

TESTIMONY

The Council of the City of New York

Committee on Education
Robert Jackson, Chair
Committee on Public Safety
Peter F. Vallone, Jr., Chair
Committee on Juvenile Justice
Sara M. Gonzalez, Chair

“Proposed In. No. 816-A: A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to requiring the department of education and the police department to provide information regarding school discipline and school safety agents to the city council”

November 10, 2009
New York, New York

Submitted by
The Legal Aid Society
Juvenile Rights Practice &
Criminal Practice
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Good afternoon. I am Nancy Ginsburg, director of the Legal Aid Society's Adolescent Intervention and Diversion Project in the Criminal Practice, a specialized unit dedicated to the representation of adolescents aged 13 to 18 who are prosecuted in the adult criminal courts. I submit this testimony on behalf of the Legal Aid Society, and thank Chairpersons Jackson, Vallone and Gonzalez as well as the Committees on Education, Public Safety and Juvenile Justice for inviting our thoughts on the proposed bill entitled the "School Safety Act". We applaud the Council for proposing this bill to address the critical issue of safety in New York City's schools. We look forward to the valuable contributions that we are sure the Committees will make in this area of vital concern to our City's children and their families.

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 29,000 children, including approximately 4000 who were charged in Family Court with juvenile delinquency. The Society's Criminal Practice represented clients in some 232,000 cases last year. Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, city agencies including the New York Police Department, Department of Education, Department of Juvenile Justice, Department of Probation and the Administration for Children's Services. In addition to representing many thousands of children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Legal Aid continues to be deeply concerned about the over-policing of New York City's public schools about which we have previously testified before the City Council. We continue to see the harmful impact of the harsh and pervasive punishment of arresting and suspending students from school, when in the vast majority of cases, less drastic approaches surely would have led to better outcomes for the students and the community.

Today we commend the many concerned members of the Council as well as Speaker Quinn for your support of the School Safety Act. This piece of legislation will bring long-awaited transparency to the policing and discipline issues in New York City schools. Since the effective transfer of the traditional school function of mediating disputes and conflicts from school personnel to the police department and central school officials who do not have daily contact and knowledge of the individual students, little information about these practices have been available to policy-makers and the public. The information collected through the mandate of School Safety Act will provide valuable insight into policing practices in schools and school discipline outcomes. This data is critical to formulating meaningful policy to create a safe and supportive school environment for New York City's students.

We believe that over-policing negatively impacts the quality of educational services provided to the students of New York City. Our biggest concerns are as follows:

- 1) Students are unnecessarily suspended and arrested for minor offenses, many of which are escalated by inappropriate reactions by School Safety Agents ("SSAs"). This creates an unnecessary and detrimental environment in which all students feel they are subjected to jail-like conditions in their schools.

2) School suspensions and arrests disproportionately impact children of color.

3) Students with special education needs are targeted for discipline and arrest.

The Effect of Police in our Schools

The Legal Aid Society strongly supports creating a safe learning environment for the children of New York City, but it has been our experience that, in many schools, the presence of SSAs, instead of enhancing safety, actually undermines the quality of education and the well-being of students and school staff. We recognize that many schools have long histories of disruption and danger which need to be addressed. However, the addition of law enforcement officers should not be the primary or sole response to these issues-- certainly not across the board in every school regardless of need.

Several studies of the Impact School program concluded that the schools in which the most police officers were placed, as compared to schools in the rest of the city, had higher enrollments even as city high schools, overall, saw less crowded conditions. These impact schools also have higher percentages of poor and African-American students, lower than average spending for direct services per student, more students over-age for their grade, higher rates of suspensions, higher rates of reported police incidents and lower rates of attendance.¹

We recognize and applaud the efforts of the New York City Department of Education in creating more small schools to alleviate these issues of the larger schools, including crime. However, those students who are left behind in the large high schools should be entitled to receive equivalent educational services

¹ Drum Major Institute, *A Look at the Impact Schools*, June 2005; National Center for Schools and Communities, Fordham University, *Policing as Education Policy: A briefing on the initial impact of the Impact Schools Program*, August 2006.

in environments that foster learning. Students in large high schools should not be delivered the message that their only option for an education is available in a building that feels like a police state.

