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NEW YORK
CITY BAR

Report on the Student Safety Act

Intro. 816-2008

New York City Bar Association Committee on Civil Rights

We write to support passage of Intro. 816-2008 (“the Student Safety Act” or “the Act”). The Student Safety Act provides greater accountability for law enforcement personnel in New York City public schools by expanding the jurisdiction of the Civilian Complaint Review Board (“the CCRB”) to include complaints against school safety agents (“SSAs”). The bill also increases transparency by establishing reporting requirements about police activity in public schools and student discipline statistics. The Association believes that the Act is a necessary step toward protecting equal access to educational opportunity for all New York City children.

In an effort to increase security in New York City public schools, the Department of Education transferred control of SSAs to the NYPD in 1998. Since then, police presence in schools has increased from 3,200 SSAs to approximately 5,200 SSAs. Laudable though the goal of increased security might be, anecdotal evidence, spanning the boroughs of the City, suggests a disturbing pattern of over-criminalization and over-policing in public schools. Last January, at a Queens elementary school, SSAs cuffed five-year-old Dennis Rivera’s hands behind his back for throwing a tantrum.¹ Just a few days prior, on a bus outside her Brooklyn elementary school, ten-year-old Imecca Burton was handcuffed by two police officers on suspicion of unruly behavior.² Both elementary school students had learning and behavioral disabilities. In October 2007, honors student Isamar Gonzales was arrested in a dispute with an SSA after attempting to enter a Manhattan high school minutes before the morning bell rang; her principal, Mark Federman, was also arrested after pleading with the SSA for leniency on behalf of the student.³ In April 2007, police arrested Chelsea Fraser in a Brooklyn high school for writing the word “okay” on her desk.⁴ In the cases of both Isamar and Chelsea, police walked the handcuffed students before their peers and into an awaiting police vehicle, causing unnecessary humiliation. These are just a few examples of disturbing police behavior in the schools, and the Council is probably aware of many more. Ironically, hearings concerning school safety oversight and the delineation of the responsibilities of police personnel and school administrators, conducted on October 10, 2007, occurred just one day after Isamar Gonzales and Principal Federman were arrested. We draw your attention to testimony during that hearing from students and non-profit organizations that are immediately affected by inappropriate police conduct in the schools.

¹ Carrie Melago, *5-year-old Boy Handcuffed in School, Taken to Hospital for Misbehaving*, NEW YORK DAILY NEWS, January 25, 2008.

² Kevin Fasick, *Cuffed Schoolkid Feared for Her Life*, NEW YORK POST, January 27, 2008.

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

⁴ Tanya Rivero, *13-year-old Arrested in School for Writing on Desk*, www.wcbstv.com, April 5, 2007.

In addition, students who are not subjected to criminal punishment for their misbehavior are often subjected to overly harsh disciplinary measures.⁵ This harsh discipline jeopardizes the academic future of students by increasing the likelihood that they will drop out of school in the future.⁶ Of particular concern to the Association is that these excessive disciplinary measures appear to disproportionately affect communities of color.⁷

The Student Safety Act is a modest effort to address this problem and promote fairness and accountability on the part of police in the classroom. Since 1998, when the Department of Education first transferred school safety functions to the NYPD, there have been numerous accounts of students taken into custody and transported to police precincts for non-criminal and non-violent disciplinary matters that should have been handled by school administrators. And there is currently no effective forum for students or parents to seek redress for these violations. Although a citizen may lodge a complaint against a police officer with the CCRB, a citizen cannot currently lodge a similar complaint against an SSA. If SSAs are to remain under the auspices of the NYPD, they should be held accountable—just like police officers—by having the CCRB field and process complaints. We understand that the proposed CCRB changes would amount to an increase of only about one-half of one percent in the current student safety budget. That would be a small price to pay to increase oversight of police in the schools in order to deter abuse.

Unfortunately, there is currently minimal access to data regarding police conduct in the schools and demographic information relating to suspensions and expulsions. The scant information that is available suggests that police personnel often engage students over conduct that is non-criminal and non-violent. “Impact schools,” where most over-policing happens, are disproportionately found in low-income neighborhoods and communities of color. We are also concerned that these same communities have seen an increase in extended suspensions and expulsions. The Act promotes transparency and provides a means to assess problems through the maintenance of detailed data by the Department of Education and the NYPD.

Aside from the disproportionate impact on poor communities and communities of color, over-policing often targets children with developmental and other disabilities. Anecdotal evidence suggests that SSAs have ignored school officials who believed that a child’s behavior should not have been criminalized because of the child’s disability. There must be a means to collect information and assess the full demographic impact of police activity and of serious disciplinary measures imposed in the schools—this Act helps accomplish this necessity.

The psychological consequence of a child’s unwarranted exposure to the criminal justice system cannot be overstated. As Chancellor Joel Klein remarked about the experience of Dennis Rivera, the image of a handcuffed five-year-old is “troubling.” More than just troubling, such an experience must be damaging to a child’s psyche. The humiliation and

⁵ For a discussion of this trend and its efficacy in obtaining a safe learning environment, see Russell Skiba, et al., *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, Report to the American Psychological Association Zero Tolerance Task Force (2006).

⁶ Rebecca Gordon et al., *Zero Tolerance: A Basic Racial Report Card*, in *Zero Tolerance* 165-175 (William Ayers et al. eds., 2001)

⁷ Russell Skiba, *When is Disproportionality Discrimination?*, in *Zero Tolerance* 176-187 (William Ayers et al. eds., 2001)

degradation endured by a handcuffed five-year-old child is exponentially beyond the harm caused to a teacher witnessing a tantrum or to an SSA being subjected to foul language or by a school desk being marked with writing. The Act's new reporting requirements are not so onerous as to outweigh the benefits of providing additional oversight to ensure that students in the New York City school system have access to a productive and respectful learning environment.

This initiative is the first step toward curtailing a harmful trend. Students have a right to learn in respectful and constructive environments, and an environment with such police presence necessarily affects the learning process. Over-policed and high-security classrooms make children feel as if they are being more criminalized and less educated, which contributes to chronic absenteeism. We echo the Council's concern that "this increasing reliance on punitive measures to enforce discipline is incompatible with a positive and respectful learning environment in the schools and undermines students' right to a quality education."

The Student Safety Act is consistent with the City's desire to promote a culture of standards and accountability in the school system, as well as to fulfill the requirements of the No Child Left Behind Act. Just as children are expected to perform well on standardized tests or suffer consequences, police within the schools must be held to a high standard.

The Department of Education's "Student Bill of Rights" provides that students are entitled to "be in a safe and supportive learning environment, free from discrimination, harassment, and bigotry." Children have a right to be free from unnecessary repression—physical or psychological. To ensure these rights, we urge the Council to pass this important initiative.

October, 2009