



# EDUCATION INTERRUPTED

The Growing Use of  
Suspensions in  
New York City's  
Public Schools





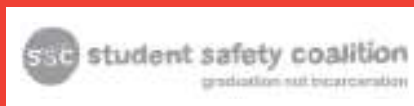


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The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, we are a not-for-profit, nonpartisan organization with eight chapters and regional offices and nearly 50,000 members across the state. Our mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers.

The Student Safety Coalition works to end the New York City School to Prison Pipeline and its disproportionate impact on youth of color and youth with special needs. Made up of New York City advocacy, academic and community based organizations, the coalition uses a coordinated set of legislative, public education and organizing strategies. To create respectful school environments and ensure the right to education for all students, the coalition promotes positive rather than punitive school safety and discipline measures and the participation of students in school decision-making processes. The Student Safety Coalition includes:

- Advocates for Children of New York
- Association of Legal Aid Attorneys, UAW 2325
- Bronx Defenders
- Children's Defense Fund New York
- Class Size Matters
- Correctional Association of New York
- CUNY Graduate Center, Participatory Action Research Collective
- DRUM- Desis Rising Up and Moving
- Make the Road New York
- NAACP Legal Defense and Education Fund
- National Economic and Social Rights Initiative
- National Lawyers Guild—NYC
- New Settlement Apartments Parent Action Committee
- New York Civil Liberties Union
- New York University School of Law Student Representation Project
- Teachers Unite
- Urban Youth Collaborative
- Youth Ministries for Peace and Justice



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This report is dedicated to Beatrice Lieberman, a lifelong educator and pioneer for social justice who understood the power of positive reinforcement and what makes kids tick.

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# CONTENTS

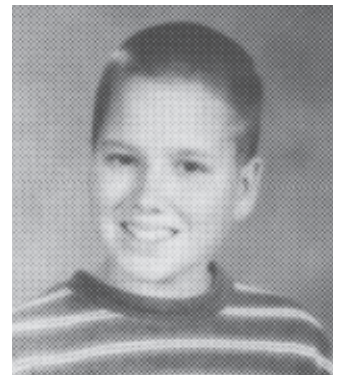
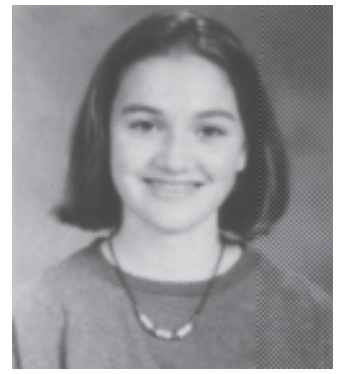
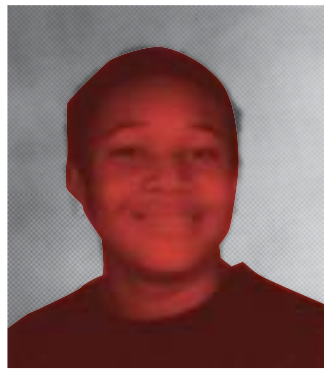
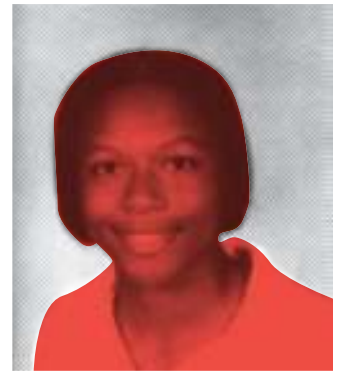
<b>Executive Summary</b>	<b>1</b>
<b>I. Introduction</b>	<b>5</b>
Methodology	5
Zero Tolerance Discipline and Suspensions	6
What is Zero Tolerance?	7
<b>II. Overview of New York City Discipline Policies</b>	<b>8</b>
Roots of Disciplinary Policies	8
Students' Due Process Rights	10
New York City Discipline Code	10
Reliance on Police in Schools	12
<b>III. New York City Suspensions Over the Last Decade</b>	<b>15</b>
Suspensions Increase while Population Decreases	15
Black Students are Suspended at Disproportionate Rates	18
Students with Disabilities are Suspended at Disproportionate Rates	20
The Academic Effect of Suspensions	22
Sub-Par Education at Suspension Sites	23
Suspensions Increase Every Spring	25
<b>IV. Conclusion and Recommendations</b>	<b>26</b>
End the Practice of Zero Tolerance Discipline	26
Mandate the Use of Positive Discipline Strategies	27
Protect Students' Rights in Suspension Hearings	27
Increase Transparency Regarding School Safety and Discipline	28
Provide Support Services for Students' Emotional and Psychological Needs	28
Encourage Meaningful Public Input on the Discipline Process	29
<b>Appendix A: Definitions</b>	<b>30</b>
<b>Appendix B: FOIL Data</b>	<b>31</b>
<b>Appendix C: List of Subjective Infractions</b>	<b>32</b>

## EXECUTIVE SUMMARY

The New York State Constitution guarantees a free public education to all children in New York.<sup>i</sup> In addition, both international human rights bodies and U.S. courts have recognized that a free education is the cornerstone of success and social development for young people.<sup>ii</sup>

In *Brown v. Board of Education*, the Supreme Court unequivocally stated, “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”

Unfortunately, growing reliance on exclusionary punishments such as suspensions effectively denies many children their right to an education. This is true nationwide, and also in New York City, where zero tolerance discipline is the norm. After analyzing 10 years of discipline data from New York City schools, we illustrate the following findings in this report:



- **The total number of suspensions in New York City grew at an alarming rate over the last decade: One out of every 14 students was suspended in 2008-2009; in 1999-2000 it was one in 25. In 2008-2009, this added up to more than 73,000 suspensions.**
- **Suspensions are becoming longer: More than 20 percent of suspensions lasted more than one week in 2008-2009, compared to 14 percent in 1999-2000. The average length of a long-term suspension is five weeks (25 school days).**
- **Between 2001 and 2010, the number of infractions listed in the schools' Discipline Code increased by 49 percent. During that same period, the number of zero tolerance infractions, which mandate a suspension regardless of the individual facts of the incident, increased by 200 percent.**
- **Students with disabilities are four times more likely to be suspended than students without disabilities.**
- **Black students, who comprise 33 percent of the student body, served 53 percent of suspensions over the past 10 years. Black students with disabilities represent more than 50 percent of suspended students with disabilities.**
- **Black students also served longer suspensions on average and were more likely to be suspended for subjective misconduct, like profanity and insubordination.**
- **Thirty percent of suspensions occur during March and June of each school year.**

The rise in suspension rates is partially attributable to an increasingly strict Discipline Code—the discipline manual issued by the New York City Department of Education (DOE) and used by administrators across the city. Over the past 10 years, principals relied on zero tolerance discipline for minor infractions as the Code was lengthened and made more severe every year. The 2010-2011 Discipline Code begins to address some of these concerns, reducing the overall number of zero tolerance infractions, but zero tolerance discipline is still the norm. For all students to maintain their right to an education, the DOE must eliminate zero tolerance discipline from city schools.

The efficacy of zero tolerance discipline is not supported by educational research. Studies have repeatedly demonstrated that overuse of suspensions can increase recidivism, worsen school climate, and is correlated with lower standardized test scores. More than that, it is a waste of valuable educational time. Between 1999 and 2008, New York City students spent more than 16 million hours serving suspensions. Instead of being in supportive, familiar school environments, New York City youth spent these hours away from their teachers and peers, often in alternative schools where age-appropriate schoolwork and special education services can be difficult to come by. Unpredictable access to lessons during a suspension, and the bureaucratic complications of temporary school reassignment, leads many students to return to school missing credits and failing classes.

In addition to zero tolerance discipline, New York students are exposed to heavy-handed street policing tactics in their schools. As a result, students may be subject to arrests or summonses for breaking school rules—rules aggressively enforced by an NYPD division nearly 70 percent larger than the entire cadre of guidance counselors in the New York City school system. While school safety officers do not have the power to suspend students, they are often complaining witnesses at suspension proceedings, and are usually involved when disciplinary infractions are treated as criminal offenses.<sup>iv</sup>



School-based arrests take students away from their lessons, teachers and peers, subject them to humiliation and frustration, brand them as “bad kids,” and can start them on a path towards the criminal justice system. In combination, zero tolerance discipline and the criminalization of students create a powerful School to Prison Pipeline.

All of this boils down to the exclusion of tens of thousands of students—often vulnerable, high-need young people—from the educational opportunities guaranteed under the New York State Constitution. Young people who are suspended repeatedly, or who are introduced to the criminal justice system at early ages, are more likely than their peers to drop out of high school.<sup>v</sup> Students who drop out are more likely to be involved with the criminal justice system—a cycle that is exacerbated when education is viewed as a reward for good behavior instead of a child’s right.<sup>vi</sup>

Worse, the students pushed out by the New York City suspension system are overwhelmingly black students and students with disabilities. This raises serious questions about the city’s ability to guarantee and protect all students’ rights to education and to due process of law.

**To stop the flow of the School to Prison Pipeline, we urge the DOE to take the following six steps:**

- **End the use of zero tolerance discipline;**
- **Mandate positive alternatives to suspension when appropriate;**
- **Protect students’ constitutional rights in suspension hearings;**
- **Increase transparency around discipline and safety practices;**
- **Provide support services for students’ emotional and psychological needs; and**
- **Encourage meaningful public input in the discipline process.**

# I. INTRODUCTION

This report analyzes 449,513 suspensions served by New York City students from 1999 to 2009 to draw a picture of zero tolerance practices in the nation's largest school district. The number of suspensions served each school year has nearly doubled in a decade—even though the student population has decreased over the same period—sending a clear message that public education is a reward for “good” behavior, rather than a fundamental right. This section explains the methodology we used to analyze the suspension data, and provides valuable background on zero tolerance discipline.

Section II provides an overview of New York City disciplinary policies and practices. It examines the ever-increasing emphasis on out-of-class and out-of-school suspensions in New York City's Discipline Code, which governs student behavior. This section also analyzes the impact that NYPD school safety officers have had on the increasing reliance on suspensions and arrests as primary disciplinary tools.

Section III analyzes 10 years of school discipline data in New York City, explaining the data behind our conclusions. Finally, the report concludes with our recommendations for the DOE, as well as city and state lawmakers.

## METHODOLOGY

Suspension data for this report was provided by the DOE in response to Freedom of Information Law (FOIL) requests filed by the Student Safety Coalition in 2008 and 2009. The records provided by the DOE include comprehensive suspension data corresponding to each school year from 1999-2000 through 2008-2009.<sup>1</sup> No protected information about individual students was revealed in the dataset.

In response to our FOIL, the DOE gathered substantial data for the years 1999-2005 from Automate the Schools (ATS), an electronic system designed to track student attendance, but not mandated for recording discipline at the school level. For school years 2005-2006 through 2008-2009, the DOE gathered a more complete dataset from the Suspension and Online Hearing Office (SOHO) database. Beginning in 2005, New York City schools were required to submit suspension records electronically to SOHO, which resulted in more accurate and detailed record-keeping.<sup>vii</sup> According to DOE records office staff, suspension data prior to 2005 may not be as reliable as more recent data.

The records were compiled by the DOE into spreadsheets, which we subsequently compiled into a longitudinal panel dataset with one record per suspension over the nine-year span of 1998-1999 through 2007-2008. The data for 2008-2009 was provided in aggregate at the Community School District level, while the remainder of the years was provided at the level of individual suspensions. Due to the use of a different unit of analysis, this 10th year was processed separately.

We enhanced the nine-year panel by adding explanations, also provided by the DOE in response to FOIL requests, for the ethnicity, disability, administrative and program codes in the dataset. We also reviewed and coded the annual *Citywide Standards* documents containing the discipline codes for each year in the study, which were provided by the DOE in response to a FOIL request, and conducted a qualitative analysis of their content. Some of this content was then coded and used in the quantitative analysis, e.g., of infraction types. Additionally, students who had been suspended multiple times over the nine-year period from 1998-1999 through 2007-2008 were identified based on anonymous ID numbers in the dataset and repeat suspensions were also analyzed separately.

Finally, where indicated in the report, we include discipline data that was collected by the DOE as part of

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<sup>1</sup> Data for the 2008-2009 school year was received in a different format and some information was suppressed in order to comply with amendments to the regulations implementing the Family Educational Rights and Privacy Act (FERPA). 34 CFR § 99 (2008). Specifically, the most recent year of data are aggregated at the community school district and school level rather than the student level. This difference in format is relevant because of possible aggregation error in these larger units of analysis not present at the individual level.

Additionally, the 2008-09 data are mostly reported in coded categories. For example, the length of suspension is reported in “disposition” categories such as “30-60 days” or “EXTENDED 1 YR SOS” rather than the actual number of days a student was suspended. Finally, unknown differences in data collection protocol, such as decision rules for coding schools by community school district, may render the data from this last year not directly comparable to the set of student level data spanning the decade prior to that year. While we have taken great care to review the most recent data and added these recent data where possible, we use caution in including this last year in our longitudinal analysis. Because of the comparability problems, much of the analysis presented below only includes the years 1999 through 2008. While we have taken great care to review the most recent data and added these recent data where possible, we use caution in including this last year in our longitudinal analysis. Because of the comparability problems, much of the analysis presented below only includes the years 1999 through 2008.

a state school assessment program known as the Comprehensive Educational Plan or CEP. We included CEP data because the statistical reliability of the records provided through FOIL for the 2007-2008 school year is questionable<sup>2</sup> and we believe CEP provides a more statistically accurate picture of school discipline for that school year.

Much of our analysis consists of descriptive statistics, including aggregations such as summation and means. These aggregates were usually weighted by the overall student population counts and subpopulation statistics, requiring some additional data from the publicly available New York State and New York City School Report Card, District 75 Reports, and Annual School Reports as well as special reports based on demographic and attendance data collection forms. An example of such data sources is the “Official Audited October 31st Register (J-FORM),”<sup>3</sup> from which we obtained student enrollment statistics.<sup>viii</sup> The analysis included producing descriptive tables and graphs, much of which is contained in this report, using standard spreadsheet and statistical software (Microsoft Excel and SPSS).

## ZERO TOLERANCE DISCIPLINE AND SUSPENSIONS

The U.S. Department of Education estimates that more than 3.3 million students were suspended at least once during the 2005-2006 school year.<sup>ix</sup> In New York City, students have served almost 450,000 suspensions since 1999, missing more than 2.2 million days of regular instruction.<sup>4</sup>

The word discipline comes from a Latin word meaning *to teach or comprehend*. However, opportunities for teaching and learning are often missing from the discipline process in American schools. The dominant discipline model is a punitive one, relying on one-size-fits-all punishments rather than interventions designed to foster students’ development.<sup>x</sup> Nationwide, most schools rely on exclusionary discipline, including suspensions, expulsions, classroom removals, and arrests of students, to kick “bad” kids out of their classrooms.

There is no credible evidence that suspension is an effective method for correcting student behavior.<sup>xi</sup> According to a 2006 study commissioned by the American Psychological Association, “School suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are suspended.”<sup>xii</sup>

### SUSPENSION OR EXPULSION?

In many jurisdictions, exclusion from school for more than 10 days is called “expulsion.”<sup>xiii</sup> In New York City, however, a “suspension” can last up to an entire school year, and “expulsion” is a legal term for the permanent exclusion of a student from the system. Under the law, only students who are 17 or older can be expelled for engaging in certain behaviors.

This distinction allows New York City to claim an extraordinarily low expulsion rate, even while thousands of students each year are suspended for 10 to 90 school days. In 2006-2007, 375 students were suspended for half an entire school year, and not one of them was considered “expelled.” In New York City, the average length of a superintendent’s suspension is 25 days—two and a half times longer than the maximum suspension in most other jurisdictions.

<sup>2</sup> The FOIL data showed a statistically improbable drop of nearly 20,000 suspensions from 2006-2007 to 2007-2008, followed by an increase of 31,841 suspensions the following year. The CEP data for 2007-2008, however, shows an increase of 5,854 suspensions between 2006-2007 and 2007-2008, and 6,818 suspensions between 2007-2008 and 2008-2009. Although it has not been officially confirmed by the DOE, the Student Safety Coalition believes that a large number of suspension records were inadvertently left out of the 2007-2008 database.

<sup>3</sup> J-FORM enrollment statistics do not always add up to 100 percent. As a result, some statistics in this report may total to more or less than 100 percent.

<sup>4</sup> The number of recorded suspensions, according to DOE records that were made available through FOIL requests, is 449,513.



The NAACP Legal Defense and Educational Fund reported in 2005 that “[t]aking children out of school for even a few days disrupts their education and often escalates poor behavior by removing them from a structured environment and giving them increased time and opportunity to get into trouble.”<sup>xiv</sup> A study of secondary school students, published in the *Journal of School Psychology*, showed that students who were suspended were 26 percent more likely to be involved with the legal system than their peers.<sup>xv</sup> This supports advocates’ concerns about a pipeline to prison.