School officials often relate to us that they feel that school discipline and safety issues have been taken out of their control. They are concerned about the loss of control over what happens with their own students. The Bill of Student Rights created by the Department of Education provides that "[s]tudents have a right to be in a safe and supportive learning environment..." Unfortunately, because of harsh discipline practices and heavy police presence in some schools, many of our students do not feel safe or supported in their learning environment.²

We, as a city, are losing opportunities for teaching lessons of social interaction, conflict resolution, and conflict de-escalation that are inherently part of every young person's social education. These skills were historically taught by educational staff who have now effectively abdicated that role. Now, a police force trained in arrest and delivery for courthouse punishment is in charge of school discipline. This unit of agents is employed and trained by the NYPD and reports to the NYPD. Despite language in the Memorandum of Understanding that suggest cooperation, there appears to be little to no coordination at the individual school level with the educational organization in which the agents are housed.

The permanent and roving metal detectors now operating in many schools reflect the law enforcement culture which treats students walking into their schools as criminal suspects instead of as children who have a right to an

² National Economic and Social Rights Initiative (NESRI), "Deprived of Dignity: Degrading Treatment and Abusive Discipline in New York City & Los Angeles Public Schools", March 2007.

education. This current perspective on school safety responds to minor disputes or misunderstandings as criminal activity, triggering an often unnecessary escalation of consequences beginning with an arrest followed by school suspension, criminal prosecution and possible incarceration.

Students are often suspended and arrested for minor offenses

New York City has developed a juvenile and criminal system in which primarily low-income children of color are arrested and prosecuted, often to the fullest extent, particularly in Family Court, for what frequently amounts to normative teen behavior or in legal terms, misdemeanors and violations. Incidents such as talking back to an officer and minor school conflicts are not addressed through counseling, mediation and the engagement of families as they are for middle and upper class families. Instead, minor incidents are often blown far out of proportion--often with devastating consequences for children and their families.

This dynamic creates a harsh and punitive environment which pervades many of the public schools, particularly those in the city's most under-served neighborhoods. If teachers or school staff had oversight responsibility for school discipline, a dispute among children, a misunderstanding, or some minor misbehavior could be used as an opportunity to teach new behaviors or skills in conflict resolution. Instead, in the current environment where law enforcement controls school safety, minor disputes or misbehavior most often result in school exclusion and harsh punishment in the court system instead of school-based counseling or mediation. An environment in which law enforcement interdiction is the norm creates profound obstacles for children seeking to obtain a quality public school education.

Additionally, many of our clients who are classified in need of special education services for identified emotional disabilities and mental illness, are often targeted by school safety officers as "criminals" when they are actually young people with very troubled social histories, many of whom are in treatment, on medication and supervised by mental health professionals. Due to their family histories of trauma, these young people often respond inappropriately to authority figures and situations arise where the SSAs escalate incidents that could have been resolved or mitigated by a trained educator or counselor with knowledge of the child's background.

There are two types of suspensions used by the NYC DOE: principal suspensions and superintendent's suspensions. Principal suspensions last for up to five days. There is no limit on how many times a principal may suspend a student over the course of an academic year. The Chancellor's regulations enumerate many specific infractions for which a superintendent's suspension must be imposed, such as using a weapon to inflict injury or selling illegal drugs. The regulations also provide that a superintendent's suspension should be sought when the student's behavior "presents a clear and present danger to the student, other students or school personnel or which is so disruptive as to prevent the orderly operation of the school." (A-443III.B.3)

In reality, however, superintendent's suspensions are often imposed for much lesser infractions by students. The Discipline Code allows for superintendent's suspensions in any number of circumstances, even something as minor as throwing a piece of chalk or talking back to school personnel or a SSA.

Even if a child is found not guilty after going through a school suspension hearing and a delinquency or criminal prosecution, s/he is often punished

academically during the process of responding to the charges. The disruption of a young person's education, even for one or two weeks, can result in the loss of an entire semester's work and cause students to be held back in their grade. Students are rarely, if ever, provided with their homework and class work pending the outcome of a suspension hearing, for example, despite the New York City Schools Chancellor's Regulations stating clearly that suspended students must not be penalized academically.³ Under the City's current school safety model, the consequences for students who are suspended and prosecuted as adults or juveniles also feature the loss of opportunity to take required exams and standardized test, and for some, being required to attend summer school or repeat the entire year instead of being promoted to the next grade. It is well known that students who are over age for their grade are more likely to end up dropping out of school without attaining a diploma.

Moreover, most or all of the suspension sites do not have labs required to obtain credit for high school science classes. Rather than helping these students to progress academically while addressing the behavioral issues that led to the suspension, DOE practice frustrates students who are academically motivated and further alienates those who are not.

School suspensions disproportionately impact children of color

We have found that the vast majority of students who are impacted by the harsh punishment of suspension in New York City are children of color.

