

Public Hearing on Proposed Revisions to the Citywide Behavioral  
Expectations to Support Student Learning  
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The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. Through CDF's Cradle to Prison Pipeline® Campaign – a national initiative to stop the funneling of thousands of children, especially poor children and children of color, down life paths that often lead to arrest, conviction and incarceration – CDF-New York works to replace punitive school discipline and safety policies in New York City schools with social and emotional supports that encourage a positive school climate and improve educational and social outcomes for youth.

We would like to thank the Department of Education (DOE) for this opportunity to submit testimony pertaining to proposed revisions to the Citywide Behavioral Expectations to Support Student Learning (The Discipline Code).

### **Overview**

The DOE and the City of New York have recently taken important steps to advance the safety and dignity of all students in New York City's public schools, and we applaud certain proposals to revise the Discipline Code for SY2016-17:

- Eliminate the ability to invoke a suspension for students in grades K-2;
- Create a superintendent's suspension option of 11-29 days, where currently the Discipline Code only allows for 6-10 days and 30-90 days;
- Systematize the early reinstatement process.

CDF-NY urges the DOE to further clarify the seven proposed changes to the Discipline Code as well as amend select proposals to more fully align with a restorative approach to teaching and learning:

- Explicitly require the use of guidance interventions before suspensions are used;
- End the option of a one-year suspension without the opportunity for review;
- Allow reviews for early reinstatement to be conducted upon student request or on request of the principal or parent.

We believe these efforts are essential initiatives toward building safe and supportive schools, and reducing disparities in the use of discipline by race, disability status, sexual orientation, and gender identity. At the same time, CDF-NY calls on the DOE to take further action as it finalizes the Discipline Code for the upcoming school year:

- Eliminate the practice of suspending students for Infraction B21, "defying or disobeying authority;"
- Provide system-wide clarity on current and forthcoming investments and supports for school communities on restorative practices and other guidance interventions included in the progressive ladder of alternative supports meant to reduce school reliance on exclusionary discipline.

### ***PART I: Significant Proposed Changes for SY2016-17***

Where we recognize components of the Mayor's Leadership Team (MLT) Phase II recommendations in the proposed changes, we ask that the DOE work to incorporate those suggestions more fully. Because the list of the "Significant Proposed Changes" is currently detached from a complete Discipline Code document, we feel there are limitations to the content of our testimony, and we ask that the DOE provide the opportunity for comment on the full Discipline Code.

- 1. Topic: DOE's vision and expectations for discipline and school climate**  
**Proposed Revision: Include the mission statement of the Mayor's Leadership Team on School Climate that was adopted in July 2015 in the introduction of the Discipline Code.**

While the "Significant Proposed Changes" memo states the intention of including the mission statement of the MLT, we would appreciate greater clarity on the exact content that is projected to be included. Of specific concern, the adopted mission statement of the MLT includes language specific to the NYPD, including but not limited to, "The New York City Mayor's Office, Department of Education and New York

City Police Department believe the City's schools must foster environments most conducive to learning."<sup>1</sup> The current Discipline Code has no mention of the NYPD directly, with a reference to police only through a partial comment on Chancellor's Regulation A-412 and in a stipulation that students have the right to the presence of school staff in situations where there may be police involvement. It is the purpose of the Memorandum of Understanding (MOU) to codify the relationship between the NYPD and DOE, and we ask that the final Discipline Code not include NYPD specific language, for reasons cited in the Phase II recommendations of the MLT:

- "School administrators have primary responsibility for intervening in and addressing student misbehavior and for ensuring consistent application of school rules and policies as set forth in the Discipline Code;" and
- "School Safety Staff should not be requested to intervene in a situation that can be safely and appropriately handled by the school's code of conduct."

