant presence. "Often I'm in a classroom when military recruiters come in and bother people," she said. Some-

times they'll meet students in the train station and then walk them all the way to school. Often they'll be right outside school when you exit. I complained to a recruiter once, but he just said, 'Well, I have a quota to fill.'"⁵³

The NYCLU and Borough President Stringer, drawing on suggestions from experts around the country, proposed a set of recommendations to better regulate military recruitment in the city's high schools.⁵⁴ These recommendations proposed a chancellor's regulation to implement inexpensive practices that would protect students from aggressive military recruiters.

Not only did the DOE ignore the borough president's and NYCLU's recommendations and refuse to issue a Chancellor's Regulation, it adopted a new policy that *expanded* the military's access to 11th and 12th grade students. On Sept. 16, 2008, Chancellor Klein issued a policy directive to principals that streamlined the process for providing military recruiters with students' information, making it easier than ever for recruiters to contact students at home. Previously, military recruiters needed to contact individual high schools to obtain students' contact information.⁵⁵ Under the new policy, military recruiters need only contact DOE headquarters to request the contact information of all 11th and 12th grade students citywide who did not submit an opt-out form. While the DOE maintains that the directive was issued as a way to better protect student privacy, it actually has the opposite effect, particularly given the fact that many students never receive opt-out forms.

While the DOE has handed over students' information personal to military recruiters, it has resisted the NYCLU's efforts to obtain public records on military recruitment in the schools through the Freedom of Information Law and has ignored the calls of elected officials to make it easy for students and parents to keep their contact information private.

These changes were unilaterally made behind closed doors without formal input even from principals, and they were not communicated to parents or students, despite the enormous privacy implications. The directive drew protests from advocacy groups, students and parents. In response, the DOE extended the deadline for submitting opt-out forms two weeks. It announced the extension in an e-mail to high school principals, but, once again, it didn't bother to inform students and parents of the new deadline.

At the same time, the DOE resisted calls from advocates, students and parents to extend the opt-out deadline by a month and to commence a 30-day public comment period before implementing the Sept. 16 directive.

The new policy sparked concern among federal, state and local lawmakers, including U.S. Rep. Charles B. Rangel, chair of the House Ways and Means Committee. In a Nov. 24, 2008 letter cosigned by 27 elected officials—nine members of the city's congressional delegation, the public advocate, the Bronx and Manhattan borough presidents, six State Senate and Assembly members, and nine City Council members—Rangel expressed concern that the DOE is not sufficiently protecting student privacy and is going well beyond its obligations to disclose students' information to military recruiters under NCLB.⁵⁶

"The opt-out process that would keep contact information private should be as easy for parents and children as the data collection process is for the military," Rangel said in the letter. "In fact, by giving the Department of Defense preferential access to our students in school, the DOE is at least implicitly promoting military careers without giving students a full picture of the breadth of career options that lie outside the armed forces."⁵⁷

Rangel, a decorated Korean War veteran, urged Klein to immediately suspend the policy and commence a 30-day comment period on the new policy. His letter included a lengthy list of recommendations for better regulating military recruitment in the schools. Aside from acknowledging that he had received the letter, Klein did not respond to the concerns of the 27 elected officials, nor did he implement any of their recommendations.

While the DOE has dutifully handed over students' information to military recruiters, it has resisted the NYCLU's efforts to obtain public records on military recruitment in the schools through the Freedom of Information Law. The DOE's persistent stalling stands in marked contrast to the response of the U.S. Coast Guard, the U.S. Navy and the U.S. Air Force, all of which have provided much more complete responses than the DOE's paltry effort.

IV. RECOMMENDATIONS

The past seven years amply demonstrate that, absent clear limits on executive authority and clear mandates for transparency, accountability and oversight, mayoral control can easily become a vehicle for unbridled control and secrecy. Therefore, whether it approves extending mayoral control or not, the State Legislature must create additional legally-mandated mechanisms that will ensure checks and balances, public input and transparency in government.

► **Clearly delineate the position of the DOE within the existing structure of city government**

The DOE cannot continue to act as its own autonomous agency, even if mayoral control is extended by the State Legislature. It must be subject to the same laws as other city agencies. Otherwise, the DOE's position within city government will continue to lead to confusion among city policymakers and allow the DOE to selectively decide when laws and regulations do or do not apply to it.

The DOE takes the position that it is not a "city agency" and is therefore not bound by laws that govern the conduct of city agencies. This allows the DOE to escape laws governing the authority of the Independent Budget Office, the legislative authority of the City Council, and the investigatory powers of the public advocate and comptroller's offices, to name just a few examples.

The DOE also claims that it is not obligated to comply with Chapter 45 of the New York City Charter, which ensures that city agencies establish uniform standards of conduct, keep the public informed of agency actions, and allow for public participation in rulemaking.