Emerging professional opinion and qualitative findings suggest that the disproportionate discipline of students of color may be due to lack of teacher preparation in classroom management or cultural competence. Although there is less data available, students with disabilities, especially those with emotional and

³ Chancellor's regulation §A-443 III.B(1)(a).

behavioral disorders, also appear to be suspended and expelled at rates disproportionate to their representation in the population.⁴

The Legal Aid Society represents many children each year who are arrested and suspended because of incidents involving School Safety Agents. Many of these incidents simply would not have occurred, or certainly would not have escalated, if trained school personnel, rather than police were charged with overseeing student discipline. We provide a few examples of interactions our clients have had with School Safety Agents in New York City schools over the past year. These examples are just a snapshot of a broader, unacceptable environment which has arisen in too many of the schools in New York City:

- Legal Aid represented a teenage boy in Family Court. He is our client because he is the subject of a child protective case and we then represented him at the school suspension hearing. He was charged with allegedly assaulting a school safety agent and refusing to show identification. However, the videotape which captured the incident showed something very different. The tape showed several school safety agents pushing our client into a corner outside the view of the camera. The camera did capture images of our client being hit by the SSAs and of one SSA laughing after the incident. Our client suffered injuries as a result of this incident. The DOE suspension hearing officer dismissed the school suspension charges. The family court case was also dismissed. Nevertheless, he missed school while the suspension was pending and to attend his court dates.
- We represented another young person who was suspended and arrested for assaulting a school security agent. Once again, the videotape demonstrated that it was the SSA who punched our client, an action which was followed by a group of SSAs tackling our client. The school suspension and family court delinquency cases against our client were both dismissed based on the videotape.
- We have represented other teenagers whose cases have actually gone to trial and Family Court judges have found the testimony of the School Safety Agents to be not credible. In these cases, the SSAs were also the initial aggressors and then blamed the students, to set off a series of events which led to the exclusion from school and prosecution of the students.

⁴ *Supra, note 2; Are Zero Tolerance Policies Effective? An Evidentiary Review and Recommendations, American Psychological Association, Zero Tolerance Task Force, February 1, 2006.*

- Legal Aid represented a 16-year-old student who was suspended and arrested for allegedly pulling the hair of a SSA. The incident occurred after the SSA told the student to get to class and the student playfully flipped her hair up with his hand as he walked to class. The SSA testified angrily at the suspension hearing that she felt disrespected when he touched her hair and she intended to teach him a lesson, which she did by having him arrested and filing paperwork to support a suspension. She did this despite the fact that the boy apologized instantaneously verbally and in writing. The student did not have a history of discipline problems and received good reports from his teachers. The hearing officer immediately reinstated him to school after the hearing. The criminal court case was adjourned in contemplation of dismissal. He missed ten days of school pending the suspension and an eleventh day to go to criminal court.
- We represented another 16-year-old who was suspended for assaulting an SSA. He was charged in criminal court with felony assault. An investigation turned up witnesses who supported our client's version of events. The incident began when our client had, in fun, thrown a piece of food at his friend sitting next to him. He was approached by a SSA in the cafeteria who told him to stop. The SSA and our client exchanged words and the SSA hit our client in the head. Our client stood up and the SSA grabbed his chest, pushed him against the wall and then threw a punch. Our client swung back and the SSA fell and then pressed charges. Both the suspension and the criminal court case were dismissed. The student, who had no previous history of disciplinary incidents and is on track to graduate high school, missed nine days of school pending the suspension hearing which never took place and approximately three more days to attend court.
- Legal Aid recently arraigned a teenager who was arrested by a SSA at 2:45 p.m., just after school ended, for standing outside his own school and not dispersing when directed to do so. He spent more than 24 hours incarcerated for an event that does not even qualify as a crime.

Legal Aid has represented other clients who have similar experiences. We know that the Council members will hear additional stories today from other concerned citizens and some of the students themselves who have been victimized by SSAs and the policies and practices of the current school safety program. *What bears highlighting in the examples we include in this testimony is that students are being approached for no reason or the behaviors for which children are confronted--being late to class, talking back, not showing ID--are all common among schoolchildren and are by no means violent or immediately dangerous behaviors.* In the examples, SSAs reacted with unacceptable

aggression and without empathy in situations that, with properly trained school personnel, could have been resolved productively without the use of physical force and without resulting in the extreme punishments of suspension and prosecution.

We join with the community of parents, students, teachers and advocates in urging the City Council to require accountability from our schools and from the police regarding school safety. We urge you to pass the School Safety Act so that there will be true transparency and accountability in the area of school safety and discipline.

Thank you for the opportunity to speak about this important issue.

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