## 2. Topic: Supports and Interventions

**Proposed Revision: Require documentation of guidance supports and interventions provided by a school prior to issuing a suspension for Level 1-3 infractions. Rename "guidance interventions" to "supports and interventions" throughout the document.**

While CDF-NY ultimately supports the proposal to require documentation of guidance supports and interventions, the exact proposed revision is unclear. A documentation requirement alone does not specify that there will be an accountability process to follow documentation, or that documentation will be subject to review. It is our understanding that this proposed change is a response to a MLT recommendation that reads, "Protections and monitoring should be put in place to ensure that schools are documenting interventions appropriately." As it is written, the proposed change does not wholly incorporate that recommendation. We call on the DOE to take a step further and mandate guidance interventions before any suspension, not only require that interventions be documented, and include all infraction levels, not only Levels 1-3. There are several conceivable methods to deter or remedy harmful student behaviors prior to resorting to a suspension,<sup>2</sup> and we ask that the DOE codify the reality that punishment can never deal with the context of the harm and that suspending children from school should be a last resort.

## 3. Topic: K-2 suspensions

**Proposed Revision: Eliminate the ability to invoke a suspension for students in K-2, except as required by law, and replace with appropriate supports and interventions. Suspension for students in grade 3 will continue to require approval by Central.**

The earliest years of school are vital in setting the foundation for a child's learning,<sup>3</sup> and the bond with and trust for a teacher is interrupted through the use of suspension,<sup>4</sup> potentially detrimentally impacting a student's connection to school or feelings toward learning in the schooling environment. The proposal to eliminate suspensions for students in kindergarten through second grade sets a strong starting point in our work to ensure all students are provided with opportunities for mutual respect and meaningful learning. Research shows that school policies and practices, not student behavior, are the primary drivers of suspension rates.<sup>5</sup> An end to the practice of suspension for students at these grade levels must be accompanied by supports for teachers and schools in alternative disciplinary approaches. It is important not only to educate school leaders and staff about the negative consequences of school suspension but also to convince them of the viability of alternatives to suspension as a response to harm. To deter the use of exclusionary discipline, educators can offer supportive relationships, academic rigor, culturally

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<sup>1</sup> The *Adopted Mission Statement* also includes the following statement: "In this way, New York City will reduce the use of suspensions as a disciplinary tool and will eliminate the use of summonses and arrests for minor school misbehavior while continuing to advance school safety." Retrieved from <http://www1.nyc.gov/site/sclt/impact/impact.page>.

<sup>2</sup> Owen, J., Wettach, J., and Hoffman, K.C. (2015). *Instead of Suspension: Alternative Strategies for Effective School Discipline*. Durham, NC: Duke Center for Child and Family Policy and Duke Law School. Retrieved from [https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead\\_of\\_suspension.pdf](https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf).

<sup>3</sup> Gregoriadis, Athanasios, and Vasilis Grammatikopoulos. "Teacher-child Relationship Quality in Early Childhood Education: The Importance of Relationship Patterns." *Early Child Development and Care* 184.3 (2014): 386-402.

<sup>4</sup> Gregory, A., Allen, J.P., Mikami, A.Y., Hafen, C.A., and Pianta, R.C. (2015). The Promise of a Teacher Professional Development Program in Reducing Racial Disparity in Classroom Exclusionary Discipline. In Losen, D.J. (Ed.), *Closing the Discipline Gap* (166-179). New York, NY: Teachers College Press.

<sup>5</sup> Fabelo, T., Thompson, M.D., Plotkin, M., Carmichael, D., Marchbanks, M.P., and Booth, E.A. (2011). *Breaking schools' rules: A statewide study of how school discipline related to students' success and juvenile justice involvement*. New York: Council of State Governments Justice Center.

relevant and responsive teaching practices, and respectful, inclusive classroom and school environments,<sup>6</sup> and because all these skills can be learned,<sup>7</sup> all educators and school staff need supports and continuous high-quality professional development to make this reform a reality.