Studies also show that suspension removes from the classroom students who have the greatest needs and would most benefit from a supportive school environment.<sup>xvi</sup> A phenomenon known as “push out” most frequently affects students who have trouble in traditional classroom environments and require the most services. These include students who are over-age and under-credited and students with emotional and/or learning disabilities.<sup>xvii</sup>

Studies have also demonstrated that suspension rates are strongly correlated with factors other than student behavior, including principals’ attitudes towards zero tolerance; teachers’ and principals’ philosophies about their role in the school; the effectiveness of the local school governance regime; teachers’ perception of achievement among students; and racial characteristics of students and staff.<sup>xviii</sup> One expert commented, “If students are interested in reducing their chances of being suspended, they will be better off by transferring to a school with a lower suspension rate than by improving their attitudes or reducing their misbehavior.”<sup>xix</sup> In other words, the extent to which a school or district has a “high” or “low” suspension rate actually has a stronger demonstrated relationship to external factors than to the type or severity of student misbehavior.

## EXCLUSIONARY DISCIPLINE AND SCHOOL ENVIRONMENT

The overuse of exclusionary discipline not only harms students, it negatively impacts the entire school. Researchers have found that high suspension rates lead students and teachers to regard their schools as unwelcoming and ineffective. Zero tolerance discipline has been linked to lower scores on standardized tests—demonstrating a strong correlation second only to poverty rates as an indicator of student success.<sup>xx</sup> Schools that rely on exclusions to maintain order spend a disproportionate amount of time on school discipline.<sup>xxi</sup>

Further, exclusionary discipline does not reassure children who are victims of misconduct, such as bullied children, that they will be safe at school. The failure to support victimized students—particularly if they attempt to defend themselves or act out aggressively—interferes with their education by creating an environment full of uncertainty, misunderstanding and fear that is not conducive to successful learning.

On the other hand, many studies have shown that students who participate in alternatives to punitive discipline, such as conflict resolution, counseling or restorative practices, are happier and more successful at school.<sup>xxii</sup>

## WHAT IS ZERO TOLERANCE?

The overuse of suspensions was driven by the rising popularity of so-called zero tolerance policies in the 1990s.<sup>5</sup> Zero tolerance, or one-strike, policies mandate suspension in response to the first instance of misbehavior. For instance, many schools adopt a zero tolerance policy on fighting. When two students

<sup>5</sup> The popularization of zero tolerance policies originated with the 1994 enactment of the Gun-Free Schools Act, which established a one-year suspension for any student who brought a gun to school (although it did permit schools to waive the suspension mandate in certain circumstances). Over time, the zero tolerance philosophy has trickled down to nearly every school district in America, and almost every infraction. The Gun-Free Schools Act of 1994, *Pub. L. 103-227 (1994)*; 20 USC §7151(b)(1) (2002).

are caught fighting, both are suspended. If one student was defending himself against chronic bullying by the other, this root problem would have no impact on the punishment—nor would it even be acknowledged in a zero tolerance system. Both bully and victim would be suspended for breaking the rule.

Zero tolerance is widely criticized for its shocking effects on the least likely students, including honor roll students, very young children and students whose rule-breaking was the result of innocent mistakes. The national media has extensively covered the results of these illogical policies: A 6-year-old was suspended for 45 days for bringing a camping tool to lunch period because, in addition to a fork and spoon, it contained a knife; a high school Eagle Scout was suspended for keeping his grandfather’s pocket knife in the glove compartment of his car; a fifth grader was suspended for bringing a knife to cut her birthday cake. The girl’s teacher actually used the knife to cut the cake before sending her to the principal.<sup>xxiii</sup> Early in 2010, a Staten Island fourth grader was nearly suspended for bringing a LEGO toy gun the size of a quarter into school. The student reported to media outlets that his principal told him “a gun is a gun.”<sup>xxiv</sup>

Zero tolerance proponents maintain that exclusions make schools safer. Unfortunately, the everyday application of zero tolerance affects vulnerable students in subtle ways that rarely make headlines. By denying a student access to supportive professionals and appropriate educational services, suspensions and expulsions can slowly chip away at a student’s will and ability to succeed.<sup>xxv</sup>

## II. OVERVIEW OF NEW YORK CITY DISCIPLINE POLICIES

### ROOTS OF DISCIPLINARY POLICIES

The New York State Constitution guarantees the right to a free public education to children in New York.<sup>xxvi</sup> The U.S. Supreme Court has identified free public education as a pillar of civil society.<sup>xxvii</sup> The right to a free education is one of the basic tenets of the Universal Declaration of Human Rights.<sup>xxviii</sup>

In 1975, the Supreme Court held that, where a state extends a right to public education to students, “it may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred.”<sup>6</sup> In order to deny students the opportunity to attend school based on disciplinary proceedings, the court ruled, schools must provide accused students with due process protections, including, at a minimum, notice of clearly articulated allegations and a chance to defend themselves. Because exclusionary discipline has the potential to seriously interrupt a students’ education, these due process rights must be scrupulously honored.

### INTERNATIONAL HUMAN RIGHTS LAW

Article 26 of the Universal Declaration of Human Rights states that every person has the right to a free and compulsory elementary education.<sup>xxix</sup> Additionally, provisions of the International Covenant on Civil and Political Rights,<sup>xxx</sup> the Convention on the Rights of the Child,<sup>xxxi</sup> the Convention on the Elimination of All Forms of Racial Discrimination<sup>xxxii</sup> and other human rights agreements are implicated in an analysis of the American exclusionary discipline system.<sup>xxxiii</sup>

<sup>6</sup> *Goss v. Lopez*, 419 U.S. 565, 574 (1975). While the Supreme Court did not create an affirmative federal right to education, it recognized students’ “legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.” *Id.* While *Goss* concerned students facing 10-day suspensions, the court wrote that its holding would apply to all but *de minimis* exclusions from school. *Id.* at 576. In New York State, limited due process protections apply to a one-day suspension, while the formal hearing requirement takes effect upon notice of a suspension for six or more days.

By denying students—disproportionately students of color and students with disabilities—access to the learning environment, schools and school districts violate internationally-recognized human rights laws. As part of the United States’ participation in the Universal Periodic Review of Human Rights Compliance in 2010, many advocates called on the Obama administration and the United Nations Human Rights Council to take a stronger stand against zero tolerance school discipline practices.<sup>xxxiv</sup>

There are three regulatory schemes that govern the suspension of students in New York City:

- The Regulations of the Commissioner of Education (issued by the State Education Department);
- The Chancellor’s Regulations (issued by the city DOE);
- And the Citywide Standards of Discipline and Intervention, known as the “Discipline Code” (issued by the city DOE). The Discipline Code is the document most often used by educators, students and parents. It is discussed in detail in the next section.

The Chancellor’s Regulation on suspension explains the procedure for suspension hearings in New York City.<sup>xxxv</sup> Nearly 100 pages long and written in legal language, the regulation can be inaccessible to families facing a suspension hearing. It is more often used by attorneys, advocates and school personnel.

The Regulations of the Commissioner of Education consist largely of instructions to school districts. They also implement the Safe Schools Against Violence in Education (“SAVE”) Act. Among other things, the SAVE Act requires school districts to establish minimum suspension terms for pupils deemed “substantially disruptive” or “violent.”<sup>xxxvi</sup> According to the statute, a student can be characterized as violent for displaying “*what appears to be a knife, gun... or other dangerous instrument*” [emphasis added], or “knowingly and intentionally damag[ing]... school district property.”<sup>xxxvii</sup> In other words, a student who brings a toy gun to school, or a knife to cut her birthday cake, could be considered a “violent pupil,” as could a student who doodled on her desk.

The SAVE Act also authorizes teachers to remove students from their classrooms for disruptive or violent behavior.<sup>xxxviii</sup> Generally, students report to a classroom used specifically for that purpose (sometimes called a “save room”) until cleared to return to class by the principal. Under the law, students must be offered an opportunity to explain their side of the story to the principal within 48 hours, at which time they may be suspended by the principal or returned to their regular class schedule.<sup>xxxix</sup>

Kindergarten through high school students are subject to classroom removals for the most minor misconduct—behaviors known as “Level 1” in the Discipline Code. Level 1 includes being late, failing to wear a required uniform, bringing a cell phone to school and wearing a hat. After three classroom removals, students who commit an additional Level 1 offense are subject to suspension. These penalties apply equally to students with disabilities.<sup>7</sup>

Some states limit classroom removals to less than one school day—after which the removal is considered a suspension—or limit the total number of classroom removals a student can be subjected to over a period of time.<sup>8</sup> At a minimum, New York City classroom removals account for thousands of phantom

<sup>7</sup> Under federal law, students with disabilities are granted protections against scenarios where they may be the victims of “push out” or where the behavior for which they are being suspended was a manifestation of their specific needs or failure to properly provide for those needs. Individuals with Disabilities Education Act (IDEA), 20 USC §1415 (j) (2005).

<sup>8</sup> In Connecticut, for instance, classroom removals cannot exceed 90 minutes and a student can only be removed twice in one week or six times in one year before they are entitled to a hearing with the principal. Classroom removals in Connecticut also trigger mandatory notice to the student’s parent(s). Conn. Gen. Stat. §10-233a (b) (2008). In California, a classroom removal can only occur once per school week. Ann. Cal. Educ. Code § 48925(d)(3) (2009).



one- and two-day suspensions; at worst, they represent egregious violations of students' rights. Because the DOE does not track classroom removals centrally, they could not be analyzed for this report.<sup>9</sup>

## STUDENTS' DUE PROCESS RIGHTS

In New York State, constitutional due process requires that students and their parents be given notice of a suspension before it begins, or as soon as possible after the suspension begins. The notice must include an adequate explanation of the alleged infraction.<sup>xl</sup> The school must conduct an investigation that includes obtaining written and signed statements from the victim and any other witnesses to the incident, and providing the accused student an opportunity to prepare a written statement, if he or she wishes.<sup>10</sup>

For suspensions of six days or longer, students have the right to a formal hearing. At the hearing, students have the right to question witnesses and the right to bring a representative of their choice. (While some attorneys provide representation for suspension hearings, parents are the most common representatives.)<sup>xli</sup> Students have the right to remain silent at the hearing, and can appeal hearing decisions to the school district and the state Education Department, and even to courts of law.<sup>xlii</sup>

For suspensions of five or fewer days, students do not have the right to a formal hearing. But they do have the right to an informal conference with the principal where they can present their side of the story and ask questions of complaining witnesses. Usually, "short-term" suspensions are served at the student's regular school but in a separate room from his or her usual teachers and classmates.

Finally, school districts are obligated to provide education services to students 17 and younger while they are suspended.<sup>xliii</sup> Students attend "suspension sites," (officially called Alternate Learning Centers or Second Chance Schools) when they have been suspended for long periods.<sup>xliiv</sup> Unfortunately, suspension sites sometimes fall short of providing adequate educational services to ensure that students keep up with their classmates while suspended. Students may be given "busy work" in lieu of appropriate schoolwork. Communication between suspension sites and students' regular schools is sometimes non-existent, leading to missed work or missed credits for students who do receive and complete work. Unpredictable access to their lessons during a long-term suspension causes many students to fail classes and join lessons that have outpaced them upon returning to school.

## NEW YORK CITY DISCIPLINE CODE

The Citywide Standards on Discipline and Intervention is the code of conduct for New York City schools. It contains a student bill of rights as well as a catalogue of infractions and the approved range of disciplinary responses to each one. The responses include "guidance interventions," non-punitive alternatives like peer mediation, guidance counseling, conflict resolution, community service and mentoring.

Pursuant to the SAVE Act, the Discipline Code is revised annually. As the legal document that provides the basis for all suspensions in New York City, its specific provisions and their interpretation have a huge effect on the number and length of suspensions each year.

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**9** A Freedom of Information Law request for data on classroom removals was denied by the DOE.

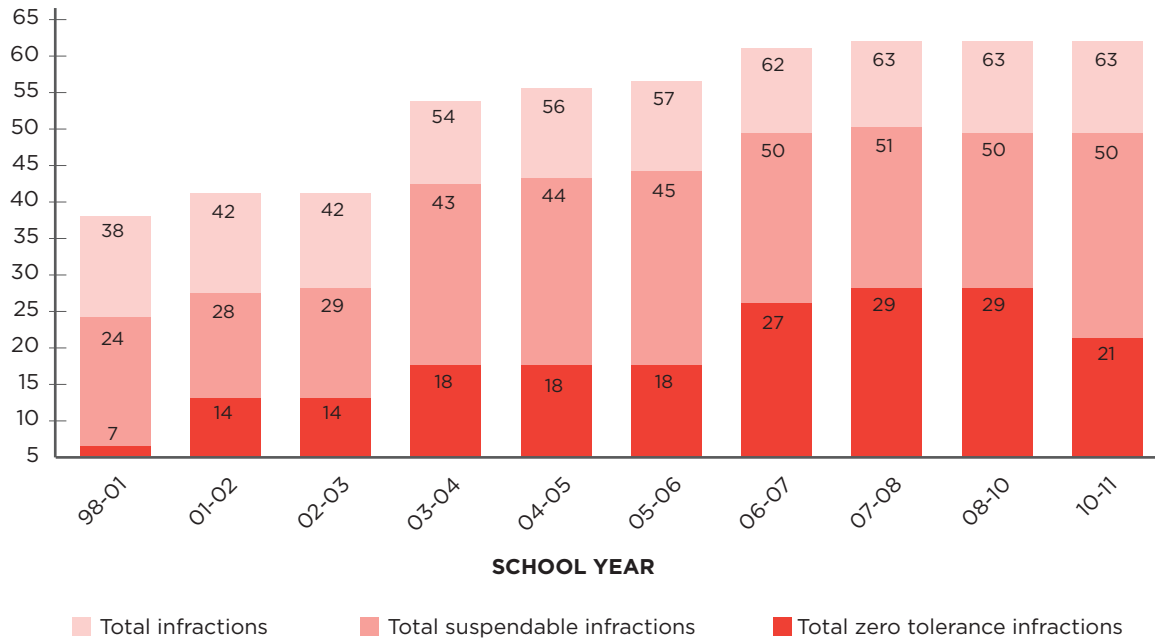
**10** Too frequently, however, administrators do not comply with these regulations. It is common for the school to collect statements from only a few individuals, such as the alleged victim and a teacher or school safety officer. Also, schools often tell the accused student that they *must* write a statement, or, by contrast, do not speak to the accused student at all; both of these are violations of the regulations and the student's constitutional rights. Although the school must ask accused students if they want to share their version of the incident, in most cases students retain their Fifth Amendment right to silence throughout the process.

Many students, frustrated by their lack of a voice in the discipline process, skip their hearings. Unfortunately, attending the hearing and building an effective record is the only way a student can appeal a suspension decision. For the most part, students are not aware of this fact, or even of their option to appeal; many students sign "no-contest" pleas.

Another reason many students miss their hearings is scheduling. Suspension hearings are held during normal business hours, necessitating parents to take time off work. Because of the backlog at the hearing offices, it is not uncommon for students and parents to spend four to six hours awaiting a hearing. A simple way to ensure more students have access to hearings would be to schedule evening and/or weekend hearings.

From 1999 to 2010, the code grew substantially—both in the total number of listed infractions and the number of infractions that result in a suspension or expulsion, as demonstrated in the chart below.<sup>11</sup> From 1998 until 2001, the code itemized 38 offenses. By 2007, there were 63.

### NYC Discipline Code Infractions, 2000-2011



Out of the 63 infractions that appeared in the code between 2008 and 2010 (during which the number of infractions stayed the same), nearly half mandated a suspension as the minimum punishment for the misbehavior. Eighty-nine percent of listed infractions—including using profane language, throwing chalk and being insubordinate—could have resulted in a child’s exclusion from school that year. Not coincidentally, 2008-2009 was the year with the highest number of recorded suspensions in our analysis.

One way the code grows from year to year is through the creation of new infractions. In 2005, for example, it became an offense for a student to “enter or attempt to enter a school building without authorization.” In the infraction’s inaugural year, 382 students were suspended for a total of 2,384 school days for the offense. The following year, there were 498 suspensions for this infraction, an increase of 30 percent.<sup>12</sup>

As the number of infractions in the Discipline Code has increased significantly, so has the number of offenses that mandate a suspension—zero tolerance infractions. While in 2001 there were seven zero tolerance infractions, the number grew to a high of 29 in 2007-2009, and is now at 21 offenses—a 200 percent increase from 2001.

The DOE has increased efforts to meet with students and advocates to discuss improvements to discipline policy. As a result of these conversations, in the 2010-2011 Discipline Code, the list of guidance interventions appears to the left of the discipline responses, with the goal of increasing its familiarity and use among school personnel. Unfortunately, the DOE does not yet mandate the use of positive interventions before or in place of exclusionary options. Further, schools’ utilization of these alternatives is not tracked by the DOE so there is no way to measure whether the changes to the code’s layout will increase their use.

