

**TESTIMONY OF JESSICA LIMBACHER ON BEHALF OF THE EDUCATION LAW  
COMMITTEE OF THE NEW YORK COUNTY LAWYERS ASSOCIATION AT THE  
PUBLIC HEARING ON THE CITYWIDE STANDARDS OF INTERVENTION AND  
DISCIPLINE MEASURES (THE DISCIPLINE CODE)**

**March 2, 2015**

My name is Jessica Limbacher and I am a member of the Education Law Committee of the New York County Lawyers Association (“NYCLA”). The NYCLA Education Law Committee appreciates the opportunity to submit testimony to the New York City Department of Education regarding the proposed revisions to the Citywide Standards of Intervention and Discipline Measures (The Discipline Code). The views expressed today are those of the NYCLA Education Law Committee, have not been approved by the NYCLA Board of Directors and do not necessarily represent the views of NYCLA.

NYCLA is a 9,000-member bar association headquartered in lower Manhattan, one block from the World Trade Center. Since its founding 107 years ago, NYCLA has had as part of its fundamental mission a commitment to promoting the administration of justice, protecting a strong and independent judiciary, and ensuring access to justice for all New Yorkers. I speak to you today on behalf of the members of the NYLCA Education Law Committee, which is comprised of attorneys interested in the practice of education law. The Committee urges the New York City Department of Education to consider the following recommendations as it considers revising the Discipline Code.

**A. Concerns regarding Disparate Impact and the Effects of Harsh and Punitive  
Disciplinary Practices**

The phrase “school-to-prison-pipeline” has been heard frequently over the past several years as schools have shifted towards implementation of safety and disciplinary policies that criminalize student behavior, resulting in students entering the criminal justice system for offenses that would once have warranted after-school detention or a meeting with parents.

This national trend means that instead of counseling or educational assistance, students are criminally punished for minor infractions and introduced to the juvenile justice system at an early age. The link between disciplinary actions, poor academic outcomes and criminal justice contact is especially troubling given the discriminatory impact of the disciplinary policies, demonstrated by the over-representation of students of color and students with disabilities in the number of suspensions each year. Even more disturbing is the fact that most of these suspensions are for minor, discretionary infractions, such as disobedience or “defying authority” rather than actual violent behavior.

**B. Recommendations for Changes to the Discipline Code**

*a. B21*

One of the Education Law Committee’s concerns regarding the current Discipline Code is infraction B21: “defying or disobeying the lawful authority or directive of school personnel or school safety agents in a way that substantially disrupts the education process and/or poses a danger to the school community.” While the new Code now clarifies that this behavior does not include using profane language, wearing prohibited clothing, or bringing prohibited items to school, the language regarding “defiance” is still so vague that it permits school officials to seek to suspend students for other minor behavior, like pushing past another student or refusing to answer a question. This is especially problematic given that minority and special education students are more likely to be suspended for incidents in which a school administrator has discretion regarding which disciplinary response to pursue. In the past few years, both Los Angeles and San Francisco have banned suspensions for willful defiance, replacing them with guidance interventions like conflict resolution, peer mediation, or counseling. The Education Law Committee recommends that New York do the same by eliminating suspension entirely as a possible disciplinary response to infraction code B21.

*b. Restorative Practices*

The Committee commends the administration’s focus on restorative practices instead of more punitive measures. However, the Committee emphasizes the need for schools to receive more resources in order to successfully implement these practices. It is critical that schools be provided with comprehensive training and/or additional staff to coordinate these programs in order for restorative justice to have a meaningful impact on students’ lives.

*C. Due Process*

Finally, the new Discipline Code eliminates as part of due process a student’s right to receive written notice of the reasons for disciplinary action taken against them in a timely fashion. It is crucial that students and parents be promptly informed in writing of the accusations against them so that they may have an opportunity to dispute the charges if they are inaccurate. Timely written notice of a disciplinary action is an essential due process right, and it needs to be spelled out clearly in the Code.

**C. Conclusion**

In the hope that the Department of Education will continue to transition to a more positive school climate, we call upon the Department of Education to consider the recommendations and comments above to improve the student Discipline Code.