#### 4. Topic: Stun Gun/Weapons

##### Proposed Revision: Remove stun weapons as a category II weapon and revise stun gun in category I to reach stun gun/weapons

Without considerable further justification, CDF-NY cannot support increasing penalties in the Discipline Code for stun weapons at this time. Revising stun weapons to become a category I weapon will dramatically increase the punishment for infractions A46, A56, A57, and A58 for students in elementary school, and infractions B48, B58, B59, and B60 for students in grades six through twelve. As is detailed below, the revision does not change the punishment for using the stun weapons “to inflict injury,” but rather increases the punishment for “possessing or selling” or using to “threaten or to attempt to inflict injury.”

GRADES 4 AND 5				
<i>Infractions</i>	<i>Response</i>	<i>As defined in Category II</i>	<i>As defined in Category I</i>	<i>Proposed Change</i>
Possessing or selling any weapon (A46 & A56)	Minimum	1 day	6 days	Increases minimum by 5 days
	Maximum	90 days	90 days	
Using any weapon to threaten or to attempt to inflict injury upon school personnel, students, or others (A57 & A58)	Minimum	6 days	6 days	Increases maximum by 270 days
	Maximum	90 days	1 year without the opportunity for early reinstatement	
Using any weapon to inflict injury upon school personnel, students, or others (A59)	Minimum	6 days	6 days	No Change
	Maximum	1 year without the opportunity for early reinstatement	1 year without the opportunity for early reinstatement	

GRADES 6 THROUGH 12				
<i>Infractions</i>	<i>Response</i>	<i>As defined in Category II</i>	<i>As defined in Category I</i>	<i>Proposed Change</i>
Possessing or selling any weapon (B48 & B58)	Minimum	1 day	6 days	Increases minimum by 5 days
	Maximum	Students not yet 17: 1 year without the opportunity for early reinstatement  Students who turned 17 prior to the beginning of the school year: Expulsion	Students not yet 17: 1 year without the opportunity for early reinstatement  Students who turned 17 prior to the beginning of the school year: Expulsion	
Using any weapon to threaten or to attempt to inflict injury upon school personnel, students, or others (B59 & B60)	Minimum	6 days	Students not yet 17: 1 year without the opportunity for early reinstatement  Students who turned 17 prior to the beginning of the school year: Expulsion	Increases minimum from 6 days to 1 year / expulsion
	Maximum	Students not yet 17: 1 year without the opportunity for early reinstatement  Students who turned 17 prior to the beginning of the school year: Expulsion		
Using any weapon to inflict injury upon school personnel, students, or others (B61)	Minimum & Maximum	Students not yet 17: 1 year without the opportunity for early reinstatement  Students who turned 17 prior to the beginning of the school year: Expulsion	Students not yet 17: 1 year without the opportunity for early reinstatement  Students who turned 17 prior to the beginning of the school year: Expulsion	No Change

<sup>6</sup> Gregory, A., Bell, J., and Pollock, M. (2014). *How Educators Can Eradicate Disparities in School Discipline: A Briefing Paper on School-Based Interventions*. Bloomington, IN: The Equity Project at Indiana University. Retrieved from [http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Disparity\\_Intervention\\_Full\\_121114.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Disparity_Intervention_Full_121114.pdf).

<sup>7</sup> Losen, D.J. (2013). Discipline Policies, Successful Schools, Racial Justice, and the Law. *Family Court Review*, 51(3):388-400.

The response to these infractions should not be an increased duration of time spent out of school without changing the circumstances of students' lives. There are countless explanations for why young people carry these devices, including as a means of self-protection specific to their own individualized safety concerns.<sup>8</sup> Mandating harsher punishments for all students across all schools will neither teach nor support students to make different decisions, nor will it address the behavioral and structural causes of violence.

Prevailing research suggests that punitive discipline measures are less likely to instill a sense of safety than measures that foster respect and trust,<sup>9</sup> and that students' feelings of safety at school are influenced by a broad scope of factors, including students' own attributes and the attributes of their schools, the adults with whom the students interact, the students' families, their neighborhoods, and the larger society.<sup>10</sup> School leadership and teachers' relationships with students are imperative in mediating the influence of external factors on perceptions of school safety.<sup>11</sup> We urge the DOE to shift away from disciplinary responses designed to exclude students, and to move toward a model that promotes relationships between teachers and students and invest in strategies, like whole-school restorative justice, that provide teachers and students with opportunities to develop strong bonds.