<sup>11</sup> Based on analysis of the Discipline Code applicable to grades six through 12. The Discipline Code applicable to kindergarten through fifth grade may differ from this analysis.

<sup>12</sup> While the DOE does not issue statements explaining its decisions to change the Discipline Code in a given year, it is worth noting that at least one publication by the DOE suggests that schools allow students access to school buildings and services before and after school as a way to combat youth gang membership. See, Office of School and Youth Development, “Let’s Put a Stop to Youth Gangs and Violence,” Department of Education (2008).

## STORIES OF SUSPENSION:



*Julian was new at his high school and had never had a discipline problem. In gym class, Julian asked a classmate if she was in a gang. The young woman was offended and she and her friend started a physical fight with Julian. Trying to defend himself, Julian fell and cut his eye on the bleachers.*

*Julian’s school suspended him for fighting—a zero tolerance offense—and sought to suspend him for 90 days, the maximum suspension possible under the Discipline Code, and half of an entire school year. Fortunately for Julian, the hearing officer in his case disagreed with the school’s recommendation and immediately reinstated him after a 10-day absence from school.*

Still, several individual schools have effectively implemented restorative practices, positive behavior supports, strong guidance programs and other non-punitive strategies with great success. By increasing resources for these programs and mandating their use, the DOE will make them feasible *alternatives* to exclusion and could significantly reduce the suspension rate.

Also in 2010, the DOE reduced the number of zero tolerance infractions in the Discipline Code for the first time in recent history. We applaud the DOE’s efforts, and hope these changes will result in fewer suspensions. However, the 21 zero tolerance infractions still represent a 200 percent increase under the Bloomberg administration.

## RELIANCE ON POLICE IN SCHOOLS

At the same time that the DOE was expanding the Discipline Code, a cultural shift was taking place regarding the “criminalization” of student behavior. In 1998, Mayor Rudolph Giuliani and the then Board of Education entered into an agreement that transferred school safety responsibilities from the board to the NYPD. The transfer occurred amidst promises by the Giuliani administration that the number of police personnel in the schools would not increase, and that school safety officers<sup>13</sup> would not arrest children in the schools.<sup>xiv</sup>

This was a natural corollary to the mayor’s dedication to his own brand of zero tolerance: “broken-windows” policing. Throughout his tenure, Giuliani subscribed to the theory that law-and-order could be best established by aggressively policing minor offenses.<sup>xvi</sup> His philosophy was imported from the streets into New York City schools, where children today can be subjected to criminal punishments for horseplay and writing on their desks. This is despite the fact that crimes by and against youth are at their lowest point in decades—a downward trend that began long before zero tolerance became a discipline catchphrase, and before the NYPD took over school safety responsibilities in New York City.<sup>xlvii</sup>

<sup>13</sup> The NYPD and the DOE currently refer to these police officers as “school safety agents.” School safety officers, however, was their job title at the time of the transfer, including in the Memorandum of Understanding that authorized the transfer. The Student Safety Coalition feels that this term more accurately captures the scope of their powers and responsibilities as peace officers and it is the term used throughout this report.



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**STORIES OF SUSPENSION:**


*One morning, as Monica was entering her Brooklyn middle school, her principal demanded to search her clothing and her belongings as part of an apparently random search. She cooperated as he repeatedly reached his hands into her pockets and then searched her backpack.*

*The principal took a bottle of orange juice out of Monica's backpack and began to yell at her for trying to bring juice into the school—drinks with added sugar are prohibited by DOE policy. Monica held onto the bottle, trying to explain that it was a type permitted under the rules. As Monica and her principal tugged on opposite ends of the bottle, Monica was tackled by a group of school safety officers who threw her to the ground, kneeled on her back and handcuffed her.*

*Her twin sister, who was not subjected to a search, saw the police slam Monica's head down on the floor. She began crying and begging the police to help her sister up. When she tried to intervene she too was handcuffed.*

*Monica was handcuffed to a table in a broom closet, and her sister was handcuffed in an empty classroom, for two hours while their father waited at the security desk to pick them up. Neither Monica nor her sister was asked to write a statement, and neither was charged with a crime.*

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Since 1998, the School Safety Division has grown by 64 percent.<sup>xlviii</sup> Today, the presence of more than 5,200 police personnel increases many schools' reliance on exclusionary tactics. School safety officers receive 14 weeks of training compared to the six months received by police officers. They are trained to maintain safety and order in schools by enforcing the penal law and the Discipline Code.<sup>xlix</sup> Importantly, they are trained to use substantially the same tactics as police on the street. They receive little or no training in adolescent development, positive discipline techniques, educational psychology, classroom management, special education or bias-based harassment and bullying.

Despite this, school safety officers in many schools are integrally involved in student discipline. While school safety officers cannot suspend a student, they are often the complaining witnesses in students' suspension hearings. Their reactions and overreactions to routine misbehavior can lead to students being removed from classrooms, suspended, physically restrained, ticketed and even arrested. Their involvement in minor disciplinary issues may actually prevent students' access to alternative forms of discipline, such as parent conferences, counseling or mediation, by removing students from the care of educators trained to provide those services.

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**STORIES OF SUSPENSION:**


*Yvette and her younger sister Gabrielle attended the same school. Every day, Yvette would meet Gabrielle outside Gabrielle’s classroom so they could walk home together.*

*One afternoon, Yvette was told by a school safety officer that she could not go down the hall to Gabrielle’s class. She explained she was picking up her younger sister, but the officer blocked her way and then shoved her when she tried to walk past. Yvette got upset and yelled, “Don’t touch me!” She tried to leave but was handcuffed and arrested by another school safety officer. Yvette was taken to the police precinct where she spent seven hours in handcuffs before being released to her mother.*

*Yvette was charged with resisting arrest and her school requested that the superintendent suspend her for one year.*

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In schools where collaboration, communication and positive reinforcement are the norm, students report good relationships with school safety officers, many of whom remain at the same school for many years.<sup>i</sup> In other schools, students report apathetic or antagonistic relationships with officers, and teachers and administrators expect officers to enforce school discipline.<sup>ii</sup> In those schools, minor misbehavior too often leads to arrest. In early 2008, for example, 5-year-old kindergarten student Dennis Rivera was taken out of his school in handcuffs after he threw a temper tantrum. In 2010, 12-year-old Alexa Gonzalez was arrested at school for writing on her desk with a marker.<sup>iii</sup>

The problem of aggressive police behavior appears to heavily afflict schools that are disproportionately attended by children of color.<sup>iiii</sup> The city’s so-called “Impact Schools”—schools targeted for increased police patrols—are disproportionately attended by black and Latino students from low-income families.

Adding to the often chaotic and confusing environment created by an increased police presence is the fact that no meaningful policies exist to clarify the roles and responsibilities of school safety officers. The only document ever executed for this purpose, a Memorandum of Understanding (MOU) between the then-Board of Education and the city, encourages principals and school safety officers in vague and uncertain terms to work together.<sup>iv</sup> It makes no meaningful distinction between enforcing penal laws on school grounds and responding to student misbehavior in a way that promotes educational—rather than criminal justice—objectives. And while the agreement purports to create a joint committee to review school safety practices, the findings, reports and/or recommendations of such a committee—if one exists—have not been shared with the public.

Despite how vague and ineffectual the MOU is at governing the role of police in schools, it is not irrelevant that top DOE personnel were barely aware of its existence: Five years after the original MOU expired, DOE personnel testified at a City Council hearing that it had not been renewed. It wasn’t until late 2009, during the mayoral control debate, that a secret agreement to renew the MOU in early 2003 was publicly revealed. Parents, teachers, principals and the public had not been consulted on its extension, and the NYPD was not even included as a signatory on the agreement.

### III. NEW YORK CITY SUSPENSIONS OVER THE LAST DECADE

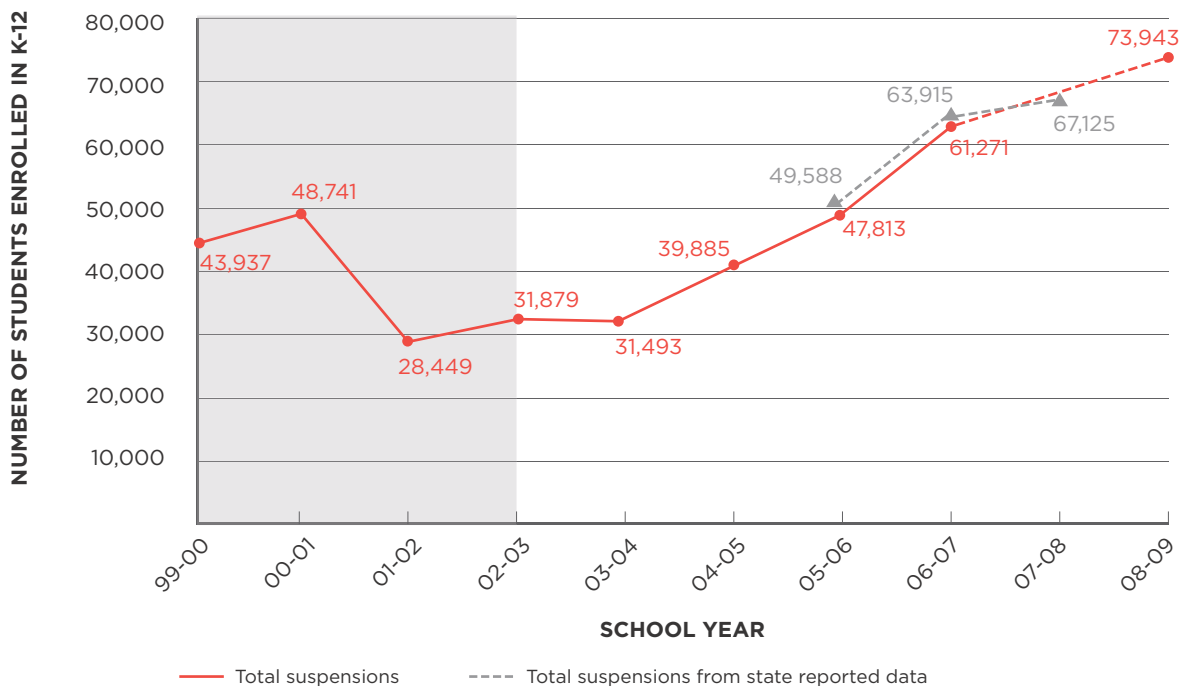
It is very likely that an increasingly strict Discipline Code and the adoption of police tactics in schools are key factors in the dramatic growth in annual suspensions of New York City students over the past decade.<sup>lv</sup> The total number of annual suspensions in the city increased from a low of 28,449 during the 2001-2002 school year to 73,943 in 2008-2009. During the same period, total enrollment in New York City schools dropped by approximately 60,000 students.

#### SUSPENSIONS INCREASE WHILE POPULATION DECREASES

During the 1999-2000 and 2000-2001 school years, students served 43,937 and 48,741 suspensions, respectively. During the 2001-2002 school year, suspensions sharply declined to 28,449, the fewest in the last decade. The reasons for the decline are not ascertainable through the data available to this study. Because it is repeated across data categories, it is likely the result of a record-keeping error.<sup>lvi</sup>

Mayor Michael Bloomberg took control of New York City schools just before the 2002-2003 school year, initiating eight years of governance and policy changes within the system (on the following graphs, the years preceding mayoral control are shaded in gray). Pressure on students and teachers increased to new levels as the Bloomberg administration’s expansion of high-stakes testing, data-driven school report cards and school closures became the norm.<sup>lvii</sup>

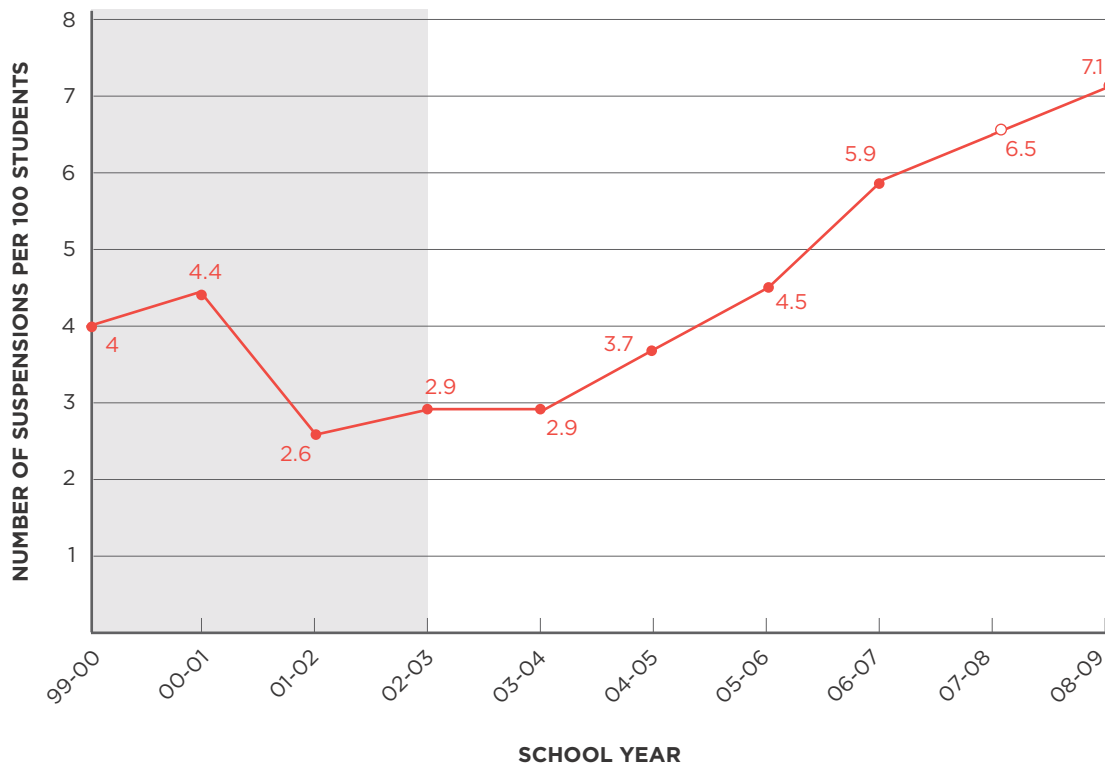
**Total Student Suspensions by Year, 1999-2009**



\*The shaded area represents years prior to mayoral control.

Note: Because of statistical irregularities in the FOIL data provided by the DOE, 2007-2008 data is not represented on this graph. We have instead used state reported data to illustrate the number of suspensions in New York City public schools. See footnote 2 for more information.

Source: DOE FOIL, student suspensions 1999-2000 through 2007-2008 and school and district suspensions 2008-2009; DOE “Official Audited October 31st Register (SFORM)”, 2000-2009.



\*The shaded area represents years prior to mayoral control.

Note: Because of statistical irregularities in the FOIL data provided by the DOE, we used state reported data for 2007-2008. See footnote 2 for more information.

In 2002, Chancellor Joel Klein announced the beginning of “Operation Safe Schools,” which flooded schools with 420 additional school safety officers—the first major increase since the 1998 compromise that put the NYPD in schools. In 2004, the DOE and NYPD launched the Impact Schools Initiative, which deploys additional police to certain schools.

In 2005, the DOE banned cell phones in schools, a controversial rule that led to the confiscation of thousands of phones at school metal detectors.<sup>lviii</sup> During this period (2002-2005), the number of suspensions steadily rose by an average of more than 8,000 suspensions per year.