The DOE must no longer exist as its own self-governing entity subject to no outside regulations or open government statutes. The State Legislature must clarify that the DOE is a "city agency" subject to the City Administrative Procedures Act and laws providing for government transparency and oversight. Moreover, the State Legislature must clarify that the City Council has jurisdiction over non-curriculum education matters, such as school safety and military recruitment policies, as well as other matters that impact the educational environment of the schools.

Assembly Member Rory Lancman and Senator Daniel Squadron recently introduced in the State Legislature the Education Accountability Act, which would clarify that the DOE is a city agency subject to the same laws and requirements as every other city agency, while preserving the powers of the DOE and the Panel for Educational Policy with respect to setting curriculum. The NYCLU supports this legislation as an important first step in creating checks and balances in the New York City school governance structure.

► **Increase public oversight by an independent and empowered board of education**

There has been little disagreement between PEP members and Mayor Bloomberg over the last seven years. That should come as no surprise: when the mayor has disagreed with panel members, he has fired them.

PEP meetings have become little more than a formality with very little discussion on important policy issues.

Regardless of whether the mayor retains sole responsibility over appointing the schools chancellor and a majority of the school board, it is in the interest of New York City's students, parents and educators to have an empowered panel that debates education policy matters.

Clearly define PEP authority

State Education Law defines PEP authority as approving “standards, policies, objectives and regulations proposed by the chancellor directly related to educational achievement and student performance.” The DOE has interpreted this provision as narrowly as possible, and thus the chancellor has introduced few resolutions and agreements for PEP approval. PEP members and advocates have complained that issues related to student performance and achievement are not brought before the panel.

Therefore, the law should be strengthened to pose an affirmative obligation on the chancellor to submit for PEP approval all new citywide policies and practices, and amendments to existing citywide policies and practices, that are related to educational achievement and student performance. The chancellor must be prohibited from executing such policies and practices without PEP approval, with exceptions for emergencies that will trigger future submissions for approval. Moreover, state law must explicitly authorize the PEP to proactively submit proposals before the panel, and not have to wait for submissions by the chancellor. Finally, “educational achievement” and “student performance” must be defined to include all policy matters that impact students’ graduation, attendance and retention rates, as well as citywide policies that impact a school’s educational environment, such as school safety policies.

The appointment of PEP members should be distributed among elected officials

The appointment of members to the PEP should not be delegated solely to the mayor and the borough presidents. Additional or replacement appointments should be given to all citywide elected officials, who like the mayor have a stake in education matters, and to the city’s legislative body, the City Council. The public advocate and comptroller should appoint members to the PEP, as well as the City Council speaker and the chair of the City Council’s Education Committee. Priority should be given to appointing individuals with a background in education. Preference should also be given to individuals who have attended a New York City public school or who have had children in the city’s public education system.

Panel members should serve a fixed term

In order to avoid undue influence on panel members and to encourage thoughtful debate on the PEP, panel members should serve fixed terms, preferably terms that are longer than the term of those who appointed them. Moreover, those who appoint panel members must be prohibited from firing their appointees without cause or notice. All terminations of panel appointments must be done only for good cause concerns unrelated to an appointee’s position on an issue (as long as it’s a reasonable position) and with 30-days notice prior to the effective date of the dismissal.

Panel members should vote for a chair

While the mayor may continue to have sole appointing authority over the schools chancellor, the PEP should vote for its own chair. The chair should not replace the chancellor as the chief executor of education policy. Rather, the chair should become the official spokesperson for the PEP, set its agenda and ensure its productivity.

In order to allow for the best use of the chair's time and abilities, the chair should be provided with resources that include a staff that is able to prepare analysis and recommendations on behalf of the PEP. The chair should also be provided with an office and a stipend.

► **Strengthen the parental voice in policymaking**

The 32 CECs and two citywide councils must be given responsibilities and authority that ensure parental involvement in the setting of school education policies.

The CECs' and citywide councils' authority should be expanded to include approval of district school safety plans, the opening and closing of schools, and other district-specific policies. For example, CEC or Citywide Council on High Schools approval should be required when a district seeks to change its school safety plan to include permanent metal detectors in certain schools.

► **Bring school safety practices in line with education policy**

The NYPD plays a unique and extensive role in the city's education system. Since 1998, when Mayor Rudolph Giuliani transferred school safety responsibilities from the Board of Education to the NYPD, and continuing with the advent of mayoral control, the NYPD has played a greatly expanded role in enforcing school discipline matters, increasing its impact on the educational environment of the schools.

At the same time that the number of police personnel in the schools increased to a whopping 5,200 agents, the ability of educators to oversee school safety and student discipline has decreased. Police personnel patrol school hallways and interact with students numerous times a day. These interactions often lead to confrontations between children and School Safety Agents and introduce an environment not supportive of the educational experience. Yet principals complain that they are unable to control the conduct of School Safety Agents and are limited in their ability to strike the right balance between school security and a supportive educational environment. The DOE's failure to adopt a school safety governance document has only exacerbated an already troubling situation.