## 5. Topic: Mitigating Circumstances

**Proposed Revision: Add to list of mitigating circumstances an item: "Consideration of social-emotional needs of all parties involved."**

It is our understanding that this addition to the list of mitigating circumstances arose from a recommendation from the MLT. Currently, the SY2015-16 Discipline Code includes the following considerations:

- the student's age and maturity;
- the student's disciplinary record (including the nature of any prior misconduct, the number of prior instances of misconduct, and the disciplinary and guidance intervention measures applied for each);
- the nature, severity, and scope of the behavior;
- the circumstances/context in which the conduct occurred;
- the frequency and duration of the behavior;
- the number of persons involved in the behavior;
- the student's IEP (Individualized Education Plan), BIP (Behavioral Intervention Plan), and/or 504 Accommodation Plan, if applicable.

Given this list, the MLT recommended that "the discipline code should be amended to include trauma sensitivity and awareness of what is going on in the home, and to ensure that decisions consider the best interests of all children involved." We feel that the incorporation of "consideration of social-emotional needs of all parties involved" alone is unnecessarily subjective and could be misconstrued to promote suspension or exclusionary discipline. Researchers have demonstrated suspension is not an effective change agent and, often, students return to school displaying the same or escalated behaviors, which leads administrators to repeatedly use suspension for the same students.<sup>12</sup> Overwhelmingly, suspension has not been shown to improve student behavior,<sup>13</sup> school climate,<sup>14</sup> or school safety<sup>15</sup>. As an alternative, restorative practices address student behavior directly and prioritize the betterment of school spaces over student exclusion. We must be concerned about how disciplinary removal affects the suspended students, and not just those who remain in class. Given persistent racial disparities in disciplinary

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<sup>8</sup> Cao, Liqun, Yan Zhang, and Ni He. "Carrying Weapons to School for Protection: An Analysis of the 2001 School Crime Supplement Data." *Journal of Criminal Justice* 36.2 (2008): 154-64.

<sup>9</sup> Steinberg, M.T., Allensworth, E., and Johnson, D.W. (2015). What Conditions Support Safety in Urban Schools?: The Influence of School Organizational Practices on Student and Teacher Reports of Safety in Chicago. In Losen, D.J. (Ed.), *Closing the Discipline Gap* (118-131). New York, NY: Teachers College Press.

<sup>10</sup> Steinberg et al. (2015). *Op. cit.*

<sup>11</sup> Steinberg et al. (2015). *Op. cit.*

<sup>12</sup> Martinez, S. (2009). A system gone berserk: How are zero-tolerance policies really affecting schools? *Preventing School Failure*, 53(3):153-157.

<sup>13</sup> Osher, D., Bear, G.G., Sprague, J.R., and Doyle, W. (2010). How Can We Improve School Discipline? *Educational Researcher*, 39(1):48-58.

<sup>14</sup> Ryan, T., Zoldy, S. (2011). Alternatives to suspension: A government initiative. *International Journal of Educational Reform*, 20(4):322-342.

<sup>15</sup> Michail, S. (2011). Understanding school responses to students' challenging behaviour: A review of literature. *Improving Schools*, 14(2):156-171.

referrals, and research into implicit bias influencing the interpretation of student behavior,<sup>16</sup> we recommend the adoption of alternative language, such as “consideration of the impact of the disciplinary response on the needs of all parties involved.”