The 2006-2007 school year was also the first full school year of the “roving” metal detector program, where dozens of police personnel descend unannounced on schools and set up temporary metal detector scanning (see sidebar).<sup>lx</sup>

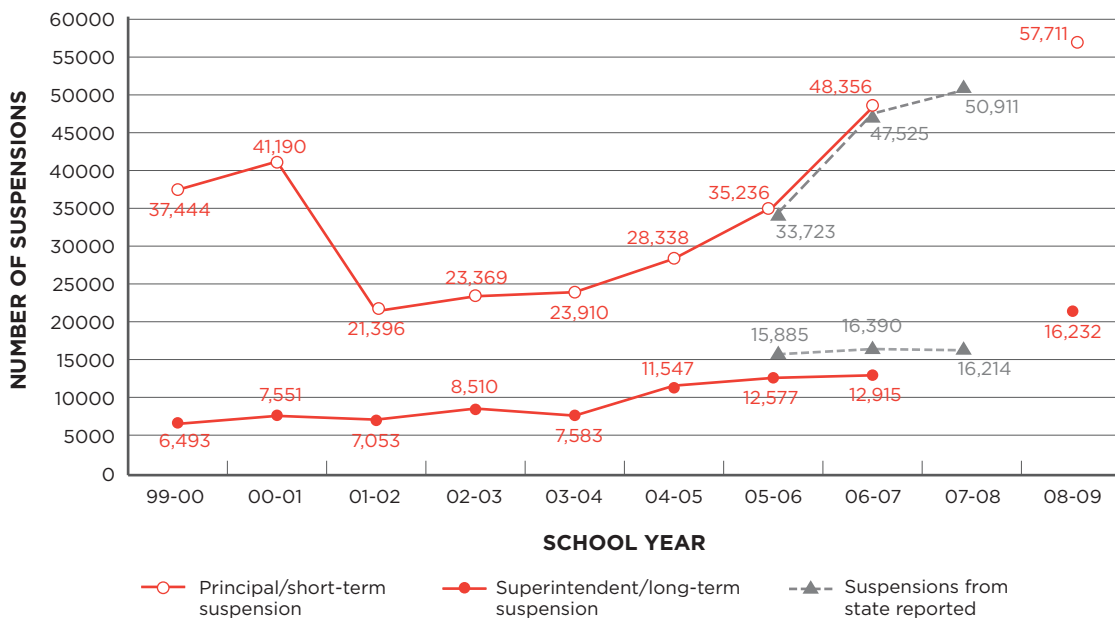


## ROVING METAL DETECTORS

The roving metal detector program, which began at the end of the 2005-2006 school year, attempts to reduce the number of weapons in schools by surprising students with the presence of metal detectors. Allegedly, all schools are equally likely to be visited by roving metal detectors. Their appearance, however, is often connected with a fight or other incident in the vicinity of a school. Police at the roving metal detectors have confiscated relatively few truly “dangerous instruments” but are responsible for hundreds of hours of missed class time while students wait in lines to be scanned.<sup>ixi</sup>

Principals report that absenteeism rises dramatically when roving metal detectors come to a school; this may be because long lines form at entrances and students choose to leave rather than wait in line. Roving metal detectors are a documented flashpoint of conflict between students and police, leading to confiscation of student property such as cell phones, calculators, snacks and school supplies, and avoidable suspensions and arrests of students.<sup>ixii</sup>

**Suspension Type by Year, 1999-2009**



Note: Because of statistical irregularities in the FOIL data provided by the DOE, 2007-2008 data is not represented on this graph. We have instead used state reported data to illustrate the number of suspensions in New York City public schools. See footnote 2 for more information.

Source: DOE FOIL, student suspensions 2000 through 2009; DOE Comprehensive Educational Plan report 2006 through 2008.



The 2008-2009 school year saw the most drastic increase in suspensions of any previous year. Students served nearly 74,000 suspensions—one for every 14 enrolled students. This is the largest total number of suspensions of any school year analyzed for this report.<sup>14</sup>

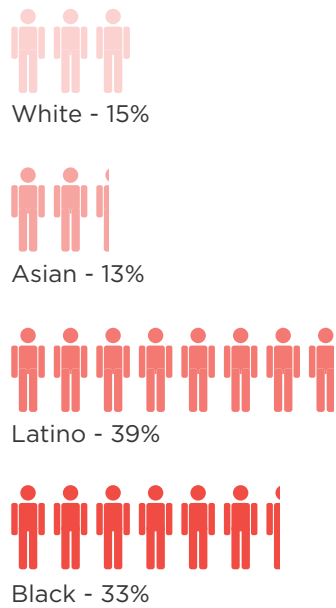
The number of long-term suspensions also hit a record high of 16,232, a 66 percent increase over 1999.<sup>15</sup> More than a third of those suspensions were between 30 days and one year in length—extraordinarily long exclusions by any measure—accounting for 100,000 school days. In most other jurisdictions, such students would have been considered expelled.<sup>16</sup>

Among the tens of thousands of students suspended in New York City since 1999, 23 percent, or approximately 88,000 students, served multiple suspensions during a single school year. Over 10 years, 62,000 students served more than three suspensions *during a single school year*. Of those students who served multiple suspensions in a year, more than 6 percent transferred to another school that same year.<sup>17</sup>

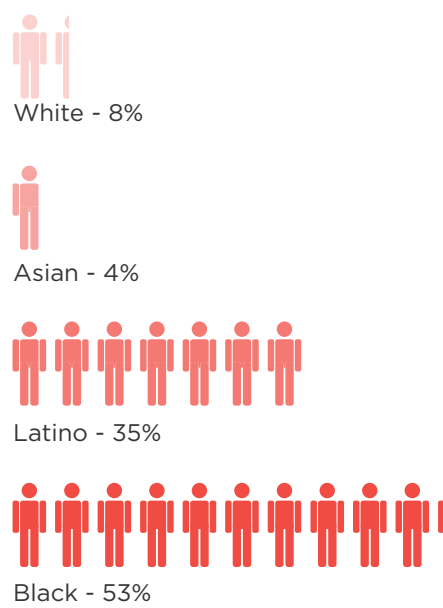
### BLACK STUDENTS ARE SUSPENDED AT DISPROPORTIONATE RATES

Although suspensions and expulsions negatively affect all children, black children bear a disproportionately heavy burden of exclusionary discipline practices. In New York City, black children are overrepresented in every facet of the suspension system, accounting for approximately 33 percent of the student population and 53 percent of suspensions over the last 10 school years.

**Average Student Enrollment by Ethnicity, 1999-2009**



**Average Student Suspensions by Ethnicity, 1999-2009**



<sup>14</sup> In the chart titled “Total Suspensions by Year,” the dotted line indicates data collected by the DOE and published on its website as part of the Comprehensive Educational Plan (CEP)—an annual assessment of schools required under state law. Data provided to the Student Safety Coalition through FOIL is unreliable for this school year, and has been supplemented with other public data. The authors have included CEP data for the years immediately preceding and following 2007-2008 to demonstrate the reliability of FOIL data for the other school years analyzed in this study. A graph including the FOIL response for 07-08 is reprinted as Appendix C.

<sup>15</sup> The 2007-2008 data provided by the DOE recorded 4,629 long-term suspensions; the Student Safety Coalition believes this data to be unreliable. See note 55.

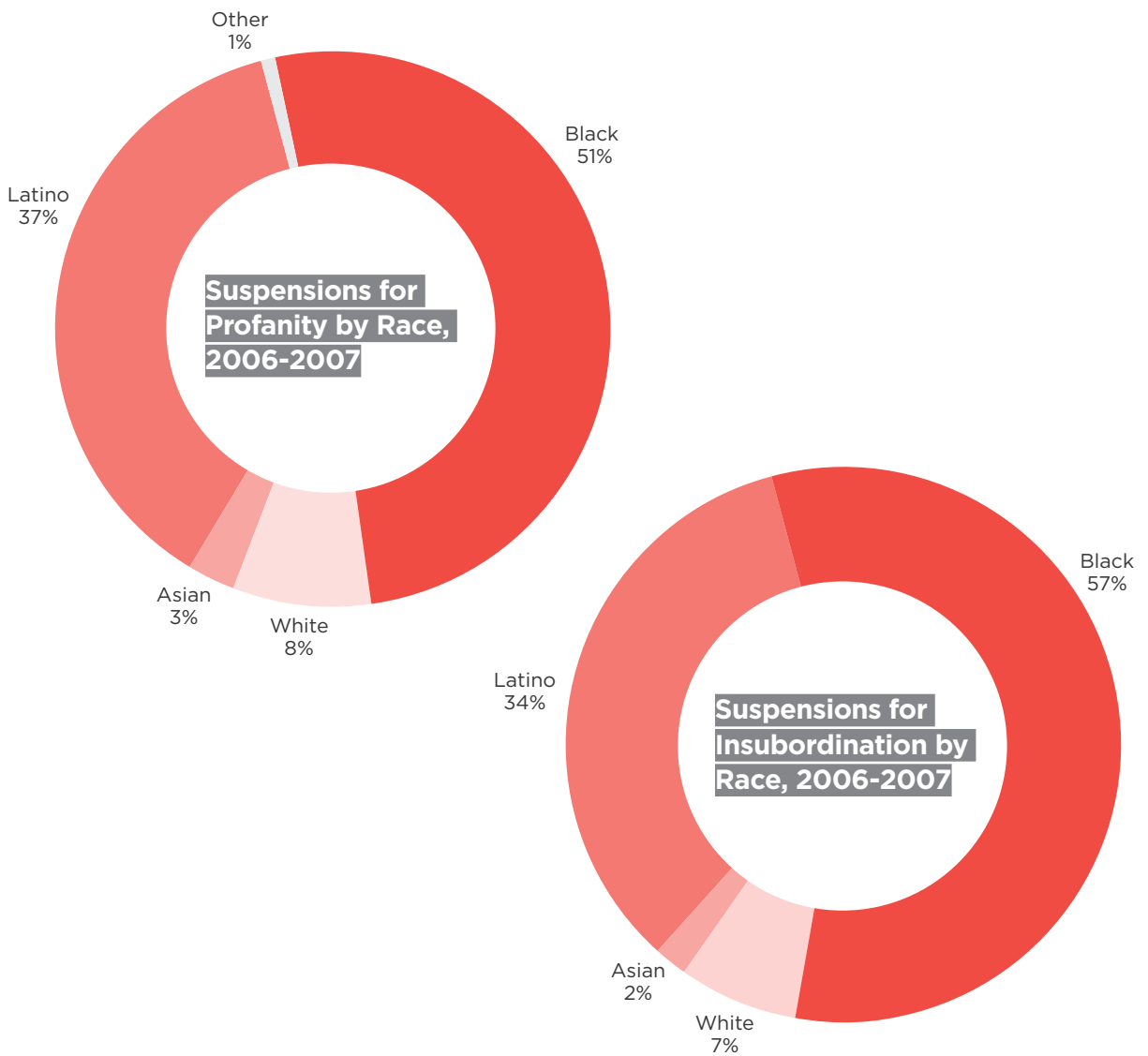
<sup>16</sup> Again, CEP data is provided as a comparison for the years 2005-2006 through 2007-2008 and is indicated by a dotted line.

<sup>17</sup> The data provided by the DOE did not allow longitudinal tracking of student outcomes. This analysis only captures students who transferred the same year they were suspended.

Black students represented the largest proportion of total suspensions and also the largest proportion of students with multiple suspensions of any race category. More than 56 percent of students who served six or more suspensions in a single school year were black, compared to 10 percent white and less than 2 percent Asian. Black students are also overrepresented in long-term suspensions, averaging 58 percent of long-term suspensions between 1999 and 2008.

Latino children in New York City are suspended at a rate closer to proportional: Latino students accounted for an average of 39 percent of the student population and 35 percent of suspensions since 1999. White and Asian students comprised 15 and 13 percent of the student population, and 8 and 4 percent of total suspensions, respectively.

The Southern Poverty Law Center has found that black and Latino children are more likely than their white peers to be disciplined for infractions that are based upon the subjective judgments of educators and school personnel, such as disrespect, loitering and excessive noise.<sup>lxiii</sup> New York City data seems to confirm this, with black students accounting for 55 percent of suspensions for subjective offenses, such as engaging in disruptive behavior, disrespectful behavior or using obscene gestures.<sup>lxiv</sup> In 2006-2007, the most recent school year for which accurate data on infraction type was provided, 51 percent of suspensions served for profanity were by black students, and just 8 percent were white students. That same year, 57 percent of students suspended for insubordination were black; 7 percent were white.



## STORIES OF SUSPENSION:



*Elijah was a well-behaved student in the eighth grade. One of only a few black students in a predominantly white school in Queens, he always had good grades and got along with most of his teachers.*

*One day, Elijah's friend brought a miniature souvenir baseball bat to school to play with. Elijah and a group of friends passed the foot-long bat around amongst themselves.*

*When a teacher found them, they were sent to the principal's office. The principal determined that the toy was a weapon and suspended Elijah, even though the bat did not belong to him.*

*None of Elijah's friends, all of whom were white, were suspended. His parents filed a complaint with the U.S. Department of Education Office for Civil Rights, which investigated the incident for evidence of discrimination.*

## STUDENTS WITH DISABILITIES ARE SUSPENDED AT DISPROPORTIONATE RATES

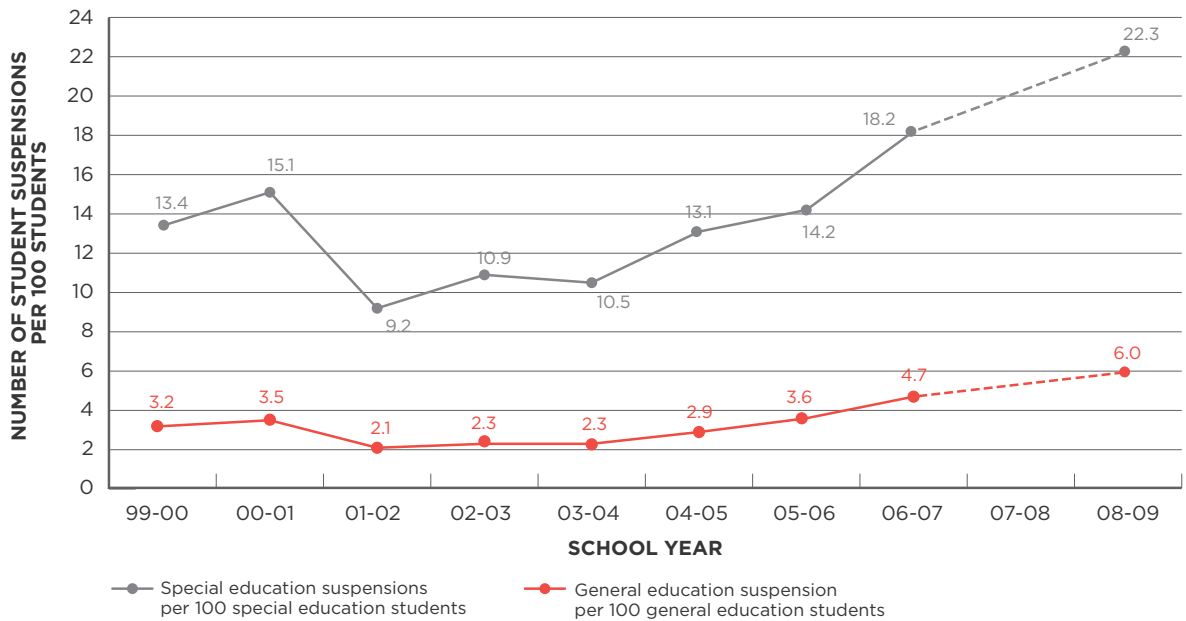
Over the past 10 years, students with disabilities have served almost 30 percent of all suspensions in New York City. In some years, for every general education student who served a suspension, approximately five of his special education peers were suspended. Among students with disabilities, those classified as having learning disabilities or emotional disabilities represent half of enrollment, but more than 80 percent of suspensions.<sup>18</sup>

Again, black students are suspended at higher rates than students of other races. Between 1999 and 2008, 36 percent of students with disabilities were black, but black students represented 53 percent of suspensions among students with disabilities. During the same period, black students with disabilities accounted for 13 percent of all black students, and more than a quarter of suspended black students.

Federal law recognizes that students with disabilities are likely to have more frequent behavior problems than children without disabilities.<sup>ixv</sup> In an effort to avoid the disproportionate and unfair exclusion of students based on behaviors related to their disabilities, the Individuals with Disabilities Education Act (IDEA)<sup>ixvi</sup> affords students with disabilities a number of protections when they are subjected to school discipline procedures. Despite these protections, students with disabilities are much more likely than their general education peers to receive a suspension, both in New York City and nationwide.<sup>ixvii</sup>

<sup>18</sup> Learning and emotionally disabled students represent about half of all students with disabilities. See Council of the Great City Schools, Improving Special Education in New York City's District 75, June 2008. Available at <http://www.arisecoalition.org/District75Report.pdf>. Last Accessed 6 Dec. 2010.

## General and Special Education Student Suspensions, 1999-2009



Note: Because of statistical irregularities in the FOIL data provided by the DOE, 2007-2008 data is not represented on this graph. See footnote 2 for more information.

Source: DOE FOIL, student suspensions 2000 through 2008; DOE "Official Audited October 31st Register (SFORM)," 2000-2009.

### STORIES OF SUSPENSION:



*By the middle of his first-grade year, 6-year-old Andre had been suspended four times. Early in the year, he was suspended from his neighborhood school for hitting another student and a teacher. Upon suspending him, the school realized that Andre had a diagnosed learning disability and should have been receiving special instruction that the school did not offer. He was transferred to a new school that offered the program.*

*On Andre's first day at the new school, he was suspended for five days, again for hitting. Within a few months, he had been suspended twice more, for 10 days each, for the same behavior. Twice, the DOE denied his mother's request for a manifestation determination review hearing (a federally-guaranteed hearing for disciplined special education students subject to more than 10 days suspension) and instead suggested she transfer Andre to another school, all before he even reached second grade.*

A 2004 study found that high suspension rates were associated with low scores on state accountability tests, even when controlling for demographic factors.<sup>lxviii</sup> In a later study, researchers found that a high suspension rate was second only to a high poverty rate as a predictor of low school-wide exam scores.

