

## **TESTIMONY**

The Council of the City of New York

Committee on Civil Rights  
Larry B. Seabrook, Chair

Committee on Education  
Robert Jackson, Chair

“Oversight: Student Suspensions”

January 23, 2008  
New York, New York

Prepared by  
The Legal Aid Society  
Juvenile Rights Practice &  
Criminal Practice  
199 Water Street, 3<sup>rd</sup> floor  
New York, NY 10038

Presented by:  
Donna Henken, Adolescent Intervention and Diversion Project,  
Criminal Defense Practice  
Jessica Jones, New York County Juvenile Rights Practice

Good morning. I am Donna Henken, staff attorney in the Legal Aid Society's Manhattan Criminal Defense office. I work in the Adolescent Intervention and Diversion Project, where we represent adolescents aged 13 to 18 who are prosecuted in the adult criminal courts. With me is Jessica Jones, paralegal in Legal Aid's Manhattan Juvenile Rights office. Ms. Jones works in the Providing Education Assistance to Kids project, which focuses on education advocacy for children charged with juvenile delinquency in the Family Court. I submit this testimony on behalf of the Legal Aid Society, and thank Chairmen Jackson and Seabrook and the Committees on Education and Civil Rights for inviting our thoughts on school suspensions in New York City. We applaud the Council for tackling this important subject, and look forward to the valuable contributions that we are sure the Committee 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, of whom almost 90% were clients in child protective proceedings. The Society's Criminal Defense Practice handled some 225,000 clients last year. We often represent students who are suspended from school. Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies. In addition to

representing many thousands of children each year in trial and appellate courts, Legal Aid also pursues 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 testified at the City Council's October 10, 2007 hearing on school safety. Similarly, we continue to see the harmful impact of the harsh and pervasive punishment of suspending and expelling 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 would like to call attention to the effect of current New York City Department of Education (DOE) policies and practices of school discipline that are too punitive and thus not productive. Additionally, these practices have effectively transferred the traditional school function of mediating disputes and conflicts to the police department and central school officials who do not have daily contact with and knowledge of the individual students. These practices impact negatively the quality of educational services provided to the students of New York City. We will focus primarily on five areas of concern:

- (1) Students are often unnecessarily suspended for minor offenses.
- (2) The suspension alternative education sites that children are required to attend after they are suspended fail to provide adequate academic instruction, homework and supportive services,
- (3) Due process rights of suspended students are compromised in the current system.
- (4) School suspensions disproportionately impact children of color.

(5) The broad range of alternatives to suspension which are outlined in the School Disciplinary Code -- including conflict resolution, mentoring programs, and group and individual counseling -- are rarely if ever used.

*Students are often unnecessarily suspended for minor offenses.*

We believe that the lack of appropriate training and supervision for the more than 5000 School Safety Agents in the city's public schools, and the use of metal detectors and roving scanners, contributes to this problem.

There are two types of suspensions used by the NYC DOE: principal's suspensions and superintendent's suspensions. Principal's suspensions last for up to five days, and there is no limit on how many times a principal may suspend a student over the course of an academic year. A recent example of the misuse of a principal's suspension comes from our practice:

●Legal Aid represents John<sup>1</sup>, a 13-year-old boy who had never received a superintendent's suspension before. John was suspended for pushing the Assistant Principal after the Assistant Principal grabbed his arm and pushed him away. The school gave the student a principal's suspension pending approval of a superintendent's suspension; this violates DOE regulation because it constitutes a double punishment for the same offense. (A-443III.B.3(i).) Further, upon approval of the superintendent suspension, the school did not notify the suspension hearing office that the school had already given John a principal's suspension. In violation of John's due process rights, the hearing was then scheduled for more than five school days after the original suspension. (A-443III.B.3(n).) John's mother risked losing her job if she took time off from work to attend a hearing, so she was unable to complain to the hearing officer of these due process violations. To make matters worse, even after John served his entire suspension, the school told John's mother to keep her son at the suspension site pending the outcome of his Family Court proceeding. The school has no authority to do this, and should have reinstated John in his regular school.

---

<sup>1</sup> The examples in this testimony involve real children, but we have changed their names to protect their privacy.