## **6. Superintendent’s Suspension for 11-29 days**

**Proposed Revision: Allow for a Superintendent’s Suspension of 11-29 days as a possible disciplinary response. Currently, the Discipline Code allows for 6-10 days and 30-90 days.**

CDF-NY supports changes to the Discipline Code that allow for the use of 11-29 day suspensions explicitly as a means to reduce the frequency of long-term suspensions and as a tool for discouraging the use of superintendent’s suspensions lasting 30 days or more. The MLT Phase II report notes the collateral consequences of long-term suspensions, citing City data showing lower attendance rates and fewer credits earned the year following suspension compared to time prior to being suspended.<sup>17</sup> Long-term suspensions foster disengagement from school,<sup>18</sup> segregating not only the student, but also the student’s family and community,<sup>19</sup> considerably disrupting a school’s efforts to build community trust and partnerships. We urge the DOE to release the complete Discipline Code with prospective revisions indicated, as the proposal does not list where the 11-29 day suspension option will be offered or what infractions will now include the 11-29 day option in the “range of possible disciplinary responses to be used in addition to guidance interventions.” It is our expectation that the new 11-29 day option become the new maximum disciplinary response where available.

## **7. Topic: Disciplinary Options/Review for Early Reinstatement**

**Proposed Revision: Allow for Superintendent Suspensions of shorter duration with clearly indicated review for early reinstatement.**

The MLT “Long Term Suspensions Subcommittee” recommended that the process for considering early reinstatement of students who are suspended be revised such that reviews may be conducted upon student request or on request of the principal or parent.<sup>20</sup> We urge the DOE to fully adopt that recommendation, so that students are not required to withstand long intervals out of their regular school awaiting the opportunity to petition for early reinstatement. Considering research that suggests Black students are subjected to far harsher discipline than other students for the same types of behavior<sup>21</sup> and tend to receive less deference,<sup>22</sup> we further call on the DOE to eliminate the ability to invoke one-year suspensions that do not provide the opportunity for early reinstatement.

### ***PART II: Further Action***

#### ***Eliminate Infraction B21 from the Discipline Code***

CDF-NY is a member of the Dignity in Schools Campaign-New York (DSC-NY), a citywide coalition of students, parents, educators, and advocates calling for positive, school-wide approaches to preventing and repairing harm in school that promote opportunities for meaningful learning. For as long as the infraction has existed, DSC-NY has insisted that the DOE eliminate the option to suspend for B-21, “defying or disobeying authority” – a category that has shown overwhelming racial disparities in its application. Last year the DOE took steps to reduce suspensions under B-21, adopting new protocol requiring principals to seek approval from the DOE’s Office of Safety and Youth Development (OSYD) prior to invoking a B-21 principal’s suspension. As a result, it has been reported that rates of suspension under this infraction have decreased substantially – from 22 percent of all suspensions to five percent of

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<sup>16</sup> Staats, C. (2014). *Implicit Racial Bias and School Discipline Disparities: Exploring the Connection*. Columbus, OH: Kirwan Institute for the Study of Race and Ethnicity at Ohio State University. Retrieved from <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ib-argument-piece03.pdf>.

<sup>17</sup> The Mayor’s Leadership Team on School Climate and Discipline. (2016). *Op. cit.*

<sup>18</sup> Noltemeyer, A.L., and Mcloughlin, C.S. (2010). Exclusionary discipline: Changes in disproportionality over time. *International Journal of Special Education*, 25(1): 59-70.

<sup>19</sup> Michail (2011). *Op. cit.*

<sup>20</sup> The Mayor’s Leadership Team on School Climate and Discipline. (2016). *Op. cit.*

<sup>21</sup> Losen, D.J. (2011). *Discipline Policies, Successful Schools, and Racial Justice*. Boulder, CO: National Education Policy Center. Retrieved from <http://nepc.colorado.edu/files/NEPC-SchoolDiscipline.pdf>.