According to the study's authors, "The use of suspension and expulsion may or may not have a direct effect on school achievement, but [our] results argue that, regardless of a school's socio-demographic status or level, removing perceived troublemakers through suspension and expulsion does *not* contribute to improved learning, as measured by achievement indicators."<sup>lxix</sup> The researchers reached the same conclusion when they studied student scores on the National Assessment of Education Progress (NAEP) exam.<sup>lxx</sup>

Worse, there is a demonstrated correlation between being suspended and dropping out or failing to graduate on time.<sup>lxxi</sup> A study by the National Center for Education Statistics found that students who are suspended repeatedly are those most at risk of dropping out. In fact, it found that students who were suspended three or more times by the end of their sophomore year of high school were five times more likely to drop out or graduate late than students who had never been suspended.<sup>lxxii</sup> A student who is repeatedly suspended in the eighth, ninth and 10<sup>th</sup> grades (about 60 percent of all suspensions in New York City occur during these years) is likely to be so far behind by the time he turns 17 that dropping out may seem like his only option.

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### STORIES OF SUSPENSION:



*Ernesto attended Catholic school for most of his life, but when he turned 16, he enrolled in a public high school in Staten Island. At the time of his transfer, Ernesto had a high-B average and no disciplinary history.*

*Almost immediately, Ernesto began to struggle, suffering from severe bullying by his classmates and harassment from a school safety officer who followed him around the school, called him a criminal and constantly hounded him for the slightest misbehavior. Ernesto asked to meet with a guidance counselor to try to solve some of his problems, but he was never granted an appointment. Instead, he took on a "tough" persona to try to protect himself. He avoided classes he had with the bullies, and even avoided certain areas of the school where the school safety officer was stationed.*

*Over the next two school years, Ernesto was suspended more than 20 times for minor offenses like smoking cigarettes, tardiness and cutting class. During his senior year, he was arrested for writing on a wall with a piece of chalk and given a superintendent's suspension. In the middle of his senior year, humiliated by the prospect of not graduating on time, Ernesto dropped out of school.*

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According to the data, the majority of New York City suspensions occur when a student is in the fifth through 10<sup>th</sup> grade. These are crucial years when students' academic futures are mapped out, and when an extended absence from school can spell disaster. Almost a quarter of suspensions were served by students in the eighth grade—the year that students apply to high schools and are at risk of not being promoted based on state academic exams.<sup>lxiii</sup>

With so much at stake during the eighth-grade year, even a short-term suspension can have consequences that lead to students falling behind, being held back and dropping out of school. Again, black students are overrepresented, accounting for 45 percent of suspended eighth graders (and 31 percent of eighth-grade enrollment) since 1999.

## SUB-PAR EDUCATION AT SUSPENSION SITES

Between 1999 and 2008, New York City students spent more than 16 million hours serving suspensions. Many of those school hours were spent at alternative schools or suspension sites, special schools for children serving long-term suspensions.<sup>19</sup>

### STORIES OF SUSPENSION:



*Paolo was a happy, successful sophomore at a Brooklyn high school when he was suspended for allegedly fighting with a school safety officer. Before his suspension, he was doing well in most of his classes, had a B average and was on track to graduate on time. He was popular with his classmates, teachers and principal.*

*Paolo was sent to an alternative school for three weeks to serve his suspension. His teachers sent his work to the suspension site, where he completed it and turned it in to site personnel. His experience at the suspension site was not necessarily negative, as he was able to receive and complete his regular schoolwork on time.*

*But when Paolo returned to school, he was told he was failing all his classes and could no longer graduate on time. The suspension personnel did not send Paolo's completed work to his regular school, so his teachers never received it. He was given zeroes for all assignments. It took two attorneys about a month to get the suspension site to finally submit his work.*

<sup>19</sup> Based on a six-hour school day; detailed data on the number of days of suspensions served in 2008-2009 was not provided by the DOE.

Occasionally, a suspended student will experience improved academic outcomes while attending a suspension site—due in part to lower student-teacher ratios or removal from powerfully negative school environments. But for every story of a student succeeding while suspended, there are more stories recounting the lack of sufficient educational services at suspension sites. Students report not receiving any assignments, receiving work that is inappropriate for their grade level, or being told to complete “busy work” assignments while suspended. Parents refuse to send their children to suspension sites in unfamiliar neighborhoods and the DOE does not always offer transportation options to suspension sites. These examples amount to denials of students’ rights to an education.

## STORIES OF SUSPENSION:



*Aliah was a high-achieving eighth grader in Brooklyn when her principal suspended her for turning in an essay in English class that the principal deemed “offensive.” After the principal told Aliah she was suspended, no further action was taken. No one from the school called Aliah’s mother to notify her of the suspension, or explain where Aliah was supposed to attend classes while she was excluded from her school. The family never received any written notice of the disciplinary proceedings.*

*When Aliah told her mother that she had been suspended, her mother called the school to find out what was going on. An administrator told her that the suspension site Aliah was assigned to was in a “bad neighborhood” and suggested that the mother keep her at home for the duration of the suspension. Aliah’s mother took the administrator’s advice, afraid to send her teenage daughter to an unfamiliar neighborhood. As a result, Aliah received no instruction while she was suspended.<sup>20</sup>*

Equally frustrating, students all too often do not receive credit for the work they complete while suspended, which can cause irreparable gaps in their education. While our data does not allow a quantitative analysis of this phenomenon, anecdotal evidence suggests that it happens with some regularity, simply due to logistical issues in sending the work back to the student’s home school. The disadvantages of temporarily assigning students to suspension sites are demonstrated in other aspects of the students’ experience. For instance, teachers do not have enough time to form relationships with students or to understand their specific needs.

A related problem concerns special education services at suspension sites. Although federal law prescribes that special education students are entitled to a free appropriate public education even while suspended, students with disabilities must only be provided with alternate instruction to the same extent as students in general education for the first 10 days of suspension or removal. Only beginning with the third week of a suspension must the student be provided with an educational program that

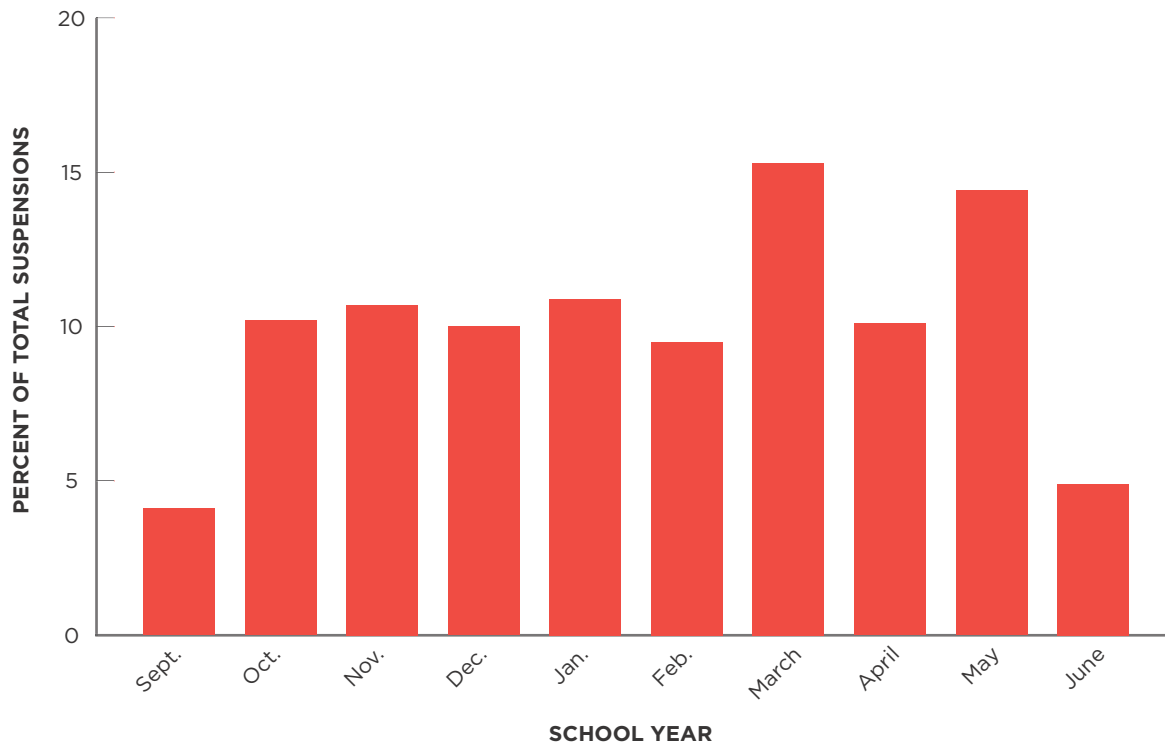
<sup>20</sup> Two persistent problems for both general and special education students assigned to suspension sites are location and transportation. Although assignments are made based on the student’s home school district, the suspension site is frequently further from home than the regular school. Typically, a parent’s request for a transfer to a different site will not be granted unless the student’s commute by public transportation exceeds 90 minutes. Students entitled to busing may have to wait weeks before the new plan is in place. Even public transportation is a struggle: Home schools often deny that they are responsible for providing Metrocards for suspended students, or they require that suspended students come back to the home school every day in order to pick up a new Metrocard.

permits appropriate advancement toward the goals set forth in the student's special education plan (known as an IEP). Fortunately, some suspension sites develop appropriate suspension plans on each student's first day. However, a rule that allows a student to go without appropriate services for 10 school days can have a serious effect on his progress.<sup>21</sup>

## SUSPENSIONS INCREASE EVERY SPRING

Suspensions in New York City show a notable trend when overlaid with the school calendar, showing a significant spike in March and May every year since 1999. In fact, 30 percent of total suspensions for a given school year are assigned in those two months.

### Average Student Suspensions by Month, 1999-2008



Source: DOE FOIL, student suspensions 2000 through 2008.

While the FOIL data does not allow us to speculate as to the cause of the spike, the DOE should take note of this pattern and address it proactively. Hundreds of hours of classroom time could be preserved if the DOE simply adjusted its response to discipline during these two months. Lowering suspension rates in these two months to numbers comparable to the rest of the school year could eliminate 7,000 suspensions each year.

With this knowledge, schools should bolster access to preventative measures during the spring semester to reduce the need for exclusionary discipline. Because exams are often administered in the spring, many thousands of students may experience serious academic hardships by being suspended during these months.

<sup>21</sup> The provision of mandated services for IEP students at suspension sites also varies considerably. Some students are denied services that are crucial to their academic and behavioral functioning; for example, the assistance of a one-on-one crisis management paraprofessional. On the other hand, many special education students experience greater success at suspension sites than at their home schools. They may benefit from more individual attention at the suspension site. Also, administrators at some suspension sites make specific efforts to strengthen deficient IEPs that may have been overlooked at the student's home school.

## A TALE OF TWO DISTRICTS?

Students attending school in District 7, located in the South Bronx, are more likely to be suspended than their peers in any other district in the city. District 7 is the smallest district in the Bronx. Thirty percent of its approximately 19,000 students are black, 72 percent are Latino, and 1 percent is white. In 2008-2009, 42 percent of long-term suspensions and 44 percent of short-term suspensions in this district were served by black students.

One of the lowest overall suspension rates is in Brooklyn's District 20, located in the neighborhoods of Bay Ridge, Dyker Heights and Borough Park. This district of more than 37,000 students has an enrollment of less than 5 percent black, 28 percent Latino, and 31 percent white students. In 2008-2009, 20 percent of long-term suspensions and 12 percent of short-term suspensions in District 20 were served by black students.

In both districts, the most common infraction leading to a suspension was fighting.

## IV. CONCLUSION AND RECOMMENDATIONS

During the 2009-2010 school year, representatives from the DOE's Office of School and Youth Development met with advocates to hear recommendations to reduce suspensions by making changes to the 2010-2011 Discipline Code. Several of the recommendations made by the advocates are repeated here, and some may already be under consideration by the DOE. This collaborative interaction is a first and promising step in stemming the flow of the School to Prison Pipeline. The DOE should continue engaging advocates, as well as invite parents and students to take on a greater role in shaping school discipline policies.

Based on our yearlong study of suspensions and the Discipline Code, we have the following six recommendations for the DOE, and state and city lawmakers.

### 1) END THE USE OF ZERO TOLERANCE DISCIPLINE

One of the most significant ways to reduce the overuse of exclusionary discipline is to end the policy and practice of zero tolerance in New York City schools. Due to the zero tolerance mandates in the Discipline Code, principals hand down suspensions as their first and only option for addressing certain types of behavior. The DOE must ensure that suspensions are used only when truly necessary, and that disciplinary responses complement rather than detract from a school's pedagogical goals.

Other urban school districts use discipline codes that are far less severe than New York City's. The Baltimore City School District, for instance, worked with the Open Society Institute of Baltimore and the Advancement Project to develop a code that focuses on prevention and intervention over suspension.

<sup>lxxiv</sup> Seattle Public Schools uses a code that reserves suspension for multiple infractions and/or behaviors it has termed "exceptional misconduct." Low-level, first-time misbehavior never results in suspension.

The DOE should amend the Discipline Code and other discipline-related policies to ensure that suspensions are used as a last resort. The menu of interventions in the code should be presented as steps to be taken *before* and *instead of* exclusionary punishments, instead of options available alongside exclusion. Principals and educators should be trained on the effectiveness of positive interventions in making their schools safer and less chaotic.

The DOE should also amend the code to ensure that student misbehavior doesn't lead unnecessarily to lengthy exclusions that can result in students dropping out. In the 2010-2011 Discipline Code, the DOE reduced the total number of zero tolerance infractions for the first time in five years.<sup>22</sup> This is a significant improvement. However, the number of infractions that must result in a suspension is still 200 percent larger than it was at the beginning of the decade. The DOE must continue to reduce the use of suspensions for infractions.

While the DOE should take immediate steps to reduce reliance on suspensions, state lawmakers must also revisit provisions contained in the SAVE Act that take discretion away from educators and force suspensions on students. State lawmakers should amend state law that unnecessarily ties the hands of local educational agencies to make determinations on how best to address misbehaving students.

## 2) MANDATE POSITIVE ALTERNATIVES TO SUSPENSION WHEN APPROPRIATE

In the Los Angeles Unified School District (LAUSD), the second-largest school district in the country, a commitment to positive behavior interventions and supports reduced the number of suspensions by 15 percent in its first year. In New York City, a 15 percent drop would translate to 11,000 fewer suspensions a year. LAUSD's program is credited with increasing attendance rates in schools and saving the district about \$2 million in administrative costs associated with suspending students.<sup>lxxv</sup>

The DOE should follow LAUSD's lead and ensure that all 1,600 public schools in New York City implement effective positive discipline, including restorative justice and positive behavior interventions and supports. Meaningful support from the DOE and a menu of positive strategies will allow principals to design interventions and supports to suit their school's culture. In order to have an effect on suspension rates and entrenched notions of zero tolerance discipline, support from the DOE must include:

- Collaboration with the NYPD to ensure that school safety responses and operations do not work against positive discipline efforts and disturb the educational environment. The DOE and the NYPD must approach their relationship as a partnership to make schools better places—not a way to pass the buck on accountability. Just as both agencies are responsible for keeping students safe, both should be held responsible for ensuring students' success. The collaboration should also make clear that police personnel are responsible for responding to serious misconduct in the schools, and not to minor offenses.
- Improved access to guidance counselors, social workers and/or school psychologists. The New York City School District employs 5,200 police personnel but only 3,152 guidance counselors.<sup>lxxvi</sup> To establish an effective culture of positive discipline, the DOE must invest in students' psychological and emotional well-being as well as their physical safety. With improved access to counseling, valuable interventions can take place *before and after* a student breaks a rule.
- Mandated training for administrators, teachers, parent coordinators and school safety officers in restorative justice, positive behavior interventions and supports, conflict resolution and other positive discipline strategies. Positive discipline should be accompanied by a shift in the culture of a school—from one of punitive discipline and mistrust to one of student supports, trust and empathy. It cannot be isolated to one class or afterschool club or be available only when school safety officers are not involved in an incident.

## 3) PROTECT STUDENTS' CONSTITUTIONAL RIGHTS IN SUSPENSION HEARINGS

Most students are not aware of their constitutional and statutory rights when facing a suspension. This results in significant violations of students' due process rights manifested in one-sided suspension

<sup>22</sup> For students in sixth through 12<sup>th</sup> grades.



hearings, unnecessary “no contest” pleas, missed opportunities for students to defend themselves, and irregularities in the hearing process such as a dean acting as both advocate and witness for the school. Schools often fail to send adequate notice to parents, to provide witness lists and evidence to the family and counsel, and sometimes even to indicate what behavior is being alleged. Typos, poor copy quality and illegible handwriting render far too many suspension notices unreadable and useless. Worse, suspension hearing officers are largely uninterested in enforcing students’ due process rights—even in the few cases where students have advocates who raise these issues.