The thousands of NYPD personnel who work in the schools must be subject to oversight by educators who have an expertise in maintaining a nurturing school environment. Therefore, the New York State Education Department and the DOE must be provided with clear authority to investigate and oversee all school safety practices, including the activities of NYPD personnel in city schools.

► **Institute practices to allow for public engagement in the decisionmaking process**

The DOE must abide by basic requirements of open government in the policymaking process.

This is most important as it relates to the promulgation of Chancellor's Regulations, which cover everything from admissions policies and security plans to health services and principal appointments. The public must be given a role in approving such regulations. All Chancellor's Regulations must be subject to a public comment period. A Chancellor's Regulation must never be finalized until the public has had at least 30-days to submit written comments on a regulation and provide in-person testimony at a hearing.

The PEP must also open its policymaking and adjudication process to the public. While the PEP does hold public meetings, they occur at the discretion of the chancellor. Moreover, information on past and future meetings is difficult to access. On the DOE's website, the most recent agenda posted for a PEP meeting is Sep-

tember 2007, and the most recent meeting minutes are from July 2007. The last PEP resolution posted on the website was from November 2006.

The PEP must ensure that the public is welcomed at its meetings and informed of its activities. It must hold well-publicized monthly hearings on matters related to educational policy, including the budget. The public must have easy access, including through the Internet, to PEP meeting information, including agendas, minutes and resolutions. PEP meetings should be broadcast on the Internet to ensure as wide an audience as possible. Finally, the PEP must institute a public comment period of 30-days prior to the approval of any resolution or agreement, and all votes must be taken publicly.

► **Mandate transparency of data**

The DOE must end its practice of withholding from the public raw data on student performance, student safety and the education budget. Moreover, the DOE must meet its statutory obligation to provide the public with access to records. Public records requests must be acknowledged and responded to in a timely manner, and the DOE records office must be well-staffed.

In order to allow for an independent assessment of the DOE's data, the Independent Budget Office must be provided with statutory authority to report on the DOE's performance, as it does on other city agencies. The IBO must be given raw data to allow it to assess the DOE's performance, including as it relates to student achievement (graduation rates, test scores, class size, etc), school environment, school safety and discipline (suspensions, discharges, etc.), and budget.

► **DOE inspector general**

In order to promote the effectiveness of the DOE, the State Legislature should create an Office of Inspector General within the DOE to conduct independent investigations into DOE practices. The goal of the inspector general should be to improve the practices employed by the DOE, and provide analysis of the impact of DOE policies and practices on the educational environment of the schools. For example, the inspector general should be authorized to conduct an assessment of the impact of the presence of 5,200 police personnel in the schools has had on the educational environment.

The inspector general's office will not replace the Office of the Special Commissioner of Investigation, which will continue to investigate individual acts of fraud, corruption and misconduct.

► **Sunset again in seven years**

The debate over the appropriate school governance structure for New York City has led to passionate discussions among policymakers and the public and a renewed interest in city schools and the people who run them. Such a vigorous debate fosters greater participatory democracy and an exchange of ideas that will ensure that the school system continues to reflect the latest opinions and scholarly views and theories on public education. Therefore, the State Legislature should ensure that whichever system it chooses for New York City, such a system expires in seven years, thus allowing for continued public debate.

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- ⁴⁰David M. Herszenhorn, "Parent councils poised for fight over schools and zoning," *The New York Times*, 15 Jan. 2005.
- ⁴¹A copy of the 1998 MOU is on file with the NYCLU.
- ⁴²The 1998 MOU created a joint committee that was supposed to recommend whether to extend or terminate the NYPD's control over school safety four years after the implementation of the transfer. According to testimony provided by Deputy Chancellor Grimm at a City Council hearing in 2007 on school safety, "To the best of my knowledge there was no joint committee that met and recommended a renewal of that MOU." Hearing of the Committees on Education, Safety and Juvenile Justice, 10 Oct. 2007.
- ⁴³Hearing of the Committees on Education, Safety and Juvenile Justice, 10 Oct. 2007.
- ⁴⁴Testimony, Ernest Logan, Hearing of the Committees on Education, Public Safety and Juvenile Justice, 10 Oct. 2007.
- ⁴⁵National Center for Schools and Communities at Fordham University, *Policing as Educational Policy: A Briefing on the Initial Impact of the Impact Schools Program* (Aug. 2006), p. 4.
- ⁴⁶New York City Department of Education, "Mayor Bloomberg, Schools Chancellor Klein and Police Commissioner Kelly Announce

a New School Safety Initiative Amid Significant Declines in Crime in City Impact Schools,” press release, 13 Apr. 2006.

