

**Joint Statement on Revisions to the New York City School Discipline Code
Wednesday, July 15, 2009**

Submitted by:

Advocates for Children	The Legal Aid Society
ARISE Coalition	Make the Road New York
Children's Defense Fund - New York	National Economic and Social Rights Initiative
Desis Rising Up and Moving (DRUM)	New York Civil Liberties Union
Institute for Juvenile Justice Reform and Alternatives	New York Lawyers for the Public Interest
International Dyslexia Association, New York Branch	Youth Represent
Juvenile Justice Project at the Correctional Association	

The first step in addressing discipline issues is to create positive school environments that reflect four principles for ensuring the human right to education:

- The full academic, social and emotional development of all students,
- Dignity and respect in the school environment,
- Freedom from discrimination, and
- The right to participation of students, parents and educators.

Schools that promote a learning environment that follow these principles will experience fewer instances of student misbehavior that will require disciplinary intervention.¹ In order to be effective, discipline policies should reflect this school culture, rather than be a punitive tool that is not integrated into these broader goals.

Yet the current draft and proposed revisions to the Discipline Code permit an overreliance on suspensions as a focus of the Department of Education's (DOE) approach to discipline, while insufficiently promoting prevention and positive behavior support. The DOE has presented no data that suggest that suspensions contribute to the successful education of students or a reduction in discipline code offenses. On the contrary, research analyzed by the American Psychological Association and others shows that students who are suspended experience serious disruptions to their education and are at much greater risk of failing their classes, being retained in grade, becoming truant, dropping out of school and becoming involved with the juvenile and criminal justice systems.² Furthermore, students of color, students with disabilities and court-involved youth are disproportionately subjected to suspensions and affected by their impact.³

For many critical reasons, suspension needs to be viewed as a measure of last resort. Instead of emphasizing punishment and exclusion, the Discipline Code should encourage the use of positive behavior support practices and other evidence-based approaches that have been proven to reduce behavior incidents from occurring in the first place and that avoid resorting to suspension. The DOE, City Hall and City Council must provide resources to fully implement these practices.

Prevention and Intervention

While the prevention and intervention strategies mentioned in the Discipline Code are helpful, what is missing is the urgent insistence that all members of the school community need to be involved in creating an environment that affirms and supports positive behavior. Teachers might know whether a student is experiencing severe academic delays that may be contributing to the situation, parents can identify challenges the youth may be experiencing outside of school, and social workers may be able

to identify social services that can address specific difficulties the student is going through. This information should be shared with all school personnel so that a context exists for students' behavior. Students also need to be included as integral partners when schools create and implement their approaches to discipline and behavior support. If school staff treat students with respect, they can work together to design the most effective positive behavior supports, to figure out what is going on when there is trouble, and to craft customized behavior support plans. A successful approach to discipline needs to model the behaviors it seeks to promote.

Schools must also tailor prevention and intervention plans that are specifically intended to address how schools perceive and treat students that are disproportionately suspended, including students of color, particularly African American boys, and students with disabilities.

Effective disciplinary frameworks have certain characteristics in common. They:

- Implement evidence-based practices;
- Are informed by students, parents, community stakeholders and other agencies;
- Treat parents and other stakeholders as partners in monitoring and modifying inappropriate behavior;
- Are embraced by teachers and staff;
- Are culturally and linguistically appropriate;
- Have a tiered system of responses that should only address behavior that is truly disruptive, not every action a student can possibly make;
- Do not result in racial, ethnic or disability related disparities; and
- View discipline as part of the educational process.

We strongly urge the DOE to recommend that schools adopt evidence-based frameworks for discipline like Positive Behavior Interventions and Supports (PBIS) and Restorative Practices in the sections of the Discipline Code addressing prevention and intervention, and to ensure that schools receive the funding and support they need to design, implement and maintain these practices. PBIS and Restorative Practices are frameworks for behavior support that embody the principles of respect, dignity, support and collaboration. Even though extensive research has demonstrated the effectiveness of these practices in reducing negative behavior and improving educational outcomes,⁴ the Discipline Code does not mention either framework.