In order to protect students’ rights, the DOE must take steps to ensure that administrators are fully aware of and respect the procedural requirements for suspending a student, including timely and adequate notice and students’ rights regarding written statements. It must emphasize in the Discipline Code and other discipline-related documents and policies that students’ rights are to be scrupulously honored and protected at all stages of the discipline process. Finally, the DOE must ensure that suspension hearing officers are fully aware of and recognize the importance of student rights in suspension hearings. Personnel who handle discipline matters should be given training and materials on the School to Prison Pipeline and research showing the negative effects suspensions can have on a student. Inadequate notice and severe due process violations in the hearing process must result in immediate reinstatement for students.

Finally, to reduce the number of students who waive their hearing due to a parent’s inability to attend, suspension hearing offices should hold some hearings in the evenings and/or on weekends in addition to regular business hours. This will help accommodate the schedules of working parents, while still allowing students with traditional representation (such as attorneys or law guardians) the full benefits of a timely hearing.

#### **4) INCREASE TRANSPARENCY AROUND DISCIPLINE AND SAFETY PRACTICES**

A major stumbling block to addressing the problems caused by zero tolerance discipline in New York City is the lack of public access to meaningful data about the use of suspensions, classroom removals and police-student interactions. The data for this report was gathered over a two-year period, through two Freedom of Information requests and several appeals filed by a team of attorneys. The information was processed and analyzed by statisticians, academics and education advocates for more than a year. Parents, students and interested members of the public likely do not have the resources necessary to request and analyze this kind of information from the DOE.

Further, even the attorneys and advocates in the Student Safety Coalition and its allies are unable to obtain several pieces of key data about school safety and discipline. For example, no data is available about classroom removals authorized by the SAVE Act. The DOE has informed the coalition that classroom removals are not tracked in a centralized way to produce reliable data. Although there is evidence that some teachers and principals use DOE electronic reporting systems to record classroom removals, the DOE maintains that this is not common practice.

The second piece of missing information is data about how immigrant students fare in the zero tolerance landscape. An incomplete but helpful picture of discipline among this group of students could be gleaned from analyzing suspension data for those registered as English Language Learners (ELL). Again, this information is not currently tracked by the DOE in a way that allows it to be cross-referenced with discipline records.

Finally, and most troublingly, most of the coalition’s requests to the NYPD for information on school safety, student arrests and other student-police interactions have been ignored or denied. The number of searches and/or seizures of student property, court summons, and the frequency of the use of restraints against students are not tracked by the DOE and are not disclosed by the NYPD.

At the end of 2010, the New York City Council passed the Student Safety Act, one of the most progressive school safety transparency laws in the nation.<sup>23</sup> The act, signed into law by Mayor Bloomberg in early 2011, provides a detailed framework for reporting of discipline and police practices in schools on a recurring basis. This data will help lawmakers and advocates form a meaningful picture of exclusionary

discipline and safety practices in school and will ensure the problem doesn't go unnoticed by the public. Enacting this law was a huge step forward for bringing clarity to the school safety regime in New York City.

## **5) PROVIDE SUPPORT SERVICES FOR STUDENTS' EMOTIONAL AND PSYCHOLOGICAL NEEDS**

Schools should hire more guidance counselors, social workers and school aides who are trained in conflict resolution and restorative justice methods to handle disciplinary infractions. In addition, more schools should collaborate with medical, mental health and social service providers, as well as community based organizations to address students' non-academic developmental needs. Identifying and managing students' emotional and physical challenges early can prevent them from manifesting as behavioral challenges in the classroom. Finally, school safety officers should be trained to refer troubled students to support staff rather than subjecting them to criminal justice tactics.

Ultimately, however, the DOE must rely less on police personnel, and more on trained educators and counselors, to ensure students' success. In 2008-2009, there were 5,200 school safety officers versus only 3,152 guidance counselors and 1,400 social workers in the schools. By hiring fewer school safety officers, the DOE can prioritize more resources for positive behavior interventions and supports and restorative justice training, and offer non-academic support to students in need.

For additional information on how providing support services for students and reducing reliance on police personnel improve student achievement and graduation rates, see "Safety with Dignity: Alternatives to the Over-Policing of Schools," published in 2009 by the NYCLU, the Annenberg Institute for School Reform at Brown University and Make the Road New York.

## **6) ENCOURAGE MEANINGFUL PUBLIC INPUT IN THE DISCIPLINE PROCESS**

Finally, the DOE must begin taking into serious consideration the input it receives from parents and students during the Discipline Code revision process. Growing public participation in annual hearings regarding changes to the code indicates that the community is intensely concerned about student discipline. Unfortunately, there is no evidence that the DOE seriously considers the comments it receives at the hearing or in written testimony. This testimony is a rich source of information from principals, parents, students and direct services providers that is going unused.

One way the DOE could acknowledge the validity of public comments on the Discipline Code would be by publishing responses to those comments before issuing the code. State and federal law require executive agencies to publish just such an "assessment" of public comments on proposed rules and regulations.<sup>lxxvii</sup> In the assessment, agency personnel address public comments and explain why they were or were not taken into consideration for the final regulations.

Publishing an assessment of comments would allow the DOE to engage parents, students and advocates in a more complete conversation about the revision process, and provide fair and reasonable justifications for Discipline Code changes that have serious effects on students' lives. Through assessments, the DOE could demonstrate that its revisions are supported by data, rather than school discipline trends or unrealistic fears.

Another avenue for increasing public participation would be to ensure that parents, students and involved community members have a voice on school safety planning committees, or at least a regular opportunity to meet with administrators and school safety officials to discuss their concerns. Involving students, in particular, in the creation and modification of school rules increases their investment in the success and safety of their school, and can have a positive impact on school climate.<sup>lxxviii</sup>

**Expulsion:** In most states, exclusion from school for more than 10 days is considered an expulsion.<sup>xxxx</sup> Because New York's constitution guarantees the right to an education, students cannot be legally expelled from school until they have reached maximum compulsory attendance age (17 in New York City). The vast majority of exclusionary discipline in New York City is served by children ages seven to 14, who are legally ineligible for expulsion. Therefore, legal expulsions are rare.

Students who are suspended for extended periods attend alternative learning centers, sometimes called suspension sites. Because they are still attending school, they can be excluded from their regular classes for up to one entire school year without being considered "expelled."

**Short-term suspension (less than five days):** These suspensions may be authorized by the principal for a maximum of five days.<sup>24</sup> The student may serve the suspension at the school or may be assigned to an alternative education site. There is no formal hearing to determine the child's guilt or innocence, but the student and parent may attend an informal suspension conference at the school to discuss the justification for the suspension. Students do have the right to appeal a principal's suspension. With far less administrative burden than long-term suspensions, short-term suspensions account for the majority of exclusionary discipline in New York City. Most are in-school suspensions.

**Long-term suspension (six days to one year):** These suspensions, from six days up to one year, are known as "superintendent's" suspensions because only the superintendent can assign them, based on the recommendation of the school and the evidence presented at the hearing. Students attend alternative education sites while suspended.

**Suspension hearing:** Suspension hearings are formal administrative proceedings, presided over by attorneys who act as judge and jury. The hearing officers are employees of the DOE. Students can be represented by an attorney, advocate or a family member if they choose, though the majority of students—unaware of this option and/or unable to afford assistance—do not have professional representation (some students are represented by a parent). Students who do not attend their suspension hearing are tried in absentia. By not presenting any evidence, students who do not attend their hearings can destroy their prospects for appealing the decision.

At the hearing, the burden is on the school to prove the charges against the student by "substantial and competent evidence"—a standard significantly lower than that used by any criminal or civil courts in New York.<sup>xxxx</sup> Students have the right to remain silent during the hearing and to cross examine the school's witnesses.

**Classroom removal:** In the year 2000, New York State passed the Safe Schools Against Violence in Education (SAVE) Act.<sup>xxxxi</sup> The legislation created "classroom removals," an exclusionary punishment that gives teachers the authority to remove a student from class for being substantially disruptive or for substantially interfering with the education of others in the class. Classroom removals can range in length from one class period to five days.<sup>xxxxii</sup>

Generally, students report to what is known as a SAVE room until cleared to return to class by the principal. Classroom removals are functionally the same as in-school suspensions, and in some jurisdictions they are subject to the same procedures as suspension. Students with disabilities are subject to classroom removals along with general education students.<sup>xxxxiii</sup>

**The Discipline Code:** Generally, a suspension is among several permissible responses to misbehavior as outlined in the Citywide Standards of Discipline and Interventions, also known as the Discipline Code, including a series of optional guidance interventions and supports.

The Discipline Code applies to behavior that occurs "in school... while on school property, while traveling on vehicles funded by the Department of Education, at all school-sponsored events" and even off school property, when the behavior negatively affects the educational process or endangers "the health, safety, morals, or welfare of the school community."<sup>25</sup>

There is a range of disciplinary responses available to teachers and administrators for each infraction in the code. The chart below is an excerpt from the 2007-2008 Discipline Code demonstrating the range of punishments for a high school student who commits a "Level 3" infraction (out of five levels).<sup>26</sup>

The disciplinary responses on the right side of the chart do not correspond with specific infractions on the left. For any infraction B20-B34 (only the first seven infractions at this level are reprinted here), any punishment, A through I, can be imposed (except where noted).

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<sup>24</sup> No outside authorization is needed for students in fourth through 12th grades. Suspensions of kindergarten through third-grade students must first be authorized by the regional superintendent, who must consider what other disciplinary, guidance and intervention measures the school has employed.

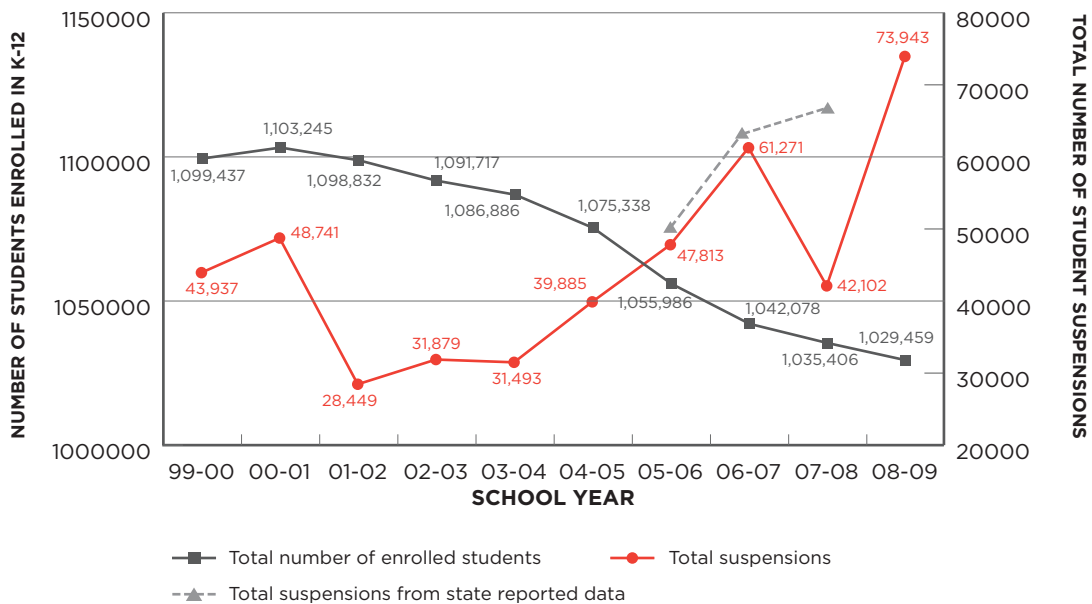
<sup>25</sup> The Student Safety Coalition believes this standard is excessively broad, permitting the DOE to reach into young people's private lives and punish them for acts that are unconnected to the schools' proper functioning. In addition, we believe this standard leads to serious infringements of students' First Amendment rights, especially with regard to electronic communications.

<sup>26</sup> Some text has been removed from the discipline code for purposes of this chart. For instance, there are in fact 15 categories of Level 3 misbehavior in the 2007-2008 code; only the first seven are reprinted here.

Infractions – Seriously Disruptive Behavior	Range of Possible Disciplinary Responses
B20 Leaving class or school premises without permission of supervising school personnel	A. Admonishment by pedagogical school staff
B21 Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety officers	B. Student/teacher conference
B22 Entering or attempting to enter a school building without authorization	C. Reprimand by appropriate supervisor (e.g., assistant principal, principal)
B23 Using slurs based upon race, ethnicity, color, national origin, religion, gender, gender identity, gender expression, sexual orientation, or disability (C-I only)	D. Parent conference
B24 Shoving, pushing, or engaging in other similar physical behavior (e.g., horseplay), or throwing an object (e.g., chalk) (C-I only)	E. In-school disciplinary action (e.g., detention, exclusion from extracurricular activities, recess or communal lunchtime)
B25 Bringing unauthorized visitors to school or allowing unauthorized visitors to enter school in violation of written school rules	F. Removal from classroom by teacher
B26 *Engaging in gang-related behavior (e.g., wearing gang apparel and/or accessories, writing graffiti, making gestures or signs) (D-I only)	G. Principal's suspension
	H. Superintendent's suspension that results in immediate reinstatement
	I. Superintendent's suspension that results in continued suspension for a fixed period

## APPENDIX B: FOIL DATA

**Total Student Suspensions by Year, 1999-2009**



Source: DOE FOIL, student suspensions 1999-2000 through 2007-2008 and school and district suspensions 2008-2009; DOE Comprehensive Educational Plan report 2006 through 2008.

# APPENDIX C: LIST OF SUBJECTIVE INFRACTIONS

Year	Grade	Code	Description
1998-1999 & 1999-2000	k-12	2	Behaving in a matter that disrupts the educative process (e.g. making excessive noise in a classroom, hall or school building)
	k-12	7	Wearing apparel that is unsafe or materially disruptive to the educative process
	k-12	13	Using profane or obscene language or gestures
	k-12	15(b)	Making inappropriate or offensive comments or engaging in inappropriate or unwanted physical contact
	k-12	16	Defying the lawful authority of school personnel, insubordination (e.g. repeated violations)
	k-12	18	Engaging in or causing disruptive behavior on the school bus
2001-2002	k-12	2	Behaving in a matter that disrupts the educative process (e.g. making excessive noise in a classroom)
	k-12	8	Wearing apparel that is unsafe or materially disruptive to the educative process
	k-12	14	Using profane or obscene language or gestures
	k-12	17(b)	Making inappropriate or offensive comments or engaging in inappropriate or unwanted physical contact
	k-12	18	Defying the lawful authority of school personnel, insubordination
	k-12	21	Engaging in or causing disruptive behavior on the school bus
	k-12	29	Engaging for the fourth time during the semester or the third time in a trimester in substantially disruptive behavior or behavior which substantially interferes with the teacher's authority over the classroom, which previously had resulted in three classroom removals during the semester or two classroom removals during the trimester
	k-12	31	Threatening, while on school property, to use any instrument that appears to be capable of causing injury or death
2002-2003	k-12	2	Behaving in a matter that disrupts the educative process (e.g. making excessive noise in a classroom)
	k-12	8	Wearing apparel that is unsafe or materially disruptive to the educative process
	k-12	14	Using profane or obscene language or gestures
	k-12	17(b)	Making inappropriate or offensive comments or engaging in inappropriate or unwanted physical contact
	k-12	18	Defying the lawful authority of school personnel, insubordination
	k-12	21	Engaging in or causing disruptive behavior on the school bus
	k-12	29	Engaging for the fourth time during the semester or the third time in a trimester in substantially disruptive behavior or behavior which substantially interferes with the teacher's authority over the classroom, which previously had resulted in three classroom removals during the semester or two classroom removals during the trimester
	k-12	31	Threatening, while on school property, to use any instrument that appears to be capable of causing injury or death
2003-2004	k-5	A05	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	k-5	A06	Engaging in verbally rude or disrespectful behavior
	k-5	A07	Wearing clothing or other items that are unsafe or disruptive to the educational process
	k-5	A12	Using profane, obscene, vulgar, lewd or abusive language or gestures
	k-5	A14	Misusing property belonging to others