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, including something as minor as throwing a piece of chalk. We regularly see young people who are suspended for minor infractions. For example, last year we represented a teenage girl who received a superintendent's suspension for having a hand grip strengthener in her school locker. The school said that this was a weapon, despite there being no evidence that it had ever been used in such a manner. The school never appeared at the suspension hearing and the charges were dismissed. Nevertheless, as with all suspensions, the charges remain permanently on her school record and she was not allowed to attend her school for several days.

- Last week, Legal Aid staff met a new client who was recently arrested after a conflict created by five School Safety Agents. Jenny is 14 years old and she had just left her school at the end of the day and was walking away from the school with three of her classmates. Once across the street from the school, one of Jenny's classmates stopped to tie her shoe before they continued walking. As she was tying her shoe, the four girls were approached by two SSAs who aggressively told them all to "keep moving!" One of the girls said out loud to her friends that she hated SSAs because of that kind of treatment. The SSA misunderstood what she said and replied, "Oh you **hit** SSAs, huh?" and then three other SSA s gathered around the girls. The girls then tried to leave or "keep moving", but one of the SSAs demanded to see the IDs for each of the girls and wanted to bring all of them back inside the school building. The girls refused and began walking home, An SSA grabbed one of the girls from

behind by pulling on her book bag which was strapped to her shoulders. A struggle ensued and that girl was thrown to the ground by the SSA. The other SSAs got involved in restraining the girl on the ground. Two of the girls were trying to help their friend up off the ground, and the last girl was thrown to the ground by an SSA and restrained.

In the end, two of the girls were arrested and one was suspended. Our client now is charged in Family Court with juvenile delinquency for “Obstructing Governmental Administration.” The arrests and suspension that resulted from those events across the street from the school were entirely unnecessary. The entire incident could have and should have been avoided, rather than escalated to the point of arrest and exclusion from school.

### ***The DOE Provides Little or No Academic Instruction During Suspensions***

Although the law requires that education not be interrupted during a suspension, children who are suspended from school in New York City receive little or no academic instruction during their suspensions. This results in children falling far behind in their coursework, causing some students to have to repeat an entire grade the following year. Some students become so frustrated at this unnecessary and illegal interruption in their education, that they drop out of school altogether. According to the Department of Education’s own regulations, a student who is suspended from school “may not be penalized academically during the suspension or removal period. . . . [S]tudents must be provided with alternative instruction, which includes, but is not limited to, class work and homework assignments. The instruction must provide the student with an opportunity to continue to earn academic credit and must be appropriate to the individual needs of the student.” (Reg. A-443 III.B.1)

Unfortunately, our experience demonstrates that these regulations are rarely followed. In fact, suspended students usually receive little or no schoolwork at all. Despite the presence of fax machines at all the suspension sites, the students’ work rarely, if ever arrives from the suspending school. Our clients regularly report that they sit at

suspension sites with nothing to do. They often are provided with “worksheets” by the suspension sites – handouts for them to work on while at the suspension site that bear no relation to the work being done at their suspending school, and which are certainly not “appropriate to the individual needs of the student.” And although the suspending school is required to send the students’ homework to the suspension site, this procedure is routinely disregarded, even when schools are ordered to do so by hearing officers.

Moreover, although the regulations provide that children are not to be penalized academically because of a suspension, those same regulations fail to provide even a minimal opportunity for most of these students to keep up with their schoolwork. For example, the regulations specifically state that, while awaiting his or her superintendent’s suspension hearing, a high school student is only entitled to two hours per day of instruction. It is inconceivable that a high school student could maintain his or her academic progress with only two hours of instruction per day. 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.

***Special Education Students Do Not Receive Appropriate and Mandated Coursework or Services During Suspensions***

Nor are special education students adequately served by the current system. For these students, who have Individualized Educational Plans (IEPs) that specify services necessary to ensure their academic success, a suspension means a disruption of services. These students are rarely, if ever, placed at sites that provide all of their IEP-mandated

services; instead, an interim service plan is written for the suspension site so that it can be tailored to what the site offers, rather than what the student actually needs.

In addition to a hearing for superintendent suspensions, special education students are entitled to a Manifestation Determination Review (MDR) meeting to determine whether the alleged behavior which led to the suspension is a direct result of the child's disability or the failure to implement the IEP. The MDR meeting is held ten school days after the date of the suspension hearing. At the MDR, the IEP team should determine whether the student is in need of transportation and complete the necessary waiver. In many cases, the IEP team is unfamiliar with the transportation waiver process, but even when waivers are filled out, we find that special education students do not receive transportation to and from the suspension sites until at least a week after the MDR determination. Often, setting up the transportation is further delayed in cases where students are new recipients of transportation, students need to be completely re-routed, or the IEP team is not in full agreement regarding the receipt of transportation. Thus, students may be inhibited from attending school based on transportation alone.