In order for schools to effectively adopt these alternatives, the DOE must provide schools with the resources and technical assistance to implement them. The City should seek specific funding for these practices and make them available to schools. These practices are worth the investment because evidence shows that they not only decrease disciplinary incidents, but increase teacher satisfaction and academic performance.⁵

Discipline codes do not in and of themselves improve student behavior. The school-wide engagement of students through positive relationships and quality curriculum is needed. A discipline code should support that engagement and encourage responses that help to build relationships and community.

Therefore we make the following specific recommendations for the Discipline Code:

- On Page 2 under Prevention and Intervention, insert language recommending that schools use evidence-based models, such as Positive Behavior Interventions and Supports and

Restorative Practices, to develop school-wide approaches to building positive school culture and implementing discipline practices that are fair and participatory.

- Throughout the Code, Guidance Interventions are listed to be used *in addition to* disciplinary responses when a student engages in misconduct. Instead:
 - The language on Page 4 and in the Discipline Code tables on pages 12 to 24 should clearly reflect a “Range of Possible Guidance Interventions to Be Used as the First Response and Instead of Suspension.”
 - In the Discipline Code tables, place the column for Guidance Interventions to the left of the column on Disciplinary Responses.
- Add restorative circles and fairness committees to the list of Guidance Interventions.
- Throughout references to Guidance Interventions, urge schools to adopt practices that engage students in developing and implementing school norms, interventions and disciplinary responses, and to include parents and community members in the process.

Disciplinary Responses and Suspensions

The Code needs to clearly state that suspension is to be used only when other methods of correction have failed. Currently the Behavioral Infractions and corresponding Disciplinary Responses listed in the Discipline Code tables do not reflect an appropriate ladder of consequences consistent with the severity of the infraction and the history of the student. In many cases, students can receive the same level of suspension for both severe and lesser infractions lumped together under categories that are open to broad interpretation.

For example, under the current proposed revisions, “attempting to take” property belonging to another is considered the same Level of Infraction and is subject to the same Disciplinary Responses as “Taking” property (Level 4 Infraction B44). Similarly, “planning” or “instigating” an incident of group violence is the same Level of Infraction and subject to the same Disciplinary Responses as “Participating in” an actual incident of group violence (Level 5 Infraction B55).

We make the following specific recommendations for the Discipline Code:

- Clearly state throughout the Code that suspensions are a measure of last resort and encourage schools to limit their use.
- The Code should affirmatively state that students cannot receive suspensions for certain minor infractions, including individual or repeated truancy, tardiness and dress code violations.
- Revise the Code to reflect an integrated, logical ladder of infractions and consequences that more appropriately address the severity of the alleged misbehavior and the corresponding disciplinary response, including:
 - Limiting the infractions for which students must receive a suspension to only the most severe infractions.
 - Clearly delineating that other infractions should be addressed with Guidance Interventions instead of suspension.

Administrators and teachers should be reminded about their additional legal obligations before suspending a student with a disability – not just that they exist, but what they are. IEP review meetings, Manifestation Determination Reviews, Behavior Intervention Plans, and Functional Behavior Assessments are all ways to ensure that students with disabilities receive appropriate services to address their disabilities, and if used properly, would significantly minimize problematic behavior and prevent or minimize student discipline and suspensions. Anything less violates state and federal law and risks creating further distrust between students, parents and school personnel, setting back students’ academic careers in often insurmountable ways, leaving the root causes of negative behavior unaddressed, and missing out on opportunities for positive collaboration that can benefit entire school communities.

Police Intervention in Discipline

The Discipline Code does not address the role of School Safety Agents (SSAs) or police in school discipline, but every day police personnel are intervening in school disciplinary matters, taking responsibility away from educators and criminalizing student behavior. These practices push youth out of school, increase placement in the juvenile and criminal justice system, and can subject undocumented students to the risk of deportation. The DOE should develop clear policies which grant primary authority for school discipline to educational personnel, rather than SSAs.

In addition, recent incidents have revealed that students have been forcibly transferred to hospital and psychiatric emergency rooms for school disciplinary matters, a practice which is unacceptable. DOE must prohibit this practice except in clear emergency situations and require school administrators to make every effort to contact parents or other guardians immediately.