	k-5	A15	Engaging in or causing disruptive behavior on the school bus
	k-3	A17	Engaging in inappropriate or unwanted physical contact
	k-5	A21	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	4-5	A27	Engaging in inappropriate or unwanted physical contact
	4-5	A31	Engaging in gang-related behavior (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	k-5	A35	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including intimidation through the use of epithets or slurs involving race, ethnicity, national origin, religion, religious practices, gender, sexual orientation or disability
	4-5	A38	Engaging in threatening, dangerous or violent behavior which is gang-related
	k-5	A40	Threatening, while on school property, to use any instrument that appears capable of causing physical injury
	6-12	B06	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	6-12	B07	Engaging in verbally rude or disrespectful behavior
	6-12	B14	Using profane, obscene, vulgar, lewd or abusive language or gestures
	6-12	B08	Wearing clothing or other items that are unsafe or disruptive to the educational process
	6-12	B16	Misusing property belonging to others
	6-12	B17	Engaging in or causing disruptive behavior on the school bus
	6-12	B20	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	6-12	B24	Engaging in gang-related behavior* (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	6-12	B36	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including intimidation through the use of epithets or slurs involving race, ethnicity, national origin, religion, religious practices, gender, sexual orientation or disability
	6-12	B40	Engaging in threatening, dangerous or violent behavior that is gang-related
	6-12	B42	Threatening, while on school property, to use any instrument that appears capable of causing physical injury
2004-2005	k-5	A06	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	k-5	A07	Engaging in verbally rude or disrespectful behavior
	k-5	A08	Wearing clothing or other items that are unsafe or disruptive to the educational process
	k-5	A13	Using profane, obscene, vulgar, lewd or abusive language or gestures
	k-5	A16	Engaging in or causing disruptive behavior on the school bus
	k-3	A18	Engaging in inappropriate or unwanted physical contact
	k-5	A22	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	4-5	A28	Engaging in inappropriate or unwanted physical contact
	4-5	A32	Engaging in gang-related behavior (e.g., wearing gang apparel, writing graffiti, making gestures or signs)

	k-5	A36	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including intimidation through the use of epithets or slurs involving race, ethnicity, national origin, religion, religious practices, gender, gender identity, sexual orientation or disability
	k-5	A39	Engaging in threatening, dangerous or violent behavior which is gang-related
	6-12	B07	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	6-12	B08	Engaging in verbally rude or disrespectful behavior
	6-12	B09	Wearing clothing or other items that are unsafe or disruptive to the educational process
	6-12	B15	Using profane, obscene, vulgar, lewd or abusive language or Gestures
	6-12	B17	Misusing property belonging to others
	6-12	B18	Engaging in or causing disruptive behavior on the school bus
	6-12	B21	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	6-12	B25	Engaging in gang-related behavior* (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	6-12	B38	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including intimidation through the use of epithets or slurs involving race, ethnicity, national origin, religion
	6-12	B40	Engaging in threatening, dangerous or violent behavior that is gang-related
	6-12	B42	Threatening, while on school property, to use any instrument that appears capable of causing physical injury
2005-2006	k-5	A06	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	k-5	A07	Engaging in verbally rude or disrespectful behavior
	k-5	A08	Wearing clothing, headgear*, or other items that are unsafe or disruptive to the educational process
	k-5	A13	Using profane, obscene, vulgar, lewd or abusive language or gestures
	k-5	A15	Misusing property belonging to others
	k-5	A16	Engaging in or causing disruptive behavior on the school bus
	k-3	A18	Engaging in inappropriate or unwanted physical contact
	k-5	A22	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	4-5	A28	Engaging in inappropriate or unwanted physical contact
	4-5	A32	Engaging in gang-related behavior (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	k-5	A36	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability
	4-5	A39	Engaging in threatening, dangerous or violent behavior which is gang-related
	6-12	B07	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	6-12	B08	Engaging in verbally rude or disrespectful behavior
	6-12	B09	Wearing clothing, headgear, or other items that are unsafe or disruptive to the educational process
	6-12	B15	Using profane, obscene, vulgar, lewd or abusive language or gestures

	6-12	B17	Misusing property belonging to others
	6-12	B18	Engaging in or causing disruptive behavior on the school bus
	6-12	B21	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	6-12	B26	Engaging in gang-related behavior* (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	6-12	B39	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability
	6-12	B41	Engaging in threatening, dangerous or violent behavior that is gang-related
	6-12	B43	Threatening, while on school property, to use any instrument that appears capable of causing physical injury
2006-2007	k-5	A06	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	k-5	A07	Engaging in verbally rude or disrespectful behavior
	k-5	A08	Wearing clothing, headgear, or other items that are unsafe or disruptive to the educational process
	k-5	A13	Using profane, obscene, vulgar, lewd or abusive language or gestures
	k-5	A15	Misusing property belonging to others
	k-5	A16	Engaging in or causing disruptive behavior on the school bus
	k-3	A18	Engaging in inappropriate or unwanted physical contact
	k-5	A22	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	4-5	A28	Engaging in inappropriate or unwanted physical contact
	4-5	A29	Engaging in gang-related behavior (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	k-5	A37	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability
	k-5	A53	Engaging in threatening, dangerous or violent behavior that is gang-related
	6-12	B07	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	6-12	B08	Engaging in verbally rude or disrespectful behavior
	6-12	B09	Wearing clothing, headgear, or other items that are unsafe or disruptive to the educational process
	6-12	B15	Using profane, obscene, vulgar, lewd or abusive language or gestures
	6-12	B17	Misusing property belonging to others
	6-12	B18	Engaging in or causing disruptive behavior on the school bus
	6-12	B21	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	6-12	B26	Engaging in gang-related behavior* (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	6-12	B40	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability

	6-12	B44	Creating a substantial risk of serious injury by recklessly engaging in behavior, and/or using an object that appears capable of causing physical injury (e.g., lighter, belt buckle, or umbrella)
	6-12	B55	Engaging in threatening, dangerous or violent behavior that is gang-related
2007-2008	k-5	A06	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	k-5	A07	Engaging in verbally rude or disrespectful behavior
	k-5	A08	Wearing clothing, headgear, or other items that are unsafe or disruptive to the educational process
	k-5	A13	Using profane, obscene, vulgar, lewd or abusive language or gestures
	k-5	A15	Misusing property belonging to others
	k-5	A16	Engaging in or causing disruptive behavior on the school bus
	k-3	A18	Engaging in inappropriate or unwanted physical contact
	k-5	A22	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	4-5	A28	Engaging in inappropriate or unwanted physical contact
	4-5	A29	Engaging in gang-related behavior (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	k-5	A37	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability
	4-5	A43	Creating a substantial risk of serious injury by recklessly engaging in behavior, and/or using an object that appears capable of causing physical injury (e.g., lighter, belt buckle, or umbrella)
	k-5	A54	Engaging in threatening, dangerous or violent behavior that is gang-related
	6-12	B07	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	6-12	B08	Engaging in verbally rude or disrespectful behavior
	6-12	B09	Wearing clothing, headgear, or other items that are unsafe or disruptive to the educational process
	6-12	B15	Using profane, obscene, vulgar, lewd or abusive language or gestures
	6-12	B17	Misusing property belonging to others
	6-12	B18	Engaging in or causing disruptive behavior on the school bus
	6-12	B21	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	6-12	B26	Engaging in gang-related behavior* (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	6-12	B40	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability
	6-12	B45	Creating a substantial risk of serious injury by recklessly engaging in behavior, and/or using an object that appears capable of causing physical injury (e.g., lighter, belt buckle, or umbrella)
	6-12	B56	Engaging in threatening, dangerous or violent behavior that is gang-related
2008-2009	k-5	A06	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	k-5	A07	Engaging in verbally rude or disrespectful behavior
	k-5	A08	Wearing clothing, headgear, or other items that are unsafe or disruptive to the educational process

	k-5	A13	Using profane, obscene, vulgar, lewd or abusive language or gestures
	k-5	A15	Misusing property belonging to others
	k-5	A16	Engaging in or causing disruptive behavior on the school bus
	k-3	A18	Engaging in inappropriate or unwanted physical contact or touching someone in a private part of body.
	k-5	A22	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	4-5	A28	Engaging in inappropriate or unwanted physical contact or touching someone in a private part of body.
	4-5	A29	Engaging in gang-related behavior (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	k-5	A37	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability
	4-5 only	A43	Creating a substantial risk of serious injury by recklessly engaging in behavior, and/or using an object that appears capable of causing physical injury (e.g., lighter, belt buckle, or umbrella)
	k-5	A54	Engaging in threatening, dangerous or violent behavior that is gang-related
	6-12	B07	Behaving in a manner which disrupts the educational process (e.g., making excessive noise in a classroom, library or hallway)
	6-12	B08	Engaging in verbally rude or disrespectful behavior
	6-12	B09	Wearing clothing, headgear, or other items that are unsafe or disruptive to the educational process
	6-12	B15	Using profane, obscene, vulgar, lewd or abusive language or gestures
	6-12	B17	Misusing property belonging to others
	6-12	B18	Engaging in or causing disruptive behavior on the school bus
	6-12	B21	Being insubordinate; defying or disobeying the lawful authority of school personnel or school safety agents
	6-12	B26	Engaging in gang-related behavior* (e.g., wearing gang apparel, writing graffiti, making gestures or signs)
	6-12	B40	Engaging in intimidating and bullying behavior—threatening, stalking or seeking to coerce or compel a student or staff member to do something; engaging in verbal or physical conduct that threatens another with harm, including taunting and/or intimidation through the use of epithets or slurs involving race, ethnicity, color, national origin, religion, religious practices, gender, gender identity, gender expression, sexual orientation or disability
	6-12	B45	Creating a substantial risk of serious injury by recklessly engaging in behavior, and/or using an object that appears capable of causing physical injury (e.g., lighter, belt buckle, or umbrella)
	6-12	B56	Engaging in threatening, dangerous or violent behavior that is gang-related

## ENDNOTES

- i. N.Y. Const. Art. XI, §1.
- ii. Universal Declaration of Human Rights, Art. 26 (1948); *Brown v. Board of Education*, 347 U.S. 483 (1954) (also stating “Today, education is perhaps the most important function of state and local governments...it is the very foundation of good citizenship.”)
- iii. See Department of Education, *Citywide Standards of Discipline and Interventions*, Grades 6-12, 2008-2009.
- iv. Ben Chapman, “School Safety Officers treated Brooklyn 9-year-old ‘like a criminal’ by handcuffing him, mom says”, *New York Daily News*, 12 May 2010. Available at [http://www.nydailynews.com/ny\\_local/brooklyn/2010/05/12/2010-05-12\\_school\\_safety\\_officers\\_treated\\_brooklyn\\_9yearold\\_like\\_a\\_criminal\\_by\\_handcuffing\\_.html](http://www.nydailynews.com/ny_local/brooklyn/2010/05/12/2010-05-12_school_safety_officers_treated_brooklyn_9yearold_like_a_criminal_by_handcuffing_.html), Last accessed Nov. 19, 2010; Leigh Remizowski, Clare Trapasso and Alison Gendar, “Cops Called as Annual Senior Prank at Richmond Hill High School Goes Wrong,” *New York*

- Daily News*, 12 June 2010. Available at [http://www.nydailynews.com/ny\\_local/queens/2009/06/13/2009-06-13\\_a\\_notsoegg-sellent\\_annual\\_food\\_fight\\_goes\\_too\\_far\\_cops\\_are\\_called\\_richmo.html](http://www.nydailynews.com/ny_local/queens/2009/06/13/2009-06-13_a_notsoegg-sellent_annual_food_fight_goes_too_far_cops_are_called_richmo.html), Last accessed July 28, 2010; Rachel Monahan, "Queens girl Alexa Gonzalez hauled out of school in handcuffs after getting caught doodling on desk," *New York Daily News*, 4 Feb. 2010. Available at [http://www.nydailynews.com/ny\\_local/education/2010/02/05/2010-02-05\\_cuffed\\_for\\_doodling\\_on\\_a\\_desk.html](http://www.nydailynews.com/ny_local/education/2010/02/05/2010-02-05_cuffed_for_doodling_on_a_desk.html), Last accessed July 28, 2010; Carrie Melago, "More than 300 students arrested illegally at schools by NYPD over 2 year period," *New York Daily News*, 8 Oct. 2008, Available at [http://www.nydailynews.com/ny\\_local/education/2008/10/08/2008-10-08\\_more\\_than\\_300\\_students\\_arrested\\_illegall.html](http://www.nydailynews.com/ny_local/education/2008/10/08/2008-10-08_more_than_300_students_arrested_illegall.html), Last accessed July 28, 2010; Carrie Melago, "Parents of 5-year-old handcuffed in school will sue City for \$15M," *New York Daily News*, 21 Feb. 2008. Available at [http://www.nydailynews.com/news/2008/02/21/2008-02-21\\_parents\\_of\\_5yearold\\_handcuffed\\_in\\_school.html](http://www.nydailynews.com/news/2008/02/21/2008-02-21_parents_of_5yearold_handcuffed_in_school.html), Last accessed Nov. 19, 2010.
- v. NAACP Legal Defense & Educational Fund, Inc., "Dismantling the School-to-Prison Pipeline (2005) p. 3; Robert Balfanz, High Poverty Secondary Schools and the Juvenile Justice System," in Wald and Losen (eds) *Deconstructing the School to Prison Pipeline* (Jossey-Bass 2003) 77-78; Russell Skiba and M. Karega Rausch, "Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness," in Evertson and Weinstein (eds), *Handbook of Classroom Management: Research, Practice, and Contemporary Issues*, (Lawrence Erlbaum Associates 2006).
  - vi. Skiba and Rausch, id.
  - vii. Central Records Access Officer and Agency Attorney Joseph Baranello, New York City Department of Education, e-mail to New York Civil Liberties Union, 10 June 2009.
  - viii. Available at <http://schools.nyc.gov/AboutUs/data/stats/Register/JFormbyDistricts/default.htm>
  - ix. National Center for Educational Statistics, "Table 160. Number of students suspended and expelled from public elementary and secondary schools, by sex, race/ethnicity, and state: 2006," Available at [http://nces.ed.gov/programs/digest/d08/tables/dt08\\_160.asp?referrer=list](http://nces.ed.gov/programs/digest/d08/tables/dt08_160.asp?referrer=list), Last accessed Nov. 19, 2010. See also, Rhonda Brownstein, "Pushed Out," *Teaching Tolerance* (2009).
  - x. Pedro A. Noguera, "School, Prisons and Social Implication of Punishment: Rethinking Disciplinary Practices," *Theory into Practice* 42 (2003) 342.
  - xi. Russell Skiba, M. Karega Rausch, and Shana Ritter, "Discipline is Always Teaching: Effective Alternatives to Zero Tolerance in Indiana's Schools," *Education Policy Briefs* 2 (2004) 6.
  - xii. Russell Skiba, et. al, "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," *American Psychological Association Council of Representatives* (Aug. 9, 2006).
  - xiii. See, e.g., Florida (F.S.A. §1003.01(5)(a) (2010), defining suspension as "the temporary removal of a student from all classes of instruction on public school grounds...for a period not to exceed 10 school days."; Ohio (R.C. §313.66(A) (2010), granting superintendents and principals the power to "suspend a pupil from school for not more than ten school days."; Connecticut (C.G.S.A. §10-233a(d) (2010), defining suspension as "an exclusion from school privileges... for no more than ten consecutive school days."; See also, California, Ann. Cal. Educ. Code §48903(a) (2009), limiting the total number of days for which a pupil can be suspended in a single school year to 20.
  - xiv. NAACP Legal Defense & Educational Fund, Inc., id.
  - xv. Virginia Costenbader and Samia Markson, "School Suspension: A Study with Secondary School Students," *Journal of School Psychology* 36 (Spring 1998) 59-82.
  - xvi. Linda M. Raffaele Mendez, Howard M. Knoff, and John M. Ferron, "School Demographic and Out-of-School Suspension Rates: A Quantitative and Qualitative Analysis of a Large, Ethnically Diverse School District," *Psychology in the Schools* 39 (2002) 260.
  - xvii. Robert Balfanz, id.
  - xviii. Russell Skiba and M. Karega Rausch, "Zero Tolerance, Suspension and Expulsion: Questions of Equity and Effectiveness," id.
  - xix. Wu, et al. "Student Suspension: A Critical Reappraisal," *The Urban Review* 14 (1982) 255.
  - xx. Russell Skiba, and M. Karega Rausch, "Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness," id.
  - xxi. Russell Skiba, et. al, "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," id.
  - xxii. See, e.g., Cara Suvall, "Restorative Justice in Schools: Learning from Jena High School," *Harvard Civil Rights-Civil Liberties Law Review* 44 (2009) (demonstrating that a disciplinary response rooted in restorative justice values is more appropriate for schools than the conventional punitive disciplinary approach); Russell Skiba, M. Karega Rausch, and Shana Ritter, "Discipline is Always Teaching: Effective Alternatives to Zero Tolerance in Indiana's Schools," *Education Policy Briefs* 2 (2004) 7; Russell Skiba and Reece Peterson, "Preventing School Failure" *Indiana Education Policy Center* 44 (2002); The Advancement Project and The Civil Rights Project at Harvard University, "Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline, Report from a National Summit on Zero Tolerance" (2000) 12; Annenberg Institute for School Reform, Make the Road New York, and New York Civil Liberties Union, *Safety with Dignity: Alternatives to the Over-Policing of Schools* (2009).
  - xxiii. Ian Urbina, "It's a Fork, It's a Spoon, It's a...Weapon?" *The New York Times* 11 Oct. 2009. Available at <http://www.nytimes.com/2009/10/12/education/12discipline.html>, Last accessed on Dec.7, 2010; Associated Press, "Eagle Scout Suspended for Keeping 2-inch Knife in Car," *New York Post* 14 Oct. 2009. Available at [http://www.nypost.com/p/news/local/eagle\\_scout\\_suspended\\_for\\_keeping\\_p0wiCkTQQH76vA7PEgYL](http://www.nypost.com/p/news/local/eagle_scout_suspended_for_keeping_p0wiCkTQQH76vA7PEgYL).
  - xxiv. Matthew Lysiak and Larry McShane, "School principal Evelyn Mastroianni apologizes to Patrick Timoney's mom for tiny toy gun bust," *New York Daily News* 5 Feb. 2010. Available at [http://www.nydailynews.com/ny\\_local/education/2010/02/05/2010-02-05\\_si\\_principal\\_i\\_blew\\_toy\\_gun\\_flap.html](http://www.nydailynews.com/ny_local/education/2010/02/05/2010-02-05_si_principal_i_blew_toy_gun_flap.html), Last Accessed 19 Nov. 2010.