⁴⁷Tanya Rivera, “13-year-old arrested in school for writing on desk,” WCBS, 5 Apr. 2007.

⁴⁸Carrie Melago, “5-year-old boy handcuffed in school, taken to hospital for misbehaving,” *Daily News*, 25 Jan. 2008.

⁴⁹In response to the growing number of police brutality incidents in the schools, more than a dozen organizations came together in 2007 and launched the Student Safety Coalition to combat the School to Prison Pipeline in New York City and its disproportionate impact on youth of color. Made up of civil rights, education and community based organizations, the coalition drafted the Student Safety Act, which would extend the jurisdiction of the Civilian Complaint Review Board to cover complaints of misconduct against School Safety Agents and require quarterly reporting by the DOE and NYPD on school safety issues, including incidents involving the arrest, expulsion or suspension of students. In August 2008, the bill was introduced with the co-sponsorship of a majority of Council Members. Unfortunately, despite its overwhelming support, the legislation is yet to receive a single hearing in the City Council, or the support of the DOE.

⁵⁰Title 20 of the United States Code §7908 (a), codifying the military recruitment provisions contained in the No Child Left Behind Act.

⁵¹The survey results were published in a September 2007 report, *We want You(th): Confronting Unregulated Military Recruitment in New York City Public Schools*. Among the key findings: (1) In violation of DOE guidelines, two in five respondents (40 percent) at selected schools did not receive a military recruitment opt-out form at the beginning of the 2006-2007 academic year. Additionally, one in three respondents (33 percent) was unsure if their school provided them with an opt-out form at the start of the year; (2) More than one in five respondents (21 percent) at selected schools reported the use of class time by military recruiters, a violation of DOE guidelines. Amongst 12th graders at selected schools, an even greater proportion—approximately one in four students (27 percent)—reported military recruiter use of class time; and (3) Nearly half of respondents (45 percent) at selected schools reported that they did not know to whom they should report military recruiter misconduct. A copy of the report is available at <http://www.nyclu.org/node/1349>.

⁵²Manhattan Borough President and New York Civil Liberties Union, *We want You(th): Confronting Unregulated Military Recruitment in New York City Public Schools*, (Sept. 2007), p. 18.

⁵³Ibid. at p. 19.

⁵⁴The recommendations included the following:

- Provide a clear written explanation of students’ rights regarding in-school recruitment.
- Provide user-friendly ways—such as including an opt-out checkbox on mandatory emergency contact cards—for students and their parents to withhold personal information from the military. Distribute such multilingual forms to students at the beginning of every year.
- Instruct principals to allow schools and students to receive ASVAB test scores without the release of student information to the military by selecting “Option 8: No release of information” when choosing a test processing option. Unless this option is selected, students’ private information will be released to the military without their explicit consent.
- Require all campus recruiters to sign in and out with school guidance offices when present on campus. Records, including recruiter affiliation and location on campus, should be collected by DOE and made publicly available.
- Enforce strict limits on frequency of recruiter visits and on recruitment activity in schools, including limiting locations within schools and prohibiting recruiter use of instructional time.
- Train school leadership on the rules and regulations of recruiter presence and activities in schools to monitor and enforce compliance. Institute a meaningful and well-publicized grievance procedure.
- Train staff in each school to properly advise students about the risks and rewards of military service and discuss alternative career options.

⁵⁵Additional information on the DOE’s military recruitment principal’s directive is available at <http://www.nyclu.org/node/2042>.

⁵⁶The following elected officials co-signed Congressman Rangel’s letter: U.S. Rep. Joseph Crowley, 7th District; U.S. Rep. Gregory W. Meeks, 6th District; U.S. Rep. Jerrold Nadler, 8th District; U.S. Rep. Edolphus Towns, 13th District; U.S. Rep. Jose E. Serrano, 16th District; U.S. Rep. Nydia M. Velazquez, 12th District; U.S. Rep. Anthony D. Weiner, 9th District; U.S. Rep. Yvette D. Clarke, 11th District; Public Advocate Betsy Gotbaum; Bronx Borough President Adolfo Carrion, Manhattan Borough President Scott M. Stringer; Sen. Bill Perkins; Sen. Eric T. Schneiderman; Sen. Jose M. Serrano; Assemblyman Adriano Espaillat; Councilwoman Gale A. Brewer; Councilman Bill de Blasio; Councilwoman Inez E. Dickens; Councilman Alan Gerson; Councilman Robert Jackson; Councilwoman Melissa Mark-Viverito; Councilman Miguel Martinez; and Councilman Albert Vann. A copy of the letter is available at <http://www.nyclu.org/node/2114>.

⁵⁷Letter from Congressman Rangel to the DOE, available at <http://www.nyclu.org/node/2114>.