- One of our clients, David, is a 14-year-old Spanish-speaking student with mild mental retardation. Because of his developmental delays, he is not able to travel alone. Prior to his suspension, he had been attending a school one block from his home. Pending his suspension hearing, the DOE assigned him to a site forty-five minutes away. When our office tried to arrange busing, the Office of Pupil Transportation stated they had no reference number for the suspension site and could not process the request. David's mother eventually decided that she had to quit her job in order to transport him to and from the suspension site.

### ***Due Process Rights of Suspended Students are Compromised***

Although the regulations provide that suspension hearings are supposed to occur within five days, they frequently do not. Because parents seeking assistance have so few

options, they are often constrained to request an adjournment while they seek help. Further, the process fails to accommodate parents, some of whom may risk losing a job by having to spend an entire day traveling and waiting for DOE personnel. The hearings are usually scheduled for 8:30 a.m.. More often than not, school administrators do not appear until after 10:00.. On more than one occasion, a school principal has had to be called to come to the hearing after a family waited for hours.

Additionally, many parents report that the school officials, who do not want to have to prepare for and attend a hearing, urge them to waive the student's right to a hearing and plead no contest. These discussions are, by nature, coercive. The school officials falsely represent that the student will be better served if he or she chooses not to have the hearing. These representations are made despite the fact that the superintendent has the ultimate power to render a decision and the school's recommendation concerning the outcome is simply that—a recommendation. As a result, in the vast majority of cases, students waive their due process rights, thereby losing the opportunity to tell their side of the story, and obtaining a more favorable outcome.

### ***School Suspensions in NYC Disproportionately Impact Children of Color***

The vast majority of students who are impacted by the harsh punishment of suspension in New York City are children of color. For example, in recent months, of the 63 students requiring assistance from Legal Aid's Providing Educational Assistance to Kids project in Manhattan, 39 children were African-American, 23 children were Hispanic, and 1 child was Asian. While some of these cases involved school transfers, the majority of the cases were school suspensions.

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 behavioral disorders, also appear to be suspended and expelled at rates disproportionate to their representation in the population. (*See, Are Zero Tolerance Policies Effective? An Evidentiary Review and Recommendations*, American Psychological Association, Zero Tolerance Task Force, February 1, 2006.)

***The Many Alternatives to Suspension Outlined in the School Discipline Code are Rarely Used***

We have repeatedly seen teachers and school administrators fail to address conflict at the local school level. The time that is taken to fill out paperwork and attend a suspension hearing, could be used to resolve the conflict on site with greater satisfaction and long-term results for school safety and for the student. The DOE's increase in principal autonomy appears to create an opportunity to return some of the behavioral control functions to the school instead of ceding it to a central location where people lack direct day-to-day knowledge of the children involved, and we hope that the DOE will take advantage of this opportunity.

***Recommendations***

1. The drastic measure of suspension should only be used in the most egregious cases. Alternatives to suspension in the form of social services, mediation, mentoring and counseling should be applied and expanded.

2. When children are suspended from school, they should receive immediately the instruction and services to which they are entitled. The DOE must provide complete academic instruction and appropriate services to students during suspensions.
3. Due process in suspension hearings must be strengthened and guaranteed.
4. Training, supervision and accountability of School Safety Agents must be enhanced, and responsibility for school safety should be transferred from the New York Police Department to the Department of Education.
5. The City should conduct research into the causes of the disproportionate impact of school suspension and expulsion on children of color and children with disabilities in New York City, and should institute policies to remedy this tragic situation.

Thank you for the opportunity to speak about these important topics. We will be happy to answer any questions that the Chairs and Committee members have.

Contact: Tamara Steckler, Attorney-in-Charge, Juvenile Rights Practice  
Phone: 212 577 3502; [tasteckler@legal-aid.org](mailto:tasteckler@legal-aid.org)

Nancy Ginsburg, Criminal Practice  
Phone: 212 298 5190; [nginsburg@legal-aid.org](mailto:nginsburg@legal-aid.org)