- 39 xxv. NAACP Legal Defense & Educational Fund, Inc., id.
- xxvi. N.Y. Const. Art. XI, §1
- xxvii. N.Y. Const. Art. XI, §1; N.Y. Educ. Law §3202(1) (2009). See, e.g., *Brown v. Board of Ed. of Topeka, Shawnee County, Kan.* 347 U.S. 483, 493 (1954) (“education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society...It is the very foundation of good citizenship.”)
- xxviii. Universal Declaration of Human Rights, Art. 26 (1948).
- xxix. Universal Declaration of Human Rights, Art. 26 (1948).
- xxx. International Covenant on Civil and Political Rights (ICCPR), 99 U.N.T.S. 171, 23 Mar. 1976. United States ratified 8 June 1992.
- xxxi. Convention on the Rights of the Child (CRC), G.A. Res. 44/25, U.N. Doc A/RES/44/25, 2 Sept. 1990. United States signed, 16 Feb. 1995 (not ratified).
- xxxii. International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, 4 Jan.1969. United States ratified 21Oct. 1994.
- xxxiii. For a detailed discussion of the human rights law implications of zero tolerance see Allard K. Lowenstein, “Dignity Denied: The Effect of ‘Zero Tolerance’ Policies on Students’ Human Rights,” American Civil Liberties Union and American Civil Liberties Union of Connecticut. (2008). Available at [http://www.aclu.org/files/pdfs/humanrights/dignitydenied\\_november2008.pdf](http://www.aclu.org/files/pdfs/humanrights/dignitydenied_november2008.pdf). Last accessed Nov. 23, 2009.
- xxxiv. The NYCLU testified before Obama Administration officials regarding the School to Prison Pipeline’s inclusion in the Periodic Review process in February 2010. Other organizations calling for exclusionary discipline to be examined as part of the process include the Poverty and Race Research Action Council, the National Social and Economic Rights Initiative, and the American Civil Liberties Union.
- xxxv. See, e.g. Chancellor’s Regulation A-443: Student Discipline Procedures.
- xxxvi. The Safe Schools Against Violence in Education (SAVE) Act, L. 2000, ch. 181; N.Y. Educ. §2801 (l) and (m)(2009). Importantly, the New York City DOE interprets the SAVE Act as requiring suspensions for certain behaviors, and has expressed this interpretation to advocates.
- xxxvii. N.Y. Educ. §3214 2-a(a)(4) and (7)(2009).
- xxxviii. The Safe Schools Against Violence in Education (SAVE) Act, L. 2000, ch. 181; N.Y. Educ. §3214 3-a (2009).
- xxxix. N.Y. Educ. §3214 3-a (b)(2009).
- xl. N.Y. Educ. § 3214(3)(b) (2009).
- xli. NY Educ. §3214 (3)(e)(2009).
- xlii. NY Educ. §3214 (3)(e)(2009).
- xliii. N.Y. Educ. §3214(2) (2009). This obligation extends to students who are younger than maximum compulsory school attendance age which is 17 in New York City and 16 elsewhere in the state. New York City Department of Education, Regulations of the Chancellor, A-210 §1A-D (2009); N.Y. Educ. §3205, §1 (2009).
- xliv. New York City Department of Education, “Long Term Suspension Centers Site List,” Available at <http://schools.nyc.gov/Offices/District79/SchoolsProgramsServices/Long+Term+Suspension+Centers+Site+List.htm>, Last accessed April 6, 2010.
- xlv. Lynette Holloway, “Board Votes to Give Police Control Over School Security,” *The New York Times*, 17 Sept, 1998. Available at <http://www.nytimes.com/1998/09/17/nyregion/board-votes-to-give-police-control-over-school-security.html>, Last accessed Nov. 19, 2010; Timothy Williams, “NYC Turns School Security Over to Police,” *Associated Press*, 17 Sept. 1998.
- xlvi. Academy of Achievement, “New York’s Pillar of Strength,” 3 May 2003. Available at <http://www.achievement.org/autodoc/page/giu0int-1>, Last accessed Nov. 19, 2010.
- xlvii. The Advancement Project, “Education on Lockdown: The Schoolhouse to Jailhouse Track,” (2005) 11.
- xlviii. Annenberg Institute for School Reform, Make the Road New York, and New York Civil Liberties Union, “Safety with Dignity: Alternatives to the Over-Policing of Schools” (2009).
- xlix. New York Police Department, “Police Academy School Safety Police Science,” 2000.
- I. Annenberg Institute for School Reform, Make the Road New York, and New York Civil Liberties Union, “Safety with Dignity: Alternatives to the Over-Policing of Schools” (2009).
- ii. American Civil Liberties Union and New York Civil Liberties Union, “Criminalizing the Classroom: The Over-Policing of New York City Schools” (2007).
- iii. Ben Chapman, “School Safety Officers treated Brooklyn 9-year-old ‘like a criminal’ by handcuffing him, mom says”, *New York Daily News*, 12 May 2010. Available at [http://www.nydailynews.com/ny\\_local/brooklyn/2010/05/12/2010-05-12\\_school\\_safety\\_officers\\_treated\\_brooklyn\\_9yearold\\_like\\_a\\_criminal\\_by\\_handcuffing\\_.html](http://www.nydailynews.com/ny_local/brooklyn/2010/05/12/2010-05-12_school_safety_officers_treated_brooklyn_9yearold_like_a_criminal_by_handcuffing_.html), Last accessed Nov. 19, 2010; Leigh Remizowski, Clare Trapasso and Alison Gendar, “Cops Called as Annual Senior Prank at Richmond Hill High School Goes Wrong,” *New York Daily News*, 12 June 2010. Available at [http://www.nydailynews.com/ny\\_local/queens/2009/06/13/2009-06-13\\_a\\_notsoegg-sellent\\_annual\\_food\\_fight\\_goes\\_too\\_far\\_cops\\_are\\_called\\_richmo.html](http://www.nydailynews.com/ny_local/queens/2009/06/13/2009-06-13_a_notsoegg-sellent_annual_food_fight_goes_too_far_cops_are_called_richmo.html), Last accessed July 28, 2010; Rachel Monahan, “Queens girl Alexa Gonzalez hauled out of school in handcuffs after getting caught doodling on desk,” *New York Daily News*, 4 Feb. 2010. Available at [http://www.nydailynews.com/ny\\_local/education/2010/02/05/2010-02-05\\_cuffed\\_for\\_doodling\\_on\\_a\\_desk.html](http://www.nydailynews.com/ny_local/education/2010/02/05/2010-02-05_cuffed_for_doodling_on_a_desk.html), Last accessed July 28, 2010; Carrie Melago, “More than 300 students arrested illegally at schools by NYPD over 2 year period,” *New York Daily News*, 8 Oct. 2008, Available at [http://www.nydailynews.com/ny\\_local/education/2008/10/08/2008-10-08\\_more\\_than\\_300\\_students\\_arrested\\_illegall.html](http://www.nydailynews.com/ny_local/education/2008/10/08/2008-10-08_more_than_300_students_arrested_illegall.html), Last accessed July 28, 2010; Carrie Melago,

"Parents of 5-year-old handcuffed in school will sue City for \$15M," *New York Daily News*, 21 Feb. 2008. Available at [http://www.nydailynews.com/news/2008/02/21/2008-02-21\\_parents\\_of\\_5yearold\\_handcuffed\\_in\\_school.html](http://www.nydailynews.com/news/2008/02/21/2008-02-21_parents_of_5yearold_handcuffed_in_school.html), Last accessed Nov. 19, 2010.

- liii. American Civil Liberties Union and New York Civil Liberties Union, "Criminalizing the Classroom: The Over-Policing of New York City Schools" (2007).
- liv. *Memorandum of Understanding Among the Board of Education of the City of New York, the Chancellor of the City School District of the City of New York, and the City of New York on the Performance of School Security Functions by the New York City Police Department for the Benefit of the City School District of the City of New York and its Students and Staff*, Executed by the Mayor, Chancellor, and Board of Education President (1998).
- lv. School violence and disruption levels have decreased since 1985. See Russell Skiba, et. al, "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," id.
- lvi. City of New York, "Children," 9/11 Health Website. Available at <http://www.nyc.gov/html/doh/wtc/html/children/children.shtml>. Last accessed Oct. 22, 2010. See also, Abby Goodnough, "Post-9/11 Pain Found to Linger in Young Minds," *The New York Times*, 2 May 2002.
- lvii. See, e.g. Jennifer Medina, "Mayor Says Student Scores will Factor in to Teacher Tenure," *The New York Times*, 25 Nov. 2009; Andy Newman, "After 8 Hours of Protests, Panel Votes to Close Schools," City Room, *The New York Times*, 27 Jan. 2010; Rachel Monahan, "Some Parents Cry Foul as City Holds Back Thousands of Students who did Poorly on Exams," *The Daily News*, 24 Sept. 2010.
- lviii. See Amy S. Clark, "School Cell Phone Ban Causes Uproar," *CBS News*, 12 May 2006. Available at <http://www.cbsnews.com/stories/2006/05/12/national/main1616330.shtml>, Last accessed Oct.22, 2010.
- lix. Central Records Access Officer and Agency Attorney Joseph Baranello, New York City Department of Education, e-mail to New York Civil Liberties Union, 10 June 2009.
- lx. Elissa Gootman, "City Schools Cut Parents' Lifeline (the Cellphone)," *The New York Times*, 27 April. 2007, Available at <http://www.nytimes.com/2006/04/27/nyregion/27schools.html>, Last accessed April 6, 2010.

For a detailed discussion of the roving metal detector program, please see American Civil Liberties Union and New York Civil Liberties Union, *Criminalizing the Classroom: The Over-policing of New York City Schools* (2007).

- lxi. American Civil Liberties Union and New York Civil Liberties Union, "Criminalizing the Classroom: The Over-Policing of New York City Schools" (2007).
- lxii. Id.
- lxiii. Rhonda Brownstein, "Pushed Out," *Teaching Tolerance* (2009). Racial disparities in suspension and expulsion contribute directly to disparities in the juvenile and criminal justice systems. In 2006, black youth made up 15 percent of the juvenile population in the U.S., but accounted for 40 percent of youth in correctional settings. Many of those students were referred to police by their schools. Melissa Sickmund, T.J Sladky, and Wei Kang, "Census of Juveniles in Residential Placement Data-book" (2008). Available at <http://www.ojdp.ncjrs.gov/ojstatbb/cjrp/>, Last accessed Nov. 19, 2010. As a study by the Correctional Association of New York found, although black and Latino youth comprise less than two-thirds of New York City youth, those children constituted 95 percent of those entering juvenile detention. The Correctional Association of New York, "Juvenile Detention in New York City" (2006) 1.
- lxiv. The list of infractions the authors consider to be "subjective" is reprinted in Appendix B.
- lxv. Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1415 (j) (2010).
- lxvi. Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1415 (2010).
- lxvii. A study of suspensions and expulsions in Kansas found that students with disabilities were more than twice as likely to be suspended or expelled as their non-disabled peers. The study found that 87 percent of the suspended/expelled students with disabilities were classified as either emotionally or learning disabled. These students represented 1 percent and 4.5 percent, respectively, of the Kansas student population, but each group represented 11 percent of students suspended and/or expelled. Sid Cooley, "Suspension/Expulsion of Regular and Special Education Students in Kansas: A Report to the Kansas State Board of Education," 22 Nov. 1995.

In addition to finding that students with disabilities were more likely to be suspended than their non-disabled peers, a 2006 study in Maryland found that students with emotional and/or behavioral disorders were most at risk for suspensions. Furthermore, the study found that black students within almost all disability categories were both more likely to be suspended than students without disabilities, and more likely to be suspended than students in the same disability group from any other racial demographic. Peter E. Leone, Michael P. Krezmien, Georgian M. Achilles "Suspension, Race, and Disability: Analysis of State-wide Practices and Reporting," *Journal of Emotional and Behavioral Disorders* (2006) 14.

- lxviii. Russell Skiba and M. Karega Rausch, "The Relationship Between Achievement, Discipline and Race: An Analysis of Factors Predicting ISTEP Scores" (Center for Evaluation and Education Policy, Indiana University, 2004).
- lxix. M. Karega Rausch and Russell Skiba, "The Academic Cost of Discipline: The Relationship Between Suspension/Expulsion and School Achievement" (Center for Evaluation and Education Policy, Indiana University, 2006). See also, Russell Skiba and M. Karega Rausch, "The Relationship Between Achievement, Discipline and Race: An Analysis of Factors Predicting ISTEP Scores" (Center for Evaluation and Education Policy, Indiana University, 2004).
- lxx. Russell Skiba, and M. Karega Rausch, "Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness," id.
- lxxi. NAACP Legal Defense & Educational Fund, Inc., *Dismantling the School-to-Prison Pipeline*, id.

- Ixxii. National Center for Education Statistics, "Table 27-2, Percentage of spring 2002 high school sophomores who had left school without completing a 4-year program as of spring 2004, by student characteristics, academic achievement, school experiences, and school characteristics," *The Condition of Education, 2006*.
- Ixxiii. Chancellor's Regulation A-501, "Promotion Standards," New York City Department of Education (Nov. 2009). Available at <http://docs.nycenet.edu/docushare/dsweb/Get/Document-24/A-501.pdf>. Last accessed Aug. 23, 2010.
- Ixxiv. Open Society Institute-Baltimore, "Stop the Schoolhouse to Jailhouse Track," <http://www.stopschoolstojails.org/osi-baltimore.html>. Last accessed Sept. 22, 2009.
- Ixxv. Los Angeles Unified School District, "Board Presentation," 13 May 2008. Available at [http://notebook.lausd.net/portal/page?\\_pageid=33,911578&\\_dad=ptl&\\_schema=PTL\\_EP](http://notebook.lausd.net/portal/page?_pageid=33,911578&_dad=ptl&_schema=PTL_EP). Last accessed May 13, 2010.
- Ixxvi. According to the United Federation of Teachers, 2009.
- Ixxvii. N.Y. State Admin. Pro. Act §202 (2010); Admin. Pro. Act, 15 U.S.C.A §§551-559 et seq. (2010)
- Ixxviii. Annenberg Institute for School Reform, Make the Road New York, and New York Civil Liberties Union, "Safety with Dignity: Alternatives to the Over-Policing of Schools" (2009).
- Ixxix. Linda M. Raffaele Mendez, Howard M. Knoff, and John M. Ferron, "School Demographic and Out-of-School Suspension Rates: A Quantitative and Qualitative Analysis of a Large, Ethnically Diverse School District," *Psychology in the Schools* 39 (2002) 259; Russell Skiba and M. Karega Rausch, "Zero Tolerance, Suspension and Expulsion: questions of Equity and Effectiveness," id.
- Ixxx. In *Board of Education v. Mills*, the Third Department described the substantial and competent evidence standard: "In final analysis, substantial evidence consists of proof within the whole record of such quality and quantity as to generate conviction in and persuade a fair and detached fact finder that, from that proof as a premise, a conclusion or ultimate fact may be extracted reasonably-probatively and logically." *Bd. of Educ. v. Mills*, 741 N.Y.S.2d 589, 590-591 (3d Dep't 2002).
- Ixxxi. N.Y. Educ. Law §3214 (2009).
- Ixxxii. Safe Schools Against Violence in Education (SAVE) Act, N.Y. Educ. §3214 (3-a) (2009).
- Ixxxiii. Under federal law, students with disabilities are granted protections against scenarios where they may be the victims of "pushout" or where the behavior for which they are being suspended was a manifestation of their specific needs. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415 (j) (2010).



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