<sup>22</sup> See Vavrus, F., & Cole, K. (2002). “I didn’t do nothing”: The discursive construction of suspension. *Urban Review*, 34:87-111. - *Findings include that Black students with a history of disciplinary referrals were more likely to be viewed negatively by their teachers and tended to receive less deference.*

all suspensions, or from 45.4 per day to 6.7 per day.<sup>23</sup> However, disparities based on race and disability persist in the utilization of B-21 suspensions and these suspensions are largely concentrated in a small subset of schools.<sup>24</sup>

During the 2015 public hearing on proposed revisions to the Discipline Code, CDF-NY testified before the DOE that oversight was not enough. Under this process, students, those most impacted by OSYD's determination, are removed from the discussion of what constitutes welcome behavior in school. With an already subjective offense like "defying or disobeying authority," adding an additional layer of external subjectivity to the suspension process fails to provide students and their families with transparent, appropriate and consistent expectations. We urge the DOE to eliminate Infraction B-21 from the Discipline Code, and provide targeted supports to that subset of schools most actively pursuing suspensions under this category.

### ***Optimize Commitments to Alternative Discipline Frameworks***

For the past several months the City of New York has promoted the new investment of \$47 million annually to support school climate initiatives and mental health services.<sup>25</sup> During the same time period, there has been tremendous public skepticism around school discipline reforms.<sup>26</sup> Too often, public justification for suspension focuses on removing a single child from the classroom for the sake of the many. Advocates for using suspension suggest removing disruptive students creates an environment in which teachers can best teach and students can best learn. These ideas persist despite accumulating research demonstrating that classmates who remain in the classroom do not benefit from the exclusion of their peers.<sup>27</sup> Even when administrators and teachers recognize that frequent suspensions and high racial disparities in punishment are unjust, they argue that they don't have the tools, training, or resources to make suggested changes.<sup>28</sup>

CDF-NY strongly supports and is encouraged by the City's increased investment in progressive discipline and restorative practices. The systemic implementation of restorative practices at the classroom, school, district, and city level, coupled with the reform offered through the Discipline Code, can play a key role in addressing racial disproportionality in discipline outcomes. At the same time, schools and their stakeholders need information about the supports and interventions that are being referenced in the Discipline Code, and they need to know what and where investments are being made. We ask that as the City continues efforts to reduce racial disparities in the application of discipline, the DOE make a concerted effort to provide schools, students, and families with information on all accessible tools and resources, and openly use the available data to evaluate and inform policy and practice change.

### ***Conclusion***

As time spent learning persists as one of the most consistent indicators of academic achievement, alternatives to exclusionary discipline must be implemented to keep students in classrooms.<sup>29</sup> CDF-NY is eager to work with you to implement a new, more equitable discipline code for NYC students and their communities. Thank you for carefully considering our testimony.

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<sup>23</sup> The Mayor's Leadership Team on School Climate and Discipline. (2016). *Maintaining the Momentum: A Plan for Safety and Fairness in Schools*. New York, NY: City of New York. Retrieved from [http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT\\_Report\\_7-21-16.pdf](http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf).

<sup>24</sup> The Mayor's Leadership Team on School Climate and Discipline. (2016). *Op. cit.*

<sup>25</sup> See <http://www.nydailynews.com/new-york/overhaul-nyc-school-suspension-policies-fire-article-1.2613057>. See also <http://www1.nyc.gov/office-of-the-mayor/news/628-16/de-blasio-administration-new-school-climate-initiatives-make-nyc-schools-safer-fairer>.

<sup>26</sup> See <http://www.chalkbeat.org/posts/ny/2016/04/20/as-new-york-citys-suspension-rate-falls-some-educators-see-a-parallel-dip-in-discipline/#.V40EdPkrKUK>.

<sup>27</sup> Fabelo et al. (2011). *Op. cit.*

<sup>28</sup> See <http://www.uft.org/press-releases/uft-responds-does-new-school-climate-initiatives>

<sup>29</sup> Losen, D., Hewitt, D., & Toldson, L. (2014). *Eliminating excessive and unfair exclusionary discipline in schools: Policy recommendations for reducing disparities*. Bloomington, IN: The Equity Project and Indiana University.