Participation and Transparency

Students, parents or guardians and community members have a right to participate in developing disciplinary policies district-wide and in their schools. The DOE should:

- Collect and make publicly available data on disciplinary incidents disaggregated by race, gender, qualification for school lunch, special education, English Language Learners, and other relevant categories. This should include data on classroom removals, principal suspensions, superintendent suspensions, SSA and police behavior, and referrals to juvenile and criminal court.
- Give earlier notice and conduct broader outreach for the Discipline Code revision process and any public hearings so that all stakeholders have more time to prepare and contribute. The low turnout at the June 2009 hearing (compared to previous years that were standing room only) reflects the inadequate notice. Furthermore, future hearings should be held during the school year when more people can know about and participate in the process.
- Begin a broader, more comprehensive citywide dialogue with all stakeholders to continue revising the Discipline Code to further reduce the reliance on suspensions and adopt more evidence-based preventive and constructive approaches to discipline, including Positive Behavior Interventions and Supports and Restorative Practices.

Examples of Discipline Codes Using Evidence-Based Practices

Los Angeles Unified School District – <http://disciplinepolicy.lausd.net>

Chicago Public Schools - <http://policy.cps.k12.il.us/documents/705.5.pdf>

Denver Public Schools - <http://www.dpsk12.org/policies/>

Resources

Safety with Dignity: Alternatives to the Over-Policing of Schools, June 2009

Annenberg Institute for School Reform, New York Civil Liberties Union, & Make the Road New York
http://www.nyclu.org/files/Safety_with_Dignity.pdf

Teachers Talk: School Culture Safety and Human Rights, October 2008

Teachers Unite & National Economic and Social Rights Initiative
http://www.nesri.org/Teachers_Talk.pdf

Education Not Deportation: Impacts of New York City School Safety Education Policies on South Asian Immigrant Youth, June 2006

Desis Rising Up and Moving (DRUM) & Urban Justice Center

http://www.urbanjustice.org/pdf/publications/Education_Not_Deportation_Report_06jun06.pdf

Equity or Exclusion: The Dynamics of Resources, Demographics, and Behavior in the New York City Public Schools, National Center for Schools and Communities, October 2003

http://www.ncscatfordham.org/binarydata/files/EQUITY_OR_EXCLUSION.pdf

Endnotes

¹ Victoria Boyd, "School Context: Bridge or Barrier to Change?," Southwest Educational Development Laboratory (SEDL), 1992; John M. Bridgeland et al., "The Silent Epidemic: Perspectives of High School Dropouts," Civic Enterprises, 2006; National School Climate Center, "The School Climate Challenge: Narrowing the gap between school climate research and school climate policy, practice guidelines and teacher education policy."

² Russell Skiba et al., "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," American Psychological Association (APA) Zero Tolerance Task Force, 2006; Linda M. Rafaele Mendez, "Predictors of suspensions and negative school outcomes: A longitudinal investigation," in Johanna Wald and Daniel J. Losen, eds., "Deconstructing the School to Prison Pipeline," *New Directions for Youth Development*, No. 99, Fall 2003.

³ U.S. Office of Civil Rights, 2006 Civil Rights Data Collection, Table 7A/8A; Ronnie Casella, "Zero-Tolerance Policy in Schools: Rationale, Consequences and Alternatives," *Teachers College Record*, Volume 105, Number 5. June 2003; Russell Skiba et al., "Discipline is Always Teaching: Effective Alternatives to Zero Tolerance in Indiana's Schools," Indiana Youth Services Association, Education Policy Briefs, Vol. 2 (3), 2004.

⁴ Stephen R. Lassen et al., "The Relationship of School-Wide Positive Behavior Support to Academic Achievement in an Urban High School," *Psychology in the Schools*, Vol 43,701-712, 2006; Hank Bohanan et al., "Schoolwide Application of Positive Behavior Support in an Urban High School," *Journal of Positive Behavior Interventions*, Vol 8, 131-145, 2006. Illinois Positive Behavior Interventions & Supports Network 2006-07 Progress Report, January 2008. <http://www.pbisillinois.org>; International Institute for Restorative Practices, "Improving School Climate: Findings from Schools Implementing Restorative Practices," June 2009, <http://www.iirp.org/pdf/IIRP-Improving-School-Climate.pdf>; Maria Hantzopoulos, "Deepening Democracy: How one school's fairness committee offers an alternative to discipline," *Rethinking Schools*, Vol. 21, No. 1, Fall 2006.

⁵ Id.