



**Advocates for Children of New York**  
Protecting every child's right to learn

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**Testimony to be delivered to the Office of Safety and Youth Development,  
New York City Department of Education**

**Re: The Draft of the New York City School Discipline Code 2014-2015**

**By Bernard Dufresne, Staff Attorney,  
School Justice Project, Advocates for Children of New York  
March 2, 2015**

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Thank you for the opportunity to comment on the draft Discipline Code. My name is Bernard Dufresne and I am a staff attorney in the School Justice Project at Advocates for Children of New York, where I focus on helping students with behavioral challenges get the support they need to stay and succeed in school. Advocates for Children is a member of the Dignity in Schools Campaign New York (DSC-NY) and supports DSC's testimony and goals of mandating guidance interventions prior to resorting to suspensions, expanding staff trainings that promote positive school environments, and eliminating suspensions for B21—"Defying or Disobeying Authority." My testimony today focuses on the DOE's revision to Infraction Code B21 and the importance of addressing the behavioral needs of Pre-K students.

As a preliminary matter, Advocates for Children would like to express our support for the Department of Education's efforts to curtail the list of infractions for which students in grades K-3 can be suspended. For too long, students as young as 5 or 6 years old have been removed from their classrooms through suspensions for minor misbehavior. Just recently, we had a case of a third grader with a disability



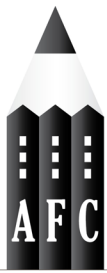
whose school tried to suspend him for 90-school days twice in consecutive weeks. Instead of spending his 9<sup>th</sup> birthday in class with his friends, he spent the entire day at a suspension hearing with me. Acknowledging that students in K-3 deserve particular protection is an important step in recognizing that successful disciplinary strategies may vary with the ages and experiences of the students, and in ensuring that all students, regardless of their age or grade level, should be provided with the behavioral support they need to reduce conduct that leads to exclusionary forms of discipline.

During the 2013-2014 school year, of the more than 53,000 suspensions issued by the DOE, more than 8,000 were for alleged violations of Infraction B21, defying or disobeying authority. Study after study has shown that racial disparities in the use of suspensions are much greater for infractions that are minor and involve subjective perceptions and discretionary punishments. While we acknowledge that the DOE has taken a step to address the overreliance on suspensions for B21 by requiring a school principal to obtain written approval from OSYD prior to authorizing a principal's suspension, there is still much concern about how the revision will work in practice. Currently, principals require authorization prior to seeking a superintendent's suspension, but from the outside, it is not clear how exactly that process works. There are no data that indicate how often, or under what circumstances, schools are given approval or what sorts of alternatives are considered prior to approval for a superintendent's suspension. Thus, while the DOE's revision



seems to make it more difficult to suspend a student for B21, it lacks transparency and does not engender the sort of paradigm shift needed in the way schools address student behavior. Therefore, we ask that the DOE issue guidance on how the B21 approval process will work, including what factors will determine whether approval for a principal's suspension is given. We also ask that OSYD require principals who want to suspend a student for B21 to demonstrate that they have employed guidance interventions prior to granting approval for the principal's suspension.

Second, while we are pleased that the DOE added a section on addressing the behavioral needs of Pre-K students in the draft Discipline Code, we ask that the DOE state explicitly that students in Pre-K cannot be suspended or expelled. Currently, instead of providing any substantive guidance on Pre-K suspensions, the draft Discipline Code refers to the DOE/ACS Pre-K Behavior Management Statement and provides a link to a version of this statement that indicates that students in Pre-K cannot be expelled or suspended *without approval from ACS or DOE* (<http://schools.nyc.gov/NR/rdonlyres/B345C3BC-9012-448D-9B73-F130EC237D63/0/BehaviorManagementStatement.pdf>). However, a version of the DOE/ACS Pre-K Behavior Management Statement posted at a different link - [http://www.nyc.gov/html/acs/downloads/pdf/earlylearn/Behavior\\_Management\\_10\\_21\\_12.pdf](http://www.nyc.gov/html/acs/downloads/pdf/earlylearn/Behavior_Management_10_21_12.pdf) - explicitly prohibits Pre-K suspensions and expulsions entirely. Data reported by the U.S. Department of Education's Office of Civil Rights show that more than 8,000 public preschoolers were suspended at least once in the 2011-2012



school year, with black boys disproportionately removed from their programs. When we suspend students from Pre-K, we miss a critical opportunity to teach appropriate school behavior and prepare them for future success in school. We ask the DOE to confirm the prohibition on the suspension and expulsion of students in Pre-K and make such a prohibition explicit in the Discipline Code.

Thank you, again, for the opportunity to testify.